

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.

(2) **CONTRACTOR.**—The contractor for a prime contract under this division shall be required to submit cost or pricing data before the pricing of a change or modification to the contract if—

(A) in the case of a change or modification made to a prime contract referred to in paragraph (1)(A), the price adjustment is expected to exceed \$2,000,000;

(B) in the case of a change or modification made to a prime contract that was entered into on or before June 30, 2018, and that has been modified pursuant to subsection (f), the price adjustment is expected to exceed \$750,000; and

(C) in the case of a change or modification not covered by subparagraph (A) or (B), the price adjustment is expected to exceed \$750,000.

(3) **OFFEROR FOR SUBCONTRACT.**—An offeror for a subcontract (at any tier) of a contract under this division shall be required to submit cost or pricing data before the award of the subcontract if the prime contractor and each higher-tier subcontractor have been required to make available cost or pricing data under this chapter and—

(A) in the case of a subcontract under a prime contract referred to in paragraph (1)(A), the price of the subcontract is expected to exceed \$2,000,000;

(B) in the case of a subcontract entered into under a prime contract that was entered into on or before June 30, 2018, and that has been modified pursuant to subsection (f), the price of the subcontract is expected to exceed \$2,000,000; and

(C) in the case of a subcontract not covered by subparagraph (A) or (B), the price of the subcontract is expected to exceed \$750,000.

(4) **SUBCONTRACTOR.**—The subcontractor for a subcontract covered by paragraph (3) shall be required to submit cost or pricing data before the pricing of a change or modification to the subcontract if—

(A) in the case of a change or modification to a subcontract referred to in paragraph (3)(A) or (B), the price adjustment is expected to exceed \$2,000,000; and

(B) in the case of a change or modification to a subcontract referred to in paragraph (3)(C), the price adjustment is expected to exceed \$750,000.

(b) **CERTIFICATION.**—A person required, as an offeror, contractor, or subcontractor, to submit cost or pricing data under subsection (a) (or required by the head of the procuring activity concerned to submit the data under section 3504 of this title) shall be required to certify that, to the best of the person's knowledge and belief, the cost or pricing data submitted are accurate, complete, and current.

(c) **TO WHOM SUBMITTED.**—Cost or pricing data required to be submitted under subsection (a) (or under section 3504 of this title), and a certification required to be submitted under subsection (b), shall be submitted—

(1) in the case of a submission by a prime contractor (or an offeror for a prime contract),

to the contracting officer for the contract (or a designated representative of the contracting officer); or

(2) in the case of a submission by a subcontractor (or an offeror for a subcontract), to the prime contractor.

(d) **APPLICATION OF CHAPTER.**—Except as provided under section 3503 of this title, this chapter applies to contracts entered into by the head of an executive agency on behalf of a foreign government.

(e) **SUBCONTRACTS NOT AFFECTED BY WAIVER.**—A waiver of requirements for submission of certified cost or pricing data that is granted under section 3503(a)(3) of this title in the case of a contract or subcontract does not waive the requirement under subsection (a)(3) of this section for submission of cost or pricing data in the case of subcontracts under that contract or subcontract unless the head of the procuring activity granting the waiver determines that the requirement under subsection (a)(3) of this section should be waived in the case of those subcontracts and justifies in writing the reason for the determination.

(f) **MODIFICATIONS TO PRIOR CONTRACTS.**—On the request of a contractor that was required to submit cost or pricing data under subsection (a) in connection with a prime contract entered into on or before June 30, 2018, the head of the executive agency that entered into the contract shall modify the contract to reflect paragraphs (2)(B) and (3)(B) of subsection (a). All those modifications shall be made without requiring consideration.

(g) **ADJUSTMENT OF AMOUNTS.**—Effective on October 1 of each year that is divisible by 5, each amount set forth in subsection (a) shall be adjusted in accordance with section 1908.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3765; Pub. L. 115-91, div. A, title VIII, § 811(a)(2), Dec. 12, 2017, 131 Stat. 1459.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
3502	41:254b(a).	June 30, 1949, ch. 288, title III, § 304A(a), as added Pub. L. 103-355, title I, § 1251(a)(2), Oct. 13, 1994, 108 Stat. 3278; Pub. L. 105-261, div. A, title VIII, § 805(b), Oct. 17, 1998, 112 Stat. 2083.

Editorial Notes

AMENDMENTS

2017—Subsec. (a). Pub. L. 115-91, § 811(a)(2)(A)(i), (ii), substituted “June 30, 2018” for “October 13, 1994” and “\$750,000” for “\$100,000” wherever appearing.

Subsec. (a)(1)(A), (2)(A). Pub. L. 115-91, § 811(a)(2)(A)(iii), substituted “\$2,000,000” for “\$500,000”. Subsec. (a)(2)(B). Pub. L. 115-91, § 811(a)(2)(A)(iv), substituted “\$750,000” for “\$500,000”.

Subsec. (a)(3)(A), (B), (4)(A). Pub. L. 115-91, § 811(a)(2)(A)(iii), substituted “\$2,000,000” for “\$500,000”.

