

Significant deficiency means a shortcoming in the system that materially affects the ability of officials of the Department of Defense to rely upon information produced by the system that is needed for management purposes.

(b) *General.* The Contractor shall establish and maintain an acceptable purchasing system. Failure to maintain an acceptable purchasing system, as defined in this clause, may result in disapproval of the system by the Contracting Officer and/or withholding of payments.

(c) *System criteria.* The Contractor's purchasing system shall—

(1) Establish and maintain policies and procedures to ensure purchase orders and subcontracts contain mandatory and applicable flowdown clauses, as required by the FAR and DFARS, including terms and conditions required by the prime contract and any clauses required to carry out the requirements of the prime contract, including the requirements of 252.246–70XX, Contractor Counterfeit Electronic Part Avoidance and Detection System;

(2) Provide for an organizational and administrative structure that ensures effective and efficient procurement of required quality materials and parts at the best value from responsible and reliable sources, including the requirements of 252.246–70XX, Contractor Counterfeit Electronic Part Avoidance and Detection System; and

(3) Establish and maintain selection processes to ensure the most responsive and responsible sources for furnishing required quality parts and materials and to promote competitive sourcing among dependable suppliers so that purchases are from sources that meet contractor quality requirements, including the requirements of 252.246–70XX, Contractor Counterfeit Electronic Part Avoidance and Detection System.

(d) *Significant deficiencies.* (1) The Contracting Officer will provide notification of initial determination to the Contractor, in writing, of any significant deficiencies. The initial determination will describe the deficiency in sufficient detail to allow the Contractor to understand the deficiency.

(2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies significant deficiencies in the Contractor's purchasing system. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing.

(3) The Contracting Officer will evaluate the Contractor's response and notify the Contractor, in writing, of the Contracting Officer's final determination concerning—

(i) Remaining significant deficiencies;

(ii) The adequacy of any proposed or completed corrective action; and

(iii) System disapproval, if the Contracting Officer determines that one or more significant deficiencies remain.

(e) If the Contractor receives the Contracting Officer's final determination of significant deficiencies, the Contractor shall, within 45 days of receipt of the final determination, either correct the significant deficiencies or submit an acceptable

corrective action plan showing milestones and actions to eliminate the deficiencies.

(f) *Withholding payments.* If the Contracting Officer makes a final determination to disapprove the Contractor's purchasing system, and the contract includes the clause at 252.242–7005, Contractor Business Systems, the Contracting Officer will withhold payments in accordance with that clause.

(End of clause)

■ 9. Amend subpart 252.2 by adding new section 252.246–70XX to read as follows:

252.246–70XX Contractor Counterfeit Electronic Part Avoidance and Detection System.

As prescribed in 246.870–3, use the following clause:

Contractor Counterfeit Electronic Part Avoidance and Detection System (Date)

(a) *Definitions.* As used in this clause—
Counterfeit part means—

(1) An unauthorized copy or substitute part that has been identified, marked, and/or altered by a source other than the part's legally authorized source and has been misrepresented to be from a legally authorized source;

(2) An item misrepresented to be an authorized item of the legally authorized source; or

(3) A new, used, outdated, or expired item from a legally authorized source that is misrepresented by any source to the end-user as meeting the performance requirements for the intended use.

Counterfeit electronic part avoidance and detection system means the Contractor's system or systems for eliminating counterfeit electronic parts from the supply chain.

Legally authorized source means the current design activity or the original manufacturer or a supplier authorized by the current design activity or the original manufacturer to produce an item.

Suspect counterfeit part means a part for which visual inspection, testing, or other information provide reason to believe that a part may be a counterfeit part.

(b) *General.* The Contractor shall establish and maintain an acceptable counterfeit electronic part avoidance and detection system. Failure to maintain an acceptable counterfeit electronic part avoidance and detection system, as defined in this clause, may result in disapproval of the purchasing system by the Contracting Officer and/or withholding of payments.

