

military department, defense agency, or other DoD component that rendered such determination, and if available, a Government point of contact;

(B) For items priced based on a catalog—

(1) A copy of or identification of the Offeror's current catalog showing the price for that item; and

(2) If the catalog pricing provided with this proposal is not consistent with all relevant sales data, 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);

(C) For items priced based on market pricing, a description of the nature of the commercial market, the methodology used to establish a market price, and all relevant sales data. The description shall be adequate to permit the DoD to verify the accuracy of the description;

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

(E) For items provided by nontraditional defense contractors, a statement that the entity is not currently performing and has not performed, for at least the 1-year period preceding the solicitation of sources by the DoD for the procurement or transaction, any contract or subcontract for the DoD that is subject to full coverage under the cost accounting standards prescribed pursuant to 41 U.S.C. 1502 and the regulations implementing such section.

(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 to determine 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 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 Contracting Officer shall insert the description at the time of issuing the solicitation or specify that the format regularly maintained by the offeror or prospective subcontractor in its business operations will be acceptable. The Contracting Officer may amend the description 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(a)(i) and 215.404-1(b).

(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 for additional information to support proposal analysis, the Offeror shall provide either the requested information, or a written explanation for the inability to fully comply.

(5) *Subcontract price evaluation.* (i) Offerors shall obtain from subcontractors the information necessary to support a determination of price reasonableness, as described in FAR part 15 and DFARS part 215.

(ii) No cost information may be required from a prospective subcontractor in any case in which there are sufficient non-Government 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—

(A) To support the conclusion that items are technically similar; and

(B) To explain any technical differences that account for variances between the proposed prices and the sales data presented.

(e) *Subcontracts.* The Offeror shall insert the substance of this provision, including this paragraph (e), in all subcontracts exceeding the simplified acquisition threshold defined in FAR part 2. The Offeror shall require prospective subcontractors to adhere to the requirements of—

(1) Paragraph (c) and (d) of this provision for subcontracts above the threshold for submission of certified cost or pricing data in FAR 15.403-4; and

(2) Paragraph (d) of this provision for subcontracts exceeding the simplified acquisition threshold defined in FAR part 2.

(End of provision)

■ 16. Add section 252.215-7011 to read as follows:

252.215-7011 Requirements for Submission of Proposals to the Administrative Contracting Officer and Contract Auditor.

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

Requirements for Submission of Proposals to the Administrative Contracting Officer and Contract Auditor (Jan 2018)

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)

■ 17. Add section 252.215-7012 to read as follows:

252.215-7012 Requirements for Submission of Proposals via Electronic Media.

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

Requirements for Submission of Proposals Via Electronic Media (Jan 2018)

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)

■ 18. Add section 252.215-7013 to read as follows:

252.215-7013 Supplies and Services Provided by Nontraditional Defense Contractors.

As prescribed in 215.408(7), use the following provision:

Supplies and Services Provided by Nontraditional Defense Contractors (Jan 2018)

Offerors are advised that in accordance with 10 U.S.C. 2380a, supplies and services provided by a nontraditional defense contractor, as defined in DFARS 212.001, may be treated as commercial items. The decision to apply commercial item procedures to the procurement of supplies and services from a nontraditional defense contractor does not require a commercial item determination and does not mean the supplies or services are commercial.

(End of provision)

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

[Docket DARS-2017-0019]

RIN 0750-AJ68

Defense Federal Acquisition Regulation Supplement: State Sponsor of Terrorism—North Korea (DFARS Case 2018-D004)

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

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal

Acquisition Regulation Supplement (DFARS) to implement the designation by the Department of State of North Korea as a state sponsor of terrorism.

DATES: Effective January 31, 2018.

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

SUPPLEMENTARY INFORMATION:

I. Background

This final rule implements the November 20, 2017, designation by the Department of State of North Korea as a state sponsor of terrorism, in accordance with section 6(j)(1)(A) of the Export Administration Act of 1979. A state sponsor of terrorism is a country, the government of which has repeatedly provided support for acts of international terrorism. The Department of State previously designated North Korea as a state sponsor of terrorism in January 1988, but rescinded the designation in October 2008. Consistent with the November 20, 2017, action, North Korea is added to the list of countries that are state sponsors of terrorism in the definition of “state sponsor of terrorism” in paragraph (a) of the provisions at DFARS 252.225-7049, Prohibition on Acquisition of Commercial Satellite Services from Certain Foreign Entities—Representation; and DFARS 252.225-7050, Disclosure of Ownership or Control by the Government of a Country that is a State Sponsor of Terrorism. The provision at DFARS 252.225-7050 implements 10 U.S.C. 2327, which prohibits DoD from entering into a contract with a firm that is owned or controlled by the government of a country that is a state sponsor of terrorism. The provision at 252.225-7049 implements 10 U.S.C. 2279, which restricts acquisitions of commercial satellite services from any entity—

- Owned by the government of a covered foreign country (China, North Korea, or any state sponsor of terrorism); or
- Planning or expected to provide or use launch or other satellite services under the contract from a covered foreign country.

II. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule only updates the list of countries that are state sponsors of terrorism in the definition of “state sponsors of terrorism” in paragraph (a) of the DFARS provisions 252.225-7049, Prohibition on Acquisition of

Commercial Satellite Services from Certain Foreign Entities—Representation; and DFARS 252.225-7050, Disclosure of Ownership or Control by the Government of a Country that is a State Sponsor of Terrorism. This revision does not impact use of clauses, their applicability to contracts or subcontracts valued at or below the simplified acquisition threshold, or their applicability to contracts or subcontracts for the acquisition of commercial items.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.) 12866, Regulatory Planning and Review, and E.O. 13563, Improving Regulation and Regulatory Review, 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. Executive Order 13771

This rule is not subject to the requirements of E.O. 13771, because the rule is issued with respect to a national security function of the United States.

V. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the Federal Acquisition Regulation (FAR) is codified at Title 41 of the United States Code (formerly known as the Office of Federal Procurement Policy Act). Specifically, 41 U.S.C 1707(a)(1) requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it only adds North Korea to the list of countries that fall within the

DFARS definition of “state sponsors of terrorism,” consistent with the November 20, 2017, designation of the country by the Secretary of State. These requirements affect only the internal operating procedures of the Government.

VI. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section V. of this preamble), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

VII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does apply. However, the changes to these DFARS provisions, do not impose additional information collection requirements or change the burden under two currently approved collections—OMB Control Number 0704-0525, entitled “Foreign Commercial Satellite Services,” and OMB Control Number 0704-0187, entitled “Information Collection in Support of the DoD Acquisition Process (Various Miscellaneous Requirements).”

List of Subjects in 48 CFR Part 252

Government procurement.

Jennifer L. Hawes,
Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR part 252 is amended as follows:

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

- 1. The authority citation for 48 CFR part 252 continues to read as follows:

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

252.225-7049 [Amended]

- 2. Section 252.225-7049 is amended by—
 - a. In the clause heading, removing the date “(OCT 2015)” and adding “(JAN 2018)” in its place; and
 - b. In paragraph (a), the definition of “State sponsor of terrorism”—
 - i. Removing “2405(j)(i)(A))” and adding “2405(j)(1)(A))” in its place; and
 - ii. Adding, after “Iran,” the country of “North Korea”.

252.225-7050 [Amended]

- 3. Section 252.225-7050 is amended by—

■ a. In the clause heading, removing the date “(OCT 2015)” and adding “(JAN 2018)” in its place; and

■ b. In paragraph (a), the definition of “State sponsor of terrorism”, adding

after “Iran,”, the country of “North Korea”.

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