

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 213—SIMPLIFIED ACQUISITION PROCEDURES

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AUTHORITY: 41 U.S.C. 1303 and 48 CFR chapter 1.

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

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]

213.104 Promoting competition.

For information on the various approaches that may be used to competitively fulfill DoD requirements, see PGI 213.104.

[80 FR 21657, Apr. 20, 2015]

213.106–1 Soliciting competition.

(a)(2) Include an evaluation factor regarding supply chain risk (see subpart 239.73) when acquiring information technology, whether as a service or as a supply, that is a covered system, is a part of a covered system, or is in support of a covered system, as defined in 239.7301.

[80 FR 67251, Oct. 30, 2015]

213.106–1–70 Soliciting competition—tiered evaluation of offers.

See limitations on the use of tiered evaluation of offers at 215.203–70.

[72 FR 42314, Aug. 2, 2007]

213.106–2 Evaluation of quotations or offers.

(b)(i) For competitive solicitations for supplies using FAR part 13 simplified acquisition procedures, including acquisitions valued at less than or equal to \$1 million under the authority at FAR subpart 13.5, the contracting officer shall—

(A) Consider data available in the statistical reporting module of the Past Performance Information Retrieval System (PPIRS–SR) regarding

the supplier's past performance history for the Federal supply class (FSC) and product or service code (PSC) of the supplies being purchased. Procedures for the use of PPIRS-SR in the evaluation of quotations or offers are provided in the PPIRS-SR User's Manual available under the references section of the PPIRS Web site at *www.ppirs.gov*;

(B) Ensure the basis for award includes an evaluation of each supplier's past performance history in PPIRS-SR for the FSC and PSC of the supplies being purchased; and

(C) In the case of a supplier without a record of relevant past performance history in PPIRS-SR for the FSC or PSC of the supplies being purchased, the supplier may not be evaluated favorably or unfavorably for its past performance history.

[80 FR 30118, May 26, 2015]

213.106-2-70 Solicitation provision.

Use the provision at 252.213-7000, Notice to Prospective Suppliers on the Use of Past Performance Information Retrieval System—Statistical Reporting in Past Performance Evaluations, in competitive solicitations for supplies when using FAR part 13 simplified acquisition procedures, including competitive solicitations using FAR part 12 procedures for the acquisition of commercial items and acquisitions valued at less than or equal to \$1 million under the authority at FAR subpart 13.5.

[80 FR 30118, May 26, 2015]

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

213.201 General.

(g) See PGI 213.201(g) for guidance on use of the higher micro-purchase thresholds prescribed in FAR 13.201(g) to support a declared contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack.

[81 FR 53045, Aug. 11, 2016]

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

(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 the United States and its outlying areas.

(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

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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, as amended at 70 FR 35544, June 21, 2005]

Subpart 213.3—Simplified Acquisition Methods

213.301 Governmentwide commercial purchase card.

Follow the procedures at PGI 213.301 for authorizing, establishing, and operating a Governmentwide commercial purchase card program.

(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, 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(a) also may use the Governmentwide commercial purchase card to make a purchase that exceeds

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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;

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

(G) Does not require transportation of supplies by sea; and

(ii) The individual making the purchase—

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

(B) Complies with the requirements of FAR 8.002 in making the purchase; and

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

(3) A contracting officer supporting 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) also may use the Governmentwide commercial purchase card to make a purchase that exceeds the micro-purchase threshold but does not exceed the simplified acquisition threshold, if—

(i) The supplies or services being purchased are immediately available;

(ii) One delivery and one payment will be made; and

(iii) The requirements of paragraphs (2)(i) and (ii) of this section are met.

(4) Guidance on DoD purchase, travel, and fuel card programs is available in the “Department of Defense Government Charge Card Guidebook for Establishing and Managing Purchase, Travel, and Fuel Card Programs” at http://www.acq.osd.mil/dpap/pdi/pc/policy/_documents.html. Additional guidance

on the fuel card programs is available at <http://www.energy.dla.mil>.

[64 FR 56705, Oct. 21, 1999; 64 FR 63380, Nov. 19, 1999, as amended at 66 FR 55123, Nov. 1, 2001; 66 FR 56902, Nov. 13, 2001; 67 FR 38021, May 31, 2002; 68 FR 56561, Oct. 1, 2003; 70 FR 75411, Dec. 20, 2005; 72 FR 6484, Feb. 12, 2007; 73 FR 70906, Nov. 24, 2008; 76 FR 76319, Dec. 7, 2011; 77 FR 23631, Apr. 20, 2012; 77 FR 35880, June 15, 2012; 79 FR 56278, Sept. 19, 2014]

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) See PGI 213.302-3 for guidance on the use of unilateral modifications.

(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.

[64 FR 2596, Jan. 15, 1999, as amended at 71 FR 3413, Jan. 23, 2006]

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—Supplies. Instead, if the Buy American Act applies to the acquisition, use the clause at—

(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—Free Trade Agreements—Balance of Payments Program, as prescribed at 225.1101(10).

[64 FR 24528, May 7, 1999, as amended at 65 FR 19850, Apr. 13, 2000; 65 FR 39704, June 27, 2000; 68 FR 56561, Oct. 1, 2003; 69 FR 1927, Jan. 13, 2004; 77 FR 35880, June 15, 2012]

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.

213.305-3 Conditions for use.

(d)(i) 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. Use of imprest funds and third party drafts must comply with—

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

(B) The Treasury Financial Manual, Volume I, Part 4, Chapter 3000.

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

(iii) 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(8); and

(B) Classified transactions.

[71 FR 3413, Jan. 23, 2006]

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) *Fuel and oil.* U.S. Government fuel cards may be used in lieu of an SF 44 for fuel, oil, and authorized refueling-related items (see PGI 213.306 for procedures on use of fuel cards);

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(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 peace-keeping operation as defined in 10 U.S.C. 2302(8); and

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

[64 FR 2596, Jan. 15, 1999, as amended at 71 FR 3413, Jan. 23, 2006; 72 FR 6484, Feb. 12, 2007; 76 FR 58150, Sept. 20, 2011]

213.307 Forms.

See PGI 213.307 for procedures on use of forms for purchases made using simplified acquisition procedures.

[71 FR 3413, Jan. 23, 2006]

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 213.5—Simplified Procedures for Certain Commercial Items

SOURCE: 80 FR 21657, Apr. 20, 2015, unless otherwise noted.

213.500–70 Only one offer.

If only one offer is received in response to a competitive solicitation issued using simplified acquisition procedures authorized under FAR subpart 13.5, follow the procedures at 215.371–2.

[80 FR 21657, Apr. 20, 2015, as amended at 80 FR 36718, June 26, 2015]

213.501 Special documentation requirements.

(a) *Sole source (including brand name) acquisitions.* For noncompetitive follow-on acquisitions of supplies or services previously awarded on a non-competitive basis, include the additional documentation required by PGI 206.303–2(b)(i) and follow the procedures at PGI 206.304(a)(S–70).

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

213.7001 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—

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

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

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

[64 FR 2596, Jan. 15, 1999, Redesignated at 71 FR 3413, Jan. 23, 2006; 81 FR 65563, Sept. 23, 2016]

213.7002 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).

[71 FR 3413, Jan. 23, 2006]

PART 214—SEALED BIDDING

Sec.

214.201–5 Part IV—Representations and instructions.

214.201–6 Solicitation provisions.

Subpart 214.2—Solicitation of Bids

214.202 General rules for solicitation of bids.

214.202–5 Descriptive literature.

214.209 Cancellation of invitations before opening.

Subpart 214.4—Opening of Bids and Award of Contract

214.404 Rejection of bids.

214.404–1 Cancellation of invitations after opening.

214.407 Mistakes in bids.

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214.408 Award.

214.408–1 General.

Subpart 214.5—Two-Step Sealed Bidding

214.503 Procedures.
214.503-1 Step one.

AUTHORITY: 41 U.S.C. 1303 and 48 CFR chapter 1.

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

214.201-6 Solicitation provisions.

(2) Use the provisions at 252.215-7007, Notice of Intent to Resolicit, and 252.215-7008, Only One Offer, as prescribed at 215.408(3) and (4), respectively.

[77 FR 39138, June 29, 2012]

Subpart 214.2—Solicitation of Bids

214.201-5 Part IV—Representations and instructions.

(c) Include an evaluation factor regarding supply chain risk (see subpart 239.73) when acquiring information technology, whether as a service or as a supply, that is a covered system, is a part of a covered system, or is in support of a covered system, as defined in 239.7301.

[80 FR 67251, Oct. 30, 2015]

214.202 General rules for solicitation of bids.

214.202-5 Descriptive literature.

(c) *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; 69 FR 65090, Nov. 10, 2004]

214.209 Cancellation of invitations before opening.

If an invitation for bids allowed fewer than 30 days for receipt of offers, and resulted in only one offer, the contracting officer shall cancel and resolicit, allowing an additional period of at least 30 days for receipt of offers, as provided in 215.371.

[77 FR 39138, June 29, 2012]

Subpart 214.4—Opening of Bids and Award of Contract

214.404 Rejection of bids.

214.404-1 Cancellation of invitations after opening.

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

(2) If only one offer is received, follow the procedures at 215.371 in lieu of the procedures at FAR 14.404-1(f).

[77 FR 39138, June 29, 2012]

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 Geospatial-Intelligence Agency: General Counsel, NGA.

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

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

(viii) Missile Defense Agency: General Counsel, MDA.

(ix) Defense Contract Management Agency: General Counsel, DCMA.

[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; 68 FR 7439, Feb. 14, 2003; 69 FR 65090, Nov. 10, 2004; 74 FR 42780, Aug. 25, 2009]

214.408 Award.

214.408-1 General.

(b) For acquisitions that exceed the simplified acquisition threshold, if only one offer is received, follow the procedures at 215.371.

[77 FR 39138, June 29, 2012]

214.503

Subpart 214.5—Two-Step Sealed Bidding

SOURCE: 80 FR 67251, Oct. 30, 2015, unless otherwise noted.

214.503 Procedures.

214.503-1 Step one.

(a)(4) Include an evaluation factor regarding supply chain risk (see subpart 239.73) when acquiring information technology, whether as a service or as a supply, that is a covered system, is a part of a covered system, or is in support of a covered system, as defined in 239.7301.

PART 215—CONTRACTING BY NEGOTIATION

Subpart 215.1—Source Selection Processes and Techniques

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215.101 Best value continuum.

215.101-70 Best value when acquiring tents or other temporary structures.

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Subpart 215.4—Contract Pricing

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

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215.403-5 Instructions for submission of certified cost or pricing data and data other than certified cost or pricing data.

215.404 Proposal analysis.

215.404-1 Proposal analysis techniques.

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215.404-73 Alternate structure approaches.

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

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215.406-1 Prenegotiation objectives.

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215.408 Solicitation provisions and contract clauses.

215.470 Estimated data prices.

Subpart 215.5—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

215.503 Notifications to unsuccessful offerors.

215.506 Postaward debriefing of offerors.

AUTHORITY: 41 U.S.C. 1303 and 48 CFR chapter 1.

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

215.101 Best value continuum.

215.101-70. Best value when acquiring tents or other temporary structures.

(a) In accordance with section 368 of the National Defense Authorization

Act for Fiscal Year 2012 (Pub. L. 112–81), when acquiring tents or other temporary structures for use by the Armed Forces, the contracting officer shall award contracts that provide the best value. Temporary structures covered by this paragraph are nonpermanent buildings, including tactical shelters, nonpermanent modular or pre-fabricated buildings, or portable or relocatable buildings, such as trailers or equipment configured for occupancy (see also 246.270–2). Determination of best value includes consideration of the total life-cycle costs of such tents or structures, including the costs associated with any equipment, fuel, or electricity needed to heat, cool, or light such tents or structures (see FAR 7.105(a)(3)(i) and PGI 207.105(a)(3)(i)).

(b) The requirements of this section apply to any agency or department that acquires tents or other temporary structures on behalf of DoD (see FAR 17.503(d)(2)).

[78 FR 13545, Feb. 28, 2013]

Subpart 215.2—Solicitation and Receipt of Proposals and Information

215.203–70 Requests for proposals—tiered evaluation of offers.

(a) The tiered or cascading order of precedence used for tiered evaluation of offers shall be consistent with FAR part 19.

(b) Consideration shall be given to the tiers of small businesses (*e.g.*, 8(a), HUBZone small business, service-disabled veteran-owned small business, small business) before evaluating offers from other than small business concerns.

(c) The contracting officer is prohibited from issuing a solicitation with a tiered evaluation of offers unless—

(1) The contracting officer conducts market research, in accordance with FAR Part 10 and Part 210, to determine—

(i) Whether the criteria in FAR part 19 are met for setting aside the acquisition for small business; or

(ii) For a task or delivery order, whether there are a sufficient number of qualified small business concerns available to justify limiting competi-

tion under the terms of the contract; and

(2) If the contracting officer cannot determine whether the criteria in paragraph (c)(1) of this section are met, the contracting officer includes a written explanation in the contract file as to why such a determination could not be made (Section 816 of Public Law 109–163).

[71 FR 53043, Sept. 8, 2006, as amended at 72 FR 42314, Aug. 2, 2007]

215.209 Solicitation provisions and contract clauses.

(a) For source selections when the procurement is \$100 million or more, contracting officers should use the provision at FAR 52.215–1, Instructions to Offerors—Competitive Acquisition, with its Alternate I.

[76 FR 58152, Sept. 20, 2011]

215.270 Peer Reviews.

Agency officials shall conduct Peer Reviews in accordance with 201.170.

[74 FR 37626, July 29, 2009]

Subpart 215.3—Source Selection

215.300 Scope of subpart.

Contracting officers shall follow the principles and procedures in Director, Defense Procurement and Acquisition Policy memorandum dated April 1, 2016, entitled “Department of Defense Source Selection Procedures,” when conducting negotiated, competitive acquisitions utilizing FAR part 15 procedures. See PGI 215.300.

