

Data Other Than Certified Cost or Pricing Data—Modifications.

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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)

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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. 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

conflict-of-interest mitigation plan. If such a plan is submitted and approved, the provision specifies that the plan will be incorporated into any resulting contract awarded to the offeror. The new solicitation provision is prescribed at 209.57X(e).

The new solicitation provision is proposed to be added to the list of provisions and clauses for use in solicitations and contracts for commercial products and commercial services at DFARS 212.301.

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 proposes a new provision at DFARS 252.209–70XX, Prohibition Relating to Conflicts of Interest in Consulting Services— Certification, to implement the requirements of section 812 of the NDAA for FY 2024. The provision at DFARS 252.209–70XX is prescribed at DFARS 209.57X(e) for use in solicitations assigned a NAICS code beginning with 5416 that involve consulting services, including solicitations using FAR part 12 procedures for the acquisition of commercial services. DoD does intend to apply the proposed rule to contracts at or below the SAT and for the acquisition of commercial services. DoD does not intend to apply the proposed rule to contracts for the acquisition of 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 Federal Acquisition Regulation system of regulations. DoD does intend to make that determination. Therefore, this

proposed rule will 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

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 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 812 of the NDAA for FY 2024 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 this statute to the acquisition of commercial services. DoD does not intend to make that determination to apply this statute to the acquisition of commercial products including COTS items. Therefore, this proposed rule will apply to the acquisition of commercial services but will not apply to the acquisition of commercial products including COTS items.

C. Determinations

Given that the requirements of section 812 of the NDAA for FY 2024 were enacted to ensure the integrity and security of contracted consulting

services, it is in the best interest of the Federal Government to apply the statute to contracts valued at or below the SAT and for the acquisition of commercial services, as defined at Federal Acquisition Regulation 2.101.

Acquisitions below the SAT represent 42 percent of the consulting services contracts awarded in the last three fiscal years. Therefore, excluding these contracts would result in a significant national security risk.

Consulting services are commercial services, as defined at FAR 2.101. Therefore, an exception for contracts for the acquisition of commercial services would exclude the contracts intended to be covered by the law, thereby undermining the overarching purpose of the law.

IV. Expected Impact of the Rule

This proposed rule, when finalized, will prohibit contracting officers from awarding contracts, assigned a NAICS code beginning with 5416, to offerors who hold contracts that involve consulting services with covered foreign entities. NAICS codes beginning with 5416 are for management, scientific, and technical consulting services.

Offerors responding to solicitations assigned those NAICS codes will be required to certify whether or not they hold contracts that involve consulting services with one or more covered foreign entities and whether they maintain a conflict-of-interest mitigation plan. If an offeror certifies that they do hold such a contract, the offeror may consult with the contracting officer and submit a conflict-of-interest mitigation plan that is auditable by a contract oversight entity. If the offeror's plan is approved, the contracting officer will incorporate the plan into the resulting contract. If the offeror does not submit a conflict-of-interest mitigation plan, the contracting officer may determine the award is in the best interests of the United States with appropriate approval. In addition, the agency will be required to submit to Congress any use of such waiver authority.

DoD expects this proposed rule, when finalized, to prevent adversaries from accessing sensitive information that may cause harm to the United States.

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 this proposed rule primarily impacts offerors that hold contracts with certain covered foreign entities. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

This proposed rule is required 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 an offeror that holds a contract for consulting services with one or more covered foreign entities. NAICS codes beginning with 5416 are for management, scientific, and technical consulting services.

The objective of this proposed rule is to implement section 812 of the NDAA for FY 2024, which is the legal basis for this proposed rule.

According to data obtained from the Procurement Integrated Enterprise Environment in the last three fiscal years, DoD awarded contracts with NAICS codes starting with 5416 to an average of 864 unique small entities per year. However, DoD cannot determine how many of those contracts awarded to small entities involve potential conflicts of interest.

