

■ 5. Add section 235.011 to read as follows:

**235.011 Data.**

(1) The contracting officer shall obtain a data management plan from the contractor at the start of the research project as required by the clause at 252.235–70YY, Data Management Plan.

(2) The contracting officer shall provide the contractor's data management plan to the program manager for approval and notify the contractor of such approval or disapproval.

■ 6. Amend section 235.072 by adding paragraphs (f) and (g) to read as follows:

**235.072 Additional contract clauses.**

\* \* \* \* \*

(f) Use the clause at 252.235–70XX, Peer-Reviewed Manuscripts, in solicitations and contracts for research and development that include fundamental research funded in whole or in part by DoD.

(g) Use the clause at 252.235–70YY, Data Management Plan, in solicitations and contracts for research and development that include fundamental research funded in whole or in part by DoD.

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

■ 7. Add sections 252.235–70XX and 252.235–70YY to read as follows:

**252.235–70XX Peer-Reviewed Manuscripts.**

As prescribed in 235.072(f), use the following clause:

**Peer-Reviewed Manuscripts (DATE)**

(a) *Definitions.* As used in this clause—  
*Final peer-reviewed manuscript* means an author's final manuscript of a peer-reviewed paper accepted for journal publication, including all modifications from the peer-review process and manuscripts jointly authored with DoD personnel during the period of performance of the fundamental research contract. It does not include reports required to be delivered under the terms of the contract.

*Peer-reviewed* means a process that subjects an author's scholarly work, research, or ideas to the scrutiny of others who are experts in the same field and is considered necessary to ensure scientific quality.

(b) *Submission of final peer-reviewed manuscript.* When the final title and date of publication of the author's final peer-reviewed manuscript are known, the Contractor shall submit an electronic copy of the manuscript to one of the following Defense Technical Information Center repositories:

(1) Contractors with a common access card (CAC), personal identity verification (PIV), or external certification authority (ECA) shall

submit to <https://discover.dtic.mil/submit-documents/>; or

(2) Contractors without a CAC, PIV, or ECA shall submit to <https://www.osti.gov/mlink/agency-submission>.

(End of clause)

**252.235–70YY Data Management Plan.**

As prescribed in 235.072(g), insert the following clause:

**Data Management Plan (DATE)**

(a) *Definitions.* As used in this clause—  
*Data* means the digitally recorded factual material commonly accepted in the scientific community as necessary to validate research findings, including data sets used to support scholarly publications including publicly releasable digital data, algorithms, or other information central to the conclusions of published peer-reviewed scientific research.

*Data management plan* means a document that describes which data generated during performance of a research and development contract will be publicly shared and preserved and how it will be accomplished, or a justification of why such actions cannot be accomplished.

(b) *Submission of data management plan.* Within 30 days of contract award, the Contractor shall submit to the Contracting Officer, with a copy to the Contracting Officer's Representative and the Program Manager, a data management plan for approval by the Program Manager. Generally, the data management plan should not exceed 2 pages and should address elements relevant to the research discipline for the following areas (see DoD Instruction 3200.12):

(1) The types of data, software, and other materials to be produced.

(2) How the data will be acquired.

(3) Time and location of data acquisition, if scientifically pertinent.

(4) How the data will be processed.

(5) The file formats and the naming conventions that will be used.

(6) A description of the quality assurance and quality control measures during collection, analysis, and processing.

(7) A description of dataset origin when existing data resources are used.

(8) A description of the standards to be used for data and metadata format and content.

(9) Appropriate timeframe for preservation.

(10) The plan may consider the balance between the relative value of data preservation and other factors such as the associated cost and administrative burden. The plan will provide a justification for such decisions.

(11) A statement that the data cannot be made available to the public when there are national security or controlled unclassified information concerns.

(c) *Implementation and maintenance of the data management plan.* The Contractor shall implement and maintain the approved data management plan throughout the performance of the contract.

(End of clause)

[FR Doc. 2024–21097 Filed 9–25–24; 8:45 am]

**BILLING CODE 6001–FR–P**

**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Parts 212, 214, 215, and 252**

[Docket DARS–2024–0028]

RIN 0750–AL55

**Defense Federal Acquisition Regulation Supplement: DoD Cost or Pricing Data Requirements (DFARS Case 2022–D004)**

**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 sections of the National Defense Authorization Acts for Fiscal Years 2018, 2021, and 2022 that update requirements for contractors to submit cost or pricing data.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before November 25, 2024, to be considered in the formation of a final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2022–D004, using either of the following methods:

○ *Federal eRulemaking Portal:* <https://www.regulations.gov>. Search for DFARS Case 2022–D004. Select “Comment” and follow the instructions to submit a comment. Please include “DFARS Case 2022–D004” on any attached documents.

○ *Email:* [osd.dfars@mail.mil](mailto:osd.dfars@mail.mil). Include DFARS Case 2022–D004 in the subject line of the message.

Comments received will generally 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 811(b) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 (Pub. L. 115–91), section 814 of the NDAA for FY 2021 (Pub. L. 116–283), and section 804 of the NDAA for FY 2022 (Pub. L. 117–81). Section 811(b) of the NDAA for FY 2018 (10 U.S.C. 2306a(d), now 10

U.S.C. 3705(a) requires offerors to submit data other than certified cost or pricing data upon contracting officer request. Section 814 of the NDAA for FY 2021 (10 U.S.C. 2306(a)(1), now 10 U.S.C. 3702(a)(2), (3), and (4)) establishes a \$2 million threshold for the Truthful Cost or Pricing Data statute (formerly Truth in Negotiations Act (TINA) and still referred to as TINA) requirements with respect to contract modifications, subcontracts, and modifications to subcontracts, respectively. Section 804 of the NDAA for FY 2022 augments the requirement at 10 U.S.C. 2306a(a)(6), now 10 U.S.C. 3702(f), for contracting officers to modify contracts to reflect the relevant TINA threshold.

