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PART 1

OFFICE OF THE ASSISTANT SECRETARY OF WAR

Status: Class D

OFFICE OF THE ASSISTANT SECRETARY OF WAR

3000 DEFENSE PENTAGON

WASHINGTON, DC 20301-3000

ACQUISITION

AND SUSTAINMENT

In reply refer to

DARS Tracking Number: 2026-O0002

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES SPECIAL OPERATIONS

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES TRANSPORTATION

COMMAND (ATTN: ACQUISITION EXECUTIVE)

DEPUTY ASSISTANT SECRETARY OF THE ARMY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE NAVY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE

(CONTRACTING)

DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Class Deviation?Revolutionary Federal Acquisition Regulation (FAR) Overhaul

Part 1, Defense FAR Supplement (DFARS) Part 201

Effective February 1, 2026, contracting officers shall use?

? The revised FAR Part 1, Federal Acquisition Regulations System published on the Revolutionary FAR Overhaul web page at https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-1 in lieu of the text codified at 48 CFR chapter 1 (https://www.ecfr.gov).

? The attached DFARS Part 201, Federal Acquisition Regulation Systems in lieu of the text codified at 48 CFR chapter 201; and

? The attached DFARS Procedures, Guidance, and Information (PGI) 201, Federal Acquisition Regulation Systems in lieu of the PGI text published on the Defense Pricing, Contracting, and Acquisition Policy web page at https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.

This class deviation implements the following:

? Section 2 of E.O. 14275, Restoring Common Sense to Federal Procurement, which establishes the policy that the FAR ?should only contain provisions required by

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Defense FAR Supplement (DFARS) Part 201
statute or essential to sound procurement, and any FAR provisions that do not advance these objectives should be removed.
? Section 4(a) of E.O. 14265, Modernizing Defense Acquisitions and Spurring Innovation in the Defense Industrial Base which requires the Secretary of War to eliminate or revise any unnecessary supplemental regulations or any other internal guidance, such as relevant parts of the Financial Management Regulation and Defense Federal Acquisition Regulation Supplement.
? The Office of Management and Budget memorandum, M-25-26 issued on May 2, 2025, titled, Overhauling the Federal Acquisition Regulation, which provided additional guidance to federal agencies regarding the FAR overhaul.
This class deviation remains in effect until rescinded or incorporated into the FAR, DFARS, and DFARS PGI. Inquiries regarding this class deviation can be addressed to osd.pentagon.ousd-a-s.mbx.dfars@mail.mil.
John M. Tenaglia
Principal Director,
Defense Pricing, Contracting, and
Acquisition Policy
Attachments:
As stated
2
Attachment A1
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Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 1
Defense FAR Supplement (DFARS) Part 201

PART 201?FEDERAL ACQUISITION REGULATIONS SYSTEM

SUBPART 201.1?FRAMEWORK

201.101 Framework.

(a)(2) DoD implementation and supplementation of the FAR is issued in the Defense Federal Acquisition Regulation Supplement (DFARS) under the authority and control of the Secretary of Defense. The DFARS is codified in chapter 2 of Title 48, Code of Federal Regulations (CFR). The DFARS contains?

(A) Requirements of law;

(B) DoD-wide policies;

(C) Delegations of FAR authorities;

(D) Deviations from FAR requirements; and

(E) Policies and procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors.

(b) Relevant procedures, guidance, and information that do not meet the criteria in paragraph (a)(2) of this section are issued in the DFARS Procedures, Guidance, and Information (PGI).

201.101-70 Maintenance of the FAR, DFARS, and PGI.

See PGI 201.101-70 for policies and procedures for maintaining the FAR, DFARS, and **PGI.**

201.103 Authority.

(1) The defense acquisition system, as defined in 10 U.S.C. 3001(a), exists to manage the investments of the United States in technologies, programs, and product support necessary to achieve the national security strategy prescribed by the President pursuant to section 108 of the National Security Act of 1947 (50 U.S.C. 3043) and to support the United States Armed Forces.

(2) The investment strategy of DoD shall be postured to support not only the current United States Armed Forces, but also future Armed Forces of the United States.

(3) The primary objective of DoD acquisition is to acquire quality supplies and services that satisfy user needs with measurable improvements to mission capability and operational support at a fair and reasonable price.

201.103-70 Applicability.

The FAR and the Defense Federal Acquisition Regulation Supplement (DFARS) also apply to purchases and contracts by DoD contracting activities made in support of

foreign military sales or North Atlantic Treaty Organization cooperative projects without regard to the nature or sources of funds obligated, unless otherwise specified in this regulation.

201.104-70 Publication and code arrangement.

(a) The CFR provides the official version of the DFARS at https://www.ecfr.gov.

(b) The DFARS and the [official version of the DFARS PGI are available in one location at https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.

(c) The Principal Director, DPCAP publishes changes to the DFARS in the Federal Register at https://www.federalregister.gov and on the DPCAP website at https://www.acq.osd.mil/dpap/dars/change_notices.html. Each change includes an effective date. See FAR 1.107(d) for direction on inclusion of]any new or revised clauses, provisions, or forms in solicitations.

201.105 OMB approval under the Paperwork Reduction Act.

See PGI 201.105 for a list of the DFARS information collection and recordkeeping requirements that have been approved by the Office of Management and Budget.

201.106 Certifications.

In accordance with 41 U.S.C. 1304, the DFARS and DoD component supplements must not include a new requirement for a certification by a contractor or offeror unless?

(1) The certification requirement is specifically imposed by statute; or

(2) Written justification for such certification is provided to the Secretary of Defense by the Under Secretary of Defense (Acquisition and Sustainment), and the Secretary of Defense approves in writing the inclusion of such certification requirement.

201.107 FAR conventions.

The following conventions apply to the DFARS:

(1) If a provision or clause applies to commercial products or commercial services, the prescription will state the applicability. If the prescription is silent regarding commercial products and commercial services, then the provision or clause does not apply to those products and services.

(2) Unless the prescription states otherwise, a provision or clause that applies to commercial products also applies to commercially available off-the-shelf items.]

201.108 Statutory acquisition-related dollar thresholds?adjustment for inflation.

(a)(i) Except as provided at paragraph (b)(2) of the statute, 41 U.S.C. 1908 requires the adjustment for inflation of all statutory acquisition-related dollar thresholds in the DFARS be applied to contracts and subcontracts without regard to the date of award of the contract or subcontract.

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(ii) Section 814(b) of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112-81) requires that the threshold established in 10 U.S.C. 2253(a)(2) for the acquisition of right-hand drive passenger sedans be adjusted for inflation in accordance with the requirements of 41 U.S.C. 1908, as appropriate.

(d) A matrix showing the most recent escalation adjustments of statutory acquisition-related dollar thresholds is available at PGI 201.108.

201.170 Peer reviews.

All peer reviews must be conducted in accordance with the procedures at PGI 201.170.

SUBPART 201.2?AGENCY ACQUISITION REGULATIONS

201.201 Policy.

(a)(1)(A) See PGI 201.201 for information on the numbering of the DFARS and department, agency, or component supplements.

(B) Departments and agencies and their component organizations may issue acquisition regulations as necessary to implement or supplement the FAR or DFARS. Approval of the Under Secretary of Defense for Acquisition and Sustainment

(USD(A&S)) is required before including in a department, agency, or component supplement, or any other contracting regulation document such as a policy letter or clause book, any policy, procedure, clause, or form that has?

(1) A significant effect beyond the internal operating procedures of the agency; or

(2) A significant cost or administrative impact on contractors or offerors.

(C) The USD(A&S) has delegated authority to the Principal Director, Defense Pricing, Contracting, and Acquisition Policy (DPCAP) to approve or disapprove the policies, procedures, clauses, and forms subject to paragraph (a)(1)(B) of this section.

201.270 Agency control and compliance procedures.

See PGI 201.270 for the requirement to control the use of local provisions and clauses.

SUBPART 201.3?DEVIATIONS FROM THE FAR

201.302 Policy.

(1) The Principal Director, Defense Pricing, Contracting, and Acquisition Policy, Office of the Under Secretary of Defense (Acquisition and Sustainment) (OUSD(A&S)DPCAP), is the approval authority within DoD for any individual or class deviation from?

(i) FAR 3.104, Procurement Integrity, or DFARS 203.104, Procurement Integrity;

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(ii) FAR subpart 27.4, Rights in Data and Copyrights, or DFARS subpart **227.4, Rights in Data and Copyrights;**

(iii) FAR part 30, Cost Accounting Standards Administration, or DFARS **part 230, Cost Accounting Standards Administration;**

(iv) FAR subpart 31.1, Applicability, or DFARS subpart 231.1, Applicability (contract cost principles);

(v) FAR subpart 31.2, Contracts with Commercial Organizations, or DFARS **subpart 231.2, Contracts with Commercial Organizations; or**

(vi) FAR part 32, Contract Financing (except subparts 32.7 and 32.8 and the payment clauses prescribed by subpart 32.1), or DFARS part 232, Contract Financing (except subparts 232.7 and 232.8).

(2) Submit requests for deviation approval through department or agency channels to the approval authority in paragraph (1) of this section as appropriate. Submit deviations that require OUSD(A&S)DPCAP approval through the Director of the DAR Council via email at osd.pentagon.ousd-a-s.mbx.dfars@mail.mil. At a minimum, each request must?

(i) Identify the department, agency, or component if applicable, requesting the deviation;

(ii) Identify the FAR or DFARS citation from which a deviation is needed, state what that citation requires, and indicate whether the request is for an individual or class deviation;

(iii) Describe the deviation and indicate which of paragraphs (a) through (f) of FAR 1.301 best categorizes the deviation;

(iv) State whether the deviation will have a significant effect beyond the internal operating procedures of the agency and/or a significant cost or administrative impact on contractors or offerors, and give reasons to support the statement;

(v) State the period of time for which the deviation is required;

(vi) State whether approval for the same deviation has been received previously, and if so, when;

(vii) State whether the proposed deviation was published in the Federal

Register and provide analysis of comments;

(viii) State whether legal counsel has reviewed the request for deviation, and if so, state results; and

(ix) Give detailed rationale for the request. State what problem or situation will be avoided, corrected, or improved if request is approved.

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201.303 Individual deviations.

Individual deviations, except those described in 201.302(1) and 201.305, must be approved in accordance with 201.304.

201.304 Class deviations.

(b)(i) Except as provided in paragraph (b)(ii) of this section, OUSD(A&S)DPCAP is the approval authority within DoD for any class deviation.

(ii) The senior procurement executives for the Army, Navy, and Air Force, and the Directors of the Defense Commissary Agency, the Defense Contract Management Agency, and the Defense Logistics Agency, may approve any class deviation, other than those described in 201.302(1), that does not?

(A) Have a significant effect beyond the internal operating procedures of the department or agency;

(B) Have a significant cost or administrative impact on contractors or offerors;

(C) Diminish any preference given small business concerns by the FAR or DFARS; or

(D) Extend to requirements imposed by statute or by regulations of other agencies such as the Small Business Administration and the Department of Labor.

201.305 Deviations pertaining to treaties and executive agreements.

Contracting officers outside the United States may deviate from prescribed nonstatutory FAR and DFARS clauses when?

(1) Contracting for support services, supplies, or construction, with the governments of North Atlantic Treaty Organization (NATO) countries or other allies (as described in 10 U.S.C. 2341(2)), or with United Nations or NATO organizations; and

(2) Such governments or organizations will not agree to the standard clauses.

SUBPART 201.4?CAREER DEVELOPMENT, CONTRACTING AUTHORITY, AND RESPONSIBILITIES

201.403 Selecting, appointing, and terminating the appointment for contracting officers.

201.403-1 General.

(1) In accordance with 10 U.S.C. 1724, in order to qualify to serve as a contracting officer with authority to award or administer contracts for amounts above the simplified acquisition threshold, a person must?

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(i) Have completed all contracting courses required for a contracting officer to serve in the grade in which the employee or member of the armed forces will serve;

(ii) Have at least 2 years experience in a contracting position;

(iii) Have received a baccalaureate degree from an accredited educational institution; and

(iv) Meet such additional requirements, based on the dollar value and complexity of the contracts awarded or administered in the position, as may be established by the Secretary of Defense.

(2) The qualification requirements in paragraph (1)(iii) of this section do not apply to a DoD employee or member of the armed forces who?

(i) On or before September 30, 2000, occupied?

(A) A contracting officer position with authority to award or administer contracts above the simplified acquisition threshold; or

(B) A position either as an employee in the 1102 occupational series or a member of the armed forces in an occupational specialty similar to the 1102 series;

(ii) Is in a contingency contracting force; or

(iii) Is an individual appointed to a 3-year developmental position. Information on developmental opportunities is contained in DoD Instruction 5000.66, Defense Acquisition Workforce Education, Training, Experience, and Career Development Program.

(3) See DoD Instruction 5000.66 for information on waivers to the requirements in paragraph (1) of this section.

201.403-2 Appointment.

(a) Certificates of Appointment executed under the Defense Acquisition Regulation have the same effect as if they had been issued under FAR.

(b) Agency heads may delegate the purchase authority in 213.301 to DoD civilian employees and members of the U.S. Armed Forces.

201.404 Contracting officer?s representative.

(c) Follow the procedures at PGI 201.404 regarding designation, assignment, qualifications, and responsibilities of a contracting officer's representative (COR).

(1) A COR must be an employee, military or civilian, of the U.S. Government, a foreign government, or a North Atlantic Treaty Organization or coalition partner. Contractor personnel must never serve as CORs.

201.404-70 Contract clause.

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Use the clause at 252.201-7000, Contracting Officer's Representative, in solicitations

and contracts when appointment of a contracting officer's representative is anticipated.

201.470 Appointment of property administrators and plant clearance

officers.

(a) The appropriate agency authority must appoint or terminate (in writing) property administrators and plant clearance officers.

(b) In appointing qualified property administrators and plant clearance officers, the appointing authority must consider experience, training, education, business acumen, judgment, character, and ethics.

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PGI 201?FEDERAL ACQUISITION REGULATIONS SYSTEM

PGI 201.1?FRAMEWORK

PGI 201.101-70 Maintenance of the FAR, DFARS, and PGI.

(a) DoD Instruction 5000.35, Defense Acquisition Regulations (DAR) System prescribes the composition and operation of the DAR Council.

(b)(1) Departments and agencies process proposed revisions of FAR or DFARS through channels to the Director of the DAR Council. Process the proposed revision as a memorandum in the following format, addressed to the Director, DAR Council via email at osd.pentagon.ousd-a-s.mbx.dfars@mail.mil.

I. PROBLEM: Succinctly state the problem created by current FAR and/or DFARS coverage and describe the factual and/or legal reasons necessitating the change to the regulation.

II. RECOMMENDATION: Identify the FAR and/or DFARS citations to be revised. Attach as TAB A a copy of the existing coverage, conformed to include the proposed additions and deletions. Indicate deleted coverage by using strikethrough to mark the current words being deleted, and insert proposed language in brackets at the appropriate locations within the existing coverage.

III. DISCUSSION: Include a complete, convincing explanation of why the change is necessary and how the recommended revision will solve the problem. Address advantages and disadvantages of the proposed revision, as well as any cost or administrative impact on Government activities and contractors. Identify any potential impact of the change on automated systems, e.g., automated financial and procurement systems. Provide any other background information that would be helpful in explaining the issue.

IV. COLLATERALS: Address the need for public comment (FAR 1.201(b)), the Paperwork Reduction Act, and the Regulatory Flexibility Act (FAR 1.201(b)(2)).

V. DEVIATIONS: If a recommended DFARS revision is a deviation from the FAR, identify the deviation and include under separate TAB a justification for the deviation that addresses the requirements of DFARS 201.302(2). The justification should be in the form of a memorandum for the Principal Director, Defense Pricing, Contracting, and Acquisition Policy, Office of the Under Secretary of Defense (Acquisition and Sustainment)

(USD(A&S)).

(ii) The public may offer proposed revisions of FAR or DFARS by submission of a memorandum, in the format (including all of the information) prescribed in paragraph (b)(1) of this section, to the Director of the DAR Council.

(c) The DAR Council is also responsible for maintenance of the DFARS Procedures, Guidance, and Information (PGI).

PGI 201.105 OMB approval under the Paperwork Reduction Act.

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The information collection and recordkeeping requirements contained in the DFARS and PGI have been approved by the Office of Management and Budget. The following OMB control numbers apply:

DFARS Segment OMB Control No.

215.403-5 0704-0497

217.7004(a) 0704-0214

217.7404-3(b) 0704-0214

217.7505(d) 0704-0214

231.205-18 0704-0483

232.10 0704-0359

239.7408 0704-0341

242.1106 0704-0250

252.204-7000 0704-0225

252.204-7008 0704-0478

252.204-7010 0704-0454

252.204-7012 0704-0478

252.204-7023 0704-0519

252.205-7000 0704-0286

252.208-7000 0704-0187

252.209-7001 0704-0187

252.209-7002 0704-0187

252.209-7004 0704-0187

252.209-7008 0704-0477

252.215-7002 0704-0232

252.215-7008 0704-0574

252.215-7010 0704-0574

252.216-7000 0704-0259

252.216-7001 0704-0259

252.216-7003 0704-0259

252.217-7012 0704-0214

252.217-7026 0704-0214

252.217-7028 0704-0214

252.219-7003 0704-0386

252.223-7001 0704-0272

252.223-7002 0704-0272

252.223-7003 0704-0272

252.223-7004 0704-0272

252.223-7007 0704-0272

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DFARS Segment OMB Control No.

252.225-7000 0704-0229

252.225-7003 0704-0229

252.225-7004 0704-0229

252.225-7005 0704-0229

252.225-7010 0704-0229

252.225-7013 0704-0229

252.225-7018 0704-0229

252.225-7020 0704-0229

252.225-7021 0704-0229

252.225-7023 0704-0229

252.225-7025 0704-0229

252.225-7032 0704-0229

252.225-7033 0704-0229

252.225-7035 0704-0229

252.225-7039 0704-0549

252.225-7040 0704-0460

252.225-7046 0704-0229

252.225-7049 0704-0525

252.225-7050 0704-0187

252.225-7057 0750-0005

252.225-7058 0750-0005

252.227-7013 0704-0369

252.227-7014 0704-0369

252.227-7017 0704-0369

252.227-7018 0704-0369

252.227-7019 0704-0369

252.227-7025 0704-0369

252.227-7028 0704-0369

252.227-7037 0704-0369

252.228-7000 0704-0216

252.228-7005 0704-0216

252.228-7006 0704-0216

252.229-7010 0704-0390

252.232-7002 0704-0321

252.232-7007 0704-0359

252.234-7002 0704-0479

252.235-7000 0704-0187

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DFARS Segment OMB Control No.

252.235-7001 0704-0187

252.235-7003 0704-0187

252.236-7000 0704-0255

252.236-7002 0704-0255

252.236-7003 0704-0255

252.236-7004 0704-0255

252.236-7010 0704-0255

252.236-7012 0704-0255

252.237-7000 0704-0231

252.237-7011 0704-0231

252.237-7023 0704-0231

252.237-7024 0704-0231

252.239-7000 0704-0341

252.239-7009 0704-0478

252.239-7010 0704-0478

252.242-7004 0704-0250

252.243-7002 0704-0397

252.244-7001 0704-0253

252.245-7003 0704-0246

252.245-7005 0704-0246

252.246-7003 0704-0441

252.246-7005 0704-0441

252.246-7006 0704-0441

252.246-7008 0704-0441

252.247-7000 0704-0245

252.247-7001 0704-0245

252.247-7002 0704-0245

252.247-7007 0704-0245

252.247-7022 0704-0245

252.247-7023 0704-0245

252.247-7026 0704-0245

252.247-7028 0704-0245

252.249-7002 0704-0533

252.251-7000 0704-0252

252.270-7002 0750-0012

Appendix F 0704-0248

Appendix I 0704-0332

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DFARS Segment OMB Control No.

DD Form 1639 0704-0246

DD Form 1659 0704-0245

DD Form 2063 0704-0231

DD Form 2139 0704-0229

DD Form 250 0704-0248

DD Form 250-1 0704-0248

PGI 201.108 Statutory acquisition-related dollar thresholds?adjustment for inflation.

The matrix showing the most recent escalation adjustments of statutory acquisition-related dollar thresholds in the DFARS is available at https://www.acq.osd.mil/dpap/dars/pgi/docs/2024-D002_(f)_Threshold_Matrix_APR_25_CPI_7.30.2025.xls.

PGI 201.170 Peer reviews.

(a) Defense Pricing, Contracting, and Acquisition Policy peer reviews.

(1) The Office of the Principal Director, Defense Pricing, Contracting, and Acquisition Policy (DPCAP), using the procedures in this section, will organize teams of reviewers and facilitate peer reviews for solicitations and contracts as follows:

(i) DPCAP will conduct the preaward peer reviews for competitive procurements prior to the three phases of the acquisition (see PGI 201.170-2(a)) for all procurements with an estimated value of $1 billion or more under major defense acquisition programs for which USD(A&S) is the milestone decision authority or USD(A&S) designates as requiring a peer review regardless of value. DoD components may request DPCAP-led peer reviews for acquisitions valued below the $1 billion threshold. DPCAP will conduct these reviews upon approval by the Director, DPCAP (Contract Policy).

(ii) DPCAP will conduct the preaward peer reviews for noncompetitive procurements prior to the two phases of the acquisition (see PGI 201.170-2(b)) for contract actions, e.g., new contracts, modifications to existing contracts, requests for equitable

adjustment, claims valued at $1 billion or more, or for any other contract action USD(A&S) designates as requiring a peer review regardless of value. DoD components may request DPCAP-led peer reviews for contract actions valued below the $1 billion threshold. DPCAP will conduct these reviews upon approval by the Director, DPCAP (Price, Cost and Finance).

(iii) Use the following criteria to identify actions that are subject to peer review:

(A) If the not-to-exceed amount for an undefinitized contract action or an unpriced change order exceeds the peer review threshold, then the resulting definitization modification(s) will be subject to peer review regardless of actual performance up to the point of definitization.

(B) For indefinite-delivery indefinite-quantity (IDIQ) contracts that will establish pricing terms that apply to orders, use the total maximum dollar value for purposes of the peer review threshold. IDIQ contracts that will not establish pricing terms in the basic

contract are not subject to peer review, but individual orders that exceed the threshold are subject to peer review.

(C) For noncompetitive contract actions, use the greater of the following when considering the firm requirement for all supplies or services:

(1) The approved Government objective amount.

(2) The contractor proposed amount.

(2) To facilitate planning for peer reviews, the military departments and defense agencies must provide a rolling annual forecast of acquisitions that will be subject to DPCAP peer reviews at the end of each quarter (i.e., March 31; June 30; September 30; December **31).**

(i) Military departments and defense agencies must submit quarterly forecasts for competitive peer reviews to the Director, DPCAP (Contract Policy), at osd.pentagon.ousd-a-s.mbx.dpc-cp@mail.mil.

(ii) Military departments and defense agencies must submit quarterly forecasts for noncompetitive peer reviews to the Director, DPCAP (Price, Cost and Finance), at osd.pentagon.ousd-a-s.mbx.dpc-pcf-peer-reviews@mail.mil.

(b) Component peer reviews. The military departments and defense agencies must establish procedures for?

(1) Preaward peer reviews of solicitations for competitive procurements not subject to paragraph (a)(1)(i) of this section; and

(2) Preaward peer reviews of noncompetitive procurements not subject to paragraph (a)(1)(ii) of this section.

(c) DoD components may request a DPCAP-led peer review for procurements that would not otherwise require a DPCAP-led peer review.

(d) Military departments and defense agencies must, on or about June 30 and December 31 of each year, submit recommended best practices and lessons learned from competitive acquisition peer reviews under major defense acquisition programs to osd.pentagon.ousd-a-s.mbx.dpc-cp@mail.mil. Submissions that have broad applicability

may be selected for posting at https://www.acq.osd.mil/asda/dpc/cp/policy/competitive-source-selection.html.

PGI 201.170-1 Objectives of peer reviews.

The objectives of peer reviews are to?

(a) Ensure that DoD contracting officers are implementing policy and regulations in a consistent and appropriate manner;

(b) Continue to improve the quality of contracting processes throughout DoD; and

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(c) Facilitate cross-sharing of best practices and lessons learned throughout DoD. DPCAP maintains a compilation of peer review lessons learned and best practices that is available at https://www.acq.osd.mil/asda/dpc/cp/policy/peer-reviews.html for competitive peer reviews and at https://www.acq.osd.mil/asda/dpc/pcf/ss-peer-reviews.html for noncompetitive peer reviews.

PGI 201.170-2 Preaward peer reviews.

(a) Preaward peer reviews for competitive acquisitions must be conducted prior to each of the following three phases of the acquisition:

(1) Issuance of the solicitation.

(2) Request for final proposal revisions (if applicable).

(3) Contract award.

(b) Preaward peer reviews for noncompetitive acquisitions must be conducted prior to each of the following two phases of the acquisition:

(1) Negotiation.

(2) Contract award.

PGI 201.170-3 Administration of peer reviews.

(a) The results and recommendations that are products of peer reviews are intended to be advisory in nature; however, in the event the peer review report includes a recommendation that is identified as ?significant? and the contracting officer does not intend to follow that recommendation, the senior procurement official of the contracting activity for the reviewed organization must be made aware of this fact before action is taken (or inaction, as applicable) that is contrary to the recommendation. Reviews will be conducted in a manner that preserves the authority, judgment, and discretion of the contracting officer and the senior officials of the requiring activity.

(b) Peer review teams should be comprised of senior contracting officials and attorneys as appropriate. Teams may include civilian employees or military personnel external to the department, agency, or component that is the subject of the peer review.

(c) Reviews are generally conducted remotely. However, a peer review may be conducted at the location of the executing contracting organization when appropriate.

(d) See paragraph (g) of this section for a list of the documents that must be made available to the competitive peer review team, along with the specific elements the team will examine. See paragraph (h) of this section for a list of the documents that must be made available to the noncompetitive peer review team, along with a link to the noncompetitive

peer review preparation resource.

(e) The review team observations and recommendations will be communicated to the contracting officer and the senior procurement official immediately upon completion of a review.

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(f) The contracting officer must document the disposition of all peer review recommendations (i.e., state whether the recommendation will be followed and, if not, why not) as a signed memorandum for the record in the applicable contract file. For competitive acquisitions, the contracting officer must submit this memorandum to osd.pentagon.ousd-a-s.mbx.dpc-cp@mail.mil prior to the next phase peer review or prior to contract award for phase 3 reviews. For noncompetitive acquisitions, the contracting officer must submit this memorandum to osd.pentagon.ousd-a-s.mbx.dpc-pcf-peer-reviews@mail.mil prior to the phase 2 peer review or prior to contract award for phase 2 reviews.

(g) Required documents and elements for competitive acquisition preaward peer review. Submit any required peer review documents to osd.pentagon.ousd-a-s.mbx.dpc-cp@mail.mil.

(1) Required documents. At a minimum, peer review teams must have access to the following documents, as applicable, at least 5 business days prior to the scheduled date of a peer review:

(i) The most recent acquisition decision memorandum for the program.

(ii) The acquisition strategy, or acquisition plan.

(iii) The source selection plan.

(iv) The draft for phase 1 or final request for proposals (RFP) and all amendments, with a synopsis of what, if any, RFP requirements (technical and contractual) were changed and why.

(v) The source selection evaluation board (SSEB) analysis and findings to ensure the evaluation of offers was consistent with the source selection plan and RFP criteria.

(vi) Any meeting minutes memorializing discussions between the Government and offerors.

(vii) All evaluation notices generated as a result of deficiencies in the offerors? proposals as well as the offerors? responses to those evaluation notices.

(viii) All minutes memorializing the conduct of source selection advisory council (SSAC) deliberations held to date.

(ix) The offerors? responses to the request for final proposal revision.

(x) The final SSAC deliberation.

(xi) The final source selection authority (SSA) determination and source selection decision.

(xii) Award or incentive fee arrangements, documentation of any required head of the contracting activity determinations and findings regarding nonavailability of objective criteria.

(2) Peer review teams may make recommendations on any aspect of the procurement, including the following:

(i) The process was well understood by both Government and Industry.

(ii) Source selection was carried out in accordance with the source selection plan and RFP.

(iii) The SSEB evaluation was clearly documented.

(iv) The SSAC advisory panel recommendation was clearly documented.

(v) The SSA decision was clearly derived from the conduct of the source selection process.

(vi) All source selection documentation is consistent with the Section M evaluation criteria.

(vii) The business arrangement.

(h) Required documents and preparation resource for noncompetitive acquisition preaward peer review. Submit any required peer review documents to osd.pentagon.ousd-a-s.mbx.dpc-pcf-peer-reviews@mail.mil.

(1) Required documents. At a minimum, peer review teams must have access to the following documents, as applicable, at least 5 business days prior to the scheduled date of a peer review:

(i) Preliminary price negotiation memorandum or business clearance for phase 1 or price negotiation memorandum or business clearance for phase 2, including all listed attachments.

(ii) Summary documents to support a discussion of salient aspects of the acquisition, e.g., business/contract clearance charts. Special charts do not need to be developed for the peer review.

(iii) The anticipated or negotiated language of clauses affecting the price or the business arrangement, e.g., economic price adjustment, performance-based payments, incentive, award-fee, or award-term provisions, terms establishing price adjustment when using demand bands, reopener clauses, exchange rate clauses, or other clauses.

(iv) Award-fee plan and documentation of any required head of the contracting activity determination and findings regarding nonavailability of objective criteria (see FAR 16.401(e)(1)).

(v) Defense Contract Audit Agency audits and Defense Contract Management Agency technical and/or price analyses, upon request.

(vi) The proposed performance-based payments schedule and Government

analysis, if use of performance-based payments is contemplated.

(vii) Any other documents deemed necessary by the review team.

(2) Noncompetitive peer review preparation resource. The noncompetitive peer review preparation resource is available at https://www.acq.osd.mil/asda/dpc/pcf/ss-peer-reviews.html. The resource identifies frequently addressed areas of emphasis. It is recommended that acquisition teams review these listed areas of interest in advance of releasing a request for proposal.

PGI 201.2?AGENCY ACQUISITION REGULATIONS

PGI 201.201 Policy.

PGI 201.201-70 Numbering.

(a) Text that supplements the FAR uses the same numbering as its FAR counterpart, with the number 70 and up added to the FAR part, subpart, or section number. When the text exceeds one paragraph, the paragraphs use the FAR numbering sequence, which is

(a)(1)(i)(A)(1)(i). For example, DFARS text supplementing FAR 1.101 would be numbered **201.101-70. The paragraphs in 201.101-70 would be (a), (b), and (c).**

(b) Text that implements the FAR uses the same numbering as its FAR counterpart. However, when the text uses a different number of paragraphs than the FAR, the text uses supplemental numbering.

(c) Paragraph numbering below the 4th level (i.e., (A)) does not repeat the numbering sequence. It uses italicized Arabic numerals (e.g., 1) at the 5th level and then italicized lower case Roman numerals (e.g., i) at the final level.

(d) Examples of DFARS numbering are in Table 1, DFARS Numbering.

(e) Department, agency, and component supplements must parallel the FAR and DFARS numbering, except department and agency supplemental numbering uses section numbers of 90 and up, instead of 70 and up.

TABLE 1, DFARS NUMBERING

FAR Is Implemented As Is Supplemented As

19 219 219.70

19.5 219.5 219.570

19.501 219.501 219.501-70

19.501-1 219.501-1 219.501-70 or 219.570

19.501-1(a) 219.501-1(a) 219.501-70 or 219.570

19.501-1(a)(1) 219.501-1(a)(1) 219.501-70 or 219.570

201.201-71 Local solicitation provisions and contract clauses.

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(a) Contract clauses and solicitation provisions developed by departments and agencies

(i.e., local clauses) that constitute a significant revision must be published for public comment in the Federal Register in accordance with DFARS 201.101.

