

15.403-3 Requiring data other than certified cost or pricing data.

(a)

(1) In those *acquisitions* that do not require *certified cost or pricing data*, the *contracting officer shall*—

(i) Obtain whatever data are available from Government or other secondary sources and use that data in determining a fair and reasonable *price*;

(ii) Require submission of *data other than certified cost or pricing data*, as defined in [2.101](#), from the *offeror* to the extent necessary to determine a fair and reasonable *price* ([10 U.S.C. 3705\(a\)](#) and 41 U.S.C.3505(a)) if the *contracting officer* determines that adequate data from sources other than the *offeror* are not available. This includes requiring data from an *offeror* to support a *cost realism* analysis;

(iii) Consider whether cost data are necessary to determine a fair and reasonable *price* when there is not adequate *price* competition;

(iv) Require that the data submitted by the *offeror* include, at a minimum, appropriate data on the *prices* at which the same item or similar items have previously been sold, adequate for determining the reasonableness of the *price* unless an exception under [15.403-1\(b\)\(1\)](#) or (2) applies; and

(v) Consider the guidance in section [3.3](#), chapter 3, volume I, of the Contract *Pricing* Reference Guide cited at [15.404-1\(a\)\(7\)](#) to determine the data an *offeror shall* be required to submit.

(2) The contractor's format for submitting the data *should* be used (see [15.403-5\(b\)\(2\)](#)).

(3) The *contracting officer shall* ensure that data used to support *price* negotiations are sufficiently current to permit negotiation of a fair and reasonable *price*. Requests for updated *offeror* data *should* be limited to data that affect the adequacy of the proposal for negotiations, such as changes in *price* lists.

(4) As specified in section 808 of the Strom Thurmond *National Defense* Authorization Act for Fiscal Year 1999 (Pub. L. 105-261), an *offeror* who does not comply with a requirement to submit data for a contract or *subcontract* in accordance with paragraph (a)(1) of this subsection is *ineligible* for award unless the HCA determines that it is in the best interest of the Government to make the award to that *offeror*, based on consideration of the following:

(i) The effort made to obtain the data.

(ii) The need for the item or service.

(iii) Increased cost or significant harm to the Government if award is not made.

(b) Adequate *price* competition. When adequate *price* competition exists (see [15.403-1\(c\)\(1\)](#)), generally no additional data are necessary to determine the reasonableness of *price*. However, if there are unusual circumstances where it is concluded that additional data are necessary to

determine the reasonableness of *price*, the *contracting officer shall*, to the maximum extent practicable, obtain the additional data from sources other than the *offeror*. In addition, the *contracting officer should* request data to determine the *cost realism* of competing *offers* or to evaluate competing approaches.

(c) *Commercial products and commercial services.*

(1) At a minimum, the *contracting officer must* use *price* analysis to determine whether the *price* is fair and reasonable whenever the *contracting officer* acquires a *commercial product* or *commercial service* (see [15.404-1\(b\)](#)). The fact that a *price* is included in a catalog does not, in and of itself, make it fair and reasonable. If the *contracting officer* cannot determine whether an offered *price* is fair and reasonable, even after obtaining additional data from sources other than the *offeror*, then the *contracting officer shall* require the *offeror* to submit *data other than certified cost or pricing data* to support further analysis (see [15.404-1](#)). This data *may* include history of sales to non-governmental and governmental entities, cost data, or any other information the *contracting officer* requires to determine the *price* is fair and reasonable. Unless an exception under [15.403-1\(b\)\(1\)](#) or (2) applies, the *contracting officer shall* require that the data submitted by the *offeror* include, at a minimum, appropriate data on the *prices* at which the same item or similar items have previously been sold, adequate for determining the reasonableness of the *price*.

(2) *Limitations relating to commercial products or commercial services* [10 U.S.C. 3705\(b\)](#) and [41 U.S.C. 3505\(b\)](#).

(i) The *contracting officer shall* limit requests for sales data relating to *commercial products* or *commercial services* to data for the same or similar items during a relevant time period.

(ii) The *contracting officer shall*, to the maximum extent practicable, limit the scope of the request for data relating to *commercial products* or *commercial services* to include only data that are in the form regularly maintained by the *offeror* as part of its commercial operations.

(iii) The Government *shall* not disclose outside the Government data obtained relating to *commercial products* or *commercial services* that is exempt from disclosure under [24.202\(a\)](#) or the Freedom of Information Act ([5 U.S.C. 552\(b\)](#)).

(3) For 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, see [15.403-1\(c\)\(3\)\(ii\)](#).

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