

# DFARS Procedures, Guidance, and Information

## PGI 215—Contracting by Negotiation

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(Revised May 18, 2011)

### PGI 215.4—CONTRACT PRICING

#### PGI 215.402 Pricing policy.

(1) Contracting officers must purchase supplies and services from responsible sources at fair and reasonable prices. The Truth in Negotiations Act (TINA) (10 U.S.C. 2306a and 41 U.S.C. 254b) requires offerors to submit cost or pricing data if a procurement exceeds the TINA threshold and none of the exceptions to cost or pricing data requirements applies. Under TINA, the contracting officer obtains accurate, complete, and current data from offerors to establish a fair and reasonable price (see FAR 15.403). TINA also allows for a price adjustment remedy if it is later found that a contractor did not provide accurate, complete, and current data.

(2) When cost or pricing data are not required, and the contracting officer does not have sufficient data or information to determine price reasonableness, FAR 15.402(a)(2) requires the offeror to provide whatever information or data the contracting officer needs in order to determine fair and reasonable prices.

(3) Obtaining sufficient data or information from the offeror is particularly critical in situations where an item is determined to be a commercial item in accordance with FAR 2.101 and the contract is being awarded on a sole source basis. This includes commercial sales information of items sold in similar quantities and, if such information is insufficient, cost data to support the proposed price.

(4) See PGI 215.404-1 for more detailed procedures for obtaining data or information needed to determine fair and reasonable prices.

#### PGI 215.403 Obtaining cost or pricing data.

##### PGI 215.403-1 Prohibition on obtaining cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 254b).

(b) *Exceptions to cost or pricing data requirements.* Even if an exception to cost or pricing data applies, the contracting officer is still required to determine price reasonableness. In order to make this determination, the contracting officer may require information other than cost or pricing data, including information related to prices and cost information that would otherwise be defined as cost or pricing data if certified.

(c)(3) *Commercial items.*

(A)(1) Contracting officers must exercise care when pricing a commercial item, especially in sole source situations. The definition of a commercial item at FAR 2.101

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requires the product or service be one—

(i) That is of a type customarily used by the general public or by non-governmental entities for other than governmental purposes; and

(ii) That—

(A) Has been sold, leased, or licensed to the general public;

(B) Has been offered for sale, lease, or license to the general public;

or

(C) Has evolved or been modified from such products or services.

(2) Therefore, some form of prior non-government sales data, or the fact that the item was sold, leased, licensed, or offered for sale (either the specific product or service or the product or service from which the item evolved) must be obtained.

(3) The fact that an item has been determined to be a commercial item does not, in and of itself, prohibit the contracting officer from requiring information other than cost or pricing data. This includes information related to prices and cost information that would otherwise be defined as cost or pricing data if certified. Obtaining sufficient data or information from the offeror is particularly critical in situations where an item is determined to be a commercial item in accordance with FAR 2.101 and the contract is being awarded on a sole source basis. See PGI 215.404-1 for more detailed procedures for use when obtaining information and data from the offeror to determine price reasonableness.

(B)(1) *Report Content.* The annual report of commercial item exceptions to Truth in Negotiations Act (TINA) requirements shall include the following:

Title: Commercial Item Exceptions to TINA Requirements

(1) Contract number, including modification number, if applicable, and program name.

(2) Contractor name.

(3) Contracting activity.

(4) Total dollar amount of exception.

(5) Brief explanation of the basis for determining that the item(s) are commercial.

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(6) Brief description of the specific steps taken to ensure price reasonableness.

(2) *Pricing Actions Reported.* The intent of this requirement is to report when a commercial item exception was determined. Therefore, the reporting of the commercial item exceptions are for pricing actions at the point the contracting officer makes a determination that the commercial item exception applies. For example—

Example 1: The contracting officer determined that a commercial item exception applies for an entire indefinite-delivery indefinite-quantity (IDIQ) contract and expected the subsequent orders to exceed \$15 million (based on the estimated maximum amount for the IDIQ or other supportable estimate of future orders). The organization would report this in accordance with DFARS 215.403-1(c)(3) for the period in which the IDIQ contract was awarded, and would include the total dollar amount of subsequent orders under the exception expected at the time of award.

Example 2: The contracting officer awards an IDIQ contract with no commercial item exceptions anticipated. The contracting officer later modifies the contract for an order that will meet commercial item exceptions, and the subsequent order(s) are expected to exceed \$15 million. Reporting (in the year the modification was issued) will include this IDIQ contract, the amount of this order, and any other expected future orders that will use the exception.

(i) For the above examples, after the contract is reported as receiving the exception with expected awards over \$15 million, there would be no further report, e.g., when a subsequent order under that contract exceeds \$15 million, because reporting for that contract was already accomplished.

(ii) When explaining price reasonableness in accordance with paragraph (c)(3)(B)(1)(6) of this subsection, if pricing was accomplished when the IDIQ contract was awarded, also explain how price reasonableness was determined. In circumstances where pricing will take place on the order at a future date, explain how pricing techniques at FAR 15.404-1 will be used, including obtaining cost information, if that is the only way to determine price reasonableness.

(4) *Waivers.*

(A) *Exceptional case TINA waiver.*

(1) In determining that an exceptional case TINA waiver is appropriate, the head of the contracting activity must exercise care to ensure that the supplies or services could not be obtained without the waiver and that the determination is clearly documented. See DPAP March 23, 2007, policy memorandum. The intent is not to relieve entities that normally perform Government contracts subject to TINA from an obligation to certify that

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cost or pricing data are accurate, complete, and current. Instead, waivers must be used judiciously, in situations where the Government could not otherwise obtain a needed item without a waiver. A prime example would be when a particular company offers an item that is essential to DoD's mission but is not available from other sources, and the company refuses to submit cost or pricing data. In such cases, a waiver may be appropriate. However, the procuring agency should, in conjunction with the waiver, develop a strategy for procuring the item in the future that will not require such a waiver (e.g., develop a second source, develop an alternative product that satisfies the department's needs, or have DoD produce the item).

(2) Senior procurement executive coordination. An exceptional case TINA waiver that exceeds \$100 million shall be coordinated with the senior procurement executive prior to granting the waiver.

(3) Waiver for part of a proposal. The requirement for submission of cost or pricing data may be waived for part of an offeror's proposed price when it is possible to clearly identify that part of the offeror's cost proposal to which the waiver applies as separate and distinct from the balance of the proposal. In granting a partial waiver, in addition to complying with the requirements in DFARS 215.403-1(c)(4), the head of the contracting activity must address why it is in the Government's best interests to grant a partial waiver, given that the offeror has no objection to certifying to the balance of its cost proposal.

(4) Waivers for unpriced supplies or services. Because there is no price, unpriced supplies or services cannot be subject to cost or pricing data certification requirements. The Government cannot agree in advance to waive certification requirements for unpriced supplies or services, and may only consider a waiver at such time as an offeror proposes a price that would otherwise be subject to certification requirements.

(B) The annual report of waiver of TINA requirements shall include the following:

Title: Waiver of TINA Requirements

- (1) Contract number, including modification number, if applicable, and program name.
- (2) Contractor name.
- (3) Contracting activity.
- (4) Total dollar amount waived.
- (5) Brief description of why the item(s) could not be obtained without a

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waiver. See DPAP March 23, 2007, policy memorandum.

(6) Brief description of the specific steps taken to ensure price reasonableness.

(7) Brief description of the demonstrated benefits of granting the waiver.

### **PGI 215.403-3 Requiring information other than cost or pricing data.**

To the extent that cost or pricing data are not required by FAR 15.403-4 and there is no other means for the contracting officer to determine that prices are fair and reasonable, the offeror is required to submit “information other than cost or pricing data” (see definition at FAR 2.101). In accordance with FAR 15.403-3(a), the offeror must provide appropriate information on the prices at which the same or similar items have previously been sold, adequate for determining the reasonableness of the price. The following clarifies these requirements:

(1) *Information other than cost or pricing data.* When cost or pricing data are not required, the contracting officer must obtain whatever information is necessary in order to determine the reasonableness of the price. The FAR defines this as “information other than cost or pricing data.” When TINA does not apply and there is no other means of determining that prices are fair and reasonable, the contracting officer must obtain appropriate information on the prices at which the same or similar items have been sold previously, adequate for evaluating the reasonableness of the price. Sales data must be comparable to the quantities, capabilities, specifications, etc., of the product or service proposed. Sufficient steps must be taken to verify the integrity of the sales data, to include assistance from the Defense Contract Management Agency, the Defense Contract Audit Agency, and/or other agencies if required. See PGI 215.404-1 for more detailed procedures for obtaining information and data from offerors to determine price reasonableness.

(2) *Previously been sold.* Contracting officers shall request offerors to provide information related to prior sales (or “offered for sale”) in support of price reasonableness determinations.

(3) *Adequacy of sales data for pricing.* The contracting officer must determine if the prior sales information is sufficient for determining that prices are fair and reasonable. If the sales information is not sufficient, additional information shall be obtained, including cost information if necessary. See PGI 215.404-1 for more detailed procedures for obtaining whatever data or information is needed to determine fair and reasonable prices.

(4) *Reliance on prior prices paid by the Government.* Before relying on a prior price paid by the Government, the contracting officer must verify and document that sufficient analysis was performed to determine that the prior price was fair and reasonable.

