

## PART 215—CONTRACTING BY NEGOTIATION

■ 4. Amend section 215.403–3 by adding paragraph (c) to read as follows:

### 215.403–3 Requiring data other than certified cost or pricing data.

\* \* \* \* \*

(c) *Commercial items.* For determinations of price reasonableness of major weapon systems acquired as commercial items, see 234.7002(d).

## PART 234—MAJOR SYSTEM ACQUISITION

■ 5. Revise section 234.7001 to read as follows:

### 234.7001 Definition.

As used in this subpart—  
*Major weapon system* means a weapon system acquired pursuant to a major defense acquisition program.

■ 6. Amend section 234.7002 by revising paragraph (d) introductory text and adding paragraph (d)(5) to read as follows:

### 234.7002 Policy.

\* \* \* \* \*

(d) \* \* \* See 212.209(a) for requirements of 10 U.S.C. 2377 with regard to market research.

\* \* \* \* \*

(5) An offeror may submit information or analysis relating to the value of a commercial item to aid in the determination of the reasonableness of the price of such item. A contracting officer may consider such information or analysis in addition to the information submitted pursuant to paragraphs (d)(1) and (2) of this section. For additional guidance see PGI 234.7002(d)(5).

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Part 215

[Docket DARS–2020–0015]

RIN 0750–AK91

### Defense Federal Acquisition Regulation Supplement: Repeal of Annual Reporting Requirements to Congressional Defense Committees (DFARS Case 2020–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 a section of the National Defense Authorization Act for Fiscal Year 2018.

**DATES:** Effective June 5, 2020.

**FOR FURTHER INFORMATION CONTACT:** Ms. Kimberly R. Ziegler, telephone 571–372–6095.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

DoD is amending the DFARS to implement section 1051 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 (Pub. L. 115–91). Section 1051 repealed numerous DoD reporting requirements to Congress, to include the annual reporting requirements for commercial items and exceptional case exceptions and waivers under section 817 of the NDAA for FY 2003 (Pub. L. 107–314). The section 817 reporting requirements and guidance regarding exceptions and waivers to cost or pricing data requirements were implemented at DFARS 215.403–3(c). Pursuant to section 1051, this rule removes the reporting requirements and guidance.

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

This rule does not create or revise any solicitation provisions or contract clauses. This rule removes rescinded reporting requirements for exceptions and waivers of cost or pricing data to congressional defense committees.

##### III. 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 Office of Federal Procurement Policy statute (codified at title 41 of the United States Code). 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 the rule merely

removes two statutory reporting requirements that have been rescinded.

#### IV. Executive Orders 12866 and 13563

Executive Orders (E.O.) 12866 and E.O. 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.

#### V. Executive Order 13771

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

#### 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 III. of this preamble), the analytical requirement 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 rule does not contain any 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).

#### List of Subjects in 48 CFR Part 215

Government procurement.

**Jennifer Lee Hawes,**

*Regulatory Control Officer, Defense Acquisition Regulations System.*

Therefore, 48 CFR part 215 is amended as follows:

## PART 215—CONTRACTING BY NEGOTIATION

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

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

■ 2. Amend section 215.403–1 by—

- a. In paragraph (c)(3)(A) removing “PGI 215.403–1(c)(3)(A)” and adding “PGI 215.403–1(c)(3)” in its place;
- b. Removing paragraph (c)(3)(B);
- c. Redesignating paragraph (c)(3)(C) as paragraph (c)(3)(B); and
- d. Revising paragraph (c)(4)(B).

The revision reads 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) \* \* \*

(B) By November 30th of each year, departments and agencies shall provide a report to the Director, Defense Pricing and Contracting, Pricing and Contracting Initiatives (DPC/PCI), of all waivers granted under FAR 15.403–1(b)(4), during the previous fiscal year, for any contract, subcontract, or modification expected to have a value of \$19.5 million or more. See PGI 215.403–1(c)(4)(B) for the format and guidance for the report.

\* \* \* \* \*

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**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Part 225**

[Docket DARS–2018–0004]

RIN 0750–AJ22

**Defense Federal Acquisition Regulation Supplement: Restrictions on Acquisitions From Foreign Sources (DFARS Case 2017–D011); Correction**

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

**ACTION:** Correcting amendments.

**SUMMARY:** On December 21, 2018, DoD published a final rule to implement sections of the National Defense Authorization Act for Fiscal Year 2017, including a section that added Australia and the United Kingdom to the definition of the “National Technology and Industrial Base.” This action corrects several sections of the regulations where the revised definition of the “National Technology and Industrial Base” was inadvertently not implemented. This document corrects the final regulations in order to acquire from Australia or the United Kingdom, without waiver, certain naval vessel components.

**DATES:** Effective June 5, 2020.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy G. Williams, telephone 571–372–6106.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD published a proposed rule in the **Federal Register** at 83 FR 42828 on August 24, 2018, that included implementation of section 881(b) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017. The final rule was published in the **Federal Register** at 83 FR 65560 on December 21, 2018. Section 881(b) amends 10 U.S.C. 2500(1) by adding Australia and the United Kingdom of Great Britain and Northern Ireland to the United States and Canada, as countries within which the activities of the national technology and industrial base are conducted. Title 10 U.S.C. 2534 requires that DoD only procure certain items, if the manufacturer of the items is part of the national technology and industrial base, unless a waiver is granted by the Secretary of Defense (previously delegated to the Under Secretary of Defense (Acquisition, Technology, and Logistics); now the Under Secretary of Defense (Acquisition and Sustainment). The Under Secretary of Defense (Acquisition, Technology and Logistics) had granted annual waivers for certain naval vessel components from the United Kingdom. Such waivers are no longer required now that the United Kingdom is part of the national technology and industrial base.

**II. Discussion and Analysis**

At the time of the final rule, the DFARS addressed the following restrictions of 10 U.S.C. 25234:

Citation	Item	Waiver	Action taken
225.7004 .....	Foreign buses .....	No .....	Added Australia and U.K. at 225.7004–1 and 225.7004–3.
225.7006, 252.225–7037, and 252.225–7038.	Air circuit breakers for naval vessels .....	Yes—U.K. ....	Added Australia and U.K. at 225.7006–1. Added Australia at 252.225–7037(b) and 252.225–7038. Removed the information regarding the U.K. waiver at 225.7006–3(b) and 225.7006–4(a)(2).
225.7010 .....	Certain naval vessel components: gyro-compasses, electronic navigation chart systems, steering controls, pumps, propulsion and machinery control systems, totally enclosed lifeboats.	Yes—U.K. ....	Inadvertently, no action taken.

The actions comparable to those that were taken with regard to the air circuit breakers for naval vessels should have been taken for the other naval vessel components. These naval vessel components are listed in a separate section, because 10 U.S.C. 2534(h) prohibits the use of contract clauses or certifications to implement this restriction. Australia and the United Kingdom should have been added to the

list of countries in the national technology and industrial base at DFARS 225.7010–1 and paragraph (b) addressing the waiver for items from the U.K. at 225.7010–3 should have been removed. Because of the existing waiver for certain naval vessel components from the United Kingdom, this lack of action has only impacted the acquisition of these naval vessel components from Australia.

In addition, there is a section at DFARS 225.7008 that addresses the waiver of restrictions of 10 U.S.C. 2534 in general. For consistency with the new definition of “national technology and industrial base,” Australia and the United Kingdom should have been added to the discussions of satisfactory quality, only one source, and unreasonable costs at DFARS 225.7008(a)(2)(ii) and (iii) and (a)(3)