document also treats a conflicting application (File No. BPH–20141028AAK) filed by Liberman Broadcasting of Dallas Licensee LLC (''Liberman''), licensee of Station KZMP–FM, Pilot Point, Texas, for a construction permit to implement a previously granted upgrade in KZMP's channel class from Channel 285C1 to 285C0 (''Pilot Point Application'') as a counterproposal. Finally, to accommodate Pyeatt's proposal, an *Order to Show Cause* is issued to Liberman as to why KZMP's channel class should not be involuntarily downgraded. *See* SUPPLEMENTARY INFORMATION, *supra.*

DATES: Comments must be filed on or before August 31, 2015, and reply comments on or before September 15, 2015.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the rule making petitioner and the counter proponent as follows: Katherine Pyeatt, 2215 Cedar Springs Rd., #1605, Dallas, Texas 75201; James R. Bayes, Esq., Mark N. Lipp, Esq., and Marnie K. Sarver, Esq., Wiley Rein LLP, 1776 K Street NW., Washington, DC 20006 (Counsel to Liberman).

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Media Bureau, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making* (''NPRM'') and *Order to Show Cause* (''OSC''), MB Docket No. 15–167, adopted July 9, 2015, and released July 10, 2015. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street SW., Washington, DC 20554. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

The document solicits comment on the proposed allotment of Channel 286A at Grant (population 289) because it could result in a first local service to that community. The proposed reference coordinates for Channel 286A at Grant are 33–57–16 NL and 95–36–30 WL. The NPRM also addresses Liberman's concerns regarding the credibility of Pyeatt's expression of interest in the proposed Grant allotment.

Next, the OSC proposes the involuntary downgrade of KZMP, Pilot Point, Texas, from Channel 285C0 to 285C1 because nearly seven years have passed since KZMP was upgraded and Liberman has not implemented the upgrade.

Finally, the NPRM also states that the public interest would be served by considering the Pilot Point Application because it could result in the provision of service to an additional 1,507,667 people and treating it as a counterproposal to Pyeatt's Petition for Rule Making. Both Pyeatt and Liberman are invited to submit comments, seeking to demonstrate why their proposals better serve the public interest under the FM Allotment Priorities. The Pilot Point Application reference coordinates are 33–32–14 NL and 96–49–54 WL.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336 and 339.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Grant, Channel 286A.

[FR Doc. 2015–18985 Filed 7–31–15; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 202, 212, 215, and 252

RIN 0750–AI64

Defense Federal Acquisition Regulation Supplement: Evaluating Price Reasonableness for Commercial Items (DFARS Case 2013–D034)

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 2013 that requires the issuance of guidance on the use of the authority to require the submission of other than cost or pricing data.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before October 2, 2015, to be considered in the formation of the final rule.

ADDRESSES: Submit comments identified by DFARS Case 2013–D034, using any of the following methods:

○ *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by entering ''DFARS Case 2013–D034'' under the heading ''Enter keyword or ID'' and selecting ''Search.'' Select the link ''Submit a Comment'' that corresponds with ''DFARS Case 2013–D034.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''DFARS Case 2013–D034'' on your attached document.

○ *Email: osd.dfars@osd.mil.* Include DFARS Case 2013–D034 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, Defense Acquisition

Regulations System, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 571–372–6099.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to amend the DFARS to implement portions of section 831 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 (Pub. L. 112–239, enacted January 2, 2013). Title 10, United States Code (U.S.C.), mandates that offerors submitting proposals for negotiated procurements provide certified cost or pricing data under certain circumstances if the estimated value of the procurement is above a certain dollar threshold. For other types of procurements, *e.g.,* commercial-item acquisitions, the law requires only that an offeror provide ''data other than certified cost or pricing data to the extent necessary to determine the reasonableness of the price'' (10 U.S.C. 2306a(d)(1)). Section 831 requires the issuance of guidance on the use of the authority to require the submission of other than cost or pricing data. Specifically, section 831, paragraph (a) provides that the guidance accomplish the following:

1. Include standards for determining whether information on the prices at which the same or similar items have previously been sold is adequate for evaluating the reasonableness of price;

2. Include standards for determining the extent of uncertified cost information that should be required in cases in which price information is not adequate for evaluating the reasonableness of price;

3. Ensure that in cases in which such uncertified cost information is required, the information shall be provided in the form in which it is regularly maintained by the offeror in its business operations; and

4. Provide that no additional cost information may be required by the Department of Defense in any case in which there are sufficient nongovernment sales to establish reasonableness of price.

