

## SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

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AUTHORITY: 48 U.S.C. 421 and 48 CFR Chapter 1.

SOURCE: 64 FR 2596, Jan. 15, 1999, unless otherwise noted.

#### 213.005 Federal Acquisition Streamlining Act of 1994 list of inapplicable laws.

(a) The restriction on use of funds appropriated for fiscal year 1998 in Sec-

tion 8117 of the National Defense Appropriations Act for Fiscal Year 1998 (Pub. L. 105-56) is inapplicable to contracts at or below the simplified acquisition threshold (see 222.1304(b)).

#### Subpart 213.1—Procedures

##### 213.101 General.

Structure awards valued above the micro-purchase threshold (*e.g.*, contract line items, delivery schedule, and invoice instructions) in a manner that will minimize the generation of invoices valued at or below the micro-purchase threshold.

[65 FR 46625, July 31, 2000]

##### § 213.106-3 Award and documentation.

(e) The procedures at FAR 13.106-3(e) do not apply when the contract includes the clause at 252.204-7004, Required Central Contractor Registration.

[64 FR 43101, Aug. 9, 1999]

#### Subpart 213.2—Actions at or Below the Micro-Purchase Threshold

##### 213.270 Use of the Governmentwide commercial purchase card.

Use the Governmentwide commercial purchase card as the method of purchase and/or method of payment for purchases valued at or below the micro-purchase threshold. This policy applies to all types of contract actions authorized by the FAR unless—

(a) The Deputy Secretary of Defense has approved an exception for an electronic commerce/electronic data interchange system or operational requirement that results in a more cost-effective payment process;

(b)(1) A general or flag officer or a member of the Senior Executive Service (SES) makes a written determination that—

(i) The source or sources available for the supply or service do not accept the purchase card; and

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(ii) The contracting office is seeking a source that accepts the purchase card.

(2) To prevent mission delays, if an activity does not have a resident general or flag officer of SES member, delegation of this authority to the level of the senior local commander or director is permitted; or

(c) The purchase or payment meets one or more of the following criteria:

(1) The place of performance is entirely outside of any State, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(2) The purchase is a Standard Form 44 purchase for aviation fuel or oil.

(3) The purchase is an overseas transaction by a contracting officer in support of a contingency operation as defined in 10 U.S.C. 101(a)(13) or a humanitarian or peacekeeping operation as defined in 10 U.S.C. 2302(8).

(4) The purchase is a transaction in support of intelligence or other specialized activities addressed by Part 2.7 of Executive Order 12333.

(5) The purchase is for training exercises in preparation for overseas contingency, humanitarian, or peacekeeping operations.

(6) The payment is made with an accommodation check.

(7) The payment is for a transportation bill.

(8) The purchase is under a Federal Supply Schedule contract that does not permit use of the Governmentwide commercial purchase card.

(9) The purchase is for medical services and—

(i) It involves a controlled substance or narcotic;

(ii) It requires the submission of a Health Care Summary Record to document the nature of the care purchased;

(iii) The ultimate price of the medical care is subject to an independent determination that changes the price paid based on application of a mandatory CHAMPUS Maximum Allowable Charge determination that reduces the Government liability below billed charges;

(iv) The Government already has entered into a contract to pay for the services without the use of a purchase card;

(v) The purchaser is a beneficiary seeking medical care; or

(vi) The senior local commander or director of a hospital or laboratory determines that use of the purchase card is not appropriate or cost-effective. The Medical Prime Vendor Program and the DoD Medical Electronic Catalog Program are two examples where use of the purchase card may not be cost-effective.

[65 FR 46626, July 31, 2000]

### Subpart 213.3—Simplified Acquisition Methods

#### 213.301 Governmentwide commercial purchase card.

(1) “United States,” as used in this section, means the 50 States and the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, Wake Island, Johnston Island, Canton Island, the outer Continental Shelf lands, and any other place subject to the jurisdiction of the United States (but not including leased bases).

(2) An individual appointed in accordance with 201.603-3(b) also may use the Governmentwide commercial purchase card to make a purchase that exceeds the micro-purchase threshold but does not exceed \$25,000, if—

(i) The purchase—

(A) Is made outside the United States for use outside the United States; and

(B) Is for a commercial item; but

(C) Is not for work to be performed by employees recruited within the United States;

(D) Is not for supplies or services originating from, or transported from or through, sources identified in FAR Subpart 25.7;

(E) Is not for ball or roller bearings as end items; and

(F) Does not require access to classified or Privacy Act information; and

(ii) The individual making the purchase—

(A) Is authorized and trained in accordance with agency procedures;

(B) Complies with the requirements of FAR 8.001 in making the purchase; and

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(C) Seeks maximum practicable competition for the purchase in accordance with FAR 13.104(b).

[64 FR 56705, Oct. 21, 1999; 64 FR 63380, Nov. 19, 1999]

### 213.302 Purchase orders.

#### 213.302-3 Obtaining contractor acceptance and modifying purchase orders.

(1) Require written acceptance of purchase orders for classified acquisitions.

(2) Generally, use unilateral modifications (see FAR 43.103) for—

(i) No-cost amended shipping instructions if—

(A) The amended shipping instructions modify a unilateral purchase order; and

(B) The contractor agrees orally or in writing; and

(ii) Any change made before work begins if—

(A) The change is within the scope of the original order;

(B) The contractor agrees;

(C) The modification references the contractor's oral or written agreement; and

(D) Block 13D of Standard Form 30, Amendment of Solicitation/Modification of Contract, is annotated to reflect the authority for issuance of the modification.

(3) A supplemental agreement converts a unilateral purchase order to a bilateral agreement. If not previously included in the purchase order, incorporate the clause at 252.243-7001, Pricing of Contract Modifications, in the Standard Form 30, and obtain the contractor's acceptance by signature on the Standard Form 30.

#### § 213.302-5 Clauses.

(a) Use the clause at 252.243-7001, Pricing of Contract Modifications, in all bilateral purchase orders.

(d) When using the clause at FAR 52.213-4, delete the reference to the clause at FAR 52.225-1, Buy American Act-Balance of Payments Program-Supplies. Instead, if the Buy American Act applies to the acquisition, use the clause at—

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(i) 252.225-7001, Buy American Act and Balance of Payments Program, as prescribed at 225.1101(2); or

(ii) 252.225-7036, Buy American Act-North American Free Trade Agreement Implementation Act-Balance of Payments Program, as prescribed at 225.1101(13).

[64 FR 24528, May 7, 1999, as amended at 65 FR 19850, Apr. 13, 2000; 65 FR 39704, June 27, 2000]

#### 213.303 Blanket purchase agreements (BPAs).

##### 213.303-5 Purchases under BPAs.

(b) Individual purchases for subsistence may be made at any dollar value; however, the contracting officer must satisfy the competition requirements of FAR Part 6 for any action not using simplified acquisition procedures.

#### 213.305 Imprest funds and third party drafts.

##### 213.305-1 General.

(1) As a matter of policy, DoD does not support the use of cash payments from imprest funds. This policy is based, in part, on the mandatory electronic funds transfer requirements of the Debt Collection Improvement Act of 1996 (Pub. L. 104-134).

(2) On a very limited basis, installation commanders and commanders of other activities with contracting authority may be granted authority to establish imprest funds and third party draft (accommodation check) accounts.

(3) Third party draft accounts, when established in accordance with DoD 7000.14-R, DoD Financial Management Regulation, Volume 5, Disbursing Policy and Procedures—

(i) Provide an alternative to cash and U.S. Treasury checks when the use of Government purchase or travel cards is not feasible;

(ii) Eliminate the need for cash on hand for imprest fund transactions; and

(iii) Give issuing activities the flexibility to issue low-volume and low-dollar value payment on site.

##### 213.305-3 Conditions for use.

(d)(i) Use of imprest funds—

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(A) Must comply with the conditions stated in—

(1) DoD 7000.14-R, DoD Financial Management Regulation, Volume 5, Disbursing Policy and Procedures; and

(2) The Treasury Financial Manual, Part 4, Chapter 3000, Section 3020; and

(B) Except as provided in paragraph (d)(ii) of this subsection, requires approval by the Director for Financial Commerce, Office of the Deputy Chief Financial Officer, Office of the Under Secretary of Defense (Comptroller).

(ii) Imprest funds are authorized for use without further approval for—

(A) Overseas transactions at or below the micro-purchase threshold in support of a contingency operation as defined in 10 U.S.C. 101(a)(13) or a humanitarian or peacekeeping operation as defined in 10 U.S.C. 2302(7); and

(B) Classified transactions.

### 213.306 SF 44, Purchase Order-Invoice-Voucher.

(a)(1) The micro-purchase limitation applies to all purchases, except that purchases not exceeding the simplified acquisition threshold may be made for—

(A) Aviation fuel and oil;

(B) Overseas transactions by contracting officers in support of a contingency operation as defined in 10 U.S.C. 101(a)(13) or a humanitarian or peacekeeping operation as defined in 10 U.S.C. 2302(7); and

(C) Transactions in support of intelligence and other specialized activities addressed by Part 2.7 of Executive Order 12333.

### 213.307 Forms.

(a) If SF 1449 is not used, use DD Form 1155 in accordance with paragraph (b)(i) of this section.

(b)(i) Use DD Form 1155, Order for Supplies or Services, for purchases made using simplified acquisition procedures.

(A) The DD Form 1155 serves as a—

(1) Purchase order or blanket purchase agreement;

(2) Delivery order or task order;

(3) Receiving and inspection report;

(4) Property voucher;

(5) Document for acceptance by the supplier; and

(6) Public voucher, when used as—

(i) A delivery order;

(ii) The basis for payment of an invoice against blanket purchase agreements or basic ordering agreements when a firm-fixed-price has been established; or

(iii) A purchase order for acquisitions using simplified acquisition procedures.

(B) The DD Form 1155 is also authorized for use for—

(1) Orders placed in accordance with FAR Subparts 8.4, 8.6, 8.7, and 16.5; and

(2) Classified acquisition when the purchase is made within the United States, its possessions, and Puerto Rico. Attach the DD Form 254, Contract Security Classification Specification, to the purchase order.

(ii) Do not use Optional Form 347, Order for Supplies or Services, or Optional Form 348, Order for Supplies or Services Schedule—Continuation.

(iii) Use Standard Form 30, Amendment of Solicitation/Modification of Contract, to—

(A) Modify a purchase order; or

(B) Cancel a unilateral purchase order.

## Subpart 213.4—Fast Payment Procedure

### 213.402 Conditions for use.

(a) Individual orders may exceed the simplified acquisition threshold for—

(i) Brand-name commissary resale subsistence; and

(ii) Medical supplies for direct shipment overseas.

## Subpart 213.70—Simplified Acquisition Procedures Under the 8(a) Program

### 213.7001 Policy.

For sole source acquisitions under the 8(a) Program, contracting officers may use the procedures established in the Memorandum of Understanding cited in 219.800.

### 213.7002 Procedures.

For acquisitions that are otherwise appropriate to be conducted using procedures set forth in this part, and also eligible for the 8(a) Program, contracting officers may use—

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(a)(1) For sole source purchase orders not exceeding the simplified acquisition threshold, the procedures in 219.804-2(2); or

(2) For other types of acquisitions, the procedures in Subpart 219.8, excluding the procedures in 219.804-2(2); or

(b) The procedures for award to the Small Business Administration in FAR Subpart 19.8.

### 213.7003 Purchase orders.

#### 213.7003-1 Obtaining contractor acceptance and modifying purchase orders.

The contracting officer need not obtain a contractor's written acceptance of a purchase order or modification of a purchase order for an acquisition under the 8(a) Program pursuant to 219.804-2(2).

#### 213.7003-2 Contract clauses.

Use the clauses prescribed in 219.811-3 (1) and (3) for purchase orders under the 8(a) Program pursuant to the Memorandum of Understanding cited in 219.800.

## PART 214—SEALED BIDDING

### Subpart 214.2—Solicitation of Bids

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214.503 Procedures.

214.503-1 Step one.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36326, July 31, 1991, unless otherwise noted.

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### Subpart 214.2—Solicitation of Bids

#### 214.201-1 Uniform contract format.

Structure awards valued above the micro-purchase threshold (*e.g.*, contract line items, delivery schedule, and invoice instructions) in a manner that will minimize the generation of invoices valued at or below the micro-purchase threshold.

[65 FR 46626, July 31, 2000]

#### 214.202 General rules for solicitation of bids.

#### 214.202-5 Descriptive literature.

(d) *Requirements of invitation for bids.* When brand name or equal purchase descriptions are used, use of the provision at FAR 52.211-6, Brand Name or Equal, satisfies this requirement.

[56 FR 36326, July 31, 1991, as amended at 63 FR 11528, Mar. 9, 1998; 64 FR 55633, Oct. 14, 1999]

### Subpart 214.4—Opening of Bids and Award of Contract

#### 214.404 Rejection of bids.

#### 214.404-1 Cancellation of invitations after opening.

The contracting officer shall make the written determinations required by FAR 14.404-1 (c) and (e).

#### 214.407 Mistakes in bids.

#### 214.407-3 Other mistakes disclosed before award.

(e) Authority for making a determination under FAR 14.407-3(a), (b) and (d) is delegated for the defense agencies, without power of redelegation, as follows:

(i) Defense Advanced Research Projects Agency: General Counsel, DARPA.

(ii) Defense Information Systems Agency: General Counsel, DISA.

(iii) Defense Intelligence Agency: Principal Assistant for Acquisition.

(iv) Defense Logistics Agency:

(A) General Counsel, DLA; and

(B) Associate General Counsel, DLA.

(v) National Imagery and Mapping Agency: General Counsel, NIMA.

(vi) Defense Threat Reduction Agency: General Counsel, DTRA.

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(vii) National Security Agency: Director of Procurement, NSA.

(viii) Ballistic Missile Defense Organization: General Counsel, BMDO.

(h) Send a signed copy of the document authorizing correction of the bid to the appropriate finance center with its copy of the contract.

[57 FR 42629, Sept. 15, 1992, as amended at 59 FR 27669, May 27, 1994; 61 FR 50452, Sept. 26, 1996. Redesignated and amended at 62 FR 34122, June 24, 1997; 64 FR 51076, Sept. 21, 1999]

### Subpart 214.5—Two-Step Sealed Bidding

#### 214.503 Procedures.

##### 214.503-1 Step one.

(a) Requests for technical proposals may be in the form of a letter.

[56 FR 36326, July 31, 1991, as amended at 57 FR 53599, Nov. 12, 1992]

## PART 215—CONTRACTING BY NEGOTIATION

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215.407-5 Estimating systems.

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

215.408 Solicitation provisions and contract clauses.

215.470 Estimated data prices.

AUTHORITY: 41 U.S.C. 421 and 48 CFR Chapter 1.

SOURCE: 63 FR 55040, Oct. 14, 1998, unless otherwise noted.

#### 215.000 Scope of part.

See 225.872 for additional guidance on procedures for purchasing form qualifying countries.

### Subpart 215.2—Solicitation and Receipt of Proposals and Information

#### 215.204-1 Uniform contract format.

Structure awards valued above the micro-purchase threshold (*e.g.*, contract line items, delivery schedule, and invoice instructions) in a manner that will minimize the generation of invoices valued at or below the micro-purchase threshold.

[65 FR 46626, July 31, 2000]

#### 215.204-2 Part I—The Schedule.

(g) When a contract contains both fixed-priced and cost-reimbursement line items or subline items, the contracting officer shall provide, in Section B, Supplies or Services and Prices/Costs, an identification of contract type specified for each contract line item or subline item to facilitate appropriate payment.

**Subpart 215.3—Source Selection****215.303 Responsibilities.**

(b)(2) For high-dollar value and other acquisitions, as prescribed by agency procedures, the source selection authority (SSA) shall approve a source selection plan (SSP) before the solicitation is issued. The SSP—

(A) Shall be prepared and maintained by a person designated by the SSA or as prescribed by agency procedures;

(B) Shall be coordinated with the contracting officer and senior advisory group, if any, within the source selection organization; and

(C) Shall include, as a minimum—

(1) The organization, membership, and responsibilities of the source selection team;

(2) A statement of the proposed evaluation factors and any significant subfactors and their relative importance;

(3) A description of the evaluation process, including specific procedures and techniques to be used in evaluating proposals; and

(4) A schedule of significant events in the source selection process, including documentation of the source selection decision and announcement of the source selection decision.

**215.304 Evaluation factors and significant subfactors.**

(c)(i) In acquisitions that require use of the clause at FAR 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, other than those based on the lowest price technically acceptable source selection process (see FAR 15.101-2), the extent of participation of small businesses and historically black colleges or universities and minority institutions in performance of the contract shall be addressed in source selection. The contracting officer shall evaluate the extent to which offerors identify and commit to small business and historically black college or university and minority institution performance of the contract, whether as a joint venture, teaming arrangement, or subcontractor.

(A) Evaluation factors may include—

(1) The extent to which such firms are specifically identified in proposals;

(2) The extent of commitment to use such firms (for example, enforceable commitments are to be weighted more heavily than non-enforceable ones);

(3) The complexity and variety of the work small firms are to perform;

(4) The realism of the proposal;

(5) Past performance of the offerors in complying with requirements of the clauses at FAR 52.219-8, Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns, and 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan; and

(6) The extent of participation of such firms in terms of the value of the total acquisition.

