

rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building. The filing hours are 8 a.m. to 7 p.m.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:**

Aaron Goldschmidt, Wireless Telecommunications Bureau, (202) 418-7146, or e-mail [Aaron.Goldschmidt@fcc.gov](mailto:Aaron.Goldschmidt@fcc.gov).

**SUPPLEMENTARY INFORMATION:** The FCC has established a Web site, <http://www.fcc.gov/pea>, which contains information and downloadable documents relating to the PEA process, including the Draft PEA. The Web site also allows individuals to contact the Commission. See original published document (proposed rule published at 76 FR 54422, September 1, 2011).

Federal Communications Commission.

**Matthew Nodine,**

*Chief of Staff, Wireless Telecommunications Bureau.*

[FR Doc. 2011-25576 Filed 9-30-11; 11:15 am]

BILLING CODE 6712-01-P

---

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Parts 215, 225, and 252

RIN 0750-AH42

#### Defense Federal Acquisition Regulation Supplement: Contracting With the Canadian Commercial Corporation (DFARS Case 2011-D049)

**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 clarify the requirements for the Canadian Commercial Corporation to submit data other than certified cost or pricing data.

**DATES:** *Comment Date:* Comments on the proposed rule should be submitted in writing to the address shown below on or before December 5, 2011, to be considered in the formation of a final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2011-D049, using any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering “DFARS Case 2011-D049” under the heading “Enter keyword or ID” and selecting “Search.” Select the link “Submit a Comment” that corresponds with “DFARS Case 2011-D049.” Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “DFARS Case 2011-D049” on your attached document.

- *E-mail:* [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2011-D049 in the subject line of the message.

- *Fax:* 703-602-0350.

- *Mail:* Defense Acquisition Regulations System, Attn: Amy G. 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 <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:**

Amy G. Williams, telephone 703-602-0328.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

This proposed rule implements a recommendation of a bilateral integrated product team on cost or pricing data, including representatives from the U.S. Government and Canada.

With some exceptions, as provided at DFARS 225.870-1(c), the Canadian Commercial Corporation awards and administers DoD contracts with contractors located in Canada.

DoD has waived the requirement for the Canadian Commercial Corporation and its subcontractors to submit certified cost or pricing data (see DFARS 215.403-1(c)(4)(C)). However, the requirement to submit data other than certified cost or pricing data has not been waived for the Canadian Commercial Corporation and its subcontractors. The purpose of this rule is to clarify the requirement to submit data other than certified cost or pricing data.

#### II. Discussion and Analysis

Effective on October 1, 2010, the definitions in the Federal Acquisition

Regulation (FAR) relating to cost or pricing data were revised (76 FR 53135, published August 30, 2010). The final rule under FAR Case 2005-036, FAC 2005-45, redefined “cost or pricing data” to mean all cost or pricing data and added a new term for “certified cost or pricing data.” Previously, the term “cost or pricing data” had been defined to mean only what is now defined as “certified cost or pricing data.” Throughout the FAR, the term “cost or pricing data” was generally replaced with the new term “certified cost or pricing data.” The same final rule also replaced the term “information other than cost or pricing data” with the new term “data other than certified cost or pricing data.” The new definition of these terms in the FAR is significant because the conforming changes to the DFARS, currently being processed under DFARS Case 2011-D040, Definition of Cost or Pricing Data, are not yet implemented. Therefore, this rule includes conforming changes to DFARS 215.4, in order to ensure that it is clear that only submission of certified cost or pricing data has been waived for the Canadian Commercial Corporation and its subcontractors.

FAR 15.402 and FAR 15.403-3 address requiring data other than certified cost or pricing data. FAR 15.402 emphasizes obtaining no more data than is necessary to establish a fair and reasonable price. Generally, no additional data is required from the offeror if the price is based on adequate price competition. FAR 15.402(a)(2)(ii)(A) and FAR 15.403-3(a)(1)(iv) both address the exceptions to obtaining data related to prices, i.e., FAR 15.403-1(b)(1) (prices based on adequate price competition) or FAR 15.403-1(b)(2) (prices set by law or regulation). None of these exceptions provides a general exception to the requirement to obtain data other than certified cost or pricing data based on a waiver of the requirement to provide certified cost or pricing data. In fact, FAR 15.403-3(a)(1)(ii) clearly states that in those acquisition that do not require certified cost or pricing data (e.g., when a waiver has been granted), the contracting officer shall obtain data other than certified cost or pricing data from the offeror to the extent necessary to determine a fair and reasonable price if the contracting officer determines that adequate data from sources other than the offeror are not available. FAR 15.403-3(a)(1)(v) recommends consideration of the guidance in section 3.3, chapter 3, volume I, of the Contract Pricing Reference Guide, available at <http://www.acq.osd.mil/dpap/cpf/>

*contract\_pricing\_reference\_guides.html*. The contracting officer would not usually require all of the listed items, but would select only those items necessary in order to determine that the price is fair and reasonable.

