

Captain of the Port Lake Michigan, or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Lake Michigan or his designated on-scene representative.

(3) The "on-scene representative" of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Lake Michigan or his on-scene representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Lake Michigan or his on-scene representative.

Dated: April 3, 2007.

Bruce C. Jones,

Captain, U.S. Coast Guard, Captain of the Port Lake Michigan.

[FR Doc. E7-7628 Filed 4-20-07; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 3, and 52

[FAR Case 2006-007; Docket 2007-0001; Sequence 1; FAR Case 2006-007, Contractor Code of Ethics and Business Conduct]

RIN 9000-AK67

Federal Acquisition Regulation; FAR Case 2006-0007, Contractor Code of Ethics and Business Conduct; Reopening of Comment Period

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule; Reopening of comment period.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to

address Contractor Code of Ethics and Business Conduct and the display of Federal agency Office of the Inspector General (OIG) Fraud Hotline Poster. The comment period is extended an additional 30 days to provide additional time for interested parties to review the proposed FAR changes.

DATES: Interested parties should submit comments in writing on or before May 23, 2007 to be considered in the formulation of a proposed rule.

ADDRESSES: Submit comments identified by FAR case 2006-007 by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Search for any document by first selecting the proper document types and selecting "Federal Acquisition Regulation" as the agency of choice. At the "Keyword" prompt, type in the FAR case number (for example, FAR Case 2006-007) and click on the "Submit" button. Please include any personal and/or business information inside the document. You may also search for any document by clicking on the "Advanced search/document search" tab at the top of the screen, selecting from the agency field "Federal Acquisition Regulation", and typing the FAR case number in the keyword field. Select the "Submit" button.

- Fax: 202-501-4067.

- Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW., Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR case 2006-007 in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Woodson, Procurement Analyst, at (202) 501-3775 for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755. Please cite FAR case 2006-007.

SUPPLEMENTARY INFORMATION: The Councils published a proposed rule in the **Federal Register** at 72 FR 7588, February 16, 2007. To allow additional time for interested parties to review the proposed FAR changes, the comment period is extended for an additional 30-

Dated: April 17, 2007

Al Matera,

Acting Director, Acquisition Policy Division.

[FR Doc. 07-1985 Filed 4-20-07; 8:45 am]

BILLING CODE 6820-EP-S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 4, 12, 14, 15, 16, 19, 27, 30, 31, 32, 42, 44, 49, and 52

[FAR Case 2005-036; Docket 2007-001, Sequence 7]

RIN: 9000-AK74

Federal Acquisition Regulation; FAR Case 2005-036, Definition of Cost or Pricing Data

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to revise the definition of "cost or pricing data"; change the term "information other than cost or pricing data" to "data other than certified cost or pricing data"; add a definition of "certified cost or pricing data" to make the terms and definitions consistent with 10 U.S.C. 2306a and 41 U.S.C. 254b and more understandable to the general reader; change terminology throughout the FAR; and clarify the need to obtain data other than certified cost or pricing data when there is no other means to determine fair and reasonable pricing during price analysis.

DATES: Interested parties should submit written comments to the FAR Secretariat on or before June 22, 2007 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAR case 2005-036 by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Search for any document by first selecting the proper document types and selecting "Federal Acquisition Regulation" as the agency of choice. At the "Keyword" prompt, type in FAR Case number Case 2005-036 and click on the "Submit" button. Please include any personal and/or

business information inside the document. You may also search for any document by clicking on the "Advanced search/document search" tab at the top of the screen, selecting from the agency field "Federal Acquisition Regulation", and typing the FAR case number in the keyword field. Select the "Submit" button.

- Fax: 202-501-4067.
- Mail: General Services

Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR case 2005-036 in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Patrick Conley at (202) 501-4770 for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755. Please cite FAR case 2005-036.

SUPPLEMENTARY INFORMATION:

A. Background

The Defense Acquisition Regulatory Council and the Civilian Agency Acquisition Council (the Councils) reviewed FAR 15.4 for needed clarification based on several events and an initial Defense Acquisition Regulation Supplement (DFARS) Case (2004-D019) that identified confusion concerning when cost or pricing data can and should be obtained. Several events identified confusion over the difference between "cost or pricing data" and "information other than cost or pricing data," the requirement to obtain "information other than cost or pricing data," and the requirement to submit "cost or pricing data" in accordance with the instructions at Table 15-2 at FAR 15.408.

On May 30, 2001 the Department of Defense Inspector General (DoD IG) issued Report No. D2001-129 that identified a situation in which contracting officers did not obtain adequate pricing information or information other than cost or pricing data for justifying price reasonableness. As a result of the Inspector General report, in March 2002, the Director of Defense Procurement issued a memorandum, titled "Price Analysis and Price Reasonableness Determinations When Cost or Pricing Data are not Obtained," to Defense agencies and military departments to

reiterate the need to obtain sufficient pricing or cost data to justify that prices are fair and reasonable.

A Defense Acquisition University (DAU) study on the "Tanker Lease Program: Acquisition Lessons Learned" questioned the consistency of the definition and usage of the term "cost or pricing data" in the FAR, DFARS and the statute. The study indicated that clarification is needed to show that both terms are referring to the same information/data. The study pointed out that the statutory language indicates that the distinguishing characteristic of certified cost or pricing data is certification, and not the level of detail of the cost or pricing data.

In 2005, Congress expressed concern regarding an Air Force defective pricing case related to judgmental factors as cost or pricing data. Based on the legal issues raised in the case, Congress is concerned that FAR regulations are ambiguous, especially in the definition of cost or pricing data in FAR 2.101 and the discussion of cost or pricing data in Table 15-2.

In its supplemental report dated October 24, 2005 for DFARS Case 2004-D019, Commercial Item Acquisition, the DFARS Pricing Committee concluded that there appears to be a misunderstanding with the use of the terminology that is currently contained in the FAR and carried forward into the DFARS with regard to "cost or pricing data" and "information other than cost or pricing data." The apparent misunderstanding leads to confusion over what information can be obtained under "information other than cost or pricing data." The Councils believe that the terminology should be changed because they believe that it should be clear that the contracting officer should be free to ask for any information necessary to determine the price to be fair and reasonable. This could include any cost data or pricing data that would support price reasonableness even though certification is not required. The Councils believe it to be extremely important to resolve any misunderstanding amongst Government and contractor acquisition professionals by ensuring that the definition is fully clarified.

The Councils researched the information identified, met with the Air Force General Counsel to discuss its findings and concerns about the defective pricing cases, obtained input from field personnel, and researched the Truth In Negotiations Act (TINA). The DoD IG also made a presentation to the Councils about recent findings and concerns.

The Air Force General Counsel briefed the Councils on issues that arose during defective pricing cases related to the information that is required to be submitted by contractors, specifically related to Table 15-2 at FAR 15.408 and referenced at 52.215-20(b). They recommended that the Councils revise the clause to make it clear that the data in Table 15-2 are required to be submitted when TINA applies.

The DoD IG briefed the Councils on recent findings related to reviews of sole source commercial item pricing and specifically about confusion over the contracting officer's ability to obtain cost or pricing data (uncertified), sales information, and other data necessary to determine prices to be fair and reasonable. The DoD IG expressed a concern that current FAR language does not point out that 10 U.S.C. 2306a(d)(1) requires contracting officers to obtain "at a minimum, appropriate information on the prices at which the same item or similar items have previously been sold, adequate for determining the reasonableness of the price." The DoD IG also suggested a need to have a separate section in the FAR for the pricing of sole source commercial items (not based on adequate price competition). The DoD IG believes that the wording in the clause at 52.215.20 for obtaining information other than cost or pricing data should be part of the terms and conditions for contracts awarded under Part 12. The DoD IG also stated that during its reviews it encountered confusion about the determination of price reasonableness for "of a type" commercial items and the process for obtaining sufficient information to determine that the prices for those items are fair and reasonable.

