

(b)(2)(i) and (ii) of this section are not met, the contracting officer may use other criteria to determine that the price of the item is based on an established catalog or market price of a commercial item sold in substantial quantities to the general public. For example—

(A) The item recently qualified for an exemption but no longer qualifies due to an unusual level of sales to the Government; or

(B) The item is a commercial item no longer sold to the public, but is still required by the Government and the proposed price can be determined reasonable based upon consideration of differences in quantities, terms, conditions, or other appropriate factors in comparison to the last price for which an exemption was granted.

(3) *Prices set by law or regulation.* Pronouncements in the form of periodic rulings, reviews, or similar actions of a governmental body, or embodied in the laws are sufficient to set a price.

(4) *Commercial items.* (i) For acquisitions of commercial items, if the exceptions at 15.804-1(a)(1) do not apply, the contracting officer shall obtain information from the prospective contractor or other sources regarding prices at which the same or similar items have been sold in the commercial marketplace in order to determine whether the price is fair and reasonable. Cost or pricing data may be obtained for such a commercial item only if the contracting officer makes a written determination that such information is inadequate for performing a price analysis and determining price reasonableness.

(ii) For modifications of commercial items, the exception at 15.804-1(a)(3) applies if the modification of a commercial item does not change the item from a commercial item to a noncommercial item. However, if the modification changes the nature of the work under the contract/subcontract either by a change to the commercial item or by the addition of other noncommercial work, the contracting officer is not prohibited from obtaining cost or pricing data for the added work.

(5) *Exceptional cases.* The head of the contracting activity may, in exceptional cases and without power of delegation, waive the requirement for submission of cost or pricing data. For example, a waiver should be considered if another exemption does not apply but the price can be determined to be fair and reasonable. The authorization for the waiver and the reasons for granting it shall be in writing. If the head of the contracting activity has waived the requirement for submission of cost or pricing data, the contractor or higher-

tier subcontractor to whom the waiver relates shall be considered as having been required to make available cost or pricing data for purposes of 15.804-2(a)(1). Consequently, award of any lower-tier subcontract expected to exceed the pertinent threshold set forth at 15.804-2(a)(1) requires the submission of cost or pricing data unless 15.804-1 otherwise applies to the subcontract.

(c) *Qualifying for an exception.* (1) In order to qualify for an exception based on established catalog or market price or prices set by law or regulation, the offeror must request an exemption. The contracting officer may specify one of the following methods:

(i) *Customary method*—SF 1412, Request for Exemption from Cost or Pricing Data.

(A) It is not necessary to establish an exemption for each line item. Consequently, a SF 1412 may be appropriate only for major items, i.e., if the proposed price for the total quantity of an item exceeds \$100,000 or another threshold specified by the contracting officer.

(B) If none of the items has a proposed price for its total quantity in excess of \$100,000 or another threshold specified by the contracting officer, a SF 1412 should be obtained for the item with the highest total proposed price.

(C) The contracting officer shall ensure that information used to support price negotiations is sufficiently current to permit negotiation of a fair and reasonable price. Requests for updated offeror information should be limited to information that affects the adequacy of the proposal for negotiations, such as changes in price lists.

(ii) *Prior exemption.* (A) If the U.S. Government has acted favorably on an exemption request for the same or similar items, the contracting officer may consider the prior submissions as support for the current exemption request. Relief from the submission of new information does not relieve the contracting officer from the requirement to determine reasonableness of price on the current acquisition.

(B) When acquiring by separate contract an item included on an active Federal Supply Service or Information Resource Management Service Multiple Award Schedule contract, the contracting officer should grant an exemption and not require a SF 1412 or similar exemption documentation if the offeror has provided as proof of the prior exemption a copy of the Certificate of Established Catalog or Market Price that was provided to GSA. Price analysis shall be performed in

accordance with 15.805-2 to determine reasonableness of price.

(iii) *Repetitive acquisitions.* The contracting officer and offeror may make special arrangements for the submission of exemption requests for repetitive acquisitions of catalog items or market items. These arrangements can take any form as long as they set forth an effective period and the exemption criteria at 15.804-1(b)(2) or (3) are satisfied. Such arrangements may be extended to other Government offices with their concurrence.

(iv) *Other.* The contracting officer may request or agree to accept information other than that specified in paragraphs (c)(1)(i) through (iii) of this section.

(2) If the offeror/contractor does not qualify for an exemption under paragraph (c)(1) of this section, an exemption may nevertheless be requested as a commercial item (see paragraph (b)(4) of this section) or as an exceptional case (see paragraph (b)(5) of this section). The contracting officer shall request sufficient documentation to support the request.

15. Section 15.804-2 is revised to read as follows:

15.804-2 Requiring Cost or Pricing Data

(a)(1) Cost or pricing data shall be obtained only if the contracting officer concludes that none of the exceptions in 15.804-1 applies. However, if the contracting officer has sufficient information available to determine price reasonableness, then a waiver in accordance with 15.804-1(b)(5) should be considered. The threshold for obtaining cost or pricing data is \$500,000. This amount will be subject to adjustment, effective October 1, 1995, and every five years thereafter. Except as provided in 15.804-1, cost or pricing data are required before accomplishing any of the following actions expected to exceed the threshold in effect at time of agreement on price or, in the case of existing contracts, the threshold specified in the contract—

(i) The award of any negotiated contract (except for undefinitized actions such as letter contracts).

(ii) The award of a subcontract at any tier, if the contractor and each higher-tier subcontractor have been required to furnish cost or pricing data. (See 15.804-1(b)(5).)

(iii) The modification of any sealed bid or negotiated contract (whether or not cost or pricing data were initially required) or subcontract covered by paragraph (a)(1)(ii) of this section. Price adjustment amounts shall consider both increases and decreases. (For example, a \$150,000 modification resulting from a