(B) Proposals addressing the extent of small business and historically black college or university and minority institution performance may be separate from subcontracting plans submitted pursuant to the clause at FAR 52.219-9 and should be structured to allow for consideration of offers from small businesses.

(C) When an evaluation includes the factor in paragraph (c)(i)(A)(1) of this section, the small businesses, historically black colleges or universities and minority institutions, and women-owned small businesses considered in the evaluation shall be listed in any subcontracting plan submitted pursuant to FAR 52.219-9 to facilitate compliance with 252.219-7003(g).

(ii) The costs or savings related to contract administration and audit may be considered when the offeror's past performance or performance risk indicates the likelihood of significant costs or savings.

[63 FR 64428, Nov. 20, 1998, as amended at 64 FR 51076, Sept. 21, 1999]

**§ 215.305 Proposal evaluation.**

(a)(2) *Past performance evaluation.* When a past performance evaluation is required by FAR 15.304, and the solicitation includes the clause at FAR 52.219-8, Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns, the evaluation factors shall include the past performance of offerors in complying with requirements of that clause. When a

past performance evaluation is required by FAR 15.304, and the solicitation includes the clause at FAR 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, the evaluation factors shall include the past performance of offerors in complying with requirements of that clause.

(b) Any determination to reject a proposal based on a violation or possible violation of Section 27 of the OFPP Act shall be made as specified in FAR 3.104.

[63 FR 55040, Oct. 14, 1998, as amended at 65 FR 39722, June 27, 2000]

### Subpart 215.4—Contract Pricing

#### 215.403 Obtaining cost or pricing data.

##### § 215.403-1 Prohibition on obtaining cost or pricing data.

(c) *Standards for exceptions from cost or pricing data requirements*—(1) *Adequate price competition*. For acquisitions under dual or multiple source programs:

(A) The determination of adequate price competition must be made on a case-by-case basis. Even when adequate price competition exists, in certain cases it may be appropriate to obtain additional information to assist in price analysis.

(B) Adequate price competition normally exists when—

(i) Prices are solicited across a full range of step quantities, normally including a 0-100 percent split, from at least two offerors that are individually capable of producing the full quantity; and

(ii) The reasonableness of all prices awarded is clearly established on the basis of price analysis (see FAR 15.404-1(b)).

(4) *Waivers*. (A) DoD has waived the requirement for submission of cost or pricing data for the Canadian Commercial Corporation and its subcontractors.

(B) DoD has waived cost or pricing data requirements for nonprofit organizations (including education institutions) on cost-reimbursement-no-fee contracts. The contracting officer shall require—

(1) Submission of information other than cost or pricing data to the extent necessary to determine reasonableness and cost realism; and

(2) Cost or pricing data from subcontractors that are not nonprofit organizations when the subcontractor's proposal exceeds the cost or pricing data threshold at FAR 15.403-4(a)(1).

##### 215.403-5 Instructions for submission of cost or pricing data or information other than cost or pricing data.

(b) When the solicitation requires contractor compliance with the Contractors Cost Data Reporting (CCDR) System (Army—AMCP 715-8, Navy—NAV PUB P-5241, and Air Force—AFMCP 800-15), require the contractor to submit DD Form 1921 or 1921-1 with its pricing proposal.

#### 215.404 Proposal analysis.

##### 215.404-1 Proposal analysis techniques.

(a) *General*. For spare parts or support equipment, perform an analysis of—

(i) Those line items where the proposed price exceeds by 25 percent or more the lowest price the Government has paid within the most recent 12-month period based on reasonably available information;

(ii) Those line items where a comparison of the item description and the proposal price indicates a potential for overpricing;

(iii) Significant high-dollar-value items. If there are no obvious high-dollar-value items, include an analysis of a random sample of items; and

(iv) A random sample of the remaining low-dollar value items. Sample size may be determined by subjective judgment, e.g., experience with the offeror and the reliability of its estimating and accounting systems.

(d) *Cost realism analysis*. The contracting officer should determine what information other than cost or pricing data is necessary for the cost realism analysis during acquisition planning and development of the solicitation. Unless such information is available from sources other than the offerors (see FAR 15.402(a)(2)), the contracting officer will need to request data from the offerors. The contracting officer—



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(i) Shall request only necessary data; and

(ii) May not request submission of cost or pricing data.

### 215.404-2 Information to support proposal analysis.

(a) *Field pricing assistance.* (i) The contracting officer should consider requesting field pricing assistance for—

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

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

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

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

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

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

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

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

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### §215.404-3 Subcontract pricing considerations.

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

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

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

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

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

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

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

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

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the ACO should consider whether providing audit or field pricing assistance will serve a valid Government interest.

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

(iv) Price redeterminable or fixed-price incentive contracts may include subcontracts placed on the same basis. When the contracting officer wants to reprice the prime contract even though the contractor has not yet established final prices for the subcontracts, the contracting officer may negotiate a firm contract price—

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

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

(1) Circumstances require prompt negotiation; and

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

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

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

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

### 215.404-4 Profit.

(b) *Policy.* (1) Departments and agencies must use a structured approach for developing a prenegotiation profit or fee objective on any negotiated contract action when cost or pricing data is obtained, except for cost-plus-award-fee contracts (see 215.404-74) or contracts with Federally Funded Research and Development Centers (FFRDCs) (see 215.404-75). There are three structured approaches—

(A) The weighted guidelines method;

(B) The modified weighted guidelines method; and

(C) An alternate structured approach.

(c) *Contracting officer responsibilities.*

(1) Also, do not perform a profit analysis when assessing cost realism in competitive acquisitions.

(2) When using a structured approach, the contracting officer—

(A) Shall use the weighted guidelines method (see 215.404-71), except as provided in paragraphs (c)(2)(B) and (c)(2)(C) of this subsection.

(B) Shall use the modified weighted guidelines method (see 215.404-72) on contract actions with nonprofit organizations other than FFRDCs.

(C) May use an alternate structured approach (see 215.404-73) when—

(1) The contract action is—

(i) At or below the cost or pricing data threshold (see FAR 15.403-4(a)(1));

(ii) For architect-engineer or construction work;

(iii) Primarily for delivery of material from subcontractors; or

(iv) A termination settlement; or

(2) The weighted guidelines method does not produce a reasonable overall profit objective and the head of the contracting activity approves use of the alternate approach in writing.

(D) Shall use the weighted guidelines method to establish a basic profit rate under a formula-type pricing agreement, and may then use the basic rate on all actions under the agreement, provided that conditions affecting profit do not change.

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(E) Shall document the profit analysis in the contract file.

(5) Although specific agreement on the applied weights or values for individual profit factors shall not be attempted, the contracting officer may encourage the contractor to—

(A) Present the details of its proposed profit amounts in the weighted guidelines format or similar structured approach; and

(B) Use the weighted guidelines method in developing profit objectives for negotiated subcontracts.

(6) The contracting officer must also verify that relevant variables have not materially changed (e.g., performance risk, interest rates, progress payment rates, distribution of facilities capital).

(d) Profit-analysis factors.—(1) *Common factors*. The common factors are embodied in the DoD structured approaches and need not be further considered by the contracting officer.

[63 FR 55040, Oct. 14, 1998, as amended at 63 FR 63799, Nov. 17, 1998; 65 FR 77829, Dec. 13, 2000; 66 FR 49863, Oct. 1, 2001]

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

(a) The DD Form 1547—

(1) Provides a vehicle for performing the analysis necessary to develop of profit objectives;

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

(3) Serves as the principal source documents for reporting profit statistics to DoD’s management information system.

(b) The military departments are responsible for establishing policies and procedures for feeding the DoD-wide management information system on profit and fee statistics (see 215.404-75).

(c) The contracting officer shall—

(1) Use and prepare a DD Form 1547 whenever a structured approach to profit analysis is required by 215.404-4(b) (see 215.404-71, 215.404-72, and

215.404-73 for guidance on using the structured approaches). Administrative instructions for completing the form are in 253.215.-70.

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

**§ 215.404-71 Weighted guidelines method.**

**§ 215.404-71-1 General.**

(a) The weighted guidelines method focuses on three profit factors—

- (1) Performance risk;
- (2) Contract type risk; and
- (3) Facilities capital employed.

(b) The contracting officer assigns values to each profit factor; the value multiplied by the base results in the profit objective for that factor. Each profit factor has a normal value and a designated range of values. The normal value is representative of average conditions on the prospective contract when compared to all goods and services acquired by DoD. The designated range provides values based on above normal or below normal conditions. In the negotiation documentation, the contracting officer need not explain assignment of the normal value, but should address conditions that justify assignment of other than the normal value.

**215.404-71-2 Performance risk.**

(a) *Description*. This profit factor addresses the contractor’s degree of risk in fulfilling the contract requirements. The factor consists of two parts:

- (1) Technical—the technical uncertainties of performance.
- (2) Management/cost control—the degree of management effort necessary—
  - (i) To ensure that contract requirements are met; and
  - (ii) To reduce and control costs.

(b) *Determination*. The following extract from the DD Form 1547 is annotated to describe the process.

Item	Contractor risk factors	Assigned weighting	Assigned value	Base (item 18)	Profit objective
21. ....	Technical .....	(1)	(2)	N/A	N/A
22. ....	Management/Cost Control .....	(1)	(2)	N/A	N/A
23. ....	Reserved.				

Item	Contractor risk factors	Assigned weighting	Assigned value	Base (item 18)	Profit objective
24. ....	Performance Risk (Composite) .....	N/A	(3)	(4)	(5)

(1) Assign a weight (percentage) to each element according to its input to the total performance risk. The total of the two weights equals 100 percent.

(2) Select a value for each element from the list in paragraph (c) of this subsection using the evaluation criteria in paragraphs (d) and (e) of this subsection.

(3) Compute the composite as shown in the following example:  
[In percentage]

	Assigned weighting	As-signed value	Weight-ed value
Technical .....	60	5.0	3.0
Management/Cost Control .....	40	4.0	1.6
Composite Value .....	100	.....	4.6

(4) Insert the amount from Block 18 of the DD Form 1547. Block 18 is total contract costs, excluding general and administrative expenses, contractor independent research and development and bid and proposal expenses, and facilities capital cost of money.

(5) Multiply (3) by (4).

(c) *Values: Normal and designated ranges.*

[In percentage]

	Normal value	Des-ignat-ed range
Standard .....	4	2 to 6
Alternate .....	6	4 to 8
Technology Incentive .....	8	6 to 10

(1) *Standard.* The standard designated range should apply to most contracts.

(2) *Alternate.* Contracting officers may use the alternate designated range for research and development and service contractors when these contractors require relatively low capital investment in buildings and equipment when compared to the defense industry overall. If the alternate designated range is used, do not give any profit for facilities capital employed (see 215.404-71-4(c)(3)).

(3) *Technology incentive.* For the technical factor only, contracting officers

may use the technology incentive range for acquisitions that include development, production, or application of innovative new technologies. The technology incentive range does not apply to efforts restricted to studies, analyses, or demonstrations that have a technical report as their primary deliverable.

(d) *Evaluation criteria for technical.*

(1) Review the contract requirements and focus on the critical performance elements in the statement of work or specifications. Factors to consider include—

- (i) Technology being applied or developed by the contractor;
- (ii) Technical complexity;
- (iii) Program maturity;
- (iv) Performance specifications and tolerances;
- (v) Delivery schedule; and
- (vi) Extent of a warranty or guarantee.

(2) *Above normal conditions.*

(i) The contracting officer may assign a higher than normal value in those cases where there is a substantial technical risk. Indicators are—

- (A) Items are being manufactured using specifications with stringent tolerance limits;
- (B) The efforts require highly skilled personnel or require the use of state-of-the-art machinery;
- (C) The services and analytical efforts are extremely important to the Government and must be performed to exacting standards;
- (D) The contractor's independent development and investment has reduced the Government's risk or cost;
- (E) The contractor has accepted an accelerated delivery schedule to meet DoD requirements; or
- (F) The contractor has assumed additional risk through warranty provisions.

(ii) Extremely complex, vital efforts to overcome difficult technical obstacles that require personnel with exceptional abilities, experience, and professional credentials may justify a value significantly above normal.

(iii) The following may justify a maximum value—

(A) Development or initial production of a new item, particularly if performance or quality specifications are tight; or

(B) A high degree of development or production concurrency.

(3) *Below normal conditions.*

(i) The contracting officer may assign a lower than normal value in those cases where the technical risk is low. Indicators are—

(A) Acquisition is for off-the-shelf items;

(B) Requirements are relatively simple;

(C) Technology is not complex;

(D) Efforts do not require highly skilled personnel;

(E) Efforts are routine;

(F) Programs are mature; or

(G) Acquisition is a follow-on effort or a repetitive type acquisition.

(ii) The contracting officer may assign a value significantly below normal for—

(A) Routine services;

(B) Production of simple items;

(C) Rote entry or routine integration of Government-furnished information; or

(D) Simple operations with Government-furnished property.

(4) *Technology incentive range.*

(i) The contracting officer may assign values within the technology incentive range when contract performance includes the introduction of new, significant technological innovation. Use the technology incentive range only for the most innovative contract efforts. Innovation may be in the form of—

(A) Development or application of new technology that fundamentally changes the characteristics of an existing product or system and that results in increased technical performance, improved reliability, or reduced costs; or

(B) New products or systems that contain significant technological advances over the products or systems they are replacing.

(ii) When selecting a value within the technology incentive range, the contracting officer should consider the relative value of the proposed innovation

to the acquisition as a whole. When the innovation represents a minor benefit, the contracting officer should consider using values less than the norm. For innovative efforts that will have a major positive impact on the product or program, the contracting officer may use values above the norm.

(e) *Evaluation criteria for management/cost control.* (1) The contracting officer should evaluate—

(i) The contractor's management and internal control systems using contracting office information and reviews made by field contract administration offices or other DoD field offices;

(ii) The management involvement expected on the prospective contract action;

(iii) The degree of cost mix as an indication of the types of resources applied and value added by the contractor;

(iv) The contractor's support of Federal socioeconomic programs;

(v) The expected reliability of the contractor's cost estimates (including the contractor's cost estimating system);

(vi) The contractor's cost reduction initiatives (*e.g.*, competition advocacy programs, technical insertion programs, obsolete parts control programs, dual sourcing, spare parts pricing reform, value engineering);

(vii) The adequacy of the contractor's management approach to controlling cost and schedule; and

(viii) Any other factors that affect the contractor's ability to meet the cost targets (*e.g.*, foreign currency exchange rates and inflation rates).

(2) *Above normal conditions.* (i) The contracting officer may assign a higher than normal value when the management effort is intense. Indicators of this are—

(A) The contractor's value added is both considerable and reasonably difficult;

(B) The effort involves a high degree of integration or coordination;

(C) The contractor has a substantial record of active participation in Federal socioeconomic programs;

(D) The contractor provides fully documented and reliable cost estimates;

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(E) The contractor has an aggressive cost reduction program that has demonstrable benefits;

(F) The contractor uses a high degree of subcontract competition (e.g., aggressive dual sourcing);

(G) The contractor has a proven record of cost tracking and control; or

(H) The contractor aggressively seeks process improvements to reduce costs.

(ii) The contracting officer may justify a maximum value when the effort—

(A) Requires large scale integration of the most complex nature;

(B) Involves major international activities with significant management coordination (e.g., offsets with foreign vendors); or

(C) Has critically important milestones.

(3) *Below normal conditions.* (i) The contracting officer may assign a lower than normal value when the management effort is minimal. Indicators of this are—

(A) The program is mature and many end item deliveries have been made;

(B) the contractor adds minimal value to an item;

(C) The efforts are routine and require minimal supervision;

(D) The contractor provides poor quality, untimely proposals;

(E) The contractor fails to provide an adequate analysis of subcontractor costs;

(F) The contractor does not cooperate in the evaluation and negotiation of the proposal;

(G) The contractor's cost estimating system is marginal;

(H) The contractor has made minimal effort to initiate cost reduction programs;

(I) The contractor's cost proposal is inadequate; or

(J) The contractor has a record of cost overruns or another indication of unreliable cost estimates and lack of cost control.

(ii) The following may justify a value significantly below normal—

(A) Reviews performed by the field contract administration offices disclose unsatisfactory management and internal control systems (e.g., quality assurance, property, control, safety, security); or

(B) The effort requires an unusually low degree of management involvement.

[65 FR 77829, Dec. 13, 2000]

**§ 215.404-71-3 Contract type risk and working capital adjustment.**

(a) *Description.* The contract type risk factor focuses on the degree of cost risk accepted by the contractor under varying contract types. The working capital adjustment is an adjustment added to the profit objective for contract type risk. It only applies to fixed-price contracts that provide for progress payments. Though it uses a formula approach, it is not intended to be an exact calculation of the cost of working capital. Its purpose is to give general recognition to the contractor's cost of working capital under varying contract circumstances, financing policies, and the economic environment.

(b) *Determination.* The following extract from the DD 1547 is annotated to explain the process.

Item	Contractor risk factors		Assigned value	Base (item 18)	Profit objective
25. ....	CONTRACT type risk .....	Cost financed (5)	(1) Length factor (6)	(2) Interest rate (7)	(3)
26. ....	WORKING capital (4) .....				(8)

(1) Select a value from the list of contract types in paragraph (c) of this subsection using the evaluation criteria in paragraph (d) of this subsection.