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Sometimes, due to exigent situations, supplies or services are purchased even though an adequate price or cost analysis could not be performed. The problem is exacerbated when other contracting officers assume these prices were adequately analyzed and determined to be fair and reasonable. The contracting officer also must verify that the prices previously paid were for quantities consistent with the current solicitation. Not verifying that a previous analysis was performed, or the consistencies in quantities, has been a recurring issue on sole source commercial items reported by oversight organizations. Sole source commercial items require extra attention to verify that previous prices paid on Government contracts were sufficiently analyzed and determined to be fair and reasonable. At a minimum, a contracting officer reviewing price history shall discuss the basis of previous prices paid with the contracting organization that previously bought the item. These discussions shall be documented in the contract file.

### **PGI 215.404 Proposal analysis.**

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

(a) *General.*

(i) The objective of proposal analysis is to ensure that the final agreed-to price is fair and reasonable. When the contracting officer needs information to determine price reasonableness and the offeror will not furnish that information, use the following sequence of steps to resolve the issue:

(A) The contracting officer should make it clear what information is required and why it is needed to determine fair and reasonable prices, and should be flexible in requesting data and information in existing formats with appropriate explanations from the offeror.

(B) If the offeror refuses to provide the data, the contracting officer should elevate the issue within the contracting activity.

(C) Contracting activity management shall, with support from the contracting officer, discuss the issue with appropriate levels of the offeror's management.

(D) If the offeror continues to refuse to provide the data, contracting activity management shall elevate the issue to the head of the contracting activity for a decision in accordance with FAR 15.403-3(a)(4).

(E) The contracting officer shall document the contract file to describe—

(1) The data requested and the contracting officer's need for that data;

(2) Why there is currently no other alternative but to procure the item from

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this particular source; and

(3) A written plan for avoiding this situation in the future (e.g., develop a second source by...; bring the procurement in house to the Government by...).

(F) Consistent with the requirements at FAR 15.304 and 42.1502 and the DoD Guide to Collection and Use of Past Performance Information, Version 3, dated May 2003, the contracting officer shall provide input into the past performance system, noting the offeror's refusal to provide the requested information.

(ii) In some cases, supplies or services that are not subject to TINA may require a cost analysis (see paragraph (b)(iv) of this section). This will occur when a price analysis is not sufficient for determining prices to be fair and reasonable. In such cases, the contracting officer should consider the need for a Defense Contract Audit Agency audit of the cost data.

(iii) Particular attention should be paid to sole source commercial supplies or services. While the order of preference at FAR 15.402 must be followed, if the contracting officer cannot determine price reasonableness without obtaining information or cost data from the offeror, at a minimum, the contracting officer must obtain appropriate information on the prices at which the same or similar items have been sold previously (often previous sales information was the basis of the commercial item determination and must be requested during price analysis of the information or data provided by the offeror). If previous sales information is not sufficient to determine price reasonableness, the contracting officer must obtain "information other than cost or pricing data" and, if necessary, perform a cost analysis.

### (b) *Price analysis.*

(i) Price analysis should generally be performed on supplies or services that are not subject to TINA. Available commercial sales, published catalogs or prices, etc., can sometimes be obtained through market research and can provide a basis for determining if the proposed prices are fair and reasonable.

(ii) In some cases, commercial sales are not available and there is no other market information for determining fair and reasonable prices. This is especially true when buying supplies or services that have been determined to be commercial, but have only been "offered for sale" or purchased on a sole source basis with no prior commercial sales upon which to rely. In such cases, the contracting officer must require the offeror to submit whatever cost information is needed to determine price reasonableness.

(iii) The following procedures shall be adhered to when executing the price analysis steps at FAR 15.404-1(b)(2):

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(A) When the contracting officer is relying on information obtained from sources other than the offeror, the contracting officer must obtain and document sufficient information to confirm that previous prices paid by the Government were based on a thorough price and/or cost analysis. For example, it would not be sufficient to use price(s) from a database paid by another contracting officer without understanding the type of analysis that was performed to determine the price(s), and without verifying that the quantities were similar for pricing purposes. This does not necessarily need to be another analysis, but there should be coordination with the other office that acknowledges an analysis was performed previously.

(B) When purchasing sole source commercial items, the contracting officer must request non-Government sales data for quantities comparable to those in the solicitation. In addition, if there have not been any non-Government sales, “information other than cost or pricing data” shall be obtained and a price or cost analysis performed as required.

(iv) When considering advice and assistance from others, the contracting officer must pay particular attention to supplies or services that are not subject to TINA because they are “of a type” customarily used by the general public or “similar to” the item being purchased. There must be a thorough analysis of—

- (A) The available price information for the similar-type item;
- (B) The changes required by the solicitation; and
- (C) The cost of modifying the base item.

(v) In some cases, the contracting officer will have to obtain “information other than cost or pricing data” from the offeror because there is not sufficient information from other sources to determine if prices are fair and reasonable. The contracting officer must use business judgment to determine the level of information needed from the offeror, but must ensure that the information is sufficient for making a reasonableness determination. For example, the offeror may have significant sales of the item in comparable quantities to non-Government entities, and that may be all the information needed, once the sales information is appropriately verified. On the other hand, there may be no non-Government sales and the contracting officer may be required to obtain cost information, and should do so. The request for additional information shall be limited to only that needed to determine prices to be fair and reasonable. For example, assume the proposal is 40 percent purchase parts, 30 percent labor, and the balance indirect rates. Also assume that the Defense Contract Management Agency (DCMA) has a forward pricing rate agreement with the offeror. It may be sufficient to limit requests to historical purchase records and/or vendor quotes and the proposed labor hours. Based on this information and the forward pricing rates from DCMA, the contracting officer may be able to determine price reasonableness.

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### (c) *Cost analysis.*

(i) When the contracting officer cannot obtain sufficient information to perform a price analysis in accordance with the pricing steps in FAR 15.404-1(b), a cost analysis is required.

(ii) When a solicitation is not subject to TINA and a cost analysis is required, the contracting officer must clearly communicate to the offeror the cost information that will be needed to determine if the proposed price is fair and reasonable.

(iii) To the extent possible, when cost or pricing data are not required to be submitted in accordance with Table 15-2 of FAR 15.408, the contracting officer should accept the cost data in a format consistent with the offeror's records.

(iv) The contracting officer must always consider the need for field pricing support from the Defense Contract Management Agency, the Defense Contract Audit Agency, and/or other agencies.

### (e) *Technical analysis.*

Requesting technical assistance is particularly important when evaluating pricing related to items that are "similar to" items being purchased or commercial items that are "of a type" or require "minor modifications." Technical analysis can assist in pricing these types of items by identifying any differences between the item being acquired and the "similar to" item. In particular, the technical review can assist in evaluating the changes that are required to get from the "similar to" item, to the item being solicited, so the contracting officer can determine sufficient price/cost analysis techniques when evaluating that the price for the item being solicited is fair and reasonable.

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

### (a) *Field pricing assistance.*

(i) The contracting officer should consider requesting field pricing assistance (See PGI 215.404-2(c) for when audit assistance should be requested) for—

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

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

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

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

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

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

(c) *Audit assistance for prime contracts or subcontracts.*

(i) The contracting officer should consider requesting audit assistance from DCAA for—

(A) Fixed-price proposals exceeding \$10 million;

(B) Cost-type proposals exceeding \$100 million.

(ii) The contracting officer should not request DCAA audit assistance for proposed contracts or modifications in an amount less than that specified in paragraph (c)(i) of this subsection unless there are exceptional circumstances explained in the request for audit. (See PGI 215.404-2(a)(i) for requesting field pricing assistance without a DCAA audit.)

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

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

(v) Requests for audit assistance for subcontracts should use the same criteria as established in paragraphs (c)(i) and (c)(ii) of this subsection.

### **PGI 215.404-3 Subcontract pricing considerations.**

(a) The contracting officer should consider the need for field pricing analysis and evaluation of lower-tier subcontractor proposals, and assistance to prime contractors when they are being denied access to lower-tier subcontractor records.

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

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

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

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

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

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

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

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

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

(iv) Price redeterminable or fixed-price incentive contracts may include

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subcontracts placed on the same basis. When the contracting officer wants to reprice the prime contract even though the contractor has not yet established final prices for the subcontracts, the contracting officer may negotiate a firm contract price—

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

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

(1) Circumstances require prompt negotiation; and

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

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

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

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

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

(1) The DD Form 1547—

(i) Provides a vehicle for performing the analysis necessary to develop a profit objective;

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

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(iii) Serves as the principal source document for reporting profit statistics to DoD's management information system.

(2) The military departments are responsible for establishing policies and procedures for feeding the DoD-wide management information system on profit and fee statistics (see PGI 215.404-76).

(3) The contracting officer shall—

(i) Use and prepare a DD Form 1547 whenever a structured approach to profit analysis is required by DFARS 215.404-4(b) (see DFARS 215.404-71, 215.404-72, and 215.404-73 for guidance on using the structured approaches). Administrative instructions for completing the form are in PGI 253.215-70.

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

### **PGI 215.404-71 Weighted guidelines method.**

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

(c) *Use of DD Form 1861 - Field pricing support.*

(i) The contracting officer may ask the ACO to complete the forms as part of field pricing support.