II. Discussion and Analysis

This rule proposes to amend the DFARS as follows to—

- Add new definitions at 202.101 for ''market-based pricing'' and ''uncertified cost data'' and at 215.401 for ''nongovernment sales,'' ''relevant sales data,'' and ''sufficient nongovernment sales to establish reasonableness of price'';
- Add section 212.209 entitled ''Determination of price reasonableness'';
- Add guidelines at 215.402(a)(3), for obtaining data other than certified cost or pricing data;
- Add instructions at 215.403–5 for the submission of certified cost or pricing data and data other than certified cost or pricing data;
- Add guidelines at 215.404–1 concerning proposal analysis techniques;
- Renumber the paragraph structure at 215.404–1–70;
- Revise the clause prescription at 215.408, paragraph(3)(i), and add three new provision prescriptions at paragraph (6); and
- Add three new provisions in part 252.

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

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.,* because the proposed rule does not add to or remove any of the existing requirements for the submission of other than certified cost or pricing data for the purpose of determining the reasonableness of prices proposed for commercial items. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

This initial regulatory flexibility analysis has been prepared consistent with 5 U.S.C. 603. It addresses additional guidance to be included in the Defense Federal Acquisition Regulation Supplement (DFARS) concerning the appropriate amount and type of other than certified cost or pricing information that contracting officers must require an offeror to submit in order to determine whether proposed prices for commercial items are fair and reasonable. The rule also proposes to add three new provisions.

The National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 included section 831, entitled ''Guidance and Training Related to Evaluating Reasonableness of Price.'' Paragraph (a) of section 831 required the issuance of guidance addressing the following four areas:

1. Requirement to include standards for determining whether information on the prices at which the same or similar items have previously been sold is adequate for evaluating the reasonableness of price.

2. Requirement to include standards for determining the extent of uncertified cost information that should be required in cases in which price information is not adequate for evaluating the reasonableness of price.

3. Ensure that in cases in which such uncertified cost information is required, the information shall be provided in the form in which it is regularly maintained by the offeror in its business operations.

4. Provide that no additional cost information may be required by the Department of Defense in any case in which there are sufficient non-Government sales to establish reasonableness of price.

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.,* because this rule merely provides guidance to contracting officers on the use of the existing authority to require the submission of other than cost or pricing data.

The reporting requirements for small entities do not differ from those for large entities and are covered by OMB Control Number 9000–0013, Cost or Pricing Data Exemption. This proposed rule does not add to or remove any of the existing requirements; it does clarify the limits on the amount and types of data that may be required from offerors so that contracting officers do not inadvertently impose submission requirements on small entities or other types of businesses that are excessive.

The rule does not duplicate, overlap, or conflict with any other Federal rules. Consistent with the stated objectives of section 831 of the NDAA for FY 2013 and with the statutory requirements for cost or pricing data in title 10, United States Code (U.S.C.), there is no alternative to applying the requirements for other than cost or pricing data equally to small and large entities.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this 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 2013–D034), in correspondence.

V. Paperwork Reduction Act

This rule affects the information collection requirements in the provisions at Federal Acquisition Regulation (FAR) subpart 15.4, Contract Pricing (in particular, FAR 15.403, Obtaining Certified Cost or Pricing Data) and the clauses at FAR 52.215–20, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data, and FAR 52.215–21, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—Modifications, currently approved under OMB Control Number 9000–0013, entitled ''Cost or Pricing Data Exemption,'' in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The impact, however, is negligible, because the DFARS change does not add or remove requirements for submission of other than cost or pricing data. The DFARS merely provides clarification of the circumstances under which the FAR requires contracting officers to obtain other than cost or pricing data solely for the purpose of determining reasonableness of prices proposed by offerors for commercial items. There are no changes to the existing requirement for supporting cost data for determining price reasonableness.

List of Subjects in 48 CFR Parts 202, 212, 215, and 252

Government procurement.

Amy G. Williams,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 202, 212, 215, and 252 are proposed to be amended as follows:

■ 1. The authority citation for parts 202, 212, 215, and 252 continues to read as follows:

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

PART 202—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 202.101 by adding, in alphabetical order, the definitions for ''market-based pricing'' and ''uncertified cost data'' to read as follows:

202.101 Definitions.

* * * * *

Market-based pricing means pricing that results when nongovernmental buyers drive the price in a commercial marketplace. When nongovernmental buyers in a commercial marketplace account for a preponderance (50 percent or more) of sales by volume of a particular item, there is a strong likelihood the pricing is market based.

