

# **Best Practices/Lessons Learned for Sole Source Pricing**



**Office of the Principal Director,  
Defense Pricing and Contracting**

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# Sole Source Pricing Best Practices/Lessons Learned

## Introduction

The purpose of this document is to collect and share best practices applicable to large dollar, sole source acquisitions with Contracting Officers and acquisition teams across the Department of Defense (DoD) workforce. This is a living document: new practices will be added intermittently and existing practices may be refined as needed. It is anticipated that COs and acquisition teams participating in sole source acquisitions subject to Peer Review at the Office of the Secretary of Defense (OSD) level will review this document to identify applicable considerations as the acquisition strategy is developed, and throughout the process of Request for Proposal (RFP) issuance, proposal evaluation, and negotiations. But, the practices set forth herein have a much broader applicability: COs and acquisition teams should consider how they might utilize these practices for lower dollar actions as well.

You, the practitioners applying your skills, experience, and ingenuity to solving the challenging issues facing contracting professionals every day, are a great source of best practices. If you have developed an effective or innovative approach to address a problem or challenge in the context of cost and price analysis, incentive arrangements, negotiations, etc., and your innovation represents a repeatable approach that can be of benefit to other DoD contracting officers, please feel free to submit your best practice by emailing it to [osd.pentagon.ousd-a-s.mbx.dpc-pcf@mail.mil](mailto:osd.pentagon.ousd-a-s.mbx.dpc-pcf@mail.mil).

NOTE: please see the acronym list at the end of this document for any acronyms with which you are unfamiliar.

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## Requirements

- Before RFP release, the contracting officer and program manager should jointly ensure that the CLIN structure in the RFP accurately reflects the requirements, supports program needs, and is not subject to change. In particular, ensure that the anticipated CLIN structure aligns with expected funding availability, in terms of year(s) of funding and color of money. Also, make sure that the breakout between the basic requirement and any options is appropriate, as shifting effort between the firm requirement and options can add time and complexity to proposal evaluation and negotiations. At the same time, request DCMA input on any anticipated incentive structure, if DCMA will be administering the contract. Once there is internal agreement on the requirement, the Program Office should discuss the requirement which will be presented in the RFP with the contractor, to ensure the parties have a common understanding of the requirement, and to address and resolve any questions the contractor may have about the requirement. Validating that both parties are on the same page with respect to the requirement at this point will avoid bottlenecks during proposal evaluation and negotiations, as well as potential issues during contract performance. It is also helpful to confirm that the requirements the prime is flowing down to its subcontractors are consistent with the overall contract requirement. Once there is agreement on the requirement, hold the requirement baseline steady from proposal submission through negotiations to facilitate efficient proposal evaluation and negotiations.
- Ensure the maximum requirement quantities on IDIQ contracts are realistic. Unrealistically high maximum requirements drive unnecessary TINA compliance (with potential time and money impacts) for suppliers who would not otherwise be required to provide certified cost or pricing data. Also, unrealistic numbers, in the context of both total maximum requirements under the IDIQ and maximum order quantities as set forth in FAR clause [52.216-19](#), can have the potential to reduce competition, including at the subcontract level. In a competitive situation, it is important to design realistic requirements that will (hopefully) attract multiple offerors. Lastly, the pricing associated with unrealistic maximum requirements may lead to an increase in Procurement Acquisition Lead Time (PALT) by driving accomplishment of review and clearance activities at higher/more levels than would otherwise have been necessary. This practice can also be found under the following topic(s): [Contract Type](#).
- From a pricing perspective, when putting an unknown or indefinite quantity of items on contract, use of price/quantity curves is preferable over the more traditional approach of quantity bands. Quantity bands are generally appropriate for small-dollar value, piece-parts produced in large quantities for many customers. They are not well suited for high-priced end-items in which support costs (e.g. sustaining labor, program management) are primarily level-of-effort tasks not driven by quantity. This is also true early in a production program

when the application of improvement curves will result in a significant difference in per-unit cost between the minimum and maximum quantities in a range. The use of quantity bands for major items is inherently inequitable, as a band unit price based on the minimum quantity is unfair to the customer for all quantities above the minimum quantity, and a band unit price based on the maximum quantity would be unfair to the supplier for all quantities less than the maximum quantity. By contrast, since price/quantity curves calculate a representative price at each possible quantity, they produce a more equitable result at every quantity point. While a price based on the quantity midpoint within a band is more equitable (there is an equal likelihood of ordering quantities above or below the midpoint), depending on the width of the band, there is still the potential for significant variation. Most companies will avoid pricing bands at the midpoint in order to ensure cost recovery in case the Government orders at the minimum of the band where the units are more expensive. Using a curve of 90%, there is 10% savings every time the quantity doubles. If a band is extremely wide, e.g. 200 – 800 units, the inequities of this approach become clear. Given the likely position of the company to establish pricing based on the minimum quantity, the Government would be forgoing 10% savings at the quantity of 400, and 20% savings at the maximum quantity. Even if the parties established the band price at the quantity of 400, the Government would forego 10% savings at the maximum quantity. These inequities can be avoided by using price/quantity curves instead of band pricing.

The use of a price/quantity curve will generally produce more equitable pricing for both sides for all actual order quantities. Contractors are often requested to provide cost or pricing data for several quantity points which can then be evaluated by the Government and used to create a price/quantity curve equation which can be applied to any actual quantity ordered. For example, the RFP may request pricing for 50, 250 and 500 units. The evaluated per-unit price for each quantity can be used to create the price/quantity curve equation. **One note of caution:** If the “pricing curve” to be used is actually a linear interpolation or extrapolation (straight line between two points), the correct values to use are total prices at each quantity, not per-unit prices. The use of per-unit prices in a linear calculation can produce total prices that are illogical and unsupportable. Per-unit prices are appropriate to use when the equation reflects a curve based on logarithmic calculations.

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## Contract Type

- For any efforts of a recurring nature which are subject to TINA, the acquisition team should compare actuals for prior buys of the same or similar items to the Government's considered negotiated values for those actions. This comparison of what the Government anticipated the prior buy would cost (the negotiated amount) to what it did cost (the actuals for the prior buy) will be used to establish whether the estimating accuracy for the current requirement is at a level that would support transition to/continued use of an FFP contract type for purposes of the in-process acquisition. If the actuals for the prior buy differ from the Government's interpretation of negotiated cost for that acquisition by more than 3 – 4%, this is an indication that the parties' understanding of the cost of performance is not refined enough to support use of an FFP contract type for the current requirement. In this circumstance, use of an FPIF contract type is preferred, as it will allow the contractor and the Government to share cost risk, as well as continue to advance their understanding of the appropriate pricing for follow-on buys. This assessment should be accomplished as early as possible, preferably prior to issuance of the RFP for the current requirement, but at latest as part of proposal evaluation and development of the Government's objective position for the current requirement. This principle applies to both prime efforts and major subcontracts, and should be revisited throughout the life of a program. Even when the program is mature, a difference of more than 3 to 4 percent between the Government's anticipated cost of performance for the prior buy (as reflected in the PNM) and the actual cost incurred for that buy is an indication that the parties lack the cost insight necessary to use an FFP contract type effectively in the context of the current acquisition. Note that actuals from related prior buys are certified cost or pricing data for purposes of the pending contract action. Refer to DFARS PGI [216.403-1](#) for additional information. This practice can also be found under the following topic(s): [Subcontracts](#).
- Use of an FPIF contract type may be appropriate when there are large differences between the contractor's and the Government's cost positions.
  - Use of an FPIF contract type can facilitate conclusion of difficult negotiations by establishing an arrangement where a range of outcomes is possible, and where underrun and overrun risk are shared.
  - Since all the points on the FPIF incentive share line, up to the point of total assumption (PTA), represent the same deal (assuming the share ratio and ceiling price are held constant), this gives the parties the option of choosing to interpret the negotiated settlement differently, based on what each party thinks the likely outcome will be. For example, the CO could place the contractor's preferred interpretation of the deal (target cost and target profit) on contract, while writing to a different point on the share line in the

PNM. When using this approach, the acquisition team should be prepared to demonstrate the concept that the deal is the same, regardless of which point on the line is used as the target. (Using a theoretical final actual cost, calculate a final adjusted price after application of the price determination formula using both the Government's and the contractor's target cost and target profit amounts. As long as the share ratio and ceiling price are consistent between the two positions, the final adjusted price will be the same.)

