

Item IV—Whistleblower Protections for Contractor Employees (Ethics) (FAR Case 94-803)

The final rule published as Item III of FAC 90-30 added FAR Subpart 3.9, Whistleblower Protections for Contractor Employees, to implement Sections 6005 and 6006 of the Federal Acquisition Streamlining Act of 1994.

The rule contained an effective date of September 19, 1995, but did not discuss the subject of applicability. The rule applies to all contracts in existence as of September 19, 1995, for reprisals to Government contractor employees occurring on or after that date.

Some existing Department of Defense contracts contain a clause addressing whistleblower protections based on a prior statute, 10 U.S.C. 2409a. The remedies provided by FAR Subpart 3.9 do not apply to contracts otherwise covered by the provisions of 10 U.S.C. 2409a.

Item V—Small Business (FAR Case 94-780)

This final rule implements Sections 7101(a) 7106, and 10004 of the Federal Acquisition Streamlining Act (FASA) of 1994. Section 7101(a) of FASA deletes Sections 15(e) and (f) of the Small Business Act (15 U.S.C. 631, et seq.). Those sections established the priority for award of set-asides and provided the statutory basis for a procurement preference for concerns located in Labor Surplus Areas (LSA). Based on this deletion, this rule removes the LSA set-aside program and LSA subcontracting program from the FAR.

Section 7106 of FASA revises Sections 8 and 15 of the Small Business Act to accommodate a Governmentwide goal of 5 percent for women-owned small businesses. This rule deletes existing, separate coverage relating to women-owned businesses and revises existing coverage to place women-owned small businesses on an equal footing with small disadvantaged businesses. In connection with this revision, the Standard Forms 294 and 295 are revised and streamlined.

Section 10004 of FASA, which requires the collection of specified data through the Federal Procurement Data System, is being implemented by FAR case 94-701. This rule augments that coverage by providing a solicitation provision to collect the information on women-owned businesses as required by that FAR case.

Item VI—Publicizing Contract Actions (FAR Case 95-606)

This final rule amends FAR sections 5.207(b)(4) and (b)(6). The amendment

deletes the requirement for the Federal Information Processing Standard (FIPS) Number in Commerce Business Daily synopses and, in lieu thereof, requests Government Printing Office (GPO) Billing Account Code Information.

Item VII—Subcontractor Payments (FAR Case 94-762)

This final rule implements Sections 2091 and 8105 of the Federal Acquisition Streamlining Act of 1994. The rule amends FAR Parts 28, 32, and 52 to reflect: statutory requirements related to providing information to subcontractors and prospective subcontractors concerning bonds under the Miller Act; that while the Government does not have privity with subcontractors, and does not serve as a collection agent for them, the Government properly has an interest in the financial capability, managerial competence, and business ethics of companies doing business with the Government; that the contracting officer should be informed about both sides of the argument in a dispute between the prime contractor and its subcontractor in order to exercise good business judgment; and finally, when an assertion raises a creditable question concerning the accuracy of a contractor certification, the contracting officer must decide whether the certification is inaccurate in any material respect, and, if so, bring the matter to the attention of the appropriate authorities, in accordance with agency regulations.

Item VIII—Reimbursement of Protest Costs (FAR Case 94-731)

This final rule implements Sections 1016, 1403, and 1435 of the Federal Acquisition Streamlining Act of 1994. The primary effect of this rule is to allow the Government to seek reimbursement for protest costs it has paid a protester, such as the protester's attorney fees, where that protest has been sustained based upon the awardee's misrepresentation. In addition to any other remedies available, the Government may collect this debt by offsetting the amount against any payment due the awardee under any Government contract the awardee might have.

Dated: September 7, 1995.

Edward C. Loeb,  
*Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.*

Federal Acquisition Circular

[Number 90-32]

Federal Acquisition Circular (FAC) 90-32 is issued under the authority of

the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified below, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90-32 is effective October 1, 1995. FAC Items I, and V through VIII, are applicable for solicitations issued on or after October 1, 1995.

Item II—Where this rule repeats a GSBCA rule that went into effect earlier, the date of the GSBCA rule and its applicability provision prevail; otherwise, this rule is applicable to protests or claims filed on or after October 1, 1995.

Item III—For solicitations issued on or after October 1, 1995: Use of the new policies, provisions and clauses is optional for solicitations issued before December 1, 1995, and mandatory for solicitations issued on or after December 1, 1995.

Item IV—Effective September 19, 1995.

Dated: September 7, 1995.  
Roland A. Hassebrock,  
*Col, USAF Director, Defense Procurement (Acting).*

Dated: September 6, 1995.  
Ida M. Ustad,  
*Associate Administrator for Acquisition Policy, General Services Administration.*

Dated: September 7, 1995.  
Tom Luedtke,  
*Deputy Associate Administrator for Procurement, National Aeronautics and Space Administration.*  
[FR Doc. 95-22775 Filed 9-15-95; 8:45 am]

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**48 CFR Parts 1, 4, 14, 15, 16, 31, 33, 36, 45, 46, 49, 52, and 53**

**[FAC 90-32; FAR Cases 94-720 and 94-721; Item I]**

**RIN 9000-AG19; 9000-AG30**

**Federal Acquisition Regulation; Truth in Negotiations Act and Related Changes**

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rules.

**SUMMARY:** These final rules are issued pursuant to the Federal Acquisition Streamlining Act of 1994 to implement those portions of Pub. L. 103-355 that make specific changes to the Truth in Negotiations Act (TINA) or that impact other areas of the FAR that affect contract pricing. These regulatory actions were subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**EFFECTIVE DATE:** October 1, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mr. Al Winston, Truth in Negotiations Act (TINA) Team Leader, at (703) 602-2119 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GSA Building, Washington, DC 20405, (202) 501-4755. Please cite FAR case 94-721.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

The Federal Acquisition Streamlining Act of 1994 (Pub. L. 103-355) (the Act) provides authorities that streamline the acquisition process and minimize burdensome government-unique requirements.

FAR case 94-721 implements Sections 1201 through 1210 and Sections 1251 and 1252 of the Act. Highlights include making TINA requirements for civilian agencies substantially the same as those for the Department of Defense (increasing the threshold for submission of "cost or pricing data" to \$500,000 and adding penalties for defective pricing). Provisions are also included that increase the threshold for cost or pricing data submission every 5 years beginning October 1, 1995. A new exception is added to the requirement for the submission of "cost or pricing data" for commercial items; the approval level for waivers is changed, and prohibitions are placed on acquiring "cost or pricing data" when an exception applies. The coverage includes a clear explanation of adequate price competition as required by the Act.

Also, FAR coverage has been included that addresses (1) "information other than cost or pricing data", (2) exceptions based on established catalog or market price, (3) inter-divisional transfers of commercial items at price, and (4) price competition when only one offer has been received.

The FAR language primarily modifies Part 15, together with associated Part 52 clauses and Part 53 forms. However, changes are also made to clauses where threshold changes are made in Part 14 pertaining to sealed bid contracting, and in Part 31 where the cost principle on

material costs has been amended to address inter-divisional transfers of commercial items at price. Additional miscellaneous changes in Parts 1, 4, 16, 33, 36, 45, 46, and 49 have also been included.

The interim rule published at 59 FR 62498, December 5, 1994 (FAR case 94-720, FAC 90-22) is adopted as final, as amended by this FAR case 94-721. FAR case 94-720 provided for an immediate increase to the threshold for "cost or pricing data" submission by contractors to civilian agencies to \$500,000. FAC 90-22 (FAR case 94-720) also removed the certification requirement of commercial pricing for parts or components for contractors doing business with civilian agencies.

*Policy for Determining Reasonableness of Price*

Two major changes are found in the new coverage. The first change shifts the policy of FAR Part 15 with respect to determining price reasonableness. A hierarchical policy preference for the types of information to be used in assessing reasonableness of price is established. The policy states that no additional information should be obtained from the contractor if there is adequate price competition. This is followed by allowing progressively more intrusive types of data requirements. Obtaining "cost or pricing data" is designated as the last choice. Use of "cost or pricing data" is coupled with a reminder that unnecessarily requiring that type of data is not desirable and can lead to additional costs to both the Government and the contractor.

New FAR coverage, based on the Act, is presented that expands the exception based on adequate price competition and provides for a special exception for commercial items. A new section addressing "information other than cost or pricing data" is created and a Standard Form 1448 is provided for use by contractors.

The new policy at FAR 15.804-1(b)(1)(ii) recognizes circumstances when it can be determined that adequate price competition exists even though only one offeror has responded to the Government's requirement.

*Defining "Cost or Pricing Data"*

The second major change accomplished by the coverage is the clarification of the meaning of the term "cost or pricing data." Currently, the FAR uses the term inconsistently. In some places, "certified cost or pricing data" is used and in other locations, it states "cost or pricing data." In the new coverage, the term has been clarified in

the definition to mean that, among other things, "cost or pricing data" is required to be certified in accordance with TINA and FAR 15.804-4, and means all facts that as of the date of agreement on price (or other mutually agreeable date) prudent buyers and sellers would reasonably expect to affect the price negotiations significantly.

*Information Other Than Cost or Pricing Data*

Since a bright-line test for "cost or pricing data" has now been established, it is also possible to craft a second category of data—"information other than cost or pricing data"—that may be required by the contracting officer in order to establish cost realism or price reasonableness. This information can include limited cost information, sales data or pricing information. The intent is also clear with respect to this category of information. Because it is not "cost or pricing data," certification shall not be required and approval to obtain this information is vested in the contracting officer. The new FAR coverage gives a detailed discussion of "information other than cost or pricing data" at 15.804-5.

**B. Regulatory Flexibility Act**

The proposed rule was not expected to have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Accordingly, an initial regulatory flexibility analysis was not prepared. Although there were no public comments on this rule that indicated that this line of reasoning was incorrect nor that treatment of small entities in the proposed rule was inappropriate, the final rule may have a significant economic impact on a substantial number of small entities because the final rule will substantially affect the price negotiations of non-competitive commercial item contracts. Small businesses may receive a substantial portion of these awards. The rule is expected to decrease the administrative expense of negotiating these awards by reducing the amount of cost or pricing data that must be submitted, reducing the amount of information necessary to qualify for an exception from cost or pricing data requirements, and streamlining the requirements for information supporting price proposals. Accordingly, a Final Regulatory Flexibility Analysis (FRFA) has been prepared and provided to the Chief Counsel for Advocacy for the Small Business Administration. A copy of the FRFA may be obtained from the FAR Secretariat.

