**DFARS Case 2023-D010**

**Data Requirements for Commercial Products for**

**Major Weapon Systems**

**Final Rule**

**PART 212—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES**

**SUBPART 212.1—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES**

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**212.102 Applicability.**

(a)(i) \* \* \*

(ii) \* \* \*

(iii) \* \* \*

(A) Determine in writing that the acquisition meets the “commercial product” or “commercial service” definition in FAR 2.101**[. See 234.7002(b) and (c) for** **subsystems of major weapon systems and components and spare parts of major weapon systems and of subsystems of major weapon systems]**;

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**SUBPART 212.2—SPECIAL REQUIREMENTS FOR THE ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES**

\* \* \* \* \*

**212.209 Determination of price reasonableness.**

(a) \* \* \*

(1) In the case of major weapon systems**[, for subsystems of major weapon systems and components and spare parts of major weapon systems and of subsystems of major weapon systems]**~~products~~ acquired as commercial products in accordance with subpart 234.70, shall use information submitted under 234.7002(**[e]**~~d~~); and

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**PART 215—CONTRACTING BY NEGOTIATION**

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**SUBPART 215.4—CONTRACT PRICING**

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**215.403 Obtaining certified cost or pricing data.**

**215.403-1 Prohibition on obtaining certified cost or pricing data (10 U.S.C. chapter 271 and 41 U.S.C. chapter 35).**

\* \* \* \* \*

(c) *Standards for exceptions from certified cost or pricing data requirements—*

\* \* \* \* \*

(3) *Commercial products or commercial services.*

(A) Follow the procedures at PGI 215.403-1(c)(3) for pricing commercial products or commercial services**[, except see 234.7002(e) for pricing commercial subsystems of major weapon systems and components and spare parts of major weapon systems and of subsystems of major weapon systems]**.

\* \* \* \* \*

**215.403-3 Requiring data other than certified cost or pricing data.**

\* \* \* \* \*

(c) *Commercial products or commercial services.* For determinations of price reasonableness of major weapon systems acquired as commercial products, see [234.7002](https://www.acquisition.gov/dfars/part-234-major-system-acquisition#DFARS_234.7002)(~~d~~**[e]**).

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**PART 234—MAJOR SYSTEM ACQUISITION**

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### SUBPART 234.70—ACQUISITION OF MAJOR WEAPON SYSTEMS AS COMMERCIAL PRODUCTS

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**234.7002 Policy.**

\* \* \* \* \*

(b) *Subsystems.*  A subsystem of a major weapon system (other than a commercially available off-the-shelf item) shall be treated as a commercial product and acquired under procedures established for the acquisition of commercial products if—

(1) The subsystem is intended for a major weapon system that is being acquired, or has been acquired, under procedures established for the acquisition of commercial products in accordance with paragraph (a) of this section; or

(2) The contracting officer determines in writing that the subsystem is a commercial product~~.~~**[ in accordance with 212.102(a)(iii). For a subsystem of a major weapon system proposed as a commercial product that has not previously been determined to be a commercial product (see 212.102(a)(ii)), follow the procedures in paragraph (d) of this section.**

**(3) This paragraph (b) shall apply only to subsystems of major weapon systems that are acquired by DoD through a—**

**(i) Prime contract;**

**(ii) Modification to a prime contract; or**

**(iii) Subcontract under a prime contract for the acquisition of a subsystem proposed as a commercial product that has not previously been determined to be a commercial product (see 212.102(a)(ii)).]**

(c) *Components and spare parts.*

(1) A component or spare part for a major weapon system (other than a commercially available off-the-shelf item) may be treated as a commercial product if—

(i) The component or spare part is intended for—

(A) A major weapon system that is being acquired, or has been acquired, under procedures established for the acquisition of commercial products in accordance with [paragraph (a)](https://www.ecfr.gov/current/title-48/section-234.7002#p-234.7002(a)) of this section; or

(B) A subsystem of a major weapon system that is being acquired, or has been acquired, under procedures established for the acquisition of commercial products in accordance with [paragraph (b)](https://www.ecfr.gov/current/title-48/section-234.7002#p-234.7002(b)) of this section; or

(ii) The contracting officer determines in writing that the component or spare part is a commercial product~~.~~**[ in accordance with 212.102(a)(iii). For a component or spare part proposed as a commercial product that has not previously been determined to be a commercial product (see 212.102(a)(ii)), follow the procedures in paragraph (d) of this section.]**