* * * * *

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

* * * * *

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 3. Add section 212.209 to subpart 212.2 to read as follows:

212.209 Determination of price reasonableness.

In order to establish a fair and reasonable price based on market-based pricing (see 215.404–1), the contracting officer shall obtain adequate commercial marketplace sales data (see 215.404–1(b)) to ensure the price offered to the Government is reasonably consistent with market-based pricing. When obtaining such data, follow the order of preference at FAR 15.402(a)(2), and otherwise comply with the requirements of FAR part 15, part 215, and PGI part 215.

PART 215—CONTRACTING BY NEGOTIATION

■ 4. Add section 215.401 to subpart 215.4 to read as follows:

215.401 Definitions.

Nongovernment sales means sales of the supplies or services to nongovernmental entities for purposes other than governmental purposes.

Relevant sales data means the subset of an offeror's sales data that, as considered by a prudent person, could reasonably be expected to influence the contracting officer's determination of price reasonableness, taking into consideration the age, volume, and nature of the transactions (including any related discounts, refunds, rebates, offsets or other adjustments) in the data subset.

Sufficient nongovernment sales to establish reasonableness of price (see 215.402(a)(3)) exist when relevant sales data reflects market-based pricing, are made available for the contracting officer to review, and contains enough information to make adjustments covered by FAR 15.404 1(b)(2)(ii)(B).

■ 5. Amend section 215.402 by adding paragraph (a)(3) to read as follows:

215.402 Pricing policy.

* * * * *

(a)(3) When obtaining data other than certified cost or pricing data (Pub. L. 112–239 sec. 831)—

(A) The standard to be used by contracting officers in determining the adequacy of information on prices at which same or similar items have been sold is whether a prudent person would conclude that it is sufficient to determine whether the proposed price is fair and reasonable. See 215.404–1 and PGI 215.404–1; and

(B) In cases when uncertified cost data is necessary to determine that the price is fair and reasonable, the contracting officer should request uncertified cost data only to the extent that a prudent person would consider necessary to determine a fair and reasonable price.

■ 6. Amend section 215.403–5 by adding paragraphs (a) and (b)(2) to read as follows:

215.403–5 Instructions for submission of certified cost or pricing data and data other than certified cost or pricing data.

(a) The contracting officer shall not limit the Government's ability to obtain any data that may be necessary to support a determination of fair and reasonable pricing.

(b)(2) If the contracting officer requires the offeror to provide uncertified cost data, it shall be the form in which it is regularly maintained by the offeror in its business operations (Pub. L. 112–239 sec. 831).

* * * * *

■ 7. Revise section 215.404–1 to read as follows:

215.404–1 Proposal analysis techniques.

(b)(2)(ii) In the absence of adequate price competition in response to the solicitation, market-based pricing is the preferred method to establish a fair and reasonable price (Pub. L. 112–239 sec. 831).

(A)(*i*) Relevant sales data are a valid basis for price comparison, in the following order of preference:

(*a*) Relevant sales data for the same good or service being acquired that reflect market-based pricing.

(*b*) Relevant sales data for substantially similar goods or services that reflect market-based pricing.

(*c*) Relevant sales data for the same good or services being acquired that do not reflect market-based pricing.

(*d*) Relevant sales data for substantially similar goods or services that do not reflect market-based pricing.

(*ii*) The contracting officer may obtain additional data necessary to verify the price to be paid is fair and reasonable. However, if relevant sales data for the same supplies or services being acquired reflects market-based pricing, and is made available for the contracting officer to review, the contracting officer shall not obtain uncertified cost data.

(*iii*) When evaluating sales data, contracting officers shall exercise prudent business judgment and consider standards such as the following, using the order of preference in FAR 15.402(a) and 215.402(a)(3):

(*a*) *Market-based pricing.* See 202.101.

(*b*) *Age of data.*

(*1*) Whether data is too old to be relevant depends on the industry (*e.g.,* rapidly evolving technologies), product maturity (*e.g.,* stable), economic factors (*e.g.,* new sellers in the marketplace), and various other considerations.

(*2*) A pending sale may be relevant if it is probable at the anticipated price, and the sale could reasonably be expected to materially influence the contracting officer's determination of price reasonableness. Consult with the offeror's corporate or divisional administrative contracting officer (if applicable) about future sales.

