DEPARTMENT OF THE NAVY
OFFICE OF THE ASSISTANT SECRETARY
RESEARCH, DEVELOPMENT AND ACQUISITION
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WASHINGTON, DC 20350-1000

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MEMORANDUM FOR DISTRIBUTION

Subj: CONTRACTING OFFICER DETERMINATION OF PRICE REASONABLENESS WHEN COST OR PRICING DATA ARE NOT OBTAINED

Ref: (a) ASN(RDA) ABM memo of November 28, 2001
(b) DODIG Audit Report D-2001-129 of May 30, 2001
(c) DODIG Audit Report D-2003-029 of November 25, 2002
(d) GAO Report GAO-02-502 of April 2002

Encl: (1) Requirement to modify Procurement Performance Measurement Assessment Program
(2) Recommendations and Guidance

I issued reference (a) in response to reference (b) to address the need for greater emphasis in documentation and determination of "price reasonableness" in your contract files.

It is important that every contracting professional under your control, understand the importance of documenting the contract file as well as documenting "price reasonableness" in the Business Clearance Memorandum/Price Negotiation Memorandum (BCM/PNM). This should be emphasized in the BCM/PNM approval process. Enclosure (1) lists questions that should be addressed as part of your internal Procurement Performance Management Assessment Program. Enclosure (2) summarizes some of the DODIG (references (b) and (c)) and GAO (reference (d)) findings and includes a list of recommendations, websites and guidance to contracting professionals.

I have assigned Ron Ostrom, (703) 693-4012, or email (Ronald.Ostrom@navy.mil) to be my point of contact for this issue. Activities and contracting professionals are requested to forward any checklists, comments, recommendations or examples on this issue for development of a guide.

M. P. Jaggard
Chief of Staff/Policy
for DASN (ACQ)

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The following additional questions should be added to the internal Procurement Performance Management Assessment Program (PPMAP) process and incorporated into internal training sessions. Process verification of the questions will be reviewed as part of DASN (ACQ) PPMAP Review.

The following questions should be asked when cost or pricing data was not received:

(a) Was the exception utilized for not obtaining cost or pricing data valid and appropriately documented?

(b) Was price reasonableness adequately justified and properly documented?

(c) Was urgency an issue? If yes, was it the requirement truly urgent or was the urgency caused by the lack of proper planning?

Findings From Various Recent DODIG Audit Reports:

SUMMARY OF PRICE REASONABLENESS DETERMINATION ISSUES:

- Market research appropriate to the circumstances was not performed.
- Catalog prices were accepted without additional review or verification of items actually being sold at prices listed.
- Prior prices used for comparison were not justified as reasonable.
- Prices were justified as competitive when no competition truly existed. (Competitive One-Bid)
- Accepted cost that were not supported or warranted.
- Failure to request discounts based upon quantity buys.
- Failure to make adequate efforts to use competition.
- Contract files were not properly documented to support determination justification.

Difference Between Cost or Pricing Data and Information Other Than Cost or Pricing Data:

The difference between "Cost or Pricing Data" and "Information Other Than Cost or Pricing Data" is the certification required by 15.406-2. Contracting officers should ask for whatever information is necessary to make and support their price reasonableness determination. If there isn't enough pricing information available to make the determination, the Contracting Officer may ask for cost related data. None of the information/data provided as "Information Other Than Cost or Pricing Data" is required to be certified. (See Attachment (A).)

Market Research:

Market research is a process to collect, organize, maintain, analyze and present data for the purpose of maximizing the capabilities, technology and competitive forces of the marketplace to meet the organization's needs for supplies or services. Market research is the responsibility of the whole acquisition team to work together to ascertain whether needs can be met by items or services available in the commercial marketplace or modified items or services in the commercial marketplace. By maintaining continuous surveillance of the marketplace, members become aware of warranties, acceptance, inspection, financing, maintenance, packaging and marking procedures, which are common for the items available in the marketplace and can be used to shape acquisition strategy, determine the type and content of the product description or statement of work, to develop the support strategy, the terms and conditions included in the contract and the evaluation factors used for source selection. The benefits of the effective use of market research and nondevelopmental items are reduced acquisition costs, reduced cycle times and greater access to advanced technologies. Information should be passed through members of the team as well as within programs within the command and the agency.

