



DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 215, 234, and 252

[Docket DARS-2023-0047]

RIN 0750-AL83

Defense Federal Acquisition Regulation Supplement: Data Requirements for Commercial Products for Major Weapon Systems (DFARS Case 2023-D010)

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 James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 that clarifies the data to be provided for certain procurements related to major weapon systems.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Ms. Jeanette Snyder, telephone 703-508-7524.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 88 FR 88554 on December 22, 2023, to implement section 803 of the James M. Inhofe National Defense Authorization Act (NDAA) for

Fiscal Year (FY) 2023 (Pub. L. 117-263). Section 803 modifies 10 U.S.C. 3455 to provide additional guidance regarding data requirements to support a determination of commerciality and price reasonableness for certain procurements associated with major weapon systems. Two respondents submitted public comments in response to the proposed rule.

II. Discussion and Analysis

DoD reviewed the public comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments is provided as follows:

A. Summary of Significant Changes From the Proposed Rule

There are no significant changes from the proposed rule.

B. Analysis of Public Comments

1. Negative impacts of the rule

Comment: One respondent indicated that the requirement to provide expanded data in support of commercial products added by section 803 presents a significant burden and risk to contractors. Many defense industrial base suppliers are commercial companies that also offer their products and services to DoD. For these suppliers, the statutory obligation to comply with the expanded data requirements will force commercial businesses to implement a compliance infrastructure to segregate and archive business data. The additional cost associated with this cannot be offset by raising product prices in a competitive commercial marketplace and is of no value to commercial buyers.

As such, many of these suppliers may simply forgo the opportunity to enter into contracts with DoD. In addition, the requirements for disclosure increase the risk that highly sensitive commercial sales data will be disclosed to competitors, which creates a significant business risk for small and medium-sized suppliers.

Response: This rule implements the additional guidance provided in section 803 of the NDAA for FY 2023 regarding data requirements to support a determination of commerciality and a determination of price reasonableness for certain procurements associated with major weapon systems. For the commerciality determination, section 803, as implemented in this rule, allows contractors to, for example, identify the comparable commercial product it sells or that is sold in the commercial market and provide the contracting officer a comparison between the physical characteristics and functionality of such a product and the subsystem, component, or spare part, if available. For the price reasonableness determination, section 803, as implemented in this rule, allows the offeror to provide or give the contracting officer access to a representative sample of prices paid for the same or similar commercial products under comparable terms and conditions and, if not feasible, to provide the prices paid for the same or similar commercial products sold under different terms and conditions. In addition, offerors may redact customer information, which alleviates any business risk. This information should be readily available to commercial

companies via their sales records, so companies should not need to establish a compliance infrastructure to segregate and archive business data. Therefore, this rule does not impose additional administrative costs or recordkeeping burdens on commercial companies that would cause them to no longer be willing to do business with DoD.

Comment: One respondent indicated that the significant compliance burden and business risk levied by section 803 will give commercial companies a choice of: (1) establishing and maintaining separate production lines for commercial and defense products; or (2) exiting the defense industrial base. Isolating defense production from commercial production requires substantial upfront investment in facilities and workforce and drives significant inefficiency in production. Given recent instability in DoD's budget processes and timing, expanding capacity in this way may be unfeasible for many companies in today's defense industrial base. The cause and effect of the changes made by section 803 will likely not only result in protracted acquisition cycle times but also adversely affect the cost of products sold to DoD and industry's ability to deliver timely requirements in support of the warfighters. In addition, it is likely to increase sole-source suppliers and compound DoD's current challenges in accessing the most innovative technologies, products, and services, which is not in the interest of the taxpayer, the warfighter, or the industrial base.

Response: Section 803 of the NDAA for FY 2023 provides additional guidance regarding data requirements to support a determination of commerciality and a determination of price reasonableness for certain procurements associated with major weapon systems. The additional guidance provides clarity to offerors and contracting officers regarding what is required for such determinations to simplify and expedite procurements. This information should be readily available to commercial companies via their product information and sales records, so commercial companies should not need to establish separate production lines or exit the DoD market. This rule should not result in an increase in sole-source suppliers, nor should it affect DoD's ability to access innovative technologies, products, and services.