## II. Discussion and Analysis

TINA requires, with exceptions, that the Government obtain certified cost or pricing data for certain contract actions listed at Federal Acquisition Regulation (FAR) 15.403–4(a)(1), such as negotiated contracts, certain subcontracts, and certain contract modifications. Section 811(a) of the NDAA for FY 2018 increased the threshold for requesting certified cost or pricing data from \$750,000 to \$2 million for contracts entered into after June 30, 2018, but it left unchanged the \$750,000 threshold for prime contract modifications. The FAR was amended to reflect this change effective August 3, 2020.

Section 814 of the NDAA for FY 2021 established a uniform \$2 million threshold for TINA requirements with respect to DoD for contractual actions, including prime contract modifications, entered into after June 30, 2018. In implementing the change to the thresholds for prime contract modifications, this proposed rule includes a new contract clause at DFARS 252.215–70SS, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—Modifications, and its Alternate I. This clause is prescribed for use in lieu of FAR 52.215–21, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—Modifications, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, if the contracting officer anticipates, at the time of solicitation, that postaward submission of certified cost or pricing data or data other than certified cost or pricing data may possibly be required for modifications. Alternate I is used to specify a format for certified cost or pricing data other than the format required by FAR Table

15–2. Further, this proposed rule, at DFARS 215.403–4, requires use of the \$2 million threshold for submission of certified cost or pricing data in conjunction with relevant FAR contract clauses and solicitation provisions regardless of the date on which the contract was awarded.

Section 804 of the NDAA for FY 2022 augments the requirement at 10 U.S.C. 3702(f) for contracting officers, in connection with a contract entered into on or before June 30, 2018, to modify the contract to reflect the changed TINA threshold as necessary. In particular, section 804 requires that such modifications be executed “as soon as practicable.” DoD is proposing to change DFARS 215.403–4 accordingly, adding six clauses, prescribed at DFARS 214.201–7 and 215.408, specifically for use when modifying contracts in accordance with 10 U.S.C. 3702(f). The six clauses are as follows:

- 252.214–70QQ, Alternate A, Price Reduction for Defective Certified Cost or Pricing Data—Modifications—Sealed Bidding.
- 252.214–70RR, Alternate A, Subcontractor Certified Cost or Pricing Data—Modifications—Sealed Bidding.
- 252.215–70TT, Alternate A, Price Reduction for Defective Certified Cost or Pricing Data—Modifications.
- 252.215–70UU, Alternate A, Subcontractor Certified Cost or Pricing Data.
- 252.215–70VV, Alternate A, Subcontractor Certified Cost or Pricing Data—Modifications.
- 252.215–70WW, Alternate A, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—Modifications.

These new DFARS clauses are designed for use with the FAR clauses that are already in existing contracts. These six DFARS clauses replace the references to the TINA threshold in the FAR clauses with the current, relevant TINA threshold for DoD contracts.

Section 811(b) of the NDAA for FY 2018 requires offerors to submit data other than certified cost or pricing data upon contracting officer request. Accordingly, DoD proposes to change the solicitation provision at DFARS 252.215–7010, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data, and its Alternate I to require that, upon contracting officer request, the offeror shall submit data other than certified cost or pricing data to the extent necessary to determine the reasonableness of the price of the contract or subcontract. Similarly, the new clause at 252.215–70SS,

Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—Modifications, and its Alternate I reflect the same clarifying language.

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

This rule proposes to amend the solicitation provision at DFARS 252.215–7010, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data, which already applies to solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services. The changes to the solicitation provision in this proposed rule, however, do not impose any new requirements on contracts at or below the SAT or for commercial services and commercial products, including COTS items. The provision will continue not to apply to acquisitions at or below the SAT but will continue to apply to acquisitions of commercial services and commercial products, including COTS items.

This proposed rule adds a new clause at DFARS 252.215–70SS, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—Modifications, and its Alternate I. The clause at DFARS 252.215–70SS is prescribed at DFARS 215.408(5)(ii) introductory text and (5)(ii)(A) and (B) for use in lieu of the clause at FAR 52.215–21, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—Modifications, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, if it is anticipated at the time of solicitation that postaward submission of certified cost or pricing data or data other than certified cost or pricing data may be required for prime contract modifications. Alternate I is prescribed when a format other than the FAR Table 15–2 format may be used for the certified cost or pricing data.

This proposed rule also includes new clauses at DFARS 252.214–70QQ, Alternate A, Price Reduction for Defective Certified Cost or Pricing Data—Modifications—Sealed Bidding; 252.214–70RR, Alternate A, Subcontractor Certified Cost or Pricing Data—Modifications—Sealed Bidding; 252.215–70TT, Alternate A, Price Reduction for Defective Certified Cost or

Pricing Data—Modifications; 252.215–70UU, Alternate A, Subcontractor Certified Cost or Pricing Data; 252.215–70VV, Alternate A, Subcontractor Certified Cost or Pricing Data—Modifications; and 252.215–70WW, Alternate A, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—Modifications. These clauses are prescribed for use with the respective clauses at FAR 52.214–27, Price Reduction for Defective Certified Cost or Pricing Data—Modifications—Sealed Bidding; FAR 52.214–28, Subcontractor Certified Cost or Pricing Data—Modifications—Sealed Bidding; 52.215–11, Price Reduction for Defective Certified Cost or Pricing Data—Modifications; 52.215–12, Subcontractor Certified Cost or Pricing Data; and 52.215–13, Subcontractor Certified Cost or Pricing Data—Modifications; when, in accordance with 10 U.S.C. 3702(f), modifying a prime contract entered into before July 1, 2018. Therefore, these clauses are not appropriate for use in new FAR part 12 solicitations and contracts.

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 services and commercial products, including COTS items.

