**DFARS Case 2021-D006**

**Definition of Material Weakness**

**Final Rule**

**PGI Text**

**PGI 215—CONTRACTING BY NEGOTIATION**

**PGI 215.4—CONTRACT PRICING**

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**PGI 215.404-2 Data to support proposal analysis.**

(a) *Field pricing assistance.* **[See PGI 215.404-2(c) regarding when to request audit assistance.]**

(i) The contracting officer should consider requesting field pricing assistance ~~(See PGI 215.404-2(c) for when audit assistance should be requested)~~ for—

(A) Fixed-price proposals exceeding the certified cost or pricing data threshold;

(B) Cost-type proposals exceeding the certified cost or pricing data threshold from offerors with ~~significant estimating system deficiencies~~**[material weaknesses]** ~~(see DFARS 215.407-5-70(a)(4) and (c)(2)(i))~~; or

(C) Cost-type proposals exceeding $10 million from offerors without ~~significant estimating system deficiencies~~**[material weaknesses]**.

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

(e) *Disposition of findings*.

(2) *Initial determination*.

(ii)(A) Within 30 days of receiving the report, if the contracting officer makes a determination that there is a ~~significant deficiency~~**[material weakness]**, the contracting officer should provide an initial determination of ~~deficiencies~~ **[material weaknesses]** and a copy of the report to the contractor and require the contractor to submit a written response.

(C) *Evaluation of contractor's response*. Within 30 days of receiving the contractor’s response, the contracting officer, in consultation with the auditor or cognizant functional specialist, should evaluate the contractor’s response and make a final determination.

(3) *Final* **[*d*]***~~D~~etermination.*

(ii)(A) *Monitoring contractor's corrective action*. The auditor and the contracting officer shall monitor the contractor's progress in correcting **[material weaknesses and]** deficiencies. If the contractor fails to make adequate progress, the contracting officer shall take whatever action is necessary to ensure that the contractor corrects the **[weaknesses and]** deficiencies. ~~Examples of a~~**[A]**ctions the contracting officer ~~can~~**[may]** take ~~are~~**[include]**: withdraw or withhold approval of the system; bringing the issue to the attention of higher level management**[;]**~~,~~ reducing or suspending progress payments (see FAR 32.503-6)**[;]**~~, implementing or increasing the withholding in accordance with 252.242-7005, Contractor Business Systems, and~~ recommending non-award of potential contracts**[, as applicable; and for material weaknesses, implementing or increasing the withholding in accordance with 252.242-7005, Contractor Business Systems]**.

(B) *Correction of ~~significant deficiencies~~***[*material weaknesses*]**.

(*1*) When the contractor notifies the contracting officer that the contractor has corrected the ~~significant deficiencies~~**[material weaknesses]**, the contracting officer shall request that the auditor review the correction to determine if the **[weaknesses and]** deficiencies have been resolved.

(*2*) The contracting officer shall determine if the contractor has corrected the **[weaknesses and]** deficiencies.

(*3*) If the contracting officer determines the contractor has corrected the **[weaknesses and]** deficiencies, **[send]** the contracting officer's notification ~~shall be sent~~ to the auditor; payment office; appropriate action officers responsible for reporting past performance at the requiring activities; and each contracting and contract administration office having substantial business with the contractor**[,]** as applicable.

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**PGI 234—MAJOR SYSTEM ACQUISITION**

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

**PGI 234.2—EARNED VALUE MANAGEMENT SYSTEM**

**PGI** **234.201 Policy.**

\* \* \* \* \*

(7) *Disposition of findings*.

(ii) *Initial determination*.

(B)(*1*) Within 30 days of receiving the report, if the contracting officer makes a determination that there is a ~~significant deficiency~~**[material weakness]**, the contracting officer should provide an initial determination of ~~deficiencies~~**[material weaknesses]** and a copy of the report to the contractor and require the contractor to submit a written response.

