Attachment 1

Class Deviation 2020-O0020

Section 890 Pilot Program to Accelerate Contracting and Pricing Processes

**Application to Participate in the Pilot Program Authorized under Section 890 of the FY19 National Defense Authorization Act (NDAA), as amended by Section 825 of the FY20 NDAA, for contract actions that exceed $50 million.**

**I. Program/Contract Information**

Program Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Cognizant Contracting Activity:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*(Buying office, Command, Department or Agency)*

Description of Requirement:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*(Product, quantity, period of performance)*

Estimated value of the current requirement:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Anticipated contract type:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

List of relevant prior acquisitions to be used as the basis for projecting costs of the current acquisition under the pilot program:

Acquisition 1:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*(Name, customer, product, quantity, period of performance, contract value, contract type)*

Acquisition 2:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*(Name, customer, product, quantity, period of performance, contract value, contract type)*

*List the same information for additional acquisitions as appropriate.*

Please discuss the extent of commonality between current and prior acquisitions. Does the current acquisition include work not required in the prior acquisitions? Did the prior acquisitions include work not required in the current buy? Are there any significant requirement changes? Were actuals from previous buys requested on these listed acquisitions? If so, how were they used in proposal evaluation and/or negotiations?

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**II. Prime Contractor Information**

Contractor Name and Location:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Contractor CAGE Code:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Status of Contractor’s Accounting System as shown in CBAR:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**III. Notional Approach to Data Requirements for the Bill of Materials**

*Please complete this section if the contracting officer plans to flow down the pilot authority to some or all first tier or lower tier subcontracts.*

For each of the relevant prior acquisitions listed in Section I, above, please provide the total considered negotiated material and subcontract cost, in dollars and as a percentage of the total considered negotiated cost line.

Acquisition 1:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*(Name, considered negotiated material/subcontract cost, in dollars and as a percent of the negotiated cost line)*

Acquisition 2:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*(Name, considered negotiated material/subcontract cost, in dollars and as a percent of the negotiated cost line)*

*List the same information for additional acquisitions as appropriate.*

Please discuss any significant issues or challenges relating to material or subcontracts which were experienced in the context of the above-listed historical acquisitions.

Please discuss the extent of commonality between current and prior acquisitions with respect to the Bill of Materials. Does the current acquisition include significant subcontracted effort not required in the prior acquisitions? Did the prior acquisitions include significant subcontract effort not required in the current buy? Are there any significant requirement changes with respect to subcontracted items? Were actuals from previous buys requested for major subcontracts? If so, how were they used in the Government’s proposal evaluation and/or negotiations with the prime contractor?\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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*Please describe the contracting officer’s planned approach for flowing down the Section 890 pilot authority to subcontracts. Please indicate whether the intent is to apply the authority to some or all first tier subcontracts subject to the Truth in Negotiations Act; the type and extent of data to be required; and whether the authority will be flowed down to lower tier subcontracts. If the type and extent of data to be required is expected to be scaled based on subcontract dollar value or other considerations, please explain.*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**IV. Acquisition Team Information**

Contracting Officer name and contact information:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Buyer/Contract specialist name and contact information:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Considerations with Respect to Type and Extent of Certified Cost or Pricing Data to Be Required**

The intent of this implementation of the Section 890 pilot program is to provide the flexibility for contracting officers to strategically identify and require submission of the specific cost or pricing data, including actual cost history details, which are expected to be most relevant in establishing a fair and reasonable price for the recurring costs associated with a product which has meaningful price history under DoD acquisitions. Contracting officers requesting approval to utilize this pilot program authority should be prepared to develop a strategy which will facilitate analysis of the contractor’s proposal for the current requirement, including any non-recurring or unique aspects. Considerations may include the following:

**Actual costs for relevant prior acquisitions for which performance is not complete:** If any of the prior acquisitions to be used to establish price reasonableness for the current requirement are not physically complete as of the date of issuance of the solicitation, the contracting officer should require the contractor to provide and support their estimate to complete (ETC). (Document the requirement in the deviation version of 252.215-7010 or the request for proposal for a contract modification in accordance with 252.215-7XXX, as applicable.) Additionally, for incomplete efforts at both the prime and the subcontract level, the contractor/subcontractor should be required to provide a data refresh prior to commencement of negotiations and prior to conclusion of negotiations between the Government and the prime. Contractor refusals to disclose ETC values should be elevated through the management chain as described in DFARS PGI 215.404-1(a)(i)(A).

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**Non-recurring effort**: The contracting officer will need to consider non-recurring effort from two perspectives. First, the contractor should be required to separately identify the non-recurring activity performed in prior acquisitions, and provide adequate actual cost details to ensure exclusion of that cost from cost estimates for the current requirement. Secondly, the contracting officer will need to work with the contractor to identify non-recurring requirements which are part of the current acquisition.

The CO must then determine the type and extent of certified cost or pricing data required to support establishment of a fair and reasonable price for that portion of the effort.

**Fixed vs variable cost**: Where there are quantity differences between the current requirement and the prior acquisitions to be used to establish price reasonableness, it is critical that the contracting officer take into account the impact of fixed vs variable costs. The contractor should be required to separately identify the fixed and variable components of the historical actuals, and provide the cost of each at a level of detail that will support the Government’s appropriate use of the historical actuals in the evaluation of the proposed cost for the current requirement.

**Changed requirements**: If there are significant requirement changes between the prior acquisitions and the current requirement, the contracting officer must develop an appropriate approach for segregating the costs associated with tasks performed in the prior acquisitions that are not required in the instant effort, to ensure those costs are not projected into estimates for the current requirements.