(c) *System criteria.* The Contractor's counterfeit electronic part avoidance and detection system shall develop and implement policies and procedures that address—

(i) The training of personnel;

(ii) The inspection and testing of electronic parts, including criteria for acceptance and rejection;

(iii) Processes to abolish counterfeit parts proliferation;

(iv) Mechanisms to enable traceability of parts to suppliers;

(v) Use and qualification of trusted suppliers;

(vi) The reporting and quarantining of counterfeit electronic parts and suspect counterfeit electronic parts;

(vii) Methodologies to identify suspect counterfeit parts and to rapidly determine if a suspect counterfeit part is, in fact, counterfeit;

(viii) The design, operation, and maintenance of systems to detect and avoid counterfeit electronic parts and suspect counterfeit electronic parts; and

(ix) The flow down of counterfeit avoidance and detection requirements to subcontractors.

(d) Government review and evaluation of the Contractor's policies and procedures will be accomplished as part of the evaluation of the Contractor's purchasing system in accordance with 252.244–7001, Contractor Purchasing System Administration.

(End of clause)

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 215, 225, and 252

RIN 0750–AH89

Defense Federal Acquisition Regulation Supplement: Only One Offer—Further Implementation (DFARS Case 2013–D001)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to further implement DoD policy relating to competitive acquisitions in which only one offer is received, providing additional exceptions, and further addressing requests for data other than certified cost or pricing data from the Canadian Commercial Corporation.

DATES: *Comment date:* Comments on the proposed rule should be submitted in writing to the address shown below on or before July 15, 2013, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2013–D001, using any of the following methods:

○ *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering “DFARS Case 2013–D001” under the heading “Enter keyword or ID” and selecting “Search.” Select the link “Submit a Comment” that corresponds with “DFARS Case 2013–D001.” Follow the instructions provided

at the “Submit a Comment” screen. Please include your name, company name (if any), and “DFARS Case 2013–D001” on your attached document.

○ *Email:* dfars@osd.mil. Include DFARS Case 2013–D001 in the subject line of the message.

○ *Fax:* 571–362–6094.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations System, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 571–372–6106.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to revise the DFARS to further implement policy with regard to acquisitions in which only one offer is received and requests for data other than certified cost or pricing data from the Canadian Commercial Corporation. This case is a follow-on to DFARS final rules published in the **Federal Register** under DFARS Case 2011–D013, Only One Offer (77 FR 39126 on June 29, 2012), and DFARS Case 2011–D049, Contracting with the Canadian Commercial Corporation (77 FR 43470 on July 24, 2012).

DFARS Case 2011–D013 was initiated to implement the initiative on promoting real competition that was presented by the Under Secretary of Defense for Acquisition, Technology & Logistics in a memorandum dated November 3, 2010, Implementation Directive for Better Buying Power—Obtaining Greater Efficiency and Productivity in Defense Spending. DFARS Case 2011–D049 was initiated to clarify the requirements for the Canadian Commercial Corporation to submit data other than certified cost or pricing data. Because these two cases were developed in parallel, the interrelationship between the two cases could not be incorporated into either final rule. Therefore, DoD is proposing to revise the DFARS to further implement both rules, in particular as they relate to each other.

II. Applicability

The final rule will apply to solicitations (including solicitations for task orders and delivery orders) issued on or after the publication date of the final rule.

III. Discussion

This rule proposes the following changes:

A. Applicability to commercial items. The rule proposes clarification at DFARS 212.301(f)(iv)(G), Solicitation provisions and contract clauses for the acquisition of commercial items, that the provision at DFARS 252.215–7003, Requirements for Data Other Than Certified Cost or Pricing Data—Canadian Commercial Corporation, or the clause at DFARS 252.215–7004, Requirement for Data other Than Certified Cost or Pricing Data—Modifications—Canadian Commercial Corporation, shall be used in acquisitions of commercial items when necessary to determine the price reasonableness of commercial items for acquisitions from the Canadian Commercial Corporation.

B. Exceptions

The rule proposes two additional exceptions to the policy on only one offer, because the acquisition procedures used for such acquisitions are not compatible with the requirements for handling the receipt of only one offer in response to a competitive solicitation at DFARS 215.371–2, i.e., to promote competition through review of requirements, and resolicitation, allowing an additional period of at least 30 days for receipt of offer. The two proposed new exceptions are as follows:

1. Architect-engineer services (see FAR subpart 36.6, and DFARS subpart 236.6).

2. Set-asides offered to and accepted by the Small Business Administration (SBA) into the 8(a) Program (see FAR subpart 19.8 and DFARS subpart 219.8). All exceptions are revised to state that there is no exception to the requirements to ensure that prices are fair and reasonable.