The Councils determined that the current definitions at FAR 2.101 for "cost or pricing data" and "information other than cost or pricing data" need to be revised to be consistent with the requirements at 10 U.S.C. 2306a and 41 U.S.C. 254b and should be better defined so it is clear that the underlying information is the same, but the requirement to certify that data distinguishes the TINA requirements. The Councils also concluded that FAR 15.4 needs to be revised to clarify the need and authority to obtain a detailed cost estimate, including cost or pricing data, when there is no other means to determine fair and reasonable pricing during price analysis even though the cost or pricing data will not be certified. As part of this clarification, the Councils revised the provisions at 52.215-20 and 52.215-21 to clarify the use of Table 15-2 at FAR 15.408. However, the Councils

did not find that there should be a separate section for pricing commercial sole source (non-competitive) items. With these clarifications, the Councils believe the hierarchy at 15.402 applies and clearly provides the contracting officer with the authority to obtain whatever data is necessary to determine whether the proposed prices are fair and reasonable, up to and including a detailed cost estimate and cost or pricing data (but excluding a certificate) - whether a sole source or other situation is involved.

The Councils decided to revise the definition of "cost or pricing data" to remove the sentence "*Cost or pricing data are data requiring certification in accordance with 15.406-2,*" as it makes the definition inconsistent with 10 U.S.C. 2306a and 41 U.S.C. 254b, and replace this with a definition of "certified cost or pricing data." A definition of "cost or pricing data" that is consistent with 10 U.S.C. 2306a and 41 U.S.C. 254b is added.

The Councils also changed the term "information other than cost or pricing data" to "data other than certified cost or pricing data" to be consistent with 10 U.S.C. 2306a and 41 U.S.C. 254b. In addition, the Councils revised the definition to clarify that contracting officers are to obtain whatever information is necessary to determine that prices are fair and reasonable. This change clearly establishes that the underlying data can be the same (detailed cost estimates and cost or pricing data). The difference occurs when the pricing action meets the requirements at 10 U.S.C. 2306a(a)(1) and 41 U.S.C. 254b(a)(1); that data must be certified. Likewise, when the certification requirements at 10 U.S.C. 2306a(a)(2) and 41 U.S.C. 254b(a)(2) do not apply, the contracting officer can obtain the same information (detailed cost estimates and cost or pricing data) when there are no other means to determine prices fair and reasonable, but that data cannot be certified. The contracting officer may also obtain only specified portions of this information, depending on the contracting officer's needs. This clarification is especially important when purchasing noncompetitive commercial items.

The Councils added a definition for "certified cost or pricing data" to clarify the distinction that certified cost or pricing data is a two-step process consisting of (1) the offeror/contractor submitting cost or pricing data, and (2) the offeror/contractor providing a certificate of current cost or pricing data at a certain date prior to agreement on price. This term also distinguishes that, when exceptions apply, it is only the

certificate that shall not be required, consistent with 10 U.S.C. 2306a(b) and 41 U.S.C. 254b(b). This is further clarified in 10 U.S.C. 2306(d) and 41 U.S.C. 254b, which require that contracting officers obtain data "...other than CERTIFIED cost or pricing data to the extent necessary to determine the reasonableness of the price..." (emphasis added).

To bring the FAR into closer compliance with 10 U.S.C. 2306a(d)(1) and 41 U.S.C. 254b(d)(1), the Councils also added the following language in 15.403-3(c):

Unless an exception under 15.403-1(b)(1) or (2) applies, the contracting officer must require that the information submitted by the offeror include, at a minimum, appropriate information on the prices at which the same item or similar items have previously been sold, adequate for determining the reasonableness of the price.

Other clarifying changes for obtaining certified cost or pricing data or data other than certified cost or pricing data are contained in the proposed FAR changes. These changes clarify that contracting officers must require the submission of whatever information is necessary to document a valid basis for determining prices to be fair and reasonable, using the hierarchy at FAR 15.402, without requesting anymore information than is necessary to adequately document the determination.

The Councils considered revising the terms to: "certified cost or pricing data" and "non-certified pricing and cost data." However, the Councils determined that the terms need to be consistent with 10 U.S.C. 2306a and 41 U.S.C. 254b. Most importantly though, if the FAR authorized the contracting officer only to obtain "noncertified cost or pricing data" when a certificate is not required, the FAR would not contain authority to obtain detailed cost estimates plus the noncertified cost or pricing data; it would only contain authority to obtain "cost or pricing" that is not certified. The distinction between detailed cost estimates and "cost or pricing data" is that "cost or pricing data" are defined in TINA, and they are limited to a subset of the information that Table 15-2 requires. The 10 U.S.C. 2306a(h)(1) definition of cost or pricing data states "the term does not include information that is judgmental, but does include the factual information from which a judgment was derived." Therefore, if a contracting officer needs a complete cost estimate and supporting judgments, the contracting officer needs more than just the noncertified cost or pricing data.

The proposed changes are expected to resolve confusion and to provide

contracting officers and contractors the necessary clarification that the contracting officer has the authority (and requirement) to request, obtain, and evaluate whatever pricing or cost information is needed to make a determination that prices are fair and reasonable - using the hierarchy at FAR 15.402.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because this proposed rule is clarifying existing statutory and regulatory authorities. It is not establishing new authorities or procedures. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Part 2, 4, 12, 14, 15, 16, 19, 27, 30, 31, 32, 42, 44, 49, and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2005-036), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 9000-0013.

List of Subjects in 48 CFR Parts 2, 4, 12, 14, 15, 16, 19, 27, 30, 31, 32, 42, 44, 49, and 52

Government procurement.

Dated: April 12, 2007.

Al Matera,

Acting Director, Contract Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 2, 4, 12, 14, 15, 16, 19, 27, 30, 31, 32, 42, 44, 49, and 52 as set forth below:

1. The authority citation for 48 CFR parts 2, 4, 12, 14, 15, 16, 19, 27, 30, 31, 32, 42, 44, 49, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101 in paragraph (b)(2) by—

a. Adding, in alphabetical order, the definition “Certified cost or pricing data”;

b. Revising the introductory text of the definition “Cost or pricing data”;

c. Adding, in alphabetical order, the definition “Data other than certified cost or pricing data”;

d. Removing the definition “Information other than cost or pricing data”.

The added and revised text reads as follows:

2.101 Definitions.

* * * * *

(b) * * *

(2) * * *

Certified cost or pricing data means “cost or pricing data” that has been required to be submitted and has been certified, or is required to be certified, in accordance with 15.406–2. This certification states that, to the best of the person’s knowledge and belief, the cost or pricing data is accurate, complete, and current as of a date certain before contract award. Cost or pricing data is required to be certified in certain procurements (10 U.S.C. 2306a and 41 U.S.C. 254b). See FAR 15.403–4.

* * * * *

Cost or pricing data (10 U.S.C. 2306a(h)(1) and 41 U.S.C. 254b) means all facts that, as of the date of price agreement, or, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on price, prudent buyers and sellers would reasonably expect to affect price negotiations significantly. Cost or pricing data are factual, not judgmental; and are verifiable. While they do not indicate the accuracy of the prospective contractor’s judgment about estimated future costs or projections, they do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred. They also include, but are not limited to, such factors as—

* * * * *

Data other than certified cost or pricing data means any data, including cost or pricing data and judgmental information necessary for the contracting officer to determine a fair and reasonable price or cost realism, where certification is not required in

accordance with 15.406–2. For example, such data may include pricing, sales, or cost data, and includes cost or pricing data for which certification is determined inapplicable after submission.

* * * * *

PART 4—ADMINISTRATIVE MATTERS**4.704 [Amended]**

3. Amend section 4.704 in paragraph (b) by removing “for cost” and adding “for certified cost” in its place.

4. Amend section 4.803 by revising paragraphs (a)(17) and (b)(4) to read as follows:

4.803 Contents of contract files.

* * * * *

(a) * * *

(17) Data and information related to the Contracting Officer’s determination of a fair and reasonable price. This may include—

(i) Cost or pricing data;

(ii) Data other than certified cost or pricing data;

(iii) Certified cost or pricing data;

(iv) Justification for waiver from the requirement to submit certified cost or pricing data; or

(v) Certificates of Current Cost or Pricing Data.

