**Requiring Data Other than Certified Cost or Pricing Data**

**DFARS Case 2020-D008**

**Final Rule**

**PART 215—CONTRACTING BY NEGOTIATION**

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**SUBPART 215.4—CONTRACT PRICING**

**\* \* \* \* \***

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

Follow the procedures at PGI 215.403-3.

**[(a) In accordance with 10 U.S.C. 2306a(d)—**

**(1) Contracting officers shall not determine the price of a contract or subcontract to be fair and reasonable based solely on historical prices paid by the Government (see PGI 215.403-3(4)); and**

**(4) In lieu of the factors for consideration listed in FAR 15.403-3(a)(4), a determination by the head of the contracting activity (see PGI 215.403-3(7)) that it is in the best interest of the Government to make the award to an offeror that does not make a good faith effort to comply with a reasonable request to submit data other than certified cost or pricing data shall be based on consideration of pertinent factors, including the following:**

**(i) The effort to obtain the data.**

**(ii) Availability of other sources of supply of the item or service.**

**(iii) The urgency or criticality of the Government’s need for the item or service.**

**(iv) Reasonableness of the price of the contract, subcontract, or modification of the contract or subcontract based on information available to the contracting officer.**

**(v) Rationale or justification made by the offeror for not providing the requested data.**

**(vi) Risk to the Government if award is not made.]**

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**215.404 Proposal analysis.**

**215.404-1 Proposal analysis techniques.**

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(b) *Price analysis for commercial and noncommercial items*.

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(ii) If the contracting officer determines that the information obtained through market research is insufficient to determine the reasonableness of price, the contracting officer shall consider information submitted by the offeror of recent purchase prices paid by the Government and commercial customers for the same or similar commercial items under comparable terms and conditions in establishing price reasonableness on a subsequent purchase if the contracting officer is satisfied that the prices previously paid remain a valid reference for comparison. **[Price reasonableness shall not be based solely on historical prices paid by the Government (see 215.403-3(a)(1)).]** The contracting officer shall consider the totality of other relevant factors such as the time elapsed since the prior purchase and any differences in the quantities purchased (~~section 853 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114-92~~**[10 U.S.C. 2306a(b)(5]**).

\* \* \* \* \*

(v) When evaluating pricing data, the contracting officer shall consider materially differing terms and conditions, quantities, and market and economic factors **[(see PGI 215.404-1(b)(v))]**. For similar items, the contracting officer shall also consider material differences between the similar item and the item being procured (see FAR 15.404-1(b)(2)(ii)(B~~) and PGI 215.404-1(b)(v~~)). Material differences are those that could reasonably be expected to influence the contracting officer’s determination of price reasonableness. The contracting officer shall consider the following factors when evaluating the relevance of the information available:

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**PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES**

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**subpart 242.15—CONTRACTOR PERFORMANCE INFORMATION**

**242.1502 Policy.**

(g) Past performance evaluations in the Contractor Performance Assessment Reporting System**[—**

**(i) S]**~~s~~hall include an assessment of the contractor’s performance against, and efforts to achieve, the goals identified in its comprehensive small business subcontracting plan when the contract contains the clause at 252.219-7004, Small Business Subcontracting Plan (Test Program)**[; and**

**(ii) Shall, unless exempted by the head of the contracting activity, include a notation on contractors that have denied multiple requests for submission of data other than certified cost or pricing data over the preceding 3-year period, but nevertheless received an award (10 U.S.C. 2306a(d)(2)(B)(ii))]**.

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