

actions executed by the contract administration office.

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PART 12—CONTRACT DELIVERY OR PERFORMANCE

12.504 [Amended]

4. Section 12.504(d) is amended by adding "or other information" before the period at the end of the sentence.

PART 14—SEALED BIDDING—

5. Section 14.201-7 is amended in paragraphs (b)(1) and (c)(1) by removing "\$100,000, or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, is expected to exceed \$500,000." and inserting "the threshold for submission of cost or pricing data at 15.804-2(a)(1)." in its place; by redesignating (d) as (e), and adding a new (d) to read as follows:

14.201-7 Contract clauses.

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(d) Contracting officers shall, if requested by the prime contractor, modify contracts to change the threshold in the contract to the threshold for submission of cost or pricing data at 15.804-2(a)(1), without requiring consideration. The contract modification shall be accomplished by inserting into the contract the current version of clauses 52.214-27, Price Reduction for Defective Cost or Pricing Data—Modifications—Sealed Bidding, and 52.214-28, Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding. These new contract clauses shall apply only to contract modifications and subcontracts for which agreement on price occurs after the contracting officer has inserted the new clauses.

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14.214 [Removed]—

6. Section 14.214 is removed.

PART 15—CONTRACTING BY NEGOTIATION

7. Section 15.106-2 is revised to read as follows:

15.106-2 Audit—commercial items.

(a) This subsection implements 10 U.S.C. 2306a(d)(2) and (3) and 41 U.S.C. 254b(d)(2) and (3).

(b) The contracting officer shall, when contracting by negotiation, insert clause 52.215-XX, Audit-Commercial Items, in solicitations and contracts when submission of cost or pricing data may be required under 15.804-2 or exempted under 15.804-1(a)(2).

15.406-5 [Amended]—

8. Section 15.406-5(b) is amended by inserting the parenthetical "(See 15.804-6 and 15.804-8.)" at the end.—

9. Section 15.703(a)(2) is revised to read as follows:

15.703 Acquisitions requiring make-or-buy programs.—

(a) * * * —

(2) Qualifies for an exception from the requirement to submit cost or pricing data under 15.804-1; or

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10. Section 15.801 is amended by revising the definition of "Cost or pricing data", and adding definitions in alphabetical order to read as follows:

15.801 Definitions.

Certified cost or pricing data is a subset of the term "cost or pricing data". The term "cost or pricing data" includes the requirement for certification. The term "certified cost or pricing data" may be used to specifically indicate "cost or pricing data" for which a certificate has been, or should have been, provided in accordance with 15.804-4.

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Cost or pricing data means all facts that, as of the date of price agreement or, if applicable, another date agreed upon between the parties that is as close as possible to the date of agreement on price, prudent buyers and sellers would reasonably expect to affect the price significantly. Cost or pricing data shall be certified in accordance with 15.804-4. Cost and pricing data are factual, not judgmental, and are therefore verifiable. While they do not indicate the accuracy of the prospective contractor's judgment about estimated future costs or projections, they do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred. They also include such factors as (a) vendor quotations; (b) nonrecurring costs; (c) information on changes in production methods and in production or purchasing volume; (d) data supporting projections of business prospects and objectives and related operations costs; (e) unit-cost trends such as those associated with labor efficiency; (f) make-or-buy decisions; (g) estimated resources to attain business goals; and (h) information on management decisions that could have a significant bearing on costs.

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Information other than cost or pricing data means any type of information that

is not required to be certified in accordance with 15.804-4, that is necessary to determine price reasonableness or cost realism. For example, such information may include pricing information, sales information, or partial cost information, and includes cost or pricing data for which certification is determined inapplicable after submission.

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Subcontract, for purposes of this subpart, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or a subcontractor.

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11. Section 15.802 is revised to read as follows:

15.802 Policy.—

Contracting officers shall—
(a) Purchase supplies and services from responsible sources at fair and reasonable prices. In establishing the reasonableness of the offered prices, the contracting officer shall not obtain more information than is necessary and shall generally use the following order of preference in determining the type of information required:—

(1) No further information from the offeror if the price is based on adequate price competition.

(2) Information other than cost or pricing data:

(i) Information related to prices (e.g., established catalog or market prices), relying first on information available within the Government, second on information obtained from sources other than the offeror and lastly on information obtained from the offeror.

(ii) Limited cost information, which does not meet the definition of cost or pricing data at 15.801.

(3) *Cost or pricing data*. The contracting officer should use every means available to ascertain a fair and reasonable price prior to requesting cost or pricing data. Contracting officers shall not unnecessarily require the submission of cost or pricing data because it leads to increased proposal preparation costs, generally extends acquisition lead-time, and wastes both contractor and Government resources.

(b) Price each contract separately and independently and not—

(1) Use proposed price reductions under other contracts as an evaluation factor, or

(2) Consider losses or profits realized or anticipated under other contracts.

(c) Not include in a contract price any amount for a specified contingency to the extent that the contract provides for a price adjustment based upon the occurrence of that contingency.