

(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 procuring activity concerned to submit the data under section 3504 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) (or under section 3504 of this title), and a certification required to be submitted under subsection (b), 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 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) APPLICATION OF CHAPTER.—Except as provided under section 3503 of this title, this chapter applies to contracts entered into by the head of an executive 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 3503(a)(3) of this title in the case of a contract or subcontract does not waive the requirement under subsection (a)(3) of this section 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 subsection (a)(3) of this section should be waived in the case of those subcontracts and justifies in writing the reason for the determination.

(f) MODIFICATIONS TO PRIOR CONTRACTS.—On the request of a contractor that was required to submit cost or pricing data under subsection (a) in connection with a prime contract entered into on or before June 30, 2018, the head of the executive agency that entered into the contract shall modify the contract to reflect paragraphs (2)(B) and (3)(B) of subsection (a). All those modifications shall be made 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.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3765; Pub. L. 115–91, div. A, title VIII, § 811(a)(2), Dec. 12, 2017, 131 Stat. 1459.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
3502	41:254b(a).	June 30, 1949, ch. 288, title III, § 304A(a), as added Pub. L. 103–355, title I, § 1251(a)(2), Oct. 13, 1994, 109 Stat. 3278; Pub. L. 105–261, div. A, title VIII, § 805(b), Oct. 17, 1998, 112 Stat. 2083.

AMENDMENTS

2017—Subsec. (a). Pub. L. 115–91, § 811(a)(2)(A)(i), (ii), substituted “June 30, 2018” for “October 13, 1994” and “\$750,000” for “\$100,000” wherever appearing.

Subsec. (a)(1)(A), (2)(A). Pub. L. 115–91, § 811(a)(2)(A)(iii), substituted “\$2,000,000” for “\$500,000”.

Subsec. (a)(2)(B). Pub. L. 115–91, § 811(a)(2)(A)(iv), substituted “\$750,000” for “\$500,000”.

Subsec. (a)(3)(A), (B), (4)(A). Pub. L. 115–91, § 811(a)(2)(A)(iii), substituted “\$2,000,000” for “\$500,000”.

Subsec. (f). Pub. L. 115–91, § 811(a)(2)(B), substituted “June 30, 2018” for “October 13, 1994”.

Subsec. (g). Pub. L. 115–91, § 811(a)(2)(C), substituted “in accordance with section 1908.” for “to the amount that is equal to the fiscal year 1994 constant dollar value of the amount set forth. Any amount, as so adjusted, that is not evenly divisible by \$50,000 shall be rounded to the nearest multiple of \$50,000. In the case of an amount that is evenly divisible by \$25,000 but not evenly divisible by \$50,000, the amount shall be rounded to the next higher multiple of \$50,000.”

§ 3503. Exceptions

(a) IN GENERAL.—Submission of certified cost or pricing data shall not be required under section 3502 of this title in the case of a contract, a subcontract, or a modification of a contract or subcontract—

(1) for which the price agreed on is based on—

- (A) adequate price competition; or
- (B) prices set by law or regulation;

(2) for the acquisition of a commercial item; or

(3) in an exceptional case when the head of the procuring activity, without delegation, determines that the requirements of this chapter may be waived and justifies in writing the reasons for the determination.

(b) MODIFICATIONS OF CONTRACTS AND SUBCONTRACTS FOR COMMERCIAL ITEMS.—In the case of a modification of a contract or subcontract for a commercial item that is not covered by the exception to the submission of certified cost or pricing data in paragraph (1) or (2) of subsection (a), submission of certified cost or pricing data shall not be required under section 3502 of this title if—

(1) the contract or subcontract being modified is a contract or subcontract for which submission of certified cost or pricing data may not be required by reason of paragraph (1) or (2) of subsection (a); and

(2) the modification would not change the contract or subcontract from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of an item other than a commercial item.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3766; Pub. L. 115–232, div. A, title VIII, § 836(b)(12), Aug. 13, 2018, 132 Stat. 1863.)

AMENDMENT OF SECTION

Pub. L. 115–232, div. A, title VIII, § 836(b)(12), (h), Aug. 13, 2018, 132 Stat. 1863, 1874, provided that, effective Jan. 1, 2020, subject to a savings provision, this section is amended as follows:

(1) in subsection (a)(2), by striking “a commercial item” and inserting “a commercial product or a commercial service”; and

(2) in subsection (b)—

(A) in the heading, by striking “Commercial Items” and inserting “Commercial Products or Commercial Services”; and

(B) by striking “a commercial item” each place it appears and inserting “a commercial product or a commercial service”.

See 2018 Amendment notes below.

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
3503	41:254b(b).	June 30, 1949, ch. 288, title III, §304A(b), as added Pub. L. 103-355, title I, §1251(a)(2), Oct. 13, 1994, 108 Stat. 3279; Pub. L. 104-106, title XLII, §4201(b)(1), Feb. 10, 1996, 110 Stat. 651.

In subsection (b)(2), the words “as the case may be” are omitted as unnecessary.

AMENDMENTS

2018—Subsec. (a)(2). Pub. L. 115-232, §836(b)(12)(A), substituted “a commercial product or a commercial service” for “a commercial item”.

Subsec. (b). Pub. L. 115-232, §836(b)(12)(B), in heading, substituted “Commercial Products or Commercial Services” for “Commercial Items” and, in text, substituted “a commercial product or a commercial service” for “a commercial item” wherever appearing.

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

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
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 following 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 items.

(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 items 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 items 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.)

AMENDMENT OF SUBSECTION (b)

Pub. L. 115-232, div. A, title VIII, §836(b)(13), (h), Aug. 13, 2018, 132 Stat. 1863, 1874, provided that, effective Jan. 1, 2020, subject to a savings provision, subsection (b) of this section is amended by striking “commercial items” each place it appears and inserting “commercial products or commercial services”. See 2018 Amendment note below.