- Not only will use of an FPIF incentive arrangement provide the flexibility that may be needed to achieve a negotiated settlement, but the more detailed cost insights available under this contract type should help both parties further their understanding of realistic pricing for future buys.
  - Under an FPIF contract type, the acquisition team should consider how they can use the contract geometry (share ratios in particular) to close the deal. This practice can also be found under the following topic(s): [Negotiation Strategy](#).
- Ensure the maximum requirement quantities on IDIQ contracts are realistic. Unrealistically high maximum requirements drive unnecessary TINA compliance (with potential time and money impacts) for suppliers who would not otherwise be required to provide certified cost or pricing data. Also, unrealistic numbers, in the context of both total maximum requirements under the IDIQ and maximum order quantities as set forth in FAR clause [52.216-19](#), can have the potential to reduce competition, including at the subcontract level. In a competitive situation, it is important to design realistic requirements that will (hopefully) attract multiple offerors. Lastly, the pricing associated with unrealistic maximum requirements may lead to an increase in Procurement Acquisition Lead Time (PALT) by driving accomplishment of review and clearance activities at higher/more levels than would otherwise have been necessary. This practice can also be found under the following topic(s): [Requirements](#).

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## Incentives/Award Fee

- Under a multiple-incentive construct, it is important for the CO and team to understand how the cost and performance incentives interact, and how these drive behavior or possible unintended consequences. For example, does the incentive structure allow for a company to overrun cost to chase after a performance incentive? (Thus, the Government is paying for some or all of the additional effort required for the contractor to earn the performance fee.) The CO may consider structuring the multiple incentive arrangement such that the performance incentive is reduced or eliminated after a specified level of cost overrun is reached.
- In a multiple incentive scenario, consider using a graduated approach to performance rewards in lieu of a binary (“all or nothing”) incentive, when warranted. For example:
  - A performance incentive rewarding the contractor for delivering an acceptable deliverable three months earlier than the contractual delivery requirement would result in a **binary outcome** (the contractor earns all of the performance incentive by meeting the target date, but loses out on the entire incentive associated with this event if they miss the date). Once it is clear the contractor will miss the target date, this incentive provides no further motivation for the contractor.
  - A performance incentive structured to provide 100% of the incentive amount associated with making delivery three months earlier than contractually required; 80% of the available incentive for delivery of an acceptable deliverable two months early; and 40% of the incentive for making delivery one month early represents a **graduated approach**. A graduated approach could be useful if the Government will achieve a measure of benefit over a range of performance outcomes. Remember that the goal is to structure multiple incentive arrangements such that the contractor is not motivated to overrun cost to earn performance incentives. This practice can also be found under the following topic(s): [Negotiation Strategy](#).
- Remember that when negotiating an incentive arrangement, if the Government makes concessions (that are not data-driven) at the cost line, these should be balanced by an increased Government underrun share. Additionally, increases to the cost line which are not supported by data serve to decrease the contractor’s cost risk, so the CO should consider whether it is necessary to provide additional ceiling coverage relative to the cost concessions. This practice can also be found under the following topic(s): [Negotiation Strategy](#).
- In order to establish a realistic FPIF ceiling percentage, the CO will need to take into consideration the various cost elements and likelihood of overrunning each one. For example, in the area of subcontracts, any negotiated FFP subcontracts would not need ceiling coverage, whereas labor hours might be an area that does need ceiling coverage.



- Use the “[FPIF Model](#)”, both in developing the objective position and in negotiations. This tool enables the user to run different scenarios during negotiations, including what happens when the geometry is modified. It will also help you to establish the Point of Total Assumption (PTA) associated with each scenario or contractor offer, and understand the profit rate at the PTA. The CO should strive to ensure that the profit at PTA is commensurate with the level of management and cost control represented by the PTA cost line.
- When considering use of award fee contracts, acquisition teams must be cognizant of the DoD preference for objective award fee evaluation criteria, as set forth at DFARS PGI [216.401](#)(e)(i). A lot of critical thinking goes into the development of a sound award fee plan, and there is no pre-determined mix of subjective and objective criteria. Some elements lend themselves more easily to objective criteria, such as cost and performance metrics. The acquisition team will also want to think through how often evaluation criteria are measured – for example, cost can only be accurately measured at the end of performance for purposes of establishing the amount of award fee earned. Note that DFARS [216.405-2](#)(1) requires that at least 40% of the award fee pool be reserved for the final evaluation period.
- If your anticipated incentive arrangement includes a positive performance or delivery incentive to motivate the contractor to exceed contract requirements, consider whether it’s also appropriate to include a related, negative incentive to emphasize the importance to the Government of, at a minimum, meeting the contract requirements.

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## Evaluation Approaches

- After RFP issuance and while waiting for submittal of the proposal, the CO and acquisition team are encouraged to develop a Cost/Price Analysis Plan which establishes each team member's (including DCAA and DCMA) evaluation responsibilities. Ensure that each proposal component is covered, while avoiding duplicate evaluations. Lay out format expectations so that technical evaluations and other inputs are provided in a way that facilitates consolidation into the Government position. Ensure that evaluators provide not only their evaluation results, but also the supporting rationale. Where appropriate, ask for a range of positions. Throughout the evaluation process, use the Cost/Price Analysis Plan to ensure evaluation products are submitted timely and meet established expectations. A best practice is to treat the Plan as a living document. Update the Plan as needed after proposal receipt, and use it to track when evaluation products are due/ are received. If evaluation due dates are missed, capture revised dates in the Plan, along with rationale/corrective actions. These steps will facilitate efficient and effective proposal evaluation.
- Hold the requirement baseline steady from proposal submission through negotiations to facilitate efficient proposal evaluation and negotiations. This practice can also be found under the following topic(s): [Negotiation Strategy](#).
- Consider use of a dedicated team, including representatives from DCMA, DCAA, and the local Pricing office (where applicable) to do a deep dive on proposed subcontracts. For example, have the dedicated team meet with suppliers (virtually or face-to-face) to fact-find/evaluate subcontract proposals, and provide well-documented subcontract pricing positions for incorporation into the overall negotiation position. The evaluation results should also be conveyed to the contractor in order to establish parameters for the prime's negotiations of the evaluated subcontracts. This practice can also be found under the following topic(s): [Subcontracts](#).
- Before submitting a data request to a contractor, contracting officers should give due consideration to the specific data to be requested, and should be able to articulate how the requested data will be used to establish price reasonableness. Data requests should be limited to only the data necessary to enable the CO to make a price reasonableness determination. It is recommended that the CO discuss with the contractor the type of data they normally collect, in order to be sure the contractor can actually produce the type of data requested. For contract actions which are not subject to TINA, the CO should allow the contractor to submit the data in the format in which it is regularly maintained. This is also true when requesting historical actual costs for contracts subject to TINA. Therefore it can be important to understand the level at which actual costs are collected in the contractor's accounting system. The CO should be sure make the request formally (in writing), specifically identifying the requested data, clearly stating that the requested data is necessary to support a price reasonableness determination, and establishing a due date for submission of the data.

When teams encounter contractor unwillingness to provide requested data, this issue should be elevated through the management chain, in accordance with the elevation procedure described at DFARS PGI [215.404-1](#) (a)(i)(A). Consider elevating concurrently within the Contracting and Program Management chains of commands, so that leadership from both functional organizations can emphasize the importance of providing the data in question. If elevation does not resolve the issue in the context of a request for data other than certified cost or pricing data, it is important to identify this in the Defense Pricing and Contracting (DPC) quarterly denials of data report as described in DFARS PGI [215.403-3](#)(6).

- If rates tend to be a repetitive issue across multiple buys, consider accomplishing (and thoroughly documenting) a trend analysis on rates. Once this analysis exists, it can be readily updated and used to support follow-on acquisitions in the event an FPRA is not in place. The intent would not be to use this analysis in place of the DCMA FPRR, but rather to support the FPRR and point out any concerns with the contractor's Forward Pricing Rate Proposal (FPRP). Additionally, if an FPRA is not in place, in order to support the DCMA FPRR, it can be very helpful to analyze the contractor's actual rate outcomes in comparison to the previously proposed, prospective FPRP rates. In this context, the most instructive comparisons will be for projections two to three years out from the date of the FPRP, for several reasons. First, making projections further out in time is a greater test of both the contractor's estimating expertise (because uncertainty increases the further one looks into the future) and their ability to manage to the estimates. Secondly, for purposes of most acquisitions with a period of performance of 3 to 4 years, the most significant spend will occur in years 2-3. The CO should also consider communicating any concerns about the FPRP to DCMA, so that potential issues with the contractor's estimating and accounting systems can be addressed. This practice can also be found under the following topic(s): [Rates](#).
- If the acquisition being negotiated will significantly impact the contractor's overall business base, review the business base associated with the contractor's proposed General and Administrative (G&A) rate, to be sure the instant acquisition is accurately reflected in the G&A base. This practice can also be found under the following topic(s): [Rates](#).
- When negotiating the definitization of a letter contract or an Undefined Contract Action (UCA), the CO should obtain current actuals for the effort being definitized, prior to entering negotiations, and routinely as negotiations progress. The actuals should include both hours and dollars, and must be provided at a level that is meaningful for purposes of Government analysis. (*Evaluation of actual hours to date is addressed in the next practice.*) It can be helpful for the CO to discuss with the contractor the extent and format of data collected by the contractor's accounting system, in order to tailor data requests in a way that will meet the CO's needs without unduly burdening the contractor. The contractor should be required to make timely and meaningful disclosures of new or updated data as they become available. For example, the

contractor should disclose pertinent information on purchase orders and subcontracts as they are negotiated, and should provide the impact of these subcontract negotiations to the proposed BOM. This practice can also be found under the following topic(s):

[Negotiation Strategy](#).

