

15.403-1 Prohibition on obtaining certified cost or pricing data (10 U.S.C. chapter 271 and 41 U.S.C. CHAPTER 35).

(a) *Certified cost or pricing data shall not be obtained for acquisitions at or below the simplified acquisition threshold.*

(b) *Exceptions to certified cost or pricing data requirements.* The contracting officer shall not require *certified cost or pricing data* to support any action (contracts, *subcontracts*, or modifications) (but may require *data other than certified cost or pricing data* as defined in FAR [2.101](#) to support a determination of a fair and reasonable *price or cost realism*)—

(1) When the *contracting officer* determines that *prices* agreed upon are based on adequate *price* competition (see standards in paragraph (c)(1) of this subsection);

(2) When the *contracting officer* determines that *prices* agreed upon are based on *prices* set by law or regulation (see standards in paragraph (c)(2) of this subsection);

(3) When a *commercial product* or *commercial service* is being acquired (see standards in paragraph (c)(3) of this subsection);

(4) When a waiver has been granted (see standards in paragraph (c)(4) of this subsection); or

(5) When modifying a contract or *subcontract* for *commercial products* or *commercial services* (see standards in paragraph (c)(3) of this section).

(c) Standards for exceptions from *certified cost or pricing data* requirements—

(1) *Adequate price competition.*

(i) A *price* is based on adequate *price* competition when—

(A) Two or more responsible *offerors*, competing independently, submit priced *offers* that satisfy the Government's expressed requirement;

(B) Award will be made to the *offeror* whose proposal represents the *best value* (see [2.101](#)) where *price* is a substantial factor in source selection; and

(C) There is no finding that the *price* of the otherwise successful *offeror* is unreasonable. Any finding that the *price* is unreasonable *must* be supported by a statement of the facts and approved at a level above the *contracting officer*.

(ii) For agencies other than DoD, NASA, and the Coast Guard, a *price* is also based on adequate *price* competition when—

(A) There was a reasonable expectation, based on *market research* or other assessment, that two or more responsible *offerors*, competing independently, would submit priced *offers* in response to the *solicitation's* expressed requirement, even though only one *offer* is received from a responsible

offeror and if-

(1) Based on the *offer* received, the *contracting officer* can reasonably conclude that the *offer* was submitted with the expectation of competition, e.g., circumstances indicate that-

(i) The *offeror* believed that at least one other *offeror* was capable of submitting a meaningful *offer*; and

(ii) The *offeror* had no reason to believe that other potential *offerors* did not intend to submit an *offer*; and

(2) The determination that the proposed *price* is based on adequate *price* competition and is reasonable has been approved at a level above the *contracting officer*; or

(B) *Price* analysis clearly demonstrates that the proposed *price* is reasonable in comparison with current or recent *prices* for the same or similar items, adjusted to reflect changes in market conditions, economic conditions, quantities, or terms and conditions under contracts that resulted from adequate *price* competition.

(2) *Prices set by law or regulation*. Pronouncements in the form of periodic rulings, reviews, or similar actions of a governmental body, or embodied in the laws, are sufficient to set a *price*.

(3) *Commercial products and commercial services*.

(i) Any *acquisition* that the *contracting officer* determines meets the *commercial product* or *commercial service* definition in 2.101, or any modification, as defined in paragraph (3)(i) of the *commercial product* definition, that does not change a *commercial product* to other than commercial, is exempt from the requirement for *certified cost or pricing data*. If the *contracting officer* determines that a product or service claimed to be commercial is not, and that no other exception or waiver applies (e.g., the *acquisition* is not based on adequate *price* competition; the *acquisition* is not based on *prices* set by law or regulation; and the *acquisition* exceeds the threshold for the submission of *certified cost or pricing data* at 15.403-4(a)(1)) the *contracting officer* shall require submission of *certified cost or pricing data*.

(ii) In accordance with section 41 U.S.C. 3501:

(A) When purchasing services that are not offered and sold competitively in substantial quantities in the commercial marketplace, but are of a type offered and sold competitively in substantial quantities in the commercial marketplace, they *may* be considered *commercial services* (thus meeting the purpose of 41 U.S.C. chapter 35 and 10 U.S.C. chapter 271 for truth in negotiations) only if the *contracting officer* determines *in writing* that the *offeror* has submitted sufficient information to evaluate, through *price* analysis, the reasonableness of the *price* of such services.

(B) In order to make this determination, the *contracting officer* *may* request the *offeror* to submit *prices* paid for the same or similar *commercial services* under comparable terms and conditions by both Government and commercial customers; and

(C) If the *contracting officer* determines that the information described in paragraph (c)(3)(ii)(B) of this section is not sufficient to determine the reasonableness of *price*, other relevant information regarding the basis for *price* or cost, including information on labor costs, material costs and overhead rates *may* be requested.

(iii) The following requirements apply to minor modifications defined in paragraph (3)(ii) of the definition of a *commercial product* at [2.101](#) that do not change the *commercial product* to other than commercial:

(A) For *acquisitions* funded by any agency other than DoD, NASA, or Coast Guard, such modifications of a *commercial product* are exempt from the requirement for submission of *certified cost or pricing data*.

(B) For *acquisitions* funded by DoD, NASA, or Coast Guard, such modifications of a *commercial product* are exempt from the requirement for submission of *certified cost or pricing data* provided the total *price* of all such modifications under a particular contract action does not exceed the greater of the threshold for obtaining *certified cost or pricing data* in [15.403-4](#) or 5 percent of the total *price* of the contract at the time of contract award.

(C) For *acquisitions* funded by DoD, NASA, or Coast Guard such modifications of a *commercial product* are not exempt from the requirement for submission of *certified cost or pricing data* on the basis of the exemption provided for at [15.403-1\(c\)\(3\)](#) if the total *price* of all such modifications under a particular contract action exceeds the greater of the threshold for obtaining *certified cost or pricing data* in [15.403-4](#) or 5 percent of the total *price* of the contract at the time of contract award.

(iv) Any *acquisition* for other than *commercial products* or services treated as *commercial products* or *commercial services* at [12.102\(f\)\(1\)](#), except sole source contracts greater than \$20 million, is exempt from the requirements for *certified cost or pricing data* ([41 U.S.C.1903](#)).

(4) *Waivers*. The *head of the contracting activity* (HCA) may, without power of delegation, waive the requirement for submission of *certified cost or pricing data* in exceptional cases. The authorization for the waiver and the supporting rationale shall be *in writing*. The HCA may consider waiving the requirement if the *price* can be determined to be fair and reasonable without submission of *certified cost or pricing data*. For example, if *certified cost or pricing data* were furnished on previous production buys and the *contracting officer* determines such data are sufficient, when combined with updated data, a waiver may be granted. If the HCA has waived the requirement for submission of *certified cost or pricing data*, the contractor or higher-tier subcontractor to whom the waiver relates shall be considered as having been required to provide *certified cost or pricing data*. Consequently, award of any lower-tier *subcontract* expected to exceed the *certified cost or pricing data* threshold requires the submission of *certified cost or pricing data* unless-

(i) An exception otherwise applies to the *subcontract*; or

(ii) The waiver specifically includes the *subcontract* and the rationale supporting the waiver for that *subcontract*.

Parent topic: [15.403 Obtaining certified cost or pricing data](#).