(d) The following representations or certifications in ORCA are applicable to this solicitation as indicated:

(i) 252.209–7005, Reserve Officer Training Corps and Military Recruiting on Campus. This clause applies to all solicitations and contracts with institutions of higher education.

(ii) 252.225–7000, Buy American Act—Balance of Payments Program Certificate. This provision applies to solicitations containing the clause at 252.225–7001, Buy American Act and Balance of Payments Program.

(iii) 252.225–7020, Trade Agreements Certificate. This provision applies to solicitations containing the clause at 252.225–7021, Trade Agreements.

(iv) 252.225–7022, Trade Agreements Certificate—Inclusion of Iraqi End Products. This provision applies to solicitations containing the clause at 252.225–7021, Trade Agreements, used with its Alternate I.

(v) 252.225–7031, Secondary Arab Boycott of Israel. This provision applies to all solicitations unless an exception applies or a waiver has been granted in accordance with 225.7604.

(vi) 252.225–7035, Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate. This provision applies to solicitations that include the clause at 252.225–7036, Buy American Act—Free Trade Agreements—Balance of Payments Program. Alternate I applies when the clause at 252.225–7036 is used with its Alternate I.

(vii) 252.225–7042, Authorization to Perform. This provision applies to solicitations when contract performance will be wholly or in part in a foreign country.

(viii) 252.229–7003, Tax Exemptions (Italy). This clause applies to solicitations and contracts when contract performance will be in Italy.

(ix) 252.229–7005, Tax Exemptions (Spain). This clause applies to solicitations and contracts when contract performance will be in Spain.

(x) 252.247–7022, Representation of Extent of Transportation by Sea. This provision applies to all solicitations except—

(A) Those for direct purchase of ocean transportation services; or

(B) Those with an anticipated value at or below the simplified acquisition threshold.

(e) The offeror has completed the annual representations and certifications electronically via the Online Representations and Certifications Application (ORCA) Web site at *https://orca.bpn.gov/.* After reviewing the ORCA database information, the offeror verifies by submission of the offer that the representations and certifications currently posted electronically that apply to this solicitation as indicated in paragraphs (d) and (e) of this provision have been entered or updated within the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), as of the date of this offer, and are incorporated in this offer by reference (*see* FAR 4.1201); except for the changes identified below [offeror to insert changes, identifying change by clause number, title, date]. These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.

FAR/DFARS Clause #	Title	Date	Change

Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications posted on ORCA.

[FR Doc. 2010–29495 Filed 11–23–10; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 215

Defense Federal Acquisition Regulation Supplement; Discussions Prior to Contract Award (DFARS Case 2010–D013)

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

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to strongly encourage discussions prior to award for source selections of procurements estimated at $100 million or more. The proposed change was recommended by the DoD Source Selection Joint Analysis Team.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before January 24, 2011, to be considered in the formation of the final rule.

ADDRESSES: Submit comments identified by DFARS Case 2010–D013, using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: dfars@osd.mil.* Include DFARS Case 2010–D013 in the subject line of the message.
- *Fax:* 703–602–0350.
- *Mail:* Defense Acquisition Regulations System, Attn: Meredith Murphy, 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 *http://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. Meredith Murphy, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), 3060 Defense Pentagon, Room 3B855, Washington, DC 20301–3060. Telephone 703–602–1302; facsimile 703–602–0350. Please cite DFARS Case 2010–D013.

SUPPLEMENTARY INFORMATION:

I. Background

This DFARS case was initiated at the request of the DoD Source Selection Joint Analysis Team (JAT), chartered by the Deputy Under Secretary of Defense (Acquisition, Technology, and Logistics) to revise the DoD source selection procedures (which are being published separately).

In their examination of current source selection processes utilized within the DoD, members of the JAT determined that there is a significant positive correlation between high-dollar value source selections conducted without discussions and protests sustained. Therefore, to improve the quality of high-dollar value, more complex source selections and reduce turbulence and inefficiency resulting from sustained protests, the JAT recommended that discussions prior to award be strongly encouraged for source selections with a dollar value of $100 million or more.

