proposed price is fair and reasonable [*U.S. Contracting Officer to provide description of the data required in accordance with FAR 15.403–3(a)(1) with the notification*].

(4) As specified in FAR 15.403–3(a)(4), an offeror who does not comply with a requirement to submit data that the U.S. Contracting Officer has deemed necessary to determine price reasonableness or cost realism is ineligible for award unless the head of the contracting activity determines that it is in the best interest of the Government to make the award to that offeror.

(d) If negotiations are conducted, the negotiated price should not exceed the offered price.

(End of provision)

[FR Doc. 2013–11399 Filed 5–15–13; 8:45 am]

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 215

RIN 0750–AH86

Defense Federal Acquisition Regulation Supplement; Forward Pricing Rate Proposal Adequacy Checklist (DFARS Case 2012–D035)

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 provide guidance to contractors for the submittal of forward pricing rate proposals to ensure the adequacy of forward pricing rate proposals submitted to the Government.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before July 15, 2013, to be considered in the formation of the final rule.

ADDRESSES: Submit comments, identified by DFARS Case 2012–D035, using any of the following methods:

Regulations.gov: http://www.regulations.gov. Submit comments via the Federal eRulemaking portal by inserting ''DFARS Case 2012–D035'' under the heading ''Enter keyword or ID'' and selecting ''Search.'' Select the link ''Submit a Comment'' that corresponds with ''DFARS Case 2012–D035.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''DFARS Case 2012–D035'' on your attached document. Follow the instructions for submitting comments.

Email: dfars@osd.mil. Include DFARS Case 2012–D035 in the subject line of the message.

Fax: 571–372–6094.

Mail: Defense Acquisition Regulations System, Attn: Mr. Mark Gomersall, OUSD(AT&L)DPAP(DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov*, including any personal information provided. To confirm receipt of your comment(s), please check *www.regulations.gov* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Mark Gomersall, 571–372–6099.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to revise the DFARS at 215.403–5 by adding instructions to contracting officers to request contractors to submit the proposed forward pricing rate proposal adequacy checklist at Table 215–XX with forward pricing rate proposals. This proposed rule provides guidance to contractors for the submittal of forward pricing rate proposals by requesting that contractors submit a proposed forward pricing rate proposal adequacy checklist with their forward pricing rate proposals to ensure submission of thorough, accurate, and complete proposals.

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 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.

III. Regulatory Flexibility Act

DoD does not expect this proposed rule 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.* However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

This rule amends the DFARS at 215.403–5 by adding instructions to contracting officers to request contractors to submit the proposed forward pricing rate proposal adequacy checklist with forward pricing rate proposals. The objective is to provide guidance to contractors for the submittal of forward pricing rate proposals.

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small because it only a small percentage of Government contractors are requested to submit a forward pricing rate proposal, as set forth at FAR 42.1701(a). The Government will ask only those contractors with a significant volume of Government contracts to submit such proposals.

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

IV. 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). Accordingly, DoD has submitted a request for approval of a new information collection requirement concerning Defense Federal Acquisition Regulation Supplement; Forward Pricing Rate Proposal Adequacy Checklist (DFARS Case 2012–D035) to the Office of Management and Budget.

A. Public reporting burden for this collection of information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden estimated as follows:

Respondents: 160.

Responses per respondent: 1.

Total annual responses: 160.

Preparation hours per response: 4 hours

Total response Burden Hours: 640 hours.

B. Request for Comments Regarding Paperwork Burden.

Written comments and recommendations on the proposed information collection, including suggestions for reducing this burden, should be sent to Ms. Jasmeet Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington,

DC 20503, or email *Jasmeet_K._Seehra@omb.eop.gov*, with a copy to the Defense Acquisition Regulations System, Attn: Mark Gomersall, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060. Comments can be received from 30 to 60 days after the date of this notice, but comments to OMB will be most useful if received by OMB within 30 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 functions of the DFARS, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Acquisition Regulations System, Attn: Mark Gomersall, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060, or email *dfars@osd.mil*. Include DFARS Case 2012–D035 in the subject line of the message.

List of Subjects in 48 CFR Part 215

Government procurement.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR part 215 as follows:

PART 215—CONTRACTING BY NEGOTIATION

■ 1. The authority citation for part 215 continues to read as follows:

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

■ 2. Add 215.403–5 to read as follows:

215.403–5 Instructions for submissions of certified cost or pricing data or data other than cost or pricing data pursuant to the procedures in FAR 42.1701(b).