* * * * *

(b) * * *

(4) Certified cost or pricing data, Certificates of Current Cost or Pricing Data, or data other than certified cost or pricing data; cost or price analysis; and other documentation supporting contractual actions executed by the contract administration office.

* * * * *

PART 12—ACQUISITION OF COMMERCIAL ITEMS**12.102 [Amended]**

5. Amend section 12.102 in paragraph (f)(2)(ii) by removing “Cost or pricing” and adding “Certified cost or pricing” in its place.

12.504 [Amended]

6. Amend section 12.504 in paragraph (a)(7) by removing “provide cost” and adding “provide certified cost” in its place.

PART 14—SEALED BIDDING

7. Amend section 14.201–7 by removing from paragraph (a) “of cost” and adding “of certified cost” in its place; and by revising paragraphs (b)(1) and (c)(1) to read as follows:

14.201–7 Contract clauses.

* * * * *

(b) * * *

(1) When contracting by sealed bidding, the contracting officer shall insert the clause at 52.214–27, Price Reduction for Defective Certified Cost or Pricing Data—Modifications—Sealed Bidding, in solicitations and contracts if the contract amount is expected to exceed the threshold for submission of certified cost or pricing data at 15.403–4(a)(1).

* * * * *

(c) * * *

(1) When contracting by sealed bidding, the contracting officer shall insert the clause at 52.214–28, Subcontractor Certified Cost or Pricing Data—Modifications—Sealed Bidding, in solicitations and contracts if the contract amount is expected to exceed the threshold for submission of certified cost or pricing data at 15.403–4(a)(1).

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

8. Amend section 15.204–5 by revising paragraph (b)(5) to read as follows:

15.204–5 Part IV—Representations and Instructions.

* * * * *

(b) * * *

(5) Certified cost or pricing data (see Table 15–2 of 15.408) or data other than certified cost or pricing data.

* * * * *

9. Amend section 15.402 by revising the introductory text and paragraph (a) to read as follows:

15.402 Pricing policy.

Contracting officers shall—

(a) Purchase supplies and services from responsible sources at fair and reasonable prices. In establishing the reasonableness of the offered prices, the contracting officer shall not obtain more data or information than is necessary. The contracting officer shall generally use the following order of preference in determining the type of data required:

(1) No additional data from the offeror, if the price is based on adequate price competition, except as provided by 15.403–3(b).

(2) Data other than certified cost or pricing data:

(i) Data related to prices (e.g., established catalog or market prices, sales, or previous contract prices), relying first on data available within the Government; second, on data obtained from sources other than the offeror; and, if necessary, on data obtained from the offeror. When obtaining data from the offeror is necessary, unless an exception

under 15.403-1(b)(1) or (2) applies, such data submitted by the offeror shall include, at a minimum, appropriate data on the prices at which the same or similar items have been sold previously, adequate for evaluating the reasonableness of the price.

(ii) Cost data necessary for the contracting officer to determine a fair and reasonable price.

(3) *Certified cost or pricing data.* When required by 15.403-4.

* * * * *

10. Amend section 15.403 by revising the section heading to read as follows:

15.403 Obtaining certified cost or pricing data.

* * * * *

11. Amend section 15.403-1 by—

a. Revising the section heading, paragraph (a), the introductory text of paragraphs (b) and (c), and paragraph (c)(3)(i);

b. Removing from paragraphs (c)(3)(ii)(A), (B), and (C) “of cost” and adding “of certified cost” in its place;

c. Removing from paragraph (c)(3)(iii) “for cost” and adding “for certified cost” in its place; and

d. Revising the introductory text of paragraph (c)(4).

The revised text reads as follows:

15.403-1 Prohibition on obtaining certified cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 254b).

(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)—

* * * * *

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

* * * * *

(3) * * *

(i) Any acquisition of an item that meets the commercial item definition in 2.101, or any modification, as defined in paragraph (3)(i) of that definition, that does not change the item from a commercial item to a noncommercial item, is exempt from the requirement for certified cost or pricing data. If the contracting officer determines that an item claimed to be commercial is, in fact, not commercial and that no other exception or waiver applies, the

contracting officer shall require submission of certified cost or pricing data.

* * * * *

(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—

* * * * *

12. Revise section 15.403-2 to read as follows:

15.403-2 Other circumstances where certified cost or pricing data are not required.

(a) The exercise of an option at the price established at contract award or initial negotiation does not require submission of certified cost or pricing data.

(b) Certified cost or pricing data are not required for proposals used solely for overrun funding or interim billing price adjustments.

13. Revise section 15.403-3 to read as follows:

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

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

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

(ii) If the contracting officer cannot obtain adequate data from sources other than the offeror, the contracting officer shall require submission of data other than certified cost or pricing data, as defined in 2.101, from the offeror that is adequate to determine a fair and reasonable price (10 U.S.C. 2306a(d)(1)

and 41 U.S.C. 254b(d)(1)). This includes data from an offeror to support a cost realism analysis.

(iii) In situations where there is not adequate price competition, the contracting officer shall consider whether cost data are necessary to determine a fair and reasonable price.

(iv) 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.

(v) To determine the data an offeror shall be required to submit, the contracting officer shall consider the guidance in Section 3.3, Chapter 3, Volume I, of the Contract Pricing Reference Guide cited at 15.404-1(a)(7).

(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 is sufficiently current to permit negotiation of a fair and reasonable price. Requests for updated offeror data should be limited to data that affects the adequacy of the proposal for negotiations, such as changes in price lists.

(4) As specified in Section 808 of Public Law 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 section 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 is necessary to determine the reasonableness of price. However, if there are unusual circumstances where it is concluded that additional data is 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 items.* (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 item (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 sales history, 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 items (10 U.S.C. 2306a(d)(2) and 41 U.S.C. 254b(d)).*

(i) The contracting officer shall limit requests for sales data relating to commercial items 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 items to include only data that is 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 items that is exempt from disclosure under 24.202(a) or the Freedom of Information Act (5 U.S.C. 552(b)).

14. Amend section 15.403-4 by revising the section heading, the introductory text of paragraphs (a)(1), (a)(1)(iii), and (b) and paragraphs (a)(1)(ii), (a)(2), (b)(1), and (c) to read as follows:

15.403-4 Requiring certified cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 254b).

(a)(1) The contracting officer shall obtain certified cost or pricing data only if the contracting officer concludes that none of the exceptions in 15.403-1(b) applies. However, if the contracting officer has reason to believe exceptional circumstances exist and has sufficient data available to determine a fair and reasonable price, then the contracting officer should consider requesting a waiver under the exception at 15.403-1(b)(4). The threshold for obtaining

certified cost or pricing data is \$650,000. Unless an exception applies, certified cost or pricing data are required before accomplishing any of the following actions expected to exceed the current threshold or, for existing contracts, the threshold specified in the contract:

* * * * *

(ii) The award of a subcontract at any tier, if the contractor and each higher-tier subcontractor were required to submit certified cost or pricing data (but see waivers at 15.403-1(c)(4)).

(iii) The modification of any sealed bid or negotiated contract (whether or not certified cost or pricing data were initially required) or any subcontract covered by paragraph (a)(1)(ii) of this subsection. Price adjustment amounts must consider both increases and decreases (e.g., a \$200,000 modification resulting from a reduction of \$500,000 and an increase of \$300,000 is a pricing adjustment exceeding \$650,000). This requirement does not apply when unrelated and separately priced changes for which certified cost or pricing data would not otherwise be required are included for administrative convenience in the same modification. Negotiated final pricing actions (such as termination settlements and total final price agreements for fixed-price incentive and redeterminable contracts) are contract modifications requiring certified cost or pricing data if—

* * * * *

(2) Unless prohibited because an exception at 15.403-1(b) applies, the head of the contracting activity, without power of delegation, may authorize the contracting officer to obtain certified cost or pricing data for pricing actions below the pertinent threshold in paragraph (a)(1) of this section, provided the action exceeds the simplified acquisition threshold. The head of the contracting activity shall justify the requirement for certified cost or pricing data. The documentation shall include a written finding that certified cost or pricing data are necessary to determine whether the price is fair and reasonable and the facts supporting that finding.