The following references and websites may be helpful with regard to market research requirements and procedures:

TITLE	WEB LOCATION
FAR Part 10	
Continuous Learning Module – Contracts (CLC-004) on the Defense Acquisition University website	https://atlas4.dau.gov/html/clc/Clc.jsp?fTopic=CLC&fKeywords=&Submit=Search
Buying Commercial & Nondevelopmental Items	http://www.dsp.dla.mil/documents/sd-2
Market Analysis for Nondevelopmental Items	http://www.dsp.dla.mil/documents/sd-5/default.htm
Navy online training course, developed by Acquisition Reform Office	http://acquisition.navy.mil/aosfiles/tools/marketresearch/
GSA Advantage	http://gsaadvantage.gov
Industrial or commerce suppliers	http://thomasregister.com
Sourcing Information	
ThomasNet	http://thomasnet.com
National Association of Purchasing Management	http://www.napm.org
Manufacturers, distributors and service providers	http://www.techsavvy.com
Large scale market trial of technologies and business processes	http://www.commerce.net
Comprehensive business services	http://www.clickit.com
U.S. Securities & Exchange Commission Corporate Information database	http://www.sec.gov/edaux/searches.htm
Financial filings	http://www.bigyellow.com
Specifications and Standards	http://nssn.org
Aircraft – Internal Parts Locator	http://www.ipls.com/
Apparel, Fiber & Textiles	http://www.gidc.org
Chemicals	http://www.chemconnect.com
Computer and Electronics	http://www.pricewatch.com/
IT database	http://www.technogate.com
Electronic Industries Association	http://www.eia.org

Recommendations and Guidance to Contracting Officers and Contract Specialists:

1. In instances, where only one source exists and that supplier quotes a minimum order price or quantity, which exceeds the government's requirement or where price reasonableness is questioned, advice should be sought from the requiring activity for possible increase in purchase quantity.

2. The BCM/PNM for **every** contract action **must** contain a documented price reasonableness determination. In those cases where cost or pricing data was not obtained, documenting price reasonableness in the BCM/PNM requires more attention and the utilization of more than one price analysis technique to support the settlement price as being fair and reasonable. As many techniques as necessary to support price reasonableness should be utilized and documented. Examples of possible supporting information include, but are not limited to:

(a) A historical comparison with prices for the same or like items should be used whenever possible. The comparative analysis should include comments verifying the reasonableness of previous prices (FAR 15.404-1(b)(2)(ii)) and adjustments made for quantity, time, breaks in production, etc. Any difference between the item being procured and the item purchased previously should be documented as well as the impact of those differences on the price. The historical prices used as a comparison should be stated in or attached to the BCM/PNM.

(b) The use of a commercial price/parts list in itself does not justify the price to be fair and reasonable (FAR 15-403.3(c)). You must also confirm and document that quantities were sold at the prices listed on the price list, to whom and consider whether or not a price reduction is warranted because of the size of the government's purchase. The BCM/PNM must also document the differences between the commercial item and the item to be procured, if there are any differences, and the cost/price impact of those differences. Even after appropriate price analysis techniques have been applied, if the price cannot be determined to be fair and reasonable, then the contracting officer may require the offeror to submit additional information as necessary to support further analysis, pursuant to FAR 15.403-3(c)(1). The commercial prices used as a comparison should be stated in or attached to the BCM/PNM.

(c) Compare the proposed price and the negotiated price with an independent government estimate (provide basis of estimate) or prices received through market research (describe the market research conducted). The independent government estimate or prices received from the market research used as a comparison should be stated in or attached to the BCM/PNM.

(d) Ensure FAR 52.215-20, "Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data," is included in all solicitations where cost or pricing data is not expected to be obtained.

