

DFARS Procedures, Guidance, and Information

PGI 215—Contracting by Negotiation

(Revised May 10, 2016)

PGI 215.3--SOURCE SELECTION

PGI 215.300—Scope of subpart.

See the policy tab for Director, Defense Procurement and Acquisition Policy memorandum dated April 1, 2016, entitled "[Department of Defense Source Selection Procedures](#)," which provides the procedures to be used within DoD when conducting negotiated, competitive acquisitions utilizing FAR part 15 procedures.

PGI 215.303 Responsibilities.

(b)(2) The source selection plan—

(A) Shall be prepared and maintained by a person designated by the source selection authority or as prescribed by agency procedures; and

(B) Shall be coordinated with the contracting officer and senior advisory group, if any, within the source selection organization.

PGI 215.304 Evaluation factors and significant subfactors.

(c)(i)(A) Evaluation factors may include—

(1) The extent to which such firms are specifically identified in proposals;

(2) The extent of commitment to use such firms (for example, enforceable commitments are to be weighted more heavily than non-enforceable ones);

(3) The complexity and variety of the work small firms are to perform;

(4) The realism of the proposal;

(5) Past performance of the offerors in complying with requirements of the clauses at FAR 52.219-8, Utilization of Small Business Concerns, and 52.219-9, Small Business Subcontracting Plan; and

(6) The extent of participation of such firms in terms of the value of the total acquisition.

(v) Using authority granted in section 806 of Pub. L. 111-383 to exclude a source based on supply chain risk requires an evaluation factor for supply chain risk, as specified at DFARS [239.73](#). Evaluating supply chain risk requires review of the supply chain, including all information technology subcontractors and suppliers that are proposed for use at any

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time in the performance of the contract and may involve the use of all-source intelligence information. The requiring activity is responsible for obtaining any necessary all-source intelligence information and must inform the contracting officer and source selection authority of the results of the review for use in evaluating offers.

PGI 215.370 Evaluation factor for employing or subcontracting with members of the Selected Reserve.

PGI 215.370-2 Evaluation factor.

(1) This evaluation factor may be used as an incentive to encourage contractors to use employees or individual subcontractors who are members of the Selected Reserve.

(2) As with all evaluation factors and subfactors, the contracting officer should consider the impact the inclusion of this factor will have on the resulting contract and weight it accordingly.

(3) The solicitation provision at [252.215-7005](#) requires an offeror to provide supporting documentation when stating an intent to use members of the Selected Reserve in the performance of the contract.

PGI 215.371 Only one offer.

PGI 215.371-2 Promote competition.

(a) For competitive solicitations in which more than one potential offeror expressed an interest in an acquisition, but only one offer was ultimately received, the Contracting Officer shall—

(1) Seek feedback (e.g., issue an RFI) after award from potential offerors expected to submit an offer; and

(2) Document any feedback received in the contract file.

(b) Agencies shall use any feedback received when considering how to overcome barriers to competition for future requirements.

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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. chapter 35) requires offerors to submit certified cost or pricing data if a procurement exceeds the TINA threshold and none of the exceptions to certified 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 certified cost or pricing data are not required, and the contracting officer does not have sufficient data to determine price reasonableness, FAR 15.402(a)(2) requires the offeror to provide whatever data the contracting officer needs in order to determine fair and reasonable prices.

(3) Obtaining sufficient data 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 data of items sold in similar quantities and, if such data is insufficient, cost data to support the proposed price.

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

PGI 215.403 Obtaining certified cost or pricing data.

PGI 215.403-1 Prohibition on obtaining certified cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. chapter 35).

(b) *Exceptions to certified cost or pricing data requirements.* Even if an exception to certified 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 data other than certified cost or pricing data, including data related to prices and cost data that would otherwise be defined as certified 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;

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public; or

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

services.

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

(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 data other than certified cost or pricing data. This includes data related to prices and cost data that would otherwise be defined as certified cost or pricing data if certified. Obtaining sufficient data 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 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

program name.

(1) Contract number, including modification number, if applicable, and

(2) Contractor name.

(3) Contracting activity.

(4) Total dollar amount of exception.

commercial.

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

reasonableness.

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

(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

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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 data, 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 certified 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 certified 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

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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 data other than certified cost or pricing data.

To the extent that certified 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 “data other than certified cost or pricing data” (see definition at FAR 2.101). In accordance with FAR 15.403-3(a), the offeror must provide appropriate data 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) *Data other than certified cost or pricing data*. When certified cost or pricing data are not required, the contracting officer must obtain whatever data is necessary in order to determine the reasonableness of the price. The FAR defines this as “data other than certified 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 data 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

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agencies if required. See [PGI 215.404-1](#) for more detailed procedures for obtaining data from offerors to determine price reasonableness.

(2) *Previously been sold.* Contracting officers shall request offerors to provide data 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 data is sufficient for determining that prices are fair and reasonable. If the sales data is not sufficient, additional data shall be obtained, including cost data if necessary. See [PGI 215.404-1](#) for more detailed procedures for obtaining whatever data 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 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.

(5) *Canadian Commercial Corporation.* All contracts with the Canadian Commercial Corporation (CCC) are placed in accordance with the practices, policies and procedures of the Government of Canada covering procurement for defense purposes (see [PGI 225.870](#)). Contracting Officers may rely on the confirmation and endorsement of the offer from the Canadian Commercial Corporation at [225.870-3\(a\)](#) as an endorsement of the cost/price as no more than would be charged to the Canadian government.

(i) When [252.215-7003](#) or [252.215-7004](#) are included in a solicitation with the Canadian Commercial Corporation, the data required by paragraph (b)(i) and (ii), in concert with the confirmation and endorsement of the offer, is intended to meet the requirements of FAR 15.404-1 for documentation of fair and reasonable pricing.