\* \* \* \* \*

(iii) *Final* **[*d*]***~~D~~etermination*.

(B)(*1*) *Monitoring contractors’ corrective action*. The contracting officer and cognizant functional specialist or auditor shall monitor the contractor's progress in correcting **[material weaknesses and]** deficiencies. If the contractor fails to make adequate progress, the contracting officer shall take whatever action is necessary to ensure that the contractor corrects the **[weaknesses and]** deficiencies. ~~Examples of a~~**[A]**ctions the contracting officer ~~can~~**[may]** take ~~are~~**[include]**: withdraw or withhold approval of the system; bringing the issue to the attention of higher level management~~, implementing or increasing the withholding in accordance with~~ [~~252.242-7005~~](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252242.htm#252.242-7005)~~, Contractor Business Systems~~**[, as applicable;]**~~, and~~ recommending non-award of potential contracts**[; and for material weaknesses, implementing or increasing the withholding in accordance with 252.242-7005, Contractor Business Systems].**

(*2*) *Correction of ~~significant deficiencies~~***[*material weaknesses*]**.

(*i*) When the contractor notifies the contracting officer that the contractor has corrected the ~~significant deficiencies~~**[material weaknesses]**, the contracting officer shall request the cognizant functional specialist or auditor to review the correction to determine if the **[weaknesses and]** deficiencies have been resolved.

(*ii*) The contracting officer shall determine if the contractor has corrected the **[weaknesses and]** deficiencies.

(*iii*) If the contracting officer determines the contractor has corrected the **[weaknesses and]** deficiencies, **[send]** the contracting officer's notification ~~shall be sent~~ to the cognizant functional specialist; auditor; payment office; appropriate action officers responsible for reporting past performance at the requiring activities; and each contracting and contract administration office having substantial business with the contractor as applicable.

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

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

**PGI 242.70—CONTRACTOR BUSINESS SYSTEMS**

**PGI 242.7000 Contractor business system deficiencies.**

(b) \* \* \*

(1) \* \* \*

Payment Withholding

(i) The purpose of this final determination is to disapprove your *[identify the contractor business system(s)]* and implement payment withholding per the terms of the ~~DFARS~~ clause at **[DFARS]** [252.242-7005](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252242.htm#252.242-7005), Contractor Business Systems.

(ii) It is my final determination that XXX System(s) contains the following ~~significant deficiencies~~**[material weaknesses]**:

--*[list all ~~significant deficiencies~~***[*material weaknesses*]***]*

(iii) Effective immediately, five percent (or a lesser percentage if five percent will exceed the withhold limitations in the ~~DFARS~~ clause at **[DFARS]** [252.242-7005](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252242.htm#252.242-7005)) of each request for payment under the contracts in Attachment A will be withheld as described below for ~~significant deficiencies~~**[material weaknesses]** in XXX system. Upon receipt of an acceptable corrective action plan and my determination that this corrective action plan is being effectively implemented, I will issue a notification with respect to reducing the percentage being withheld to two percent until I determine that all ~~significant deficiencies~~**[material weaknesses]**, as identified in this final determination, have been corrected. Failure to follow the accepted corrective action plan will result in an increase in the percentage withheld against each payment under this contract to five percent (or a lesser percentage if five percent will exceed the withhold limitations in DFARS [252.242-7005](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252242.htm#252.242-7005)). *[Repeat this paragraph, as necessary, if multiple withholds are being applied to multiple systems in accordance with* [*252.242-7005*](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252242.htm#252.242-7005)*(d)]*

\* \* \* \* \*

(2) Use this sample format for determinations to reduce payment withholding:

Reduction of Temporary Payment Withholding

(i) The purpose of this determination is to reduce the payment withholding percentage per the terms of the ~~DFARS~~ clause at **[DFARS]** [252.242-7005](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252242.htm#252.242-7005), Contractor Business Systems, as a result of receiving an acceptable corrective action plan from the contractor, dated YYYY/MM/DD, for resolving deficiencies in its XXX system(s) as identified in the Contracting Officer’s determination, dated YYYY/MM/DD. This reduction is prospective and previous amounts withheld will not be reduced or released at this time.