(ii) When the Weighted Guidelines Method is used, completion of the DD Form 1861 requires information not included on the Form CASB-CMF, i.e., distribution percentages of land, building, and equipment for the business unit performing the contract. Choose the most practical method for obtaining this information, for example—

(A) Contract administration offices could obtain the information through the process used to establish factors for facilities capital cost of money or could establish advance agreements on distribution percentages for inclusion in field pricing reports;

(B) The corporate ACO could obtain distribution percentages; or

(C) The contracting officer could request the information through a solicitation provision.

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

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

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

<u>Contracting Office</u>	<u>Designated Office</u>
ARMY	
All	*
NAVY	
All	Commander Fleet and Industrial Supply Center, Norfolk Washington Detachment, Code 402 Washington Navy Yard Washington, DC 20374-5000
AIR FORCE	
Air Force Materiel Command (all field offices)	*

\* Use the automated system, Profit Weighted Guidelines and Application at <https://www.wgl.wpafb.af.mil/wgl>, as required by your department.

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

(4) Contracting offices outside the United States and its outlying areas are exempt from reporting.

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

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

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- (6) In preparing and sending the quarterly report, designated offices—
- (i) Perform the necessary audits to ensure information accuracy;
  - (ii) Do not enter classified information;
  - (iii) Transmit the report using approved electronic means; and
  - (iv) Send the reports not later than the 30th day after the close of the quarterly reporting periods.

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

### PGI 215.406-1 Prenegotiation objectives.

- (a) Also consider—
- (i) Data resulting from application of work measurement systems in developing prenegotiation objectives; and
  - (ii) Field pricing assistance personnel participation in planned prenegotiation and negotiation activities.
- (b) Prenegotiation objectives, including objectives related to disposition of findings and recommendations contained in preaward and postaward contract audit and other advisory reports, shall be documented and reviewed in accordance with departmental procedures.

(i) *Significant Disagreements.* (A) Contracting officers and contract auditors have complementary roles in the contracting process and are expected to collaborate to determine fair and reasonable contract values, in accordance with [Director, Defense Procurement and Acquisition Policy memorandum dated December 4, 2009, Subject: Resolving Contract Audit Recommendations](#). When a significant disagreement arises on questioned costs, the contracting officer and the auditor shall discuss the basis of the disagreement. The contracting officer shall document that discussion and their disagreement in a written communication to the auditor. The contracting officer shall also document the disagreement in the prenegotiation objective (or pre-business clearance). The contracting officer may then proceed with negotiations when the prenegotiation objectives are approved.

(B) A significant disagreement is defined as the contracting officer planning to sustain less than 75-percent of the total recommended questioned costs in a Defense Contract Audit Agency (DCAA) audit report of a contractor proposal for an initial contract or a contract modification with a value equal to or greater than \$10 million. It does not apply to

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costs that DCAA has categorized as unsupported or unresolved in its audit report.

(ii) *Adjudication Procedures.* DCAA has three days to elevate the issues within the contracting officer's activity after receipt of the contracting officers' written communication confirming the disagreement. Furthermore, DCAA may appeal the significant issues up the chain of command as established in each Component's "Resolving Contract Audit Recommendations" policy. If issues remain, the Director, DCAA may escalate from the Defense Component's Head of Contracting Activity or Senior Procurement Executive, to the Director, Defense Procurement and Acquisition Policy (DPAP). If the DCAA Director believes that the Director, DPAP has not adequately addressed the matter, the disagreement may finally be elevated to the Under Secretary of Defense for Acquisition, Technology, and Logistics, and the Comptroller.

(iii) Notwithstanding the above, the Director, DCAA, may always raise audit issues to the Director, DPAP.

### **PGI 215.406-3 Documenting the negotiation.**

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

(10) The documentation—

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

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

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

### **PGI 215.407-4 Should-cost review.**

(b) *Program should-cost review.*

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

(c) *Overhead should-cost review.*

(1) Contact the Defense Contract Management Agency (DCMA) (<http://www.dcma.mil/>) for questions on overhead should-cost analysis.

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(2)(A) DCMA or the military department responsible for performing contract administration functions (e.g., Navy SUPSHIP) should consider, based on risk assessment, performing an overhead should-cost review of a contractor business unit (as defined in FAR 2.101) when all of the following conditions exist:

- (1) Projected annual sales to DoD exceed \$1 billion;
- (2) Projected DoD versus total business exceeds 30 percent;
- (3) Level of sole-source DoD contracts is high;
- (4) Significant volume of proposal activity is anticipated;
- (5) Production or development of a major weapon system or program is anticipated; and
- (6) Contractor cost control/reduction initiatives appear inadequate.

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

(C) Overhead should-cost reviews are labor intensive. These reviews generally involve participation by the contracting, contract administration, and contract audit elements. The extent of availability of military department, contract administration, and contract audit resources to support DCMA-led teams should be considered when determining whether a review will be conducted. Overhead should-cost reviews generally should not be conducted at a contractor business segment more frequently than every 3 years.

### **PGI 215.407-5 Estimating systems.**

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

(e) *Disposition of findings.*

(2) *Initial determination.*

(ii)(A) Within 10 days of receiving the report, if the contracting officer makes a determination that there is a significant deficiency, the contracting officer should provide an initial determination of deficiencies and a copy of the report to the contractor and require the contractor to submit a written response.

(C) *Evaluation of contractor's response.* Within 30 days of receiving the

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contractor's response, the contracting officer, in consultation with the auditor or cognizant functional specialist, should evaluate the contractor's response and make a final determination.

### (3) *Final Determination.*

(ii)(A) *Monitoring contractor's corrective action.* The auditor and the contracting officer shall monitor the contractor's progress in correcting deficiencies. If the contractor fails to make adequate progress, the contracting officer shall take whatever action is necessary to ensure that the contractor corrects the deficiencies. Examples of actions the contracting officer can take are: bringing the issue to the attention of higher level management, reducing or suspending progress payments (see FAR 32.503-6), implementing or increasing the withholding in accordance with [252.242-7005](#), Contractor Business Systems, if applicable, and recommending non-award of potential contracts.

### (B) *Correction of significant deficiencies.*

(1) When the contractor notifies the contracting officer, in writing, that the contractor has corrected the significant deficiencies, the contracting officer shall request that the auditor review the correction to determine if the deficiencies have been resolved.

(2) The contracting officer shall determine if the contractor has corrected the deficiencies.

(3) If the contracting officer determines the contractor has corrected the deficiencies, the contracting officer's notification shall be sent to the auditor; payment office; appropriate action officers responsible for reporting past performance at the requiring activities; and each contracting and contract administration office having substantial business with the contractor, as applicable.

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

(b)(i) The form and the provision included in the solicitation request the offeror to state what portion of the total price is estimated to be attributable to the production or development of the listed data for the Government (not to the sale of rights in the data). However, offerors' estimated prices may not reflect all such costs; and different offerors may reflect these costs in a different manner, for the following reasons—

- (A) Differences in business practices in competitive situations;
- (B) Differences in accounting systems among offerors;
- (C) Use of factors or rates on some portions of the data;

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

(E) Differences in data preparation methods among offerors.

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

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*(Revised May 18, 2011)*

### PGI 225.74—DEFENSE CONTRACTORS OUTSIDE THE UNITED STATES

#### PGI 225.7401 Contracts requiring performance or delivery in a foreign country.

(a) If the acquisition requires the performance of services or delivery of supplies in an area outside the United States, the contracting officer shall—

(i) Ensure that the solicitation and contract include any applicable host country and designated operational area performance considerations. Failure to provide such information—

(A) May result in a contract that does not reflect the respective support relationships between the contractor and the Government, ultimately affecting the ability of the contractor to fulfill the contract terms and conditions;

(B) May result in unplanned support burdens being placed on the Government in a theater of operations;

(C) May result in contractor personnel conflicting with theater operations or performing in violation of a theater commander's directives or host country laws; or

(D) May cause contractor personnel to be wrongly subjected to host country laws.

(ii) Comply with any theater business clearance/contract administration delegation requirements (which must be consistent with the combat support agency's established functions and responsibilities) set forth by the geographic combatant commander during declared contingency operations for all solicitations and contracts that relate to the delivery of supplies and services to the designated area(s) of operation.

(A) Theater business clearance ensures—

(1) Contracted effort to be accomplished in designated area(s) of operations, along with any associated contractor personnel, is visible to the combatant commander;

(2) Contracted effort is in consonance with in-country commanders' plans;

(3) Solicitations and contracts contain appropriate terms and conditions;

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(4) Contracted effort will be properly overseen in designated area(s) of operation;

(5) Any Government-furnished support requirements associated with contractor personnel are properly addressed in the contract terms and conditions.

(B) Contract administration delegation—

(1) Allows the combatant commander to exercise control over the assignment of contract administration (which must be consistent with the combat support agency's established functions and responsibilities) for that portion of contracted effort that relates to performance in, or delivery to, designated area(s) of operation.

(2) Allows the combatant commander to exercise oversight to ensure the contractor's compliance with combatant commander and subordinate task force commander policies, directives, and terms and conditions.