### C. Paperwork Reduction Act

The Paperwork Reduction Act, Pub. L. 96-511, is deemed to apply because this final rule contains information collection requirements. Approval was obtained from the Office of Management and Budget (OMB) on March 24, 1995, under OMB Control No. 9000-0013. A request for a three-year extension was submitted to OMB on July 11, 1995. Public comments concerning this request were invited through a Federal Register notice at 60 FR 36406, July 17, 1995.

### D. Public Comments

On January 6, 1995, a proposed rule was published in the Federal Register (60 FR 2282). The proposed rule afforded the public a 60-day comment period. During that time, 40 organizations submitted more than 213 comments. A public meeting was also held on this rule on February 13, 1995. Based upon comments received, the TINA drafting team refined the coverage.

On June 19, 1995, at 60 FR 31935, a notification of additional changes was published that revised the original January 6, 1995 proposed rule. Interested parties were advised that the original rule had been modified as a result of earlier comments and that a copy of the revised proposed rule could be obtained from the FAR Secretariat. Those who had commented on the original rule were provided with the updated document. A 30-day written comment period was provided for, and another public hearing was conducted on July 7, 1995. As a result of the second public comment period, the Team received 148 pages of written comments from 18 commenters and one telephonic comment. Based upon comments received, the TINA drafting team further refined the coverage.

The following are highlights of changes that were made to the proposed rule as a result of both rounds of public comments and both public meetings:

- The Rule was edited to improve readability.
  - The hierarchical policy at FAR 15.802 was clarified to ensure that it is consistent with TINA and FASA.
  - Regulatory guidance implementing the catalog or market price exception to TINA was replaced with more flexible procedures (See 52.215-41 & -42).
- The Standard Form (SF) 1412, “Request for Exemption from Submission of Cost or Pricing Data,” was eliminated.
- Relational tests were eliminated.
- Disclosure of lowest prices is no longer mandated.

- TINA based postaward audit access is no longer required.
- Expanded guidance was provided on what constitutes substantial sales.
- Requirement for offerors to account for “government end use” when addressing sales to the general public was eliminated.
- Reference to GSA certifications was removed.

- Flexibility in requesting an exception to TINA was improved via generic provisions at FAR 52.215-41 & 52.215-42 that provide broad guidelines on the type of data that would be needed to qualify for a TINA exception.

- The barriers in the proposed rule that prevented easier access to the new commercial item exception have been substantially decreased, to the maximum extent permitted by FASA.
- A Commercial Item definition cross-reference was given.
- A definition of cost realism was added.
- Additional data requirements were removed for qualification under the commercial item exception created by FASA (rebates, credits, warranties, sales to resellers).
- Expanded guidance was provided on effective dates for certification of cost or pricing data.
- The new SF 1448 has been substantially revised to remove reference to cost related information that may not be appropriate for all users of the form.

### Disposition of Public Comments

#### *Commercial Exception*

Several commenters expressed concern that the proposed coverage continued to subordinate the new commercial item exception to TINA to the traditional TINA exceptions of adequate price competition, catalog or market price, or price set by law or regulation.

The Team has carefully considered this issue. The Team concludes that making the new commercial item exception (Section 1204(d)(2), 1251(d)(2)) co-equal with the original TINA exceptions is consistent with the philosophy of FASA which is intended to make it easier for commercial companies to do business with the Government. However, the Team also concludes that the language at (d)(2), “and the procurement is not covered by an exception in subsection (b),” is clear on its face and prevents an absolute co-equal relationship. Nevertheless, upon further consideration of the issue, the Team has decided that there is sufficient statutory flexibility to provide for a more liberal regulatory implementation

of the commercial item exception. Therefore, the Team has modified its proposed FAR language to make regulatory use of the commercial item exception more readily available while still providing for a consistent interpretation of statutory requirements. This is accomplished by replacing the words, “if an exception does not apply” with the words “if the contracting officer does not have sufficient information to support an exception” at 15.804-1(a)(2) and 15.804-1(b)(4).

The Team has also reduced the contractor’s risk of doing business with the Government by including a statement in the solicitation provision at 52.215-41 that indicates that providing information on one TINA exception is not a representation that only one TINA exception may apply.

#### *Most Favored Customer*

Other commenters were pleased to see that the SF 1412, “Request for Exemption from Submission of Cost or Pricing Data,” had been eliminated from the coverage. However, the treatment of “most favored customer” pricing remains a major concern. The commenters continue to press for a FAR prohibition on asking for this type of information.

The Team believes that establishing a FAR prohibition on any specific contracting practice is contrary to the philosophy of FASA to empower the contracting officer and to provide for regulatory flexibility. Furthermore, it is bad policy guidance to construct an absolute prohibition because it is not possible to foresee all circumstances and an absolute prohibition could preclude a reasonable course of action under circumstances that could not be foreseen.

With respect to the specific issue, just as the Team believes having requirements that always mandate obtaining “most favored customer” pricing is flawed, so would a policy that prohibits obtaining this kind of information also be flawed. The Team is convinced that both policy and procedural rules need to be constructed in a flexible manner so they may be adapted to specific sets of circumstances. As a result of earlier comments, the Team removed the Standard Form 1412 and its associated requirement to disclose this type of information as a condition of applying for a catalog or market price exception to TINA.

The Team has also included policy guidance at 15.802 that indicates a strong preference for pricing contracts with the minimum amount of data needed to accomplish the task.

Specifically, when adequate price competition is present, the contracting officer is strongly admonished not to obtain any additional information from the offeror. As the situation moves away from that of adequate price competition, the negotiation position between the parties moves more in favor of the contractor and the contracting officer is allowed to use more pricing tools. Nevertheless, the policy is to price the contract in the least intrusive manner.

*SF 1448, "Proposal Cover Sheet/Cost or Pricing Data Not Required"*

Concern was also expressed that with the elimination of the SF 1412, contracting officers might request submission of catalog or market price exception data on the new SF 1448. The commenters believed that the SF 1448 was not properly designed for that purpose.

Although the SF 1448 is not intended as a substitute for the SF 1412, the Team modified the SF 1448 to eliminate reference to cost related information. This preserves the bright line between "cost or pricing data" that can only be submitted on an SF 1411 and all other "information other than cost or pricing data" that may be submitted using the SF 1448.

*Cost Accounting Standards*

Several commenters stated that the Cost Accounting Standards (CAS) needed to be revised to narrow the definition of what constitutes "cost or pricing data" for purposes of CAS covered contracts. The commenters believe that until CAS is modified the coverage in the TINA rule would not completely address the issue of commercial contractors being required to expose cost data to the Government and to be accountable for such data.

The Team believes the commenters have identified a valid concern. However, the matter rests with the CAS Board as the problem is that the CAS definition of "cost data" is more broadly based than the "cost or pricing data" definition in the FAR coverage.

*Market Price Exception*

Commenters also stated that for the market price exception to be useful to industry it should not be tied to independent verification.

The Team does not agree with the commenters. It believes that it makes sense to maintain this requirement as FASA requires clear FAR standards as to what is required to qualify for a TINA exception. The Team believes independent verification is an essential element of a market price. Furthermore, with the creation of the new FASA

commercial item exception to TINA, it is useful to differentiate a price reasonableness determination based on market price from information provided directly by an offeror under the authority of the new FASA commercial item exception.

List of Subjects in 48 CFR Parts 1, 4, 14, 15, 16, 31, 33, 36, 45, 46, 49, 52, and 53

Government procurement.

Dated: September 7, 1995.

Edward C. Loeb,  
Deputy Project Manager for the  
Implementation of the Federal Acquisition  
Streamlining Act of 1994.

The interim rule published at 59 FR 62498, December 5, 1994, FAC 90-22, FAR case 94-720, is adopted as final, as amended by this FAR case 94-721. Therefore, 48 CFR Parts 1, 4, 14, 15, 16, 31, 33, 36, 45, 46, 49, 52, and 53 are amended as set forth below:

1. The authority citation for 48 CFR Parts 1, 4, 14, 15, 16, 31, 33, 36, 45, 46, 49, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

**PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM**

2. The table in section 1.106 is amended under the "FAR Segment" and "OMB Control Number" columns by removing "52.215-32" and "9000-0105", and "SF 1412" and "9000-0013"; and adding entries, in numerical order, to read as follows:

**1.106 OMB approval under the Paperwork Reduction Act.**

	FAR segment	OMB control No.
	*	*
52.215-41	.....	9000-0013
52.215-42	.....	9000-0013
	*	*
SF 1448	.....	9000-0013
SF 1449	.....	9000-0136

**PART 4—ADMINISTRATIVE MATTERS**

3. Section 4.702 is amended by adding paragraph (a)(3) to read as follows:

**4.702 Applicability.**

(a)(3) Audit—Commercial Items (52.215-43).

4. Section 4.803 is amended by revising paragraphs (a)(17) and (b)(4) to read as follows:

**4.803 Contents of contract files.**

(a) \* \* \*  
(17) Cost or pricing data and Certificates of Current Cost or Pricing Data or a required justification for waiver, or information other than cost or pricing data.

(b) \* \* \*  
(4) Cost or pricing data, Certificates of Current Cost or Pricing Data, or information other than cost or pricing data; cost or price analysis; and other documentation supporting contractual actions executed by the contract administration office.

**PART 14—SEALED BIDDING**

**14.201-7 [Amended]**

5. Section 14.201-7 is amended by removing paragraph (d) and redesignating paragraph "(e)" as paragraph "(d)."

**PART 15—CONTRACTING BY NEGOTIATION**

6. Section 15.106-2 is added to read as follows:

**15.106-2 Audit—Commercial items.**

(a) This subsection implements 10 U.S.C. 2306a(d)(2) and (3) and 41 U.S.C. 254b(d)(2) and (3).

(b) The contracting officer shall, when contracting by negotiation, insert clause 52.215-43, Audit—Commercial Items, in solicitations and contracts when submission of cost or pricing data is expected to be excepted under 15.804-1(a)(2) (i.e., a commercial item where price is otherwise fair and reasonable). The clause shall also be included in solicitations and contracts when cost or pricing data are required, for incorporation into subcontracts that may be excepted under 15.804-1(a)(2).

