

SUBPART 215.4—CONTRACT PRICING

(Revised April 12, 2013)

215.402 Pricing policy.

Follow the procedures at [PGI 215.402](#) when conducting cost or price analysis, particularly with regard to acquisitions for sole source commercial items.

215.403 Obtaining certified cost or pricing data.

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.* Follow the procedures at [PGI 215.403-1\(b\)](#).

(c) *Standards for exceptions from certified cost or pricing data requirements.*

(1) *Adequate price competition.*

(A) For acquisitions under dual or multiple source programs—

(1) The determination of adequate price competition must be made on a case-by-case basis. Even when adequate price competition exists, in certain cases it may be appropriate to obtain additional data to assist in price analysis.

(2) Adequate price competition normally exists when—

(i) Prices are solicited across a full range of step quantities, normally including a 0-100 percent split, from at least two offerors that are individually capable of producing the full quantity; and

(ii) The reasonableness of all prices awarded is clearly established on the basis of price analysis (see FAR 15.404-1(b)).

(B) If only one offer is received in response to a competitive solicitation, see [215.371-3](#).

(3) *Commercial items.*

(A) Follow the procedures at [PGI 215.403-1\(c\)\(3\)\(A\)](#) for pricing commercial items.

(B) By November 30th of each year, departments and agencies shall provide a report to the Director, Defense Procurement and Acquisition Policy (DPAP), ATTN: DPAP/CPIC, of all contracting officer determinations that commercial item exceptions apply under FAR 15.403-1(b)(3), during the previous fiscal year, for any contract, subcontract, or modification expected to have a value of \$15,000,000 or more. See [PGI 215.403-1\(c\)\(3\)\(B\)](#) for the format and guidance for the report. The Director, DPAP, will submit a consolidated report to the congressional defense committees.

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(4) *Waivers.*

(A) The head of the contracting activity may, without power of delegation, apply the exceptional circumstances authority when a determination is made that—

(1) The property or services cannot reasonably be obtained under the contract, subcontract, or modification, without the granting of the waiver;

(2) The price can be determined to be fair and reasonable without the submission of certified cost or pricing data; and

(3) There are demonstrated benefits to granting the waiver. Follow the procedures at [PGI 215.403-1\(c\)\(4\)\(A\)](#) for determining when an exceptional case waiver is appropriate, for approval of such waivers, for partial waivers, and for waivers applicable to unpriced supplies or services.

(B) By November 30th of each year, departments and agencies shall provide a report to the Director, DPAP, ATTN: DPAP/CPIC, of all waivers granted under FAR 15.403-1(b)(4), during the previous fiscal year, for any contract, subcontract, or modification expected to have a value of \$15,000,000 or more. See [PGI 215.403-1\(c\)\(4\)\(B\)](#) for the format and guidance for the report. The Director, DPAP, will submit a consolidated report to the congressional defense committees.

(C) DoD has waived the requirement for submission of certified cost or pricing data for the Canadian Commercial Corporation and its subcontractors (but see [215.408\(5\)](#) and [225.870-4\(c\)](#)).

(D) DoD has waived certified cost or pricing data requirements for nonprofit organizations (including educational institutions) on cost-reimbursement-no-fee contracts. The contracting officer shall require—

(1) Submission of data other than certified cost or pricing data to the extent necessary to determine price reasonableness and cost realism; and

(2) Certified cost or pricing data from subcontractors that are not nonprofit organizations when the subcontractor's proposal exceeds the certified cost or pricing data threshold at FAR 15.403-4(a)(1).

215.403-3 Requiring data other than certified cost or pricing data.

Follow the procedures at [PGI 215.403-3](#).

215.404 Proposal analysis.

215.404-1 Proposal analysis techniques.

(1) Follow the procedures at [PGI 215.404-1](#) for proposal analysis.

(2) For spare parts or support equipment, perform an analysis of—

(i) Those line items where the proposed price exceeds by 25 percent or more the lowest price the Government has paid within the most recent 12-month period based on

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reasonably available data;

(ii) Those line items where a comparison of the item description and the proposed price indicates a potential for overpricing;

(iii) Significant high-dollar-value items. If there are no obvious high-dollar-value items, include an analysis of a random sample of items; and

(iv) A random sample of the remaining low-dollar value items. Sample size may be determined by subjective judgment, e.g., experience with the offeror and the reliability of its estimating and accounting systems.

215.404-2 Data to support proposal analysis.

See [PGI 215.404-2](#) for guidance on obtaining field pricing or audit assistance.

215.404-3 Subcontract pricing considerations.

Follow the procedures at [PGI 215.404-3](#) when reviewing a subcontractor's proposal.

215.404-4 Profit.

(b) Policy.

(1) Contracting officers shall use a structured approach for developing a prenegotiation profit or fee objective on any negotiated contract action when certified cost or pricing data is obtained, except for cost-plus-award-fee contracts (see [215.404-74](#), [216.405-2](#), and FAR 16.405-2) or contracts with Federally Funded Research and Development Centers (FFRDCs) (see [215.404-75](#)). There are three structured approaches—

- (A) The weighted guidelines method;
- (B) The modified weighted guidelines method; and
- (C) An alternate structured approach.

(c) Contracting officer responsibilities.

(1) Also, do not perform a profit analysis when assessing cost realism in competitive acquisitions.

(2) When using a structured approach, the contracting officer—

(A) Shall use the weighted guidelines method (see [215.404-71](#)), except as provided in paragraphs (c)(2)(B) and (c)(2)(C) of this subsection.

(B) Shall use the modified weighted guidelines method (see [215.404-72](#)) on contract actions with nonprofit organizations other than FFRDCs.

(C) May use an alternate structured approach (see [215.404-73](#)) when—

(1) The contract action is—

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15.403-4(a)(1);

(i) At or below the certified cost or pricing data threshold (see FAR

(ii) For architect-engineer or construction work;

(iii) Primarily for delivery of material from subcontractors; or

(iv) A termination settlement; or

(2) The weighted guidelines method does not produce a reasonable overall profit objective and the head of the contracting activity approves use of the alternate approach in writing.

(D) Shall use the weighted guidelines method to establish a basic profit rate under a formula-type pricing agreement, and may then use the basic rate on all actions under the agreement, provided that conditions affecting profit do not change.

(E) Shall document the profit analysis in the contract file.

(5) Although specific agreement on the applied weights or values for individual profit factors shall not be attempted, the contracting officer may encourage the contractor to—

(A) Present the details of its proposed profit amounts in the weighted guidelines format or similar structured approach; and

(B) Use the weighted guidelines method in developing profit objectives for negotiated subcontracts.

(6) The contracting officer must also verify that relevant variables have not materially changed (e.g., performance risk, interest rates, progress payment rates, distribution of facilities capital).

(d) *Profit-analysis factors.*

(1) *Common factors.* The common factors are embodied in the DoD structured approaches and need not be further considered by the contracting officer.

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

Follow the procedures at [PGI 215.404-70](#) for use of DD Form 1547 whenever a structured approach to profit analysis is required.

215.404-71 Weighted guidelines method.

215.404-71-1 General.

(a) The weighted guidelines method focuses on four profit factors—

(1) Performance risk;

(2) Contract type risk;

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- (3) Facilities capital employed; and
- (4) Cost efficiency.

(b) The contracting officer assigns values to each profit factor; the value multiplied by the base results in the profit objective for that factor. Except for the cost efficiency special factor, each profit factor has a normal value and a designated range of values. The normal value is representative of average conditions on the prospective contract when compared to all goods and services acquired by DoD. The designated range provides values based on above normal or below normal conditions. In the price negotiation documentation, the contracting officer need not explain assignment of the normal value, but should address conditions that justify assignment of other than the normal value. The cost efficiency special factor has no normal value. The contracting officer shall exercise sound business judgment in selecting a value when this special factor is used (see [215.404-71-5](#)).

215.404-71-2 Performance risk.

(a) *Description.* This profit factor addresses the contractor's degree of risk in fulfilling the contract requirements. The factor consists of two parts:

- (1) Technical--the technical uncertainties of performance.
- (2) Management/cost control--the degree of management effort necessary--
 - (i) To ensure that contract requirements are met; and
 - (ii) To reduce and control costs.

(b) *Determination.* The following extract from the DD Form 1547 is annotated to describe the process.

Item	Contractor Risk Factors	Assigned Weighting	Assigned Value	Base (Item 20)	Profit Objective
21.	Technical	(1)	(2)	N/A	N/A
22.	Management/ Cost Control	(1)	(2)	N/A	N/A
23.	Performance Risk (Composite)	N/A	(3)	(4)	(5)

(1) Assign a weight (percentage) to each element according to its input to the total performance risk. The total of the two weights equals 100 percent.

(2) Select a value for each element from the list in paragraph (c) of this subsection using the evaluation criteria in paragraphs (d) and (e) of this subsection.

(3) Compute the composite as shown in the following example:

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	Assigned Weighting	Assigned Value	Weighted Value
Technical	60%	5.0%	3.0%
Management/ Cost Control	40%	4.0%	1.6%
Composite Value	100%		4.6%

(4) Insert the amount from Block 20 of the DD Form 1547. Block 20 is total contract costs, excluding facilities capital cost of money.

(5) Multiply (3) by (4).

(c) *Values: Normal and designated ranges.*

	Normal Value	Designated Range
Standard	5%	3% to 7%
Technology Incentive	9%	7% to 11%

(1) *Standard.* The standard designated range should apply to most contracts.