(ii) Effective immediately, two percent of each request for payment under this contract will be withheld as described below. The two percent being withheld will remain in effect until the Contracting Officer determines that the Contractor has corrected all ~~significant deficiencies~~**[material weaknesses]** as directed by the Contracting Officer’s determination. Failure to follow the accepted corrective action plan will result in an increase in the percentage withheld against each payment under this contract to five percent (or a lesser percentage if five percent will exceed the withhold limitations in DFARS [252.242-7005](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252242.htm#252.242-7005)).

\* \* \* \* \*

(3) Use the sample format below if payment withholding is discontinued pending receipt of auditor or functional specialist verification and based on evidence that the **[c]**~~C~~ontractor has corrected all ~~significant deficiencies~~**[material weaknesses]**, in accordance with **[the clause at]** DFARS ~~clause~~ [252.242-7005](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252242.htm#252.242-7005), Contractor Business Systems:

Discontinuation of Payment Withholding Pending Verification

\* \* \* \* \*

(ii) The discontinuation of the payment withhold is made pending receipt of verification and based on my review of the evidence submitted by the Contractor that all the Contractor’s system(s) **[material weaknesses]**~~deficiencies~~ identified in the Contracting Officer’s determination dated YYYY/MM/DD have been corrected.

\* \* \* \* \*

(4) Use the sample format below if payment withholding is discontinued after auditor or functional specialist verification that the **[c]**~~C~~ontractor has corrected all ~~significant deficiencies~~**[material weaknesses]**, in accordance with **[the clause at]** DFARS ~~clause~~ [252.242-7005](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252242.htm#252.242-7005), Contractor Business Systems:

Discontinuation of Payment Withholding

\* \* \* \* \*

(ii) The discontinuation of the payment withhold is made based on verification that all the Contractor’s system(s) **[material weaknesses]**~~deficiencies~~ identified in the Contracting Officer’s final determination dated YYYY/MM/DD have been corrected.

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**PGI 242.72—CONTRACTOR MATERIAL MANAGEMENT AND ACCOUNTING SYSTEM**

**PGI 242.7203 Review procedures.**

(**[c]**~~C~~) *Disposition of findings*.

(2) *Initial determination*.

(ii)(A) Within 30 days of receiving the report, if the contracting officer makes a determination that there is a ~~significant deficiency~~**[material weakness]**, the contracting officer should provide an initial determination of ~~deficiencies~~**[material weaknesses]** and a copy of the report to the contractor and require the contractor to submit a written response.

\* \* \* \* \*

(3) *Final* **[*d*]***~~D~~etermination*.

(ii)(A) *Monitoring contractor's corrective action*. The contracting officer, with the assistance of the auditor, shall monitor the contractor's progress in correcting **[material weaknesses and]** deficiencies. If the contractor fails to make adequate progress, the contracting officer shall take whatever action is necessary to ensure that the contractor corrects the **[weaknesses and]** deficiencies. ~~Examples of a~~**[A]**ctions the contracting officer ~~can~~**[may]** take ~~are~~**[include]**: ~~disapprove~~**[disapproving]** the contractor's MMAS; bringing the issue to the attention of higher level management; ~~implementing or increasing the withholding in accordance with~~ [~~252.242-7005~~](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252242.htm#252.242-7005)~~, Contractor Business Systems, if applicable; and~~ recommending non-award of potential contracts**[, as applicable; and for material weaknesses, implementing or increasing the withholding in accordance with 252.242-7005, Contractor Business Systems]**.

(B) *Correction of ~~significant deficiencies~~***[*material weaknesses.*]**

(*1*) When the contractor notifies the contracting officer that the contractor has corrected the ~~significant deficiencies~~**[material weaknesses]**, the contracting officer shall request that the auditor review the correction to determine if the **[weaknesses and]** deficiencies have been resolved.

