**252.215-7010 Requirements for Certified Cost or Pricing Data and Data Other**

**Than Certified Cost or Pricing Data. (DEVIATION 2024-O0007)**

 Use the following deviation provision, in lieu of the basic or alternate of the provision at DFARS 252.215-7010, in solicitations that the Director, Price, Cost and Finance / Defense Pricing and Contracting, has authorized for participation in the Section 890 Pilot Program.

REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA AND DATA OTHER

THAN CERTIFIED COST OR PRICING DATA (DEVIATION 2024-O0007)

(FEB 2024)

 (a) Definitions. As used in this provision—

 “Market prices” means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors.

 “Non-Government sales” means sales of the supplies or services to non-Governmental entities for purposes other than governmental purposes.

 “Relevant sales data” means information provided by an offeror on sales of the same or similar items that can be used to establish price reasonableness taking into consideration the age, volume, and nature of the transactions (including any related discounts, refunds, rebates, offsets, or other adjustments).

 “Sufficient non-Government sales” means relevant sales data that reflects market pricing and contains enough information to make adjustments covered by FAR 15.404-1(b)(2)(ii)(B).

 “Uncertified cost data” means the subset of “data other than certified cost or pricing data” (see FAR 2.101) that relates to cost.

 (b) Exceptions from certified cost or pricing data.

 (1) In lieu of submitting certified cost or pricing data, the Offeror may submit a written request for exception by submitting the information described in paragraphs (b)(1)(i) and (ii) of this provision. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted and whether the price is fair and reasonable.

 (i) Exception for price set by law or regulation - Identification of the law or regulation establishing the price offered. If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

 (ii) Commercial item exception. For a commercial item exception, the Offeror shall submit, at a minimum, information that is adequate for evaluating the reasonableness of the price for this acquisition, including prices at which the same item or similar items have been sold in the commercial market. Such information shall include—

 (A) For items previously determined to be commercial, the contract number and military department, defense agency, or other DoD component that rendered such determination, and if available, a Government point of contact;

 (B) For items priced based on a catalog—

 (1) A copy of or identification of the Offeror’s current catalog showing the price for that item; and

 (2) If the catalog pricing provided with this proposal is not consistent with all relevant sales data, a detailed description of differences or inconsistencies between or among the relevant sales data, the proposed price, and the catalog price (including any related discounts, refunds, rebates, offsets, or other adjustments);

 (C) For items priced based on market pricing, a description of the nature of the commercial market, the methodology used to establish a market price, and all relevant sales data. The description shall be adequate to permit DoD to verify the accuracy of the description;

 (D) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item; or

 (E) For items provided by nontraditional defense contractors, a statement that the entity is not currently performing and has not performed, for at least the 1-year period preceding the solicitation of sources by DoD for the procurement or transaction, any contract or subcontract for DoD that is subject to full coverage under the cost accounting standards prescribed pursuant to 41 U.S.C. 1502 and the regulations implementing such section.

 (2) The Offeror grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this provision, and to determine the reasonableness of price.

 (c) Requirements for certified cost or pricing data. This acquisition is accomplished under the authority of section 890 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115-232), as amended by section 825 of the NDAA for FY 2020 (Pub. L. 116-92), section 818 of the NDAA for FY 2023 (Pub. L. 117-263), and section 841 of the NDAA for FY 2024 (Pub. L. 118-31). The intent of this pilot program is to test the efficacy of basing price reasonableness determinations primarily on actual costs of performance for prior purchases of the same or similar products for the Department of Defense. If the Offeror is not granted an exception from the requirement to submit certified cost or pricing data, the following applies:

 (1) In lieu of providing complete cost or pricing data, as defined in FAR 2.101, the Offeror shall submit a subset of cost or pricing data and supporting attachments as follows: [*Contracting Officer shall list the specific cost or pricing data deemed necessary to establish price reasonableness for this acquisition, and describe the required submission format for each type of data. At a minimum, the Contracting Officer shall identify the specific prior DoD purchases of the same or similar products for which the Offeror is required to submit the actual cost of performance. The Offeror is not required to submit cost or pricing data that is not listed within this provision. If the Contracting Officer finds that additional cost or pricing data are needed in order to determine that the price is fair and reasonable, the Contracting Officer shall issue an amendment to the solicitation, revising this paragraph as needed to require the submission of the additional data*.]