(ii) Use of [252.215-7003](#) or [252.215-7004](#) in sole source acquisitions not meeting the threshold at [215.408\(3\)\(i\)\(A\)](#) or (ii)(A)(1) or competitive acquisitions at any dollar value shall be supported by a determination and finding justifying the anticipated need for data other than certified cost or pricing data to determine a fair and reasonable price.

(iii) When the contracting officer anticipates the need for additional data to establish a fair and reasonable price, specific data should be requested at time of solicitation as detailed in DFARS [252.215-7003](#).

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(iv) Examples of clause use:

Scenario	Requirement
Sole source to CCC, fixed price, with estimated value of \$600 million.	Include provision and clause in accordance with 215.408(3)(i)(A)(2) and (ii)(A)(1)(ii), respectively, because estimated value exceeds \$500 million.
Sole source to CCC, cost reimbursement, with estimated value of \$800,000.	Include provision and clause in accordance with 215.408(3)(i)(A)(1) and (ii)(A)(1)(i), respectively, because estimated value exceeds \$750,000.
Sole source to CCC, cost-reimbursement, with estimated value of \$500,000.	Do not include provision and clause, unless D&F is approved in accordance with 215.408(3)(i)(B) and (ii)(A)(2)), respectively, because estimated value does not exceed \$750,000.
Sole source to CCC, fixed price, with estimated value of \$800,000	Do not include provision and clause, unless D&F is approved in accordance with 215.408(3)(i)(B) and (ii)(A)(2)), respectively, because estimated value does not exceed \$500 million.
Modifications to contracts that include the clause 252.215-7004 .	If 252.215-7004 is included in the contract, then data are required for modifications valued above the simplified acquisition threshold, or a higher threshold specified in the solicitation by the contracting officer, in accordance with 252.215-7004(b) .

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 data to determine price reasonableness and the offeror will not furnish that data, use the following sequence of steps to resolve the issue:

(A) The contracting officer should make it clear what data is required and why it is needed to determine fair and reasonable prices, and should be flexible in requesting data 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

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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 data other than cost or pricing data from the offeror, at a minimum, the contracting officer must obtain appropriate data on the prices at which the same or similar items have been sold previously (often previous sales data was the basis of the commercial item determination and must be requested during price analysis of the data provided by the offeror). If previous sales data is not sufficient to determine price reasonableness, the contracting officer must obtain "data other than certified 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 data 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 data 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 data obtained from sources

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other than the offeror, the contracting officer must obtain and document sufficient data 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, “data other than certified 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 data 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 “data other than certified cost or pricing data” from the offeror because there is not sufficient data from other sources to determine if prices are fair and reasonable. The contracting officer must use business judgment to determine the level of data needed from the offeror, but must ensure that the data 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 data needed, once the sales data is appropriately verified. On the other hand, there may be no non-Government sales and the contracting officer may be required to obtain cost data, and should do so. The request for additional data 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 data 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 data 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 data that will be needed to determine if the proposed price is fair and reasonable.

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(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 Data 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 certified cost or pricing data threshold;

(B) Cost-type proposals exceeding the certified 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.

(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—

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(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.

(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

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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 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 certified cost or pricing data on the subcontracts show the amounts to be reasonable and realistic; or

(B) If certified 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.

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(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; and

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

(2) 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 data 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 data, for example—

(A) Contract administration offices could obtain the data 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 data through a solicitation provision.

PGI 215.406-1 Prenegotiation objectives.

(a) Also consider—

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(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 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.

(c) *Cost estimates for program baselines and contract negotiations for Major Defense Acquisition and Major Automated Information System Programs.*

(i) For the purpose of contract negotiations and obligation of funds under this paragraph, the Government shall prepare cost analyses and targets based on the Government's reasonable expectation of successful contractor performance in accordance with the contractor's proposal and previous experience.

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(ii) Cost estimates developed for baseline descriptions and other program purposes by the Director of Cost Assessment and Program Evaluation pursuant to its functions, do not meet the criteria described in paragraph (c)(i) of this subsection and, thus, shall not be used for purposes of developing the Government's contract negotiation position or for the obligation of funds. However, the Government may consider the data used to develop such estimates when developing the cost analyses and targets described in paragraph (c)(i) of this subsection.

(d) See Frequently asked 'Questions and Answers' at http://www.acq.osd.mil/dpap/cpic/cp/sec_808_NDAA.html relating to the limitations placed on the Department of Defense for aggregate annual amounts available for contracted services in accordance with section 808 of the National Defense Authorization Act for Fiscal year 2012, P.L. 112-81 and DFARS Class Deviation 2012-O0012, Limitation on Amounts Available for Contracted Services, dated July 31, 2012.

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) Shall 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;

(C) Shall address the rationale for not using the weighted guidelines method when its use would otherwise be required by DFARS [215.404-70](#); and

(D) Shall be marked "FOR OFFICIAL USE ONLY", as appropriate and in accordance with [DoD Manual 5200.01](#), Volume 4.

(11) The contracting officer is responsible to ensure the approved pre- and postnegotiation noncompetitive business clearance documents (e.g., price negotiation memoranda) are uploaded into the Contract Business Analysis Repository (CBAR) at <http://www.dcmamail.com/DCMAIT/cbt/CBAR/index.cfm> for the purpose of sharing negotiation experience with other contracting officers preparing to negotiate. This includes both noncompetitive actions using the procedures at FAR part 12, Acquisition of Commercial Items, as well as noncompetitive actions using the procedures at FAR part 15, Contracting by Negotiation, that are valued in excess of \$25 million and awarded on or after June 24, 2013 (and for all definitized or awarded actions over \$100 million, which occurred on or after October 1, 2012).

(A) Business clearance documents uploaded to CBAR shall be marked "FOR OFFICIAL USE ONLY (FOUO)" at the top and bottom of the face or cover page, and on the bottom of each page containing FOUO, including the back page or cover.

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(B) The business clearance documents uploaded to CBAR shall be signed by the contracting officer and shall include all other signatures required by local policy/procedure.