(*2*) The contracting officer shall determine if the contractor has corrected the **[weaknesses and]** deficiencies.

(*3*) If the contracting officer determines the contractor has corrected the **[weaknesses and]** deficiencies, **[send]** the contracting officer's notification ~~shall be sent~~ to the auditor; payment office; appropriate action officers responsible for reporting past performance at the requiring activities; and each contracting and contract administration office having substantial business with the contractor as applicable.

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**PGI 242.75—CONTRACTOR ACCOUNTING SYSTEMS AND RELATED CONTROLS**

**PGI 242.7502 Policy.**

(d) *Disposition of findings*.

(2) *Initial determination*.

(ii)(A) Within 30 days of receiving the report, if the contracting officer makes a determination that there is a ~~significant deficiency~~**[material weakness]**, the contracting officer should provide an initial determination of ~~deficiencies~~**[material weaknesses]** and a copy of the report to the contractor and require the contractor to submit a written response.

\* \* \* \* \*

(3) *Final* **[*d*]***~~D~~etermination*.

(ii)(A) *Monitoring contractor's corrective action*. The contracting officer, with the assistance of the auditor, shall monitor the contractor's progress in correcting **[material weaknesses and]** deficiencies. If the contractor fails to make adequate progress, the contracting officer shall take whatever action is necessary to ensure that the contractor corrects the **[material weaknesses and]** deficiencies. ~~Examples of a~~**[A]**ctions the contracting officer ~~can~~**[may]** take ~~are~~**[include]**: ~~disapprove~~**[disapproving]** the ~~contractor’s MMAS~~**[system]**; bringing the issue to the attention of higher level management~~;~~ **[, as applicable; and for material weaknesses,]** implementing or increasing the withholding in accordance with [252.242-7005](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252242.htm#252.242-7005), Contractor Business Systems~~, if applicable; and recommending non-award of potential contracts~~.

(B) *Correction of ~~significant deficiencies~~***[*material weaknesses.*]**

(*1*) When the contractor notifies the contracting officer that the contractor has corrected the ~~significant deficiencies~~**[material weaknesses]**, the contracting officer shall request that the auditor review the correction to determine if the **[weaknesses and]** deficiencies have been resolved.

(*2*) The contracting officer shall determine if the contractor has corrected the **[material weaknesses]**~~deficiencies~~.

(*3*) If the contracting officer determines the contractor has corrected the **[material weaknesses]**~~deficiencies~~, **[send]** the contracting officer's notification ~~shall be sent~~ to the auditor; payment office; appropriate action officers responsible for reporting past performance at the requiring activities; and each contracting and contract administration office having substantial business with the contractor as applicable.

(g) *Mitigating the risk of* **[*material weaknesses and*]***~~accounting~~ system deficiencies on specific proposals*.

(2) In the event that a contractor’s accounting system contains **[material weaknesses or]** deficiencies, even if it has been disapproved, a cost reimbursement contract is not prohibited if the contracting officer determines that the contractor’s accounting system is adequate for determining costs applicable to the contract or order.

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**PGI 244—SUBCONTRACTING POLICIES AND PROCEDURES**

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

**PGI 244.3—CONTRACTORS' PURCHASING SYSTEMS REVIEWS**

**PGI 244.305-70 Policy.**

(c) *Disposition of findings*.

(2) *Initial determination*.

(ii)(A) Within 30 days of receiving the report, if the contracting officer makes a determination that there is a ~~significant deficiency~~**[material weakness]**, the contracting officer should provide an initial determination of ~~deficiencies~~**[material weaknesses]** and a copy of the report to the contractor and require the contractor to submit a written response.

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(3) *Final* **[*d*]***~~D~~etermination*.