- In UCA situations, it is important to review actual hours incurred to date in comparison to the proposal. The first such review should occur just prior to initiation of negotiations, and this assessment should be repeated throughout negotiations. The CO should compare actual hours incurred as of specific points of time to the proposed time-phasing of labor, and question the contractor about inconsistencies. For example, if the contractor projected that 200,000 hours would be incurred by month 15 of performance, but the actuals as of that point are 145,000 hours, does that mean the contractor is underrunning, or are they behind schedule? The CO may need to ask the contractor to assess the percent complete in conjunction with hours incurred as of a specific point in time, and the CO may find it beneficial to ask technical specialists, including at DCMA, to assist in assessing the accuracy of the contractor's estimate of percent complete. Depending on the results of these analyses, it may be appropriate to revise the Government's position. In addition, where the UCA requirement is a follow-on to a prior contract action, it can be very informative for the acquisition team to obtain the prior contract action's actuals by month, and compare these to the UCA's actuals by month leading up to definitization. It is helpful to get the data at as low a level of detail as supported by the contractor's accounting system, such as by labor category by month, or even at the level of individual BOEs, if available, in order to ensure the actuals are meaningful for purposes of comparison to the instant acquisition. The results of these comparisons will assist the team in using data-driven negotiation methods to support negotiation of a reasonable definitized price. This practice can also be found under the following topic(s): [Negotiation Strategy](#).
- The CO should consider whether it's appropriate to apply the decrement resulting from the team's detailed review of (larger dollar) material and subcontracts to those items valued below the TINA threshold. For example, apply the overall decrement resulting from review of the top 80% of the BOM to the remaining 20%. This may be more expeditious than applying scarce Government resources to a detailed review of the low dollar components of the BOM. This practice can also be found under the following topic(s): [Subcontracts](#).
- For recurring requirements (subject to TINA), be sure to obtain the actual cost incurred for recent prior acquisitions of the same or similar supplies or services. In addition to obtaining the "actual costs", it is recommended the CO obtain prior actuals at the lowest level of detail supported by the contractor's accounting system, such as by labor category by month. If actuals by BOE by month are available, that level of detail can be very informative for purposes of evaluating the current effort. This insight into the contractor's actual cost experience should inform the Government's negotiation

position for the current buy. What something “did cost” is a great predictor of what something “will cost”.

- When considering the actual cost of performance under prior contract actions, it is important to recognize that what the prime contractor paid to a subcontractor on a fixed price subcontract may not be commensurate with the subcontractor’s actual cost experience for that subcontract. Where subcontract costs represent a significant percent of the total contract cost, or where proposed subcontract costs are increasing year over year at a rate that exceeds anticipated inflation, the acquisition team should consider whether there is benefit to investigating the actual cost of performance for select subcontracts subject to TINA. Remember that, just as with prime contracts, for subcontracts subject to TINA, actuals from related prior buys are certified cost or pricing data for purposes of the pending subcontract action. When applicable, the acquisition team may consider requesting the prime to obtain actual cost of prior efforts for select follow-on subcontracts which are subject to TINA. Some subcontractors may be reluctant to share this information with the prime contractor, citing competitive or proprietary data concerns. In that event, it is reasonable to expect the subcontractor to disclose the prior actuals at the same level of detail as the effort was originally proposed to the prime, such as labor hours by function, material cost, and total cost. This practice can also be found under the following topic(s): [Subcontracts](#).
- For follow-on acquisitions, ensure that the technical evaluators compare proposed hours to the actual hours from the related prior buy(s), both at the level of the total proposal and at the BOE level when the current requirement and the prior buy(s) include the same or similar BOEs/tasks.
- Investigate whether the terms of prior acquisitions of the same/similar items or services required the contractor to report cost data. (For example, did the contract include DFARS clause [252.234-7004](#)? Did prior contracts include CDRL requirements which obligated the contractor to submit actual hours, actual cost, etc.?) Acquisition teams should be sure to obtain and leverage any cost data pertaining to prior buys which is available due to cost reporting requirements under the earlier contract awards.
- In the context of sole source commercial pricing, contracting officers must be cognizant of the limitations on obtaining cost data from the contractor, as set forth in DFARS [215.404-1\(b\)](#) (obtain cost data only if pricing information from internal and secondary sources, e.g., Government purchase history and market research, is not adequate to establish price reasonableness), and the order of preference expressed in FAR [15.403-3](#) and DFARS [212.209](#) with respect to additional potential types or sources of data that may support a determination of price reasonableness. When considering Government price history, the CO must be sure to validate that the previous prices paid were sufficiently analyzed and determined fair and reasonable. If, after considering those sources and types of data, it is necessary to request that the contractor provide additional data other than certified cost or pricing data, contracting officers must give

due consideration to the specific data requested, limiting requests to only that data which is necessary in order to validate price reasonableness. Requesting the “right” data the first time is helpful for both parties: the contractor does not have to respond to iterative requests, and the CO has the data needed to complete price analysis and move on to negotiations (if necessary) and contract award. The CO should be sure to make the request formally (in writing), specifically identifying the requested data, clearly stating that the requested data is necessary to support a price reasonableness determination, and establishing a due date for submission of the data. It is recommended that the CO discuss with the contractor the type of data they normally collect, in order to be sure the contractor can actually produce the type of data requested. For contract actions which are not subject to TINA, the CO should allow the contractor to submit the data in the format in which it is regularly maintained. Where contractors or subcontractors fail to provide requested data other than certified cost or pricing data, teams should follow the steps detailed in FAR [15.403-3\(a\)\(4\)](#). It may be necessary for the Head of the Contracting Activity to make a decision about whether or not to make a contract award, based on the considerations set forth in FAR 15.403-3(a)(4). Contractor failures to provide requested data other than certified cost or pricing data should be identified in the quarterly report to DPC required by DPC's [25 Apr 2019 memo](#) and DFARS PGI [215.403-3\(6\)](#). This practice can also be found under the following topic(s): [Commercial Items](#).

- If the CO and acquisition team are not using a price/quantity curve for purchased materials, it is important to conduct an incremental unit analysis where a range of quantities is being priced. This analysis assesses the unit pricing of each priced quantity range by removing the total pricing for the previous quantity band(s), to establish whether the additional quantities being procured cost more, or less, on a unit price basis as compared to the lesser quantity. (The general expectation is that unit pricing within each successive quantity range should be lower than the unit pricing in the predecessor quantity bands. If not, there would have to be a rational explanation, such as additional tooling needed to produce additional items, although this type of cost is not a “recurring” cost.)

The below table demonstrates the insight that can be gained through an incremental unit analysis. In this example, total average unit price is decreasing as the quantity procured increases, as we would expect. However, accomplishment of an incremental unit analysis shows that, beginning with unit 601, the unit pricing for the 601 – 1200 and 1201 – 2400 quantity bands is increasing. In this circumstance, the CO would be expected to ask the contractor to explain why the incremental unit pricing is increasing, and press for lower pricing for the higher quantity ranges if the contractor response fails to clearly explain why the proposed pricing does not reflect a continued unit price decrease as quantities increase.