**15.406-5 [Amended]**

7. Section 15.406-5(b) is amended by inserting at the end of the paragraph the parenthetical "(see 15.804-6 and 15.804-8)."

8. Section 15.703(a)(2) is revised to read as follows:

**15.703 Acquisitions requiring make-or-buy programs.**

(a) \* \* \*  
(2) Qualifies for an exception from the requirement to submit cost or pricing data under 15.804-1; or

9. Section 15.801 is amended by revising the definitions of "Cost analysis" and "Cost or pricing data", and adding in alphabetical order "Information other than cost or pricing data", "Subcontract", "Commercial item", and "Cost realism" to read as follows:

**15.801 Definitions.**

*Commercial item* is defined in 2.101.

*Cost analysis* means the review and evaluation of the separate cost elements and proposed profit of (a) an offeror's or contractor's cost or pricing data or information other than cost or pricing data and (b) the judgmental factors applied in projecting from the data to the estimated costs in order to form an opinion on the degree to which the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency.

*Cost or pricing data* means all facts that, as of the date of price agreement or, if applicable, another date agreed upon between the parties that is as close as practicable to the date of agreement on price, prudent buyers and sellers would reasonably expect to affect price negotiations significantly. Cost or pricing data are data requiring certification in accordance with 15.804-4. Cost or pricing data are factual, not judgmental, and are therefore verifiable. While they do not indicate the accuracy of the prospective contractor's judgment about estimated future costs or projections, they do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred. They also include such factors as—

- (a) Vendor quotations;
- (b) Nonrecurring costs;
- (c) Information on changes in production methods and in production or purchasing volume;
- (d) Data supporting projections of business prospects and objectives and related operations costs;
- (e) Unit-cost trends such as those associated with labor efficiency;
- (f) Make-or-buy decisions;
- (g) Estimated resources to attain business goals; and
- (h) Information on management decisions that could have a significant bearing on costs.

*Cost realism* means the costs in an offeror's proposal are (a) realistic for the work to be performed; (b) reflect a clear understanding of the requirements; and (c) are consistent with the various

elements of the offeror's technical proposal.

\* \* \* \* \*

*Information other than cost or pricing data* means any type of information that is not required to be certified, in accordance with 15.804-4, that is necessary to determine price reasonableness or cost realism. For example, such information may include pricing, sales, or cost information, and includes cost or pricing data for which certification is determined inapplicable after submission.

\* \* \* \* \*

*Subcontract*, as used in this subpart, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or a subcontractor.

\* \* \* \* \*

10. Section 15.802 is revised to read as follows:

**15.802 Policy.**

Contracting officers shall—

(a) Purchase supplies and services from responsible sources at fair and reasonable prices. In establishing the reasonableness of the offered prices, the contracting officer shall not obtain more information than is necessary. To the extent that the Truth in Negotiations Act, as implemented in 15.804-2 and 15.804-5(b) permits, the contracting officer shall generally use the following order of preference in determining the type of information required:

(1) No further information from the offeror if the price is based on adequate price competition, except as provided by 15.804-5(a)(3).

(2) Information other than cost or pricing data:

(i) Information related to prices (e.g., established catalog or market prices), relying first on information available within the Government; second, on information obtained from sources other than the offeror; and, if necessary, on information obtained from the offeror.

(ii) Cost information, which does not meet the definition of cost or pricing data at 15.801.

(3) *Cost or pricing data*. The contracting officer should use every means available to ascertain a fair and reasonable price prior to requesting cost or pricing data. Contracting officers shall not unnecessarily require the submission of cost or pricing data, because it leads to increased proposal preparation costs, generally extends acquisition lead-time, and wastes both contractor and Government resources.

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

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

(2) Consider losses or profits realized or anticipated under other contracts.

(c) Not include in a contract price any amount for a specified contingency to the extent that the contract provides for a price adjustment based upon the occurrence of that contingency.

11. Section 15.803 is amended in paragraph (a) by revising the last sentence to read as follows:

**15.803 General.**

(a) \* \* \* This prohibition does not preclude disclosing discrepancies or mistakes of fact (such as duplications, omissions, and errors in computation) contained in the cost or pricing data or information other than cost or pricing data supporting the proposal.

**15.804 Cost or pricing data and information other than cost or pricing data.**

12. Section 15.804, heading, is revised to read as set forth above.

13. Section 15.804-1 is revised to read as follows:

**15.804-1 Prohibition on obtaining cost or pricing data.**

(a) *Exceptions to cost or pricing data requirements*. The contracting officer shall not, pursuant to 10 U.S.C. 2306a and 41 U.S.C. 254b, require submission of cost or pricing data (but may require information other than cost or pricing data to support a determination of price reasonableness or cost realism)—

(1) If the contracting officer determines that prices agreed upon are based on—

(i) Adequate price competition (see exception standards at paragraph (b)(1) of this subsection);

(ii) Established catalog or market prices of commercial items sold in substantial quantities to the general public (see exception standards at paragraph (b)(2) of this section); or

(iii) Prices set by law or regulation (see exception standards at paragraph (b)(3) of this subsection).

(2) For acquisition of a commercial item, if the contracting officer does not have sufficient information to support an exception under paragraph (a)(1) of this section, but the contracting officer can determine the price is fair and reasonable (see exception standards at paragraph (b)(4) of this section and pricing requirements at 15.804-5(b));

(3) For exceptional cases where a waiver has been granted (see exception standards at paragraph (b)(5) of this section); or

(4) For modifications to contracts or subcontracts for commercial items, if

the basic contract or subcontract was awarded without the submission of cost or pricing data because the action was granted an exception from cost or pricing data requirements under paragraph (a)(1) of this section and the modification does not change the contract or subcontract to a contract or subcontract for the acquisition of other than a commercial item (see exception standards at paragraph (b)(6) of this subsection).

(b) *Standards for exceptions from cost or pricing data requirements*—(1) *Adequate price competition.* A price is based on adequate price competition if—

(i) Two or more responsible offerors, competing independently, submit priced offers responsive to the Government's expressed requirement and if—

(A) Award will be made to a responsible offeror whose proposal offers either—

(1) The greatest value (see 15.605(c)) to the Government and price is a substantial factor in source selection; or

(2) The lowest evaluated price; and

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

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

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

(1) The offeror believed that at least one other offeror was capable of submitting a meaningful, responsive offer; and

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

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

(iii) Price analysis clearly demonstrates that the proposed price is reasonable in comparison with current or recent prices for the same or similar items purchased in comparable quantities, under comparable terms and conditions under contracts that resulted from adequate price competition.

(2) *Established catalog or market prices*—(i) *Established catalog price.* Established catalog prices are prices (including discount prices) recorded in a catalog, price list, schedule, or other verifiable and established record that (A) are regularly maintained by the manufacturer or vendor; and (B) are published or otherwise available for customer inspection.

(ii) *Established market price.* An established market price is a price that is established in the course of ordinary and usual trade between buyers and sellers free to bargain and that can be substantiated by data from sources independent of the offeror.

(iii) *Based on.* A price may also be based on an established catalog or market price if the item or class of items being purchased is not itself a catalog or market priced commercial item but is sufficiently similar to the catalog or market priced commercial item to ensure that any difference in prices can be identified and justified without resorting to cost analysis.

(iv) *Sold in substantial quantities.* An item is sold in substantial quantities if there are sales of more than a nominal quantity based on the norm of the industry segment. In determining what constitutes a substantial quantity, the contracting officer should consider such things as the size of the market; and how recently the item was introduced into the market. Models, samples, prototypes, and experimental units are not substantial quantities. For services to be sold in substantial quantities, they must also be customarily provided by the offeror, using personnel regularly employed and equipment (if any is necessary) regularly maintained principally to provide the services.

(A) The method used to establish sales may be sales order, contract, shipment, invoice, actual recorded sales, or other records, so long as the method used is consistent, provides an accurate indication of sales activity, and is verifiable. If the item would not otherwise qualify for an exception, sales of the item by affiliates may be considered. In addition, sales of essentially the same commercial item by other manufacturers or vendors may be considered in determining whether sales are substantial, provided that the price of those sales is also considered. Data to support sales quantities may also come from other manufacturers, industry associations or marketing groups, annual financial reports, etc.

(B) An exception may apply for an item based on the market price of the item regardless of the quantity of sales of the item previously made by the offeror or the types of customers for

these sales, provided that sales of the same or similar items by other sellers meet the exception criteria.

(v) *General public.* The general public ordinarily consists of buyers other than the U.S. Government or its instrumentalities, e.g., U.S. Government corporations. Sales to the general public do not include sales to affiliates of the offerors or purchases by the U.S. Government on behalf of foreign governments, such as for Foreign Military Sales. If the contracting officer can determine without requiring information from the offeror that sales are for Government end use, these sales need not be considered sales to the general public.

(3) *Prices set by law or regulation.*

Pronouncements in the form of periodic rulings, reviews, or similar actions of a governmental body, or embodied in the laws are sufficient to set a price.

(4) *Commercial items.* For acquisition of a commercial item, if the contracting officer does not have sufficient information to support an exception under 15.804-1(a)(1) or (a)(4), the contracting officer shall grant an exception for a contract, subcontract, or modification of a contract or subcontract if the contracting officer obtains the pricing information described in 15.804-5(b). Cost or pricing data may be obtained for such a commercial item only if the contracting officer makes a written determination that the pricing information is inadequate for performing a price analysis and determining price reasonableness.

(5) *Exceptional cases.* The head of the contracting activity may, without power of delegation, waive the requirement for submission of cost or pricing data. The authorization for the waiver and the reasons for granting it shall be in writing. A waiver may be considered if another exception does not apply but the price can be determined to be fair and reasonable without submission of cost or pricing data. For example, if cost or pricing data were furnished on previous production buys and the contracting officer determines such data are sufficient, when combined with updated information, a waiver may be granted. If the head of the contracting activity has waived the requirement for submission of cost or pricing data, the contractor or higher-tier subcontractor to whom the waiver relates shall be considered as having been required to make available cost or pricing data. Consequently, award of any lower-tier subcontract expected to exceed the cost or pricing data threshold requires the submission of cost or pricing data unless an exception otherwise applies to the subcontract.