(e) If the offeror refuses to provide information necessary to support the contracting officer's determination of price reasonableness, the issue should be elevated to higher management until the issue is resolved. Management should take actions as necessary to assist in obtaining adequate documentation. A determination of price reasonableness can not be made without adequate supporting documentation. It is in the best interest of both parties that adequate documentation be provided and documented.

(f) Use the assistance of Defense Contract Audit Agency (DCAA)/Defense Contract Management Agency (DCMA) whenever possible to support price reasonableness determination. When DCAA/DCMA assistance is unavailable, internal technical support should be sought.

(g) Even in competitive procurements where multiple offers are received, it is important that the reasonableness of the negotiated price be supported and documented in the BCM/PNM whether through adequate price competition or other analysis.

(h) In competitive one-bid situations, ensure the BCM/PNM is fully documented justifying why you believe competition exists and how it supports price reasonableness. Include copies of any related correspondence in the contract file that supports the expectation of multiple competitors. Also be sure to document the reason you, as the contracting officer, expected to have more than one bid. You should consider the financial investment needed by a contractor to produce a product that they may never have produced or not produced for a long time. It is also very important that you consider whether or not the one-bid contractor could have known that he was the only bidder. For example, if a part of the item being procured comes from a single source, the one-bidder could have asked the sole source provider if they had received any other requests for quote, thus indicating he would be sole bidder.

(i) BCM/PNM should include additional statements/comments with regard to:

(1) Explaining the absence of competition if only one source is solicited and acquisition is below the simplified acquisition threshold.
(2) In a competitive award, support the award decision if other than price-related factors were utilized in selecting the supplier.
(3) The differences between items being procured and the item previously purchased (or the commercial item). If there is a substantial cost or technical difference, the BCM/PNM must explain why the comparison is still valid as a basis for the price-reasonableness determination.

3. The following websites may be helpful:

TITLE	WEB LOCATION
Contract Pricing Reference Guides	http://www.acq.osd.mil/dpap/contractpricing/index.htm
Commercial Pricing Information Guide	http://akss.dau.mil/docs/030EVDOC.doc
Mission Strategy Execution CON 111	http://akss.dau.mil/jsp/default.jsp
Price Analysis Methods QMT-110	https://acc.dau.mil/simplify/ev.php?ID=60710_201&ID2=DO_TOPIC
Defense Acquisition University (search on price analysis)	http://akss.dau.mil/jsp/default.jsp
DoN Acquisition One Source	http://www.abm.rda.hq.navy.mil/navyaos/content/view/full/2
Defense Procurement and Acquisition Policy	http://www.acq.osd.mil/dpap/
DoL Wage Determination Site	http://www.wdol.gov/
DoD Sponsored Parametric Cost Estimating Handbook	http://www.ispa-cost.org/PEIWeb/cover.htm
NASA Parametric Cost Estimating Handbook	http://www1.jsc.nasa.gov/bu2/PCEHHTML/pceh.htm

Management Emphasis:

1. When approving the BCM/PNM the approving official **must** ensure that the document as written:

(a) supports the exception (from FAR 15.403-1(c)(1) through (4)) for not obtaining cost or pricing data and

(b) documents and justifies price reasonableness. (Do not rely on information that is not in the BCM/PNM unless properly referenced and retained in the contract file.)

(c) documents the comparisons and differences in the item being procured and item being compared.