(C) The documentation shall be uploaded to CBAR no later than 30 days after award of the contract action associated with the negotiation and shall include both the prenegotiation objectives required by FAR 15.406-1 and [PGI 215.406-1](#), and the record of negotiations (i.e. the Price Negotiation Memoranda required by FAR 15.406-3 and [PGI 215.406-3](#)). The contracting officer shall complete the “description of acquisition” field with keywords and searchable terms to identify the products and services acquired. Additionally, the contracting officer shall complete the “comments” field of the CBAR record to summarize unique features and aspects of the negotiation in order to prompt other contracting teams to inquire further to learn from their peers’ prior experience.

(D) If an initial indefinite-delivery indefinite-quantity (IDIQ) task or delivery order contract contemplates issuance of task or delivery orders that will invoke negotiated rates or values from the basic contract, then the business clearance record for the basic IDIQ contract shall be uploaded if the estimated value of the contract (e.g. ceiling price) exceeds the prescribed dollar threshold. To the extent individual task or delivery orders entail a negotiation (i.e. did not simply incorporate prices established at the basic contract level), a business clearance record for the individual task or delivery orders that exceed the prescribed dollar thresholds shall be uploaded to CBAR.

(E) For additional information about obtaining access to and training for the CBAR database, see the Director, Defense Contract Management Agency memorandum, dated April 2, 2013. [Click here](#).

PGI 215.407-2 Make-or-buy programs.

(d) *Solicitation Requirements*. Consider the following factors when deciding whether to request a make-or-buy plan—

- (1) The prime contractor’s assumption of risk;
- (2) The prime contractor’s plant capacity;
- (3) The prime contractor’s degree of vertical integration;
- (4) The prime contractor’s internal resources;
- (5) The anticipated contract type;
- (6) The complexity, uniqueness, or configuration maturity associated with the end item or its subsystems;
- (7) Critical path items;
- (8) The impact on contract overhead rates with respect to maintaining work in-house;
- (9) The industrial base that could potentially satisfy some system requirements,

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based on market survey;

(10) Proprietary data and/or trade secrets;

(11) Potential product quality concerns associated with items that would be subject to subcontracting;

(12) Integrated master schedule timelines and their tolerances for variation;

(13) The availability and experience of program office personnel to credibly analyze and evaluate a submission; and

(14) Socioeconomic considerations, e.g. small business or labor surplus area concerns.

(f) *Evaluation, negotiation, and Agreement.* When a make-or-buy plan is required, listed below are factors that may be considered when evaluating a submission—

(1) Prime contractor past performance, especially with respect to subcontract management;

(2) Prime contractor make-or-buy history;

(3) Adequacy of contractor's existing make-or-buy processes, including cost and technical risk considerations;

(4) Component availability through existing sources, e.g. available inventory, or other Government contracts;

(5) Prime contractor plant capacity;

(6) The adequacy of the prime contractor's technical, financial and personnel capabilities; and

(7) Prime contractor justification that is provided with respect to items it does not normally make.

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.

(2)(A) DCMA or the military department responsible for performing contract

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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 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

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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;
- (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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PGI 216—Types of Contracts

(Revised May 10, 2016)

PGI 216.1—SELECTING CONTRACT TYPES

PGI 216.104 Factors in selecting contract type.

See the policy tab for Director, Defense Procurement and Acquisition Policy memorandum dated April 1, 2016, entitled "[Guidance on Using Incentive and Other Contract Types](#)," when selecting and negotiating the most appropriate contract type for a given procurement.

PGI 216.104-70 Research and development.

(1) *General.* There are several categories of research and development (R&D) contracts: research, exploratory development, advanced development, engineering development, and operational systems development (see DFARS [235.001](#) for definitions). Each category has a primary technical or functional objective. Different parts of a project may fit several categories. The contract type must fit the work required, not just the classification of the overall program.

(2) *Research and exploratory development.*

- (i) Price is not necessarily the primary factor in determining the contract type.
- (ii) The nature of the work to be performed will usually result in a cost-plus award fee, cost-plus fixed fee term, cost-no-fee, or cost-sharing contract.
- (iii) If the Government and the contractor can identify and agree upon the level of contractor effort required, the contracting officer may select a firm fixed-price level-of-effort contract, except see DFARS [235.006](#).
- (iv) If the Government and the contractor agree that an incentive arrangement is desirable and capable of being evaluated after completion of the work, the contracting officer may use an incentive type contract.

(3) *Advanced development.*

- (i) The nature of the work to be performed often results in a cost-plus fixed fee completion type contract.
- (ii) Contracting officers may select incentive contracts if—
 - (A) Realistic and measurable targets are identified; and
 - (B) Achievement of those targets is predictable with a reasonable degree of accuracy.

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PGI 216—Types of Contracts

- (iii) Contracting officers should not use contracts with only cost incentives where—
 - (A) There will be a large number of major technical changes; or
 - (B) Actions beyond the control of the contractor may influence the contractor's achievement of cost targets.
- (4) Engineering development and operational systems development.
 - (i) When selecting contract types, also consider—
 - (A) The degree to which the project is clearly defined, which in turn affects the contractor's ability to provide accurate cost estimates;
 - (B) The need for effort that will overlap that of earlier stages;
 - (C) The need for firm technical direction by the Government; and
 - (D) The degree of configuration control the Government will exercise.
 - (ii) For development efforts, particularly for major defense systems, the preferred contract type is cost reimbursement.
 - (iii) Contracting officers should use fixed-price type contracts when risk has been reduced to the extent that realistic pricing can occur; e.g., when a program has reached the final stages of development and technical risks are minimal, except see DFARS [235.006](#).

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PGI 225—Foreign Acquisition

(Revised May 10, 2016)

PGI 225.77—ACQUISITIONS IN SUPPORT OF OPERATIONS IN AFGHANISTAN

PGI 225.7703 Enhanced authority to acquire products or services from Afghanistan.

PGI 225.7703-1 Acquisition procedures.