[81 FR 28730, May 10, 2016]

215.303 Responsibilities.

(b)(2) For high-dollar value and other acquisitions, as prescribed by agency procedures, the source selection authority shall approve a source selection plan before the solicitation is issued. Follow the procedures at PGI 215.303(b)(2) for preparation of the source selection plan.

[71 FR 3414, Jan. 23, 2006]

215.304 Evaluation factors and significant subfactors.

(c)(i) In acquisitions that require use of the clause at FAR 52.219–9, Small

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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 (to include service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns) 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 performance of the contract, whether as a joint venture, teaming arrangement, or subcontractor.

(A) See PGI 215.304(c)(i)(A) for examples of evaluation factors.

(B) Proposals addressing the extent of small business performance shall be separate from subcontracting plans submitted pursuant to the clause at FAR 52.219-9 and shall be structured to allow for consideration of offers from small businesses.

(C) When an evaluation assesses the extent that small businesses are specifically identified in proposals, the 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(e).

(ii) In accordance with 10 U.S.C. 2436, consider the purchase of capital assets (including machine tools) manufactured in the United States, in source selections for all major defense acquisition programs as defined in 10 U.S.C. 2430.

(iii) See 247.573-2(c) for additional evaluation factors required in solicitations for the direct purchase of ocean transportation services.

(iv) In accordance with section 812 of the National Defense Authorization Act for Fiscal Year 2011, consider the manufacturing readiness and manufacturing-readiness processes of potential contractors and subcontractors as a part of the source selection process for major defense acquisition programs.

(v) Include an evaluation factor regarding supply chain risk (see subpart 239.73) when acquiring information technology, whether as a service or as a supply, that is a covered system, is a

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part of a covered system, or is in support of a covered system, as defined in 239.7301. For additional guidance see PGI 215.304(c)(v).

[71 FR 3414, Jan. 23, 2006, as amended at 71 FR 14109, Mar. 21, 2006; 72 FR 49205, Aug. 28, 2007; 76 FR 38051, June 29, 2011; 78 FR 69270, Nov. 18, 2013; 79 FR 61581, Oct. 14, 2014; 80 FR 67251, Oct. 30, 2015]

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 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 Business Subcontracting Plan, the evaluation factors shall include the past performance of offerors in complying with requirements of that clause.

[71 FR 3414, Jan. 23, 2006]

215.306 Exchanges with offerors after receipt of proposals.

(c) *Competitive range.*

(1) For acquisitions with an estimated value of \$100 million or more, contracting officers should conduct discussions. Follow the procedures at FAR 15.306(c) and (d).

[76 FR 58152, Sept. 20, 2011]

215.370 Evaluation factor for employing or subcontracting with members of the Selected Reserve.

215.370-1 Definition.

Selected Reserve, as used in this section, is defined in the provision at 252.215-7005, Evaluation Factor for Employing or Subcontracting with Members of the Selected Reserve.

[73 FR 62211, Oct. 20, 2008]

215.370-2 Evaluation factor.

In accordance with Section 819 of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109-163), the contracting officer may use an evaluation factor that considers whether an

offeror intends to perform the contract using employees or individual subcontractors who are members of the Selected Reserve. See PGI 215.370-2 for guidance on use of this evaluation factor.

[73 FR 62211, Oct. 20, 2008]

215.370-3 Solicitation provision and contract clause.

(a) Use the provision at 252.215-7005, Evaluation Factor for Employing or Subcontracting with Members of the Selected Reserve, in solicitations that include an evaluation factor considering whether an offeror intends to perform the contract using employees or individual subcontractors who are members of the Selected Reserve.

(b) Use the clause at 252.215-7006, Use of Employees or Individual Subcontractors Who are Members of the Selected Reserve, in solicitations that include the provision at 252.215-7005. Include the clause in the resultant contract only if the contractor stated in its proposal that it intends to perform the contract using employees or individual subcontractors who are members of the Selected Reserve, and that statement was used as an evaluation factor in the award decision.

[73 FR 62211, Oct. 20, 2008]

215.371 Only one offer.

215.371-1 Policy.

It is DoD policy, if only one offer is received in response to a competitive solicitation—

(a) To take the required actions to promote competition (see 215.371-2); and

(b) To ensure that the price is fair and reasonable (see 215.371-3) and to comply with the statutory requirement for certified cost or pricing data (see FAR 15.403-4).

[77 FR 39138, June 29, 2012]

215.371-2 Promote competition.

Except as provided in sections 215.371-4 and 215.371-5—

(a) If only one offer is received when competitive procedures were used and the solicitation allowed fewer than 30 days for receipt of proposals, the contracting officer shall—

(1) Consult with the requiring activity as to whether the requirements document should be revised in order to promote more competition (see FAR 6.502(b) and 11.002); and

(2) Resolicit, allowing an additional period of at least 30 days for receipt of proposals; and

(b) For competitive solicitations in which more than one potential offeror expressed an interest in an acquisition, but only one offer was ultimately received, follow the procedures at PGI 215.371-2.

[80 FR 21657, Apr. 20, 2015]

215.371-3 Fair and reasonable price.

(a) If there was “reasonable expectation... that ...two or more offerors, competing independently, would submit priced offers” but only one offer is received, this circumstance does not constitute adequate price competition unless an official at a level above the contracting officer approves the determination that the price is reasonable (see FAR 15.403-1(c)(1)(ii)).

(b) Except as provided in section 215.371-4(a), if only one offer is received when competitive procedures were used and the solicitation allowed at least 30 days for receipt of proposals (unless the 30-day requirement is not applicable in accordance with 215.371-4(a)(3) or has been waived in accordance with section 215.371-5), the contracting officer shall—

(1) Determine through cost or price analysis that the offered price is fair and reasonable and that adequate price competition exists (with approval of the determination at a level above the contracting officer) or another exception to the requirement for certified cost or pricing data applies (see FAR 15.403-1(c) and 15.403-4). In these circumstances, no further cost or pricing data is required; or

(2)(i) Obtain from the offeror cost or pricing data necessary to determine a fair and reasonable price and comply with the requirement for certified cost or pricing data at FAR 15.403-4. For acquisitions that exceed the cost or pricing data threshold, if no exception at FAR 15.403-1(b) applies, the cost or pricing data shall be certified; and

(ii) Enter into negotiations with the offeror as necessary to establish a fair

215.371-4

and reasonable price. The negotiated price should not exceed the offered price.

[77 FR 39138, June 29, 2012, as amended at 78 FR 65216, Oct. 31, 2013]

215.371-4 Exceptions.

(a) The requirements at section 215.371-2 do not apply to—

(1) Acquisitions at or below the simplified acquisition threshold;

(2) Acquisitions in support of contingency, humanitarian or peacekeeping operations, or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack;

(3) Small business set-asides under FAR subpart 19.5, set asides offered and accepted into the 8(a) Program under FAR subpart 19.8, or set-asides under the HUBZone Program (see FAR 19.1305(c)), the Service-Disabled Veteran-Owned Small Business Procurement Program (see FAR 19.1405(c)), or the Women-Owned Small Business Program (see FAR 19.1505(d));

(4) Acquisitions of basic or applied research or development, as specified in FAR 35.016(a), that use a broad agency announcement; or

(5) Acquisitions of architect-engineer services (see FAR 36.601-2).

(b) The applicability of an exception in paragraph (a) of this section does not eliminate the need for the contracting officer to seek maximum practicable competition and to ensure that the price is fair and reasonable.

[78 FR 65216, Oct. 31, 2013]

215.371-5 Waiver.

(a) The head of the contracting activity is authorized to waive the requirement at 215.371-2 to resolicit for an additional period of at least 30 days.

(b) This waiver authority cannot be delegated below one level above the contracting officer.

[77 FR 39138, June 29, 2012]

215.371-6 Solicitation provision.

Use the provision at 252.215-7007, Notice of Intent to Resolicit, in competitive solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, that will be solicited for fewer than 30

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days, unless an exception at 215.371-4 applies or the requirement is waived in accordance with 215.371-5.

[78 FR 65216, Oct. 31, 2013]

Subpart 215.4—Contract Pricing

215.402 Pricing policy.

Follow the procedures at PGI 215.402 when conducting cost or price analysis, particularly with regard to acquisitions for sole source commercial items.

[72 FR 30278, May 31, 2007]

215.403 Obtaining certified cost or pricing data.

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

(b) *Exceptions to certified cost or pricing data requirements* Follow the procedures at PGI 215.403-1(b).

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

(1) *Adequate price competition.*

(A) For acquisitions under dual or multiple source programs—

(1) 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 data to assist in price analysis; and

(2) 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)).

(B) If only one offer is received in response to a competitive solicitation, see 215.371-3.

(3) *Commercial items.* (A) Follow the procedures at PGI 215.403-1(c)(3)(A) for pricing commercial items.

(B) By November 30th of each year, departments and agencies shall provide a report to the Director, Defense Procurement and Acquisition Policy

(DPAP), ATTN: DPAP/CPIC, of all contracting officer determinations that commercial item exceptions apply under FAR 15.403-1(b)(3), during the previous fiscal year, for any contract, subcontract, or modification expected to have a value of \$19.5 million or more. See PGI 215.403-1(c)(3)(B) for the format and guidance for the report. The Director, DPAP, will submit a consolidated report to the congressional defense committees.

(4) *Waivers.* (A) The head of the contracting activity may, without power of delegation, apply the exceptional circumstances authority when a determination is made that—

(1) The property or services cannot reasonably be obtained under the contract, subcontract, or modification, without the granting of the waiver;

(2) The price can be determined to be fair and reasonable without the submission of certified cost or pricing data; and

(3) There are demonstrated benefits to granting the waiver. Follow the procedures at PGI 215.403-1(c)(4)(A) for determining when an exceptional case waiver is appropriate, for approval of such waivers, for partial waivers, and for waivers applicable to unpriced supplies or services.

(B) By November 30th of each year, departments and agencies shall provide a report to the Director, DPAP, ATTN: DPAP/CPIC, of all waivers granted under FAR 15.403-1(b)(4), during the previous fiscal year, for any contract, subcontract, or modification expected to have a value of \$19.5 million or more. See PGI 215.403-1(c)(4)(B) for the format and guidance for the report. The Director, DPAP, will submit a consolidated report to the congressional defense committees.

(C) DoD has waived the requirement for submission of certified cost or pricing data for the Canadian Commercial Corporation and its subcontractors (but see 215.408(3) and 225.870-4(c)).

(D) DoD has waived certified 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 data other than certified cost or pricing data to the ex-

tent necessary to determine reasonableness and cost realism; and

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

[63 FR 55040, Oct. 14, 1998, as amended at 71 FR 69493, Dec. 1, 2006; 72 FR 30278, May 31, 2007; 76 FR 58137, Sept. 20, 2011; 77 FR 39139, June 29, 2012; 77 FR 43472, July 24, 2012; 77 FR 52253, Aug. 29, 2012; 77 FR 76937, 76939, Dec. 31, 2012; 78 FR 13543, Feb. 28, 2013; 78 FR 65216, Oct. 31, 2013; 80 FR 36904, June 26, 2015]

215.403-3 Requiring data other than certified cost or pricing data.

Follow the procedures at PGI 215.403-3.

[72 FR 30278, May 31, 2007, as amended at 77 FR 76940, Dec. 31, 2012]

215.403-5 Instructions for submission of certified cost or pricing data and data other than certified cost or pricing data.

(b)(3) For contractors following the contract cost principles in FAR subpart 31.2, Contracts With Commercial Organizations, pursuant to the procedures in FAR 42.1701(b), the administrative contracting officer shall require contractors to comply with the submission items in Table 215.403-1 in order to ensure that their forward pricing rate proposal is submitted in an acceptable form in accordance with FAR 15.403-5(b)(3). The contracting officer should request that the proposal be submitted to the Government at least 90 days prior to the proposed effective date of the rates. To ensure the proposal is complete, the contracting officer shall request that the contractor complete the Contractor Forward Pricing Rate Proposal Adequacy Checklist at Table 215.403-1, and submit it with the forward pricing rate proposal.

TABLE 215.403-1—CONTRACTOR FORWARD PRICING RATE PROPOSAL ADEQUACY CHECKLIST

Complete the following checklist, providing the location of requested information, or an explanation of why the requested information is not provided, and submit it with the forward pricing rate proposal.

