Procedures, Guidance, and Information (PGI) for additional guidance concerning places of performance.

List of Subjects in 48 CFR Part 207

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR part 207 is amended as follows:

PART 207—ACQUISITION PLANNING

■ 1. The authority citation for 48 CFR part 207 continues to read as follows:

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

■ 2. Add section 207.108 to read as follows:

207.108 Additional requirements for telecommuting.

See PGI 207.108 for additional guidance concerning places of performance.

[FR Doc. 2022–18227 Filed 8–24–22; 8:45 am]

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 225, and 252

[Docket DARS–2022–0020]

RIN 0750–AL61

Defense Federal Acquisition Regulation Supplement: Employment Transparency Regarding Individuals Who Perform Work in the People's Republic of China (DFARS Case 2022–D010)

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

ACTION: Interim rule.

SUMMARY: DoD is issuing an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act that requires a disclosure from entities that employ one or more individuals who will perform work in the People's Republic of China.

DATES: Effective August 25, 2022.

Comments on the interim rule should be submitted in writing to the address shown below on or before October 24, 2022, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2022–D010, using any of the following methods:

○ *Federal eRulemaking Portal: https://www.regulations.gov.* Search for ''DFARS Case 2022–D010.'' Select ''Comment'' and follow the instructions to submit a comment. Please include your name, company name (if any), and ''DFARS Case 2022–D010'' on any attached document.

○ *Email: osd.dfars@mail.mil.* Include DFARS Case 2022–D010 in the subject line of the message.

Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *https://www.regulations.gov,* approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Kimberly Bass, telephone 703–717–3446.

SUPPLEMENTARY INFORMATION:

I. Background

This interim rule revises the DFARS to implement section 855 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2022 (Pub. L. 117–81, 10 U.S.C. 4651 note prec.). Section 855 requires offerors who are covered entities, when submitting a bid or proposal for a covered contract, to disclose their use of workforce and facilities in the People's Republic of China, if they employ one or more individuals who will perform work in the People's Republic of China, unless a national security waiver has been granted. A recurring disclosure is also required for fiscal years 2023 and 2024, for contractors that are covered entities and are a party to one or more covered contracts in each fiscal year, if the contractor employs one or more individuals who perform work in the People's Republic of China on any such contract.

II. Discussion and Analysis

A. Award Restriction

Unless a waiver has been granted, the statutory restriction on the award, renewal, or extension of a covered contract requires the offeror to provide, at the time of an offer, the disclosures required in the solicitation provision at DFARS 252.225–7057, Preaward Disclosure of Employment of Individuals Who Work in the People's Republic of China. The statutory restriction requires contractors to provide the disclosures required in the contract clause at 252.225–7058, Postaward Disclosure of Employment of Individuals Who Work in the People's Republic of China. Specifically, offerors and contractors that are covered entities are required to disclose their use of workforce and facilities in the People's Republic of China, if they employ one or more individuals who will perform work in the People's Republic of China on a covered contract.

B. Preaward Disclosure Requirements

This rule adds in the provision at 252.225–7057, Preaward Disclosure of Employment of Individuals Who Work in the People's Republic of China, the requirement for offerors to disclose their use of workforce and facilities in the People's Republic of China, if the offeror employs one or more individuals who perform work in the People's Republic of China, unless a national security waiver of the disclosure is granted. The preaward disclosure is required at the time the offeror submits an offer.

C. Postaward Disclosure Requirements

The requirement for the postaward disclosures for fiscal years 2023 and 2024 is located in the clause at 252.225–7058, Postaward Disclosure of Employment of Individuals Who Work in the People's Republic of China. These disclosures are required following the contract award for contractors that are covered entities. The postaward disclosures must include the total number of individuals who will perform work in the People's Republic of China on the covered contracts; and a description of the physical presence of the facility, including the street address, where work on the covered contract will be performed.

D. National Security Waiver of Disclosure

The requirement for the national security waiver of disclosure is added at DFARS 225.7021–3. The disclosure requirements may be waived if the senior procurement executive determines in writing that such disclosure would not be in the national security interests of the United States. The waiver authority may not be delegated. A cross-reference is provided to DFARS PGI 225.7021–4(a) to provide guidance on requirements for the senior procurement executive's determination.

E. Definitions

Definitions for ''covered contract'' and ''covered entity'' are included at 225.7021–1 as defined in the statute. ''Covered contract'' is defined as any DoD contract or subcontract with a value in excess of $5 million and excludes contracts for commercial

items. ''Covered entity'' is defined as any corporation, company, limited liability, limited partnership, business trust, business association or similar entity, including any subsidiary thereof performing work on a covered contract in the People's Republic of China.