(c) When issuing solicitations and contracts for performance in Afghanistan, follow the guidance for CENTCOM Operational Contract Support Policies and Procedures, Theater Business Clearance, at <https://www2.centcom.mil/sites/contracts/Pages/GCO.aspx>, and use the applicable solicitation provisions and contract clauses:

(1) The provision at DFARS [252.232-7014](#), Notification of Payment in Local Currency (Afghanistan), as prescribed at DFARS [232.7202](#).

PGI 225.7703-2 Determination requirements.

(b) Subject matter experts for defense industrial base matters are as follows:

For Army: SAAL-PA, Army Industrial Base Policy, telephone 703-695-2488.

For DLA: DLA J-74, Acquisition Programs and Industrial Capabilities Division, telephone 703-767-1427.

For Navy: Ship Programs, DASN Ships, telephone 703-697-1710.

For Air Force: Air Force Research Laboratory, Materials Manufacturing Directorate, telephone 703-588-7777.

For Other Defense Agencies: Personnel at defense agencies without industrial base expertise on staff should contact the Office of the Deputy Under Secretary of Defense for Industrial Policy (Acquisition, Technology, and Logistics), telephone 703-697-0051.

(c) Determination formats.

(i) Prepare an individual determination and findings substantially as follows:

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DEPARTMENT OR AGENCY

Authority to Acquire Products or Services from Afghanistan

Determination and Findings

Upon the basis of the following findings and determination which I hereby make in accordance with the provisions of DFARS [225.7703-2](#), the acquisition of a product or service, other than small arms, in support of operations in Afghanistan may be made as follows:

Findings

1. The [contracting office] proposes to purchase under contract number _____, [describe item]. The total estimated cost of this acquisition is _____.
2. The product or service is to be used by [describe the entity(ies) that are the intended user(s) of the product or service].
3. The contracting officer recommends conducting the acquisition using the following procedure, which, given this determination, is authorized by Section 886 of Public Law 110-181:

[Select one of the following.]

Provide a preference for products or services from Afghanistan.

Limit competition to products or services from Afghanistan.

Use procedures other than competitive procedures to award a contract to a particular source or sources from Afghanistan.

4. To implement the recommended procedure, the solicitation will contain [title and number of the applicable provision and/or clause prescribed at DFARS [225.7703-4](#)].
5. The proposed acquisition will provide a stable source of jobs in Afghanistan because _____.
6. The proposed use of other than full and open competition is necessary to provide this stable source of jobs in Afghanistan.
7. The proposed use of other than full and open competition will not

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adversely affect military operations or stability operations in Afghanistan, because _____. This is the opinion of the *[title of the official responsible for operations in the area involved]*.

8. The proposed use of other than full and open competition will not adversely affect the United States industrial base.
9. *[If a preference will be provided for products or services from Afghanistan, or if competition will be limited to products or services from Afghanistan, include—*

(1) A description of efforts made to ensure that offers are solicited from as many potential sources as is practicable; and

(2) Whether a notice was or will be publicized as required by FAR Subpart 5.2 and, if not, which exception in FAR 5.202 applies.]

- or -

[If procedures other than competitive procedures will be used to award a contract to a particular source or sources from Afghanistan, include—

(1) A description of the market research conducted in accordance with FAR Part 10 and the results; or a statement of the reason market research was not conducted;

(2) A listing of the sources, if any, that expressed, in writing, an interest in the acquisition;

(3) A demonstration that the proposed contractor's unique qualifications require the use of a noncompetitive acquisition, or an explanation of the other reasons for use of a noncompetitive acquisition; and

(4) A certification by the contracting officer that the information in paragraphs (1) through (3) above is accurate and complete to the best of the contracting officer's knowledge and belief.]

Determination

I hereby determine that it is in the national security interest of the United States to use the acquisition procedure described above, because the procedure is necessary to provide a stable source of jobs in Afghanistan and it will not adversely affect (1) Operations in Afghanistan or (2) the United States industrial base.

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(Date)

(ii) Prepare a determination and findings for a class of acquisitions substantially as follows:

DEPARTMENT OR AGENCY

Authority to Acquire Products or Services from Afghanistan

Determination and Findings

Upon the basis of the following findings and determination which I hereby make in accordance with the provisions of DFARS [225.7703-2](#), the acquisition of products or services, other than small arms, in support of operations in Afghanistan may be made as follows:

Findings

1. It is anticipated that *[applicable departments/agencies/components]* will need to award contracts during the period from _____ to _____ in order to acquire *[describe the type(s) of products or services]* for *[describe the purpose, if the purpose for which the items will be acquired is a defining characteristic of the class of acquisitions to be covered by the class determination]*.
2. The products or services to be acquired under the contemplated contracts are to be used by *[describe the entity(ies) intended to use the products or services]*.
3. This class of acquisitions should be conducted using the following procedure, which, given this determination, is authorized by Section 886 of Public Law 110-181, as amended by section 842 of Pub. L. 112-239:

[Select one of the following.]

Provide a preference for products or services from Afghanistan.

Limit competition to products or services from Afghanistan.

Use procedures other than competitive procedures to award a contract to a particular source or sources from Afghanistan.