CONTRACTOR FORWARD PRICING RATE PROPOSAL ADEQUACY CHECKLIST

Submission item	Proposal page No. (if applicable)	If not provided, explain (may use continuation pages)
General Instructions		
<p>1. Is there a properly completed first page of the proposal as specified by the contracting officer?</p> <p>Initial proposal elements include:</p> <ul style="list-style-type: none"> a. Name and address of contractor; b. Name and telephone number of point of contact; c. Period covered; d. The page of the proposal that addresses— <ul style="list-style-type: none"> 1. Whether your organization is subject to cost accounting standards (CAS); 2. Whether your organization has submitted a CAS Disclosure Statement, and whether it has been determined adequate; 3. Whether you have been notified that you are or may be in noncompliance with your Disclosure Statement or CAS (other than a noncompliance that the cognizant Federal agency official had determined to have an immaterial cost impact), and if yes, an explanation; 4. Whether any aspect of this proposal is inconsistent with your disclosed practices or applicable CAS, and, if so, an explanation; and whether the proposal is consistent with established estimating and accounting principles and procedures and FAR part 31, Cost Principles, and, if not, an explanation; e. The following statement: "This forward pricing rate proposal reflects our estimates, as of the date of submission entered in (f) below and conforms with Table 215.403-1. By submitting this proposal, we grant the Contracting Officer and authorized representative(s) the right to examine those records, which include books, documents, accounting procedures and practices, and other data, regardless of type and form or whether such supporting information is specifically referenced or included in the proposal as the basis for each estimate, that will permit an adequate evaluation of the proposed rates and factors."; f. Date of submission; and g. Name, title, and signature of authorized representative. <p>2. Summary of proposed direct and indirect rates and factors, including the proposed pool and base costs for each proposed indirect rate and factor.</p> <p>3. Table of Contents or index.</p> <ul style="list-style-type: none"> a. Does the proposal include a table of contents or index identifying and referencing all supporting data accompanying or identified in the proposal? b. For supporting documentation not provided with the proposal, does the basis of each estimate in the proposal include the location of the documentation and the point of contact (custodian) name, phone number, and email address? Does the proposal disclose known or anticipated changes in business activities or processes that could materially impact the proposed rates (if not previously provided)? For example— <ul style="list-style-type: none"> a. Management initiatives to reduce costs; b. Changes in management objectives as a result of economic conditions and increased competitiveness; c. Changes in accounting policies, procedures, and practices including (i) reclassification of expenses from direct to indirect or vice versa; (ii) new methods of accumulating and allocating indirect costs and the related impact; and (iii) advance agreements; d. Company reorganizations (including acquisitions or divestitures); e. Shutdown of facilities; or f. Changes in business volume and/or contract mix/type. <p>4. Do proposed costs based on judgmental factors include an explanation of the estimating processes and methods used, including those used in projecting from known data?</p> <p>5. Does the proposal show trends and budgetary data? Does the proposal provide an explanation of how the data, as well as any adjustments to the data, were used?</p> <p>6. The proposal should reconcile to the supporting data referenced. If the proposal does not reconcile to the supporting data referenced, identify applicable page(s) and explain.</p> <p>7. The proposal should be internally consistent. If the proposal is not internally consistent, identify applicable page(s) and explain.</p>	<p>Proposal Cover Page.</p> <p>Immediately following the proposal cover page.</p>	
Direct Labor		
<p>Direct Labor Rates Methodology and Basis of Each Estimate</p> <p>9. a. Does the proposal include an explanation of the methodology used to develop the direct labor rates and identify the basis of each estimate?</p>		

CONTRACTOR FORWARD PRICING RATE PROPOSAL ADEQUACY CHECKLIST—Continued

Submission item	Proposal page No. (if applicable)	If not provided, explain (may use continuation pages)
b. Does the proposal include or identify the location of the supporting documents for the base-period labor rates (e.g., payroll records)? 10. Does the proposal identify escalation factors for the out-year labor rates, the costs to which escalation is applicable, and the basis of each factor used? 11. Does the proposal identify planned or anticipated changes in the composition of labor rates, labor categories, union agreements, headcounts, or other factors that could significantly impact the direct labor rates?		
Indirect Rates (Fringe, Overhead, G&A, etc.)		
12. Indirect Rates Methodology and Basis of Each Estimate. a. Does the proposal identify the basis of each estimate and provide an explanation of the methodology used to develop the indirect rates? b. Does the proposal include or identify the location of the supporting documents for the proposed rates? 13. Does the proposal identify indirect expenses by burden center, by cost element, by year (including any voluntary deletions, if applicable) in a format that is consistent with the accounting system used to accumulate actual expenses? 14. Does the proposal identify any contingencies? 15. Does the proposal identify planned or anticipated changes in the nature, type, or level of indirect costs, including fringe benefits? 16. Does the proposal identify corporate, home office, shared services, or other incoming allocated costs and the source for those costs, including location and point of contact (custodian) name, phone number, and email address? 17. Does the proposal separately identify all intermediate cost pools and provide a reconciliation to show where the costs will be allocated? 18. Does the proposal identify the escalation factors used to escalate indirect costs for the out-years, the costs to which escalation is applicable, and the basis of each factor used? 19. Does the proposal provide details of the development of the allocation base? 20. Does the proposal include or reference the supporting data for the allocation base such as program budgets, negotiation memoranda, proposals, contract values, etc.? 21. Does the proposal identify how the proposed allocation bases reconcile with its long range plans, strategic plan, operating budgets, sales forecasts, program budgets, etc.?		
Cost of Money (COM)		
22. Cost of Money. a. Are Cost of Money rates submitted on Form CASB-CMF, with the Treasury Rate used to compute COM identified and a summary of the net book value of assets, identified as distributed and non-distributed? b. Does the proposal identify the support for the Form CASB-CMF, for example, the underlying reports and records supporting the net book value of assets contained in the form?		
Other		
23. Does the proposal include a comparison of prior forecasted costs to actual results in the same format as the proposal and an explanation/analysis of any differences? 24. If this is a revision to a previous rate proposal or a forward pricing rate agreement, does the new proposal provide a summary of the changes in the circumstances or the facts that the contractor asserts require the change to the rates?		

[79 FR 73496, Dec. 11, 2014]

215.404

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215.404 Proposal analysis.

215.404–1 Proposal analysis techniques.

(1) Follow the procedures at PGI 215.404–1 for proposal analysis.

(2) 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 data;

(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.

[63 FR 55040, Oct. 14, 1998, as amended at 71 FR 69494, Dec. 1, 2006; 72 FR 30278, May 31, 2007; 77 FR 76940, Dec. 31, 2012]

215.404–2 Data to support proposal analysis.

See PGI 215.404–2 for guidance on obtaining field pricing or audit assistance.

[71 FR 69494, Dec. 1, 2006]

215.404–3 Subcontract pricing considerations.

Follow the procedures at PGI 215.404–3 when reviewing a subcontractor's proposal.

[71 FR 69494, Dec. 1, 2006]

215.404–4 Profit.

(b) *Policy.* (1) Contracting officers shall use a structured approach for developing a prenegotiation profit or fee objective on any negotiated contract action when certified cost or pricing data is obtained, except for cost-plus-award-fee contracts (see 215.404–74, 216.405–2, and FAR 16.405–2) 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—

(i) The contract action is—

(i) At or below the certified 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.

(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; 71 FR 69494, Dec. 1, 2006; 77 FR 76940, Dec. 31, 2012]

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

Follow the procedures at PGI 215.404-70 for use of DD Form 1547 whenever a structured approach to profit analysis is required.

[71 FR 69494, Dec. 1, 2006]

215.404-71 Weighted guidelines method.

215.404-71-1 General.

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

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

(b) The contracting officer assigns values to each profit factor; the value multiplied by the base results in the profit objective for that factor. Except for the cost efficiency special 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 price 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. The cost efficiency special factor has no normal value. The contracting officer shall exercise sound business judgment in selecting a value when this special factor is used (see 215.404-71-5).

[67 FR 20689, Apr. 26, 2002]

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 20)	Profit objective
21 ..	Technical	(1)	(2)	N/A	N/A
22 ..	Management/Cost Control	(1)	(2)	N/A	N/A
23 ..	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:

	Assigned weighting (percent)	Assigned value (percent)	Weighted value (percent)
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 20 of the DD Form 1547. Block 20 is total contract costs, excluding facilities capital cost of money.

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

(c) Values: Normal and designated ranges.

	Normal value (percent)	Designated range
Standard	5	3% to 7%
Technology Incentive	9	7% to 11%

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

(2) *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) Requirements are relatively simple;
- (B) Technology is not complex;
- (C) Efforts do not require highly skilled personnel;
- (D) Efforts are routine;
- (E) Programs are mature; or
- (F) 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 data, 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 adequacy of the contractor's management approach to controlling cost and schedule; and

(vii) 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 there is a high degree of management effort. 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 good record of past performance;

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

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

(F) The contractor makes appropriate make-or-buy decisions; or

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

(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;

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

(K) The contractor has a poor record of past performance.

(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

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assurance, property control, safety, security); or

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

[67 FR 20689, Apr. 26, 2002, as amended at 67 FR 49254, July 30, 2002; 78 FR 13543, Feb. 28, 2013]

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 20)	Profit objective
24.	CONTRACT type risk		(1) Length factor	(2) Interest rate	(3)
25.	WORKING capital (4)	Cost financed (5)	(6)	(7)	(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 20, i.e., the total allowable costs excluding 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 <https://www.fiscal.treasury.gov/fsservices/gov/pmt/promptPayment/rates.htm>). 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 25).

(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 25. 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) and 243.204-70-6). 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 excluding facilities capital cost of money), reduced as appropriate when—

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(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 80 percent, the portion that the contractor finances is 20 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 less40
22 to 2765
28 to 3390
34 to 39	1.15
40 to 45	1.40
46 to 51	1.65
52 to 57	1.90

TABLE—Continued

Period to perform substantive portion (in months)	Contract length factor
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; 66 FR 63335, Dec. 6, 2001; 67 FR 20691, Apr. 26, 2002; 67 FR 49255, July 30, 2002; 72 FR 14239, Mar. 27, 2007; 75 FR 48277, Aug. 10, 2010; 80 FR 56929, Sept. 21, 2015]

215.404-71-4 Facilities capital employed.

(a) *Description.* This factor focuses on encouraging and rewarding 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) *Contract facilities capital estimates.* The contracting officer shall estimate the facilities capital cost of money and capital employed using—

(1) An analysis of the appropriate Forms CASB-CMF and cost of money factors (48 CFR 9904.414 and FAR 31.205-10); and

(2) DD Form 1861, Contract Facilities Capital Cost of Money.

(c) *Use of DD Form 1861.* See PGI 215.404-71-4(c) for obtaining field pricing support for preparing DD Form 1861.

(1) *Purpose.* The DD Form 1861 provides a means of linking the Form CASB-CMF and DD Form 1547, Record of Weighted Guidelines Application. It—

(i) Enables the contracting officer to differentiate profit objectives for various types of assets (land, buildings, equipment). The procedure is similar to applying overhead rates to appropriate overhead allocation bases to determine contract overhead costs.

(ii) Is designed to record and compute the contract facilities capital cost of

money and capital employed which is carried forward to DD Form 1547.

(2) *Completion instructions.* Complete a DD Form 1861 only after evaluating the contractor's cost proposal, establishing cost of money factors, and establishing a prenegotiation objective on cost. Complete the form as follows:

(i) List overhead pools and direct-charging service centers (if used) in the same structure as they appear on the contractor's cost proposal and Form CASB-CMF. The structure and allocation base units-of-measure must be compatible on all three displays.

(ii) Extract appropriate contract overhead allocation base data, by year, from the evaluated cost breakdown or prenegotiation cost objective and list against each overhead pool and direct-charging service center.

(iii) Multiply each allocation base by its corresponding cost of money factor to get the facilities capital cost of money estimated to be incurred each year. The sum of these products represents the estimated contract facilities capital cost of money for the year's effort.

(iv) Total contract facilities cost of money is the sum of the yearly amounts.

(v) Since the facilities capital cost of money factors reflect the applicable

cost of money rate in Column 1 of Form CASB-CMF, divide the contract cost of money by that same rate to determine the contract facilities capital employed.

(d) *Preaward facilities capital applications.* To establish cost and price objectives, apply the facilities capital cost of money and capital employed as follows:

(1) *Cost of Money.* (i) *Cost Objective.* Use the imputed facilities capital cost of money, with normal, booked costs, to establish a cost objective or the target cost when structuring an incentive type contract. Do not adjust target costs established at the outset even though actual cost of money rates become available during the period of contract performance.

(ii) *Profit Objective.* When measuring the contractor's effort for the purpose of establishing a prenegotiation profit objective, restrict the cost base to normal, booked costs. Do not include cost of money as part of the cost base.

(2) *Facilities Capital Employed.* Assess and weight the profit objective for risk associated with facilities capital employed in accordance with the profit guidelines at 215.404-71-4.

(e) *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
26	Land	N/A	(2)	N/A
27	Buildings	N/A	(2)	N/A
28	Equipment	(1)	(2)	(3)

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

(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 20 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 20 at price (i.e., including G&A expenses and profit).

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

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

Asset type	Normal value (percent)	Designated range
Land	0	N/A
Buildings	0	N/A
Equipment	17.5	10 to 25

(g) *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; and

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

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

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

(ii) The contracting officer may assign a value significantly above normal when there are direct and measurable benefits in efficiency and significantly reduced acquisition costs 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.

[63 FR 55040, Oct. 14, 1998, as amended at 67 FR 20691, Apr. 26, 2002; 67 FR 49255, July 30, 2002; 71 FR 69494, Dec. 1, 2006; 72 FR 14239, Mar. 27, 2007; 73 FR 70906, Nov. 24, 2008]

215.404-71-5 Cost efficiency factor.

(a) This special factor provides an incentive for contractors to reduce costs. To the extent that the contractor can demonstrate cost reduction efforts that benefit the pending contract, the contracting officer may increase the prenegotiation profit objective by an amount not to exceed 4 percent of total objective cost (Block 20 of the DD Form 1547) to recognize these efforts (Block 29).

(b) To determine if using this factor is appropriate, the contracting officer shall consider criteria, such as the following, to evaluate the benefit the contractor's cost reduction efforts will have on the pending contract:

(1) The contractor's participation in Single Process Initiative improvements;

(2) Actual cost reductions achieved on prior contracts;

(3) Reduction or elimination of excess or idle facilities;

(4) The contractor's cost reduction initiatives (e.g., competition advocacy programs, technical insertion programs, obsolete parts control programs, spare parts pricing reform, value engineering, outsourcing of functions such as information technology). Metrics developed by the contractor

such as fully loaded labor hours (i.e., cost per labor hour, including all direct and indirect costs) or other productivity measures may provide the basis for assessing the effectiveness of the contractor's cost reduction initiatives over time;

(5) The contractor's adoption of process improvements to reduce costs;

(6) Subcontractor cost reduction efforts;

(7) The contractor's effective incorporation of commercial items and processes; or

(8) The contractor's investment in new facilities when such investments contribute to better asset utilization or improved productivity.

(c) When selecting the percentage to use for this special factor, the contracting officer has maximum flexibility in determining the best way to evaluate the benefit the contractor's cost reduction efforts will have on the pending contract. However, the contracting officer shall consider the impact that quantity differences, learning, changes in scope, and economic factors such as inflation and deflation will have on cost reduction.

[67 FR 20692, Apr. 26, 2002, as amended at 67 FR 49255, July 30, 2002]

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 21-23 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 20 of the DD Form 1547. Show the net (reduced) amount on the DD Form 1547.