(6) *Modifications.* This exception only applies when the original contract or subcontract was exempt from cost or pricing data based on adequate price competition, catalog or market price, or price set by law or regulation (15.804-1(a)(1)). For modifications of contracts or subcontracts for commercial items, the exception at 15.804-1(a)(4) applies if the modification does not change the item from a commercial item to a noncommercial item. However, if the modification to a contract or a subcontract changes the nature of the work under the contract or subcontract either by a change to the commercial item or by the addition of other noncommercial work, the contracting officer is not prohibited from obtaining cost or pricing data for the added work.

(c) *Special circumstances when purchasing commercial items.* (1) It is not necessary to obtain information supporting an exception for each line item. Sampling techniques may be used.

(2) If the U.S. Government has acted favorably on an exception request for the same or similar items, the contracting officer may consider the prior submissions as support for the current exception request. Relief from the submission of new information does not relieve the contracting officer from the requirement to determine reasonableness of price on the current acquisition.

(3) When acquiring by separate contract an item included on an active Federal Supply Service or Information Technology Service Multiple Award Schedule contract, the contracting officer should grant an exception and not require documentation if the offeror has provided proof that an exception has been granted for the schedule item. Price analysis shall be performed in accordance with 15.805-2 to determine reasonableness of price.

(4) The contracting officer and offeror may make special arrangements for the submission of exception requests for repetitive acquisitions. These arrangements can take any form as long as they set forth an effective period and the exception criteria at 15.804-1 are satisfied. Such arrangements may be extended to other Government offices with their concurrence.

(d) *Requesting an exception.* In order to qualify for an exception, other than an exception for adequate price competition, from the requirements to submit cost or pricing data, the offeror must submit a written request. The solicitation provision at 52.215-41 or other methods may be used. It is the responsibility of the contracting officer to determine, based on the information submitted, and any other information

available to the contracting officer, which exception, if any, applies.

14. Section 15.804-2 is revised to read as follows:

**15.804-2 Requiring cost or pricing data.**

(a) (1) Pursuant to 10 U.S.C. 2306a and 41 U.S.C. 254b, cost or pricing data shall be obtained only if the contracting officer concludes that none of the exceptions in 15.804-1 applies. However, if the contracting officer has sufficient information available to determine price reasonableness, then a waiver under the exception at 15.804-1(b)(5) should be considered. The threshold for obtaining cost or pricing data is \$500,000. This amount will be subject to adjustment, effective October 1, 1995, and every five years thereafter. Unless an exception applies, cost or pricing data are required before accomplishing any of the following actions expected to exceed the threshold in effect on the date of agreement on price, or the date of award, whichever is later; or, in the case of existing contracts, the threshold specified in the contract:

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

(ii) The award of a subcontract at any tier, if the contractor and each higher-tier subcontractor have been required to furnish cost or pricing data (but see exceptional cases at 15.804-1(b)(5)).

(iii) The modification of any sealed bid or negotiated contract (whether or not cost or pricing data were initially required) or subcontract covered by paragraph (a)(1)(ii) of this subsection. Price adjustment amounts shall consider both increases and decreases. (For example, a \$150,000 modification resulting from a reduction of \$350,000 and an increase of \$200,000 is a pricing adjustment exceeding \$500,000.) This requirement does not apply when unrelated and separately priced changes for which cost or pricing data would not otherwise be required are included for administrative convenience in the same modification.

(2) Unless prohibited because an exception at 15.804-1(a)(1) applies, the head of the contracting activity, without power of delegation, may authorize the contracting officer to obtain cost or pricing data for pricing actions below the pertinent threshold in paragraph (a)(1) of this subsection provided the action exceeds the simplified acquisition threshold. The head of the contracting activity shall justify the requirement for cost or pricing data. The documentation shall include a written finding that cost or pricing data are necessary to determine whether the

price is fair and reasonable and the facts supporting that finding.

(b) When cost or pricing data are required, the contracting officer shall require the contractor or prospective contractor to submit to the contracting officer (and to have any subcontractor or prospective subcontractor submit to the prime contractor or appropriate subcontractor tier) the following in support of any proposal:

(1) The cost or pricing data.

(2) A certificate of current cost or pricing data, in the format specified in 15.804-4, certifying that to the best of its knowledge and belief, the cost or pricing data were accurate, complete, and current as of the date of agreement on price or, if applicable, another date agreed upon between the parties that is as close as practicable to the date of agreement on price.

(c) If cost or pricing data are requested and submitted by an offeror, but an exception is later found to apply, the data shall not be considered cost or pricing data as defined in 15.801 and shall not be certified in accordance with 15.804-4.

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

**15.804-3 [Reserved]**

15. Section 15.804-3 is removed and reserved.

16. Section 15.804-4 is amended by revising paragraph (a), the double asterisk footnote to the certification statement following paragraph (a), paragraph (c), and paragraph (e); and in paragraphs (f) and (h) by removing the word "certified". The revised text reads as follows:

**15.804-4 Certificate of Current Cost or Pricing Data.**

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

Certificate of Current Cost or Pricing Data

\* \* \* \* \*

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

\* \* \* \* \*

(c) The contracting officer and contractor are encouraged to reach a prior agreement on criteria for establishing closing or cutoff dates when appropriate in order to minimize

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

\* \* \* \* \*

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

\* \* \* \* \*

17. Section 15.804-5 is added to read as follows:

**15.804-5 Requiring information other than cost or pricing data.**

(a)(1) If cost or pricing data are not required because an exception applies, or an action is at or below the cost or pricing data threshold, the contracting officer shall make a price analysis to determine the reasonableness of the price and any need for further negotiation.

(2) The contracting officer may require submission of information other than cost or pricing data only to the extent necessary to determine reasonableness of the price or cost realism. The contractor's format for submitting such information shall be used unless the contracting officer determines that use of a specific format is essential. The contracting officer shall ensure that information used to support price negotiations is sufficiently current to permit negotiation of a fair and reasonable price. Requests for updated offeror information should be limited to information that affects the adequacy of the proposal for negotiations, such as changes in price lists. Such data shall not be certified in accordance with 15.804-4.

(3) When an acquisition is based on adequate price competition, generally no additional information is necessary to determine the reasonableness of price. However, if it is determined that additional information is necessary to determine the reasonableness of the price, the contracting officer shall, to the maximum extent practicable, obtain the

additional information from sources other than the offeror. In addition, the contracting officer may request information to determine the cost realism of competing offers or to evaluate competing approaches.

(4) When cost or pricing data are not required because an action is at or below the cost or pricing data threshold, information requested shall include, as a minimum, appropriate information on the prices and quantities at which the same or similar items have previously been sold, that is adequate for evaluating the reasonableness of the proposed price. Cost information may also be required. For example, cost information might be necessary to support an analysis of material costs.

(b)(1) When acquiring commercial items for which an exception under 15.804-1(a)(2) may apply, the contracting officer shall seek to obtain from the offeror or contractor information on prices at which the same or similar items have been sold in the commercial market, that is adequate for evaluating, through price analysis, the reasonableness of the price of the action.

(2) If such information is not available from the offeror or contractor, the contracting officer shall seek to obtain such information from another source or sources.

(3) Requests for sales data relating to commercial items shall be limited to data for the same or similar items during a relevant time period.

(4) In requesting information from an offeror under this paragraph (b), the contracting officer shall, to the maximum extent practicable, limit the scope of the request to include only information that is in the form regularly maintained by the offeror in commercial operations.

(5) Any information obtained pursuant to this paragraph (b) that is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552(b)) shall not be disclosed by the Government.

(c) If, after receipt of offers, the contracting officer concludes there is insufficient information available to determine price reasonableness and none of the exceptions applies, then cost or pricing data shall be obtained.

18. Section 15.804-6 is amended by revising the heading and paragraphs (a) and (b);

Amending Table 15-2 by:

(a) Revising the heading;

(b) Adding introductory text;

(c) Revising the first paragraph of item 1, and the fourth paragraph of Item 1 entitled "Established Catalog or Market Prices/Prices Set by Law or Regulation";

(d) Revising item 4; and

(e) Amending 8B by revising the paragraph "Under Column (2)" instruction under the table;

Adding Table 15-3 following Table 15-2;

And revising paragraph (c) of 15.804-6; and revising the first sentence of paragraph (d).

The revised and added text reads as follows:

**15.804-6 Instructions for submission of cost or pricing data or information other than cost or pricing data.**

(a) Taking into consideration the hierarchy at 15.802, the contracting officer shall specify in the solicitation (see 15.804-8 (h) and (i))—

(1) Whether cost or pricing data are required;

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

(3) Whether information other than cost or pricing data is required, if cost or pricing data are not necessary;

(4) The format (see paragraph (b) of this subsection) in which the cost or pricing data or information other than cost or pricing data shall be submitted; and

(5) Necessary preaward or postaward access to offeror's records if not provided by the use of a standard form or clause.

(b)(1) Cost or pricing data shall be submitted on a SF 1411 unless required to be submitted on one of the termination forms specified in subpart 49.6. The SF 1411 shall not be used unless cost or pricing data are required to be submitted. Contract pricing proposals submitted on a SF 1411 with supporting attachments shall be prepared in accordance with Table 15-2 or as specified by the contracting officer. Data supporting forward pricing rate agreements or final indirect cost proposals shall be submitted in a format acceptable to the contracting officer.

(2) If information other than cost or pricing data is required to support price reasonableness or cost realism, the contracting officer may require such information to be submitted using a SF 1448. Requests for information should be tailored so that only necessary data are requested. The information is not considered cost or pricing data and shall not be certified in accordance with 15.804-4. Information submitted on a SF 1448 shall be prepared following the instructions provided in Table 15-3.

**Table 15-2 Instructions for Submission of a Contract Pricing Proposal When Cost or Pricing Data are Required**

The SF 1411 provides a cover sheet for use by offerors to submit to the Government a pricing proposal of estimated and/or actual costs only when cost or pricing data are required.

1. The pricing proposal shall be segregated by contract line item with sufficient detail to permit cost analysis. Attach cost-element breakdowns, using the applicable formats prescribed in Item 8A, B, or C of this section, for each proposed line item. These breakdowns must conform to the instructions in the solicitation and any specific requirements established by the contracting officer. Furnish supporting breakdowns for each cost element, consistent with the offeror's cost accounting system.