C. Provision and Clause Prescriptions

1. The prescription for the provision at DFARS 252.215–7007, Notice of Intent to Resolicit, has been moved from DFARS 215.408 to DFARS 215.371–6, because it does not relate to pricing.

2. The remaining provision and clause prescriptions at 215.408 are re-ordered to be in numerical order of the provisions and clauses. The prescriptions for DFARS 252.215–7003,

Requirement for Data Other Than Certified Cost or Pricing Data—Canadian Commercial Corporation and 252.215–7004, Requirement for Data Other Than Certified Cost or Pricing Data—Modifications—Canadian Commercial Corporation, are revised consistent with DFARS 225.870–4(c) and relocated to DFARS 215.408(3).

3. Approval authorities for use of 252.215–7003 and 252.215–7004 are removed from the clause prescription and relocated to DFARS 225.870–4.

4. The use of DFARS 252.215–7004 in competitive solicitations is addressed. In competitive solicitations, if approval has been obtained as required at DFARS 225.870–4(c)(2)(ii), the solicitation may include both FAR 52.215–21, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—Modifications, and DFARS 252.215–7004 to provide for the possibility of future modifications to the contract. The contracting officer shall then select the appropriate clause to include in the contract, depending on whether or not contract award is to the Canadian Commercial Corporation.

5. In order to accommodate the circumstance in which a contracting officer may require offerors to provide data other than certified cost or pricing data with each offer in a competitive acquisition, the statement that the provision FAR 52.215–20, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data, will only take effect as specified in 252.215–7008, Only One Offer, has been deleted. Rather, the prescription allows use of both 252.215–7008 and 52.215–20, if the contracting officer is requesting submission of data other than certified cost or pricing data with the offer.

D. Approval Authorities for Requesting Data From the Canadian Commercial Corporation

Discussion of contracting procedures when contracting with the Canadian Commercial Corporation at DFARS 225.870–4 has been amplified with regulations relating when approval is required to request data from the Canadian Commercial Corporation (moved from the prescriptions at DFARS 215.408). The rule also proposes that no further approval is required to request data in competitive solicitations if—

- Data other than certified cost or pricing data are required from all offerors; or
- The Canadian Commercial Corporation submits the only offer in response to a competitive solicitation

that meets the thresholds at 225.870–4(2)(i)(A) or (B), applicable to sole source acquisitions from the Canadian Commercial Corporation.

E. “Only One Offer” Provision

The rule proposes to amend the provision at DFARS 252.215–7008, Only One Offer, to remove the requirement to submit data requested by the contracting officer after receipt of only one offer in accordance with FAR 52.215–20. Rather, the provision incorporates the appropriate requirements of FAR 52.215–20 if the offeror is other than the Canadian Commercial Corporation and then separately addresses the requirements for submission of data if the sole offeror is the Canadian Commercial Corporation.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

This rule further implements DoD policy relating to competitive acquisitions in which only one offer is received, providing additional exceptions, and further addressing requests for data other than certified cost or pricing data from the Canadian Commercial Corporation, especially relating to competitive solicitations when only one offer is received from the Canadian Commercial Corporation.

The objective of the rule is to promote competition and ensure fair and reasonable prices by implementing DoD policy with regard to acquisitions when only one offer is received, including the Canadian Commercial Corporation.

The legal basis is 41 U.S.C. 421 and 48 CFR Chapter 1.

The final regulatory flexibility analysis for the final rule under FARS case 2011–D013, Only One Offer, was addressed in the **Federal Register** notice published in the **Federal Register** (77 FR 39126) on June 29, 2012). With regard to DFARS Case 2011–D049, Contracting with the Canadian Commercial Corporation (77 FR 43470 on July 24, 2012), DoD certified that there was no significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it only impacted Canadian business concerns. The changes proposed in this rule are not expected to impact a significant number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the only changes impacting domestic entities are the added exceptions for architect-engineer services and the 8(a) Program, which are more in the nature of a clarification than a change.

Architect-engineer services are purchased under the Brooks Act. The final rule for Only One Offer was not made applicable to FAR part 36. This rule specifically clarifies that it is inapplicable.