Subsec. (f). Pub. L. 115-91, § 811(a)(2)(B), substituted “June 30, 2018” for “October 13, 1994”.

Subsec. (g). Pub. L. 115-91, § 811(a)(2)(C), substituted “in accordance with section 1908.” for “to the amount that is equal to the fiscal year 1994 constant dollar value of the amount set forth. Any amount, as so adjusted, that is not evenly divisible by \$50,000 shall be

rounded to the nearest multiple of \$50,000. In the case of an amount that is evenly divisible by \$25,000 but not evenly divisible by \$50,000, the amount shall be rounded to the next higher multiple of \$50,000.”

§ 3503. Exceptions

(a) IN GENERAL.—Submission of certified cost or pricing data shall not be required under section 3502 of this title in the case of a contract, a subcontract, or a modification of a contract or subcontract—

(1) for which the price agreed on is based on—

- (A) adequate price competition; or
- (B) prices set by law or regulation;

(2) for the acquisition of a commercial product or a commercial service; or

(3) in an exceptional case when the head of the procuring activity, without delegation, determines that the requirements of this chapter may be waived and justifies in writing the reasons for the determination.

(b) MODIFICATIONS OF CONTRACTS AND SUBCONTRACTS FOR COMMERCIAL PRODUCTS OR COMMERCIAL SERVICES.—In the case of a modification of a contract or subcontract for a commercial product or a commercial service that is not covered by the exception to the submission of certified cost or pricing data in paragraph (1) or (2) of subsection (a), submission of certified cost or pricing data shall not be required under section 3502 of this title if—

(1) the contract or subcontract being modified is a contract or subcontract for which submission of certified cost or pricing data may not be required by reason of paragraph (1) or (2) of subsection (a); and

(2) the modification would not change the contract or subcontract from a contract or subcontract for the acquisition of a commercial product or a commercial service to a contract or subcontract for the acquisition of an item other than a commercial product or a commercial service.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3766; Pub. L. 115-232, div. A, title VIII, §836(b)(12), Aug. 13, 2018, 132 Stat. 1863.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
3503	41:254b(b).	June 30, 1949, ch. 288, title III, §304A(b), as added Pub. L. 103-355, title I, §1251(a)(2), Oct. 13, 1994, 108 Stat. 3279; Pub. L. 104-106, title XLII, §4201(b)(1), Feb. 10, 1996, 110 Stat. 651.

In subsection (b)(2), the words “as the case may be” are omitted as unnecessary.

Editorial Notes

AMENDMENTS

2018—Subsec. (a)(2). Pub. L. 115-232, §836(b)(12)(A), substituted “a commercial product or a commercial service” for “a commercial item”.

Subsec. (b). Pub. L. 115-232, §836(b)(12)(B), in heading, substituted “Commercial Products or Commercial Services” for “Commercial Items” and, in text, substituted “a commercial product or a commercial service” for “a commercial item” wherever appearing.

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.

§ 3504. Cost or pricing data on below-threshold contracts

(a) AUTHORITY TO REQUIRE SUBMISSION.—Subject to subsection (b), when certified cost or pricing data are not required to be submitted by section 3502 of this title for a contract, subcontract, or modification of a contract or subcontract, the data may nevertheless be required to be submitted by the head of the procuring activity, but only if the head of the procuring activity determines that the data are necessary for the evaluation by the agency of the reasonableness of the price of the contract, subcontract, or modification of a contract or subcontract. In any case in which the head of the procuring activity requires the data to be submitted under this section, the head of the procuring activity shall justify in writing the reason for the requirement.

(b) EXCEPTION.—The head of the procuring activity may not require certified cost or pricing data to be submitted under this section for any contract or subcontract, or modification of a contract or subcontract, covered by the exceptions in section 3503(a)(1) or (2) of this title.

(c) DELEGATION OF AUTHORITY PROHIBITED.—The head of a procuring activity may not delegate the functions under this section.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3767.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
3504	41:254b(c).	June 30, 1949, ch. 288, title III, §304A(c), as added Pub. L. 103-355, title I, §1251(a)(2), Oct. 13, 1994, 108 Stat. 3280; Pub. L. 104-106, title XLII, §§4201(b)(1), 4321(e)(3), Feb. 10, 1996, 110 Stat. 651, 675.

§ 3505. Submission of other information

(a) AUTHORITY TO REQUIRE SUBMISSION.—When certified cost or pricing data are not required to be submitted under this chapter for a contract, subcontract, or modification of a contract or subcontract, the contracting officer shall require submission of data other than certified cost or pricing data to the extent necessary to determine the reasonableness of the price of the contract, subcontract, or modification of the contract or subcontract. Except in the case of a contract or subcontract covered by the exceptions in section 3503(a)(1) of this title, the contracting officer shall require that the data submitted include, at a minimum, appropriate information on the prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price for the procurement.

(b) LIMITATIONS ON AUTHORITY.—The Federal Acquisition Regulation shall include the fol-