(2) *Technology incentive.* For the technical factor only, contracting officers may use the technology incentive range for acquisitions that include development, production, or application of innovative new technologies. The technology incentive range does not apply to efforts restricted to studies, analyses, or demonstrations that have a technical report as their primary deliverable.

(d) *Evaluation criteria for technical.*

(1) Review the contract requirements and focus on the critical performance elements in the statement of work or specifications. Factors to consider include—

- (i) Technology being applied or developed by the contractor;
- (ii) Technical complexity;
- (iii) Program maturity;
- (iv) Performance specifications and tolerances;
- (v) Delivery schedule; and
- (vi) Extent of a warranty or guarantee.

(2) *Above normal conditions.*

(i) The contracting officer may assign a higher than normal value in those cases where there is a substantial technical risk. Indicators are—

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(A) Items are being manufactured using specifications with stringent tolerance limits;

(B) The efforts require highly skilled personnel or require the use of state-of-the-art machinery;

(C) The services and analytical efforts are extremely important to the Government and must be performed to exacting standards;

(D) The contractor's independent development and investment has reduced the Government's risk or cost;

(E) The contractor has accepted an accelerated delivery schedule to meet DoD requirements; or

(F) The contractor has assumed additional risk through warranty provisions.

(ii) Extremely complex, vital efforts to overcome difficult technical obstacles that require personnel with exceptional abilities, experience, and professional credentials may justify a value significantly above normal.

(iii) The following may justify a maximum value—

(A) Development or initial production of a new item, particularly if performance or quality specifications are tight; or

(B) A high degree of development or production concurrency.

(3) *Below normal conditions.*

(i) The contracting officer may assign a lower than normal value in those cases where the technical risk is low. Indicators are—

(A) Requirements are relatively simple;

(B) Technology is not complex;

(C) Efforts do not require highly skilled personnel;

(D) Efforts are routine;

(E) Programs are mature; or

(F) Acquisition is a follow-on effort or a repetitive type acquisition.

(ii) The contracting officer may assign a value significantly below normal for—

(A) Routine services;

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- (B) Production of simple items;
- (C) Rote entry or routine integration of Government-furnished information; or
- (D) Simple operations with Government-furnished property.

(4) *Technology incentive range.*

(i) The contracting officer may assign values within the technology incentive range when contract performance includes the introduction of new, significant technological innovation. Use the technology incentive range only for the most innovative contract efforts. Innovation may be in the form of--

(A) Development or application of new technology that fundamentally changes the characteristics of an existing product or system and that results in increased technical performance, improved reliability, or reduced costs; or

(B) New products or systems that contain significant technological advances over the products or systems they are replacing.

(ii) When selecting a value within the technology incentive range, the contracting officer should consider the relative value of the proposed innovation to the acquisition as a whole. When the innovation represents a minor benefit, the contracting officer should consider using values less than the norm. For innovative efforts that will have a major positive impact on the product or program, the contracting officer may use values above the norm.

(e) *Evaluation criteria for management/cost control.*

(1) The contracting officer should evaluate--

(i) The contractor's management and internal control systems using contracting office data, information and reviews made by field contract administration offices or other DoD field offices;

(ii) The management involvement expected on the prospective contract action;

(iii) The degree of cost mix as an indication of the types of resources applied and value added by the contractor;

(iv) The contractor's support of Federal socioeconomic programs;

(v) The expected reliability of the contractor's cost estimates (including the contractor's cost estimating system);

(vi) The adequacy of the contractor's management approach to controlling cost and schedule; and

(vii) Any other factors that affect the contractor's ability to meet the cost targets (e.g., foreign currency exchange rates and inflation rates).

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(2) *Above normal conditions.*

(i) The contracting officer may assign a higher than normal value when there is a high degree of management effort. Indicators of this are—

difficult; (A) The contractor's value added is both considerable and reasonably

(B) The effort involves a high degree of integration or coordination;

(C) The contractor has a good record of past performance;

(D) The contractor has a substantial record of active participation in Federal socioeconomic programs;

estimates; (E) The contractor provides fully documented and reliable cost

(F) The contractor makes appropriate make-or-buy decisions; or

(G) The contractor has a proven record of cost tracking and control.

(ii) The contracting officer may justify a maximum value when the effort—

(A) Requires large scale integration of the most complex nature;

(B) Involves major international activities with significant management coordination (e.g., offsets with foreign vendors); or

(C) Has critically important milestones.

(3) *Below normal conditions.*

(i) The contracting officer may assign a lower than normal value when the management effort is minimal. Indicators of this are—

made; (A) The program is mature and many end item deliveries have been

(B) The contractor adds minimal value to an item;

(C) The efforts are routine and require minimal supervision;

(D) The contractor provides poor quality, untimely proposals;

(E) The contractor fails to provide an adequate analysis of subcontractor costs;

(F) The contractor does not cooperate in the evaluation and negotiation of the proposal;

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- (G) The contractor's cost estimating system is marginal;
 - (H) The contractor has made minimal effort to initiate cost reduction programs;
 - (I) The contractor's cost proposal is inadequate;
 - (J) The contractor has a record of cost overruns or another indication of unreliable cost estimates and lack of cost control; or
 - (K) The contractor has a poor record of past performance.
- (ii) The following may justify a value significantly below normal—
- (A) Reviews performed by the field contract administration offices disclose unsatisfactory management and internal control systems (e.g., quality assurance, property control, safety, security); or
 - (B) The effort requires an unusually low degree of management involvement.

215.404-71-3 Contract type risk and working capital adjustment.

(a) *Description.* The contract type risk factor focuses on the degree of cost risk accepted by the contractor under varying contract types. The working capital adjustment is an adjustment added to the profit objective for contract type risk. It only applies to fixed-price contracts that provide for progress payments. Though it uses a formula approach, it is not intended to be an exact calculation of the cost of working capital. Its purpose is to give general recognition to the contractor's cost of working capital under varying contract circumstances, financing policies, and the economic environment.

(b) *Determination.* The following extract from the DD 1547 is annotated to explain the process.

Item	Contractor Risk Factors	Assigned Value	Base (Item 20)	Profit Objective
24.	Contract Type Risk	(1)	(2)	(3)

		Cost Financed	Length Factor	Interest Rate	
25.	Working Capital (4)	(5)	(6)	(7)	(8)

(1) Select a value from the list of contract types in paragraph (c) of this subsection using the evaluation criteria in paragraph (d) of this subsection.

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(2) Insert the amount from Block 20, i.e., the total allowable costs excluding facilities capital cost of money.

(3) Multiply (1) by (2).

(4) Only complete this block when the prospective contract is a fixed-price contract containing provisions for progress payments.

(5) Insert the amount computed per paragraph (e) of this subsection.

(6) Insert the appropriate figure from paragraph (f) of this subsection.

(7) Use the interest rate established by the Secretary of the Treasury (see http://www.treasurydirect.gov/govt/rates/tcir/tcir_opdirsemi.htm). Do not use any other interest rate.

(8) Multiply (5) by (6) by (7). This is the working capital adjustment. It shall not exceed 4 percent of the contract costs in Block 20.

(c) *Values: Normal and designated ranges.*

Contract Type	Notes	Normal Value (percent)	Designated Range (percent)
Firm-fixed-price, no financing	(1)	5	4 to 6.
Firm-fixed-price, with performance-based payments	(6)	4	2.5 to 5.5.
Firm-fixed-price, with progress payments	(2)	3	2 to 4.
Fixed-price incentive, no financing	(1)	3	2 to 4.
Fixed-price incentive, with performance-based payments	(6)	2	0.5 to 3.5.
Fixed-price with redetermination provision	(3)		
Fixed-price incentive, with progress payments	(2)	1	0 to 2.
Cost-plus-incentive-fee	(4)	1	0 to 2.
Cost-plus-fixed-fee	(4)	.5	0 to 1.
Time-and-materials (including overhaul contracts priced on time-and-materials basis)	(5)	.5	0 to 1.
Labor-hour	(5)	.5	0 to 1.
Firm-fixed-price, level-of-effort	(5)	.5	0 to 1.

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(1) “No financing” means either that the contract does not provide progress payments or performance-based payments, or that the contract provides them only on a limited basis, such as financing of first articles. Do not compute a working capital adjustment.

(2) When the contract contains provisions for progress payments, compute a working capital adjustment (Block 25).

(3) For the purposes of assigning profit values, treat a fixed-price contract with redetermination provisions as if it were a fixed-price incentive contract with below normal conditions.

(4) Cost-plus contracts shall not receive the working capital adjustment.

(5) These types of contracts are considered cost-plus-fixed-fee contracts for the purposes of assigning profit values. They shall not receive the working capital adjustment in Block 25. However, they may receive higher than normal values within the designated range to the extent that portions of cost are fixed.

(6) When the contract contains provisions for performance-based payments, do not compute a working capital adjustment.

(d) *Evaluation criteria.*

(1) *General.* The contracting officer should consider elements that affect contract type risk such as—

- (i) Length of contract;
- (ii) Adequacy of cost data for projections;
- (iii) Economic environment;
- (iv) Nature and extent of subcontracted activity;
- (v) Protection provided to the contractor under contract provisions (e.g., economic price adjustment clauses);
- (vi) The ceilings and share lines contained in incentive provisions;
- (vii) Risks associated with contracts for foreign military sales (FMS) that are not funded by U.S. appropriations; and
- (viii) When the contract contains provisions for performance-based payments—
 - (A) The frequency of payments;
 - (B) The total amount of payments compared to the maximum allowable amount specified at FAR 32.1004(b)(2); and
 - (C) The risk of the payment schedule to the contractor.

