

Pub. L. 115-91, div. A, title X, §1051(j), Dec. 12, 2017, 131 Stat. 1563; Pub. L. 115-232, div. A, title VIII, §§825, 836(f)(4), Aug. 13, 2018, 132 Stat. 1856, 1871, provided that:

“(a) GUIDANCE FOR EXCEPTIONS IN EXCEPTIONAL CIRCUMSTANCES.—Not later than 60 days after the date of the enactment of this Act [Dec. 2, 2002], the Secretary of Defense shall issue guidance on the circumstances under which it is appropriate to grant an exceptional case exception or waiver with respect to certified cost and pricing data and cost accounting standards.

“(b) DETERMINATION REQUIRED FOR EXCEPTIONAL CASE EXCEPTION OR WAIVER.—The guidance shall, at a minimum, include a limitation that a grant of an exceptional case exception or waiver is appropriate with respect to a contract, subcontract, or (in the case of submission of certified cost and pricing data) modification only upon a determination that—

“(1) the property or services cannot reasonably be obtained under the contract, subcontract, or modification, as the case may be, without the grant of the exception or waiver;

“(2) the price can be determined to be fair and reasonable without the submission of certified cost and pricing data or the application of cost accounting standards, as the case may be; or

“(3) there are demonstrated benefits to granting the exception or waiver.

“(c) APPLICABILITY OF NEW GUIDANCE.—The guidance issued under subsection (a) shall apply to each exceptional case exception or waiver that is granted on or after the date on which the guidance is issued.

“(d) DEFINITIONS.—In this section:

“(1) The term ‘exceptional case exception or waiver’ means either of the following:

“(A) An exception pursuant to section 2306a(b)(1)(C) of title 10, United States Code [now 10 U.S.C. 3703(a)(3)], relating to submission of certified cost and pricing data.

“(B) A waiver pursuant to section 1502(b)(3)(B) of title 41, United States Code, relating to the applicability of cost accounting standards to contracts and subcontracts.

“(2) The term ‘commercial product-commercial service exception’ means an exception pursuant to section 2306a(b)(1)(B) of title 10, United States Code [now 10 U.S.C. 3703(a)(2)], relating to submission of certified cost and pricing data.”

[Section 836(f)(4)(A) of Pub. L. 115-232, which directed amendment of section 817(d)(1) of Pub. L. 107-314, set out above, by substituting “commercial product-commercial service exceptions” for “commercial item exceptions”, could not be executed because those words did not appear subsequent to amendment by section 1051(j) of Pub. L. 115-91.]

CHAPTER 271—TRUTHFUL COST OR PRICING DATA (TRUTH IN NEGOTIATIONS)

Sec.	
3701.	Definitions.
3702.	Required cost or pricing data and certification.
3703.	Exceptions.
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3708.	Right to examine contractor records.

Editorial Notes

PRIOR PROVISIONS

A prior chapter 271, “TRUTHFUL COST OR PRICING DATA”, as added by Pub. L. 115-232, div. A, title VIII, §801(a), Aug. 13, 2018, 132 Stat. 1828, and consisting of reserved section 3701, was repealed by Pub. L. 116-283, div. A, title XVIII, §1831(a), Jan. 1, 2021, 134 Stat. 4208.

§ 3701. Definitions

In this chapter:

(1) COST OR PRICING DATA.—The term “cost or pricing data” means all facts that, as of the date of agreement on the price of a contract (or the price of a contract modification), or, if applicable consistent with section 3706(a)(2) of this title, another date agreed upon between the parties, a prudent buyer or seller would reasonably expect to affect price negotiations significantly. Such term does not include information that is judgmental, but does include the factual information from which a judgment was derived.

(2) SUBCONTRACT.—The term “subcontract” includes a transfer of commercial products or commercial services between divisions, subsidiaries, or affiliates of a contractor or a subcontractor.

(Added and amended Pub. L. 116-283, div. A, title XVIII, §1831(a), (b), Jan. 1, 2021, 134 Stat. 4209; Pub. L. 117-81, div. A, title XVII, §1701(b)(10)(A), Dec. 27, 2021, 135 Stat. 2133.)

Editorial Notes

CODIFICATION

The text of subsec. (h) of section 2306a of this title, which was transferred to this section and amended by Pub. L. 116-283, §1831(b), was based on Pub. L. 99-500, §101(c) [title X, §952(a)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-166, and Pub. L. 99-591, §101(c) [title X, §952(a)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-166; Pub. L. 99-661, div. A, title IX, formerly title IV, §952(a), Nov. 14, 1986, 100 Stat. 3945, renumbered title IX, Pub. L. 100-26, §3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100-180, div. A, title VIII, §804(a), Dec. 4, 1987, 101 Stat. 1125; Pub. L. 103-355, title I, §§1204(1), 1208, Oct. 13, 1994, 108 Stat. 3275, 3277; Pub. L. 104-106, div. D, title XLII, §4201(a)(2)(B), Feb. 10, 1996, 110 Stat. 651; Pub. L. 111-350, §5(b)(15), Jan. 4, 2011, 124 Stat. 3843; Pub. L. 115-232, div. A, title VIII, §836(c)(5)(C), Aug. 13, 2018, 132 Stat. 1865. Pub. L. 99-500, Pub. L. 99-591, and Pub. L. 99-661 added identical sections. Pub. L. 99-591 is a corrected version of Pub. L. 99-500.

AMENDMENTS

2021—Pub. L. 116-283, §1831(b), as amended by Pub. L. 117-81, §1701(b)(10)(A), transferred subsec. (h) of section 2306a of this title to this section, struck out subsec. (h) designation and heading “Definitions” at beginning, and substituted “this chapter” for “this section” in introductory provisions and “section 3706(a)(2) of this title” for “subsection (e)(1)(B)” in par. (1).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 117-81 applicable as if included in the enactment of title XVIII of Pub. L. 116-283 as enacted, see section 1701(a)(2) of Pub. L. 117-81, set out in a note preceding section 3001 of this title and Effective Date note below.

EFFECTIVE DATE

Section and amendment by Pub. L. 116-283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116-283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3702. Required cost or pricing data and certification

(a) WHEN REQUIRED.—The head of an agency shall require offerors, contractors, and sub-