

participate in the Simpler NOFO project. Therefore, the application requirements and evaluation criteria will change in FY24 to lessen the burden and make it easier to read, understand, and write an application. The ANA Project Framework, used in NOFOs from FY 2018–2023, will no longer be used, although some elements will remain. The required elements for an ANA application across all five NOFOs that will be evaluated will include: Project Narrative (for 75 points) to include the Current Community Condition (5 points), Project Goal (7 points), Objectives (8 points), Project Strategy and Implementation Plan (15 points), Community Based Strategy (12 points), Population to be Served (7 points), Outcomes (6 points), Objective Work Plan (15 points). The Organizational Capacity (total of 15 points) includes a Staffing Plan (5 points), Data Management Plan (3 points), Partnerships and Consultants (2 points), and Oversight Plan (5 points). The Line-Item Budget and Budget Narrative will be combined for a total of 10 points. A total of 100 points will be available for each NOFO. As mentioned earlier, no bonus points will be provided for any NOFO.

6. Reduction in Application Page Limits

ANA's previous application total page limit was 150 pages, excluding Standard Forms such as the SF-424, SF-424A, and other OMB-approved forms including ANA's Objective Work Plan. Applicant feedback informed ANA that 150 pages is too much. While ANA limits rather than requires 150 pages, applicants sometimes feel that it is a requirement to provide 150 pages to have a competitive application. Therefore, ANA will reduce the total page limit from 150 to 100 pages to reduce the burden to apply for ANA funding. To accommodate the lower page limit, business plans will no longer be required at the time of application submission. However, if a proposed project is subject to a business plan, ANA staff will request an applicant to provide a business plan during the Internal Review of Proposed Projects process of finalizing and negotiating grant awards.

Statutory Authority: Sections 803 and 814 of the Native American Programs Act of 1974 (NAPA), as amended (42 U.S.C. 2291b; 2992b-1).

Patrice H. Kunesh,

Commissioner, Administration for Native Americans.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 215, 225, and 252

[Docket DARS-2024-0002]

RIN 0750-AL64

Defense Federal Acquisition Regulation Supplement: Assuring Integrity of Overseas Fuel Supplies (DFARS Case 2022-D013)

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 implement a section of the National Defense Authorization Act for Fiscal Year 2022 that requires offerors to certify that they will not provide fuel from a prohibited source and that they will comply with certain export control and anticorruption regulations and statutes for contracts awarded for the acquisition of fuel in support of overseas contingency operations.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before April 15, 2024, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2022-D013, using either of the following methods:

○ *Federal eRulemaking Portal:* <https://www.regulations.gov>. Search for DFARS Case 2022-D013. Select "Comment" and follow the instructions to submit a comment. Please include "DFARS Case 2022-D013" on any attached documents.

○ *Email:* osd.dfars@mail.mil. Include DFARS Case 2022-D013 in the subject line of the message.

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

FOR FURTHER INFORMATION CONTACT: Mr. Jon Snyder, telephone 703-945-5341.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to revise the DFARS to implement section 843 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2022 (Pub.

L. 117-81). Section 843 requires offerors to certify that fuel to be provided for a contract in support of an overseas contingency operation is not sourced from a prohibited nation or region and to furnish such records as are necessary to verify their compliance with applicable export control and anticorruption regulations and statutes. Section 843 requires contracting officers, when conducting a source selection for such contracts, to consider using tradeoff processes and certain evaluation factors. If the contracting officer does not consider a tradeoff process prior to issuing the solicitation, the contracting officer is required to justify in writing why a tradeoff process was not considered. Section 843 also requires the contracting officer to ensure, prior to contract award, that the offeror is not disqualified based upon an unsupported denial of access to a facility or equipment by the host nation.