(*c*) *Volume.* The number of transactions must be sufficient to permit the contracting officer to make a determination on price reasonableness based on the relevant sales data. If the number of transactions is insufficient to make a determination, the contracting officer shall consider broadening the search (*e.g.,* identify whether all customers were included) to obtain additional relevant sales data as necessary to make the determination, following the order of preference at 215.404–1(b)(2)(ii)(A)(i), and complying with FAR 15.402(a)(2).

(*d*) *Nature of transactions.* The nature of a sales transaction includes the information necessary to understand the transaction, such as terms and conditions, date, quantity sold, sale price, the intended end-user, the type of customer (government, distributor, retail end-user, etc.), and related agreements. It also includes information such as warranty information, key product technical specifications, maintenance agreements, or preferred customer rewards, if they substantially impact price differences among sales. When relevant sales data has materially differing terms and conditions (see 215.404–1(b)(2)(ii)(B)), the contracting officer shall adjust the prices as required by FAR 15.404–1(b)(2)(ii)(B).

(*e*) *Catalog Prices.* Catalog prices are reliable when consistent with relevant sales data (including any related discounts, refunds, rebates, offsets or other adjustments).

(B) Terms and conditions, quantities, and market and economic factors, are materially differing if the differences could reasonably be expected to influence the contracting officer's determination of price reasonableness.

(C) The DoD cadre of experts is identified at PGI 215.404–2(a)(iii).

■ 8. Add section 215.404–1–70 to read as follows:

215.404–1–70 Procedures.

(a) Follow the procedures at PGI 215.404–1 for proposal analysis.

(b) For spare parts or support equipment, perform an analysis of—

(1) Those line items where the proposed price exceeds by 25 percent or more the lowest price the Government has paid within the most recent 12-month period based on reasonably available data;

(2) Those line items where a comparison of the item description and the proposed price indicates a potential for overpricing;

(3) Significant high-dollar-value items. If there are no obvious high-dollar-value items, include an analysis of a random sample of items; and

(4) A random sample of the remaining low-dollar value items. Sample size may be determined by subjective judgment, *e.g.,* experience with the offeror and the reliability of its estimating and accounting systems.

■ 9. Amend section 215.408 by—

■ a. Revising paragraph (3)(i)(A)(1) introductory text;

■ b. Revising paragraph (3)(i)(A)(2) introductory text;

■ c. Revising paragraph (3)(i)(B) introductory text; and

■ d. Adding paragraph (6).

The revisions and addition read as follows:

215.408 Solicitation provisions and contract clauses.

* * * * *

(3) * * *

(i)(A) * * *

(*1*) In lieu of 252.215–70XX, Requirement for Data Other Than Certified Cost or Pricing Data, in a solicitation, including solicitations using FAR part 12 procedures for the acquisition of commercial items, for a sole source acquisition from the Canadian Commercial Corporation that is—

* * * * *

(*2*) In lieu of 252.215–70XX in a solicitation, including solicitations using FAR part 12 procedures for the acquisition of commercial items, for a sole source acquisition from the Canadian Commercial Corporation that does not meet the thresholds specified in paragraph (3)(i)(A)(1), if approval is obtained as required at 225.870–4(c)(2)(ii); and

(B) Do not use 252.225–7003 in lieu of 252.215–70XX in competitive acquisitions.

* * * * *

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

(i) Use the provision at 252.215–70XX, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data, in lieu of the provision at FAR 52.215–20 Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data, in solicitations and contracts when it is reasonably certain that the submission of certified cost or pricing data or data other than certified cost or pricing data will be required.

(A) Use the basic provision when the submission of certified cost or pricing data may not be required at the time of solicitation, or when submission of certified cost or pricing data is required to be in the format required by FAR Table 15–2.

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

(ii) Use the provision at 252.215–70YY, Requirements for Submission of Proposals to the Administrative Contracting Officer and Contract Auditor, when using the basic or alternate of the provision at 252.215–70XX if copies of the proposal are to be sent to the ACO and contract auditor.

(iii) Use the provision at 252.215–70ZZ, Requirements for Submission of Proposals via Electronic Media, when using the basic or alternate of the provision at 252.215–70XX if submission via electronic media is required.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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

252.215–70XX Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data.

Basic. As prescribed in 215.408(6)(i) and (6)(i)(A), use the following provision:

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

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

Nongovernment sales means sales of the supplies or services to nongovernmental entities for purposes other than governmental purposes.

Market-based pricing means pricing that results when nongovernmental buyers drive the price in a commercial marketplace. When nongovernmental buyers in a commercial marketplace account for a preponderance (50 percent or more) of sales by volume of a particular item, there is a strong likelihood the pricing is market based.