Comment: One respondent indicated that section 803 struck sections of law (10 U.S.C. 3455(d)(1)(B)(i-iv)) that provide for an incremental approach to seeking data to determine reasonableness of price for commercial products. In determining price reasonableness, this long-standing framework required contracting officers to start with the least expensive and most reliable, relevant data (e.g., price data) and move down the spectrum to data that is most expensive and time-consuming to collect and analyze (e.g., cost data). This incremental approach was intended to keep acquisitions efficient, prices low, and decisions unbiased. In striking this incremental approach, section 803 sets conditions for contracting officers

to start the process with an immediate demand for cost data, likely leading to increased acquisition cycle times, as well as increased tensions during contract negotiations, not only between DoD and the contractor but also between the contractor and their suppliers.

Response: Section 803, as implemented in this rule at DFARS 234.7002(e) (1) and (2), continues to require contracting officers to first request price data. DFARS 234.7002(e) (3) directs contracting officers to only request additional information from the offeror if the price data is insufficient to determine price reasonableness and approval to do so has been obtained. As such, this rule maintains the long-standing framework for contracting officers to first request price data from offerors and, therefore, should not affect acquisition cycle time or contract negotiations.

Comment: One respondent indicated that implementation of section 803 will likely compound DoD's current challenges in leveraging multi-use technologies, stimulating expansion of domestic production and investment in advanced manufacturing technologies, and potentially accelerate growing fragility of suppliers, particularly small businesses. As noted in the National Defense Industrial Strategy, DoD-unique requirements make DoD an unattractive customer, particularly for small businesses and nontraditional defense contractors, thus impeding competition and increasing the likelihood of sole-source situations. The respondent indicated that the compliance cost

and the risk of exposure of business-sensitive data jeopardizes the ability of small businesses, in particular, to remain viable in the commercial marketplace. This may leave them no choice but to exit the defense market, which will increase the fragility of the defense industrial base. The loss of these suppliers will also lead to time-consuming and expensive processes to requalify new vendors if they can be found. Aerospace prime contractors would be uniquely impacted by such departures, as many suppliers are subject to specific airworthiness standards and Federal Aviation Administration qualifications. As such, the increased burden, compliance cost and risk of exposure imposed by the implementation of section 803 may result in the need to identify and qualify new suppliers, which may increase costs on current programs, drive delays in the delivery of critical capability to the warfighter, and impede DoD's efforts to meet increased contracting small business goals.

Response: Section 803 of the NDAA for FY 2023 provides additional guidance that clarifies to offerors and contracting officers as to what is required to be submitted to simplify and expedite procurements. This information should be readily available to small businesses via their sales data; therefore, it should not impose an additional burden to the extent that businesses would exit the defense market or that prime contractors would need to locate new qualified subcontractors. In addition, any business risk is alleviated, as the rule also

allows offerors to redact sensitive customer information. This rule should not affect DoD's ability to leverage multi-use technologies, stimulate the expansion of domestic production and investment in advanced manufacturing technologies, or meet its small business goals.

Comment: One respondent indicated that 10 U.S.C. 3455, unlike the Truth in Negotiations Act (10 U.S.C. chapter 271), does not provide a waiver and the only exception for data submission is for commercially available off-the-shelf (COTS) items.

Accordingly, some suppliers may only be willing to provide COTS-based solutions to remain clear of the requirements imposed by section 803. This will result in the loss of benefit of modern manufacturing capability to perform in-line modifications of commercial aircraft to meet DoD needs. Instead of a commercial derivative military aircraft being assembled on a commercial production line, the alternative is a complete COTS aircraft being disassembled, modified, and reassembled. This will result in a significant increase in cost to DoD and a significant delay in delivery of capability to the warfighter.