II. Discussion and Analysis

DoD proposes to add to the DFARS a new section 225.70WW, Restriction on acquisition of fuel for overseas contingency operations. Section 225.70WW provides the scope, prohibition, and procedures for contracting officers to use for the acquisition of fuel that is for overseas contingency operations and is expected to exceed the simplified acquisition threshold. This proposed rule requires that fuel is not sourced from a nation or region prohibited from selling petroleum to the United States. The proposed rule allows contracting officers to request records from the apparent successful offeror to verify compliance with certain regulations and statutes when the head of the contracting activity determines in writing that it is necessary. In addition, the proposed rule precludes contracting officers from disqualifying an offeror based on an unsupported denial of access to a facility or equipment by a host-nation government.

This proposed rule includes a new section 215.101-71, Tradeoff process when acquiring fuel for overseas contingency operations, which requires contracting officers to consider using a tradeoff process during a source selection. When using a tradeoff process, contracting officers are required to consider the use of certain evaluation factors. This proposed rule also provides procedures for a contracting officer to justify when a tradeoff process is not considered.

A new solicitation provision is proposed at DFARS 252.225-70XX, Restriction on Acquisition of Fuel for Overseas Contingency Operations, for

use in solicitations expected to exceed the simplified acquisition threshold, including solicitations using FAR part 12 procedures for the acquisition of commercial products, including commercially available off-the-shelf (COTS) items, and commercial services, for the procurement of fuel for overseas contingency operations. DFARS 252.225-70XX requires an offeror to certify that the fuel, in whole or in part, or derivatives of such fuel, to be provided under the resulting contract will not be sourced from a nation or region prohibited from selling petroleum to the United States. This proposed provision requires the apparent successful offeror to furnish records verifying compliance upon contracting officer request. The provision also requires an offeror, prior to award, to promptly report to the contracting officer any instance of unsupported denial of access to a facility or equipment by a host nation government that may prevent it from complying with the terms and conditions of the solicitation.

Since DoD plans to apply the requirements of this proposed rule to acquisitions using FAR part 12 procedures, cross references to the new subpart are added at new paragraphs 212.203(5) and 212.301(f)(ix)(OO).

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

This proposed rule includes a new provision at DFARS 252.225-70XX, Restriction on Acquisition of Fuel for Overseas Contingency Operations, to implement the requirements of section 843 of the NDAA for FY 2022. The provision at DFARS 252.225-70XX is prescribed at DFARS 225.70WW-4 for use in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services, that are for the procurement of fuel for overseas contingency operations and are expected to exceed the simplified acquisition threshold. DoD does not intend to apply the proposed rule to contracts at or below the SAT. DoD does intend to apply the proposed rule to contracts for the acquisition of commercial products including COTS items and for the acquisition of commercial services.

A. Applicability to Contracts at or Below the Simplified Acquisition Threshold

41 U.S.C. 1905 governs the applicability of laws to contracts or

subcontracts in amounts not greater than the simplified acquisition threshold. It is intended to limit the applicability of laws to such contracts or subcontracts. 41 U.S.C. 1905 provides that if a provision of law contains criminal or civil penalties, or if the Federal Acquisition Regulatory Council makes a written determination that it is not in the best interest of the Federal Government to exempt contracts or subcontracts at or below the SAT, the law will apply to them. The Principal Director, Defense Pricing and Contracting (DPC), is the appropriate authority to make comparable determinations for regulations to be published in the DFARS, which is part of the Federal Acquisition Regulation system of regulations. DoD does not intend to make that determination. Therefore, this proposed rule will not apply at or below the simplified acquisition threshold.

B. Applicability to Contracts for the Acquisition of Commercial Products Including COTS Items and for the Acquisition of Commercial Services

10 U.S.C. 3452 exempts contracts and subcontracts for the acquisition of commercial products including COTS items, and commercial services from provisions of law enacted after October 13, 1994, unless the Under Secretary of Defense (Acquisition and Sustainment) (USD(A&S)) makes a written determination that it would not be in the best interest of DoD to exempt contracts for the procurement of commercial products and commercial services from the applicability of the provision or contract requirement, except for a provision of law that—

- Provides for criminal or civil penalties;
- Requires that certain articles be bought from American sources pursuant to 10 U.S.C. 4862 (previously 10 U.S.C. 2533c), or that strategic materials critical to national security be bought from American sources pursuant to 10 U.S.C. 4863 (previously 10 U.S.C. 2533b); or
- Specifically refers to 10 U.S.C. 3452 and states that it shall apply to contracts and subcontracts for the acquisition of commercial products (including COTS items) and commercial services.