F. Lists of Laws Not Applicable to Commercial Items

The statute does not apply to commercial contracts and subcontracts. Accordingly, 10 U.S.C. 4651 note prec. is added to the lists of laws that are not applicable to commercial items at DFARS 212.503, Applicability of certain laws to executive agency contracts for the acquisition of commercial items; and 212.504, Applicability of certain laws to subcontracts for the acquisition of commercial items. At 212.503, paragraph (ix), 107 Stat 1720 (Section 843(a), Pub. L. 103–160), Reporting Requirement Regarding Dealings with Terrorist Countries, is removed, as the statute expired on September 30, 1996.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Services and Commercial Products, Including Commercially Available Off-the-Shelf (COTS) Items

This rule creates a new solicitation provision and contract clause: (1) DFARS 252.225–7057, Preaward Disclosure of Employment of Individuals Who Work in the People's Republic of China; and (2) DFARS 252.225–7058, Postaward Disclosure of Employment of Individuals Who Work in the People's Republic of China. The solicitation provision at DFARS 252.225–7057 is prescribed at DFARS 225.7021–5(a) for use in solicitations that include the clause at DFARS 252.225–7058. The contract clause at DFARS 252.225–7058 is prescribed at DFARS 225.7021–5(b) for use in solicitations and contracts with an estimated value in excess of $5 million unless a waiver has been granted. Section 855 of the NDAA for FY 2022 applies to covered contracts valued in excess of $5 million, excluding contracts for commercial products or commercial services. Therefore, DoD is not applying the rule to contracts at or below the SAT or to contracts for the acquisition of commercial services or commercial products, including COTS items.

IV. Expected Impact of the Rule

The contracting officer will be required to insert the new solicitation provision and contract clause in solicitations and resulting contracts with a value in excess of $5 million, excluding contracts for commercial items. Contractors will be required to include the clause in subcontracts with a value in excess of $5 million, excluding subcontracts for commercial items. The offeror's preaward disclosure is required when the offeror that is a covered entity submits a proposal in response to a solicitation for a covered contract. The solicitation provision requires the offeror to disclose their proposed use of workforce and facilities in the People's Republic of China, if the offeror employs one or more individuals who will perform work in the People's Republic of China on a covered contract.

The contractor's postaward disclosure is also required for fiscal years 2023 and 2024, to disclose if the contractor that is a covered entity employs one or more individuals who perform work in the People's Republic of China on a covered contract. The disclosure must include the total number of individuals who will perform work in the People's Republic of China on the contract; and a description of the exact street location of the physical presence in China where the work on the contract will be performed. The postaward disclosure requirements will flow down to subcontracts that meet the definition of ''covered contract.''

In order to provide the disclosures, offerors, contractors, and subcontractors will need to maintain records of the information required for the disclosures, ensuring that the information is available when needed.

V. 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.

VI. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804.

VII. Regulatory Flexibility Act

DoD does not expect this interim 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 data analysis revealed no impacted small entities. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

This rule is required to implement section 855 of the National Defense Authorization Act (NDAA) for Fiscal Year 2022 (Pub. L. 117–81, 10 U.S.C. 4651 note prec.).

The objective of the rule is implement section 855 of the NDAA for FY 2022 to require offerors when submitting a proposal for a covered contract to disclose their use of workforce and facilities in the People's Republic of China, if they employ one or more individuals who will perform work in the People's Republic of China, unless a national security waiver has been granted. A national security waiver may be granted if a determination is made that such disclosure would not be in the interest of national security. Recurring disclosures are required following contract award for contractors that are covered entities for fiscal years 2023 and 2024. The initial and recurring disclosures must include the total number of individuals who will perform work in the People's Republic of China on the covered contracts and a description of the physical presence of the facility, including the street address, where work on the covered contract will be performed.

Data from the Federal Procurement Data System (FPDS) was analyzed for fiscal years 2019, 2020, and 2021, purchases of supplies or end products and services for which the place of manufacture, place of performance, or country of the product's origin is China; with a value above $5 million; and excluding commercial items and commercially available off-the-shelf (COTS) items. The FPDS data revealed no awards that met these criteria.

In addition, a data analysis was performed on the North Atlantic Treaty Organization (NATO) Commercial and Government Entity (NCAGE) codes from the NATO Support and Procurement Agency for entities located in the

People's Republic of China, including Hong Kong. This review revealed a total of 5,143 entities. There were 4,706 entities in the People's Republic of China with NCAGE codes, and 437 entities in Hong Kong with NCAGE codes. This list of NCAGE codes was compared to any People's Republic of China or Hong Kong NCAGE codes from the FPDS data results for a list of contract awards in fiscal years 2019, 2020, and 2021. Similarly, there were no contract awards to any unique entities or small entities meeting the criteria.