(1) A local clause is considered a significant revision if the clause?

(i) Contains a new certification requirement for contractors or offerors that is not

imposed by statute (see FAR 1.106 and DFARS 201.106);

(ii) Constitutes a deviation (as defined at FAR 1.3) from the parts and subparts identified at DFARS 201.302; or

(iii) Will be used on a repetitive basis and?

(A) Imposes a new requirement for the collection of information from 10 or more members of the public (see FAR 1.105); or

(B) Has any cost or administrative impact on contractors or offerors beyond that contained in the FAR or DFARS.

(2) A local clause is not considered a significant revision, if the clause?

(i) Is for a one-time use intended to meet the needs of an individual acquisition

(e.g., a clause developed as a result of negotiations and documented in the business clearance or similar document), except for clauses that constitute a deviation (as defined at FAR 1.301) from the parts and subparts identified at DFARS 201.302; or

(ii) May be used on a repetitive basis and has no new or additional cost or administrative impact on contractors or offerors beyond any cost or administrative impact contained in existing FAR or DFARS coverage.

PGI 201.270 Agency control and compliance procedures.

(a) Agencies must control the use of clauses or provisions other than those prescribed by the FAR or DFARS (i.e., local clauses) and shall include procedures to ensure that a local clause?

(1) Is evaluated to determine whether the local clause constitutes a significant revision;

(2) Is numbered in accordance with FAR 52.1 and DFARS 252.1 (see 252.103);

(3) Is accompanied by a prescription in the appropriate part and subpart of the department or agency FAR supplement where the subject matter of the clause receives its primary treatment;

(4) If it constitutes a significant revision?

(i) Is published for public comment in the Federal Register in accordance with FAR 1.201 and DFARS 201.201;

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(ii) Complies with the Paperwork Reduction Act 1980 (44 USC chapter 35), in accordance with FAR 1.105 and 1.301; and

(iii) Complies with the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), in accordance with FAR 1.301; and

(5) When Federal Register publication is required for any policy, procedure, clause, or form, the department or agency requesting Under Secretary of Defense (Acquisition and Sustainment) approval for use of the policy, procedure, clause, or form must include an analysis of the public comments in the request for approval.

PGI 201.4?CAREER DEVELOPMENT, CONTRACTING AUTHORITY, AND RESPONSIBILITIES

PGI 201.404 Contracting officer?s representative.
PGI 201.404-70 Roles and responsibilities.
Contracting officers must inform all individuals performing on their behalf of their delegated roles and responsibilities and the relationships among the parties.

(a) When designating Department of State personnel as a contracting officer?s representative (COR for contracts executed by DoD in support of Department of State in Iraq), follow the procedures in the Director, Defense Procurement and Acquisition Policy memorandum dated July 11, 2011, Contracting Officer?s Representative Designation?Iraq.

(b) DoD COR certification standards define minimum COR competencies, experience, and training requirements according to the nature and complexity of the requirement and contract performance risk. These COR certification standards should be considered when developing service requirements, soliciting proposals, and performing surveillance during contract performance. The DoD standards and policy are provided in DoD Instruction **5000.72, DoD Standard for Contracting Officer?s Representative (COR) Certification.**

(c) Guidance on the appointment and duties of CORs is provided in the DoD COR Guidebook.

(d) DoD components must use the Joint Appointment Module (JAM), within the Procurement Integrated Enterprise Environment (PIEE), to electronically track COR nominations, appointments, terminations, and training certifications for contracts assigned a COR. Components must use the Surveillance and Performance Monitoring (SPM) Module, located in the PIEE, for all other contract surveillance actions. Further guidance on the use of JAM and SPM Module is available at https://piee.eb.mil/piee-landing/.

(e) A COR assists in the technical monitoring or administration of a contract.

(1) Unless an exemption applies, contracting officers must designate a COR for all service contracts, including both firm-fixed-price and other than firm-fixed-price contracts, and supply contracts with cost-reimbursable line items awarded by a DoD component or by any other Federal agency on behalf of DoD within 3 business days of contract award. The surveillance activities performed by CORs should be tailored to the

dollar value and complexity of the specific contract for which they are designated. For geographically dispersed large contracts with multiple task orders, contracting officers should consider appointing multiple or alternate CORs to assist with surveillance duties. These CORs should have specific duties based on criteria, such as geographic region or distinct task areas, to avoid conflicting or duplicative direction. Contracting officers may exempt service contracts from this requirement when?

(i) The contract will be awarded using simplified acquisition procedures;

(ii) The requirement is not complex; and

(iii) The contracting officer documents the file, in writing, with the specific reasons why the appointment of a COR is unnecessary.

(2) For supply contracts with cost-reimbursement contracts line items, contracting

officers must either retain or delegate surveillance activities to a COR or DCMA. Contracting officers may delegate surveillance activities to both a COR and DCMA on the same contract. However, contracting officers must not delegate the same surveillance activities to the COR and DCMA.

(3) The contracting officer must ensure the written designation required by FAR **1.404(a)(1) is maintained in JAM or the SPM Module.**

(f) A COR must maintain an electronic COR Surveillance file in the SPM Module for each contract assigned. This file must include, at a minimum?

(1) A copy of the contracting officer's letter of designation and other documentation describing the COR's duties and responsibilities; and

(2) Documentation of actions taken in accordance with the delegation of authority.

(g) Contracting officers, must, at a minimum, review the COR?s files within six months of contract award and annually thereafter, for accuracy and completeness. More frequent reviews may be conducted in subsequent years based upon the risks, complexity, and value of the contract. The results of the contracting officer?s review must be documented in the SPM Module.

(h) Within 30 days of completing the COR file review, contracting officers must?

(1) Provide COR performance feedback to their supervisor; and

(2) Discuss any performance inadequacies with the COR.

(i) Prior to contract closeout, the COR will ensure the COR Surveillance files for the assigned contract are complete and available to the contracting officer.

PART 3

OFFICE OF THE ASSISTANT SECRETARY OF WAR

Status: Class D

OFFICE OF THE ASSISTANT SECRETARY OF WAR

3000 DEFENSE PENTAGON

WASHINGTON, DC 20301-3000

ACQUISITION

AND SUSTAINMENT

In reply refer to

DARS Tracking Number: 2026-O0031

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES SPECIAL OPERATIONS

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES TRANSPORTATION

COMMAND (ATTN: ACQUISITION EXECUTIVE)

DEPUTY ASSISTANT SECRETARY OF THE ARMY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE NAVY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE

(CONTRACTING)

DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Class Deviation?Revolutionary Federal Acquisition Regulation (FAR) Overhaul

Part 3, Defense FAR Supplement (DFARS) Part 203

Effective February 1, 2026, contracting officers shall use?

? The revised FAR Part 3, Improper Business Practices and Personal Conflicts of Interest published on the Revolutionary FAR Overhaul web page at https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-3 in lieu of the text codified at 48 CFR chapter 1 (https://www.ecfr.gov).

? The attached DFARS Part 203, Improper Business Practices and Personal Conflicts of Interest in lieu of the text codified at 48 CFR chapter 2; and

? The attached DFARS Procedures, Guidance, and Information (PGI) 203, Improper Business Practices and Personal Conflicts of Interest, in lieu of the PGI text published on the Defense Pricing, Contracting, and Acquisition Policy web page at https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.

This class deviation implements the following:

? Section 2 of E.O. 14275, Restoring Common Sense to Federal Procurement, which establishes the policy that the FAR ?should only contain provisions required by statute or essential to sound procurement, and any FAR provisions that do not

advance these objectives should be removed.
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? Section 4(a) of E.O. 14265, Modernizing Defense Acquisitions and Spurring Innovation in the Defense Industrial Base which requires the Secretary of War to eliminate or revise any unnecessary supplemental regulations or any other internal guidance, such as relevant parts of the Financial Management Regulation and Defense Federal Acquisition Regulation Supplement.
? The Office of Management and Budget memorandum, M-25-26 issued on May 2, 2025, titled, Overhauling the Federal Acquisition Regulation, which provided additional guidance to federal agencies regarding the FAR overhaul.
This class deviation remains in effect until rescinded or incorporated into the FAR, DFARS, and DFARS PGI. Inquiries regarding this class deviation can be addressed to osd.pentagon.ousd-a-s.mbx.dfars@mail.mil.
John M. Tenaglia
Principal Director,
Defense Pricing, Contracting, and
Acquisition Policy
Attachments:
As stated
2
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PART 203?IMPROPER BUSINESS PRACTICES AND PERSONAL

CONFLICTS OF INTEREST

203.070 Reporting of violations and suspected violations.

Report violations and suspected violations of the following requirements in accordance with 209.406-3 or 209.407-3 and DoDD 7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities:

(a) Certificate of Independent Price Determination (FAR 3.103).
(b) Procurement integrity (FAR 3.104).
(c) Gratuities clause (FAR 3.203).
(d) Antitrust laws (FAR 3.303).
(e) Covenant Against Contingent Fees (FAR 3.405).
(f) Kickbacks (FAR 3.502).
(g) Prohibitions on persons convicted of defense-related contract felonies (203.570).

SUBPART 203.1?SAFEGUARDS

203.104 Procurement integrity.

203.104-1 Definitions.

As used in this section?
?Federal agency procurement,? defined at FAR 3.104-1, also includes commercial

solutions openings.

203.104-4 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

(d)(3) For purposes of FAR 3.104-4(d)(3) only, DoD follows the notification procedures in FAR 27.404-5(a). However, FAR 27.404-5(a)(1) does not apply to DoD.

203.170 Business practices.

To ensure the separation of functions for oversight, source selection, contract negotiation, and contract award, departments and agencies must adhere to the following best practice policies:

(a) Senior leaders must not perform multiple roles in source selection for a major weapon system or major service acquisition.

(b) Vacant acquisition positions must be filled on an ?acting? basis from below until a permanent appointment is made. To provide promising professionals an opportunity

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to gain experience by temporarily filling higher positions, these oversight duties must not accrue at the top.

(c) Acquisition process reviews of the military departments must be conducted to assess and improve acquisition and management processes, roles, and structures. The scope of the reviews should include?

(1) Distribution of acquisition roles and responsibilities among personnel;

(2) Processes for reporting concerns about unusual or inappropriate actions; and

(3) Application of DoD Instruction 5000.2, Operation of the Defense Acquisition System, and the disciplines in the Defense Acquisition Guidebook.

(d) Source selection processes must be?

(1) Reviewed and approved by cognizant organizations responsible for oversight;

(2) Documented by the head of the contracting activity or at the agency level; and

(3) Periodically reviewed by outside officials independent of that office or agency.

(e) Legal review of documentation of major acquisition system source selection must be conducted prior to contract award, including the supporting documentation of the source selection evaluation board, source selection advisory council, and source selection authority.

(f) Procurement management reviews must determine whether clearance threshold authorities are clear and must provide independent review for acquisitions exceeding the simplified acquisition threshold.

203.171 Senior DoD officials seeking employment with defense contractors.

203.171-1 Scope.

This section implements section 847 of the National Defense Authorization Act for

Fiscal Year 2008 (Pub. L. 110-181).

203.171-2 Definition.

As used in this section?

?Covered DoD official? is defined in the clause at 252.203-7000, Requirements Relating to Compensation of Former DoD Officials.

203.171-3 Policy.

(a) A DoD official covered by the requirements of section 847 of Public Law 110-181

(a ?covered DoD official?) who, within 2 years after leaving DoD service, expects to

receive compensation from a DoD contractor, must, prior to accepting such compensation, request a written opinion from the appropriate DoD ethics counselor regarding the applicability of post-employment restrictions to activities that the official may undertake on behalf of a contractor.

(b) A DoD contractor must not knowingly provide compensation to a covered DoD official within 2 years after the official leaves DoD service unless the contractor first determines that the official has received, or has requested at least 30 days prior to receiving compensation from the contractor, the post-employment ethics opinion described in paragraph (a) of this section.

(c) If a DoD contractor knowingly fails to comply with the requirements of the clause at 252.203-7000, consider taking administrative and contractual actions, including cancellation of a procurement, rescission of a contract, or initiation of suspension or debarment proceedings (41 U.S.C. 2105(c)).

203.171-4 Solicitation provision and contract clause.

(a) Insert the clause at 252.203-7000, Requirements Relating to Compensation of Former DoD Officials, in all solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services.

(b) Insert the provision at 252.203-7005, Representation Relating to Compensation of Former DoD Officials, in all solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services and solicitations for task orders and delivery orders.

SUBPART 203.5?OTHER IMPROPER BUSINESS PRACTICES

203.502-2 Subcontractor kickbacks.

(h) See PGI 203.502-2 for a list of organizations designated for investigations of possible kickbacks.

203.570 Prohibition on persons convicted of fraud or other defense-contract-related felonies.

203.570-1 Scope.

This section implements 10 U.S.C. 4656. For information on 10 U.S.C. 4656, see PGI **203.570-1.**

203.570-2 Prohibition period.

DoD has sole responsibility for determining the period of the prohibition described in paragraph (b) of the clause at 252.203-7001, Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies. The prohibition period?

(a) Must not be less than 5 years from the date of conviction unless the agency head or a designee grants a waiver in the interest of national security. Follow the waiver procedures at PGI 203.570-2(a); and

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(b) May be more than 5 years from the date of conviction if the agency head or a designee makes a written determination of the need for the longer period. The agency must provide a copy of the determination to the address at PGI 203.570-2(b).

203.570-3 Contract clause.

Insert the clause at 252.203-7001, Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies, in all solicitations and contracts exceeding the simplified acquisition threshold, except solicitations and contracts for commercial products or commercial services.

SUBPART 203.7?VOIDING AND RESCINDING CONTRACTS

203.703 Authority.

The authority to act for the agency head under this subpart is limited to a level no lower than an official who is appointed by and with the advice of the Senate, without power of redelegation. For the defense agencies, for purposes of this subpart, the agency head designee is the Under Secretary of Defense (Acquisition and Sustainment).

SUBPART 203.8?LIMITATIONS ON THE PAYMENT OF FUNDS TO INFLUENCE FEDERAL TRANSACTIONS

203.806 Processing suspected violations.

Report suspected violations to the address at PGI 203.806(a).

SUBPART 203.9?WHISTLEBLOWER PROTECTIONS FOR CONTRACTOR EMPLOYEES

203.900 Scope of subpart.

This subpart implements 10 U.S.C. 4701 and section 883 of the National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116-283).

(a)(i) 10 U.S.C. 4701 provides DoD whistleblower protection policies and procedures for contractor employees. Use sections 203.901 through 203.906 of this subpart in lieu of FAR sections 3.901 through 3.906 to implement 10 U.S.C. 4701.

(ii) 10 U.S.C. 4701 does not apply to any element of the intelligence community, as defined in 50 U.S.C. 3003(4). Sections 203.901 through 203.906 do not apply to any disclosure made by an employee of a contractor or subcontractor of an element of the intelligence community if such disclosure?

(A) Relates to an activity or an element of the intelligence community; or

(B) Was discovered during contract or subcontract services provided to an

element of the intelligence community.

(c) Section 883 of the National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116-283) prohibits the award of a DoD contract to contractors that require their employees to sign internal confidentiality agreements or statements that would prohibit or otherwise restrict such employees from lawfully reporting waste, fraud, or abuse

related to the performance of a DoD contract to a designated investigative or law enforcement representative within DoD authorized to receive such information.

203.901 Definitions.

As used in this subpart?

?Abuse of authority? means an arbitrary and capricious exercise of authority that is inconsistent with the mission of DoD or the successful performance of a DoD contract.

203.903 Policy.

(1) Prohibition. 10 U.S.C. 4701 prohibits contractors and subcontractors from discharging, demoting, or otherwise discriminating against an employee as a reprisal for disclosing, to any of the entities listed at paragraph (3) of this section, information that the employee reasonably believes is evidence of gross mismanagement of a DoD contract, a gross waste of DoD funds, an abuse of authority relating to a DoD contract, a violation of law, rule, or regulation related to a DoD contract (including the competition for or negotiation of a contract), or a substantial and specific danger to public health or safety. Such reprisal is prohibited even if undertaken at the request of an executive branch official, unless the request takes the form of a non-discretionary directive and is within the authority of the executive branch official making the request.

(2) Classified information. As provided in section 827(h) of the National Defense Authorization Act for Fiscal Year 2013, nothing in this subpart provides any rights to disclose classified information not otherwise provided by law.

(3) Entities to whom disclosure may be made include:

(i) A Member of Congress or a representative of a committee of Congress.

(ii) An Inspector General that receives funding from or has oversight over contracts awarded for or on behalf of DoD.

(iii) The Government Accountability Office.

(iv) A DoD employee responsible for contract oversight or management.

(v) An authorized official of the Department of Justice or other law enforcement agency.

(vi) A court or grand jury.

(vii) A management official or other employee of the contractor or subcontractor who has the responsibility to investigate, discover, or address misconduct.

(4) Disclosure clarified. An employee who initiates or provides evidence of contractor or subcontractor misconduct in any judicial or administrative proceeding relating to waste, fraud, or abuse on a DoD contract will be deemed to have made a

disclosure.

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(5) Contracting officer actions. Upon receipt of a complaint of reprisal of the type described in paragraph (1) of this section, forward it to legal counsel or to the appropriate party in accordance with agency procedures.

203.904 Procedures for filing complaints.

(1) Any employee of a contractor or subcontractor who believes that he or she has been discharged, demoted, or otherwise discriminated against contrary to the policy in **203.903 may file a complaint with the DoD Inspector General.**

(2) A complaint may not be brought under this section more than three years after the date on which the alleged reprisal took place.

(3) The complaint must be signed and must contain?

(i) The name of the contractor;

(ii) The contract number, if known; if not, a description reasonably sufficient to identify the contract(s) involved;

(iii) The violation of law, rule, or regulation giving rise to the disclosure;

(iv) The nature of the disclosure giving rise to the discriminatory act, including the party to whom the information was disclosed; and

(v) The specific nature and date of the reprisal.

203.905 Procedures for investigating complaints.

(1) Unless the DoD Inspector General makes a determination that the complaint is frivolous, fails to allege a violation of the prohibition in 203.903, or has been previously addressed in another Federal or State judicial or administrative proceeding initiated by the complainant, the DoD Inspector General will investigate the complaint.

(2) If the DoD Inspector General investigates the complaint, the DoD Inspector General will?

(i) Notify the complainant, the contractor alleged to have committed the violation, and the head of the agency; and

(ii) Provide a written report of findings to the complainant, the contractor alleged to have committed the violation, and the head of the agency.

(3) Upon completion of the investigation, the DoD Inspector General?

(i) Either will determine that the complaint is frivolous, fails to allege a violation of the prohibition in 203.903, or has been previously addressed in another Federal or State judicial or administrative proceeding initiated by the complainant, or will submit the report addressed in paragraph (2) of this section within 180 days after receiving the complaint; and

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(ii) If unable to submit a report within 180 days, will submit the report within the additional time period, up to 180 days, as agreed to by the person submitting the complaint.

(4) The DoD Inspector General may not respond to any inquiry or disclose any information from or about any person alleging the reprisal, except to the extent that such response or disclosure is?

(i) Made with the consent of the person alleging reprisal;

(ii) Made in accordance with 5 U.S.C. 552a (the Freedom of Information Act) or as required by any other applicable Federal law; or

(iii) Necessary to investigate the alleged reprisal.

(5) The legal burden of proof specified at paragraph (e) of 5 U.S.C. 1221 (Individual Right of Action in Certain Reprisal Cases) applies for the purposes of an investigation conducted by the DoD Inspector General, decision by the head of an agency, or judicial or administrative proceeding to determine whether prohibited discrimination has occurred.

203.906 Remedies.

(1) Not later than 30 days after receiving a DoD Inspector General report in accordance with 203.905, the head of the agency must determine whether sufficient basis exists to conclude that the contractor has subjected the complainant to a reprisal as prohibited by 203.903 and must either issue an order denying relief or take one or more of the following actions:

(i) Order the contractor to take affirmative action to abate the reprisal.

(ii) Order the contractor to reinstate the person to the position that the person held before the reprisal, together with compensatory damages (including back pay), employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.

(iii) Order the contractor to pay the complainant an amount equal to the aggregate amount of all costs and expenses (including attorneys? fees and expert witnesses? fees) that were reasonably incurred by the complainant for, or in connection with, bringing the complaint regarding the reprisal, as determined by the head of the agency.

(2) If the head of the agency issues an order denying relief or has not issued an order within 210 days after the submission of the complaint or within 30 days after the expiration of an extension of time granted in accordance with 203.905(3)(ii), and no evidence exists that such delay is due to the bad faith of the complainant?

(i) The complainant will be deemed to have exhausted all administrative remedies with respect to the complaint; and

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(ii) The complainant may bring a de novo action at law or equity against the contractor to seek compensatory damages and other relief available under 10 U.S.C.

4701 in the appropriate district court of the United States, which has jurisdiction over such an action without regard to the amount in controversy. Either party to the action may request a jury trial. An action under this authority may not be brought more than 2 years after the date on which remedies are deemed to have been exhausted.

(3) An Inspector General determination and an agency head order denying relief under paragraph (2) of this section is admissible in evidence in any de novo action at law or equity brought pursuant to 10 U.S.C. 4701(c).

(4) Whenever a contractor fails to comply with an order issued by the head of the agency in accordance with 10 U.S.C. 4701, the head of the agency or designee must request the Department of Justice to file an action for enforcement of such order in the United States district court for a district in which the reprisal was found to have occurred. In any action brought under this paragraph, the court may grant appropriate relief, including injunctive relief, compensatory and exemplary damages, and reasonable attorney fees and costs. The person upon whose behalf an order was issued may also file such an action or join in an action filed by the head of the agency.

(5) Any person adversely affected or aggrieved by an order issued by the head of the agency in accordance with 10 U.S.C. 4701 may obtain judicial review of the order?s conformance with the law, and the implementing regulation, in the United States Court of Appeals for a circuit in which the reprisal is alleged in the order to have occurred. No petition seeking such review may be filed more than 60 days after issuance of the order by the head of the agency or designee. This review must conform to Chapter 7 of Title 5, Unites States Code. Filing such an appeal does stay the enforcement of the order by the head of an agency, unless the court specifically enters a stay.

(6) The rights and remedies provided for in this subpart may not be waived by any agreement, policy, form, or condition of employment.

203.909 Prohibition on providing funds to an entity that requires certain internal confidentiality agreements or statements.

203.909-3 Solicitation provision and contract clause.

Insert the provision at FAR 52.203-18, Prohibition on Contracting with Entities That Require Certain Internal Confidentiality Agreements or Statements?Representation, and the clause at FAR 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements, prescribed at FAR 3.909-3 to implement section 883 of the National Defense Authorization Act for Fiscal Year 2021.

203.970 Contract clause.

Insert the clause at 252.203-7002, Requirement to Inform Employees of Whistleblower Rights, in all solicitations and contracts, including solicitations and contracts using FAR

part 12 procedures for the acquisition of commercial products or commercial services.

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SUBPART 203.10?CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT

203.1003 Requirements.

(b) Notification of possible contractor violation. Upon notification of a possible contractor violation of the type described in FAR 3.1003(b), coordinate the matter with the following office:

Department of Defense Office of Inspector General, Administrative Investigations Contractor Disclosure Program, 4800 Mark Center Drive, Suite 14L25, Arlington, VA 22350-1500.

Toll-Free Telephone: 866-429-8011. Website: https://www.dodig.mil/Programs/Contractor-Disclosure-Program/.

(c) Fraud hotline poster. For contracts performed outside the United States, when security concerns can be appropriately demonstrated, the contracting officer may provide the contractor the option to publicize the program to contractor personnel in a manner other than public display of the poster required by 203.1004(b)(2)(ii), such as private employee written instructions and briefings.

203.1004 Contract clauses.

(a) Insert the clause at 252.203-7003, Agency Office of the Inspector General, in solicitations and contracts that include the FAR clause 52.203-13, Contractor Code of Business Ethics and Conduct.

(b)(2)(ii) Unless the contract is for the acquisition of a commercial product or commercial service, insert the clause at 252.203-7004, Display of Hotline Posters, in lieu of the clause at FAR 52.203-14, Display of Hotline Poster(s), in solicitations and contracts, if the contract value exceeds $7.5 million. If the Department of Homeland Security (DHS) provides disaster relief funds for the contract, DHS will provide information on how to obtain and display the DHS fraud hotline poster (see FAR **3.1003).**

PART 252?SOLICITATION PROVISIONS AND CONTRACT CLAUSES

SUBPART 252.2?TEXT OF PROVISIONS AND CLAUSES

252.203-7000 Requirements Relating to Compensation of Former DoD Officials.

As prescribed in 203.171-4(a), use the following clause:

REQUIREMENTS RELATING TO COMPENSATION OF FORMER DOD OFFICIALS (SEP 2011)

(a) Definition. Covered DoD official, as used in this clause, means an individual that?

(1) Leaves or left DoD service on or after January 28, 2008; and

(2)(i) Participated personally and substantially in an acquisition as defined in 41 U.S.C. 131 with a value in excess of $10 million, and serves or served?

(A) In an Executive Schedule position under subchapter II of chapter 53 of Title 5, United States Code;

(B) In a position in the Senior Executive Service under subchapter VIII of chapter 53 of Title 5, United States Code; or

(C) In a general or flag officer position compensated at a rate of pay for grade O-7 or above under section 201 of Title 37, United States Code; or

(ii) Serves or served in DoD in one of the following positions: Program manager, deputy program manager, procuring contracting officer, administrative contracting officer, source selection authority, member of the source selection evaluation board, or chief of a financial or technical evaluation team for a contract in an amount in excess of $10 million.

(b) The Contractor shall not knowingly provide compensation to a covered DoD official within 2 years after the official leaves DoD service, without first determining that the official has sought and received, or has not received after 30 days of seeking, a written opinion from the appropriate DoD ethics counselor regarding the applicability of post-employment restrictions to the activities that the official is expected to undertake on behalf of the Contractor.

(c) Failure by the Contractor to comply with paragraph (b) of this clause may subject the Contractor to rescission of this contract, suspension, or debarment in accordance with 41 U.S.C. 2105(c).

(End of clause)

252.203-7001 Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies.

As prescribed in 203.570-3, use the following clause:

PROHIBITION ON PERSONS CONVICTED OF FRAUD OR OTHER DEFENSE-CONTRACT-RELATED FELONIES (JAN 2023)

(a) Definitions. As used in this clause?

(1) Arising out of a contract with the DoD means any act in connection with?

(i) Attempting to obtain;

(ii) Obtaining; or

(iii) Performing a contract or first-tier subcontract of any agency, department, or component of the Department of Defense (DoD).

(2) Conviction of fraud or any other felony means any conviction for fraud or a felony in violation of state or Federal criminal statutes, whether entered on a verdict or plea, including a plea of nolo contendere, for which sentence has been imposed.

(3) Date of conviction means the date judgment was entered against the individual.

(b) Any individual who is convicted after September 29, 1988, of fraud or any other felony arising out of a contract with the DoD is prohibited from serving?

(1) In a management or supervisory capacity on this contract;

(2) On the board of directors of the Contractor;

(3) As a consultant, agent, or representative for the Contractor; or

(4) In any other capacity with the authority to influence, advise, or control the decisions of the Contractor with regard to this contract.

(c) Unless waived, the prohibition in paragraph (b) of this clause applies for not less than 5 years from the date of conviction.

(d) 10 U.S.C. 4656 provides that the Contractor shall be subject to a criminal penalty of not more than $500,000 if convicted of knowingly?

(1) Employing a person under a prohibition specified in paragraph (b) of this clause; or

(2) Allowing such a person to serve on the board of directors of the contractor or first-tier subcontractor.

(e) In addition to the criminal penalties contained in 10 U.S.C. 4656, the Government may consider other available remedies, such as?

(1) Suspension or debarment;

(2) Cancellation of the contract at no cost to the Government; or

(3) Termination of the contract for default.

(f) The Contractor may submit written requests for waiver of the prohibition in paragraph (b) of this clause to the Contracting Officer. Requests shall clearly identify?

(1) The person involved;

(2) The nature of the conviction and resultant sentence or punishment imposed;

(3) The reasons for the requested waiver; and

(4) An explanation of why a waiver is in the interest of national security.

(g) Subcontracts. The Contractor agrees to include the substance of this clause, appropriately modified to reflect the identity and relationship of the parties, in all first-tier subcontracts exceeding the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation, except those for commercial products, commercial services, or commercial components.

(h) Pursuant to 10 U.S.C. 4656(c), defense contractors and subcontractors may obtain information as to whether a particular person has been convicted of fraud or any other felony arising out of a contract with the DoD by contacting The Office of Justice Programs, The Denial of Federal Benefits Office, U.S. Department of Justice, telephone

(301) 937-1542; www.ojp.usdoj.gov/BJA/grant/DPFC.html.

(End of clause)

252.203-7002 Requirement to Inform Employees of Whistleblower Rights.

As prescribed in 203.970, use the following clause:

REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (DEC 2022)

(a) The Contractor shall inform its employees in writing, in the predominant native language of the workforce, of contractor employee whistleblower rights and protections

under 10 U.S.C. 4701, as described in subpart 203.9 of the Defense Federal Acquisition Regulation Supplement.

(b) The Contractor shall include the substance of this clause, including this paragraph (b), in all subcontracts.

(End of clause)

252.203-7003 Agency Office of the Inspector General.

As prescribed in 203.1004(a), use the following clause:

AGENCY OFFICE OF THE INSPECTOR GENERAL (AUG 2019)

The agency office of the Inspector General referenced in paragraphs (c) and (d) of FAR clause 52.203-13, Contractor Code of Business Ethics and Conduct, is the DoD Office of Inspector General at the following address:

Department of Defense Office of Inspector General, Administrative Investigations, Contractor Disclosure Program, 4800 Mark Center Drive, Suite 14L25, Alexandria, VA 22350-1500.

Toll Free Telephone: 866-429-8011. Website: https://www.dodig.mil/Programs/Contractor-Disclosure-Program/.

(End of clause)

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252.203-7004 Display of Hotline Posters.

As prescribed in 203.1004(b)(2)(ii), use the following clause:

DISPLAY OF HOTLINE POSTERS (JAN 2023)

(a) Definition. As used in this clause?

United States means the 50 States, the District of Columbia, and outlying areas.

(b) Display of hotline poster(s). (1)(i) The Contractor shall display prominently the DoD fraud, waste, and abuse hotline poster prepared by the DoD Office of the Inspector General, in effect at time of contract award, in common work areas within business segments performing work under Department of Defense (DoD) contracts.

(ii) For contracts performed outside the United States, when security concerns can be appropriately demonstrated, the contracting officer may provide the contractor the option to publicize the program to contractor personnel in a manner other than public display of the poster, such as private employee written instructions and briefings.

(2) If the contract is funded, in whole or in part, by Department of Homeland Security (DHS) disaster relief funds and the work is to be performed in the United States, the DHS fraud hotline poster shall be displayed in addition to the DoD hotline poster. If a display of a DHS fraud hotline poster is required, the Contractor may obtain such poster from?

(i) DHS Office of Inspector General/MAIL STOP 0305, Attn: Office of Investigations?Hotline, 245 Murray Lane SW., Washington, DC 20528-0305; or

(ii) Via the Internet at

https://www.oig.dhs.gov/assets/Hotline/DHS_OIG_Hotline-optimized.jpg.

(c)(1) These DoD hotline poster may be obtained from: Defense Hotline, The Pentagon, Washington, DC 20301-1900, or is also available via the internet at https://www.dodig.mil/Resources/Posters-and-Brochures/.

(2) If a significant portion of the employee workforce does not speak English, then the poster is to be displayed in the foreign languages that a significant portion of the employees speak.

(3) Additionally, if the Contractor maintains a company Web site as a method of providing information to employees, the Contractor shall display an electronic version of the required poster at the Web site.