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(2) *Mandatory.* The contracting officer shall assess the extent to which costs have been incurred prior to definitization of the contract action (also see [217.7404-6\(a\)](#) and [243.204-70-6](#)). The assessment shall include any reduced contractor risk on both the contract before definitization and the remaining portion of the contract. When costs have been incurred prior to definitization, generally regard the contract type risk to be in the low end of the designated range. If a substantial portion of the costs have been incurred prior to definitization, the contracting officer may assign a value as low as 0 percent, regardless of contract type.

(3) *Above normal conditions.* The contracting officer may assign a higher than normal value when there is substantial contract type risk. Indicators of this are—

- (i) Efforts where there is minimal cost history;
- (ii) Long-term contracts without provisions protecting the contractor, particularly when there is considerable economic uncertainty;
- (iii) Incentive provisions (e.g., cost and performance incentives) that place a high degree of risk on the contractor;
- (iv) FMS sales (other than those under DoD cooperative logistics support arrangements or those made from U.S. Government inventories or stocks) where the contractor can demonstrate that there are substantial risks above those normally present in DoD contracts for similar items; or
- (v) An aggressive performance-based payment schedule that increases risk.

(4) *Below normal conditions.* The contracting officer may assign a lower than normal value when the contract type risk is low. Indicators of this are—

- (i) Very mature product line with extensive cost history;
- (ii) Relatively short-term contracts;
- (iii) Contractual provisions that substantially reduce the contractor's risk;
- (iv) Incentive provisions that place a low degree of risk on the contractor;
- (v) Performance-based payments totaling the maximum allowable amount(s) specified at FAR 32.1004(b)(2); or
- (vi) A performance-based payment schedule that is routine with minimal risk.

(e) *Costs financed.*

(1) Costs financed equal total costs multiplied by the portion (percent) of costs financed by the contractor.

(2) Total costs equal Block 20 (i.e., all allowable costs excluding facilities capital cost of money), reduced as appropriate when—

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(i) The contractor has little cash investment (e.g., subcontractor progress payments liquidated late in period of performance);

(ii) Some costs are covered by special financing provisions, such as advance payments; or

(iii) The contract is multiyear and there are special funding arrangements.

(3) The portion that the contractor finances is generally the portion not covered by progress payments, i.e., 100 percent minus the customary progress payment rate (see FAR 32.501). For example, if a contractor receives progress payments at 80 percent, the portion that the contractor finances is 20 percent. On contracts that provide progress payments to small businesses, use the customary progress payment rate for large businesses.

(f) *Contract length factor.*

(1) This is the period of time that the contractor has a working capital investment in the contract. It—

(i) Is based on the time necessary for the contractor to complete the substantive portion of the work;

(ii) Is not necessarily the period of time between contract award and final delivery (or final payment), as periods of minimal effort should be excluded;

(iii) Should not include periods of performance contained in option provisions; and

(iv) Should not, for multiyear contracts, include periods of performance beyond that required to complete the initial program year's requirements.

(2) The contracting officer—

(i) Should use the following table to select the contract length factor;

(ii) Should develop a weighted average contract length when the contract has multiple deliveries; and

(iii) May use sampling techniques provided they produce a representative result.

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TABLE	
Period to Perform Substantive Portion (in months)	Contract Length Factor
21 or less	.40
22 to 27	.65
28 to 33	.90
34 to 39	1.15
40 to 45	1.40
46 to 51	1.65
52 to 57	1.90
58 to 63	2.15
64 to 69	2.40
70 to 75	2.65
76 or more	2.90

(3) Example: A prospective contract has a performance period of 40 months with end items being delivered in the 34th, 36th, 38th, and 40th months of the contract. The average period is 37 months and the contract length factor is 1.15.

215.404-71-4 Facilities capital employed.

(a) *Description.* This factor focuses on encouraging and rewarding capital investment in facilities that benefit DoD. It recognizes both the facilities capital that the contractor will employ in contract performance and the contractor's commitment to improving productivity.

(b) *Contract facilities capital estimates.* The contracting officer shall estimate the facilities capital cost of money and capital employed using—

(1) An analysis of the appropriate Forms CASB-CMF and cost of money factors (48 CFR 9904.414 and FAR 31.205-10); and

(2) DD Form 1861, Contract Facilities Capital Cost of Money.

(c) *Use of DD Form 1861.* See [PGI 215.404-71-4\(c\)](#) for obtaining field pricing support for preparing DD Form 1861.

(1) *Purpose.* The DD Form 1861 provides a means of linking the Form CASB-CMF and DD Form 1547, Record of Weighted Guidelines Application. It—

(i) Enables the contracting officer to differentiate profit objectives for various types of assets (land, buildings, equipment). The procedure is similar to applying overhead rates to appropriate overhead allocation bases to determine contract overhead costs.

(ii) Is designed to record and compute the contract facilities capital cost of money and capital employed which is carried forward to DD Form 1547.

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(2) *Completion instructions.* Complete a DD Form 1861 only after evaluating the contractor's cost proposal, establishing cost of money factors, and establishing a prenegotiation objective on cost. Complete the form as follows:

(i) List overhead pools and direct-charging service centers (if used) in the same structure as they appear on the contractor's cost proposal and Form CASB-CMF. The structure and allocation base units-of-measure must be compatible on all three displays.

(ii) Extract appropriate contract overhead allocation base data, by year, from the evaluated cost breakdown or prenegotiation cost objective and list against each overhead pool and direct-charging service center.

(iii) Multiply each allocation base by its corresponding cost of money factor to get the facilities capital cost of money estimated to be incurred each year. The sum of these products represents the estimated contract facilities capital cost of money for the year's effort.

(iv) Total contract facilities cost of money is the sum of the yearly amounts.

(v) Since the facilities capital cost of money factors reflect the applicable cost of money rate in Column 1 of Form CASB-CMF, divide the contract cost of money by that same rate to determine the contract facilities capital employed.

(d) *Preaward facilities capital applications.* To establish cost and price objectives, apply the facilities capital cost of money and capital employed as follows:

(1) *Cost of Money.*

(i) *Cost Objective.* Use the imputed facilities capital cost of money, with normal, booked costs, to establish a cost objective or the target cost when structuring an incentive type contract. Do not adjust target costs established at the outset even though actual cost of money rates become available during the period of contract performance.

(ii) *Profit Objective.* When measuring the contractor's effort for the purpose of establishing a prenegotiation profit objective, restrict the cost base to normal, booked costs. Do not include cost of money as part of the cost base.

(2) *Facilities Capital Employed.* Assess and weight the profit objective for risk associated with facilities capital employed in accordance with the profit guidelines at 215.404-71-4.

(e) *Determination.* The following extract from the DD Form 1547 has been annotated to explain the process.

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Item	Contractor Facilities Capital Employed	Assigned Value	Amount Employed	Profit Objective
26.	Land	N/A	(2)	N/A
27.	Buildings	N/A	(2)	N/A
28.	Equipment	(1)	(2)	(3)

(1) Select a value from the list in paragraph (f) of this subsection using the evaluation criteria in paragraph (g) of this subsection.

(2) Use the allocated facilities capital attributable to land, buildings, and equipment, as derived in DD Form 1861, Contract Facilities Capital Cost of Money.

(i) In addition to the net book value of facilities capital employed, consider facilities capital that is part of a formal investment plan if the contractor submits reasonable evidence that—

(A) Achievable benefits to DoD will result from the investment; and

(B) The benefits of the investment are included in the forward pricing structure.

(ii) If the value of intracompany transfers has been included in Block 20 at cost (i.e., excluding general and administrative (G&A) expenses and profit), add to the contractor's allocated facilities capital, the allocated facilities capital attributable to the buildings and equipment of those corporate divisions supplying the intracompany transfers. Do not make this addition if the value of intracompany transfers has been included in Block 20 at price (i.e., including G&A expenses and profit).

(3) Multiply (1) by (2).

(f) *Values: Normal and designated ranges.*

Asset Type	Normal Value	Designated Range
Land	0%	N/A
Buildings	0%	N/A
Equipment	17.5%	10% to 25%

(g) *Evaluation criteria.*

(1) In evaluating facilities capital employed, the contracting officer—

(i) Should relate the usefulness of the facilities capital to the goods or services being acquired under the prospective contract;

(ii) Should analyze the productivity improvements and other anticipated industrial base enhancing benefits resulting from the facilities capital investment, including—

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(A) The economic value of the facilities capital, such as physical age, undepreciated value, idleness, and expected contribution to future defense needs; and

(B) The contractor's level of investment in defense related facilities as compared with the portion of the contractor's total business that is derived from DoD; and

(iii) Should consider any contractual provisions that reduce the contractor's risk of investment recovery, such as termination protection clauses and capital investment indemnification.

(2) *Above normal conditions.*

(i) The contracting officer may assign a higher than normal value if the facilities capital investment has direct, identifiable, and exceptional benefits. Indicators are—

(A) New investments in state-of-the-art technology that reduce acquisition cost or yield other tangible benefits such as improved product quality or accelerated deliveries; or

(B) Investments in new equipment for research and development applications.