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4. To implement the recommended procedure, solicitations will contain *[title and number of the applicable provision and/or clause prescribed at DFARS 225.7703-4].*
5. Each of the contemplated contracts will provide a stable source of jobs in Afghanistan, because _____.
6. The proposed use of other than full and open competition for this class of acquisitions is necessary to provide this stable source of jobs in Afghanistan.
7. The proposed use of other than full and open competition for this class of acquisitions will not adversely affect operations in Afghanistan, because_____. This is the opinion of the *[title of the official responsible for operations in the area involved]*.
8. The proposed use of other than full and open competition for this class of acquisitions will not adversely affect the United States industrial base.
9. *[If a preference will be provided for products or services from Afghanistan, or if competition will be limited to products or services from Afghanistan, include—*
 - (1) *A description of the efforts that will be made to ensure that offers are solicited from as many potential sources as is practicable; and*
 - (2) *Whether a notice will be publicized as required by FAR Subpart 5.2 and, if not, which exception in FAR 5.202 applies.]*

- OR -

[If procedures other than competitive procedures will be used to award contracts to a particular source or sources from Afghanistan, include—

(1) *A description of the market research conducted in accordance with FAR Part 10 and the results; or a statement of the reason market research was not conducted;*

(2) *A listing of the sources, if any, that expressed, in writing, an interest in this class of acquisitions;*

(3) *A demonstration that the proposed contractor's unique qualifications require the use of a noncompetitive acquisition, or an explanation of the other reasons for use of a noncompetitive acquisition; and*

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(4) *A certification by the contracting officer that the information in paragraphs (1) through (3) above is accurate and complete to the best of the contracting officer's knowledge and belief.*

Determination

I hereby determine that it is in the national security interest of the United States to use the acquisition procedure described above for [description of the class of acquisitions to which this determination is intended to apply], because the procedure is necessary to provide a stable source of jobs Afghanistan and it will not adversely affect (1) Operations in Afghanistan or (2) the United States industrial base.

(Date)

(iii) Prepare a determination and findings for acquisitions issued pursuant to [Class Deviation 2016-O0004](#), to Acquire Products and Services Produced in Afghanistan or in Countries along a Major Route of Supply to Afghanistan, substantially as follows:

DEPARTMENT OR AGENCY

AUTHORITY TO ACQUIRE PRODUCTS OR SERVICES FROM

1

Determination and Findings

Upon the basis of the following findings and determination, which I hereby make in accordance with the provisions of DFARS 225.7799-2 (DEVIATION [2016-O0004](#)), the acquisition of a product or service, other than small arms, in support of operations in Afghanistan may be made as follows:

FINDINGS

1. The 1A proposes to purchase under solicitation number 1B, 1C. The total estimated cost of this acquisition is 1D.
2. The product or service is to be used by 2.

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3. The contracting officer recommends conducting the acquisition using the following procedure, which, given this determination, is authorized by section 801 of Public Law 111-084 and section 886 of Pub. L. 110-181:

3

4. To implement the recommended procedure, the solicitation will contain:

a. DFARS 252.225-7998, Preference for Products or Services from Afghanistan, a Central Asian State, Pakistan, or the South Caucasus (DEC 2015) (DEVIATION [2016-O0004](#)), and DFARS 252.225-7999, Requirement for Products or Services from Afghanistan, a Central Asian State, Pakistan, or the South Caucasus (DEC 2015) (DEVIATION [2016-O0004](#)); or

b. DFARS 252.225-7996, Acquisition Restricted to Products or Services from Afghanistan, a Central Asian State, Pakistan, or the South Caucasus (DEC 2015) (DEVIATION [2016-O0014](#)).

5. The proposed acquisition will provide a product or service that is to be used

5

6.a. For products or services from Afghanistan, a Central Asian State, Pakistan, or the South Caucasus, it is in the national security interest of the United States to use a procedure specified in 225.7799-1(a)(DEVIATION [2016-O0004](#)) because the procedure is necessary to

6A

Use of the procedure for acquisition of products or services from Afghanistan, a Central Asian State, Pakistan, or the South Caucasus will not adversely affect military or stability operations in Afghanistan or the United States industrial base (see 6B).

b. For products or services from Afghanistan, it is in the national security interest of the United States to use a procedure specified in 225.7799-1(a)(DEVIATION [2016-O0004](#)) because the procedure is necessary to provide a stable source of jobs in Afghanistan.

Use of the procedure for acquisition of products or services from Afghanistan will not adversely affect military or stability operations in Afghanistan or the United States industrial base (see 6B). (see 6C)

7. Acquisitions conducted using the procedures specified in DFARS 225.7799-1(a) (DEVIATION [2016-O0004](#)), (see para. 3. above), are authorized to use other than full and open competition procedures and do not require the justification and approval addressed in FAR Subpart 6.3.

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8. Requirement will be/was synopsisized: YES NO . If not synopsisized, exception at FAR 5.202(a) applies.

_____ Date: _____

CONTRACTING OFFICER

Name: _____

Office Symbol: _____

DETERMINATION

In accordance with the authorization outlined in DFARS 225.7799-2(b)(1)(i)([DEVIATION 2016-O0004](#)) and under the authority of section 801 of the National Defense Authorization Act for Fiscal Year 2010, as most recently amended by sections 886 and 1214 of the National Defense Authorization Act for Fiscal Year 2016, I hereby determine that it is in the national security interest of the United States to use the acquisition procedure described above because the procedure is necessary to encourage countries along a major route of supply in support of military and stability operations in Afghanistan. This procedure will not adversely affect military or stability operations in Afghanistan or the United States industrial base.

_____ Date: _____

INSTRUCTIONS FOR COMPLETING DETERMINATION

- 1 Afghanistan, a Central Asian State, Pakistan, or the South Caucasus
 - 1A Office symbol of your contracting office
 - 1B RFP/RFQ/IFB number
 - 1C Description of the items to be purchased
 - 1D Estimated amount of the requirement (in USD)
- 2 Describe the entity(ies) that are the intended user(s) of the product or service
- 3 *Select and include one of the following:*
 - a. Provide a preference for products or services from Afghanistan, a Central Asian State, Pakistan, or the South Caucasus in accordance with the evaluation procedures at 225.7799-3 (DEVIATION [2016-O0004](#)).
 - b. Limit competition to products or services from Afghanistan, a Central Asian State, Pakistan, or the South Caucasus DEVIATION [2016-O0004](#)).

- 5 *Select and include one of the following:*

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In the country that is the source of the product or service.

In the course of efforts by the United States and the Forces to ship goods to or from Afghanistan in support of operations in Afghanistan.

By the military forces, police, or other security personnel of Afghanistan.