(b) When certified cost or pricing data are required, the contracting officer shall require the contractor or prospective contractor to submit to the contracting officer (and to have any subcontractor or prospective subcontractor submit to the prime contractor or appropriate subcontractor tier) the following in support of any proposal:

(1) The certified cost or pricing data and data other than certified cost or pricing data.

* * * * *

(c) If certified cost or pricing data are requested and submitted by an offeror, but an exception is later found to apply, the data must not be considered certified cost or pricing data as defined in 2.101 and must not be certified in accordance with 15.406-2.

* * * * *

15. Amend section 15.403-5 by revising the section heading, paragraphs (a)(1), (a)(2), (a)(3), (b)(1), and (b)(2) to read as follows:

15.403-5 Instructions for submission of certified cost or pricing data and data other than certified cost or pricing data.

(a) * * *

(1) Whether certified cost or pricing data are required;

(2) That, in lieu of submitting certified cost or pricing data, the offeror may submit a request for exception from the requirement to submit certified cost or pricing data;

(3) Any data other than certified cost or pricing data that is required; and

* * * * *

(b) * * *

(1) Unless required to be submitted on one of the termination forms specified in Subpart 49.6, the contracting officer may require submission of certified cost or pricing data in the format indicated in Table 15-2 of 15.408, specify an alternative format, or permit submission in the contractor's format.

(2) Data other than certified cost or pricing data may be submitted in the offeror's own format unless the contracting officer decides that use of a specific format is essential for evaluating and determining the price is fair and reasonable and the format has been described in the solicitation.

* * * * *

16. Amend section 15.404-1 by:

a. Removing from paragraphs (a)(2) and (a)(3) "when cost" and adding "when certified cost" in its place;

b. Revising paragraph (a)(4) and the second sentence of paragraph (a)(6);

c. Revising the heading of paragraph (b);

d. Adding three sentences to the end of paragraph (b)(1);

e. Revising the second sentence of paragraph (b)(2)(i), and paragraphs (b)(2)(ii) and (b)(2)(vii);

f. Revising paragraph (c)(1);

g. Removing from paragraph (e)(1)

"may" and adding "should" in its place;

h. Adding paragraph (e)(3); and

i. Removing from the third sentence of paragraph (f)(2) "may" and adding "should" in its place.

The revised and added text reads as follows:

15.404-1 Proposal analysis techniques.

(a) * * *

(4) Cost analysis may also be used to evaluate data other than certified cost or pricing data to determine cost reasonableness or cost realism when a fair and reasonable price cannot be determined through price analysis alone for commercial or non-commercial items.

* * * * *

(6) * * * Any discrepancy or mistake of fact (such as duplications, omissions, and errors in computation) contained in the certified cost or pricing data or data other than certified cost or pricing data submitted in support of a proposal shall be brought to the contracting officer's attention for appropriate action.

* * * * *

(b) Price analysis for commercial and non-commercial items. (1) * * * Unless an exception under 15.403-1(b)(1) or (2) applies, at a minimum, the contracting officer shall obtain appropriate data on the prices at which the same item or similar items have previously been sold and determine if the data is adequate for evaluating the reasonableness of the price. Price analysis may include evaluating data other than certified cost or pricing data obtained from the offeror or contractor when there is no other means for determining a fair and reasonable price - see paragraph (c) of this section. Contracting officers shall obtain price or cost data from the offeror or contractor if that is the only means to determine the price to be fair and reasonable—including commercial item price analysis.

(2) * * *

(i) * * * Normally, adequate price competition establishes a fair and reasonable price (see 15.403-1(c)(1)).

(ii) Comparison of proposed prices to prior Government buys and sales prices to other than the Government of the same or similar items, including commercial items that are "of a type" or requiring minor modifications, or other available data;

(A) The prior price must be a valid basis for comparison. If there has been a significant time lapse between the last acquisition and the present one or if the terms and conditions of the acquisition are significantly different, or if the reasonableness of the prior price is uncertain, then the prior price may not be a valid basis for comparison.

(B) The prior price must be adjusted to account for differing terms and conditions, quantities and market and economic factors. For similar items, the

contracting officer must also adjust the prior price to account for the differences between the similar item and the item being procured.

(C) Expert technical advice should be obtained when analyzing similar items or commercial items that are "of a type" or requiring minor modifications to ascertain the magnitude of changes required and to assist in pricing the required changes.

* * * * *

(vii) Analysis of data other than certified cost or pricing data (as defined at 2.101) provided by the offeror.

* * * * *

(c) * * *

(1) Cost analysis is the review and evaluation of the separate cost elements and profit or fee in an offeror's or contractor's proposal (including certified cost or pricing data and data other than certified cost or pricing data, which are defined at 2.101, needed to determine a fair and reasonable price or cost realism), and the application of judgment to determine how well the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency.

* * * * *

(e) * * *

(3) The contracting officer should request technical assistance in evaluating pricing related to items that are "similar to" items being purchased or commercial items that are "of a type" or requiring minor modifications to ascertain the magnitude of changes required and to assist in pricing the required changes.

* * * * *

17. Amend section 15.404-2 by—

a. Revising the section heading;

b. Removing from the second sentence of paragraph (a)(1) and the first sentence of the introductory text of paragraph (a)(2) "must" and adding "shall" in its place; and

c. Revising the introductory text of paragraph (a)(2)(iii) and paragraph (a)(2)(iii)(F).

The revised text reads as follows:

15.404-2 Data to support proposal analysis.

(a) * * *

(2) * * *

(iii) Information to help contracting officers determine commerciality and a fair and reasonable price, including—

* * * * *

(F) Identifying general market conditions affecting determinations of commerciality and a fair and reasonable price.

* * * * *

18. Amend section 15.404-3 by—

a. Revising paragraphs (a) and (b)(3);
b. Revising the introductory text of paragraph (c);

c. Removing from the introductory text of paragraph (c)(1) "subcontractor(s), cost" and adding "subcontractor(s), certified cost" in its place;

d. Removing from paragraph (c)(1)(ii) "pertinent cost" and adding "pertinent certified cost" in its place;

e. Revising paragraph (c)(2);

f. Removing from paragraph (c)(3) and the first sentence of paragraph (c)(4) "Subcontractor cost" and adding "Subcontractor certified cost" in its place;

g. Removing from paragraph (c)(5) "Government cost" and adding "Government certified cost" in its place.

The revised text reads as follows:

15.404-3 Subcontract pricing considerations.

(a) The contracting officer is responsible for the determination of a fair and reasonable price for the prime contract, including subcontracting costs. The contracting officer should consider whether a contractor or subcontractor has an approved purchasing system, has performed cost or price analysis of proposed subcontractor prices, or has negotiated the subcontract prices before negotiation of the prime contract, in determining the reasonableness of the prime contract price. This does not relieve the contracting officer from the responsibility to analyze the contractor's submission, including subcontractor's certified cost or pricing data.

(b) * * *

(3) When required by paragraph (c) of this section, submit subcontractor certified cost or pricing data to the Government as part of its own certified cost or pricing data.

(c) Any contractor or subcontractor that is required to submit certified cost or pricing data also shall obtain and analyze certified cost or pricing data before awarding any subcontract, purchase order, or modification expected to exceed the certified cost or pricing data threshold, unless an exception in 15.403-1(b) applies to that action.

* * * * *

(2) The contracting officer should require the contractor or subcontractor to submit to the Government (or cause submission of) subcontractor certified cost or pricing data below the thresholds in paragraph (c)(1) of this section and data other than certified cost or pricing data that the contracting officer considers necessary for adequately pricing the prime contract.

* * * * *

19. Amend section 15.406–2 by—
 a. Revising the introductory text of paragraph (a);

b. Removing from the second sentence of the certificate in paragraph (a) “the cost” and adding “the certified cost” in its place;

c. Revising paragraph (e).

The revised text reads as follows:

15.406–2 Certificate of Current Cost or Pricing Data.