(ii) The contracting officer may assign a value significantly above normal when there are direct and measurable benefits in efficiency and significantly reduced acquisition costs on the effort being priced. Maximum values apply only to those cases where the benefits of the facilities capital investment are substantially above normal.

(3) *Below normal conditions.*

(i) The contracting officer may assign a lower than normal value if the facilities capital investment has little benefit to DoD. Indicators are—

(A) Allocations of capital apply predominantly to commercial item lines;

(B) Investments are for such things as furniture and fixtures, home or group level administrative offices, corporate aircraft and hangars, gymnasiums; or

(C) Facilities are old or extensively idle.

(ii) The contracting officer may assign a value significantly below normal when a significant portion of defense manufacturing is done in an environment characterized by outdated, inefficient, and labor-intensive capital equipment.

215.404-71-5 Cost efficiency factor.

(a) This special factor provides an incentive for contractors to reduce costs. To the extent that the contractor can demonstrate cost reduction efforts that benefit the pending contract, the contracting officer may increase the prenegotiation profit objective by an amount not to exceed 4 percent of total objective cost (Block 20 of the DD Form 1547) to recognize these efforts (Block 29).

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(b) To determine if using this factor is appropriate, the contracting officer shall consider criteria, such as the following, to evaluate the benefit the contractor's cost reduction efforts will have on the pending contract:

- (1) The contractor's participation in Single Process Initiative improvements;
- (2) Actual cost reductions achieved on prior contracts;
- (3) Reduction or elimination of excess or idle facilities;

(4) The contractor's cost reduction initiatives (e.g., competition advocacy programs, technical insertion programs, obsolete parts control programs, spare parts pricing reform, value engineering, outsourcing of functions such as information technology). Metrics developed by the contractor such as fully loaded labor hours (i.e., cost per labor hour, including all direct and indirect costs) or other productivity measures may provide the basis for assessing the effectiveness of the contractor's cost reduction initiatives over time;

- (5) The contractor's adoption of process improvements to reduce costs;
- (6) Subcontractor cost reduction efforts;
- (7) The contractor's effective incorporation of commercial items and processes;

or

(8) The contractor's investment in new facilities when such investments contribute to better asset utilization or improved productivity.

(c) When selecting the percentage to use for this special factor, the contracting officer has maximum flexibility in determining the best way to evaluate the benefit the contractor's cost reduction efforts will have on the pending contract. However, the contracting officer shall consider the impact that quantity differences, learning, changes in scope, and economic factors such as inflation and deflation will have on cost reduction.

215.404-72 Modified weighted guidelines method for nonprofit organizations other than FFRDCs.

(a) *Definition.* As used in this subpart, a nonprofit organization is a business entity—

- (1) That operates exclusively for charitable, scientific, or educational purposes;
- (2) Whose earnings do not benefit any private shareholder or individual;
- (3) Whose activities do not involve influencing legislation or political campaigning for any candidate for public office; and
- (4) That is exempted from Federal income taxation under section 501 of the Internal Revenue Code.

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(b) For nonprofit organizations that are entities that have been identified by the Secretary of Defense or a Secretary of a Department as receiving sustaining support on a cost-plus-fixed-fee basis from a particular DoD department or agency, compute a fee objective for covered actions using the weighted guidelines method in 215.404-71, with the following modifications:

(1) *Modifications to performance risk (Blocks 21-23 of the DD Form 1547).*

(i) If the contracting officer assigns a value from the standard designated range (see [215.404-71-2\(c\)](#)), reduce the fee objective by an amount equal to 1 percent of the costs in Block 20 of the DD Form 1547. Show the net (reduced) amount on the DD Form 1547.

(ii) Do not assign a value from the technology incentive designated range.

(2) *Modifications to contract type risk (Block 24 of the DD Form 1547).* Use a designated range of -1 percent to 0 percent instead of the values in [215.404-71-3](#). There is no normal value.

(c) For all other nonprofit organizations except FFRDCs, compute a fee objective for covered actions using the weighted guidelines method in [215.404-71](#), modified as described in paragraph (b)(1) of this subsection.

215.404-73 Alternate structured approaches.

(a) The contracting officer may use an alternate structured approach under [215.404-4\(c\)](#).

(b) The contracting officer may design the structure of the alternate, but it shall include—

(1) Consideration of the three basic components of profit--performance risk, contract type risk (including working capital), and facilities capital employed. However, the contracting officer is not required to complete Blocks 21 through 30 of the DD Form 1547.

(2) Offset for facilities capital cost of money.

(i) The contracting officer shall reduce the overall prenegotiation profit objective by the amount of facilities capital cost of money under Cost Accounting Standard (CAS) 414, Cost of Money as an Element of the Cost of Facilities Capital (48 CFR 9904.414). Cost of money under CAS 417, Cost of Money as an Element of the Cost of Capital Assets Under Construction (48 CFR 9904.417), should not be used to reduce the overall prenegotiation profit objective. The profit amount in the negotiation summary of the DD Form 1547 must be net of the offset.

(ii) This adjustment is needed for the following reason: The values of the profit factors used in the weighted guidelines method were adjusted to recognize the shift in facilities capital cost of money from an element of profit to an element of contract cost (see FAR 31.205-10) and reductions were made directly to the profit factors for performance risk. In order to ensure that this policy is applied to all DoD

contracts that allow facilities capital cost of money, similar adjustments shall be made to contracts that use alternate structured approaches.

215.404-74 Fee requirements for cost-plus-award-fee contracts.

In developing a fee objective for cost-plus-award-fee contracts, the contracting officer shall—

- (a) Follow the guidance in FAR 16.405-2 and [216.405-2](#);
- (b) Not use the weighted guidelines method or alternate structured approach;
- (c) Apply the offset policy in [215.404-73](#)(b)(2) for facilities capital cost of money, i.e., reduce the base fee by the amount of facilities capital cost of money; and
- (d) Not complete a DD Form 1547.

215.404-75 Fee requirements for FFRDCs.

For nonprofit organizations that are FFRDCs, the contracting officer—

(a) Should consider whether any fee is appropriate. Considerations shall include the FFRDC's—

(1) Proportion of retained earnings (as established under generally accepted accounting methods) that relates to DoD contracted effort;

(2) Facilities capital acquisition plans;

(3) Working capital funding as assessed on operating cycle cash needs; and

(4) Provision for funding unreimbursed costs deemed ordinary and necessary to the FFRDC.

(b) Shall, when a fee is considered appropriate, establish the fee objective in accordance with FFRDC fee policies in the DoD FFRDC Management Plan.

(c) Shall not use the weighted guidelines method or an alternate structured approach.

215.404-76 Reporting profit and fee statistics.

Follow the procedures at [PGI 215.404-76](#) for reporting profit and fee statistics.

215.406-1 Prenegotiation objectives.

Follow the procedures at [PGI 215.406-1](#) for establishing prenegotiation objectives.

215.406-3 Documenting the negotiation.

Follow the procedures at [PGI 215.406-3](#) for documenting the negotiation and uploading sole source business clearance documentation into the Contract Business Analysis Repository.

215.407-2 Make-or-buy programs.

(a) *General.* See PGI for guidance on factors to consider when deciding whether to request a make-or-buy plan and for factors to consider when evaluating make-or-buy plan submissions.

(e) *Program requirements.*

(1) *Items and work included.* The minimum dollar amount is \$1.5 million.

215.407-3 Forward pricing rate agreements.

(b)(i) Use forward pricing rate agreement (FPRA) rates when such rates are available, unless waived on a case-by-case basis by the head of the contracting activity.

(ii) Advise the ACO of each case waived.

(iii) Contact the ACO for questions on FPRA or recommended rates.

215.407-4 Should-cost review.

See [PGI 215.407-4](#) for guidance on determining whether to perform a program or overhead should-cost review.

215.407-5 Estimating systems.

215.407-5-70 Disclosure, maintenance, and review requirements.

(a) *Definitions.*

(1) “Acceptable estimating system” is defined in the clause at [252.215-7002](#), Cost Estimating System Requirements.

(2) “Contractor” means a business unit as defined in FAR 2.101.

(3) “Estimating system” is as defined in the clause at [252.215-7002](#), Cost Estimating System Requirements.

(4) “Significant deficiency” is defined in the clause at [252.215-7002](#), Cost Estimating System Requirements.

(b) *Applicability.*

(1) DoD policy is that all contractors have acceptable estimating systems that consistently produce well-supported proposals that are acceptable as a basis for negotiation of fair and reasonable prices.

(2) A large business contractor is subject to estimating system disclosure, maintenance, and review requirements if—

(i) In its preceding fiscal year, the contractor received DoD prime contracts or subcontracts totaling \$50 million or more for which certified cost or pricing were required; or

(ii) In its preceding fiscal year, the contractor received DoD prime contracts or subcontracts totaling \$10 million or more (but less than \$50 million) for which

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certified cost or pricing data were required and the contracting officer, with concurrence or at the request of the ACO, determines it to be in the best interest of the Government (e.g., significant estimating problems are believed to exist or the contractor's sales are predominantly Government).

(c) *Policy.*

(1) The contracting officer shall—

(i) Through use of the clause at [252.215-7002](#), Cost Estimating System Requirements, apply the disclosure, maintenance, and review requirements to large business contractors meeting the criteria in paragraph (b)(2)(i) of this section;

(ii) Consider whether to apply the disclosure, maintenance, and review requirements to large business contractors under paragraph (b)(2)(ii) of this section; and

(iii) Not apply the disclosure, maintenance, and review requirements to other than large business contractors.

