

subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden “for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television.
Federal Communications Commission.
Thomas Horan,
Chief of Staff Media Bureau.

Final Rule

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICE

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. In § 73.622(j), amend the table under California by adding an entry for Colusa to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *				
(j) * * *				
	Community		Channel No.	
* * * * *				
	California			
* * * * *				
Colusa			* 2	
* * * * *				

[FR Doc. 2023–23467 Filed 10–24–23; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 201, 202, 203, 205, 206, 207, 208, 209, 215, 217, 219, 222, 225, 230, 231, 232, 236, 242, 243, 249, 250, and 252

[Docket DARS–2023–0001]

Defense Federal Acquisition Regulation Supplement; Technical Amendments

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

ACTION: Final rule; technical amendment.

SUMMARY: DoD is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to make needed editorial changes resulting from a section of the National Defense Authorization Act for Fiscal Year 2017 that made organizational changes within the Office of the Secretary of Defense.

DATES: Effective October 30, 2023.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer D. Johnson, Defense Acquisition Regulations System, telephone 703–717–8226.

SUPPLEMENTARY INFORMATION: Section 901 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (Pub. L. 114–328) amended title 10, United States Code (U.S.C.) to strike 10 U.S.C. 133 and add two new sections 10 U.S.C. 133a, Under Secretary of Defense for Research and Engineering; and 10 U.S.C. 133b, Under Secretary of Defense for Acquisition and Sustainment, effective February 1, 2018. This technical amendment provides editorial changes to fully align the DFARS with the name redesignations necessitated by section 901(b) of the NDAA for FY 2017 from Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L)) to Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)).

The DFARS has been incrementally updated to implement the section 901(b) name changes when publishing other final rules that included these organizational references; however, this technical amendment is needed to accomplish all remaining changes required. Concurrently, the previously designated USD(AT&L) Defense Procurement and Acquisition Policy office was changed to USD(A&S) Defense Pricing and Contracting, and this change is included in this technical

amendment. Certain internet links and email addresses are updated and other minor edits are made to add pointers to DFARS Procedures, Guidance, and Information.

List of Subjects in 48 CFR Parts 201, 202, 203, 205, 206, 207, 208, 209, 215, 217, 219, 222, 225, 230, 231, 232, 236, 242, 243, 249, 250, and 252

Government procurement.

Jennifer D. Johnson,
Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 201, 202, 203, 205, 206, 207, 208, 209, 215, 217, 219, 222, 225, 230, 231, 232, 236, 242, 243, 249, 250, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 201, 202, 203, 205, 206, 207, 208, 209, 215, 217, 219, 222, 225, 230, 231, 232, 236, 242, 243, 249, 250, and 252 continues to read as follows:

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

PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

■ 2. Revise section 201.105–3 to read as follows:

201.105–3 Copies.

The DFARS and the DFARS Procedures, Guidance, and Information (PGI) are available at <https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html>.

201.107 [Amended]

■ 3. Amend section 201.107 in paragraph (2) by removing “Under Secretary of Defense (Acquisition, Technology, and Logistics)” and adding “Under Secretary of Defense (Acquisition and Sustainment)” in its place.

■ 4. Amend section 201.201–1—

■ a. By revising paragraph (d)(i) introductory text;

■ b. In paragraph (d)(i)II by removing “Recommendation” and adding “RECOMMENDATION” in its place;

■ c. In paragraph (d)(i)III by removing “Discussion” and adding “DISCUSSION” in its place;

■ d. In paragraph (d)(i)IV by removing “Collaterals” and adding “COLLATERALS” in its place; and

■ e. By revising paragraph (d)(i)(V).
The revisions read as follows:

201.201–1 The two councils.

* * * * *

(d)(i) Departments and agencies process proposed revisions of FAR or DFARS through channels to the Director

of the DAR Council. Process the proposed revision as a memorandum in the following format, addressed to the Director, DAR Council via email at *osd.pentagon.ousd-a-s.mbx.dfars@mail.mil*.

* * * * *

V. DEVIATIONS: If a recommended revision of DFARS is a FAR deviation, identify the deviation and include under separate TAB a justification for the deviation that addresses the requirements of 201.402(2). The justification should be in the form of a memorandum for the Principal Director, Defense Pricing and Contracting, Office of the Under Secretary of Defense (Acquisition and Sustainment).