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

(2) *Modifications to contract type risk (Block 24 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; 67 FR 20692, Apr. 26, 2002; 67 FR 49255, July 30, 2002]

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 amount of facilities capital cost of money under Cost Accounting Standard (CAS) 414, Cost of Money as an Element of the Cost of Facilities Capital (48 CFR 9904.414). Cost of money under CAS 417, Cost of Money as an Element of the Cost of Capital Assets Under Construction (48 CFR 9904.417), should not be used to reduce

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the overall prenegotiation profit objective. 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.

[63 FR 55040, Oct. 14, 1998, as amended at 67 FR 20692, Apr. 26, 2002; 71 FR 69494, Dec. 1, 2006]

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 amount of facilities capital cost of money; and

(d) Not complete a DD Form 1547.

[63 FR 55040, Oct. 14, 1998, as amended at 67 FR 20692, Apr. 26, 2002]

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;

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

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(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]

215.406-1 Prenegotiation objectives.

Follow the procedures at PGI 215.406-1 for establishing prenegotiation objectives.

[71 FR 69494, Dec. 1, 2006]

215.406-3 Documenting the negotiation.

Follow the procedures at PGI 215.406-3 for documenting the negotiation and uploading sole source business clearance documentation into the Contract Business Analysis Repository.

[78 FR 21850, Apr. 12, 2013]

215.407-2 Make-or-buy programs.

(a) *General.* See PGI 215.407-2 for guidance on factors to consider when deciding whether to request a make-or-buy plan and for factors to consider when evaluating make-or-buy plan submissions.

(e) *Program requirements—(1) Items and work included.* The minimum dollar amount is \$1.5 million.

[63 FR 55040, Oct. 14, 1998, as amended at 75 FR 45073, Aug. 2, 2010; 76 FR 76319, Dec. 7, 2011]

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-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.

See PGI 215.407-4 for guidance on determining whether to perform a program or overhead should-cost review.

[71 FR 69495, Dec. 1, 2006]

215.407-5 Estimating systems.

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

(a) *Definitions.* (1) *Acceptable estimating system* is defined in the clause at 252.215-7002, Cost Estimating System Requirements.

(2) *Contractor* means a business unit as defined in FAR 2.101.

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

(4) *Significant deficiency* is defined in the clause at 252.215-7002, Cost Estimating System Requirements.

(b) *Applicability.* (1) DoD policy is that all contractors have acceptable estimating systems that consistently produce well-supported proposals that are acceptable as a basis for negotiation of fair and reasonable prices.

(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 certified 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 certified 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) *Policy.* (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 section;

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

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

(2) The cognizant contracting officer, in consultation with the auditor, for contractors subject to paragraph (b)(2) of this section, shall—

(i) Determine the acceptability of the disclosure and approve or disapprove the system; and

(ii) Pursue correction of any deficiencies.

(3) The auditor conducts estimating system reviews.

(4) An acceptable system shall 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.

(5) In evaluating the acceptability of a contractor's estimating system, the contracting officer, in consultation with the auditor, shall determine whether the contractor's estimating system complies with the system criteria for an acceptable estimating system as prescribed in the clause at 252.215-7002, Cost Estimating System Requirements.

(d) *Disposition of findings—(1) Reporting of findings.* The auditor shall document findings and recommendations in a report to the contracting officer. If the auditor identifies any significant estimating system deficiencies, the report shall describe the deficiencies in sufficient detail to allow the contracting officer to understand the deficiencies.

(2) *Initial determination.* (i) The contracting officer shall review all findings and recommendations and, if there are no significant deficiencies, shall promptly notify the contractor, in writing, that the contractor's estimating system is acceptable and approved; or

(ii) If the contracting officer finds that there are one or more significant deficiencies (as defined in the clause at 252.215-7002, Cost Estimating System Requirements) due to the contractor's

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failure to meet one or more of the estimating system criteria in the clause at 252.215-7002, the contracting officer shall—

(A) Promptly make an initial written determination on any significant deficiencies and notify the contractor, in writing, providing a description of each significant deficiency in sufficient detail to allow the contractor to understand the deficiency;

(B) Request the contractor to respond in writing to the initial determination within 30 days; and

(C) Promptly evaluate the contractor's responses to the initial determination, in consultation with the auditor or functional specialist, and make a final determination.

(3) *Final determination.* (i) The contracting officer shall make a final determination and notify the contractor in writing that—

(A) The contractor's estimating system is acceptable and approved, and no significant deficiencies remain, or

(B) Significant deficiencies remain. The notice shall identify any remaining significant deficiencies, and indicate the adequacy of any proposed or completed corrective action. The contracting officer shall—

(1) Request that the contractor, within 45 days of receipt of the final determination, either correct the deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the deficiencies;

(2) Disapprove the system in accordance with the clause at 252.215-7002, Cost Estimating System Requirements; and

(3) Withhold payments in accordance with the clause at 252.242-7005, Contractor Business Systems, if the clause is included in the contract.

(ii) Follow the procedures relating to monitoring a contractor's corrective action and the correction of significant deficiencies in PGI 215.407-5-70(e).

(e) *System approval.* The contracting officer shall promptly approve a previously disapproved estimating system and notify the contractor when the contracting officer determines that there are no remaining significant deficiencies.

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(f) *Contracting officer notifications.* The cognizant contracting officer shall promptly distribute copies of a determination to approve a system, disapprove a system and withhold payments, or approve a previously disapproved system and release withheld payments, to the auditor; payment office; affected contracting officers at the buying activities; and cognizant contracting officers in contract administration activities.

[63 FR 55040, Oct. 14, 1998, as amended at 67 FR 49252, July 30, 2002; 71 FR 69495, Dec. 1, 2006; 76 FR 28866, May 18, 2011; 77 FR 11365, Feb. 24, 2012; 77 FR 76940, Dec. 31, 2012]

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 Certified Cost or Pricing Data—Modifications;

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

(iii) FAR 52.215-13, Subcontractor Certified 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 certified cost or pricing data.

(3) When contracting with the Canadian Commercial Corporation—

(i)(A) Use the provision at 252.215-7003, Requirement for Data Other Than Certified Cost or Pricing Data—Canadian Commercial Corporation—

(1) In lieu of FAR 52.215-20, Requirement for Data Other Than Certified Cost or Pricing Data, in a solicitation, including solicitations using FAR part 12 procedures for the acquisition of commercial items, for a sole source acquisition from the Canadian Commercial Corporation that is—

(i) Cost-reimbursement, if the contract value is expected to exceed \$700,000; or

(ii) Fixed-price, if the contract value is expected to exceed \$500 million; or

(2) In lieu of FAR 52.215-20, in a solicitation, including solicitations using FAR part 12 procedures for the acquisition of commercial items, for a sole

source acquisition from the Canadian Commercial Corporation that does not meet the thresholds specified in paragraph (3)(i)(A)(1), if approval is obtained as required at 225.870-4(c)(2)(ii); and

(B) Do not use 252.225-7003 in lieu of FAR 52.215-20 in competitive acquisitions. The contracting officer may use FAR 52.215-20 with its Alternate IV, as prescribed at 15.408(1)(3), even if offers from the Canadian Commercial Corporation are anticipated; and

(ii)(A) Use the clause at 252.215-7004, Requirement for Data Other Than Certified Cost or Pricing Data—Modifications—Canadian Commercial Corporation—

(1) In a solicitation, including solicitations using FAR part 12 procedures for the acquisition of commercial items, for a sole source acquisition, from the Canadian Commercial Corporation and resultant contract that is—

(i) Cost-reimbursement, if the contract value is expected to exceed \$700,000; or

(ii) Fixed-price, if the contract value is expected to exceed \$500 million;

(2) In a solicitation, including solicitations using FAR part 12 procedures for the acquisition of commercial items, for a sole source acquisition from the Canadian Commercial Corporation and resultant contract that does not meet the thresholds specified in paragraph (3)(ii)(A) (1), if approval is obtained as required at 225.870-4(c)(2)(ii); or

(3)(i) In a solicitation, including solicitations using FAR part 12 procedures for the acquisition of commercial items, for a competitive acquisition that includes FAR 52.215-21, Requirement for Data Other Than Certified Cost or Pricing Data—Modifications, or that meets the thresholds specified in paragraph (3)(ii)(A) (1).

(ii) The contracting officer shall then select the appropriate clause to include in the contract (52.215-21 only if award is not to the Canadian Commercial Corporation; or 252.215-7004 if award is to the Canadian Commercial Corporation and necessary approval is obtained in accordance with 225.870-4(c)(2)(ii)); and

(B) The contracting officer may specify a higher threshold in paragraph (b) of the clause 252.215-7004.

(4)(i) Use the provision at 252.215-7008, Only One Offer, in competitive solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, unless an exception at 215.371-4(a) applies.

(ii) In solicitations that include 252.215-7008, Only One Offer, also include the provision at FAR 52.215-20, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data, with any appropriate alternate as prescribed at FAR 15.408-1, if the contracting officer is requesting submission of data other than certified cost or pricing data with the offer.

(5) When the solicitation requires the submission of certified cost or pricing data, the contracting officer should include 252.215-7009, Proposal Adequacy Checklist, in the solicitation to facilitate submission of a thorough, accurate, and complete proposal.

[63 FR 55040, Oct. 14, 1998, as amended at 72 FR 20760, Apr. 26, 2007; 73 FR 27472, May 13, 2008; 75 FR 48279, Aug. 10, 2010; 77 FR 39139, June 29, 2012; 77 FR 43472, July 24, 2012; 77 FR 76940, Dec. 31, 2012; 78 FR 13543, Feb. 28, 2013; 78 FR 18872, Mar. 28, 2013; 78 FR 37986, June 25, 2013; 78 FR 65216, Oct. 31, 2013; 81 FR 28730, May 10, 2016; 81 FR 36473, June 7, 2016]

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, include DD Form 1423, Contract Data Requirements List, in the solicitation. See PGI 215.470(b) for guidance on the use of DD Form 1423.

(c) 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

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the costs of duplication, but not of preparation, of such data.

[63 FR 55040, Oct. 14, 1998, as amended at 71 FR 69495, Dec. 1, 2006]

Subpart 215.5—Preward, Award, and Postaward Notifications, Protests, and Mistakes

SOURCE: 78 FR 69270, Nov. 18, 2013, unless otherwise noted.

215.503 Notifications to unsuccessful offerors.

If the Government exercises the authority provided in 239.7305(d), the notifications to unsuccessful offerors, either preaward or postaward, shall not reveal any information that is determined to be withheld from disclosure in accordance with section 806 of the National Defense Authorization Act for Fiscal Year 2011, as amended by section 806 of the National Defense Authorization Act for Fiscal Year 2013 (see subpart 239.73).

215.506 Postaward debriefing of offerors.

(e) If the Government exercises the authority provided in 239.7305(d), the debriefing shall not reveal any information that is determined to be withheld from disclosure in accordance with section 806 of the National Defense Authorization Act for Fiscal Year 2011, as amended by section 806 of the National Defense Authorization Act for Fiscal Year 2013 (see subpart 239.73).

PART 216—TYPES OF CONTRACTS

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216.703 Basic ordering agreements.
AUTHORITY: 41 U.S.C. 1303 and 48 CFR chapter 1.

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

Subpart 216.1—Selecting Contract Types

216.102 Policies.

In accordance with section 811 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239), use of any cost-reimbursement line item for

the acquisition or production of major defense acquisition programs is prohibited unless the exception at 234.004(2)(ii) applies.

[79 FR 4632, Jan. 29, 2014]

216.104 Factors in selecting contract type.

Contracting officers shall follow the principles and procedures in Director, Defense Procurement and Acquisition Policy memorandum dated April 1, 2016, entitled “Guidance on Using Incentive and Other Contract Types,” when selecting and negotiating the most appropriate contract type for a given procurement. See PGI 216.104.

[81 FR 28730, May 10, 2016]

216.104-70 Research and development.

Follow the procedures at PGI 216.104-70 for selecting the appropriate research and development contract type.

[71 FR 39007, July 11, 2006]

Subpart 216.2—Fixed-Price Contracts

216.203 Fixed-price contracts with economic price adjustment.

216.203-4 Contract clauses.

(1) Generally, use the clauses at FAR 52.216-2, Economic Price Adjustment—Standard Supplies, FAR 52.216-3, Economic Price Adjustment—Semistandard Supplies, and FAR 52.216-4, Economic Price Adjustment—Labor and Material, only when—

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

(ii) Delivery or performance will not be completed within 6 months after contract award.

(2) Follow the procedures at PGI 216.203-4 when using an economic price adjustment clause based on cost indexes of labor or material.

[71 FR 39007, July 11, 2006]

216.203-4-70 Additional provisions and clauses.

(a) *Price adjustment for basic steel, aluminum, brass, bronze, or copper mill products.* (1)(i) The price adjustment clause at 252.216-7000, Economic Price Adjust-

ment—Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products, may be used in fixed-price supply solicitations and 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.

(ii) 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.

(2) Use the price adjustment provision at 252.216-7007, Economic Price Adjustment—Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products—Representation, in solicitations that include the clause at 252.216-7000, Economic Price Adjustment—Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products.

(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)(i) The price adjustment clause at 252.216-7003, Economic Price Adjustment—Wage Rates or Material Prices Controlled by a Foreign Government, may be used in fixed-price supply and service solicitations and contracts when—

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

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

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

(2) Use the provision at 252.216-7008, Economic Price Adjustment—Wage Rates or Material Prices Controlled by a Foreign Government—Representation, in solicitations that include the clause at 252.216-7003, Economic Price Adjustment—Wage Rates or Material Prices Controlled by a Foreign Government. If the solicitation includes the provision at FAR 52.204-7, do not separately list the provision 252.216-7008 in the solicitation.

[56 FR 36340, July 31, 1991, as amended at 62 FR 34122, June 24, 1997; 62 FR 40472, July 29, 1997; 77 FR 19129, Mar. 30, 2012; 78 FR 37986, June 25, 2013, 78 FR 40043, July 3, 2013]

Subpart 216.3—Cost-Reimbursement Contracts

216.301-3 Limitations.

