

## **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.](#)