DoD research has indicated that holding meaningful discussions with industry prior to contract award on high-dollar value, complex requirements improves both industry's understanding of solicitation requirements and the Government's understanding of industry issues. By identifying and discussing these issues prior to submission of final proposals, the Government is often able to issue clarifying language. The modified requirements documentation allows

industry to tailor proposals and better describe the offeror's intended approach, increases the probability that the offeror's proposal satisfies Government requirements, and often results in better contract performance. Asking contracting officers to conduct discussions with industry provides a reasonable approach to recognizing and addressing valid industry concerns and a constructive alternative to protests resulting from industry frustration over misunderstood requirements.

DoD notes the potential disadvantages of this proposed change in increased time to complete the source-selection process and additional workload for acquisition staff. However, failure to hold discussions in high-dollar value, more complex source selections has led to misunderstandings of Government requirements by industry and flaws in the Government's evaluation of offerors' proposals, leading to protests that have been sustained, and ultimately extending source-selection timelines. DoD proposes to decrease the possibility of this outcome by making such discussions the default procedure for source selections for procurements at or above $100 million. However, use of the term "should," as defined in FAR part 2, provides that the expected course of action need not be followed if inappropriate for a particular circumstance.

II. Executive Order 12866

This is not a significant regulatory action and, therefore, is not subject to review under Section 6 of Executive Order 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.,* because the rule does not add to or delete existing regulations on discussions for the vast majority of DoD procurements, *i.e.,* those under $100 million. For the largest procurements of at least $100 million, any increase in discussions is anticipated to benefit all offerors, including small businesses, by providing them an opportunity to explain details of the offer and market their particular capabilities.

An initial regulatory flexibility analysis has been prepared and is summarized as follows: The opportunity to participate in discussions increases the probability of selection for award, as described above. In fiscal year 2009, the most recent fiscal year for which data is available, DoD awarded 620 new contracts and 252 new task orders/delivery orders of $100 million or more to small businesses. While there is no way to determine how many more small businesses may have been selected for high-dollar value DoD awards had discussions been held, it is reasonable to assume that the number would have been higher, thus providing small businesses with a net positive benefit.

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 2010–D013) in correspondence.

IV. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because there are no information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 215

Government procurement.

Clare M. Zebrowski,

Editor, Defense Acquisition Regulations System.

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

1. The authority citation for 48 CFR part 215 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

PART 215—CONTRACTING BY NEGOTIATION

2. Add sections 215.203–71 and 215.209 to read as follows:

215.203–71 Requests for proposals—procurements of $100 million or more.

For source selections when the procurement is $100 million or more, contracting officers should conduct discussions with offerors in the competitive range.

215.209 Solicitation provisions and contract clauses.

(a) For source selections when the procurement is $100 million or more, contracting officers should use the provision at 52.215–1, Instructions to Offerors—Competitive Acquisition, with its Alternate I.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Docket No. NHTSA–2010–0158

Regulation Identifier No. (RIN) 2127–AJ44

Federal Motor Vehicle Safety Standards, Child Restraint Systems; Hybrid III 10-Year-Old Child Test Dummy

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: This document proposes to amend Federal Motor Vehicle Safety Standard (FMVSS) No. 213, *Child Restraint Systems,* regarding a Hybrid III 10-year-old child test dummy that the agency seeks to use in the compliance test procedures of the standard. This document supplements a 2005 notice of proposed rulemaking (NPRM) and a 2008 SNPRM previously published in this rulemaking (RIN 2127–AJ44) regarding this test dummy. In the 2005 NPRM, in response to Anton's Law, NHTSA proposed to adopt the 10-year-old child test dummy into FMVSS No. 213 to test child restraints for older children. Subsequently, to address variation that was found in dummy readings due to chin-to-chest contact, NHTSA published the 2008 SNPRM to propose a NHTSA-developed procedure for positioning the test dummy in belt-positioning seats. Comments on the SNPRM objected to the positioning procedure, and some suggested an alternative procedure developed by the University of Michigan Transportation Research Institute (UMTRI). Today's SNPRM proposes to use the UMTRI procedure to position the test dummy rather than the NHTSA-developed procedure. We note that the 10-year-old child dummy may sometimes experience stiff contact between its chin and upper sternal bib region which may result in an unrealistically high value of the head injury criterion (HIC) [1] referenced in the standard. Accordingly, NHTSA proposes that the dummy's HIC measurement will not be used to assess the compliance of the tested child restraint. This SNPRM also proposes other amendments to FMVSS No. 213, including a proposal to permit NHTSA to use, at the manufacturer's option, the

[1] Throughout this document, HIC refers to the head injury criterion computed using a 36 millisecond (msec) time interval.