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

The statute at 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. The statute at 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, Contracting, and Acquisition Policy (DPCAP), is the appropriate authority to make comparable determinations for regulations to be published in the DFARS, which is part of the FAR 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 Services and Commercial Products, Including COTS Items*

The statute at 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 statutes implemented in this proposed rule do not impose criminal or civil penalties, do not require purchase pursuant to 10 U.S.C. 4862 or 4863, and do not refer to 10 U.S.C. 3452. Therefore, section 811(b) of the NDAA for FY 2018, section 814 of the NDAA for FY 2021, and section 804 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, DPCAP is the appropriate authority to make this determination. DoD intends to make that determination to apply these statutes to the acquisition of commercial products, including COTS items, and to the acquisition of commercial services.

#### *C. Determination*

DFARS 252.215–7010, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data, allows offerors to submit a written request for an exception from the requirement to submit certified cost or pricing data, by submitting specific information to support a commercial product or commercial service exception or an exception based on prices set by law or regulation. As this implies, DFARS 252.215–7010 is

presently prescribed for use in solicitations to include those using FAR part 12 procedures for the acquisition of commercial products and commercial services. This proposed rule does not include any changes to this prescription.

The requirements of section 811(b) of the NDAA for FY 2018, section 814 of the NDAA for FY 2021, and section 804 of the NDAA for FY 2022 should apply to the procurement of commercial products, including COTS items, and to the procurement of commercial services for the following reasons.

Implementation of these sections provides guidance concerning rendering of commercial product and commercial service determinations and the appropriate amount and type of other than certified cost or pricing information that contracting officers must require an offeror to submit in order to determine whether proposed prices for commercial products and commercial services are fair and reasonable. Exclusion of acquisitions of commercial products, including COTS items, and commercial services would greatly limit the impact of the statutory requirements and forestall the opportunity to clarify commercial product and commercial service documentation, pricing criteria, and requirements. For example, implementing section 811(b) of the NDAA for FY 2018 requires augmenting DFARS 252.215–7010, which presently applies to the acquisition of commercial products and commercial services. Section 804 of the NDAA for FY 2022 will be implemented in a proposed new DFARS clause, 252.215–70SS, that is applicable postaward in a manner analogous to the solicitation provision at DFARS 252.215–7010. The new clause at 252.215–70SS must similarly apply to the acquisition of commercial products and commercial services. In order to reflect congressional intent, section 814 of the NDAA for FY 2021 must apply to the acquisition of commercial products and commercial services as a consequence of 252.215–7010 applying to such acquisitions.

An exception for contracts for the acquisition of commercial items, 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 Proposed Rule**

By increasing the TINA threshold for contract modifications and subcontracts to match that of contracts entered into after June 30, 2018, this proposed rule,

when finalized, will benefit both the Government and the public. In particular, by implementing a uniform TINA threshold, this proposed rule will promote efficiency and reduce costs associated with administering contracts. This proposed rule requires contractors to provide data other than certified cost or pricing data when certified cost or pricing data is not required. Finally, this proposed rule provides Government contracting officers with the ability to obtain data other than certified cost or pricing data for contract modifications analogous to what they can obtain when issuing contracts. This data is critical for determining fair and reasonable prices when certified cost or pricing data is not required. Adding this language should expedite contract negotiations and award.

#### 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 the proposed rule does not add to existing requirements for the submission of other than certified cost or pricing data for the purpose of determining the reasonableness of proposed prices; rather, the proposed rule decreases the number of contracts and subcontracts subject to TINA. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

DoD is proposing to amend the DFARS to implement the following: section 811(b) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 (Pub. L. 115–91), section 814 of the NDAA for FY 2021 (Pub. L. 116–283), and section 804 of the NDAA for FY 2022 (Pub. L. 117–81). Section 811(b) of the NDAA for FY 2018 (10

U.S.C. 2306a(d), now 10 U.S.C. 3705(a)) requires offerors to submit data other than certified cost or pricing data upon contracting officer request. Section 814 of the NDAA for FY 2021 (10 U.S.C. 2306(a)(1), now 10 U.S.C. 3702(a)(2), (3), and (4)) establishes a \$2 million threshold for the Truthful Cost or Pricing Data (Truth in Negotiations) statute (referred to as TINA) requirements with respect to contract modifications, subcontracts, modifications to subcontracts. TINA requires, with notable exceptions, contractors to submit cost or pricing data and to certify the accuracy of the data, for the award of negotiated contracts exceeding the \$2 million threshold. Section 804 of the NDAA for FY 2022 augments the requirement at 10 U.S.C. 2306a(a)(6) (now 10 U.S.C. 3702(f)) for contracting officers to modify contracts to reflect the relevant TINA threshold. Section 804 requires such modifications to be executed “as soon as practicable.”

The objective of this proposed rule is to propose amendments to the DFARS to implement the statutory changes described above. The legal basis for the proposed rule is section 811(b) of the NDAA for FY 2018, section 814 of the NDAA for FY 2021, and section 804 of the NDAA for FY 2022.

Data was obtained from the Federal Procurement Data System for new awards valued over \$2 million in FY 2019, FY 2020, and FY 2021. DoD awarded an average of 10,593 contracts per year during FY 2019 through FY 2021. Of those contracts, an average of approximately 5,567 contracts were awarded to 3,659 unique small entities per year. By increasing the TINA threshold for contract modifications and subcontracts, this proposed rule will benefit small businesses by reducing the overall number of contracts to which TINA requirements apply.

The proposed rule imposes new reporting, recordkeeping, or compliance requirements via proposed DFARS clause 252.215–70SS, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—Modifications.

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

There are no known alternatives that would accomplish the stated objectives of the applicable statutes.

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–D004), in correspondence.