The final rule for Only One Offer was not made applicable to set-asides under FAR part 19. The final rule specifically excluded small business set-asides and set asides under the HUBZone Program, the Service-Disabled Veteran-Owned Small Business Procurement Program, and the Women-Owned Small Business Program. The 8(a) Program was inadvertently omitted from the list of specific exclusions. In accordance with FAR 19.805–1, an acquisition offered to the SBA shall be awarded on the basis of competition limited to eligible 8(a) firms if two conditions are met: (1) the anticipated total value of the contract exceeds the thresholds at FAR 19.805–1(a)(2); and (2) there must be a reasonable expectation that at least two eligible and responsible 8(a) firms will submit offers and that award can be made at a fair and reasonable price.

The proposed rule imposes no new reporting, recordkeeping, or other information collection requirements. The submission of certified cost or pricing data or data other than certified cost or pricing data is covered in FAR 15.4 and associated clauses in 52.215, OMB clearances 9000–013.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known significant alternatives to the rule that would adequately implement the DoD policy.

There is no significant economic impact on a substantial number of small entities.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 610 (DFARS Case 2013–D001), in correspondence.

VI. Paperwork Reduction Act

The proposed rule does not impose any additional information collection requirements that require approval under the Paperwork Reduction Act (5 U.S.C. chapter 35). The submission of certified cost or pricing data or data other than certified cost or pricing data required for negotiation is covered in FAR 15.4 and associated clauses in FAR 52.215, OMB clearance 9000–013, Cost or Pricing Data Requirements and Information Other Than Cost or Pricing Data, in the amount of 10,101,684 hours.

List of Subjects in 48 CFR Parts 212, 215, 225, and 252

Government procurement.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 212, 215, 225, and 252 are proposed to be amended as follows:

■ 1. The authority citation for 48 CFR parts 212, 215, 225, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 2. Amend section 212.301 by—

■ a. Redesignating paragraphs (f)(iv)(G) and f(iv)(H) through (R) as (f)(iv)(I) and f(iv)(K) through (U) respectively;

■ b. Adding new paragraphs (f)(iv)(G), (H), and (J);

■ c. Revising newly designated paragraph (f)(iv)(I).

The added and revised text reads as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(f) * * *

(iv) * * *

(G) Use the provision at 252.215–7003, Requirements for Submission of Data Other Than Certified Cost or

Pricing Data—Canadian Commercial Corporation, as prescribed at 215.408(3)(i).

(H) Use the clause at 252.215–7004, Requirement for Submission of Data Other Than Certified Cost or Pricing Data—Modifications—Canadian Commercial Corporation, when necessary to determine the price reasonableness of commercial items as prescribed at 215.408(3)(ii).

(I) Use the provisions at 252.215–7007, Notice of Intent to Resolicit, as prescribed at 215.408.

(J) Use the provision 252.215–7008, Only One Offer, as prescribed at 215.371–6.

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PART 215—CONTRACTING BY NEGOTIATION

■ 3. Amend section 215.371–3 by—

■ a. In paragraph (a), removing “at one level” and adding “at a level” in its place.

■ b. In paragraph (b) introductory text, removing “215.371–4(b)” and adding “215.371–4(a)(3)” in its place.

■ c. In paragraph (b)(1), removing “at one level” and adding “at a level” in its place.

■ d. In paragraph (b)(2)(i) removing “, in accordance with FAR provision 52.215–20” and removing “FAR 15.403–1(c)” and adding “FAR 15.403–1(b)” in its place.

■ 4. Revise section 215.371–4 to read as follows:

215.371–4 Exceptions.

(a) The requirements at sections 215.371–2 do not apply to—

(1) Acquisitions at or below the simplified acquisition threshold;

(2) Acquisitions in support of contingency, humanitarian or peacekeeping operations, or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack;

(3) Small business set-asides under FAR subpart 19.5, set asides offered and accepted into the 8(a) Program under FAR subpart 19.8, or set-asides under the HUBZone Program (see FAR 19.1305(c)), the Service-Disabled Veteran-Owned Small Business Procurement Program (see FAR 19.1405(c)), or the Women-Owned Small Business Program (see FAR 19.1505(d));

(4) Acquisitions of basic or applied research or development, as specified in FAR 35.016(a), that use a broad agency announcement; or

(5) Acquisitions of architect-engineer services (see FAR 36.601–2).