(d) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (d), in all subcontracts that exceed the threshold specified in Defense Federal Acquisition Regulation Supplement 203.1004(b)(2)(ii) on the date of subcontract award, except when the subcontract is for the acquisition of a commercial product or commercial service.

(End of clause)

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252.203-7005 Representation Relating to Compensation of Former DoD Officials.

As prescribed in 203.171-4(b), insert the following provision:

REPRESENTATION RELATING TO COMPENSATION OF FORMER DOD OFFICIALS (SEP 2022)

(a) Definition. Covered DoD official is defined in the clause at 252.203-7000, Requirements Relating to Compensation of Former DoD Officials.

(b) By submission of this offer, the Offeror represents, to the best of its knowledge and belief, that all covered DoD officials employed by or otherwise receiving compensation from the Offeror, and who are expected to undertake activities on behalf of the Offeror for any resulting contract, are presently in compliance with all applicable post-employment restrictions, including those contained in 18 U.S.C. 207, 41 U.S.C. 2101-2107, 5 CFR part 2641, section 1045 of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91), and Federal Acquisition Regulation 3.104-2.

(End of provision)

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PGI 203?IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

PGI 203.5--OTHER IMPROPER BUSINESS PRACTICES

PGI 203.502-2 Subcontractor kickbacks.

The DoD Inspector General has designated Special Agents of the following investigative organizations as representatives for conducting inspections and audits under 41 U.S.C. chapter 87, Kickbacks:

(a) U.S. Army Criminal Investigation Command.

(b) Naval Criminal Investigative Service.

(c) Air Force Office of Special Investigations.

(d) Defense Criminal Investigative Service.

PGI 203.570 Prohibition on persons convicted of fraud or other defense-contract-related felonies.

PGI 203.570-1 Scope.

The complete text of 10 U.S.C. 4656, Prohibition on Persons Convicted of Defense-Contract Related Felonies and Related Criminal Penalty on Defense Contractors, is available at http://uscode.house.gov/. Select ?Search the U.S. Code?, then type ?10 USC Sec. 4656? (including the quotation marks) in the search engine window and click on the search button.

PGI 203.570-2 Prohibition period.

(a)(1) Review any waiver request, and either?

(i) Deny the request if the contracting officer decides the waiver is not required in the interests of national security; or

(ii) Forward the request to the head of the agency or designee for approval if the contracting officer decides the waiver may be in the interest of national security.

(2) The head of the agency or designee must report all waivers granted, and the reasons for granting the waiver, to the Under Secretary of Defense (Acquisition and Sustainment), who will forward the report to Congress.

(3) Guidance on using the Exclusions section of the System for Award Management is available at PGI 209.105-1.

(b) Submit a copy of the determination to Bureau of Justice Assistance, U.S. Department of Justice, 810 Seventh Street, NW, Washington, DC 20531.

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PGI 203.8?LIMITATIONS ON THE PAYMENT OF FUNDS TO INFLUENCE FEDERAL TRANSACTIONS

PGI 203.806 Processing suspected violations.

(a) Report violations or potential violations of the Lobbying Disclosure Act (31 U.S.C. 1352) through agency channels to the Office of the Principal Director, Defense Pricing, Contracting, and Acquisition Policy (Contract Policy) via email at osd.pentagon.ousd-a-s.mbx.asda-dp-c-contractpolicy@mail.mil.

(b) The OUSD(AT&L) memorandum dated March 5, 2012, Department of Defense Inspector General (DODIG) Report 2012-030, Contractor Compliance Varies with Classification of Lobbying Costs and Reporting of Lobbying Activities (Project No. D2010-

DOOOCF-0145.000) is available here.

PART 4

OFFICE OF THE ASSISTANT SECRETARY OF WAR

Status: Class D

OFFICE OF THE ASSISTANT SECRETARY OF WAR

3000 DEFENSE PENTAGON

WASHINGTON, DC 20301-3000

ACQUISITION

AND SUSTAINMENT

In reply refer to

DARS Tracking Number: 2026-O0043

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES SPECIAL OPERATIONS

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES TRANSPORTATION

COMMAND (ATTN: ACQUISITION EXECUTIVE)

DEPUTY ASSISTANT SECRETARY OF THE ARMY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE NAVY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE

(CONTRACTING)

DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Class Deviation?Revolutionary Federal Acquisition Regulation (FAR) Overhaul

Part 4, Defense FAR Supplement (DFARS) Part 204

Effective February 17, 2026, contracting officers shall use?

? The revised FAR Part 4, Administrative and Information Matters, published on the Revolutionary FAR Overhaul web page at https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-4 in lieu of the text codified at 48 CFR chapter 1 (https://www.ecfr.gov).

? The attached DFARS Part 204, Administrative and Information Matters, in lieu of the text codified at 48 CFR chapter 2; and

? The attached DFARS Procedures, Guidance, and Information (PGI) 204, Administrative and Information Matters, in lieu of the PGI text published on the Defense Pricing, Contracting, and Acquisition Policy web page at https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.

This class deviation implements the following:

? Section 2 of E.O. 14275, Restoring Common Sense to Federal Procurement, which establishes the policy that the FAR ?should only contain provisions required by statute or essential to sound procurement, and any FAR provisions that do not

advance these objectives should be removed.
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? Section 4(a) of E.O. 14265, Modernizing Defense Acquisitions and Spurring Innovation in the Defense Industrial Base which requires the Secretary of War to eliminate or revise any unnecessary supplemental regulations or any other internal guidance, such as relevant parts of the Financial Management Regulation and Defense Federal Acquisition Regulation Supplement.
? The Office of Management and Budget memorandum, M-25-26 issued on May 2, 2025, titled, Overhauling the Federal Acquisition Regulation, which provided additional guidance to federal agencies regarding the FAR overhaul.
This class deviation remains in effect until rescinded or incorporated into the FAR, DFARS, and DFARS PGI. Inquiries regarding this class deviation can be addressed to osd.pentagon.ousd-a-s.mbx.dfars@mail.mil.
John M. Tenaglia
Principal Director,
Defense Pricing, Contracting, and
Acquisition Policy
Attachments:
As stated
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Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 4
Defense FAR Supplement (DFARS) Part 204

PART 204?ADMINISTRATIVE AND INFORMATION MATTERS

Subpart 204.2?Solicitation, Evaluation, and Award

204.201 Unique procurement instrument identifiers.

(b) See PGI 204.201 for use of unique procurement instrument identifiers.

(c) In addition to the supplementary PIID numbering procedures in FAR

4.201(c), follow the procedures at PGI 204.201(c).

204.201-70 Policy

See PGI 204.201-70 for Procurement Instrument Identifier (PIID) policy.

204.201-71 Cross reference to Federal Procurement Data System.

See PGI 204.201-71 for detailed guidance on mapping PIID and supplementary PIID numbers stored in the Electronic Data Access system to data elements reported in the Federal Procurement Data System

204.201-72 Order of application for modifications.

See PGI 204.201-72 to determine numeric sequence of contract and order modifications.

204.202-70 Uniform use of line items.

(a) Definitions. As used in this section?

?Accounting classification reference number (ACRN)? means any combination of

a two position alpha/numeric code used as a method of relating the accounting classification citation to detailed line item information contained in the schedule.
?Accounting Classification? means the minimum financial data elements that must be exchanged to identify the obligations that have an accounting impact for final posting in the appropriate general ledger. This must not include the purchase request number or commitment identification number.
?Attachment? means any documentation, appended to a contract or incorporated by reference, which does not establish a requirement for deliverables.
?Commitment Identification Number? means a data element used to trace a committed amount to the resulting obligation.
?Definitized item?means an item for which a firm price has been established in the basic contract or by modification.
?Exhibit? means a document, referred to in a contract, which is attached and establishes requirements for deliverables. The term must not be used to refer to any other kind of attachment to a contract. The DD Form 1423, Contract Data Requirements List, is always an exhibit, rather than an attachment.
?Nonseverable deliverable? means a deliverable item that is a single end product or undertaking, entire in nature, that cannot be feasibly subdivided into discrete elements or phases without losing its identity.
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(b) Policy.

(1) Deliverables must trace back to a separately identifiable line item, deliverable subline item, or exhibit line item.

(2) If a line item or subline item has subordinate exhibit line items, the line item or subline item must be informational.

(3) Do not use informational line items or informational subline items to separately identify deliverables.

(4) Use exhibits to separately identify data deliverables using a DD Form 1423 or its electronic equivalent.

(5) Contracting officers may use exhibits to group and separately identify deliverables (e.g. initial spare parts for major weapon systems).

(6) Do not use attachments to identify a deliverable requirement, including data deliverables, or otherwise provide information required to be captured as discrete data elements.

(c) Applicability. Use the numbering procedures in this section when separate item numbers are assigned, unless?

(1) The contract is an indefinite-delivery type for petroleum products against which military installations issue delivery orders for products to be consumed by them; or

(2) The contract is a communications service authorization issued by the Defense Information Systems Agency's Defense Information Technology

Contracting Organization.

(d) Use of exhibits and attachments. See PGI 204.202.70(e) for guidance on the use of exhibits and attachments.

204.202-71 Establishing line items, subline, and exhibit line items.

(a) Line items. When establishing line items, follow the procedures at PGI **204.202-71(a).**

(b) Subline items. When establishing subline items, follow the procedures at PGI 204.202-71(b).

(c) Exhibit line items. When establishing exhibit line items, follow the procedures at PGI 204.202-71(c).

204.202-72 Required data elements.

(a) See PGI 204.202-72 for guidance on data elements required when numbering line items, exhibits, attachments, and other data requirements.

(b) See PGI 204.202-72(f) for exceptions to data element requirements.

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204.202-73 Modification requirements.

See PGI 202.202-73 for new line item requirements during modifications.

204.202-74 Traceability of Appropriations.

Accounting classification reference numbers (ACRNs) ensure traceability of funds from accounting systems to contract actions. Follow the procedures at PGI 204.202-74 for use of ACRNs.

204.202-75 Numbering format for line items, subline items, and exhibit line items.

See PGI 204.202.75 for formatting guidance on line items, subline items, and exhibit line items.

204.202-76 Payment allocation instructions.

(a) Contracting officers must not require contractors to invoice for expenses at any level of detail other than by the deliverable line item, or at contract level in the case of progress payments based on costs applicable across multiple line items.

(b) Follow the procedures at PGI 204.202-76 to establish the allocation of payments in contracts.

204.202-77 Payment instructions.

Follow the procedures at PGI 204.202-77 for inclusion of payment instructions in contracts.

204.202-78 Contract clauses.

(a) Insert the clause at 252.204-7002, Payment for Line or Subline Items Not Separately Priced, in solicitations and contracts when the price for items not separately priced is included in the price of another line or subline item.

(b) Insert the clause at 252.204-7006, Billing Instructions?Cost Vouchers, in solicitations and contracts when a cost-reimbursement contract, a time-and-

materials contract, or a labor-hour contract is contemplated.

204.203 System for Award Management.

204.203-270 Procedures.

Follow the procedures and guidance at PGI 204.203-270 concerning Commercial and Government Entity (CAGE) codes.

204.203-271 Maintenance of the CAGE file.

See PGI 204.203-271 for guidance on CAGE file maintenance.

204.204 Taxpayer Identification Number Information.

(a)(2) DoD uses the Federal Procurement Data System (FPDS) to meet these reporting requirements.

204.204-70 Taxpayer identification information collection.

The payment office obtains the taxpayer identification number and type of organization from the System for Award Management database. This applies to

contracts that include the provisions at FAR 52.204-7, System for Award Management and FAR 52.204-90 Offeror Identification.

204.206 Contracting officer's signature.

A photocopy, facsimile, electronic, mechanically applied, and printed signature, seal, and date are considered an original signature, seal, and date. Follow the procedures at PGI 204.206 for signature of contract documents.

204.208 Solicitation provisions and contract clauses.

204.208-70 Solicitation provisions and contract clauses.

When using the provision at FAR 52.204-7, System for Award Management? Registration?

(a) Insert the provision with 252.204-7998, Alternate A, Annual Representations and Certifications; and

(b) Do not include the following provisions separately in the solicitation, which are included in DFARS 252.204-7998:

(1) 252.204-7016, Covered Defense Telecommunications Equipment or Services?Representation.

(2) 252.209-7002, Disclosure of Ownership or Control by a Foreign Government.

(3) 252.216-7008, Economic Price Adjustment?Wage Rates or Material Prices Controlled by a Foreign Government?Representation.

(4) 252.225-7000, Buy American?Balance of Payments Program Certificate.

(5) 252.225-7020, Trade Agreements Certificate.

(6) 252.225-7031, Secondary Arab Boycott of Israel.

(7) 252.225-7035, Buy American?Free Trade Agreements?Balance of Payments Program Certificate.

(8) 252.225-7042, Authorization to Perform.

(9) 252.225-7049, Prohibition on Acquisition of Certain Foreign Commercial Satellite Services?Representations.

(10) 252.225-7050, Disclosure of Ownership or Control by the Government of a Country that is a State Sponsor of Terrorism.

(11) 252.226-7002, Representation for Demonstration Project for Contractors Employing Persons with Disabilities.

(12) 252.229-7012, Tax Exemptions (Italy)?Representation.

(13) 252.229-7013, Tax Exemptions (Spain)?Representation.

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(14) 252.232-7015, Performance-Based Payments?Representation.

204.208-71 Additional contract clauses.

(a) Insert the basic or the alternate of the clause at 252.204-7023, Reporting Requirements for Contracted Services, in solicitations, contracts, agreements, and orders, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that?

(1) Have a total estimated value, including options, that exceeds $3 million; and

(2) Are for services in the following service acquisition portfolio groups:

(i) Logistics management services.

(ii) Equipment-related services.

(iii) Knowledge-based services.

(iv) Electronics and communications services.

(b) Insert the basic clause in solicitations and contracts, except solicitations and resultant awards of indefinite-delivery contracts, and orders placed under non-DoD contracts that meet the criteria in paragraph (a)(1) of this section.

(c) Insert the alternate I clause in solicitations and resultant awards of indefinite-delivery contracts, basic ordering agreements, and blanket purchase agreements, when one or more of the orders under the contract or agreement are expected to meet the criteria in paragraph (a)(1) of this section.

204.270 Electronic Data Access.

See PGI 204.270 for information on the policies and procedures for the Electronic Data Access (EDA) system.

204.271 Contract distribution.

Contracting officers must distribute one signed copy or reproduction of the signed contract to the contractor, payment office, and all other entities on the contract distribution list. See PGI 204.271 for guidance on the distribution of contracts and modifications.

SUBPART 204.3?POST-AWARD

204.301 Contract Reporting

In addition to FAR 4.301, see PGI 204.301 for contract reporting policy and follow the procedures at PGI 204.301-71 for reporting data to the Federal Procurement Data System (FPDS).

204.301-70 General.

See PGI 204.301-70 for additional information on FPDS and procedures for resolving technical or policy issues relating to FPDS.

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204.301-71 Responsibilities.

In addition to the requirements at FAR 4.301(f)?

(a) The process for reporting contract actions to FPDS should, where possible, be automated by incorporating it into contract writing systems.

(b) Data in FPDS is stored indefinitely and is electronically retrievable. Therefore, the contracting officer may reference the contract action report (CAR) approval date in the associated Government contract file instead of including a paper copy of the electronically submitted CAR in the file. Such reference satisfies contract file documentation requirements of FAR 4.101.

(c) By December 15th of each year, the chief acquisition officer of each DoD component required to report its contract actions must submit to the Principal Director, Defense Pricing, Contracting, and Acquisition Policy, its annual certification and data validation results for the preceding fiscal year in accordance with the DoD Data Improvement Plan requirements at https://www.acq.osd.mil/asda/dpc/ce/cap/index.html. The Principal Director, Defense Pricing, Contracting, and Acquisition Policy, will submit a consolidated DoD annual certification to the Office of Management and Budget by January 5th of each year.

204.301-72 Reporting data.

In addition to FAR 4.301, follow the procedures at PGI 204.301-72 for reporting data to FPDS.

204.303 Service contracts inventory.

204.303-70 DoD reporting thresholds.

(a) Requirement. This section prescribes the requirement to report certain contracted services in accordance with 10 U.S.C. 4505.

(b) Reporting requirements thresholds. Service contractor reporting of information is required in the System for Award Management (SAM) when a contract or order?

(1) Has a total estimated value, including options, that exceeds $3 million; and

(2) Is for services in the following service acquisition portfolio groups (see PGI 204.303-70(b)(2)) for a list of applicable product and service codes):

(i) Logistics management services.

(ii) Equipment-related services.

(iii) Knowledge-based services.

(iv) Electronics and communications services.

204.303-71 Contractor reporting.

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(a) The basic and the alternate of the clause at 252.204-7023, Reporting Requirements for Contracted Services, require contractors to report annually, by October 31, on the services performed under the contract or order, including any first-tier subcontracts, during the preceding Government fiscal year.

(b) For indefinite-delivery contracts, basic ordering agreements, and blanket purchase agreements?

(1) Contractor reporting is required for each order issued under the contract or agreement that meets the requirements of paragraph (b) of this section; and

(2) Service contract reporting is not required for the basic contract or agreement.

204.304 System For Award Management.

204.304-70 Procedures.

See PGI 204.304-70 for information on navigation and data entry in the System for Award Management (SAM) database.

(a) On contract award documents, use the contractor's legal or ?doing business as? name and physical address information as recorded in the SAM database at the time of award.

(b) When making a determination to exercise an option, or at any other time before issuing a modification other than a unilateral modification making an administrative change, ensure that?

(1) The contractor's record is active in the SAM database; and

(2) The contractor's unique entity identifier (UEI) number, Commercial and Government Entity (CAGE) code, name, and physical address are accurately reflected in the contract document.

(c) At any time, if the UEI number, CAGE code, contractor name, or physical address on a contract no longer matches the information on the contractor's record in the SAM database, the contracting officer must process a novation or change-of-name agreement, or an address change, as appropriate.

(d) See PGI 204.304-70 for additional requirements relating to use of information in the SAM database.

(e) On contractual documents transmitted to the payment office, provide the CAGE code, instead of the UEI, in accordance with agency procedures.

204.308 Contract closeout.

204.308-170 Procedures for closing out contract files.

(a) Except as provided in paragraph (c) of this section, contracting officers must

close out contracts in accordance with the procedures at PGI 204.308-170. The
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closeout date for file purposes must be determined and documented by the procuring contracting officer.

(b) The head of the contracting activity must assign the highest priority to closeout of contracts awarded for performance in a contingency area. Heads of contracting activities must monitor and assess on a regular basis the progress of contingency contract closeout activities and take appropriate steps if a backlog occurs. For guidance on the planning and execution of closing out such contracts, see PGI 207.104-70(b)(2)(vii)(B).

(c)(1) In accordance with section 836 of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114-328), contracting officers may close out contracts or groups of contracts through issuance of one or more modifications to such contracts without completing a reconciliation audit or other corrective action in accordance with FAR 4.308-1(a)(3) through (15), as appropriate, if each contract?

(i)(A) For military construction (as defined at 10 U.S.C. 2801) or shipbuilding, was awarded at least 10 fiscal years before the current fiscal year;

(B) For all other contracts, was awarded at least 7 fiscal years before the current fiscal year;

(ii) The performance or delivery was completed at least 4 years prior to the current fiscal year; and

(iii) Has been determined by a contracting official, at least one level above the contracting officer, to be not otherwise reconcilable, because?

(A) The contract or related payment records have been destroyed or lost; or

(B) Although contract or related payment records are available, the time or effort required to establish the exact amount owed to the U.S. Government or amount owed to the contractor is disproportionate to the amount at issue.

(2) Any contract or group of contracts meeting the requirements of paragraph (c)(1) of this section may be closed out through a negotiated settlement with the contractor. Except as provided in paragraph (3)(ii)(B) of this section, the contract closeout process must include a bilateral modification of the affected contract, including those contracts that are closed out in accordance with a negotiated settlement.

(i) For a contract or groups of contracts, the contracting officer must prepare a negotiation settlement memorandum that describes how the requirements of paragraph (c)(1) of this section have been met.

(ii) For a group of contracts, a bilateral modification of at least one contract must be made to reflect the negotiated settlement for a group of contracts, and unilateral modifications may be made, as appropriate, to other contracts in the group to reflect the negotiated settlement.

(3) For contract closeout actions under paragraph (c) of this section, remaining contract balances?

(i) May be offset with balances in other contract line items within the same contract, regardless of the year or type of appropriation obligated to fund each contract line item and regardless of whether the appropriation obligated to fund such contract line item has closed; and

(ii) May be offset with balances on other contracts, regardless of the year or type of appropriations obligated to fund each contract and regardless of whether such appropriations have closed.

(4) USD(A&S) is authorized to waive any provision of acquisition law or regulation in order to carry out the closeout procedures authorized in paragraph

(c)(1) of this section (see procedures at PGI 204.308-170(c)(iv)).

(d) When using the clause at 252.204-7022, Expediting Contract Closeout, to expedite contract closeout, determine the residual dollar amount upon completion of all applicable closeout requirements of FAR 4.308.

204.308-171 Procedures for closing out contract files?Governmentwide commercial purchase card as the sole payment.

Follow the procedures at PGI 204.308-171 to close out contract files when the Governmentwide commercial purchase card is the sole method of payment.

204.308-2 Contract closeout by the office administering the contract.

See PGI 204.308-2 for information on contract closeout by the office administering the contract.

204.308-270 Closeout of the contracting office files if another office administers the contract.

See PGI 204.308-270 when another office, other than the contracting office administers the contract.

204.308-70 Contract clause.

Insert the clause at 252.204-7022, Expediting Contract Closeout, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, when the contracting officer intends to expedite contract closeout through the mutual waiver of entitlement to a residual dollar amount of $1,000 or less determined at the time of contract closeout.

204.309 Storage, handling, and contract files.

204.309-70 Handling of contract files.

Any document posted to the Electronic Data Access (EDA) system is part of the contract file and is accessible by multiple parties, including the contractor. Do not include in EDA contract documents that are classified, too sensitive for widespread distribution (e.g., personally identifiable information and Privacy Act and Health

Insurance Portability and Accountability Act), or attachments that cannot be practicably converted to electronic format (e.g., samples, drawings, and models). Inclusion of any document in EDA other than contracts, modifications, and orders is optional.

SUBPART 204.7?CONTRACTOR RECORDS RETENTION

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204.705-70 Specific retention periods.

(a) The sources of the period for which contract files must be retained are General Records Schedule 3 (Procurement, Supply, and Grant Records) and General Records Schedule 6 (Accountable Officers' Accounts Records). Copies of the General Records Schedule may be obtained from the National Archives and Records Administration, Washington, DC 20408.

(b) Deviations from the periods cannot be granted by the Defense Acquisition Regulatory Council. Forward requests for deviations to both the Government Accountability Office and the National Archives and Records Administration.

(c) Hold completed contract files in the office responsible for maintaining them for a period of 12 months after completion. After the initial 12-month period, send the records to the local records holding or staging area until they are eligible for destruction. If no space is available locally, transfer the files to the General Services Administration Federal Records Center that services the area.

(d) Duplicate or working contract files should not contain originals of materials that properly belong in the official files. Destroy working files as soon as practicable once they are no longer needed.

(e) Retain pricing review files, containing documents related to reviews of the contractor's price proposals, subject to certified cost or pricing data (see FAR 15.403-4), for six years. If it is impossible to determine the final payment date in order to measure the six-year period, retain the files for nine years.

SUBPART 204.71?RESERVED

SUBPART 204.72?ANTITERRORISM AWARENESS TRAINING

204.7200 Scope of subpart.

This subpart provides policy and guidance related to antiterrorism awareness training for contractor personnel who require routine physical access to a Federally-controlled facility or military installation.

204.7201 Definition.

As used in this subpart?

?Military installation? means a base, camp, post, station, yard, center, or other activity under the jurisdiction of the Secretary of a military department or, in the case of an activity in a foreign country, under the operational control of the Secretary of a military department or the Secretary of Defense (see 10 U.S.C. 2801(c)(4)).

204.7202 Policy.

It is DoD policy that?

(a) Contractor personnel who, as a condition of contract performance, require routine physical access to a Federally-controlled facility or military installation are required to complete Level I antiterrorism awareness training within 30 days of requiring access and annually thereafter; and

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(b) In accordance with Department of Defense Instruction O-2000.16, Volume 1, DoD Antiterrorism (AT) Program Implementation: DoD AT Standards, Level I antiterrorism awareness training may be completed?

(1) Through a DoD-sponsored and certified computer or web-based distance learning instruction for Level I antiterrorism awareness; or

(2) Under the instruction of a qualified Level I antiterrorism awareness instructor.

204.7203 Contract clause.

Insert the clause at 252.204-7004, DoD Antiterrorism Awareness Training for Contractors, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, when contractor personnel require routine physical access to a Federally-controlled facility or military installation.

SUBPART 204.73?RESERVED

SUBPART 204.74?DISCLOSURE OF INFORMATION TO LITIGATION SUPPORT CONTRACTORS

204.7400 Scope of subpart.

This subpart prescribes policies and procedures for the release and safeguarding of information to litigation support contractors. It implements the requirements at 10 U.S.C. 129d.

204.7401 Definitions.

As used in this subpart?

?Computer software? means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer data bases or computer software documentation.

?Litigation information? means any information, including sensitive information, that is furnished to the contractor by or on behalf of the Government, or that is generated or obtained by the contractor in the performance of litigation support under a contract. The term does not include information that is lawfully, publicly available without restriction, including information contained in a publicly available solicitation.

?Litigation support? means administrative, technical, or professional services provided in support of the Government during or in anticipation of litigation.
?Litigation support contractor? means a contractor (including its experts, technical consultants, subcontractors, and suppliers) providing litigation support under a contract that contains the clause at 252.204-7014, Limitations on the Use or Disclosure of Information by Litigation Support Contractors.
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?Sensitive information? means controlled unclassified information of a commercial, financial, proprietary, or privileged nature. The term includes technical data and computer software, but does not include information that is lawfully, publicly available without restriction.
?Technical data? means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.

204.7402 Policy.

(a) Any release or disclosure of litigation information that includes sensitive information to a litigation support contractor, and the litigation support contractor's use and handling of such information, must comply with the requirements of 10 U.S.C. 129d.

(b) To the maximum extent practicable, DoD will provide notice to an offeror or contractor submitting, delivering, or otherwise providing information to DoD in connection with an offer or performance of a contract that such information may be released or disclosed to litigation support contractors.

(c) Information that is publicly available without restriction, including publicly available solicitations for litigation support services, will not be protected from disclosure as litigation information.

(d) When sharing sensitive information with a litigation support contractor, contracting officers must ensure that all other applicable requirements for handling and safeguarding the relevant types of sensitive information are included in the contract (e.g., FAR part 40 and subpart 24.1; DFARS part 240 and subpart 224.1).

204.7403 Contract clauses.

(a) Insert the clause at 252.204-7014, Limitations on the Use or Disclosure of Information by Litigation Support Contractors, in all solicitations and contracts that involve litigation support services, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services.

(b) Insert the clause at 252.204-7015, Notice of Authorized Disclosure of Information for Litigation Support, in solicitations and contracts that involve litigation support services, including solicitations and contracts using FAR part 12

procedures for the acquisition of commercial products and commercial services.

SUBPART 204.75?RESERVED

SUBPART 204.76?SUPPLIER PERFORMANCE RISK SYSTEM

204.7600 Scope of subpart.

This subpart provides policies and procedures for use of the Supplier Performance Risk System (SPRS) risk assessments in the evaluation of a quotation or offer.

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204.7601 Definitions.

As used in this subpart?

?Item risk? means the probability that a product, based on intended use, will introduce performance risk resulting in safety issues, mission degradation, or monetary loss.

?Price risk? means the measure of whether a proposed price for a product or service is consistent with historical prices paid for that item or service.

?Supplier risk? means the probability that an award may subject the procurement to the risk of unsuccessful performance or to supply chain risk.

204.7602 Applicability.

Use of SPRS risk assessments is required for the evaluation of quotations or offers in response to solicitations for supplies and services, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services, excluding solicitations for the procurement of supplies or services exempted by the Department of Defense Instruction (DoDI) 5000.79, Defense-wide Sharing and Use of Supplier and Product Performance Information. SPRS retrieves item, price, quality, delivery, and contractor information from contracts in Government reporting systems in order to develop risk assessments of contractors. SPRS is available at https://piee.eb.mil/, and the SPRS user's guides are available at https://www.sprs.csd.disa.mil/reference.htm.

204.7603 Procedures.

The contracting officer must consider price risk and supplier risk, if available in SPRS, as a part of the award decision. For procurement of an end product identified by a material identifier that is available as described at PGI 204.7603, the contracting officer must also consider assessments of item risk, if available, as a **part of the award decision. Offerors or quoters without a risk assessment in SPRS** must not be considered favorably or unfavorably. Contracting officers must use their discretion in considering the information available in SPRS on item risk, price risk, and supplier risk as follows:

(a) Item risk.

(1) Consider item risk to determine whether the procurement of products represents a high performance risk to the Government. If an item has a high risk rating, then the SPRS item risk report will display the reason(s) an item is

identified as high risk.

(2) Before issuing a solicitation for the procurement of an end product identified by a material identifier that is available as described at PGI 204.7603, the contracting officer must ensure a SPRS item risk search has been performed and must consider any item risk warnings provided. When evaluating quotations or offers for an end product identified by a material identifier, a SPRS item risk search is required for any end product that did not have an item risk search performed prior to solicitation. If there are item risk warnings, the contracting officer must consider strategies to mitigate risk, such as the following:

(i) Consulting with the program office.

(ii) Including mitigating requirements in the statement of work, as provided by the requiring activity.

(iii) Including FAR and DFARS clauses identified in the SPRS application, as appropriate.

(b) Price risk.

(1) When procuring a service or an end product identified by a material identifier that is available as described at PGI 204.7603, the contracting officer must consider price risk assessment in determining if a proposed price is consistent with historical prices paid for an item or otherwise creates a risk to the Government. Contracting officers must not rely solely on the price risk assessment when determining prices to be fair and reasonable.

(2) The contracting officer must consider strategies to mitigate price risk, such as the following:

(i) Not awarding to offerors or quoters with high risk price ratings unless there is a way to justify the price through additional price or cost analysis.

(ii) Utilizing appropriate price negotiation techniques and procedures.

(iii) Using price reasonableness or price realism techniques at FAR **13.203 or 15.4. See also 215.403-3 when making award decisions.**

(c) Supplier risk. The contracting officer must consider supplier risk, to assess the risk of unsuccessful performance and supply chain risk, in award decisions. Supplier risk assessments in SPRS include quality, delivery, and other contractor performance information.

204.7604 Solicitation provision.

Except for supplies or services exempted by DoDI 5000.79, insert the provision at **252.204-7024, Notice on the Use of the Supplier Performance Risk System, in** solicitations for supplies and services, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services.

SUBPART 204.77?U.S.?INTERNATIONAL ATOMIC ENERGY AGENCY REQUIREMENTS

204.770 U.S.?International Atomic Energy Agency Additional Protocol.

204.770-1 General.

Under the U.S.-International Atomic Energy Agency Additional Protocol (U.S.-IAEA AP), the United States is required to declare a wide range of public and private nuclear-related activities to the IAEA and potentially provide access to IAEA inspectors for verification purposes.

204.770-2 National security exclusion.

(a) The U.S.-IAEA AP permits the United States unilaterally to declare exclusions from inspection requirements for activities, or locations or information associated with such activities, with direct national security significance.

(b) In order to ensure that all relevant activities are reviewed for direct national security significance, both current and former activities, and associated locations or information, are to be considered for applicability for a national security exclusion.

(c) If a DoD program manager receives notification from a contractor that the contractor is required to report any of its activities in accordance with the U.S.-IAEA AP, the program manager will?