(iii) Refer to the website at <http://www.acq.osd.mil/dpap/pacc/cc/index.html>, which contains required procedures and applicable guidance and information;

(iv) Follow [specific guidance for the combatant command in whose area the contractor will be performing services or delivering supplies. This guidance is contained on the respective combatant commander's operational contract support webpage which is linked to the procedures at [http://www.acq.osd.mil/dpap/pacc/cc/areas\\_of\\_responsibility.html](http://www.acq.osd.mil/dpap/pacc/cc/areas_of_responsibility.html), at the weblink for the combatant command for the area in which the contractor will be performing services or delivering items. These pages list prevailing regulations, policies, requirements, host nation laws, orders/fragmentary orders, combatant commander's directives, unique clauses, and other considerations necessary for soliciting and awarding a contract for performance in, or delivery of items to, that combatant commander's area of responsibility;

(v) To determine the appropriate point(s) of contact for contracting matters in/within the combatant commander's area of responsibility, contact the overseas contracting office by accessing the link for the combatant command in whose area of responsibility the contractor will be performing services or delivering items. From the combatant command website, link to the contracting office supporting the combatant command to identify the appropriate point of contact; and

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(vi) Use the following checklist as a guide to document consideration of each listed issue, as applicable, and retain a copy of the completed checklist in the contract file.

### CHECKLIST

The contracting officer shall verify that the requiring activity has considered the following when building its requirements package, as applicable:

\_\_\_\_ (1) Whether the contemplated acquisition will duplicate or otherwise conflict with existing work being performed or items already provided in the area, and whether economies of scope/schedule can be leveraged if there are already existing contracts in place for similar work or items.

\_\_\_\_ (2) The availability of technically qualified and properly trained Government civilian and/or military personnel to oversee the performance of the contract in the combatant commander's area of responsibility (e.g., contracting officer's representatives, quality assurance representatives, property administrators).

\_\_\_\_ (3) The applicability of any international agreements to the acquisition. (Some agreements may be classified and must be handled appropriately.)

\_\_\_\_ (4) Compliance with area-specific, anti-terrorism security guidance set forth by the command anti-terrorism officer, to include soliciting anti-terrorism officer guidance on the particular requirement and the location of delivery and/or execution of services, and incorporating recommended security measures into the requirements package.

\_\_\_\_ (5) Whether there are any requirements for use of foreign currencies, including applicability of U.S. holdings of excess foreign currencies.

\_\_\_\_ (6) Information on taxes and duties from which the Government may be exempt.

\_\_\_\_ (7) If the acquisition requires performance of work in the foreign country, whether there are standards of conduct for the prospective contractor and, if so, the consequences for violation of such standards of conduct.

\_\_\_\_ (8) The availability of logistical and other Government-furnished support and equipment for contractor personnel. This includes, but is not limited to: berthing and messing; intra-theater transportation; medical support; morale, welfare, and recreation support; postal support; force protection support; organizational clothing and personal protective gear (e.g., body armor and gas masks.)

\_\_\_\_ (9) If the contractor will employ foreign workers, whether a waiver of the Defense Base Act will be required (see FAR 28.305).

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\_\_\_\_ (10) Whether contractor personnel will need authorization to carry weapons for the performance of the contract.

\_\_\_\_ (11) If the contract will include the clause at DFARS [252.225-7040](#), Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States, the Government official authorized to receive DD Form 93, Record of Emergency Data Card, to enable the contracting officer to provide that information to the contractor, as required by paragraph (g) of the clause.

\_\_\_\_ (12) Other requirements associated with contractor personnel to include deployment-related training, accountability (registration in Synchronized Pre-deployment and Operational Tracker), medical and dental qualifications, theater entrance and country clearance requirements.

\_\_\_\_ (13) Any other requirements of the website for the country in which the contract will be performed or the designated operational area to which deliveries will be made.

The contracting officer shall provide the following information to the applicable overseas contracting office (see PGI [225.7401](#)(a)(v)):

\_\_\_\_ (1) The solicitation number, the estimated dollar value of the acquisition, and a brief description of the work to be performed or the items to be delivered.

\_\_\_\_ (2) Notice of contract award, including contract number, dollar value, and a brief description of the work to be performed or the items to be delivered.

\_\_\_\_ (3) Any additional information requested by the applicable contracting office to ensure full compliance with policies, procedures, and objectives of the applicable country or designated operational area.

(b) For work performed in Japan or Korea, U.S.-Japan or U.S.-Korea bilateral agreements govern the status of contractors and employees, criminal jurisdiction, and taxation. U.S. Forces Japan (USFJ) and U.S. Forces Korea (USFK) are sub-unified commands of Pacific Command (PACOM). The PACOM Staff Judge Advocate contact information is available at [http://www.pacom.mil/web/Site\\_Pages/Staff%20Directory/J0/J0.shtml](http://www.pacom.mil/web/Site_Pages/Staff%20Directory/J0/J0.shtml) or by clicking on Staff Directory/Special Staff on the PACOM website. Links to USFJ and USFK websites can be found at the PACOM website at <http://www.pacom.mil> by clicking on “Regional Resources - Links”.

(i) For work performed in Japan—

(A) U.S.-Japan bilateral agreements govern the status of contractors and employees, criminal jurisdiction, and taxation;

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(B) USFJ and component policy, as well as U.S.-Japan bilateral agreements, govern logistic support and base privileges of contractor employees;

(C) The Commander, USFJ, is primarily responsible for interpreting the Status of Forces Agreement (SOFA) and local laws applicable to U.S. Forces in Japan and for requirements in support of USFJ; and

(D) To ensure that the solicitation and resultant contract reflect an accurate description of available logistics support and application of the U.S.-Japan SOFA, review the information on Contract Performance in Japan at the USFJ website, <http://www.usfj.mil>; or

(2) Contact the Staff Judge Advocate at (commercial) 011-81-3117-55-7717, or DSN 315-225-7717.

(ii) For work performed in Korea—

(A) U.S.-Korea bilateral agreements govern the status of contractors and employees, criminal jurisdiction, and taxation;

(B) USFK and component policy, as well as U.S.-Korea bilateral agreements, govern logistics support and base privileges of contractor employees;

(C) The Commander, USFK, is primarily responsible for interpreting the SOFA and local laws applicable to U.S. Forces in Korea and for requirements in support of USFK; and

(D) To ensure that the solicitation and resultant contract reflect an accurate description of available logistics support and application of the U.S.-Korea SOFA, review the SOFA information found at the USFK website at <http://www.usfk.mil/usfk/> under “Publications”, or at <http://www.usfk.mil/usfk/sofadocuments.aspx>. Contact information for the Commander is also available at <http://www.usfk.mil/usfk/leadership.aspx>.

(E) Additional applicable directives and regulations are available at <http://www.usfk.mil/usfk/>, click on the drop down menu for “Publications”.

(c) For work performed in specified countries in the USCENTCOM area of responsibility, follow theater business clearance/ contract administration delegation policy as set forth in OSD policy letters linked to this PGI, and specific theater business clearance/contract administration delegation instructions as implemented by USCENTCOM’s Joint Theater Support Contracting Command and found under contracting guidance at

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[http://www.acq.osd.mil/dpap/pacc/cc/areas\\_of\\_responsibility.html](http://www.acq.osd.mil/dpap/pacc/cc/areas_of_responsibility.html) (click on CENTCOM area of responsibility).

### **PGI 225.7402 Contractor personnel authorized to accompany U.S. Armed Forces deployed outside the United States.**

(1) DoDI 3020.41, Contractor Personnel Authorized to Accompany the U.S. Armed Forces, serves as a comprehensive source of DoD policy and procedures concerning DoD contractor and subcontractor personnel authorized to accompany the U.S. Armed Forces. Such personnel—

(i) May include U.S. citizens, U.S. legal aliens, third country nationals, and local nationals;

(ii) May be employees of external support, systems support, or theater support contractors, as defined in Enclosure 2 of DoDI 3020.41; and

(iii) Are provided with an appropriate identification card under the Geneva Conventions (also see DoDI 1000.1, Identity Cards Required by the Geneva Conventions).

(2) Not all contractor personnel in a designated operational area are authorized to accompany the U.S. Armed Forces. For example, contractor personnel performing reconstruction contracts generally are not authorized to accompany the U.S. Armed Forces.

(3) Also see PGI [207.105\(b\)\(20\)\(C\)](#) for special considerations for acquisition planning for crisis situations outside the United States.

### **PGI 225.7402-2 Definitions.**

“Designated operational areas” include, but are not limited to, such descriptors as theater of war, theater of operations, joint operations area, amphibious objective area, joint special operations area, and area of operations. See DoD Joint Publication 3-0, Joint Operations, Chapter II, Paragraph 5, “Organizing the Operational Areas,” at <https://jdeis.js.mil/jdeis/index.jsp> (select “Browse Joint Pubs” under “Joint Doctrine” heading).

### **PGI 225.7402-3 Government support.**

(a) Support that may be authorized or required when contractor personnel are deployed with or otherwise provide support in the theater of operations to U.S. military forces deployed outside the United States may include, but are not limited to—

(i) Deployment in-processing centers;

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- (ii) Training;
- (iii) Transportation to operation area;
- (iv) Transportation within operation area;
- (v) Physical security;
- (vi) Force protection;
- (vii) Organizational clothing and individual equipment;
- (viii) Emergency medical care;
- (ix) Mess operations;
- (x) Quarters;
- (xi) Postal service;
- (xii) Phone service;
- (xiii) Emergency notification;
- (xiv) Laundry; and
- (xv) Religious services.