There are projected reporting or recordkeeping requirements, and there may be costs to ensure compliance. The contractor's postaward disclosure is required for fiscal years 2023 and 2024, if the contractor that is a covered entity employs one or more individuals who perform work in the People's Republic of China on a covered contract. The disclosure must include the total number of individuals who will perform work in the People's Republic of China on the contract and a description of the exact street location of the physical presence in China where the work on the contract will be performed.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

DoD was unable to identify any other alternatives that would reduce burden on small businesses and still meet the objectives of the statute.

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 2022–D010), in correspondence.

VIII. Paperwork Reduction Act

This 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). This information collection requirement has been assigned OMB Control Number 0750–0005, entitled Defense Federal Acquisition Regulation Supplement (DFARS), Disclosure of Employment of Individuals Who Work in the People's Republic of China. The DFARS rule adds preaward and postaward disclosure requirements.

A. Estimate of Public Reporting Burden

Public reporting burden for this collection of information is estimated to average approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden estimated as follows:

Respondents: 30.

Responses per respondent: approximately 1.6.

Total annual responses: 50.

Preparation hours per response: 1.

Total response burden hours: 50.

B. Request for Comments Regarding Paperwork Burden

Written comments and recommendations on the proposed information collection, including suggestions for reducing this burden, should be sent to Ms. Susan Minson at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503, or email *Susan_M._Minson@omb.eop.gov,* with a copy to the Defense Acquisition Regulations System, Attn: Ms. Kimberly Bass, at *osd.dfars@mail.mil.* Comments can be received from 30 to 60 days after the date of this notice, but comments to OMB will be most useful if received by OMB within 30 days after the date of this notice.

Public comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the DFARS, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please contact Defense Acquisition Regulations System, Attn: Ms. Kimberly Bass, via email at *osd.dfars@mail.mil.* Include DFARS Case 2022–D010 in the subject line of the message.

IX. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. Implementation of the disclosure requirements is urgent, because section 855 of the NDAA for FY 2022 requires DoD to collect preaward disclosures beginning in FY 2022 and postaward disclosures beginning in FY 2023. The disclosures are necessary to mitigate the risk associated with performance of DoD contracts and subcontracts at facilities located in the People's Republic of China. Performance of a contract, whether classified or unclassified, in a nation that is not our ally may provide opportunities for that nation to gather sensitive information. It is a matter of national security to be aware of the entities, contracts, and subcontracts that are exposed to such risks, so that mitigation strategies can be implemented. However, pursuant to 41 U.S.C. 1707 and Federal Acquisition Regulation 1.501–3(b), DoD will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 212, 225, and 252

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 212, 225, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 212, 225, and 252 continues to read as follows:

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

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 2. Amend section 212.503 by revising paragraph (a)(ix) to read as follows:

212.503 Applicability of certain laws to executive agency contracts for the acquisition of commercial items.

(a) * * *

(ix) 10 U.S.C. 4651, note prec. (section 855, Pub. L. 117–81), Employment Transparency Regarding Individuals Who Perform Work in the People's Republic of China.

* * * * *

■ 3. Amend section 212.504 by—

■ a. Redesignating paragraphs (a)(xvi) and (xvii) as paragraphs (a)(xvii) and (xviii); and

■ b. Adding a new paragraph (a)(xvi) to read as follows:

212.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.

(a) * * *

(xvi) 10 U.S.C. 4651, note prec. (section 855, Pub. L. 117–81),

Employment Transparency Regarding Individuals Who Perform Work in the People's Republic of China.

* * * * *

PART 225—FOREIGN ACQUISITION

■ 4. Add sections 225.7021, 225.7021–1, 225.7021–2, 225.7021–3, and 225.7021–4 to subpart 225.70 to read as follows:

* * * * *

Sec.

225.7021 Disclosure requirements for employment transparency regarding individuals who perform work in the People's Republic of China.

225.7021–1 Definitions.

225.7021–2 Restrictions.

225.7021–3 National security waiver of disclosure.

225.7021–4 Solicitation provision and contract clause.

* * * * *

225.7021 Disclosure requirements for employment transparency regarding individuals who perform work in the People's Republic of China.

See PGI 225.7021 for additional procedures regarding disclosures.

225.7021–1 Definitions.

As used in this section—

Covered contract means any DoD contract or subcontract with a value in excess of $5 million, not including contracts for commercial items.