 (2)(i) As soon as practicable after agreement on price, but before contract award (except for unpriced actions such as letter contracts), the Offeror shall submit a Certificate of Current Cost or Pricing Data, using the following language:

Certificate of Current Cost or Pricing Data for Acquisitions Accomplished under the Authority of Section 890 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019, as amended by Section 825 of the NDAA for FY 2020, Section 818 of the NDAA for 2023, and Section 841 of the NDAA for FY 2024

 This is to certify that, to the best of my knowledge and belief, the cost or pricing data required by the provision at 252.215-7010, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data (DEVIATION 2024-O0007) of the Request for Proposal for this action, and submitted either actually or by specific identification in writing, to the Contracting Officer or to the Contracting Officer's Representative in support of \_\_\_\_\_\_\_\_\* are accurate, complete, and current as of \_\_\_\_\_\_\_\_\*\*. This certification includes the cost or pricing data supporting any advance agreements and forward pricing rate agreements between the Offeror and the Government that are part of the proposal.

 Firm \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Title \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Date of execution\*\*\*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \*Identify the proposal involved, giving the appropriate identifying number (e.g., RFP No.).

 \*\*Insert the day, month, and year when price negotiations were concluded and price agreement was reached or, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on price.

 \*\*\*Insert the day, month, and year of signing, which should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to.

 (ii) The certificate does not constitute a representation as to the accuracy of the Offeror’s judgment on the estimate of future costs or projections. It applies to the data upon which the judgment or estimate was based. This distinction between fact and judgment should be clearly understood. With respect to the certified cost or pricing data required by paragraphs (c)(1) or (e) of this provision (as revised by solicitation amendment, if applicable), if the Offeror had information reasonably available at the time of agreement showing that the negotiated price was not based on accurate, complete, and current data, the Offeror’s responsibility is not limited by any lack of personal knowledge of the information on the part of its negotiators.

 (iii) The Contracting Officer and Offeror are encouraged to reach a prior agreement on criteria for establishing closing or cutoff dates when appropriate in order to minimize delays associated with proposal updates. Closing or cutoff dates applicable to the certified cost or pricing data required by paragraphs (c)(1) or (e) of this provision should be included as part of the data submitted with the proposal and, before agreement on price, data should be updated by the contractor to the latest closing or cutoff dates for which the data are available. Use of cutoff dates coinciding with reports is acceptable, as certain data may not be reasonably available before normal periodic closing dates (e.g., actual indirect costs). Data within the Offeror’s or a subcontractor’s organization on matters significant to contractor management and to the Government will be treated as reasonably available, if that data was required to be submitted by paragraph (c)(1) or (e) of this provision. What is significant depends upon the circumstances of each acquisition.

 (iv) Possession of a Certificate of Current Cost or Pricing Data is not a substitute for examining and analyzing the Offeror’s proposal.

 (v) If certified cost or pricing data are requested by the Government and submitted by the Offeror, but an exception is later found to apply, the data shall not be considered certified cost or pricing data and shall not be certified in accordance with this subsection.

 (3) The Offeror is responsible for determining whether a subcontractor qualifies for an exception from the requirement for submission of certified cost or pricing data on the basis of adequate price competition, i.e., two or more responsible offerors, competing independently, submit priced offers that satisfy the Government's expressed requirement in accordance with FAR 15.403-1(c)(1).

 (d) *Requirements for data other than certified cost or pricing data*.

 (1) Data other than certified cost or pricing data submitted in accordance with this provision shall include all data necessary to permit a determination that the proposed price is fair and reasonable, to include the requirements in DFARS [215.402](https://www.acq.osd.mil/dpap/dars/dfars/html/current/215_4.htm#215.402)(a)(i) and [215.404-1](https://www.acq.osd.mil/dpap/dars/dfars/html/current/215_4.htm#215.404-1)(b).