(1) Conduct a security assessment to determine if, and by what means, access may be granted to the IAEA; or

(2) Provide written justification to the component or agency treaty office for application of the national security exclusion at that location to exclude access by the IAEA, in accordance with DoD Instruction 2060.03, Application of the National Security Exclusion to the Agreements Between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America.

204.770-3 Contract clause.

Insert the clause at 252.204-7010, Requirement for Contractor to Notify DoD if the Contractor's Activities are Subject to Reporting Under the U.S.-International Atomic Energy Agency Additional Protocol, in solicitations and contracts for research and development or major defense acquisition programs involving?

(a) Any fissionable materials (e.g., uranium, plutonium, neptunium, thorium, americium);

(b) Other radiological source materials; or

(c) Technologies directly related to nuclear power production, including nuclear or radiological waste materials.

Part 252?SOLICITATION PROVISIONS AND CONTRACT CLAUSES

SUBPART 252.2?TEXT OF PROVISIONS AND CLAUSES

252.204-7002 Payment for Contract Line or Subline Items Not Separately Priced.

As prescribed in 204.202-79(a), Insert the following clause:

Payment for Contract Line or Subline Items Not Separately Priced (APR 2020)

(a) If the schedule in this contract contains any contract line or subline items identified as not separately priced (NSP), it means that the unit price for the NSP line or subline item is included in the unit price of another, related line or subline item.

(b) The Contractor shall not invoice the Government for an item that includes in its price an NSP item until?

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(1) The Contractor has also delivered the NSP item included in the price of the item being invoiced; and

(2) The Government has accepted the NSP item.

(c) This clause does not apply to technical data.

(End of clause)

252.204-7004 Antiterrorism Awareness Training for Contractors.

As prescribed in 204.7203, insert the following clause:

Antiterrorism Awareness Training for Contractors (JAN 2023)

(a) Definition. As used in this clause?

Military installation means a base, camp, post, station, yard, center, or other activity under the jurisdiction of the Secretary of a military department or, in the case of an activity in a foreign country, under the operational control of the Secretary of a military department or the Secretary of Defense (see 10 U.S.C. 2801(c)(4)).

(b) Training. Contractor personnel who require routine physical access to a Federally-controlled facility or military installation shall complete Level I antiterrorism awareness training within 30 days of requiring access and annually thereafter. In accordance with Department of Defense Instruction O-2000.16 Volume 1, DoD Antiterrorism (AT) Program Implementation: DoD AT Standards, Level I antiterrorism awareness training shall be completed?

(1) Through a DoD-sponsored and certified computer or web-based distance learning instruction for Level I antiterrorism awareness; or

(2) Under the instruction of a Level I antiterrorism awareness instructor.

(c) Additional information. Information and guidance pertaining to DoD antiterrorism awareness training is available at https://jko.jten.mil/ or as otherwise identified in the performance work statement.

(d) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts, including subcontracts for commercial products and commercial services, when subcontractor performance requires routine physical access to a Federally-controlled facility or military installation.

(End of clause)

252.204-7006 Billing Instructions?Cost Vouchers.

As prescribed in 204.202-79(b), insert the following clause:
Billing Instructions?Cost Vouchers (MAY 2023)
When submitting a request for payment using a cost voucher, the Contractor shall?
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(a) Identify the contract line item(s) on the payment request that reasonably reflect contract work performance; and

(b) Separately identify a payment amount for each contract line item included in the payment request.

(End of clause)

252.204-7998 Alternate A, Annual Representations and Certifications.

As prescribed in 204.208(b), insert the following provision:

ALTERNATE A, ANNUAL REPRESENTATIONS AND CERTIFICATIONS (DEVIATION 2026-O0043)(FEB 2026)

Include the following paragraphs (e), (f), and (g) in the provision at FAR 52.204-7:

(e)(1) If the provision at FAR 52.204-7, System for Award Management ? Registration, is included in this solicitation, paragraph (g) of this provision applies.

(2) If the provision at FAR 52.204-7, System for Award Management ? Registration, is not included in this solicitation, and the Offeror has an active registration in the System for Award Management (SAM), the Offeror may choose to use paragraph (g) of this provision instead of completing the corresponding individual representations and certifications in the solicitation. The Offeror shall indicate which option applies by checking one of the following boxes:

____ (i) Paragraph (g) applies.

____ (ii) Paragraph (g) does not apply and the Offeror has completed the individual representations and certifications in the solicitation.

(f)(1) The following representations or certifications in the SAM database are applicable to this solicitation as indicated:

(i) 252.204-7016, Covered Defense Telecommunications Equipment or Services?Representation. Applies to all solicitations.

(ii) 252.216-7008, Economic Price Adjustment?Wage Rates or Material Prices Controlled by a Foreign Government. Applies to solicitations for fixed-price supply and service contracts when the contract is to be performed wholly or in part in a foreign country, and a foreign government controls wage rates or material prices and may during contract performance impose a mandatory change in wages or prices of materials.

(iii) 252.225-7042, Authorization to Perform. Applies to all solicitations when performance will be wholly or in part in a foreign country.

(iv) 252.225-7049, Prohibition on Acquisition of Certain Foreign Commercial Satellite Services?Representations. Applies to solicitations for the

acquisition of commercial satellite services.
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(v) 252.225-7050, Disclosure of Ownership or Control by the Government of a Country that is a State Sponsor of Terrorism. Applies to all solicitations expected to result in contracts of $150,000 or more.

(vi) 252.229-7012, Tax Exemptions (Italy)?Representation. Applies to solicitations when contract performance will be in Italy.

(vii) 252.229-7013, Tax Exemptions (Spain)?Representation. Applies to solicitations when contract performance will be in Spain.

(2) The following representations or certifications in SAM are applicable to this solicitation as indicated by the Contracting Officer: [Contracting Officer check as appropriate.]

____(i) 252.209-7002, Disclosure of Ownership or Control by a Foreign Government.

____(ii) 252.225-7000, Buy American?Balance of Payments Program Certificate.

____(iii) 252.225-7020, Trade Agreements Certificate.

____Use with Alternate I.

____(iv) 252.225-7031, Secondary Arab Boycott of Israel.

____(v) 252.225-7035, Buy American?Free Trade Agreements?Balance of Payments Program Certificate.

____Use with Alternate I.

____Use with Alternate II.

____Use with Alternate III.

____Use with Alternate IV.

____Use with Alternate V.

____ (vi) 252.226-7002, Representation for Demonstration Project for Contractors Employing Persons with Disabilities.

____ (vii) 252.232-7015, Performance-Based Payments?Representation.

(g) The Offeror has completed the annual representations and certifications electronically via the SAM website at https://www.sam.gov After reviewing the SAM database information, the Offeror verifies by submission of the offer that the representations and certifications currently posted electronically that apply to this solicitation as indicated in FAR 52.204-7 and paragraph (f) of this provision have been entered or updated within the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), as of the date of this offer, and are incorporated in this offer by reference (see FAR 4.203-1); except for the changes
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identified below [Offeror to insert changes, identifying change by provision number, title, date]. These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.
FAR/DFARS provision No. Title Date Change
Any changes provided by the Offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications located in the SAM database.

(End of provision)

252.204-7010 Requirement for Contractor to Notify DoD if the Contractor's Activities are Subject to Reporting Under the U.S.-International Atomic Energy Agency Additional Protocol.

As prescribed in 204.770-3, insert the following clause:
Requirement for Contractor to Notify DoD if the Contractor's Activities Are Subject to Reporting Under the U.S.-International Atomic Energy Agency Additional Protocol (JAN 2009)

(a) If the Contractor is required to report any of its activities in accordance with Department of Commerce regulations (15 CFR part 781 et seq.) or Nuclear Regulatory Commission regulations (10 CFR part 75) in order to implement the declarations required by the U.S.-International Atomic Energy Agency Additional Protocol (U.S.-IAEA AP), the Contractor shall?

(1) Immediately provide written notification to the following DoD Program Manager:
[Contracting Officer to insert Program Manager's name, mailing address, e-mail address, telephone number, and facsimile number];

(2) Include in the notification?

(i) Where DoD contract activities or information are located relative to the activities or information to be declared to the Department of Commerce or the Nuclear Regulatory Commission; and

(ii) If or when any current or former DoD contract activities and the activities to be declared to the Department of Commerce or the Nuclear Regulatory Commission have been or will be co-located or located near enough to one another to result in disclosure of the DoD activities during an IAEA inspection or visit; and

(3) Provide a copy of the notification to the Contracting Officer.

(b) After receipt of a notification submitted in accordance with paragraph (a) of this clause, the DoD Program Manager will?

(1) Conduct a security assessment to determine if and by what means access may be granted to the IAEA; or

(2) Provide written justification to the component or agency treaty office for a national security exclusion, in accordance with DoD Instruction 2060.03, Application of the National Security Exclusion to the Agreements Between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America. DoD will notify the Contractor if a national security exclusion is applied at the Contractor's location to prohibit access by the IAEA.

(c) If the DoD Program Manager determines that a security assessment is required?

(1) DoD will, at a minimum?

(i) Notify the Contractor that DoD officials intend to conduct an assessment of vulnerabilities to IAEA inspections or visits;

(ii) Notify the Contractor of the time at which the assessment will be conducted, at least 30 days prior to the assessment;

(iii) Provide the Contractor with advance notice of the credentials of the DoD officials who will conduct the assessment; and

(iv) To the maximum extent practicable, conduct the assessment in a manner that does not impede or delay operations at the Contractor's facility; and

(2) The Contractor shall provide access to the site and shall cooperate with DoD officials in the assessment of vulnerabilities to IAEA inspections or visits.

(d) Following a security assessment of the Contractor's facility, DoD officials will notify the Contractor as to?

(1) Whether the Contractor's facility has any vulnerabilities where potentially declarable activities under the U.S.-IAEA AP are taking place;

(2) Whether additional security measures are needed; and

(3) Whether DoD will apply a national security exclusion.

(e) If DoD applies a national security exclusion, the Contractor shall not grant access to IAEA inspectors.

(f) If DoD does not apply a national security exclusion, the Contractor shall apply managed access to prevent disclosure of program activities, locations, or information in the U.S. declaration.

(g) The Contractor shall not delay submission of any reports required by the Department of Commerce or the Nuclear Regulatory Commission while awaiting a DoD response to a notification provided in accordance with this clause.

(h) The Contractor shall incorporate the substance of this clause, including this paragraph (h), in all subcontracts that are subject to the provisions of the U.S.-**IAEA AP.**

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(End of clause)

252.204-7014 Limitations on the Use or Disclosure of Information by

Litigation Support Contractors.
As prescribed in 204.7403(a), insert the following clause:
Limitations on the Use or Disclosure of Information by Litigation Support Contractors (JAN 2023)

(a) Definitions. As used in this clause?

Computer software means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer data bases or computer software documentation.

Litigation information means any information, including sensitive information, that is furnished to the contractor by or on behalf of the Government, or that is generated or obtained by the contractor in the performance of litigation support under a contract. The term does not include information that is lawfully, publicly available without restriction, including information contained in a publicly available solicitation.

Litigation support means administrative, technical, or professional services provided in support of the Government during or in anticipation of litigation.

Litigation support contractor means a contractor (including its experts, technical consultants, subcontractors, and suppliers) providing litigation support under a contract that contains this clause.

Sensitive information means controlled unclassified information of a commercial, financial, proprietary, or privileged nature. The term includes technical data and computer software, but does not include information that is lawfully, publicly available without restriction.

Technical data means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.

(b) Limitations on use or disclosure of litigation information. Notwithstanding any other provision of this contract, the Contractor shall?

(1) Access and use litigation information only for the purpose of providing litigation support under this contract;

(2) Not disclose litigation information to any entity outside the Contractor's organization unless, prior to such disclosure the Contracting Officer has provided written consent to such disclosure;

(3) Take all precautions necessary to prevent unauthorized disclosure of litigation information;

(4) Not use litigation information to compete against a third party for Government or nongovernment contracts; and

(5) Upon completion of the authorized litigation support activities, destroy or return to the Government at the request of the Contracting Officer all litigation information in its possession.

(c) Violation of paragraph (b)(1),(b)(2), (b)(3), (b)(4), or (b)(5) of this clause is a basis for the Government to terminate this contract.

(d) Indemnification and creation of third party beneficiary rights. The Contractor agrees?

(1) To indemnify and hold harmless the Government, its agents, and employees from any claim or liability, including attorneys' fees, court costs, and expenses, arising out of, or in any way related to, the misuse or unauthorized modification, reproduction, release, performance, display, or disclosure of any litigation information; and

(2) That any third party holding proprietary rights or any other legally protectable interest in any litigation information, in addition to any other rights it may have, is a third party beneficiary under this contract who shall have a right of direct action against the Contractor, and against any person to whom the Contractor has released or disclosed such litigation information, for any such unauthorized use or disclosure of such information.

(e) Contractor employees. The Contractor shall ensure that its employees are subject to use and nondisclosure obligations consistent with this clause prior to the employees being provided access to or use of any litigation information covered by this clause.

(f) Subcontracts. Include the substance of this clause, including this paragraph

(f), in all subcontracts, including subcontracts for commercial products or commercial services.

(End of clause)

252.204-7015 Notice of Authorized Disclosure of Information for Litigation Support.

As prescribed in 204.7403(b), insert the following clause:

Notice of Authorized Disclosure of Information for Litigation Support (JAN 2023)

(a) Definitions. As used in this clause?

Computer software means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer data bases or computer software documentation.

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Litigation support means administrative, technical, or professional services provided in support of the Government during or in anticipation of litigation.

Litigation support contractor means a contractor (including its experts, technical consultants, subcontractors, and suppliers) providing litigation support under a

contract that contains the clause at 252.204-7014, Limitations on the Use or Disclosure of Information by Litigation Support Contractors.

Sensitive information means controlled unclassified information of a commercial, financial, proprietary, or privileged nature. The term includes technical data and computer software, but does not include information that is lawfully, publicly available without restriction.

Technical data means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.

(b) Notice of authorized disclosures Notwithstanding any other provision of this solicitation or contract, the Government may disclose to a litigation support contractor, for the sole purpose of litigation support activities, any information, including sensitive information, received?

(1) Within or in connection with a quotation or offer; or

(2) In the performance of or in connection with a contract.

(c) Subcontracts. Include the substance of this clause, including this paragraph (c), in all subcontracts, including subcontracts for commercial products or commercial services.

(End of clause)

252.204-7022 Expediting Contract Closeout.

As prescribed in 204.308-70, insert the following clause:

Expediting Contract Closeout

(a) At the conclusion of all applicable closeout requirements of Federal Acquisition Regulation 4.308, the Government and Contractor shall mutually agree on the residual dollar amount remaining on the contract. Both the Government and Contractor agree to waive payment of any residual dollar amount of $1,000 or less to which either party may be entitled at the time of contract closeout.

(b) A residual dollar amount includes all money owed to either party at the end of the contract and as a result of the contract, excluding amounts connected in any way with taxation or a violation of law or regulation.

(c) For purposes of determining residual dollar amounts, offsets (e.g., across multiple contracts or orders) may be considered only to the extent permitted by law.

(End of clause)

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252.204-7023 Reporting Requirements for Contracted Services.

Basic. As prescribed in 204.208-71(a)(1) and (2), insert the following clause:

Reporting Requirements for Contracted Services?Basic (Jul 2021)

(a) Definition. As used in this clause?

First-tier subcontract means a subcontract awarded directly by the contractor for

the purpose of acquiring services for performance of a prime contract. It does not include the contractor's supplier agreements with vendors, such as long-term arrangements for materials or supplies or services that benefit multiple contracts and/or the costs of which are normally applied to a contractor's general and administrative expenses or indirect costs.

(b) The Contractor shall report annually, by October 31, at https://www.sam.gov, on the services performed under this contract or order, including any first-tier subcontracts, during the preceding Government fiscal year (October 1-September 30).

(c) The Contractor shall report the following information for the contract or order:

(1) The total dollar amount invoiced for services performed during the preceding Government fiscal year under the contract or order.

(2) The number of Contractor direct labor hours, to include first-tier subcontractor direct labor hours, as applicable, expended on the services performed under the contract or order during the previous Government fiscal year.

(d) The Government will review the Contractor's reported information for reasonableness and consistency with available contract information. In the event the Government believes that revisions to the Contractor's reported information are warranted, the Government will notify the Contractor. Upon notification, the Contractor shall revise the reported information or provide the Government with a supporting rationale for the information.

(End of clause)

Alternate I, Reporting Requirements for Contracted Services

As prescribed in 204.208-71(a)(3), use the following clause, which substitutes ?contract or agreement for each order? in lieu of ?contract or order? in paragraph (b) and ?order? in lieu of ?contract or order? in paragraphs (c) and (c)(1) and (2), and identifies the dollar threshold and service acquisition portfolio groups for which orders under the contract or agreement require service contract reporting.

Reporting Requirements for Contracted Services?Alternate I (Jul 2021)

(a) Definition. As used in this clause?

First-tier subcontract means a subcontract awarded directly by the contractor for the purpose of acquiring services for performance of a prime contract. It does not include the contractor's supplier agreements with vendors, such as long-term arrangements for materials or supplies or services that benefit multiple contracts

and/or the costs of which are normally applied to a contractor's general and administrative expenses or indirect costs.

(b) The contractor shall report annually, by October 31, at https://www.sam.gov, on services performed during the preceding Government fiscal year (October 1-September 30) under this contract or agreement for each order, including any first-

tier subcontract, which exceeds $3 million for services in the following service acquisition portfolio groups:

(1) Logistics management services.

(2) Equipment-related services.

(3) Knowledge-based services.

(4) Electronics and communications services.

(c) The Contractor shall report the following information for the order:

(1) The total dollar amount invoiced for services performed during the preceding Government fiscal year under the order.

(2) The number of Contractor direct labor hours, to include first-tier subcontractor direct labor hours, as applicable, expended on the services performed under the order during the previous Government fiscal year.

(d) The Government will review the Contractor's reported information for reasonableness and consistency with available contract information. In the event the Government believes that revisions to the Contractor's reported information are warranted, the Government will notify the Contractor. Upon notification, the Contractor shall revise the reported information or provide the Government with a supporting rationale for the information.

(End of clause)

252.204-7024 Notice on the Use of the Supplier Performance Risk System.

As prescribed in 204.7604, insert the following provision:

Notice on the Use of the Supplier Performance Risk System

(a) Definitions. As used in this provision?

Item risk means the probability that a product, based on intended use, will introduce performance risk resulting in safety issues, mission degradation, or monetary loss.

Price risk means a measure of whether a proposed price for a product or service is consistent with historical prices paid for that item or service.

Supplier risk means the probability that an award may subject the procurement to the risk of unsuccessful performance or to supply chain risk (see Defense Federal Acquisition Regulation Supplement 240).

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(b) The Supplier Performance Risk System (SPRS), available at https://piee.eb.mil/, will be used in the evaluation of the Quoter or Offeror's performance. SPRS retrieves item, price, quality, delivery, and contractor information on contracts from Government reporting systems in order to develop risk assessments.

(c) The Contracting Officer will consider SPRS risk assessments during the evaluation of quotations or offers received in response to this solicitation as follows:

(1) Item risk will be considered to determine whether the procurement represents a high performance risk to the Government.

(2) Price risk will be considered in determining if a proposed price is consistent with historical prices paid for a product or a service or otherwise creates a risk to the Government.

(3) Supplier risk, including but not limited to quality and delivery, will be considered to assess the risk of unsuccessful performance and supply chain risk.

(d) SPRS risk assessments are generated daily. Quoters or Offerors are able to access their risk assessments by following the access instructions in the SPRS user's guide available at https://www.sprs.csd.disa.mil/reference.htm. Quoters and Offerors are granted access to SPRS for their own risk assessment classifications only. SPRS reporting procedures and risk assessment methodology are detailed in the SPRS user's guide. The method to challenge a rating generated by SPRS is also provided in the user's guide. SPRS evaluation criteria are available at https://www.sprs.csd.disa.mil/pdf/SPRS_DataEvaluationCriteria.pdf.

(e) The Contracting Officer may consider any other available and relevant information when evaluating a quotation or an offer.

(End of provision)

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PGI 204?ADMINISTRATIVE AND INFORMATION MATTERS

PGI 204.2?SOLICITATION, EVALUATION, AND AWARD

PGI 204.201 Unique procurement instrument identifiers.

(b) DoD-issued PIIDs are thirteen characters in length. Use only alpha-numeric characters, as prescribed in FAR 4.201 and this subpart. Do not use the letter I or O in any part of the PIID.

(1) Position 9.

(i) DoD will use three of the letters reserved for departmental or agency use in FAR 4.201(b)(3), Table 4-1 in this position as follows:

(A) Use M to identify purchase orders and task or delivery orders issued by the enterprise FedMall system.

(B) Use S to identify broad agency announcements and commercial solutions openings.

(C) Use T to identify automated requests for quotations by authorized legacy contract writing systems. Legacy contract writing systems authorized to use the letter T in position 9 of the PIID for automated requests for quotation include the following:

(1) Department of Navy?s Item Management and Procurement

(ITIMP) system.

(2) Defense Logistics Agency?s Enterprise Business System (EBS).

(ii) Do not use other letters identified in FAR 4.201(b)(3), Table 4-1 as ?Reserved for future Federal Governmentwide use? or ?Reserved for departmental or agency use? in position 9 of the PIID.

(iii) Do not use the letter C or H for contracts or agreements with provisions for orders or calls.

(2) Positions 10 through 17. In accordance with FAR 4.201(b)(4), DoD-issued PIIDs must only use positions 10 through 13 to complete the PIID. Enter the serial number of the instrument in these positions. A separate series of serial numbers may be used for any type of instrument listed in FAR 4.201(b)(3), Table 4-1. DoD components assign such series of PIID numbers sequentially. A DoD component may reserve blocks of numbers or alpha-numeric numbers for use by its various activities. Use C in position 10 to identify the solicitation as a commercial solutions opening.

(c)(1) Positions 2 through 6. In accordance with FAR 4.201(b)(3), DoD-issued supplementary PIIDs must, for positions 2 through 6 of modifications to contracts and agreements, comply with the following:

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(i) Positions 2 and 3. These two digits may be either alpha or numeric characters, except?

(A) Use K, L, M, N, P, and Q only in position 2, and only if the modification is issued by the Air Force and is a provisioned item order;

(B) Use S only in position 2, and only to identify modifications issued to provide initial or amended shipping instructions when?

(1) The contract has either FOB origin or destination delivery terms; and

(2) The price changes;

(C) Use T, U, V, W, X, or Y only in position 2, and only to identify modifications issued to provide initial or amended shipping instructions when?

(1) The contract has FOB origin delivery terms; and

(2) The price does not change; and

(D) Use Z only in position 2, and only to identify a modification which definitizes a letter contract or a previously issued undefinitized modification.

(2) Positions 4 through 6. These positions are always numeric. Use a separate series of serial numbers for each type of modification listed in paragraph (c)(1) of this section.

(3) Positions 10 through 17. Positions 10 through 13 of a DoD-issued PIID must not be a sequence of four zeroes (i.e., ?0000?).

(4) The following are elements and examples of proper supplementary PIID numbering.

(i) Position 1. Use a ?U? in position 1 (e.g., ?U00001?) in lieu of an ?A? or ?P?, as necessary, to process draft modifications through contract writing systems and associated applications. Change the ?U? to an ?A? or ?P? prior to award to comply with FAR and DFARS standards.

(ii) Positions 2 through 6. Examples of proper numbering for positions 2 through 6 are as follows:

Provisioned items order
Shipping
Normal modification (reserved for exclusive use by
Instructions
the Air Force only)
00001 ? 99999 K0001 ? K9999 S0001 ? S9999
then KA001 ? KZ999 SA001 ? SZ999
A0001 ? A9999 L0001 ? L9999 T0001 ? T9999
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Provisioned items order
Shipping
Normal modification (reserved for exclusive use by
Instructions
the Air Force only)
B0001 ? B9999 LA001 ? LZ999 TA001 ? TZ999
and so on to M0001 ? M9999 U0001 ? U9999
H0001 ? H9999 MA001 ? MZ999 UA001 ? UZ999
then N0001 ? N9999 V0001 ? V9999
J0001 ? J9999 NA001 ? NZ999 VA001 ? VZ999
then P0001 ? P9999 W0001 ? W9999
R0001 ? R9999 PA001 ? PZ999 WA001 ? WZ999
then Q0001 ? Q9999 X0001 ? X9999
AA001 ? HZ999 QA001 ? QZ999 XA001 ? XZ999
then
JA001 ? JZ999 Y0001 ? Y9999
RA001 ? RZ999 YA001 ? YZ999

(iii) If the contract administration office is changing the contract administration or disbursement office for the first time and is using computer generated modifications to notify many offices, it uses the six position supplementary number ARZ999. If either office has to be changed again during the life of the contract, the supplementary number will be ARZ998, and on down as needed.

PGI 204.201-70 Policy.

(a) Establishment of a Procurement Instrument Identifier (PIID). Do not reuse a PIID once it has been assigned. Do not assign the same PIID to more than one task or delivery order, even if they are issued under different base contracts or agreements.

(b) Transition of PIID numbering. Effective October 1, 2016, all DoD components must comply with the PIID numbering requirements at FAR 4. 201 and this section for all new solicitations, contracts, orders, and agreements issued, and any amendments and modifications to those new actions.

(c) Change in the PIID after its assignment. When a PIID is changed after contract

award, the new PIID is known as a continued contract.

(1) A continued contract?

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(i) Does not constitute a new procurement;

(ii) Incorporates all prices, terms, and conditions of the predecessor contract effective at the time of issuance of the continued contract;

(iii) Operates as a separate contract independent of the predecessor contract once issued; and

(iv) Must not be used to evade competition requirements, expand the scope of work, or extend the period of performance beyond that of the predecessor contract.

(2) When issuing a continued contract, the contracting officer must?

(i) Issue an administrative modification to the predecessor contract to clearly state that?

(A) Any future awards provided for under the terms of the predecessor contract (e.g., issuance of orders or exercise of options) will be accomplished under the continued contract; and

(B) Supplies and services already acquired under the predecessor contract must remain solely under that contract for purposes of Government inspection, acceptance, payment, and closeout; and

(ii) A continued contract is issued solely for administrative reasons. When issuing a continued contract, the contracting officer must perform the following tasks:

(A) Obtain approval at a level above the contracting officer before issuance of the continued contract.

(B) Assign a PIID to the continued contract that is different from the PIID assigned to the predecessor contract, using the uniform PIID numbering system prescribed in FAR 4.201(b) and DFARS 204.201. The predecessor contract will retain the PIID originally assigned to it.

(C) Find a clear breaking point (e.g., between issuance of orders, exercise of options, or establishment of a new line of accounting) to issue the continued contract.

(D) Clearly segregate contractual requirements for purposes of Government inspection, acceptance, payment, and closeout. Supplies already delivered and services already performed under the predecessor contract will remain under the predecessor contract. This will allow the predecessor contract to be closed out when all inspection, acceptance, payment, and other closeout issues associated with supplies delivered and services performed under the predecessor contract are complete.

(E) Include in the continued contract all terms and conditions of the predecessor contract that pertain to the supplies and services yet to be delivered or performed. At the time it is issued, the continued contract may not in any way alter the prices or terms and conditions established in the predecessor contract.

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(F) Provide advance notice to the contractor before issuance of the continued contract, to include the PIID and the effective date of the continued contract.

(G) Modify the predecessor contract to?

(1) Reflect any necessary administrative changes such as transfer of Government property, and make the Government property accountable under the continued contract;

(2) Clearly state that future performance (e.g., issuance of orders or exercise of options) will be accomplished under the continued contract; and

(3) Specify the administrative reason for issuing the continued contract.

(H) Reference the predecessor contract PIID on the face page of the continued contract to ensure traceability.

(ii) Sample language for the administrative modification to the predecessor contract follows:

This modification is issued for administrative purposes to facilitate continued contract performance due to [state the reason for assigning an additional PIID]. This modification is authorized in accordance with FAR 4.201 and DFARS 204.201. Supplies and services already acquired under this contract number must remain solely under this contract number for purposes of Government inspection, acceptance, payment, and closeout. All future [delivery orders] [task orders] [options exercised] will be accomplished under continued contract [insert contract number].

PGI 204.201-71 Cross reference to Federal Procurement Data System.

The following matrices should be used as a cross reference between the terms used in the FAR, DFARS, and Federal Procurement Data System (FPDS).

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STRUCTURE OF REQUIRED IDENTIFIERS

Key and Format Description	
A - DoD Procurement Instrument Identifier (PIID)	Consists of the concatenation of the following four fields: Enterprise Fiscal Year in Procurement Serialized Identifier - which award is Instrument Type Identifier DODAAC made Code

of
contracting
office
Six alpha- Two numeric One alpha character Four
numeric characters excluding alpha-
characters I and O numeric
excluding characters
I and O excluding
I and O.
0000 is
not an
acceptable
value.
B - DoD Order Four alpha-numeric characters excluding I and O. A and P are
Number prohibited in the first position. 0000 is not an acceptable value.
(Supplementary
PIID) (NOTE: Four character supplementary PIID order numbers are only
allowed to be issued through FY16. Subsequently, all orders must
be in the format shown above in section A of this table. DoD
activities are encouraged to transition as soon as possible in FY16 to
this new method for numbering orders under DoD contracts and
agreements. Transition must be completed no later than October 1,
2016.)
C - DoD Six alpha-numeric characters beginning with A or P, excluding I and
Procurement O. P00000 and A00000 are not acceptable values.
Instrument
Modification
Identifier
(Supplementary
PIID)
D - DoD Order Two alpha-numeric characters excluding I and O. 00 is not an
Modification acceptable value.
Identifier
(Supplementary (NOTE: Two character supplementary PIID modification numbers
PIID) are only allowed to be issued to DoD orders issued through FY16.
Modification to DoD orders issued after the transition to the new
method of numbering orders under DoD contracts and agreements
must be in the form shown in section C of this table.
E - Non DoD 4 to 50 Alpha-numeric characters
Procurement
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Instrument
Number

ELEMENTS NEEDED TO IDENTIFY A DEPARTMENT OF DEFENSE

PROCUREMENT ACTION

Required as shown below to uniquely identify
the action.
Procurement
Procurement Reference
Instrument
Instrument Procurement
Identifier Modification
Action Type Instrument Order Number
(PIID) Number
(Reference
(Contract
Use Only)
Number)
BPA or Order
under a Schedule
or other non-DoD
Instrument E A
Order against a
BPA under a
Schedule (FY16
and later) E A A
Order against a
BPA under a
Schedule (Pre-
FY16) E A B
DoD Contract,
Purchase Order,
BOA, BPA not
under a
Schedule, or
other instrument A
Order against a
DoD Contract,
BOA, BPA not
under a
Schedule, or
other instrument
(FY16 and later) A A
Order against a

DoD Contract,
BOA, BPA not
under a Schedule
or other
instrument
(Pre-FY16) A B
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Modification to a
BPA or Order
under a Schedule
or other non-
DoD instrument E A C
Modification to an
Order against a
BPA under a
Schedule
(FY16 and later) E A A C
Modification to an
Order against a
BPA under a
Schedule
(Pre-FY16) E A B D
Modification to a
DoD Contract,
Purchase Order,
BOA, BPA not
under a
Schedule, or
other instrument
A C
Modification to an
Order against a
DoD Contract,
BOA, or BPA not
under a schedule
(FY16 and later) A A C
Modification to an
Order against a
DoD Contract,
BOA, or BPA not
under a schedule

(Pre-FY16) A B D

FPDS FIELD NAME

FPDS Crosswalk REF_IDV REF_IDV_MODIFI- MODIFICATION_NUM

_PIID CATION_NUMBER PIID BER

BPA or Order E Use 0 A Use 0
under a Schedule
or other non-DoD
Instrument
Order against a A Use 0 A Use 0
BPA under a
Schedule (FY16
and later)
Order against a A Use 0 B* Use 0
BPA under a
Schedule
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(Pre-FY16)

DoD Contract, A Use 0
Purchase Order,
BOA, BPA not
under a Schedule,
or other
instrument
Order against a A Use 0 A C
DoD Contract,
BOA, BPA not
under a Schedule,
or other
instrument (FY16
and later)
Order against a A Use 0 B* D*
DoD Contract,
BOA, BPA not
under a Schedule,
or other
instrument

(Pre-FY16)

Modification to a A C
BPA or Order
under a Schedule

or other non-DoD
Instrument
Modification to an A Use 0 A C
Order against a
BPA under a
Schedule
(FY16and later)
Modification to an A Use 0 B* D*
Order against a
BPA under a
Schedule
(Pre-FY16)
Modification to a A C
DoD Contract,
Purchase Order,
BOA, BPA not
under a Schedule,
or other
instrument
Modification to an A Use 0 A C
Order against a
DoD Contract,
BOA, or BPA not
under a Schedule
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(FY16 and later)
Modification to an A Use 0 B* D*
Order against a
DoD Contract,
BOA, or BPA not
under a Schedule
(Pre-FY16)
* Note that FPDS strips leading zeroes, so that modification 02 to order 0024 is shown as modification 2 to order 24.
PGI 204.201-72 Order of application for modifications.