#### VII. Paperwork Reduction Act

This proposed rule contains information collection requirements that require the approval of the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. chapter 35). Accordingly, DoD has submitted a request for approval of a revised information collection requirement concerning OMB Control Number 0704–0574, titled “Defense Federal Acquisition Regulation Supplement (DFARS) Part 215; Only One Offer and Related Clauses at 252.215,” to OMB.

##### A. Estimate of Public Burden

Public reporting burden for this collection of information is estimated to average 30 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:* 1,247.

*Total annual responses:* 1,435.

*Total annual burden hours:* 50,190.

##### B. Request for Comments Regarding Paperwork Burden

Written comments and recommendations on the proposed information collection, including suggestions for reducing this burden, should be submitted using the Federal eRulemaking Portal at <https://www.regulations.gov> or by email to [osd.dfars@mail.mil](mailto:osd.dfars@mail.mil). Comments can be received up to 60 days after the date of this notice.

Public comments are particularly invited on: whether this collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; the accuracy of DoD’s estimate of the burden of this information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

To obtain a copy of the supporting statement and associated collection instruments, please email [osd.dfars@mail.mil](mailto:osd.dfars@mail.mil). Include DFARS Case 2022–D004 in the subject line of the message.

**List of Subjects in 48 CFR Parts 212, 214, 215, and 252**

Government procurement.

**Jennifer D. Johnson,**

*Editor/Publisher, Defense Acquisition Regulations System.*

Therefore, the Defense Acquisition Regulations System proposes to amend 48 CFR parts 212, 214, 215, and 252 amended as follows:

■ 1. The authority citation for 48 CFR parts 212, 214, 215, 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 212.301 by revising paragraph (f)(vi)(E) introductory text and adding paragraph (f)(vi)(G) to read as follows:

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

\* \* \* \* \*

(f) \* \* \*

(vi) \* \* \*

(E) Use the provision 252.215–7010, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data, as prescribed at 215.408(5)(i) to comply with section 831 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239) and 10 U.S.C. 3702(a), 3703(d) and (e), and 3705(a).

\* \* \* \* \*

(G) Use the clause at 252.215–70SS, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—Modifications, as prescribed at 215.408(5)(ii) to comply with section 831 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239) and 10 U.S.C. 3703(d) and (e), and 3705(a).

\* \* \* \* \*

**PART 214—SEALED BIDDING**

■ 3. Revise section 214.201–6 to read as follows:

**214.201–6 Solicitation provisions.**

Use the provisions at 252.215–7007, Notice of Intent to Resolicit, and 252.215–7008, Only One Offer, as prescribed at 215.371–6 and 215.408(3), respectively.

■ 4. Add section 214.201–7 to read as follows:

**214.201–7 Contract clauses.**

(b)(1) When modifying a contract entered into before July 1, 2018, in accordance with 215.403–4(a)(3), use the clause at FAR 52.214–27, Price Reduction for Defective Certified Cost or Pricing Data—Modifications—Sealed Bidding, with 252.214–70QQ, Alternate A, Price Reduction for Defective Certified Cost or Pricing Data—Modifications—Sealed Bidding.

(c)(1)(ii) When modifying a contract entered into before July 1, 2018, in accordance with 215.403–4(a)(3), use the clause at FAR 52.214–28, Subcontractor Certified Cost or Pricing Data—Modifications—Sealed Bidding, with 252.214–70RR, Alternate A, Subcontractor Certified Cost or Pricing Data—Modifications—Sealed Bidding. Do not use alternate I of the clause at FAR 52.214–28.

**PART 215—CONTRACTING BY NEGOTIATION**

■ 5. Add section 215.403–4 to read as follows:

**215.403–4 Requiring certified cost or pricing data (10 U.S.C. chapter 271 and 41 U.S.C. chapter 35).**

(a)(1) Notwithstanding FAR 15.403–4(a)(1), the \$2 million threshold for obtaining certified cost or pricing data applies to contract modifications, subcontracts, and subcontract modifications, regardless of when the prime contract was awarded.

(3) For a contract entered into before July 1, 2018, the contracting officer shall modify the contract as soon as practicable, without requiring consideration, to reflect the threshold at paragraph (a)(1) for obtaining certified cost or pricing data on contract modifications and subcontracts entered into on or after July 1, 2018 (10 U.S.C. 3702(f)). See 214.201–7 and 215.408.

■ 6. Amend section 215.408—

■ a. By redesignating paragraphs (5)(ii) and (iii) as paragraphs (5)(iii) and (iv); and

■ b. By adding a new paragraph (5)(ii) and paragraph (9).

The additions read as follows:

**215.408 Solicitation provisions and contract clauses.**

\* \* \* \* \*

(5) \* \* \*

(ii) Use the basic or alternate of the clause at 252.215–70SS, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—Modifications, in lieu of the clause at FAR 52.215–21, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—

Modifications, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, if it is reasonably certain that certified cost or pricing data or data other than certified cost or pricing data will be required for modifications.

(A) Use the basic clause when submission of certified cost or pricing data is required to be in the FAR Table 15–2 format.

(B) Use the alternate I clause to specify a format for certified cost or pricing data other than the format required by FAR Table 15–2.

\* \* \* \* \*

(9) When modifying a prime contract entered into before July 1, 2018, in accordance with 215.403–4(a)(3)—

(i) Use the clause at FAR 52.215–11, Price Reduction for Defective Certified Cost or Pricing Data—Modifications, with 252.215–70TT, Alternate A, Price Reduction for Defective Certified Cost or Pricing Data—Modifications.

(ii)(A) Use the clause at FAR 52.215–12, Subcontractor Certified Cost or Pricing Data, with 252.215–70UU, Alternate A, Subcontractor Certified Cost or Pricing Data.

(B) Do not use alternate I of the clause at FAR 52.215–12.

(iii)(A) Use the clause at FAR 52.215–13, Subcontractor Certified Cost or Pricing Data—Modifications, with 252.215–70VV, Alternate A, Subcontractor Certified Cost or Pricing Data—Modifications.