For contracts in connection with a military construction project or a military family housing project, contracting officers shall not use cost-plus-fixed-fee, cost-plus-award-fee, or cost-plus-incentive-fee contract types (10 U.S.C. 2306(c)). This applies notwithstanding a declaration of war or the declaration by the President of a national emergency under section 201 of the National Emergencies Act (50 U.S.C. 1621) that includes the use of the Armed Forces.

[81 FR 65564, Sept. 23, 2016]

216.306 Cost-plus-fixed-fee contracts.

(c) *Limitations.* For contracts in connection with a military construction project or military family housing project, see the prohibition at 216.301-3.

(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—

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

(A) 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.

(B) 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; 71 FR 39007, July 11, 2006; 81 FR 65564, Sept. 23, 2016]

216.307 Contract clauses.

(a) As required by section 827 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239), use the clause at 252.216-7009, Allowability of Costs Incurred in Connection With a Whistleblower Proceeding—

(1) In task orders entered pursuant to contracts awarded before September 30, 2013, that include the clause at FAR 52.216-7, Allowable Cost and Payment; and

(2) In contracts awarded before September 30, 2013, that—

(i) Include the clause at FAR 52.216-7, Allowable Cost and Payment; and

(ii) Are modified to include the clause at DFARS 252.203-7002, Requirement to Inform Employees of Whistleblower Rights, dated September 2013 or later.

[78 FR 59861, Sept. 30, 2013]

Subpart 216.4—Incentive Contracts

216.401 General.

(c) See PGI 216.401(c) for information on the Defense Acquisition University Award and Incentive Fees Community of Practice.

(e) Award-fee plans required in FAR 16.401(e) shall be incorporated into all award-fee type contracts. Follow the procedures at PGI 216.401(e) when planning to award an award-fee contract.

[75 FR 78619, Dec. 16, 2010, as amended at 76 FR 8305, Feb. 14, 2011]

216.401-71 Objective criteria.

(1) Contracting officers shall use objective criteria to the maximum extent possible to measure contract performance. Objective criteria are associated with cost-plus-incentive-fee and fixed-price-incentive contracts.

(2) When objective criteria exist but the contracting officer determines that it is in the best interest of the Government also to incentivize subjective elements of performance, the most appropriate contract type is a multiple-incentive contract containing both objective incentives and subjective award-fee criteria (i.e., cost-plus-incentive-fee/award-fee or fixed-price-incentive/award-fee).

(3) See PGI 216.401(e) for guidance on the use of award-fee contracts.

[76 FR 8305, Feb. 14, 2011]

216.402 Application of predetermined, formula-type incentives.

216.402-2 Technical performance incentives.

See PGI 216.402-2 for guidance on establishing performance incentives.

[71 FR 39007, July 11, 2006]

216.403 Fixed-price incentive contracts.

216.403-1 Fixed-price incentive (firm target) contracts.

(b) *Application.*

(1) The contracting officer shall give particular consideration to the use of fixed-price incentive (firm target) contracts, especially for acquisitions moving from development to production.

(2) The contracting officer shall pay particular attention to share lines and ceiling prices for fixed-price incentive (firm target) contracts, with a 120 percent ceiling and a 50/50 share ratio as the point of departure for establishing the incentive arrangement.

(3) See PGI 216.403-1 for guidance on the use of fixed-price incentive (firm target) contracts.

[76 FR 57679, Sept. 16, 2011]

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

See PGI 216.403-2 for guidance on the use of fixed-price incentive (successive targets) contracts.

[71 FR 39007, July 11, 2006]

216.405 Cost-reimbursement incentive contracts.

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

See PGI 216.405-1 for guidance on the use of cost-plus-incentive-fee contracts.

[71 FR 39007, July 11, 2006]

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

(1) *Award-fee pool.* The award-fee pool is the total available award fee for each evaluation period for the life of the contract. The contracting officer shall perform an analysis of appropriate fee distribution to ensure at least 40 percent of the award fee is available for the final evaluation so that the award fee is appropriately distributed over all evaluation periods to incentivize the contractor throughout performance of the contract. The percentage of award fee available for the final evaluation may be set below 40 percent if the contracting officer determines that a lower percentage is appropriate, and this determination is approved by the head of the contracting activity (HCA). The HCA may not delegate this approval authority.

(2) *Award-fee evaluation and payments.* Award-fee payments other than payments resulting from the evaluation at the end of an award-fee period are prohibited. (This prohibition does not apply to base-fee payments.) The fee-determining official's rating for award-fee evaluations will be provided to the contractor within 45 calendar days of the end of the period being evaluated. The final award-fee payment will be consistent with the fee-determining official's final evaluation of the contractor's overall performance against the

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cost, schedule, and performance outcomes specified in the award-fee plan.

(3) *Limitations.*

(i) The cost-plus-award-fee contract shall not be used—

(A) To avoid—

(1) Establishing cost-plus-fixed-fee contracts when the criteria for cost-plus-fixed-fee contracts apply; or

(2) Developing objective targets so a cost-plus-incentive-fee contract can be used; or

(B) For either engineering development or operational system development acquisitions that have specifications suitable for simultaneous research and development and production, except a cost-plus-award-fee 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—

(1) It is more advantageous; and

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

(ii) Do not apply the weighted guidelines method to cost-plus-award-fee contracts for either the base (fixed) fee or the award fee.

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

(4) See PGI 216.405-2 for guidance on the use of cost-plus-award-fee contracts.

[76 FR 8305, Feb. 14, 2011]

216.405-2-70 Award fee reduction or denial for jeopardizing the health or safety of Government personnel.

(a) *Definitions.*

Covered incident and *serious bodily injury*, as used in this section, are defined in the clause at 252.216-7004, Award Fee Reduction or Denial for Jeopardizing the Health or Safety of Government Personnel.

(b) The contracting officer shall include in the evaluation criteria of any award-fee plan, a review of contractor and subcontractor actions that jeopardized the health or safety of Government personnel, through gross negligence or reckless disregard for the safety of such personnel, as determined through—

(1) Conviction in a criminal proceeding, or finding of fault and liability in a civil or administrative proceeding (in accordance with section 823 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111-84)); or

(2) If a contractor or a subcontractor at any tier is not subject to the jurisdiction of the U.S. courts, a final determination of contractor or subcontractor fault resulting from a DoD investigation (in accordance with section 834 of the National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111-383)).

(c) In evaluating the contractor's performance under a contract that includes the clause at 252.216-7004, Award Fee Reduction or Denial for Jeopardizing the Health or Safety of Government Personnel, the contracting officer shall consider reducing or denying award fees for a period if contractor or subcontractor actions cause serious bodily injury or death of civilian or military Government personnel during such period. The contracting officer's evaluation also shall consider recovering all or part of award fees previously paid for such period.

[75 FR 69361, Nov. 12, 2010. Redesignated at 76 FR 52135, Aug. 19, 2011]

216.405-2-71 Award fee reduction or denial for failure to comply with requirements relating to performance of private security functions.

(a) In accordance with section 862 of the National Defense Authorization Act for Fiscal Year 2008, as amended, the contracting officer shall include in any award-fee plan a requirement to review contractor compliance with, or violation of, applicable requirements of the contract with regard to the performance of private security functions in an area of contingency operations, complex contingency operations, or other military operations or exercises that are designated by the combatant commander (see 225.370).

(b) In evaluating the contractor's performance under a contract that includes the clause at 252.225-7039, Defense Contractors Performing Private Security Functions Outside the United States, the contracting officer shall consider reducing or denying award

fees for a period if the contractor fails to comply with the requirements of the clause during such period. The contracting officer's evaluation also shall consider recovering all or part of award fees previously paid for such period.

[76 FR 52135, Aug. 19, 2011, as amended at 78 FR 73450, Dec. 6, 2013; 81 FR 42560, June 30, 2016]

216.406 Contract clauses.

(e)(1) Use the clause at 252.216–7004, Award Fee Reduction or Denial for Jeopardizing the Health or Safety of Government Personnel, in all solicitations and contracts containing award-fee provisions.

(2) Use the clause at 252.216–7005, Award Fee, in solicitations and contracts when an award-fee contract is contemplated.

[76 FR 8305, Feb. 14, 2011]

216.470 Other applications of award fees.

See PGI 216.470 for guidance on other applications of award fees.

[71 FR 39008, July 11, 2006]

Subpart 216.5—Indefinite-Delivery Contracts

216.501–2–70 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.

(b) See 217.204(e)(i) for limitations on the period for task order or delivery

order contracts awarded by DoD pursuant to 10 U.S.C. 2304a.

[56 FR 36340, July 31, 1991, as amended at 57 FR 42630, Sept. 15, 1992; 63 FR 11529, Mar. 9, 1998. Redesignated and amended at 78 FR 38235, June 26, 2013]

216.504 Indefinite-quantity contracts.

(c)(1)(ii)(D) *Limitation on single-award contracts.* (i) The authority to make the determination authorized in FAR 16.504(c)(1)(ii)(D)(1) shall not be delegated below the level of the senior procurement executive.

(ii) A copy of each determination made in accordance with FAR 16.504(c)(1)(ii)(D) shall be submitted to the Director, Defense Procurement and Acquisition Policy, via the OUSD(AT&L)DPAP/CPIC email address at *osd.pentagon.ousd-atl.mbx.cpic@mail.mil*.

[77 FR 23631, Apr. 20, 2012, as amended at 80 FR 56930, Sept. 21, 2015]

216.505 Ordering.

(1) Departments and agencies shall comply with the review, approval, and reporting requirements established in accordance with subpart 217.7 when placing orders under non-DoD contracts in amounts exceeding the simplified acquisition threshold.

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

(b)(2) *Exceptions to the fair opportunity process.* For an order exceeding the simplified acquisition threshold, that is a follow-on to an order previously issued for the same supply or service based on a justification for an exception to fair opportunity citing the authority at FAR 16.505(b)(2)(i)(B) or (C), follow the procedures at PGI 216.505(b)(2).

[63 FR 11529, Mar. 9, 1998, as amended at 70 FR 29642, May 24, 2005; 71 FR 14103, Mar. 21, 2006; 80 FR 21657, Apr. 20, 2015; 80 FR 67255, Oct. 30, 2015]

216.505–70 Orders under multiple award contracts.

If only one offer is received in response to an order exceeding the simplified acquisition threshold that is

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placed on a competitive basis, the contracting officer shall follow the procedures at 215.371.

[78 FR 38235, June 26, 2013]

216.506 Solicitation provisions and contract clauses.

(a) Insert the clause at 252.216-7006, Ordering, in lieu of the clause at FAR 52.216-18, Ordering, in solicitations and contracts when a definite-quantity contract, a requirements contract, or an indefinite-quantity contract is contemplated.

(d) Use the basic or the alternate of the clause at 252.216-7010, Requirements, in lieu of the clause at FAR 52.216-21, Requirements, in solicitations and contracts when a requirements contract for the preparation of personal property for shipment or storage, or for the performance of intracity or intra-area movement, is contemplated.

(1) Use the basic clause if the acquisition does not involve a partial small business set-aside.

(2) Use the alternate I clause if the acquisition involves a partial small business set-aside.

(S-70) Use the provisions at 252.215-7007, Notice of Intent to Resolicit, and 252.215-7008, Only One Offer, as prescribed at 215.408(3) and (4), respectively.

[63 FR 11529, Mar. 9, 1998, as amended at 76 FR 25568, May 5, 2011; 77 FR 23631, Apr. 20, 2012; 77 FR 39139, June 29, 2012; 79 FR 22037, Apr. 21, 2014]

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

216.601 Time-and-materials contracts.

(d) *Limitations.* (i)(A) *Approval of determination and findings for time-and-materials or labor-hour contracts.*

(1) *Base period plus any option periods is three years or less.*

(i) For contracts (including indefinite-delivery contracts) and orders in which the portion of the requirement performed on a time-and-materials or labor-hour basis exceeds \$1 million, the approval authority for the determination and findings shall be the senior contracting official within the con-

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tracting activity. This authority may not be delegated.

(ii) For contracts (including indefinite-delivery contracts) and orders in which the portion of the requirement performed on a time-and-materials or labor-hour basis is less than or equal to \$1 million, the determination and findings shall be approved one level above the contracting officer.

(2) *Base period plus any option periods exceeds three years.* The authority of the head of the contracting activity to approve the determination and findings may not be delegated.

(3) *Exception.* The approval requirements in paragraphs (d)(i)(A)(1) and (2) of this section do not apply to contracts that—

(i) Support contingency or peacekeeping operations; or

(ii) Provide humanitarian assistance, disaster relief, or recovery from conventional, nuclear, biological, chemical, or radiological attack.

(B) *Content of determination and findings.* The determination and findings shall contain sufficient facts and rationale to justify that no other contract type is suitable. At a minimum, the determination and findings shall—

(1) Include a description of the market research conducted;

(2) Establish that it is not possible at the time of placing the contract or order to accurately estimate the extent or duration of the work or to anticipate costs with any reasonable degree of certainty;

(3) Address why a cost-plus-fixed-fee term or other cost-reimbursement, incentive, or fixed-price contract or order is not appropriate; for contracts (including indefinite-delivery contracts) and orders for noncommercial items awarded to contractors with adequate accounting systems, a cost-plus-fixed-fee term contract type shall be preferred over a time-and-materials or labor-hour contract type;

(4) Establish that the requirement has been structured to minimize the use of time-and-materials and labor-hour requirements (*e.g.*, limiting the value or length of the time-and-materials or labor-hour portion of the contract or order; establishing fixed prices for portions of the requirement); and

(5) Describe the actions planned to minimize the use of time-and-materials and labor-hour contracts on future acquisitions for the same requirements.

(C) *Indefinite-delivery contracts.* For indefinite-delivery contracts, the contracting officer shall structure contracts that authorize time-and-materials orders or labor-hour orders to also authorize orders on a cost-reimbursement, incentive, or fixed-price basis, to the maximum extent practicable.

