List of Subjects in 42 CFR Part 88

Aerodigestive disorders, Appeal procedures, Health care, Mental health conditions, Musculoskeletal disorders, Respiratory and pulmonary diseases.

Text of the Rule

For the reasons discussed in the preamble, the Department of Health and Human Services amends 42 CFR part 88 as follows:

PART 88—WORLD TRADE CENTER HEALTH PROGRAM

■ 1. The authority citation for part 88 continues to read as follows:

Authority: 42 U.S.C. 300mm–300mm–61, Pub. L. 111–347, 124 Stat. 3623.

■ 2. Amend § 88.1 by adding the definitions of ''Pentagon site,'' ''police department,'' and ''Shanksville, Pennsylvania site,'' in alphabetical order, to read as follows:

§ 88.1 Definitions.

* * * * *

Pentagon site means any area of the land (consisting of approximately 280 acres) and improvements thereon, located in Arlington, Virginia, on which the Pentagon Office Building, Federal Building Number 2, the Pentagon heating and sewage treatment plants, and other related facilities are located, including various areas designated for the parking of vehicles, vehicle access, and other areas immediately adjacent to the land or improvements previously described that were affected by the terrorist-related aircraft crash on September 11, 2001; and those areas at Fort Belvoir in Fairfax County, Virginia and at the Dover Port Mortuary at Dover Air Force Base in Delaware involved in the recovery, identification, and transportation of human remains for the incident.

Police department means any law enforcement department or agency, whether under Federal, state, or local jurisdiction, responsible for general police duties, such as maintenance of public order, safety, or health, enforcement of laws, or otherwise charged with prevention, detection, investigation, or prosecution of crimes.

* * * * *

Shanksville, Pennsylvania site means the property in Stonycreek Township, Somerset County, Pennsylvania, which is bounded by Route 30 (Lincoln Highway), State Route 1019 (Buckstown Road), and State Route 1007 (Lambertsville Road); and those areas at the Pennsylvania National Guard Armory in Friedens, Pennsylvania involved in the recovery, identification, and transportation of human remains for the incident.

■ 3. Amend § 88.4 by adding paragraphs (b) and (c) to read as follows:

§ 88.4 Eligibility criteria—status as a WTC responder.

* * * * *

(b) Responders to the Pentagon site of the September 11, 2001, terrorist attacks, may apply for enrollment in the WTC Health Program on or after April 29, 2013. Individuals must meet the criteria below to be considered eligible for enrollment:

(1) The individual was an active or retired member of a fire or police department (fire or emergency personnel), worked for a recovery or cleanup contractor, or was a volunteer; and

(2) Performed rescue, recovery, demolition, debris cleanup, or other related services at the Pentagon site of the September 11, 2001, terrorist attacks, for at least 1 day beginning September 11, 2001, and ending on November 19, 2001.

(c) Responders to the Shanksville, Pennsylvania site of the September 11, 2001, terrorist attacks, may apply for enrollment in the WTC Health Program on or after April 29, 2013. Individuals must meet the criteria below to be considered eligible for enrollment:

(1) The individual was an active or retired member of a fire or police department (fire or emergency personnel), worked for a recovery or cleanup contractor, or was a volunteer; and

(2) Performed rescue, recovery, demolition, debris cleanup, or other related services at the Shanksville, Pennsylvania site of the September 11, 2001, terrorist attacks, for at least 1 day beginning September 11, 2001, and ending on October 3, 2001.

* * * * *

Dated: October 2, 2012.

John Howard,

Administrator, World Trade Center Health Program and Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, Department of Health and Human Services.

[FR Doc. 2013–07146 Filed 3–27–13; 8:45 am]

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 215 and 252

RIN 0750–AH47

Defense Federal Acquisition Regulation Supplement: Proposal Adequacy Checklist (DFARS Case 2011–D042)

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

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to incorporate a proposal adequacy checklist for proposals in response to solicitations that require submission of certified cost or pricing data.

DATES: *Effective Date:* March 28, 2013

FOR FURTHER INFORMATION CONTACT: Mr. Dustin Pitsch, telephone 571–372–6090.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 76 FR 75512 on December 2, 2011, to incorporate the requirement for a proposal adequacy checklist into DFARS 215.408, and an associated solicitation provision at 252.215–7009, to ensure offerors take responsibility for submitting thorough, accurate, and complete proposals. Fifteen respondents submitted public comments in response to the proposed rule.

II. Discussion and Analysis of the Public Comments

DoD reviewed the public comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments is provided, as follows:

A. Summary of significant changes from the proposed rule.

• The sentence ''Completion of this checklist in no way reduces the responsibility to fully comply with all of the requirements of 41 U.S.C. chapter 35, Truthful Cost or Pricing Data, and any other special requirements of the solicitation.'' is removed from the checklist instructions at DFARS 252.215–7009.

• The sentence ''In preparation of the offeror's checklist, offerors may elect to have their prospective subcontractors use the same or similar checklist as appropriate.'' was added to the end of

the checklist instructions at DFARS 252.215–7009. The following checklist items are referred to by their proposed rule numbering scheme:

- Checklist item 2 is modified to change the word ''lending'' to ''accountable''.
- Checklist item 3 is modified to read ''Does the proposal identify and explain notifications of noncompliance with CASB or CAS; any proposal inconsistencies with your disclosed practices or applicable CAS; and inconsistencies with your established estimating and accounting principles and procedures?''
- Checklist item 4 is modified to read ''Does the proposal disclose any other known activity that could materially impact the costs?'' and now includes the list of eight sample factors that appear in the definition of ''cost or pricing data'' at FAR 2.101. The reference column is updated to add FAR 2.101, ''Cost or pricing data''.
- Checklist item 9 is revised in response to public comments to provide a different reference.
- Checklist item 10 has added the phrase ''including breakdown by year'' after ''consistent with your cost accounting system''.
- Checklist items 11 and 13 are removed in response to public comments and are covered by final rule item 10, as revised.
- Checklist item 14 is removed in response to public comments and final rule checklist item 4 was modified to include that non-recurring costs should be noted in the proposal along with other known activity that could materially impact costs.
- Checklist item 16 (final rule item 13) is modified to read ''Is there a Government forward pricing rate agreement (FPRA)? If so, the offeror shall identify the official submittal of such rate and factor data.'' Checklist item 33 from the proposed rule, has been revised and combined with final rule item 13, to address the proposal requirements if there is no FPRA.
- Checklist item 17 is removed in response to public comments.
- Checklist item 18 (final rule item 14) is modified to note that a consolidated summary of individual material and services is ''frequently referred to as a Consolidated Bill of Materials (CBOM)''.
- Checklist item 19 (final rule item 15) is modified to read ''Has the offeror identified in the proposal those subcontractor proposals, for which the contracting officer has initiated or may need to request field pricing analysis?'' and to add the reference ''DFARS 215.404–3.''
- Checklist item 20 (final rule item 16) is modified to remove ''proposal(s)'' and add ''certified cost or pricing data''.
- Checklist item 21 (final rule item 17) is combined with checklist item 22 and modified to read ''Is there a Price/Cost Analysis establishing the reasonableness of each of the proposed subcontracts included with the proposal? If the offeror's price/cost analyses are not provided with the proposal, does the proposal include a matrix identifying dates for receipt of subcontractor proposal, completion of fact finding for purposes of price/cost analysis, and submission of the price/cost analysis?''
- The sections of the checklist titled ''COMMERCIAL ITEM DETERMINATION'' and ''ADEQUATE PRICE COMPETITION'' are now titled ''EXCEPTIONS TO CERTIFIED COST OR PRICING DATA.''
- Checklist item 23 (final rule item 18) is modified to read ''Has the Offeror submitted any exceptions to the submission of certified cost or pricing data for commercial items proposed either at the prime or subcontractor level, in accordance with provision 52.215–20?'' and now contains a list of the questions from items 24 through 26. The reference column is updated to read ''FAR 52.215–20'' And ''FAR 2.101, commercial item.''
- Checklist item 27 (final rule item 19) is modified to read ''Does the proposal include a price analysis for all commercial items offered that are not available to the general public?''
- Checklist item 32 (final rule item 24) is modified to read ''For labor Basis of Estimates, does the proposal include labor categories, labor hours, and task descriptions, (e.g.; Statement of Work reference, applicable CLIN, Work Breakdown Structure, rationale for estimate, applicable history, and time-phasing)?''
- Checklist item 33 is removed and relocated within final rule item 13 in response to public comments.
- Checklist item 35 (final rule item 26) is modified to add ''and how they are applied.''
- Checklist item 43 is removed in response to public comments.
- Checklist item 44 (final rule 34) is revised in response to public comments to provide a different reference in the reference column and to address all types of economic price adjustments, not just those based on indices.
- Checklist item 45 (final rule item 35) is modified to read ''If the offeror is proposing Performance-Based Payments did the offeror comply with FAR clause 52.232–28?'' and the reference is updated to read ''FAR 52.232–28.''
- Checklist item 47 is removed in response to public comments.

B. Analysis of Public Comments.

1. Increased Cost

Comment: Two respondents stated that this new rule would result in increased costs that will ultimately be passed on to the Government and may be financially prohibitive to seeking other business.

Response: This provision results from a long history of incomplete proposals resulting in rework and lost time, and it aims to achieve cost savings by improving initial proposal submissions from contractors.

2. Improved Efficiency

Comment: One respondent noted that the checklist will improve efficiency on both sides of the contract and that DOD will save time because they will have all the answers they need to determine which contractor is best for the Government.

Response: This comment accurately expresses the goals of this rule.

3. Paperwork Reduction Act

Comment: Several respondents believed that this checklist imposes additional reporting requirements on the contractor and note that many of the checklist items are not currently required for submission of certified cost or pricing data. One respondent noted that while this checklist adds the new requirements it appears to add no value to the contracting process.

Response: This rule does not impose additional requirements over what is already required under the conditions where certified cost or pricing data are required and these requirements are already covered by OMB Control Number 9000–0013. This provision is applicable to solicitations with an estimated value greater than the TINA threshold and that require certified cost or pricing data. This provision intends to increase uniformity across DoD, minimize local variations, and thereby decrease proposal preparation costs.

4. Unnecessary and Duplicative

Comment: Several respondents suggested that the checklist is unnecessary and duplicative. One respondent noted that it is the offeror's responsibility to comply with the requirements of the solicitation and an offeror that is unable to submit a compliant proposal is likely to be noncompliant after award. The same respondent noted that this checklist is somewhat duplicative of the DCAA forward pricing adequacy checklist. Another noted that most of the checklist

items already appear in FAR 15.408 at table 15–2 and suggested that the rule should require contractors confirm that their proposal complies with all applicable requirements of 15–2. Another respondent noted that this rule is: (1) Not compliant with Executive Order 12866 as there is no defined problem that this rule aims to solve; (2) the rule is inconsistent, incompatible and duplicative of what is already in Table 15–2; and (3) that this checklist only adds a layer of regulatory requirements.

Response: This provision is a single, uniform tool that is applicable across DoD to address the inconsistent interpretations of Table 15–2. The intent of this provision is to increase uniformity across DoD, minimize local variations, and thereby decrease proposal preparation costs. The checklist created by this rule is a DFARS provision; any checklist that DCAA currently uses is outside the scope of this rule.

5. Belongs in Procedures, Guidance, and Information (PGI)

Comment: Several of the respondents suggested that this checklist should be incorporated into the DFARS PGI as it seems that it is intended to be a tool for assisting contracting officers in determining the adequacy of proposal and not a regulatory requirement.

Response: This provision impacts contractors; therefore it must be in the DFARS. Language added to the DFARS PGI cannot have any effect on the public and exists to assist contracting officers.

6. Better Buying Power (BBP)

Comment: Several respondents stated that the proposed rule does not support the BBP Initiative and noted that the rule does not align with any of the 23 principal actions. The respondents believed that the proposed rule is contrary to the BBP Initiative to reduce nonproductive processes and bureaucracy.

Response: While this initiative predates BBP, it is consistent with the BBP's cost reduction initiatives.

7. Self validation

Comment: Several comments were received regarding the possibility of contractors self validating their proposal through the use of the checklist. The respondents noted that: (1) The contractor has always been responsible for meeting the requirements of the solicitation; (2) use of the checklist will not relieve the contracting officers of the responsibility of determining the proposal adequate; and (3) it is likely that time and resources will be wasted reviewing the checklist instead of reviewing the proposal.

Response: This provision should result in cost savings by improving initial proposal submissions from offerors and reduce the amount of rework and resubmissions. Because the offeror will specify where to find required information in its proposal, this provision aims to achieve time savings for contracting officers.

8. Protest potential

Comment: One respondent suggested that this rule creates additional potential for protests as acceptance of the checklist or the non-rejection of the checklist would allow contractors to claim they have met all solicitation requirements and were unfairly denied award.

Response: This checklist is intended to facilitate the contractor submitting an adequate proposal. The checklist is not intended to be a standalone decision document; it will be used by contracting officials in reviewing proposals when certified cost or pricing data are required.

9. Require Checklist (Shall/Should)

Comment: One respondent suggested changing the clause prescription at 215.408(3) to read that the contracting officer ''shall'' use the checklist instead of ''should'' as is used in the proposed rule. This respondent believed that nonstandard mandatory use of the checklist will cause confusion across the DoD and industry.

Response: Because of the wide variance in requirements, the contracting officer will have discretion to determine applicability to the requirements.

10. Corrective Actions

Comment: Two respondents suggested that there should be penalties associated with non-submission of the checklist.

Response: The checklist is intended to be a tool to assist contractors to provide adequate, compliant proposals; it is not meant to be punitive. Non-receipt of the checklist may result in extending the proposal evaluation and delaying contract award.

11. Contracting Officer Determination

Comment: One respondent suggested that the contracting officer should specify which items on the checklist will be required and where data other than certified cost or pricing data are required.

Response: This provision is to be included only in solicitations requiring certified cost or pricing data.

12. Tailoring

Comment: One respondent suggested that the contracting officer should be able to tailor the checklist as necessary to each acquisition.

Response: The solicitation provision will be utilized in its entirety. This is a tool for offerors to improve the initial proposal submission, ensuring adequacy and completeness.

13. Subcontractor Flowdown

Comment: Several comments were received regarding the applicability of the checklist to subcontractors as the proposed rule has no guidance on this. One of the respondents noted that flowdown to require subcontractor to use the checklist would add a significant amount of time to proposal preparation.

Response: The checklist is not required to flow down to subcontractors, but prime contractors may elect to use it for their prospective subcontractors' proposals.

14. Solicitation Process Changes

Comment: One respondent made several suggestions toward the overall solicitation process including: (1) Not allowing proposal costs to be billed directly if the proposal is inadequate; (2) requiring contractors to justify their proposed fee with a risk analysis; (3) requiring, for all proposal modifications, a total proposal resubmission; (4) requiring more detail in contractor's analysis of subcontractor proposals; and (5) creating a requirement that postaward subcontractor cost savings should be passed on to the Government.

Response: These comments are beyond the scope of this rule.

15. Section L

Comment: One respondent stated that many of the checklist items are already called out in section L of the solicitation and suggested that section L could be modified to reflect the pertinent items in the checklist.

Response: The solicitation provision created by this rule will go in section L of the solicitation, and it is meant to supplement the other instructions for circumstances where certified cost or pricing data will be required.

16. Remove ''compliance'' Statement

Comment: One respondent suggested removing the ''compliance'' statement directly preceding the checklist at clause 252.215–7009.

Response: The provision is modified to remove ''Completion of this checklist in no way reduces the responsibility to fully comply with all of the requirements of 41 U.S.C. chapter 35,

Truthful Cost or Pricing Data, and any other special requirements of the solicitation.''

17. Indefinite-Delivery Indefinite-Quantity (IDIQ) Applicability

Comment: One respondent stated that the checklist is not appropriate for IDIQ solicitations and awards. The respondent stated that this is because IDIQs often provide a placeholder value or a predetermined bill of material that the offeror must use, but the checklist implies that the offeror is responsible for all of the TINA requirements for a value in the proposal that has been directed by the Government.

Response: This checklist is applicable to solicitations that require certified price and costing data. When a predetermined bill of materials is provided by the Government, certified cost or price data is not required for that cost element.

18. Certified Bill of Materials (CBOM)

Comment: One respondent stated that the Government's requirement for a CBOM is not always consistently interpreted or applied which, at times, has resulted in unnecessary costs to the Government in the name of compliance. The checklist should encourage contractors to discuss BOM requirements with the contracting officer prior to preparing the proposal where a single CBOM (in an electronic format) is not consistent with the contractor's current (and approved) practices. Further, the contracting officer should be allowed the reasonable discretion to decide what information or format is truly necessary for determining a price fair and reasonable.

Response: The rule does not restrict communication among the parties. Specific submission requirements can be included in section L of the solicitation at the contracting officer's discretion.

19. Contractor Versus Offeror

Comment: One respondent stated that the terms ''Offeror'' and ''contractor'' should be used consistently and not interchangeably to minimize confusion.

Response: All ''contractor'' references have been changed to ''offeror'' in the DFARS text and provision.

20. CAGE and DUNS

Comment: One respondent suggested that proposals include both the CAGE and DUNS numbers of the offeror in order to more effectively monitor offeror compliance with forward pricing rate recommendations and forward pricing rate agreements.

Response: This is outside the scope of this rule; it is already required by the solicitation.

21. Proposal Requirements

Comment: One respondent requested adding a question in the ''General Instructions'' to assess whether the offeror addressed the specific requirements of the contracting officer within the proposal.

Response: This checklist addresses proposals that will require certified cost or pricing data. Specific submission requirements can be included in section L of the solicitation at the contracting officer's discretion.

22. General Instructions

Comment: One respondent suggested adding under ''General Instructions'' the following three items:

a. Does the proposal comply with the RFP in regard to data rights?

b. Does the proposal comply with the RFP regarding the applicable requirements relative to submission of subcontracting plan, Cost and Software Data Reporting (DFARS 252.234–7003, 252.234–7004), EVM, Unique Item Identification (UID) and specialty metals?''

Response: This checklist applies only to the cost proposal and not the proposal in its entirety.

23. Column Heading

Comment: One respondent requested changing the format of the checklist to include a ''Y/N/N/A'' column.

Response: The checklist is designed to be open-ended. An explanation should be provided when ''not applicable.'' A column with ''Y/N/N/A'' is not necessary. If the offeror fills in the checklist with a page number(s) in the ''Proposal Page No.'' column this would denote that ''yes'' the item has been provided. If the contractor enters something in the ''If not provided EXPLAIN'' column, this would denote that the item has not been provided and there should be an explanation as to why the item has not been provided. The item not being applicable for the particular proposal can be included with the explanation as to why it has not been provided.

24. Checklist Item 1

Comment: Two respondents recommended modifying the reference block for item 1 to accurately reflect the two items being referred to in FAR table 15–2.

Response: The reference is changed to ''Paragraph A.''

25. Checklist Item 2

Comment: One respondent recommended the terminology in the checklist item for Government-furnished material/tooling/test equipment be made consistent with the FAR reference for Government property. Another respondent suggested requiring a cost impact study if Government-furnished property/material/tooling/test equipment is denied. One respondent requested replacing the term ''lending'' with ''accountable'' in order to be consistent with the FAR.

Response: The DFARS text is changed to replace the term ''lending'' with ''accountable''. A cost impact study is outside the scope of this rule.

26. Checklist Item 3

Comment: One respondent suggested changing the checklist item to ask whether the offeror has been notified of any CAS noncompliance or other estimating deficiencies that may impact the proposed price. Another respondent recommended requiring the offeror to evaluate the magnitude of the impact of the CAS noncompliance or deficiency on estimated costs, describe the offeror's efforts to correct the noncompliance, and propose a method of dealing with the noncompliance in the negotiated agreement. One respondent stated that no FAR references or any other FAR or DFARS clauses currently require an offeror to disclose estimating deficiencies in a proposal and this checklist item would create a new requirement for an offeror.

Response: This item is revised to read ''Does the proposal identify and explain notifications of noncompliance with CASD or CAS; any proposal inconsistencies with your disclosed practices or applicable CAS; and inconsistencies with our established estimating and accounting principles and procedures?'' to more closely align with table 15–2.

27. Checklist Item 4

Comment: One respondent stated some of the terms in the checklist were newly created for the checklist and were not directly from the requirements already in the Federal Acquisition Regulation (FAR). The respondent suggested the inclusion of new terms would cause inconsistency that may lead to confusion. The FAR reference was also questioned.

Response: This checklist item is modified to read ''Does the proposal disclose any other known activity that could materially impact the costs?'' and now includes the list of eight sample factors that appear in the definition of

''cost or pricing data'' at FAR 2.101. The reference column is updated to add FAR 2.101, ''cost or pricing data.''

28. Checklist Item 7

Comment: Two respondents stated it would be wastefully time consuming and burdensome for offerors to disclose which pages of the proposal contain a judgmental factor applied and the mathematical or other methods used in the estimate. The respondents suggested a large percentage of the pages comprising the proposal would contain such information.

Response: Having contractors identify this information prevents miscommunication and misunderstanding, and it will save time in the proposal evaluation process.

29. Checklist Item 9

Comments: One respondent stated the FAR reference was not applicable because it pertains to CLINS instead of cost estimating relationships. One respondent suggested the checklist item should include an additional requirement that the offeror explain how the cost estimating relationship (CER) is applied.

Response: This reference for the item has been change to cite Section II, Paragraphs A and B of Table 15–2. These references require the basis of estimate. CER is a basis of estimate that could be used when cost is not proposed on a discrete basis.

30. Checklist Item 10

Comment: One respondent stated the FAR reference was not applicable because it pertains to CLINS instead of cost elements.

Response: Paragraph D is referenced because it specifically requests offeror to provide cost element breakdown for each proposed line item. The checklist does not directly restate every item of table 15–2 as it is meant to be used as a tool to ensure all necessary elements have been included with the proposal.

31. Checklist Item 11

Comments: One respondent noted the FAR reference to paragraph D was not applicable. Another respondent commented the item would introduce a new requirement because paragraph D does not require a yearly breakdown by either total price or cost element.

Response: This element is removed from the checklist as it is covered by final rule item 10; breakdowns for cost elements must be consistent with the cost accounting system.

32. Checklist Item 13

Comments: One respondent noted the FAR reference to paragraph E was not applicable. Another respondent commented the item would introduce a new requirement because paragraph D does not require a yearly breakdown by either total price or cost element.

Response: This element is removed from the checklist as it is covered by final rule item 10; breakdowns for cost elements must be consistent with the cost accounting system.

33. Checklist Item 14

Comments: One respondent noted the FAR reference to paragraph E was not applicable. Another respondent commented the item would introduce a new requirement because the offeror currently does not have to segregate recurring and non-recurring costs at the CLIN/Sub-CLIN and total cost levels.

Response: This checklist item is removed as non-recurring costs are cited in the definition of ''cost or pricing data'' at FAR 2.101 and should be noted in response to checklist item 4.

34. Checklist Item 17

Comments: Several respondents stated the checklist item for a description of supplies and services addresses non-cost information and should be eliminated. The respondents commented that the checklist item would create a new reporting requirement for offerors because this is not currently a FAR or DFARS requirement.

Response: Since item 17 requests non-cost information, it is removed from the final rule. The basis on which supplies or services meet the need of the Government should be developed within the proposal.

35. Checklist Item 18 (Final Rule Item 14)

Comments: One respondent requested the language of the checklist item be expanded to inquire whether the offeror's estimating technique is appropriate and whether inter-organizational transfers are included in the Consolidated Bill of Materials. Several respondents suggested a requirement that an offeror provide an electronic version of the CBOM that can be sorted by supplier, category, quantity, unit price, extended price of parts number, and identification of commercial items. Another respondent imparted the rationale that was utilized to reach the final version of the Air Force Proposal Adequacy Checklist and cautioned expanding the scope for this checklist item.

Response: The suggested items, as well as requiring an electronic submission that can be sorted, would be new reporting requirements beyond the intent of this rule. Specific submission requirements can be included in section L of the solicitation at the contracting officer's discretion. The checklist is not intended to dictate all specific requirements for every solicitation in which it is used.

36. Checklist Item 19 (Final Rule Item 15)

Comments: Several respondents suggested additional language to inform offerors that they must still perform price and cost analysis when an assist audit has been requested on a subcontractor. One respondent suggested the checklist item be modified or eliminated because contracting officers and DCAA, not prime contractors have the authority to request assist audits of subcontractors. Another respondent requested amending the checklist item to direct the offeror to inform the contracting officer as soon as possible of the need for an assist audit resulting from proprietary data rights assertions.

Response: A reference for item 19 is added to reflect ''DFARS 215.404–3'' and the checklist item is modified to read ''Has the offeror identified in the proposal those subcontractor proposals, for which the contracting officer has initiated or may need to request field pricing analysis?''

37. Checklist Item 20 (Final Rule Item 16)

Comments: One respondent proposed the FAR reference be revised to match that of item 18. Two respondents suggested modifying the language. One suggested: ''Per the thresholds of FAR 15.404–3(c), Subcontract Pricing Considerations, does the proposal include either a copy of the applicable subcontractor's proposals or the date by which these proposals will be submitted directly from the subcontractor? If proposals are to be submitted, annotate the projected date provided of submission in 'explanation' column of this checklist.'' The other respondent suggested modifying the language to read: ''* * * does the proposal include a copy of the applicable subcontractor's certified cost or pricing data?''

Response: The item reference is revised to add ''FAR 52.244–2''. The submission item text will be modified to incorporate the second respondent's suggestion of ''* * * does the proposal include a copy of the applicable subcontractor's certified cost or pricing data?'' If the answer is ''no,'' the explanation should state how and when the data will be provided.

38. Checklist Item 21 (Final Rule Item 17)

Comments: One respondent noted the language in checklist items 21 and 22 should be consistent when addressing an offeror's price/cost analysis of subcontracts. One respondent suggested the checklist item question be modified to ask whether a prime contractor's price/cost analysis of each proposed subcontract greater than $700,000 is included in the proposal.

Response: Item 21 is modified to read ''Is there a price/cost analysis establishing the reasonableness of each of the proposed subcontracts included with the proposal?'' A price or cost analysis must be accomplished on all subcontractor proposals; there is no dollar threshold for this.

39. Checklist Item 22 (Final Rule Item 17)

Comments: One respondent stated the checklist item would create a new reporting requirement for offerors because this is not currently a FAR or DFARS clause that requires an offeror to provide a matrix of anticipated dates for the receipt of proposals from subcontractors. Other respondents recommended identifying the offeror as a prime contractor and using the language consistently when addressing an offeror's price/cost analysis of subcontracts.

Response: This is only necessary if a proposal is incomplete because the information in the preceding checklist item has not been submitted. The checklist is not generating a new reporting requirement; it is only requesting remaining proposal components submission date for adequacy. This item has been combined with the previous checklist item (item 21 which is item 16 in the final rule) to clarify that it is a follow-up that is only necessary when an analysis has not yet been submitted for each subcontract.

40. Checklist Item 23 (Final Rule Item 18)

Comments: One respondent commented the item would introduce a new requirement because it is not currently mandatory for the offeror to indicate whether commercial items would be exempt for certified cost or pricing data requirements. The respondent noted a contracting officer may require data other than certified cost or pricing data when a commercial item is being acquired. Another respondent suggested the offeror provide the rationale for commercial items listed as exempt from certified cost or pricing data requirements.

Response: This is not a new reporting requirement as this item allows the offeror to acknowledge an allowable exemption to the requirement for certified cost or pricing data at the prime or subcontractor level. The item is modified to read ''Has the Offeror submitted any exceptions to the submission of certified cost or pricing data for commercial items proposed either at the prime or subcontractor level, in accordance with provision 52.215–20?'' and now contains a bulleted list of the questions from items 24 through 26. The reference column is updated to read ''FAR 52.215–20'' and ''FAR 2.101, commercial item.''

41. Checklist Item 24

Comments: One respondent noted the FAR reference only points to the definition of a commercial item and does not reference a FAR instruction for an offeror to provide a technical description of the differences between the proposed item and the comparison item.

Response: This item is removed because the requirements at 52.215–20 are consolidated in checklist item 23 (final rule item 17) making this item redundant.

42. Checklist Item 25

Comments: One respondent commented the checklist item would create a new reporting requirement for offerors because the FAR currently states a contracting officer may require data other than certified cost or pricing data but does not require an offeror to provide such information for every proposal. Another respondent suggested including language that a minor modification must meet the definition in FAR 2.101 in order to clarify the requirements of a commercial item exemption. One respondent requested the checklist item ask the offeror to justify, in addition to classifying, the modification. Several respondents requested the replacement of the phrase ''see note below'' with language that informs the offeror modifications that do not qualify as minor under FAR 2.101 or modifications that qualify as minor where the total price of all such modifications exceed the greater of the thresholds for certified cost or pricing data or 5% of the total price of the contract are not exempt from the submission of certified cost or pricing data.

Response: This item is removed because the requirements at 52.215–20 are consolidated in checklist item 23 (final rule item 18) making this item redundant.

43. Checklist Item 26

Comments: One respondent stated the checklist item only references the definition of a commercial item and would create a new reporting requirement for offerors because this is not currently a FAR or DFARS requirement for an offeror to provide a technical description of the differences between the proposed item and the comparison item.

Response: This item is removed because the requirements at 52.215–20 are consolidated in checklist item 23 (final rule item 18) making this item redundant.

44. Checklist Item 27 (Final Rule Item 19)

Comments: Several respondents suggested additional requirements for the offeror to provide data other than certified cost or pricing data to support a determination of price reasonableness for commercial items such as data related competition, market prices, costs, etc. One respondent stated that the reference was incorrect because cost or pricing data are not required for commercial items and if such information were required, it creates a new reporting requirement for offerors because this is not currently a FAR or DFARS requirement for an offeror.

Response: The contracting officer would have to decide during discussions if other than certified cost or pricing data will be necessary. This is not a new requirement; it is a reminder that a price analysis is still required when certified cost or pricing data are not required. The FAR reference is revised to reflect ''FAR 15.408, Table 15–2, Section II Paragraph A'' and rephrased to address ''a price analysis for all commercial items offered that are not available to the general public.''

45. Checklist Item 30 (Final Rule Item 22)

Comments: One respondent suggested amending the FAR reference for the requirement to provide analysis for inter-organizational transfers.

Response: The table 15–2 reference is added to the references column in the final rule (Paragraph A(1) Section II Table 15–2).

46. Checklist Item 31 (Final Rule Item 23)

Comments: One respondent noted the importance of well referenced information regarding the types, time phasing, and WBS for direct labor so that the cost element summary can be reconciled with the basis of estimates.

Response: The checklist is intended to assist contractors in providing well referenced proposal information.

47. Checklist Item 32 (Final Rule Item 24)

Comments: One respondent noted the checklist item would impose a new requirement on offerors since the FAR reference requires a time-phased breakdown of labor hours, rates, and cost by appropriate category but does not require task descriptions, statement-of-work reference, applicable CLIN, work breakdown structure (WBS), rationale for estimate and other detailed breakdowns. Another responded reiterated the importance of well referenced information regarding the types, time phasing, and WBS for direct labor so that the cost element summary can be with reconciled with the basis of estimates.

Response: The checklist item is modified to include the list of examples ''Statement of Work reference, applicable CLIN, work breakdown structure, rationale for estimate, applicable history, and time-phasing'' in parentheses. Also, ''e.g.'' has been added at the beginning of this list to further denote that the items are merely examples.

48. Checklist Item 33 (Final Rule Item 13)

Comments: One respondent recommended relocating the content of checklist item 33 into the ''General Instructions.'' Another respondent suggested a requirement that an offeror provide historical direct labor rates for proposed labor categories if a FPRA/FPRP is not available. Ifhistorical direct labor rates are also not available the respondent requests an offeror provide marketplace analysis for the proposed labor categories.

Response: This item is relocated to the ''General Instructions'' section of the checklist and consolidated with item 16 (final rule item 13).

49. Checklist Item 35 (Final Rule Item 26)

Comments: Several respondents request including additional guidance in the checklist item so offerors more clearly explain how indirect rates are developed and applied throughout the proposal.

Response: The rule text is modified to include ''and how they are applied?''

50. Checklist Item 36 (Final Rule Item 27)

Comments: One respondent stated the language of the checklist item should be amended to distinguish when travel is proposed as a direct cost because it may not always be proposed as such and the question requirement would not be applicable. Another respondent stated the checklist item creates a new reporting requirement for offerors because this is no current FAR or DFARS requirement.

Response: The travel details listed in item 36 are not spelled out in table 15–2; however they are the necessary details to provide an adequate basis for pricing of direct travel.

51. Checklist Item 40 (Final Rule Item 31)

Comments: One respondent stated the checklist item duplicates the requirement listed in checklist item 39 which addresses cost element breakdowns of all types of proposals.

Response: The tables are represented in separate checklist items to accentuate that they are each used in different circumstances.

52. Checklist Item 41 (Final Rule Item 32)

Comments: One respondent stated the checklist item duplicates the requirement listed in checklist item 39 which addresses cost element breakdowns of all types of proposals.

Response: The tables are represented in separate checklist items to accentuate that they are each used in different circumstances.

53. Checklist Item 43

Comments: One respondent commented that the item would introduce a new requirement because the checklist item requires the offeror to state that the fee is in accordance with statutory requirements whereas the FAR reference identifies a requirement on the contracting officer to verify the fee does not exceed statutory requirements.

Response: This item is removed because the contracting officer determines if the fee is appropriate in accordance with the regulations, not the offeror.

54. Checklist Item 44 (Final Rule Item 34)

Comments: One respondent recommended the removal of item 44 in the checklist regarding the rationale and application of economic price adjustment in a proposal. The respondent noted the inclusion of the item on the checklist may encourage an offeror to propose the use of economic price adjustments, which would not be desirable to the Government because of the of the administrative burden. The respondent also stated the checklist item assumes an economic price adjustment with indices when indices are only one of the methods available. The FAR reference was also questioned.

Response: This item is revised to address all type of economic incentive arrangements and a new reference has been provided to FAR 16.203–4 and FAR 15.408 Table 15–2, Section II, Paragraphs A, B, C, and D.

55. Checklist Item 45 (Final Rule Item 35)

Comments: One respondent suggested that the checklist item should clarify that an offeror can propose a separate price for performance based payments which are negotiated after award. Another respondent stated that the checklist item creates a new reporting requirement for offerors because there is no current FAR or DFARS requirement for an offeror to provide an expenditure profile.

Response: The reference is modified to reflect FAR 52.232–28 and the item is modified to read as follows: ''If the offeror is proposing Performance-Based Payments, did the offeror comply with FAR 52.232–28?'' The provision at FAR 52.232–28 is included in solicitations when offerors are invited to propose performance based payments and the provision includes all of the necessary information for submission.

56. Checklist Item 46 (Final Rule Item 36)

Comments: One respondent suggested expanding checklist item 46 to require identification and explanation of any higher tier subcontractors rather than limiting the requirement to only subcontractors supplying the prime contractor. Another respondent recommended the FAR reference be amended to include FAR 52.215–22.

Response: References to FAR clauses 52.215–22 and 52.215–23 are added. This checklist is addressed to the offeror and not to the subcontractors. When the prime is subcontracting more than 70% of the effort, the contractor is required to disclose this in the proposal.

57. Checklist Item 47

Comments: One respondent commented the item would introduce a new requirement because the checklist item does not make reference to a current requirement within the FAR.

Response: This item is removed as point of contact data is already required by table 15–2 Section I (A)(3), which is covered by checklist item 1.

III. 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, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* and is summarized as follows:

This final rule amends the Defense Federal Acquisition Regulation Supplement (DFARS) to add a checklist for Department of Defense (DoD) contractors to complete under solicitations that require the submission of certified cost or pricing data and when the Contracting Officer chooses to use the provision. This rule supports DoD's Better Buying Power initiatives.

The objective of the rule is to ensure that offerors submit thorough, accurate, and complete proposals. Through filling out the checklist the contractor will be able to self validate their proposals.

No significant issues were raised by the public in response to the initial regulatory flexibility analysis.

No comments were filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the rule.

The rule will apply to solicitations, for which certified cost or pricing data are required. Based on data collected in the Federal Procurement Data System for FY2008—FY2010, there are on average 905 actions per year that met the criteria where the proposal adequacy checklist could be utilized; on average 421 of those actions were with small business concerns.

No alternatives were determined; the proposal adequacy checklist was created directly from requirements already in the FAR.

V. Paperwork Reduction Act

The 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). However, these changes to the DFARS do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 9000–0013, entitled Cost or Pricing Data Exemption Information.

List of Subjects in 48 CFR Part(s) 215 and 252

Government procurement.

Kortnee Stewart,

Editor, Defense Acquisition Regulations System.

Therefore, DoD amends 48 CFR parts 215 and 252 as follows:

■ 1. The authority citation for parts 215 and 252 continues to read as follows:

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

PART 215—CONTRACTING BY NEGOTIATION

■ 2. Section 215.408 is amended by adding new paragraph (6) to read as follows:

215.408 Solicitation provisions and contract clauses.

* * * * *

(6) When the solicitation requires the submission of certified cost or pricing data, the contracting officer should include 252.215–7009, Proposal Adequacy Checklist, in the solicitation to facilitate submission of a thorough, accurate, and complete proposal.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Add 252.215–7009 to read as follows:

252.215–7009 Proposal adequacy checklist.

As prescribed in 215.408(6), use the following provision:

Proposal Adequacy Checklist (MAR 2013)

The offeror shall complete the following checklist, providing location of requested information, or an explanation of why the requested information is not provided. In preparation of the offeror's checklist, offerors may elect to have their prospective subcontractors use the same or similar checklist as appropriate.

PROPOSAL ADEQUACY CHECKLIST

References	Submission item	Proposal page No.	If not provided EXPLAIN (may use continuation pages)
	GENERAL INSTRUCTIONS		
1. FAR 15.408, Table 15–2, Section I Paragraph A	Is there a properly completed first page of the proposal per FAR 15.408 Table 15–2 I.A or as specified in the solicitation?		
2. FAR 15.408, Table 15–2, Section I Paragraph A(7)	Does the proposal identify the need for Government-furnished material/tooling/test equipment? Include the accountable contract number and contracting officer contact information if known.		
3. FAR 15.408, Table 15–2, Section I Paragraph A(8)	Does the proposal identify and explain notifications of noncompliance with Cost Accounting Standards Board or Cost Accounting Standards (CAS); any proposal inconsistencies with your disclosed practices or applicable CAS; and inconsistencies with your established estimating and accounting principles and procedures?		
4. FAR 15.408, Table 15–2, Section I, Paragraph C(1)	Does the proposal disclose any other known activity that could materially impact the costs?		

PROPOSAL ADEQUACY CHECKLIST—Continued

References	Submission item	Proposal page No.	If not provided EXPLAIN (may use continuation pages)
FAR 2.101, ''Cost or pricing data''	This may include, but is not limited to, such factors as— (1) Vendor quotations; (2) Nonrecurring costs; (3) Information on changes in production methods and in production or purchasing volume; (4) Data supporting projections of business prospects and objectives and related operations costs; (5) Unit-cost trends such as those associated with labor efficiency; (6) Make-or-buy decisions; (7) Estimated resources to attain business goals; and (8) Information on management decisions that could have a significant bearing on costs.		
5. FAR 15.408, Table 15–2, Section I Paragraph B	Is an Index of all certified cost or pricing data and information accompanying or identified in the proposal provided and appropriately referenced?		
6. FAR 15.403–1(b)	Are there any exceptions to submission of certified cost or pricing data pursuant to FAR 15.403–1(b)? If so, is supporting documentation included in the proposal? (Note questions 18–20.)		
7. FAR 15.408, Table 15–2, Section I Paragraph C(2)(i).	Does the proposal disclose the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data?		
8. FAR 15.408, Table 15–2, Section I Paragraph C(2)(ii).	Does the proposal disclose the nature and amount of any contingencies included in the proposed price?		
9. FAR 15.408 Table 15–2, Section II, Paragraph A or B.	Does the proposal explain the basis of all cost estimating relationships (labor hours or material) proposed on other than a discrete basis?		
10. FAR 15.408, Table 15–2, Section I Paragraphs D and E.	Is there a summary of total cost by element of cost and are the elements of cost cross-referenced to the supporting cost or pricing data? (Breakdowns for each cost element must be consistent with your cost accounting system, including breakdown by year.)		
11. FAR 15.408, Table 15–2, Section I Paragraphs D and E.	If more than one Contract Line Item Number (CLIN) or sub Contract Line Item Number (sub-CLIN) is proposed as required by the RFP, are there summary total amounts covering all line items for each element of cost and is it cross-referenced to the supporting cost or pricing data?		
12. FAR 15.408, Table 15–2, Section I Paragraph F	Does the proposal identify any incurred costs for work performed before the submission of the proposal?		
13. FAR 15.408, Table 15–2, Section I Paragraph G	Is there a Government forward pricing rate agreement (FPRA)? If so, the offeror shall identify the official submittal of such rate and factor data. If not, does the proposal include all rates and factors by year that are utilized in the development of the proposal and the basis for those rates and factors?		
COST ELEMENTS			
MATERIALS AND SERVICES			
14. FAR 15.408, Table 15–2, Section II Paragraph A	Does the proposal include a consolidated summary of individual material and services, frequently referred to as a Consolidated Bill of Material (CBOM), to include the basis for pricing? The offeror's consolidated summary shall include raw materials, parts, components, assemblies, subcontracts and services to be produced or performed by others, identifying as a minimum the item, source, quantity, and price.		

PROPOSAL ADEQUACY CHECKLIST—Continued

References	Submission item	Proposal page No.	If not provided EXPLAIN (may use continuation pages)
	SUBCONTRACTS (Purchased materials or services)		
15. DFARS 215.404–3	Has the offeror identified in the proposal those subcontractor proposals, for which the contracting officer has initiated or may need to request field pricing analysis?		
16. FAR 15.404–3(c) FAR 52.244–2	Per the thresholds of FAR 15.404–3(c), Subcontract Pricing Considerations, does the proposal include a copy of the applicable subcontractor's certified cost or pricing data?		
17. FAR 15.408, Table 15–2, Note 1; Section II Paragraph A.	Is there a price/cost analysis establishing the reasonableness of each of the proposed subcontracts included with the proposal? If the offeror's price/cost analyses are not provided with the proposal, does the proposal include a matrix identifying dates for receipt of subcontractor proposal, completion of fact finding for purposes of price/cost analysis, and submission of the price/cost analysis?		
	EXCEPTIONS TO CERTIFIED COST OR PRICING DATA		
18. FAR 52.215–20 FAR 2.101, ''commercial item''	Has the offeror submitted an exception to the submission of certified cost or pricing data for commercial items proposed either at the prime or subcontractor level, in accordance with provision 52.215–20? a. Has the offeror specifically identified the type of commercial item claim (FAR 2.101 commercial item definition, paragraphs (1) through (8)), and the basis on which the item meets the definition? b. For modified commercial items (FAR 2.101 commercial item definition paragraph (3)); did the offeror classify the modification(s) as either— i. A modification of a type customarily available in the commercial marketplace (paragraph (3)(i)); or ii. A minor modification (paragraph (3)(ii)) of a type not customarily available in the commercial marketplace made to meet Federal Government requirements not exceeding the thresholds in FAR 15.403–1(c)(3)(iii)(B)? c. For proposed commercial items ''of a type'', or ''evolved'' or modified (FAR 2.101 commercial item definition paragraphs (1) through (3)), did the contractor provide a technical description of the differences between the proposed item and the comparison item(s)?		
19. FAR 15.408, Table 15–2, Section II Paragraph A	Does the proposal include a price analysis for all commercial items offered that are not available to the general public?		
20. FAR 15.408, Table 15–2, Section II Paragraph A(1).	Does the proposal support the degree of competition and the basis for establishing the source and reasonableness of price for each subcontract or purchase order priced on a competitive basis exceeding the threshold for certified cost or pricing data?		
	INTERORGANIZATIONAL TRANSFERS		
21. FAR 15.408, Table 15–2, Section II Paragraph A.(2).	For inter-organizational transfers proposed at cost, does the proposal include a complete cost proposal in compliance with Table 15–2?		
22. FAR 15.408, Table 15–2, Section II Paragraph A(1).	For inter-organizational transfers proposed at price in accordance with FAR 31.205–26(e), does the proposal provide an analysis by the prime that supports the exception from certified cost or pricing data in accordance with FAR 15.403–1?		

PROPOSAL ADEQUACY CHECKLIST—Continued

References	Submission item	Proposal page No.	If not provided EXPLAIN (may use continuation pages)
	DIRECT LABOR		
23. FAR 15.408, Table 15–2, Section II Paragraph B	Does the proposal include a time phased (i.e.; monthly, quarterly) breakdown of labor hours, rates and costs by category or skill level? If labor is the allocation base for indirect costs, the labor cost must be summarized in order that the applicable overhead rate can be applied.		
24. FAR 15.408, Table 15–2, Section II Paragraph B	For labor Basis of Estimates (BOEs), does the proposal include labor categories, labor hours, and task descriptions—(e.g.; Statement of Work reference, applicable CLIN, Work Breakdown Structure, rationale for estimate, applicable history, and time-phasing)?		
25. FAR subpart 22.10	If covered by the Service Contract Labor Standards statute (41 U.S.C. chapter 67), are the rates in the proposal in compliance with the minimum rates specified in the statute?		
	INDIRECT COSTS		
26. FAR 15.408, Table 15–2, Section II Paragraph C	Does the proposal indicate the basis of estimate for proposed indirect costs and how they are applied? (Support for the indirect rates could consist of cost breakdowns, trends, and budgetary data.)		
	OTHER COSTS		
27. FAR 15.408, Table 15–2, Section II Paragraph D	Does the proposal include other direct costs and the basis for pricing? If travel is included does the proposal include number of trips, number of people, number of days per trip, locations, and rates (e.g. airfare, per diem, hotel, car rental, etc)?		
28. FAR 15.408, Table 15–2, Section II Paragraph E	If royalties exceed $1,500 does the proposal provide the information/data identified by Table 15–2?		
29. FAR 15.408, Table 15–2, Section II Paragraph F ..	When facilities capital cost of money is proposed, does the proposal include submission of Form CASB–CMF or reference to an FPRA/FPRP and show the calculation of the proposed amount?		
	FORMATS FOR SUBMISSION OF LINE ITEM SUMMARIES		
30. FAR 15.408, Table 15–2, Section III	Are all cost element breakdowns provided using the applicable format prescribed in FAR 15.408, Table 15–2 III? (or alternative format if specified in the request for proposal)		
31. FAR 15.408, Table 15–2, Section III Paragraph B	If the proposal is for a modification or change order, have cost of work deleted (credits) and cost of work added (debits) been provided in the format described in FAR 15.408, Table 15–2.III.B?		
32. FAR 15.408, Table 15–2, Section III Paragraph C	For price revisions/redeterminations, does the proposal follow the format in FAR 15.408, Table 15–2.III.C?		
	OTHER		
33. FAR 16.4	If an incentive contract type, does the proposal include offeror proposed target cost, target profit or fee, share ratio, and, when applicable, minimum/maximum fee, ceiling price?		
34. FAR 16.203–4 and FAR 15.408 Table 15–2, Section II, Paragraphs A, B, C, and D.	If Economic Price Adjustments are being proposed, does the proposal show the rationale and application for the economic price adjustment?		
35. FAR 52.232–28	If the offeror is proposing Performance-Based Payments—did the offeror comply with FAR 52.232–28?		

PROPOSAL ADEQUACY CHECKLIST—Continued

References	Submission item	Proposal page No.	If not provided EXPLAIN (may use continuation pages)
36. FAR 15.408(n) ..... FAR 52.215–22 FAR 52.215–23	Excessive Pass-through Charges—Identification of Subcontract Effort: If the offeror intends to subcontract more than 70% of the total cost of work to be performed, does the proposal identify: (i) the amount of the offeror's indirect costs and profit applicable to the work to be performed by the proposed subcontractor(s); and (ii) a description of the added value provided by the offeror as related to the work to be performed by the proposed subcontractor(s)?		

(End of provision)

[FR Doc. 2013–07106 Filed 3–27–13; 8:45 am]

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 225 and 252

RIN 0750–AH69

Defense Federal Acquisition Regulation Supplement: United States-Korea Free Trade Agreement (DFARS Case 2012–D025)

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

ACTION: Final rule.

SUMMARY: DoD has adopted as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement the United States-Korea Free Trade Agreement. The Republic of Korea is already party to the World Trade Organization Government Procurement Agreement.

DATES: *Effective date:* March 28, 2013.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, telephone: 571–372–6106.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published an interim rule in the **Federal Register** at 77 FR 30356 on May 22, 2012, to implement the United States-Korea Free Trade Agreement (see the United States-Korea Free Trade Agreement Implementation Act (Pub. L. 112–41) (19 U.S.C. 3805 note)). There were no public comments submitted in response to the interim rule.

II. 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 a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

DoD certifies that this rule will not 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.* Korea is already a designated country under the World Trade Organization (WTO) Agreement on Government Procurement (GPA). Although the rule now opens up Government procurement to the goods and services of Korea at or above the threshold of $100,000, DoD does not anticipate any significant economic impact on U.S. small businesses. DoD only applies the trade agreements to the non-defense items listed at DFARS 225.401–70, and acquisitions that are set aside or provide other forms of preference for small businesses are exempt. FAR 19.502–2 states that acquisitions that do not exceed $150,000 (except as described in paragraph (1) of the definition of ''simplified acquisition threshold'' at FAR 2.101) are automatically reserved exclusively for small business concerns, unless the contracting officer determines that there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns.

IV. Paperwork Reduction Act

This rule affects the certification and information collection requirements in the provision at DFARS 252.225–7035, currently approved under OMB Control Number 0704–0229, titled Defense Federal Acquisition Regulation Supplement part 225, Foreign Acquisition, and related clauses, in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35). OMB Control Number 0704–0229 assessed the total burden related to part 225 at approximately 57,230 hours. The impact of this rule, however, is negligible, because it is just a question of under which category offered goods from the Republic of Korea would be listed. The rule also affects DFARS 252.225–7018, which is a variant of the Buy American-trade agreements certifications already approved, which was issued as an interim rule under DFARS Case 2011–D046 (76 FR 78858, December 20, 2011).

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Kortnee Stewart,

Editor, Defense Acquisition Regulations System.

Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR parts 225 and 252, which was published at 77 FR 30356 on May 22, 2012, is adopted as a final rule without change.

[FR Doc. 2013–07131 Filed 3–27–13; 8:45 am]

BILLING CODE 5001–06–P