Covered entity means any corporation, company, limited liability company, limited partnership, business trust, business association, or other similar entity, including any subsidiary thereof, performing work on a covered contract in the People's Republic of China, including by leasing or owning real property used in the performance of the covered contract in the People's Republic of China.

225.7021–2 Restrictions.

In accordance with section 855 of the National Defense Authorization Act for Fiscal Year 2022 (Pub. L. 117–81, 10 U.S.C. 4651 note prec.), do not award, extend, or exercise an option on a covered contract unless a covered entity has submitted each required disclosure.

225.7021–3 National security waiver of disclosure.

The senior procurement executive (SPE) may waive the disclosure requirements at 225.7021–2 if the SPE determines in writing that such disclosure would not be in the national security interests of the United States. This authority may not be delegated. See PGI 225.7021–3 for procedures and content requirements regarding the SPE's written determination.

225.7021–4 Solicitation provision and contract clause.

(a) Use the provision at 252.225–7057, Preaward Disclosure of Employment of Individuals Who Work in the People's Republic of China, in solicitations that include the clause at 252.225–7058.

(b) Unless a waiver has been granted, use the clause at 252.225–7058, Postaward Disclosure of Employment of Individuals Who Work in the People's Republic of China, in solicitations and contracts with an estimated value in excess of $5 million.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Add sections 252.225–7057 and 252.225–7058 to read as follows:

252.225–7057 Preaward Disclosure of Employment of Individuals Who Work in the People's Republic of China.

As prescribed in 225.7021–4(a), use the following provision:

Preaward Disclosure of Employment of Individuals Who Work in the People's Republic of China (Aug 2022)

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

Covered contract and *covered entity* have the meaning given in the clause 252.225–7058, Postaward Disclosure of Employment of Individuals Who Work in the People's Republic of China.

(b) *Prohibition on award.* In accordance with section 855 of the National Defense Authorization Act for Fiscal Year 2022 (Pub. L. 117–81, 10 U.S.C. 4651 note prec.), DoD may not award a contract to the Offeror if it is a covered entity and proposes to employ one or more individuals who will perform work in the People's Republic of China on a covered contract, unless the Offeror has disclosed its use of workforce and facilities in the People's Republic of China.

(c) *Preaward disclosure requirement.* At the time of submission of an offer for a covered contract, an Offeror that is a covered entity shall provide disclosures to include—

(1) The proposed use of workforce on a covered contract or subcontract, if the Offeror employs one or more individuals who perform work in the People's Republic of China;

(2) The total number of such individuals who will perform work in the People's Republic of China; and

(3) A description of the physical presence, including street address or addresses, in the People's Republic of China, where work on the covered contract will be performed.

(End of provision)

252.225–7058 Postaward Disclosure of Employment of Individuals Who Work in the People's Republic of China.

As prescribed in 225.7021–4(b), use the following clause:

Postaward Disclosure of Employment of Individuals Who Work in The People's Republic of China (Aug 2022)

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

Covered contract means any DoD contract or subcontract with a value in excess of $5 million, not including contracts for commercial items.

Covered entity means any corporation, company, limited liability company, limited partnership, business trust, business association, or other similar entity, including any subsidiary thereof, performing work on a covered contract in the People's Republic of China, including by leasing or owning real property used in the performance of the covered contract in the People's Republic of China.

(b) *Disclosure requirement.* (1) In accordance with section 855 of the National Defense Authorization Act for Fiscal Year 2022 (Pub. L. 117–81, 10 U.S.C. 4651 note prec.), DoD may not award, extend, or exercise an option on a covered contract with a covered entity unless such covered entity submits each required disclosure of its use of workforce and facilities in the People's Republic of China, if it employs one or more individuals who perform work in the People's Republic of China on a covered contract.

(2) If the Contractor is a covered entity, the Contractor shall disclose for the Government's fiscal years 2023 and 2024, the Contractor's employment of one or more individuals who perform work in the People's Republic of China on any covered contract. The disclosures shall include—

(i) The total number of such individuals who perform work in the People's Republic of China on the covered contracts funded by DoD; and

(ii) A description of the physical presence, including street address or addresses in the People's Republic of China, where work on the covered contract is performed.

(c) *Subcontracts.* The Contractor shall insert this clause, including this paragraph (c), without alteration other than to identify the appropriate parties, in all subcontracts that meet the definition of a covered contract.

(End of clause)

[FR Doc. 2022–18226 Filed 8–24–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 225, and 252

[Docket DARS–2020–0035]

RIN 0750–AK94

Defense Federal Acquisition Regulation Supplement: Restriction on Acquisition of Tantalum (DFARS Case 2020–D007)

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