

unpriced change order for a foreign military sale or a special access program, the contracting officer shall provide prior notice, through agency channels, to the Office of the Principal Director, Defense Pricing and Contracting (Contract Policy) via email at osd.pentagon.ousd-a-s.mbx.asda-dp-c-contractpolicy@mail.mil.

PART 249—TERMINATION OF CONTRACTS

■ 46. Amend section 249.7000 by revising paragraph (a)(1) to read as follows:

249.7000 Terminated contracts with Canadian Commercial Corporation.

(a) * * *

(1) The Letter of Agreement (LOA) between the Department of Defence Production (Canada) and the U.S. DoD, “Canadian Agreement” (for a copy of the LOA or for questions on its currency, contact the Office of the Principal Director, Defense Pricing and Contracting (Contract Policy), at osd.pentagon.ousd-a-s.mbx.asda-dp-c-contractpolicy@mail.mil;

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PART 250—EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT

250.102–1–70 [Amended]

■ 47. Amend section 250.102–1–70 in paragraph (b)(1) by removing “USD (AT&L)” and adding “USD(A&S)” in its place, and in paragraph (b)(2) by removing “USD(AT&L)” and adding “USD(A&S)” in its place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.225–7040 [Amended]

■ 48. Amend section 252.225–7040—

■ a. By removing the clause date “(OCT 2015)” and adding “(OCT 2023)” in its place; and

■ b. In paragraph (g)(1) of the clause by removing “USD (AT&L)” and adding “the Under Secretary of Defense (Acquisition and Sustainment)” in its place.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 225, and 252

[Docket DARS–2023–0022]

RIN 0750–AL88

Defense Federal Acquisition Regulation Supplement: Prohibition on Certain Procurements From the Xinjiang Uyghur Autonomous Region (DFARS Case 2023–D015)

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

ACTION: Final rule.

SUMMARY: DoD is adopting as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2023 that prohibits the use of funds to knowingly procure any products mined, produced, or manufactured wholly or in part by forced labor from the Xinjiang Uyghur Autonomous Region of the People’s Republic of China.

DATES: Effective October 30, 2023.

FOR FURTHER INFORMATION CONTACT: Kimberly Bass, telephone 703–717–3446.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published an interim rule in the **Federal Register** at 87 FR 76980 on December 16, 2022, to implement section 848 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2022 (Pub. L. 117–81). DoD subsequently published an interim rule in the **Federal Register** at 88 FR 37794 on June 9, 2023, to implement section 855 of the NDAA for FY 2023 (Pub. L. 117–263). Section 855 repealed section 848 of the NDAA for FY 2022, including the requirement for a certification from offerors for contracts with DoD stating the offeror has made a good faith effort to determine that forced labor from the Xinjiang Uyghur Autonomous Region of the People’s Republic of China (XUAR) was not or will not be used in the performance of a contract. Section 855 requires offerors or awardees of a DoD contract to make a good faith effort to determine that forced labor from XUAR will not be used in performance of a DoD contract. The interim rule required offerors to represent, by submission of an offer, that they have made a good faith effort

to determine that forced labor from XUAR will not be used in performance of a contract resulting from the solicitation.

One respondent submitted public comments in response to the interim rule. The interim rule has been converted to a final rule, without change.

II. Discussion and Analysis

DoD reviewed the public comments in the development of the final rule. A discussion of the comments is provided, as follows:

1. Strong Support for the Rule

Comment: The respondent strongly supported the interim rule. The respondent noted that the rule helps to preserve the United States’ global leadership on human rights and protects national security.

Response: DoD acknowledges the support for the rule.

2. Supply Chain

Comment: The respondent relayed concerns regarding implementation of the interim rule that requires offerors to make a good faith effort to gain full knowledge of their entire supply chain, including the procurement of commercial items and components. The respondent noted the Chinese economy can be opaque and further conveyed it can be difficult for prime contractors to obtain accurate supplier information, especially if responses were required within an accelerated timeframe. Additionally, further down the supply chain (*i.e.*, subcontractors, vendors, and other suppliers at all tiers), including for the procurement of commercial items and components, it can be exceedingly difficult for prime contractors to obtain accurate information.