Response: FAR 15.403-1(b)(1) and (2) provide exceptions to the requirement to provide data to support a determination of price reasonableness as specified in this rule at DFARS 234.7002(e)(1). Section 803 allows the offeror to provide, or give the contracting officer access to, a representative sample of prices paid for the same or similar commercial products under comparable terms and conditions and, if not feasible, to

provide, or give the contracting officer access to, the prices paid for the same or similar commercial products sold under different terms and conditions. Since this rule allows offerors to give contracting officers access to this information, it should actually reduce any contractor burden. This information should be readily available to offerors via their sales records; therefore, it should not impose an additional burden to the extent that contractors would be willing to only provide COTS items to DoD. Since this rule clarifies the data offerors are to provide to the contracting officer to determine price reasonableness, the rule may expedite contract negotiations, decrease acquisition cycle time, and expedite delivery of capability to the warfighter.

2. Clarifications

Comment: One respondent indicated the proposed rule DFARS text referencing "subsystems of major weapon systems and components and spare parts of major weapon systems and subsystems" is awkward and confusing. It appears that the language is referring to "subsystems of major weapon systems" and "components and spare parts of major weapon systems and of subsystems of major weapon systems."

Response: The text at DFARS 212.102(a)(iii)(A), 212.209(a)(1), and 215.403-1(c)(3)(A) has been amended to incorporate the recommended change.

Comment: One respondent indicated that the proposed rule text at DFARS 234.7002(d)(4)(ii) makes no sense. If the offeror does

not sell a comparable commercial product, then how can the offeror provide a comparison of the comparable commercial product. The comparison should be between the product being offered and the most comparable commercial product in the commercial marketplace.

Response: The text at DFARS 234.7002(d)(4)(ii) has been amended to require the offeror to provide the contracting officer a comparison between the physical characteristics and functionality of the most comparable commercial product in the commercial market and the subsystem, component, or spare part, if available.

Comment: One respondent indicated the proposed rule text at DFARS 234.7002(e)(3) is incomplete. The "if/then" statement is missing the "then" portion. The respondent asked why the DAR Council had removed the rest of the language in paragraph (3), which states "...the contracting officer shall request the offeror to submit other relevant information, including uncertified cost data. However, no uncertified cost data may be required in any case in which there are sufficient non-Government sales of the same item to establish reasonableness of price."

Response: The text at DFARS 234.7002(e)(3)(i) and (ii) has been moved to 234.7002(e)(3) to include the "if/then" statement in one paragraph for clarity. Regarding the deletion of the language in paragraph (e)(3), the proposed rule text at DFARS 234.7002(e)(1) clarifies the data to be submitted by offerors

and, as such, replaces the existing text at DFARS 234.7002(e) (3) that was removed in the proposed rule.

C. Other Changes

The text at DFARS 234.7002(d) (4) is amended to add the following to the end of the phrase for clarity: "then the offeror is required to". Paragraph (b) (1) (ii) of the basic and alternate I of the provision at DFARS 252.215-7010 is amended to clarify that the information to be provided by the offeror pursuant to this paragraph is also for purposes of determining commerciality. Paragraph (d) (3) of the basic and alternate I of the provision at DFARS 252.215-7010 is also amended to add a cross reference to DFARS 234.7002(e) for clarity. In addition, minor editorial changes are made in the basic and alternate I of the provision.

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

This final rule amends the provision at DFARS 252.215-7010, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data. However, this proposed rule does not impose any new requirements on contracts at or below the SAT, for commercial products including COTS items, or for commercial services. The provision will continue to not apply to acquisitions at or below the SAT and will continue to

apply to acquisitions of commercial products, excluding COTS items, and to acquisitions of commercial services.

IV. Expected Impact of the Rule

DoD does not expect this final rule to have a significant impact on the Government or offerors because it merely clarifies the data an offeror is required to provide to the contracting officer when a subsystem of a major weapon system or a component or spare part of a major weapon system or of a subsystem of a major weapon system is proposed as a commercial product. Specifically, this rule clarifies the data an offeror is required to provide to support the contracting officer's determination of price reasonableness and commerciality. This rule will also allow an offeror to give the contracting officer access to the data, in lieu of submitting it, and to redact certain customer information from such data.