(e) *Solicitation provisions.* Use the provision at FAR 52.216-29, Time-and-Materials/Labor-Hour Proposal Requirements—Non-Commercial Item Acquisition with Adequate Price Competition, with 252.216-7002, Alternate A, in solicitations contemplating the use of a time-and-materials or labor-hour contract type for non-commercial items if the price is expected to be based on adequate competition.

[71 FR 74471, Dec. 12, 2006, as amended at 73 FR 70912, Nov. 24, 2008; 80 FR 29980, May 26, 2015]

216.603 Letter contracts.

216.603-2 Application.

(c)(3) In accordance with 10 U.S.C. 2326, establish definitization schedules for letter contracts following the requirements at 217.7404-3(a) instead of the requirements at FAR 16.603-2(c)(3).

[75 FR 32642, June 8, 2010]

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 217.7405(a) for additional guidance regarding use of the clause at 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, as amended at 71 FR 58537, Oct. 4, 2006; 72 FR 69159, Dec. 7, 2007; 76 FR 76319, Dec. 7, 2011]

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 5 years.

(d) *Orders.* Follow the procedures at PGI 216.703(d) for issuing orders under basic ordering agreements.

[71 FR 39008, July 11, 2006]

PART 217—SPECIAL CONTRACTING METHODS

Subpart 217.1—Multiyear Contracting

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Subpart 217.78 [Reserved]

AUTHORITY: 41 U.S.C. 1303 and 48 CFR chapter 1.

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

Subpart 217.1—Multyear Contracting

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

217.103 Definitions.

As used in this subpart—

Advance procurement 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.

Congressional defense committees means—

(1) The Committee on Armed Services of the Senate;

(2) The Committee on Appropriations of the Senate;

(3) The Subcommittee on Defense of the Committee on Appropriations of the Senate;

(4) The Committee on Armed Services of the House of Representatives;

(5) The Committee on Appropriations of the House of Representatives; and

(6) The Subcommittee on Defense of the Committee on Appropriations of the House of Representatives.

Military installation means a base, camp, post, station, yard, center, or other activity under the jurisdiction of the Secretary of a military department or, in the case of an activity in a foreign country, under the operational control of the Secretary of a military department or the Secretary of Defense (10 U.S.C. 2801(c)(4)).

[68 FR 43332, July 22, 2003, as amended at 79 FR 35700, June 24, 2014; 80 FR 29982, May 26, 2015]

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. 2306b(1)(7); section 8008(a) of Pub. L. 105-56 and similar sections in subsequent DoD appropriations acts).

(b) The head of the agency must provide written notice to the congressional defense committees at least 30 days before termination of any multiyear contract (section 8010 of Division C, Title VIII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and similar sections in subsequent DoD appropriations acts).

(c) Every multiyear contract must comply with FAR 17.104(c), unless an exception is approved through the budget process in coordination with the cognizant comptroller.

(d)(1) DoD must provide notification to the congressional defense committees at least 30 days before entering into a multiyear contract for certain procurements, including those expected to—

(i) Employ an unfunded contingent liability in excess of \$20 million (see 10 U.S.C. 2306b(1)(1)(B)(i)(II), 10 U.S.C. 2306c(d)(1), and section 8008(a) of Pub. L. 105-56 and similar sections in subsequent DoD appropriations acts);

(ii) Employ economic order quantity procurement in excess of \$20 million in any one year of the contract (see 10 U.S.C. 2306b(1)(1)(B)(i)(I) and section 8008(a) of Pub. L. 105-56 and similar sections in subsequent DoD appropriations acts);

(iii) 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 10 U.S.C. 2306b(1)(1)(B)(ii) and section 8008(a) of Pub. L. 105-56 and similar sections in subsequent DoD appropriations acts); or

(iv) Include a cancellation ceiling in excess of \$135.5 million (see 10 U.S.C. 2306c(d)(4) and 10 U.S.C. 2306b(g)(1)).

(2) A DoD component must submit a request for authority to enter into a multiyear contract described in paragraphs (d)(1)(i) through (iv) of this section 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 (d)(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 (see section 8008(b) of Pub. L. 105-56).

(4) Agencies must establish reporting procedures to meet the congressional notification requirements of paragraph (d)(1) of this section. The head of the agency must submit a copy of each notice to the Director of Defense Procurement and Acquisition Policy, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics) (OUSD(AT&L)DPAP), and to the Deputy Under Secretary of Defense (Comptroller) (Program/Budget) (OUSD(C)(P/B)).

(5) If the budget for a contract that contains a cancellation ceiling in excess of \$135.5 million does not include proposed funding for the costs of contract cancellation up to the cancellation ceiling established in the contract—

(i) The notification required by paragraph (d)(1) of this section shall include—

(A) The cancellation ceiling amounts planned for each program year in the proposed multiyear contract, together with the reasons for the amounts planned;

(B) The extent to which costs of contract cancellation are not included in the budget for the contract; and

(C) A financial risk assessment of not including budgeting for costs of contract cancellation (10 U.S.C. 2306b(g) and 10 U.S.C. 2306c(d)); and

(ii) The head of the agency shall provide copies of the notification to the Office of Management and Budget at least 14 days before contract award.

[66 FR 63337, Dec. 6, 2001, as amended at 68 FR 7439, Feb. 14, 2003; 70 FR 24324, May 9, 2005; 71 FR 75892, Dec. 19, 2006; 75 FR 9115, Mar. 1, 2010; 75 FR 54526, Sept. 8, 2010; 75 FR 45073, Aug. 2, 2010; 76 FR 58152, Sept. 20, 2011; 80 FR 29982, May 26, 2015; 80 FR 36904, June 26, 2015; 81 FR 28731, May 10, 2016]

217.171 Multiyear contracts for services.

(a) The head of the agency may enter into a multiyear contract for a period of not more than 5 years for the following types of services (and items of supply relating to such services), even though funds are limited by statute to obligation only during the fiscal year for which they were appropriated (10 U.S.C. 2306c(a)). Covered services are—

(1) Operation, maintenance, and support of facilities and installations;

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

(3) Specialized training requiring high-quality instructor skills (*e.g.*, training for pilots and aircrew members or foreign language training);

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

(5) Environmental remediation services for—

(i) An active military installation;

(ii) A military installation being closed or realigned under a base closure law as defined in 10 U.S.C. 2667(h)(2); or

(iii) A site formerly used by DoD (10 U.S.C. 2306c(b)).

(b) The head of the agency must be guided by the following principles when entering into a multiyear contract for services:

(1) The portion of the cost of any plant or equipment amortized as a cost of contract performance should not exceed the ratio between the period of contract performance and the anticipated useful commercial life of the plant or equipment. As used in this section, “useful commercial life” means

the commercial utility of the facilities rather than the physical life, with due consideration given to such factors as the location, specialized nature, and obsolescence of the facilities.

(2) Consider the desirability of obtaining an option to extend the term of the contract for a reasonable period not to exceed 3 years at prices that do not include charges for plant, equipment, or other nonrecurring costs already amortized.

(3) Consider the desirability of reserving the right to take title, under the appropriate circumstances, to the plant or equipment upon payment of the unamortized portion of the cost (10 U.S.C. 2306c(c)).

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

(1) There will be a continuing requirement for the services consistent with current plans for the proposed contract period;

(2) Furnishing the services will require—

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

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

(3) Using a multiyear contract will promote the best interests of the United States by encouraging effective competition and promoting economies in operations (10 U.S.C. 2306c(a)).

(d) The head of an agency may not initiate a multiyear contract for services if the value of the multiyear contract exceeds \$678.5 million unless a law specifically provides authority for the contract (10 U.S.C. 2306c(d)(2)).

[66 FR 63337, Dec. 6, 2001, as amended at 68 FR 43333, July 22, 2003; 70 FR 24324, May 9, 2005; 71 FR 75892, Dec. 19, 2006; 75 FR 45073, Aug. 2, 2010; 76 FR 58153, Sept. 20, 2011; 76 FR 76319, Dec. 7, 2011; 80 FR 29982, May 26, 2015; 80 FR 36904, June 26, 2015]

217.172 Multiyear contracts for supplies.

(a) This section applies to all multiyear contracts for supplies, including weapon systems and other multiyear acquisitions specifically authorized by law (10 U.S.C. 2306b).

(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 (10 U.S.C. 2306b(a)(6)).

(c) Multiyear contracts in amounts exceeding \$678.5 million must be specifically authorized by law in an act other than an appropriations act (10 U.S.C. 2306b(i)(1)).

(d) The head of the agency may not initiate a multiyear procurement contract for any system (or component thereof) if the value of the multiyear contract would exceed \$678.5 million unless authority for the contract is specifically provided in an appropriations act (10 U.S.C. 2306b(1)(3)).

(e) The head of the agency shall not enter into a multiyear contract unless—

(1) The Secretary of Defense has submitted to Congress a budget request for full funding of units to be procured through the contract;

(2) In the case of a contract for procurement of aircraft, the budget request includes full funding of procurement funds for production beyond advance procurement activities of aircraft units to be produced in the fiscal year covered by the budget;

(3) Cancellation provisions in the contract do not include consideration of recurring manufacturing costs of the contractor associated with the production of unfunded units to be delivered under the contract;

(4) The contract provides that payments to the contractor under the contract shall not be made in advance of incurred costs on funded units; and

(5) The contract does not provide for a price adjustment based on a failure to award a follow-on contract (section 8010 of Division C, Title VIII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and similar sections in subsequent DoD appropriations acts).

(f)(1) The head of the agency must not enter into or extend a multiyear contract that exceeds \$678.5 million (when entered into or extended) until the Secretary of Defense identifies the contract and any extension in a report

submitted to the congressional defense committees (10 U.S.C. 2306b(1)(5)).

(2) In addition, for contracts equal to or greater than \$678.5 million, the head of the contracting activity must determine that the conditions required by paragraph (h)(2)(i) through (vii) of this section will be met by such contract, in accordance with the Secretary's certification and determination required by paragraph (h)(2) of this section .

(g) 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 (10 U.S.C. 2306b(h)(1)); 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 paragraphs (h)(3) and (4) of this section regarding economic order quantity procurements) (10 U.S.C. 2306b(h)(2)). Before initiating an advance procurement, the contracting officer must verify that it is consistent with DoD policy (*e.g.*, the full funding policy in Volume 2A, chapter 1, of DoD 7000.14-R, Financial Management Regulation).

(h) The head of the agency shall ensure that the following conditions are satisfied before awarding a multiyear contract for a defense acquisition program that has been specifically authorized by law to be carried out using multiyear contract authority:

(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 in writing, by no later than 30 days before entry into such contracts, that each of the conditions in paragraphs (h)(2)(i) through (vii) of this section is satisfied (10 U.S.C. 2306b(i)(3)).

(i) The Secretary has determined that each of the requirements in FAR 17.105-1, paragraphs (b)(1) through (5), will be met by such contract and has provided the basis for such determination to the congressional defense committees (10 U.S.C. 2306b(i)(3)(A)).

(ii) The Secretary's determination under paragraph (h)(2)(i) of this section

was made after the completion of a cost analysis performed by the Defense Cost and Resource Center of the Department of Defense and such analysis supports the findings (10 U.S.C. 2306b(i)(3)(B)).

(iii) The system being acquired pursuant to such contract has not been determined to have experienced cost growth in excess of the critical cost growth threshold pursuant to 10 USC 2433(d) within 5 years prior to the date the Secretary anticipates such contract (or a contract for advance procurement entered into consistent with the authorization for such contract) will be awarded (10 U.S.C. 2306b(i)(3)(C)).

(iv) A sufficient number of end items of the system being acquired under such contract have been delivered at or within the most current estimates of the program acquisition unit cost or procurement unit cost for such system to determine that current estimates of such unit costs are realistic (10 U.S.C. 2306b(i)(3)(D)).

(v) Sufficient funds will be available in the fiscal year in which the contract is to be awarded to perform the contract, and the future-years defense program for such fiscal year will include the funding required to execute the program without cancellation (10 U.S.C. 2306b(i)(3)(E)).

(vi) The contract is a fixed price type contract (10 U.S.C. 2306b(i)(3)(F)).

(vii) 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)(3)(G)). The head of the agency shall submit to OUSD(C)(P/B) information supporting the agency's determination that this requirement has been met.

(viii) The head of the agency shall submit information supporting this certification to OUSD(C)(P/B) for transmission to Congress through the Secretary of Defense.

(A) The head of the agency shall, as part of this certification, give written notification to the congressional defense committees of—

(1) The cancellation ceiling amounts planned for each program year in the proposed multiyear contract, together

with the reasons for the amounts planned;

(2) The extent to which costs of contract cancellation are not included in the budget for the contract; and

(3) A financial risk assessment of not including the budgeting for costs of contract cancellation (10 U.S.C. 2306b(g)); and

(B) The head of the agency shall provide copies of the notification to the Office of Management and Budget at least 14 days before contract award.

(3) The contract is for the procurement of a complete and usable end item (10 U.S.C. 2306b(i)(5)(A)).

(4) Funds appropriated for any fiscal year for advance procurement are obligated only for the procurement of those long-lead items that are necessary in order to meet a planned delivery schedule for complete major end items that are programmed under the contract to be acquired with funds appropriated for a subsequent fiscal year (including an economic order quantity of such long-lead items when authorized by law (10 U.S.C. 2306b(i)(5)(B))).

(5) The Secretary may make the certification under paragraph (h)(2) of this section notwithstanding the fact that one or more of the conditions of such certification are not met if the Secretary determines that, due to exceptional circumstances, proceeding with a multiyear contract under this section is in the best interest of the Department of Defense and the Secretary provides the basis for such determination with the certification (10 U.S.C. 2306b(i)(6)).

(6) The Secretary of Defense may not delegate this authority to make the certification under paragraph (h)(2) of this section or the determination under paragraph (h)(5) of this section to an official below the level of the Under Secretary of Defense for Acquisition, Technology, and Logistics (10 U.S.C. 2306b(i)(7)).