(a) There may be situations where the numeric order of the modifications to a contract does not reflect the order in which those changes to the contract take effect.

(b) To establish the sequence of modifications to a contract or order, the modifications will be applied in the following order?

(1) Modifications will be applied in order of the effective date on the modification;

(2) In the event of two or more modifications with the same effective date, modifications will be applied in signature date order; and

(3) In the event of two or more modifications with the same effective date and the same signature date, procuring contracting office modifications will be applied in numeric order, followed by contract administration office modifications in numeric order.

PGI 204.2 - Solicitation, Evaluation, and Award

PGI 204.202-70 Uniform use of line items.

(d) Use of exhibits and attachments.

(1) Exhibits may be used instead of putting a long list of litems or subline items in the contract schedule. Exhibits are particularly useful in buying spare parts.

(2) When using exhibits, establish a line or subline item and refer to the exhibit.

(3) Identify exhibits individually.

(4) Each exhibit must apply to only one line item or subline item.

(5) More than one exhibit may apply to a single line item.

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(6) Data items on a DD Form 1423, Contract Data Requirements List, may be either separately priced or not separately priced.

(i) Separately priced. When data are separately priced, enter the price in Section B of the contract.

(ii) Not separately priced. Include prices in a priced line item or subline item.

(7) The contracting officer may append attachments to exhibits, as long as the attachment does not identify a deliverable requirement that has not been established by a line item or subline item or exhibit line item.

(8) Include exhibit line items and associated information in the electronically distributed contract documents identified in PGI 204.271-2(c)(1)(i) and (2).

(e) Use of exhibits and attachments.

(1) Exhibits may be used instead of putting a long list of litems or subline items in the contract schedule. Exhibits are particularly useful in buying spare parts.

(2) When using exhibits, establish a line or subline item and refer to the exhibit.

(3) Identify exhibits individually.

4d) Each exhibit must apply to only one line item or subline item.

(5) More than one exhibit may apply to a single line item.

(6) Data items on a DD Form 1423, Contract Data Requirements List, may be either separately priced or not separately priced.

(i) Separately priced. When data are separately priced, enter the price in Section B of the contract.

(ii) Not separately priced. Include prices in a priced line item or subline item.

(7) The contracting officeer may append attachments to exhibits, as long as the attachment does not identify a deliverable requirement that has not been established by

a line item or subline item or exhibit line item.

(8) Include exhibit line items and associated information in the electronically distributed contract documents identified in PGI 204.201(c)(1)(i) and (2).

PGI 204.202-71 Establishing line items, subline items, and exhibit line items.

(a) Line Items.

(1) When structuring line items, consider the following:

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(i) The effect of the chosen units of measure on administration and payment, especially on fixed-price contracts.

(ii) The need for periodic deliveries and payments when selecting a unit of measure as it may impact the contractor?s cashflow during contract performance.

(iii) The impact of any financing arrangements under FAR part 32 and whether there is a need to consider cashflow for progress payments.

(2) Minimum requirements.

(i) Supply line items:

(A) Contracting officers must match the quantity to the actual number of the supplies to be provided. If more than one delivery is expected, the quantity cannot be ?1?.

(B) Describe the item or supply being procured in sufficient specificity and detail to be identified by a third party in order to?

(1) Submit a bid, quote, or offer;

(2) Receive the item or supply;

(3) Inspect the item or supply;

(4) Pay for it; and

(5) Inventory if applicable

(C) Use manufacturer part numbers or similar identifiers when available.

(i) Service line items:

(A) Contracting officers must match the quantities with the frequency with which performance will be reviewed, and on fixed-price line items, payment made. If the quantity used is 1, then the contract only allows for 1 payment, 1 time, for that 1 delivery when performance is completed. In contrast, if performance will be reviewed, accepted, and paid on a monthly basis, the quantity should reflect the number of months in the period of performance. For example, a 12-month effort should reflect a quantity of 12, a unit of measure of months or lots and the amount which will be paid each month.

(B) Describe the services being procured and accepted in a manner that traces the requirements of the performance work statement (PWS), statement of work (SOW), or statement of objectives (SOO) to the line item structure so that a third party can?

(1) Submit a bid, quote or offer;

(2) Observe and inspect performance;

(3) Accept performance; and

(4) Pay for the services

(3) Add any performance incentives or award fees to the same deliverable line item on which the performance occurs.

(4) Single accounting classification citation. Establish informational subline items for each accounting classification citation when the use of multiple accounting classification citations is necessary for a single deliverable.

(5) The line item number must be the same as the solicitation line item number unless there is a valid reason for using different numbers.

(b) Subline items.

(1) Deliverable subline items. Subline items will be used instead of line items to facilitate payment, delivery tracking, contract funds accounting, or other management purposes. Such subline items must be used when items bought under one line item number?

(i) Are to be paid for from more than one accounting classification. A subline item must be established for the quantity associated with the single accounting classification citation. Establish a line item rather than a subline item if it is likely that a subline item may be assigned additional accounting classification citations at a later date. Identify the funding as required at PGI 204.202-71(a)(4));

(ii) Are to be packaged in different sizes, each represented by its own NSN;

(iii) Have collateral costs, such as packaging costs, but those costs are not a part of the unit price of the line item;

(iv) Have different delivery dates or destinations or requisitions, or a combination of the three; or

(v) Identify parts of an assembly or kit which?

(A) Have to be separately identified at the time of shipment or performance; and

(B) Are separately priced.

(2) Informational subline items.

(i) Informational subline items must be used to identify each accounting classification citation assigned to a single line item number when use of multiple citations is authorized (see PGI 204.202-71(a)(4)).

(ii) Contracting officers must not provide pricing arrangement, delivery, inspection, or acceptance information on informational subline items.

(c) Exhibit line items.

(1) A line item or subline item may refer to an exhibit or multiple exhibits. However, each exhibit may only be associated with one line item or subline item. An exhibit may contain one or more exhibit line items.

(2) Exhibit line items are separately identifiable and require the elements at FAR **4.202-4.**

(3) All line items sharing the same exhibit must be the same contract type.

PGI 204.202-72 Required data elements.

(a)(1) Line items. Line items must consist of four numeric digits from 0001 to 9999.

(2) Subline items.

(i) Subline items must consist of a ?line item base? (four numeric digits derived from the separately identifiable or informational line item associated with one or more subline items) concatenated with an ?extension? of either two numeric or two alpha characters, depending on the type of subline item.

(ii) Types of subline items.

(A) Deliverable subline items. The line item extension for deliverable subline items must only consist of two alpha characters from AA through ZZ. Use alpha characters for deliverable subline items, running AA through ZZ. For example, where line item 0005 is associated with three deliverable subline items, line item base 0005 would be concatenated with extensions AA, AB, and AC to form deliverable subline items 0005AA, 0005AB, and 0005AC.

(B) Informational subline items. The line item extension for informational subline items must only consist of two numeric characters from 01 through 99. For example, where line item 0001 has two informational subline items, line item base 0001 would be concatenated with extensions 01 and 02 to form info subline items 000101 and 000102.

(3) Exhibit line items. Exhibit line items must be associated with informational line items or subline items using an exhibit identifier. Exhibit line items must consist of the exhibit identifier concatenated with a serial extension. For example, where informational line item 0004 is associated with Exhibit C, associated ELINs would be C001, C002, C003, etc. Where exhibit Identifiers consist of two alpha characters, excluding I and O, the serial number following the exhibit identifier in an exhibit line item number would be two digits. For example, given Exhibit GG, exhibit line items could include GG01, GG02, GG03, GG04, etc. Serial numbers need not be consecutive, but they must be unique.

(b) Line item descriptions. Two types of descriptions may exist: a short description, sometimes referred to as a ?noun?, and a long description. Sh(1)ort descriptions should concisely describe a deliverable or label a line item or subline item as informational.

Contracting officers must take great care to not use vague descriptions or descriptions that provide redundant information otherwise captured in data elements such as the period of the effort, such as supplies, products, spares, option line, FY 20XX requirement. While contracting officers may use ?miscellaneous text? to further describe

deliverables, overuse is highly discouraged. Styling text with bold, underline, strikethrough, etc., is also highly discouraged. Contracting officers should not use tables within text fields, despite several contract writing systems making them available for use.

(c)(1) Use of PSCs. The list of active PSCs is available in the PSC Manual at https://www.acquisition.gov/PSC_Manual. Contracting officers must ensure PSCs are current at the time a line item, subline item, or exhibit line item is established; however, unless otherwise required by statute, regulation, policy, or the contract, contracting officers are not required to change a PSC on an existing line item if the PSC is deactivated or modified.

(2) The list of allowable units of measure is on the Defense Pricing, Contracting, and Acquisition Policy website at https://www.acq.osd.mil/asda/dpc/ce/ds/docs/pds/Line_Item_UoM_List.xlsx.

(3) Delivery and acceptance locations must be defined using Activity Address Codes published in (1) DoD Activity Address Directory (DODAAD), DoD 4000.25-6-M, or (2) Military Assistance Program Address Directory System (MAPAD), DoD 4000.25-8-M and available for verification at https://www.daas.dla.mil/daasinq/default.asp.

(4) Assign acceptance or approval responsibility using an Activity Address Code. Do not assign acceptance responsibility to an Activity Address code that does not have acceptors assigned in WAWF, unless one of the exceptions to WAWF at section 232.7002 applies. Available roles for an Activity Address Code can be verified at the Active DoDAACs & Roles link on the WAWF homepage at https://piee.eb.mil/xhtml/unauth/home/login.xhtml.

(5) Use an Accounting Classification Reference Number (ACRN) to associate an accounting classification citation with a line item, subline item, or exhibit line item.

(See PGI 204.202-75).

(6) Contracts for foreign military sales (FMS) must provide traceability for each Defense Security Cooperation Agency FMS case identifier to a deliverable.

(d) Define delivery locations using Activity Address Codes located at https://home.daas.dla.mil/DAASINQ/default.asp and in accordance with?

(1) DoD Activity Address Directory (DODAAD), DoD Defense Logistics Manual (DLM) 4000.25, Volume 6, Chapter 2; or

(2) Military Assistance Program Address Directory System (MAPAD), DoD DLM **4000.25, Volume 6, Chapter 3.**

(e) The following examples illustrate when the requirements at paragraph (a) apply?

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(1) Separately identifiable subline items. The rule applies to subline items 0001AA and 0001AB. It does not apply to the line item 0001, because it does not have a deliverable.

ITEM NO. SUPPLIES/SERVICE QUANTITY UNIT UNIT AMOUNT

PRICE

0001 Widgets

0001AA Red painted widgets 6 EA $10.00 $60.00

0001AB Unpainted widgets 6 EA $9.50 $57.00

(2) Informational subline items. The rule applies to line item 0001. It does not apply to subline items 000101, 000102, and 000103 because they do not have deliverables.

ITEM SUPPLIES/SERVICE QUANTITY UNIT UNIT AMOUNT

NO. PRICE

0001 Widget 1 LOT $60,000 $60,000

implementation Joint

Service Study

000101 Army funding

(AA: $20,000)

000102 Navy funding

(AB: $20,000)

000103 Air Force funding

(AC: $20,000)

(3) Line item with no subline items. The rule applies.

ITEM SUPPLIES/SERVICE QUANTITY UNIT UNIT AMOUNT

NO. PRICE

0001 Red painted widgets 6 EA $10.00 $60.00

(4) Line item is parent to an exhibit. The rule applies to the exhibit lines.

ITEM SUPPLIES/SERVICE QUANTITY UNIT UNIT AMOUNT

NO. PRICE

0001 See exhibit A

($117.00)

A001 Red painted widgets 6 EA $10.00 $60.00

A002 Unpainted widgets 6 EA $9.50 $57.00

(5) Line is parent to a subline item which refers to an exhibit. The rule applies to the exhibit lines.

ITEM NO. SUPPLIES/SERVICE QUANTITY UNIT UNIT AMOUNT

PRICE

0001 Widget program

0001AA Design and develop 1 LOT $500.00 $500.00

widgets

0001AB See exhibit A

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($117.00)
A001 Red painted widgets 6 EA $10.00 $60.00
A002 Unpainted widgets 6 EA $9.50 $57.00

(f) Exceptions to required data elements .

(1) Line items that are not priced separately are labelled ?Not Separately Priced or NSP as an entry for price or amount if the price is included in another subline item or a different line item. Include the line item or subline item that includes the price in the description block.

(2) This requirement does not apply if the subline item or line item was created to refer to an exhibit. If management needs dictate that a unit price be entered, the price must be included in the item description block of the schedule and enclosed in parentheses.

(3) When a subline item has deliverable separately priced exhibit line items, the delivery schedule, destination, period of performance, or place of performance should be identified at the exhibit line level, rather than the subline item level.

PGI 204.202-73 Modification requirements.

Create a new line item, subline item, or exhibit line item if a change results in?

(a) A material change in price; or

(b) A technical change which results in?

(1) A materially different item than the original item, or

(2) A variation in performance, outcomes, or deliverables.

PGI 204.202-74 Traceability of Appropriations

(a) Scope. This PGI section provides the policies and procedures for associating line item numbers to funding appropriations.

(b) Requirements for traceability from the purchase request. Every purchase request must be recorded on the resulting contract action to establish unique traceability to requirements and funding (see DFARS 204.202-74).

(1) Purchase request numbers and purchase request line item numbers must be identified in the contract.

(2) All purchase request numbers and purchase request line item numbers must be included on the corresponding contract line or subline items in section B of the Schedule, or its equivalent.

(3) If only one purchase request applies to the contract action, that purchase request number may be shown on the contract form in the appropriate field (e.g. block 4 of SF 26 or block 1 of the SF 1449).

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(4) If more than one purchase request is on a contract award, the purchase request number field in Section A or its equivalent section of the contract must read ?See Schedule?.

(5) If the purchase request includes a Commitment Identification Number (CIN) field to provide traceability in addition to the purchase request line item number, ensure

each CIN is placed on the corresponding line item number on the contract.

(6) If the purchase request originates from a requisition (e.g. MILSTRIP or FEDSTRIP) or a Military Interdepartmental Purchase Request (DD 448), include the document identifier and the purchase request information in (a), if applicable, on each line item on the contract.

(7) If a contract action was not initiated via a purchase request (e.g. issuance of a Basic Ordering Agreement or a modification that does not obligate funds) then the purchase request information in (a) may be blank.

(c) Procedures.

(1) Establishing the contract ACRN.

(i) The contracting office issuing the contract or order is responsible for assigning ACRNs.

(ii) Do not assign?

(A) An ACRN to more than one accounting classification citation; or,

(B) More than one ACRN to one accounting classification citation.

(2) The contract must include the accounting classification citation and ACRN as follows:

(i) In the accounting and appropriations data block in section A or its equivalent section of the contract if space allows or in section G, Contract Administration Data (or its equivalent)?

(A) The ACRN must be shown as a detached prefix to the accounting classification citation,

(B) Unless the accounting classification citation is only present for the transportation officer to cite on Government bills of lading.

(ii) ACRNs must be shown in the supplies/services column near the item description in Section B or equivalent (see PGI 204.202-75).

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PGI 204.202-75 Numbering format for line items, subline items, and exhibit line items.

(a)(1) Line item numbering. Do not use the letters I or O.

(2) Do not use lowercase alpha characters

(3) Do not use special characters (e.g. $, &) or spaces

(4) Do not re-purpose a number that has been deleted, terminated, canceled, or otherwise removed from the contract.

(5) Numbers must be sequential but do not need to be consecutive.

(b) Subline item numbering. Number subline items by adding either two numeric characters or two alpha characters to the basic line item number.

(1) Information subline item numbers. Use numeric characters only for information subline items, running 01 through 99. Do not use spaces or special characters to separate the subline item number from the line item number that is its root. For example, if the line item number is 0001, the first three subline items would be

000101, 000102, and 000103. Do not use a designation more than once within a line item.

(2) Separately identified subline items. Use alpha characters only for separately identified subline items, running AA through ZZ. Do not use spaces or special characters to separate the subline item number from the line item number that is its root. For example, if the line item number is 0001, the first three subline items would be 0001AA, 0001AB, and 0001AC.

(i) Do not use the letters I or O as alpha characters.

(ii) Use all 24 available alpha characters in the second position before selecting a different alpha character for the first position. For example, AA, AB, AC, through AZ before beginning BA, BB, and BC.

(c) Within a given line item, the subline item numbers must be sequential but need not be consecutive.

(d) If exhibits are used, create a contract subline item citing the exhibit's identifier. See PGI 204.202-72.

(e) If a line item involves ancillary functions, like packaging and handling, transportation, payment of state or local taxes, or use of reusable containers, and these functions are normally performed by the contractor and the contractor is normally entitled to reimbursement for performing these functions, do not establish a separate subline item solely to account for these functions. However, do identify the functions in the contract schedule. If an offeror separately prices these functions, the contracting officer may establish separate subline items for the functions; however, the separate subline items must conform to the requirements of DFARS 204.202-4.

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(f) The following examples illustrate subline items numbering?

(1) Subline items structured to identify destinations for identical items, identically priced (delivery schedule must be established for each subline item, not the line item).

UNIT

ITEM NO. SUPPLIES/SERVICE QUANTITY UNIT AMOUNT

PRICE

0001 NSN 1615-00-591-6620

Shim, Aluminum Alloy,...

Apbl, Rotor, Helicopter

PRON A1-9-63821-M1-

M1 ACRN:AA

0001AA A3168R-9030-4025 10 EA $100.00 $1,000.00

A2537M IPD: 2 RDD:

334 PROJ: 501

0001AB A3168R-9030-4026 10 EA $100.00 $1,000.00

A51AXBM IPD: 2 RDD:

325 PROJ: 502

0001AC A3168R-9030-4027 15 EA $100.00 $1,500.00

A67KBCM IPD: 2 RDD:

349 PROJ: 503

(2) Subline items structured to identify destinations for identical items, not identically priced (delivery schedule must be established for each subline item, not the line item).

ITEM UNIT

SUPPLIES/SERVICE QUANTITY UNIT AMOUNT

NO. PRICE

0001 NSN 1615-00-591-6620

Shim, Aluminum Alloy,...

Apbl, Rotor, Helicopter

PRON A1-9-63821-M1-

M1 ACRN:AA

0001AA A3168R-9030-4025 10 EA $100.00 $1,000.00

A2537M IPD: 2 RDD:

334 PROJ: 501

0001AB A3168R-9030-4026 20 EA $99.00 $1,980.00

A51AXBM IPD: 2 RDD:

325 PROJ: 502

0001AC A3168R-9030-4027 30 EA $98.00 $2,940.00

A67KBCM IPD: 2 RDD:

349 PROJ: 503

NOTE: Difference in prices for identical items is due to separate destinations for FOB destination delivery.

(3) Subline items structured to identify different sizes of an item that are not identically priced (delivery schedule must be established for each subline item, not the line item).

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ITEM UNIT

SUPPLIES/ SERVICE QUANTITY UNIT AMOUNT

NO. PRICE

0002 Body Armor Ground

Troops Variable Type

Small Arms,

Fragmentation Protective

Nylon Felt Vest, Front

and Back Plates,
Ceramic Plate, Type I
0002AA First Article 1 LO NSP
0002AB 8470-00-141-0935 1936 SE $331.77 $642,306.72
Medium
Regular
0002AC 8470-00-141-0936 Large 625 SE $355.77 $222,356.25
Regular
0002AD 8470-00-141-0937, 1237 SE $346.77 $428,954.49
Medium
Long
0002AE 8470-00-141-0938, Large 804 SE $365.77 $294,079.08
Long

(4) Subline items structured to provide the capability for relating subordinate separately priced packaging costs to the overall line item. (Separate delivery schedules must be established for the subline item identifying the contractor's product and for the subline item identifying packaging. No schedule will be established for the line item.)

ITEM UNIT
SUPPLIES/ SERVICE QUANTITY UNIT AMOUNT
NO. PRICE
0001 6105-00-635-6568 50380
Ref No 63504-WZ
Armature Motor ACRN:
AA
0001AA 6105-00-635-6568 50380 2 EA $2,895.87 $5,791.74
Ref No 63504-WZ
Armature Motor ACRN:
AA
0001AB Packaging ACRN:AA 2 EA $289.58 $579.16

(5) Subline items structured to identify different accounting classifications for identical items (delivery schedule must be established for each subline item, not the line item).

AJ: 17X150518350315069100000192B000000000000000000
AK: 17X150518370317569100000192B000000000000000000
AL: 17X150519350314369100000192B000000000000000000
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ITEM SUPPLIES/
QUANTITY UNIT UNIT PRICE AMOUNT
NO. SERVICE
0002 Pulse Decoder EA $3,037.40

KY-312/A5Q-19

0002AA Pulse Decoder 2 $6,074.80

KY-312/A5Q-19

ACRN: AJ

0002AB Pulse Decoder 6 $18,224.40

KY-312/A5Q-19

ACRN: AK

0002AC Pulse Decoder 2 $6,074.80

KY-312/A5Q-19

ACRN: AL

NOTE: Unit price may be shown at line item level and total amounts shown at subline item level.

(6) Informational subline items established to identify multiple accounting classification citations assigned to a single line item.

ITEM

SUPPLIES/ SERVICE QUANTITY UNIT UNIT PRICE AMOUNT

NO.

0001 Air Vehicle 1 EA $6,700,000 $6,700,000

000101 ACRN:AA

$3,300,000

000102 ACRN:AB

$2,000,000

000103 ACRN:AC

$1,400,000

(7) Subline items structured to identify parts of an assembly (delivery schedule and price must be established for each identified part at the subline item level, not for the assembly at the line item level).

ITEM SUPPLIES/

QUANTITY UNIT UNIT PRICE AMOUNT

NO. SERVICE

0003 Automatic Degausing

System Consisting of:

(2 ea @ $52,061;

$104,122 total)

0003AA Switchboard 2 EA $52,061.00 $104,122.00

0003AB Remote Control 2 EA NSP

Panel

0003AC Power Supply (M 2 EA NSP

Coil) SSM Type 145

Amps, 220 V DC)

* * * * *

0003AF Power Supply (A Coil) 2 EA NSP

SSM Type (118

Amps, 220 V DC)
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(8) Subline items structured to identify parts of a kit (delivery schedule and price must be established for each identified part at the subline item level, not for the kit at the line item level).

ITEM SUPPLIES/
QUANTITY UNIT UNIT PRICE AMOUNT
NO. SERVICE

0031 Conversion Kit to
Convert Torpedo MK
45 Mod 0 to Torpedo
MK 45 Mod 1

(50 Kt @ $10,868.52;
$543,426 total)
0031AA Integrator Assy LD 50 EA $10,868.52 $543,426.00
620106
0031AB Pulse Generator Assy 50 EA NSP
LD 587569
0031AC Drive Shaft Assy LD 50 EA NSP
587559
* * * *
0031BF Actual Panel Assy LD 50 EA NSP
542924

NOTE: In this example, the prices of subline items 0031AB through 0031BF are included in the Integrator Assembly.

(g) Numbering exhibits and attachments.

(1) Use alpha characters to identify exhibits. The alpha characters must be either single or double capital letters. Do not use the letters I or O.

(2) Once an identifier has been assigned to an exhibit, do not use it on another exhibit in the same contract.

(3) The identifier must always appear in the first or first and second positions of all applicable exhibit line item numbers.

(4) If the exhibit has more than one page, cite the procurement instrument identification number, exhibit identifier, and applicable line or subline item number on each page.

(5) Use numbers to identify attachments.

PGI 204.202-76 Payment allocation instructions

When multiple accounting citations are present, the payment office must allocate and record the amounts paid to the accounting classification citations in the contract using the table below based on the type of payment request submitted (see DFARS 252.232-

7006) and the type of effort.
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PGI 204.202-77 Payment instructions.

(a) Use payment instructions in contracts and orders that are funded by multiple accounting classification reference number (ACRN) citations and?

(1) Include deliverable line items or deliverable subline items (see FAR 4.202) that are funded by multiple ACRNs; or

(2) Authorize financing payments.

(b) Insert the table at paragraph (c) of this section in Section G of the contract, or equivalent. When some, but not all, of the fixed-price line items in a contract are subject to contract financing payments, the contracting officer must clearly identify to which line items the payment clause(s) included in Section I of the contract apply.

(c) The payment office must allocate and record the amounts paid from the ACRNs in the contract using table 204-1 based on the type of payment request submitted (see DFARS 252.232-7006) and the type of effort identified by the Product Service Code for each deliverable line item or subline item (see FAR 4.202-4).

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Table 204-1
For Government Use Only
Contract/Order Type of
Payment Clause Payment
Request
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ylppuS ecivreS
noitcurtsnoC
Payment Office
Allocation Method
52.212-4 (Alt I), Cost Voucher X X N/A Line item specific proration.
Contract Terms and If there is more than one
Conditions? ACRN within a deliverable line
Commercial Products item, the funds will be
and Commercial allocated in the same
Services; proportion as the amount of
52.216-7, Allowable funding currently unliquidated
Cost and Payment; for each ACRN on the line

52.232-7, Payments item billed.
Under Time-and-
Materials and Labor-
Hour Contracts
52.232-1, Payments, Navy X X N/A Line item specific by fiscal
252.217-7007, Shipbuilding year. If there is more than one
Payments Invoice ACRN within a deliverable line
(vessel repair and (Fixed Price) or deliverable subline item, the
alterations) funds will be allocated using
the oldest funds first. In the
event of a deliverable line or
deliverable subline item with
two or more ACRNs with the
same fiscal year, those
amounts will be prorated to
the available unliquidated
funds for that year.
52.232-1, Payments; Invoice X X N/A Line item specific proration.
52.232-2, Payments If there is more than one
Under Fixed-Price ACRN within a deliverable line
Research and item or deliverable subline
Development item, the funds will be
Contracts; allocated in the same
52.232-3, Payments proportion as the amount of
Under Personal funding currently unliquidated
Services Contracts; for each ACRN on the
52.232-4, Payments deliverable line or deliverable
Under Transportation subline item for which
Contracts and payment is requested.
Transportation-
Related Services
Contracts; and
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52.232-6, Payments
Under
Communication
Service Contracts
With Common
Carriers
52.232-5, Payments Construction N/A N/A X Line item specific by fiscal
Under Fixed-Price and Facilities year. If there is more than one

Construction Management ACRN within a deliverable line
Contracts Invoice or deliverable subline item, the
funds will be allocated using
the oldest funds first. In the
event of a deliverable line or
deliverable subline item with
two or more ACRNs with the
same fiscal year, those
amounts will be prorated to
the available unliquidated
funds for that year.

52.232-16, Progress Progress X X N/A Contract-wide proration.

Payments Payment* Funds must be allocated in
(excluding contracts the same proportion as the
with multiple lot amount of funding currently
progress payments) unliquidated for each ACRN.
Progress payments are
considered contract level
financing, and the ?contract
price? must reflect the fixed-
price portion of the contract
per FAR 32.501-3.

52.232-16, Progress Progress X X N/A Lot-wide proration (applies to

Payments; Payment* lots specifically identified in the

252.232-7018, contract).

Progress If there is more than one
Payments?Multiple ACRN within a lot, the funds
Lots will be allocated in the same
proportion as the amount of
funding currently unliquidated
for each ACRN on the lot for
which payment is requested.
See paragraph (c) of this
section for multiple lot CLIN
structure.

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52.232-29, Terms for Commercial X X N/A Specified in approved

Financing of Product and payment. The contracting
Purchases of Commercial officer must specify the
Commercial Products Service amount to be paid and the

and Commercial Financing* account(s) to be charged for
Services; 52.232-30, each payment approval in
Installment Payments accordance with FAR
for Commercial 32.207(b)(2).
Products and
Commercial Services

52.232-32, Performance- X X N/A Specified in approved
Performance-Based Based payment. The contracting
Payments Payments* officer must specify the
amount to be paid and the
account(s) to be charged for
each payment approval in
accordance with FAR
32.1007(b)(2).

252.232-7002, Progress X X N/A Allocate costs among line
Progress Payments Payment* items and countries in a
for Foreign Military manner acceptable to the
Sales Acquisitions administrative contracting
officer.

*Liquidation of Financing Payments. Liquidation will be applied by the payment office against those ACRNs which are identified by the payment instructions for the delivery payment and in keeping with the liquidation provision of the applicable contract financing clause (i.e., progress payment, performance-based payment, or commercial product and commercial service financing).

(c) The following example illustrates a contract with multiple lots. Note that each lot is specifically identified in Section B of the Schedule in the event lot-wide proration will be used in accordance with DFARS 252.232-7018, Progress Payments-Multiple Lots. Note also that cost-reimbursement line items are not included in the request for progress payment.

Section B ? Supplies or services and prices/costs.

ITEM
SUPPLIES/SERVICE QUANTITY UNIT UNIT PRICE AMOUNT
NO.
Lot 1 (FYXX)
0001 Lot 1 ABC Vehicle
(FFP)
0001AA Lot 1 ABC Vehicles, 19 EA $300,000 $5,700,000
Army (Procurement)
0001AB Lot 1 ABC Vehicles, 11 EA $300,000 $3,300,000
Marine Corps
(Procurement)
0002 Data for Item 0001 NSP
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ITEM

SUPPLIES/SERVICE QUANTITY UNIT UNIT PRICE AMOUNT

NO.

0003 Lot 1 Initial Spares

(FFP)

0003AA Lot 1 ABC Vehicle

Initial Spares Army

(See Exhibit C,

$456,000)

(Procurement)

0003AB Lot 1 ABC Vehicle

Initial Spares Marine

Corps (See Exhibit D,

$264,000)

(Procurement)

0004 Lot 1 System 1 Lot Est. Cost:

Engineering and $167,400

Program

Management (CPFF) Fixed Fee:

$12,600

OPTION ITEMS

Lot 2 (FYXY)

1001 Lot 2 ABC Vehicles

(FFP)

1001AA Lot 2 ABC Vehicles, 25 EA $303,000 $7,575,000

Army (Procurement)

1001AB Lot 2 ABC Vehicles, 15 EA $307,500 $4,545,000

Marine Corps

(Procurement)

1002 Data for Item 1001 NSP

1003 Lot 2 Initial Spares

(FFP)

1003AA Lot 2 ABC Vehicle

Initial Spares Army

(See Exhibit E,

$606,000)

(Procurement)

1003AB Lot 2 ABC Vehicle

Initial Spares Marine

Corps (See Exhibit F,

$363,600)

(Procurement)

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ITEM

SUPPLIES/SERVICE QUANTITY UNIT UNIT PRICE AMOUNT

NO.

1004 Lot 2 System 1 Lot Est. Cost:

Engineering and $225,432

Program

Management (CPFF) Fixed Fee:

$16,968

PGI 204.203 System for Award Management.

