

be due to permanent and enforceable measures. Therefore, the designation status of the Washington Area will remain nonattainment for the 2015 8-hour ozone NAAQS until such time as DC, MD, and VA submit a request for redesignation pursuant to 107(d)(3) of the CAA and the EPA determines that the area meets the CAA requirements for redesignation to attainment and takes action to redesignate the area.

The EPA also proposes to take final agency action on an exceptional events request submitted by DC on March 20, 2024, and concurred on by the EPA on July 17, 2024.

The EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action. The EPA previously received comments on the 2023 CDD Proposal (88 FR 6688, February 1, 2023). In re-proposing the CDD, the EPA will consider all comments received on the 2023 CDD Proposal as the Agency moves forward with the current rulemaking. Accordingly, commenters need not submit duplicate comments on the current proposal.²⁴ However, the EPA welcomes comments providing additional information not previously submitted to the Agency.

V. Statutory and Executive Order Reviews

This rulemaking proposes to make an attainment determination based on air quality data and would, if finalized, result in the suspension of certain Federal requirements and would not impose any additional requirements. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive

Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” The EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income population, and Indigenous peoples.

In addition, this action for the Washington Area does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because this action is not approved to apply in Indian country located in the Washington Area, and the EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Reporting and recordkeeping requirements.

Adam Ortiz,

Regional Administrator, Region III.

[FR Doc. 2024–26423 Filed 11–14–24; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 213, 217, 239, and 252

[Docket DARS–2024–0034]

RIN 0750–AK23

Defense Federal Acquisition Regulation Supplement: Disclosure of Information Regarding Foreign Obligations (DFARS Case 2018–D064)

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 2019, which prohibits DoD from acquiring products, services, or systems relating to information or operational technology, cybersecurity, industrial control systems, or weapon systems through a contract unless the offeror or contractor provides disclosures related to sharing source code and computer code with foreign governments.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before January 14, 2025, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2018–D064, using either of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Search for DFARS Case 2018–D064. Select “Comment” and follow the instructions to submit a comment. Please include “DFARS Case 2018–D064” on any attached documents.

- *Email:* osd.dfars@mail.mil. Include DFARS Case 2018–D064 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

²⁴ Comments received on the 2023 Proposal are contained in the same docket as the current proposal: Docket ID No. EPA–R03–OAR–2022–0987.

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: Ms. Heather Kitchens, telephone 571–296–7152.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to revise the DFARS to implement section 1655(a) and (c) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232). Section 1655(a) prohibits DoD from acquiring products, services, or systems relating to information or operational technology, cybersecurity, industrial control systems, or weapon systems through a contract unless the offeror or contractor provides disclosures related to sharing source code and computer code with foreign governments. Section 1655(c) requires contracts for those products, services, or systems to include a clause requiring the disclosures during the contract period of performance if an entity becomes aware of information requiring disclosure.

The first part of the disclosure is related to whether, after August 12, 2013, the entity making the disclosure has allowed, or is under an obligation to allow, a foreign government to review the code of a noncommercial product, system, or service developed for DoD. The second part of the disclosure pertains to whether, after August 12, 2013, the entity making the disclosure has allowed, or is under an obligation to allow, a foreign government in a list required by section 1654 of the NDAA for FY 2019 to review the source code of a product, system, or service that DoD is using or intends to use.

The third part of the disclosure is related to whether the entity making the disclosure holds or has sought a license pursuant to the Export Administration Regulations (15 CFR chapter VII, subchapter C), the International Traffic in Arms Regulations (22 CFR chapter I, subchapter M), or successor regulations, for information technology products, components, software, or services that contain code custom-developed for the noncommercial product, system, or service DoD is using or intends to use.

Once the disclosures are provided to DoD, and if the Secretary of Defense determines that the disclosure relating to a product, system, or service entails a risk to the national security infrastructure or data of the United States, or any national security system under the control of DoD, section 1655

requires the Secretary to take such measures as the Secretary considers appropriate to mitigate such risks. In addition, as the Secretary considers appropriate, the Secretary may condition any agreement for the use, procurement, or acquisition of the product, system, or service on the inclusion of enforceable conditions or requirements that would mitigate such risks.

II. Discussion and Analysis

This proposed rule includes a new subpart, 239.7X, Disclosure of Information Regarding Foreign Obligations. Section 239.7X00 describes the statutory requirement implemented in the new subpart. Section 239.7X01 includes new definitions of computer code, open source software, and source code. The new subpart includes the section 1655 prohibition at 239.7X02. Section 239.7X03 clarifies that the prohibition does not apply to open source software.

A section on procedures was added at 239.7X04 to require contracting officers to validate in the Catalog Data Standard within the Electronic Data Access (EDA) system (<https://piee.eb.mil>) that offerors or contractors have completed all foreign obligation disclosures prior to awarding a contract or exercising an option. Section 1655 prohibits DoD from using a product, service, or system procured or acquired under certain awards unless foreign obligation disclosures have been made. This proposed rule requires completion of the foreign obligation disclosures prior to exercising an option to ensure DoD complies with the statutory intent.

Section 239.7X05 provides prescriptions for a new solicitation provision and contract clause. The new provision is prescribed for use in solicitations that include the clause at 252.239–70ZZ, Postaward Disclosure of Foreign Obligations. The new clause is prescribed for use in solicitations and contracts, task orders, or delivery orders, for the acquisition of products, services, or systems relating to information or operational technology, cybersecurity, industrial control systems, or weapon systems, including those using Federal Acquisition Regulation (FAR) part 12 procedures for the acquisition of commercial products and commercial services.

The purpose of the provision at 252.239–70YY, Preaward Disclosure of Foreign Obligations—Representation, is to notify offerors that they will be required to make disclosures within the Catalog Data Standard in the Electronic Data Access (EDA) system (<https://piee.eb.mil>) in order to be eligible for

award. While there are three distinct disclosures, the provision identifies the first and second disclosures in one paragraph at 252.239–70YY, paragraph (c)(1), for clarity. The third disclosure is identified at paragraph (c)(2). This provision includes a requirement for all offerors to represent by submission of the offer that the information on the foreign disclosures the offeror has made within the Catalog Data Standard in EDA is current, accurate, and complete.

The purpose of the clause at 252.239–70ZZ, Postaward Disclosure of Foreign Obligations, is to require contractors to maintain their disclosures in the Catalog Data Standard within EDA and flow down the requirement to maintain disclosures in the Catalog Data Standard within EDA to subcontractors. Similar to the provision, while there are three distinct disclosures, the clause identifies the first and second disclosures in one paragraph at 252.239–70XX, paragraph (b)(1), for clarity. The third disclosure is identified at paragraph (b)(2). The clause also requires contractors to require their subcontractors to complete foreign obligation disclosures in the Catalog Data Standard in EDA prior to awarding the subcontract.

Language was added at part 212 to apply the provision and clause to the acquisition of commercial products and commercial services. In part 213, language was added to apply the requirement to disclose foreign obligations will be applied at or below the micro-purchase threshold. Language was also added at part 217 to instruct the contracting officer exercise options only after verifying in the Catalog Data Standard in the EDA system (<https://piee.eb.mil>) that all disclosures have been completed.

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 proposed rule proposes a new provision and clause to implement the requirements of section 1655 of the NDAA for FY 2019: (1) DFARS 252.239–70YY, Preaward Disclosure of Foreign Obligations—Representation; and (2) DFARS 252.239–70ZZ, Postaward Disclosure of Foreign Obligations. The provision at DFARS 252.239–70YY is prescribed at DFARS 239.7X05(a) for use in solicitations that include the clause at DFARS 252.239–70ZZ. The clause at DFARS 252.239–70ZZ is prescribed at DFARS 239.7X05(b) for use in solicitations and contracts for the acquisition of products, services, or

systems relating to information or operational technology, cybersecurity, industrial control systems, or weapon systems, including those using FAR part 12 procedures for the acquisition of commercial products and commercial services. DoD does intend to apply the proposed rule to contracts at or below the SAT. DoD does intend to apply the proposed rule to contracts for the acquisition of commercial products including COTS items and for the acquisition of commercial services.

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

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 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, or that strategic materials critical to national security be

bought from American sources pursuant to 10 U.S.C. 4863; 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 1655 of the NDAA for FY 2019 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 products including COTS items and to the acquisition of commercial services. Therefore, this proposed rule will apply to the acquisition of commercial products including COTS items and to the acquisition of commercial services.

C. Determinations

Given that the requirements of section 1655 of the NDAA for FY 2019 were enacted to require disclosures of foreign obligations by contractors for contracts that include products, services, or systems relating to information or operational technology, cybersecurity, industrial control systems, or weapon systems and since products, services, or systems related to information or operational technology, cybersecurity, industrial control systems or weapon systems can include COTS items and awards at or below the SAT, it is in the best interest of the Federal Government to apply the statute to contracts for the acquisition of commercial services and commercial products, including COTS items, as defined at Federal Acquisition Regulation 2.101 and awards that are at or below the SAT. An exception for contracts for the acquisition of commercial services and commercial products, including COTS items, or for contracts or subcontracts valued at or below the SAT, would exclude the contracts intended to be covered by the law, thereby undermining the overarching public policy purpose of the law.

IV. Expected Impact of the Rule

The proposed rule implements section 1655 of the NDAA for FY 2019, which prohibits DoD from acquiring products, services, or systems relating to information or operational technology, cybersecurity, industrial control

systems, or weapon systems through a contract unless the offeror or contractor provides disclosures related to sharing source code and computer code with foreign governments. Based on data from the Federal Procurement Data System, DoD issued approximately 36,677 new awards for information technology and weapon systems to approximately 4,147 unique entities per year on average from FY 2021 through FY 2023. DoD assumes this number will cover awardees for information or operational technology, cybersecurity, industrial control systems, and weapon systems, as there is no way to track individual awards for operational technology, industrial control systems, and cybersecurity. Of the 4,147 unique entities, on average, that received awards each year, an average of approximately 17,100 awards were made to 2,667 unique small entities from FY 2021 through FY 2023. DoD assumes that the clause will apply to the estimated 4,147 unique entities, including the 2,667 unique small entities.

DoD does not have a way to track the number of unique offerors per award, so DoD estimates that the number of offerors is the number of unique entities that received awards (*i.e.*, 4,147) multiplied by a factor of three, representing three offerors per award. Therefore, the estimated number of offerors is three times the average number of entities that received information technology and weapon systems awards for FY 2021 through FY 2023 (4,147 entities × 3), or 12,441, of which 8,002 are estimated to be small entities.

The proposed changes will require offerors for products, services, or systems related to information or operational technology, cybersecurity, industrial control systems, or weapon systems to make certain disclosures in the Catalog Data Standard within EDA (<https://piee.eb.mil>) regarding whether they have shared certain source code and computer code with foreign persons or governments any time since August 12, 2013. During contract performance, prior to the exercise of any option, contractors will be required to update their disclosures in the Catalog Data Standard within EDA.

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 rule is only applied to awards for products, services, or systems related to information or operational technology, cybersecurity, industrial control systems, or weapon systems. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

This proposed rule is necessary to implement section 1655 of the NDAA for FY 2019. Section 1655 prohibits DoD from using a product, service, or system relating to information or operational technology, cybersecurity, industrial control systems, or weapon systems provided by an entity unless that entity makes certain disclosures. The disclosures required by the statute have three parts.

The first part of the disclosures is related to whether, since August 12, 2013, the entity making the disclosure has allowed, or is under an obligation to allow, a foreign government to review the code of an other than commercial product, system, or service developed for DoD. The second part of the disclosure pertains to whether, since August 12, 2013, the entity making the disclosure has allowed, or is under an obligation to allow, a foreign government in the list required by section 1654 of the NDAA for FY 2019 to review the source code of a product, system, or service that DoD is using or intends to use. The third part of the disclosure is related to whether the entity making the disclosure holds or has sought a license pursuant to the Export Administration Regulations (15 CFR chapter VII, subchapter C), the International Traffic in Arms Regulations (22 CFR chapter I, subchapter M), or successor regulations, for information technology products, components, software, or services that contain code custom-developed for the other than commercial product, system, or service DoD is using or intends to use.

Once the disclosures are provided to DoD, and if the Secretary of Defense determines that the disclosure relating to a product, system, or service entails a risk to the national security infrastructure or data of the United States, or any national security system under the control of DoD, section 1655 requires the Secretary to take such measures as the Secretary considers appropriate to mitigate such risks.

The objective of this proposed rule is to implement the statutory requirement for offeror, contractor, and subcontractor disclosures under section 1655 of the NDAA for FY 2019 prior to award and during contract performance. The legal basis for the proposed rule is section 1655 of the NDAA for FY 2019.

The proposed rule applies to offerors, contractors, and subcontractors for information or operational technology, cybersecurity, industrial control systems, or weapon systems. Based on data from the Federal Procurement Data System, DoD issued approximately 36,677 awards to 4,147 entities, of which 17,100 awards were made to 2,667 small entities, for information technology and weapon systems, on average, from FY 2021 through FY 2023. DoD assumes these numbers will cover small entities awarded contracts for products, services, or systems relating to information or operational technology, cybersecurity, industrial control systems, and weapon systems, as there is no way to track individual awards for operational technology, cybersecurity, and industrial control systems. In order to estimate the number of offerors for information or operational technology, cybersecurity, industrial control systems, and weapon systems, DoD assumes the number of offerors will be the 4,147 awardees multiplied by a factor of three, or 12,441 offerors, of which 8,002 are estimated to be small entities.

This proposed rule does impose new reporting, recordkeeping, or other compliance requirements for small entities. These reporting requirements would apply to any offerors that are small entities for a contract for information or operational technology, cybersecurity, industrial control systems, and weapon systems. These small entities will be required to make disclosures within the Catalog Data Standard within the EDA system (<https://piee.eb.mil>) in order to be eligible for award and will be required to represent that the disclosures are current, accurate, and complete. Contractors whose contracts contain the clause 252.239-70ZZ, Postaward Disclosure of Foreign Obligations, will be required to maintain their disclosures

in EDA and flow down the requirement to maintain disclosures in EDA to subcontracts and other contractual instruments.

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 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 2018-D064) 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 2018-D064, Disclosure of Information Regarding Foreign Obligations, to the Office of Management and Budget.

A. Estimate of Public Burden

Public reporting burden for this collection of information is estimated to average 0.5 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:

Respondents: 12,441.

Total annual responses: 14,515.

Total annual burden hours: 7,257.5.

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 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. Include DFARS Case 2018–D064 in the subject line of the message.

List of Subjects in 48 CFR Parts 212, 213, 217, 239, 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, 213, 217, 239, and 252 as follows:

- 1. The authority citation for parts 212, 213, 217, 239, 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 adding paragraphs (f)(xvi)(E) and (F) to read as follows:

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

* * * * *

(f) * * *

(xvi) * * *

(E) Use the provision at 252.239–70YY, Preaward Disclosure of Foreign Obligations—Representation, as prescribed in 239.7X05(a), to comply with section 1655 of the National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232).

(F) Use the clause at 252.239–70ZZ, Postaward Disclosure of Foreign Obligations, as prescribed at 239.7X05(b), to comply with section 1655 of the National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232).

* * * * *

PART 213—SIMPLIFIED ACQUISITION PROCEDURES

- 3. Add section 213.201–70 to read as follows:

213.201–70 Additional general requirements.

Do not procure or obtain, or exercise an option or otherwise extend a contract relating to, information or operational technology, cybersecurity, industrial control systems, or weapon systems from a contractor, including through a subcontractor at any tier, unless the contractor completes all foreign obligation disclosures in the Catalog Data Standard within the Electronic Data Access system (<https://piee.eb.mil>). See subpart 239.7X.

PART 217—SPECIAL CONTRACTING METHODS

- 4. Amend section 217.207 by adding paragraph (c)(3) to read as follows:

217.207 Exercise of options.

(c) * * *

(3) Verifying in the Catalog Data Standard in the Electronic Data Access system (<https://piee.eb.mil>) that all foreign obligation disclosures are completed (see 239.7X).

PART 239—ACQUISITION OF INFORMATION TECHNOLOGY

- 5. Add subpart 239.7X to read as follows:

Subpart 239.7X—Disclosure of Information Regarding Foreign Obligations

Sec.

239.7X00 Scope.

239.7X01 Definitions.

239.7X02 Prohibition.

239.7X03 Exception.

239.7X04 Procedures.

239.7X05 Solicitation provision and contract clause.

SUBPART 239.7X—DISCLOSURE OF INFORMATION REGARDING FOREIGN OBLIGATIONS

239.7X00 Scope.

This section implements the foreign obligation disclosure requirements of section 1655(a) and (c) of the National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232).

239.7X01 Definitions.

As used in this subpart—

Computer code means a set of instructions, rules, or routines recorded in a form that is capable of causing a computer to perform a specific operation or series of operations. It includes both source code and object code.

Open source software means software for which the human-readable source code is available for use, study, reuse, modification, enhancement, and redistribution by the users of such

software (section 1655, Pub. L. 115–232).

Source code means any collection of code, with or without comments, written using a human-readable programming language, usually as plain text. This code is later translated into machine language by a compiler. The translated code is referred to as object code.

239.7X02 Prohibition.

(a) Contracting officers shall not procure or obtain, or exercise an option or otherwise extend a contract to procure or obtain, any products, services, or systems relating to information or operational technology, cybersecurity, industrial control systems, or weapon systems through a contract or subcontract at any tier from a prospective contractor unless the offeror or contractor makes the disclosures required by section 1655 of the NDAA for FY 2019.

(b) Contracting officers shall ensure that they do not violate the prohibition by using the provision at 252.239–70YY and the clause at 252.239–70ZZ, as prescribed. The provision requires offerors to provide the required foreign obligation disclosures, and the clause ensures that contractors provide updates to foreign obligation disclosures for the life of the contract.

239.7X03 Exception.

The prohibition at 239.7X02 does not apply to open source software.

239.7X04 Procedures.

(a) Contracting officers shall not award a contract, task order, or delivery order for information or operational technology, cybersecurity, industrial control systems, or weapon systems, unless the prospective contractor has completed all of the foreign obligation disclosures in the Catalog Data Standard within the Electronic Data Access (EDA) system (<https://piee.eb.mil>) and those disclosures are current, accurate, and complete (see 239.7X02).

(b) Contracting officers shall not exercise an option or extend the period of performance on a contract, task order, or delivery order for information or operational technology, cybersecurity, industrial control systems, or weapons systems, unless the contractor has completed all of the foreign obligation disclosures in the Catalog Data Standard within the EDA system (see 239.7X02).

(c) Contracting officers shall work with the program office to validate that the offeror has completed all of the foreign obligation disclosures in the Catalog Data Standard within the EDA system.

(d) Contracting officers shall follow agency procedures, as applicable, in the event that the program office notifies the contracting officer that additional steps must be taken prior to award based on information disclosed in EDA.

239.7X05 Solicitation provision and contract clause.

(a) Use the provision at 252.239–70YY, Preaward Disclosure of Foreign Obligations—Representation, in solicitations that include the clause at 252.239–70ZZ.

(b) Use the clause at 252.239–70ZZ, Postaward Disclosure of Foreign Obligations, in solicitations and contracts, task orders, or delivery orders, including those using FAR part 12 procedures for the acquisition of commercial products and commercial services, for the acquisition of products, services, or systems relating to information or operational technology, cybersecurity, industrial control systems, or weapon systems.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 6. Add sections 252.239–70YY and 252.239–70ZZ to read as follows:

252.239–70YY Preaward Disclosure of Foreign Obligations—Representation.

As prescribed in 239.7X05(a), use the following provision:

Preaward Disclosure of Foreign Obligations—Representation (Date)

(a) *Definitions.* As used in this provision, *computer code*, *open source software*, and *source code* are defined in the Defense Federal Acquisition Regulation Supplement 252.239–70ZZ, Postaward Disclosure of Foreign Obligations, clause of this solicitation.

(b) *Prohibition on award.* In accordance with section 1655 of Public Law 115–232, no contract for information or operational technology, cybersecurity, industrial control systems, or weapon systems may be awarded to an offeror unless the offeror makes the disclosures described in paragraph (c).

(c) *Disclosures.* The Offeror shall complete the following foreign obligation disclosures in the Catalog Data Standard in the Electronic Data Access (EDA) system (<https://piee.eb.mil>):

(1) Whether, and if so, when, at any time after August 12, 2013, the Offeror—

(i) Has allowed a foreign person or foreign government to review the source code for any product, system, or service that DoD is using or intends to use, or the computer code for

any other than commercial product, system, or service developed for DoD; or

(ii) Is under any obligation to allow a foreign person or foreign government to review, as a condition of entering into an agreement for sale or other transaction with a foreign government or with a foreign person on behalf of such a government—

(A) The source code for any product, system, or service that DoD is using or intends to use; or

(B) The computer code for any other than commercial product, system, or service developed for DoD; and

(2) Whether or not the Offeror holds or has sought a license pursuant to the Export Administration Regulations (15 CFR chapter VII, subchapter C) or the International Traffic in Arms Regulations (22 CFR chapter I, subchapter M) for information technology products, components, software, or services that contain computer code custom-developed for the other than commercial product, system, or service DoD is procuring.

(d) *Exception.* The prohibition in paragraph (b) of this provision does not apply to open source software.

(e) *Representation.* By submission of its offer, the Offeror represents that it has completed the foreign obligation disclosures in EDA and the disclosures are current, accurate, and complete.

(End of provision)

252.239–70ZZ Postaward Disclosure of Foreign Obligations.

As prescribed in 239.7X05(b), use the following clause:

Postaward Disclosure of Foreign Obligations (Date)

(a) *Definitions.* As used in this clause—
Computer code means a set of instructions, rules, or routines recorded in a form that is capable of causing a computer to perform a specific operation or series of operations. It includes both source code and object code.

Open source software means software for which the human-readable source code is available for use, study, reuse, modification, enhancement, and redistribution by the users of such software (section 1655, Pub. L. 115–232).

Source code means any collection of code, with or without comments, written using a human-readable programming language, usually as plain text. This code is later translated into machine language by a compiler. The translated code is referred to as object code.

(b) *Prohibition.* The Contractor shall not provide to DoD any products, services, or systems relating to information or operational technology, cybersecurity, industrial control systems, or weapon systems through a contract or subcontract at any tier unless the Contractor makes the disclosures described in paragraph (c).

(c) *Disclosures.* The Contractor shall complete the following foreign obligation disclosures in the Catalog Data Standard in the Electronic Data Access (EDA) system (<https://piee.eb.mil>):

(1) Whether, and if so, when, at any time after August 12, 2013, the Contractor—

(i) Has allowed a foreign person or foreign government to review the source code for any product, system, or service that DoD is using or intends to use, or the computer code for any other than commercial product, system, or service developed for DoD;

(ii) Is under any obligation to allow a foreign person or foreign government to review, as a condition of entering into an agreement for sale or other transaction with a foreign government or with a foreign person on behalf of such a government—

(A) The source code for any product, system, or service that DoD is using or intends to use; or

(B) The computer code for any other than commercial product, system, or service developed for DoD; and

(2) Whether or not the supplier holds or has sought a license pursuant to the Export Administration Regulations (15 CFR chapter VII, subchapter C) or the International Traffic in Arms Regulations (22 CFR chapter I, subchapter M) for information technology products, components, software, or services that contain computer code custom-developed for the other than commercial product, system, or service DoD is using or intends to use.

(d) *Maintenance of disclosures.* The Contractor shall maintain its foreign obligation disclosures in EDA for the life of the contract.

(e) *Identification of information requiring disclosure.* In the event the Contractor identifies information requiring disclosure during contract performance, or the Contractor is notified of such by a subcontractor at any tier or any other source, the Contractor shall update its disclosures in EDA and shall disclose any mitigation measures taken or anticipated.

(f) *Exception.* The prohibition in paragraph (b) does not apply to open source software.

(g) *Subcontracts.* The Contractor shall—

(1) Insert the substance of this clause, including this paragraph (g), in subcontracts, or other contractual instruments, for the acquisition of products, services, or systems relating to information or operational technology, cybersecurity, industrial control systems, or weapon systems, including those for commercial products and commercial services; and

(2) Require the subcontractor to complete the foreign obligation disclosures in EDA prior to awarding a subcontract.

(End of clause)

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