 (2) In cases in which uncertified cost data is required, the information shall be provided in the form in which it is regularly maintained by the Offeror or prospective subcontractor in its business operations.

 (3) The Offeror shall provide information described as follows: *[Insert description of the data and the format that are required, including access to records necessary to permit an adequate evaluation of the proposed price in accordance with FAR 15.403-3]*.

 (4) Within 10 days of a written request from the Contracting Officer for additional information to support proposal analysis, the Offeror shall provide either the requested information, or a written explanation for the inability to fully comply.

 (5) Subcontract price evaluation.

 (i) The Offeror shall obtain from subcontractors the minimum information necessary to support a determination of price reasonableness, as described in FAR part 15 and DFARS part 215.

 (ii) No cost information may be required from a prospective subcontractor in any case in which there are sufficient non-Government sales of the same item to establish reasonableness of price.

 (iii) If the Offeror relies on relevant sales data for similar items to determine the price is reasonable, the Offeror shall obtain only that technical information necessary—

 (A) To support the conclusion that items are technically similar; and

 (B) To explain any technical differences that account for variances between the proposed prices and the sales data presented, but excluding paragraph (c), in all subcontracts exceeding the simplified acquisition threshold defined in FAR part 2.

 (e) *Subcontracts*.

 (1) For subcontracts above the threshold for submission of certified cost or pricing data in FAR 15.403-4 to which the authority of the Section 890 pilot has been flowed down, in lieu of the requirements in paragraphs (a) and (b) of the clause at 52.215-12, Subcontractor Certified Cost or Pricing Data, of this solicitation, the Offeror shall require the subcontractor to submit a subset of cost or pricing data (actually or by specific identification in writing) as follows:

 (i) [*Contracting Officer shall add paragraphs as necessary to identify each first-tier subcontract to which the authority of the Section 890 pilot has been flowed down, and the specific certified cost or pricing data required for each subcontract. Contracting Officer shall list the specific cost or pricing data deemed necessary to determine that the price is fair and reasonable for each subcontract, and describe the required submission format for each type of data. The type and extent of data required may differ based on the dollar value of the subcontract proposal, or other appropriate considerations. At a minimum, the Contracting Officer shall identify the specific prior subcontracts awarded in support of the DoD purchases of the same or similar products for which the subcontractor is required to submit the actual cost of performance. The Contracting Officer shall specify whether the authority of the Section 890 pilot is further flowed down to any lower-tier subcontract pertaining to each first-tier subcontract. Where the pilot authority is flowed down to lower-tier subcontracts, the Contracting Officer shall describe the specific certified cost or pricing data that is to be provided by each affected lower-tier subcontractor. The subcontractor and lower tier subcontractors to which the pilot authority is flowed down are not required to submit certified cost or pricing data that is not listed within this provision. If the Contracting Officer finds that additional certified cost or pricing data are needed in order to determine that the price is fair and reasonable, the Contracting Officer shall issue an amendment to the solicitation, revising this paragraph as needed to require the submission of the additional data.*]

 (ii) In the event a subcontractor denies the Offeror access to the data described in paragraph (e)(1)(i) of this provision, the data may be provided directly to the Contracting Officer.

 (iii) If a subcontractor is unable to provide the extent of historical actual cost experience required by paragraph (e)(1)(i), then the Offeror shall require the subcontractor to provide certified cost or pricing data in accordance with paragraph (e)(2) of this clause.

 (iv) The Offeror shall require the subcontractor to certify in substantially the form prescribed in paragraph (c)(2) of this provision that, to the best of its knowledge and belief, the data submitted under paragraph (e)(1)(i) of this provision were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract.

 (2) For subcontracts above the threshold for submission of certified cost or pricing data in FAR 15.403-4 to which the authority of the Section 890 pilot has not been flowed down, the Offeror shall require the subcontractor to provide certified cost or pricing data in accordance with the clause at 52.215-12, Subcontractor Certified Cost or Pricing Data, of this solicitation and shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (a) of the clause at 52.215-12 were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract.

(End of provision)