The statute implemented in this proposed rule does not impose criminal or civil penalties, does not require purchase pursuant to 10 U.S.C. 4862 or 4863, and does not refer to 10 U.S.C. 3452. Therefore, section 843 of the NDAA for FY 2022 will not apply to the acquisition of commercial services or commercial products including COTS items unless a written determination is

made. Due to delegations of authority, the Principal Director, DPC is the appropriate authority to make this determination. DoD intends to make that determination to apply this statute to the acquisition of commercial products including COTS items and to the acquisition of commercial services. Therefore, this proposed rule will apply to the acquisition of commercial products including COTS items and to the acquisition of commercial services.

C. Determination

Given that the requirements of section 843 of the NDAA for FY 2022 were enacted to ensure that fuel for overseas contingency operations is not procured from prohibited sources, and since fuel is generally a commercial product or COTS item, it is in the best interest of the Federal Government to apply the rule to contracts for the acquisition of commercial services and commercial products, including COTS items, as defined at Federal Acquisition Regulation 2.101. An exception for contracts for the acquisition of commercial services and commercial products, including COTS items, would exclude the contracts intended to be covered by the law, thereby undermining the overarching public policy purpose of the law.

IV. Expected Impact of the Rule

This proposed rule includes a requirement for offerors for a contract for the procurement of fuel that is for an overseas contingency operation and is expected to exceed the SAT, to certify that the proposed fuel, in whole or in part, or derivatives of such fuel, will not be sourced from a nation or region prohibited from selling petroleum to the United States. Offerors will also be required to comply with certain export control and anticorruption statutes and regulations. The apparent successful offeror may be requested to provide records to verify such compliance upon contracting officer request.

This proposed rule also includes new requirements for contracting officers. Contracting officers must not disqualify an offeror based on an unsupported denial of access to a facility or equipment by a host nation government. When conducting a source selection for such acquisitions, contracting officers will be required to consider the use of a tradeoff process and the use of certain evaluation factors. If the contracting officer does not consider a tradeoff process, the contracting officer must justify and obtain approval of the rationale for not considering a tradeoff process.

Analysis of data from the Federal Procurement Data System for fiscal years 2021, 2022, and 2023, for DoD contracts awarded to procure fuel for overseas operations revealed there was an average of five awards per fiscal year. These five awards were made to three contractors. Across the three fiscal years, a total of three companies received awards for the procurement of liquid fuels supporting overseas operations. During this period, no awards were made to small entities.

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. Regulatory Flexibility Act

DoD does not expect this proposed rule, when finalized, 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.*, because during recent fiscal years there were no contracts awarded to small entities for supplying fuel for overseas contingency operations. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

This proposed rule is necessary to implement section 843 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2022 (Pub. L. 117–81). Section 843 requires offerors to certify that the fuel procured for an overseas contingency operation is not sourced from a prohibited nation or region and to furnish such records as are necessary to verify their compliance with certain export control and anticorruption statutes and regulations. Section 843 requires contracting officers to consider a tradeoff process and the use of certain evaluation factors when procuring fuel for an overseas contingency operation. If the contracting officer does not consider a tradeoff process, section 843 requires the contracting officer to justify, before issuing the solicitation, why a tradeoff process was not considered.

The objective of the proposed rule is to implement section 843 of the NDAA for FY 2022, which is the legal basis for the rule.

Data from the Federal Procurement Data System was analyzed for fiscal years 2021, 2022, and 2023 for DoD contracts awarded to procure fuel for overseas operations. The data revealed there was an average of five awards per fiscal year for the procurement of fuel supporting overseas operations. These awards were made to three unique entities, of which none were small entities. Therefore, DoD does not anticipate that this proposed rule will have an impact on small entities.