\* \* \* \* \*

Established Catalog or Market Prices or Prices Set by Law or Regulation or Commercial Item Not Covered By Another Exception—When an exception from the requirement to submit cost or pricing data is requested, whether the item was produced by others or by the offeror, provide justification for the exception as required by 15.804-1(d).

\* \* \* \* \*

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

\* \* \* \* \*

**8. Headings for Submission of Line-Item Summaries:**

\* \* \* \* \*

**B. Change Orders, Modifications, and Claims.**

\* \* \* \* \*

Under Column (2)—Include the current estimates of what the cost would have been to complete the deleted work not yet performed (not the original proposal estimates), and the cost of deleted work already performed.

\* \* \* \* \*

**Table 15-3 Instructions for Submission of Information Other Than Cost or Pricing Data**

SF 1448 is a cover sheet for use by offerors to submit information to the Government when cost or pricing data are not required but the contracting officer has requested information to help establish price reasonableness or cost realism. Such information is not considered cost or pricing data, and shall not be certified in accordance with 15.804-4.

1. The information submitted shall be at the level of detail described in the solicitation or specified by the contracting officer. The offeror's own format is acceptable unless the contracting officer determines that use of a specific format is essential.

A. If adequate price competition is expected, the information may include cost or technical information necessary to determine the cost realism and adequacy of the offeror's proposal, e.g., information adequate to validate that the proposed costs are consistent with the technical proposal, or cost breakdowns to help identify unrealistically priced proposals.

B. If the offer is expected to be at or below the cost or pricing data threshold, and adequate price competition is not expected, the information may consist of data to permit the contracting officer and authorized representatives to determine price reasonableness, e.g., information to support an analysis of material costs (when sufficient information on labor and overhead rates is already available), or information on prices and quantities at which the offeror has previously sold the same or similar items.

2. Any information submitted must support the price proposed. Include sufficient detail or cross references to clearly establish the relationship of the information provided to the price proposed. Support any information provided by explanations or supporting rationale as needed to permit the contracting officer and authorized representatives to evaluate the documentation.

\* \* \* \* \*

(c) Closing or cutoff dates should be included as part of the data submitted with the proposal (see 15.804-4(c)).

(d) The requirement for submission of cost or pricing data is met if all cost or pricing data reasonably available to the offeror are either submitted or specifically identified in writing by the time of agreement on price or another time agreed upon by the parties. \* \* \*

\* \* \* \* \*

19. Section 15.804-7 is amended by revising paragraphs (b)(7)(i), (ii)(B), and (iii) to read as follows:

**15.804-7 Defective cost or pricing data.**

\* \* \* \* \*

(b) \* \* \*

(7)(i) In addition to the price adjustment amount, the Government is entitled to interest on any overpayments. The Government is also entitled to penalty amounts on certain of these overpayments. Overpayment occurs only when payment is made for supplies or services accepted by the Government. Overpayments would not result from amounts paid for contract financing as defined in 32.902.

(ii) \* \* \*

(B) Consider the date of each overpayment (the date of overpayment for this interest calculation shall be (1)

the date payment was made for the related completed and accepted contract items, or (2) for subcontract defective pricing, the date payment was made to the prime contractor, based on prime contract progress billings or deliveries, which included payments for a completed and accepted subcontract item); and

\* \* \* \* \*

(iii) In arriving at the amount due for penalties on contracts where the submission of defective cost or pricing data was a knowing submission, the contracting officer shall obtain an amount equal to the amount of overpayment made. Before taking any contractual actions concerning penalties, the contracting officer shall obtain the advice of counsel.

\* \* \* \* \*

20. Section 15.804-8 is amended by revising the heading and adding paragraphs (h) and (i) to read as follows:

**15.804-8 Contract clauses and solicitation provisions.**

\* \* \* \* \*

(h) *Requirements for cost or pricing data or information other than cost or pricing data.* Considering the hierarchy at 15.802, the contracting officer may insert the provision at 52.215-41, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data, in solicitations if it is reasonably certain that cost or pricing data or information other than cost or pricing data will be required. This provision also provides instructions to offerors on how to request an exception. Use the provision with Alternate I to specify a format for cost or pricing data other than the format required by Table 15-2 of 15.804-6(b). Use the provision with Alternate II when copies of the proposal are to be sent to the administrative contracting officer and contract auditor. Use the provision with Alternate III when submission via electronic media is required. Replace the basic provision with Alternate IV when a SF 1411 will not be required because an exception may apply, but information other than cost or pricing data is required as described in 15.804-5.

(i) *Requirements for cost or pricing data or information other than cost or pricing data—modifications.*

Considering the hierarchy at 15.802, the contracting officer may insert the clause at 52.215-42, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications, in solicitations and contracts if it is reasonably certain that cost or pricing data or information other than cost or pricing data will be required for modifications. This clause also provides

instructions to contractors on how to request an exception. Use the clause with Alternate I to specify a format for cost or pricing data other than the format required by Table 15-2 of 15.804-6(b). Use the clause with Alternate II if copies of the proposal are to be sent to the administrative contracting officer and contract auditor. Use the clause with Alternate III if submission via electronic media is required. Replace the basic clause with Alternate IV if a SF 1411 is not required because an exception may apply, but information other than cost or pricing data is required as described in 15.804-5.

21. Section 15.805-1 is amended in the first sentence of paragraph (a) by inserting a comma after the word "engineering"; and by adding paragraph (d) to read as follows:

**15.805-1 General.**

\* \* \* \* \*

(d) The Armed Services Pricing Manual (ASPM Volume I, "Contract Pricing," and Volume 2, "Price Analysis") was issued by the Department of Defense to guide pricing and negotiating personnel. The ASPM provides detailed discussion and examples applying pricing policies to pricing problems. The ASPM is available for use for instruction and professional guidance. However, it is not directive and its references to Department of Defense forms and regulations should be considered informational only. Copies of ASPM Vol. 1 (Stock No. 008-000-00457-9) and Vol. 2 (Stock No. 008-000-00467-6) may be purchased from the Superintendent of Documents, U.S. Government Printing Office, by telephone (202) 512-1800 or facsimile (202) 512-2250, or by mail order from the Superintendent of Documents, P. O. Box 371954, Pittsburgh, PA 15250-7954.

22. Section 15.805-2 is amended by adding paragraph (f) to read as follows:

**15.805-2 Price analysis.**

\* \* \* \* \*

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

23. Section 15.806-1 is amended in the first sentence of paragraph (a)(2) by removing the phrase "claims for exemption" and inserting "requests for exception" in its place, and revising (b) to read as follows:

**15.806-1 General.**

\* \* \* \* \*

(b) Unless the subcontract qualifies for an exception under 15.804-1, any

contractor required to submit cost or pricing data also shall obtain cost or pricing data before awarding any subcontract or purchase order expected to exceed the cost or pricing data threshold, or issuing any modification involving a price adjustment expected to exceed the cost or pricing data threshold.

\* \* \* \* \*

24. Section 15.806-2 is amended by revising paragraph (a), the first sentence of (c), and (d) to read as follows:

**15.806-2 Prospective subcontractor cost or pricing data.**

(a) The contracting officer shall require a contractor that is required to submit cost or pricing data also to submit to the Government (or cause submission of) accurate, complete, and current cost or pricing data from prospective subcontractors in support of each subcontract cost estimate that is

- (1) \$1,000,000 or more,
- (2) Both more than the cost or pricing data threshold and more than 10 percent of the prime contractor's proposed price, or
- (3) Considered to be necessary for adequately pricing the prime contract.

These subcontract cost or pricing data may be submitted using a Standard Form (SF) 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required).

\* \* \* \* \*

(c) If the prospective contractor satisfies the contracting officer that a subcontract will be priced on the basis of one of the exceptions, the contracting officer shall not require submission of cost or pricing data to the Government in that case. \* \* \*

(d) Subcontractor cost or pricing data shall be accurate, complete, and current as of the date of price agreement or, if applicable, another date agreed upon between the parties, given on the contractor's Certificate of Current Cost or Pricing Data. The prospective contractor shall be responsible for updating a prospective subcontractor's data.

\* \* \* \* \*

25. Section 15.808 is amended in paragraph (a)(5) introductory text by removing the word "certified"; by revising paragraph (a)(6); by removing paragraph (a)(7) and redesignating paragraphs (a)(8) through (a)(10) as (a)(7) through (a)(9) to read as follows:

**15.808 Price negotiation memorandum.**

(a) \* \* \*

(6) If cost or pricing data were not required in the case of any price negotiation exceeding the cost or pricing

data threshold, the exception used and the basis for it.

\* \* \* \* \*

26. Section 15.812-1 is amended by revising paragraph (b) and the second sentence of paragraph (c) to read as follows:

**15.812-1 General.**

\* \* \* \* \*

(b) However, the policy in paragraph (a) of this subsection does not apply to any contract or subcontract item of supply for which the price is, or is based on, an established catalog or market price of a commercial item sold in substantial quantities to the general public under 15.804-1(b)(2) or a commercial item exception under 15.804-1(b)(4).

(c) \* \* \* The contracting officer shall require similar information when contracting by negotiation with full and open competition if adequate price competition is not expected (see 15.804-1(b)(1)). \* \* \*

**PART 16—TYPES OF CONTRACTS**

**16.203-4 [Amended]**

27. Section 16.203-4 is amended in paragraphs (a)(1)(ii) and (b)(1)(ii) by removing "15.804-3" and inserting "15.804-1" in its place.