Response: There are no exceptions to the requirements that offerors or DoD contractors make a good faith effort to determine that forced labor from XUAR will not be used in the performance of the DoD contract. DoD has determined to make this law applicable to contracts for the acquisition of commercial services and commercial products, including commercially available off-the-shelf (COTS) items, in order to promote the overarching public policy, except products or services purchased using the Governmentwide commercial purchase card or the Standard Form (SF) 44, Purchase Order-Invoice Voucher.

3. Additional Definition

Comment: A respondent stated that in the background information of the rule, DoD should also define the term

“knowingly procure” consistent with what DoD officials must do to comply with that requirement.

Response: The final rule as implemented is in accordance with section 855 of the NDAA for FY 2023, 10 U.S.C. 2496(b), and 10 U.S.C. 4661. Consequently, there is no definition in the rule for the term “knowingly procure”. The rule as implemented complies with all definitions as outlined in the applicable statutes.

4. Good Faith Effort

Comment: The respondent identified the policy implementation of section 889 of the NDAA for FY 2019 and urged adoption of the language similar to the provision as implemented at Federal Acquisition Regulation 52.204–26, Covered Telecommunications Equipment or Services-Representation, that required offerors to provide representation utilizing a standard of “reasonable inquiry” (although section 889 is outside the scope of the statutory requirements of this rule). The respondent recommended that DoD should use the standard of “reasonable inquiry” in the place of the standard of a good faith effort as it specifically pertains to a contractor’s representation that no products associated with forced labor from XUAR are present in its offer or during performance under a contract.

Response: The rule implements section 855 of the NDAA for FY 2023, which requires DoD to issue policy to require that an offeror or awardee of a DoD contract make a good faith effort to determine that forced labor from XUAR will not be used. Section 855 specifically requires use of the standard of a good faith effort. The final rule as written is consistent with the requirements of section 855.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold, for Commercial Services, and for Commercial Products, Including COTS Items

The interim rule amended the solicitation provision at DFARS 252.225–7059, Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region–Representation, and the contract clause at DFARS 252.225–7060, Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region. The clause at DFARS 252.225–7060 is prescribed for use in solicitations and contracts utilizing funds appropriated or otherwise made available for any fiscal year, including solicitations using FAR part 12 procedures for the acquisition of commercial services and commercial products including COTS items.

Consistent with the determination that DoD made with regard to the application of the requirements of section 855 of the NDAA for FY 2023, the provision at DFARS 252.225–7059 and the clause at DFARS 252.225–7060 apply to contracts valued at or below the simplified acquisition threshold (SAT) and to the acquisition of commercial services and commercial products, including COTS items, as defined at FAR 2.101. For an explanation of the rationale for DoD’s determination, see the interim rule published in the **Federal Register** at 88 FR 37794 on June 9, 2023.

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, as amended.

V. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804.

VI. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* and is summarized as follows:

This rule is necessary to finalize an interim rule that amended the DFARS to implement section 855 of the National Defense Authorization act (NDAA) for Fiscal Year (FY) 2023 (Pub. L. 117–263). Section 855 prohibits the use of DoD funds for any fiscal year to knowingly procure any products mined, produced, or manufactured wholly or in part by

forced labor from the Xinjiang Uyghur Autonomous Region of the People’s Republic of China (XUAR). Section 855 requires offerors or awardees of a DoD contract to make a good faith effort to determine that forced labor from XUAR will not be used in the performance of a DoD contract. In addition, section 855 repeals section 848 of the NDAA for FY 2022 (Pub. L. 117–81), which required a certification from offerors that they had made a good faith effort to determine that forced labor from XUAR was not or will not be used in the performance of a DoD contract.

The objective of the rule is to implement the prohibition and the requirement for offerors or contractors to make a good faith effort to determine that forced labor from XUAR will not be used in the performance of a DoD contract.

No public comments were received in response to the initial regulatory flexibility analysis.

DoD reviewed data obtained from the Federal Procurement Data System for FY 2020, 2021, and 2022 for DoD purchases of supplies or end products valued above the micro-purchase threshold, including commercial products and commercially available off-the-shelf items. DoD made an average of 374,735 awards to 16,122 unique entities, of which 154,515 awards were made to 12,187 unique small entities. In addition to the small entities that received awards, DoD estimates there were approximately 621,718 unsuccessful offerors. Note that the unsuccessful offerors are not unique entities; in other words, a single entity may have been counted more than once as an unsuccessful offeror. The rule applies to successful offerors that receive awards and unsuccessful offerors.