(b) The applicability of an exception in paragraph (a) of this section does not

eliminate the need for the contracting officer to seek maximum practicable competition and to ensure that the price is fair and reasonable.

■ 5. Add section 215.371–6 to read as follows:

215.371–6 Solicitation provision.

Use the provision at 252.215–7007, Notice of Intent to Resolicit, in competitive solicitations that will be solicited for fewer than 30 days, unless an exception at 215.371–4 applies or the requirement is waived in accordance with 215.371–5.

215.403–1 [Amended]

■ 6. Amend section 215.403–1 by—

■ a. In second sentence of paragraph (c)(1)(A)(1), removing “price analysis.” and adding “price analysis; and” in its place.

■ b. In paragraph (c)(4)(C), removing “215.408(5)” and adding “215.408(3)” in its place.

■ 7. Amend section 215.408 by—

■ a. Revising paragraph (3);

■ b. In paragraph (4)(i), removing “215.371–4(a)(1) applies.” and adding “215.371–4(a) applies.” in its place.

■ c. In paragraph (4)(ii), removing “but that provision will only take effect as specified in 252.215–7008” and adding “if the contracting officer is requesting submission of data other than certified cost or pricing data with the offer” in its place.

■ d. Removing paragraph (5).

The revised text reads as follows:

215.408 Solicitation provisions and contract clauses.

* * * * *

(3) When contracting with the

Canadian Commercial Corporation—

(i)(A) Use the provision at 252.215–7003, Requirement for Data Other Than Certified Cost or Pricing Data—Canadian Commercial Corporation—

(1) In lieu of FAR 52.215–20, Requirement for Data Other Than Certified Cost or Pricing Data, in a solicitation for a sole source acquisition from the Canadian Commercial Corporation that is—

(i) Cost-reimbursement, if the contract value is expected to exceed \$700,000; or

(ii) Fixed-price, if the contract value is expected to exceed \$500 million; or

(2) In lieu of FAR 52.215–20, in a sole source acquisition from the Canadian Commercial Corporation that does not meet the thresholds specified in paragraph (3)(i)(A)(1), if approval is obtained as required at 225.870–4(c)(2)(ii); and

(B) Do not use 252.225–7003 in lieu of FAR 52.215–20 in competitive acquisitions. The contracting officer

may use FAR 52.215–20 with its Alternate IV, as prescribed at 15.408(1)(3), even if offers from the Canadian Commercial Corporation are anticipated; and

(ii)(A) Use the clause at 252.215–7004, Requirement for Data Other Than Certified Cost or Pricing Data—Modifications—Canadian Commercial Corporation—

(1) In a solicitation for a sole source acquisition from the Canadian Commercial Corporation and resultant contract that is—

(i) Cost-reimbursement, if the contract value is expected to exceed \$700,000; or

(ii) Fixed-price, if the contract value is expected to exceed \$500 million;

(2) In a solicitation for a sole source acquisition from the Canadian Commercial Corporation and resultant contract that does not meet the thresholds specified in paragraph (3)(ii)(A)(1) of this section, if approval is obtained as required at 225.870–4(c)(2)(ii); or

(3)(i) In a solicitation for a competitive acquisition that includes FAR 52.215–21, Requirement for Data Other Than Certified Cost or Pricing Data—Modifications, or that meets the thresholds specified in paragraph (3)(ii)(A)(1) of this section.

(ii) The contracting officer shall then select the appropriate clause to include in the contract (52.215–21 only if award is not to the Canadian Commercial Corporation; or 252.215–7004 if award is to the Canadian Commercial Corporation and necessary approval is obtained in accordance with 225.870–4(c)(2)(ii)); and

(B) The contracting officer may specify a higher threshold in paragraph (b) of the clause 252.215–7004.

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PART 225—FOREIGN ACQUISITION

■ 8. Amend section 225.870–4 by—

■ a. Revising paragraph (c)(2).

■ b. In paragraph (c)(3), removing “215.408(5)(i)” and adding “215.408(3)(i)” in its place.

The revision reads as follows:

225.870–4 Contracting procedures.