(b)(3) For contractors following the commercial contract cost principles in FAR 31.2, if the contracting officer determines that a forward pricing rate proposal should be obtained pursuant to FAR 42.1701, the contracting officer shall require that the forward pricing rate proposals comply with FAR 15.408, Table 15–2, and DFARS 252.215–7002. The contracting officer should request that the proposal be submitted to the Government at least 90 days prior to the implementation date for the proposed rates. To ensure the proposal is complete, the contracting officer shall request the contractor complete the contractor forward pricing rate proposal adequacy checklist at Table 215–XX, and submit it with the forward pricing rate proposal.

Table 215–XX—Contractor Forward Pricing Rate Proposal Adequacy Checklist

The contractor should complete the following checklist, providing location of requested information, or an explanation of why the requested information is absent.

CONTRACTOR FORWARD PRICING RATE 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.A.	Is there a properly completed first page of the proposal or a summary format as specified by the contracting officer?		
2. FAR 15.407–1 and FAR 15.408, Table 15–2, Section I.A.(8).	Does the proposal disclose known or anticipated changes in business activities or processes that could materially impact the costs (if not previously provided)? For example: a. Management initiatives to reduce costs; Changes in management objectives as a result of economic conditions and increased competitiveness; c. Changes in accounting policies, procedures, and practices including: (i) reclassification of expenses from direct to indirect or vice versa; (ii) new methods of accumulating and allocating indirect costs and the related impact and (iii) advance agreements; d. Company reorganizations (including acquisitions or divestitures); e. Shutdown of facilities; f. Changes in business volume and/or contract mix/type.		
3. FAR 15.408, Table 15–2, Section I.B.	Does the proposal include a table of contents (index) identifying and referencing all supporting data accompanying or identified in the proposal?		
4. DFARS 252.215–7002(d)(4)(iv)	For supporting documentation not provided with the proposal, does the basis of estimate in the proposal include the location of the documentation and the point of contact (custodian) name, phone number, and email address?		

CONTRACTOR FORWARD PRICING RATE PROPOSAL ADEQUACY CHECKLIST—Continued

References	Submission item	Proposal page No.	If not provided EXPLAIN (may use continuation pages)
5. FAR 15.408, Table 15–2, Section I.C.(2)(i).	Is the proposal mathematically correct and does it reconcile to the supporting data referenced?		
6. FAR 15.408, Table 15–2, Section I.C.(2)(i) and DFARS 252.215–7002(d)(4)(iv).	Do proposed costs based on judgmental factors include an explanation of the estimating processes and methods used; including those used in projecting from known data?		
7. FAR 15.408, Table 15–2, Section I.D.	Is the proposal internally consistent (for example, is the direct labor base used for labor overhead consistent with direct labor in the G&A allocation base)?		
8. FAR 15.408, Table 15–2. Section II.C. and DFARS 252.215–7002(d)(4)(iv).	Does the proposal show trends and budgetary data? Is an explanation of how the data was used provided, including any adjustments to the data?		
Direct Labor			
9. FAR 15.408, Table 15–2, Section II.B.	Does the proposal include an explanation of the methodology used to develop the direct labor rates and identify the basis of estimate?		
10. DFARS 252.215(d)(4)(iv)	Does the proposal include or identify the location of the supporting documents for the base-year labor rates (e.g., payroll records)?		
11. FAR 15.408 Table 15–2, Section I.C(2)(i); DFARS 252.215–7002(d)(4)(iv).	Does the proposal identify escalation factors for the out years, the costs to which escalation is applicable, and the basis of the factors used?		
12. FAR 15.407–1	Does the proposal identify planned or anticipated changes in the composition of labor rates, labor categories, union agreements, headcounts, or other factors that could significantly impact the direct labor rates?		
Indirect Rates (Fringe, Overhead, G&A, etc.)			
13. FAR 15.408, Table 15–2, Section II.C.	Does the proposal identify the basis of estimate and provide an explanation of the methodology used to develop the indirect rates?		
14. FAR 15.408, Table 15–2, Section I.B.	Does the proposal include or identify the location of the supporting documents for the proposed rates?		
15. FAR 15.408 Table 15–2, Section I.D.	Does the proposal identify indirect expenses by burden center, by cost element, by year (including any voluntary deletions, if applicable) in a format that is consistent with the accounting system used to accumulate actual expenses?		
16. FAR 15.408, Table 15–2, Section I.C.(2)(ii).	Does the proposal identify any contingencies?		
17. FAR 15.407–1	Does the proposal identify planned or anticipated changes in the nature, type or level of indirect costs, including fringe benefits?		
18. DFARS 252.215–7002(d)(4)(iv)	Does the proposal identify corporate, home office, shared services, or other incoming allocated costs and the source for those costs, including location and point of contact (custodian) name, phone number, and email address?		
19. FAR 15.408 Table 15–2, Section II.C.; DFARS 252.215–7002(d)(4)(iv).	Does the proposal separately identify all intermediate cost pools and provide a reconciliation to show where the costs were allocated?		
20. FAR 15.408 Table 15–2, Section I.C(2)(i); DFARS 252.215–7002(d)(4)(iv).	Does the proposal identify the escalation factors for the out years, the costs to which escalation is applicable, and the basis of the factors used?		
21.DFARS 252.215–7002(d)(4)(iv)	Does the proposal provide appropriate details of the development of the allocation base?		
22. FAR 15.408 Table 15–2, Section I.B., DFARS 252.215–7002(d)(4)(xi).	Does the proposal include or reference the supporting data for the allocation base such as program budgets, negotiation memorandums, proposals, contract values, etc.?		
23. DFARS 252.215–7002(d)(4)(xi)	Does the proposal identify how the proposed allocation base reconciles with its long range plans, strategic plan, operating budgets, sales forecasts, program budgets, etc.?		