(2) The cognizant contracting officer, in consultation with the auditor, for contractors subject to paragraph (b)(2) of this section, shall—

(i) Determine the acceptability of the disclosure and approve or disapprove the system; and

(ii) Pursue correction of any deficiencies.

(3) The auditor conducts estimating system reviews.

(4) An acceptable system shall provide for the use of appropriate source data, utilize sound estimating techniques and good judgment, maintain a consistent approach, and adhere to established policies and procedures.

(5) In evaluating the acceptability of a contractor's estimating system, the contracting officer, in consultation with the auditor, shall determine whether the contractor's estimating system complies with the system criteria for an acceptable estimating system as prescribed in the clause at [252.215-7002](#), Cost Estimating System Requirements.

(d) *Disposition of findings—*

(1) *Reporting of findings.* The auditor shall document findings and recommendations in a report to the contracting officer. If the auditor identifies any significant estimating system deficiencies, the report shall describe the deficiencies in sufficient detail to allow the contracting officer to understand the deficiencies.

(2) *Initial determination.* (i) The contracting officer shall review all findings and recommendations and, if there are no significant deficiencies, shall promptly notify the contractor, in writing, that the contractor's estimating system is acceptable and approved; or

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(ii) If the contracting officer finds that there are one or more significant deficiencies (as defined in the clause at [252.215-7002](#), Cost Estimating System Requirements) due to the contractor's failure to meet one or more of the estimating system criteria in the clause at [252.215-7002](#), the contracting officer shall—

(A) Promptly make an initial written determination on any significant deficiencies and notify the contractor, in writing, providing a description of each significant deficiency in sufficient detail to allow the contractor to understand the deficiency;

(B) Request the contractor to respond, in writing, to the initial determination within 30 days; and

(C) Promptly evaluate the contractor's responses to the initial determination, in consultation with the auditor or functional specialist, and make a final determination.

(3) *Final determination.* (i) The contracting officer shall make a final determination and notify the contractor, in writing, that—

(A) The contractor's estimating system is acceptable and approved, and no significant deficiencies remain, or

(B) Significant deficiencies remain. The notice shall identify any remaining significant deficiencies, and indicate the adequacy of any proposed or completed corrective action. The contracting officer shall—

(1) Request that the contractor, within 45 days of receipt of the final determination, either correct the deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the deficiencies;

(2) Disapprove the system in accordance with the clause at [252.215-7002](#), Cost Estimating System Requirements; and

(3) Withhold payments in accordance with the clause at [252.242-7005](#), Contractor Business Systems, if the clause is included in the contract.

(ii) Follow the procedures relating to monitoring a contractor's corrective action and the correction of significant deficiencies in [PGI 215.407-5-70\(e\)](#).

(e) *System approval.* The contracting officer shall promptly approve a previously disapproved estimating system and notify the contractor when the contracting officer determines that there are no remaining significant deficiencies.

(f) *Contracting officer notifications.* The cognizant contracting officer shall promptly distribute copies of a determination to approve a system, disapprove a system and withhold payments, or approve a previously disapproved system and release withheld payments, to the auditor; payment office; affected contracting officers at the buying activities; and cognizant contracting officers in contract administration activities.

215.408 Solicitation provisions and contract clauses.

(1) Use the clause at [252.215-7000](#), Pricing Adjustments, in solicitations and contracts that contain the clause at—

(i) FAR 52.215-11, Price Reduction for Defective Certified Cost or Pricing Data--Modifications;

(ii) FAR 52.215-12, Subcontractor Certified Cost or Pricing Data; or

(iii) FAR 52.215-13, Subcontractor Certified Cost or Pricing Data--Modifications.

(2) Use the clause at [252.215-7002](#), Cost Estimating System Requirements, in all solicitations and contracts to be awarded on the basis of certified cost or pricing data.

(3) Use the provision at [252.215-7007](#), Notice of Intent to Resolicit, in competitive solicitations that will be solicited for fewer than 30 days, unless an exception at [215.371-4](#) applies or the requirement is waived in accordance with [215.371-5](#).

(4)(i) Use the provision at [252.215-7008](#), Only One Offer, in competitive solicitations, unless an exception at [215.371-4\(a\)\(1\)](#) applies.

(ii) In solicitations that include [252.215-7008](#), Only One Offer, also include the provision at FAR 52.215-20, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data, with any appropriate alternate as prescribed at FAR 15.408-1, but that provision will only take effect as specified in [252.215-7008](#).

(5) When contracting with the Canadian Commercial Corporation—

(i) Use the provision at [252.215-7003](#), Requirement for Data Other Than Certified Cost or Pricing Data—

(A) In solicitations for sole source acquisitions that are—

(1) Cost-reimbursement, if the contract value is expected to exceed \$700,000; or

(2) Fixed-price, if the contract value is expected to exceed \$500 million;
or

(B) In other solicitations, if the head of the contracting activity, or designee no lower than two levels above the contracting officer, determines that data other than certified cost or pricing data are needed in order to determine that the price is fair and reasonable (see FAR 15.403-3(a)); and

(ii)(A) Use the clause at [252.215-7004](#), Requirement for Data Other Than Certified Cost or Pricing Data—Modifications—Canadian Commercial Corporation—

(1) In solicitations and contracts for sole source acquisitions that are—

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(i) Cost-reimbursement, if the contract value is expected to exceed \$700,000; or

(ii) Fixed-price, if the contract value is expected to exceed \$500 million; or

(2) In other solicitations and contracts, if the head of the contracting activity, or designee no lower than two levels above the contracting officer, determines that it is reasonably certain that data other than certified cost or pricing data will be needed in order to determine that the price of modifications is fair and reasonable (see FAR 15.403-3(a)).

(B) The contracting officer may specify a higher threshold in paragraph (b) of the clause.

(6) When the solicitation requires the submission of certified cost or pricing data, the contracting officer should include [252.215-7009](#), Proposal Adequacy Checklist, in the solicitation to facilitate submission of a thorough, accurate, and complete proposal.

215.470 Estimated data prices.

(a) DoD requires estimates of the prices of data in order to evaluate the cost to the Government of data items in terms of their management, product, or engineering value.

(b) When data are required to be delivered under a contract, include DD Form 1423, Contract Data Requirements List, in the solicitation. See [PGI 215.470\(b\)](#) for guidance on the use of DD Form 1423.

(c) The contracting officer shall ensure that the contract does not include a requirement for data that the contractor has delivered or is obligated to deliver to the Government under another contract or subcontract, and that the successful offeror identifies any such data required by the solicitation. However, where duplicate data are desired, the contract price shall include the costs of duplication, but not of preparation, of such data.

(Revised April 12, 2013)

235.001 Definitions.

“Research and development” means those efforts described by the Research, Development, Test, and Evaluation (RDT&E) budget activity definitions found in the DoD Financial Management Regulation (DoD 7000.14-R), Volume 2B, Chapter 5.

235.006 Contracting methods and contract type.

(b)(i) For major defense acquisition programs as defined in 10 U.S.C. 2430—

(A) Follow the procedures at [234.004](#); and

(B) Notify the Under Secretary of Defense (Acquisition, Technology, and Logistics) (USD(AT&L)) of an intent not to exercise a fixed-price production option on a development contract for a major weapon system reasonably in advance of the expiration of the option exercise period.

(ii) For other than major defense acquisition programs—

(A) Do not award a fixed-price type contract for a development program effort unless—

(1) The level of program risk permits realistic pricing;

(2) The use of a fixed-price type contract permits an equitable and sensible allocation of program risk between the Government and the contractor; and

(3) A written determination that the criteria of paragraphs (b)(ii)(A)(1) and (2) of this section have been met is executed—

(i) By the USD(AT&L) if the contract is over \$25 million and is for: research and development for a non-major system; the development of a major system (as defined in FAR 2.101); or the development of a subsystem of a major system; or

(ii) By the contracting officer for any development not covered by paragraph (b)(ii)(A)(3)(i) of this section.

(B) Obtain USD(AT&L) approval of the Government’s prenegotiation position before negotiations begin, and obtain USD(AT&L) approval of the negotiated agreement with the contractor before the agreement is executed, for any action that is—

(1) An increase of more than \$250 million in the price or ceiling price of a fixed-price type development contract, or a fixed-price type contract for the lead ship of a class;

(2) A reduction in the amount of work under a fixed-price type development contract or a fixed-price type contract for the lead ship of a class, when the value of the work deleted is \$100 million or more; or

(3) A repricing of fixed-price type production options to a development contract, or a contract for the lead ship of a class, that increases the price or ceiling price by more than \$250 million for equivalent quantities.

235.006-70 Manufacturing Technology Program.

In accordance with 10 U.S.C. 2521(d), for acquisitions under the Manufacturing Technology Program—

(a) Award all contracts using competitive procedures; and

(b) Include in all solicitations an evaluation factor that addresses the extent to which offerors propose to share in the cost of the project (see FAR 15.304).

235.006-71 Competition.

See [234.005-1](#) for limitations on the use of contract line items or contract options for the provision of advanced component development or prototypes of technology developed under a competitively awarded proposal.