(a) When certified cost or pricing data are required, the contracting officer shall require the contractor to execute a Certificate of Current Cost or Pricing Data, using the format in this paragraph, and must include the executed certificate in the contract file.

* * * * *

(e) If certified cost or pricing data are requested by the Government and submitted by an offeror, but an exception is later found to apply, the data shall not be considered certified cost or pricing data and shall not be certified in accordance with this subsection.

20. Amend section 15.406–3 by revising paragraphs (a)(5) and (a)(6), and the second and third sentences of paragraph (a)(7) to read as follows:

15.406–3 Documenting the negotiation.

(a) * * *

(5) If certified cost or pricing data were not required in the case of any price negotiation exceeding the certified cost or pricing data threshold, the exception used and the basis for it.

(6) If certified cost or pricing data were required, the extent to which the contracting officer—

(i) Relied on the certified cost or pricing data submitted and used them in negotiating the price;

(ii) Recognized as inaccurate, incomplete, or noncurrent any certified cost or pricing data submitted; the action taken by the contracting officer and the contractor as a result; and the effect of the defective data on the price negotiated; or

(iii) Determined that an exception applied after the data were submitted and, therefore, considered not to be certified cost or pricing data.

(7) * * * Where the determination of a fair and reasonable price is based on cost analysis, the summary shall address each major cost element. When determination of a fair and reasonable price is based on price analysis, the summary shall include the source and type of data used to support the determination.

* * * * *

21. Amend section 15.407–1 by—
 a. Revising the section heading;

b. Removing from the first sentence of paragraph (a) “any cost” and adding “any certified cost” in its place;

c. Revising paragraph (b)(1);

d. Removing from paragraphs (b)(2) and (b)(3)(ii) “the cost” and adding “the certified cost” in its place;

e. Revising paragraph (b)(3)(iv);

f. Removing from paragraph (b)(4) “understated cost” and adding “understated certified cost” in its place;

g. Removing from the first sentence of paragraph (b)(5)(ii) “the cost” and adding “the certified cost” in its place;

h. Removing from the first sentence of paragraph (b)(7)(iii) “defective cost” and adding “defective certified cost” in its place;

i. Removing from the first sentence of paragraph (e) “Defective Cost” each time it appears (twice) and adding “Defective Certified Cost” in its place;

j. Removing from the first sentence of the introductory text of paragraph (f) “subcontractor cost” and adding “subcontractor certified cost” in its place;

k. Removing from the first sentence of paragraph (f)(2) “subcontractor cost” and adding “subcontractor certified cost” in its place.

The revised text reads as follows:

15.407–1 Defective certified cost or pricing data.

* * * * *

(b) * * *

(1) If, after award, certified cost or pricing data are found to be inaccurate, incomplete, or noncurrent as of the date of final agreement on price or an earlier date agreed upon by the parties given on the contractor’s or subcontractor’s Certificate of Current Cost or Pricing Data, the Government is entitled to a price adjustment, including profit or fee, of any significant amount by which the price was increased because of the defective data. This entitlement is ensured by including in the contract one of the clauses prescribed in 15.408 (b) and (c) and is set forth in the clauses at 52.215–10, Price Reduction for Defective Certified Cost or Pricing Data, and 52.215–11, Price Reduction for Defective Certified Cost or Pricing Data—Modifications. The clauses give the Government the right to a price adjustment for defects in certified cost or pricing data submitted by the contractor, a prospective subcontractor, or an actual subcontractor.

* * * * *

(3) * * *

(iv) Certified cost or pricing data were required; however, the contractor or subcontractor did not submit a

Certificate of Current Cost or Pricing Data relating to the contract.

* * * * *

15.407–2 [Amended]

22. Amend section 15.407–2 in paragraph (c)(1) by removing “requiring cost” and adding “requiring certified cost” in its place.

23. Amend section 15.407–3 by revising the first sentence of paragraph (a) to read as follows:

15.407–3 Forward pricing rate agreements.

(a) When certified cost or pricing data are required, offerors are required to describe any forward pricing rate agreements (FPRA’s) in each specific pricing proposal to which the rates apply and to identify the latest certified cost or pricing data already submitted in accordance with the agreement. * * *

* * * * *

24. Amend section 15.408 by—

a. Revising paragraphs (b), (c), (d), and (e);

b. Removing from paragraphs (g), (j), and (k) “that cost” and adding “that certified cost” in its place;

c. Revising the introductory text of paragraph (l), (l)(1), (l)(4), and (m); and

d. In Table 15–2, which follows paragraph (m)(3), by—

1. Revising the table title, the introductory text, and Notes 1 and 2;

2. Revising the first sentence of paragraph B. and the introductory text of paragraph C. of the *General Instructions*; and

3. Revising the introductory text of paragraph A. and paragraph A.(2) of the *Cost Elements*.

The revised text reads as follows:

15.408 Solicitation provisions and contract clauses.

* * * * *

(b) *Price Reduction for Defective Certified Cost or Pricing Data.* The contracting officer shall, when contracting by negotiation, insert the clause at 52.215–10, Price Reduction for Defective Certified Cost or Pricing Data, in solicitations and contracts when it is contemplated that certified cost or pricing data will be required from the contractor or any subcontractor (see 15.403–4).

(c) *Price Reduction for Defective Certified Cost or Pricing Data—Modifications.* The contracting officer shall, when contracting by negotiation, insert the clause at 52.215–11, Price Reduction for Defective Certified Cost or Pricing Data—Modifications, in solicitations and contracts when it is contemplated that certified cost or pricing data will be required from the contractor or any subcontractor (see

15.403-4) for the pricing of contract modifications, and the clause prescribed in paragraph (b) of this section has not been included.

(d) *Subcontractor Certified Cost or Pricing Data*. The contracting officer shall insert the clause at 52.215-12, Subcontractor Certified Cost or Pricing Data, in solicitations and contracts when the clause prescribed in paragraph (b) of this section is included.

(e) *Subcontractor Certified Cost or Pricing Data—Modifications*. The contracting officer shall insert the clause at 52.215-13, Subcontractor Certified Cost or Pricing Data—Modifications, in solicitations and contracts when the clause prescribed in paragraph (c) of this section is included.

* * * * *

(l) *Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data*. Considering the hierarchy at 15.402, the contracting officer shall insert the provision at 52.215-20, Requirements for Certified Cost or Pricing Data or Data Other Than Certified Cost and Pricing Data, in solicitations if it is reasonably certain that certified cost or pricing data or data other than certified cost or pricing data will be required. This provision also provides instructions to offerors on how to request an exception. The contracting officer shall—

(1) Use the provision with its Alternate I to specify a format for certified cost or pricing data or data other than certified cost or pricing data other than the format required by Table 15-2 of this section;

* * * * *

(4) Replace the basic provision with its Alternate IV if certified cost or pricing data are not expected to be required because an exception may apply, but data other than certified cost or pricing data is required as described in 15.403-3.

(m) *Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—Modifications*. Considering the hierarchy at 15.402, the contracting officer shall insert the clause at 52.215-21, Requirements for Certified Cost or Pricing Data or Data Other Than Certified Cost or Pricing Data—Modifications, in solicitations and contracts if it is reasonably certain that certified cost or pricing data or data other than certified cost or pricing data will be required for modifications. This clause also provides instructions to contractors on how to request an exception. The contracting officer shall—

(1) Use the clause with its Alternate II if copies of the proposal are to be sent to the ACO and contract auditor;

(2) Use the clause with its Alternate III if submission via electronic media is required; and

(3) Replace the basic clause with its Alternate IV if certified cost or pricing data are not expected to be required because an exception may apply, but data other than certified cost or pricing data is required as described in 15.403-3.

TABLE 15-2—INSTRUCTIONS FOR SUBMITTING COST/PRICE PROPOSALS WHEN CERTIFIED COST OR PRICING DATA ARE REQUIRED

This document provides instructions for preparing a contract pricing proposal when certified cost or pricing data are required.