* * * * *

(c) * * *

(2) The Canadian Commercial Corporation is not exempt from the requirement to submit data other than certified cost or pricing data, as defined in FAR 2.101. In accordance with FAR 15.403–3(a)(1)(ii), the contracting officer shall require submission of data other than certified cost or pricing data from the offeror, to the extent necessary to determine a fair and reasonable price.

(i) No further approval is required to request data other than certified cost or pricing data from the Canadian Commercial Corporation in the following circumstances:

(A) In a solicitation for a sole source acquisitions that is—

(1) Cost-reimbursement, if the contract value is expected to exceed \$700,000; or

(2) Fixed-price, if the contract value is expected to exceed \$500 million.

(B) If the Canadian Commercial Corporation submits the only offer in response to a competitive solicitation that meets the thresholds specified in paragraph (c)(2)(i)(A) of this section.

(C) For modifications that exceed \$150,000 in contracts that meet the criteria in paragraph (c)(2)(i)(A) or (B) of this section.

(D) In competitive solicitations in which data other than certified cost or pricing data are required from all offerors.

(ii) In any circumstances other than those specified in paragraph (c)(2)(i) of this section, the contracting officer shall only require data other than certified cost or pricing data from the Canadian Commercial Corporation if the head of the contracting activity, or designee no lower than two levels above the contracting officer, determines that data other than certified cost or pricing data are needed (or in the case of modifications that it is reasonably certain that data other than certified cost or pricing data will be needed) in order to determine that the price is fair and reasonable (see FAR 15.403–3(a)).

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PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.215.7003 [Amended]

■ 9. Amend section 252.215–7003 by, in the introductory text, removing “As prescribed at 215.408(5)(i),” and adding “As prescribed at 215.408(3)(i),” in its place.

■ 10. Amend section 252.215–7004 by—

■ a. In the introductory text, removing “As prescribed at 215.408(5)(ii),” and adding “As prescribed at 215.408(3)(ii),” in its place.

■ b. Removing the clause date of “(JUL 2012)” and adding “(DATE)” in its place.

■ c. In paragraph (b) introductory text, removing “the simplified acquisition threshold” and adding “\$150,000” in its place.

■ d. Adding introductory text after the clause date and before paragraph (a) to read as follows:

252.215.7004 Requirement for Submission of Data Other Than Certified Cost or Pricing Data—Modifications—Canadian Commercial Corporation.

* * * * *

This clause, in lieu of FAR 52.215–21, applies only if award is to the Canadian Commercial Corporation.

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252.215–7007 [Amended]

■ 11. Amend section 252.215–7007 by, in the introductory text, removing “As prescribed at 215.408(3),” and adding “As prescribed at 215.371–6,” in its place.

252.215–7008

■ 12. Revise section 252.215–7008 to read as follows:

252.215–7008 Only one offer.

As prescribed at 215.408(4), use the following provision:

ONLY ONE OFFER (DATE)

(a) After initial submission of offers, the Offeror agrees to submit any subsequently requested additional cost or pricing data if the Contracting Officer notifies the Offeror that—

(1) Only one offer was received; and
(2) Additional cost or pricing data is required in order to determine whether the price is fair and reasonable or to comply with the statutory requirement for certified cost or pricing data (10 U.S.C. 2306a and FAR 15.403–3).

(b) *Requirement for submission of additional cost or pricing data.* Except as provided in paragraph (c) of this provision, the Offeror shall submit additional cost or pricing data as follows:

(1) If the Contracting Officer notifies the Offeror that additional cost or pricing data are required in accordance with paragraph (a) of this clause, the data shall be certified unless an exception applies (FAR 15.403–1(b)).

(2) *Exceptions from certified cost or pricing data.* In lieu of submitting certified cost or pricing data, the Offeror may submit a written request for exception by submitting the information described in the following paragraphs. 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) *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 on prices at which the same item or similar items have previously been sold in the commercial market that is adequate for evaluating the reasonableness of the price for this acquisition. Such information may include—

(A) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities;

(B) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market; or

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

(3) 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 the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the Offeror's determination of the prices to be offered in the catalog or marketplace.