235.008 Evaluation for award.

See [209.570](#) for limitations on the award of contracts to contractors acting as lead system integrators.

235.010 Scientific and technical reports.

(b) For DoD, the Defense Technical Information Center is responsible for collecting all scientific and technical reports. For access to these reports, follow the procedures at [PGI 235.010\(b\)](#).

235.015-70 Special use allowances for research facilities acquired by educational institutions.

(a) *Definitions.* As used in this subsection—

(1) “Research facility” means—

(i) Real property, other than land; and

(ii) Includes structures, alterations, and improvements, acquired for the purpose of conducting scientific research under contracts with departments and agencies of the DoD.

(2) “Special use allowance” means a negotiated direct or indirect allowance—

(i) For construction or acquisition of buildings, structures, and real property, other than land; and

(ii) Where the allowance is computed at an annual rate exceeding the rate which normally would be allowed under FAR Subpart 31.3.

(b) *Policy.*

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(1) Educational institutions are to furnish the facilities necessary to perform defense contracts. FAR 31.3 governs how much the Government will reimburse the institution for the research programs. However, in extraordinary situations, the Government may give special use allowances to an educational institution when the institution is unable to provide the capital for new laboratories or expanded facilities needed for defense contracts.

(2) Decisions to provide a special use allowance must be made on a case-by-case basis, using the criteria in paragraph (c) of this subsection.

(c) *Authorization for special use allowance.* The head of a contracting activity may approve special use allowances only when all of the following conditions are met—

- (1) The research facility is essential to the performance of DoD contracts;
- (2) Existing facilities, either Government or nongovernment, cannot meet program requirements practically or effectively;
- (3) The proposed agreement for special use allowances is a sound business arrangement;
- (4) The Government's furnishing of Government-owned facilities is undesirable or impractical; and
- (5) The proposed use of the research facility is to conduct essential Government research which requires the new or expanded facilities.

(d) *Application of the special use allowance.*

- (1) In negotiating a special use allowance—
 - (i) Compare the needs of DoD and of the institution for the research facility to determine the amount of the special use allowance;
 - (ii) Consider rental costs for similar space in the area where the research facility is or will be located to establish the annual special use allowance;
 - (iii) Do not include or allow—
 - (A) The costs of land; or
 - (B) Interest charges on capital;
 - (iv) Do not include maintenance, utilities, or other operational costs;
 - (v) The period of allowance generally will be—
 - (A) At least ten years; or
 - (B) A shorter period if the total amount to be allowed is less than the construction or acquisition cost for the research facility;

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(vi) Generally, provide for allocation of the special use allowance equitably among the Government contracts using the research facility;

(vii) Special use allowances apply only in the years in which the Government has contracts in effect with the institution. However, if in any given year there is a reduced level of Government research effort which results in the special use allowance being excessive compared to the Government research funding, a separate special use allowance may be negotiated for that year;

(viii) Special use allowances may be adjusted for the period before construction is complete if the facility is partially occupied and used for Government research during that period.

(2) A special use allowance may be based on either total or partial cost of construction or acquisition of the research facility.

(i) When based on total cost neither the normal use allowance nor depreciation will apply—

(A) During the special use allowance period; and

(B) After the educational institution has recovered the total construction or acquisition cost from the Government or other users.

(ii) When based on partial cost, normal use allowance and depreciation—

(A) Apply to the balance of costs during the special use allowance period to the extent negotiated in the special use allowance agreement; and

(B) Do not apply after the special use allowance period, except for normal use allowance applied to the balance.

(3) During the special use allowance period, the research facility—

(i) Shall be available for Government research use on a priority basis over nongovernment use; and

(ii) Cannot be put to any significant use other than that which justified the special use allowance, unless the head of the contracting activity, who approved the special use allowance, consents.

(4) The Government will pay only an allocable share of the special use allowance when the institution makes any substantial use of the research facility for parties other than the Government during the period when the special use allowance is in effect.

(5) In no event shall the institution be paid more than the acquisition costs.

235.016 Broad agency announcement.

To help achieve the goals of Section 1207 of Pub. L. 99-661 (see Part 226), contracting officers shall—

(1) Whenever practicable, reserve discrete or severable areas of research interest contained in broad agency announcements for exclusive competition among historically black colleges and universities and minority institutions;

(2) Indicate such reservation—

(i) In the broad agency announcement; and

(ii) In the announcement synopsis (see [205.207\(d\)](#)).

235.017 Federally Funded Research and Development Centers.

(a) *Policy.*

(2) No DoD fiscal year 1992 or later funds may be obligated or expended to finance activities of a DoD Federally Funded Research and Development Center (FFRDC) if a member of its board of directors or trustees simultaneously serves on the board of directors or trustees of a profit-making company under contract to DoD, unless the FFRDC has a DoD-approved conflict of interest policy for its members (Section 8107 of Pub. L. 102-172 and similar sections in subsequent Defense appropriations acts).

235.017-1 Sponsoring agreements.

(c)(4) DoD-sponsored FFRDCs that function primarily as research laboratories (C3I Laboratory operated by the Institute for Defense Analysis, Lincoln Laboratory operated by Massachusetts Institute of Technology, and Software Engineering Institute operated by Carnegie Mellon) may respond to solicitations and announcements for programs which promote research, development, demonstration, or transfer of technology (Section 217, Pub. L. 103-337).

235.070 Indemnification against unusually hazardous risks.

235.070-1 Indemnification under research and development contracts.

(a) Under 10 U.S.C. 2354, and if authorized by the Secretary concerned, contracts for research and/or development may provide for indemnification of the contractor or subcontractors for—

(1) Claims by third persons (including employees) for death, bodily injury, or loss of or damage to property; and

(2) Loss of or damage to the contractor's property to the extent that the liability, loss, or damage—

(i) Results from a risk that the contract defines as “unusually hazardous;”

(ii) Arises from the direct performance of the contract; and

(iii) Is not compensated by insurance or other means.

(b) Clearly define the specific unusually hazardous risks to be indemnified. Submit this definition for approval with the request for authorization to grant indemnification. Include the approved definition in the contract.

235.070-2 Indemnification under contracts involving both research and development and other work.

These contracts may provide for indemnification under the authority of both 10 U.S.C. 2354 and Pub. L. 85-804. Pub. L. 85-804 will apply only to work to which 10 U.S.C. 2354 does not apply. Actions under Pub. L. 85-804 must also comply with FAR 50.104-3.

235.070-3 Contract clauses.

When the contractor is to be indemnified in accordance with [235.070-1](#), use either—

(a) The clause at [252.235-7000](#), Indemnification Under 10 U.S.C. 2354--Fixed Price; or

(b) The clause at [252.235-7001](#), Indemnification Under 10 U.S.C. 2354--Cost-Reimbursement, as appropriate.

235.071 Export-controlled items.

For requirements regarding access to export-controlled items, see Subpart [204.73](#).

235.072 Additional contract clauses.

(a) Use the clause at [252.235-7002](#), Animal Welfare, or one substantially the same, in solicitations and contracts awarded in the United States or its outlying areas involving research on live vertebrate animals.

(b) Use the clause at [252.235-7003](#), Frequency Authorization, in solicitations and contracts for developing, producing, constructing, testing, or operating a device requiring a frequency authorization.

(c) Use the clause at [252.235-7010](#), Acknowledgment of Support and Disclaimer, in solicitations and contracts for research and development.

(d) Use the clause at [252.235-7011](#), Final Scientific or Technical Report, in solicitations and contracts for research and development.

(e) Use the clause at [252.235-7004](#), Protection of Human Subjects, in solicitations and contracts that include or may include research involving human subjects in accordance with 32 CFR Part 219, DoD Directive 3216.02, and 10 U.S.C. 980, including research that meets exemption criteria under 32 CFR 219.101(b). The clause—

(1) Applies to solicitations and contracts awarded by any DoD component, regardless of mission or funding Program Element Code; and

(2) Does not apply to use of cadaver materials alone, which are not directly regulated by 32 CFR Part 219 or DoD Directive 3216.02, and which are governed by other DoD policies and applicable State and local laws.

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Part 237—Service Contracting

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SUBPART 237.1—SERVICE CONTRACTS—GENERAL
(Revised April 12, 2013)

237.101 Definitions.

As used in this subpart—

“Increased performance of security-guard functions,”

(1) In the case of an installation or facility where no security-guard functions were performed as of September 10, 2001, the entire scope or extent of the performance of security-guard functions at the installation or facility after such date; and

(2) In the case of an installation or facility where security-guard functions were performed within a lesser scope of requirements or to a lesser extent as of September 10, 2001, than after such date, the increment of the performance of security-guard functions at the installation or facility that exceeds such lesser scope of requirements or extent of performance.

“Senior mentors” means retired flag, general, or other military officers or retired senior civilian officials who provide expert experience-based mentoring, teaching, training, advice, and recommendations to senior military officers, staff, and students as they participate in war games, warfighting courses, operational planning, operational exercises, and decision-making exercises.

237.102 Policy.

(c) In addition to the prohibition on award of contracts for the performance of inherently governmental functions, contracting officers shall not award contracts for functions that are exempt from private sector performance. See [207.503\(e\)](#) for the associated documentation requirement.

(e) Program officials shall obtain assistance from contracting officials through the Peer Review process at [201.170](#).

237.102-70 Prohibition on contracting for firefighting or security-guard functions.