This proposed rule does impose new reporting, recordkeeping, or other compliance requirements for small entities. The new solicitation provision at DFARS 252.209–70XX, Notice of Prohibition Relating to Conflicts of Interest in Consulting Services—Certification, requires offerors to certify whether they or their subsidiaries or affiliates hold a contract for consulting services with one or more covered entities and whether they maintain a conflict-of-interest mitigation plan that meets certain criteria listed in the solicitation provision.

This 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 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 2024–D007), in correspondence.

VII. Paperwork Reduction Act

This proposed rule contains information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35). Accordingly, DoD has submitted a request for approval of a new information collection requirement concerning DFARS Case 2024–D007, Preventing Conflicts of Interest for Certain Consulting Services, to the Office of Management and Budget.

A. Estimate of Public Burden

Public reporting burden for this collection of information is estimated to average 1 hour 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 is estimated as follows:

1. Certification

Respondents: 5,307.
Number of annual responses: 5,307.
Annual burden hours: 5,307.

2. Conflict-of-Interest Mitigation Plan

Respondents: 114.
Number of annual responses: 177.
Annual burden hours: 144.

3. Total Public Burden

Respondents: 5,307.
Number of annual responses: 5,484.
Annual burden hours: 5,484.

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. Comments can be received up to 60 days after the date of this document.

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. Include DFARS Case 2024–D007 in the subject line of the message.

List of Subjects in 48 CFR Parts 209, 212, 237, 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 209, 212, 237, and 252 as follows:

■ 1. The authority citation for parts 209, 212, 237, and 252 continues to read as follows:

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

PART 209—CONTRACTOR QUALIFICATIONS

■ 2. Add section 209.503–70 to read as follows:

209.503–70 Waiver.

Notwithstanding FAR 9.503, for consulting services, as defined at 209.57X(b), the waiver approval authority is the Secretary of Defense and the following officials, without power of delegation below an official appointed by the President and confirmed by the Senate:

(a) The Under Secretary of Defense (Acquisition and Sustainment).

(b) The assistant secretaries of the military departments. (See PGI 209.503–70.)

■ 3. Add section 209.57X to read as follows:

209.57 X Conflicts of interest in certain consulting services.

(a) *Scope.* (1) This section implements section 812 of the National Defense Authorization Act for Fiscal Year 2024 (Pub. L. 118–31).

(2) To the extent that this section is inconsistent with FAR subpart 9.5, this section takes precedence.

(b) *Definitions.* As used in this section—

Consulting services means advisory and assistance services, except that the term does not include the provision of products or services related to—

- (i) Compliance with legal, audit, accounting, tax, reporting, or other requirements of the laws and standards of countries; or
- (ii) Participation in a judicial, legal, or equitable dispute resolution proceeding.

Contract oversight entity means any of the following:

- (i) The contracting officer.
- (ii) The contracting officer's representative.
- (iii) The Defense Contract Management Agency.
- (iv) The Defense Contract Audit Agency.
- (v) The DoD Office of Inspector General or any subcomponent of that office.
- (vi) The Government Accountability Office.

Covered contract means a DoD contract involving consulting services.

Covered foreign entity means any of the following:

- (i) The government of the People's Republic of China, the Chinese Communist Party, the People's Liberation Army, the Ministry of State Security, or other security service or intelligence agency of the People's Republic of China.
- (ii) The government of the Russian Federation or any entity sanctioned by the Secretary of the Treasury under Executive Order 13662, Blocking Property of Additional Persons Contributing to the Situation in Ukraine.
- (iii) The government of any country if the Secretary of State determines that such government has repeatedly provided support for acts of international terrorism pursuant to any of the following:

(A) Section 1754(c)(1)(A) of the Export Control Reform Act of 2018 (50 U.S.C. 4318(c)(1)(A)).

(B) Section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371).

(C) Section 40 of the Arms Export Control Act (22 U.S.C. 2780).

(D) Any other provision of law.

(iv) Any entity included on any of the following lists maintained by the Department of Commerce (see the Export Administration Regulations at 15 CFR subchapter C):

(A) The Entity List in supplement no. 4 to 15 CFR part 744.

(B) The Denied Persons List as described in 15 CFR 764.3(a)(2).

(C) The Unverified List in supplement no. 6 to 15 CFR part 744.