(e) *Letter of Authorization.*

(i) A Letter of Authorization (LOA) is necessary to enable a contractor employee to process through a deployment processing center, to travel to, from, and within the theater of operations, and to identify any additional authorizations and privileges. If authorized by the contracting officer, a contracting officer's representative may approve a Letter of Authorization. Contractor travel orders will be prepared by the supporting installation.

(ii) The LOA will state the intended length of assignment in the theater of operations and will identify planned use of Government facilities and privileges in the theater of operations, as authorized by the contract. Authorizations may include such privileges as access to the exchange facilities and the commissary, and use of Government messing and billeting. The LOA must include the name of the approving Government official.

(iii) Sample LOA:

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OFFICE SYMBOL

Date

MEMORANDUM FOR *[insert name and address of military organization with the authority to provide Government-provided support where the contractor employees will be deployed]*

SUBJECT: Contractor Letter of Authorization *[note: much of the information contained within this Memorandum is similar to the information contained in travel orders for Government personnel]*

1. The *[insert appropriate name of Government requiring activity, such as a program management office]*, in its capacity for providing support under Contract Number *[insert contract number]*, *[insert delivery or task order number if applicable]*, awarded *[insert award date]*; authorizes the *[insert company name]* employee identified below to proceed to the locations and for the timeframe indicated below. Travel being performed is necessary and in the public's service.

a. Name: *[insert employee's full name, including middle name. In addition, include the employee's GS grade equivalent]*.

b. Home Address: *[insert complete street address, city, state, and zip code. Include a CONUS work e-mail address if available]*.

c. Date of Birth: *[insert employee's birth date]*.

d. Place of Birth: *[insert employee's birth place]*.

e. Passport Number/Expiration Date: *[insert contractor employee's passport number and passport expiration date]*.

f. Next of Kin: *[insert full name, along with contact information and individual's relationship]*.

g. Job Title: *[insert company job title for employee]*.

h. Equivalent GS grade: For purposes of determining what level of Government-provided support should be granted to contractor personnel, and for prisoner-of-war status, the individual named herein is equivalent to a *[for contractor non-supervisory positions insert GS-12. For contractor supervisory/managerial positions insert GS-13]*.

i. Level of Clearance: *[insert individual's security clearance; if not applicable, insert N/A]*.

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j. Issuing Agency: *[insert complete name and address of Government contracting organization that awarded the contract for which this work is being performed].*

k. Countries to be visited: *[insert the countries to be visited in support of military operations].*

l. Purpose: *[provide a brief description of the contractor support being provided. This should not exceed three lines. If known, include what military organizations will be supported at the tactical level].*

m. Deployed Performance Period: *[provide the estimated deployed performance dates].*

2. Contractor Privileges: *[Note the following list is provided for sample purposes only. The contracting officer should not state the following list verbatim. Every contracting officer should prepare the LOA in accordance with those specific privileges that may be made available for contractor personnel in performance of the specific contract.]* Request that this contractor employee be granted, subject to availability, access to or the privileges defined below while temporarily deployed with *[insert military organization supporting]* on Contract Number *[insert contract number]*:

a. Common Access Card (CAC), Geneva Convention Card (DD Form 489), and ration cards.

b. *[Insert appropriate exchange name]* Exchange service facilities (includes rationed items).

c. Military clothing sales for repair and replacement of issued equipment.

d. Organizational clothing and individual equipment.

e. Military banking facilities and Finance Accounting Office.

f. Government transportation (i.e. aircraft, automobile, bus, train) for official Government business.

g. Commissary (includes rationed items).

h. Morale and welfare recreational facilities (e.g., clubs, movie theaters, gyms).

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- i. Purchase of petroleum and oil products for rental and/or Government vehicles.
- j. Customs exemption.
- k. Emergency medical care.
- l. The following theater-specific immunizations that are not available to the general public: \_\_\_\_\_.
- m. Mess facilities.
- n. Quarters.
- o. Military postal service.
- p. Phone service.
- q. Laundry services.
- r. Religious services.

3. Travel Discount Rates: *[Insert full name of contract employee]*, the bearer of this letter, is an employee of *[insert company name]* which has a contract with this agency under Government contract *[insert contract number]*. During the period of this contract, *[insert performance period relating to deployment]*, and only if the vendor permits, the named bearer is eligible and authorized to use available travel discount rates in accordance with Government contracts and/or agreements. Government Contract City Pair fares are not available to Contractors.

4. Special Notice: Employees, including dependents residing with employees, employed by or accompanying the Armed Forces outside the United States, who engage in conduct outside the United States that would constitute an offense punishable by imprisonment for more than one year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States, may potentially be subject to the criminal jurisdiction of the United States. See the Military Extraterritorial Jurisdiction Act of 2000 (18 U.S.C. 3261 et. seq., as amended by Section 1088 of the National Defense Authorization Act for Fiscal Year 2005 (Public Law 108-375)).

5. Points of Contacts (POC):

a. POC at *[insert contracting activity information]* is the undersigned. The undersigned can be reached at:

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(1) DSN and Commercial *[insert phone numbers]*.

(2) E-mail *[insert unclassified e-mail address]*.

b. The Government requiring activity POC at *[insert requiring activity information]* is *[insert a requiring activity POC who will be familiar with the work being performed]*. The undersigned can be reached at:

(1) DSN and Commercial *[insert phone numbers]*.

(2) E-mail *[insert unclassified e-mail address]*.

c. Contracting Officer's Representative (COR) POC *[insert primary contract COR information. In addition to the primary COR, there may be a COR in the theater of operations.]*. The COR can be reached at:

(1) DSN and Commercial *[insert phone numbers]*.

(2) E-mail *[insert unclassified e-mail address]*.

6. Upon completion of the mission, the employee should make all attempts to return to the deployment processing center point of origin.

*[The LOA is typically signed by the procuring contracting officer.]*

CF: *[insert applicable addresses (i.e., PM for the individual specified in this order)]*

### **PGI 225.7402-5 Contract clauses.**

(a) Class Deviation [2011-00004](#), Contractor Personnel Performing in the United States Central Command Area of Responsibility.

(i) "Performance in the United States Central Command Area of Responsibility (USCENTCOM AOR)" means performance of a service or construction, as required by the contract. For supply contracts, production of the supplies or associated overhead functions are not covered, but services associated with the acquisition of the supplies are covered (e.g., installation or maintenance).

(ii) If a contract requires performance in the USCENTCOM AOR, but some personnel performing the contract are authorized to accompany the U.S. Armed Forces, and other personnel performing the contract are not authorized to accompany the U.S. Armed Forces, include in the solicitation and contract both the clause at DFARS [252.225-7040](#) and the clause provided by Class Deviation [2011-00004](#).

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(iii) In exceptional circumstances, the head of the agency may authorize deviations from the requirements of Class Deviation [2011-O0004](#), in accordance with FAR Subpart 1.4 and DFARS Subpart [201.4](#).

(iv) Also see <http://www.acq.osd.mil/log/PS/spot.html> for business rules on use of the SPOT system.

(b) When using the clause at DFARS [252.225-7040](#), Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States, consider the applicability of the following clauses:

(i) The clause at DFARS [252.225-7043](#), Antiterrorism/Force Protection Policy for Defense Contractors Outside the United States, as prescribed at DFARS [225.7403-2](#).

(ii) Either the clause at FAR 52.228-3, Workers' Compensation Insurance (Defense Base Act), or the clause at FAR 52.228-4, Workers' Compensation and War-Hazard Insurance Overseas, as prescribed at FAR 28.309(a) and (b).

(iii) The clause at FAR 52.228-7, Insurance—Liability to Third Persons, in cost-reimbursement contracts as prescribed at DFARS [228.311-1](#).

(iv) The clause at DFARS [252.228-7003](#), Capture and Detention, as prescribed at DFARS [228.370](#)(d).

(v) The clause at DFARS [252.237-7019](#), Training for Contractor Personnel Interacting with Detainees, as prescribed at DFARS [237.171-4](#).

(vi) The clause at FAR 52.249-14, Excusable Delays, as prescribed at FAR 49.505(b).

(vii) The clauses at FAR 52.251-1, Government Supply Sources, as prescribed at FAR 51.107, and DFARS [252.251-7000](#), Ordering from Government Supply Sources, as prescribed at DFARS [251.107](#).

### **PGI 225.7403 Antiterrorism/force protection.**

#### **PGI 225.7403-1 General.**

Information and guidance pertaining to DoD antiterrorism/force protection policy for contracts that require performance or travel outside the United States can be obtained from the following offices:

(1) For Army contracts: HQDA-AT; telephone, DSN 222-9832 or commercial (703) 692-9832.

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(2) For Navy contracts: Naval Criminal Investigative Service (NCIS), Code 21; telephone, DSN 288-9077 or commercial (202) 433-9077.

(3) For Marine Corps contracts: CMC Code POS-10; telephone, DSN 224-4177 or commercial (703) 614-4177.

(4) For Air Force and Combatant Command contracts: The appropriate Antiterrorism Force Protection Office at the Command Headquarters. Also see <https://atep.dtic.mil>.

(5) For defense agency contracts: The appropriate agency security office.

(6) For additional information: Assistant Secretary of Defense for Special Operations and Low Intensity Conflict, ASD (SOLIC); telephone, DSN 227-7205 or commercial (703) 697-7205.