PGI 204.203-270 Procedures.

(a) Assist offerors in obtaining the required Commercial and Government Entity (CAGE) codes. Note that if an offeror?s facility requires security clearance in accordance with a potential contract, the offeror is required to have a CAGE code assigned to that facility. If the facility is a location other than the offeror?s office submitting the proposal, that facility is not required to be separately registered in the System for Award Management (SAM) in order to have a CAGE code assigned. Offerors may be directed to the DLA CAGE Branch (see PGI 204.203-271 for contact information);

(b) Do not deny a potential offeror a solicitation package because the offeror does not have a CAGE code, unique entity identifier, or TIN;

(c) Do not require a contractor to register sections or locations of their organization in SAM for reasons not already required by clauses present in their contracts in order to obtain a CAGE code; and

(d) Do not require a contractor to obtain new CAGE codes or change CAGE code records assigned to their locations solely for Government administration purposes (such as a result of a Government reorganization, change in Government contracting officer or office) or for distinction in Government systems beyond physical address and Electronic Funds Transfer (EFT) data.

PGI 204.203-271 Maintenance of the CAGE file.

The following information and procedures are provided to assist contracting officers.

(a) Assignment of CAGE codes for entities located in the United States or its outlying areas.

(1) CAGE codes are assigned per legal entity at individual physical addresses (i.e., the same entity at the same physical address will not be assigned two or more CAGE codes). The only exception to this rule is when an entity has a registration in the SAM with multiple EFT addresses identified by multiple EFT indicators. In this case, each EFT indicator record is assigned a separate CAGE code to assist in correct processing of payments.

(2) CAGE codes are not assigned to mailing addresses; a physical address must be provided. Neither U.S. Post Office boxes nor addresses that can be identified

as belonging to commercial mail and/or shipping provider locations will be accepted as physical addresses.

(3) CAGE codes are not assigned to entities where the provided physical address is identified as a short-term virtual location, such as mobile offices, commercial packaging/mailing facilities (e.g., UPS stores, FedEx stores), mailbox rentals and certain business incubator locations if the majority of the operations are not performed from that incubator location. A sole proprietor, partnership, corporate entity, or other business organization must have a principal place of business, even if it is a home office, from where the business operates and record books are maintained. In that case, a home address of an officer of the company or board member would be required.

(4) Individuals who register in SAM as sole proprietors are assigned CAGE codes. However, there may not be multiple CAGE codes assigned to the same location even if the entity names are differentiated by establishing a Limited Liability Corporation (LLC) (e.g., ?John Smith? and ?John Smith, LLC?). Additionally, the standard for the legal business name for sole proprietors, driven by Internal Revenue Service (IRS) standards, is the use of the individual?s personal name. Any additional name used for the sole proprietorship should be identified as a doing business as (DBA) name (e.g., ?John Smith? is the legal business name, ?Smith Construction? is the DBA).

(5) Authorized agents or brokers may be assigned CAGE codes for identification and processing purposes. A single CAGE code will be assigned to the agent or broker entity in addition to any codes assigned to the entities represented by the agent or broker (i.e., only one code will be assigned to a specific agent or broker entity regardless of the number of firms represented by that agent or broker). Codes will not be assigned to an agent or broker in care of the entity being represented or in any way infer that the agent or broker is a separate establishment bearing the name of the entity represented by the agent or broker.

(6) There are some cases where both the owner of real property and a separate legal entity located at the same address as the real property each are required to have CAGE codes assigned. Examples are an office building owner and a tenant in the office building, or a landowner and a company using all or a portion of the land to farm. Additional cases exist where two separate entities may lease office space in the same building and both require CAGE codes. In both situations, the most specific physical address will be requested (i.e., specific additions of suites, floors, or room numbers) to distinguish between the two entities. If no more specific physical address is able to be identified, then documentation such as that listed in PGI 204.203-271(c)(3)(i)(A) will be requested to ensure that the entities are separate legal entities.

(b) NCAGE code assignment for entities located outside the United States and its outlying areas managed via established NATO processes. SAM records received by

the CAGE code system for validation must?

(1) Include an NCAGE that has been received from the NATO Support Agency?s (NSPA?s) common database. The frequency with which local country code bureaus update the common database differs by the country. While most updates occur within a week, it can take up to a month to process. The CAGE code system will hold a validation request from SAM for three (3) days before rejecting it because the NCAGE does not appear to exist; and

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(2) Include a legal business name and physical address that matches the address on the NSPA database in order to be validated.

(c) Changes of information on the CAGE code record.

(1) The DLA CAGE Branch accepts written requests for changes to CAGE files from the following sources:

(i) The company, organization, or sole proprietor entity identified by the code, if located in the United States or its outlying areas.

(A) For CAGE records for which there is a corresponding registration in SAM, the entity must update and submit their SAM registration for validation. If the update includes a change to the entity?s legal business name, the additional steps at PGI 204.203-271(c)(3)(i)(C) will be necessary.

(B) For CAGE records for which there is not a corresponding registration in SAM, the entity must use company letterhead to request a change to their CAGE code record. Submit requests for changes to CAGE files, when there is not a corresponding SAM record, at https://cage.dla.mil. The form may be emailed to cagemail@dla.mil, or a hard copy mailed to?

DLA CAGE Branch

74 Washington Avenue

Battle Creek, MI 49037

Telephone Number: toll-free 877-352-2255

(ii) The Government contracting office on agency letterhead.

(iii) The Government contract administration office on agency letterhead.

(2) The DLA CAGE branch refers requests for changes to CAGE files from entities located outside the United States and its outlying areas as follows:

(i) Entities located in a NATO or NATO-sponsored nation must contact their codification bureau. A listing of codification bureaus is found at https://eportal.nspa.nato.int/ac135/about/contacts.

(ii) Entities located in a country that is neither in NATO nor sponsored by NATO must contact the NATO Support Agency (NSPA) at ncage@nspa.nato.int or request update after searching for their CAGE code at https://eportal.nspa.nato.int/Codification/CageTool/home.

(3) When a request is received by DLA (either directly or via an entity-updated SAM registration submitted for validation) that includes a change to the entity?s legal

business name as recorded within the CAGE file, the DLA team will contact the entity and process the request in accordance with the following procedure:
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(i) If the entity indicates that it does not hold any active federal Government contracts or any outstanding invoices on a physically complete contract, the entity will be asked to provide the following to DLA?

(A) Signed legal documentation that confirms the formal name change and accurately reflects the change requested. Examples of acceptable documentation include: Articles of Incorporation, Articles of Organization, Bill of Sale, Asset Purchase Agreement, Secretary of State documentation, and Legal Merger or Acquisition documentation. DLA will not accept Internal Review Service (IRS) documentation or validation, as the IRS does not require the use of the legal business name. Sole proprietors will need to provide their filings for one of the following: Fictitious Business Name, Assumed Name, Trade Style Name, or Business License. DLA may use information found at state government websites in lieu of requesting documentation from the entity to confirm the name if it is available;

(B) Written statement that they do not have active federal contracts or any outstanding invoices on a physically complete contract; and

(C) After receipt of the documentation in (A) and (B), DLA will process the change. If the initial request was received from SAM as a part of the CAGE validation process, the processed change will be communicated back to SAM.

(ii) If the entity indicates it does hold active Federal Government contracts, the entity will be asked to provide an indication in writing (may be provided by email) if the change in legal business name is a result of an acquisition, merger, or other situation related to recognition of a successor in interest to Federal Government contracts when contractor assets are transferred, which would necessitate a novation agreement be executed.

(A) If the entity indicates that the change in legal business name is not a result of an acquisition merger or other situation as indicated above; the entity will be asked to confirm, in writing (may be provided by email) that it has advised each of the respective Government contracting officers necessary to process name-change agreements in accordance with FAR Subpart 42.9 requirements. Additionally, DLA will ask the entity to provide a copy of the change-of-name agreement (see FAR 42.9) signed by the entity. DLA will not process a change to the CAGE file without a copy of the signed change-of-name agreement, or confirmation from the cognizant Government contracting officer that processing a change to the CAGE file prior to the signed change-of-name agreement being completed is permissible. Note that the modification action that incorporates the change-of-name agreement into the contract is an acceptable method of providing the change-of-name agreement. However, if the modification is not able to be issued until the CAGE code information is updated, the change-of-name agreement itself will suffice.

(B) If the entity indicates that the change in legal business name is a result of an acquisition, merger, or other situation as indicated above, DLA will request the entity to provide the Novation Agreement that has been executed by the cognizant Government contracting officer (see FAR 42.9) as well as the contact information for that contracting officer. DLA may, based on the content of the Novation Agreement, request that the contracting officer provide additional information regarding any Government interest in whether CAGE codes are transferred to the successor in
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interest. DLA will not process a change to the CAGE file without a copy of the executed Novation Agreement, or confirmation from the cognizant Government contracting officer that processing a change to the CAGE file prior to the novation agreement being completed is permissible. Note that the modification action that incorporates the Novation Agreement into the contract is an acceptable method of providing the Novation Agreement. However, if the modification is not able to be issued until the CAGE code information is updated, the Novation Agreement itself will suffice.

(1) When contacted by DLA in relation to a name change resulting from a novation, contracting officers must provide DLA the following information:

(i) Name(s), address(es), and code(s) of the contractor(s) transferring the original contractual rights and obligations (transferor).

(ii) Name(s), address(es), and code(s) (if any) of the entity who is the successor in interest (transferee).

(iii) Name(s), address(es), and code(s) (if any) of the entity who is retaining or receiving the rights to the technical data.

(iv) Description of the circumstances surrounding the novation agreement and especially the relationship of each entity to the other.

(2) Note that if the name change request was received as a part of a registration from SAM update, and this situation applies, the update will be sent back to SAM as rejected by CAGE validation if a copy of the executed Novation Agreement or confirmation from the cognizant Government contracting officer is not available within 10 business days. The entity may resubmit the update in SAM with the changed legal name at such point this information becomes available.

(4) If the initial request was received from SAM as a part of the CAGE validation process, a processed change will be communicated back to SAM.

(5) Note that DLA does not follow the process outlined in (c)(3) of this section for minor changes in the legal business name received from SAM during validation, such as changing an ?and? to ?&?; inserting or removing abbreviations, such as changing ?Co.? to ?Company?; inserting or removing a space between words in an entity?s name; or inserting or removing acronyms or wording identifying a type of incorporated status, such as ?Inc.? or ?LLC?. These changes are processed and communicated back to **SAM.**

204.206 Contracting officer's signature.

(a) Include the contracting officer's telephone number and, when available, e-mail/Internet address on contracts and modifications.

(b) The contracting officer may sign bilateral modifications of a letter contract before signature by the contractor.

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PGI 204.270 Electronic Data Access.

PGI 204.270-1 Policy.

(a) The Electronic Data Access (EDA) system, an online repository for contractual instruments and supporting documents, is DoD's primary tool for electronic distribution of contract documents and contract data. Contract attachments must be uploaded to EDA, except for contract attachments that are classified, are too sensitive for widespread distribution (e.g., personally identifiable information and Privacy Act and Health Insurance Portability and Accountability Act or cannot be practicably converted to electronic format (e.g., samples, drawings, and models). Section J (or similar location when the Uniform Contract Format is not used) must include the annotation ?provided under separate cover? for any attachment not uploaded to EDA.

(b) Agencies are responsible for ensuring the following when posting documents, including contractual instruments, to EDA?

(1) The timely distribution of documents; and

(2) That internal controls are in place to ensure that?

(i) The electronic version of a contract document in EDA is an accurate representation of the contract; and

(ii) The contract data in EDA is an accurate representation of the underlying contract.

PGI 204.270-2 Procedures.

(a) Maintain an account in Wide Area WorkFlow (WAWF), which provides access to Electronic Data Access (EDA) to ensure their ability to validate and verify data and documents distributed to EDA, as necessary.

(b) Agencies must perform, upon deployment of any contract writing system or other source of contractual documents to be posted to EDA, an analysis to verify adequate controls are in place to ensure that contract documents including attachments, and contract data posted to EDA are accurate representations of the contract. When the procedures in this section are followed, contract documents and data in EDA are an accurate representation of the contract and therefore may be used for audit purposes. Analyses performed must include the following?

(1) For documents posted in document formats (e.g., Portable Document Format (PDF)), verification that the electronic versions of contract documents posted to EDA are accurate representations of the contract; however, the electronic version is not required to display visual signatures; and

(2) For data sent to EDA in the data standards at PGI 204.271 review of the

data posted to EDA against the contract documents verified under PGI 204.270(b)(1) to ensure the contract data rendered in EDA is an accurate representation of the underlying contract. To facilitate this review process, all feeds of data to EDA in the Procurement Data Standard are initially placed in a view only evaluation mode, where

the data is not available to other systems or outside users pending verification. Upon completion of the review of data, contracting organizations must notify the EDA program office of the results of the review, with a list of the issuing offices of the contractual actions, the identifier of the system sending the actions, the version or versions of the data standards to which the review applies, and the locations of the systems sending the actions, directing one of the following decisions?

(i) Delete all data sent to date (in this case the system remains in evaluation status pending further review);

(ii) Delete all data sent to date, and change all subsequent data from 'evaluation' to 'compliant' status; or

(iii) Retain all data sent to date, and change all subsequent data from 'evaluation' to 'compliant' status.

(c) Contract deficiency reports. The following procedures provide details on the creation and processing of contract deficiency reports, which are used to correct problems with contracts distributed in EDA.

(1) Contracting officers and all individuals tasked with creating, managing, or viewing contract deficiency reports (CDRs) must establish and maintain an account in **WAWF.**

(2) Agencies that award or administer contracts, or perform pay office functions, should assign individuals within their organization to create, manage, and view CDRs within WAWF based on the following CDR user roles: initiator, reviewer, assignee, and view only.

(3) The contracting officer must correct contract deficiencies identified in a CDR and document the steps taken to resolve the deficiency in the CDR.

(4) The CDR process.

(i) Creation. A CDR is created when a deficiency is identified in the procurement instrument. A list of types of CDR deficiencies is available at https://www.acq.osd.mil/asda/dpc/ce/ds/procurement-data-standard.html. The specifics of the deficiency must be documented in the description in enough detail to provide the assignee an understanding of the problem.

(ii) Approval. Once a CDR is created, the initiator must route the CDR to their local approval official for review.

(iii) Assignment. Once a CDR is approved, it is routed to the appropriate contracting activity for action.

(iv) Acceptance. A CDR must be accepted or returned by the contracting activity. If a CDR is determined to have been incorrectly assigned, the contracting

activity can reassign the CDR to the proper organization (if known) or reject the CDR.
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(v) Resolution. The assignee must document the actions taken to resolve a CDR. If a modification has been issued to resolve the deficiency, it must be identified in the CDR. Once all deficiencies identified on a CDR have been resolved, mark the CDR as resolved. All CDRs should be resolved within 30 days of approval.

(vi) Close. After resolution of a CDR, the initiator of the CDR can accept the resolution and manually close the CDR or return it to the assignee for further action. CDRs not manually closed or returned by the initiator to the assignee within 60 days after resolution will automatically be closed. Once the CDR is closed, a notification is generated advising that the CDR is closed.

(5) Additional information on the CDR module of WAWF is available in PIEE at https://piee.eb.mil/.

PGI 204.271 Contract distribution.

(a) The procuring contracting officer (PCO) retains the hand signed original or digitally signed contract for the contract file. Administrative contracting officers and termination contracting officers provide electronic or the hand signed original of each modification to the PCO for retention in the contract file. Unless otherwise directed by department/agency procedures, the office issuing the orders maintains the original of orders under basic ordering agreements and the original of provisioning orders; and

(b) Ensure that distribution of contracts and modifications is consistent with security directives.

(c) Use the following distribution procedures?

(1) Contracts and modifications must be distributed electronically (except as provided at PGI 204.270-1(a)) using the following methods:

(i) Indexed Portable Document Format files must be sent via the Global Exchange system (GEX) to the Electronic Data Access (EDA) (https://piee.eb.mil/) system to provide a human-readable copy of contract documents.

(ii) Electronic data files depicting the contract must be sent in at least one of the following formats via the GEX to EDA and to systems supporting specific offices as set forth in paragraph (B) of this section below. (Note that the GEX can be used to translate from the formats below to other formats. Organizations should send both formats in parallel unless validation failures have been eliminated.)

(A) American National Standards Institute X.12 Electronic Data Interchange standard transaction sets 850 and 860.

(B) Department of Defense Procurement Data Standard (PDS) Extensible Markup Language (XML) format: https://www.acq.osd.mil/asda/dpc/ce/ds/procurement-data-standard.html.

(ii) After contract execution, provide an electronic data file copy of the contract and modifications in either X.12 or PDS XML to the following:
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(A) The contract administration office, if the contracting officer delegates contract administration to another office (see FAR Subpart 42.2). The contracting officer also should provide the contract administration office with a copy of the contract distribution list, indicating those offices that should receive copies of modifications, and any changes to the list as they occur.

(B) The payment office. Provide any modification that changes the payment office to both the new and the old payment offices.

(C) Each accounting office whose funds are cited in the contract.

(D) Each consignee specified in the contract. A transshipping terminal is not a consignee. The Defense Logistics Agency (DLA) is authorized to prescribe alternate procedures for distribution of contract documents in DLA Europe and Africa.

(E) The military interdepartmental purchase request requiring activity in the case of coordinated acquisition.

(F) The receiving activity, if the contract or modification provides initial or amended shipping instructions under PGI 204.201(c)(1)(B) and (C).

(iii) Provide electronic notice of award via EDA to the following:

(A)(1) The appropriate Defense Contract Audit Agency (DCAA) office, as listed in DCAAP 5100.1, Directory of DCAA Offices, or as obtained through the DCAA cognizant field audit office locator, both available via the Internet at http://www.dcaa.mil, if the contract or modification is one of the following types:

(i) Cost-reimbursement.

(ii) Time-and-materials.

(iii) Labor-hour.

(iv) Fixed-price with provisions for redetermination, cost incentives, economic price adjustment based on cost, or cost allowability.

(v) Any other contract that requires audit service.

(2) If there is a question as to the appropriate DCAA field audit office, request the assistance of the DCAA financial liaison advisor or the nearest DCAA field audit office.

(B) Those organizations required to perform contract administration support functions (e.g., when manufacturing is performed at multiple sites, provide a copy to the contract administration office cognizant of each location).

(C) The cognizant administrative contracting officer when the contract is not assigned for administration but contains a Cost Accounting Standards clause. Indicate that the copy is provided ?For Cost Accounting Standards Administration Only? (see FAR 30.601(b)); and

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(D) The cognizant Defense Security Service office listed in DoD **5100.76-M, Physical Security of Sensitive Conventional Arms, Ammunition, and** Explosives, when the clause at DFARS 252.223-7007, Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives, is included in the contract. An extract of the pertinent information can be provided instead of the contract.

(3) If electronic distribution is not available, provide one paper copy to each location identified in paragraphs (c)(1) and (2) of this section.

PGI 204.3?POST-AWARD

PGI 204.301 Contract reporting.

(a) The OSD Procurement Data Improvement Plan, posted at https://www.acq.osd.mil/asda/dpc/ce/cap/data-improvement.html, applies to each of the military services and agencies with procurement authority, and identifies the data validation requirements and responsibilities that support the annual Department of Defense certification identified at FAR 4.301(f)(3). These review requirements encompass contract action reports submitted to FPDS, terminations for default and other documents submitted to the Federal Awardee Performance and Integrity Information System (FAPIIS) module at https://sam.gov/fapiis, and other reporting and posting requirements.

(b) Contract action reports (CARs) must be completed in compliance with the timelines established in FAR 4.301(f). CARs or their data are not available for public view or for non-DoD use until 90 days after the ?Date Signed? data element in order to minimize risk to military operations.

PGI 204.301-70 General.

(a)(1) Helpful documents. The Federal Procurement Data System (FPDS) website at https://www.fpds.gov provides useful documentation assist with FPDS data entry. The Data Dictionary and FPDS User?s Manual are provided to guide users on data requirements and to facilitate the accurate entry of data into the FPDS. These documents can be found at the top of the website homepage under the ?Training? and ?Worksite? tabs to include:

(i) FPDS Data Element Dictionary. There is a Data Dictionary specific to contracts and Other Transactions. The Data Dictionary data dictionary outlines relevant information for each data field. The Data Dictionary identifies whether a data field is ?Required,? ?Optional,? ?Propagates from the base action,? ?Not Applicable,? or ?System Generated,? for each type of data entry screen (Awards, Indefinite-Delivery Vehicles, Other Transactions, and Transactions/Modifications). It also identifies the source of data entry (e.g., Contracting Officer, (SAM), FPDS); the format of the field; and whether the field input is derived from entries in other fields. At the back of the Data Dictionary is a useful summary.

(ii) FPDS Data Validations. This document identifies all the validation rules that are applied to data entry. Most of the rules apply Governmentwide. DoD specific

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validation rules are clearly identified with the prefix ?DoD? throughout the document and in section ?1.5.1 DoD Specific Validations?.

(iii) FPDS Users Manual. This manual provides general guidance on how to navigate FPDS, familiarize users with FPDS data requirements and assist them with FPDS data entry. The nature of the fields in this document were determined based on Governmentwide requirements. To determine DoD-specific requirements, refer to the Instructions that mention ?DoD? in the FPDS Data Element Dictionary. The FPDS User Manual is not a policy document; it is intended only for general guidance. Refer to PGI for specific FPDS reporting requirements.

(2) Reporting technical or policy issues.

(i) Technical issues. To report an FPDS technical issue?

(A)(1) Users of contract writing systems should contact the local contract writing system administrator to determine the appropriate procedures; and

(2) Web users should contact their local system administrator, who will then contact the FPDS Help Desk if further support is required; or

(B) If the issue is an obvious FPDS technical issue that needs to be documented and corrected by the system, the user should create and submit a trouble ticket with the Federal Service Desk (https://www.fsd.gov/), or submit a comment or request via the Live Chat at www.fsd.gov. When submitting a ticket to When e-mailing FSD, also send a copy to the applicable agency representative identified in paragraph

(2)(iii) of this section.

(ii) Policy issues. Report policy issues and submit or questions to the applicable agency representative identified in paragraph (2)(iii) of this section.

(iii) Agency representatives. Department and component FPDS representatives and their contact information can be found at https://dodprocurementtoolbox.com/site-pages/ebusiness-fpds-ng.

PGI 204.301-72 Reporting data.

The use of generic UEIs is limited to those rare circumstances outlined at FAR 4.301(e). Use generic UEIs only for the purposes of reporting contract award data to the FPDS. In cases where generic codes are required for reporting, use both the generic UEI and its associated CAGE code. Do not enter a generic UEI, used for reporting to FPDS, nor a generic CAGE code that corresponds to a generic UEI, on any contractual document. Using the generic codes on actual contract actions masks the true identity of the vendor and makes any accurate electronic processing of invoices, receiving reports, and payments impossible; and it can, in fact, result in misdirected payments. As a reminder FAR 4.203-1 requires each contractor be identified by its actual CAGE code on contract actions; there is no exemption to the requirement for an actual CAGE code.

(a) Methods of reporting to FPDS.

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(1) Individual contract action report (CAR) (one CAR per contract action). The

normal method of reporting to FPDS is through the use of individual CARs.

(i) An individual CAR is required to be reported for each of the following types of awards regardless of the estimated value of the award:

(A) Indefinite-delivery contract.

(B) Blanket purchase agreement (prescribed by FAR parts 8, 12, or 13).

(C) Basic ordering agreement.

(D) Basic agreement (only if the agreement has a value and potential obligations greater than $0).

(E) Task and delivery orders and calls issued under any agreement or indefinite-delivery contract (including Federal Supply Schedules, Governmentwide acquisition contracts, or multi-agency contracts).

(F) Modification to any contract, agreement, order, or call where a CAR is required for the base award regardless of the amount being obligated or deobligated on the modification.

(ii)(A) An individual CAR is required to be reported for each of the following types of awards when the award process was conducted using other than micro-purchase procedures and the value is greater than the micro-purchase threshold (MPT):

(1) Purchase order.

(2) Definitive contract.

(B) Although a contract action report is not required for these awards when micro-purchase procedures were followed and the value is less than the MPT, it is encouraged as a best practice if the award was not accomplished using the Governmentwide commercial purchase card (GPC) or a Standard Form 44. Additionally, when the purchase order or definitive contract being awarded is in response to a contingency, an individual report is required when the value of the award is greater than $25,000, not the MPT of $40,000 referenced in FAR part 2.

(C) See paragraphs (a)(1) and (iii) of this section for exceptions to individual reporting.

(2) Multiple CARs (more than one CAR per contract action).

(i) Prepare multiple CARs if the contract or order award is anticipated to include both foreign funding and U.S. funding.

(ii) The determination of whether multiple CARs are needed for the situations described in paragraph (a)(2)(i) of this section is made when the contract or order is awarded. Contracting officers are not required to delete and re-enter CARs in

FPDS as multiple CARs if, during the life of the contract or order, subsequent unanticipated modifications make the award eligible for multiple CARs.

(iii) The following multiple CAR transaction identification numbers have been established for reporting multiple CARs and must be used by all DoD contracting offices. Do not use transaction numbers other than ?0? if the requirements for multiple CARs in paragraphs (a)(2)(i) and (ii) of this section do not apply at the time of contract

or order award. When reporting modifications, include the transaction number that was reported on the initial base award in order to properly identify the referenced contract action report. If the situation described in paragraph (a)(2)(i) of this section exists, transaction numbers should be assigned based on foreign military sales (FMS) and non-FMS rather than by type of contract pricing arrangement. Do not use multiple CARs with transaction numbers other than ?0? if the entire award is expected to be funded by foreign funding.

Transaction Type Transaction Number

No multiple CARs 0

FMS 14

Non-FMS 16

(3) Express reporting (consolidated reporting of multiple contract actions, to be submitted at least monthly).

(i) Express reporting may be used for?

(A) Multiple contract actions against a single contract or agreement, when monthly volume of actions is such that individual contract action reporting is overly burdensome (e.g., orders placed by the Defense Commissary Agency; installation housing maintenance; and recurring blanket purchase agreement actions);

(B) Multiple contract actions accomplished away from the contracting office, such as ships away from home port; contingency, humanitarian, or peacekeeping operations; or other remote deployments;

(C) Multiple delivery orders that use the GPC as both the method of purchase and payment under Federal Supply Schedules, Governmentwide acquisition contracts (GWACs), blanket purchase agreements (BPAs), basic ordering agreements

(BOAs), and other indefinite-delivery type contracts;

(D) Multiple contract actions for energy-related supplies and associated services accomplished by Defense Logistics Agency (DLA) Energy; and

(E) Orders under communications service agreements for local dial tone services, in accordance with agency procedures.

(ii) When express reports reflect more than one contractor for overseas actions or consolidated delivery orders made using the GPC where identification of the contract or agreement is not possible, use the appropriate generic UEI.

(iii) When express reports are used, sum all of the actions and enter in the ?Number of Actions? data field. Also sum all of the obligations and enter in the ?Action

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Obligation,? ?Base and Exercised Options Value,? and ?Base and All Options Value? data fields. Express reports must be submitted no less frequently than monthly.

(iv) When express reports are used, the contracting officer must maintain a log of individual actions being summarized on the express reports and ensure it is available for audit purposes. Logs must include the following, at a minimum, for each action: procurement instrument identifier (PIID) used for the express report under which

action is summarized, referenced indefinite-delivery vehicles (IDV) PIID (if the express report is summarizing task/delivery/call orders), date of award, obligation amount, vendor name, and UEI (if known).

(b) Actions not reported. In addition, to the types of actions listed in FAR **4.301(a)(3), do not report the following types of actions to FPDS:**

(1) Orders placed by ordering officers against IDVs awarded by?

(i) The United States Transportation Command (USTRANSCOM) or its components for decentralized transportation-related services. USTRANSCOM will report these orders. Contracting officers must submit consolidated reports of orders (bookings/bills of lading) at least annually to USTRANSCOM; or

(ii) DLA Energy for energy-related supplies and associated services using defensewide working capital funds. DLA Energy will report these orders. It is the responsibility of the contracting office to ensure that orders placed against these vehicles using other than defensewide working capital funds are reported to FPDS.

(2) Contracts, agreements, or orders that are themselves classified.

(c) Specific instructions for entering data in FPDS.

(1) Contracting officers must choose the correct FPDS format (e.g., purchase order, basic ordering agreement (BOA), blanket purchase agreement (BPA)) to report the award of a new contract, agreement, or order. Note that prior to fiscal year (FY)10, DoD offices reported BOAs and BPAs as IDCs in FPDS; BPA calls issued under those pre-FY10 reported BPAs are reported using the task/delivery order format in FPDS. BPA calls issued under DoD issued BPAs reported FY10 or later or any civilian agency issued BPA should be reported using the BPA call format.

(2) The remaining instructions in this section cover the different sections of an FPDS contract action report, as presented to the user in the system. Not every data element is addressed here, as many are self-explanatory. Users should also consult the FPDS User Manual referenced in PGI 204.301-70(a)(1)(iii) for more complete descriptions and examples. Also, the instructions in this section use data field names based on what is shown to the user while entering data in FPDS; for more specific information, review the FPDS Data Element Dictionary referenced in PGI 204.301-70(a)(1)(i).

(3) FPDS Entry ? Document Information Section.

(i) Enter the new contract, agreement, or order number in the ?Procurement Instrument Identifier? data field. Note that new awards will be reflected as Modification 0 in FPDS.

(ii) If the action is a BPA awarded against a Federal Supply Schedule, enter the Federal Supply Schedule contract number in the ?Referenced IDV ID? data field.

(iii) If the action is a delivery order awarded against a Federal Supply Schedule, Governmentwide acquisition contract (GWAC), BOA, or other IDC; enter that contract or BOA number in the ?Referenced IDV ID? data field.

(iv) If the action is a BPA call awarded against a BPA, enter the BPA number in the ?Referenced IDV ID? data field.

(v) If the action is a modification, enter the contract, agreement, or order number in the ?Procurement Instrument Identifier? data field and the modification number in the ?Modification Number? data field.

(vi) If multiple reports are required by paragraph (a)(2) of this section, then enter the appropriate transaction number in the ?Transaction Number? data field.

(vii) If the award is associated with a solicitation, enter the solicitation number in the ?Solicitation ID? data field.

(viii) If the award is associated with an initiative identified in FPDS (e.g., American Recovery and Reinvestment Act), choose the appropriate value in the ?Treasury Account Symbol Initiative? data field.

(4) FPDS Entry ?Treasury Account Symbol (TAS) data fields.

(i) TAS data fields are no longer required to be entered in FPDS (as of July 2016) and should be left blank; however, if correcting TAS data fields on a previously reported contract action report follow the instructions in this section.

(ii) The TAS should be provided by the requiring organization with the purchase request and is often part of the line of accounting. The list of valid TAS is maintained by the Department of Treasury in the FASTBook; an on-line version of the FASTBook is available at https://www.fiscal.treasury.gov/reference-guidance/fast-book/index.html. Each TAS reported to FPDS includes a character agency identifier and a four-character main account code (example: 97 0100). Some TAS also require a three-character subaccount code. Note that the Department of Treasury FASTBook indicates a transition from a two-character agency identifier to a three-character agency identifier. However, at this time, DoD contracting officers are advised to drop the leading zero (0) from a three-character agency identifier and enter the next two characters in FPDS (e.g., 097 becomes 97).

(iii) Report the TAS on CARs for each contract action with an obligation amount other than $0. The TAS that is reported on a CAR should represent the

predominant type of funding in terms of absolute dollars obligated and deobligated on the specific contract action being reported.

(iv) For contract actions awarded by working capital funds offices, and the original type of funds received from the customer are not tied to specific procurements or otherwise identifiable, use the TAS that represents the working capital funds provided.

