



ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

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JUN 08 2007

MEMORANDUM FOR DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(POLICY AND PROCUREMENT), ASA (ALT)  
DEPUTY ASSISTANT SECRETARY OF THE NAVY  
(ACQUISITION MANAGEMENT), ASN (RDA)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(ACQUISITION), SAF/AQ  
DIRECTORS OF DEFENSE AGENCIES

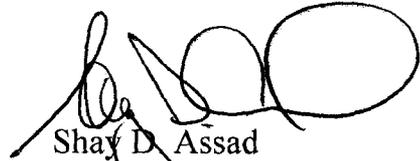
SUBJECT: Determining Fair and Reasonable Contract Prices - Revised Procedures,  
Guidance and Instruction (PGI)

DPAP published the attached revision to the PGI on May 31, 2007 to provide guidance regarding the application of existing FAR/DFARS requirements for determining fair and reasonable contract prices. This PGI change is in response to several oversight reports, including findings contained in DoD IG Report D2005-D000CH-0183.000, "Commercial Contract for Noncompetitive Spare Parts with Hamilton Sundstrand Corporation." This revised PGI coverage:

- Emphasizes the requirement that contracting officers obtain cost or pricing data if the procurement is above the TINA threshold and none of the exceptions to submission of cost or pricing data apply.
- Emphasizes that contracting officers must obtain whatever information or data is necessary to determine a fair and reasonable price when TINA does not apply. In particular, the PGI coverage highlights the importance of adequately assessing sole source commercial items, including obtaining information other than cost or pricing data where necessary.
- Includes procedures and guidance regarding TINA waivers.
- Includes procedures and guidance for determining when to perform price analysis, cost analysis, and technical analysis.
- Includes a requirement for Senior Procurement Executive review of exceptional case TINA waivers over \$100 million.



Please ensure your contracting activities are aware of this PGI revision. My point of contact for this memorandum is Mr. John McPherson, Senior Procurement Analyst, who can be reached at 703-602-0296 or via e-mail at [john.mcpherson@osd.mil](mailto:john.mcpherson@osd.mil).

A handwritten signature in black ink, appearing to read 'Shay D. Assad', with a large, stylized flourish at the end.

Shay D. Assad  
Director, Defense Procurement  
and Acquisition Policy

Attachments:  
As stated

(Revised May 31, 2007)

## **PGI 215.4—CONTRACT PRICING**

(See DFARS 215.4 - Pop-up window, PGI Viewer mode)

### **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 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.

(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 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 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. 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 inconsistencies 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 215.403-5 Instructions for submission of cost or pricing data or information other than cost or pricing data.**

Require the contractor to submit DD Form 1921 or 1921-1 with its pricing proposal when the solicitation requires contractor compliance with the Contractor Cost Data Reporting System (DoD 5000.4-M-1, Contractor Cost Data Reporting Manual).

**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 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):

(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.

(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.