

tion 892 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 [Pub. L. 111-383] (10 U.S.C. 2306a note) and the Better Buying Power initiative of the Secretary of Defense.”

CHAPTER 35—TRUTHFUL COST OR PRICING DATA

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SENATE REVISION AMENDMENT

In chapter 35 heading, “OR” substituted for “AND” by S. Amdt. 4726 (111th Cong.). See 156 Cong. Rec. 18683 (2010).

§ 3501. General

(a) DEFINITIONS.—In this chapter:

(1) COST OR PRICING DATA.—The term “cost or pricing data” means all facts that, as of the date of agreement on the price of a contract (or the price of a contract modification) or, if applicable consistent with section 3506(a)(2) of this title, another date agreed upon between the parties, a prudent buyer or seller would reasonably expect to affect price negotiations significantly. The term does not include information that is judgmental, but does include factual information from which a judgment was derived.

(2) SUBCONTRACT.—The term “subcontract” includes a transfer of commercial products or commercial services between divisions, subsidiaries, or affiliates of a contractor or a subcontractor.

(b) REGULATIONS.—

(1) MINIMIZING ABUSE OF COMMERCIAL SERVICES AUTHORITY.—The Federal Acquisition Regulation shall ensure that 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, may be treated as commercial services for purposes of this chapter 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 for the services.

(2) INFORMATION TO SUBMIT.—To the extent necessary to make a determination under paragraph (1), the contracting officer may request the offeror to submit—

(A) prices paid for the same or similar commercial services under comparable terms and conditions by both government and commercial customers; and

(B) if the contracting officer determines that the information described in subpara-

graph (A) 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.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3764; Pub. L. 115-232, div. A, title VIII, §836(b)(11), Aug. 13, 2018, 132 Stat. 1863.)

HISTORICAL AND REVISION NOTES

| <i>Revised Section</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i> |
|------------------------|---------------------------|---|
| 3501(a) | 41:254b(h). | June 30, 1949, ch. 288, title III, §304A(h), formerly §304A(f), as added Pub. L. 103-355, title I, §1251(a)(2), Oct. 13, 1994, 108 Stat. 3284; redesignated as §304A(h), Pub. L. 104-106, title XLII, §4201(b)(2)(B), Feb. 10, 1996, 110 Stat. 652. |
| 3501(b) | 41:254b note. | Pub. L. 110-417, [div. A], title VIII, §868, Oct. 14, 2008, 122 Stat. 4552. |

Subsection (a) of Pub. L. 110-417, §868 is omitted as unnecessary.

In subsection (b)(1), the words “The Federal Acquisition Regulation” are substituted for “The regulations modified pursuant to subsection (a)” for clarity and conformity with the revised title.

Editorial Notes

AMENDMENTS

2018—Subsec. (a). Pub. L. 115-232, §836(b)(11)(A), redesignated pars. (2) and (3) as (1) and (2), respectively, substituted “commercial products or commercial services” for “commercial items” in par. (2), as redesignated, and struck out former par. (1), which defined “commercial item”.

Subsec. (b)(1). Pub. L. 115-232, §836(b)(11)(B), in heading, struck out “item” before “authority” and, in text, substituted “commercial services” for “commercial items”.

Subsec. (b)(2)(A). Pub. L. 115-232, §836(b)(11)(B)(ii), substituted “commercial services” for “commercial items”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115-232 effective Jan. 1, 2020, subject to a savings provision, see section 836(h) of Pub. L. 115-232, set out as an Effective Date of 2018 Amendment; Savings Provision note under section 453b of Title 6, Domestic Security.

§ 3502. Required cost or pricing data and certification

(a) WHEN REQUIRED.—The head of an executive agency shall require offerors, contractors, and subcontractors to make cost or pricing data available as follows:

(1) OFFEROR FOR PRIME CONTRACT.—An offeror for a prime contract under this division to be entered into using procedures other than sealed-bid procedures shall be required to submit cost or pricing data before the award of a contract if—

(A) in the case of a prime contract entered into after June 30, 2018, the price of the contract to the Federal Government is expected to exceed \$2,000,000; and

(B) in the case of a prime contract entered into on or before June 30, 2018, the price of the contract to the Federal Government is expected to exceed \$750,000.