Min Qty	Max Qty	Extended Price*	Avg Unit Price*	Incremental	
				Pricing	Incremental Pricing Formula
1	100	\$ 1,000,000.00	\$ 10,000.00	N/A	N/A
101	300	\$ 2,970,000.00	\$ 9,900.00	\$ 9,850.00	=( $2,970,000 - 1,000,000$ ) / (300 - 100)
301	600	\$ 5,850,000.00	\$ 9,750.00	\$ 9,600.00	=( $5,850,000 - 2,970,000$ ) / (600 - 300)
601	1,200	\$ 11,640,000.00	\$ 9,700.00	\$ 9,650.00	=( $11,640,000 - 5,850,000$ ) / (1,200 - 600)
1,201	2,400	\$ 23,232,000.00	\$ 9,680.00	\$ 9,660.00	=( $23,232,000 - 11,640,000$ ) / (2,400 - 1,200)

\* at max quantity

- The PCO should be cognizant of whether the prime contractor’s proposal includes goods or services from any foreign subcontractors. Where foreign subcontractors or vendors are involved, it’s important to understand whether the prime will be paying the subcontractor in US Dollars, or in the vendor’s currency. If the vendor requires payment in their own currency, the prime is likely using an exchange rate to convert the subcontract amount to US dollars for purposes of its proposal to the USG. The PCO should recognize that proposed exchange rates must be evaluated, and are subject to negotiation. If there is significant disagreement over the exchange rate, or if the contractor is proposing a “hedge” to protect it from fluctuations in the currency market, the PCO should consider whether it might be appropriate to incorporate a reopener clause in the contract to protect both parties. This practice can also be found under the following topic(s): [Subcontracts](#) and [Negotiation Strategy](#).
- Systems Engineering and Program Management (SEPM) can represent a significant amount of a contractor’s proposed labor effort on production contracts. The PCO should analyze actual SEPM hours incurred on prior and on-going contracts for the same or similar end item. As a program matures, SEPM effort should be expected to diminish as technical challenges are resolved. When analyzing SEPM actual hours from other contracts, the evaluator should determine whether or not SEPM efforts were consistently categorized and charged so that any comparison is “apples-to-apples”. Because some SEPM efforts can be level-of-effort in nature, concurrency with other contracts should be considered in determining the appropriate amount of SEPM to be charged to any contract. It can also be important to consider SEPM hours relative to total hours and to touch labor hours. Therefore, evaluators should ensure that they are provided all labor hours for the same or similar contracts, not just SEPM hours. Whether or not a contractor cites actual hours as the basis of estimate has no bearing on the Government’s right under TINA to be provided all actual hours on contracts it considers relevant to the effort being proposed.

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## Subcontracts

- The CO can use profit to influence successful subcontract outcomes. This can be accomplished by providing the prime contractor with the Government's position on acceptable price ranges for major subcontracts, before the prime enters negotiations with the subcontractors. Additional profit is warranted for "good" deals in comparison to the pre-established Government expectations, while reduction of profit will be the result for negotiated subcontract prices that exceed the Government's acceptable range. This practice can also be found under the following topic(s): [Profit/Fee](#).
- Consider use of a dedicated team, including representatives from DCMA, DCAA, and the local Pricing office (where applicable) to do a deep dive on proposed subcontracts. For example, have the dedicated team meet with suppliers (virtually or face-to-face) to fact-find/evaluate subcontract proposals, and provide well-documented subcontract pricing positions for incorporation into the overall negotiation position. The evaluation results should also be conveyed to the contractor in order to establish parameters for the prime's negotiations of the evaluated subcontracts. This practice can also be found under the following topic(s): [Evaluation Approaches](#).
- The CO should consider whether it's appropriate to apply the decrement resulting from the team's detailed review of (larger dollar) material and subcontracts to those items valued below the TINA threshold. For example, apply the overall decrement resulting from review of the top 80% of the BOM to the remaining 20%. This may be more expeditious than applying scarce Government resources to a detailed review of the low dollar components of the BOM. This practice can also be found under the following topic(s): [Evaluation Approaches](#).
- In the early phases of a program, the acquisition team should compare actuals for prior buys to the Government's considered negotiated values for those actions. The comparison of what the Government anticipated the prior buys would cost (the negotiated cost line) to what it did cost (the actual cost for those buys) will be used to establish whether the estimating accuracy is at a level that would support transition to/continued use of an FFP contract type for purposes of the pending acquisition. If the actuals for the prior buy differ from the Government's interpretation of negotiated cost for that acquisition by more than 3 – 4%, this is an indication that the parties' understanding of the cost of performance is not refined enough to support use of an FFP contract type for the current requirement. This principle applies to both prime efforts and major subcontracts, and should be revisited throughout the life of a program. Even when the program is mature, a difference of more than 3 to 4 percent between the negotiated subcontract cost and the actual cost incurred for the prior subcontract effort is an indication that the parties lack the cost insight necessary to use



an FFP contract type effectively. A related practice, from the perspective of prime contracts, can be found under the following topic(s): [Contract Type](#).

- It is not optimal for the Government to have to tell the prime, after the fact, that they didn't negotiate a good deal with the subcontractor. Instead, it is important to be proactive and engage with the prime on major subcontracts in advance of prime/subcontractor negotiations in order to put the prime on notice as to the Government's expectations with regard to the subcontract. Since the prime is acting as our agent in negotiations with the subcontractor, it is in our best interest to help the prime by providing them with insight into our position, including any input from DCAA or DCMA which will inform the Government position. This is particularly critical when the subcontractor, citing competitive or proprietary data concerns, does not provide the prime with a fully supported, TINA-compliant proposal. While this circumstance does not relieve the prime of the responsibility to analyze the subcontractor's proposal and negotiate a fair and reasonable subcontract price, it would not be prudent for the CO to rely solely on the prime's analysis based on incomplete data. Note that the CO must take care when providing the Government position to the prime not to disclose the subcontractor's proprietary data. For major subcontracts where there is a concern that the prime does not have adequate data to negotiate effectively, the CO may wish to discuss with the prime whether Government participation in the prime/subcontractor negotiation will be useful. This practice can also be found under the following topic(s): [Negotiation Strategy](#).
- In a UCA environment, the CO should consider whether it is appropriate and necessary to fill in the "consent to subcontract" paragraph in the Subcontracts clause (paragraph (d) of FAR [52.244-2](#)) by identifying any specific subcontracts of concern. The purpose of utilizing this term of the Subcontracts clause is to require the CO's written consent before select subcontracts are placed. If the prime contractor has an approved purchasing system, as a gauge of whether it is appropriate to utilize the consent to subcontract provision, the CO may consider prior experience with the prime and its subcontractors. Were there any significant issues, such as a poor subcontract deal, that could be avoided through utilization of the clause? It is recommended that when subcontracts are identified in the consent to subcontract term of the clause, this be done judiciously, considering factors such as materiality. When this approach is used, the CO should coordinate with the ACO to ensure the PCO and ACO are on the same page with regard to pricing expectations for the subcontracts listed in 52.244-2(d). In some cases, the PCO may also consider retaining responsibility for consent to subcontract until after contract definitization (see FAR [42.302\(a\)\(51\)](#)).
- When considering the actual cost of performance under prior contract actions, it is important to recognize that what the prime contractor paid to a subcontractor on a fixed price subcontract may not be commensurate with the subcontractor's actual cost experience for that subcontract. Where subcontract costs represent a significant

percent of the total contract cost, or where proposed subcontract costs are increasing year over year at a rate that exceeds anticipated inflation, the acquisition team should consider whether there is benefit to investigating the actual cost of performance for select subcontracts subject to TINA. Remember that, just as with prime contracts, for subcontracts subject to TINA, actuals from related prior buys are certified cost or pricing data for purposes of the pending subcontract action. When applicable, the acquisition team may consider requesting the prime to obtain actual cost of prior efforts for select follow-on subcontracts which are subject to TINA. Some subcontractors may be reluctant to share this information with the prime contractor, citing competitive or proprietary data concerns. In that event, it is reasonable to expect the subcontractor to disclose the prior actuals at the same level of detail as the effort was originally proposed to the prime, such as labor hours by function, material cost, and total cost. This practice can also be found under the following topic(s): [Evaluation Approaches](#).