Relevant sales data means the subset of an offeror's sales data that, as considered by a prudent person, could reasonably be expected to influence the contracting officer's determination of price reasonableness, taking into consideration the age, volume, and nature of the transactions (including any related discounts, refunds, rebates, offsets or other adjustments) in the data subset.

Sufficient nongovernment sales to establish reasonableness of price (see DFARS 215.402(a)(3)(A)) exist when relevant sales data reflects market-based pricing, are made available for the contracting officer to review, and contains enough information to make adjustments covered by FAR 15.404 1(b)(2)(ii)(B).

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

(1) In lieu of submitting certified cost or pricing data, offerors may submit a written request for exception by submitting the information described in the following paragraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable.

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

(ii) *Commercial item exception.* For a commercial item exception, the offeror shall submit, at a minimum, information on prices at which the same item or similar items have previously been sold in the commercial market that is adequate for evaluating the reasonableness of the price for this acquisition. Such information shall include—

(A) For items priced based on a catalog—

(*1*) A copy of the offeror's current catalog showing the price for that item; and

(*2*) Either of the following two alternative statements, included in the proposal:

(*i*) ''The catalog provided with this proposal is consistent with all relevant sales data (including any related discounts, refunds, rebates, offsets or other adjustments). Relevant sales data shall be made available upon request of the contracting officer.''

(*ii*) ''The catalog provided with this proposal is not consistent with all relevant sales data, due to the following: *[Insert a detailed description of differences or inconsistencies between or among the relevant sales data, the proposed price, and the catalog price (including any related discounts, refunds, rebates, offsets or other adjustments).]*'';

(B) For items priced using market-based pricing, a description of: the nature of the commercial market; the methodology used to establish a market-based price; and all relevant sales data. The description shall be adequate to permit the Department of Defense to verify the accuracy of the description. If relevant sales data exist, the Offeror shall make such data available to the contracting officer for review within 10 days of a written request from the contracting officer; and

(C) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.

(2) The Offeror grants the contracting officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this provision, and the reasonableness of price.

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

(1) The Offeror shall prepare and submit certified cost or pricing data, and supporting attachments in accordance with the instructions contained in Table 15–2 of FAR 15.408, which is incorporated by reference with the same force and effect as though it were inserted here in full text. The instructions in Table 15–2 are incorporated as a mandatory format to be used in this contract, unless the Contracting Officer and the Offeror agree to a different format and change this provision to use Alternate I.

(2) As soon as practicable after agreement on price, but before contract award (except for unpriced actions such as letter contracts), the Offeror shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.406–2.

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

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

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

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

(4) Within 10 days of a written request from the contracting officer to the offeror for additional information to support proposal analysis, the Offeror shall either provide the requested information, or provide a written explanation for the inability to fully comply with the request. Before providing an explanation for noncompliance, offerors are encouraged to clarify the request with the contracting officer.

(5) *Subcontract price evaluation.*

(i) Offerors shall obtain from subcontractors whatever information is necessary to support a determination of price reasonableness, as described in FAR part 15 and DFARS art 215. It may include cost data to support a commerciality determination, cost realism analysis, should-cost review, or any other type of analysis addressed by FAR part 15 and DFARS part 215. The data needed from a prospective subcontractor may include data other than certified cost or pricing data (which includes uncertified cost data obtained from the subcontractor), and information on the prices at which the same or similar items have previously been sold.

(ii) No additional cost information may be required from a prospective subcontractor in any case in which there are sufficient nongovernment sales of the same item to establish reasonableness of price.

(iii) If the offeror relies on relevant sales data for similar items to determine the price is reasonable, the Offeror shall obtain only that technical information necessary to support the conclusion that—

(A) The items are technically similar; and,

(B) Any dissimilarities should not produce a material price difference.

(e) The Offeror shall require all prospective subcontractors above the simplified acquisition threshold in FAR part 2 to adhere to the requirements of paragraph (c) of this provision when determining that the proposed prices from prospective lower-tier subcontractors are fair and reasonable.

(End of provision)

Alternate I. As prescribed in 215.408(6)(i) and (6)(i)(B), use the following provision, which includes a different paragraph (c)(1).

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

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

Nongovernment sales means sales of the supplies or services to nongovernmental entities for purposes other than governmental purposes.

Market-based pricing means pricing that results when nongovernmental buyers drive the price in a commercial marketplace. When nongovernmental buyers in a commercial marketplace account for a preponderance (50 percent or more) of sales by volume of a particular item, there is a strong likelihood the pricing is market based.

Relevant sales data means the subset of an offeror's sales data that, as considered by a prudent person, could reasonably be expected to influence the contracting officer's determination of price reasonableness, taking into consideration the age, volume, and nature of the transactions (including any

related discounts, refunds, rebates, offsets or other adjustments) in the data subset.

Sufficient nongovernment sales to establish reasonableness of price (see DFARS 215.402(a)(3)(A)) exist when relevant sales data reflects market-based pricing, are made available for the contracting officer to review, and contains enough information to make adjustments covered by FAR 15.404 1(b)(2)(ii)(B).

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

(1) In lieu of submitting certified cost or pricing data, offerors may submit a written request for exception by submitting the information described in the following paragraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable.

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

(ii) *Commercial item exception.* For a commercial item exception, the offeror shall submit, at a minimum, information on prices at which the same item or similar items have previously been sold in the commercial market that is adequate for evaluating the reasonableness of the price for this acquisition. Such information may include—

(A) For items priced based on a catalog—

(*1*) A copy of the offeror's current catalog showing the price for that item; and

(*2*) Either of the following two alternative statements, included in the proposal:

(*i*) ''The catalog provided with this proposal is consistent with all relevant sales data (including any related discounts, refunds, rebates, offsets or other adjustments). Relevant sales data shall be made available upon request of the contracting officer.''

(*ii*) ''The catalog provided with this proposal is not consistent with all relevant sales data, due to the following: *[Insert a detailed description of differences or inconsistencies between or among the relevant sales data, the proposed price, and the catalog price (including any related discounts, refunds, rebates, offsets or other adjustments).]*'';

(B) For items priced using market-based pricing, a description of the nature of the commercial market; the methodology used to establish a market-based price; and all relevant sales data. The description shall be adequate to permit the Department of Defense to verify the accuracy of the description. If relevant sales data exist, the Offeror shall make such data available to the contracting officer for review within 10 days of a written request from the contracting officer; and

(C) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.

(2) The Offeror grants the contracting officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this provision, and the reasonableness of price.

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

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

(2) As soon as practicable after agreement on price, but before contract award (except for unpriced actions such as letter contracts), the Offeror shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.406–2.

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

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

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

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

(4) Within 10 days of a written request from the contracting officer to the offeror for additional information to support proposal analysis, the Offeror shall either provide the requested information, or provide a written explanation for refusing to comply with the request. Before providing a refusal and explanation, offerors are encouraged to clarify the request with the contracting officer.

(5) *Subcontract price evaluation.*

(i) Offerors shall obtain from subcontractors whatever information is necessary to support a determination of price reasonableness, as described in FAR part 15 and DFARS part 215. The information may include cost data to support a commerciality determination, cost realism analysis, should-cost review, or any other type of analysis addressed by FAR part 15 and DFARS part 215. The data needed from a prospective subcontractor may include data other than certified cost or pricing data (which includes uncertified cost data obtained from the subcontractor), and information on the prices at which the same or similar items have previously been sold.

(ii) No additional cost information may be required from a prospective subcontractor in any case in which there are sufficient nongovernment sales of the same item to establish reasonableness of price.

(iii) If the offeror relies on relevant sales data for similar items to determine the price is reasonable, the Offeror shall obtain only that technical information necessary to support the conclusion that—

(A) The items are technically similar; and

(B) Any dissimilarities should not produce a material price difference.

(e) The Offeror shall require all prospective subcontractors above the simplified acquisition threshold in FAR part 2 to adhere to the requirements of paragraph (c) of this provision when determining that the proposed prices from prospective lower-tier subcontractors are fair and reasonable.

(End of provision)

■ 11. Add section 252.215–70YY to read as follows:

252.215–70YY Requirements for Submission of Proposals to the Administrative Contracting Officer and Contract Auditor.

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

Requirements for Submission of Proposals to the Administrative Contracting Officer and Contract Auditor (DATE)

When the proposal is submitted, the Offeror shall also submit one copy each to—

(a) The Administrative Contracting Officer, and

(b) The Contract Auditor.

(End of provision)

■ 12. Add section 252.215–70ZZ to read as follows:

252.215–70ZZ Requirements for Submission of Proposals via Electronic Media.

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

Requirements for Submission of Proposals Via Electronic Media (DATE)

The Offeror shall submit the cost portion of the proposal via the following electronic media: *[Insert media format, e.g., electronic spreadsheet format, electronic mail, etc.].*

(End of provision)

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