(2) Insert the amount from Block 18, i.e., the total allowable costs excluding general and administrative expenses,

independent research and development and bid and proposal expenses, and facilities capital cost of money.

(3) Multiply (1) by (2).

(4) Only complete this block when the prospective contract is a fixed-price contract containing provisions for progress payments.

(5) Insert the amount computed per paragraph (e) of this subsection.

(6) Insert the appropriate figure from paragraph (f) of this subsection.

(7) Use the interest rate established by the Secretary of the Treasury (see 230.7101-1(a)). Do not use any other interest rate.

(8) Multiply (5) by (6) by (7). This is the working capital adjustment. It shall not exceed 4 percent of the contract costs in Block 20.

(c) *Values: Normal and designated ranges.*

Contract type	Notes	Normal value (percent)	Designated range (percent)
Firm-fixed-price, no financing .....	(1)	5.0	4 to 6.
Firm-fixed-price, with performance-based payments .....	(6)	4.0	2.5 to 5.5
Firm-fixed-price, with progress payments .....	(2)	3.0	2 to 4.
Fixed-price incentive, no financing .....	(1)	3.0	2 to 4.
Fixed-price incentive, with performance-based payments .....	(6)	2.0	0.5 to 3.5.
Fixed-price with redetermination provision .....	(3)	.....	.....
Fixed-price incentive, with progress payments .....	(2)	1.0	0 to 2.
Cost-plus-incentive-free .....	(4)	1.0	0 to 2.
Cost-plus-fixed-fee .....	(4)	0.5	0 to 1.
Time-and-materials (including overhaul contracts priced on time-and-materials basis) .....	(5)	0.5	0 to 1.
Labor-hour .....	(5)	0.5	0 to 1.
Firm-fixed-price, level-of-effort .....	(5)	0.5	0 to 1.

(1) “No financing” means either that the contract does not provide progress payments or performance-based payments, or that the contract provides them only on a limited basis, such as financing of first articles. Do not compute a working capital adjustment.

(2) When the contract contains provisions for progress payments, compute a working capital adjustment (Block 26).

(3) For the purposes of assigning profit values, treat a fixed-price contract with redetermination provisions as if it were a fixed-price incentive contract with below normal conditions.

(4) Cost-plus contracts shall not receive the working capital adjustment.

(5) These types of contracts are considered cost-plus-fixed-fee contracts for the purposes of assigning profit values. They shall not receive the working capital adjustment in Block 26. However, they may receive higher than normal values within the designated range to the extent that portions of cost are fixed.

(6) When the contract contains provisions for performance-based payments, do not compute a working capital adjustment.

(d) *Evaluation criteria.*

(1) *General.* The contracting officer should consider elements that affect contract type risk such as—

(i) Length of contract;

(ii) Adequacy of cost data for projections;

(iii) Economic environment;

(iv) Nature and extent of subcontracted activity;

(v) Protection provided to the contractor under contract provisions (e.g., economic price adjustment clauses);

(vi) The ceilings and share lines contained in incentive provisions;

(vii) Risks associated with contracts for foreign military sales (FMS) that are not funded by U.S. appropriations; and

(viii) When the contract contains provisions for performance-based payments—

(A) The frequency of payments;

(B) The total amount of payments compared to the maximum allowable amount specified at FAR 32.1004(b)(2); and

(C) The risk of the payment schedule to the contractor.

(2) *Mandatory.* The contracting officer shall assess the extent to which costs have been incurred prior to the definitization of the contract action (also see 217.7404-6(a)). The assessment shall include any reduced contractor risk on both the contract before definitization and the remaining portion of the contract. When costs have been incurred prior to definitization, generally regard the contract type risk

to be in the low end of the designated range. If a substantial portion of the costs have been incurred prior to definitization, the contracting officer may assign a value as low as 0 percent, regardless of contract type.

(3) *Above normal conditions.* The contracting officer may assign a higher than normal value when there is substantial contract type risk. Indicators of this are—

- (i) Efforts where there is minimal cost history;
- (ii) Long-term contracts without provisions protecting the contractor, particularly when there is considerable economic uncertainty;
- (iii) Incentive provisions (e.g., cost and performance incentives) that place a high degree of risk on the contractor;
- (iv) FMS sales (other than those under DoD cooperative logistics support arrangements or those made from U.S. Government inventories or stocks) where the contractor can demonstrate that there are substantial risks above those normally present in DoD contracts for similar items; or
- (v) An aggressive performance-based payment schedule that increases risk.

(4) *Below normal conditions.* The contracting officer may assign a lower than normal value when the contract type risk is low. Indicators of this are—

- (i) Very mature product line with extensive cost history;
- (ii) Relative short-term contracts;
- (iii) Contractual provisions that substantially reduce the contractor's risk;
- (iv) Incentive provisions that place a low degree of risk on the contractor;
- (v) Performance-based payments totaling the maximum allowable amount(s) specified at FAR 32.1004(b)(2); or
- (vi) A performance-based payment schedule that is routine with minimal risk.

(e) *Costs financed.*

(1) Costs financed equal total costs multiplied by the portion (percent) of costs financed by the contractor.

(2) Total costs equal Block 20 (i.e., all allowable costs, including general and administrative and independent research and development/bid and proposal, but excluding facilities capital

cost of money), reduced as appropriate when—

- (i) The contractor has little cash investment (e.g., subcontractor progress payments liquidated late in period of performance);
- (ii) Some costs are covered by special financing provisions, such as advance payments; or
- (iii) The contract is multiyear and there are special funding arrangements.

(3) The portion that the contractor finances is generally the portion not covered by progress payments, i.e., 100 percent minus the customary progress payment rate (see FAR 32.501). For example, if a contractor receives progress payments at 75 percent, the portion that the contractor finances is 25 percent. On contracts that provide progress payments to small businesses, use the customary progress payment rate for large businesses.

(f) *Contract length factor.* (1) This is the period of time that the contractor has a working capital investment in the contract. It—

- (i) Is based on the time necessary for the contractor to complete the substantive portion of the work;
- (ii) Is not necessarily the period of time between contract award and final delivery (or final payment), as periods of minimal effort should be excluded;
- (iii) Should not include periods of performance contained in option provisions; and
- (iv) Should not, for multiyear contracts, include periods of performance beyond that required to complete the initial program year's requirements.

(2) The contracting officer—

- (i) Should use the following table to select the contract length factor;
- (ii) Should develop a weighted average contract length when the contract has multiple deliveries; and
- (iii) May use sampling techniques provided they produce a representative result.

TABLE

Period to perform substantive portion (in months)	Contract length factor
21 or less .....	.40
22 to 27 .....	.65
28 to 33 .....	.90
34 to 39 .....	1.15
40 to 45 .....	1.40



TABLE—Continued

Period to perform substantive portion (in months)	Contract length factor
46 to 51 .....	1.65
52 to 57 .....	1.90
58 to 63 .....	2.15
64 to 69 .....	2.40
70 to 75 .....	2.65
76 or more .....	2.90

(3) Example: A prospective contract has a performance period of 40 months with end items being delivered in the 34th, 36th, 38th, and 40th months of the contract. The average period is 37

months and the contract length factor is 1.15.

[63 FR 55040, Oct. 14, 1998, as amended at 64 FR 61032, Nov. 9, 1999]

**215.404-71-4 Facilities capital employed.**

(a) *Description.* This factor focuses on encouraging and rewarding aggressive capital investment in facilities that benefit DoD. It recognizes both the facilities capital that the contractor will employ in contract performance and the contractor's commitment to improving productivity.

(b) *Determination.* The following extract from the DD Form 1547 has been annotated to explain the process.

Item	Contractor facilities capital employed	Assigned value	Amount employed	Profit objective
27. ....	LAND .....	N/A	(2)	N/A
28. ....	BUILDINGS .....	(1)	(2)	(3)
29. ....	EQUIPMENT .....	(1)	(2)	(3)

(1) Select a value from the list in paragraph (c) of this subsection using the evaluation criteria in paragraph (d) of this subsection.

(2) Use the allocated facilities capital attributable to land, buildings, and equipment, as derived in DD Form 1861, Contract Facilities Capital Cost of Money (see 230,7001).

(i) In addition to the net book value of facilities capital employed, consider facilities capital that is part of a formal investment plan if the contractor submits reasonable evidence that—

(A) Achievable benefits to DoD will result from the investment; and

(B) The benefits of the investment are included in the forward pricing structure.

(ii) If the value of intracompany transfers has been included in Block 18 at cost (i.e., excluding general and administrative (G&A) expenses and profit), add to the contractor's allocated facilities capital, the allocated facilities capital attributable to the buildings and equipment of those corporate divisions supplying the intracompany transfers. Do not make this addition if the value of intracompany transfers has been included in Block 18 at price (i.e., including G&A expenses and profit).

(3) Multiply (1) by (2).

(c) Values: Normal and designated ranges.

Notes	Asset type	Normal value (percent)	Designated range (percent)
(1) .....	Land .....	0	N/A
(1) .....	Buildings .....	15	10 to 20
(1) .....	Equipment .....	35	20 to 50
(2) .....	Land .....	0	N/A
(2) .....	Buildings .....	5	0 to 10
(2) .....	Equipment .....	20	15 to 25
(3) .....	Land .....	0	N/A
(3) .....	Buildings .....	0	0
(3) .....	Equipment .....	0	0

(1) These are the normal values and ranges. They apply to all situations except those noted in (2) and (3).

(2) These alternate values and ranges apply to situations where a highly facilitized manufacturing firm will be performing a research and development or services contract. They balance the method used to allocate facilities capital cost of money, which may produce disproportionate allocation of assets to these types of efforts.

(3) When using a value from the alternate designated range for the performance risk factor (see 215.404-71-2(c)(2)), do not allow profit on facilities capital employed.

(d) *Evaluation criteria.* (1) In evaluating facilities capital employed, the contracting officer—

(i) Should relate the usefulness of the facilities capital to the goods or services being acquired under the prospective contract;

(ii) Should analyze the productivity improvements and other anticipated industrial base enhancing benefits resulting from the facilities capital investment, including—

(A) The economic value of the facilities capital, such as physical age, undepreciated value, idleness, and expected contribution to future defense needs; and

(B) The contractor's level of investment in defense related facilities as compared with the portion of the contractor's total business that is derived from DoD;

(iii) Should consider any contractual provisions that reduce the contractor's risk of investment recovery, such as termination protection clauses and capital investment indemnification; and

(iv) Shall ensure that increases in facilities capital investments are not merely asset revaluations attributable to mergers, stock transfers, take-overs, sales of corporate entities, or similar actions.

(2) *Above normal conditions.* (i) The contracting officer may assign a higher than normal value if the facilities capital investment has direct, identifiable, and exceptional benefits. Indicators are—

(A) New investments in state-of-the-art technology that reduce acquisition

cost of yield other tangible benefits such as improved product quality or accelerated deliveries;

(B) Investments in new equipment for research and development applications; or

(C) Contractor demonstration that the investments are over and above the normal capital investments necessary to support anticipated requirements of DoD programs.

(ii) The contracting officer may assign a value significantly above normal when there are direct and measurable benefits in efficiency and significantly reduced acquisition cost on the effort being priced. Maximum values apply only to those cases where the benefits of the facilities capital investment are substantially above normal.

(3) *Below normal conditions.* (i) The contracting officer may assign a lower than normal value if the facilities capital investment has little benefit to DoD. Indicators are—

(A) Allocations of capital apply predominantly to commercial item lines;

(B) Investments are for such things as furniture and fixtures, home or group level administrative offices, corporate aircraft and hangars, gymnasiums; or

(C) Facilities are old or extensively idle.

(ii) The contracting officer may assign a value significantly below normal when a significant portion of defense manufacturing is done in an environment characterized by outdated, inefficient, and labor-intensive capital equipment.

**215.404-72 Modified weighted guidelines method for nonprofit organizations other than FFRDCs.**

(a) *Definition.* As used in this subpart, a nonprofit organization is a business entity—

(1) That operates exclusively for charitable, scientific, or educational purposes;

(2) Whose earnings do not benefit any private shareholder or individual;

(3) Whose activities do not involve influencing legislation or political campaigning for any candidate for public office; and

(4) That is exempted from Federal income taxation under section 501 of the Internal Revenue Code.

(b) For nonprofit organizations that are entities that have been identified by the Secretary of Defense or a Secretary of a Department as receiving sustaining support on a cost-plus-fixed-fee basis from a particular DoD department or agency, compute a fee objective for covered actions using the weighted guidelines method in 215.404-71, with the following modifications:

(1) *Modifications to performance risk (Blocks 21-24 of the DD Form 1547).* (i) If the contracting officer assigns a value from the standard designated range (see 215.404-71-2(c)), reduce the fee objective by an amount equal to 1 percent of the costs in Block 18 of the DD Form 1547. Show the net (reduced) amount on the DD Form 1547.

(ii) If the contracting officer assigns a value from the alternate designated range, reduce the fee objective by an amount equal to 2 percent of the costs in Block 18 of the DD Form 1547. Show the net (reduced) amount on the DD Form 1547.

(iii) Do not assign a value from the technology incentive designated range.

(2) *Modifications to contract type risk (Block 25 of the DD Form 1547).* Use a designated range of -1 percent to 0 percent instead of the values in 215.404-71-3. There is no normal value.

(c) For all other nonprofit organizations except FFRDCs, compute a fee objective for covered actions using the weighted guidelines method in 215.404-71, modified as described in paragraph (b)(1) of this subsection.

[63 FR 63799, Nov. 17, 1998, as amended at 65 FR 77831, Dec. 13, 2000]

**215.404-73 Alternate structured approaches.**

(a) The contracting officer may use an alternate structured approach under 215.404-4(c).

(b) The contracting officer may design the structure of the alternate, but it shall include—

(1) Consideration of the three basic components of profit—performance risk, contract type risk (including working capital), and facilities capital employed. However, the contracting officer is not required to complete

Blocks 21 through 30 of the DD Form 1547.

(2) Offset for facilities capital cost of money.

(i) The contracting officer shall reduce the overall prenegotiation profit objective by the lesser of 1 percent of total cost or the amount of facilities capital cost of money. The profit amount in the negotiation summary of the DD Form 1547 must be net of the offset.

(ii) This adjustment is needed for the following reason: The values of the profit factors used in the weighted guidelines method were adjusted to recognize the shift in facilities capital cost of money from an element of profit to an element of contract cost (see FAR 31.205-10) and reductions were made directly to the profit factors for performance risk. In order to ensure that this policy is applied to all DoD contracts that allow facilities capital cost of money, similar adjustments shall be made to contracts that use alternate structured approaches.

**215.404-74 Fee requirements for cost-plus-award-fee contracts.**

In developing a fee objective for cost-plus-award-fee contracts, the contracting officer shall—

(a) Follow the guidance in FAR 16.405-2 and 216.405-2;

(b) Not use the weighted guidelines method or alternate structured approach;

(c) Apply the offset policy in 215.404-73(b)(2) for facilities capital cost of money, i.e., reduce the base fee by the lesser of 1 percent of total costs or the amount of facilities capital cost of money; and

(d) Not complete a DD Form 1547.

**215.404-75 Fee requirements for FFRDCs.**

For nonprofit organizations that are FFRDCs, the contracting officer—

(a) Should consider whether any fee is appropriate. Considerations shall include the FFRDC's—

(1) Proportion of retained earnings (as established under generally accepted accounting methods) that relates to DoD contracted effort;

(2) Facilities capital acquisition plans;

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(3) Working capital funding as assessed on operating cycle cash needs; and

(4) Provision for funding unreimbursed costs deemed ordinary and necessary to the FFRDC.

(b) Shall, when a fee is considered appropriate, establish the fee objective in accordance with FFRDC fee policies in the DoD FFRDC Management Plan.

(c) Shall not use the weighted guidelines method or an alternate structured approach.

[63 FR 63800, Nov. 17, 1998]

**215.404-76 Reporting profit and fee statistics.**

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

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

Contracting office	Designated officer
<b>ARMY</b>	
All .....	U.S. Army, Contracting Support Agency, ATTN: SARD—RS, 5109 Leesburg Pike, Suite 916, Falls Church, VA 22041-3201
<b>NAVY</b>	
*Naval Air Systems Command .....	Commander, Fleet and Industrial Supply Center, Norfolk Washington Detachment, Code 402, Washington Navy Yard, Washington, DC 20374-5000
*Naval Sea Systems Command	
*Space and Naval Warfare Systems Command	
*Naval Facilities Engineering Command	
*Naval Supply Systems Command	
*Office of Naval Research	
*Headquarters, United States Marine Corps	
*Strategic Systems Programs Office	
*Military Sealift Command	
*Automatic Data Processing Selection Office	
*Navy Regional Data Automation Center	
*Naval Research Laboratory	
*Navy Commercial Communications Center	
*Naval Aviation Depot Operations Center	
<b>AIR FORCE</b>	
Air Force Materiel Command (all field offices) .....	Air Force Materiel Command, 645 CCSG/SCOS, ATTN: J010 Clerk, 2721 Sacramento Street, Wright-Patterson Air Force Base, OH 45433-5006

\*Includes all subordinate field offices

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

(d) Contracting offices outside the United States, its possessions, and Puerto Rico are exempt from reporting.