By the United States or coalition forces in Afghanistan.

6Ai Paragraph (6.a. may be deleted if the product or service is for use by the military forces, police, or other security personnel of Afghanistan.

6Aii *Select and include one of the following:*

Reduce the overall United States transportation costs and risks in shipping goods in support of operations in Afghanistan.

Encourage states of Central Asia, Pakistan, and the South Caucasus to cooperate in expanding supply routes through their territory in support of operations in Afghanistan.

Help develop more robust and enduring routes of supply to or from Afghanistan.

6B The contracting officer generally may presume that there will not be an adverse effect on the U.S. industrial base. However, when in doubt the contracting officer should coordinate with the applicable subject matter experts.

6C Delete paragraph 6.b. if the product or service concerned is to be used only by the military forces, police, or other security personnel of Afghanistan.

7 Include a description of efforts made to ensure offers are solicited from as many potential sources as is practicable.

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(Revised May 10, 2016)

PGI 225.79— EXPORT CONTROL

PGI 225.7901 Export-controlled items.

PGI 225.7901-2 General.

(1) *DoD Focal Point on Export Controls.*

(i) Within DoD, the focal point on export controls is the Defense Technology Security Administration (DTSA). Official authorities and responsibilities of DTSA are established in DoD Directive 5105.72.

(ii) Initial DoD acquisition workforce questions regarding the applicability of the Export Administration Regulations (EAR) or the International Traffic in Arms Regulations (ITAR) to specific procurements or items, or interpretation of DoD issuances regarding export controls, may be directed to the DTSA Policy Directorate, by phone at 571-372-2438/2377 or by visiting the DTSA web site at: <http://www.dtsa.mil/SitePages/contact-us/default.aspx>.

(2) *Regulations.* The Department of State and the Department of Commerce are the lead agencies responsible for regulations governing the export of defense articles, commercial items, and dual use items.

(i) *The International Traffic in Arms Regulations (ITAR)*, issued by the Department of State, control the export of defense-related articles and services, including technical data, ensuring compliance with the Arms Export Control Act (22 U.S.C. 2751 *et seq.*). The United States Munitions List (USML) identifies defense articles, services, and related technical data that are inherently military in character and could, if exported, jeopardize national security or foreign policy interests of the United States.

(A) The ITAR is published in Title 22 of the Code of Federal Regulations (CFR), Parts 120 through 130 (22 CFR 120-130). The official version of the ITAR is maintained at <http://www.gpoaccess.gov/cfr/index.html>. The Department of State also maintains an on-line version at http://www.pmdtc.state.gov/regulations_laws/itar_official.html.

(B) The USML is part of the ITAR, in 22 CFR Part 121, and is available at the web sites in paragraph (2) (i) (A) of this section.

(C) The Department of State is responsible for compliance with the ITAR. Depending on the nature of questions you may have, you may contact the following Department of State office to obtain additional information:

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U.S. Department of State
Bureau of Political Military Affairs
Directorate of Defense Trade Controls
Office of Defense Trade Controls Compliance

http://www.pmddtc.state.gov/about/contact_information.html.

(D) Contracting officers should not answer any questions a contractor may ask regarding how to comply with the ITAR. If asked, the contracting officer should direct the contractor's attention to paragraph (c) of the clause at DFARS [252.225-7048](#) and may inform the contractor that the Department of State publishes guidance regarding ITAR compliance at <http://www.pmddtc.state.gov/compliance/index.html>.

(E) Contracting officers should not answer any questions a contractor may ask regarding the State Department requirement, mentioned in the clause at [252.225-7048](#), for contractors to register with the Department of State in accordance with the ITAR. If asked, the contracting officer should direct the contractor's attention to paragraph (b) of the clause, which directs the contractor to consult with the Department of State regarding any questions relating to compliance with the ITAR. (The registration requirements are in Subpart 122.1 of the ITAR. Subpart 122.1 requires any person who engages in the United States in the business of either manufacturing or exporting defense articles or furnishing defense services to register with the Directorate of Defense Trade Controls.)

(ii) *The Export Administration Regulations (EAR)*, issued by the Department of Commerce, control the export of dual-use items, (items that have both commercial and military or proliferation applications) and purely commercial items. These items include commodities, software, and technology. Many items subject to the EAR are set forth by Export Control Classification Number on the Commerce Control List.

(A) The EAR is published in Title 15 of the Code of Federal Regulations, Parts 730 through 774 (15 CFR Parts 730-774), available at <http://www.gpoaccess.gov/cfr/index.html> and http://www.access.gpo.gov/bis/ear/ear_data.html.

(B) The Commerce Control List is part of the EAR, in Supplement No. 1 to 15 CFR Part 774, and is available at <http://www.gpoaccess.gov/cfr/index.html> and http://www.access.gpo.gov/bis/ear/ear_data.html.

(C) The Department of Commerce is responsible for compliance with the EAR. Depending on the nature of questions you may have, you may contact the following Department of Commerce office to obtain additional information:

U.S. Department of Commerce

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Bureau of Industry and Security
Office of Exporter Services (OExS)
OExS Hotline: 202-482-4811.

(D) Contracting officers should not answer any questions a contractor may ask regarding how to comply with the EAR. If asked, the contracting officer should direct the contractor's attention to paragraph (b) of the clause at DFARS [252.225-7048](#) and may inform the contractor that the Department of Commerce publishes guidance regarding EAR compliance at <http://www.bis.doc.gov/>.

(3) *National Security Decision Directive (NSDD) 189, National Policy on the Transfer of Scientific, Technical, and Engineering Information.*

(i) NSDD 189 establishes a national policy that, to the maximum extent possible, the products of fundamental research shall remain unrestricted. NSDD 189 provides that no restrictions may be placed upon the conduct or reporting of federally funded fundamental research that has not received national security classification, except as provided in applicable U.S. statutes. As a result, contracts confined to the performance of unclassified fundamental research generally do not involve any export-controlled items, as defined in paragraph (a) of the clause at DFARS [252.225-7048](#).