This rule is expected to result in the timely submission of data, which may decrease the time it takes for a contracting officer to determine a product to be commercial, to determine price reasonableness, and to award a contract.

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, as amended.

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

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* and is summarized as follows:

This rule is necessary to implement section 803 of the James M. Inhofe National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2023. The objective of this rule is to implement section 803, which modifies 10 U.S.C. 3455 to clarify the data an offeror is required to provide to the contracting officer to support a commerciality determination and a price reasonableness

determination when a subsystem of a major weapon system or a component or spare part of a major weapon system or of a subsystem of a major weapon system is proposed as a commercial product.

No significant issues were raised by the public comments in response to the initial regulatory flexibility analysis.

Based on data from the Federal Procurement Data System for fiscal years 2021 through 2023, DoD awarded an average of approximately 50,260 commercial contracts related to major weapon systems to an average of 2,685 unique small entities per year. Therefore, this rule is expected to apply to approximately 2,685 small entities per fiscal year.

This rule does not impose any new reporting, recordkeeping, or other compliance requirements for small entities. The information being collected falls under the currently approved information collection requirements under Office of Management and Budget (OMB) Control Number 0704-0574, Defense Federal Acquisition Regulation Supplement (DFARS) Part 215; Only One Offer and Related Clauses in DFARS 252.

There are no known alternatives that would accomplish the stated objectives of the applicable statute.

VIII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies to this final rule. However, these changes to the DFARS do not impose additional information collection requirements to the paperwork burden previously approved by OMB under OMB Control

Number 0704-0574, Defense Federal Acquisition Regulation Supplement (DFARS) Part 215; Only One Offer and Related Clauses in DFARS 252.

List of Subjects in 48 CFR Parts 212, 215, 234, and 252

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 212, 215, 235, and 252 are amended as follows:

1. The authority citation for parts 212, 215, 234, and 252 continues to read as follows:

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

PART 212—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

2. Amend section 212.102 by revising paragraph (a)(iii)(A) to read as follows:

212.102 Applicability.

(a) * * *

(iii) * * *

(A) Determine in writing that the acquisition meets the "commercial product" or "commercial service" definition in FAR 2.101. See 234.7002(b) and (c) for subsystems of major weapon systems and components and spare parts of major weapon systems and of subsystems of major weapon systems;

* * * * *

3. Amend section 212.209 by revising paragraph (a) (1) to read as follows:

212.209 Determination of price reasonableness.

(a) * * *

(1) In the case of major weapon systems, for subsystems of major weapon systems and components and spare parts of major weapon systems and of subsystems of major weapon systems acquired as commercial products in accordance with subpart 234.70, shall use information submitted under 234.7002(e); and

* * * * *

PART 215—CONTRACTING BY NEGOTIATION

4. Amend section 215.403-1 by revising paragraph (c) (3) (A) to read as follows:

215.403-1 Prohibition on obtaining certified cost or pricing data (10 U.S.C. chapter 271 and 41 U.S.C. chapter 35).

* * * * *

(c) * * *

(3) * * *

(A) Follow the procedures at PGI 215.403-1(c) (3) for pricing commercial products or commercial services, except see 234.7002(e) for pricing commercial subsystems of major weapon systems and components and spare parts of major weapon systems and of subsystems of major weapon systems.

* * * * *

215.403-3 [Amended]

5. Amend section 215.403-3 in paragraph (c) by removing "234.7002(d)" and adding "234.7002(e)" in its place.

PART 234—MAJOR SYSTEM ACQUISITION

6. Amend section 234.7002 by—

- a. Revising paragraph (b) (2);
- b. Adding paragraph (b) (3);
- c. Revising paragraphs (c) (1) (ii), (c) (2) and (d); and
- e. Adding a paragraph (e); and

The revisions and additions read as follows:

234.7002 Policy.

* * * * *

(b) * * *

(2) The contracting officer determines in writing that the subsystem is a commercial product in accordance with 212.102(a)(iii). For a subsystem of a major weapon system proposed as a commercial product that has not previously been determined to be a commercial product (see 212.102(a)(ii)), follow the procedures in paragraph (d) of this section.