(7) 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. 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 shall 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 (10 U.S.C. 2306b(i)(4)). The request shall—

- (i) Quantify the savings that can be achieved;
- (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)DPAP for transmission to Congress via the Secretary of Defense and the President.

(i) 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)).

(j) Any requests for increased funding or reprogramming for procurement of a major system under a multiyear contract shall be accompanied by an explanation of how the request for increased funding affects the determinations made by the Secretary of Defense under 217.172(h)(2) (10 U.S.C. 2306b(m)).

[76 FR 58153, Sept. 20, 2011, as amended at 80 FR 29982, May 26, 2015; 80 FR 36904, June 26, 2015; 81 FR 28731, May 10, 2016]

217.173 Multiyear contracts for military family housing.

The head of the agency may enter into multiyear contracts for periods up to 4 years 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 (10 U.S.C. 2829).

[76 FR 58154, Sept. 20, 2011]

217.174 Multiyear contracts for electricity from renewable energy sources.

(a) The head of the contracting activity may enter into a contract for a period not to exceed 10 years for the purchase of electricity from sources of renewable energy, as that term is defined

in section 203(b)(2) of the Energy Policy Act of 2005 (42 U.S.C. 15852(b)(2)).

(b) *Limitations.* The head of the contracting activity may exercise the authority in paragraph (a) of this section to enter into a contract for a period in excess of 5 years only if the head of the contracting activity determines, on the basis of a business case analysis (see PGI 217.174 for a business case analysis template and guidance) prepared by the requiring activity, that—

- (1) The proposed purchase of electricity under such contract is cost effective; and
- (2) It would not be possible to purchase electricity from the source in an economical manner without the use of a contract for a period in excess of 5 years.

(c) Nothing in this section shall be construed to preclude the DoD from using other multiyear contracting authority of DoD to purchase renewable energy.

[75 FR 34943, June 21, 2010. Redesignated and amended at 76 FR 58154, Sept. 20, 2011]

Subpart 217.2—Options

217.202 Use of options.

(1) See PGI 217.202 for guidance on the use of options.

(2) See 234.005-1 for limitations on the use of contract options for the provision of advanced component development, prototype, or initial production of technology developed under the contract or the delivery of initial or additional items.

[75 FR 32638, June 8, 2010, as amended at 81 FR 17045, Mar. 25, 2016]

217.204 Contracts.

(e)(i) Notwithstanding FAR 17.204(e), the ordering period of a task order or delivery order contract (including a contract for information technology) awarded by DoD pursuant to 10 U.S.C. 2304a—

- (A) May be for any period up to 5 years;
- (B) May be subsequently extended for one or more successive periods in accordance with an option provided in the contract or a modification of the contract; and

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(C) Shall not exceed 10 years unless the head of the agency determines in writing that exceptional circumstances require a longer ordering period.

(ii) Paragraph (e)(i) of this section does not apply to the following:

(A) Contracts, including task or delivery order contracts, awarded under other statutory authority.

(B) Advisory and assistance service task order contracts (authorized by 10 U.S.C. 2304b that are limited by statute to 5 years, with the authority to extend an additional 6 months (see FAR 16.505(c)).

(C) Definite-quantity contracts.

(D) GSA schedule contracts.

(E) Multi-agency contracts awarded by agencies other than NASA, DoD, or the Coast Guard.

(iii) Obtain approval from the senior procurement executive before issuing an order against a task or delivery order contract subject to paragraph (e)(i) of this section, if performance under the order is expected to extend more than 1 year beyond the 10-year limit or extended limit described in paragraph (e)(i)(C) of this section (see FAR 37.106 for funding and term of service contracts).

[70 FR 73152, Dec. 9, 2005, as amended at 79 FR 58696, Sept. 30, 2014]

217.207 Exercise of options.

(c) In addition to the requirements at FAR 17.207(c), exercise an option only after determining that the contractor's record in the System for Award Management database is active and the contractor's Data Universal Numbering System (DUNS) number, Commercial and Government Entity (CAGE) code, name, and physical address are accurately reflected in the contract document. See PGI 217.207 for the requirement to perform cost or price analysis of spare parts prior to exercising any option for firm-fixed-price contracts containing spare parts.

[79 FR 67356, Nov. 13, 2014]

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

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likelihood that the options will be exercised (10 U.S.C. 2305(a)(5)). This limitation also applies to sealed bid solicitations for the contracts excluded by FAR 17.200.

[63 FR 11529, Mar. 9, 1998, as amended at 71 FR 27642, May 12, 2006]

217.208-70 Additional clauses.

(a) Use the basic or the alternate of the clause at 252.217-7000, Exercise of Option to Fulfill Foreign Military Sales Commitments, in solicitations and contracts when an option may be used for foreign military sales requirements. Do not use the basic or the alternate of this clause in contracts for establishment or replenishment of DoD inventories or stocks, or acquisitions made under DoD cooperative logistics support arrangements.

(1) Use the basic clause when the foreign military sales country is known at the time of solicitation or award.

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

(b) When a surge option is needed in support of industrial capability production planning, 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 to ensure adequate quantities are available to meet item requirements.

(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.

[63 FR 11529, Mar. 9, 1998, as amended at 71 FR 27642, May 12, 2006; 79 FR 65593, Nov. 5, 2014]

Subpart 217.5—Interagency Acquisitions

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

217.500 Scope of subpart.

(a) Unless more specific statutory authority exists, the procedures in FAR subpart 17.5 and this subpart apply to all purchases, except micro-purchases,

made for DoD by another agency. This includes orders under a task or delivery order contract entered into by the other agency. (Pub. L. 105-261, Section 814.)

(b) A contracting activity from one DoD Component may provide acquisition assistance to deployed DoD units or personnel from another DoD Component. See PGI 217.502-1 for guidance and procedures.

[64 FR 14400, Mar. 25, 1999, as amended at 76 FR 76319, Dec. 7, 2011; 80 FR 36718, June 26, 2015; 80 FR 74695, Nov. 30, 2015]

217.502 Procedures.

217.502-1 General.

(a) *Determination of best procurement approach*—(1) *Assisted acquisitions.* Follow the procedures at PGI 217.502-1(a)(1), when a contracting activity from one DoD Component provides acquisition assistance to deployed DoD units or personnel from another DoD Component.

(b) *Written agreement on responsibility for management and administration*—(1) *Assisted acquisitions.* Follow the procedures at PGI 217.502-1(b)(1), when a contracting activity from a DoD Component provides acquisition assistance to deployed DoD units or personnel from another DoD Component.

[80 FR 74695, Nov. 30, 2015]

217.503 Ordering procedures.

(a) When the requesting agency is within DoD, a copy of the executed determination and findings required by FAR 17.502-2 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 determination and findings shall be obtained from the requesting agency and placed in the contract file for the Economy Act order.

[76 FR 76319, Dec. 7, 2011]

Subpart 217.6—Management and Operating Contracts

217.600 Scope of subpart.

FAR subpart 17.6 does not apply to DoD.

Subpart 217.7—Interagency Acquisitions: Acquisitions by Nondefense Agencies on Behalf of the Department of Defense

[80 FR 51751, Aug. 26, 2015]

217.700 Scope of subpart.

This subpart—

(a) Implements section 854 of the National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108-375), section 801 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181), and section 806 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111-84); and

(b) Prescribes policy for the acquisition of supplies and services through the use of contracts or orders issued by non-DoD agencies.

217.701 Definitions.

As used in this subpart—

Assisted acquisition means the type of interagency contracting through which acquisition officials of a non-DoD agency award a contract or a task or delivery order for the acquisition of supplies or services on behalf of DoD.

Direct acquisition means the type of interagency contracting through which DoD orders a supply or service from a Governmentwide acquisition contract maintained by a non-DoD agency.

Governmentwide acquisition contract means a task or delivery order contract that—

- (1) Is entered into by a non-defense agency; and
- (2) May be used as the contract under which property or services are procured for one or more other departments or agencies of the Federal Government.

217.770 Procedures.

Departments and agencies shall establish and maintain procedures for reviewing and approving orders placed for supplies and services under non-DoD contracts, whether through direct acquisition or assisted acquisition, when the amount of the order exceeds the simplified acquisition threshold. These procedures shall include—

- (a) Evaluating whether using a non-DoD contract for the acquisition is in

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the best interest of DoD. Factors to be considered include—

- (1) Satisfying customer requirements;
- (2) Schedule;
- (3) Cost effectiveness (taking into account discounts and fees). In order to ensure awareness of the total cost of fees associated with use of a non-DoD contract, follow the procedures at PGI 217.770(a)(3); and
- (4) Contract administration (including oversight);
 - (b) Determining that the tasks to be accomplished or supplies to be provided are within the scope of the contract to be used;
 - (c) Reviewing funding to ensure that it is used in accordance with appropriation limitations; and
 - (d) Collecting and reporting data on the use of assisted acquisition for analysis. Follow the reporting requirements in subpart 204.6.

[80 FR 51751, Aug. 26, 2015, as amended at 80 FR 56930, Sept. 21, 2015]

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. 40 U.S.C. 503 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.

[63 FR 11529, Mar. 9, 1998, as amended at 77 FR 35880, June 15, 2012]

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).

(b) *Property* means items that fall within one of the generic categories listed in DoD 4140.1-R, DoD Materiel Management Regulation, Chapter 9.5,

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Exchange or Sale of Nonexcess Personal Property.

[56 FR 36345, July 31, 1991, as amended at 65 FR 39705, June 27, 2000; 77 FR 23631, Apr. 20, 2012]

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 9.5.

[56 FR 36345, July 31, 1991, as amended at 65 FR 39705, June 27, 2000; 77 FR 23631, Apr. 20, 2012]

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 9.5.

(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; 77 FR 23632, Apr. 20, 2012]

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

(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 contiguous United States. Allow at least 21 calendar days outside the contiguous United States.

[70 FR 35544, June 21, 2005]

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 ref-

erence 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 or its outlying areas, which—

(1) Request ship repair work; and

(2) 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 and its outlying areas.

(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.

[56 FR 36345, July 31, 1991, as amended at 70 FR 35544, June 21, 2005]

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217.7103 Master agreements and job orders.

217.7103-1 Content and format of master agreements.

Follow the procedures at PGI 217.7103-1 for preparation of master agreements.

[71 FR 27642, May 12, 2006]

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 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 or its outlying areas 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) Follow the procedures at PGI 217.7103-3 when preparing solicitations for job orders.

[56 FR 36345, July 31, 1991, as amended at 63 FR 55052, Oct. 14, 1998; 63 FR 56290, Oct. 21, 1998; 70 FR 35545, June 21, 2005; 71 FR 27642, May 12, 2006]

217.7103-4 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—

(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) Follow the procedures at PGI 217.7103-4 when processing this type of undefinitized contract action.

[56 FR 36345, July 31, 1991. Redesignated and amended at 71 FR 27643, May 12, 2006]

217.7103-5 Repair costs not readily ascertainable.

Follow the procedures at PGI 217.7103-5 if the nature of any repairs is such that their extent and probable cost cannot be ascertained readily.

[71 FR 27643, May 12, 2006]

217.7103-6 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.

[63 FR 11529, Mar. 9, 1998. Redesignated at 71 FR 27643, May 12, 2006]

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 Man-ner 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 [Reserved]

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

(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—Undefinited 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 includes task orders and delivery orders.

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(3) 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. For policy relating to definitization of change orders, see 243.204–70.

(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 data for the DoD to do complete and meaningful analyses and audits of the—

(1) Data in the proposal; and

(2) Any other data 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. For policy relating to definitization of change orders, see 243.204–70.

[56 FR 36345, July 31, 1991, as amended at 75 FR 10191, Mar. 5, 2010; 75 FR 48277, Aug. 10, 2010; 77 FR 76940, Dec. 31, 2012]

217.7402 Exceptions.

(a) The following undefinitized contract actions (UCAs) are not subject to this subpart. However, the contracting officer shall apply the policy and procedures to them to the maximum extent practicable (also see paragraph (b) of this section):

(1) UCAs for foreign military sales;

(2) Purchases at or below the simplified acquisition threshold;

(3) Special access programs;

(4) Congressionally mandated long-lead procurement contracts.

(b) If the contracting officer determines that it is impracticable to adhere to the policy and procedures of this subpart for a particular contract

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action that falls within one of the categories in paragraph (a)(1), (3), or (4) of this section, the contracting officer shall provide prior notice, through agency channels, electronically via email to the Deputy Director, Defense Procurement and Acquisition Policy (Contract Policy and International Contracting), at osd.pentagon.ousd-atl.mbx.cpic@mail.mil.

[75 FR 48277, Aug. 10, 2010, as amended at 80 FR 72607, Nov. 20, 2015]

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.

217.7404 Limitations.

See PGI 217.7404 for additional guidance on obtaining approval to authorize use of an undefinitized contract action, documentation requirements, and other limitations on their use.

[56 FR 36345, July 31, 1991, as amended at 77 FR 52253, Aug. 29, 2012]

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.

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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.

(a) 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).

(b) In determining the appropriate amount to obligate, the contracting officer shall assess the contractor's proposal for the undefinitized period and shall obligate funds only in an amount consistent with the contractor's re-

quirements for the undefinitized period.

[60 FR 29498, June 5, 1995, as amended at 74 FR 37650, July 29, 2009]

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; or
- (2) A humanitarian or peacekeeping operation.

[60 FR 29498, June 5, 1995, as amended at 63 FR 67804, Dec. 9, 1998; 71 FR 27643, May 12, 2006]

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 contracting activity 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;

(b) The contractor's reduced cost risk for costs incurred during performance of the remainder of the contract; and

(c) The requirements at 215.404-71-3(d)(2). The risk assessment shall be documented in the contract file.

[74 FR 37650, July 29, 2009]

217.7405 Plans and reports.

(a) To provide for enhanced management and oversight of UCAs, departments and agencies shall—

(1) Prepare and maintain a Consolidated UCA Management Plan; and

(2) Prepare semi-annual Consolidated UCA Management Reports addressing each UCA with an estimated value exceeding \$5 million.