(ii) NSDD 189 does not take precedence over statutes. NSDD 189 does not exempt any research, whether basic, fundamental, or applied, from statutes that apply to export controls such as the Arms Export Control Act, the Export Administration Act of 1979, as amended, or the U.S. International Emergency Economic Powers Act, or the regulations that implement those statutes (the ITAR and the EAR). Thus, if export-controlled items are used to conduct research or are generated as part of the research efforts, the export control laws and regulations apply to the controlled items.

(iii) NSDD 189 is available at <http://www.fas.org/irp/offdocs/nsdd/nsdd-189.htm>.

(4) *DoD Instruction 2040.02, International Transfers of Technology, Articles, and Services.* This DoD instruction provides guidance to manage and control transfers of technology, articles, and services consistent with U.S. foreign policy and national security objectives. DoD Instruction 2040.02 is available at <http://www.dtic.mil/whs/directives/>.

(5) *Other DoD Issuances.* Other DoD issuances that address export control matters include those listed below. Except as otherwise noted, these issuances are available at <http://www.dtic.mil/whs/directives/>.

- DoD Instruction 2015.4, Defense Research, Development, Test and Evaluation (RDT&E) Information Exchange Program (IEP).

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- DoD Directive 5000.1, The Defense Acquisition System.
- DoD Instruction 5000.2, Operation of the Defense Acquisition System.
- DoD Directive 5105.72, Defense Technology Security Administration (DTSA).
- DoD Publication 5200.1-M, Acquisition Systems Protection Program.
- DoD Instruction 5200.39, Critical Program Information (CPI) Protection Within the Department of Defense.
- DoD Publication 5220.22-M, National Industrial Security Program Operating Manual (NISPOM).
- DoD Directive 5230.25, Withholding of Unclassified Technical Data From Public Disclosure.
- DoD Instruction 5230.27, Presentation of DoD-Related Scientific and Technical Papers at Meetings.
- Defense Acquisition Guidebook, available at <http://akss.dau.mil/dag/DoD5000.asp?view=document&doc=1>.
- Under Secretary of Defense (Intelligence) Memorandum, Subject: Policy and Procedures for Sanitization of Department of Defense (DoD) Classified or Controlled Unclassified Information Prior to Public Release, is available [here](#)

[Link to online training on export controls:](#)

CLM 036 Technology Transfer and Export Control Fundamentals,
http://icatalog.dau.mil/onlinecatalog/courses.aspx?crs_id=306

PGI 225.7902 Defense Trade Cooperation Treaties.

The following documents are accessible at: <http://pmdt.c.state.gov/>:

- DTC Treaties.
- Implementing Arrangements.
- The provisions of the International Traffic in Arms Regulations (ITAR) (22 CFR 126.16 (Australia) and 22 CFR 126.17 (United Kingdom)) pertaining to the DTC Treaties.
- List of Defense Articles Exempted from DTC Treaty Coverage (also in 22 CFR 126 Supplement No. 1).
- List of Approved Community Members.
- Definitions.

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PGI 225.7902-2 Purpose.

(1) Background.

(i) The U.S. Government controls exports of defense articles, technical data, and defense services. The controls are imposed by the Arms Export Control Act (AECA) and the Department of State regulation that implements the AECA export controls. That regulation is the ITAR. See [PGI 204.7302\(2\)\(i\)](#) for more information about the ITAR.

(ii) Under the ITAR, the Department of State manages an export licensing system in which government approvals are often necessary for companies to hold discussions about potential projects, pursue joint activities, ship hardware, or transfer know-how to one another, and even sometimes to move engineers and other personnel within branches of the same company located in different countries. This process can be challenging for U.S. exporters and for foreign firms in their supply chains.

(iii) Given the close allied relationship of the United States with Australia and the United Kingdom, the President and the respective Prime Ministers decided to reform the defense trade system between their countries with the goal of facilitating the exchange of certain defense articles, technical data, and defense services between their militaries and security authorities, and their industries. They negotiated bilateral Defense Trade Cooperation DTC Treaties to achieve this goal. These bilateral DTC Treaties establish permissions for export without export licenses for each country, if an export meets the DTC Treaty requirements. Other exports remain under the AECA and the ITAR. The DTC Treaties are intended solely to waive certain requirements of the ITAR for specific transactions within the scope of the DTC Treaties not remove any requirements for contractors to comply with domestic U.S. law.

(iv) The Department of State regulations implementing the DTC Treaties are in the ITAR.

(2) How the DTC Treaties work.

(i) The DTC Treaties establish Approved Communities. The “Approved Community” for each DTC Treaty is defined in DFARS clause [252.225-7047](#). Exports of most U.S. defense articles, technical data, and defense services are permitted to go into and to move within the Approved Community, without the need for government approvals and export licenses (provided that all persons comply with statutory and regulatory requirements outside of DFARS and ITAR concerning the import of defense articles and defense services or the possession or transfer of defense articles, including, but not limited to, regulations issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives found at 27 C.F.R. Parts 447, 478, and 479, which are unaffected by the DTC Treaties) when in support of the following:

- Combined U.S.-Australia or U.S.-U.K. military or counterterrorism operations.
- U.S.-Australia or U.S.-U.K. cooperative security and defense research, development,

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production, and support programs.

- Specific security and defense projects that are for the government of Australia or the government of the United Kingdom use only.
- U.S. Government end use.

(ii) Under the DTC Treaties, instead of a U.S. exporter preparing and requesting Department of State approval of an export license or other written authorization for a project, the exporter may elect to use the applicable DTC Treaty if Treaty conditions are met. If using a DTC Treaty, the exporter will check the Department of State website (<http://pmddtc.state.gov/>) or other appropriate reference and verify that—

- The Australian or U.K. partner is on the list of approved companies/facilities (i.e., a member of the Approved Community);
- The effort is in support of at least one of the scope areas identified in paragraph (2)(i) of this section; and
- The defense article is not on the exempted technology list. (Also in 22 CFR 126 Supplement No. 1).