(3) This paragraph (b) shall apply only to subsystems of major weapon systems that are acquired by DoD through a—

(i) Prime contract;

(ii) Modification to a prime contract; or

(iii) Subcontract under a prime contract for the acquisition of a subsystem proposed as a commercial product that has not previously been determined to be a commercial product (see 212.102(a)(ii)).

(c) * * *

(1) * * *

(ii) The contracting officer determines in writing that the component or spare part is a commercial product in accordance with 212.102(a)(iii). For a component or spare part proposed as a commercial product that has not previously been determined to be a commercial product (see 212.102(a)(ii)), follow the procedures in paragraph (d) of this section.

(2) This paragraph (c) shall apply only to components and spare parts that are acquired by DoD through a-

(i) Prime contract;

(ii) Modification to a prime contract; or

(iii) Subcontract under a prime contract for the acquisition of a component or spare part proposed as a commercial product that has not previously been determined to be a commercial product (see 212.102(a)(ii)).

(d) *Commerciality determination.* To the extent necessary to make a commercial product determination in accordance with 212.102(a)(iii) that relies on paragraph (1), (2), (3), (4), or (5) of the "commercial product" definition at FAR 2.101 for a subsystem, component, or spare part as described in paragraphs (b) and (c) of this section, the provision at 252.215-7010, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data, requires the offeror to-

(1) Identify the comparable commercial product the offeror sells to the general public or nongovernmental entities for other than governmental purposes;

(2) Provide a comparison between the physical characteristics and functionality of the comparable commercial product and the subsystem, component, or spare part, including—

(i) For products under paragraph (3)(i) of the “commercial product” definition at FAR 2.101, a description of the modification and documentation to support that the modification is customarily available in the marketplace; or

(ii) For products under paragraph (3)(ii) of the “commercial product” definition at FAR 2.101, a detailed description of the modification and detailed technical data to demonstrate that the modification is minor (e.g., information on production processes and material differences); and

(3) Provide the national stock number (NSN) for the comparable commercial product, if one is assigned, and the NSN for the subsystem, component, or spare part, if one is assigned; or

(4) If the offeror does not sell a comparable commercial product to the general public or nongovernmental entities for other than governmental purposes, then the offeror is required to—

(i) Notify the contracting officer in writing that it does not sell such a comparable product; and

(ii) Provide the contracting officer a comparison between the physical characteristics and functionality of the most comparable commercial product in the commercial market and the subsystem, component, or spare part, if available.

(e) *Relevant information to determine price reasonableness.* For products relying on paragraph (3)(ii) of the "commercial product" definition at FAR 2.101, see FAR 15.403-1(c)(3)(iii)(C). See 212.209(a) for requirements of 10 U.S.C. 3453 with regard to market research.

(1) Unless an exception at FAR 15.403-1(b)(1) or (2) applies-

(i) To the extent necessary to make a determination of price reasonableness, the contracting officer shall require the offeror to submit to or provide the contracting officer access to a representative sample, as determined by the contracting officer, of prices paid for the same or similar commercial products under comparable terms and conditions by both Government and commercial customers and the terms and conditions of such sales; or

(ii) If the contracting officer determines that the offeror cannot provide or give access to sufficient information described in this paragraph (e)(1) to determine the reasonableness of price, the contracting officer shall require the offeror to submit or provide the contracting officer access to a representative sample, as determined by the contracting officer, of the prices paid for the same or similar commercial

products sold under different terms and conditions and the terms and conditions of such sales.

(2) The contracting officer shall allow the offeror to redact only information provided pursuant to paragraph (e)(1) of this section that identifies the customer, if the offeror certifies in writing for each sale that the customer is a-

(i) Government customer (e.g., Federal, State, local, or foreign government);

(ii) Commercial customer purchasing the product for governmental purposes; or

(iii) Commercial customer purchasing the product for a commercial, mixed, or unknown purpose.