- Teams are encouraged to engage with the contractor early in the process (i.e., after RFP release but prior to proposal submission) in order to gain an understanding of the anticipated timeline for major subcontract proposal evaluations and negotiations. When will subcontract proposals be submitted to the prime? What is the prime's anticipated schedule for completing cost/price analyses of sole source subcontract proposals and submitting these to the CO? Which subcontracts meet the dollar threshold requirements in FAR [15.404-3\(c\)\(1\)](#), for submission of not only the prime's analysis, but also the subcontractor's proposal and cost or pricing data, to the CO? Will the prime request an assist audit for any subcontracts? Are there subcontractors which are expected to decline to submit TINA-compliant proposals to the prime, citing competitive or proprietary data concerns? The CO can use the answers to these questions to plan the Government's evaluation of subcontracts, as well as to enable timely communication of Government positions on subcontracts to the prime. It is also a good idea, in the context of this discussion, for the CO to communicate an expectation for the prime to keep the Government informed in relation to any issues that come up at the subcontract level, such as a subcontractor's failure to respond timely to requests for supporting data.
- The PCO should be cognizant of whether the prime contractor's proposal includes goods or services from any foreign subcontractors. Where foreign subcontractors or vendors are involved, it's important to understand whether the prime will be paying the subcontractor in US Dollars, or in the vendor's currency. If the vendor requires payment in their own currency, the prime is likely using an exchange rate to convert the subcontract amount to US dollars for purposes of its proposal to the USG. The PCO should recognize that proposed exchange rates must be evaluated, and are subject to negotiation. If there is significant disagreement over the exchange rate, or if the contractor is proposing a "hedge" to protect it from fluctuations in the currency market, the PCO should consider whether it might be appropriate to incorporate a reopener

clause in the contract to protect both parties. This practice can also be found under the following topic(s): [Evaluation Approaches](#) and [Negotiation Strategy](#).

- If you are experiencing recurring issues with the timeliness or quality of a prime contractor's evaluations of its suppliers' proposals, you should communicate the concerns to the cognizant DCAA audit office and DCMA ACO or DACO. This may become a consideration in estimating system and purchasing system reviews.
- It is not uncommon for subcontractors to decline to submit fully TINA-compliant proposals to prime contractors, due to reasons such as being competitors on other acquisitions. In these cases, the subcontractor submits the fully detailed proposal to the contracting officer in lieu of the prime contractor, in order to be compliant with TINA. When this happens, the contracting officer must conduct appropriate cost and price analysis of the subcontract proposal. In this context, the CO and acquisition team will need to look at whether there are differences between the subcontractor's FPRP and DCMA's FPRR, and take that into consideration in your position, especially for large dollar subcontracts. Keep in mind you will not be able to share any specific DCMA or DCAA recommendations on rates with the prime, but you should be able to share an overall decrement which results from incorporation of the DCMA rate position. This practice can also be found under the following topic(s): [Rates](#).
- Competition at the subcontract level is vital for purposes of avoiding data denials and overpriced parts. Competed subcontracts facilitate agreement on reasonableness of subcontract pricing, and reduce the subcontract analysis burden for both parties. Acquisition teams should encourage prime contractors to compete subcontracts whenever possible. Especially in the context of follow-on acquisitions, the Government is in a good position to begin conversations about this topic with the prime well in advance of RFP issuance. The acquisition team should expect the prime contractor to be able to explain why sole source subcontracted items aren't being competed, and describe actions the prime is taking to position itself to be able to compete those subcontracted requirements in the future. If the prime has made a commercial item determination with respect to a subcontract requirement, there should be similar items available in the commercial marketplace. If the prime contractor is not competing the commercial requirements, ask why not. Raise any concerns in this area to DCMA and DCAA for purpose of estimating and purchasing system reviews. This practice can also be found under the following topic(s): [Commercial Items](#).

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## Commercial Items (this term includes services)

- When reviewing commercial items, it is a best practice to leverage the expertise resident in the [DCMA Commercial Item Group](#) (CIG). The DCMA CIG can assist with identifying prior Government commerciality determinations, evaluating new contractor commerciality assertions, and can provide valuable insights if the CO is considering requesting Head of Contracting Activity (HCA) concurrence to overturn an existing commercial item determination (CID). The CIG may also be able to assist with price analysis for commercial items, or may suggest other resources.
- When a company is asserting commerciality, such that certified cost or pricing data will not be provided, and there is not a robust commercial market for the item, it is often useful to obtain a picture of the item (or even a sample, if possible), to better understand its complexity and intrinsic value. For example, if the proposed price is \$5,000, but the picture looks like an item that could be bought in the “fasteners” aisle at the local hardware store, this may lead the acquisition team to ask pertinent questions about the item. (What are the differences between this item and the item that costs \$.89 in the hardware store? Materials used? Dimensions? Performance specs?) The answers to these types of questions may either help the Government team better understand the proposed pricing, or may lead them to determine they need to ask more questions, or press for more reasonable pricing.
- If the contractor has not completed required CIDs, you should bring that to the attention of the cognizant DCMA Divisional Administrative Contracting Officer (DACO).
- Conducting meaningful market pricing research is critical in the context of commercial items and services. When it comes to evaluating the price of a commercial item, whether this is in the context of a prime contractor, subcontractor, or contractor subsidiary, it is important not only to “vet” prior government history, but also not to stop there. The below questions can be useful as you expand your approach to researching:
  - What are other customers paying for the same (or similar) items from the same vendor?
  - What is the Government paying for the same (or similar) items from other vendors?
  - What are other customers paying for the same (or similar) items from other vendors?

Obtaining this information gives the CO not only insight into what other customers are paying, but insight into sales prices from other vendors, as well. This is another area where the DCMA CIG can provide valuable assistance.

- In the context of sole source commercial pricing, contracting officers must be cognizant of the limitations on obtaining cost data from the contractor, as set forth in DFARS [215.404-1\(b\)](#) (obtain cost data only if pricing information from internal and secondary sources, e.g., Government purchase history and market research, is not adequate to establish price reasonableness), and the order of preference expressed in FAR [15.403-3](#) and DFARS [212.209](#) with respect to additional potential types or sources of data that may support a determination of price reasonableness. When considering Government price history, the CO must be sure to validate that the previous prices paid were sufficiently analyzed and determined fair and reasonable. If, after considering those sources and types of data, it is necessary to request that the contractor provide additional data other than certified cost or pricing data, contracting officers must give due consideration to the specific data requested, limiting requests to only that data which is necessary in order to validate price reasonableness. Requesting the “right” data the first time is helpful for both parties: the contractor does not have to respond to iterative requests, and the CO has the data needed to complete price analysis and move on to negotiations (if necessary) and contract award. The CO should be sure to make the request formally (in writing), specifically identifying the requested data, clearly stating that the requested data is necessary to support a price reasonableness determination, and establishing a due date for submission of the data. It is recommended that the CO discuss with the contractor the type of data they normally collect, in order to be sure the contractor can actually produce the type of data requested. For contract actions which are not subject to TINA, the CO should allow the contractor to submit the data in the format in which it is regularly maintained. Where contractors or subcontractors fail to provide requested data other than certified cost or pricing data, teams should follow the steps detailed in FAR [15.403-3\(a\)\(4\)](#). It may be necessary for the Head of the Contracting Activity to make a decision about whether or not to make a contract award, based on the considerations set forth in FAR [15.403-3\(a\)\(4\)](#). Contractor failures to provide requested data other than certified cost or pricing data should be identified in the quarterly report to DPC required by DPC's [25 Apr 2019 memo](#) and DFARS PGI [215.403-3\(6\)](#). This practice can also be found under the following topic(s): [Evaluation Approaches](#).
- Competition at the subcontract level is vital for purposes of avoiding data denials and overpriced parts. Competed subcontracts facilitate agreement on reasonableness of subcontract pricing, and reduce the subcontract analysis burden for both parties. Acquisition teams should encourage prime contractors to compete subcontracts whenever possible. Especially in the context of follow-on acquisitions, the Government is in a good position to begin conversations about this topic with the prime well in advance of RFP issuance. The acquisition team should expect the prime contractor to be able to explain why sole source subcontracted items aren't being competed, and describe actions the prime is taking to position itself to be able to compete those subcontracted requirements in the future. If the prime has made a commercial item determination with respect to a subcontract requirement, there should be similar items

available in the commercial marketplace. If the prime contractor is not competing the commercial requirements, ask why not. Raise any concerns in this area to DCMA and DCAA for purpose of estimating and purchasing system reviews. This practice can also be found under the following topic(s): [Subcontracts](#).

- Cash flow can be traded off in a commercial environment. You should understand how generous your cash flow terms are in relation to customary terms in the marketplace and leverage that information in your price negotiation. Be aware of the statutory restrictions, such as the 15% limit on advance payments. This practice can also be found under the following topic(s): [Negotiation Strategy](#) and [Financing](#).