If all three conditions are met, then the U.S. exporter and the Australian or U.K. partner may use the DTC Treaty exemptions in the ITAR to move qualifying defense articles without the need to obtain export licenses or other written authorizations, provided compliance with paragraph (2)(i) of this section.

(iii) A company using a DTC Treaty, in addition to checking the three lists (as explained in paragraph (2)(ii) of this section), must also comply with requirements in the applicable DTC Treaty and the associated Implementing Arrangements, and the provisions of the ITAR pertaining to the DTC Treaty. These include marking and recordkeeping requirements to ensure that export-controlled items are recognized as such and treated accordingly. For example, instead of normal ITAR requirements, the provisions of the ITAR pertaining to the DTC Treaties establish the requirements that apply. Similarly, DFARS [225.7902](#) implements requirements that relate to exports that a prospective contractor may make under a DoD solicitation or that a contractor may make in performance of a DoD contract. The company must continue to comply with domestic laws and regulations, including those pertaining to the movement of defense articles within the United States.

PGI 225.7902-4 Procedures.

(1) Since the DTC Treaties apply only to eligible items, a solicitation or contract falls within the scope of the DTC Treaties, and is thus eligible for DTC Treaty coverage (i.e., falls within the scope of the DTC Treaties) if it will acquire at least one defense article that is not otherwise exempt from the DTC Treaties and is required for—

(i) Combined military or counterterrorism operations as described in the Implementing Arrangements;

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(ii) Cooperative security and defense research, development, production, and support programs that are identified pursuant to the Implementing Arrangements;

(iii) Cases where the government or Australia or the government of the United Kingdom is the end user in mutually agreed specific security and defense projects, that are identified pursuant to the Implementing Arrangements; or

(iv) U.S. Government end use under a solicitation or contract.

(2) Since the DTC Treaties apply only to eligible items, a solicitation or contract falls within the scope of the DTC Treaties and is thus eligible for DTC Treaty coverage when it will acquire at least one defense article that is DTC Treaty-eligible and the contract falls within the scope of the DTC Treaties. Article 3, section (2) of each DTC Treaty and Section 4 of each Implementing Arrangement require the DTC Treaty Participants to maintain lists of defense articles to be exempted from the scope of the DTC Treaties. These exempted technology lists are incorporated in Supplement No. 1 to part of the ITAR and are accessible at: <http://www.pmddtc.state.gov/treaties/index.html>

(3) The DTC Treaties do not apply to defense articles initially being acquired pursuant to the U.S. Foreign Military Sales (FMS) program, although, once the defense articles are acquired by the Australia or United Kingdom under an FMS case, the DTC Treaty applies as though the defense articles were exported under the DTC Treaty, subject to [PGI 225.7902-2](#).

(4) If a company obtains an export license, or other authorization, for the export of defense articles that might otherwise have been eligible for export without a license under a DTC Treaty, the terms of the export license, or other authorization, shall apply unless and until the company obtains approval to transition to DTC Treaty coverage. The process and requirements for transition are described in 22 CFR 126.16(i) and 22 CFR 126.17(i), respectively.

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PGI 239—Acquisition of Information Technology

(Revised May 10, 2016)

PGI 239.74—TELECOMMUNICATIONS SERVICES

PGI 239.7402 Policy.

(c) *Foreign carriers.*

(i) Frequently, foreign carriers are owned by the government of the country in which they operate. The foreign governments often prescribe the methods of doing business.

(ii) In contracts for telecommunications services in foreign countries, describe the rates and practices in as much detail as possible. It is DoD policy not to pay discriminatory rates. DoD will pay a reasonable rate for telecommunications services or the rate charged the military of that country, whichever is less.

(iii) Refer special problems with telecommunications acquisition in foreign countries to higher headquarters for resolution with appropriate State Department representatives.

(d) *Long-haul telecommunications services.* DISA will acquire all long-haul telecommunications services for DoD. See [DoD Directive 5105.19](#), Defense Information Systems Agency (DISA).

PGI 239.7405 Delegated authority for telecommunications resources.

Related Documents:

Documents related to DoD's delegated authority to enter into telecommunications service contracts are available [here](#).

PGI 239.7406 Certified cost or pricing data and data other than certified cost or pricing data.

Examples of instances where certified cost or pricing data, if required in accordance with FAR 15.403-4, or data other than certified cost or pricing data, if required in accordance with FAR 15.403-3, may be necessary to support price reasonableness include—

- (1) Nontariffed services;
- (2) Special rates and charges not included in a tariff, whether filed or to be filed;
- (3) Special assembly rates and charges;
- (4) Special construction and equipment charges;

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(5) Contingent liabilities that are fixed at the outset of the service;

(6) Proposed cancellation and termination charges under the clause at [252.239-7007](#), Cancellation or Termination of Orders, and reuse arrangements under the clause at [252.239-7008](#), Reuse Arrangements;

(7) Rates contained in voluntary tariffs filed by nondominant common carriers; or

(8) A tariff, whether filed or to be filed, for new services installed or developed primarily for Government use.

PGI 239.7407 Type of contract.

When using a basic agreement in conjunction with a communication service authorization—

(1) Use DD Form 428, Communication Service Authorization (CSA), or an electronic data processing substitute to award, modify, cancel, or terminate telecommunications services. The CSA shall—

(i) Refer to the basic agreement;

(ii) Specify the types and quantities and equipment to be provided as well as the tariff (or other price if a tariff is not available) of those services and equipment;

(iii) Specify the premises involved;

(iv) Cite the address for billing;

(v) Identify the disbursing office;

(vi) Provide funding information; and

(vii) Include an expiration date.

(2) Before awarding a CSA, comply with the requirements in FAR and DFARS, e.g., for competition, reviews, approvals, and determinations and findings.