### **PGI 225.7404 Contract administration in support of contingency operations.**

(a) In accordance with Joint Publication 1, Doctrine for the Armed Forces of the United States, at [http://www.apexnet.org/docs/Joint\\_Publication\\_1.pdf](http://www.apexnet.org/docs/Joint_Publication_1.pdf), the geographic combatant commander or subordinate joint force commander, through his command authority to exercise operational control, has the authority to exercise control over the assignment of contract administration during contingency operations, consistent with the combat support agency's established mission functions, responsibilities, and core competencies, for contracts requiring delivery of items or performance within the area of operations.

(b) In certain contingency operations, the combatant commander or joint force commander may promulgate theater or joint operations area guidance for contracting that may include establishing—

(1) A contracting command and control structure;

(2) Head of contracting activity responsibilities, specific orders, and policies, including local clauses;

(3) Roles and responsibilities of DoD components and supporting agencies in contract formation and execution; and

(4) Procedures and requirements for contract clearance and contract administration of contracts requiring delivery of items and performance within the area of operations.

(c) When a combat support agency is tasked by the combatant commander to provide contingency contract administration services in support of contingency operations and such support will be required for a long duration, the combat support agency shall initiate a memorandum of agreement with the combatant commander or joint force commander.

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This agreement shall clearly delineate the purpose of the support, respective responsibilities of the combat support agency and the joint, lead service or service contracting activity requesting the support, combat support agency support parameters, and a resolution process for resolving support issues.

(1) The memorandum of agreement should focus on maximizing the combat support agency's core competencies to address the more critical, complex, high-risk, and specialized oversight requirements.

(2) The memorandum of agreement should take into consideration the combat support agency's core competencies, workload priorities, and contract administration services support parameters for accepting requests for contract administration services support.

(3) A combat support agency shall not be assigned to perform tasks outside its mission functions, responsibilities, or core competencies.

(4) Contracting officers contemplating requesting contract administration support in a contingency area from a combat support agency should first ascertain whether such a memorandum of agreement exists by contacting their combat support agency point of contact and or checking the combatant commander operational contract support website (referenced in DFARS PGI [225.7401](#)).

(5) The following is a notional format for a memorandum of agreement for contract administration services support;

(A) Purpose: Outline formal procedures for requesting contract administration services support, describe objectives associated with combat support agency providing such support.

(B) Reference: Key documents or reference(s) associated with the execution of the contract administration services support.

(C) Clearing-house functions performed by the designated joint or lead component contracting activity in the operational area—

(1) Contract clearance parameters – when required;

(2) Contract delegation parameters – when required.

(D) Contract administration services support parameters –

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(1) Acceptable for delegation - contract types that will be accepted by the combat support agency based on risk, dollar threshold, geographic dispersion of performance, service type, criticality of acceptance, or other criteria;

(2) Generally not be delegated – below-threshold contract types;

(3) Will not be delegated – no agency expertise to oversee.

(E) Delegation process – process for accepting and assigning contract administration services tasks within the combat support agency.

(F) Joint resolution process – procedures in the event of disagreement on actions to be supported by the combat support agency.

(G) Term of the Agreement and Modification - length of time the agreement will be in effect and procedures for the parties to modify or terminate it.

(d) Disputes regarding requested support should be resolved at the lowest management level possible, through a predetermined resolution process. When support issues arise that affect the ability of a combat support agency to provide contract administration support that cannot be resolved at lower management levels, follow procedures set forth in DoDI 3000.06, Combat Support Agencies, paragraphs 5.6.8 and 5.6.9, (<http://www.dtic.mil/whs/directives/corres/pdf/300006p.pdf>).

# DFARS Procedures, Guidance, and Information

## PGI 234—Major System Acquisition

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(Revised May 18, 2011)

### PGI 234.2—EARNED VALUE MANAGEMENT SYSTEM

#### PGI 234.201 Policy.

(1)(iii) When the program manager decides to implement earned value management on contracts and subcontracts valued at less than \$20,000,000, a cost-benefit analysis shall be conducted and the results documented in the contract file. Considerations for determining the effectiveness of applying earned value management in these situations and guidance for tailoring reporting can be found in—

(1) The Defense Acquisition Guidebook, Chapter 11, Section 11.3, at <https://akss.dau.mil/dag/DoD5000.asp?view=document>; and

(2) The DoD Earned Value Management Implementation Guide at <https://acc.dau.mil/CommunityBrowser.aspx?id=19557>.

(iv) In extraordinary cases where cost/schedule visibility is required and cannot be obtained using other means, the program manager shall request a waiver for individual contracts from the Milestone Decision Authority. In these cases, the program manager will conduct a business case analysis that includes rationale as to why a cost or fixed-price incentive contract was not an appropriate contracting vehicle. Considerations for determining the effectiveness of applying earned value management in these situations and guidance for tailoring reporting can be found in—

(1) The Defense Acquisition Guidebook, Chapter 11, Section 11.3, at <https://akss.dau.mil/dag/DoD5000.asp?view=document>; and

(2) The DoD Earned Value Management Implementation Guide at <https://acc.dau.mil/CommunityBrowser.aspx?id=19557>.

(2) The procuring contracting officer shall obtain the assistance of the administrative contracting officer in determining the adequacy of an earned value management system (EVMS) plan that an offeror proposes for compliance with ANSI/EIA-748, under the provision at DFARS 252.234-7001, Notice of Earned Value Management System. The Government will review and approve the offeror's EVMS plan before contract award. Instructions for performing EVMS plan reviews can be found at <http://guidebook.dcms.mil/39/instructions.htm>.

(4) Additional guidance on earned value management can be found in—

(A) The Guidebook for Earned Value Management System (EVMS) System-Level Surveillance at <http://guidebook.dcms.mil/79/instructions.htm>;

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## PGI 234—Major System Acquisition

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(B) The Guidebook for Earned Value Management System - Program Analysis at [http://guidebook.dcmamil/248/guidebook\\_process.htm](http://guidebook.dcmamil/248/guidebook_process.htm); and

(C) The Program Managers' Guide to the Integrated Baseline Review Process (the IBR Guide) at <http://www.acq.osd.mil/pm/currentpolicy/currentpolicy.html>.

(7) *Disposition of findings.*

(ii) *Initial determination.*

(B)(1) Within 10 days of receiving the report, if the contracting officer makes a determination that there is a significant deficiency, the contracting officer should provide an initial determination of deficiencies and a copy of the report to the contractor and require the contractor to submit a written response.

(3) *Evaluation of contractor's response.* Within 30 days of receiving the contractor's response, the contracting officer, in consultation with the auditor or cognizant functional specialist, should evaluate the contractor's response and make a final determination.

(iii) *Final determination.*

(B)(1) *Monitoring contractor's corrective action.* The contracting officer and cognizant functional specialist or auditor shall monitor the contractor's progress in correcting deficiencies. If the contractor fails to make adequate progress, the contracting officer shall take whatever action is necessary to ensure that the contractor corrects the deficiencies. Examples of actions the contracting officer can take are: bringing the issue to the attention of higher level management, implementing or increasing the withholding in accordance with [252.242-7005](#), Contractor Business Systems.

(2) *Correction of significant deficiencies.*

(i) When the contractor notifies the contracting officer that the contractor has corrected the significant deficiencies, the contracting officer shall request the cognizant functional specialist or auditor to review the correction to determine if the deficiencies have been resolved.

(ii) The contracting officer shall determine if the contractor has corrected the deficiencies.

(iii) If the contracting officer determines the contractor has corrected the deficiencies, the contracting officer's notification shall be sent to the cognizant functional specialist; auditor; payment office; appropriate action officers at the requiring activities; and each contracting and contract administration office having substantial business with the

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## PGI 234—Major System Acquisition

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contractor as applicable.

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## PGI 242—Contract Administration and Audit Services

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(Added May 18, 2011)

### PGI 242.70— CONTRACTOR BUSINESS SYSTEMS

#### PGI 242.7000 Contractor business system deficiencies.

(b) *Determination to withhold payments.* The following are sample formats for written notifications of contracting officer determinations to initiate payment withholding, reduce payment withholding, and discontinue payment withholding in accordance with the clause at DFARS [252.242-7005](#), Contractor Business Systems:

(1) Use this sample format for written final determinations to implement payment withholding:

#### Payment Withholding

(i) The purpose of this final determination is to disapprove your *[identify the contractor business system(s)]* and implement payment withholding per the terms of the DFARS clause at [252.242-7005](#), Contractor Business Systems.

(ii) It is my final determination that XXX System(s) contains the following significant deficiencies:

*--[list all significant deficiencies]*

(iii) Effective immediately, five percent (or a lesser percentage if five percent will exceed the withhold limitations in the DFARS clause at [252.242-7005](#)) of each request for payment under the contracts in Attachment A will be withheld as described below for significant deficiencies in XXX system. Upon receipt of an acceptable corrective action plan and my determination that this corrective action plan is being effectively implemented, I will issue a notification with respect to reducing the percentage being withheld to two percent until I determine that all significant deficiencies, as identified in this final determination, have been corrected. Failure to follow the accepted corrective action plan will result in an increase in the percentage withheld against each payment under this contract to five percent (or a lesser percentage if five percent will exceed the withhold limitations in DFARS [252.242-7005](#)). *[Repeat this paragraph, as necessary, if multiple withholds are being applied to multiple systems in accordance with [252.242-7005\(d\)](#)]*

(iv) For payments under cost, labor-hour, or time-and-material contracts: The Contractor shall apply a five percent (or a lesser percentage if five percent will exceed the withhold limitations in DFARS [252.242-7005](#)) withhold to the amount being billed and prepare a cost voucher in Wide Area WorkFlow (WAWF) for the net amount due. The Contractor shall show the amount withheld on the current billing, as well as the cumulative amount withheld to date on this contract in accordance with DFARS clause [252.242-7005](#),

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in the Comments block of the Miscellaneous Info Tab in WAWF.