* * * * *

201.301 [Amended]

- 5. Amend section 201.301 in paragraph (b) by removing “Under Secretary of Defense (Acquisition, Technology, and Logistics) (USD(AT&L))” and adding “Under Secretary of Defense (Acquisition and Sustainment) (USD(A&S))” in its place.
- 6. Amend section 201.304—
 - a. In paragraph (1)(i) introductory text by removing “USD (AT&L)” and adding “USD(A&S)” in its place;
 - b. By revising paragraph (1)(ii);
 - c. In paragraph (2)(ii) by removing “USD(AT&L)” and adding “USD(A&S)” in its place;
 - d. In paragraph (4) by removing “OUSD(AT&L)DPAP” and adding “USD(A&S)DPC” in its place;
 - e. In paragraph (5) by removing “USD(AT&L)” and “OUSD(AT&L)DPAP” and adding “USD(A&S)” and “OUSD(A&S)DPC” in their places, respectively; and
 - f. By revising paragraph (6).

The revisions read as follows:

201.304 Agency control and compliance procedures.

* * * * *

- (1) * * *
- (ii) Except as provided in paragraph (2) of this section, the USD(A&S) has delegated authority to the Principal Director, Defense Pricing and Contracting (DPC) to approve or disapprove the policies, procedures, clauses, and forms subject to paragraph (1)(i) of this section.

* * * * *

(6) The Principal Director, DPC publishes changes to the DFARS in the **Federal Register** at <https://www.federalregister.gov> and on the DPC website at https://www.acq.osd.mil/dpap/dars/change_notices.html. Each change includes an effective date. Unless guidance accompanying a

change states otherwise, contracting officers must include any new or revised clauses, provisions, or forms in solicitations issued on or after the effective date of the change.

- 7. Amend section 201.402 by—
 - a. Revising paragraph (1) introductory text;
 - b. Amending paragraph (1)(ii) by removing “Subpart” and adding “subpart” in its place wherever it appears; and
 - c. Revising paragraph (2) introductory text.

The revisions read as follows:

201.402 Policy.

(1) The Principal Director, Defense Pricing and Contracting (DPC), Office of the Under Secretary of Defense (Acquisition and Sustainment) (OUSD(A&S)DPC), is the approval authority within DoD for any individual or class deviation from—

* * * * *

(2) Submit requests for deviation approval through department/agency channels to the approval authority in paragraph (1) of this section, 201.403, or 201.404, as appropriate. Submit deviations that require OUSD(A&S)DPC approval through the Director of the DAR Council via email at *osd.pentagon.ousd-a-s.mbx.dfars@mail.mil*. At a minimum, each request must—

* * * * *

201.404 [Amended]

- 8. Amend section 201.404 in paragraph (b)(i) by removing “OUSD(AT&L)DPAP” and adding “OUSD(A&S)DPC” in its place.

* * * * *

PART 202—DEFINITIONS OF WORDS AND TERMS

- 9. Amend section 202.101—
 - a. In the definition of “Departments and agencies” by removing “the Marine Corps is a part of the Department of the Navy” and adding “the Marine Corps is a part of the Department of the Navy, and the Space Force is a part of the Air Force” in its place and removing “the Space Development Agency,”;
 - b. In the definition of “Head of the agency” by removing “Under Secretary of Defense (Acquisition, Technology, and Logistics), and the Director of Defense Procurement and Acquisition Policy” and adding “Under Secretary of Defense (Acquisition and Sustainment), and the Principal Director, Defense Pricing and Contracting” in its place;
 - c. In the definition of “Procedures, Guidance, and Information (PGI)” in

paragraph (4) by removing “electronically at <http://www.acq.osd.mil/dpap/dars/index.htm>” and adding “at <https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html>” in its place; and

- d. By revising the definition of “Senior procurement executive”.

