ness of price are sufficiently documented. The Under Secretary shall require that the contract file include, at a minimum, the following:

"(1) A justification of the need for additional cost information.

"(2) A copy of any request from the Department of Defense to a contractor for additional cost information.

"(3) Any response received from the contractor to the request, including any rationale or justification provided by the contractor for a failure to provide the requested information.

"(d) COMPTROLLER GENERAL REVIEW AND REPORT.—

"(1) REVIEW REQUIREMENT.—The Comptroller General of the United States shall conduct a review of data collected pursuant to sections 2306a(d) [now 10 U.S.C. 3705] and 2379 [now 10 U.S.C. 3455] of title 10, United States Code, during the two-year period beginning on the date of the enactment of this Act.

"(2) REPORT REQUIREMENT.—Not later than 180 days after the end of the two-year period referred to in paragraph (1), the Comptroller General shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on—

"(A) the extent to which the Department of Defense made need access to additional cost information pursuant to sections 2306a(d) [now 10 U.S.C. 3705] and 2379 [now 10 U.S.C. 3455] of title 10, United States Code, during such two-year period in order to determine price reasonableness;

"(B) the extent to which acquisition officials of the Department of Defense compiled with the guidance issued pursuant to subsection (a) during such two-year period;

"(C) the extent to which the Department of Defense needed access to additional cost information during such two-year period to determine reasonableness of price, but was not provided such information by the contractor on request; and

"(D) recommendations for improving evaluations of reasonableness of price by Department of Defense acquisition professionals, including recommendations for any amendments to law, regulations, or guidance.

"(c) APPLICABILITY OF NEW GUIDANCE.—The guidance issued under subsection (a) shall apply to each exceptional case exception or waiver that is granted on or after the date on which the guidance is issued.

"(d) DEFINITIONS.—In this section:

"(1) The term 'exceptional case exception or waiver' means either of the following:

"(A) An exception pursuant to section 2306a(b)(1)(C) of title 10, United States Code [now 10 U.S.C. 3703(a)(1)], relating to submission of certified cost and pricing data.

"(B) A waiver pursuant to section 1502(b)(3)(B) of title 41, United States Code, relating to the applicability of cost accounting standards to contracts and subcontracts.

"(2) The term 'commercial product-commercial service exception' means an exception pursuant to section 2306a(b)(1)(B) of title 10, United States Code [now 10 U.S.C. 3703(a)(2)], relating to submission of certified cost and pricing data.

"(Added and amended Pub. L. 115–222, which directed amendment of section 817(d)(1) of Pub. L. 107–314, set out above, by substituting "commercial product-commercial service exceptions" for "commercial item exceptions", could not be executed because those words did not appear subsequent to amendment by section 1035(j) of Pub. L. 115–91.)

CHAPTER 271—TRUTHFUL COST OR PRICING DATA (TRUTH IN NEGOTIATIONS)

Sec. 3701. Definitions.

3702. Required cost or pricing data and certification.

3703. Exceptions.

3704. Cost or pricing data on below-threshold contracts.

3705. Submission of other information.

3706. Price reductions for defective cost or pricing data.

3707. Interest and penalties for certain overpayments.

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Editorial Notes

PRIOR PROVISIONS


§ 3701. 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 3706(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. Such term does not include information that is judgmental, but does include the 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.
§ 3702. Required cost or pricing data and certification

(a) When Required.—The head of an 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 a chapter 137 legacy provision to be entered into using procedures other than sealed-bid procedures that is only expected to receive one bid shall be required to submit cost or pricing data before the award of the contract if—

(A) in the case of a prime contract entered into after June 30, 2018, the price of the contract to the United States 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 United States is expected to exceed $750,000.

(2) Contractor.—The contractor for a prime contract under a chapter 137 legacy provision shall be required to submit cost or pricing data before the pricing of a change or modification to the contract if the price adjustment is expected to exceed $2,000,000.

(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 agency concerned to submit such data under section 3704 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) 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 to 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) Applicability of Chapter.—Except as provided under section 3703 of this title, this chapter applies to contracts entered into by the head of an 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 3703(a)(3) of this title in the case of a contract or subcontract does not waive the requirement under subsection (a)(3) 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 that subsection should be waived in the case of such subcontracts and justifies in writing the reasons for the determination.

(f) Modifications to Prior Contracts.—Under subsection (a), in connection with a prime contract entered into on or before June 30, 2018, the head of the agency that entered into such contract shall modify the contract as soon as practicable to reflect paragraphs (1) and (2) of such subsection, 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 of title 41.