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

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

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

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

(2) Do not enter classified information;

(3) Transmit the report via computer magnetic tape using the procedures, format, and editing process issued by the Director of Defense Procurement; and

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

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

[63 FR 55040, Oct. 14, 1998. Redesignated at 63 FR 63800, Nov. 17, 1998, as amended at 65 FR 52952, Aug. 31, 2000; 65 FR 58607, Sept. 29, 2000; 66 FR 49863, Oct. 1, 2001]

### 215.406-1 Prenegotiation objectives.

(a) Also consider—

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

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

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

### 215.406-3 Documenting the negotiation.

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

(10) The documentation—

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

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

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

### 215.407-2 Make-or-buy programs.

(e) *Program requirements*—(1) *Items and work included*. The minimum dollar amount is \$1 million.

### 215.407-3 Forward pricing rate agreements.

(b)(i) Use forward pricing rate agreement (FPRA) rates when such rates are available, unless waived on a case-by-

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case basis by the head of the contracting activity.

(ii) Advise the ACO of each case waived.

(iii) Contact the ACO for questions on FPRAs or recommended rates.

### 215.407-4 Should-cost review.

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

(c) *Overhead should-cost review*. (1) Contact the Defense Contract Management Agency (DCMA) (<http://www.dcmc.hq.dla.mil/>) for questions on overhead should-cost analysis.

(2)(A) DCMA or the military department responsible for performing contract administration functions (e.g., Navy SUPSHIP) should consider, based on risk assessment, performing an overhead should-cost review of a contractor business unit (as defined in FAR 31.001) when all of the following conditions exist:

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

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

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

(4) Significant volume of proposal activity is anticipated;

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

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

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

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

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contractor business segment more frequently than every 3 years.

[63 FR 55040, Oct. 14, 1998, as amended at 65 FR 52952, Aug. 31, 2000; 65 FR 58607, Sept. 29, 2000]

### 215.407-5 Estimating systems.

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

##### (a) Definitions.

(1) *Acceptable estimating system* means an estimating system that—

- (i) Is established, maintained, reliable, and consistently applied; and
- (ii) Produces verifiable, supportable, and documented cost estimates.

(2) *Contractor* means a business unit as defined in FAR 31.001.

(3) *Estimating system* is as defined in the clause at 252.215-7002, Cost Estimating System Requirements.

(4) *Significant estimating system deficiency* means a shortcoming in the estimating system that is likely to consistently result in proposal estimates for total cost or a major cost element(s) that do not provide an acceptable basis for negotiation of fair and reasonable prices.

(b) *Applicability*. (1) DoD policy is that all contractors have estimating systems that—

- (i) Are acceptable;
- (ii) Consistently produce well-supported proposals that are acceptable as a basis for negotiation of fair and reasonable prices;
- (iii) Are consistent with and integrated with the contractor's related management systems; and
- (iv) Are subject to applicable financial control systems.

(2) A large business contractor is subject to estimating system disclosure, maintenance, and review requirements if—

- (i) In its preceding fiscal year, the contractor received DoD prime contracts or subcontracts totaling \$50 million or more for which cost or pricing data were required; or
- (ii) In its preceding fiscal year, the contractor received DoD prime contracts or subcontracts totaling \$10 million or more (but less than \$50 million) for which cost or pricing data were required and the contracting officer, with concurrence or at the request of the

ACO, determines it to be in the best interest of the Government (e.g., significant estimating problems are believed to exist or the contractor's sales are predominantly Government).

(c) *Responsibilities*. (1) The contracting officer shall—

(i) Through use of the clause at 252.215-7002, Cost Estimating System Requirements, apply the disclosure, maintenance, and review requirements to large business contractors meeting the criteria in paragraph (b)(2)(i) of this subsection;

(ii) Consider whether to apply the disclosure, maintenance, and review requirements to large business contractors under paragraph (b)(2)(ii) of this subsection; and

(iii) Not apply the disclosure, maintenance, and review requirements to other than large business contractors.

(2) The cognizant ACO, for contractors subject to paragraph (b)(2) of this subsection, shall—

(i) Determine the acceptability of the disclosure and system; and

(ii) Pursue correction of any deficiencies.

(3) The cognizant auditor, on behalf of the ACO, serves as team leader in conducting estimating system reviews.

(4) A contractor subject to estimating system disclosure, maintenance, and review requirements shall—

- (i) Maintain an acceptable system;
- (ii) Describe its system to the ACO;
- (iii) Provide timely notice of changes in the system; and
- (iv) Correct system deficiencies identified by the ACO.

(d) *Characteristics of an acceptable estimating system*—(1) *General*. An acceptable system should provide for the use of appropriate source data, utilize sound estimating techniques and good judgment, maintain a consistent approach, and adhere to established policies and procedures.

(2) *Evaluation*. In evaluating the acceptability of a contractor's estimating system, the ACO should consider whether the contractor's estimating system, for example—

- (i) Establishes clear responsibility for preparation, review, and approval of cost estimates;

(ii) Provides a written description of the organization and duties of the personnel responsible for preparing, reviewing, and approving cost estimates;

(iii) Assures that relevant personnel have sufficient training, experience, and guidance to perform estimating tasks in accordance with the contractor's established procedures;

(iv) Identifies the sources of data and the estimating methods and rationale used in developing cost estimates;

(v) Provides for appropriate supervision throughout the estimating process;

(vi) Provides for consistent application of estimating techniques;

(vii) Provides for detection and timely correction of errors;

(viii) Protects against cost duplication and omissions;

(ix) Provides for the use of historical experience, including historical vendor pricing information, where appropriate;

(x) Requires use of appropriate analytical methods;

(xi) Integrates information available from other management systems, where appropriate;

(xii) Requires management review including verification that the company's estimating policies, procedures, and practices comply with this regulation;

(xiii) Provides for internal review of and accountability for the acceptability of the estimating system, including the comparison of projected results to actual results and an analysis of any differences;

(xiv) Provides procedures to update cost estimates in a timely manner throughout the negotiation process; and

(xv) Addresses responsibility for review and analysis of the reasonableness of subcontract prices.

(3) *Indicators of potentially significant estimating deficiencies.* The following examples indicate conditions that may produce or lead to significant estimating deficiencies—

(i) Failure to ensure that historical experience is available to and utilized by cost estimators, where appropriate;

(ii) Continuing failure to analyze material costs or failure to perform subcontractor cost reviews as required;

(iii) Consistent absence of analytical support for significant proposed cost amounts;

(iv) Excessive reliance on individual personal judgments where historical experience or commonly utilized standards are available;

(v) Recurring significant defective pricing findings within the same cost element(s);

(vi) Failure to integrate relevant parts of other management systems (e.g., production control or cost accounting) with the estimating system so that the ability to generate reliable cost estimates is impaired; and

(vii) Failure to provide established policies, procedures, and practices to persons responsible for preparing and supporting estimates.

(e) *Review procedures.* Cognizant audit and contract administration activities shall—

(1) Establish and manage regular programs for reviewing selected contractors' estimating systems.

(2) Conduct reviews as a team effort.  
(i) The contract auditor will be the team leader.

(ii) The team leader will—

(A) Coordinate with the ACO to ensure that team membership includes qualified contract administration technical specialists.

(B) Advise the ACO and the contractor of significant findings during the conduct of the review and during the exit conference.

(C) Prepare a team report.

(1) The ACO or a representative should—

(i) Coordinate the contract administration activity's review;

(ii) Consolidate findings and recommendations; and

(iii) When appropriate, prepare a comprehensive written report for submission to the auditor.

(2) The contract auditor will attach the ACO's report to the team report.

(3) Tailor reviews to take full advantage of the day-to-day work done by both organizations.

(4) Conduct a review, every 3 years, of contractors subject to the disclosure requirements. The ACO and the auditor

may lengthen or shorten the 3-year period based on their joint risk assessment of the contractor's past experience and current vulnerability.

(f) *Disposition of survey team findings—*

(1) *Reporting of survey team findings.* The auditor will document the findings and recommendations of the survey team in a report to the ACO. If there are significant estimating deficiencies, the auditor will recommend disapproval of all or portions of the estimating system.

(2) *Initial notification to the contractor.* The ACO will provide a copy of the team report to the contractor and, unless there are no deficiencies mentioned in the report, will ask the contractor to submit a written response in 30 days, or a reasonable extension.

(i) If the contractor agrees with the report, the contractor has 60 days from the date of initial notification to correct any identified deficiencies or submit a corrective action plan showing milestones and actions to eliminate the deficiencies.

(ii) If the contractor disagrees, the contractor should provide rationale in its written response.

(3) *Evaluation of contractor's response.* The ACO, in consultation with the auditor, will evaluate the contractor's response to determine whether—

(i) The estimating system contains deficiencies that need correction;

(ii) The deficiencies are significant estimating deficiencies that would result in disapproval of all or a portion of the contractor's estimating system; or

(iii) The contractor's proposed corrective actions are adequate to eliminate the deficiency.

(4) *Notification of ACO determination.* The ACO will notify the contractor and the auditor of the determination and, if appropriate, of the Government's intent to disapprove all or selected portions of the system. The notice shall—

(i) List the cost elements covered;

(ii) Identify any deficiencies requiring correction; and

(iii) Require the contractor to correct the deficiencies within 45 days or submit an action plan showing milestones and actions to eliminate the deficiencies.

(5) *Notice of disapproval.* If the contractor has neither submitted an ac-

ceptable corrective action plan nor corrected significant deficiencies within 45 days, the ACO shall disapprove all or selected portions of the contractor's estimating system. The notice of disapproval must—

(i) Identify the cost elements covered;

(ii) List the deficiencies that prompted the disapproval; and

(iii) Be sent to the cognizant auditor, and each contracting and contract administration officer having substantial business with the contractor.

(6) *Monitoring contractor's corrective action.* The auditor and the ACO will monitor the contractor's progress in correcting deficiencies. If the contractor fails to make adequate progress, the ACO shall take whatever action is necessary to ensure that the contractor corrects the deficiencies. Examples of actions the ACO can take are: bringing the issue to the attention of higher level management, reducing or suspending progress payments (see FAR 32.503-6), and recommending nonaward of potential contracts.

(7) *Withdrawal of estimating system disapproval.* The ACO will withdraw the disapproval when the ACO determines that the contractor has corrected the significant system deficiencies. The ACO will notify the contractor, the auditor, and affected contracting and contract administration activities of the withdrawal.

(g) *Impact of estimating system deficiencies on specific proposals.* (1) Field pricing teams will discuss identified estimating system deficiencies and their impact in all reports on contractor proposals until the deficiencies are resolved.

(2) The contracting officer responsible for negotiation of a proposal generated by an estimating system with an identified deficiency shall evaluate whether the deficiency impacts the negotiations. If it does not, the contracting officer should proceed with negotiations. If it does, the contracting officer should consider other alternatives, e.g.—

(i) Allowing the contractor additional time to correct the estimating system deficiency and submit a corrected proposal;



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(ii) Considering another type of contract, e.g., FPIF instead of FFP;

(iii) Using additional cost analysis techniques to determine the reasonableness of the cost elements affected by the system's deficiency;

(iv) Segregating the questionable areas as a cost reimbursable line item;

(v) Reducing the negotiation objective for profit or fee; or

(vi) Including a contract (reopener) clause that provides for adjustment of the contract amount after award.

(3) The contracting officer who incorporates a reopener clause into the contract is responsible for negotiating price adjustments required by the clause. Any reopener clause necessitated by an estimating deficiency should—

(i) Clearly identify the amounts and items that are in question at the time of negotiation;

(ii) Indicate a specific time or subsequent event by which the contractor will submit a supplemental proposal, including cost or pricing data, identifying the cost impact adjustment necessitated by the deficient estimating system;

(iii) Provide for the contracting officer to unilaterally adjust the contract price if the contractor fails to submit the supplemental proposal; and

(iv) Provide that failure of the Government and the contractor to agree to the price adjustment shall be a dispute under the Disputes clause.

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

(1) Use the clause at 252.215-7000, Pricing Adjustments, in solicitations and contracts that contain the clause at—

(i) FAR 52.215-11, Price Reduction for Defective Cost or Pricing Data—Modifications;

(ii) FAR 52.215-12, Subcontractor Cost or Pricing Data; or

(iii) FAR 52.215-13, Subcontractor Cost or Pricing Data—Modifications.

(2) Use the clause at 252.215-7002, Cost Estimating System requirements, in all solicitations and contracts to be awarded on the basis of cost or pricing data.

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### **215.470 Estimated data prices.**

(a) DoD requires estimates of the prices of data in order to evaluate the cost to the Government of data items in terms of their management, product, or engineering value.

(b) When data are required to be delivered under a contract, the solicitation will include DD Form 1423, Contract Data Requirements List. The form and the provision included in the solicitation request the offeror to state what portion of the total price is estimated to be attributable to the production or development of the listed data for the Government (not to the sale of rights in the data). However, offerors' estimated prices may not reflect all such costs; and different offerors may reflect these costs in a different manner, for the following reasons—

(1) Differences in business practices in competitive situations;

(2) Differences in accounting systems among offerors;

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

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

(5) differences in data preparation methods among offerors.

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

(d) The contracting officer shall ensure that the contract does not include a requirement for data that the contractor has delivered or is obligated to deliver to the government under another contract or subcontract, and that the successful offeror identifies any such data required by the solicitation. However, where duplicate data are desired, the contract price shall include the costs of duplication, but not of preparation, of such data.

## **PART 216—TYPES OF CONTRACTS**

### **Subpart 216.1—Selecting Contract Types**

Sec.

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216.104-70 Research and development.

### **Subpart 216.2—Fixed-Price Contracts**

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216.203-4 Contract clauses.

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216.203-4 -70 Additional clauses.

### Subpart 216.3—Cost-Reimbursement Contracts

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### Subpart 216.4—Incentive Contracts

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216.402-2 Technical performance incentives.  
216.403 Fixed-price incentive contracts.  
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216.405 Cost-reimbursement incentive contracts.  
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216.405-2 Cost-plus-award-fee contracts.  
216.470 Other applications of award fees.

### Subpart 216.5—Indefinite-Delivery Contracts

216.501 General.  
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216.506 Solicitation provisions and contract clauses.

### Subpart 216.6—Time-and-Materials, Labor-Hour, and Letter Contracts

216.603 Letter contracts.  
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### Subpart 216.7—Agreements

216.703 Basic ordering agreements.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36340, July 31, 1991, unless otherwise noted.

## Subpart 216.1—Selecting Contract Types

### 216.104 Factors in selecting contract types.

(d) Design stability should also be considered.

### 216.104-70 Research and development.

(a) *General.* There are several categories of research and development (R&D) contracts: research, exploratory development, advanced development, engineering development, and operational systems development (see 235.001 for definitions). Each category has a primary technical or functional objective. Different parts of a project

may fit several categories. The contract type must fit the work required, not just the classification of the overall program.

(b) *Research and exploratory development.* (1) Price is not necessarily the primary factor in determining the contract type.

(2) The nature of the work to be performed will usually result in a cost-plus award fee, cost-plus fixed fee term, cost-no-fee, or cost-sharing contract.

(3) If the Government and the contractor can identify and agree upon the level of contractor effort required, the contracting officer may select a firm fixed-price level-of-effort contract, except see 235.006.

(4) If the Government and the contractor agree that an incentive arrangement is desirable and capable of being evaluated after completion of the work, the contracting officer may use an incentive type contract.

(c) *Advanced development.* (1) The nature of the work to be performed often results in a cost-plus fixed fee completion type contract.

(2) Contracting officers may select incentive contracts if—

(i) Realistic and measurable targets are identified; and

(ii) Achievement of those targets is predictable with a reasonable degree of accuracy.

(3) Contracting officers should not use contracts with only cost incentives where—

(i) There will be a large number of major technical changes; or

(ii) Actions beyond the control of the contractor may influence the contractor's achievement of cost targets.

(d) *Engineering development and operational systems development.* (1) When selecting contract types, also consider—

(i) The degree to which the project is clearly defined, which in turn affects the contractor's ability to provide accurate cost estimates;

(ii) The need for effort that will overlap that of earlier stages;

(iii) The need for firm technical direction by the Government; and

(iv) The degree of configuration control the Government will exercise.

(2) For development efforts, particularly for major defense systems, the

preferred contract type is cost reimbursement.

(3) Contracting officers should use fixed-price type contracts when risk has been reduced to the extent that realistic pricing can occur; e.g., when a program has reached the final stages of development and technical risks are minimal, except see 235.006.

### Subpart 216.2—Fixed-Price Contracts

#### 216.203 Fixed-price contracts with economic price adjustment.

##### 216.203-4 Contract clauses.

(a) *Adjustment based on established prices-standard supplies.* Generally, use the clause at FAR 52.216-2, Economic Price Adjustment-Standard Supplies, only when—

(i) The total contract price exceeds the simplified acquisition threshold; and

(ii) Delivery will not be completed within 6 months after the contract date.

(b) *Adjustment based on established prices-semistandard supplies.* Generally, use the clause at FAR 52.216-3, Economic Price Adjustment-Semistandard Supplies, only when—

(i) The total contract price exceeds the simplified acquisition threshold; and

(ii) Delivery will not be completed within 6 months after the contract date.