(4) *Requirements for certified cost or pricing data.* If the Offeror is not granted an exception from the requirement to submit certified cost or pricing data, the following applies:

(i) The Offeror shall prepare and submit certified cost or pricing data and supporting attachments in accordance with the instructions contained in Table 15–2 of FAR 15.408, which is incorporated by reference with the same force and effect as though it were inserted here in full text. The instructions in Table 15–2 are incorporated as a mandatory format to be used, unless the Contracting Officer and the Offeror agree to a different format.

(ii) 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, as prescribed by FAR 15.406–2.

(c) If the Offeror is the Canadian Commercial Corporation, certified cost or pricing data are not required. If the Contracting Officer notifies the Canadian Commercial Corporation that additional data other than certified cost or pricing data are required in accordance with 225.870–4(c), the Canadian Commercial Corporation shall obtain and provide the following:

(1) Profit rate or fee (as applicable).

(2) Analysis provided by Public Works and Government Services Canada to the Canadian Commercial Corporation to determine a fair and reasonable price (comparable to the analysis required at FAR 15.404–1).

(3) Data other than certified cost or pricing data necessary to permit a determination by the U.S. Contracting Officer that the

proposed price is fair and reasonable [*U.S. Contracting Officer to provide description of the data required in accordance with FAR 15.403-3(a)(1) with the notification*].

(4) As specified in FAR 15.403-3(a)(4), an offeror who does not comply with a requirement to submit data that the U.S. Contracting Officer has deemed necessary to determine price reasonableness or cost realism is ineligible for award unless the head of the contracting activity determines that it is in the best interest of the Government to make the award to that offeror.

(d) If negotiations are conducted, the negotiated price should not exceed the offered price.

(End of provision)

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 215

RIN 0750-AH86

Defense Federal Acquisition Regulation Supplement; Forward Pricing Rate Proposal Adequacy Checklist (DFARS Case 2012-D035)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to provide guidance to contractors for the submittal of forward pricing rate proposals to ensure the adequacy of forward pricing rate proposals submitted to the Government.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before July 15, 2013, to be considered in the formation of the final rule.

ADDRESSES: Submit comments, identified by DFARS Case 2012-D035, using any of the following methods:

Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inserting "DFARS Case 2012-D035" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2012-D035." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2012-D035" on your attached document.

Follow the instructions for submitting comments.

Email: dfars@osd.mil. Include DFARS Case 2012-D035 in the subject line of the message.

Fax: 571-372-6094.

Mail: Defense Acquisition Regulations System, Attn: Mr. Mark Gomersall, OUSD(AT&L)DPAP(DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check www.regulations.gov approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Mark Gomersall, 571-372-6099.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to revise the DFARS at 215.403-5 by adding instructions to contracting officers to request contractors to submit the proposed forward pricing rate proposal adequacy checklist at Table 215-XX with forward pricing rate proposals. This proposed rule provides guidance to contractors for the submittal of forward pricing rate proposals by requesting that contractors submit a proposed forward pricing rate proposal adequacy checklist with their forward pricing rate proposals to ensure submission of thorough, accurate, and complete proposals.

II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the

Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

This rule amends the DFARS at 215.403-5 by adding instructions to contracting officers to request contractors to submit the proposed forward pricing rate proposal adequacy checklist with forward pricing rate proposals. The objective is to provide guidance to contractors for the submittal of forward pricing rate proposals.

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small because it only a small percentage of Government contractors are requested to submit a forward pricing rate proposal, as set forth at FAR 42.1701(a). The Government will ask only those contractors with a significant volume of Government contracts to submit such proposals.

The proposed rule does not duplicate, overlap, or conflict with any other Federal rules.

IV. Paperwork Reduction Act

The rule contains information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35). Accordingly, DoD has submitted a request for approval of a new information collection requirement concerning Defense Federal Acquisition Regulation Supplement; Forward Pricing Rate Proposal Adequacy Checklist (DFARS Case 2012-D035) to the Office of Management and Budget.

A. Public reporting burden for this collection of information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden estimated as follows:

Respondents: 160.

Responses per respondent: 1.

Total annual responses: 160.

Preparation hours per response: 4 hours

Total response Burden Hours: 640 hours.

B. Request for Comments Regarding Paperwork Burden.

Written comments and recommendations on the proposed information collection, including suggestions for reducing this burden, should be sent to Ms. Jasmeet Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington,