PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

208.404 [Amended]

■ 2. Amend section 208.404, in paragraph (a)(iv), by removing ''215.408(3)'' and ''215.408(4)'' and adding ''215.371–6'' and ''215.408(3)'' in their place, respectively.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

212.301 [Amended]

■ 3. Amend section 212.301 by—
■ a. In paragraph (f)(vi)(A), removing ''215.408(3)(i)'' and adding ''215.408(2)(i)'' in its place;
■ b. In paragraph (f)(vi)(B), removing ''215.408(3)(ii)'' and adding ''215.408(2)(ii)'' in its place;
■ c. In paragraph (f)(vi)(D), removing ''215.408(4)'' and adding ''215.408(3)'' in its place;
■ d. In paragraph (f)(vi)(E), removing ''215.408(6)(i)'' and adding ''215.408(5)(i)'' in its place;
■ e. In paragraph (f)(vi)(E)(*1*), removing ''215.408(6)(i)(A)'' and adding ''215.408(5)(i)(A)'' in its place; and
■ f. In paragraph (f)(vi)(E)(*2*), removing ''215.408(6)(i)(B)'' and adding ''215.408(5)(i)(B)'' in its place.

PART 214—SEALED BIDDING

214.201–6 [Amended]

■ 4. Amend section 214.201–6 by removing ''215.408(3) and (4)'' and adding ''215.371–6 and 215.408(3)'' in its place.

PART 215—CONTRACTING BY NEGOTIATION

215.408 [Amended]

■ 5. Amend section 215.408 by—
■ a. Removing paragraph (1);
■ b. Redesignating paragraphs (2) through (7) as paragraphs (1) through (6);
■ c. In newly redesignated paragraph (2)(i)(A)(*2*), removing ''paragraph (3)(i)(A)(*1*)'' and adding ''paragraph (2)(i)(A)(*1*) of this section'' in its place; and
■ d. In newly redesignated paragraphs (2)(ii)(A)(*2*) and (2)(ii)(A)(*3*)(*i*), removing ''paragraph (3)(ii)(A) (*1*)'' and adding ''paragraph (2)(ii)(A)(*1*) of this section'' in its place.

PART 216—TYPES OF CONTRACTS

216.506 [Amended]

■ 6. Amend section 216.506, in paragraph (S–70), by removing ''215.408(3) and (4)'' and adding ''215.371–6 and 215.408(3)'' in its place.

PART 225—FOREIGN ACQUISITION

225.870–4 [Amended]

■ 7. Amend section 225.870–4, in paragraph (c)(3), by removing ''215.408(3)(i) and (ii)'' and adding ''215.408(2)(i) and (ii)'' in its place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.215–7000 [Removed and Reserved]

■ 8. Remove and reserve 252.215–7000.

252.215–7002 [Amended]

■ 9. Amend section 252.215–7002, in the introductory text, by removing ''215.408(2)'' and adding ''215.408(1)'' in its place.

252.215–7003 [Amended]

■ 10. Amend section 252.215–7003, in the introductory text, by removing ''215.408(3)(i)'' and adding ''215.408(2)(i)'' in its place.

252.215–7004 [Amended]

■ 11. Amend section 252.215–7004, in the introductory text, by removing ''215.408(3)(ii)'' and adding ''215.408(2)(ii)'' in its place.

252.215–7008 [Amended]

■ 12. Amend section 252.215–7008, in the introductory text, by removing ''215.408(4)'' and adding ''215.408(3)'' in its place.

252.215–7009 [Amended]

■ 13. Amend section 252.215–7009 by, in the Basic clause introductory text, removing ''215.408(5)'' and adding ''215.408(4)'' in its place.

252.215–7010 [Amended]

■ 14. Amend section 252.215–7010 by—
■ a. In the Basic clause introductory text, removing ''215.408(6)(i) and (6)(i)(A)'' and adding ''215.408(5)(i) and (5)(i)(A)'' in its place; and
■ b. In the Alternate I clause introductory text, removing ''215.408(6)(i) and (6)(i)(B)'' and adding ''215.408(5)(i) and (5)(i)(B)'' in its place.

252.215–7011 [Amended]

■ 15. Amend section 252.215–7011, in the introductory text, by removing ''215.408(6)(ii)'' and adding ''215.408(5)(ii)'' in its place.

252.215–7012 [Amended]

■ 16. Amend section 252.215–7012, in the introductory text, by removing ''215.408(6)(iii)'' and adding ''215.408(5)(iii)'' in its place.

252.215–7013 [Amended]

■ 17. Amend section 252.215–7013, in the introductory text, by removing ''215.408(7)'' and adding ''215.408(6)'' in its place.

[FR Doc. 2018–14044 Filed 6–28–18; 8:45 am]

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 202, 215, 225, and 252

[Docket–DARS–2015–0027]

RIN 0750–AI59

Defense Federal Acquisition Regulation Supplement: Offset Costs (DFARS Case 2015–D028)

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 2016 related to costs associated with indirect offsets under foreign military sales (FMS) agreements and expand on the prior interim rule guidance related to FMS offset costs.

DATES: Effective June 29, 2018.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Gomersall, telephone 571–372–6176.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published an interim rule in the **Federal Register** (80 FR 31309) on June 2, 2015, to amend the DFARS to state that all offset costs that involve benefits provided by the U.S. defense contractor to the FMS customer that are unrelated to the item being purchased under the Letter of Offer and Acceptance (LOA) (indirect offset costs) are deemed reasonable, with no further analysis necessary on the part of the contracting officer, provided that the U.S. defense contractor submits to the contracting officer a signed offset agreement or other documentation showing that the FMS customer has made the provision of an indirect offset of a certain dollar value a condition of the FMS acquisition.

To expand on the interim rule guidance and incorporate the requirements of section 812 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2016, DoD

published a subsequent proposed rule in the **Federal Register** (81 FR 78015) on November 4, 2016.

Section 812 of the NDAA for FY 2016 amended 10 U.S.C. 2306a(b)(1) to state that submission of certified cost or pricing data shall not be required in the case of a contract, a subcontract, or modification of a contract or subcontract to the extent such data—

(i) Relates to an offset agreement in connection with a contract for the sale of a weapon system or defense-related item to a foreign country or foreign firm; and

(ii) Does not relate to a contract or subcontract under the offset agreement for work performed in such foreign country or by such foreign firm that is directly related to the weapon system or defense-related item being purchased under the contract.

II. Discussion and Analysis

One respondent submitted public comments in response to the proposed rule. DoD reviewed the public comments in the development of this final rule. A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows:

A. Summary of Significant Changes

In addition to the interim rule revisions to DFARS 225.7303–2, Cost of doing business with a foreign government or an international organization, this final rule includes the proposed rule amendments to revise 215.403–1(b), Exceptions to certified cost or pricing data requirements, and adds clause 252.215–7014, Exception from Certified Cost or Pricing Data Requirements for Foreign Military Sales Indirect Offsets.

In response to public comments, the definitions of ''direct offset'' and ''indirect offset'' have been revised, and the title of DFARS Clause 252.215–7014 has been revised.

B. Analysis of Public Comments

1. Definition of ''direct offsets''

Comment: The respondent stated that the definition of ''direct offsets'' in the proposed rule is too broad to satisfy the statutory requirements, and leaves room for ambiguity in determining whether an offset requirement is indirect or direct. In some cases, there may be indirect offset projects that are related to the item being purchased, but not part of the FMS procurement itself, such as a maintenance facility for the item that is being offered. The definition for direct offsets should be limited to manufacturing or services performed by a foreign supplier to fulfill the specific FMS contract deliverable. For example, the respondent explained that FMS customers are increasingly interested in maintaining their aircraft throughout the lifecycle and are requesting projects from U.S. aerospace companies that involve maintenance, repair, overhaul, and simulation capability. Related products and services that are needed to operate, maintain, and/or sustain the item, but are not part of the scope or directly procured under the LOA, including training and maintenance activities, are not direct offsets.

Moreover, although it is correct that direct offsets are ''generally . . . performed within a specific period,'' this is not necessarily a distinguishing characteristic for a direct offset, and may lead to confusion. The respondent, however, recommended adding the clarifying phrase ''integral to the deliverable of the FMS contract'' in the definition, because it reinforces that direct offsets are directly related to the system offered in the LOA.

Response: DoD concurs with the respondent's recommendation in part. The first sentence of the direct offset definition is revised to provide that a direct offset involves benefits or obligations, including supplies or services, that are directly related to the item being purchased and are integral to the deliverable of the FMS contract. However, the definition still states that, generally, direct offsets must be performed within a specific period, because they are integral to the deliverable of the FMS contract, to provide a bright line discriminator between direct and indirect offsets.

2. Definition of ''indirect offsets''

Comment: The respondent recommended revising the definition of ''indirect offsets'' to provide clarity for the contracting officers to identify indirect offsets and enable FMS customers to obtain the offset benefits they need without the additional cost and time of having the contractor propose and negotiate an offset program subject to Federal Acquisition Regulation (FAR) parts 15 and 31, thereby fulfilling the intention of section 812 of the NDAA for FY 2016. Foreign customers are increasingly looking for indirect offset projects that are not integral to the items being purchased in an LOA, but that may be related to the defense articles. Without revision to this definition, contracting officers could mistakenly view these indirect offset projects as direct offsets. In addition, offsets are not necessarily in fulfillment of an FMS contract. Since offsets are executed under a separate offset agreement, the offset customer is not always the same as the supply contract customer, and the offset authority may have different offset project priorities than the supply contract customer.

Response: DoD concurs with the respondent's recommendation and has revised the definition of indirect offsets.

3. Definition of ''offset costs''

Comment: The respondent recommended revising the definition of ''offset costs.'' Generally, offsets are implemented in accordance with a foreign purchaser's national offset requirements. These requirements can differ from country to country, and not all offset transactions may be deemed to be required. Offsets are frequently agreed to in a contractual commitment and are not addressed explicitly in the LOA. Accordingly, the definition of offset costs should be modified to address these circumstances.

Response: DoD disagrees with this recommendation. For offsets to be included in FMS contracts, they must be required (explicitly or implicitly) as a condition of foreign military sales.

4. Offset Agreements

Comment: The respondent recommended removing the word ''Agreements'' from the title for DFARS clause 252.215–7014. The distinction between direct and indirect offsets is typically made at the project level, not at the agreement level. An FMS customer may include requirements for both direct and indirect projects in a single offset agreement. A reference here to an Agreement is overbroad and is certain to cause confusion in the implementation.

Response: DoD concurs with the respondent's recommendation and has revised the title of DFARS clause 252.215–7014, accordingly.

5. Appropriate Documentation

Comment: The respondent believes that the administrative requirement for evidence to show that the FMS customer has ''made the provision of an indirect offset a condition of the FMS acquisition'' and that such evidence support the specific acquisition is unnecessary, onerous, and not responsive to statutory guidance provided in section 812 of the NDAA for FY 2016.

The respondent concurs with prior public comments to the interim rule which stated that, ''a country's offset guidelines may allow for both direct and indirect projects, but the defense contractor and foreign government might not decide on a specific mix of

direct versus indirect projects until after the LOA is signed. As such, this requirement could effectively negate much of the benefit of this rule.''

The respondent explained that in practice, an offset agreement may not specify an indirect offset requirement, but rather the overall offset obligation that can be fulfilled with both direct and indirect offset projects. Moreover, many offset agreements do not require offset obligation percentages or minimum direct/indirect offset requirements. A country's offset requirements may also flow down to items (products or services) that are affiliated with sales that are being supplied by, but not limited to, Government-furnished equipment, or lower tier defense contractors. In such cases, a contractor may have no ''evidence'' to provide of the requirement related to the specific acquisition other than the requirements outlined in the foreign law, regulation, policy, or other general guidance.

The intent of section 812 of the NDAA for FY 2016 was to eliminate the need for an unnecessary and time-consuming review of offsets that are negotiated directly between the contractor and foreign customer. A combination of the ''FMS customer's offset guidelines, requirements, regulations or law, policy or historical requirements'' should be a sufficient showing of evidence for an offset requirement.

The respondent recommended that contracting officers accept that the contractor has an indirect offset requirement, if so stated, since a contractor claiming an offset requirement where none exists would be subject to other laws and regulations governing such false claims.

Response: It is not an unreasonable requirement for contractors to provide the contracting officer a signed offset agreement or other documentation showing that the FMS customer has made the provision of an indirect offset a condition of the FMS acquisition as a condition for deeming indirect offset costs to be reasonable for purposes of FAR parts 15 and 31 with no further analysis necessary. Therefore, no revisions are necessary.

6. Administrative Costs

Comment: The respondent believed that administration costs should not be distinguishable from other indirect costs for the purposes of this rule. As stated, ''indirect offset costs are deemed reasonable for purposes of FAR parts 15 and 31 with no further analysis necessary on the part of the contracting officer. . . .'' Similarly, section 812 of the NDAA for FY 2016 makes no such distinction between indirect offset administration costs and other costs.

The respondent further stated that it is unclear what administration costs might be envisioned for further review. For example, travel and project execution costs might be deemed administrative costs. Since these costs would not be determined until the offset projects are defined, such costs might also not be determined until after the LOA is signed.

The respondent explained that the intent of the statutory and regulatory guidance related to indirect offset costs was to ensure that contracting officers did not have to conduct reasonableness analysis in these instances. Contracting officers should not have a greater requirement to parse out indirect administration costs for which they have no greater knowledge and expertise than the indirect offset costs in total.

The respondent suggested that the definitions for ''direct'' and ''indirect'' offsets should provide sufficient clarification for contracting officers to ensure that the final rule implements the statutory requirement that those costs not directly related to the system or item being purchased under the LOA are not subjected to certified pricing requirements.

Therefore, the respondent believed that it is not appropriate or necessary for a contracting officer to engage in cost reasonableness analysis for administration costs related to indirect offsets. The respondent recommended that the final rule should make clear that all indirect offset costs are deemed reasonable for the purposes of FAR parts 15 and 31 with no further analysis necessary on the part of the contracting officer, and that the rule applies to all indirect offset costs, including any administrative costs.

Response: The definitions for ''direct'' and ''indirect'' offsets provides sufficient clarification for contracting officers to ensure that those costs not directly related to the item being purchased or integral to the deliverable of the FMS contract are not subjected to certified pricing requirements. No further clarification is required.

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

This rule clarifies requirements related to costs associated with indirect offsets under Foreign Military Sales agreements. The revisions do not add any new burdens or impact applicability of clauses and provisions at or below the simplified acquisition threshold, or to commercial items.

IV. 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. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This rule is not an E.O. 13771, Reducing Regulation and Controlling Regulatory Costs, regulatory action, because this rule is not significant under E.O. 12866.

VI. Regulatory Flexibility Act

A final regulatory flexibility analysis has been performed and is summarized as follows:

The objective of this rule is to incorporate the requirements of section 812 of the National Defense Authorization Act of 2016 to provide clarification to contracting officers when indirect offsets are a condition of an FMS acquisition. This rule revises DFARS 225.7303–2, ''Cost of doing business with a foreign government or an international organization'' by adding paragraph (a)(3)(iii) to provide guidelines to contracting officers when an indirect offset is a condition of a Foreign Military Sales (FMS) acquisition. This rule specifically addresses indirect offsets as they are applied to the Defense Security Cooperation Agency's FMS cases. This rule is necessitated by the recent and foreseeable trend of increasing numbers and complexity of indirect offsets desired by DoD FMS customers.

DoD administers FMS programs with partner nations to maintain and strengthen relationships with nations that if not nurtured through these partnerships may threaten national security. The Department's FMS program allows foreign customers to request, and pay for, through inclusion of the cost in the FMS Letter of Offer and Acceptance (LOA) and DoD contract, offsets that are directly related

to the FMS end items (*i.e.,* ''direct offsets''), as well as offsets that are not directly related to the end item (*i.e.,* ''indirect offsets'').

DoD recognizes the need to have offsets embedded in DoD FMS contracts. However, the decision whether to engage in indirect offsets, and the responsibility for negotiating and implementing these offset arrangements, ultimately reside with the FMS customer and contractor(s) involved. Thus, the DoD contracting officer is not provided the information necessary to negotiate cost or price of the indirect offsets, particularly with respect to price reasonableness determinations pursuant to FAR part 15. This rule provides that under these circumstances, when the provision of an indirect offset is a condition of the FMS acquisition and provided that the U.S. defense contractor submits to the contracting officer an offset agreement or other substantiating documentation, those indirect offset costs are deemed reasonable for the purposes of FAR part 31.

There were no significant issues raised by the public in response to the initial regulatory flexibility analysis.

DoD does not expect this rule to have a significant impact on the small businesses that may be affected by this rule, because the DFARS amendments merely clarify that contracting officers are not responsible for making a determination of price reasonableness for indirect offset agreements for which they have no purview.

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.*

There is no change to reporting or recordkeeping as a result of this rule. The rule does not duplicate, overlap, or conflict with any other Federal rules, and there are no known significant alternative approaches to the rule that would meet the requirements.

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 Parts 202, 215, 225, and 252

Government procurement.

Amy G. Williams,

Deputy, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 202, 215, 225, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 202, 215, 225, and 252 continues to read as follows:

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

PART 202—DEFINITIONS OF WORDS AND TERMS

■ 2. In section 202.101, add, in alphabetical order, definitions of ''Offset'' and ''Offset costs'' to read as follows:

202.101 Definitions.

* * * * *

Offset means a benefit or obligation agreed to by a contractor and a foreign government or international organization as an inducement or condition to purchase supplies or services pursuant to a foreign military sale (FMS). There are two types of offsets: Direct offsets and indirect offsets.

(1) A direct offset involves benefits or obligations, including supplies or services that are directly related to the item(s) being purchased and are integral to the deliverable of the FMS contract. For example, as a condition of a foreign military sale, the contractor may require or agree to permit the customer to produce in its country certain components or subsystems of the item being sold. Generally, direct offsets must be performed within a specified period, because they are integral to the deliverable of the FMS contract.

(2) An indirect offset involves benefits or obligations, including supplies or services that are not directly related to the specific item(s) being purchased and are not integral to the deliverable of the FMS contract. For example, as a condition of a foreign military sale, the contractor may agree to purchase certain manufactured products, agricultural commodities, raw materials, or services, or make an equity investment or grant of equipment required by the FMS customer, or may agree to build a school, road or other facility. Indirect offsets would also include projects that are related to the FMS contract but not purchased under said contract (*e.g.,* a project to develop or advance a capability, technology transfer, or know-how in a foreign company). Indirect offsets may be accomplished without a clearly defined period of performance.

Offset costs means the costs to the contractor of providing any direct or indirect offsets required (explicitly or implicitly) as a condition of a foreign military sale.

* * * * *

PART 215—CONTRACTING BY NEGOTIATION

■ 3. In section 215.403–1, revise paragraph (b) 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).

(b) *Exceptions to certified cost or pricing data requirements.* (i) Follow the procedures at PGI 215.403–1(b).

(ii) Submission of certified cost or pricing data shall not be required in the case of a contract, subcontract, or modification of a contract or subcontract to the extent such data relates to an indirect offset.

* * * * *

■ 4. In section 215.408, add paragraph (7) to read as follows:

215.408 Solicitation provisions and contract clauses.

* * * * *

(7) Use the clause at 252.215–7014, Exception from Certified Cost or Pricing Data Requirements for Foreign Military Sales Indirect Offsets, in solicitations and contracts that contain the provision at FAR 52.215–20, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data, when it is reasonably certain that—

(i) The contract is expected to include costs associated with an indirect offset; and

(ii) The submission of certified cost or pricing data or data other than certified cost or pricing data will be required.

PART 225—FOREIGN ACQUISITION

■ 5. In section 225.7303–2, revise paragraph (a)(3) to read as follows:

225.7303–2 Cost of doing business with a foreign government or an international organization.

(a) * * *

(3) *Offsets.* For additional information see 225.7306.

(i) An offset agreement is the contractual arrangement between the FMS customer and the U.S. defense contractor that identifies the offset obligation imposed by the FMS customer that has been accepted by the U.S. defense contractor as a condition of the FMS customer's purchase. These

agreements are distinct and independent of the LOA and the FMS contract. Further information about offsets and LOAs may be found in the Defense Security Cooperation Agency (DSCA) Security Assistance Management Manual (DSCA 5105.38–M), chapter 6, paragraph 6.3.9. (*http://samm.dsca.mil/chapter/chapter-6*).

(ii) A U.S. defense contractor may recover all costs incurred for offset agreements with a foreign government or international organization if the LOA is financed wholly with foreign government or international organization customer cash or repayable foreign military finance credits.

(iii) The U.S. Government assumes no obligation to satisfy or administer the offset agreement or to bear any of the associated costs.

(iv) Indirect offset costs are deemed reasonable for purposes of FAR parts 15 and 31 with no further analysis necessary on the part of the contracting officer, provided that the U.S. defense contractor submits to the contracting officer a signed offset agreement or other documentation showing that the FMS customer has made the provision of an indirect offset a condition of the FMS acquisition. FMS customers are placed on notice through the LOA that indirect offset costs are deemed reasonable without any further analysis by the contracting officer.

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 6. Add section 252.215–7014 to read as follows:

252.215–7014 Exception from Certified Cost or Pricing Data Requirements for Foreign Military Sales Indirect Offsets.

As prescribed in 215.408(8), use the following clause:

Exception From Certified Cost or Pricing Data Requirements for Foreign Military Sales Indirect Offsets (JUN 2018)

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

Offset means a benefit or obligation agreed to by a contractor and a foreign government or international organization as an inducement or condition to purchase supplies or services pursuant to a foreign military sale (FMS). There are two types of offsets: Direct offsets and indirect offsets.

(i) A direct offset involves benefits or obligations, including supplies or services that are directly related to the item being purchased and are integral to the deliverable of the FMS contract. For example, as a condition of a foreign military sale, the contractor may require or agree to permit the customer to produce in its country certain components or subsystems of the item being sold. Generally, direct offsets must be performed within a specified period, because they are integral to the deliverable of the FMS contract.

(ii) An indirect offset involves benefits or obligations, including supplies or services that are not directly related to the specific item(s) being purchased and are not integral to the deliverable of the FMS contract. For example, as a condition of a foreign military sale, the contractor may agree to purchase certain manufactured products, agricultural commodities, raw materials, or services, or make an equity investment or grant of equipment required by the FMS customer, or may agree to build a school, road or other facility. Indirect offsets would also include projects that are related to the FMS contract but not purchased under said contract (*e.g.,* a project to develop or advance a capability, technology transfer, or know-how in a foreign company). Indirect offsets may be accomplished without a clearly defined period of performance.

(b) *Exceptions from certified cost or pricing data requirements.* Notwithstanding the requirements of Federal Acquisition Regulation (FAR) 52.215–20, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data, in the case of this contract or a subcontract, and FAR 52.215–21, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—Modifications, in the case of modification of this contract or a subcontract, submission of certified cost or pricing data shall not be required to the extent such data relates to an indirect offset (10 U.S.C. 2306a(b)(1)).

(End of clause)

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