(3) If the contracting officer determines that the information submitted pursuant to paragraph (e)(1) of this section is not sufficient to determine the reasonableness of price because the comparable commercial product provided by the offeror is not a valid basis for price analysis or the proposed price is not reasonable after evaluating sales data, then the contracting officer shall obtain approval from an official one level above the contracting officer, without power of delegation, and require the offeror to submit other relevant information regarding the basis for price or cost, including information on labor costs, material costs, and overhead rates.

(4) An offeror shall not be required to submit information described in paragraph (e)(1) of this section with regard to a commercially available off-the-shelf item. An offeror may be

required to submit such information with regard to any other item that was developed exclusively at private expense only after the head of the contracting activity determines in writing that the information submitted pursuant to paragraph (e)(1) of this section is not sufficient to determine the reasonableness of price.

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

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

7. Amend section 252.215-7010—

- a. By removing the provision date “JAN 2023” and adding “MAY 2024” in its place;
- b. In paragraph (a) by revising the definition of “Sufficient non-Government sales”;
- c. By revising and republishing paragraphs (b) and (d);
- d. In Alternate I—
 - i. By revising the provision title and date;
 - ii. In paragraph (a) by revising the definition of “Sufficient non-Government sales”; and
 - iii. By revising and republishing paragraphs (b) and (d).

The additions, revisions and republications read as follows:

**252.215-7010 Requirements for Certified Cost or Pricing Data
and Data Other Than Certified Cost or Pricing Data.**

* * * * *

(a) * * *

Sufficient non-Government sales means relevant sales data that reflects market pricing and contains enough information to make adjustments covered by Federal Acquisition Regulation (FAR) 15.404-1(b) (2) (ii) (B).

* * * * *

(b) *Exceptions from certified cost or pricing data.* (1) In lieu of submitting certified cost or pricing data, the Offeror may submit a written request for exception by submitting the information described in paragraphs (b) (1) (i) and (ii) of this provision. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted and whether the price is fair and reasonable.

(i) *Exception for prices set by law or regulation—*
Identification of the law or regulation establishing the prices offered. If the prices are controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(ii) *Commercial product or commercial service exception.*
For a commercial product or commercial service exception, the Offeror shall submit, at a minimum, information that is adequate

for determining commerciality and evaluating the reasonableness of the price for this acquisition, including prices at which the same product or service or similar products or services have been sold in the commercial market. Such information shall include-

(A) For products or services previously determined to be commercial, the contract number and military department, defense agency, or other DoD component that rendered such determination, and if available, a Government point of contact;

(B) For subsystems of a major weapon system and components and spare parts of a major weapon system or subsystem of a major weapon system that have not previously been determined to be commercial-

(1) The comparable commercial product the Offeror sells to the general public or nongovernmental entities;

(2) A comparison between the physical characteristics and functionality of the comparable commercial product and the subsystem, component, or spare part, including-

(i) For products under paragraph (3)(i) of the "commercial product" definition at FAR 2.101, a description of the modification and documentation to support that the modification is customarily available in the marketplace; or

(ii) For products under paragraph (3)(ii) of the "commercial product" definition at FAR 2.101, a detailed description of the modification and detailed technical data to

demonstrate that the modification is minor (e.g., information on production processes and material differences); and

(3) The national stock number (NSN) for the comparable commercial product, if one is assigned, and the NSN for the subsystem, component, or spare part, if one is assigned; or

(4) If the Offeror does not sell a comparable commercial product to the general public or nongovernmental entities for purposes other than government purposes, the Offeror shall—

(i) Notify the Contracting Officer in writing that it does not sell such a comparable product; and

(ii) Provide the Contracting Officer with a comparison of the physical characteristics and functionality of the most comparable commercial product in the commercial market.

(C) 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);

(D) 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;

(E) 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

(F) 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 DoD for the procurement or transaction, any contract or subcontract for 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.

* * * * *

(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 the minimum information necessary to permit a determination that the proposed price is fair and reasonable, to include the requirements in Defense Federal Acquisition Regulation Supplement (DFARS) 215.402(a)(i), 215.404-1(b), and 234.7002(e).

(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) If the Offeror redacts data that identifies the customer (see DFARS 234.7002(e)(2)), then the Offeror shall include, for each sale, the following signed statement with the data submitted:

"By submission of this data, the Offeror [Offeror insert company name] certifies that the customer was [Offeror insert one or more of the following as applicable: a government customer; a commercial customer purchasing the same or similar product for governmental purposes (e.g., Federal, state, local, or foreign government); or a commercial customer purchasing the same or similar product for a commercial, mixed, or unknown purpose]."

(4) Within 10 days of a written request from the Contracting Officer for additional information to permit an adequate evaluation of the proposed price in accordance with FAR 15.403-3 or DFARS 234.7002(e), 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 minimum information necessary to support a determination of price reasonableness, as described in FAR part 15 and DFARS part 215.

(ii) No cost data 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.

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Alternate I. * * *

REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA AND DATA OTHER THAN CERTIFIED COST OR PRICING DATA—ALTERNATE I (MAY 2024)

(a) * * *

Sufficient non-Government sales means relevant sales data that reflects market pricing and contains enough information to make adjustments covered by Federal Acquisition Regulation (FAR) 15.404-1(b) (2) (ii) (B).

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(b) *Exceptions from certified cost or pricing data.* (1) In lieu of submitting certified cost or pricing data, the Offeror may submit a written request for exception by submitting the information described in paragraphs (b) (1) (i) and (ii) of this provision. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted and whether the price is fair and reasonable.

(i) *Exception for price set by law or regulation—*

Identification of the law or regulation establishing the price offered. If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(ii) *Commercial product or commercial service exception.*

For a commercial product or commercial service exception, the Offeror shall submit, at a minimum, information that is adequate for determining commerciality and evaluating the reasonableness of the price for this acquisition, including prices at which the same product or service or similar products or services have been sold in the commercial market. Such information shall include—

(A) For products or services previously determined to be commercial, the contract number and military department, defense agency, or other DoD component that rendered such determination, and if available, a Government point of contact;

(B) For subsystems of a major weapon system and components and spare parts of a major weapon system or subsystem of a major weapon system that have not previously been determined to be commercial—

(1) The comparable commercial product the Offeror sells to the general public or nongovernmental entities;

(2) A comparison between the physical characteristics and functionality of the comparable commercial product and the subsystem, component, or spare part, including—

(i) For products under paragraph (3)(i) of the “commercial product” definition at FAR 2.101, a description of the modification and documentation to support that the modification is customarily available in the marketplace; or

(ii) For products under paragraph (3)(ii) of the “commercial product” definition at FAR 2.101, a detailed description of the modification and detailed technical data to demonstrate that the modification is minor (e.g., information on production processes and material differences); and

(3) The national stock number (NSN) for the comparable commercial product, if one is assigned, and the NSN for the subsystem, component, or spare part; or

(4) If the Offeror does not sell a comparable commercial product to the general public or nongovernmental entities for purposes other than government purposes, the Offeror shall—

(i) Notify the Contracting Officer in writing that it does not sell such a comparable product; and

(ii) Provide the Contracting Officer with a comparison of the physical characteristics and functionality of the most comparable commercial product in the commercial market.

(C) 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);

(D) 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;

(E) 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

(F) 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.

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(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 Defense Federal Acquisition Regulation Supplement (DFARS) 215.402(a)(i), 215.404-1(b), and 237.7002(e).

(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) If the Offeror redacts data that identifies the customer (see DFARS 234.7002(e)(2)), then the Offeror shall include, for each sale, the following signed statement with the data submitted:

"By submission of this data, the Offeror [*Offeror insert company name*] certifies that the customer was [*Offeror insert one or more of the following as applicable: a government customer (e.g., Federal, state, local, or foreign government); a commercial customer purchasing the same or similar product for governmental purposes; or a commercial customer purchasing the same or similar product for a commercial, mixed, or unknown purpose*]."

(4) 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 or DFARS 234.7002(e).]*

(5) 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.

(6) *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.

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