(c) *Adjustments based on actual cost of labor or material.*

(2) Limit use of the clause at FAR 52.216-4, Economic Price Adjustment-Labor and Material, to contracts in which the price exceeds \$50,000 and the period of performance exceeds 6 months, unless otherwise approved by the chief of the contracting office. Use an appropriate modification of the clause in sealed bidding.

(4) Apply the full amount of the decrease in the labor rates and fringe benefits or unit prices for materials.

(d) *Adjustments based on cost indexes of labor or material.* Use the following guidelines—

(i) Do not make the clause unnecessarily complex.

(ii) Normally, the clause should not provide either a ceiling or a floor for adjustment unless adjustment is based on indices below the four digit level of the Bureau of Labor Statistics—

(A) Producer Price Index;

(B) Employment Cost Index for wages and salaries, benefits, and compensation costs for aerospace industries; or

(C) Wage and Income Series by Standard Industrial Classification (Labor).

(iii) Normally, the clause should cover all potential economic fluctuations within the original contract period of performance.

(iv) The clause must accurately identify the index(es) upon which adjustments will be based.

(A) It must provide for a means to adjust for appropriate economic fluctuation in the event publication of the movement of the designated index is discontinued. This might include the substitution of another index if the time remaining would justify doing so and an appropriate index is reasonably available, or some other method for repricing the remaining portion of work to be performed.

(B) Normally, there should be no need to make an adjustment if computation of the identified index is altered. However, it may be appropriate to provide for adjustment of the economic fluctuation computations in the event there is such a substantial alteration in the method of computing the index that the original intent of the parties is negated.

(C) When an index to be used is subject to revision (e.g., the Bureau of Labor Statistics Producer Price Indexes), the economic price adjustment clause must specify that any economic price adjustment will be based on a revised index and must identify which revision to the index will be used.

(v) Construct the index to encompass a large sample of relevant items while still bearing a logical relationship to the type of contract costs being measured. The basis of the index should not be so large and diverse that it is significantly affected by fluctuations not relevant to contract performance, but it must be broad enough to minimize the effect of any single company, including the anticipated contractor(s).

(vi) Construction of an index is largely dependent upon three general series published by the U.S. Department of Labor, Bureau of Labor Statistics (BLS). These are the—

(A) Industrial Commodities portion of the Producer Price Index;

(B) Employment Cost Index for wages and salaries, benefits, and compensation costs for aerospace industries; and

(C) Wage and Income Series by Standard Industrial Classification (Labor). Since there is no BLS published series currently available that relates directly to total prices of delivered DoD aircraft, ships, missiles, electronics, etc., it will be necessary to construct composite indices from major portions of the three series identified.

(vii) Normally, do not use more than two indices, i.e., one for labor (direct and indirect) and one for material (direct and indirect).

(viii) The clause must establish and properly identify a base period comparable to the contract periods for which adjustments are to be made as a reference point for application of an index.

(ix) The clause should not provide for an adjustment beyond the original contract performance period, including options. The start date for the adjustment may be the beginning of the contract or a later time, as appropriate, based on the projected rate of expenditures.

(x) The expenditure profile for both labor and material should be based on a predetermined rate of expenditure (expressed as the percentage of material or labor usage as it relates to the total contract price) in lieu of actual cost incurred.

(A) If the clause is to be used in a competitive acquisition, determine the labor and material allocations, with regard to both mix of labor and material and rate of expenditure by percentage, in a manner which will, as nearly as possible, approximate the average expenditure profile of all companies to be solicited so that all companies may compete on an equal basis.

(B) If the clause is to be used in a noncompetitive acquisition, the labor and material allocations may be subject to negotiation and agreement.

(C) For multiyear contracts, establish predetermined expenditure profile tables for each of the annual increments in the multiyear buy. Each of the second and subsequent year tables must be cumulative to reflect the total expenditures for all increments funded through the latest multiyear funding.

(xi) The clause should state the percentage of the contract price subject to price adjustment.

(A) Normally, do not apply adjustments to the profit portion of the contract.

(B) Examine the labor and material portions of the contract to exclude any areas that do not require adjustment. For example, it may be possible to exclude—

(1) Subcontracting for short periods of time during the early life of the contract which could be covered by firm-fixed-priced subcontracting;

(2) Certain areas of overhead, e.g., depreciation charges, prepaid insurance costs, rental costs, leases, certain taxes, and utility charges;

(3) Labor costs for which a definitive union agreement exists; and

(4) Those costs not likely to be affected by fluctuation in the economy.

(C) Allocate that part of the contract price subject to adjustment to specific periods of time (e.g., quarterly, semi-annually, etc.) based on the most probable expenditure or commitment basis (expenditure profile).

(xii) The clause should provide for definite times or events that trigger price adjustments. Adjustments should be frequent enough to afford the contractor appropriate economic protection without creating a burdensome administrative effort. The adjustment period should normally range from quarterly to annually.

(xiii) When the contract contains cost incentives, any sums paid to the contractor on account of economic price adjustment provisions must be subtracted from the total of the contractor's allowable costs for the purpose of establishing the total costs to which the cost incentive provisions apply. If the incentive arrangement is cited in percentage ranges, rather than dollar ranges, above and below target

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costs, structure the economic price adjustment clause to maintain the original contract incentive range in dollars.

(xiv) The economic price adjustment clause should provide that once the labor and material allocations and the portion of the contract price subject to price adjustment have been established, they remain fixed through the life of the contract and shall not be modified except in the event of significant changes in the scope of the contract. The clause should state that pricing actions pursuant to the Changes clause or other provisions of the contract will be priced as though there were no provisions for economic price adjustment. However, subsequent modifications may include a change to the delivery schedule or significantly change the amount of, or mix of, labor or material for the contract. In such cases, it may be appropriate to prospectively apply economic price adjustment coverage. This may be accomplished by—

(A) Using an economic price adjustment (EPA) clause that applies only to the effort covered by the modification;

(B) Revising the baseline data or period in the EPA clause for the basic contract to include the new work; or

(C) Using an entirely new EPA clause for the entire contract, including the new work.

(xv) Consistent with the factors in paragraphs (d)(i) through (xiv) of this subsection, it may also be appropriate to provide in the prime contract for similar economic price adjustment arrangements between the prime contractor and affected subcontractors to allocate risks properly and ensure that those subcontractors are provided similar economic protection.

(xvi) When economic price adjustment clauses are included in contracts that do not require submission of cost or pricing data as provided for in FAR 15.403-1, the contracting officer must obtain adequate information to establish the baseline from which adjustments will be made. The contracting officer may require verification of the data submitted to the extent necessary

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to permit reliance upon the data as a reasonable baseline.

[56 FR 36340, July 31, 1991, as amended at 62 FR 40472, July 29, 1997; 63 FR 11529, Mar. 9, 1998; 64 FR 2597, Jan. 15, 1999]

**216.203-4-70 Additional clauses.**

(a) *Price adjustment for basic steel, aluminum, brass, bronze, or copper mill products.*

(1) The price adjustment clause at 252.216-7000, Economic Price Adjustment—Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products, may be used in fixed-price supply contracts for basic steel, aluminum, brass, bronze, or copper mill products, such as sheets, plates, and bars, when an established catalog or market price exists for the particular product being acquired.

(2) The 10 percent figure in paragraph (d)(1) of the clause shall not be exceeded unless approval is obtained at a level above the contracting officer.

(b) *Price adjustment for nonstandard steel items.* (1) The price adjustment clause at 252.216-7001, Economic Price Adjustment—Nonstandard Steel Items, may be used in fixed-price supply contracts when—

(i) The contractor is a steel producer and actually manufacture the standard steel mill item referred to in the “base steel index” definition of the clause; and

(ii) The items being acquired are nonstandard steel items made wholly or in part of standard steel mill items.

(2) When this clause is included in invitations for bids, omit Note 6 of the clause and all references to Note 6.

(3) Solicitations shall instruct offerors to complete all blanks in accordance with the applicable notes.

(4) When the clause is to provide for adjustment on a basis other than “established price” (see Note 6 of the clause), that price must be verified.

(5) The ten percent figure in paragraph (e)(4) of the clause shall not be exceeded unless approval is obtained at a level above the contracting officer.

(c) *Price adjustment for wage rates or material prices controlled by a foreign government.* (1) The price adjustment clause at 252.216-7003, Economic Price Adjustment—Wage Rates or Material

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Prices Controlled by a Foreign Government, may be used in fixed-price supply and service contracts when—

(i) The contract is to be performed wholly or in part in a foreign country; and

(ii) A foreign government controls wage rates or material prices and may, during contract performance, impose a mandatory change in wages or prices of material.

(2) Verify the base wage rates and material prices prior to contract award and prior to making any adjustment in the contract price.

[56 FR 36340, July 31, 1991, as amended at 62 FR 34122, June 24, 1997; 62 FR 40472, July 29, 1997]

### Subpart 216.3—Cost-Reimbursement Contracts

#### 216.306 Cost-plus-fixed-fee contracts.

(c) *Limitations.*

(i) Except as provided in paragraph (c)(ii) of this section, annual military construction appropriations acts prohibit the use of cost-plus-fixed-fee contracts that—

(A) Are funded by a military construction appropriations act;

(B) Are estimated to exceed \$25,000; and

(C) Will be performed within the United States, except Alaska.

(ii) The prohibition in paragraph (c)(i) of this section does not apply—

(A) To contracts for environmental restoration at an installation that is being closed or realigned where payments are made from a Base Realignment and Closure Account; or

(B) To contracts specifically approved in writing, setting forth the reasons therefor, in accordance with the following:

(1) The Secretaries of the military departments are authorized to approve such contracts that are for environmental work only, provided the environmental work is not classified as construction, as defined by 10 U.S.C. 2801.

(2) The Secretary of Defense or designee must approve such contracts that are not for environmental work only or

are for environmental work classified as construction.

[62 FR 1058, Jan. 8, 1997; 62 FR 1817, Jan. 13, 1997; 62 FR 49305, Sept. 19, 1997]

### Subpart 216.4—Incentive Contracts

#### 216.402 Application of predetermined, formula-type incentives.

##### 216.402-2 Technical performance incentives.

Contractor performance incentives should relate to specific performance areas of milestones, such as delivery or test schedules, quality controls, maintenance requirements, and reliability standards.

##### 216.403 Fixed-price incentive contracts.

(b) *Application.*

(3) Individual line items may have separate incentive provisions; e.g., when dissimilar work calls for separate formulas.

##### 216.403-2 Fixed-price incentive (successive targets) contracts.

(a) *Description.* (1)(iii) The formula does not apply for the life of the contract. It is used to fix the firm target profit for the contract. To provide an incentive consistent with the circumstances, the formula should reflect the relative risk involved in establishing an incentive arrangement where cost and pricing information were not sufficient to permit the negotiation of firm targets at the outset.

##### 216.404 Fixed-price contracts with award fees.

Award-fee provisions may be used in fixed-price contracts as provided in 216.470

[63 FR 11529, Mar. 9, 1998]

##### 216.405 Cost-reimbursement incentive contracts.

##### 216.405-1 Cost-plus-incentive-fee contracts.

(b) *Application.*

(3) Give appropriate weight to basic acquisition objectives in negotiating the range of fee and the fee adjustment formula. For example—

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(A) In an initial product development contract, it may be appropriate to provide for relatively small adjustments in fee tied to the cost incentive feature, but provide for significant adjustments if the contractor meets or surpasses performance targets.

(B) In subsequent development and test contracts, it may be appropriate to negotiate an incentive formula tied primarily to the contractor's success in controlling costs.

[56 FR 36340, July 31, 1991. Redesignated at 63 FR 11529, Mar. 9, 1998]

### **216.405-2 Cost-plus-award-fee contracts.**

(a) *Description.* (i) Normally, award fee is not earned when the fee-determining official has determined that contractor performance has been submarginal or unsatisfactory.

(ii) The basis for all award fee determinations shall be documented in the contract file.

(b) *Application.* (1) The cost-plus-award-fee (CPAF) contract is also suitable for level of effort contracts where mission feasibility is established but measurement of achievement must be by subjective evaluation rather than objective measurement. See Table 16-1, Performance Evaluation Criteria, for sample performance evaluation criteria and Table 16-2, Contractor Performance Evaluation Report, for a sample evaluation report.

(2) The contracting activity may—

(A) Establish a board to—

(1) Evaluate the contractor's performance; and

(2) Determine the amount of the award or recommend an amount to the contracting officer.

(B) Afford the contractor an opportunity to present information on its own behalf.

(c) *Limitations.* The CPAF contract shall not be used—

(i) To avoid—

(A) Establishing CPFF contracts when the criteria for CPFF contracts apply, or

(B) Developing objective targets so a CPFF contract can be used.

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(ii) For either engineering development or operational system development acquisitions which have specifications suitable for simultaneous research and development and production, except a CPAF contract may be used for individual engineering development or operational system development acquisitions ancillary to the development of a major weapon system or equipment, where—

(A) It is more advantageous; and

(B) The purpose of the acquisition is clearly to determine or solve specific problems associated with the major weapon system or equipment.

(2)(A) Do not apply the weighted guidelines method to CPAF contracts for either the base (fixed) fee or the award fee.

(B) The base fee shall not exceed three percent of the estimated cost of the contract exclusive of the fee.

[56 FR 36340, July 31, 1991. Redesignated at 63 FR 11529, Mar. 9, 1998]

### **216.470 Other applications of award fees.**

The "award amount" portion of the fee may be used in other types of contracts under the following conditions—

(1) The Government wishes to motivate and reward a contractor for management performance in areas which cannot be measured objectively and where normal incentive provisions cannot be used. For example, logistics support, quality, timeliness, ingenuity, and cost effectiveness are areas under the control of management which may be susceptible only to subjective measurement and evaluation.

(2) The "base fee" (fixed amount portion) is not used.

(3) The chief of the contracting office approves the use of the "award amount."

(4) An award review board and procedures are established for conduct of the evaluation.

(5) The administrative costs of evaluation do not exceed the expected benefits.

TABLE 16-1—PERFORMANCE EVALUATION CRITERIA

		Submarginal	Marginal	Good	Very good	Excellent
A—Time of Delivery.	(A-1) Adherence to plan schedule.	Consistently late on 20% of plans.	Late on 10% plans w/o prior agreement.	Occasional plan late w/o justification.	Meets plan schedule.	Delivers all plans on schedule & meets prod. change requirements on schedule.
	(A-2) Action on Anticipated delays.	Does not expose changes or resolve them as soon as recognized.	Exposes changes but is dilatory in resolution on plans.	Anticipates changes, advise Shipyard but misses completion of design plans 10%.	Keeps Yard posted on delays, resolves independently on plans.	Anticipates in good time, advises Shipyard, resolves independently and meets production schedule.
	(A-3) Plan Maintenance.	Does not complete inter-related systems studies concurrently.	System studies completed but constr. plan changes delayed.	Major work plans coordinated in time to meet production schedules.	Design changes from studies and inter-related plans issued in time to meet product schedules.	Design changes, studies resolved and test data issued ahead of production requirements.
B—Quality of Work.	(B-1) Work Appearance.	25% dwgs. not compatible with Shipyard repro. processes and use.	20% not compatible with Shipyard repro. processes and use.	10% not compatible with Shipyard repro. processes and use.	0% dwgs. prepared by Des. agent not compatible with Shipyard repro. processes and use.	0% dwgs. presented incl. Des. agent, vendors, subcontr. not compatible with Shipyard repro. processes and use.
	(B-2) Thoroughness and Accuracy of Work.	Is brief on plans tending to leave questionable situations for Shipyard to resolve.	Has followed guidance, type and standard dwgs.	Has followed guidance, type and standard dwgs. questioning and resolving doubtful areas.	Work complete with notes and thorough explanations for anticipated questionable areas.	Work of highest caliber incorporating all pertinent data required including related activities.
	(B-3) Engineering Competence.	Tendency to follow past practice with no variation to meet reqmts. job in hand.	Adequate engrg. to use & adapt existing designs to suit job on hand for routine work.	Engineered to satisfy specs., guidance plans and material provided.	Displays excellent knowledge of constr. reqmts. considering systems aspect, cost, shop capabilities and procurement problems.	Exceptional knowledge of Naval shipwork & adaptability to work process incorporating knowledge of future planning in Design.
	(B-4) Liaison Effectiveness.	Indifferent to requirements of associated activities, related systems, and Shipyard advice.	Satisfactory but dependent on Shipyard to force resolution of problems without constructive recommendations to subcontr. or vendors.	Maintains normal contact with associated activities depending on Shipyard for problems requiring military resolution.	Maintains independent contact with all associated activities, keeping them informed to produce compatible design with little assistance for Yard.	Maintains expert contact, keeping Yard informed, obtaining info from equip., supplies w/o prompting by Shipyard.