The revision reads as follows:

202.101 Definitions.

* * * * *

Senior procurement executive means, for DoD—

- (1) Department of Defense (including the defense agencies)—Under Secretary of Defense (Acquisition and Sustainment);
- (2) Department of the Army—Assistant Secretary of the Army (Acquisition, Logistics and Technology);
- (3) Department of the Navy—Assistant Secretary of the Navy (Research, Development and Acquisition);
- (4) Department of the Air Force—Assistant Secretary of the Air Force (Acquisition); and
- (5) The directors of the defense agencies have been delegated authority to act as senior procurement executive for their respective agencies, except for such actions that by terms of statute, or any delegation, must be exercised by the Under Secretary of Defense (Acquisition and Sustainment).

* * * * *

PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

203.703 [Amended]

- 10. Amend section 203.703 by removing “Under Secretary of Defense (Acquisition, Technology, and Logistics)” and adding “Under Secretary of Defense (Acquisition and Sustainment)” in its place.

PART 205—PUBLICIZING CONTRACT ACTIONS

- 11. Revise section 205.205 to read as follows:

205.205 Special situations.

See PGI 205.205 for instructions on the solicitation notice regarding timely definitization of equitable adjustments for change orders under construction contracts.

205.303 [Amended]

- 12. Amend section 205.303 in paragraph (a)(ii)(A) by removing “Office of the Assistant Secretary of Defense (Public Affairs)” and adding “Office of the Assistant to the Secretary of Defense for Public Affairs” in its place.

PART 206—COMPETITION REQUIREMENTS**206.302–5 [Amended]**

■ 13. Amend section 206.302–5 in paragraph (c)(i)(B) by removing “Director of Defense Procurement and Acquisition Policy, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics)” and adding “Principal Director, Defense Pricing and Contracting, Office of the Under Secretary of Defense (Acquisition and Sustainment)” in its place.

206.304 [Amended]

■ 14. Amend section 206.304 in paragraph (a)(4) introductory text by removing “Under Secretary of Defense (Acquisition, Technology, and Logistics)” and adding “Under Secretary of Defense (Acquisition and Sustainment)” in its place.

PART 207—ACQUISITION PLANNING**207.106 [Amended]**

■ 15. Amend section 207.106 in paragraph (S–73) by removing “Undersecretary of Defense for Acquisition, Technology, and Logistics (USD (AT&L)) and “USD (AT&L)” and adding “Under Secretary of Defense for Acquisition and Sustainment (USD(A&S))” and “USD(A&S)” in their places, respectively.

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES**208.7002 [Amended]**

■ 16. Amend section 208.7002 in paragraphs (a)(1) and (2) and paragraph (b) by removing “Deputy Under Secretary of Defense (Logistics)” and adding “Deputy Assistant Secretary of Defense (Logistics)” in its place.

PART 209—CONTRACTOR QUALIFICATIONS**209.406–2 [Amended]**

■ 17. Amend section 209.406–2 in paragraph (1)(ii) by removing “Director of Defense Procurement and Acquisition Policy” and adding “Principal Director, Defense Pricing and Contracting,” in its place.

209.570–2 [Amended]

■ 18. Amend section 209.570–2 in paragraph (c)(2) by removing “Under Secretary of Defense for Acquisition, Technology, and Logistics. (Also see 209.570–3(b).)” and adding “Under Secretary of Defense for Acquisition and Sustainment. Also, see 209.570–3(b).” in its place.

PART 215—CONTRACTING BY NEGOTIATION**215.403–1 [Amended]**

■ 19. Amend section 215.403–1 in paragraph (c)(4)(B) by removing “Director, Defense Pricing and Contracting, Pricing and Contracting Initiatives (DPC/PCI)” and adding “Office of the Principal Director, Defense Pricing and Contracting, (Price, Cost and Finance)” in its place.

■ 20. Add section 215.406 to read as follows:

215.406 Documentation.

■ 21. Add section 215.406–2 to read as follows:

215.406–2 Certificate of current cost or pricing data.

See PGI 215.406–2 for additional information and guidance on Certificates of Current Cost or Pricing Data.

PART 217—SPECIAL CONTRACTING METHODS**217.7405 [Amended]**

■ 22. Amend section 217.7405 in paragraph (b) by removing “Office of the Director, Defense Procurement and Acquisition Policy” and adding “Office of the Principal Director, Defense Pricing and Contracting (Contract Policy) at *osd.pentagon.ousd-a-s.mbx.asda-dp-c-contractpolicy@mail.mil*” in its place.