28. Section 16.501(c) is amended by revising the first sentence to read as follows:

**16.501 General.**

\* \* \* \* \*

(c) Indefinite-delivery contracts may provide for firm-fixed-prices (see 16.202), fixed prices with economic price adjustment (see 16.203), fixed prices with prospective redetermination (see 16.205), or prices based on catalog or market prices (see 15.804-1(b)(2)). \* \* \*

28a. Section 16.603-4 is amended after the first sentence in paragraph (b)(3) by adding a sentence to read as follows:

**16.603-4 Contract clauses.**

\* \* \* \* \*

(b)(3) \* \* \* If, at the time of entering into the letter contract, the contracting officer knows that the definitive contract will be based on adequate price competition or will otherwise meet the criteria of 15.804-1 for not requiring submission of cost or pricing data, the words "and cost or pricing data supporting its proposal" may be deleted from paragraph (a) of the clause. \* \* \*

\* \* \* \* \*

**PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES**

29. Section 31.205–26 is amended by revising paragraphs (e) and (f) to read as follows:

**31.205–26 Material costs.**

\* \* \* \* \*

(e) Allowance for all materials, supplies, and services that are sold or transferred between any divisions, subdivisions, subsidiaries, or affiliates of the contractor under a common control shall be on the basis of cost incurred in accordance with this subpart. However, allowance may be at price when it is the established practice of the transferring organization to price interorganizational transfers at other than cost for commercial work of the contractor or any division, subsidiary, or affiliate of the contractor under a common control, and when the item being transferred qualifies for an exception under 15.804–1 and the contracting officer has not determined the price to be unreasonable.

(f) When a catalog or market price exception under 15.804–1(a)(1)(ii) applies under paragraph (e) of this subsection, the price should be adjusted to reflect the quantities being acquired and may be adjusted to reflect the actual cost of any modifications necessary because of contract requirements.

**PART 33—PROTESTS, DISPUTES, AND APPEALS**

30. Section 33.207(d) is revised to read as follows:

**33.207 Contractor certification.**

\* \* \* \* \*

(d) The aggregate amount of both increased and decreased costs shall be used in determining when the dollar thresholds requiring certification are met (see example in 15.804–2(a)(1)(iii) regarding cost or pricing data).

\* \* \* \* \*

**PART 36—CONSTRUCTION AND ARCHITECT ENGINEERING CONTRACTS**

31. Section 36.402 is amended by revising the introductory text of paragraph (b) and (b)(1) to read as follows:

**36.402 Price negotiation.**

\* \* \* \* \*

(b) The contracting officer shall evaluate proposals and associated cost or pricing data or information other than cost or pricing data and shall compare them to the Government estimate.

(1) When submission of cost or pricing data is not required (see 15.804–

1 and 15.804–2), and any element of proposed cost differs significantly from the Government estimate, the contracting officer should request the offeror to submit cost information concerning that element (e.g., wage rates or fringe benefits, significant materials, equipment allowances, and subcontractor costs).

\* \* \* \* \*

**PART 45—GOVERNMENT PROPERTY**

32. Section 45.103(b)(1) is revised to read as follows:

**45.103 Responsibility and liability for Government property.**

\* \* \* \* \*

(b) \* \* \*

(1) Negotiated fixed-price contracts for which the contract price is not based upon an exception at 15.804–1;

\* \* \* \* \*

33. Section 45.106(b)(2) is revised to read as follows:

**45.106 Government property clauses.**

\* \* \* \* \*

(b) \* \* \*

(2) If the contract is—

(i) A negotiated fixed-price contract for which prices are not based on an exception at 15.804–1; or

(ii) A fixed-price service contract which is performed primarily on a Government installation, provided the contracting officer determines it to be in the best interest of the Government (see 45.103(b)(4)), the contracting officer shall use the clause with its Alternate I.

\* \* \* \* \*

**PART 46—QUALITY ASSURANCE**

**46.804 [Amended]**

34. Section 46.804 is amended by removing the parenthetical “(see 15.804–3(c))” and inserting “(see 15.804–1(b)(2))”.

**PART 49—TERMINATION OF CONTRACTS**

35. Section 49.208 is amended in the introductory paragraph by revising the last sentence to read as follows:

**49.208 Equitable adjustment after partial termination.**

\* \* \* The contractor shall submit the proposal on SF 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required).

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

35a. Part 52 is amended by removing the derivation lines following all “(End of provision)” or “(End of clause)” parentheticals and Alternates.

36. Section 52.214–27 is amended by revising the date of the clause and paragraphs (a) and (e)(2) to read as follows:

**52.214–27 Price Reduction for Defective Cost or Pricing Data—Modifications—Sealed Bidding.**

\* \* \* \* \*

Price Reduction for Defective Cost or Pricing Data—Modifications—Sealed Bidding (Oct. 1995)

(a) This clause shall become operative only for any modification to this contract involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for the submission of cost or pricing data at FAR 15.804–2(a)(1), except that this clause does not apply to a modification if an exception under FAR 15.804–1 applies.

\* \* \* \* \*

(e) \* \* \*

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data which were incomplete, inaccurate, or noncurrent. (End of clause.)

37. Section 52.214–28 is amended by revising the date of the clause and paragraphs (b) and (d) to read as follows:

**52.214–28 Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding.**

\* \* \* \* \*

Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding (Oct. 1995)

(b) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.804–2(a)(1), on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modifications involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for submission of cost or pricing data at FAR 15.804–2(a)(1), the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.804–1 applies.

\* \* \* \* \*

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that, when entered into, exceeds the threshold for submission of cost or pricing data at FAR 15.804–2(a)(1). (End of clause.)

**52.214–29 [Amended]**

37a. Section 52.214–29 is amended in the introductory text by removing the citation “14.201–7(e)” and inserting “14.201–7(d)” in its place.

38. Section 52.215–22 is amended by revising the date of the clause, and paragraph (d)(2) to read as follows:

**52.215-22 Price Reduction for Defective Cost or Pricing Data.**

\* \* \* \* \*

Price Reduction for Defective Cost or Pricing Data (Oct. 1995)

\* \* \* \* \*

(d) \* \* \*

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data which were incomplete, inaccurate, or noncurrent.  
(End of clause.)

39. Section 52.215-23 is amended by revising the clause date and paragraphs (a) and (e)(2) to read as follows:

**52.215-23 Price Reduction for Defective Cost or Pricing Data—Modifications**

\* \* \* \* \*

Price Reduction for Defective Cost or Pricing Data—Modifications (Oct. 1995)

(a) This clause shall become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), except that this clause does not apply to any modification if an exception under FAR 15.804-1 applies.

\* \* \* \* \*

(e) \* \* \*

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data which were incomplete, inaccurate, or noncurrent.  
(End of clause)

40. Section 52.215-24 is amended by revising the date of the clause, and paragraph (a) to read as follows:

**52.215-24 Subcontractor Cost or Pricing Data.**

\* \* \* \* \*

Subcontractor Cost or Pricing Data (Oct 1995)

(a) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.804-1 applies.

\* \* \* \* \*

41. Section 52.215-25 is amended by revising the date of the clause and paragraphs (b) and (d) to read as follows:

**52.215-25 Subcontractor Cost or Pricing Data—Modifications.**

\* \* \* \* \*

Subcontractor Cost or Pricing Data—Modifications (Oct 1995)

(b) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.804-1 applies.

\* \* \* \* \*

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1) on the date of agreement on price or the date of award, whichever is later.  
(End of clause)

42. Section 52.215-26 is amended by revising the clause date and paragraph (b) to read as follows:

**52.215-26 Integrity of Unit Prices.**

\* \* \* \* \*

Integrity of Unit Prices (Oct 1995)

\* \* \* \* \*

(b) The requirement in paragraph (a) of this clause does not apply to any contract or subcontract item of supply for which the unit price is, or is based on, an established catalog or market price for a commercial item sold in substantial quantities to the general public or to an item qualifying for a commercial item exception to cost or pricing data. A price is based on an established catalog or market price only if the item being purchased is sufficiently similar to the catalog or market priced commercial item to ensure that any difference in prices can be identified and justified without resort to cost analysis.

\* \* \* \* \*

43. Sections 52.215-41 through 52.215-43 are added to read as follows:

**52.215-41 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data.**

As prescribed in 15.804-8(h), insert the following provision:

Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data (Oct 1995)

(a) *Exceptions from cost or pricing data.* (1) In lieu of submitting cost or pricing data, offerors may submit a written request for exception by submitting the information

described in the following subparagraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable.

(i) Information relative to an exception granted for prior or repetitive acquisitions.  
(ii) Catalog price information as follows:  
(A) Attach a copy of or identify the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which this proposal is being made.

(B) Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, and reseller.

(C) Additionally, for each catalog item that exceeds \_\_\_\_\_ \* (extended value not unit price), provide evidence of substantial sales to the general public. This may include sales order, contract, shipment, invoice, actual recorded sales or other records that are verifiable. In addition, if the basis of the price proposal is sales of essentially the same commercial item by affiliates, other manufacturers or vendors, those sales may be included. The offeror shall explain the basis of each offered price and its relationship to the established catalog price. When substantial general public sales have also been made at prices other than catalog or price list prices, the offeror shall indicate how the proposed price relates to the price of such recent sales in quantities similar to the proposed quantities.

(iii) *Market price information.* Include the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. The nature of the market should be described. The supply or service being purchased should be the same as or similar to the market price supply or service. Data supporting substantial sales to the general public is also required.

(iv) Identification of the law or regulation establishing the price offered. If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(v) For a commercial item exception, information on prices at which the same item or similar items have been sold in the commercial market.

(2) The offeror grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this provision, and the reasonableness of price. Access does not extend to cost or profit information or other data relevant solely to the offeror's determination of the prices to be offered in the catalog or marketplace.

(b) *Requirements for cost or pricing data.* If the offeror is not granted an exception from the requirement to submit cost or pricing data, the following applies:

\*Insert dollar amount for sampling (see 15.804-1(c)(1))

(1) The offeror shall submit cost or pricing data on Standard Form (SF) 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required), with supporting attachments prepared in accordance with Table 15-2 of FAR 15.804-6(b)(2).

(2) As soon as practicable after agreement on price, but before contract award (except for unpriced actions such as letter contracts), the offeror shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.804-4.

(c) By submitting information to qualify for an exception, an offeror is not representing that this is the only exception that may apply.

(End of provision)

*Alternate I* (Oct 1995). As prescribed in 15.804-8(h), substitute the following paragraph (b)(1) for paragraph (b)(1) of the basic provision:

(b)(1) The offeror shall submit cost or pricing data on Standard Form (SF) 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required), with supporting attachments prepared in the following format:

*Alternate II* (Oct 1995). As prescribed in 15.804-8(h), add the following paragraph (d) to the basic provision:

(c) When the proposal is submitted, also submit one copy each, including the SF 1411 and supporting attachments, to: (1) the Administrative Contracting Officer, and (2) the Contract Auditor.