(B) Do not use alternate I of the clause at FAR 52.215–13.

(iv) Use the clause at 52.215–21, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—Modifications, with 252.215–70WW, Alternate A, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—Modifications.

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

■ 7. Add section 252.214–70QQ to read as follows:

**252.214–70QQ Alternate A, Price Reduction for Defective Certified Cost or Pricing Data—Modifications—Sealed Bidding.**

As prescribed in 214.201–7(b)(1), use the following clause:

**Alternate A, Price Reduction for Defective Certified Cost or Pricing Data—Modifications—Sealed Bidding (Date)**

Substitute “215.403–4(a)(1) of the Defense Federal Acquisition Regulation Supplement” for references to 15.403–4(a)(1) of the Federal Acquisition Regulation wherever they appear in the clause at 52.214–27, Price Reduction for Defective Certified Cost or Pricing Data—Modifications—Sealed Bidding.

(End of clause)

■ 8. Add section 252.214–70RR to read as follows:

**252.214–70RR Alternate A, Subcontractor Certified Cost or Pricing Data—Modifications—Sealed Bidding.**

As prescribed in 214.201–7(c)(1)(ii), use the following clause:

**Alternate A, Subcontractor Certified Cost or Pricing Data—Modifications—Sealed Bidding (Date)**

Substitute “215.403–4(a)(1) of the Defense Federal Acquisition Regulation Supplement” for references to 15.403–4(a)(1) of the Federal Acquisition Regulation wherever they appear in the clause at 52.214–28, Subcontractor Certified Cost or Pricing Data—Modifications—Sealed Bidding.

(End of clause)

■ 9. Amend section 252.215–7010—

■ a. By removing the provision date of “(MAY 2024)” and adding “(DATE)” in its place;

■ b. By revising paragraph (b)(1)(ii)(C);

■ c. In paragraph (b)(1)(ii)(D) by removing “items” and “the DoD” and adding “products or services” and “DoD” in their places, respectively;

■ d. In paragraphs (b)(1)(ii)(E) and (F) by removing “items” and adding “products or services” in its place;

■ e. By revising paragraph (c)(3);

■ f. By redesignating paragraphs (d)(1) through (5) as paragraphs (d)(2) through (6);

■ g. By adding a new paragraph (d)(1);

■ h. In newly redesignated paragraph (d)(5) by removing “FAR 15.403–3” and adding “this paragraph (d)” in its place;

■ i. In paragraph (e)(1) by removing “FAR 15.403–4” and adding “DFARS 215.403–4(a)(1)” in its place; and

■ j. In Alternate I—

■ i. By removing the provision date of “(MAY 2024)” and adding “(DATE)” in its place;

■ ii. By revising paragraph (b)(1)(ii)(C);

■ iii. In paragraph (b)(1)(ii)(D) by removing “items” and “the DoD” and adding “products or services” and “DoD” in their places, respectively;

■ iv. In paragraph (b)(1)(ii)(E) by removing “items” and adding “products or services” in its place;

■ v. By revising paragraphs (b)(1)(ii)(F) and (c)(3);

■ vi. By redesignating paragraphs (d)(1) through (6) as paragraphs (d)(2) through (7);

■ vii. By adding a new paragraph (d)(1);

■ viii. By revising newly redesignated paragraph (d)(6); and

■ ix. In paragraph (e)(1) by removing “FAR 15.403–4” and adding “DFARS 215.403–4(a)(1)” in its place.

The revisions and additions read as follows:

**252.215–7010 Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(ii) \* \* \*

(C) For products or services priced based on a catalog—

(1) A copy of or identification of the Offeror’s current catalog showing the price for that product or service; and

(2) If the catalog pricing provided with this proposal is not supported by all relevant sales data, a detailed description of differences or inconsistencies between or among the relevant sales data, the proposed price, and the catalog price (including any related discounts, refunds, rebates, offsets, or other adjustments);

\* \* \* \* \*

(c) \* \* \*

(3) The Offeror is responsible for determining whether a subcontractor qualifies for an exception from the requirement for submission of certified cost or pricing data on the basis of adequate price competition in accordance with FAR 15.403–1(c)(1)(i).

(d) \* \* \*

(1) When certified cost or pricing data are not required to be submitted under this provision, the Offeror shall submit data to the extent necessary to determine the reasonableness of the price of the contract or subcontract, when requested by the Contracting Officer.

\* \* \* \* \*

Alternate I. \* \* \*

(b) \* \* \*

(1) \* \* \*

(ii) \* \* \*

(C) For products or services priced based on a catalog—

(1) A copy of or identification of the Offeror’s current catalog showing the price for that product or service; and

(2) If the catalog pricing provided with this proposal is not supported by all relevant sales data, a detailed description of differences or inconsistencies between or among the relevant sales data, the proposed price, and the catalog price (including any

related discounts, refunds, rebates, offsets, or other adjustments);

\* \* \* \* \*

(F) For products or services provided by nontraditional defense contractors, a statement that the entity is not currently performing and has not performed, for at least the 1-year period preceding the solicitation of sources by DoD for the procurement or transaction, any contract or subcontract for DoD that is subject to full coverage under the cost accounting standards prescribed pursuant to 41 U.S.C. 1502 and the regulations implementing such section.

\* \* \* \* \*

(c) \* \* \*

(3) The Offeror is responsible for determining whether a subcontractor qualifies for an exception from the requirement for submission of certified cost or pricing data on the basis of adequate price competition in accordance with FAR 15.403–1(c)(1)(i).

(d) \* \* \*

(1) When certified cost or pricing data are not required to be submitted under this provision, the Offeror shall submit data to the extent necessary to determine the reasonableness of the price of the contract or subcontract, when requested by the Contracting Officer.