Note 1: There is a clear distinction between submitting certified cost or pricing data and merely making available books, records, and other documents without identification. The requirement for submission of certified cost or pricing data is met when all accurate certified cost or pricing data reasonably available to the offeror have been submitted, either actually or by specific identification, to the Contracting Officer or an authorized representative. As later data comes into your possession, it should be submitted promptly to the Contracting Officer in a manner that clearly shows how the data relates to the offeror's price proposal. The requirement for submission of certified cost or pricing data continues up to the time of agreement on price, or an earlier date agreed upon between the parties if applicable.

Note 2: By submitting your proposal, you grant the Contracting Officer or an authorized representative the right to examine records that formed the basis for the pricing proposal. That examination can take place at any time before award. It may include those books, records, documents, and other types of factual data (regardless of form or whether the data is specifically referenced or included in the proposal as the basis for pricing) that will permit an adequate evaluation of the proposed price.

I. General Instructions

* * * * *

B. In submitting your proposal, you must include an index, appropriately referenced, of all the certified cost or pricing data and data other than certified cost or pricing data accompanying or identified in the proposal.

C. As part of the specific information required, you must submit, with your proposal, certified cost or pricing data (as defined at FAR 2.101). You must clearly identify on your cover sheet that certified cost or pricing data are included as part of the proposal. In addition, you must submit with your proposal any data other than certified cost or pricing data reasonably required to explain your estimating process, including—

* * * * *

II. Cost Elements

* * * * *

A. *Materials and services*. Provide a consolidated priced summary of individual material quantities included in the various tasks, orders, or contract line items being proposed and the basis for pricing (vendor quotes, invoice prices, etc.). Include raw materials, parts, components, assemblies, and services to be produced or performed by others. For all items proposed, identify the item and show the source, quantity, and price. Conduct price analyses of all subcontractor proposals. Conduct cost analyses for all subcontracts when certified cost or pricing data are submitted by the subcontractor. Include these analyses as part of your own certified cost or pricing data submissions for subcontracts expected to exceed the appropriate threshold in FAR 15.403-4. Submit the subcontractor certified cost or pricing data as part of your own certified cost or pricing data as required in paragraph IIA(2) of this table. These requirements also apply to all subcontractors if required to submit certified cost or pricing data.

* * * * *

(2) *All Other*. Obtain certified cost or pricing data and data other than certified cost or pricing data from prospective sources for those acquisitions (such as subcontracts, purchase orders, material order, etc.) exceeding the threshold set forth in FAR 15.403-4 and not otherwise exempt, in accordance with FAR 15.403-1(b) (i.e., adequate price competition, commercial items, prices set by law or regulation or waiver). Also provide data showing the basis for establishing source and reasonableness of price. In addition, provide a summary of your cost analysis and a copy of certified cost or pricing data and data other than certified cost or pricing data submitted by the prospective source in support of each subcontract, or purchase order that is the lower of either \$11,500,000 or more, or both more than the pertinent certified cost or pricing data threshold and more than 10 percent of the prime contractor's proposed price. The Contracting Officer may require you to submit certified cost or pricing data and data other than certified cost or pricing data in support of proposals in lower amounts. Subcontractor certified cost or pricing data must be accurate, complete and current as of the date of final price agreement, or an earlier date agreed upon by the parties, given on the prime contractor's Certificate of Current Cost or Pricing Data. The prime contractor is responsible for updating a prospective subcontractor's data. For standard commercial items fabricated by the offeror that are generally stocked in inventory, provide a separate cost breakdown, if priced based on cost. For interorganizational transfers priced at cost, provide a separate breakdown of cost elements. Analyze the certified cost or pricing data and data other than certified cost or pricing data and submit the results of your analysis of the prospective source's proposal. When submission of a prospective source's certified cost or pricing data is required as described in this paragraph, it must be included as part of your own certified cost or pricing data. You must also submit any data other than certified cost or pricing data obtained from a

subcontractor, either actually or by specific identification, along with the results of any analysis performed on that data.

* * * * *

PART 16—TYPES OF CONTRACTS

16.202–2 [Amended]

25. Amend section 16.202–2 by removing from paragraph (b) “valid cost” and adding “valid certified cost” in its place.

26. Amend section 16.203–2 by revising paragraph (b) to read as follows:

16.203–2 Application.

* * * * *

(b) In contracts that do not require submission of certified cost or pricing data, the contracting officer shall obtain adequate data to establish the base level from which adjustment will be made and may require verification of data submitted.

27. Amend section 16.603–2 by revising the first sentence of paragraph (c) to read as follows:

16.603–2 Application.

* * * * *

(c) Each letter contract shall, as required by the clause at 52.216–25, Contract Definition, contain a negotiated definitization schedule including (1) dates for submission of the contractor’s price proposal, required certified cost or pricing data and data other than certified cost or pricing data, and, if required, make-or-buy and subcontracting plans, (2) a date for the start of negotiations, and (3) a target date for definitization, which shall be the earliest practicable date for definitization. * * *

* * * * *

28. Amend section 16.603–4 by revising the second sentence of paragraph (b)(3) to read as follows:

16.603–4 Contract clauses.

(b) * * *

(3) * * * If at the time of entering into the letter contract, the contracting officer knows that the definitive contract will be based on adequate price competition or will otherwise meet the criteria of 15.403–1 for not requiring submission of certified cost or pricing data, the words “and certified cost or pricing data” may be deleted from paragraph (a) of the clause. * * *

* * * * *

PART 19—SMALL BUSINESS PROGRAMS

29. Amend paragraph 19.705–4 by—
a. Removing from the introductory paragraph and paragraph (a) “must” and adding “shall” in its place; and

b. Revising paragraph (d)(3) to read as follows:

19.705–4 Reviewing the subcontracting plan.

* * * * *

(d) * * *

(3) Ensure that the subcontracting goals are consistent with the offeror’s certified cost or pricing data or data other than certified cost or pricing data.

* * * * *

30. Amend section 19.806 by revising the second and third sentences of paragraph (a) to read as follows:

19.806 Pricing the 8(a) contract.

(a) * * * If required by Subpart 15.4, the SBA shall obtain certified cost or pricing data and data other than certified cost or pricing data from the 8(a) contractor. If the SBA requests audit assistance to determine proposed price to be fair and reasonable in a sole source acquisition, the contracting activity shall furnish it to the extent it is available.

* * * * *

PART 27—PATENTS, DATA, AND COPYRIGHTS

27.204–1 [Amended]

31. Amend section 27.204–1 in the first sentence of paragraph (b) by removing “which cost” and adding “which certified cost” in its place.

27.204–2 [Amended]

32. Amend section 27.204–2 in the first sentence by removing “which cost” and adding “which certified cost” in its place.

PART 30—COST ACCOUNTING STANDARDS ADMINISTRATION

30.201–5 [Amended]

33. Amend section 30.201–5 in paragraph (c)(6) by removing “Whether cost” and adding “Whether certified cost” in its place.

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

31.205–6 [Amended]

34. Amend section 31.205–6 in paragraph (j)(3)(i)(B), the second sentence of paragraph (j)(3)(ii), and the second sentence of paragraph (o)(5) by removing “which cost” and adding “which certified cost” in its place.

PART 32—CONTRACT FINANCING

32.613 [Amended]

35. Amend section 32.613 in paragraph (h)(3) by removing “Defective Cost” and adding “Defective Certified Cost” in its place.

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

42.705–1 [Amended]

36. Amend section 42.705–1 in paragraph (b)(5)(iii)(D) by removing “of cost” and adding “of certified cost” in its place.

37. Amend section 42.1304 by revising paragraph (d) to read as follows:

42.1304 Government delay of work.

* * * * *

(d) The contracting officer shall retain in the file a record of all negotiations leading to any adjustment made under the clause, and related certified cost or pricing data, or data other than certified cost or pricing data.

38. Amend section 42.1701 by—

a. Removing from the first sentence of paragraph (b) “include cost” and adding “include certified cost” in its place, and adding a new second sentence; and

b. Revising the second sentence of paragraph (c).