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## Rates

- If rates tend to be a repetitive issue across multiple buys, consider accomplishing (and thoroughly documenting) a trend analysis on rates. Once this analysis exists, it can be readily updated and used to support follow-on acquisitions in the event an FPRA is not in place. The intent would not be to use this analysis in place of the DCMA FPRR, but rather to support the FPRR and point out any concerns with the contractor's Forward Pricing Rate Proposal (FPRP). Additionally, if an FPRA is not in place, in order to support the DCMA FPRR, it can be very helpful to analyze the contractor's actual rate outcomes in comparison to the previously proposed, prospective FPRP rates. In this context, the most instructive comparisons will be for projections two to three years out from the date of the FPRP, for several reasons. First, making projections further out in time is a greater test of both the contractor's estimating expertise (because uncertainty increases the further one looks into the future) and their ability to manage to the estimates. Secondly, for purposes of most acquisitions with a period of performance of 3 to 4 years, the most significant spend will occur in years 2-3. The CO should also consider communicating any concerns about the FPRP to DCMA, so that potential issues with the contractor's estimating and accounting systems can be addressed. This practice can also be found under the following topic(s): [Evaluation Approaches](#).
- It is not uncommon for subcontractors to decline to submit fully TINA-compliant proposals to prime contractors, due to reasons such as being competitors on other acquisitions. In these cases, the subcontractor submits the fully detailed proposal to the contracting officer in lieu of the prime contractor, in order to be compliant with TINA. When this happens, the contracting officer must conduct appropriate cost and price analysis of the subcontract proposal. In this context, the CO and acquisition team will need to look at whether there are differences between the subcontractor's FPRP and DCMA's FPRR, and take that into consideration in your position, especially for large dollar subcontracts. Keep in mind you will not be able to share any specific DCMA or DCAA recommendations on rates with the prime, but you should be able to share an overall decrement which results from incorporation of the DCMA rate position. This practice can also be found under the following topic(s): [Subcontracts](#).
- If there has been a corporate merger and rates savings are anticipated in the future, but not yet reflected in the rates, the CO may need to include a rate savings clause if an FFP contract type is contemplated. As a minimum, the CO should contact DCMA to understand the impact of the merger on the rates and whether a savings clause is recommended. When a rate savings clause is used, the potential adjustment should be based on the contractor's actual rate experience rather than rates established in a subsequent FPRA, as there is no guarantee that the Government and the contractor will come to an agreement on an FPRA at any point during contract performance. Additionally, the rate savings clause should identify the baseline for the adjustment resulting from the clause. For example, the contractor's last known position could be used as the baseline; if the negotiated total price was 90% of the contractor's last

known position, the adjustment based on application of the final rates to the baseline would be multiplied by 90% to establish the adjustment amount as a result of the rate savings clause. This practice is targeted toward FFP contracts as the Government does not share in any cost savings under that contract type, whereas, on a Fixed Price Incentive contract, the CO may be able to consider this in the negotiation of the share ratios.

- In general, DCMA is the organization that has the knowledge and expertise regarding a given company's rates. If the contractor submits data related to indirect rates in the context of an individual negotiation, the CO should share the disclosed data with the cognizant DCMA Administrative Contracting Officer (ACO)/Divisional ACO (DACO) responsible for issuing Forward Pricing Rate Agreements and Recommendations (FPRAs and FRRs) and rely on the ACO's/DACO's analysis of the data. In general, COs should rely on the DCMA experts' opinion of the rates, and should communicate with the ACO/DACO during negotiations regarding alternative solutions. COs who deviate from the FRR without coordinating with DCMA may inadvertently reduce DCMA's leverage to achieve an FPRA with the contractor, and negatively impact the buying offices which are attempting to sustain the FRR in their negotiations. This practice can also be found under the following topic(s): [Negotiation Strategy](#).
- If the acquisition being negotiated will significantly impact the contractor's overall business base, review the business base associated with the contractor's proposed General and Administrative (G&A) rate, to be sure the instant acquisition is accurately reflected in the G&A base. This practice can also be found under the following topic(s): [Evaluation Approaches](#).

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## Profit/Fee

- The CO can use profit to influence successful subcontract outcomes. This can be accomplished by providing the prime contractor with the Government's position on acceptable price ranges for major subcontracts, before the prime enters negotiations with the subcontractors. Additional profit is warranted for "good" deals in comparison to the pre-established Government expectations, while reduction of profit will be the result for negotiated subcontract prices that exceed the Government's acceptable range. This practice can also be found under the following topic(s): [Subcontracts](#).
- If a team intends to utilize the cost efficiency factor on the Weighted Guidelines (WGL), the CO should assess whether/in what amount the company's identified cost efficiency activities will actually reduce the cost on the instant contract. Then, consider how that savings should be shared between the contractor and the Government. The resulting dollars can then be converted to a WGL cost efficiency factor profit percentage. It would not make sense to provide profit dollars that exceed the cost benefits to the instant contract.

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## Negotiation Strategy

- Hold the requirement baseline steady from proposal submission through negotiations to facilitate efficient proposal evaluation and negotiations. This practice can also be found under the following topic(s): [Evaluation Approaches](#).
- COs are encouraged to use a fact-based (data-driven) negotiation approach. Government negotiation offers should be well supported, and the contractor is put on notice that its offers are also expected to be well-supported. Movements in the Government position are made in response to data disclosures supporting increases in cost. Under this approach, concessions at the cost line (movement not supported by data disclosures) are often tied to downward movement in the Government's profit position.
- The CO and the PM should consider jointly establishing negotiation ground rules with the contractor prior to entering negotiations. Once the ground rules are established, the Government team should be sure to conform to them, and hold the contractor accountable for doing the same. The ground rules should address how offers will be exchanged (face-to-face, email, video conference, etc.); the expected level of detail for offers, especially in the initial exchanges; a commitment to remain engaged in negotiations until a settlement is reached; negotiation participants; offer turnaround time; and timing of submissions of updated cost or pricing data. In particular, ensure that the "right" contractor personnel, with authority to commit the contractor, are representing the contractor in negotiations.
- Going "bottom-line" early in negotiations is generally not a successful approach. It is recognized that in the final outcome, the parties do not have to agree (nor likely will they) to all of the cost details behind the settlement on FPIF and cost type contracts, nor do the parties have to agree to the breakout of cost and profit on an FFP settlement. However, going bottom-line too early, whether initiated by the Government or the company in order to "cut to the chase", frequently backfires and can actually lead to prolonged negotiations. If the parties are unable to reach agreement on this basis and are far apart in the negotiations, it can become time consuming to re-trace steps, introduces substantive rework, and often results in significant delays. While it is a judgment call as to when it is the appropriate point in the negotiation to move to bottom line negotiations, it can be helpful to discuss with individuals with significant negotiation experience, before taking that step. To reiterate: going to the bottom line from the onset of negotiations is clearly not in the best interest of the parties as it is not conducive to resolving differences and thereby arriving at a price that is fair to both parties.
- It is recommended that, at the beginning of the proposal process, COs clearly establish expectations with the contractor regarding timely data disclosures during the Government's proposal review and evaluation, and continuing into negotiations.

Disclosure of new or more current data as it becomes available will keep the parties on an equal footing, which in turn will facilitate both efficient negotiation, and negotiation of a price that's fair to both parties. The CO should reiterate expectations regarding timely data disclosures prior to entering into negotiations. One of the expectations the CO should clearly communicate to the contractor is that it's not necessary, or desired, for the contractor to submit a revised proposal every time there is new or updated data to disclose; instead, these disclosures can be made on a timely basis via "data handouts". The contractor should be discouraged from holding data disclosures until pre-determined timeframes or until the end of negotiations. Timely data disclosures during negotiations should facilitate a quick turnaround on submission of the Certificate of Current Cost or Pricing Data, and minimize any sweep submissions. The CO should include in the RFP an expectation that the contractor will submit the Certificate of Current Cost or Pricing Data within five business days after the conclusion of negotiations, consistent with [DFARS PGI 215.406-2](#). If the contractor is routinely unable or unwilling to make timely data disclosures, the CO should bring this concern to the attention of DCAA and DCMA, as it may have implications for the evaluation of the contractor's business systems.