The proposed rule does not impose any new reporting, recordkeeping, or other compliance requirements for small entities.

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

There are no known alternatives to the proposed rule that would accomplish the stated objectives of the applicable statute.

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

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this proposed 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 2022–D013), in correspondence.

VII. Paperwork Reduction Act

This proposed 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, 215, 225, and 252

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, 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 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 PRODUCTS AND COMMERCIAL SERVICES

■ 2. Amend section 212.203 by adding paragraph (5) to read as follows:

212.203 Procedures for solicitation, evaluation, and award.

* * * * *

(5) See 215.101–71 and 225.70WW for the acquisition of fuel for overseas contingency operations.

■ 3. Amend section 212.301 by adding paragraph (f)(x)(OO) to read as follows:

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

* * * * *

(f) * * *

(x) * * *

(OO) Use the provision at 252.225–70XX, Restriction on Acquisition of Fuel for Overseas Contingency Operations, as prescribed in 225.70WW–4, to comply with section 843 of the National Defense Authorization Act for Fiscal Year 2022 (Pub. L. 117–81).

PART 215—CONTRACTING BY NEGOTIATION

■ 4. Add section 215.101–71 to subpart 215.1 to read as follows:

215.101–71 Tradeoff process when acquiring fuel for overseas contingency operations.

(a) When conducting a source selection for the acquisition of fuel that is for an overseas contingency operation and is expected to exceed the simplified acquisition threshold, the contracting officer shall consider using a tradeoff process in accordance with FAR 15.101–1 (section 843 of the National Defense Authorization Act for Fiscal Year 2022 (Pub. L. 117–81)). The contracting officer should consider using the following evaluation factors in any such tradeoff process:

- (1) Past performance.
- (2) Cost.
- (3) Anticorruption training.
- (4) Anticorruption compliance.

(b) If a tradeoff process was not considered, prior to the issuance of the solicitation, the contracting officer shall justify in writing why a tradeoff process was not considered and obtain approval by an official one level above the contracting officer. This authority is not delegable. The contracting officer shall include the justification in the contract file.

PART 225—FOREIGN ACQUISITION

■ 5. Add sections 225.70WW, 225.70WW-1, 225.70WW-2, 225.70WW-3, and 225.70WW-4 to subpart 225.70 to read as follows:

*	*	*	*	*
Sec.				
225.70WW	Restriction on acquisition of fuel for overseas contingency operations.			
225.70WW-1	Scope.			
225.70WW-2	Prohibition.			
225.70WW-3	Procedures.			
225.70WW-4	Solicitation provision.			
*	*	*	*	*

225.70WW Restriction on acquisition of fuel for overseas contingency operations.**225.70WW-1 Scope.**

This section implements section 843 of the National Defense Authorization Act for Fiscal Year 2022 (Pub. L. 117-81), for the acquisition of fuel for overseas contingency operations.

225.70WW-2 Prohibition.

Contracting officers shall not award, for an overseas contingency operation, a contract for fuel, in whole or in part, or derivatives of such fuel, that is sourced from nations or regions prohibited from selling petroleum to the United States. See FAR subpart 25.7 for prohibited sources.

225.70WW-3 Procedures.

(a) For contracts for the acquisition of fuel for overseas contingency operations, including contracts using FAR part 12 procedures, expected to exceed the simplified acquisition threshold, the contracting officer—

(1) May request records from the apparent successful offeror to verify compliance with the following statutes and regulations only when the head of the contracting activity determines in writing that it is necessary:

(i) The Foreign Corrupt Practices Act (15 U.S.C. 78dd-1 *et seq.*).

(ii) International Traffic in Arms Regulations at 22 CFR 120 through 130 (see PGI 225.7901-2).

(iii) Export Administration Regulations at 15 CFR 730 through 774 (see PGI 225.7901-2).