*Alternate III* (Oct. 1995). As prescribed in 15.804-8(h), add the following paragraph (d) to the basic provision (if Alternate II is also used, redesignate as paragraph (e)):

(d) Submit the cost portion of the proposal via the following electronic media: (*Insert media format, e.g., electronic spreadsheet format, electronic mail, etc.*)

*Alternate IV* (Oct. 1995). As prescribed in 15.804-8(h), replace the text of the basic provision with the following:

(a) Submission of cost or pricing data is not required.

(b) Provide information described below: (*Insert description of the information and the format that are required, including access to records necessary to permit an adequate evaluation of the proposed price in accordance with 15.804-6(a)(5). Standard Form 1448, Proposal Cover Sheet (Cost or Pricing Data Not Required), may be used for information other than cost or pricing data.*)

#### **52.215-42 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications.**

As prescribed in 15.804-8(i), insert the following clause:

Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications (Oct. 1995)

(a) *Exceptions from cost or pricing data.* (1) In lieu of submitting cost or pricing data for modifications under this contract, for price adjustments expected to exceed the threshold set forth at FAR 15.804-2(a)(1) on the date of the agreement on price or the date of the award, whichever is later, the Contractor may submit a written request for exception by submitting the information described in the

following subparagraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable—

(i) Information relative to an exception granted for prior or repetitive acquisitions.

(ii) Catalog price information as follows:

(A) Attach a copy of or identify the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which this proposal is being made.

(B) Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, and reseller.

(C) Additionally, for each catalog item that exceeds \_\_\_\_\_\* (extended value not unit price), provide evidence of substantial sales to the general public. This may include sales order, contract, shipment, invoice, actual recorded sales or other records that are verifiable. In addition, if the basis of the price proposal is sales of essentially the same commercial item by affiliates, other manufacturers or vendors, those sales may be included. The offeror shall explain the basis of each offered price and its relationship to the established catalog price. When substantial general public sales have also been made at prices other than catalog or price list prices, the offeror shall indicate how the proposed price relates to the price of such recent sales in quantities similar to the proposed quantities.

(iii) *Market price information.* Include the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. The nature of the market should be described. The supply or service being purchased should be the same as or similar to the market price supply or service. Data supporting substantial sales to the general public is also required.

(iv) Identification of the law or regulation establishing the price offered. If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(v) Information on modifications of contracts or subcontracts for commercial items.

(A) If (1) The original contract or subcontract was granted an exception from cost or pricing data requirements because the price agreed upon was based on adequate price competition, catalog or market prices of commercial items, or prices set by law or regulation; and (2) the modification (to the contract or subcontract) is not exempted based on one of these exceptions, then the Contractor may provide information to establish that the modification would not change the contract or subcontract from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of an item other than a commercial item.

\*Insert dollar amount for sampling (see 15.804-1(c)(1)).

(B) For a commercial item exception, the Contractor may provide information on prices at which the same item or similar items have been sold in the commercial market.

(2) The Contractor grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this clause, and the reasonableness of price. Access does not extend to cost or profit information or other data relevant solely to the Contractor's determination of the prices to be offered in the catalog or marketplace.

(3) By submitting information to qualify for an exception, an offeror is not representing that this is the only exception that may apply.

(b) *Requirements for cost or pricing data.*

If the Contractor is not granted an exception from the requirement to submit cost or pricing data, the following applies:

(1) The Contractor shall submit cost or pricing data on Standard Form (SF) 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required), with supporting attachments prepared in accordance with Table 15-2 of FAR 15.804-6(b)(2).

(2) As soon as practicable after agreement on price, but before award (except for unpriced actions), the Contractor shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.804-4. (End of clause.)

*Alternate I* (Oct. 1995). As prescribed in 15.804-8(i), substitute the following paragraph (b)(1) for paragraph (b)(1) of the basic clause.

(b)(1) The Contractor shall submit cost or pricing data on Standard Form (SF) 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required), with supporting attachments prepared in the following format:

*Alternate II* (Oct. 1995). As prescribed in 15.804-8(i), add the following paragraph (c) to the basic clause:

(c) When the proposal is submitted, also submit one copy each, including the SF 1411 and supporting attachments, to: (1) The Administrative Contracting Officer, and (2) the Contract Auditor.

*Alternate III* (Oct. 1995). As prescribed in 15.804-8(i), add the following paragraph (c) to the basic clause (if Alternate II is also used, redesignate as paragraph (d)):

(c) Submit the cost portion of the proposal via the following electronic media: (*Insert media format.*)

*Alternate IV* (Oct. 1995). As prescribed in 15.804-8(i), replace the text of the basic clause with the following:

(a) Submission of cost or pricing data is not required.

(b) Provide information described below: (*Insert description of the information and the format that are required, including access to records necessary to permit an adequate evaluation of the proposed price in accordance with 15.804-6(a)(5). Standard Form 1448, Proposal Cover Sheet (Cost or Pricing Data Not Required), may be used for information other than cost or pricing data.*)

**52.215-43 Audit—Commercial Items.**

As prescribed at 15.106-2, insert the following clause:

Audit—Commercial Items (Oct. 1995)

(a) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or any other form.

(b) This paragraph applies to solicitations and contracts or subcontracts for commercial items that may be or have been granted an exception from submittal of cost or pricing data only under FAR 15.804-1(a)(2). In order to determine the accuracy of the information on prices at which the same or similar items have been sold in the commercial market, the Contracting Officer and authorized representatives have a right to examine such information provided by the offeror, Contractor, or subcontractor, and all records that directly relate to such information. Access does not extend to cost or profit information or other data relevant solely to the offeror's determination of the prices to be offered in the marketplace. This right shall expire two years after the date of award of the contract, or two years after the date of any modification to the contract, with respect to which this information is provided.

(c) If the prime Contractor and each higher-tier subcontractor were required to submit cost or pricing data, the Contractor and each subcontractor shall insert the substance of this clause, including this paragraph (c), in each subcontract for which submission of cost or pricing data was required or for which an exception was granted under FAR 15.804-1(a)(2).  
(End of clause.)

**52.216-2 [Amended]**

44. Section 52.216-2 is amended in the clause heading by revising the date to read "(Oct. 1995)"; in paragraph (a)(2) by removing "15.804-3" and inserting "15.804-1" in its place; and removing the parenthetical following "(End of clause)".

**52.216-3 [Amended]**

45. Section 52.216-3 is amended in the clause heading by removing "(APR 1984)" and inserting "(Oct. 1995)"; in paragraph (a)(2) by removing the reference "15.804-3" and inserting "15.804-1"; and by removing the parenthetical following "(End of clause)".

46. Section 52.216-5 is amended by revising the clause date and paragraph (d)(1)(i)(A); and by removing the parenthetical following "(End of clause)" to read as follows:

**52.216-5 Price Redetermination—Prospective.**

\* \* \* \* \*

Price Redetermination—Prospective (Oct. 1995)

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(i) \* \* \*

(A) An estimate and breakdown of the costs of these supplies or services on Standard Form 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required), or in any other form on which the parties may agree;

\* \* \* \* \*

47. Section 52.216-6 is amended by revising the introductory text, the clause date, and paragraph (c)(1)(ii) to read as follows:

**52.216-6 Price Redetermination—Retroactive.**

As prescribed in 16.206-4, insert the following clause:

Price Redetermination—Retroactive (Oct. 1995)

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(ii) A statement on Standard Form 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required), or in any other form on which the parties may agree, of all costs incurred in performing the contract; and

\* \* \* \* \*

48. Section 52.216-25 is amended by revising the introductory paragraph; and the parentheticals following the end of the main clause and the end of Alternate I are removed to read as follows:

**52.216-25 Contract Definitization.**

As prescribed in 16.603-4(b)(3), insert the following clause:

\* \* \* \* \*

49. Section 52.222-48 is amended by revising the clause date, redesignating paragraphs (a) (i), (ii), and (iii) as (a) (1), (2), and (3), and revising newly redesignated paragraph (a)(2) to read as follows:

**52.222-48 Exemption from Application of Service Contract Act Provisions for Contracts for Maintenance, Calibration, and/or Repair of Certain ADP, Scientific and Medical and/or Office and Business Equipment—Contractor Certification.**

\* \* \* \* \*

Exemption From Application of Service Contract Act Provisions for Contracts for Maintenance, Calibration, and/or Repair of Certain ADP, Scientific and Medical and/or Office and Business Equipment—Contractor Certification (Oct. 1995)

(a) \* \* \* (2) The contract services are furnished at prices which are, or are based on, established catalog or market prices for the maintenance, calibration, and/or repair of certain ADP, scientific and medical and/or office and business equipment. An "established catalog price" is a price (including discount price) recorded in a catalog, price list, schedule, or other verifiable and established record that is regularly maintained by the manufacturer or the Contractor and is either published or otherwise available for inspection by customers. An "established market price" is a current price, established in the course of ordinary and usual trade between buyers and sellers free to bargain, which can be substantiated by data from sources independent of the manufacturer or Contractor; and \* \* \*

\* \* \* \* \*

**PART 53—FORMS**

50. Section 53.215-2 is revised to read as follows:

**53.215-2 Price negotiation (SF's 1411 and 1448).**

The following standard forms are prescribed for use in connection with requirements for obtaining cost or pricing data or information other than cost or pricing data from offerors or contractors, as specified in 15.804:

(a) SF 1411 (REV. OCT./95), *Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required)*. (See 15.804-6(b)(1).) SF 1411 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the loose-leaf edition of the FAR.

(b) SF 1448 (OCT/95), *Proposal Cover Sheet (Cost or Pricing Data Not Required)*. (See 15.804-6(b)(2).) SF 1448 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the loose-leaf edition of the FAR.

51. Section 53.301-1411 is revised and 53.301-1448 is added to read as follows:

53.301-1411 Contract Pricing Proposal Cover Sheet.