PART 219—SMALL BUSINESS PROGRAMS**219.800 [Amended]**

■ 23. Amend section 219.800 in paragraph (a) by removing “Under Secretary of Defense (Acquisition, Technology, and Logistics)” and adding “Under Secretary of Defense (Acquisition and Sustainment)” in its place.

PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS**222.1403 [Amended]**

■ 24. Amend section 222.1403 in paragraph (c)(i) by removing “Under Secretary of Defense for Acquisition” and adding “Assistant Secretary of Defense for Acquisition” in its place.

PART 225—FOREIGN ACQUISITION**225.103 [Amended]**

■ 25. Amend section 225.103 in paragraph (a)(i)(B) by removing “Under Secretary of Defense (Acquisition,

Technology, and Logistics)” and adding “Under Secretary of Defense (Acquisition and Sustainment)” in its place.

■ 26. Amend section 225.401 by revising paragraph (a)(2)(A) introductory text to read as follows:

225.401 Exceptions.

- (a) * * *
(2) * * *

(A) If a department or agency considers an individual acquisition of a product to be indispensable for national security or national defense purposes and appropriate for exclusion from the provisions of FAR subpart 25.4, it may submit a request with supporting rationale to the Principal Director, Defense Pricing and Contracting (DPC), Office of the Under Secretary of Defense (Acquisition and Sustainment) (OUSD(A&S)DPC). Approval by OUSD(A&S)DPC is not required if—
* * * * *

225.403 [Amended]

■ 27. Amend section 225.403 in paragraph (c)(ii) introductory text by removing “Director of Defense Procurement and Acquisition Policy” and adding “Principal Director, Defense Pricing and Contracting” in its place.

225.770–5 [Amended]

■ 28. Amend section 225.770–5 in paragraph (c)(1) by removing “Director of Defense Procurement and Acquisition Policy” and adding “Principal Director, Defense Pricing and Contracting” in its place.

225.871–5 [Amended]

■ 29. Amend section 225.871–5—
■ a. In the section heading by removing “Subcontracting” and adding “subcontracting” in its place; and
■ b. In paragraph (a) by removing “Director of Defense Procurement and Acquisition Policy” and adding “Principal Director, Defense Pricing and Contracting” in its place.

225.871–7 [Amended]

■ 30. Amend section 225.871–7 in paragraph (a)(1) by removing “Director of Defense Procurement and Acquisition Policy” and adding “Principal Director, Defense Pricing and Contracting” in its place.

225.872–2 [Amended]

■ 31. Amend section 225.872–2 in paragraph (a)(2)(ii) by removing “Deputy Under Secretary of Defense (Industrial Affairs)” and adding “Deputy Assistant Secretary of Defense for Industrial Base Policy” in its place.

225.872-3 [Amended]

■ 32. Amend section 225.872-3 in paragraph (e)(4) by removing “Under Secretary of Defense (Acquisition, Technology, and Logistics)” and adding “Under Secretary of Defense (Acquisition and Sustainment)” in its place.

■ 33. Amend section 225.872-5 by revising paragraph (a) to read as follows:

225.872-5 Contract administration.

(a) Arrangements exist with some qualifying countries to provide reciprocal contract administration services. Some arrangements are at no cost to either government. To determine whether such an arrangement has been negotiated and what contract administration functions are covered, contact 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*.

* * * * *

225.7002-2 [Amended]

■ 34. Amend section 225.7002-2 in paragraph (b)(1)(i) by removing “Under Secretary of Defense (Acquisition, Technology, and Logistics)” and adding “Under Secretary of Defense (Acquisition and Sustainment)” in its place.

225.7003-3 [Amended]

■ 35. In section 225.7003-3 amend paragraph (b)(2)(ii) by removing “Director, Defense Procurement and Acquisition Policy” and adding “Principal Director, Defense Pricing and Contracting” in its place.

PART 230—COST ACCOUNTING STANDARDS ADMINISTRATION

■ 36. Add section 230.201 to read as follows:

230.201 Contract requirements.

■ 37. Amend section 230.201-5 by revising paragraph (a)(1)(A) introductory text, paragraph (a)(1)(B), and paragraph (e) to read as follows:

230.201-5 Waiver.