(b) Consolidated UCA Management Reports and Consolidated UCA Management Plan updates shall be submitted to the Office of the Director, Defense Procurement and Acquisition Policy, by October 31 and April 30 of each year in accordance with the procedures at PGI 217.7405.

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(c) Consolidated UCA Management Reports shall include information about all change orders that are not forward priced (*i.e.*, unpriced) and have an estimated value exceeding \$5 million.

[74 FR 37650, July 29, 2009, as amended at 75 FR 48277, Aug. 10, 2010]

217.7406 Contract clauses.

(a) Use the clause at FAR 52.216-24, Limitation of Government Liability, in—

- (1) All UCAs;
- (2) Solicitations associated with UCAs;
- (3) Basic ordering agreements;
- (4) Indefinite-delivery contracts;
- (5) Any other type of contract providing for the use of UCAs; and
- (6) Unpriced change orders with an estimated value exceeding \$5 million.

(b)(1) Use the clause at 252.217-7027, Contract Definitization, in—

- (i) All UCAs;
- (ii) Solicitations associated with UCAs;
- (iii) Basic ordering agreements;
- (iv) Indefinite-delivery contracts;
- (v) Any other type of contract providing for the use of UCAs; and
- (vi) Unpriced change orders with an estimated value exceeding \$5 million.

(2) Insert the applicable information in paragraphs (a), (b), and (d) of the clause.

(3) If, at the time of entering into the UCA or unpriced change order, 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 certified cost or pricing data, the words “and certified cost or pricing data” may be deleted from paragraph (a) of the clause.

[75 FR 48277, Aug. 10, 2010, as amended at 77 FR 76940, Dec. 31, 2012]

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.

[56 FR 36345, July 31, 1991, as amended at 71 FR 27643, May 12, 2006]

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217.7501 Definition.

Replenishment parts, as used in this subpart, means repairable or consumable parts acquired after the initial provisioning process.

[71 FR 27643, May 12, 2006]

217.7502 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 PGI 217.7504.

(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. See 209.270 for requirements applicable to replenishment parts for aviation or ship critical safety items.

(c) Shall follow the limitations on price increases in 217.7505.

[56 FR 36345, July 31, 1991, as amended at 69 FR 55989, Sept. 17, 2004. Redesignated and amended at 71 FR 27643, May 12, 2006; 73 FR 1827, Jan. 10, 2008]

217.7503 Spares acquisition integrated with production.

Follow the procedures at PGI 217.7503 for acquiring spare parts concurrently with the end item.

[71 FR 27643, May 12, 2006]

217.7504 Acquisition of parts when data is not available.

Follow the procedures at PGI 217.7504 when acquiring parts for which the Government does not have the necessary data.

[71 FR 27643, May 12, 2006]

217.7505 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 replenishment part issued within the most recent 12 months.

[56 FR 36345, July 31, 1991, as amended at 64 FR 2598, Jan. 15, 1999. Redesignated at 71 FR 27643, May 12, 2006]

217.7506 Spare parts breakout program.

See PGI 217.7506 and DoD 4140.1-R, DoD Supply Chain Materiel Management Regulation, Chapter 8, Section

C8.3, for spare parts breakout requirements.

[71 FR 27643, May 12, 2006]

Subpart 217.76—Contracts with Provisioning Requirements

217.7601 Provisioning.

(a) Follow the procedures at PGI 217.7601 for contracts with provisioning requirements.

(b) For technical requirements of provisioning, see DoD 4140.1-R, DoD Supply Chain Materiel Management Regulation, Chapter 2, Section C2.2.

[71 FR 27643, May 12, 2006]

Subpart 217.77—Over and Above Work

217.7701 Procedures.

Follow the procedures at PGI 217.7701 when acquiring over and above work.

[71 FR 27643, May 12, 2006]

217.7702 Contract clause.

Use the clause at 252.217-7028, Over and Above Work, in solicitations and contracts containing requirements for over and above work, except as provided for in subpart 217.71.

Subpart 217.78 [Reserved]

PART 218—EMERGENCY ACQUISITIONS

Subpart 218.1—Available Acquisition Flexibilities

Sec.

218.170 Additional acquisition flexibilities.

Subpart 218.2—Emergency Acquisition Flexibilities

218.201 Contingency operation.

218.202 Defense or recovery from certain attacks.

218.203 Incidents of national significance, emergency declaration, or major disaster declaration.

218.270 Humanitarian or peacekeeping operation.

218.271 Head of contracting activity determinations.

218.272 Use of electronic business tools.

AUTHORITY: 41 U.S.C. 1303 and 48 CFR chapter 1.

SOURCE: 72 FR 2632, Jan. 22, 2007, unless otherwise noted.

Subpart 218.1—Available Acquisition Flexibilities

218.170 Additional acquisition flexibilities.

Additional acquisition flexibilities available to DoD are as follows:

(a) *Circumstances permitting other than full and open competition.* Use of the authority at FAR 6.302-2, Unusual and compelling urgency, may be appropriate under certain circumstances. See PGI 206.302-2.

(b) *Use of advance Military Interdepartmental Purchase Request (MIPR).* For urgent requirements, the advance MIPR may be transmitted electronically. See PGI 208.7004-3.

(c) *Use of the Governmentwide commercial purchase card.* Governmentwide commercial purchase cards do not have to be used for purchases valued at or below the micro-purchase threshold if the place of performance is entirely outside the United States. See 213.270(c)(1).

(d) *Master agreement for repair and alteration of vessels.* The contracting officer, without soliciting offers, may issue a written job order for emergency work to a contractor that has previously executed a master agreement, when delay would endanger a vessel, its cargo or stores, or when military necessity requires immediate work on a vessel. See 217.7103-4, 252.217-7010, and PGI 217.7103-4.

(e) *Spare parts breakout program.* An urgent immediate buy need not be delayed if an evaluation of the additional information cannot be completed in time to meet the required delivery date. See PGI 217.7506, paragraph 1-105(e).

(f) *Storage and disposal of toxic and hazardous materials.* Under certain emergency situations, exceptions apply with regard to the prohibition on storage or disposal of non-DoD-owned toxic or hazardous materials on DoD installations. See 223.7102(a)(3) and (7).

(g) *Authorization Acts, Appropriations Acts, and other statutory restrictions on foreign acquisition.* Acquisitions in the following categories are not subject to the restrictions of 225.7002, Restrictions

on food, clothing, fabrics, specialty metals, and hand or measuring tools: (1) Acquisitions at or below the simplified acquisition threshold; (2) Acquisitions outside the United States in support of combat operations; (3) Acquisitions of perishable foods by or for activities located outside the United States for personnel of those activities; (4) Acquisitions of food, specialty metals, or hand or measuring tools in support of contingency operations, or for which the use of other than competitive procedures has been approved on the basis of unusual and compelling urgency in accordance with FAR 6.302-2; (5) Emergency acquisitions by activities located outside the United States for personnel of those activities; and (6) Acquisitions by vessels in foreign waters. See 225.7002-2.

(h) *Rights in technical data.* The agency head may notify a person asserting a restriction that urgent or compelling circumstances (e.g., emergency repair or overhaul) do not permit the Government to continue to respect the asserted restriction. See 227.7102-2; 227.7103-5; 227.7103-13; 227.7104; 227.7203-13; 252.227-7013; 252.227-7014; 252.227-7015; 252.227-7018; and 252.227-7037.

(i) *Tax exemption in Spain.* If copies of a contract are not available and duty-free import of equipment or materials is urgent, the contracting officer may send the Joint United States Military Group copies of the Letter of Intent or a similar document indicating the pending award. See PGI 229.7001.

(j) *Electronic submission and processing of payment requests.* Exceptions to the use of Wide Area WorkFlow are at 232.7002(a).

(k) *Mortuary services.* In an epidemic or other emergency, the contracting activity may obtain services beyond the capacity of the contractor's facilities from other sources. See 237.7003(b) and 252.237-7003.

[72 FR 2632, Jan. 22, 2007, as amended at 77 FR 38733, June 29, 2012]

Subpart 218.2—Emergency Acquisition Flexibilities

218.201 Contingency operation.

(1) *Selection, appointment, and termination of appointment.* Contracting officer qualification requirements pertaining to a baccalaureate degree and 24 semester credit hours of business related courses do not apply to DoD employees or members of the armed forces who are in a contingency contracting force. See 201.603-2(2).

(2) *Policy for item unique identification.* Contractors will not be required to provide DoD item unique identification if the items, as determined by the head of the agency, are to be used to support a contingency operation. See 211.274-2(b).

(3) *Use of the Governmentwide commercial purchase card.* Governmentwide commercial purchase cards do not have to be used for purchases valued at or below the micro-purchase threshold if the purchase or payment is for an overseas transaction by a contracting officer in support of a contingency operation, or for training exercises in preparation for overseas contingency, humanitarian, or peacekeeping operations. See 213.201(g) and 213.270(c)(3) and (5).

(4) *Governmentwide commercial purchase card.* A contracting office supporting a contingency operation or a humanitarian or peacekeeping operation may use the Governmentwide commercial purchase card to make a purchase that exceeds the micro-purchase threshold but does not exceed the simplified acquisition threshold if certain conditions are met. See 213.301(3).

(5) *Imprest funds and third party drafts.* Imprest funds are authorized for use without further approval for overseas transactions at or below the micro-purchase threshold in support of a contingency operation or a humanitarian or peacekeeping operation. See 213.305-3(d)(iii)(A).

(6) *Standard Form (SF) 44, Purchase Order-Invoice-Voucher.* SF 44s may be used for purchases not exceeding the simplified acquisition threshold for overseas transactions by contracting officers in support of a contingency operation or a humanitarian or peacekeeping operation. See 213.306(a)(1)(B).

(7) *Undefinitized contract actions.* The head of the agency may waive certain limitations for undefinitized contract actions if the head of the agency determines that the waiver is necessary to support a contingency operation or a humanitarian or peacekeeping operation. See 217.7404-5(b).

(8) *Prohibited sources.* DoD personnel are authorized to make emergency acquisitions in direct support of U.S. or allied forces deployed in military contingency, humanitarian, or peacekeeping operations in a country or region subject to economic sanctions administered by the Department of the Treasury, Office of Foreign Assets Control. See 225.701-70.

(9) *Authorization Acts, Appropriations Acts, and other statutory restrictions on foreign acquisition.* Acquisitions in the following categories are not subject to the restrictions of 225.7002, Restrictions on food, clothing, fabrics, specialty metals, and hand or measuring tools: (1) Acquisitions at or below the simplified acquisition threshold; (2) Acquisitions outside the United States in support of combat operations; (3) Acquisitions of perishable foods by or for activities located outside the United States for personnel of those activities; (4) Acquisitions of food, specialty metals, or hand or measuring tools in support of contingency operations, or for which the use of other than competitive procedures has been approved on the basis of unusual and compelling urgency in accordance with FAR 6.302-2; (5) Emergency acquisitions by activities located outside the United States for personnel of those activities; and (6) Acquisitions by vessels in foreign waters. See 225.7002-2.

(10) *Electronic submission and processing of payment requests.* Contractors do not have to submit payment requests in electronic form for contracts awarded by deployed contracting officers in the course of military operations, including contingency operations or humanitarian or peacekeeping operations. See 232.7002(a)(4).

[72 FR 2632, Jan. 22, 2007, as amended at 78 FR 76072, Dec. 16, 2013; 81 FR 53045, Aug. 11, 2016]

218.202

218.202 Defense or recovery from certain attacks.

Policy for unique item identification. Contractors will not be required to provide DoD unique item identification if the items, as determined by the head of the agency, are to be used to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack. See 211.274–2(b).

218.203 Incidents of national significance, emergency declaration, or major disaster declaration.

(1) *Establishing or maintaining alternative sources.* PGI contains a sample format for Determination and Findings citing the authority of FAR 6.202(a), regarding exclusion of a particular source in order to establish or maintain an alternative source or sources. Alternate 2 of the sample format addresses having a supplier available for furnishing supplies or services in case of a national emergency. See PGI 206.202.

(2) *Electronic submission and processing of payment requests.* Contractors do not have to submit payment requests in electronic form for contracts awarded by contracting officers in the conduct of emergency operations, such as responses to natural disasters or national or civil emergencies. See 232.7002(a)(4).

218.270 Humanitarian or peacekeeping operation.

The term “humanitarian or peacekeeping operation” is defined at FAR 2.101. In accordance with 10 U.S.C. 2302(7), when a humanitarian or peace-

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keeping operation is declared, the simplified acquisition threshold is raised to \$300,000 for DoD purchases that are awarded and performed, or purchases that are made, outside the United States in support of that operation. See 202.101.

[76 FR 44281, July 25, 2011]

218.271 Head of contracting activity determinations.

For contract actions supporting contingency operations or facilitating defense against or recovery from nuclear, biological, chemical, or radiological attack, the term “head of the agency” is replaced with “head of the contracting activity,” as defined in FAR 2.101, in the following locations:

(a) FAR 2.101:

(1) Definition of “Micro-purchase threshold,” paragraph (3).

(2) Definition of “Simplified acquisition threshold.”

(b) FAR 12.102(f).

(c) FAR 13.201(g).

(d) FAR 13.500(e).

(e) FAR 18.2.

[74 FR 2407, Jan. 15, 2009. Redesignated at 76 FR 44281, July 25, 2011]

218.272 Use of electronic business tools.

When supporting a contingency operation or humanitarian or peacekeeping operation, follow the procedures at PGI 218.272 concerning the use of electronic business tools.

[80 FR 10390, Feb. 26, 2015]

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 219—SMALL BUSINESS PROGRAMS

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AUTHORITY: 41 U.S.C. 1303 and 48 CFR chapter 1.

SOURCE: 56 FR 36353, July 31, 1991, unless otherwise noted.

Subpart 219.2—Policies

219.201 General policy.

(c) For the defense agencies, the director of the Office of Small Business Programs must be appointed by, be responsible to, and report directly to the director or deputy director of the defense agency.