The added and revised text reads as follows:

42.1701 Procedures.

* * * * *

(b) * * * The ACO shall also obtain any necessary data other than certified cost or pricing data. * * *

(c) * * * The agreement shall provide for cancellation at the option of either party and shall require the contractor to submit to the ACO and to the cognizant contract auditor any significant change in certified cost or pricing data and data other than certified cost or pricing data.

* * * * *

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

44.202–2 [Amended]

39. Amend section 44.202–2 in paragraph (a)(8) by removing “current cost” and adding “current certified cost” in its place.

44.303 [Amended]

40. Amend section 44.303 in paragraph (b) by removing “current cost” and adding “current certified cost” in its place.

44.305–3 [Amended]

41. Amend section 44.305–3 in paragraph (a)(1) by removing “Cost” and adding “Certified cost” in its place.

PART 49—TERMINATION OF CONTRACTS

49.105 [Amended]

42. Amend section 49.105 in paragraph (c)(15) by removing “current

cost” and adding “current certified cost” in its place.

49.603-1 [Amended]

43. Amend section 49.603-1 in paragraph (b)(7)(x) of the agreement by removing “defective cost” and adding “defective certified cost” in its place.

49.603-2 [Amended]

44. Amend section 49.603-2 in paragraph (b)(8)(vii) of the agreement by removing “defective cost” and adding “defective certified cost” in its place.

49.603-3 [Amended]

45. Amend section 49.603-3 in paragraph (b)(7)(xv) of the agreement by removing “defective cost” and adding “defective certified cost” in its place.

49.603-4 [Amended]

46. Amend section 49.603-4 in paragraph (b)(4)(viii) of the agreement by removing “defective cost” and adding “defective certified cost” in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

47. Amend section 52.214-26 by—
a. Revising the date of the clause;
b. Revising the introductory text of paragraph (b); and
c. Removing from paragraph (e) “of cost” and adding “of certified cost” in its place.

The revised text reads as follows:

52.214-26 Audit and Records—Sealed Bidding.

* * * * *

AUDIT AND RECORDS—SEALED BIDDING (DATE)

* * * * *

(b) *Certified cost or pricing data.* If the Contractor has been required to submit certified cost or pricing data or data other than certified cost or pricing data in connection with the pricing of any modification to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the certified cost or pricing data, shall have the right to examine and audit all of the Contractor’s records, including computations and projections, related to—

* * * * *

48. Amend section 52.214-27 by—
a. Revising the section heading;
b. Revising the clause heading and date of the clause;
c. Removing from paragraph (a) “of cost” and adding “of certified cost” in its place;

d. Removing from paragraph (b)(1) “furnished cost” and adding “furnished certified cost” in its place; and removing from paragraph (b)(2)

“Contractor cost” and adding “Contractor certified cost” in its place;

e. Removing from paragraph (c)(2) “defective cost” and adding “defective certified cost” in its place;

f. Removing from paragraph (d)(1)(i) “current cost” and adding “current certified cost” in its place; and removing from paragraph (d)(1)(ii) “the cost” and adding “the certified cost” in its place;

g. Removing from paragraph (d)(2)(i)(B) “the cost” and adding “the certified cost” in its place; and

h. Removing from paragraph (e)(2) “submitted cost” and adding “submitted certified cost” in its place;

The revised text reads as follows:

52.214-27 Price Reduction for Defective Certified Cost or Pricing Data—Modifications—Sealed Bidding.

* * * * *

PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA—MODIFICATIONS—SEALED BIDDING (DATE)

* * * * *

49. Amend section 52.214-28 by—
a. Revising the section heading;
b. Revising the clause heading and date of the clause;

c. Removing from paragraph (a)(1) “of cost” and adding “of certified cost” in its place;

d. Revising paragraph (b); and
e. Removing from paragraph (d) “of cost” and adding “of certified cost” in its place.

The revised text reads as follows:

52.214-28 Subcontractor Certified Cost or Pricing Data—Modifications—Sealed Bidding.

* * * * *

SUBCONTRACTOR CERTIFIED COST OR PRICING DATA—MODIFICATIONS—SEALED BIDDING (DATE)

* * * * *

(b) Before awarding any subcontract expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.804-2(a)(1), on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modifications involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.804-2(a)(1), the Contractor shall require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing) and data other than certified cost or pricing data, unless an exception under FAR 15.403-1(b) applies.

* * * * *

50. Amend section 52.215-2 by—
a. Revising the date of the clause;
b. Revising the introductory text of paragraph (c); and

c. Removing from paragraph (g)(2) “which cost” and adding “which certified cost” in its place.

The revised text reads as follows:

52.215-2 Audit and Records—Negotiation.

* * * * *

AUDIT AND RECORDS—NEGOTIATION (DATE)

* * * * *

(c) *Certified cost or pricing data.* If the Contractor has been required to submit certified cost or pricing data and data other than certified cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the certified cost or pricing data, shall have the right to examine and audit all of the Contractor’s records, including computations and projections, related to—

* * * * *

51. Amend section 52.215-9 by—
a. Revising the date of the clause;
b. In *Alternate I* by revising the date of *Alternate I* and paragraph (d)(1).

c. In *Alternate II* by revising the date of *Alternate II* and paragraph (d)(1).
The revised text reads as follows:

52.215-9 Changes or Additions to Make-or-Buy Program.

* * * * *

CHANGES OR ADDITIONS TO MAKE-OR-BUY PROGRAM (DATE)

* * * * *

Alternate I (Date). * * * *

(d) * * * *

(1) Support its proposal with certified cost or pricing data and data other than certified cost or pricing data when permitted and necessary to support evaluation; and

* * * * *

Alternate II (Date). * * * *

(d) * * * *

(1) Support its proposal with certified cost or pricing data and data other than certified cost or pricing data to permit evaluation; and

* * * * *

52. Amend section 52.215-10 by—
a. Revising the section heading;
b. Revising the clause heading and date of the clause;

c. Removing from paragraph (a)(1) “furnished cost” and adding “furnished certified cost” in its place, and removing from paragraph (a)(2) “Contractor cost” and adding

“Contractor certified cost” in its place;

d. Removing from paragraph (b)(2) “defective cost” and adding “defective certified cost” in its place;

e. Removing from paragraph (c)(1)(i) “current cost” and adding “current certified cost” in its place, and removing from paragraphs (c)(1)(ii) and

(c)(2)(i)(B) “the cost” and adding “the certified cost” in its place; and

f. Removing from paragraph (d)(2) “submitted cost” and adding “submitted certified cost” in its place. The revised text reads as follows:

52.215–10 Price Reduction for Defective Certified Cost or Pricing Data.

* * * * *

PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA (DATE)

* * * * *

- 53. Amend section 52.215–11 by—
 - a. Revising the section heading;
 - b. Revising the clause heading and date of the clause;
 - c. Removing from paragraph (a) “of cost” and adding “of certified cost” in its place;
 - d. Removing from paragraph (b)(1) “furnished cost” and adding “furnished certified cost” in its place; and removing from paragraph (b)(2) “Contractor cost” and adding “Contractor certified cost” in its place;
 - e. Removing from paragraph (c)(2) “defective cost” and adding “defective certified cost” in its place;
 - f. Removing from paragraph (d)(1)(i) “current cost” and adding “current certified cost” in its place; and removing from paragraphs (d)(1)(ii) and (d)(2)(i)(B) “the cost” and adding “the certified cost” in its place; and
 - g. Removing from paragraph (e)(2) “submitted cost” and adding “submitted certified cost” in its place.
 The revised text reads as follows:

52.215–11 Price Reduction for Defective Certified Cost or Pricing Data—Modifications.

* * * * *

PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA—MODIFICATIONS (DATE)

* * * * *

- 54. Amend section 52.215–12 by—
 - a. Revising the section heading;
 - b. Revising the clause heading and date of the clause;
 - c. Removing from paragraph (a) “of cost” each time it appears (twice) and adding “of certified cost” in its place, and removing “submit cost” and adding “submit certified cost” in its place;
 - d. Removing from the introductory text of paragraph (c) and (c)(1) “of cost” and adding “of certified cost” in its place; and
 - e. Removing from paragraph (c)(2) “Subcontractor Cost” and adding “Subcontractor Certified Cost” in its place.
 The revised text reads as follows:

52.215–12 Subcontractor Certified Cost or Pricing Data.