- (a) * * *
- (1) * * *

(A) The military departments and the Principal Director, Defense Pricing and Contracting (DPC), Office of the Under Secretary of Defense (Acquisition and Sustainment)—

* * * * *

(B) Follow the procedures at PGI 230.201-5(a)(1) for submitting waiver requests to the Principal Director, DPC.

* * * * *

(e) By November 30th of each year, the military departments shall provide a report to the Office of the Principal Director, DPC (Contract Policy) of all waivers granted under FAR 30.201-5(a), during the previous fiscal year, for any contract, subcontract, or modification expected to have a value of \$15 million or more. See PGI 230.201-5(e) for format and guidance for the report. The Principal Director, DPC, will submit a consolidated report to the CAS Board and the congressional defense committees.

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

231.205-70 [Amended]

■ 38. Amend section 231.205-70 in paragraph (c)(4)(ii)(A) by removing “Under Secretary of Defense (Acquisition, Technology, and Logistics)” and adding “Under Secretary of Defense (Acquisition and Sustainment)” in its place.

PART 232—CONTRACT FINANCING

232.006-5 [Amended]

■ 39. Amend section 232.006-5 by removing “Departments and agencies” and “Under Secretary of Defense (Acquisition, Technology, and Logistics), through the Director of Defense Procurement and Acquisition Policy” and adding “Departments and agencies,” and “Under Secretary of Defense (Acquisition and Sustainment) through the Principal Director, Defense Pricing and Contracting” in their places, respectively.

■ 40. Amend section 232.070 by revising paragraphs (a) and (b) to read as follows:

232.070 Responsibilities.

(a) The Principal Director, Defense Pricing and Contracting (DPC), Office of the Under Secretary of Defense (Acquisition and Sustainment) (OUSD(A&S)DPC) is responsible for ensuring uniform administration of DoD contract financing, including DoD contract financing policies and important related procedures. Agency discretion under FAR part 32 is at the DoD level and is not delegated to the departments and agencies. Proposals by the departments and agencies, to exercise agency discretion, shall be submitted to OUSD(A&S)DPC.

(b) Departments and agencies are responsible for their day-to-day contract financing operations. Refer specific cases involving financing policy or important procedural issues to OUSD(A&S)DPC for consideration through the department/agency Contract

Finance Committee members (also see subpart 201.4 for deviation request and approval procedures).

* * * * *

232.611 [Amended]

■ 41. Amend section 232.611 in paragraph (a) introductory text by removing “The Director of Defense Procurement and Acquisition Policy, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics)” and adding “The Principal Director, Defense Pricing and Contracting, Office of the Under Secretary of Defense (Acquisition and Sustainment)” in its place.

232.7101 [Amended]

■ 42. Amend section 232.7101—
 ■ a. In paragraph (b) by removing “Director, Defense Procurement and Acquisition Policy (DPAP)” and adding “Principal Director, Defense Pricing and Contracting (DPC)” in its place; and
 ■ b. In paragraph (c) by removing “Director, DPAP” and adding “Principal Director, DPC” in its place.

PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

■ 43. Add section 236.211 to read as follows:

236.211 Distribution of advance notices and solicitations.

See PGI 236.211 for instructions on reporting data for definitization of requests for equitable adjustment.

PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

242.602 [Amended]

■ 44. Amend section 242.602 in paragraph (c)(2) by removing “Director of Defense Procurement and Acquisition Policy” and adding “Principal Director, Defense Pricing and Contracting” in its place.

PART 243—CONTRACT MODIFICATIONS

■ 45. Amend section 243.204-70-1 by revising paragraph (b) to read as follows:

243.204-70-1 Scope.

* * * * *

(b) Unpriced change orders for foreign military sales and special access programs are not subject to this section, but the contracting officer shall apply the policy and procedures to them to the maximum extent practicable. If the contracting officer determines that it is impracticable to adhere to the policy and procedures of this section for an

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;

* * * * *

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.

[FR Doc. 2023–23435 Filed 10–24–23; 8:45 am]

BILLING CODE 6001–FR–P

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