(2) This paragraph (c) shall apply only to components and spare parts that are acquired by DoD through a**[—**

**(i) P]**~~p~~rime contract**[;**

**(ii)]** ~~or a m~~**[M]**odification to a prime contract**[;]**~~,~~ or ~~through a~~

**[(iii) S]**~~s~~ubcontract under a prime contract ~~or modification to a prime contract~~ **[for the acquisition of a component or spare part proposed as a commercial product that has not previously been determined to be a commercial product (see 212.102(a)(ii)).]** ~~on which the prime contractor adds no, or negligible, value.~~

**[(d) *Commerciality determination.* To the extent necessary to make a commercial product determination in accordance with 212.102(a)(iii) that relies on paragraph (1), (2), (3), (4), or (5) of the “commercial product” definition at FAR 2.101 for a subsystem, component, or spare part as described in paragraphs (b) and (c) of this section, the provision at 252.215-7010, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data, requires the offeror to—**

**(1) Identify the comparable commercial product the offeror sells to the general public or nongovernmental entities for other than governmental purposes;**

**(2) Provide a comparison between the physical characteristics and functionality of the comparable commercial product and the subsystem, component, or spare part, including—**

**(i) For products under paragraph (3)(i) of the “commercial product” definition at FAR 2.101, a description of the modification and documentation to support that the modification is customarily available in the marketplace; or**

**(ii) For products under paragraph (3)(ii) of the “commercial product” definition at FAR 2.101, a detailed description of the modification and detailed technical data to demonstrate that the modification is minor (e.g., information on production processes and material differences); and**

**(3) Provide the national stock number (NSN) for the comparable commercial product, if one is assigned, and the NSN for the subsystem, component, or spare part, if one is assigned; or**

**(4) If the offeror does not sell a comparable commercial product to the general public or nongovernmental entities for other than governmental purposes, then the offeror is required to—**

**(i) Notify the contracting officer in writing that it does not sell such a comparable product; and**

**(ii) Provide the contracting officer a comparison between** **the physical characteristics and functionality of the most comparable commercial product in the commercial market and the subsystem, component, or spare part, if available.]**

(**[e]**~~d~~) *Relevant information* **[*to determine price reasonableness.* For products relying on paragraph (3)(ii) of the “commercial product” definition at FAR 2.101, see FAR 15.403-1(c)(3)(iii)(C)]***.* See 212.209(a) for requirements of [10 U.S.C. 3453](https://www.govinfo.gov/link/uscode/10/3453) with regard to market research.

(1) **[Unless an exception at FAR 15.403-1(b)(1) or (2) applies—**

**(i)]** To the extent necessary to make a determination of price reasonableness, the contracting officer shall require the offeror to ~~submit prices paid for the same or similar commercial products under comparable terms and conditions by both Government and commercial customers.~~**[submit to or provide the contracting officer access to a representative sample, as determined by the contracting officer, of prices paid for the same or similar commercial products under comparable terms and conditions by both Government and commercial customers and the terms and conditions of such sales; or]**

(**[ii]**~~2~~) If the contracting officer determines that the offeror cannot provide **[or give access to]** sufficient information described in **[this]** paragraph (**[e]**~~d~~)(1) ~~of this section~~ to determine the reasonableness of price, the contracting officer shall ~~request~~**[require]** the offeror to submit **[or provide the contracting officer access to a representative sample, as determined by the contracting officer, of the]**~~information on—~~

~~(i) P~~**[p]**rices paid for the same or similar **[commercial products sold]**~~items~~ under different terms and conditions **[and the terms and conditions of such sales.]**~~;~~

~~(ii) Prices paid for similar levels of work or effort on related products or services;~~

~~(iii) Prices paid for alternative solutions or approaches; and~~

~~(iv) Other relevant information that can serve as the basis for a price reasonableness determination.~~

**[(2) The contracting officer shall allow the offeror to redact only information provided pursuant to paragraph (e)(1) of this section that identifies the customer, if the offeror certifies in writing for each sale that the customer is a—**