CONTRACTOR FORWARD PRICING RATE PROPOSAL ADEQUACY CHECKLIST—Continued

References	Submission item	Proposal page No.	If not provided EXPLAIN (may use continuation pages)
Cost of Money (COM)			
24. FAR 15.408, Table 15–2, Section II.F.	Are Cost of Money rates submitted on Form CASB–CMF, with the Treasury Rate used to compute COM identified and a summary of the net book value of assets, identified as distributed & non-distributed?		
25. DFARS 252.215–7002(d)(4)(iv)	Does the proposal identify the support for the Form CASB–CMF, for example, the underlying reports and records supporting the net book value of assets contained in the form?		
OTHER			
26. DFARS 252.215–7002(d)(4)(xiii)	Does the proposal include a comparison of prior forecasted costs to actual results in the same format as the proposal and an explanation/analysis of any differences?		
27. DFARS 252.215–7002(d)(4)(xiv)	If this is a revision to a previous rate proposal or an FPRA, does the new proposal provide a summary of the changes in the circumstances or the facts that the contractor asserts require the change to the rates?		

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BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 225

RIN 0750–AH84

Defense Federal Acquisition Regulation Supplement: Preparation of Letter of Offer and Acceptance (DFARS Case 2012–D048)

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 address the contracting officer role in assisting the DoD implementing agency in preparation of the letter of offer and acceptance for a foreign military sales program that will require an acquisition.

DATES: *Comment Date:* Comments on the proposed rule should be submitted in writing to the address shown below on or before July 15, 2013, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2012–D048, using any of the following methods:

○ *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by entering ''DFARS Case 2012–D048'' under the heading ''Enter keyword or ID'' and selecting ''Search.'' Select the link ''Submit a Comment'' that corresponds with ''DFARS Case 2012–D048.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''DFARS Case 2012–D048'' on your attached document.

○ *Email: dfars@osd.mil.* Include DFARS Case 2012–D048 in the subject line of the message.

○ *Fax:* 571–372–6094.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations System, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 571–372–6106.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to amend DFARS 225.7302 to revise and move the text at PGI 225.7302(1) into the DFARS, because of potential impact on contractors.

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 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.

III. Regulatory Flexibility Act

DoD does not expect this rule 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.* However, DoD has prepared an Initial Regulatory Flexibility Analysis, which is summarized as follows:

This action is necessary because the directions to the contracting officer at PGI 225.7302(1) may have impact on prospective contractors, and therefore require relocation to the DFARS.

The objective of this rule is to provide direction to the contracting officer on actions required to work with the