TABLE 16-1—PERFORMANCE EVALUATION CRITERIA—Continued

		Submarginal	Marginal	Good	Very good	Excellent
C—Effectiveness in Controlling and/or Reducing Costs.	(B-5) Independence and Initiative.	Constant surveillance req'd to keep job from slipping—assign to low priority to satisfy needs.	Requires occasional prod'g to stay on schedule & expects Shipyard resolution of most problems.	Normal interest and desire to provide workable plans with average assistance & direction by Shipyard.	Complete & accurate job. Free of incompatibilities with little or no direction by Shipyard.	Develops complete and accurate plans, seeks out problem areas and resolves with assoc. act. ahead of schedule.
	(C-1) Utilization of Personnel.	Planning of work left to designers on drafting boards.	Supervision sets & reviews goals for designers.	System planning by supervisory, personnel, studies checked by engineers.	Design parameters established by system engineers & held in design plans.	Mods. to design plans limited to less than 5% as result lack engrg. system correlation.
	(C-2) Control Direct Charges (Except Labor).	Expenditures not controlled for services.	Expenditures reviewed occasionally by supervision.	Direct charges set & accounted for on each work package.	Provides services as part of normal design function w/o extra charges.	No cost overruns on original estimates absorbs service demands by Shipyard.
	(C-3) Performance to Cost Estimate.	Does not meet cost estimate for original work or changes 30% time.	Does not meet cost estimate for original work or changes 20% time.	Exceeds original est. on change orders 10% time and meets original design costs.	Exceeds original est. on change orders 5% time.	Never exceeds estimates of original package or change orders.

TABLE 16-2.—CONTRACTOR PERFORMANCE EVALUATION REPORT

Category	Criteria	Rating	Item factor	Evaluation rating	Category factor	Efficiency rating
A	TIME OF DELIVERY.					
	A-1 Adherence to Plan Schedule .....	_____	x	.40 = _____		
	A-2 Action on Anticipated Delays .....	_____	x	.30 = _____		
	A-3 Plan Maintenance .....	_____	x	.30 = _____		
	Total Item Weighed Rating .....	_____	....	.....	x	.30 = _____
B	QUALITY OF WORK.					
	B-1 Work Appearance .....	_____	x	.15 = _____		
	B-2 Thoroughness and Accuracy of Work .....	_____	x	.30 = _____		
	B-3 Engineering Competence .....	_____	x	.20 = _____		
	B-4 Liaison Effectiveness .....	_____	x	.15 = _____		
	B-5 Independence and Initiative .....	_____	x	.20 = _____		
	Total Item Weighed Rating .....	_____	....	.....	x	.40 = _____
C	EFFECTIVENESS IN CONTROLLING AND/OR REDUCING COSTS.					
	C-1 Utilization of Personnel .....	_____	x	.30 = _____		
	C-2 Control of all Direct Charges Other than Labor .....	_____	x	.30 = _____		
	C-3 Performance to Cost Estimate .....	_____	x	.40 = _____		
	Total Item Weighed Rating .....	_____	....	.....	x	.30 = _____
TOTAL WEIGHED RATING:						
Rated by:						
Signature(s): - - s0						

Ratings—Excellent; Very good; Good; Marginal; Submarginal;

Period of 19

Contract Number

Contractor

Date of Report

PNS Technical Monitor/s

**Note:** Provide supporting data and/or justification for below average or outstanding item ratings.

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### Subpart 216.5—Indefinite-Delivery Contracts

#### 216.501 General.

(a)(i) For items with a shelf-life of less than 6 months, consider the use of indefinite-delivery type contracts with orders to be placed either—

(A) Directly by the users; or

(B) By central purchasing offices with deliveries direct to users.

(ii) Whenever an indefinite-delivery contract is issued, the issuing office must furnish all ordering offices sufficient information for the ordering office to complete its contract reporting responsibilities under 204.670-2. This data must be furnished to the ordering activity in sufficient time for the activity to prepare its report for the action within 3 working days of the order.

[56 FR 36340, July 31, 1991, as amended at 57 FR 42630, Sept. 15, 1992; 63 FR 11529, Mar. 9, 1998]

#### 216.505 Ordering.

Orders placed under indefinite-delivery contracts may be issued on DD Form 1155, Order for Supplies or Services.

[63 FR 11529, Mar. 9, 1998]

#### 216.506 Solicitation provisions and contract clauses.

(d) If the contract is for the preparation of personal property for shipment or storage (see 247.271-4), substitute paragraph (f) at 252.247-7015, Requirements, for paragraph (f) of the clause at FAR 52.216-21, Requirements.

[63 FR 11529, Mar. 9, 1998]

### Subpart 216.6—Time-And-Materials, Labor-Hour, and Letter Contracts

#### 216.603 Letter contracts.

##### 216.603-3 Limitations.

See subpart 217.74 for additional limitations on the use of letter contracts.

##### 216.603-4 Contract clauses.

(b)(2) See 217.7406(a) for additional guidance regarding use of the clause at

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FAR 52.216-24, Limitation of Government Liability.

(3) Use the clause at 252.217-7027, Contract Definitization, in accordance with its prescription at 217.7406(b), instead of the clause at FAR 52.216-25, Contract Definitization.

[61 FR 7743, Feb. 29, 1996]

### Subpart 216.7—Agreements

#### 216.703 Basic ordering agreements.

(c) *Limitations.* The period during which orders may be placed against a basic ordering agreement may not exceed three years. The contracting officer, with the approval of the chief of the contracting office, may grant extensions for up to two years. No single extension shall exceed one year. See subpart 217.74 for additional limitations on the use of undefinitized orders under basic ordering agreements.

(d) *Orders.* (i) The contracting officer issuing an order under a basic ordering agreement shall be responsible for ensuring compliance with the provisions and limitations of this section.

(ii) Individual orders under a basic ordering agreement shall be individually closed following completion of the orders (see FAR 4.804).

(1)(iii) The office issuing the agreement shall furnish all authorized ordering offices sufficient information for the ordering office to complete its contract reporting responsibilities under 204.670-2 or, in the case of civilian agencies, the Federal Procurement Data System reporting requirement. Data furnished to civilian agencies must contain uncoded information about the data elements and the meanings of the codes to permit these users to translate the data into the federal format. This data must be furnished to the ordering activity in sufficient time for the activity to prepare its report for the action within 3 working days of the order.

(2)(i) Any activity listed in the agreement may issue orders on DD Form 1155, Order for Supplies or Services, or Standard Form 26, Award/Contract.

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(3) Incentive provisions consistent with this part are permitted.

[56 FR 36340, July 31, 1991, as amended at 61 FR 7743, Feb. 29, 1996; 61 FR 18195, Apr. 24, 1996]

### PART 217—SPECIAL CONTRACTING METHODS

#### Subpart 217.1—Multiyear Contracting

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- 217.170 General.
- 217.171 Multiyear contracts for services.
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#### Subpart 217.2—Options

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#### Subpart 217.5—Interagency Acquisitions Under the Economy Act

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#### Subpart 217.70—Exchange of Personal Property

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- 217.7600 Scope of subpart.
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217.7603-3 \*COM019\*Negotiating and executing supplemental agreements.

### Subpart 217.77—Over and Above Work

217.7700 Scope of subpart.  
217.7701 Procedures.  
217.7702 Contract clause.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36345, July 31, 1991, unless otherwise noted.

### Subpart 217.1—Multiyear Contracting

SOURCE: 63 FR 11529, Mar. 9, 1998, unless otherwise noted.

#### 217.103 Definitions.

*Advance procurement*, as used in this subpart, means an exception to the full funding policy that allows acquisition of long lead time items (advance long lead acquisition) or economic order quantities (EOQ) of items (advance EOQ acquisition) in a fiscal year in advance of that in which the related end item is to be acquired. Advance procurements may include materials, parts, components, and effort that must be funded in advance to maintain a planned production schedule.

#### 217.170 General.

(a) Before awarding a multiyear contract, the head of the agency must compare the cost of that contract to the cost of an annual procurement approach, using a present value analysis. Do not award the multiyear contract unless the analysis shows that the multiyear contract will result in the lower cost (10 U.S.C. 2306(1)(5)).

(b) The head of the agency must provide written notice to the congressional defense committees at least 10 days before termination of any multiyear contract (10 U.S.C. 2306(1)(4)).

(c) The Secretary of Defense may instruct the head of the agency proposing a multiyear contract to include in that contract negotiated priced options for varying the quantities of end items to be procured over the life of the contract (10 U.S.C. 2306b(j)).

(d) Every multiyear contract must comply with FAR 17.104(c), unless an

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exception is approved through the budget process in coordination with the cognizant comptroller.

(e)(1) DoD must receive authorization from, or provide notification to, Congress before entering into a multiyear contract for certain procurements, including those expected to—

(i) Exceed \$500 million for any particular system or system component (see 217.173(b)(4));

(ii) Employ economic order quantity procurement in excess of \$20 million in any one year (see 217.174(a)(1));

(iii) Employ an unfunded contingent liability in excess of \$20 million (see 217.172(c)); or

(iv) Involve a contract for advance procurement leading to a multiyear contract that employs economic order quantity procurement in excess of \$20 million in any one year (see 217.174(a)(2)).

(2) A DoD component must submit a request for authority to enter into such multiyear contracts as part of the component's budget submission for the fiscal year in which the multiyear contract will be initiated. DoD will include the request, for each candidate it supports, as part of the President's Budget for that year and in the Appendix to that budget as part of proposed legislative language for the appropriations bill for that year (Section 8008(b) of Pub. L. 105–56).

(3) If the advisability of using a multiyear contract becomes apparent too late to satisfy the requirements in paragraph (e)(2) of this section, the request for authority to enter into a multiyear contract must be—

(i) Formally submitted by the President as a budget amendment; or

(ii) Made by the Secretary of Defense, in writing, to the congressional defense committees (Section 8008(b) of Pub. L. 105–56).

[64 FR 43096, Aug. 9, 1999]

#### 217.171 Multiyear contracts for services.

(a) *10 U.S.C. 2306(g)*.

(1) The head of the agency may enter into multiyear contracts for the following types of services (and items of supply relating to such services), even though funds are limited by statute to

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obligation only during the fiscal year for which they were appropriated:

(i) Operation, maintenance, and support of facilities and installations.

(ii) Maintenance or modification of aircraft, ships, vehicles, and other highly complex military equipment.

(iii) Specialized training requiring high quality instructor skills (e.g., training for pilots and other aircrew members or foreign language training).

(iv) Base services (e.g., ground maintenance, in-plane refueling, bus transportation, and refuse collection and disposal).

(2) The head of the agency may use this authority only if the term of the contract does not exceed 5 years. However, the head of the agency may extend the term of the contract by exercising an option that does not—

(i) Exceed 3 years; or

(ii) Include charges for plant, equipment, or other nonrecurring costs already amortized.

(3) Before entering into a multiyear contract for services, the head of the agency must make a written determination that—

(i) There will be a continuing need for the services and incidental supplies consistent with current plans for the proposed contract period;

(ii) Furnishing the services and incidental supplies will require—

(A) A substantial initial investment in plant or equipment; or

(B) The incurrence of substantial contingent liabilities for the assembly, training, or transportation of a specialized work force; and

(iii) Using a multiyear contract will be in the best interest of the United States by encouraging effective competition and promoting economical business operations (e.g., economic lot purchases and more efficient production rates).

(b) *10 U.S.C. 2829.*

(1) The head of the agency may enter into multiyear contracts for supplies and services required for management, maintenance, and operation of military family housing and may pay the costs of such contracts for each year from annual appropriations for that year.

(2) The head of the agency may use this authority only if the term of the contract does not exceed 4 years.

[64 FR 43097, Aug. 9, 1999]

### **217.172 Multiyear contracts for supplies.**

(a) This section applies to all multiyear contracts for supplies, including weapon systems. For policies that apply only to multiyear contracts for weapon systems, see 217.173.

(b) The head of the agency may enter into a multiyear contract for supplies if, in addition to the conditions listed in FAR 17.105-1(b), the use of such a contract will promote the national security of the United States.

(c) The head of the agency must provide written notice to the congressional defense committees at least 30 days before the contracting officer awards a multiyear contract including an unfunded contingent liability in excess of \$20 million (10 U.S.C. 2306b(1)(1)(A)).

(d) Agencies must establish reporting procedures to meet the requirements of paragraph (c) of this section. The head of the agency must submit copies of the notifications to the Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics) (OUSD(AT&L)DP), and to the Deputy Under Secretary of Defense (Comptroller) (Program/Budget) (OUSD(C)(P/B)).

[64 FR 43097, Aug. 9, 1999, as amended at 65 FR 39704, June 27, 2000]

### **217.173 Multiyear contracts for weapon systems.**

(a) As authorized by 10 U.S.C. 2306b(h) and subject to the conditions in paragraph (b) of this section, the head of the agency may enter into a multiyear contract for—

(1) A weapon system and associated items, services, and logistics support for a weapon system; and

(2) Advance procurement of components, parts, and materials necessary to manufacture a weapon system, including advance procurement to achieve economic lot purchases or more efficient production rates (see

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217.174 regarding economic order quantity procurement).

(b) The head of the agency must ensure that the following conditions are satisfied before awarding a multiyear contract under the authority described in paragraph (a) of this section:

(1) The multiyear exhibits required by DoD 7000.14-R, Financial Management Regulation, are included in the agency's budget estimate submission and the President's budget request.

(2) The Secretary of Defense certifies to Congress that the current 5-year defense program fully funds the support costs associated with the multiyear program (10 U.S.C. 2306b(i)(1)(A)). The head of the agency must submit information supporting this certification to USD(C) (P/B) for transmission to Congress through the Secretary of Defense.

(3) The proposed multiyear contract provides for production at not less than minimum economic rates, given the existing tooling and facilities (10 U.S.C. 2306b(i)(1)(B)). The head of the agency must submit to USD(C) (P/B) information supporting the agency's determination that this requirement has been met.

(4) If the value of a multiyear contract for a particular system or component exceeds \$500 million, use of a multiyear contract is specifically authorized by—

(i) An appropriations act (10 U.S.C. 2306b(1)(3)); and

(ii) A law other than an appropriations act (10 U.S.C. 2306b(1)(3)).

(5) All other requirements of law are met and there are no other statutory restrictions on using a multiyear contract for the specific system or component (10 U.S.C. 2306b(i)(2)). One such restriction may be the achievement of specified cost savings. If the agency finds, after negotiations with the contractor(s), that the specified savings cannot be achieved, the head of the agency must assess the savings that, nevertheless, could be achieved by using a multiyear contract. If the savings are substantial, the head of the agency may request relief from the law's specific savings requirement. The request must—

(i) Quantify the savings that can be achieved;

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(ii) Explain any other benefits to the Government of using the multiyear contract;

(iii) Include details regarding the negotiated contract terms and conditions; and

(iv) Be submitted to OUSD (AT&L) DP for transmission to Congress via the Secretary of Defense and the President.

[64 FR 43097, Aug. 9, 1999, as amended at 65 FR 39704, June 27, 2000]

### **217.174 Multiyear contracts that employ economic order quantity procurement.**

(a) The head of the agency must provide written notice to the congressional defense committees at least 30 days before awarding—

(1) A multiyear contract providing for economic order quantity procurement in excess of \$20 million in any one year; or

(2) A contract for advance procurement leading to a multiyear contract that employs economic order quantity procurement in excess of \$20 million in any one year (10 U.S.C. 2306b(1)(1)(A)).

(b) Before initiating an advance procurement, the contracting officer must verify that it is consistent with DoD policy (e.g., Part 3 of DoD 5000.2-R, Mandatory Procedures for Major Defense Acquisition Programs (MDAPs) and Major Automated Information System (MAIS) Acquisition Programs, and the full funding policy in Volume 2A, Chapter 1, of DoD 7000.14-R, Financial Management Regulation).

[64 FR 43097, Aug. 9, 1999]

## **Subpart 217.2—Options**

### **217.202 Use of options.**

(1) Options may be used for foreign military sales requirements.

(2) Consider use of surge options to support the Industrial Preparedness Production Planning program (see subpart 208.72). A surge option allows the Government, prior to final delivery, to—

(i) Accelerate the contractor's production rate in accordance with a surge production plan or a delivery schedule provided by the contractor under the terms of the contract; and

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(ii) Purchase additional quantities of supplies or services.

(3) See subpart 217.74 for limitations on the use of undefinitized options.

[56 FR 36345, July 31, 1991, as amended at 61 FR 7743, Feb. 29, 1996]

### 217.207 Exercise of options.

(c) Except for contracts for the acquisition of commercial items, if the contractor has any contract containing the clause at FAR 52.222-37, Employment Reports on Disabled Veterans and Veterans of the Vietnam Era, the contracting officer may exercise an option with a value exceeding the simplified acquisition threshold only after determining that the contractor has submitted the most recent report required by that clause (see 222.1304(b)).

[63 FR 11851, Mar. 11, 1998]

### 217.208 Solicitation provisions and contract clauses.

Sealed bid solicitations shall not include provisions for evaluations of options unless the contracting officer determines that there is a reasonable likelihood that the options will be exercised (10 U.S.C. 2301(a)(7)). This limitation also applies to sealed bid solicitations for the contracts excluded by FAR 17.200.

### 217.208-70 Additional clauses.

(a) Use the clause at 252.217-7000, Exercise of Option to Fulfill Foreign Military Sales Commitments, when an option may be used for foreign military sale requirements.

(1) Use Alternate I when the foreign military sale country is not known at the time of solicitation or award.

(2) Do not use this clause in contracts for establishment or replenishment of DoD inventories or stocks, or acquisitions made under DoD cooperative logistics support arrangements.

(b) When a surge option is needed in support of industrial preparedness production planning (see subpart 208.72), use the clause at 252.217-7001, Surge Option, in solicitations and contracts.