(D) The Military End User List in supplement no. 7 to 15 CFR part 744.

(v) Any entity identified by the Secretary of Defense pursuant to section 1237(b) of the National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105–261; 50 U.S.C. 1701 note).

(vi) Any entity on the Non-Specially Designated Nationals Chinese Military-Industrial Complex Companies List maintained by the Office of Foreign Assets Control of the Department of the Treasury under Executive Order 14032, Addressing the Threat From Securities Investments That Finance Certain Companies of the People's Republic of China.

(c) *Prohibition.* The contracting officer shall not award a contract assigned a North American Industry Classification System (NAICS) code beginning with 5416 that involves consulting services to an offeror that—

- (1) Cannot certify that neither the offeror nor its subsidiaries or affiliates hold a contract involving consulting services with one or more covered foreign entities; and
- (2) Does not have a conflict-of-interest mitigation plan that is auditable by a contract oversight entity and approved by the contracting officer.

(d) *Waiver.* (1) If the prospective contractor(s) certified, in response to paragraph (c) of the provision at 252.209–70XX, Prohibition Relating to Conflicts of Interest in Consulting Services—Certification, that it or its subsidiaries or affiliates hold a contract for consulting services with one or more covered foreign entities and the offeror has not submitted an acceptable conflict-of-interest mitigation plan, the contracting officer shall—

- (i) Notify the offeror of the potential withholding of award due to the unmitigated conflict of interest; and
 - (ii) Specify that the offeror has 10 days to respond to the notification.
- (2) If the contracting officer determines that it is in the best interests of the United States to award the contract, notwithstanding the conflict of interest, the contracting officer shall request a waiver in accordance with 209.503–70.
- (3) The prohibition may be waived on a case-by-case basis if an official listed at 209.503–70 determines that a waiver is necessary for national security purposes.

(4) The contracting officer shall include the waiver request and the waiver in the contract file.

(5) Not later than 30 days after approval of the waiver, the agency shall provide written notification to the House and Senate Armed Services Committees of the use of such waiver authority. The notification shall include—

(i) The specific justification for providing the waiver;

(ii) The number of offerors that did not require a waiver;

(iii) The number of offerors that were granted a waiver;

(iv) Identification of the covered foreign entity that is the subject of the waiver; and

(v) The total dollar value of the covered contract.

(e) *Solicitation provision.* Use the provision at 252.209–70XX, Prohibition Relating to Conflicts of Interest in Consulting Services—Certification, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial services, assigned a NAICS code beginning with 5416. Do not include the provision in solicitations for the acquisition of commercial products.

PART 212—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

■ 4. Amend section 212.301 by revising paragraph (f)(iv) to read as follows:

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

* * * * *

(f) * * *

(iv) *Part 209—Contractor*

Qualifications. (A) Use the provision at 252.209–7011, Representation for Restriction on the Use of Certain Institutions of Higher Education, as prescribed at 209.170–4, to comply with section 1062 of the National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116–283).

(B) Use the provision at 252.209–70XX, Prohibition Relating to Conflicts of Interest in Consulting Services—Certification, as prescribed in 209.57X(e), to comply with section 812 of the National Defense Authorization Act for Fiscal Year 2024 (Pub. L. 118–31).

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PART 237—SERVICE CONTRACTING

■ 5. Add section 237.27X to read as follows:

237.27X Consulting services.

See 209.57X for requirements related to conflicts of interest in consulting services.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 6. Add section 252.209–70XX to read as follows:

252.209–70XX Prohibition Relating to Conflicts of Interest in Consulting Services—Certification.

As prescribed in 209.57X(e), use the following provision:

Prohibition Relating to Conflicts of Interest in Consulting Services—Certification (DATE)

(a) *Definitions.* As used in this provision—
Consulting services means advisory and assistance services, except that the term does not include the provision of products or services related to—

(1) Compliance with legal, audit, accounting, tax, reporting, or other requirements of the laws and standards of countries; or

(2) Participation in a judicial, legal, or equitable dispute resolution proceeding.

