

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

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
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-

lowing provisions regarding the types of information that contracting officers may require under subsection (a):

(1) **REASONABLE LIMITATIONS.**—Reasonable limitations on requests for sales data relating to commercial products or commercial services.

(2) **LIMITATION ON SCOPE OF REQUEST.**—A requirement that a contracting officer limit, to the maximum extent practicable, the scope of any request for information relating to commercial products or commercial services from an offeror to only that information that is in the form regularly maintained by the offeror in commercial operations.

(3) **INFORMATION NOT TO BE DISCLOSED.**—A statement that any information received relating to commercial products or commercial services that is exempt from disclosure under section 552(b) of title 5 shall not be disclosed by the Federal Government.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3767; Pub. L. 115-232, div. A, title VIII, §836(b)(13), 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>
3505	41:254b(d).	June 30, 1949, ch. 288, title III, §304A(d), as added Pub. L. 103-355, title I, §1251(a)(2), Oct. 13, 1994, 108 Stat. 3281; Pub. L. 104-106, title XLII, §§ 4201(b)(1), 4321(e)(4), Feb. 10, 1996, 110 Stat. 652, 675; Pub. L. 105-261, div. A, title VIII, §808(b), Oct. 17, 1998, 112 Stat. 2085.

Editorial Notes

AMENDMENTS

2018—Subsec. (b). Pub. L. 115-232 substituted “commercial products or commercial services” for “commercial items” wherever appearing.

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§ 3506. Price reductions for defective cost or pricing data

(a) **PROVISION REQUIRING ADJUSTMENT.**—

(1) **IN GENERAL.**—A prime contract (or change or modification to a prime contract) under which a certificate under section 3502(b) of this title is required shall contain a provision that the price of the contract to the Federal Government, including profit or fee, shall be adjusted to exclude any significant amount by which it may be determined by the head of the executive agency that the price was increased because the contractor (or any subcontractor required to make the certificate available) submitted defective cost or pricing data.

(2) **WHAT CONSTITUTES DEFECTIVE COST OR PRICING DATA.**—For the purposes of this chapter, defective cost or pricing data are cost or

pricing data that, as of the date of agreement on the price of the contract (or another date agreed on between the parties), were inaccurate, incomplete, or noncurrent. If for purposes of the preceding sentence the parties agree on a date other than the date of agreement on the price of the contract, the date agreed on by the parties shall be as close to the date of agreement on the price of the contract as is practicable.

(b) **VALID DEFENSE.**—In determining for purposes of a contract price adjustment under a contract provision required by subsection (a) whether, and to what extent, a contract price was increased because the contractor (or a subcontractor) submitted defective cost or pricing data, it is a defense that the Federal Government did not rely on the defective data submitted by the contractor or subcontractor.

(c) **INVALID DEFENSES.**—It is not a defense to an adjustment of the price of a contract under a contract provision required by subsection (a) that—

(1) the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted by the contractor or subcontractor because the contractor or subcontractor—

(A) was the sole source of the property or services procured; or

(B) otherwise was in a superior bargaining position with respect to the property or services procured;

(2) the contracting officer should have known that the cost or pricing data in issue were defective even though the contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the contracting officer;

(3) the contract was based on an agreement between the contractor and the Federal Government about the total cost of the contract and there was no agreement about the cost of each item procured under the contract; or

(4) the prime contractor or subcontractor did not submit a certification of cost or pricing data relating to the contract as required by section 3502(b) of this title.

(d) **OFFSETS.**—

(1) **WHEN ALLOWED.**—A contractor shall be allowed to offset an amount against the amount of a contract price adjustment under a contract provision required by subsection (a) if—

(A) the contractor certifies to the contracting officer (or to a designated representative of the contracting officer) that, to the best of the contractor's knowledge and belief, the contractor is entitled to the offset; and

(B) the contractor proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification), or, if applicable, consistent with subsection (a)(2), another date agreed on by the parties, and that the data were not submitted as specified in section 3502(c) of this title before that date.

(2) **WHEN NOT ALLOWED.**—A contractor shall not be allowed to offset an amount otherwise authorized to be offset under paragraph (1) if—

(A) the certification under section 3502(b) of this title with respect to the cost or pricing data involved was known to be false when signed; or

(B) the Federal Government proves that, had the cost or pricing data referred to in paragraph (1)(B) been submitted to the Federal Government before date of agreement on the price of the contract (or price of the modification), or, if applicable, under subsection (a)(2), another date agreed on by the parties, the submission of the cost or pricing data would not have resulted in an increase in that price in the amount to be offset.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3768.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
3506	41:254b(e).	June 30, 1949, ch. 288, title III, §304A(e), as added Pub. L. 103-355, title I, §1251(a)(2), Oct. 13, 1994, 108 Stat. 3282.

§3507. Interest and penalties for certain overpayments

(a) **IN GENERAL.**—If the Federal Government makes an overpayment to a contractor under a contract with an executive agency subject to this chapter and the overpayment was due to the submission by the contractor of defective cost or pricing data, the contractor shall be liable to the Federal Government—

(1) for interest on the amount of the overpayment, to be computed—

(A) for the period beginning on the date the overpayment was made to the contractor and ending on the date the contractor repays the amount of the overpayment to the Federal Government; and

(B) at the current rate prescribed by the Secretary of the Treasury under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621); and

(2) if the submission of the defective data was a knowing submission, for an additional amount equal to the amount of the overpayment.

(b) **LIABILITY NOT AFFECTED BY REFUSAL TO SUBMIT CERTIFICATION.**—Any liability under this section of a contractor that submits cost or pricing data but refuses to submit the certification required by section 3502(b) of this title with respect to the cost or pricing data is not affected by the refusal to submit the certification.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3769.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
3507	41:254b(f).	June 30, 1949, ch. 288, title III, §304A(f), as added Pub. L. 103-355, title I, §1251(a)(2), Oct. 13, 1994, 108 Stat. 3283.

§3508. Right to examine contractor records

For the purpose of evaluating the accuracy, completeness, and currency of cost or pricing