(1) Insert the percentage of increase the option represents in paragraph (a) of the clause.

(2) Change 30 days in paragraphs (b)(2) and (d)(1) to longer periods, if appropriate.

(3) Change the 24-month period in paragraph (c)(3), if appropriate.

## Subpart 217.4—Leader Company Contracting

### 217.401 General.

(1) When leader company contracting is to be considered, take special effort to select a small disadvantaged business (SDB) concern as the follower company if—

(i) The follower company will be a subcontractor and the North American Industry Classification System (NAICS) Industry Subsector of the acquisition is one in which use of an evaluation factor or subfactor for participation of SDB concerns is currently authorized (see FAR 19.201(b)); or

(ii) The follower company will be a prime contractor and the NAICS Industry Subsector of the acquisition is one in which use of a price evaluation adjustment is currently authorized (see FAR 19.201(b)).

(2) If special effort is required by paragraph (1) of this section and an SDB is not selected as the follower company, the contracting officer shall document the contract file to reflect—

(i) The extent of actions taken to identify SDB concerns for participation in the acquisition; and

(ii) The rationale for selection of a non-SDB as the follower company.

[63 FR 64429, Nov. 20, 1998, as amended at 65 FR 50148, Aug. 17, 2000]

## Subpart 217.5—Interagency Acquisitions Under the Economy Act

SOURCE: 63 FR 11530, Mar. 9, 1998, unless otherwise noted.

### 217.500 Scope of subpart.

(b) Unless more specific statutory authority exists, the procedures in FAR Subpart 17.5, this subpart, and DODI 4000.19 apply to all purchases, except micro-purchases, made for DoD by another agency. This includes orders under a task or delivery order contract



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entered into by the other agency. (Pub. L. 105-261, Section 814.)

[64 FR 14400, Mar. 25, 1999]

### **217.503 Determinations and findings requirements.**

(c) If requested, the contracting officer who normally would contract for the requesting activity should advise in the determination process.

### **217.504 Ordering procedures.**

(a) When the requesting agency is within DoD, a copy of the executed D&F shall be furnished to the servicing agency as an attachment to the order. When a DoD contracting office is acting as the servicing agency, a copy of the executed D&F shall be obtained from the requesting agency and placed in the contract file for the Economy Act order.

## **Subpart 217.6—Management and Operating Contracts**

### **217.600 Scope of subpart.**

FAR subpart 17.6 does not apply to DoD.

## **Subpart 217.70—Exchange of Personal Property**

### **217.7000 Scope of subpart.**

This subpart prescribes policy and procedures for exchange of nonexcess personal property concurrent with an acquisition. Section 201(c) of the Federal Property and Administrative Services Act of 1949, 63 Stat. 384, as amended (40 U.S.C. 481(c)) permits exchange of personal property and application of the exchange allowance to the acquisition of similar property. This subpart does not authorize the sale of nonexcess personal property.

### **217.7001 Definitions.**

As used in this subpart—

(a) *Exchange (trade-in) property* means property which—

(1) Is not excess but is eligible for replacement (because of obsolescence, unserviceability, or other reason); and

(2) Is applied as whole or partial payment toward the acquisition of similar items (i.e., items designed and constructed for the same purpose).

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(b) *Property* means items that fall within one of the generic categories listed in DoD 4140.1-R, DoD Materiel Management Regulation, Chapter 6.2, Exchange or Sale of Nonexcess Personal Property.

[56 FR 36345, July 31, 1991, as amended at 65 FR 39705, June 27, 2000]

### **217.7002 Policy.**

DoD policy is to exchange, rather than replace, eligible nonexcess property whenever exchange promotes economical and efficient program accomplishment. Exchange policy, authority, and applicability are governed by—

(a) The Federal Property Management Regulations issued by the Administrator of the General Services Administration; and

(b) DoD 4140.1-R, Chapter 6.2.

[56 FR 36345, July 31, 1991, as amended at 65 FR 39705, June 27, 2000]

### **217.7003 Purchase request.**

Ensure that the requiring activity provides all of the following in support of the purchase request—

(a) A certification that the property is eligible for exchange and complies with all conditions and limitations of DoD 4140.1-R, Chapter 6.2.

(b) A written determination of economic advantage indicating—

(1) The anticipated economic advantage to the Government from use of the exchange authority;

(2) That exchange allowances shall be applied toward, or in partial payment of, the items to be acquired; and

(3) That, if required, the exchange property has been rendered safe or innocuous or has been demilitarized;

(c) All applicable approvals for the exchange; and

(d) A description of the property available for exchange (e.g., nomenclature, location, serial number, estimated travel value).

[56 FR 36345, July 31, 1991, as amended at 65 FR 39705, June 27, 2000]

### **217.7004 Solicitation and award.**

(a) Solicitations shall include a request for offerors to state prices—

(1) For the new items being acquired without any exchange; and

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(2) For the new items with the exchange (trade-in allowance) for the exchange property listed.

(b) The contracting officer is not obligated to award on an exchange basis. If the lowest evaluated offer is an offer for the new items without any exchange, the contracting officer may award on that basis and forgo the exchange.

(c) Exchanges may be made only with the successful offeror. When the successful offer includes an exchange, award one contract for both the acquisition of the new property and the trade-in of the exchange property. The only exception is when the items must be acquired against a mandatory Federal supply schedule contract, in which case, award a separate contract for the exchange.

### 217.7005 Solicitation provision.

Use the provision at 252.217-7002, Offering Property for Exchange, when offering nonexcess personal property for exchange. Allow a minimum of 14 calendar days for the inspection period in paragraph (b) of the clause if the exchange property is in the continental United States. Allow at least 21 calendar days outside the United States.

## Subpart 217.71—Master Agreement for Repair and Alteration of Vessels

### 217.7100 Scope of subpart.

This subpart contains acquisition policies and procedures for master agreements for repair and alteration of vessels.

### 217.7101 Definitions.

(a) *Master agreement for repair and alteration of vessels*—

(1) Is a written instrument of understanding, negotiated between a contracting activity and a contractor that—

(A) Contains contract clauses, terms, and conditions applying to future contracts for repairs, alterations, and/or additions to vessels; and

(B) Contemplates separate future contracts that will incorporate by reference or attachment the required and

applicable clauses agreed upon in the master agreement.

(2) Is not a contract.

(b) *Job order*—

(1) Is a fixed price contract incorporating, by reference or attachment, a master agreement for repair and alteration of vessels;

(2) May include clauses pertaining to subjects not covered by the master agreement; but applicable to the job order being awarded; and

(3) Applies to a specific acquisition and sets forth the scope of work, price, delivery date, and other appropriate terms that apply to the particular job order.

### 217.7102 General.

(a) Activities shall enter into master agreements for repair and alteration of vessels with all prospective contractors located within the United States, its possessions, or Puerto Rico, which—

(1) Request ship repair work; and

(2) Which possess the organization and facilities to perform the work satisfactorily. (Issuance of a master agreement does not indicate approval of the contractor's facility for any particular acquisition and is not an affirmative determination of responsibility under FAR subpart 9.1 for any particular acquisition.)

(b) Activities may use master agreements in work with prospective contractors located outside the United States, its possessions, or Puerto Rico.

(c) Activities may issue job orders under master agreements to effect repairs, alterations, and/or additions to vessels belonging to foreign governments.

(1) Contractors shall treat vessels of a foreign government as if they were vessels of the U.S. Government whenever requested to do so by the contracting officer.

(2) Identify the vessel and the foreign government in the solicitation and job order.

### 217.7103 Procedures.

#### 217.7103-1 Content and format.

(a) A Master agreement shall contain all clauses required by 217.7104(a), statute and executive order.

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(b) The following format may be adapted to fit specific circumstances:

MASTER AGREEMENT FOR REPAIR AND ALTERATION OF VESSELS

(1) This agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, by the United States of America (the "Government") represented by \_\_\_\_\_, the Contracting Officer, and, \_\_\_\_\_ a corporation organized and existing under the laws of the State of \_\_\_\_\_ (the "Contractor").

(2) The clauses in this agreement, shall be incorporated, by reference or attachment, in job orders issued under this agreement to effect repairs, alterations, and/or additions to vessels.

(3) By giving 30 days written notice, either party to this agreement has the right to cancel it without affecting the rights and liabilities under any job order existing at the time of cancellation. The Contractor shall perform, under the terms of this agreement, all work covered by any job order awarded before the effective date of the cancellation.

(4) This agreement may be modified only by mutual agreement of the parties. A modification of this agreement shall not affect any job order in existence at the time of modification, unless the parties agree otherwise.

(5) The rights and obligations of the parties to this agreement are set forth in this agreement and the clauses of any job orders issued under this agreement. In the event there is an inconsistency between this agreement and any job order, the provisions of this agreement shall govern.

(6) This agreement shall remain in effect until canceled by either party.

THE UNITED STATES OF AMERICA  
by \_\_\_\_\_  
(Contracting Officer)

\_\_\_\_\_  
(Contractor)  
by \_\_\_\_\_  
(Authorized Individual)

\_\_\_\_\_  
(Title)

**217.7103-2 Period of agreement.**

(a) Master agreements remain in effect until canceled by either the contractor or the contracting officer.

(b) Master agreements can be canceled by either the contractor or the contracting officer by giving 30 days written notice to the other.

(c) Cancellation of a master agreement does not affect the rights and liabilities under any job order existing at the time of cancellation. The contractor must continue to perform all work covered by any job order issued

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before the effective date of cancellation of the master agreement.

**217.7103-3 Solicitations for job orders.**

(a) When a requirement arises within the United States, its possessions, or Puerto Rico for the type of work covered by the master agreement, solicit offers from prospective contractors that—

(1) Previously executed a master agreement; or

(2) Have not previously executed a master agreement, but possess the necessary qualifications to perform the work and agree to execute a master agreement before award of a job order.

(b) Prepare the solicitation in the uniform contract format and in accordance with FAR Subpart 14.2 or 15.2, as applicable.

(c) Include in the solicitation—

(1) The nature of the work to be performed;

(2) The date the vessel will be available to the contractor;

(3) The date the work is to be completed; and

(4) Whether bulk ammunition is aboard the vessel.

(d) Unless the solicitation states otherwise, offers are to be based on performance at the contractor's site.

(e) Solicitations processed under negotiated acquisition procedures shall require offerors to include a breakdown of the price with reasonable supporting detail in whatever format and detail the contracting officer may request.

(f) Where practicable, afford potential offerors an opportunity to inspect the item needing repair or alteration.

[56 FR 36345, July 31, 1991, as amended at 63 FR 55052, Oct. 14, 1998; 63 FR 56290, Oct. 21, 1998]

**217.7103-4 Award of a job order.**

Award job orders in accordance with FAR Subpart 14.4 or 15.5.

[64 FR 55052, Oct. 14, 1998]

**217.7103-5 Emergency work.**

(a) The contracting officer, without soliciting offers, may issue a written job order to a contractor that has previously executed a master agreement when—

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(i) Delay in the performance of necessary repair work would endanger a vessel, its cargo or stores; or

(ii) Military necessity requires immediate work on a vessel.

(b) Process this type of undefinitized contract action in accordance with subpart 217.74.

(c) Negotiate a price as soon as practicable after the issuance of an undefinitized order and definitize the job order upon completing negotiations.

### **217.7103-6 Repair costs not readily ascertainable.**

If the nature of any repairs is such that their extent and probable cost cannot be ascertained readily, the solicitation should—

(a) Solicit offers for determining the nature and extent of the repairs;

(b) Provide that upon determination by the contracting officer of what work is necessary, the contractor, if requested by the contracting officer, shall negotiate prices for performance of the repairs; and

(c) Provide that prices for the repairs, if ordered, will be set forth in a modification of the job order.

### **217.7103-7 Modification of master agreements.**

(a) Review each master agreement at least annually before the anniversary of its effective date and revise it as necessary to conform to the requirements of the FAR and DFARS. Statutory or other mandatory changes may require review and revision earlier than one year.

(b) A master agreement shall be changed only by modifying the master agreement itself. It shall not be changed through a job order.

(c) A modification to a master agreement shall not affect job orders issued before the effective date of the modification.

### **217.7104 Contract clauses.**

(a) Use the following clauses in solicitations for, and in, master agreements for repair and alteration of vessels:

(1) 252.217-7003, Changes.

(2) 252.217-7004, Job Orders and Compensation.

(3) 252.217-7005, Inspection and Manner of Doing Work.

(4) 252.217-7006, Title.

(5) 252.217-7007, Payments.

(6) 252.217-7008, Bonds.

(7) 252.217-7009, Default.

(8) 252.217-7010, Performance.

(9) 252.217-7011, Access to Vessel.

(10) 252.217-7012, Liability and Insurance.

(11) 252.217-7013, Guarantees.

(12) 252.217-7014, Discharge of Liens.

(13) 252.217-7015, Safety and Health.

(14) 252.217-7016, Plant Protection, as applicable.

(b)(1) Incorporate in solicitations for, and in, job orders, the clauses in the master agreement, and any other clauses on subjects not covered by the master agreement, but applicable to the job order to be awarded.

(2) Use the clause at 252.217-7016, Plant Protection, in job orders where performance is to occur at the contractor's facility.

## **Subpart 217.72—Bakery and Dairy Products**

### **217.7200 Scope.**

This subpart provides special policies and requirements for acquisition of perishable bakery and dairy products.

### **217.7201 Contract requirements for dairy products.**

(a) Include the following chemical and microbiological requirements in solicitations and resulting contracts for milk, milk products, and cultured products (as defined in the Veterinary/Medical Wholesomeness Assurance Program for Fresh and Cultured Dairy Products and Frozen Desserts (AR-40-70/NAVSUPINST 4355.6/AFR 161-46/MCO 10110.44)):

(1) *Chemical requirements.* Products shall meet the chemical requirements for each specification cited in the contract on the date of award.

(2) *Microbiological requirements.* Products shall meet microbiological requirements stated in Public Health Service Publication 229, Grade A Pasteurized Milk Ordinance, in effect on the date of award. In the event of conflict between these requirements and individual product specifications, the

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requirements of Public Health Service Publication 229 take precedence.

(b) When the contractor is required to furnish its own cabinets for dispensing milk from bulk containers—

(1) Include the following information in the solicitation—

(i) The number (or estimated number) of dispenser cabinets required;

(ii) Whether metal stands for the cabinets are required;

(iii) The number of cabinets required with a capacity of two containers each; and

(iv) The number required with a capacity of three containers each.

(2) Include the contractor's list of cabinet equipment in the schedule of the contract.

(c) The contracting officer shall notify the Government quality assurance representative of code changes approved under the clause at 252.217-7022, Code Dating.

### 217.7202 Contract type.

Normally use requirements contracts for bakery and dairy products. Other indefinite delivery contracts and other contract types may be used as appropriate.

### 217.7203 Contract clauses.

(a) Use the following additional clauses in solicitations and contracts for perishable bakery and dairy products—

(1) 252.217-7017, Time of Delivery. Use Alternate I when the contract is other than a requirements contract. Insert the number of hours in paragraph (c) of Alternate I.

(2) 252.217-7018, Change in Plant Location.

(3) 252.217-7019, Sanitary Conditions. Use Alternate I when the contract is other than a requirements contract.

(4) 252.217-7022, Code Dating. Use this clause only when the schedule or a specification requires labels showing the date of pasteurization, manufacture, production, or processing.

(5) 252.217-7023, Marking. Do not use this clause when MIL-STD-129, Marking for Shipment and Storage, is required.

(6) 252.217-7024, Responsibility for Containers and Equipment. Use when

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contractor is required to provide reusable containers and equipment.

(b) Use the following additional clauses in solicitations and contracts for perishable dairy products—

(1) 252.217-7020, Examination and Testing. Use Alternate I when the contract is an indefinite quantity contract.

(2) 252.217-7021, Deficiency Adjustment.

(3) 252.217-7025, Containers and Equipment.

### Subpart 217.73—Identification of Sources of Supply

#### 217.7300 Scope.

This subpart implements 10 U.S.C. 2384. It contains policy and procedures for requiring contractors to identify the actual manufacturer of supplies furnished to DoD.

#### 217.7301 Policy.

Contractors shall identify their sources of supply in contracts for supplies. Contractor identification of sources of supply enables solicitation, in subsequent acquisitions, of actual manufacturers or other suppliers of items. This enhances competition and potentially avoids payment of additional costs for no significant added value.

#### 217.7302 Procedures.

(a) Whenever practicable, include a requirement for contractor identification of sources of supply in all contracts for the delivery of supplies. The identification shall include—

(1) The item's actual manufacturer or producer, or all the contractor's sources for the item;

(2) The item's national stock number (if there is one);

(3) The item identification number used by—

(i) The actual manufacturer or producer of the item; or

(ii) Each of the contractor's sources for the item; and

(4) The source of any technical data delivered under the contract.

(b) The requirement in paragraph (a) of this section does not apply to contracts that are—

(1) For commercial items; or

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(2) Valued at or below the simplified acquisition threshold.