(v) For contract actions funded by foreign governments, and those funds are not considered under the Foreign Military Financing Program identified by the Department of Treasury in its FASTBook, in order to report the action to FPDS using the code that most closely approximates the use of the funds, then enter?

(A) 97 0100 (Operation and Maintenance, Defense-Wide, Defense) as

the TAS for requirements that can be categorized as operations and maintenance in nature;

(B) 97 0300 (Procurement, Defense-Wide) as the TAS for requirements that can be categorized as procurement in nature; or

(C) 97 0400 (Research, Development, Test, and Evaluation, Defense-Wide) as the TAS for requirements that can be categorized as research and development in nature.

(v) USTRANSCOM should use 97 0100 (Operation and Maintenance, Defense-Wide, Defense) as the TAS when reporting the consolidated orders of from their decentralized transportation-related services contracts.

(5) FPDS Entry ? Dates Section.

(i) The ?Date Signed? data field represents the date the contracting officer signed or otherwise awarded the contract action.

(ii) The ?Effective Date? data field represents the date the period of performance begins. For actions where an authorization to proceed was given prior to the signed contract action, use the date of the authorization in this data element.

(iii) The date entered in the ?Completion Date? data field must be the latest period of performance / delivery date of all of the exercised line items on the contract or order. This data field must be updated on the contract action report used to report the modification whenever line items are added or exercised by modification that extend the period of performance / delivery date beyond what was previously entered, including the exercise of any option years.

(iv) The date entered in the ?Estimated Ultimate Completion Date? data field must be the latest period of performance / delivery date of all line items on the contract or order, including unexercised line items and option years. This data field must be updated on the contract action report used to report the modification whenever line items are added or changed by modification that extend the period of performance/delivery date beyond what was previously entered.

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(v) The date entered in the ?Last Date to Order? data field on IDCs, BOAs, and BPAs must be the last date allowed by the contract for the contractor to accept orders. This data field must be updated whenever this date is changed by modification from what was previously entered.

(vi) The ?Solicitation Date? data field generally represents the date an invitation for bids, request for quotations, or request for proposals was issued to potential bidders or offerors. However, follow the instructions below for other situations where an invitation for bids, request for quotations, or request for proposals is not issued:

(A) When the action is the award of an order using existing pre-priced line items under an ordering instrument where no proposal is required (i.e., there are no elements of the delivery or performance to negotiate)?

(1) Orders under single-award indefinite delivery vehicles, BPA calls under single-award BPAs issued under FAR part 8, and BPA calls under BPAs issued under FAR part 12. Use the date the procurement-ready requirements package (including funded purchase request or MIPR) was provided to the contracting office as the ?Solicitation Date?. If unknown, use the date of the award of the order as the ?Solicitation Date?.

(2) Orders under multiple-award indefinite delivery contracts and BPA calls issued under multiple-award BPAs issued under FAR part 12. Use the date of the survey of the multiple-award contracts or BPAs prices in accordance with FAR **part 8 or 16 procedures.**

(B) When the action is the award of a contract under a broad agency announcement (BAA), use the date when a final (not draft) combined synopsis/solicitation is issued as the ?Solicitation Date? except?

(1) For two-step BAAs, including white paper submissions for review, selection, and subsequent request for full proposals, the ?Solicitation Date? is the date when the contracting officer signs the proposal request;

(2) Under BAAs with calls, the ?Solicitation Date? is the date when the individual call is issued; or

(3) For open BAAs, when white papers and/or proposals are accepted for review over an extended period (typically open for a year or longer), the ?Solicitation Date? is either the date when the contracting officer signs a proposal request (white papers) or the date on which the proposal is submitted, whichever is earlier.

(C) For awards made in response to unsolicited proposals, the ?Solicitation Date? is the date when the offeror is notified of proposal acceptance for negotiations and/or award.

(D) For orders placed under indefinite-delivery contracts or agreements, do not use the solicitation date from the indefinite-delivery contract or agreement as the

date issued in the ?Solicitation Date? field unless the order was awarded at the same time as the indefinite-delivery contract or agreement.

(E) For new indefinite-delivery contracts awarded under a multiple-award solicitation?s on-ramp procedures that were awarded at least 3 months after the initial round of indefinite-delivery contracts were awarded, enter the date the awardee provided a proposal as the ?Solicitation Date.?

(6) FPDS Entry ? Amounts Section.

(ii) When entering a net deobligation on a contract action, include the minus (-) sign.

(ii) The amount entered in the ?Base and Exercised Options Value? for new awards must be the total value (represented in U.S. dollars and cents) of all the exercised line items on the contract or order regardless of whether they are partially or

fully funded. This data field must be updated on the contract action report used to report the modification whenever the current value of the contract or order is changed by modification, including when options are exercised. When reporting such a modification, report the net value of the change itself in ?Current? field; FPDS will calculate the new total Base and Exercised Options Value. When an Administrative Contracting Officer (ACO) executes a modification and the previous value reported in FPDS is incorrect, the ACO must notify the procuring contract office of the discrepancy and enter the appropriate value in the ?Current? field of the ?Base and Exercised Options Value? to ensure a correct total is represented. The ACO must document the correction of the discrepancy in the contract file.

(3) The amount entered in the ?Base and All Options Value? for new awards must be the total potential value of the award (represented in U.S. dollars and cents)

(e.g., total price, total not-to-exceed amount, maximum award amount, etc.), including the value of all unexercised line items and options. For blanket purchase agreements and basic ordering agreements, enter the total expected amount for orders that will be issued. Note: on IDV formats in FPDS, this data element is named ?Base and All Options Value (Total Contract Value).?

(A) For each IDC resulting from a solicitation where multiple awards were contemplated, this is the maximum for that resulting specific contract. Note: this amount is not always the same as the ceiling for the program under which multiple contracts were awarded. Each contract must have a specific ceiling identified for that specific period (see FAR 16.504-1(a)).

(B) This data field must be updated on the contract action report used to report the modification whenever the total potential value is changed by modification, including changes made as a result of overruns or claims. When reporting such a modification, report the net value of the change itself in ?Current? field; FPDS will calculate the new total Base and All Options Value. When an ACO executes a modification and the previous value reported in FPDS is incorrect, the ACO must notify the procuring contract office of the discrepancy and enter the appropriate value in the ?Current? field of the ?Base and All Options Value? to ensure a correct total is represented. The ACO must document the discrepancy correction in the contract file.

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(iv) The amount entered in the ?Action Obligation? for new awards must be the total value of all the obligated funds on the contract or order, represented in U.S. dollars and cents. When reporting a modification, report the net value of the change in funding accomplished by the modification in the ?Current? field; FPDS will calculate the new total action obligation value. When an ACO executes a modification and the previous value reported in FPDS is incorrect, the ACO must notify the procuring contract office of the discrepancy and enter the appropriate value in the ?Current? field of the ?Action Obligation Value? field to ensure a correct total is represented. The ACO must document the discrepancy correction in the contract file.

(v) The amount entered in the ?Total Estimated Order Value? for new IDC awards must be the total estimated value of all anticipated orders to be placed under the contract. For DoD, this value should match the ?Base and All Options? value, as DoD does not obligate funds on indefinite-delivery contracts themselves.

(7) FPDS Entry ? Purchaser Information Section.

(i) Enter the contracting office?s DoD Activity Address Code (DoDAAC) in as the ?Contracting Office ID? data field.

(ii) If the requiring organization is a DoD organization, enter the DoDAAC or the requiring office in the ?Funding Office ID? data field. This is normally the DoDAAC that is included on the purchase request in the purchase request number. If the contract action is supporting working capital funded efforts and the specific requiring office is unknown, enter the DoDAAC for the working capital funded office. Do not enter the DoDAAC from the contracting office in the ?Funding Office ID? field unless the contracting office is also the requiring organization.

(iii) If the requiring organization is not a DoD organization, enter the Funding Office ID provided on the interagency agreement in the ?Funding Office ID? data field.

(iv) Choose the appropriate value in the ?Foreign Funding? data field as to whether or not the action includes foreign funding that is identified as FMS. If the action does not include foreign funds, choose ?Not Applicable.?

(8) FPDS Entry ? Contractor Information Section.

(i) Enter the UEI for the vendor in the ?Unique Entity Identifier? data field. This UEI will be used to pull the associated current registration from the SAM database.

(ii) If a SAM exception applies to the procurement, ensure the correct exception is chosen from the ?SAM Exception? data field. In this case the UEI entered in the ?Unique Entity Identifier? data field will be used to pull the contractor?s name and location information from SAM?s UEI database instead of SAM active registrations.

(9) FPDS Entry ? Contract Data Section.

(i) On the contract action report used to report the base award, choose the type of contract pricing in the ?Type of Contract? data field that is applicable to the predominant amount of the action, based on the value of the line items. This value will automatically populate any subsequent contract action reports for modifications.

(ii) If the procurement is for services, enter the appropriate Inherently Governmental Functions indicator:

(A) ?Closely Associated? means functions that are closely associated with inherently governmental functions; those contractor duties that could expand to become inherently governmental functions without sufficient management controls or oversight on the part of the Government. Office of Federal Procurement Policy (OFPP) Policy Letter 11?01, Performance of Inherently Governmental and Critical Functions, provides examples of work that is inherently governmental and therefore must be performed by Federal employees and work that is closely associated with inherently

governmental functions that may be performed by either Federal employees or contractors.

(B) ?Critical Functions? means functions that are necessary to the agency being able to effectively perform and maintain control of its mission and operations. Typically, critical functions are recurring and long-term in duration.

(C) ?Other Functions? means neither ?Closely Associated Functions? nor ?Critical Functions?.

(D) For services that include performing both ?Closely Associated? and ?Critical Functions,? select ?Closely Associated, Critical Functions.?

(E) If services include performing ?Other Functions? and either ?Closely Associated? or ?Critical Functions,? select only the ?Closely Associated? or ?Critical Functions? value.

(iii) Enter ?Yes? in the ?Multiyear Contract? field if the procurement is a multiyear contract in accordance with FAR 17.1; otherwise enter ?No.?

(iv) Enter the full name of the program, not an acronym or abbreviation, in the ?Major Program? field if there is an associated program name. Contracts and agreements with ordering provisions established as multi-agency contracts or for wide use within an agency must always include a program name in order to ensure they are correctly represented in the Interagency Contract Directory (ICD) at https://www.contractdirectory.gov/contractdirectory/ (see FAR 7.102(b)(4)).

(v) If the procurement is as a result of a requirement responding specifically to a National Interest Action that is listed in this field (for example, ?Hurricane Sandy? or ?Operation Enduring Freedom (OEF),?) then select the appropriate value. Otherwise, enter ?None.?

(vi) For indefinite-delivery contracts, enter the appropriate type of IDC in the ?Type of IDC? field: Indefinite Quantity, Requirements, or Definite Quantity.

(vii) For IDVs in the ?Multiple or Single Award IDV? field:

(A) Select ?Multiple Award? when the contract action is?

(1) One of several indefinite-delivery indefinite-quantity (IDIQ) contracts awarded under a single solicitation in accordance with FAR 16.504-3;

(2) One of several blanket purchase agreements (BPAs) awarded against a Federal Supply Schedule in accordance with FAR 8.104 and FAR 12.201-1(e)(3);

(3) Any other IDIQ contract that an agency enters into with two or more sources under the same solicitation that requires contracting officers to compare or compete their requirements among several vendors; or

(4) A part 12 BPA or Basic Ordering Agreement (BOA) with multiple awards.

(B) Select ?Single Award? when the contract does not satisfy any of the above criteria for a multiple award.

(viii) When reporting the initial award of IDCs and agreements that allow orders to be placed by other contracting offices, enter the acronym or short abbreviation of the program name for the program supported by the contract or agreement with ordering provisions in the ?Program Acronym? field. Contracts and agreements with ordering provisions established as multi-agency contracts or for wide use within an agency must always include an acronym or abbreviated program name, and the first five characters of this field must be:

(A) ?FSSI-" for a federal strategic sourcing initiative (FSSI) vehicle.

(B) ?MMAC-" for a multiple-award multi-agency contract.

(C) ?SMAC-" for a single-award multi-agency contract.

(D) ?MBPA-" for a blanket purchase agreement available for use outside of the Department of Defense.

(E) ?AGYV-" for an agency-wide acquisition vehicle. For the purpose of this section, an agency-wide acquisition vehicle is an IDC, BPA, or basic ordering agreement intended for the sole use of the Department of Defense. These may be for DoD-wide use or limited to one or more specific Military Services or Defense Agencies.

(ix) In the ?Cost or Pricing Data? field, enter ?Yes? if certified cost and pricing data were obtained. Enter ?Not Obtained ? Waived? if the requirement for certified cost and pricing data was waived. Enter ?No? if certified cost or pricing data were not obtained and no waiver was required. See FAR 15.403 for the requirements for certified cost and pricing data.

(x) Enter ?Yes? in the ?Purchase Card as Payment Method? field if the GPC was used as the method of payment or as both the method of purchase and payment for the contract action. Enter ?No? if neither was the case.

(xi) In the ?Undefinitized Action? field, enter ?Letter Contract? if the procurement is a letter contract that meets the description in FAR 16.603-1. Enter

?Other Undefinitized Action? if the procurement is for any other unpriced action that must be subsequently definitized. Enter ?No? if neither of these situations is applicable.

(xii) Enter ?Yes? in the ?Performance Based Service Acquisition? field if the procurement is for services and performance based acquisition procedures were used. Enter ?No? if the procurement is for services and performance based acquisition procedures were not used. Enter ?Not Applicable? if the procurement is not for services.

(xiii) In the ?Contingency Humanitarian Peacekeeping Operation? field, enter ?Contingency? if the procurement is in response to a contingency operation as defined in **10 U.S.C. 101(a)(13) or ?Humanitarian? if the procurement is in response to a** humanitarian or peacekeeping operation as defined in 10 U.S.C. 3015(2). Otherwise, enter ?Not Applicable.?

(xviiii) In the ?Cost Accounting Standards Clause? field, enter ?Yes? if the procurement was subject to cost accounting standards (CAS) and the associated clauses were included in the contract. Enter ?No ? CAS Waiver Approved? if the

procurement is subject to CAS but a waiver was approved. Enter ?Not Applicable? if neither situation applies.

(xv) Consolidated Contract.

(A) Enter ?Consolidated Requirements? when the requirements meet the definition of ?Consolidation or consolidated requirement? at FAR 2.101 but a written determination was not made because the estimated value of the requirements were at or below $2 million, or the requirements are bundled and a written determination for bundling is required.

(B) Enter ?Consolidated Requirements with Written Determination? when the requirements meet the definition of "Consolidation or consolidated requirement" at FAR 2.101 and a written determination is made in accordance with FAR **7.107-2.**

(C) Enter ?Consolidated Requirements Under FAR 7.107-1(b) Exceptions? when the requirements meet the definition of "Consolidation or consolidated requirement" at FAR 2.101 but do not require a written determination in accordance with FAR 7.107-1(b).

(D) Enter ?Not Consolidated? when the requirements do not meet the definition of "Consolidation or consolidated requirement" at FAR 2.101.

(xvi) Enter ?1? in the ?Number of Actions? data field unless using Express Reporting procedures described in paragraph (1)(iii) of this section.

(10) FPDS Entry ? Legislative Mandates Section.

(i) For the ?Clinger-Cohen Act,? ?Labor Standards,? ?Materials, Supplies, Articles, and Equipment,? and ?Construction Wage Rate Requirements? data elements, answer ?Yes? if the acts apply to any of the line items on the award. Choose ?Not Applicable? if the act itself is not applicable based on implementation requirements in the FAR for each act (see FAR subparts 22.10, 22.6, and 22.4, respectively), or choose

?No? if the act is applicable, but the associated clauses were not included in the award. For the ?Clinger-Cohen Act?, choose ?No? if either the Act is not applicable or the planning requirements from the act were not accomplished.

(ii) Indicate in the ?Interagency Contracting Authority? data field if the action is subject to the Economy Act, a different statutory authority, or if interagency authorities are not applicable. If the contracting officer selects ?Other Statutory Authority? in the ?Interagency Contracting Authority?, they must enter the name of the other authority in the associated text box.

(iii) In the ?Additional Reporting? data field, select each value that represents reporting to be accomplished by the contractor that is required by the contract. Multiple values may be selected.

(A) If none of the reporting requirements apply, select ?None of the Above.?

(B) Select ?Service Contract Inventory FAR 4.17? if FAR clause 52.204-

14, Service Contract Reporting Requirements, is present in the contract.

(C) Select ?Employment Eligibility Verification (52.222-54)? if FAR clause 52.222-54, Employment Eligibility Verification, is included in the contract .

(11) FPDS Entry ? Principal Place of Performance Section.

(i) For supplies, the data entered in this section must reflect the predominant place where manufacturing occurred or where procured finished products were taken out of inventory. Do not enter the Government delivery location. When the manufacturing or inventory location is unknown, and the contractor has not provided a separate address for the place of performance in FAR provision 52.214-14 or 52.215-6 with its offer, enter the contractor?s physical address that corresponds with its registration in the System for Award Management (SAM) that is identified by its UEI and CAGE code.

(ii) For services, identify the location that represents the predominant place the services are performed. For services that start performance in one location and complete performance in a different location, such as transportation and cargo shipment services, the completion or destination location must be entered. If the contract or order has multiple destination locations, enter the location where the predominant amount is being delivered.

(iii) For place of performance based in the United States, ensure the zip code + 4 data element is entered. This will populate the city and state fields accordingly. Zip codes and their +4 extensions can be identified at the United States Postal Service website (www.usps.com). When a ?+4? extension cannot be determined for a zip code (for example, in a highly rural area or at a location with a vanity address), choose the ?+4? extension that represents the area nearest to the place of performance.

(12) FPDS Entry ? Contract Marketing Data Section. This section applies to IDVs (i.e., BOAs, BPAs, and IDCs) only.

(i) Enter the website in the ?Website URL? data field where a new user would find the best information about ordering under the vehicle. This is an optional field, but each multi-agency contract being reported should include one.

(ii) In the ?Who Can Use? data field, choose the value that best represents which agencies are allowed to have their contracting officers place orders under the vehicle. If only the office that awarded the IDV is allowed to place orders under the vehicle, choose ?Only My Agency?. Do not list codes or text under the ?Codes? or ?Other? options unless the vehicle only allows very specific parts of agencies to place orders.

(iii) Include in the ?Email Contact? data element the specific email of the contracting officer responsible for the IDV who is able to answer questions concerning ordering. A group email address may only be used in this field if it is continuously monitored.

(iv) Enter the maximum dollar value of each order that may be issued under

the vehicle in the ?Individual Order / Call Limit? field.

(v) Enter the fee charged to the ordering agency for allowing the ordering agency to place an order under the specific vehicle. The fee may be identified as a fixed percentage, an upper and lower amount if based on a varying factor, or as ?no fee.? This is not the fee paid to a contracting office for placing an order on behalf of a requiring office.

(vi) Enter a brief description of ordering instructions in the ?Ordering Procedure? data field. If the ?Website URL? field is entered, this field is not required to be completed; however, ensure that the website provided gives the user enough information to be able to place an order.

(13) FPDS Entry ? Product or Service Information Section.

(i) For the ?Product or service code (PSC)? data field choose the code that best represents the predominant amount of supplies or services being procured on the award. The list of active PSCs for use in FPDS reporting is available on the FPDS website under the ?Worksite? section under ?Reference.?

(ii) For the ?Principal NAICS code? data field, enter the NAICS code that best represents the type of industry related to the predominant amount of supplies or services being procured on the award. If the award was a result of a solicitation that included any of the following provisions, use the NAICS code that was included in the provision: 52.204-7, System for Award Management?Registration or 52.219-1, Small Business Program Representations. The list of active NAICS codes for use in FPDS reporting is available on the FPDS website under the ?Worksite? section under ?Reference?.

(iii) Contract bundling.

(A) Enter ?Bundled Requirements? when the requirements meet the definition of ?Bundling? at FAR 2.101.

(B) Enter ?Substantially Bundled Requirements? when the requirements meet the definition of ?Bundling? at FAR 2.101 but has an estimated value outlined at **FAR 7.107-1.**

(C) Enter ?Bundled Requirements Under a FAR 7.107-1(b) Exception? when the requirements meet the definition of ?Bundling? at FAR 2.101 but do not require a written determination in accordance with FAR 7.107-1(b).

(C) Enter ?Not Bundled? when the requirements do not meet the definition of ?Bundling? at FAR 2.101.

(iv) Enter in the ?DoD Acquisition Program? data field?

(A) The Centralized Unique Program Identification (CUPID), also known as a program number, when the acquisition is part of an acquisition program for which a CUPID has been designated. The CUPID is the unique authoritative identifier for all DoD acquisition programs. CUPIDs are 3 alphanumeric characters. If needed, use the code look-up table provided for the data element in the CAR to identify the appropriate

code.

(B) The appropriate following code if a new award is associated with one of the following programs or activities:

(1) ZBL ? for Performance-Based Logistics (PBL) support.

(2) ZRS ? for Randolph-Sheppard Act dining facilities.

(3) ZBC ? for Base Realignment and Closure (BRAC) environmental activities.

(4) ZDE ? for Defense environmental and restoration programs.

(5) ZOP ? for other environmental programs.

(6) ZSE ? for Environmental Protection Agency (EPA) Superfund activities.

(7) ZSF ? prescribed under a Status of Forces Agreement (SOFA).

(C) ?000? if neither (1) or (2) in this section apply.

(v) Enter the country code where products were manufactured or performance of services occurred in the ?Country of Product or Service Origin? data field. If needed, use the code look-up table provided for the data element in the CAR to identify the code for a country.

(vi) Place of Manufacture.

(A) Choose ?Not a Manufactured End Product? when the procurement is for services or for unmanufactured end products (e.g., ores, food, animals).

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(B) Choose ?Manufactured Outside the U.S. ? Use Outside the U.S.? when the procurement is for supplies acquired for use outside the United States.

(C) If the procurement is for supplies to be used inside the United States, choose one of the following:

(1) ?Manufactured in the U.S.? when the supplies that are considered domestic end products (see FAR 25.101).

(2) ?Manufactured Outside the U.S. ? Trade Agreements? when the supplies are acquired subject to a Trade Agreement (see FAR 25.4) where the Buy American Act requirements have been waived.

(3) The exception to the Buy American Act that was used in the procurement when the supplies are considered foreign end products (see FAR 25.103):

(i) ?Manufactured Outside the U.S. ? Public Interest.?

(ii) ?Manufactured Outside the U.S. ? Domestic Nonavailability.?

(iii) ?Manufactured Outside the U.S. ? Unreasonable Cost.?

(iv) ?Manufactured Outside the U.S. ? Resale.?

(v) ?Manufactured Outside the U.S. ? Commercial Information Technology.?

(vii) ?Manufactured Outside the U.S. ? Qualifying Country.?

Only choose ?Manufactured Outside the United States ? Qualifying Country? if the

country of product or service origin is one of the current qualifying countries at DFARS **225.003.**

(vii) In the ?Domestic or Foreign Entity? data field, choose the most applicable answer regarding the ownership of the contractor.

(viii) Indicate whether Government Furnished Property (GFP), (see FAR **45.101), is included on the award in the ?GFE/GFP Provided Under This Action? data** field.

(A) When reporting modifications to previously reported award, the CAR should carry the same value for this data element as was on the CAR for the initial award unless the modification itself is specifically adding GFP where the originally was none. There is no need to create a CAR solely to report the return of GFP at the end of performance.

(B) When reporting task, delivery, or call orders under indefinite-delivery contracts or agreements, this data element reflects whether GFP is or is not included specifically as a part of the order itself. The value for the underlying contract or agreement is collected separately.

(ix) For the ?Description of requirement? data field

(A) Enter a short description of what is being procured by the action. This should be entered in plain English with no acronyms or military jargon such that the public can understand what is being acquired by the Department. Do not use national stock numbers, part numbers, or other identifiers without also including associated plain English descriptions.

(B) When reporting modifications, do not use this field to explain what type of procurement process is accomplished (e.g., exercise option year, incremental funding); continue to address what is being procured.

(C) When establishing a contract with an option or line item pursuant to DFARS 234.7202, also enter ?831 Authority?.

(x) For the ?Recovered materials/sustainability? data field, choose the value from the list below that reflects the requirements of sustainability incorporated into the contract or order. If there is a combination of the attributes on the contract that does not exist in the list below, choose the one from the list that most closely reflects the situation on the contract.

(A) FAR 52.223-4 included. Use when the contract includes the requirement for recovered materials in accordance with FAR Subpart 23.4 and provision **52.223-4, Recovered Material Certification, was included in the solicitation.**

(B) FAR 52.223-4 and 52.223-9 included. Use when the contract includes the requirement for recovered materials in accordance with FAR Subpart 23.1, provision 52.223-4 was included in the solicitation, and clause 52.223-9 is included in the contract.

(C) No clauses included and no sustainability included. Use when the contract includes neither requirements nor provisions/clauses for recovered materials or energy efficient or biobased.

(D) Energy-efficient. Use when the contract includes the requirement for energy-efficient products or sustainable products in accordance with FAR Subpart **23.1.**

(E) Biobased. Use when the contract includes the requirement for biobased products in accordance with FAR Subpart 23.1.

(F) Environmentally preferable. Do not use.

(G) FAR 52.223-4 and energy efficient. Use when the contract includes the requirement for?

(1) Recovered materials in accordance with FAR Subpart 23.1 and provision 52.223-4 was included in the solicitation; and

(2) Energy efficient products or sustainable products in accordance with FAR Subpart 23.1.

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(H) FAR 52.223-4 and biobased and energy efficient. Use when the contract includes the requirement for?

(1) Recovered materials in accordance with FAR Subpart 23.1 and provision 52.223-4 was included in the solicitation; and

(2) Biobased products in accordance with FAR Subpart 23.1.

(I) FAR 52.223-4 and environmentally preferable. Do not use.

(J) FAR 52.223-4, biobased, and energy efficient. Use when the contract includes the requirement for?

(1) Recovered materials in accordance with FAR Subpart 23.1 and provision 52.223-4 was included in the solicitation;

(2) Energy efficient products in accordance with FAR Subpart 23.1; and

(3) Biobased products in accordance with FAR Subpart 23.1.

(K) FAR 52.223-4, biobased and environmentally preferable. Do not use

(L) FAR 52.223-4, biobased, energy efficient and environmentally preferable. Do not use.Not used.

(14) FPDS Entry ? Competition Information Section.

(i) Solicitation procedures. Select the appropriate entry from the following list:

(A) Simplified Acquisition. Report this code for competitive and noncompetitive contract actions that used simplified acquisition procedures in accordance with FAR part 13. However, if the action is noncompetitive and the reason for other than full and open competition is other than ?Authorized by Statute,? ?Authorized Resale,? or ?SAP Noncompetition,? then enter ?Only One Source Solicited?

as the solicitation procedure. (Note that most times when in conflict, the reason for other than full and open competition takes precedence over the type of solicitation procedure used.)

(B) Only One Source Solicited. Use this code if no solicitation procedure was used or only one source is solicited for the action.

(C) Negotiated Proposal/Quote. Use this code for competitive contract actions that use negotiated procedures (FAR parts 12, 13, or 15).

(D) Sealed Bid. Use this code for contract actions using sealed bid procedures (FAR part 14).

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(E) Two Step. Use this code for contract actions that use a combination of sealed bids and negotiated procedures (FAR 6.101).

(F) Architect-Engineer FAR 6.102. Use this code if the action resulted from selection of sources for architect-engineer contracts pursuant to FAR 6.101(b)(3).

(G) Basic Research. Use this code if the action resulted from a competitive selection of basic research proposals pursuant to FAR 6.101(b)(3).

(H) Alternative Sources. Use this code if the action resulted from use of procedures that provided for full and open competition after exclusion of sources to establish or maintain alternative sources pursuant to FAR 6.102.

(I) Subject to Multiple Award Fair Opportunity. FPDS will automatically populate this entry for orders placed against multiple award contracts (to include Federal Supply Schedules) and FAR part 8 BPAs (and orders issued under such BPAs that are subject to fair opportunity pursuant to FAR 16.507-2(a)(1).

(ii) Extent Competed. Select the appropriate entry from the following list. The extent competed for any modification or order against a task order or delivery order contract pulls from the basic contract and is shown in the ?Extent competed for referenced IDV? data field.

(A) Competed under SAP. Report this for competitive contract actions that were awarded using FAR part 13 Simplified Acquisition Procedures (i.e., solicitation procedures were ?Simplified Acquisition?).

(B) Full and Open Competition (F&OC). Report this if the contract action resulted from an award pursuant to FAR 6.101(b)(1), Sealed bids; FAR **6.101(b)(2), Competitive proposals; FAR 6.101(b), Combination; or any other** competitive method that did not exclude sources of any type.

(C) F&OC after Exclusion of Sources. Report this when sources are excluded before competition. (Note: This terminology is broader than FAR Subpart 6.1, which includes set-aside actions and actions to establish or maintain alternate sources, in that it also includes actions justified by a justification and approval that provided for competition).

(D) Not Available for Competition. Report this if the contract action is not available for competition (i.e., contract actions where the solicitation procedure was

?Only One Source? and the reason not competed is ?Authorized by Statute,? ?International Agreement,? ?Utilities,? or ?Authorized Resale.?) Note that sole source awards for 8a firms, HUBZone firms, service-related disabled veteran-owned concerns, and women-owned small business concerns (including economically disadvantaged women-owned small business concerns) should always be identified as ?Authorized by Statute? as the reason for other than full and open competition.

(E) Not Competed under SAP. Report this for non-competitive contract actions that were awarded using FAR part 13, Simplified Acquisition Procedures and

(i.e., solicitation procedures were ?Simplified Acquisition?).

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(F) Not Competed. Report this when the contract action is not competed and the solicitation procedures are ?Only One Source.?

(iii) Type of Set-Aside.

(A) If the contract action is a result of a set-aside or sole source authorized under part 19 of the FAR, choose the applicable value. In order to indicate a FAR part 19 set-aside or sole source on an order under a multiple-award contract, see paragraph (vii) of this section.

(B) Note that the type of set-aside is collected on the original award. In the case of a task or delivery order being reported, the user will see the type of set-aside from the original contract in the ?Type Set Aside? data element. The ?Type of Set-Aside Source? data element is system generated to indicate whether the data in the ?Type Set Aside? data element was entered on the specific CAR being viewed or if it was pre-populated from the original contract award.

(iv) SBIR/STTR. Ensure the ?SBIR/STTR? data field is completed if the contract action is a result of a Small Business Innovative Research (SBIR) or Small Technology Transfer Research (STTR) Program. SBIR and STTR Phase III awards require that a previous SBIR or STTR award exists.

(v) Other than Full and Open Competition.

(A) Simplified Acquisition Procedures (SAP). Select only ?SAP Non-Competition,? ?Authorized by Statute? if a sole source set-aside must also be noted, or ?Authorized for Resale? when the award is noncompetitive and simplified acquisition procedures were used. Do not choose other values from the list.

(B) Other than Simplified Acquisition Procedures. Select from available values the one that matches the FAR part 6 authority referenced in the Justification & Authorization document for using other than competitive procedures. Do not choose ?SAP Non-competition.?

(C) Acquiring Products or Services from Afghanistan. Do not use.

(vi) Fair Opportunity/Limited Sources. This field is the basis for determining whether competition is provided for on orders placed against multiple-award contracts

(to include DoD contracts, Governmentwide Acquisition Contracts, Federal Supply Schedules, and BPAs issued under the Federal Supply Schedules). If a Federal Supply

Schedule contract or a Governmentwide multiple-award contract is not coded as a multiple-award vehicle, thereby preventing completion of this field, the FPDS user should advise the agency FPDS so that the contracting office for the multiple-award contract can be notified and pursue correction.

(A) Urgency. Report this if the action was justified pursuant to FAR **8.102 or 16.507-6(b)(1).**

(B) Only One Source. Other ? Report if the action was justified pursuant to FAR 6.103-1, FAR 12.102, or 16.507-6(b)(2).