- With respect to sweep data, remember that the Government is entitled to a full downward adjustment for factual data that should have been disclosed prior to the conclusion of negotiations. This should not be a negotiation point. Note that the current policy, as set forth in [DFARS PGI 215.406-2](#), requires that any cost or pricing data submitted after price agreement shall be reviewed and dispositioned after award of the contract action, pursuant to FAR [15.407-1](#), Defective Pricing, unless the negotiated price agreement is nullified and the parties reopen negotiations to address the sweep data. If the sweep data are reviewed and dispositioned after award of the contract action, a price reduction will be accomplished in a subsequent modification in accordance with FAR [52.215-10](#) or FAR [52.215-11](#), if merited.
- Remember that when negotiating an incentive arrangement, if the Government makes concessions (that are not data-driven) at the cost line, these should be balanced by an increased Government underrun share. Additionally, increases to the cost line which are not supported by data serve to decrease the contractor's cost risk, so the CO should consider whether it is necessary to provide additional ceiling coverage relative to the cost concessions. This practice can also be found under the following topic(s): [Incentives/Award Fee](#).
- When negotiating the definitization of a letter contract or an Undefined Contract Action (UCA), the CO should obtain current actuals for the effort being definitized, prior to entering negotiations, and routinely as negotiations progress. The actuals should include both hours and dollars, and must be provided at a level that is meaningful for purposes of Government analysis. It can be helpful for the CO to discuss with the contractor the extent and format of data collected by the contractor's accounting system, in order to tailor data requests in a way that will meet the CO's needs without

unduly burdening the contractor. The contractor should be required to make timely and meaningful disclosures of new or updated data as they become available. For example, the contractor should disclose pertinent information on purchase orders and subcontracts as they are negotiated, and should provide the impact of these subcontract negotiations to the proposed Bill of Material (BOM). This practice can also be found under the following topic(s): [Evaluation Approaches](#).

- In UCA situations, it is important to review actual hours incurred to date in comparison to the proposal. The first such review should occur just prior to initiation of negotiations, and this assessment should be repeated throughout negotiations. The CO should compare actual hours incurred as of specific points of time to the proposed time-phasing of labor, and question the contractor about inconsistencies. For example, if the contractor projected that 200,000 hours would be incurred by month 15 of performance, but the actuals as of that point are 145,000 hours, does that mean the contractor is underrunning, or are they behind schedule? The CO may need to ask the contractor to assess the percent complete in conjunction with hours incurred as of a specific point in time, and the CO may find it beneficial to ask technical specialists, including at DCMA, to assist in assessing the accuracy of the contractor's estimate of percent complete. Depending on the results of these analyses, it may be appropriate to revise the Government's position. In addition, where the UCA requirement is a follow-on to a prior contract action, it can be very informative for the acquisition team to obtain the prior contract action's actuals by month and compare these to the UCA's actuals by month leading up to definitization. It is helpful to get the data at as low a level of detail as supported by the contractor's accounting system, such as by labor category by month, or even at the level of individual BOEs, if available, in order to ensure the actuals are meaningful for purposes of comparison to the instant acquisition. The results of these comparisons will assist the team in using data-driven negotiation methods to support negotiation of a reasonable definitized price. This practice can also be found under the following topic(s): [Evaluation Approaches](#).
- When identifying the membership of the Government's negotiation team, note that negotiations are best supported by the individual experts who evaluated the proposal and made the recommendations that were incorporated into the Government position. For example, it is important to include the technical evaluator in negotiations when labor estimates or issues are being discussed. Similarly, the CO should request negotiation support from the cognizant auditor or from DCMA personnel when the areas of the proposal which they evaluated are being addressed in negotiations.
- It is not optimal for the Government to have to tell the prime, after the fact, that they didn't negotiate a good deal with the subcontractor. Instead, it is important to be proactive and engage with the prime on major subcontracts in advance of prime/subcontractor negotiations in order to put the prime on notice as to the Government's expectations with regard to the subcontract. Since the prime is acting as our agent in negotiations with the subcontractor, it is in our best interest to help the

prime by providing them with insight into our position, including any input from DCAA or DCMA which will inform the Government position. This is particularly critical when the subcontractor, citing competitive or proprietary data concerns, does not provide the prime with a fully supported, TINA-compliant proposal. While this circumstance does not relieve the prime of the responsibility to analyze the subcontractor's proposal and negotiate a fair and reasonable subcontract price, it would not be prudent for the CO to rely solely on the prime's analysis based on incomplete data. Note that the CO must take care when providing the Government position to the prime not to disclose the subcontractor's proprietary data. For major subcontracts where there is a concern that the prime does not have adequate data to negotiate effectively, the CO may wish to discuss with the prime whether Government participation in the prime/subcontractor negotiation will be useful. This practice can also be found under the following topic(s): [Subcontracts](#).

- Cash flow can be traded off in a commercial environment. You should understand how generous your cash flow terms are in relation to customary terms in the marketplace and leverage that information in your price negotiation. Be aware of the statutory restrictions, such as the 15% limit on advance payments. This practice can also be found under the following topic(s): [Commercial Items](#) and [Financing](#).
- If you believe a contractor is not negotiating in good faith (for example, not complying with agreed-to ground rules, failing to submit offers within a reasonable time, failing to provide data requested by the CO, etc.), consider elevating to leadership to have them emphasize expectations to the company's management.
- The contractor should be keeping data current throughout fact-finding and negotiations. If a contractor is not doing that, it could be indicative of issues with the company's business systems (estimating system, purchasing system, accounting system, etc.). The fact that a company takes a long time to provide the Certificate of Current Cost or Pricing Data is not a good reason to establish a cut-off date. (Note that the sweep is not a Government requirement, but something that a contractor chooses to do, in order to mitigate its potential exposure to defective pricing claims from the Government.)
- In general, DCMA is the organization that has the knowledge and expertise regarding a given company's rates. If the contractor submits data related to indirect rates in the context of an individual negotiation, the CO should share the disclosed data with the cognizant DCMA Administrative Contracting Officer (ACO)/Divisional ACO (DACO) responsible for issuing Forward Pricing Rate Agreements and Recommendations (FPRAs and FRRs) and rely on the ACO's/DACO's analysis of the data. In general, COs should rely on the DCMA experts' opinion of the rates, and should communicate with the ACO/DACO during negotiations regarding alternative solutions. COs who deviate from the FRR without coordinating with DCMA may inadvertently reduce DCMA's leverage to achieve an FPR with the contractor, and negatively impact the buying offices which

are attempting to sustain the FPRR in their negotiations. This practice can also be found under the following topic(s): [Rates](#).

- Use of an FPIF contract type may be appropriate when there are large differences between the contractor's and the Government's cost positions.
  - Use of an FPIF contract type can facilitate conclusion of difficult negotiations by establishing an arrangement where a range of outcomes is possible, and where underrun and overrun risk are shared.
  - Since all the points on the FPIF incentive share line, up to the point of total assumption (PTA), represent the same deal (assuming the share ratio and ceiling price are held constant), this gives the parties the option of choosing to interpret the negotiated settlement differently, based on what each party thinks the likely outcome will be. For example, the CO could place the contractor's preferred interpretation of the deal (target cost and target profit) on contract, while writing to a different point on the share line in the PNM. When using this approach, the acquisition team should be prepared to demonstrate the concept that the deal is the same, regardless of which point on the line is used as the target. (Using a theoretical final actual cost, calculate a final adjusted price after application of the price determination formula using both the Government's and the contractor's target cost and target profit amounts. As long as the share ratio and ceiling price are consistent between the two positions, the final adjusted price will be the same.)
  - Not only will use of an FPIF incentive arrangement provide the flexibility that may be needed to achieve a negotiated settlement, but the more detailed cost insights available under this contract type should help both parties further their understanding of realistic pricing for future buys.
  - Under an FPIF contract type, the acquisition team should consider how they can use the contract geometry (share ratios in particular) to close the deal. This practice can also be found under the following topic(s): [Contract Type](#)
- In a multiple incentive scenario, consider using a graduated approach to performance rewards in lieu of a binary ("all or nothing") incentive, when warranted. For example:
  - A performance incentive rewarding the contractor for delivering an acceptable deliverable three months earlier than the contractual delivery requirement would result in a **binary outcome** (the contractor earns all of the performance incentive by meeting the target date, but loses out on the entire incentive associated with this event if they miss the date). Once it is clear the contractor will miss the target date, this incentive provides no further motivation for the contractor.

- A performance incentive structured to provide 100% of the incentive amount associated with making delivery three months earlier than contractually required; 80% of the available incentive for delivery of an acceptable deliverable two months early; and 40% of the incentive for making delivery one month early represents a **graduated approach**. A graduated approach could be useful if the Government will achieve a measure of benefit over a range of performance outcomes. Remember that the goal is to structure multiple incentive arrangements such that the contractor is not motivated to overrun cost to earn performance incentives. This practice can also be found under the following topic(s): [Incentives/Award Fee](#).