\* \* \* \* \*

(5) Within 10 days of a written request from the Contracting Officer for additional information to permit an adequate evaluation of the proposed price in accordance with this paragraph (d), the Offeror shall provide either the requested information, or a written explanation for the inability to fully comply.

\* \* \* \* \*

■ 10. Add section 252.215–70SS to read as follows:

**252.215–70SS Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—Modifications.**

As prescribed in 215.408(5)(ii) and (5)(ii)(A), use the following basic clause:

**Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—Modifications—Basic (DATE)**

(a) *Definitions.* As used in this clause—  
*Market prices* means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offeror, contractor, or subcontractor.

*Non-Government sales* means sales of the supplies or services to non-Governmental entities for purposes other than governmental purposes.

*Relevant sales data* means information provided by an offeror, contractor, or subcontractor on sales of the same or similar items that can be used to establish price reasonableness taking into consideration the age, volume, and nature of the transactions (including any related discounts, refunds, rebates, offsets, or other adjustments).

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

*Uncertified cost data* means the subset of “data other than certified cost or pricing data” (see FAR 2.101) that relates to cost.

(b) *Exceptions from certified cost or pricing data.*

(1) In lieu of submitting certified cost or pricing data for modifications under this contract, for price adjustments expected to exceed the threshold set forth in Defense Federal Acquisition Regulation Supplement (DFARS) 215.403–4(a)(1), the Contractor may submit a written request for exception by submitting the information described in paragraphs (b)(1)(i) and (ii) of this clause. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted and whether the price is fair and reasonable.

(i) *Exception for prices set by law or regulation—Identification of the law or regulation establishing the prices offered.* If the prices are controlled under law by periodic rulings, reviews, or similar actions of a governmental body, provide a copy of the controlling document, unless it was previously submitted to the contracting office.

(ii) *Commercial product and commercial service exception.* For a commercial product or commercial service exception, the Contractor shall submit, at a minimum, information that is adequate for evaluating the reasonableness of the price for this modification, including prices at which the same or similar products or services have been sold in the commercial market. The Contractor may provide information establishing that the proposed modification would not change the existing contract or subcontract from a contract or subcontract for a commercial product or commercial service to one for other than a commercial product or service. Such information shall include—

(A) For products or services previously determined to be commercial, the contract number and military department, defense agency, or other DoD component that rendered such determination and, if available, a Government point of contact;

(B) For products or services priced based on a catalog—

(1) A copy of or identification of the Contractor’s current catalog showing the price for that product or service; and

(2) If the catalog pricing provided with this proposal is not supported by all relevant sales data, a detailed description of differences or inconsistencies between or among the relevant sales data, the proposed price, and the catalog price, including any related discounts, refunds, rebates, offsets, or other adjustments;

(C) For products or services priced based on market pricing, a description of the nature of the commercial market, the methodology used to establish a market price, and all relevant sales data. The description shall be adequate to permit DoD to verify the accuracy of the description;

(D) For products or services included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule products or services; or

(E) For products or services provided by nontraditional defense contractors, a statement that the entity is not currently performing and has not performed, for at least the 1-year period preceding the solicitation of sources by DoD for the procurement, any contract or subcontract for DoD that is subject to full coverage under the cost accounting standards prescribed pursuant to 41 U.S.C. 1502 and the regulations implementing such section.

(2) The Contractor 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 clause, and to determine the reasonableness of price.

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

(1) The Contractor 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 in this contract, unless the Contracting Officer and the Contractor agree to a different format and replace this clause with Alternate I of 252.215–70SS.

(2) As soon as practicable after agreement on price, but before award of the modification, the Contractor shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.406–2.

(3) The Contractor is responsible for determining whether a subcontractor qualifies for an exception from the requirement for submission of certified cost or pricing data on the basis of adequate price competition in accordance with FAR 15.403–1(c)(1)(i).

(d) *Requirements for data other than certified cost or pricing data.*

(1) When certified cost or pricing data are not required to be submitted under this clause for a contract or subcontract, the Contractor shall submit data other than certified cost or pricing data to the extent necessary to determine the reasonableness of the price of the contract or subcontract when requested by the Contracting Officer.

(2) Data other than certified cost or pricing data submitted in accordance with this clause shall include the minimum information necessary to permit a determination that the proposed price is fair and reasonable, to include the requirements in DFARS 215.402(a)(i) and 215.404–1(b).

(3) In cases in which uncertified cost data is required, the information shall be provided in the form in which it is regularly maintained by the Contractor, subcontractor, or prospective subcontractor in its business operations.

(4) Within 10 days of a written request from the Contracting Officer for additional information to permit an adequate evaluation of the proposed price in accordance with this paragraph, the Contractor shall provide either the requested information or a written explanation for the inability to fully comply.

(e) *Subcontract price evaluation.*

(1) Contractors shall obtain from subcontractors the minimum information necessary to support a determination of price reasonableness, as described in FAR part 15 and DFARS part 215.

(2) No cost data may be required from a current or prospective subcontractor in any case in which there are sufficient non-Government sales of the same item to establish reasonableness of price.

(3) If the Contractor relies on relevant sales data for similar items to determine the price is reasonable, the Contractor shall obtain only that technical information necessary to—

(i) Support the conclusion that items are technically similar; and

(ii) Explain any technical differences that account for variances between the proposed prices and the sales data presented.

(f) *Subcontracts.* The Contractor shall insert the substance of this clause, including this paragraph (f), in subcontracts exceeding the simplified acquisition threshold defined in FAR part 2. The Contractor shall require subcontractors and prospective subcontractors to adhere to the requirements of—

(1) Paragraphs (c) and (d) of this clause for subcontracts above the threshold for submission of certified cost or pricing data in DFARS 215.403–4(a)(1); and

(2) Paragraph (d) of this clause for subcontracts exceeding the simplified acquisition threshold defined in FAR part 2. (End of clause)

*Alternate I.* As prescribed in 215.408(5)(ii) and (5)(ii)(B), use the following clause, which includes a different paragraph (c)(1) than the basic clause and amends paragraph (d) by redesignating paragraph (d)(4) of the basic clause as (d)(5) and adding a new paragraph (d)(4).

**Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—Modifications—Alternate I (DATE)**

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

*Market prices* means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offeror, contractor, or subcontractor.

*Non-Government sales* means sales of the supplies or services to non-Governmental entities for purposes other than governmental purposes.

*Relevant sales data* means information provided by an offeror, contractor, or subcontractor on sales of the same or similar

items that can be used to establish price reasonableness taking into consideration the age, volume, and nature of the transactions (including any related discounts, refunds, rebates, offsets, or other adjustments).

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

*Uncertified cost data* means the subset of “data other than certified cost or pricing data” (see FAR 2.101) that relates to cost.

(b) *Exceptions from certified cost or pricing data.*

(1) In lieu of submitting certified cost or pricing data for modifications under this contract, for price adjustments expected to exceed the threshold set forth in Defense Federal Acquisition Regulation Supplement (DFARS) 215.403–4(a)(1), the Contractor may submit a written request for exception by submitting the information described in paragraphs (b)(1)(i) and (ii) of this clause. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted and whether the price is fair and reasonable.

(i) *Exception for prices set by law or regulation—Identification of the law or regulation establishing the prices offered.* If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, provide a copy of the controlling document, unless it was previously submitted to the contracting office.

(ii) *Commercial product and commercial service exception.* For a commercial product or commercial service exception, the Contractor shall submit, at a minimum, information that is adequate for evaluating the reasonableness of the price for this modification, including prices at which the same or similar products or services have been sold in the commercial market. The Contractor may provide information establishing that the proposed modification would not change the existing contract or subcontract from a contract or subcontract for a commercial product or commercial service to one for other than a commercial product or service. Such information shall include—

(A) For products or services previously determined to be commercial, the contract number and military department, defense agency, or other DoD component that rendered such determination and, if available, a Government point of contact;

(B) For products or services priced based on a catalog—

(1) A copy of or identification of the Contractor’s current catalog showing the price for that product or service; and

(2) If the catalog pricing provided with this proposal is not supported by all relevant sales data, a detailed description of differences or inconsistencies between or among the relevant sales data, the proposed price, and the catalog price, including any related discounts, refunds, rebates, offsets, or other adjustments;

(C) For products or services priced based on market pricing, a description of the nature

of the commercial market, the methodology used to establish a market price, and all relevant sales data. The description shall be adequate to permit DoD to verify the accuracy of the description;

(D) For products or services included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule products or services; or

(E) For products or services provided by nontraditional defense contractors, a statement that the entity is not currently performing and has not performed, for at least the 1-year period preceding the solicitation of sources by DoD for the procurement, any contract or subcontract for DoD that is subject to full coverage under the cost accounting standards prescribed pursuant to 41 U.S.C. 1502 and the regulations implementing such section.

(2) The Contractor 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 clause, and to determine the reasonableness of price.

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

(1) The Contractor shall submit certified cost or pricing data and supporting attachments in the following format: *[Contracting officer insert description of the data and format that are required, and include access to records necessary to permit an adequate evaluation of the proposed price in accordance with FAR 15.408, Table 15–2, Note 2. The Contracting Officer shall insert the description at the time of issuing the solicitation or specify that the format regularly maintained by the Contractor or current or prospective subcontractor in its business operations will be acceptable. The Contracting Officer may amend the description as the result of negotiations.]*

(2) As soon as practicable after agreement on price, but before award of the modification, the Contractor shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.406–2.

(3) The Contractor is responsible for determining whether a subcontractor qualifies for an exception from the requirement for submission of certified cost or pricing data on the basis of adequate price competition in accordance with FAR 15.403–1(c)(1)(i).

(d) *Requirements for data other than certified cost or pricing data.*

(1) When certified cost or pricing data are not required to be submitted under this clause for a contract or subcontract, the Contractor shall submit data other than certified cost or pricing data to the extent necessary to determine the reasonableness of the price of the contract or subcontract when requested by the Contracting Officer.

(2) Data other than certified cost or pricing data submitted in accordance with this clause shall include the minimum information necessary to permit a determination that the proposed price is fair

and reasonable, to include the requirements in DFARS 215.402(a)(i) and 215.404–1(b).

(3) In cases in which uncertified cost data is required, the information shall be provided in the form in which it is regularly maintained by the Contractor, subcontractor, or prospective subcontractor in its business operations.

(4) The Contractor shall provide information described as follows: *[Insert description of the data and the format that are required upon request, including access to records necessary to permit an adequate evaluation of the proposed price in accordance with FAR 15.403–3].*

(5) Within 10 days of a written request from the Contracting Officer for additional information to permit an adequate evaluation of the proposed price in accordance with this paragraph, the Contractor shall provide either the requested information or a written explanation for the inability to fully comply.

(e) *Subcontract price evaluation.*

(1) The Contractor shall obtain from subcontractors the information necessary to support a determination of price reasonableness, as described in FAR part 15 and DFARS part 215.

(2) No cost data may be required from a current or prospective subcontractor in any case in which there are sufficient non-Government sales of the same item to establish reasonableness of price.

(3) If the Contractor relies on relevant sales data for similar items to determine the price is reasonable, the Contractor shall obtain only that technical information necessary to—

(i) Support the conclusion that items are technically similar; and

(ii) Explain any technical differences that account for variances between the proposed prices and the sales data presented.

