

## Department of Energy

915.404-4-70-1

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.

[63 FR 56851, Oct. 23, 1998, as amended at 74 FR 36363, July 22, 2009; 76 FR 7692, 7693, Feb. 11, 2011]

### 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.

[63 FR 56851, Oct. 23, 1998, as amended at 76 FR 7692, 7693 Feb. 11, 2011]

### 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