Information Other Than Cost or Pricing Data:

Information Other Than Cost or Pricing Data		
Information Element	Consider Requiring Offerors/Contractors To…	Related Analysis Questions
Catalog Pricing	Identify any relevant commercial catalog, its date, catalog prices, and related discounts. Also require the offeror/contractor to explain any differences between the offered price, the established catalog price, and price of recent sales in quantities similar to the proposed quantities.	Does the firm have a commercial catalog? How do the prices for recent commercial sales compare with the catalog price? How does the price offered compare to the catalog price and the circumstances of the commercial sales?
Market Pricing	Describe the nature of the relevant market and how that market affects the offered price including the source and date or period of any relevant market quotation or other basis for market price, the base market price, and applicable discounts and other adjustments.	Is there a commercial market for the item? Is there an independent and verifiable record of the market price? How does the price offered compare with the prices paid by other customers under similar circumstances?
Other Evidence of Prices Charged	Provide evidence of prices charged other customers under similar circumstances. For example, the firm could provide copies of contracts with other customers to document the prices charged.	Can the offeror provide evidence of the prices paid by commercial customers? Do commercial customers verify prices paid? How does the price offered compare with the prices paid by other customers under similar circumstances?
Services Normally Provided	Describe the services provided by the offeror/contract to the firm's buying at the prices provided as bases for price analysis. Different firms and industries provide different levels of support services for their products, including product warranties, set-up, and financing.	What services are provided other customers? Based on services provided, should the Government price be different than the price charged commercial customers?
Normal Order Size	Document the normal order size for firms paying prices provided by the offeror/contractor as bases for price analysis. Prices may relate to the total size of each order, not just the price of the item involved. For example, an order could include 100 units of the item and nothing else, or the order could include 100 units of the item and thousands of units of other items. Presumably, the larger order should merit a lower price.	What was the total dollar value of the orders with other customers? Based on the relative order size, should the Government price be different than the price charged other customers?
Annual Volume of Sales to Similar Customers	Document the sales volume to similar customers and the prices paid by those customers. For example, commercial firms often negotiate total volume discounts with major customers, over and above normal order quantity discounts. In comparing total volume of purchases, you should normally consider known acquisitions from all Government activities as a group.	Under similar circumstances, does the firm sell at lower prices to firms with larger total annual purchases? What prices are charged other customers with total annual purchases similar to that of the Government?
Lowest Price Charged Other Customers	Document the lowest prices recently charged other customers for the same or similar products. The Government procurement may not rate this most favored customer treatment, however this information will provide useful information on the lowest prices paid by any customer under any circumstances. What is recent will vary based on the type of item and the market. Generally it will vary from three months to a year.	What is the lowest recent price paid for the same or similar product? How do the circumstances of the Government procurement differ from the circumstance of the lowest price sale?

Information Other Than Cost or Pricing Data:

Contracting Situation	Analysis Purpose	Analysis Questions
You expect a single offer at or below the cost or pricing data threshold, and you do not expect to be able to determine price reasonableness using price analysis alone.	Support determination of price reasonableness.	Does the proposed price appear reasonable based on its relationship with estimated costs?
You expect a single offer greater than the cost or pricing data threshold that will be excepted from cost or pricing data requirements, but you do not expect to be able to determine price reasonableness using price analysis alone.		
You expect competitive offers, but because of technical differences, you do not expect to be able to determine price reasonableness using price information alone.		
You find that there are too few sales of commercial item to use as a basis for price analysis and cost analysis is the only reasonable method for determining price reasonableness.		
You expect competitive offers for a cost reimbursement contract.	Cost realism analysis is determined probable final cost to the Government.	Are proposed costs realistic for the work to be performed?
You expect competitive offers for a fixed price contract but new requirements may not be understood by all the offerors.	Cost realism analysis is determined an offeror understands all contract requirements.	Do proposed costs reflect a clear understanding of contract requirements?
You expect competitive offers for a fixed-price contract, but you have concerns about the performance quality that will result from each offeror's proposal.	Cost realism analysis to determine an offeror's ability to deliver proposed quality at the proposed price.	Are proposed costs consistent the offeror's technical proposal?
You expect competitive offers from a fixed-price contract, but market analysis leads you to believe that some offerors may propose unrealistic prices that would jeopardize contract performance.	Cost realism analysis to determine an offeror's ability to meet all contract requirements at the proposed price.	Do proposed costs reflect a clear understanding of contract requirements?

From the Contract Pricing Reference Guides available at: http://www.acq.osd.mil/dpap/contractpricing/index.htm