[56 FR 36345, July 31, 1991, as amended at 64 FR 2597, Jan. 15, 1999]

### 217.7303 Solicitation provision.

(a) Use the provision at 252.217-7026, Identification of Sources of Supply, or one substantially the same, in all solicitations for supplies when the acquisition is being conducted under other than full and open competition, except when—

(1) Using FAR 6.302-5;

(2) The contracting officer already has the information required by the provision (e.g., the information was obtained under other acquisitions);

(3) The contract is for subsistence, clothing or textiles, fuels, or supplies purchased and used outside the United States;

(4) The contracting officer determines that it would not be practicable to require offerors/contractors to provide the information, e.g., nonrepetitive local purchases; or

(5) The contracting officer determines that the exception at 217.7302(b) applies to all items under the solicitation.

(b) If appropriate, use the provision at 252.217-7026, Identification of Sources of Supply, or one substantially the same, in service contracts requiring the delivery of supplies.

### Subpart 217.74—Undefinitized Contract Actions

#### 217.7400 Scope.

This subpart prescribes policies and procedures implementing 10 U.S.C. 2326.

#### 217.7401 Definitions.

As used in this subpart—

(a) *Contract action* means an action which results in a contract.

(1) It includes contract modifications for additional supplies or services.

(2) It does not include change orders, administrative changes, funding modifications, or any other contract modifications that are within the scope and under the terms of the contract, e.g., engineering change proposals, value engineering change proposals, and over

and above work requests as described in subpart 217.77.

(b) *Definitization* means the agreement on, or determination of, contract terms, specifications, and price, which converts the undefinitized contract action to a definitive contract.

(c) *Qualifying proposal* means a proposal containing sufficient information for the DoD to do complete and meaningful analyses and audits of the—

(1) Information in the proposal; and

(2) Any other information that the contracting officer has determined DoD needs to review in connection with the contract.

(d) *Undefinitized contract action* means any contract action for which the contract terms, specifications, or price are not agreed upon before performance is begun under the action. Examples are letter contracts, orders under basic ordering agreements, and provisioned item orders, for which the price has not been agreed upon before performance has begun.

#### 217.7402 Exceptions.

The following undefinitized contract actions (UCAs) are not subject to this subpart, but the contracting officer should apply the policy to them (and to changes under the Changes clause) to the maximum extent practicable—

(a) UCAs for foreign military sales;

(b) Purchases at or below the simplified acquisition threshold;

(c) Special access programs;

(d) Congressionally mandated long-lead procurement contracts.

[56 FR 36345, July 31, 1991, as amended at 61 FR 7743, Feb. 29, 1996]

#### 217.7403 Policy.

DoD policy is that undefinitized contract actions shall—

(a) Be used only when—

(1) The negotiation of a definitive contract action is not possible in sufficient time to meet the Government's requirements; and

(2) The Government's interest demands that the contractor be given a binding commitment so that contract performance can begin immediately.

(b) Be as complete and definite as practicable under the particular circumstances.

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### 217.7404 Limitations.

#### 217.7404-1 Authorization.

The contracting officer shall obtain approval from the head of the contracting activity before—

(a) Entering into a UCA. The request for approval must fully explain the need to begin performance before definitization, including the adverse impact on agency requirements resulting from delays in beginning performance.

(b) Including requirements for non-urgent spare parts and support equipment in a UCA. The request should show that inclusion of the non-urgent items is consistent with good business practices and in the best interest of the United States.

(c) Modifying the scope of a UCA when performance has already begun. The request should show that the modification is consistent with good business practices and in the best interests of the United States.

#### 217.7404-2 Price ceiling.

UCAs shall include a not-to-exceed price.

#### 217.7404-3 Definitization schedule.

(a) UCAs shall contain definitization schedules that provide for definitization by the earlier of—

(1) The date that is 180 days after issuance of the action (this date may be extended but may not exceed the date that is 180 days after the contractor submits a qualifying proposal); or

(2) The date on which the amount of funds obligated under the contract action is equal to more than 50 percent of the not-to-exceed price.

(b) Submission of a qualifying proposal in accordance with the definitization schedule is a material element of the contract. If the contractor does not submit a timely qualifying proposal, the contracting officer may suspend or reduce progress payments under FAR 32.503-6, or take other appropriate action.

[56 FR 36345, July 31, 1991, as amended at 60 FR 29498, June 5, 1995; 63 FR 67803, Dec. 9, 1998]

### 217.7404-4 Limitations on obligations.

The Government shall not obligate more than 50 percent of the not-to-exceed price before definitization. However, if a contractor submits a qualifying proposal before 50 percent of the not-to-exceed price has been obligated by the Government, then the limitation on obligations before definitization may be increased to no more than 75 percent (see 232.102-70 for coverage on provisional delivery payments).

[60 FR 29498, June 5, 1995]

### 217.7404-5 Exceptions.

(a) The limitations in 217.7404-2, 217.7404-3, and 217.7404-4 do not apply to UCAs for the purchase of initial spares.

(b) The head of an agency may waive the limitations in 217.7404-2, 217.7404-3, and 217.7404-4 for UCAs if the head of the agency determines that the waiver is necessary to support—

(1) A contingency operation as defined in 10 U.S.C. 101(a)(13); or

(2) A humanitarian or peacekeeping operation as defined in 10 U.S.C. 2302(7).

[60 FR 29498, June 5, 1995, as amended at 63 FR 67804, Dec. 9, 1998]

### 217.7404-6 Allowable profit.

When the final price of a UCA is negotiated after a substantial portion of the required performance has been completed, the head of the agency shall ensure the profit allowed reflects—

(a) Any reduced cost risk to the contractor for costs incurred during contract performance before negotiation of the final price; and

(b) The contractor's reduced cost risk for costs incurred during performance of the remainder of the contract.

### 217.7405 Definitizations.

For each definitization modification, the contracting officer shall include all data required by 243.171.

[60 FR 34470, July 3, 1995]

### 217.7406 Contract clauses.

(a) Use the clause at FAR 52.216-24, Limitation of Government Liability, in all UCAs, solicitations associated with UCAs, basic ordering agreements, indefinite delivery contracts, and any

other type of contract providing for the use of UCAs.

(b) Use the clause at 252.217-7027, Contract Definition, in all UCAs, solicitations associated with UCAs, basic ordering agreements, indefinite delivery contracts, and any other type of contract providing for the use of UCAs. Insert the applicable information in paragraphs (a), (b), and (d) of the clause. If, at the time of entering into the UCA, the contracting officer knows that the definitive contract action will meet the criteria of FAR 15.403-1, 15.403-2, or 15.403-3 for not requiring submission of cost or pricing data, the words "and cost or pricing data" may be deleted from paragraph (a) of the clause.

[61 FR 7743, Feb. 29, 1996, as amended at 63 FR 55052, Oct. 14, 1998]

### Subpart 217.75—Acquisition of Replenishment Parts

#### 217.7500 Scope of subpart.

This subpart provides guidance on additional requirements related to acquisition of replenishment parts (as defined in appendix E).

#### 217.7501 General.

Departments and agencies—

(a) May acquire replenishment parts concurrently with production of the end item.

(b) Shall provide for full and open competition when fully adequate drawings and any other needed data are available with the right to use for acquisition purposes (see part 227). However—

(1) When data is not available for a competitive acquisition, use one of the procedures in 217.7503.

(2) Replenishment parts must be acquired so as to ensure the safe, dependable, and effective operation of the equipment. Where this assurance is not possible with new sources, competition may be limited to the original manufacturer of the equipment or other sources that have previously manufactured or furnished the parts as long as the action is justified.

(c) Shall follow the limitations on price increases in 217.7504.

#### 217.7502 Spares acquisition integrated with production (SAIP).

(a) Spares acquisition integrated with production (SAIP) is a technique used to acquire replenishment parts concurrently with parts being produced for the end item.

(b) Include appropriately tailored provisions in the contract when SAIP is used.

[56 FR 36345, July 31, 1991, as amended at 65 FR 39705, June 27, 2000]

#### 217.7503 Acquisition of parts when data is not available.

When acquiring a part for which the Government does not have necessary data with rights to use in a specification or drawing for competitive acquisition, use one of the following procedures in order of preference—

(a) When items of identical design are not required, the acquisition may still be conducted through full and open competition by using a performance specification or other similar technical requirement or purchase description that does not contain data with restricted rights. Two methods are—

(1) Two-step sealed bidding; and

(2) Brand name or equal purchase descriptions.

(b) When other than full and open competition is authorized under FAR part 6, acquire the part from the firm which developed or designed the item or process, or its licensees, provided productive capacity and quality are adequate and the price is fair and reasonable.

(c) When additional sources are needed and the procedures in paragraph (a) of this section are not practicable, consider the following alternatives—

(1) Encourage the developer to license others to manufacture the parts;

(2) Acquire the necessary rights in data;

(3) Use a leader company acquisition technique (FAR subpart 17.4) when complex technical equipment is involved and establishing satisfactory additional sources will require technical assistance as well as data; or

(4) Incorporate a priced option in the contract which allows the Government to require the contractor to establish a second source.



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(d) As a last alternative, the contracting activity may develop a design specification for competitive acquisition through reverse engineering. Contracting activities shall not do reverse engineering unless—

(1) Significant cost savings can be demonstrated; and

(2) The action is authorized by the head of the contracting activity.

### **217.7504 Limitations on price increases.**

This section provides implementing guidance for section 1215 of Public Law 98-94 (10 U.S.C. 2452 note).

(a) The contracting officer shall not award, on a sole source basis, a contract for any centrally managed replenishment part when the price of the part has increased by 25 percent or more over the most recent 12-month period.

(1) Before computing the percentage difference between the current price and the prior price, adjust for quantity, escalation, and other factors necessary to achieve comparability.

(2) Departments and agencies may specify an alternate percentage or percentages for contracts at or below the simplified acquisition threshold.

(b) The contracting officer may award a contract for a part, the price of which exceeds the limitation in paragraph (a) of this section, if the contracting officer certifies in writing to the head of the contracting activity before award that—

(1) The contracting officer has evaluated the price of the part and concluded that the price increase is fair and reasonable; or

(2) The national security interests of the United States require purchase of the part despite the price increase.

(c) The fact that a particular price has not exceeded the limitation in paragraph (a) of this section does not relieve the contracting officer of the responsibility for obtaining a fair and reasonable price.

(d) Contracting officers may include a provision in sole source solicitations requiring that the offeror supply with its proposal, price and quantity data on any government orders for the replen-

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ishment part issued within the most recent 12 months.

[56 FR 36345, July 31, 1991, as amended at 64 FR 2598, Jan. 15, 1999]

### **Subpart 217.76—Contracts with Provisioning Requirements**

#### **217.7600 Scope of subpart.**

This subpart contains contract requirements and procedures for items to be provisioned. For technical requirements of provisioning, see DoDD 4140.40, Provisioning of End Items of Material. For breakout requirements, see appendix E.

#### **217.7601 Definitions.**

As used in this subpart,

(a) *Provisioning* means the process of determining and acquiring the range and quantity of spare and repair parts, and support and test equipment required to operate and maintain an end item for an initial period of service.

(b) *Provisioned item* means any item selected under provisioning procedures.

(c) *Provisioned items order* (PIO) means an undefinitized order issued under a contract which includes the Government's requirements for provisioned items. (Provisioned items with firm prices are acquired by supplemental agreement or by separate contract.)

(d) *Provisioning activity* means the organization responsible for selecting and determining requirements for provisioned items.

(e) *Provisioning requirements statement* means the contractual document listing the specific provisioning requirements for that contract. The statement normally includes:

(1) Instructions, such as the provisioning method to be used;

(2) The extent of provisioning technical documentation and data needed (including administrative requirements for submission and distribution);

(3) The type and location of provisioning conferences;

(4) Sample article requirements;

(5) The delivery schedule;

(6) Packaging and marking requirements for provisioned items; and

(7) Requirements for provisioning screening.

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(f) *Provisioning technical documentation* means the data needed for the identification, selection, determination of initial requirements, and cataloging of support items to be acquired through the provisioning process. It includes such things as provisioning lists and logistics support analysis summaries. Descriptive data such as drawings and photographs are referred to as *supplementary provisioning technical documentation*.

### 217.7602 Contracting requirements.

#### 217.7602-1 Contractual provisions.

Contracts containing provisioning requirements shall—

(a) List the provisioning functions to be performed and who will perform them;

(b) Include a provisioning requirements statement or specify a time limit for its incorporation into the contract by modification (revisions to the provisioning requirements statement shall also be incorporated by contract modification);

(c) Include on the DD Form 1423, Contract Data Requirements List, a schedule for delivery of provisioning technical documentation, or provide for the schedule to be incorporated later by contract modification;

(d) Require flowdown of the appropriate provisioning technical documentation requirement when the subcontractor prepares the documentation;

(e) Specify any applicable procedures for interim release by the contractor of long lead time items, and include ordering and funding instructions for such items. As a minimum, the instructions shall require the contractor to advise the contracting officer or provisioning activity at least 30 days before release of the items, their estimated costs, and the effective date of release;

(f) Specify the activity designated to issue provisioned items orders, i.e., contracting officer, provisioning activity, or administrative contracting officer. When it is expected that more than one activity will place provisioned items orders against the contract, state the requirements for provisioned

items of each activity as separate contract line items;

(g) Provide a definitization schedule (normally 120 days after receipt of the contractor's proposal), and a time-frame for the contractor to furnish price proposals for provisioned items orders (normally 60 days after order issuance);

(h) Specify exhibit identifiers applicable to the contract line/subline items; and

(i) Include procedures for processing changes (including cancellations) in quantities of items ordered.

#### 217.7602-2 Issuance of provisioned items orders.

(a) Use the Standard Form 30, Amendment of Solicitation/Modification of Contract, to—

(1) Issue provisioned items orders;

(2) Decrease or cancel quantities of items ordered; and

(3) Cover the contractor's interim release of long lead items when the contracting officer approves the release (if the release is not approved, the contracting officer shall notify the contractor to cancel the items).

(b) Include in Block 14 of the Standard Form 30—

(1) The term PROVISIONED ITEMS ORDER in capital letters and underlined; and

(2) The appropriate exhibit identifier(s) for all attached exhibits.

(c) Obligate funds to cover the estimated price of the items being ordered. Show individual estimated prices for each exhibit line item on the accounting and payment office copies.

(d) Distribution is the same as for the basic contract (see FAR 4.2). However, if the exhibits are voluminous, the contracting officer may restrict distribution of the exhibits to the contract administration office.

(e) See subpart 217.74 for additional guidance and limitations on the use of undefinitized contract actions.

### 217.7603 Contract administration requirements.

#### 217.7603-1 Provisioning conferences.

When requested by the contracting officer or provisioning activity, the

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contract administration office shall assist the contracting officer or provisioning activity in scheduling and determining the types of provisioning conferences required, e.g., guidance meetings, long lead time items conferences, source coding meetings.

### **217.7603-2 Contract administration office monitoring.**

The contract administration office (CAO) shall monitor contracts containing provisioning requirements. As a minimum the CAO shall—

(a) Ensure that the contractor understands the provisioning requirements;

(b) Review contractor progress in the preparation of provisioning technical documentation and, if requested by the contracting officer or provisioning activity, inspect it for format and content;

(c) Ensure the prime contractor flows-down provisioning requirements to any subcontractor charged with preparation of documentation;

(d) Advise the contracting office or provisioning activity of delays in delivery of provisioning technical documentation or other related problems (see FAR subpart 42.11);

(e) Ensure contractor compliance with contract requirements concerning the assignment of national stock numbers; and

(f) Ensure that the contractor complies with contractual criteria for release of long lead time items.

### **217.7603-3 Negotiating and executing supplemental agreements.**

(a) The administrative contracting officer (ACO) shall definitize provisioned items orders within the prescribed schedule.

(b) If the provisioned items order does not contain a delivery date, or the contractor cannot meet the date, the ACO shall coordinate the negotiated schedule with the contracting officer or provisioning activity before execution of the supplemental agreement.

(c) The ACO shall maintain records of provisioned items orders showing—

(1) The adequacy of obligated funds;

(2) Due dates for price proposals; and

(3) Actions taken to obtain additional funds or to deobligate excess funds.

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### **Subpart 217.77—Over and Above Work**

#### **217.7700 Scope of subpart.**

This subpart prescribes policies and procedures for acquisition of over and above work.

#### **217.7701 Procedures.**

(a) Contracts for the performance of maintenance, overhaul, modification, and repair of various items (e.g., aircraft, engines, ground support equipment, ships) generally contain over and above work requirements. When they do, the contracting officer shall establish a separate contract line item for the over and above work.

(b) Over and above requirements task the contractor to identify needed repairs and recommend corrective action during contract performance. The contractor submits a work request to identify the over and above work and, as appropriate, the Government authorizes the contractor to proceed.

(c) The clause at 252.217-7028, Over and Above Work, requires the contractor and the contracting officer responsible for administering the contract to negotiate specific procedures for Government administration and contractor performance of over and above work requests.

(d) The contracting officer may issue a blanket work request authorization describing the manner in which individual over and above work requests will be administered and setting forth a dollar limitation for all over and above work under the contract. The blanket work request authorization may be in the form of a letter or contract modification (Standard Form 30).

(e) Over and above work requests are within the scope of the contract. Therefore, procedures in subpart 217.74, Undefined Contractual Actions, do not apply.

(f) To the maximum extent practical, over and above work shall be negotiated prior to performance of the work.

#### **217.7702 Contract clause.**

Use the clause at 252.217-7028, Over and Above Work, in solicitations and contracts containing requirements for

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over and above work, except as provided for in subpart 217.71.