(ii)(A) *Monitoring contractors’ corrective action*. The contracting officer and Purchasing System Analyst (PSA) or auditor shall monitor the contractor's progress in correcting **[material weaknesses and]** deficiencies. If the contractor fails to make adequate progress, the contracting officer shall take whatever action is necessary to ensure that the contractor corrects the **[weaknesses and]** deficiencies. ~~Examples of a~~**[A]**ctions the contracting officer ~~can~~**[may]** take ~~are~~**[include]**: withdraw**[ing]** or withhold**[ing]** approval of the system; bringing the issue to the attention of higher level management**[;]**~~,~~ ~~implementing or increasing the withholding in accordance with~~ [~~252.242-7005~~](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252242.htm#252.242-7005)~~, Contractor Business Systems, and~~ recommending non-award of potential contracts**[, as applicable; and for material weaknesses, implementing or increasing the withholding in accordance with 252.242-7005, Contractor Business Systems]**.

(B) *Correction of ~~significant deficiencies~~***[*material weaknesses*]**.

(*1*) When the contractor notifies the contracting officer that the contractor has corrected the ~~significant deficiencies~~**[material weaknesses]**, the contracting officer shall request the PSA or auditor to review the correction to determine if the **[weaknesses and]** deficiencies have been resolved.

(*2*) The contracting officer shall determine if the contractor has corrected the **[weaknesses and]** deficiencies.

(*3*) If the contracting officer determines the contractor has corrected the deficiencies, the contracting officer's notification shall be sent to the PSA; auditor; payment office; appropriate action officers responsible for reporting past performance at the requiring activities; and each contracting and contract administration office having substantial business with the contractor as applicable.

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**PGI 245—GOVERNMENT PROPERTY**

**PGI 245.1—General**

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**PGI 245.105 Contractors’ property management system compliance.**

(d) *Disposition of findings*.

(2) *Initial determination*.

(ii)(A) Within 30 days of receiving the report, if the contracting officer makes a determination that there is a ~~significant deficiency~~**[material weakness]**, the contracting officer should provide an initial determination of ~~deficiencies~~**[material weaknesses]** and a copy of the report to the contractor and require the contractor to submit a written response.

\* \* \* \* \*

(3) *Final* **[*d*]***~~D~~etermination*.

(ii)(A) *Monitoring contractor's corrective action*. The contracting officer, with the assistance of the auditor, shall monitor the contractor's progress in correcting **[material weaknesses and]** deficiencies. If the contractor fails to make adequate progress, the contracting officer shall take whatever action is necessary to ensure that the contractor corrects the **[weaknesses and]** deficiencies. ~~Examples of a~~**[A]**ctions the contracting officer ~~can~~**[may]** take ~~are~~**[include]**: ~~disapprove the contractor’s MMAS;~~**~~[~~withdrawing or withholding approval of the system;]** bringing the issue to the attention of higher level management**[;]**~~, implementing or increasing the withholding in accordance with the clause at~~ [~~252.242-7005~~](http://www.acq.osd.mi/dpap/dars/dfars/html/current/252242.htm#252.242-7005)~~, Contractor Business Systems, and~~ recommending non-award of potential contracts**[, as applicable; and for material weaknesses, implementing or increasing the withholding in accordance with 252.242-7005, Contractor Business Systems]**.

(B) *Correction of ~~significant deficiencies~~***[*material weaknesses.*]**

(*1*) When the contractor notifies the contracting officer that the contractor has corrected the ~~significant deficiencies~~**[material weaknesses]**, the contracting officer shall request that the auditor review the correction to determine if the **[weaknesses and]** deficiencies have been resolved.

(*2*) The contracting officer shall determine if the contractor has corrected the **[weaknesses and]** deficiencies.

(*3*) If the contracting officer determines the contractor has corrected the **[weaknesses and]** deficiencies, **[send]** the contracting officer's notification ~~shall be sent~~ to the auditor; payment office; appropriate action officers responsible for reporting past performance at the requiring activities; and each contracting and contract administration office having substantial business with the contractor as applicable.

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