* * * * *

SUBCONTRACTOR CERTIFIED COST OR PRICING DATA (DATE)

* * * * *

- 55. Amend section 52.215–13 by—
 - a. Revising the section heading;
 - b. Revising the clause heading and date of the clause;
 - c. Removing from paragraph (a)(1) “of cost” and adding “of certified cost” in its place;
 - d. Revising paragraph (b); and
 - e. Removing from paragraph (d) “of cost” and adding “of certified cost” in its place;
 The revised text reads as follows:

52.215–13 Subcontractor Certified Cost or Pricing Data—Modifications.

* * * * *

SUBCONTRACTOR CERTIFIED COST OR PRICING DATA—MODIFICATIONS (DATE)

* * * * *

- (b) Before awarding any subcontract expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403–4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403–4, the Contractor shall require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing) and data other than certified cost or pricing data, unless an exception under FAR 15.403–1 applies.

* * * * *

52.215–14 [Amended]

- 56. Amend section 52.215–14 by—
 - a. Revising the date of the clause to read “(Date)”;
 - b. Removing from the last sentence of paragraph (a) “of cost” and adding “of certified cost” in its place; and
 - c. Revising the date of *Alternate I* to read “(Date)”.

52.215–15 [Amended]

- 57. Amend section 52.215–15 by revising the date of the clause to read “(Date)”;
- and removing from paragraph (b)(2) and the second sentence of paragraph (c) “which cost” and adding “which certified cost” in its place.
- 58. Amend section 52.215–20 by—
 - a. Revising the section heading;
 - b. Revising the provision heading and date of the provision;
 - c. Revising the introductory text of paragraph (a) of the provision;
 - d. Removing from the first sentence of paragraph (a)(1) of the provision “submitting cost” and adding “submitting certified cost” in its place;
 - e. Revising the introductory text of paragraph (b) and (b)(1) of the provision;
 - f. Revising *Alternate I*;
 - g. Revising the date of *Alternate II*;

- h. Revising the date of *Alternate III*;
 - i. Revising the date of *Alternate IV* and paragraphs (a) and (b).
- The revised text reads as follows:

52.215–20 Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data.

* * * * *

REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA AND DATA OTHER THAN CERTIFIED COST OR PRICING DATA (DATE)

(a) *Exceptions from certified cost or pricing data.*

* * * * *

(b) *Requirements for certified cost or pricing data and data other than certified cost or pricing data.* If the offeror is not granted an exception from the requirement to submit certified cost or pricing data, the following applies:

(1) The offeror shall prepare and submit certified cost or pricing data, data other than certified cost or pricing data, and supporting attachments in accordance with the instructions contained in Table 15–2 of FAR 15.408 which is incorporated by reference with the same force and effect as though it were inserted here in full text. The instructions in Table 15–2 are incorporated as a mandatory format to be used in this contract, unless the Contracting Officer and the Contractor negotiate a different format and change this clause to use *Alternate I*.

* * * * *

Alternate I (Date). As prescribed in 15.408(l) and 15.403–5(b)(1), substitute the following paragraph (b)(1) for paragraph (b)(1) of the basic provision:

(b)(1) The offeror shall submit certified cost or pricing data, data other than certified cost or pricing data, and supporting attachments in the following format: *[Insert description of the data and format that are required, including access to records necessary to permit an adequate evaluation of the proposed price in accordance with 15.403–4. The description may be inserted at the time of issuing the solicitation, the contracting officer may specify that the offeror’s format will be acceptable, or the description may be inserted as the result of negotiations.]*

Alternate II (Date). * * *

* * * * *

Alternate III (Date). * * *

* * * * *

Alternate IV (Date). * * *

(a) Submission of certified cost or pricing data is not required.

(b) Provide data described below: *[Insert description of the data and the format that are required, including access to records necessary to permit an adequate evaluation of the proposed price in accordance with 15.403–3.]*

- 59. Amend section 52.215–21 by—
 - a. Revising the section heading;
 - b. Revising the clause heading and date of the clause;
 - c. Revising the introductory text of paragraph (a) of the clause;
 - d. Removing from the first sentence of paragraph (a)(1) of the clause

“submitting cost” and adding “submitting certified cost” in its place;

e. Removing from paragraph (a)(1)(ii)(A)(1) of the clause “from cost” and adding “from certified cost” in its place;

f. Revising the introductory text of paragraph (b) and (b)(1) of the clause;

g. Removing and reserving *Alternate I*;

h. Revising the date of *Alternate II*;

i. Revising the date of *Alternate III*;

j. Revising the date of *Alternate IV* and paragraphs (a) and (b).

The revised text reads as follows:

52.215–21 Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—Modifications.

* * * * *

REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA AND DATA OTHER THAN CERTIFIED COST OR PRICING DATA—MODIFICATIONS (DATE)

(a) *Exceptions from certified cost or pricing data.*

* * * * *

(b) *Requirements for certified cost or pricing data and data other than certified cost or pricing data.* If the Contractor is not granted an exception from the requirement to submit certified cost or pricing data, the following applies:

(1) The Contractor shall submit certified cost or pricing data, data other than certified cost or pricing data, and supporting attachments in accordance with the instructions contained in Table 15–2 of FAR 15.408 which is incorporated by reference with the same force and effect as though it were inserted here in full text. The instructions in Table 15–2 are incorporated as a mandatory format to be used in this contract, unless the Contracting Officer and

the Contractor negotiate a different format and change this clause to use Alternative I.

* * * * *

Alternate I [Reserved]

Alternate II (Date). * * *

* * * * *

Alternate III (Date). * * *

* * * * *

Alternate IV (Date). * * *

(a) Submission of certified cost or pricing data is not required.

(b) Provide data described below: *[Insert description of the data and the format that are required, including access to records necessary to permit an adequate evaluation of the proposed price in accordance with 15.403–3.]*

60. Amend section 52.216–25 by—

a. Revising the date of the clause;

b. Revising the third sentence of paragraph (a) of the clause; and

c. Removing from the paragraph (b) of the clause “and cost” and adding “and certified cost” in its place.

The revised text reads as follows:

52.216–25 Contract Definitization.

* * * * *

CONTRACT DEFINITIZATION (DATE)

(a) * * * The Contractor agrees to submit a _____ *[insert specific type of proposal; e.g., fixed-price or cost-and-fee]* proposal along with certified cost or pricing data and data other than certified cost or pricing data supporting its proposal.

* * * * *

52.230–2 [Amended]

61. Amend section 52.230–2 by revising the date of the clause to read “(Date)”; and removing from the first sentences of paragraphs (a)(3) and (d) “submitted cost” and adding “submitted certified cost” in its place.

52.230–5 [Amended]

62. Amend section 52.230–5 by revising the date of the clause to read “(Date)”; and removing from the first sentence of paragraph (a)(3) and the introductory text of paragraph (d) “submitted cost” and adding “submitted certified cost” in its place.

52.232–17 [Amended]

63. Amend section 52.232–17 by revising the date of the clause to read “(Date)”; and removing from the first sentence of paragraph (a) “Defective Cost” and adding “Defective Certified Cost” in its place.

64. Amend section 52.244–2 by—

a. Revising the date of the clause;

b. Revising paragraph (f)(1)(v);

c. Removing from paragraph (f)(1)(vii)(C) “reason cost” and adding “reason certified cost” in its place; and

d. Removing from paragraphs (f)(1)(vii)(D) and (f)(1)(vii)(E)

“subcontractor’s cost” and adding “subcontractor’s certified cost” in its place.

The revised text reads as follows:

52.244–2 Subcontracts.

* * * * *

SUBCONTRACTS (DATE)

* * * * *

(f) * * *

(1) * * *

(v) The subcontractor’s current, complete, and accurate certified cost or pricing data, data other than certified cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.

* * * * *

[FR Doc. 07–1927 Filed 4–20–07; 8:45 am]

BILLING CODE 6820–EP–S