**(i) Government customer (e.g., Federal, State, local, or foreign government);**

**(ii) Commercial customer purchasing the product for governmental purposes; or**

**(iii) Commercial customer purchasing the product for a commercial, mixed, or unknown purpose.]**

(3) If the contracting officer determines that the information submitted pursuant to ~~paragraphs~~**[paragraph]** (**[e]**~~d~~)(1) ~~and (2)~~ of this section is not sufficient to determine the reasonableness of price **[because the comparable commercial product provided by the offeror is not a valid basis for price analysis or the proposed price is not reasonable after evaluating sales data, then the contracting officer shall obtain approval from an official one level above the contracting officer, without power of delegation, and require the offeror to submit other relevant information regarding the basis for price or cost, including information on labor costs, material costs, and overhead rates.]**~~, the contracting officer shall request the offeror to submit other relevant information, including uncertified cost data. However, no uncertified cost data may be required in any case in which there are sufficient non-Government sales of the same item to establish reasonableness of price.~~

(4) An offeror shall not be required to submit information described in paragraph (**[e]**~~d~~)(**[1]**~~3~~) of this section with regard to a commercially available off-the-shelf item. An offeror may be required to submit such information with regard to any other item that was developed exclusively at private expense only after the head of the contracting activity determines in writing that the information submitted pursuant to ~~paragraphs~~**[paragraph]** (**[e]**~~d~~)(1) ~~and (2)~~ of this section is not sufficient to determine the reasonableness of price.

(5) An offeror may submit information or analysis relating to the value of a commercial product to aid in the determination of the reasonableness of the price of such commercial product. A contracting officer may consider such information or analysis in addition to the information submitted pursuant to ~~paragraphs~~**[paragraph]** (**[e]**~~d~~)(1) ~~and (2)~~ of this section. For additional guidance see [PGI 234.7002](https://www.acq.osd.mil/dpap/dars/dfars/html/current/234_7.htm#234.7002)(**[e]**~~d~~)(5).

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**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

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**SUBPART 252.2—TEXT OF PROVISIONS AND CLAUSES**

\* \* \* \* \*

[**252.215-7010 Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data.**](https://www.ecfr.gov/current/title-48/section-252.215-7010)

*Basic.* As prescribed in 215.408(5)(i) and (5)(i)(A), use the following provision:

REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA AND DATA OTHER THAN CERTIFIED COST OR PRICING DATA—BASIC (**[MAY 2024]**~~JAN 2023~~)

(a) *Definitions*. As used in this provision—

\* \* \* \* \*

*Sufficient non-Government sales* means relevant sales data that reflects market pricing and contains enough information to make adjustments covered by **[Federal Acquisition Regulation (]**FAR**[)]** 15.404–1(b)(2)(ii)(B).

\* \* \* \* \*

(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 prices set by law or regulation – Identification of the law or regulation establishing the prices offered.* If the prices are 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 product or commercial service exception*. For a commercial product or commercial service exception, the Offeror shall submit, at a minimum, information that is adequate for **[****determining commerciality and]** evaluating the reasonableness of the price for this acquisition, including prices at which the same product or service or similar products or services have been sold in the commercial market. Such information shall include—

(A) For products or services 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 subsystems of a major weapon system and components and spare parts of a major weapon system or subsystem of a major weapon system that have not previously been determined to be commercial—**

**(*1*) The comparable commercial product the Offeror sells to the general public or nongovernmental entities;**

**(*2*) A comparison between the physical characteristics and functionality of the comparable commercial product and the subsystem, component, or spare part, including—**

**(*i*) For products under paragraph (3)(i) of the “commercial product” definition at FAR 2.101, a description of the modification and documentation to support that the modification is customarily available in the marketplace; or**

**(*ii*) For products under paragraph (3)(ii) of the “commercial product” definition at FAR 2.101, a detailed description of the modification and detailed technical data to demonstrate that the modification is minor (e.g., information on production processes and material differences); and**

**(*3*) The national stock number (NSN) for the comparable commercial product, if one is assigned, and the NSN for the subsystem, component, or spare part, if one is assigned; or**

**(*4*) If the Offeror does not sell a comparable commercial product to the general public or nongovernmental entities for purposes other than government purposes, the Offeror shall—**

**(*i*) Notify the Contracting Officer in writing that it does not sell such a comparable product; and**

**(*ii*) Provide the Contracting Officer with a comparison of the physical characteristics and functionality of the most comparable commercial product in the commercial market.]**

(**[C]**~~B~~) \* \* \*

(**[D]**~~C~~) \* \* \*

(**[E]**~~D~~) \* \* \*

(**[F]**~~E~~) \* \* \*

\* \* \* \* \*

(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 the minimum information necessary to permit a determination that the proposed price is fair and reasonable, to include the requirements in **[****Defense Federal Acquisition Regulation Supplement (]**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)**[, and 234.7002(e)]**.