In order to facilitate requests for data other than certified cost or pricing data when contracting with the Canadian Commercial Corporation, this rule proposes a new provision, Requirement for Submission of Data Other Than Certified Cost or Pricing Data—Canadian Commercial Corporation, for use in appropriate solicitations with the Canadian Commercial Corporation, and a comparable clause, Requirement for Submission of Data Other Than Certified Cost or Pricing Data—Modifications—Canadian Commercial Corporation, to be included in contracts to cover modifications that may require submission of data other than certified cost or pricing data. This provision and clause are a tailored version of Alternate IV of—

- 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—Modification.

The provision and clause both require the following information:

- Profit rate or fee (as applicable).
- Analysis provided by Public Works and Government Services Canada to Canadian Commercial Corporation to determine a fair and reasonable price (comparable to the analysis required by FAR 15.404–1).

- Data other than certified cost or pricing data necessary to permit an adequate determination by the U.S. contracting officer that the proposed price is fair and reasonable. (The U.S. contracting officer must insert a description of the data required, in accordance with the guidance at 15.403–3(a)(1).)

The rule prescribes use of this provision and clause in solicitations and contracts for sole source acquisitions from the Canadian Commercial Corporation that are expected to result in cost-reimbursement contracts expected to exceed the simplified acquisition threshold or fixed-price contracts expected to exceed \$500 million. The provision and clause may also be used in other solicitations and contracts if the head of the contracting activity, or designee no lower than one level above the contracting officer, determines that such data is needed in order to determine that the price is fair

and reasonable (see FAR 15.403–3(a)(2)).

### 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 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.

### IV. 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 it only impacts Canadian business concerns. No domestic entities will be impacted by this rule. For the definition of “small business”, the Regulatory Flexibility Act refers to the Small Business Act, which in turn allows the U.S. Small Business Administration (SBA) Administrator to specify detailed definitions or standards. 5 U.S.C. 601(3) and 15 U.S.C. 632(a). The SBA regulations at 13 CFR 121.105 discuss who is a small business: “(a)(1) Except for small agricultural cooperatives, a business concern eligible for assistance from SBA as a small business is a business entity organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor.” Therefore, an initial regulatory flexibility analysis has not been performed. 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 2011–D049), in correspondence.

### 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, Cost or Pricing Data Requirements and Information Other Than Cost or Pricing Data.

#### List of Subjects in 48 CFR Parts 215, 225, and 252

Government procurement.

**Ynette R. Shelkin,**

*Editor, Defense Acquisition Regulations System.*

Therefore, 48 CFR parts 215, 225, and 252 are amended as follows:

1. The authority citation for 48 CFR parts 215, 225, and 252 continues to read as follows:

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

#### PART 215—CONTRACTING BY NEGOTIATION

2. Amend section 215.403–1 by revising the heading and revising paragraph (c)(4)(C) to read as follows:

##### 215.403–1 Prohibition on obtaining certified cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. chapter 35).

\* \* \* \* \*

(c) \* \* \*

(4) \* \* \*

(C) DoD has waived the requirement for submission of certified cost or pricing data for the Canadian Commercial Corporation and its subcontractors (but see 215.408(3) and 225.870–4(d)).

\* \* \* \* \*

3. Amend section 215.408 by adding paragraph (3) to read as follows:

##### 215.408 Solicitation provisions and contract clauses.

\* \* \* \* \*

(3) When contracting with the Canadian Commercial Corporation—  
(i) Use the provision at 252.215–70XX, Requirement for Data Other Than Certified Cost or Pricing Data—

(A) In solicitations for sole source acquisitions that are—

(1) Cost-reimbursement, if the contract value is expected to exceed the simplified acquisition threshold; or

(2) Fixed-price, if the contract value is expected to exceed \$500 million; or

(B) In other solicitations, if the head of the contracting activity, or designee

no lower than one level above the contracting officer, determines that data other than certified cost or pricing data is needed in order to determine that the price is fair and reasonable (see FAR 15.403-3(a)(2)); and

(ii) Use the clause at 252.215-70YY, Requirement for Data Other Than Certified Cost or Pricing Data—Modifications—Canadian Commercial Corporation—

(A) In solicitations and contracts for sole source acquisitions that are—

(1) Cost-reimbursement, if the contract value is expected to exceed the simplified acquisition threshold; or

(2) Fixed-price, if the contract value is expected to exceed \$500 million; or

(B) In other solicitations and contracts, if the head of the contracting activity, or designee no lower than one level above the contracting officer, determines that it is reasonably certain that data other than certified cost or pricing data will be needed in order to determine that the price of modifications is fair and reasonable (see FAR 15.403-3(a)(2)).

**PART 225—FOREIGN ACQUISITION**

4. Amend section 225.870-4 by redesignating paragraph (c) as paragraph (d) and adding new paragraph (c) to read as follows:

**225.870-4 Contracting procedures.**

\* \* \* \* \*

(c) *Requirement for data other than certified cost or pricing data.* (1) DoD has waived the requirement for submission of certified cost or pricing data for the Canadian Commercial Corporation and its subcontractors (see 215.403-1(c)(4)(C)).

(2) The Canadian Commercial Corporation is not exempt from the requirement to submit data other than certified cost or pricing data, as defined in FAR 2.101. In accordance with FAR 15.403-3(a)(1)(ii), the contracting officer shall require submission of data other than certified cost or pricing data from the offeror, to the extent necessary to determine a fair and reasonable price.

(3) The contracting officer shall use the provision at 252.215-70XX, Requirement for Data Other Than Certified Cost or Pricing Data—Canadian Commercial Corporation, and the clause at 252.215-70YY, Requirement for Data Other Than Certified Cost or Pricing Data—Modifications—Canadian Commercial Corporation, as prescribed at 215.408(3)(i) and (ii), respectively.

(4) Except for contracts described in 225.870-1(c)(1) through (4), Canadian suppliers will provide required data

other than certified cost or pricing data exclusively through the Canadian Commercial Corporation.

\* \* \* \* \*

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

5. Add section 252.215-70XX to read as follows:

**252.215-70XX Requirement for Submission of Data Other Than Certified Cost or Pricing Data—Canadian Commercial Corporation.**

As prescribed at 215.408(3), use the following provision:

**REQUIREMENT FOR SUBMISSION OF DATA OTHER THAN CERTIFIED COST OR PRICING DATA—CANADIAN COMMERCIAL CORPORATION (DATE)**

(a) Submission of certified cost or pricing data is not required.

(b) Canadian Commercial Corporation shall obtain and provide the following:

- (1) Profit rate or fee (as applicable).
- (2) Analysis provided by Public Works and Government Services Canada to the Canadian Commercial Corporation to determine a fair and reasonable price (comparable to the analysis required at FAR 15.404-1).
- (3) Data other than certified cost or pricing data necessary to permit a determination by the U.S. Contracting Officer that the proposed price is fair and reasonable [U.S. Contracting Officer to insert description of the data required in accordance with 15.403-3(a)(1)].

(End of provision)

6. Add section 252.215-70YY to read as follows:

**252.215-70YY Requirement for Submission of Data Other Than Certified Cost or Pricing Data—Modifications—Canadian Commercial Corporation.**

As prescribed at 215.408(3), use the following clause:

**REQUIREMENT FOR SUBMISSION OF DATA OTHER THAN CERTIFIED COST OR PRICING DATA—MODIFICATIONS—CANADIAN COMMERCIAL CORPORATION (DATE)**

(a) Submission of certified cost or pricing data is not required.

(b) Canadian Commercial Corporation shall obtain and provide the following:

- (1) Profit rate or fee (as applicable).
- (2) Analysis provided by Public Works and Government Services Canada to the Canadian Commercial Corporation to determine a fair and reasonable price (comparable to the analysis required at FAR 15.404-1).
- (3) Data other than certified cost or pricing data necessary to permit a determination by the U.S. Contracting Officer that the proposed price is fair and reasonable [U.S. Contracting Officer to insert description of

the data required in accordance with 15.403-3(a)(1)].

(End of clause.)

[FR Doc. 2011-25237 Filed 10-3-11; 8:45 am]

BILLING CODE 5001-06-P

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

[FWS-R1-ES-2008-0048; MO 92210-0-0008 B2]

**Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Lake Sammamish Kokanee Population of *Oncorhynchus nerka* as an Endangered or Threatened Distinct Population Segment**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of a 12-month petition finding.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the Lake Sammamish kokanee, *Oncorhynchus nerka*, as an endangered or threatened species under the Endangered Species Act of 1973, as amended (Act). After review of all available scientific and commercial information, we find that the Lake Sammamish kokanee population is not a listable entity under the Act and, therefore, listing is not warranted. We ask the public to continue to submit to us any new information that becomes available concerning the taxonomy, biology, ecology, and status of Lake Sammamish kokanee, and to support cooperative conservation efforts for this population.

**DATES:** The finding announced in this document was made on October 4, 2011.

**ADDRESSES:** This finding is available on the Internet at <http://www.regulations.gov> at docket number [FWS-R1-ES-2008-0048]. Supporting documentation we used to prepare this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office, 510 Desmond Drive, SE., Suite 102, Lacey, WA 98503. Please submit any new information, materials, comments, or questions concerning this finding to the above address.

**FOR FURTHER INFORMATION CONTACT:** Ken Berg, Manager, Project Leader, Washington Fish and Wildlife Office, U.S. Fish and Wildlife Service (see