(f) *Subcontracts.* The Contractor shall insert the substance of this clause, including this paragraph (f), in subcontracts exceeding the simplified acquisition threshold defined in FAR part 2. The Contractor shall require subcontractors and prospective subcontractors to adhere to the requirements of—

(1) Paragraphs (c) and (d) of this clause for subcontracts above the threshold for submission of certified cost or pricing data in DFARS 215.403–4(a)(1); and

(2) Paragraph (d) of this clause for subcontracts exceeding the simplified acquisition threshold defined in FAR part 2.

(End of clause)

■ 11. Add sections 252.215–70TT, 252.215–70UU, 252.215–70VV, and 252.215–70WW to read as follows:

\* \* \* \* \*

Sec.

252.215–70TT Alternate A, Price Reduction for Defective Certified Cost or Pricing Data—Modifications.

252.215–70UU Alternate A, Subcontractor Certified Cost or Pricing Data.

252.215–70VV Alternate A, Subcontractor Certified Cost or Pricing Data—Modifications.

252.215–70WW Alternate A, Requirements for Certified Cost or Pricing Data and



Data Other Than Certified Cost or Pricing Data—Modifications.

\* \* \* \* \*

**252.215–70TT Alternate A, Price Reduction for Defective Certified Cost or Pricing Data—Modifications.**

As prescribed in 215.408(9)(i), use the following clause:

**Alternate A, Price Reduction for Defective Certified Cost or Pricing Data—Modifications (DATE)**

Substitute “215.403–4(a)(1) of the Defense Federal Acquisition Regulation Supplement” for references to 15.403–4(a)(1) of the Federal Acquisition Regulation wherever they appear in the clause at 52.215–11, Price Reduction for Defective Certified Cost or Pricing Data—Modifications.

(End of clause)

**252.215–70UU Alternate A, Subcontractor Certified Cost or Pricing Data.**

As prescribed in 215.408(9)(ii), use the following clause:

**Alternate A, Subcontractor Certified Cost or Pricing Data (DATE)**

Substitute “215.403–4(a)(1) of the Defense Federal Acquisition Regulation Supplement” for references to 15.403–4(a)(1) of the Federal Acquisition Regulation wherever they appear in the clause at 52.215–12, Subcontractor Certified Cost or Pricing Data.

(End of clause)

**252.215–70VV Alternate A, Subcontractor Certified Cost or Pricing Data—Modifications.**

As prescribed in 215.408(9)(iii), use the following clause:

**Alternate A, Subcontractor Certified Cost or Pricing Data—Modifications (DATE)**

Substitute “215.403–4(a)(1) of the Defense Federal Acquisition Regulation Supplement” for references to 15.403–4(a)(1) of the Federal Acquisition Regulation wherever they appear in the clause at 52.215–13, Subcontractor Certified Cost or Pricing Data—Modifications.

(End of clause)

**252.215–70WW Alternate A, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—Modifications.**

As prescribed in 215.408(9)(iv), use the following clause:

**Alternate A, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—Modifications (DATE)**

Substitute “215.403–4(a)(1) of the Defense Federal Acquisition Regulation Supplement” for references to 15.403–4(a)(1) of the Federal Acquisition Regulation wherever they appear in the clause at 52.215–21, Requirements for

Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—Modifications.

(End of clause)

[FR Doc. 2024–21098 Filed 9–25–24; 8:45 am]

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**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Parts 209, 212, 237, and 252**

[Docket DARS–2024–0029]

RIN 0750–AM04

**Defense Federal Acquisition Regulation Supplement: Preventing Conflicts of Interest for Certain Consulting Services (DFARS Case 2024–D007)**

**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 2024 that prohibits contracting officers from awarding contracts assigned certain North American Industry Classification System codes to offerors that hold contracts that involve consulting services with certain covered foreign entities.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before November 25, 2024, to be considered in the formation of a final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2024–D007, using either of the following methods:

○ *Federal eRulemaking Portal:* <https://www.regulations.gov>. Search for DFARS Case 2024–D007. Select “Comment” and follow the instructions to submit a comment. Please include “DFARS Case 2024–D007” on any attached documents.

○ *Email:* [osd.dfars@mail.mil](mailto:osd.dfars@mail.mil). Include DFARS Case 2024–D007 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 812 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2024 (Pub. L. 118–31). Section 812 prohibits contracting officers from awarding contracts assigned a North American Industry Classification System (NAICS) code beginning with 5416 to offerors who hold contracts that involve consulting services with certain covered foreign entities. NAICS codes beginning with 5416 are for management, scientific, and technical consulting services. Section 812 allows an offeror to submit a conflict-of-interest mitigation plan and allows the prohibition to be waived under certain circumstances.

**II. Discussion and Analysis**

This proposed rule includes a new section 209.57X, Conflicts of Interest in Certain Consulting Services, to implement section 812 of the NDAA for FY 2024. This new section 209.57X provides contracting officers the scope, definitions, prohibition, and waiver procedures for conflicts of interest in consulting services. DFARS 209.57X(c) prohibits contracting officers from awarding contracts assigned a NAICS code beginning with 5416 to an offeror that holds a contract for consulting services with one or more covered foreign entities if the offeror does not have an approved conflict-of-interest mitigation plan. DFARS 209.57X(b) contains the definitions of “consulting services”, “contract oversight entity”, “covered contract”, and “covered foreign entity”. The proposed rule also includes DFARS 209.503–70, which specifies the waiver authority for the prohibition at 209.57X(c).

A new solicitation provision is proposed at DFARS 252.209–70XX, Prohibition Relating to Conflicts of Interest in Consulting Services—Certification, for use in solicitations assigned a NAICS code beginning with 5416 that involve consulting services, including solicitations using Federal Acquisition Regulation (FAR) part 12 procedures for the acquisition of commercial services. DFARS 252.209–70XX requires an offeror to certify whether or not the offeror, its subsidiaries, or its affiliates hold a contract for consulting services with one or more covered foreign entities. If the offeror cannot certify to this, the offeror may contact the contracting officer for guidance on submitting an existing