<b>CONTRACT PRICING PROPOSAL COVER SHEET</b> <i>(Cost or Pricing Data Required)</i>				1. SOLICITATION/CONTRACT/MODIFICATION NUMBER		OMB No.: 9000-0013 Expires:		
Public reporting burden for this collection of information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition Policy, GSA, Washington, DC 20405.								
2a. NAME OF OFFEROR				3a. NAME OF OFFEROR'S POINT OF CONTACT		3c. TELEPHONE		
2b. FIRST LINE ADDRESS				3b. TITLE OF OFFEROR'S POINT OF CONTACT		AREA CODE	NUMBER	
2c. STREET ADDRESS				<b>4. TYPE OF CONTRACT ACTION (Check)</b>				
2d. CITY		2e. STATE	2f. ZIP CODE	a. NEW CONTRACT		d. LETTER CONTRACT		
				b. CHANGE ORDER		e. UNPRICED ORDER		
				c. PRICE REVISION/ REDETERMINATION		f. OTHER (Specify)		
5. TYPE OF CONTRACT (Check)				<b>6. PROPOSED COST (A + B = C)</b>				
<input type="checkbox"/> FFP	<input type="checkbox"/> CPFF	<input type="checkbox"/> CPF	<input type="checkbox"/> CPAF	A. COST		B. PROFIT/FEE		
<input type="checkbox"/> FPI	<input type="checkbox"/> OTHER (Specify)			C. TOTAL				
<b>7. PERFORMANCE</b>								
PLACE	a.						PERIOD	a.
	b.							b.
8. List and reference the identification, quantity and total price proposed for each contract line item. A line item cost breakdown supporting this recap is required unless otherwise specified by the Contracting Officer. (Continue on reverse, and then on plain paper, if necessary. Use same headings.)								
a. LINE ITEM NO.	b. IDENTIFICATION			c. QUANTITY	d. TOTAL PRICE	e. PROP. REF. PAGE		
<b>9. PROVIDE THE FOLLOWING (if available)</b>								
NAME OF CONTRACT ADMINISTRATION OFFICE				NAME OF AUDIT OFFICE				
STREET ADDRESS				STREET ADDRESS				
CITY		STATE	ZIP CODE	CITY		STATE	ZIP CODE	
TELEPHONE	AREA CODE	NUMBER		TELEPHONE	AREA CODE	NUMBER		
10. WILL YOU REQUIRE THE USE OF ANY GOVERNMENT PROPERTY IN THE PERFORMANCE OF THIS WORK? (If "yes" identify)				11a. DO YOU REQUIRE GOVERNMENT CONTRACT FINANCING TO PERFORM THIS PROPOSED CONTRACT? (If "Yes," complete item 11b)		11b. TYPE OF FINANCING (Check one)		
<input type="checkbox"/> YES <input type="checkbox"/> NO				<input type="checkbox"/> YES <input type="checkbox"/> NO		<input type="checkbox"/> ADVANCE PAYMENT <input type="checkbox"/> PROGRESS PAYMENTS		
						<input type="checkbox"/> GUARANTEED LOANS		
12. HAVE YOU BEEN AWARDED ANY CONTRACTS OR SUBCONTRACTS FOR THE SAME OR SIMILAR ITEMS WITHIN THE PAST 3 YEARS? (If "Yes," identify item(s), customer(s) and contract number(s) on reverse of form.)				13. IS THIS PROPOSAL CONSISTENT WITH YOUR ESTABLISHED ESTIMATING AND ACCOUNTING PRACTICES AND PROCEDURES AND FAR PART 31, COST PRINCIPLES? (If "no," explain on reverse of form)				
<input type="checkbox"/> YES <input type="checkbox"/> NO				<input type="checkbox"/> YES <input type="checkbox"/> NO				
<b>14. COST ACCOUNTING STANDARDS BOARD (CASB) DATA (Public Law 91-379 as amended and FAR PART 30)</b>								
a. WILL THIS CONTRACT ACTION BE SUBJECT TO CASB REGULATIONS? (If "No," explain in proposal)				b. HAVE YOU SUBMITTED A CASB DISCLOSURE STATEMENT (CASB DS-1 or 2)? (If "Yes," specify in proposal the office to which submitted and if determined to be adequate)				
<input type="checkbox"/> YES <input type="checkbox"/> NO				<input type="checkbox"/> YES <input type="checkbox"/> NO				
c. HAVE YOU BEEN NOTIFIED THAT YOU ARE OR MAY BE IN NONCOMPLIANCE WITH YOUR DISCLOSURE STATEMENT OR COST ACCOUNTING STANDARDS? (If "Yes," explain in proposal)				d. IS ANY ASPECT OF THIS PROPOSAL INCONSISTENT WITH YOUR DISCLOSED PRACTICES OR APPLICABLE COST ACCOUNTING STANDARDS? (If "Yes," explain in proposal)				
<input type="checkbox"/> YES <input type="checkbox"/> NO				<input type="checkbox"/> YES <input type="checkbox"/> NO				
This proposal is submitted in response to the solicitation, contract, modification, etc., in item 1 and reflects our estimates and/or actual costs as of this date and conforms with the instructions in FAR 15.804-6(b)(1), and Table 15-2. By submitting this proposal, the offeror, if selected for negotiation, grants the contracting officer and authorized representative(s) the right to examine, at any time before award, those records, which include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or any other form, or whether such supporting information is specifically referenced or included in the proposal as the basis for pricing, that will permit an adequate evaluation of the proposed price.								
15. NAME OF OFFEROR (Type)			15. TITLE OF OFFEROR (Type)			15. NAME OF FIRM		
17. SIGNATURE						18. DATE OF SUBMISSION		

AUTHORIZED FOR LOCAL REPRODUCTION  
Previous edition is not usable

STANDARD FORM 1411 (REV. 10-95)  
Prescribed by GSA - FAR (48 CFR) 53.215-2(a)

53.301 Proposal Cover Sheet

BILLING CODE 6820-EP-P

<b>PROPOSAL COVER SHEET</b> <i>(Cost or Pricing Data Not Required)</i>				1. SOLICITATION/CONTRACT/MODIFICATION NUMBER		OMB NO.: 9000-0013 Expires:		
<small>Public reporting burden for this collection of information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VNS), Office of Federal Acquisition Policy, GSA, Washington, DC 20406.</small>								
2a. NAME OF OFFEROR			3a. NAME OF OFFEROR'S POINT OF CONTACT			3c. TELEPHONE		
2b. FIRST LINE ADDRESS			3b. TITLE OF OFFEROR'S POINT OF CONTACT			AREA CODE NUMBER		
2c. STREET ADDRESS			4. TYPE OF CONTRACT ACTION (Check)					
2d. CITY		2e. STATE						2f. ZIP CODE
5. TYPE OF CONTRACT (Check)			A. NEW CONTRACT		D. LETTER CONTRACT			
<input type="checkbox"/> FFP <input type="checkbox"/> CPFF <input type="checkbox"/> CPF <input type="checkbox"/> CPAF <input type="checkbox"/> FPI <input type="checkbox"/> OTHER (Specify)			B. CHANGE ORDER		E. UNPRICED ORDER			
			C. PRICE REVISION/REDETERMINATION		F. OTHER (Specify)			
6. PERFORMANCE								
PLACES	a.						PERIODS	a.
	b.							b.
	c.							c.
7. List and reference the identification, quantity and total price proposed for each contract line item. (Continue on reverse, if necessary. Use same headings)								
a. LINE ITEM NO.	b. IDENTIFICATION			c. QUANTITY	d. TOTAL PRICE	e. PROP. REF. PAGE		
8. PROVIDE THE FOLLOWING (if available)								
NAME OF CONTRACT ADMINISTRATION OFFICE				NAME OF AUDIT OFFICE				
STREET ADDRESS				STREET ADDRESS				
CITY		STATE	ZIP CODE	CITY		STATE	ZIP CODE	
TELEPHONE	AREA CODE	NUMBER		TELEPHONE	AREA CODE	NUMBER		
This proposal is submitted in response to the solicitation, contract, modification, etc. in item 1. By submitting this proposal, the offeror, if selected for discussions, grants the contracting officer or an authorized representative the right to examine, at any time before award, any of those books, records, documents, or other records directly pertinent to the information requested or submitted. See instructions at Table 15-3.								
9a. NAME OF OFFEROR (Typed)				10. NAME OF FIRM				
9b. TITLE OF OFFEROR (Typed)								
11. SIGNATURE						12. DATE OF SUBMISSION		

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STANDARD FORM 1448 (10-95)  
Prescribed by GSA - FAR (48 CFR) 53.215-2(a)

[FR Doc. 95-22776 Filed 9-15-95; 8:45 am]  
BILLING CODE 6820-EP-C

**48 CFR Parts 1, 33, 42, 50, and 52**

[FAC 90-32; FAR Case 94-730; Item II]

RIN 9000-AG28

**Federal Acquisition Regulation;  
Protests, Disputes, and Appeals**

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** This final rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103-355) (the Act) dated October 13, 1994, to implement the Act's requirements with respect to disputes and protests to the General Accounting Office and General Services Administration Board of Contract Appeals. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**DATES:** *Effective date:* October 1, 1995.

*Applicability date:* Where this rule repeats a GSBCA rule that went into effect earlier, the date of the GSBCA rule

and its applicability provision prevails; otherwise, this rule is applicable to protests or claims filed on or after the effective date of this rule.

**FOR FURTHER INFORMATION CONTACT:** Mr. Craig E. Hodge, Protests/Disputes Team Leader, at (703) 274-8940 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-32, FAR case 94-730, Protests, Disputes and Appeals.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

The Federal Acquisition Streamlining Act of 1994, Pub. L. 103-355, (the Act) provides authorities that streamline the acquisition process and minimize burdensome Government-unique requirements.

This notice announces FAR revisions developed under FAR Case 94-730, Protests, Disputes, and Appeals. The Act changed the General Accounting Office (GAO) protest procedures, the General Services Board of Contract Appeals (GSBCA) protest procedures, and the alternative dispute resolution (ADR) procedures. This rule reflects those changes to GAO, GSBCA, and

ADR procedures that require revisions to the FAR.

**B. Regulatory Flexibility Act**

The Department of Defense, the General Services Administration and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because a relatively small number of firms file protests or claims. In addition, this rule is generally derivative of GAO and GSBCA rules which implement the statute. Neither the GAO nor the GSBCA concluded that the rules they were promulgating, which form the basis for this rule, had a significant economic impact on a substantial number of small entities.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the change to the FAR does not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*