Contract oversight entity means any of the following:

(1) The Contracting Officer.

(2) The Contracting Officer's Representative.

(3) The Defense Contract Management Agency.

(4) The Defense Contract Audit Agency.

(5) The DoD Office of Inspector General or any subcomponent of that office.

(6) The Government Accountability Office.

Covered contract means a DoD contract involving consulting services.

Covered foreign entity means any of the following:

(1) The government of the People's Republic of China, the Chinese Communist Party, the People's Liberation Army, the Ministry of State Security, or other security service or intelligence agency of the People's Republic of China.

(2) The government of the Russian Federation or any entity sanctioned by the Secretary of the Treasury under Executive Order 13662, Blocking Property of Additional Persons Contributing to the Situation in Ukraine.

(3) The government of any country, if the Secretary of State determines that such government has repeatedly provided support

for acts of international terrorism, pursuant to any of the following:

(i) Section 1754(c)(1)(A) of the Export Control Reform Act of 2018 (50 U.S.C. 4318(c)(1)(A)).

(ii) Section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371).

(iii) Section 40 of the Arms Export Control Act (22 U.S.C. 2780).

(iv) Any other provision of law.

(4) Any entity included on any of the following lists maintained by the Department of Commerce (see the Export Administration Regulations at 15 CFR subchapter C):

(i) The Entity List in supplement no. 4 to 15 CFR part 744.

(ii) The Denied Persons List as described in 15 CFR 764.3(a)(2).

(iii) The Unverified List in supplement no. 6 to 15 CFR part 744.

(iv) The Military End User List in supplement no. 7 to 15 CFR part 744.

(5) Any entity identified by the Secretary of Defense pursuant to section 1237(b) of the National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105–261; 50 U.S.C. 1701 note).

(6) Any entity on the Non-Specially Designated Nationals Chinese Military-Industrial Complex Companies List maintained by the Office of Foreign Assets Control of the Department of the Treasury under Executive Order 14032, Addressing the Threat from Securities Investments that Finance Certain Companies of the People's Republic of China.

(b) *Prohibition.* If the Offeror cannot certify that neither the Offeror nor any of its subsidiaries or affiliates hold a contract that involves consulting services with one or more covered foreign entities, DoD cannot award to the Offeror a contract assigned a North American Industry Classification System code beginning with 5416.

(c) *Certification.* The Offeror certifies that—

(1)(i) It does does not hold a contract for consulting services with one or more covered foreign entities; and

(ii) Its subsidiaries or affiliates do do not hold a contract for consulting services with one or more covered foreign entities; and

(2) It does does not maintain a conflict-of-interest mitigation plan described in paragraph (d) of this provision.

(d) *Conflict-of-interest mitigation plan.* If the Offeror answered in the affirmative in paragraphs (c)(1) and (2) of this provision, the Offeror may contact the Contracting Officer for guidance on submitting the Offeror's conflict-of-interest mitigation plan.

(1) The Offeror's conflict-of-interest mitigation plan shall be auditable by a contract oversight entity and shall include—

(i) An identification, unless otherwise prohibited by law or regulation, of any covered contracts of the Offeror or its subsidiaries or affiliates with a covered foreign entity. If the Offeror is unable to identify one or more covered foreign entities due to confidentiality obligations, the Offeror shall identify such entities as a covered foreign entity;

(ii) A written analysis, including a course of action for avoiding, neutralizing, or mitigating the actual or potential conflict of interest of such a covered contract;

(iii) A description of the procedures by which the Offeror or its subsidiaries or affiliates will ensure that individuals who will perform the scope of a covered contract will not, for the duration of such contract, also provide any consulting services to any covered foreign entity; and

(iv) A description of the procedures by which the Offeror or its subsidiaries or affiliates will submit to the contract oversight entities a notice of an unmitigated conflict of interest with respect to a covered contract within 15 days of determining that such a conflict has arisen.

(2) If the Contracting Officer approves the Offeror's conflict-of-interest mitigation plan, the Contracting Officer will incorporate the plan into any contract awarded to the Offeror resulting from this solicitation.

(End of provision)

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