

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

- (a)
- (1) In those *acquisitions* that do not require *certified cost or pricing data*, the *contracting officer shall*—
- (i) Obtain whatever data are available from Government or other secondary sources and use that data in determining a fair and reasonable *price*;
- (ii) Require submission of *data other than certified cost or pricing data*, as defined in [2.101](#), from the *offeror* to the extent necessary to determine a fair and reasonable *price* ([10 U.S.C. 3705\(a\)](#) and [41 U.S.C.3505\(a\)](#)) if the *contracting officer* determines that adequate data from sources other than the *offeror* are not available. This includes requiring data from an *offeror* to support a *cost realism* analysis;
- (iii) Consider whether cost data are necessary to determine a fair and reasonable *price* when there is not adequate *price* competition;
- (iv) 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* unless an exception under [15.403-1\(b\)\(1\)](#) or (2) applies; and
- (v) Consider the guidance in section [3.3](#), chapter 3, volume I, of the Contract *Pricing* Reference Guide cited at [15.404-1\(a\)\(7\)](#) to determine the data an *offeror shall* be required to submit.
- (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 are sufficiently current to permit negotiation of a fair and reasonable *price*. Requests for updated *offeror* data *should* be limited to data that affect the adequacy of the proposal for negotiations, such as changes in *price* lists.
- (4) As specified in section 808 of the Strom Thurmond *National Defense* Authorization Act for Fiscal Year 1999 (Pub. L. 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 subsection 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 are necessary to determine the reasonableness of *price*. However, if there are unusual circumstances where it is concluded that additional data are 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 products and commercial services.*

(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 product* or *commercial service* (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 history of sales to non-governmental and governmental entities, 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 products or commercial services* [10 U.S.C. 3705\(b\)](#) and [41 U.S.C. 3505\(b\)](#).

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

(3) For 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, see [15.403-1\(c\)\(3\)\(ii\)](#).

Parent topic: [15.403 Obtaining certified cost or pricing data.](#)