(a) Under 10 U.S.C. 2465, the DoD is prohibited from entering into contracts for the performance of firefighting or security-guard functions at any military installation or facility unless—

(1) The contract is to be carried out at a location outside the United States and its outlying areas at which members of the armed forces would have to be used for the performance of firefighting or security-guard functions at the expense of unit readiness;

(2) The contract will be carried out on a Government-owned but privately operated installation;

(3) The contract (or renewal of a contract) is for the performance of a function under contract on September 24, 1983; or

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(4) The contract—

(i) Is for the performance of firefighting functions;

(ii) Is for a period of 1 year or less; and

(iii) Covers only the performance of firefighting functions that, in the absence of the contract, would have to be performed by members of the armed forces who are not readily available to perform such functions by reason of a deployment.

(b) Under Section 2907 of Pub. L. 103-160, this prohibition does not apply to services at installations being closed (see Subpart [237.74](#)).

(c) Under Section 1010 of Pub. L. 107-56, this prohibition does not apply to any contract that--

(1) Is entered into during the period of time that United States armed forces are engaged in Operation Enduring Freedom or during the period 180 days thereafter;

(2) Is for the performance of security functions at any military installation or facility in the United States;

(3) Is awarded to a proximately located local or State government, or a combination of such governments, whether or not any such government is obligated to provide such services to the general public without compensation; and

(4) Prescribes standards for the training and other qualifications of local government law enforcement personnel who perform security functions under the contract in accordance with criteria established by the Secretary of the department concerned.

(d)(1) Under Section 332 of Pub. L. 107-314, as amended by Section 333 of Pub. L. 109-364 and Section 343 of Pub. L. 110-181, this prohibition does not apply to any contract that is entered into for any increased performance of security-guard functions at a military installation or facility undertaken in response to the terrorist attacks on the United States on September 11, 2001, if--

(i) Without the contract, members of the Armed Forces are or would be used to perform the increased security-guard functions;

(ii) The agency has determined that--

(A) Recruiting and training standards for the personnel who are to perform the security-guard functions are comparable to the recruiting and training standards for DoD personnel who perform the same security-guard functions;

(B) Contractor personnel performing such functions will be effectively supervised, reviewed, and evaluated; and

(C) Performance of such functions will not result in a reduction in the security of the installation or facility;

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(iii) Contract performance will not extend beyond September 30, 2012; and

(iv) The total number of personnel employed to perform security-guard functions under all contracts entered into pursuant to this authority does not exceed the following limitations:

(A) For fiscal year 2007, the total number of such personnel employed under such contracts on October 1, 2006.

(B) For fiscal year 2008, the number equal to 90 percent of the total number of such personnel employed under such contracts on October 1, 2006.

(C) For fiscal year 2009, the number equal to 80 percent of the total number of such personnel employed under such contracts on October 1, 2006.

(D) For fiscal year 2010, the number equal to 70 percent of the total number of such personnel employed under such contracts on October 1, 2006.

(E) For fiscal year 2011, the number equal to 60 percent of the total number of such personnel employed under such contracts on October 1, 2006.

(F) For fiscal year 2012, the number equal to 50 percent of the total number of such personnel employed under such contracts on October 1, 2006.

(2) Follow the procedures at [PGI 237.102-70\(d\)](#) to ensure that the personnel limitations specified in paragraph (d)(1)(iv) of this subsection are not exceeded.

237.102-71 Limitation on service contracts for military flight simulators.

(a) *Definitions.* As used in this subsection—

(1) “Military flight simulator” means any system to simulate the form, fit, and function of a military aircraft that has no commonly available commercial variant.

(2) “Service contract” means any contract entered into by DoD, the principal purpose of which is to furnish services in the United States through the use of service employees as defined in 41 U.S.C. 6701.

(b) Under Section 832 of Pub. L. 109-364, as amended by Section 883(b) of Pub. L. 110-181, DoD is prohibited from entering into a service contract to acquire a military flight simulator. However, the Secretary of Defense may waive this prohibition with respect to a contract, if the Secretary—

(1) Determines that a waiver is in the national interest; and

(2) Provides an economic analysis to the congressional defense committees at least 30 days before the waiver takes effect. This economic analysis shall include, at a minimum—

(i) A clear explanation of the need for the contract; and

(ii) An examination of at least two alternatives for fulfilling the

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requirements that the contract is meant to fulfill, including the following with respect to each alternative:

- (A) A rationale for including the alternative.
- (B) A cost estimate of the alternative and an analysis of the quality of each cost estimate.
- (C) A discussion of the benefits to be realized from the alternative.
- (D) A best value determination of each alternative and a detailed explanation of the life-cycle cost calculations used in the determination.

(c) When reviewing requirements or participating in acquisition planning that would result in a military department or defense agency acquiring a military flight simulator, the contracting officer shall notify the program officials of the prohibition in paragraph (b) of this subsection. If the program officials decide to request a waiver from the Secretary of Defense under paragraph (b) of this subsection, the contracting officer shall follow the procedures at [PGI 237.102-71](#).

237.102-72 Contracts for management services.

In accordance with Section 802 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181), DoD may award a contract for the acquisition of services the primary purpose of which is to perform acquisition support functions with respect to the development or production of a major system, only if—

(a) The contract prohibits the contractor from performing inherently governmental functions;

(b) The DoD organization responsible for the development or production of the major system ensures that Federal employees are responsible for determining—

- (1) Courses of action to be taken in the best interest of the Government; and
- (2) Best technical performance for the warfighter; and

(c) The contract requires that the prime contractor for the contract may not advise or recommend the award of a contract or subcontract for the development or production of the major system to an entity owned in whole or in part by the prime contractor.

237.102-73 Prohibition on contracts for services of senior mentors.

DoD is prohibited from entering into contracts for the services of senior mentors. See [PGI 237.102-73](#) for references to DoD policy and implementation guidance.

237.102-74 Taxonomy for the acquisition of services.

See [PGI 237.102-74](#) for OUSD(AT&L) DPAP memorandum, “Taxonomy for the Acquisition of Services,” dated November 23, 2010.

237.102-75 Guidebook for the acquisition of services.

See [PGI 237.102-75](#) for the “Guidebook for the Acquisition of Services.”

237.102-76 Review criteria for the acquisition of services.

See [PGI 237.102-76](#) for tenets and review criteria to be used when conducting preaward and postaward reviews for the acquisition of services.

237.102-77 Automated requirements roadmap tool.

See [PGI 237.102-77](#) for guidance on using the Automated Requirements Roadmap Tool to develop and organize performance requirements into draft versions of the performance work statement, the quality assurance surveillance plan, and the performance requirements summary.

237.102-78 Market research report guide for improving the tradecraft in services acquisition.

See [PGI 210.070](#) for guidance on use of the market research report guide to conduct and document market research for service acquisitions.

237.102-79 Private sector notification requirements in support of in-sourcing actions.

Contracting officers shall follow the procedures at [PGI 237.102-79](#) for notifying affected incumbent contractors of Government in-sourcing actions, in accordance with 10 U.S.C. 2463.

237.104 Personal services contracts.

(b)(i) Authorization to acquire the personal services of experts and consultants is included in 10 U.S.C. 129b. Personal service contracts for expert and consultant services must also be authorized by a determination and findings (D&F) in accordance with department/agency regulations.

(A) Generally, the D&F should authorize one contract at a time; however, an authorizing official may issue a blanket D&F for classes of contracts.

(B) Prepare each D&F in accordance with FAR 1.7 and include a determination that—

- (1) The duties are of a temporary or intermittent nature;
- (2) Acquisition of the services is advantageous to the national defense;
- (3) DoD personnel with necessary skills are not available;
- (4) Excepted appointment cannot be obtained;
- (5) A nonpersonal services contract is not practicable;
- (6) Statutory authority, 5 U.S.C. 3109 and other legislation, apply; and
- (7) Any other determination required by statutes has been made.

(ii) Personal services contracts for health care are authorized by 10 U.S.C. 1091.

(A) This authority may be used to acquire—

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(1) Direct health care services provided in medical treatment facilities;

(2) Health care services at locations outside of medical treatment facilities (such as the provision of medical screening examinations at military entrance processing stations); and

(3) Services of clinical counselors, family advocacy program staff, and victim's services representatives to members of the Armed Forces and covered beneficiaries who require such services, provided in medical treatment facilities or elsewhere. Persons with whom a personal services contract may be entered into under this authority include clinical social workers, psychologists, psychiatrists, and other comparable professionals who have advanced degrees in counseling or related academic disciplines and who meet all requirements for State licensure and board certification requirements, if any, within their fields of specialization.

(B) Sources for personal services contracts with individuals under the authority of 10 U.S.C. 1091 shall be selected through the procedures in this section. These procedures do not apply to contracts awarded to business entities other than individuals. Selections made using the procedures in this section are exempt by statute from FAR Part 6 competition requirements (see [206.001\(b\)](#)).

(C) Approval requirements for—

(1) Direct health care personal services contracts (see paragraphs (b)(ii)(A)(1) and (2) of this section) and a pay cap are in DoDI 6025.5, Personal Services Contracts for Health Care Providers.

(i) A request to enter into a personal services contract for direct health care services must be approved by the commander of the medical/dental treatment facility where the services will be performed.

(ii) A request to enter into a personal services contract for a location outside of a medical treatment facility must be approved by the chief of the medical facility who is responsible for the area in which the services will be performed.

