

(End of agreement)

(g) The submitter of any proposal shall be provided notice adequate to afford an opportunity to take appropriate action before release of any information (data) contained therein pursuant to a request under the Freedom of Information Act (5 U.S.C. 552); and, time permitting, the submitter should be consulted to obtain assistance in determining the eligibility of the information (data) in question as an exemption under the Act. (See also 48 CFR 24.2, Freedom of Information Act.)

[63 FR 56851, Oct. 23, 1998, as amended at 74 FR 36363, July 22, 2009; 76 FR 7693, Feb. 11, 2011]

### Subpart 915.3—Source Selection

#### 915.305 Proposal evaluation.

(d) Personnel from DOE, other Government agencies, consultants, and contractors, including those who manage or operate Government-owned facilities, may be used in the evaluation process as evaluators or advisors when their services are necessary and available. When personnel outside the Government, including those of contractors who operate or manage Government-owned facilities, are to be used as evaluators or advisors, approval and nondisclosure procedures as required by 915.207–70 shall be followed and a notice of the use of non-Federal evaluators shall be included in the solicitation. In all instances, such personnel will be required to comply with DOE conflict of interest and nondisclosure requirements.

[63 FR 56851, Oct. 23, 1998, as amended at 76 FR 7692, Feb. 11, 2011]

### Subpart 915.4—Contract Pricing

#### 915.404 Proposal analysis.

##### 915.404–2 Information to support proposal analysis.

(a)(1) Field pricing assistance as discussed in 48 CFR 15.404–2(a) is not required for the negotiation of DOE contract prices or modifications thereof. The term “field pricing assistance” refers to the Department of Defense (DOD) system for obtaining a price and/or cost analysis report from a cog-

nizant DOD field level contract management office wherein requests for the review of a proposal submitted by an offeror are initiated and the recommendations made by the various specialists of the management office are consolidated into a single report that is forwarded to the office making the contract award for use in conducting negotiations. In the DOE, such review activities, except for reviews performed by professional auditors, are expected to be accomplished by pricing support personnel located in DOE Contracting Activities. The DOE contracting officer shall formally request the assistance of appropriate pricing support personnel, other than auditors, for the review of any proposal that exceeds the threshold stated at 48 CFR 15.403–4(a)(1), unless the contracting officer has sufficient data to determine the reasonableness of the proposed cost or price. Such pricing support may be requested for proposals below the threshold stated at 48 CFR 15.403–4(a)(1), if considered necessary for the establishment of a reasonable pricing arrangement. Contracting officers, however, are not precluded by this section from requesting pricing assistance from a cognizant DOD contract management office, provided an appropriate cross-servicing arrangement for pricing support services exists between the DOE and the servicing agency.

(c)(1) When an audit is required pursuant to 915.404–2–70, “Audit as an aid in proposal analysis,” the request for audit shall be sent directly to the Federal audit office assigned cognizance of the offeror or prospective contractor. When the cognizant agency is other than the Defense Contract Audit Agency or the Department of Health and Human Services, and an appropriate interagency agreement has not been established, the need for audit assistance shall be coordinated with the Office of Policy, within the Headquarters procurement organization.

(2)(i) The request for audit shall establish the due date for receipt of the auditor’s report and in so doing shall allow as much time as possible for the auditor’s review.

(ii) Copies of technical analysis reports prepared by DOE technical or other pricing support personnel shall

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not normally be provided to the auditor. The contracting officer or the supporting price, cost, or financial analyst at the contracting activity shall determine the monetary impact of the technical findings.

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### 915.404-2-70 Audit as an aid in proposal analysis.

(a) When a contract price will be based on cost or pricing data submitted by the offerors, the DOE contracting officer or authorized representative shall request a review by the cognizant Federal audit activity prior to the negotiation of any contract or modification including modifications under advertised contracts in excess of—

(1) The threshold stated at 48 CFR 15.403-4(a)(1) for a firm fixed-price contract or a fixed-price contract with economic price adjustment provisions; or adjustment provisions; or

(2) Twice the threshold at 48 CFR 15.403-4(a)(1) for requiring cost or pricing data for all other contract types, including initial prices, estimated costs of cost-reimbursement contracts, interim and final price redeterminations, and target and settlement of incentive contracts.

(b) The requirement for auditor reviews of proposals which exceed the thresholds specified in paragraph (a) of this section may be waived at a level above the contracting officer when the reasonableness of the negotiated contract price can be determined from information already available. The contract file shall be documented to reflect the reason for any such waiver, provided, however, that independent Government estimates of cost or price shall not be used as the sole justification for any such waiver.

[63 FR 56851, Oct. 23, 1998, as amended at 74 FR 36363, July 22, 2009; 76 FR 7692, Feb. 11, 2011]

### 915.404-4 Profit.

(c)(4)(i) *Contracting officer responsibilities.* The statutory limitations on price and fee as set forth in 48 CFR 15.404-4(c)(4)(i) shall be followed, except as exempted for DOE architect-engineer contracts covering Atomic Energy

Commission (AEC) and Bonneville Power Administration (BPA) functions. Pursuant to section 602(d) (13) and (20) of the Federal Property and Administration Services Act of 1949, as amended, those former AEC functions, as well as those of the BPA, now being performed by DOE are exempt from the 6 percent of cost restriction on contracts for architect-engineer services. The estimated costs on which the maximum fee is computed shall include facilities capital cost of money when this cost is included in cost estimates.

(c)(6) In cases where a change or modification calls for substantially different work than the basic contract, the contractor's effort may be radically changed and a detailed analysis of the profit factors would be a necessity. Also, if the dollar amount of the change or contract modification is very significant in comparison to the contract dollar amount, a detailed analysis should be made.

(d) *Profit-analysis factors.* A profit/fee analysis technique designed for a systematic application of the profit factors in 48 CFR 15.404-4(d) provides contracting officers with an approach that will ensure consistent consideration of the relative value of the various factors in the establishment of a profit objective and the conduct of negotiations for a contract award. It also provides a basis for documentation of this objective, including an explanation of any significant departure from it in reaching a final agreement. The contracting officer's analysis of these prescribed factors is based on information available prior to negotiations. Such information is furnished in proposals, audit data, performance reports, preaward surveys and the like.

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### 915.404-4-70 DOE structured profit and fee system.

This section implements 48 CFR 15.404-4(b) and (d).

[63 FR 56851, Oct. 23, 1998, as amended at 76 FR 7693, Feb. 11, 2011]

### 915.404-4-70-1 General.

(a) *Objective.* It is the intent of DOE to remunerate contractors for financial