(iv) Relevant regulations promulgated by the Office of Foreign Assets Control of the Department of the Treasury. Sanction information for specific countries and programs is available at <https://ofac.treasury.gov/sanctions-programs-and-country-information>.

(2) To the maximum extent practicable, shall not disqualify an otherwise responsible offeror on the basis of an unsupported denial of access to a facility or equipment by a host-nation government. The provision at

252.225-70XX, Restriction on Acquisition of Fuel for Overseas Contingency Operations, requires offerors to report promptly to the contracting officer, prior to award, any instance of unsupported denial of access to a facility or equipment by a host-nation government that may prevent it from complying with the terms and conditions of the solicitation.

(b) See 215.101-71 for the requirement to consider using a tradeoff process.

225.70WW-4 Solicitation provision.

Use the provision at 252.225-70XX, Restriction on Acquisition of Fuel for Overseas Contingency Operations, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services, that are for the acquisition of fuel for overseas contingency operations and are expected to exceed the simplified acquisition threshold.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 6. Add section 252.225-70XX to read as follows:

252.225-70XX Restriction on Acquisition of Fuel for Overseas Contingency Operations.

As prescribed in 225.70WW-4, use the following provision:

Restriction on Acquisition of Fuel for Overseas Contingency Operations (Date)

(a) *Prohibition.* For an overseas contingency operation, DoD may not procure fuel in whole or in part, or derivatives of such fuel, that is sourced from nations or regions prohibited from selling petroleum to the United States. See Federal Acquisition Regulation subpart 25.7 for prohibited sources.

(b) *Certification.* Offerors shall complete the certification in paragraph (b)(1) of this provision and submit the certification with their offer.

(1) The Offeror does [] does not [] certify that the fuel, in whole or in part, or derivatives of such fuel, to be provided under any contract resulting from this solicitation is not sourced from a nation or region prohibited from selling petroleum to the United States.

(2) Only Offerors who certify that the fuel to be provided is not sourced from a prohibited nation or region will be eligible for award.

(c) Compliance.

(1) When requested by the Contracting Officer, the apparent successful Offeror shall submit records necessary to demonstrate compliance with applicable laws and regulations regarding export-controlled items and anticorruption statutes and regulations including—

(i) The Foreign Corrupt Practices Act (15 U.S.C. 78dd-1 *et seq.*);

(ii) International Traffic in Arms Regulations (ITAR) at 22 CFR 120 through 130 (also see Defense Federal Acquisition Regulation Supplement (DFARS) clause 252.225-7048, Export-Controlled Items);

(iii) Export Administration Regulations (EAR) at 15 CFR 730 through 774 (also see DFARS clause 252.225-7048); and

(iv) Relevant regulations promulgated by the Office of Foreign Assets Control of the Department of the Treasury. Sanction information for specific countries and programs is available at <https://ofac.treasury.gov/sanctions-programs-and-country-information>.

(2) The Offeror shall contact the Department of State regarding ITAR compliance and the Department of Commerce regarding EAR compliance.

(d) *Reporting requirement.* The Offeror shall, prior to contract award, promptly report to the Contracting Officer any instance of unsupported denial of access to a facility or equipment by a host-nation government that may prevent it from complying with the terms and conditions of the solicitation.

(End of provision)

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DEPARTMENT OF DEFENSE**Defense Acquisition Regulations System****48 CFR Parts 212, 227, and 252**

[Docket DARS-2024-0005]

RIN 0750-AL21

Defense Federal Acquisition Regulation Supplement: Use of DoD Program Nomenclature (DFARS Case 2021-D002)

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 introduce coverage of trademarks and similar designations, such as popular names and program names. In addition to the request for written comments on this proposed rule, DoD will hold a public meeting to hear the views of interested parties.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before April 15, 2024, to be considered in the formation of a final rule.

Public Meeting: A virtual public meeting will be held on March 22, 2024, from 1:00 p.m. to 5:00 p.m., Eastern