(2) Services of clinical counselors, family advocacy program staff, and victim's services representatives (see paragraph (b)(ii)(A)(3) of this section), shall be in accordance with agency procedures.

(D) The contracting officer must ensure that the requiring activity provides a copy of the approval with the purchase request.

(E) The contracting officer must provide adequate advance notice of contracting opportunities to individuals residing in the area of the facility. The notice must include the qualification criteria against which individuals responding will be evaluated. The contracting officer shall solicit applicants through at least one local publication which serves the area of the facility. Acquisitions under this section for personal service contracts are exempt from the posting and synopsis requirements of FAR Part 5.

(F) The contracting officer shall provide the qualifications of individuals responding to the notice to the commander of the facility for evaluation and ranking in

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accordance with agency procedures. Individuals must be considered solely on the basis of the professional qualifications established for the particular personal services being acquired and the Government's estimate of reasonable rates, fees, or other costs. The commander of the facility shall provide the contracting officer with rationale for the ranking of individuals, consistent with the required qualifications.

(G) Upon receipt from the facility of the ranked listing of applicants, the contracting officer shall either—

(1) Enter into negotiations with the highest ranked applicant. If a mutually satisfactory contract cannot be negotiated, the contracting officer shall terminate negotiations with the highest ranked applicant and enter into negotiations with the next highest.

(2) Enter into negotiations with all qualified applicants and select on the basis of qualifications and rates, fees, or other costs.

(H) In the event only one individual responds to an advertised requirement, the contracting officer is authorized to negotiate the contract award. In this case, the individual must still meet the minimum qualifications of the requirement and the contracting officer must be able to make a determination that the price is fair and reasonable.

(I) If a fair and reasonable price cannot be obtained from a qualified individual, the requirement should be canceled and acquired using procedures other than those set forth in this section.

(iii)(A) In accordance with 10 U.S.C. 129b(d), an agency may enter into a personal services contract if—

(1) The personal services—

(i) Are to be provided by individuals outside the United States, regardless of their nationality;

(ii) Directly support the mission of a defense intelligence component or counter-intelligence organization of DoD; or

(iii) Directly support the mission of the special operations command of DoD; and

(2) The head of the contracting activity provides written approval for the proposed contract. The approval shall include a determination that addresses the following:

(i) The services to be procured are urgent or unique;

(ii) It would not be practical to obtain such services by other means; and

(iii) For acquisition of services in accordance with paragraph (b)(iii)(A)(1)(i) of this section, the services to be acquired are necessary and appropriate

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for supporting DoD activities and programs outside the United States.

(B) The contracting officer shall ensure that the applicable requirements of paragraph (b)(iii)(A)(2) of this section have been satisfied and shall include the approval documentation in the contract file.

(iv) The requirements of 5 U.S.C. 3109, Employment of Experts and Consultants; Temporary or Intermittent, do not apply to contracts entered into in accordance with paragraph (b)(iii) of this section.

(d) See [237.503\(c\)](#) for requirements for certification and approval of requirements for services to prevent contracts from being awarded or administered in a manner that constitutes an unauthorized personal services contract.

(f)(i) Payment to each expert or consultant for personal services under 5 U.S.C. 3109 shall not exceed the highest rate fixed by the Classification Act Schedules for grade GS-15 (see 5 CFR 304.105(a)).

(ii) The contract may provide for the same per diem and travel expenses authorized for a Government employee, including actual transportation and per diem in lieu of subsistence for travel between home or place of business and official duty station.

(iii) Coordinate with the civilian personnel office on benefits, taxes, personnel ceilings, and maintenance of records.

237.106 Funding and term of service contracts.

(1) Personal service contracts for expert or consultant services shall not exceed 1 year. The nature of the duties must be—

(i) Temporary (not more than 1 year); or

(ii) Intermittent (not cumulatively more than 130 days in 1 year).

(2) The contracting officer may enter into a contract, exercise an option, or place an order under a contract for severable services for a period that begins in one fiscal year and ends in the next fiscal year if the period of the contract awarded, option exercised, or order placed does not exceed 1 year (10 U.S.C. 2410a).

237.109 Services of quasi-military armed forces.

See [237.102-70](#) for prohibition on contracting for firefighting or security-guard functions.

237.170 Approval of contracts and task orders for services.

237.170-1 Scope.

This section—

(a) Implements 10 U.S.C. 2330; and

(b) Applies to services acquired for DoD, regardless of whether the services are acquired through--

- (1) A DoD contract or task order; or
- (2) A contract or task order awarded by an agency other than DoD.

237.170-2 Approval requirements.

(a) *Acquisition of services through a contract or task order that is not performance based.*

(1) For acquisitions at or below \$85.5 million, obtain the approval of the official designated by the department or agency.

(2) For acquisitions exceeding \$85.5 million, obtain the approval of the senior procurement executive.

(b) *Acquisition of services through use of a contract or task order issued by a non-DoD agency.* Comply with the review, approval, and reporting requirements established in accordance with Subpart [217.78](#) when acquiring services through use of a contract or task order issued by a non-DoD agency.

237.171 Training for contractor personnel interacting with detainees.

237.171-1 Scope.

This section prescribes policies to prevent the abuse of detainees, as required by Section 1092 of the National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108-375).

237.171-2 Definition.

“Combatant commander,” “detainee,” and “personnel interacting with detainees,” as used in this section, are defined in the clause at [252.237-7019](#), Training for Contractor Personnel Interacting with Detainees.

237.171-3 Policy.

(a) Each DoD contract in which contractor personnel, in the course of their duties, interact with detainees shall include a requirement that such contractor personnel—

(1) Receive Government-provided training regarding the international obligations and laws of the United States applicable to the detention of personnel, including the Geneva Conventions; and

(2) Provide a copy of the training receipt document to the contractor.

(b) The combatant commander responsible for the area where the detention or interrogation facility is located will arrange for the training and a training receipt document to be provided to contractor personnel. For information on combatant commander geographic areas of responsibility and point of contact information for each command, see [PGI 237.171-3\(b\)](#).

237.171-4 Contract clause.

Use the clause at [252.237-7019](#), Training for Contractor Personnel Interacting with Detainees, in solicitations and contracts for the acquisition of services if—

(a) The clause at [252.225-7040](#), Contractor Personnel Supporting a Force Deployed Outside the United States, is included in the solicitation or contract; or

(b) The services will be performed at a facility holding detainees, and contractor personnel in the course of their duties may be expected to interact with the detainees.

237.172 Service contracts surveillance.

Ensure that quality assurance surveillance plans are prepared in conjunction with the preparation of the statement of work or statement of objectives for solicitations and contracts for services. These plans should be tailored to address the performance risks inherent in the specific contract type and the work effort addressed by the contract. (See FAR Subpart 46.4.) Retain quality assurance surveillance plans in the official contract file. See <https://sam.dau.mil>, Step Four – Requirements Definition, for examples of quality assurance surveillance plans.

237.173 Prohibition on interrogation of detainees by contractor personnel.

237.173-1 Scope.

This section prescribes policies that prohibit interrogation of detainees by contractor personnel, as required by section 1038 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111-84).

237.173-2 Definitions. As used in this subpart—

“Detainee” means any person captured, detained, held, or otherwise under the effective control of DoD personnel (military or civilian) in connection with hostilities. This includes, but is not limited to, enemy prisoners of war, civilian internees, and retained personnel. This does not include DoD personnel or DoD contractor personnel being held for law enforcement purposes.

“Interrogation of detainees” means a systematic process of formally and officially questioning a detainee for the purpose of obtaining reliable information to satisfy foreign intelligence collection requirements.

237.173-3 Policy.

(a) No detainee may be interrogated by contractor personnel.

(b) Contractor personnel with proper training and security clearances may be used as linguists, interpreters, report writers, information technology technicians, and other employees filling ancillary positions, including as trainers of and advisors to interrogators, in interrogations of detainees if—

(1) Such personnel are subject to the same laws, rules, procedures, and policies (including DoD Instruction 1100.22, Policy and Procedures for Determining Workforce Mix, (<http://www.dtic.mil/whs/directives/corres/pdf/110022p.pdf>); DoD Directive 2310.01E, The Department of Defense Detainee Program (<http://www.dtic.mil/whs/directives/corres/pdf/231001p.pdf>); and DoD Directive 3115.09, DoD Intelligence Interrogations, Detainee Debriefings, and Tactical Questioning, (<http://www.dtic.mil/whs/directives/corres/pdf/311509p.pdf>)); pertaining

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to detainee operations and interrogations as those that apply to Government personnel in such positions in such interrogations; and

(2) Appropriately qualified and trained DoD personnel (military or civilian) are available to oversee the contractor's performance and to ensure that contractor personnel do not perform activities that are prohibited under this section.

237.173-4 Waiver.

The Secretary of Defense may waive the prohibition in [237.173-3\(a\)](#) for a period of 60 days, if the Secretary determines such a waiver is vital to the national security interests of the United States. The Secretary may renew a waiver issued pursuant to this paragraph for an additional 30-day period, if the Secretary determines that such a renewal is vital to the national security interests of the United States. Not later than five days after issuance of the waiver, the Secretary shall submit written notification to Congress. See specific waiver procedures at DoDI 1100.22.

237.173-5 Contract clause.

Insert the clause at [252.237-7010](#), Prohibition on Interrogation of Detainees by Contractor Personnel, in solicitations and contracts for the provision of services.