Additionally, the contracting officer must determine what cost or pricing data will be required to support new work not required or performed under the prior acquisitions.

**Labor**: The contracting officer will need to ensure that the contractor provides adequate insight into the composition of the historical labor actuals to inform the Government’s evaluation of the proposal for the current requirement. For example, the prior actuals may need to show hours by labor category by task. Where labor hours included in the historical acquisitions were proposed based on factors, and the contractor’s proposal for the current requirement is expected to use the same or similar factors, it may be useful to compare proposed factors for prior acquisitions to actual outcomes for those efforts.

**Subcontracts subject to the Truth in Negotiations Act (TINA)**: For the purposes of this pilot, the authority provided under Section 890 of the FY19 NDAA may be flowed down to first-tier or lower-tier subcontracts subject to TINA, at the discretion of the contracting officer. This means that, for those subcontracts for which the pilot authority is flowed down, the contracting officer for acquisitions approved for participation in the pilot will need to establish the extent, structure, and level of detail of the historical actual cost data which subcontractors will be required to submit in lieu of traditional certified cost or pricing data, and must ensure that the actuals are presented in a manner that will support efficient and effective evaluation of the subcontract proposal for the current requirement. It may be useful to stratify the covered subcontracts by proposed dollar value; for a subset of the subcontracts (generally, the major subcontracts), the contracting officer may find it appropriate to require submission of actuals at a level of detail similar to the types of breakout required for the prime contractor’s prior actuals. For some subcontracts it may be appropriate to obtain only limited insight into the total actuals, e.g., total cost, total labor dollars/hours, and total material. For lower dollar subcontracts, it may be appropriate to either require submission of the subcontractor’s recurring actual cost for specified prior acquisitions in support of DoD contracts, or simply obtain the prime’s purchase order history for the specified prior acquisitions. The contracting officer’s insight into the quality of the

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prime’s negotiated vendor pricing in the context of the historical acquisitions may come into play in making this decision. For those subcontracts for which the pilot authority is flowed down, consideration should be given to obtaining subcontract cost breakouts segregating recurring and non- recurring effort, at a minimum. If there are significant quantity variations between the prior subcontracts and the current requirement, it may also be prudent to gain insight into the breakout of fixed and variable costs under the subcontract. Cost implications of requirement changes between the prior subcontracts and the current requirement must be considered: the cost of work performed under prior subcontracts but not currently required must be segregated in the historical actuals, while new requirements must be adequately supported in the subcontract proposal, since the cost history of prior subcontracts will not be informative with respect to the new work. The contracting officer may wish to consider whether there is benefit in requiring submission of the prime’s cost analyses for select subcontracts, as these become available. In addition to the historical actuals, the contracting officer should also consider requiring the prime contractor and its subcontractors to disclose suppliers’ quotes, offers, and agreed-to vendor pricing for the current requirement as those data become available.

**Material and subcontracts below the TINA threshold or meeting a TINA exception:** The deviation provision DFARS 252.215-7010(d)(5) and deviation clause 252.215-7XXX(c)(5) in support of this pilot address expectations with respect to subcontracts not subject to TINA. The Government has no entitlement to incurred cost data for these subcontracts. The PCO will need to consider whether data in addition to the prime contractor’s purchase order history will be needed to support proposed pricing for these items. In particular, where the prime contractor has made a commerciality assertion with regard to a subcontractor, the contracting officer will need to consider whether data other than certified cost or pricing data will be required, and if so, the type and extent of data.

**Interdivisional transfers:** For interdivisional transfers subject to TINA, the PCO will need to determine the appropriate level of detail for supporting cost or pricing data. Considerations may include the dollar value of the interdivisional transfer and the complexity of the effort.

**ODCs:** While discrete ODCs are often proposed based on judgmental estimates, the contracting officer should consider whether the historical ODC cost experience from the prior acquisitions may provide an appropriate basis for projection of ODC cost for the current effort. The concepts of recurring vs non- recurring costs and fixed vs variable, discussed above, may also come into play.

**Rates and factors**: It may be useful to compare proposed rates and factors for prior acquisitions to actual outcomes, especially with respect to estimating factors which are not the subject of an FPRA or an FPRR. However, contracting officers would generally be expected to use prospective DCMA rate positions, when available, in the pricing of the current requirement.

**Format and content of the proposal for the current requirement**: The contracting officer should consider what traditional proposal content will still be required under the auspices of the Section 890 pilot, if the actual cost detail from prior acquisitions is provided, and what typical proposal content may be foregone. For example, the contractor should still be expected to submit a cost element summary at the CLIN level and in the aggregate, a priced bill of materials, and a time-phased breakdown of labor hours and rates by category. Labor basis of estimate (BOE) sheets may not be needed to support that portion of the current requirement which is identical to the requirements of prior buys, whereas the contractor should be expected to submit BOEs to support non-recurring effort which is not represented

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in the prior actuals. The contracting officer may elect to require submission of some prime cost analyses of subcontract proposals, while perhaps choosing to rely on the prime’s PO history or the subcontractor’s submission of prior actuals for other subcontracts. While the specifics will vary according to the circumstances of each pilot program acquisition, it is critical for the contracting officer to have a proposal evaluation plan in place in order to ensure that the optimal subset of data is obtained to permit efficient and effective proposal evaluation, negotiation, and establishment of a fair and

reasonable price.