(iv) For progress payments: The Contractor shall prepare the request in WAWF without applying any withhold percentage. The Contracting Officer will reduce the approved amount by five percent (or a lesser percentage if five percent will exceed the withhold limitations in DFARS [252.242-7005](#)) and record the amount being withheld on the progress payment request, as well the cumulative amount withheld on this contract in accordance with DFARS clause [252.242-7005](#), in the Comments block of the Miscellaneous Info Tab in WAWF.

(v) For performance-based payments: The Contractor shall prepare the request in WAWF without applying any withhold percentage to the performance based payment event schedule amounts. The Contracting Officer will reduce the amount approved by five percent (or a lesser percentage if five percent will exceed the withhold limitations in DFARS [252.242-7005](#)) and record the amount being withheld on the performance based payment as well as the cumulative amount withheld on this contract in accordance with the DFARS clause [252.242-7005](#) in the Comments block of the of the Miscellaneous Info Tab in WAWF.

(2) Use this sample format for determinations to reduce payment withholding:

### Reduction of Temporary Payment Withholding

(i) The purpose of this determination is to reduce the payment withholding percentage per the terms of the DFARS clause at [252.242-7005](#), Contractor Business Systems, as a result of receiving an acceptable corrective action plan from the contractor, dated YYYY/MM/DD, for resolving deficiencies in its XXX system(s) as identified in the Contracting Officer's determination, dated YYYY/MM/DD. This reduction is prospective and previous amounts withheld will not be reduced or released at this time.

(ii) Effective immediately, two percent of each request for payment under this contract will be withheld as described below. The two percent being withheld will remain in effect until the Contracting Officer determines that the Contractor has corrected all significant deficiencies as directed by the Contracting Officer's determination. Failure to follow the accepted corrective action plan will result in an increase in the percentage withheld against each payment under this contract to five percent (or a lesser percentage if five percent will exceed the withhold limitations in DFARS [252.242-7005](#)).

(iii) For payments under cost, labor-hour, or time-and-material contracts: The Contractor shall apply a two percent withhold to the amount being billed and prepare a cost voucher in Wide Area WorkFlow (WAWF) for the net amount due. The Contractor shall show the amount withheld on the current billing, as well as the cumulative amount withheld to date on this contract in accordance with DFARS clause [252.242-7005](#), in the Comments block of the Miscellaneous Info Tab in WAWF.

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### PGI 242—Contract Administration and Audit Services

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(iv) For progress payments: The Contractor shall prepare the request in WAWF without applying any withhold percentage. The Contracting Officer will reduce the approved amount by two percent and record the amount being withheld on the progress payment request, as well the cumulative amount withheld on this contract in accordance with DFARS clause [252.242-7005](#), in the Comments block of the Miscellaneous Info Tab in WAWF.

(v) For performance-based payments: The Contractor shall prepare the request in WAWF without applying any withhold percentage to the performance-based payment event schedule amounts. The Contracting Officer will reduce the amount approved by two percent and record the amount being withheld on the performance-based payment as well as the cumulative amount withheld on this contract in accordance with the DFARS clause [252.242-7005](#) in the Comments block of the of the Miscellaneous Info Tab in WAWF.

(3) Use the sample format below if payment withholding is discontinued pending receipt of auditor or functional specialist verification and based on evidence that the Contractor has corrected all significant deficiencies, in accordance with DFARS clause [252.242-7005](#), Contractor Business Systems:

#### Discontinuation of Payment Withholding Pending Verification

(i) The purpose of this determination is to approve your *[identify system(s)]* pending verification, discontinue the payment withhold as identified in the Contracting Officer's determination dated YYYY/MM/DD, and release previous amounts withheld on the contracts in Attachment A, in accordance with DFARS clause [252.242-7005](#), Contractor Business Systems.

(ii) The discontinuation of the payment withhold is made pending receipt of verification and based on my review of the evidence submitted by the Contractor that all the Contractor's system(s) deficiencies identified in the Contracting Officer's determination dated YYYY/MM/DD have been corrected.

(iii) The Contractor is authorized to submit a bill in the amount of \$XXXXXXXX. The billed amount should be submitted on the same type of invoice as the withhold was originally taken, as appropriate.

(4) Use the sample format below if payment withholding is discontinued after auditor or functional specialist verification that the Contractor has corrected all significant deficiencies, in accordance with DFARS clause [252.242-7005](#), Contractor Business Systems:

#### Discontinuation of Payment Withholding

(i) The purpose of this determination is to approve your *[identify system(s)]*,

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discontinue the payment withhold as identified in the Contracting Officer's determination dated YYYY/MM/DD, and release previous amounts withheld on the contracts in Attachment A, in accordance with DFARS clause [252.242-7005](#), Contractor Business Systems.

(ii) The discontinuation of the payment withhold is made based on verification that all the Contractor's system(s) deficiencies identified in the Contracting Officer's final determination dated YYYY/MM/DD have been corrected.

(iii) The Contractor is authorized to submit a bill in the amount of \$XXXXXXXX. The billed amount should be submitted on the same type of invoice as the withhold was originally taken, as appropriate.

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(Added May 18, 2011)

### PGI 242.72—CONTRACTOR MATERIAL MANAGEMENT AND ACCOUNTING SYSTEM

#### PGI 242.7203 Review procedures.

(c) *Disposition of findings.*

(2) *Initial determination.*

(ii)(A) Within 10 days of receiving the report, if the contracting officer makes a determination that there is a significant deficiency, the contracting officer should provide an initial determination of deficiencies and a copy of the report to the contractor and require the contractor to submit a written response.

(C) *Evaluation of contractor's response.* Within 30 days of receiving the contractor's response, the contracting officer, in consultation with the auditor or cognizant functional specialist, should evaluate the contractor's response and make a final determination.

(3) *Final Determination.*

(ii)(A) *Monitoring contractor's corrective action.* The contracting officer, with the assistance of the auditor, shall monitor the contractor's progress in correcting deficiencies. If the contractor fails to make adequate progress, the contracting officer shall take whatever action is necessary to ensure that the contractor corrects the deficiencies. Examples of actions the contracting officer can take are: disapprove the contractor's MMAS; bringing the issue to the attention of higher level management; implementing or increasing the withholding in accordance with [252.242-7005](#), Contractor Business Systems, if applicable; and recommending non-award of potential contracts.

(B) *Correction of significant deficiencies.*

(1) When the contractor notifies the contracting officer that the contractor has corrected the significant deficiencies, the contracting officer shall request that the auditor review the correction to determine if the deficiencies have been resolved.

(2) The contracting officer shall determine if the contractor has corrected the deficiencies.

(3) If the contracting officer determines the contractor has corrected the deficiencies, the contracting officer's notification shall be sent to the auditor; payment office; appropriate action officers responsible for reporting past performance at the requiring

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## PGI 242—Contract Administration and Audit Services

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activities; and each contracting and contract administration office having substantial business with the contractor as applicable.

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## PGI 242—Contract Administration and Audit Services

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(Added May 18, 2011)

### PGI 242.75—CONTRACTOR ACCOUNTING SYSTEMS AND RELATED CONTROLS

#### PGI 242.7502 Policy.

(d) *Disposition of findings.*

(2) *Initial determination.*

(ii)(A) Within 10 days of receiving the report, if the contracting officer makes a determination that there is a significant deficiency, the contracting officer should provide an initial determination of deficiencies and a copy of the report to the contractor and require the contractor to submit a written response.

(C) *Evaluation of contractor's response.* Within 30 days of receiving the contractor's response, the contracting officer, in consultation with the auditor or cognizant functional specialist, should evaluate the contractor's response and make a final determination.

(3) *Final Determination.*

(ii)(A) *Monitoring contractor's corrective action.* The auditor and the contracting officer shall monitor the contractor's progress in correcting deficiencies. If the contractor fails to make adequate progress, the contracting officer shall take whatever action is necessary to ensure that the contractor corrects the deficiencies. Examples of actions the contracting officer can take are: disapproving the system; bringing the issue to the attention of higher level management; implementing or increasing the withholding in accordance with [252.242-7005](#), Contractor Business Systems, if applicable; and recommending non-award of potential contracts.

(B) *Correction of significant deficiencies.*

(1) When the contractor notifies the contracting officer that the contractor has corrected the significant deficiencies, the contracting officer shall request that the auditor review the correction to determine if the deficiencies have been resolved.

(2) The contracting officer shall determine if the contractor has corrected the deficiencies.

(3) If the contracting officer determines the contractor has corrected the deficiencies, the contracting officer's notification shall be sent to the auditor; payment office; appropriate action officers responsible for reporting past performance at the requiring

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activities; and each contracting and contract administration office having substantial business with the contractor as applicable.