- The PCO should be cognizant of whether the prime contractor's proposal includes goods or services from any foreign subcontractors. Where foreign subcontractors or vendors are involved, it's important to understand whether the prime will be paying the subcontractor in US Dollars, or in the vendor's currency. If the vendor requires payment in their own currency, the prime is likely using an exchange rate to convert the subcontract amount to US dollars for purposes of its proposal to the USG. The PCO should recognize that proposed exchange rates must be evaluated, and are subject to negotiation. If there is significant disagreement over the exchange rate, or if the contractor is proposing a "hedge" to protect it from fluctuations in the currency market, the PCO should consider whether it might be appropriate to incorporate a reopener clause in the contract to protect both parties. This practice can also be found under the following topic(s): [Evaluation Approaches](#) and [Subcontracts](#).

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## Financing

- Financing can impact price. For example, if you are changing financing terms to provide additional cash flow over what was originally negotiated on a given contract, you are required to obtain consideration. (See FAR [32.005](#).)
- Cash flow can be traded off in a commercial environment. You should understand how generous your cash flow terms are in relation to customary terms in the marketplace, and leverage that information in your price negotiation. Be aware of the statutory restrictions, such as the 15% limit on advance payments. This practice can also be found under the following topic(s): [Commercial Items](#) and [Negotiation Strategy](#).
- If the contractor is proposing Performance Based Payments (PBPs), the CO and team should review the [Defense Pricing and Contracting \(DPC\)-sponsored training](#) on this topic before negotiations. It is recommended that Pricing be involved in running the PBP model and vetting the expenditure profile against the proposal.
- If it is anticipated that the contractor will propose PBPs, the CO should require the contractor to submit its expenditure profile with the proposal, in order to enable the acquisition team to begin its evaluation of the expenditure profile right away. Negotiating PBPs can add time to the contract award schedule and therefore it is important to be proactive in this area.
- If the acquisition in question will be the subject of a Peer Review, the CO should provide a populated PBP model along with the documents submitted in support of the Phase I Peer review, and should be prepared to discuss the team's approach to evaluating the expenditure profile.
- The regulations governing PBPs have undergone several recent changes as the requirements of National Defense Authorization Acts have been implemented. It is critical for COs to stay abreast of these changes in order to be able to structure PBP arrangements that meet current requirements. Refer to FAR [32.10](#) and DFARS [232.10](#), as well as DFARS PGI [232.10](#) and the [DAU PBP webinar](#).
- When establishing PBP arrangements, COs must establish whether each event will be a cumulative or severable event. In a production buy, it would not make sense that all events would be "severable" as there would be a logical sequence of events to building the item, so there should be events that are contingent upon the completion of prior events. This is also important from the standpoint of how the value of the events is determined. If you are projecting an event one year from today and using the expenditure profile to determine the basis, if the event is "severable" and can be performed out of sequence in relation to the pricing, you may need to price the specific event rather than use the expenditure profile. This would ensure the PBP value is truly



commensurate with the PBP event, consistent with the requirements set forth at FAR [32.1004\(b\)\(3\)\(ii\)](#).

- When the contractor requests PBPs, it is very important to obtain a monthly cost expenditure profile that reflects costs; this would not be the same thing as termination liability. The CO and acquisition team will have to expend effort evaluating the realism of the profile; this is mostly easily done when there is prior history. It is critical that this element of the arrangement is properly quantified in order to minimize instances of unintended advance payments under the PBP construct or providing a cash flow that is not commensurate with what is needed to perform the contract.
- When PBPs will be used, it's important for acquisition teams to evaluate using the PBP Tool at [https://www.acq.osd.mil/dpap/cpic/cp/Performance\\_based\\_payments.html](https://www.acq.osd.mil/dpap/cpic/cp/Performance_based_payments.html) to analyze cash flow. This model provides both the Government's and contractor's perspectives on PBPs in terms of Net Present Value, and sets the stage for negotiation of "win-win" PBP arrangements.

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## Documentation

- The Final PNM should be considered a stand-alone document. Therefore, it must describe the basis for the contractor's proposal, the reasoning behind the PCO's objective position, and the basis for the Government's interpretation of the negotiated amount, in enough detail that a reader who does not have access to the proposal or the Price Objective Memorandum (POM) or Preliminary PNM (PPNM) can understand each party's position and how the negotiated amount was derived/why the negotiated amount deviated from the objective. Generally, the breakout of the negotiated position in the PNM should be at the same level as in the POM or PPNM.
- In drafting the Final PNM, it is recommended that the drafter use the POM or Preliminary PNM as the starting point, retaining the content of the POM/PPNM describing the basis for the proposed and objective positions (and editing where appropriate, for example for verb tense), and incorporating the content necessary to explain what transpired during the business clearance and in negotiations.
- It is important to clearly document the considered negotiated values for subcontracted commercial items in the PNM; this information will be useful for future cost/price analyses, both on the same program, and potentially other programs, as well.
- Your Preliminary PNM or POM should contain a list of major suppliers, showing the proposed and objective amounts for each, and the rationale for each position. The final PNM should augment the list by adding the Government's considered negotiated position for each listed subcontractor, with the rationale supporting each considered negotiated value. The final PNM should include, as an attachment, a table showing the proposed, objective, and considered negotiated amounts for every first-tier supplier over the TINA threshold.
- It is important to clearly document the analysis and the basis of the Government position on System Engineering/Program Management (SEPM) for the purpose of future cost analyses. This analysis should address how the Government established that the SEPM hours included in the objective and negotiated positions are commensurate with the required support.
- Expected POM/PPNM and PNM attachments include the following:
  - Detailed cost element build-up spreadsheet (in total, by contract type, by basic/options, by CLIN, as appropriate) of proposed and objective positions; updated in the final PNM to include a cost element build-up spreadsheet for the negotiated position, at the same level of detail;
  - DD1547/DD1861 if the Weighted Guidelines Method was used;
  - A table showing the proposed, objective, and considered negotiated amounts for every first-tier supplier over the TINA threshold (final PNM);

- Listing by year of all rates, direct and indirect, included in each position (unless this information is included in the body of the POM/PPNM and PNM);
- Graph(s) depicting proposed/objective incentive arrangements (unless presented in the body of the PPNM), with graphs updated or added in the PNM to reflect the negotiated settlement; and
- The signed Certificate of Current Cost or Pricing Data (final PNM only).

Additional attachments should be included as necessary based on the circumstances of each acquisition.

- The POM/PPNM and PNM should indicate the extent to which the CO relied on the certified cost or pricing data provided by the contractor, and specifically identify any certified cost or pricing data which was not relied upon. The final PNM should identify the date of receipt of the Certificate of Current Cost or Pricing Data, or explain why the certificate was not required/not received. If the contractor submitted sweep data along with the certificate, the PNM should explain how the sweep data was handled, in accordance with DFARS PGI [215.406-2](#).

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## Acronym List

ACO: Administrative Contracting Officer  
BOE: Basis of Estimate  
BOM: Bill of Materials  
CAS: Cost Accounting Standards  
CDRL: Contract Data Requirements List  
CID: Commercial Item Determination  
CIG: Commercial Item Group  
CLIN: Contract Line Item Number  
CO: Contracting Officer  
CPFF: Cost Plus Fixed Fee  
CPIF: Cost Plus Incentive Fee  
DACO: Divisional Administrative Contracting Officer  
DCAA: Defense Contract Audit Agency  
DCMA: Defense Contract Management Agency  
DFARS: Defense Federal Acquisition Regulation Supplement  
DoD: Department of Defense  
DPC: Defense Pricing and Contracting  
DPC/PCF: Defense Pricing and Contracting/Price, Cost, and Finance  
FFP: Firm, Fixed Price  
FPIF: Fixed Price Incentive (Firm Targets)  
FPRA: Forward Pricing Rate Agreement  
FPRP: Forward Pricing Rate Proposal  
FRR: Forward Pricing Rate Recommendation  
G&A: General and Administrative  
HCA: Head of the Contracting Activity  
IDIQ: Indefinite Delivery/Indefinite Quantity  
NRE: Non-recurring Engineering

OSD: Office of the Secretary of Defense  
PALT: Procurement Acquisition Lead Time  
PBP: Performance-Based Payments  
PCO: Procuring Contracting Officer  
PGI: Procedures, Guidance, and Information  
PM: Program Manager, Program Management  
PNM: Price Negotiation Memorandum  
POM: Price Objective Memorandum  
PPNM: Preliminary Price Negotiation Memorandum  
PTA: Point of Total Assumption  
RFP: Request for Proposal  
SEPM: Systems Engineering/Program Management  
TINA: Truth in Negotiations Act  
Ts & Cs: Terms and conditions  
UCA: Undefined Contract Action  
USG: United States Government  
WGL: Weighted Guidelines

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