The rule does not require any new reporting or recordkeeping.

There are no known significant alternative approaches to the rule that would meet the requirements of the statute.

VII. Paperwork Reduction Act

This rule does not contain any 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).

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

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

■ Accordingly, the interim rule amending 48 CFR parts 212, 225, and 252, which was published at 88 FR 37794 on June 9, 2023, is adopted as final without change.

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DEPARTMENT OF DEFENSE**Defense Acquisition Regulations System****48 CFR Part 225**

[Docket DARS–2023–0006]

RIN 0750–AL39

Defense Federal Acquisition Regulation Supplement: Restrictions on Overhaul and Repair of Naval Vessels in Foreign Shipyards (DFARS Case 2021–D021)

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

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2021 that restricts overhaul and repair of a naval vessel in a shipyard outside the United States or Guam.

DATES: Effective October 30, 2023.

FOR FURTHER INFORMATION CONTACT: Kimberly Bass, telephone 703–717–3446.

SUPPLEMENTARY INFORMATION:**I. Background**

DoD is issuing a final rule amending the DFARS to implement section 1025 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021 (Pub. L. 116–283), which amends 10 U.S.C. 8680(a) to restrict the overhaul or repair of a naval vessel in a shipyard outside the United States or Guam. The restriction does not apply to voyage repairs or to repairs required for damage sustained due to hostile actions or interventions. In addition, the restriction does not apply to a naval vessel classified as a littoral combat ship operating on deployment for corrective

and preventive maintenance or repair and facilities maintenance. The rule also establishes the criteria under which foreign workers or foreign contractors may be used to perform corrective and preventive maintenance or repair or facilities maintenance on a naval vessel.

DoD published a proposed rule in the **Federal Register** at 88 FR 17360 on March 22, 2023, to revise the DFARS to implement section 1025 of the NDAA for FY 2021. One respondent submitted a public comment in response to the proposed rule.

II. Discussion and Analysis

DoD reviewed the public comment in the development of the final rule. A discussion of the comment is provided, as follows:

A. Summary of Significant Changes

No changes are made to the final rule as a result of public comments.

B. Analysis of Public Comment

Comment: A respondent provided comments with overall support of the rule and stated it would save money and reduce the need for supplies and preventative maintenance on ships in foreign shipyards.

Response: DoD acknowledges the respondent's support for the rule.

C. Other Changes

Minor editorial changes are made in paragraph (b) of DFARS 225.7013–2 to comply with drafting conventions.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Products, Including Commercially Available Off-the-Shelf Items, and Commercial Services

This rule does not create any new solicitation provisions or contract clauses. It does not impact any existing solicitation provisions or contract clauses or prescriptions for their use.

IV. Expected Impact of the Rule

Currently, DFARS 225.7013 includes the restrictions on the construction or repair of vessels in foreign shipyards. This rule adds the exception for repairs necessary to correct damage sustained due to hostile actions or interventions and for corrective and preventive maintenance or repair and facilities maintenance on naval vessels classified as littoral combat ships operating on deployment. Under these exceptions, the repairs or maintenance described above may be performed in a shipyard outside the United States or Guam in accordance with 10 U.S.C. 8680(a). The rule also specifies the authorized use of

foreign workers under certain conditions when a determination is made by the Secretary of the Navy, who cannot further delegate the authority to make such a determination.

V. 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, as amended.

VI. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804.

VII. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* and is summarized as follows:

DoD is issuing a final rule amending the DFARS to implement section 1025 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021 (Pub. L. 116–283). Section 1025 amends 10 U.S.C. 8680(a) to restrict the overhaul or repair of a naval vessel in a shipyard outside the United States or Guam, unless the repairs are: (1) voyage repairs or repairs necessary to correct damage sustained due to hostile actions or interventions; or (2) to a naval vessel classified as a littoral combat ship operating on deployment for corrective and preventive maintenance or repair and facilities maintenance. The final rule also establishes that: (1) foreign workers may not be used to perform corrective and preventive maintenance or repair on a naval vessel unless the