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## PGI 244—Subcontracting Policies and Procedures

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(Revised May 18, 2011)

### PGI 244.3—CONTRACTORS' PURCHASING SYSTEMS REVIEWS

#### PGI 244.305-70 Policy.

(c) *Disposition of findings.*

(2) *Initial determination.*

(ii)(A) Within 10 days of receiving the report, if the contracting officer makes a determination that there is a significant deficiency, the contracting officer should provide an initial determination of deficiencies and a copy of the report to the contractor and require the contractor to submit a written response.

(C) *Evaluation of contractor's response.* Within 30 days of receiving the contractor's response, the contracting officer, in consultation with the auditor or cognizant functional specialist, should evaluate the contractor's response and make a final determination.

(3) *Final Determination.*

(ii)(A) *Monitoring contractors' corrective action.* The contracting officer and Purchasing System Analyst (PSA) or auditor shall monitor the contractor's progress in correcting deficiencies. If the contractor fails to make adequate progress, the contracting officer shall take whatever action is necessary to ensure that the contractor corrects the deficiencies. Examples of actions the contracting officer can take are: withdraw or withhold approval of the system; bringing the issue to the attention of higher level management, implementing or increasing the withholding in accordance with [252.242-7005](#), Contractor Business Systems, and recommending non-award of potential contracts.

(B) *Correction of significant deficiencies.*

(1) When the contractor notifies the contracting officer that the contractor has corrected the significant deficiencies, the contracting officer shall request the PSA or auditor to review the correction to determine if the deficiencies have been resolved.

(2) The contracting officer shall determine if the contractor has corrected the deficiencies.

(3) If the contracting officer determines the contractor has corrected the deficiencies, the contracting officer's notification shall be sent to the PSA; auditor; payment office; appropriate action officers responsible for reporting past performance at the requiring

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## PGI 244—Subcontracting Policies and Procedures

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activities; and each contracting and contract administration office having substantial business with the contractor as applicable.

# DFARS Procedures, Guidance, and Information

## PGI 245—Government Property

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(Revised May 18, 2011)

### PGI 245.1 - GENERAL

#### PGI 245.102-70 Policy.

(1) A basic principle of the Federal Acquisition Regulations System is that, upon contract award, contractors bring all the necessary organization, experience, accounting and operational controls, property, and technical skills, or the ability to obtain them (reference FAR 9.104-1 (e), (f), and (g) of General Standards). Therefore, upon contract award, responsible contractors should have the means to provide effective and efficient stewardship of Government property.

(2) For the purpose of this PGI, “Government property” is personal property owned by the Government and furnished to a contractor, or acquired by a contractor and title vests in the Government. Government property does not include property under any statutory leasing authority (except as to non-Government use of property under FAR 45.301(f)); property to which the Government has acquired a lien or title solely because of partial, advance, progress, or performance-based payments; software; or intellectual property. It does not include property that is incidental to the place of performance; such as when the contract requires contractor personnel to be located on a Government site or installation where the use of Government-provided office space and equipment, e.g., chairs, telephones, and computers, is standard practice.

#### PGI 245.103 General.

#### PGI 245.103-70 Furnishing Government property to contractors.

(1) The requiring activity (project or program manager, or purchase request generator), as part of its responsibility for acquisition planning (FAR part 7, Acquisition Planning), is the decision point as to whether or not to furnish property to contractors. The basis for any decision to provide Government property shall be documented by the requiring activity and provided to the contracting officer. Such documentation is not required when contractors are furnished property for repair, modification, or overhaul under a contract.

(2) Prior to furnishing Government property to the contractor, the contracting officer shall ensure that each of the requirements of FAR 45.102 are addressed as follows, and documented in the contracting file—

(i) *Element 1: In the Government’s best interest.* Discussion should be specific, factual, and where necessary, address actual or projected dollars and percentages. Merely selecting one or two objectives supported by a general, perfunctory discussion does not address this element satisfactorily. Discussion should address the following factors:

(A) Economy – Furnishing Government property is the lowest cost or price alternative.

(B) Standardization – There is a critical need for precise replication.

(C) Security – Government property is needed due to national security issues/concerns.

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## PGI 245—Government Property

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(D) Expedite production – Government property is crucial to achieving timely or accelerated delivery of a supply item or service.

(E) Scarcity – The Government can obtain scarce items, or is the only source of property necessary for successful execution of a contract.

(F) Maintain the industrial base – Government property is needed to ensure future capability to obtain a particular supply item or service.

(G) Contract type – Government property will enable the Government to obtain a more favorable contract type.

(ii) *Element 2: Overall benefit.* Demonstrate that the overall benefit to the acquisition significantly outweighs the increased cost of administration, including property disposal.

(A) Property in the hands of contractors drives program costs. Therefore, in order to make the case that providing Government property to the contractor is worthwhile, the associated costs must be considered and the business decision justified. The costs of Government property removal and disposal, including demilitarization and disposal of environmentally-regulated property, must be included.

(B) Costs must be either less than what the contractor might otherwise incur, or the demonstrated benefit to the Government must outweigh these additional contract costs.

(iii) *Element 3: Government assumption of risk.* Demonstrate that providing the property does not substantially increase the Government's risk.

(A) Risk must be discussed and documented. A risk analysis is warranted to demonstrate that the Government is not substantially increasing its risk. For example, when furnishing Government property, the Government is ordinarily responsible for suitability of use, timely delivery, and replacement of defective Government property.

(B) Other risks may need to be considered, discussed, and documented.

(iv) *Element 4: Government requirements cannot otherwise be met.* Document why the furnishing of Government property is critical and significant to meeting acquisition plan objectives.

### **PGI 245.103-71 Transferring Government property accountability.**

(1) Government property can only be transferred from one contract to another when firm requirements exist under the gaining contract (see FAR 45.102, Policy.). Such transfers shall be documented by modifications to both gaining and losing contracts. (Note: This also applies to orders issued under the same contract.) Once transferred, all property shall be considered Government-furnished property (GFP) when retained by the contractor for continued use under the gaining contract.

(2) The warranties of suitability of use and timely delivery of do not apply to GFP acquired or fabricated by the contractor as contractor-acquired property that is subsequently transferred to another contract with the same contractor.

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## PGI 245—Government Property

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(3) Maintaining property on an existing contract beyond completion of delivery performance or service completion is prohibited.

(4) It is the responsibility of contracting officers/item managers to ensure that Government property transfers are properly reported electronically, including the initial furnishing by DoD of Government property and the subsequent transfer of such property to other contracts/contractors, or its return to the Government. DoD or contractor-operated logistics systems using Defense Logistics Management System (DLMS)-enhanced reporting capability, to include authorizing contract number and Item Unique Identification (IUID), when applicable, shall be employed to report initial shipment, receipt acknowledgement, or return of items of supply in accordance with MILSTRIP and Military Standard Transaction Reporting and Accounting Procedure(s) (MILSTRAP). Such use of the DLMS will satisfy Government property transfer reporting requirements. For other Government property items where the DLMS is not applicable, the DoD Wide-Area Workflow (WAWF) Government property transfer system functionality should be used to accomplish reporting requirements. For information on DLMS, MILSTRIP, and MILSTRAP, see [http://www.dla.mil/j-6/dlmso/eLibrary/Manuals/dlmso\\_pubs.asp](http://www.dla.mil/j-6/dlmso/eLibrary/Manuals/dlmso_pubs.asp) and click on DoD 4000.25-M, DoD 4000.25-1-M, and DoD 4000.25-2-M, respectively. For information on WAWF, see <https://wawf.eb.mil>; under the Navigation Menu on the left, there is an "About WAWF" link. Click on "list of options" to learn more about WAWF. One of those links is "Access Web-Based Training (External Link)." That link will take the user to <http://wawftraining.com>. This is a web-based, computer-based training type course that includes a section on "Property Shipment and Receipt."

### PGI 245.105 Contractors' property management system compliance.

(d) *Disposition of findings.*

(2) *Initial determination.*

(ii)(A) Within 10 days of receiving the report, if the contracting officer makes a determination that there is a significant deficiency, the contracting officer should provide an initial determination of deficiencies and a copy of the report to the contractor and require the contractor to submit a written response.

(C) *Evaluation of contractor's response.* Within 30 days of receiving the contractor's response, the contracting officer, in consultation with the auditor or cognizant functional specialist, should evaluate the contractor's response and make a final determination.

(3) *Final Determination.*

(ii)(A) *Monitoring contractor's corrective action.* The contracting officer and property administrator shall monitor the contractor's progress in correcting deficiencies. If the contractor fails to make adequate progress, the contracting officer shall take whatever action is necessary to ensure that the contractor corrects the deficiencies. Examples of

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### PGI 245—Government Property

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actions the contracting officer can take are: withdraw or withhold approval of the system; bringing the issue to the attention of higher level management, implementing or increasing the withholding in accordance with the clause at [252.242-7005](#), Contractor Business Systems, and recommending non-award of potential contracts.

(B) *Correction of significant deficiencies.*

(1) When the contractor notifies the contracting officer that the contractor has corrected the significant deficiencies, the contracting officer shall request the property administrator to review the correction to determine if the deficiencies have been resolved.

(2) The contracting officer shall determine if the contractor has corrected the deficiencies.

(3) If the contracting officer determines the contractor has corrected the deficiencies, the contracting officer's notification shall be sent to the property administrator; auditor; payment office; appropriate action officers responsible for reporting past performance at the requiring activities; and each contracting and contract administration office having substantial business with the contractor as applicable.