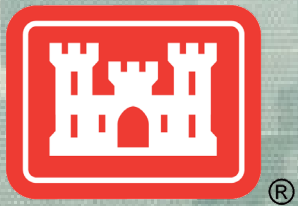


Determining a Fair and Reasonable Price

Meet the Corps

March 2020



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US Army Corps of Engineers
BUILDING STRONG®

Agenda

- Price Negotiation
- Cost/Price Analysis
- Allowable, Allocable, Reasonable
- Independent Government Estimate
- Profit/Risk
- Certificate of Cost or Pricing Data
- Partnering



Price Negotiation

- FAR 15.404-1(a) objective of proposal analysis is to ensure that the final agreed-to price *is fair and reasonable*.
- FAR 15.405 - Contracting officer is solely responsible for exercising judgment to reach final price agreement.



Price Analysis

- The process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit.
- FAR 15.404-1(b)(2) _____



FAR15.404-1(b)(2)

- (i) Comparison of proposed prices received in response to the solicitation. (***Competition***)
- (ii) Comparison of proposed prices to historical prices paid, whether by the Government or other than the Government, for the same or similar items. – (***Historical***)
- (iii) Use of parametric estimating methods/application of rough yardsticks (***RS Means***)



FAR15.404-1(b)(2) – cont'd

- (iv) Comparison with competitive published price lists, published market prices of commodities, similar indexes... (***Bureau of Labor Statistics, Surveys, etc.***)
- (v) Comparison of proposed prices with independent Government cost estimates. (***IGE***)
- (vi) Comparison of proposed prices with prices obtained through market research for the same or similar items.
- (vii) Analysis of data other than certified cost or pricing data provided by the offeror. (***Estimates, Payrolls, etc***)



FAR 15.404-1(c)(2)

- (i) Verification of cost data or pricing data and evaluation of cost elements, including--
 - ▶ (A) The necessity for, and reasonableness of, proposed costs, including allowances for contingencies;
 - ▶ (B) Projection of the offeror's cost trends, on the basis of current and historical cost or pricing data;
 - ▶ (C) Reasonableness of estimates generated by appropriately calibrated and validated parametric models or cost-estimating relationships; and
 - ▶ (D) The application of audited or negotiated indirect cost rates, labor rates, and cost of money or other factors.



FAR 15.404-1(c)(2)

- (iii) Comparison of costs proposed by the offeror for individual cost elements with—
 - ▶ (A) Actual costs previously incurred by the same offeror;
 - ▶ (B) Previous cost estimates from the offeror or from other offerors for the same or similar items;
 - ▶ (C) Other cost estimates received in response to the Government's request;
 - ▶ (D) Independent Government cost estimates by technical personnel; and
 - ▶ (E) Forecasts of planned expenditures.



Contract Cost Principles

- A cost is allowable when it complies with all of the following requirements
 - ▶ Reasonable
 - ▶ Allocable
 - ▶ Terms of contract
 - ▶ Any limitations of FAR Subpart 31



IGE Disclosure

- FAR 36.203 Government Estimate of Construction Costs

(C) Access to information concerning the Government estimate shall be limited to Government personnel... An exception to this rule may be made during contract negotiations to allow the contracting officer to identify a specialized task and disclose the associated cost breakdown figures in the Government estimate, but only to the extent deemed necessary to arrive at a fair and

reasonable price. **The overall amount of the Government's estimate shall not be disclosed**



IGE Revisions

- FAR 36.214(b)(2) When a proposed price is significantly lower than the Government estimate, the contracting officer shall make sure both the offeror and the Government estimator completely understand the scope of the work. **If negotiations reveal errors in the Government estimate, the estimate shall be corrected** and the changes shall be documented in the contract file.



Award Limitations

- UAI 5136.205-100 Statutory cost limitations – Civil Works
 - ▶ No Civil works construction shall be done by private contract if the price exceeds IGE by more than 25%.
- UAI 5136.205-100 Cost limitations – Military Construction
 - ▶ MILCON – award must be approved by commander if more than 15% over IGE
 - ▶ O&M/SRM – Installation Commander or Designee approval obtained prior to award if exceeds amount on project authorization document.



FAR 15.404-3

Subcontract pricing considerations

- The prime contractor shall:
 - ▶ Conduct appropriate cost/price analyses
 - ▶ Include results of analyses in price proposal
 - ▶ When required, submit subcontractor certified cost or pricing data.
 - Required when a single subcontract is over \$2M and more than 10 percent of prime contractor's price.



FAR 15.404-4 Profit

- (a)(1) – Profit is potential total remuneration over allowable costs.
 - Actual profit/fee vary from the negotiated profit/fee.
 - Motivator of efficient and effective performance.
 - Merely reducing prices by reducing profit is not in the Government's interest.
 - Predetermined percentages to total costs do not motivate optimum performance.
- (b)(1) Structured approaches are required.



Profit Factors

Alternate Structured Approach (Construction & A-E)

- Degree of risk – 0.03 to 0.12
 - ▶ Equitable adjustments or settlements 0.03
- Relative difficulty of work – 0.03 to 0.12
- Size of job - 0.03 to 0.12
 - ▶ Up to \$100k – 0.12
 - ▶ Between \$100k & \$5M – 0.05 to 0.11
 - ▶ Between \$5M & \$10M – 0.04
 - ▶ Over \$10M – 0.03



Profit Factors continued

- Period of Performance - 0.03 to 0.12
 - ▶ NTE 1 month – 0.03
 - ▶ Over 24 months – 0.12
- Contractor's investment - 0.03 to 0.12
- Assistance by Government - 0.03 to 0.12
- Subcontracting - 0.03 to 0.12
 - ▶ 80 percent to be subcontracted – 0.03
 - ▶ 100 percent self performed 0.12



	<u>FACTOR</u>	<u>EXPLANATION</u>	<u>WEIGHT</u>	<u>RATE</u>	<u>VALUE</u>
1	Degree of Risk	Average	0.07	20%	1.40%
2	Relative Difficulty of Work	Average	0.07	15%	1.05%
3	Size of Job	\$6.5M	0.05	15%	0.75%
4	Period of Performance	16 months	0.05	15%	0.75%
5	Contractor's Investment	Average	0.03	5%	0.15%
6	Assistance by Government	Average	0.03	5%	0.15%
7	Subcontracting	80% +	0.03	25%	0.75%
	Totals			100%	5.00%



Profit –DFARS 215.404-4

(Supplies & Services)

- Weighted Guidelines Method (DD 1547)
- Focuses on four factors
 - ▶ Performance Risk
 - ▶ Contract Type Risk
 - ▶ Facilities Capital Employed
 - ▶ Cost Efficiency



Certified Cost or Price Data

- If the action has an absolute value of over \$2M, a signed certificate of current cost or pricing data is required.
- Sample certificate at FAR15.406-2



Partnering

“Clearly, the best dispute resolution is dispute prevention...By taking the time at the start of a project to identify common goals, common interests, lines of communication, and a commitment to cooperative problem solving, we encourage the will to resolve disputes and achieve project goals.”

-LTG H. J. Hatch, Commander, U.S. Army Corps of Engineers Policy Memorandum 11, 7 August 1990



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