(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) If the Offeror redacts data that identifies the customer (see DFARS 234.7002(e)(2)), then the Offeror shall include, for each sale, the following signed statement with the data submitted:**

**“By submission of this data, the Offeror *[Offeror insert company name]* certifies that the customer was *[Offeror insert one or more of the following as applicable: a government customer; a commercial customer purchasing the same or similar product for governmental purposes (e.g., Federal, state, local, or foreign government); or a commercial customer purchasing the same or similar product for a commercial, mixed, or unknown purpose]*.”]**

(**[4]**~~3~~) Within 10 days of a written request from the Contracting Officer for additional information to permit an adequate evaluation of the proposed price in accordance with FAR 15.403-3 **[****or DFARS 234.7002(e)]**, the Offeror shall provide either the requested information, or a written explanation for the inability to fully comply.

(**[5]**~~4~~) \* \* \*

(e) \* \* \*

(End of provision)

*Alternate I*. As prescribed in [215.408](https://www.acq.osd.mil/dpap/dars/dfars/html/current/215_4.htm#215.408)(5)(i) and (5)(i)(B), use the following provision, which includes a different paragraph (c)(1).

REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA AND DATA OTHER THAN CERTIFIED COST OR PRICING DATA—~~BASIC~~**[ALTERNATE I]**

(~~JAN 2023~~**[MAY 2024]**)

(a) *Definitions*. As used in this provision—

\* \* \* \* \*

*Sufficient non-Government sales* means relevant sales data that reflects market pricing and contains enough information to make adjustments covered by **[****Federal Acquisition Regulation (]**FAR**[)]** 15.404–1(b)(2)(ii)(B).

\* \* \* \* \*

(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 product or commercial service exception*. For a commercial product or commercial service exception, the Offeror shall submit, at a minimum, information that is adequate for **[****determining commerciality and]** evaluating the reasonableness of the price for this acquisition, including prices at which the same product or service or similar products or services have been sold in the commercial market. Such information shall include—

(A) For products or services 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 subsystems of a major weapon system and components and spare parts of a major weapon system or subsystem of a major weapon system that have not previously been determined to be commercial—**

**(*1*) The comparable commercial product the Offeror sells to the general public or nongovernmental entities;**

**(*2*) A comparison between the physical characteristics and functionality of the comparable commercial product and the subsystem, component, or spare part, including—**

**(*i*) For products under paragraph (3)(i) of the “commercial product” definition at FAR 2.101, a description of the modification and documentation to support that the modification is customarily available in the marketplace; or**

**(*ii*) For products under paragraph (3)(ii) of the “commercial product” definition at FAR 2.101, a detailed description of the modification and detailed technical data to demonstrate that the modification is minor (e.g., information on production processes and material differences); and**

**(*3*) The national stock number (NSN) for the comparable commercial product, if one is assigned, and the NSN for the subsystem, component, or spare part; or**

**(*4*) If the Offeror does not sell a comparable commercial product to the general public or nongovernmental entities for purposes other than government purposes, the Offeror shall—**

**(*i*) Notify the Contracting Officer in writing that it does not sell such a comparable product; and**

**(*ii*) Provide the Contracting Officer with a comparison of the physical characteristics and functionality of the most comparable commercial product in the commercial market.]**

(**[C]**~~B~~) \* \* \*

(**[D]**~~C~~) \* \* \*

(**[E]**~~D~~) \* \* \*

(**[F]**~~E~~) \* \* \*

\* \* \* \* \*

(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 **[****Defense Federal Acquisition Regulation Supplement (]**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)**[,** **and 234.7002(e)]**.

(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) If the Offeror redacts data that identifies the customer (see DFARS 234.7002(e)(2)), then the Offeror shall include, for each sale, the following signed statement with the data submitted:**

**“By submission of this data, the Offeror [*Offeror insert company name*] certifies that the customer was [*Offeror insert one or more of the following as applicable: a government customer (e.g., Federal, state, local, or foreign government); a commercial customer purchasing the same or similar product for governmental purposes; or a commercial customer purchasing the same or similar product for a commercial, mixed, or unknown purpose]*.”]**

(**[4]**~~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* **[*****or DFARS 234.7002(e)*]***]*.

(**[5]**~~4~~) \* \* \*

(**[6]**~~5~~) \* \* \*

(e) \* \* \*

(End of provision)