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(C) Follow-On Delivery Order Following Competitive Initial Order. Report this if the action was justified pursuant to FAR 8.405-6(a)(1)(i)(C) or 16.507-**6(b)(3).**

(D) Minimum Guarantee. Report this if it was necessary to place an order to satisfy a minimum amount guaranteed to the contractor. See FAR 16.507-**6(b)(4).**

(E) Other Statutory Authority. Report this if a statute expressly authorizes or requires that the purchase by made from a specified source. See FAR **16.507-6(b)(5).**

(F) Fair Opportunity Given. Report this if fair opportunity was given pursuant to FAR 16.505(b)(1).

(G) Competitive Set-Aside. Report this if the order was set aside pursuant to FAR part 19. and a sub-set of multiple-award contract holders meeting the set-aside criteria were provided fair opportunity to submit an offer. If this value is selected, also choose the appropriate set-aside in the ?Type of Set-Aside? field. Do not select this value if the original multiple award contract itself was set-aside or partially set-aside.

(H) Sole Source. Report this if the order was issued pursuant to FAR **part 19 and awarded to a single contract holder meeting the socio-economic criteria** without providing fair opportunity to other multiple-award contract holders. If this value is selected, also choose the appropriate value in the ?Type of Set-Aside? field.

(vii) If an award did not provide for full and open competition; or in the case of simplified acquisition, did not provide the maximum extent of competition practicable; select the value in the ?Other Than Full and Open Competition? field that represents the justification used.

(viii) In the ?Commercial Product or Commercial Service Acquisition Procedures? data field, indicate whether commercial procedures were?

(A) Used for commercial products or commercial services;

(B) Used for supplies or services pursuant to FAR 12.001(b) and (c); or

(D) Not used.

(ix) In the ?Simplified Procedures for Certain Commercial Products or

Commercial Services? data field, indicate if the contract action utilized procedures under FAR subpart 12.2.

(x) In the ?A-76 Action? data field, indicate if the contract action resulted from an A-76 / FAIR Act competitive sourcing process. Note, however, that DoD is currently under a moratorium from procuring services using these procedures. See PGI 207.170 for more information.

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(xi) In the ?Local Area Set Aside? data field, indicate if the contract action resulted from a local area set-aside in accordance with FAR 26.202.

(xii) In the ?FedBizOpps? data field, enter ?Yes? if the award was greater than $25,000 in value and subject to FAR 5.1 synopsis requirements. Enter ?No? if the award was greater than $25,000 in value, but an exception to synopsis requirements applied. Enter ?Not Applicable? if the award was less than or equal to $25,000 in value.

(xiii) Number of Offers.

(A) Enter the specific number of offers received in response to the solicitation. In the case of contracts awarded as a result of a Broad Agency Announcement, enter the number of proposals received under the specific announcement. In the case of orders under a multiple-award contract (including Federal Supply Schedules and GWACs), BOAs, and BPAs, enter the number of offers received for the specific order.

(B) Note that the ?Number of Offers Received? is collected on the original award. In the case of a task or delivery order being reported, the user will see the number of offers from the original contract in the ?IDV Number of Offers? data element. The ?Number of Offers Source? data element is system generated to indicate whether the data in the ?Number of Offers Received? data element was entered on the specific CAR being viewed or if it was pre-populated from the original contract award.

(15) FPDS Entry ? Preference Programs / Other Data Section.

(i) Contracting Officer?s Business Size Selection?

(1) When entering a new contract, purchase order, or agreement award in FPDS, contracting officers must ensure they appropriately choose ?Small Business? or ?Other than Small Business? in the ?Contracting Officer?s Determination of Business Size? data field according to the NAICS code applied to the award, its associated size standard, and the contractor?s response to provision 52.219-1. The contracting officer must enter ?Other than Small Business? for awards where the contractor has not certified to its status in one of these provisions.

(2) If the ?Contracting Officer?s Determination of Business Size? data field is completed with ?Small Business?, the contractor?s other socio-economic information that it has entered or the Small Business Administration (SBA) has provided to the System for Award Management (SAM) database will be included in the contract action report. This includes designations such as SBA-Certified 8(a), Women-owned Small Business, Service Disabled Veteran Owned.

(3) Contracting officers will not be allowed to identify types of set-asides in FPDS unless the ?Contracting Officer?s Determination of Business Size? field is completed with ?Small Business,? and other required socio-economic designations are present in the Contractor?s SAM record (e.g., contractor must have the SBA-Certified 8(a) designation in order to identify an 8(a) type set-aside in FPDS).

(4) All subsequent modifications and delivery orders under the initial award will be automatically populated with the same designations.

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(B) Subcontracting Plan. Select whether a subcontracting plan is required for the contract action, and, if so, which type applies from the following values:

(1) Plan Not Required;

(2) Plan Not Included, No Subcontracting Possibilities;

(3) Individual Subcontracting Plan;

(4) Commercial Subcontracting Plan; or

(5) DoD Comprehensive Subcontracting Plan.

(d) Reporting modifications to FPDS.

(1) Modifications against previously reported contracts, agreements, and orders are required to be reported to FPDS if they include any obligation or deobligation amount. They are also required to be reported to FPDS if there is no obligation or deobligation amount and involve a change to the data reported in any data field in the contract action report (e.g., vendor name, completion date, place of performance).

(2) Contracting officers should choose the ?Reason for Modification? value that best represents the purpose of the modification action. If more than one reason for modification applies, choose the more specific value. When a name, address, UEI, or CAGE code change occurs as the result of the modification, choose ?Novation,? ?Vendor UEI Change,? or ?Vendor Address Change,? per the instructions at paragraphs (d)(5),

(6), and (7), rather than other values that may also apply to the action (e.g., Exercise Option).

(3) Do not use ?Close Out? as the reason for modification in FPDS unless the modification being reported actually accomplishes the close out of the award.

(4) DoD offices must not use the ?Transfer Action? value in the ?Reason for Modification? field unless transferring the contract to a non-DoD contracting office (e.g., Department of Interior).

(5) Modifications for novations (see FAR Subpart 42.9 and DFARS subpart **242.9) must use ?Novation Agreement? in the ?Reason for Modification? field.**

(i) When this value is used, the contracting officer must enter the appropriate UEI for the contractor in the modification contract action report. FPDS will then bring over the current vendor name and address from the contractor?s SAM record for that UEI into the modification contract action report. Subsequent contract action reports will show the updated UEI and vendor name.

(ii) When this value is used, FPDS also allows the contracting officer to

update the ?Contracting Officer?s Determination of Business Size? data field. The contracting officer must ensure that the contractor?s current size status is appropriately recorded on the modification contract action report. Subsequent contract action reports

will reflect the size entered on this modification contract action report (see FAR subpart **19.301.**

(6) Modifications for contractor name changes that do not require a novation (see FAR Subpart 42.9 and DFARS Subpart 242.9) must use ?Vendor UEI Change? in the ?Reason for Modification? field. When this value is used, the contracting officer must enter the appropriate UEI for the contractor in the modification contract action report. FPDS will then bring over the current vendor name and address from the contractor?s SAM record for that UEI into the modification contract action report. Subsequent contract action reports will show the updated UEI and vendor name.

(7) Modifications for contractor address changes that do not require a novation must use ?Vendor Address Change? in the ?Reason for Modification? field. When this value is used, FPDS will bring over the current address from the contractor?s SAM record into the modification contract action report. Subsequent contract action reports will show the updated address.

(8) Modifications for re-representation actions (see FAR 19.301(a) and **19.301(c) must use either ?Re-representation? or ?Re-representation of Non-Novated** Merger/Acquisition?, as appropriate, in the ?Reason for Modification? field. When this value is used, FPDS allows the contracting officer to update the ?Contracting Officer?s Determination of Business Size? data field. The contracting officer must ensure that the contractor?s current size status is appropriately recorded on the modification contract action report. Subsequent contract action reports will reflect the size entered on this modification contract action report.

(9) When a modification is reported with ?Termination for Default? or ?Termination for Cause? in the ?Reason for Modification? data field, the user must also report the termination to the Federal Awardee Performance and Integrity Information System (FAPIIS) contained at https://sam.gov/fapiis in accordance with FAR 42.1103(g) requirements.

(e) Reporting awards where the GPC is both the method of purchase and payment.

(1) Do not report open-market purchases (i.e., not under a Federal Supply schedule, agreement, or contract) made with the GPC valued less than the micro-purchase threshold to FPDS.

(2) Purchases made using the GPC as the method of both purchase and payment under federal schedules, agreements, or contracts are required to be reported to FPDS regardless of value. Contracting offices must ensure all such purchases made by their authorized cardholders are reported to FPDS at least monthly. Any individual purchase valued greater than $25,000 must be reported individually to FPDS. For

individual purchases valued less than $25,000, there are three acceptable methods for reporting to FPDS. They are, in preferred order of use?

(i) Report each order individually to FPDS;

(ii) Report a consolidated express report to FPDS using the delivery order or BPA call format that references the individual contract or BPA, respectively; or

(iii) Report a consolidated express report to FPDS using the purchase order format that uses the generic UEI R5NWZ87HPLX4 for ?GPC Consolidated Reporting? or U9X7H1UVY6U5 for ?GPC Foreign Contractor Consolidated Reporting?, as appropriate, as the identifier. Note that when a generic UEI is used to report these actions, only ?Other than Small Business? is allowed as the ?Contracting Officer?s Determination of Business Size? selection.

(3) For orders placed on FedMall, contracting officers are not required to separately report such awards to FPDS.

(f) Using generic entity identifier .

(1) Generic entity identifiers may only be used for reporting to FPDS in accordance with FAR 4.301(e) or paragraph (c)(5)(ii)(C) of this section. Note that if a generic entity identifier is used on the report to FPDS, systems that prepopulate data based on the UEI reported to FPDS may not be able to use the UEI for further reporting on that contract action because the contractor identification information is not accurately reflected. For example, assessing officials cannot report past performance reports to the Contractor Performance Assessment Reporting System (CPARS) (see FAR Subpart **42.11) if a generic entity identifier was used to report the action to FPDS. Additionally,** some reporting requirements placed on the contractor, such as subcontract reporting required by FAR subparts 4.3 and 19.2, are not able to be completed. Therefore, it is important that the use of generic UEIs in reporting to FPDS be rare and only when necessary.

(2) The following generic entity identifiers are available for use in contract reporting only if the conditions in FAR 4.301(e) or paragraph (5)(ii)(C) of this section apply:

(i) Generic entity identifier LX9KAH68DKV5 ? Student Workers in Laboratories. Used to report actions awarded to student workers providing goods/services in Government laboratories (or other Government facilities) when obtaining a UEI would place a financial hardship on the student. Corresponding CAGE code in the System for Award Management (SAM): 35HL9.

(ii) Generic entity identifier LN9PU5M2YZN5 ? Miscellaneous Foreign Awardees. Used to report actions awarded to vendors located outside the United States providing goods/services when a specific UEI is not available. Corresponding CAGE code in SAM: 35KC0.

(iii) Generic entity identifier L2UVLEUTJU39 ? Spouses of Service Personnel. Used to report actions awarded to service personnel dependents located

and providing goods/services outside the United States when obtaining a UEI would place a financial hardship on the dependent. Corresponding CAGE code in SAM: **3JDV7.**

(4) Generic entity identifier KBD2CJ5JXJV5 ? Navy Vessel Purchases In Foreign Ports. Used to report actions awarded to vendors located outside the United States providing goods/services in support of vessels located in foreign ports when a specific UEI is not available. Corresponding CAGE code in SAM: 35KD3.

(5) Generic entity identifier JKRMS84PMND5 ? Foreign Utility Consolidated Reporting. Used to report procurement actions awarded to vendors located outside the United States providing utilities goods/services when a specific UEI is not available. Corresponding CAGE code in SAM: 3JDX5.

(6) Generic entity identifier KA5HQCLKUVW1 ? Domestic Awardees (Undisclosed). Used to report actions awarded to vendors located in the United States where identifying the vendor could cause harm to the mission or the vendor (for example, domestic shelters). Corresponding CAGE code in SAM: 3JEH0.

(7) Generic entity identifier NN2NGPDNCK23 ? Foreign Awardees (Undisclosed). Used to report actions awarded to vendors located outside the United States when identifying the vendor could cause harm to the mission or the vendor. Corresponding CAGE code in SAM: 3JEV3.

(8) Generic entity identifier R5NWZ87HPLX4 ? GPC Consolidated Reporting. Used to report orders and calls issued via the GPC under indefinite-delivery type contracts and agreements to businesses located in the United States, and the UEI for the vendor is not available to the office reporting the action. Corresponding CAGE code in SAM: 3JDW4.

(9) Generic entity identifier U9X7H1UVY6U5 ? GPC Foreign Contractor Consolidated Reporting. Used to report orders and calls issued via the GPC under indefinite delivery type contracts and agreements to businesses located outside the United States, and the UEI for the vendor is not available to the office reporting the action. Corresponding CAGE code in SAM: 3JDV9.

(g) Contract Action Report Status.

(1) The ?Status? data element on contract action reports indicates whether an award is still open or officially ?closed? and applies to the family of actions comprising the contract or order (i.e., includes all modifications to that contract or order). Values in this field will either be null (blank), indicating that the contract is still open; or ?Closed,? indicating the contract or order has completed closeout activities in accordance with FAR 4.308, as supplemented. Awards without the ?Closed? status are assumed to still be open and either still within the established delivery dates or period of performance, or in a post-performance period preparing for closeout.

(2) The ?Status? is changed to ?Closed? in one of three ways:

(i) User reports a modification using ?Closeout? in the ?Reason for

Modification? field. This should be rare and only occur when a modification being issued actually closes the award in that modification (not just prepares for it). If a contract action report is finalized with ?Closeout? as the value, it will no longer be able to be corrected by the user. Users will need to contact the FPDS help desk to perform any corrections.

(ii) User with ?Closeout? privileges in FPDS marks the award as closed. This will be rare in DoD; only the DoD and Service lead system administrators will be given these privileges.

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(iii) An agency system sends a ?Close? notice via web services to FPDS.

(3) When the ?Status? is changed to ?Closed? that status is applied to the contract or order and all of its subsequent modifications. Closed notices received for task, delivery, and call orders placed under IDCs or agreements do not cause the IDC or agreement to be closed. Closed notices received for IDCs or agreements do not cause task, delivery, and call orders placed under them to be closed.

(4) Once a contract or order, and its modifications, has been marked as ?Closed? the user or agency cannot change the status and will need to contact the FPDS help desk to remove the status if it was marked in error.

PGI 204.303 Service contracts inventory.

PGI 204.303-70 DoD reporting thresholds.

(b)(2) Contracts or task orders that meet the threshold at DFARS 204.303-70(b)(1) and are assigned the following Product Service Codes require service contract information to be reported in the System for Award Management:

Portfolio Group First 2 Digits Last 2 Digits

GA

M1 GD

GZ

02

R6 04

13

Logistics Management Services R7 06

S2 15

V0 01-03

V1 19

V3 01-02

W0 81

10-20 65-69

87-88

22-26 71

91

H1 28-32 73-75

93-96

34-49 77-81

99

51-56 85

10-20 55-56 83-85

22-26 65-69 87-88

Equipment Related Services

H2 28-32 71 91

34-49 73 93-96

51-53 76-81 99

10-20 51-56 87-89

22-26 65-69 91

H3

28-32 73-81 93-96

34-49 83-85 99

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Portfolio Group First 2 Digits Last 2 Digits

10-20

65-69 87-89

22-26

71 91

H9 28-32

73-81 93-96

34-49

83-85 99

51-56

10-20 83-85

51-56

22-26 87

62

28-32 89

J0 66-69

34-40 91

73

42 93-96

77-81

43-49 99

J9 98-99

10-20 51-53 83

22-26 55-56 85
28-32 62 87
K0
34-40 66-69 91
42 73 93-96
43-49 77-81 99
10-20
66-69 87-89
22-26
73 91
L0 28-32
77-81 93-96
34-49
84-85 99
51-56
10-20 51-55
87
22-26 62
89
28-32 66-69
N0 91
34-40 73
93-96
42-44 77-81
99
46-49 83-85
P1
P2 00
P3
P9 99
10-20
51-53 80
22-26
60 83
28-32
66 89
W0 34-37
68-69 91
39-40
73 93-96
42-44
77 99
46-49
01-22

D3 24-25

99

Electronics and Communications H1

H2 58-63

H3 70

H9

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Portfolio Group First 2 Digits Last 2 Digits

N0

58-61

63

J0

70

99

58-61

K0

63

W0

70

58-61

L0 62-63

70

R4 1330

06

S2

11

16

AA 26

AE 36

96

AB

16 36

AH 96

26 46

AS

16

AC 46 66

26

AD 56 96

36

AF

AK

16

AM

AZ

AG 16 46 76

Knowledge Based Services AN 26 56 86

AT 36 66 96

16 46

AJ 76

26 56

AV 96

36 66

16

AL 26

96

26

56 76

AP 36

66 96

46

16

AQ

96

16

46 76

AR 26

66 96

36

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Portfolio Group First 2 Digits Last 2 Digits

02-07 16-22

37-55

B5 09-10 24-30

99

13 32-34

01-10

G0

99

01-02 14

22-29
04-06 16
R4 31
08 18
97-99
10-12 20
03
05-12
R6
14-15
99
01-05
R7 07-13
99
01-16
T0
99
01-14
U0
99
PGI 204.304 System For Award Management.
PGI 204.304-70 Procedures.
The System for Award Management (SAM) website at https://www.sam.gov provides useful documents and online training to assist with SAM navigation and data entry. User guides and demonstration videos can be found on the SAM homepage, the SAM Help section located at the top of the website homepage, and the Federal Service Desk (FSD) website at https://www.fsd.gov.

(a) Use SAM as the primary source of contractor information for contract award and administration, to include supporting contract writing, management, and administration systems. Do not request or use contractor information from other sources, unless another source is specifically authorized. At a minimum, supporting systems must use SAM as the authoritative source for the following data elements, as applicable by system, when SAM is required in accordance with FAR 4.304:

(1) Unique entity identifier (UEI).
(2) Commercial and Government Entity (CAGE) code.
(3) Taxpayer Identification Number (TIN).
(4) Legal business name.
(5) Doing business as (DBA) name.

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(6) Physical address.

(7) Mailing address.

(8)(i)Electronic Funds Transfer (EFT) information (includes American Banking Association (ABA) routing number, account number, and account Type) and any additional EFT indicators.

(ii) Ensure that SAM nondisclosure requirements regarding TIN and EFT information are followed.

PGI 204.308 Contract closeout.

PGI 204.308-170 Procedures for closing out contract files.

(a) Data supporting contract closeout (e.g., DD Form 1594, Contract Completion Statement) are electronically transmitted throughout DoD. Defense Logistics Manual **4000.25, Defense Logistics Management Standards (DLMS), Volume 7, Contract** Administration, Chapter 4, Contract Completion Status Reporting, available at https://www.dla.mil/Defense-Data-Standards/Publications/Vol-7-Administration/, contains detailed instructions regarding closeout and electronic data transmission.

(1) The administration office closeout date for file purposes will be the date in Block 9d of the DD Form 1594 or agency equivalent.

(2) If the contracting office must do a major closeout action that will take longer than 3 months after the date shown in Block 9d of the DD Form 1594?

(i) The purchasing office closeout date for file purposes will be the date in Block 10e of the DD Form 1594 or agency equivalent; and

(ii) The contracting office must notify the contract administration office of the revised closeout date by either sending a copy of the completed DD Form 1594 or by electronically transmitting the data.

(3) Completion of block 10 is not required, when the contracting office accepts the closeout date in block 9d of the DD Form 1594 (or agency equivalent) and the contract completion statement is posted to the Electronic Data Access (EDA) system as required by PGI 204.271.

(4) Closeouts posted to EDA are considered part of the contract file and do not need to be duplicated in any other version of the contract file.

(5) A contract modification is not needed to deobligate excess funds when block 5 is completed, and this deobligation will occur upon distribution of the contract completion statement. Send a notification and a copy of the contract completion statement to the comptroller to allow general ledger reconciliation.

(6) A contract qualifies for an automated closeout process if the contract?

(i) Only has firm-fixed-price line items;

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(ii) Does not exceed $500,000; and

(iii) Does not include any of the following provision and clauses:

(A) FAR 52.211-11, Liquidated Damages?Supplies, Services, or Research and Development.

(B) FAR 52.216-7, Allowable Cost and Payment.

(C) FAR 52.227-9, Refund of Royalties.

(D) FAR 52.227-11, Patent Rights?Ownership by the Contractor.

(E) FAR 52.227-13, Patent Rights?Ownership by the Government.

(F) FAR 52.232-16, Progress Payments.

(G) FAR 52.232-29, Terms for Financing of Purchases of Commercial Products and Commercial Services.

(H) FAR 52.232-30, Installment Payments for Commercial Products and Commercial Services.

(I) FAR 52.232-32, Performance-Based Payments.

(J) FAR 52.245-1, Government Property.

(K) FAR 52.248-1, Value Engineering.

(iv) DoD components may add further limitations to ensure all contract requirements have been completed prior to closeout.

(v) Basic ordering agreements, blanket purchase agreements, and indefinite-delivery contracts can be automatically closed using automated contract closeout procedures after all orders are closed and the ordering period has expired.

(b) A department or agency requesting a waiver of any provisions of acquisition law or regulation to carry out the closeout procedures must forward the request and any supporting documentation to the Office of the Principal Director, Defense Pricing, Contracting, and Acquisition Policy (Contract Policy) via osd.pentagon.ousd-a-s.mbx.dpc-cp@mail.mil. The Principal Director, Defense Pricing, Contracting, and Acquisition Policy, will forward the request to USD(A&S), as appropriate.

PGI 204.308-171 Procedures for closing out contract files- Governmentwide commercial purchase card as the sole payment.

When the Governmentwide commercial purchase card is the sole method of payment?

(a) The contractor?s final invoice is not required to close a contract or order; and

(b) The contract completion statement?

(1) Does not require the final voucher number and date;

(2) Does not require the final invoice number and date; however

(3) Requires the final acceptance date.

(c) Additional guidance on the Governmentwide commercial purchase card can be found at https://www.acq.osd.mil/asda/dpc/ce/pc/docs-guides.html.

PGI 204.308-2 Contract closeout by the office administering the contract.

(a) Locally developed forms or a statement of completion may be used instead of the DD Form 1594, Contract Completion Statement, and use the administration office closeout date. Whichever method is used, the form must be retained in the contract file and copies sent to EDA and financial systems using the American National Standards Institute (ANSI) X12 Electronic Data Interchange (EDI) 567 transaction set.

(b) For contracts valued above the simplified acquisition threshold, prepare a DD Form 1597, Contract Closeout Check List (or agency equivalent), to ensure that all

required contract actions have been satisfactorily accomplished.

PGI 204.308-270 Closeout of the contracting office files if another office administers the contract.

(a) When an office other than the contracting office administers the contract, the administering office must?

(1) Provide the contracting office an interim contract completion statement when the contract is physically completed using the ANSI X12 567;

(2) Prepare a DD Form 1597, Contract Closeout Check List or agency equivalent, if necessary, to determine that all the required actions have been completed;

(3) Initiate DD Form 1593, Contract Administration Completion Record, if necessary to obtain statements from other organizational elements that they have completed the actions for which they are responsible; and

(4) Upon final payment?

(i) Process a DD Form 1594 or the electronic equivalent verifying that all contract administration office actions have been completed; and

(ii) Send the original DD Form 1594 or the electronic equivalent to the contracting office for filing in the contract file and send a copy to EDA and financial systems using the ANSI X12 567.

(b) If the administrative contracting officer (ACO) cannot close out a contract within the specified time period (see FAR 4.308-2), the ACO must notify the procuring contracting officer (PCO) within 45 days after the expiration of the time period of?

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(1) The reasons for the delay; and

(2) The new target date for closeout.

(c) If the contract still is not closed out by the new target date, the ACO must again notify the PCO with the reasons for delay and a new target date.

PGI 204.70?RESERVED

PGI 204.71?RESERVED.

PGI 204.76?SUPPLIER PERFORMANCE RISK SYSTEM

PGI 204.7603 Procedures.

The Supplier Performance Risk System (SPRS) provides item risk, price risk, and supplier risk assessment on end products and price risk and supplier risk assessment on services. SPRS provides item and price risk for end products using the material identifiers listed in paragraphs (a)(1)(i) through (v). SPRS also provides a supplier risk score for the contractor that provided the product or services. The contracting officer may consider item risk, price risk, and supplier risk assessments to determine the performance risk of the offeror or product and to assess the risk of ongoing contractor performance.

(a) Item risk.

(1) SPRS provides the contracting officer warnings and mitigation strategies for

end products identified by military departments or defense agencies as high risk (due to diminishing manufacturing sources and material shortages, history of counterfeiting, etc.). End products are identified by one or more of the following material identifiers:

(i) National Stock Number (NSN).

(ii) Internet Blog Serial Number (IBSN).

(iii) Universal Product Code (UPC).

(iv) Global Standards 1 (GS1).

(v) Manufacturer Commercial and Government Entity (CAGE) and part number.

(2) Presolicitation. For items identified as high risk in SPRS or by the requiring activity in purchase requests, the contracting officer must mitigate this risk by including a clause that addresses first article approval or certificate of conformance in the solicitation or by applying other risk mitigation strategies.

(b) Price risk. SPRS provides the contracting officer warning of possible over- or under-payment risks based on historical purchase data.

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(c) Supplier risk. SPRS provides the contracting officer a score for the assessment of the contractor?s performance. The supplier risk score includes data associated with the contractor?s quality and delivery data.

(d) Evaluation of quotations or offers for supplies. During the evaluation of the offers received for supplies or services that contain supplies, the contracting officer must consider the risk assessments available in SPRS.

(e) Award and documentation.

(1) In determining a price fair and reasonable, the contracting officer must review the price risk data provided in SPRS and follow the procedures at FAR 12.203 or 15.4 to make an award decision. In the event that price risk has been identified, the contracting officer must perform further price analysis.

(2) In assessing offeror performance capabilities, the contracting officer must review the supplier risk data provided in SPRS and tailor the contract oversight for risk. Mitigate supplier risk by?

(i) Including clauses to strengthen oversight (e.g., a clause that addresses first article testing or certificate of conformance); and

(ii) Removing discretionary clauses to recognize successful performance (e.g., a clause that addresses first article testing).

(3) The contracting officer must document the contract file on any action taken as a result of information obtained from SPRS.

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PART 5

OFFICE OF THE ASSISTANT SECRETARY OF WAR

Status: Class D

OFFICE OF THE ASSISTANT SECRETARY OF WAR

3000 DEFENSE PENTAGON

WASHINGTON, DC 20301-3000

ACQUISITION

AND SUSTAINMENT

In reply refer to

DARS Tracking Number: 2026-O0003

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES SPECIAL OPERATIONS

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES TRANSPORTATION

COMMAND (ATTN: ACQUISITION EXECUTIVE)

DEPUTY ASSISTANT SECRETARY OF THE ARMY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE NAVY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE

(CONTRACTING)

DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Class Deviation?Revolutionary Federal Acquisition Regulation (FAR) Overhaul

Part 5, Defense FAR Supplement (DFARS) Part 205

Effective February 1, 2026, contracting officers shall use?

? The revised FAR Part 5, Publicizing Contract Actions published on the Revolutionary FAR Overhaul web page at https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-5 in lieu of the text codified at 48 CFR chapter 1 (https://www.ecfr.gov).

? The attached DFARS Part 205, Publicizing Contract Actions in lieu of the text codified at 48 CFR chapter 2; and

? The attached DFARS Procedures, Guidance, and Information (PGI) 205, Publicizing Contract Actions in lieu of the PGI text published on the Defense Pricing, Contracting, and Acquisition Policy web page at https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.

This class deviation implements the following:

? Section 2 of E.O. 14275, Restoring Common Sense to Federal Procurement, which establishes the policy that the FAR ?should only contain provisions required by

Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 5,
Defense FAR Supplement (DFARS) Part 205
statute or essential to sound procurement, and any FAR provisions that do not advance these objectives should be removed.
? Section 4(a) of E.O. 14265, Modernizing Defense Acquisitions and Spurring Innovation in the Defense Industrial Base which requires the Secretary of War to eliminate or revise any unnecessary supplemental regulations or any other internal guidance, such as relevant parts of the Financial Management Regulation and Defense Federal Acquisition Regulation Supplement.
? The Office of Management and Budget memorandum, M-25-26 issued on May 2, 2025, titled, Overhauling the Federal Acquisition Regulation, which provided additional guidance to federal agencies regarding the FAR overhaul.
This class deviation remains in effect until rescinded or incorporated into the FAR, DFARS, and DFARS PGI. Inquiries regarding this class deviation can be addressed to osd.pentagon.ousd-a-s.mbx.dfars@mail.mil.
John M. Tenaglia
Principal Director,
Defense Pricing, Contracting, and
Acquisition Policy
Attachments:
As stated
2
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Defense FAR Supplement (DFARS) Part 205

PART 205?PUBLICIZING CONTRACT ACTIONS

SUBPART 205.0?SCOPE OF PART

205.002 Policy.

205.002-70 Preparation and transmittal of synopses.

(a) See PGI 205.002-70(a) for numbering synopses notices.

(b) See PGI 205.002-70(b) for small business events.

SUBPART 205.1?PRESOLICITATION

205.101 Presolicitation Notice.

205.101-70 Availability of DoD solicitations.

See PGI 205.101-70 for policy and procedures related to the Solicitation Module within the Procurement Integrated Enterprise Environment.

205.102 Paid Advertisements.

Heads of contracting activities are delegated authority to approve the publication of paid advertisements in newspapers.

205.103-70 Special Notices.

See PGI 205.103-70 for instructions on the solicitation notice regarding timely definitization of equitable adjustments for change orders under construction contracts.

(b)(i) See DFARS 207.107 for DoD-funded acquisitions that involve bundling.

SUBPART 205.2?SOLICITATION

205.201 Solicitation Notice.

205.201-70 Timing.

(a) Allow at least 45 days response time when requested by a qualifying or designated country source (as these terms are used in Part (as these terms are used in **Part 225) and the request is consistent with the Government's requirement.**

(b) When using competitive procedures, if a solicitation allowed fewer than 30 days for receipt of offers and resulted in only one offer, the contracting officer must resolicit, allowing an additional period of at least 30 days for receipt of offers, except as provided in 215.371-4 and 215.371-5.

SUBPART 205.3--SYNOPSES OF CONTRACT AWARDS

205.301 General.

205.301-70 Synopsis of exceptions to domestic source requirements.

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Defense FAR Supplement (DFARS) Part 205

(a) In accordance with 10 U.S.C. 4862(k), synopsize through the Governmentwide point of entry (https://www.sam.gov), awards exceeding the simplified acquisition threshold that are for the acquisition of any clothing, fiber, yarn, or fabric items described in 225.7002-1(a)(1)(ii) through (x), if?

(1) The Secretary concerned has determined that domestic items are not available, in accordance with 225.7002-2(b); or

(2) The acquisition is for chemical warfare protective clothing, and the contracting officer has determined that an exception to domestic source requirements applies because the acquisition furthers an agreement with a qualifying country, in accordance with 225.7002-2(n).

(b) The synopsis must be submitted in sufficient time to permit its publication not later than 7 days after contract award.

(c) In addition to the information otherwise required in a synopsis of contract award, the synopsis must include one of the following statements as applicable:

(1) ?The exception at DFARS 225.7002-2(b) applies to this acquisition, because the Secretary concerned has determined that items grown, reprocessed, reused, or produced in the United States cannot be acquired as and when needed in satisfactory quality and sufficient quantity at U.S. market prices.?

(2) ?The exception at DFARS 225.7002-2(n) applies to this acquisition, because the contracting officer has determined that this acquisition of chemical warfare protective clothing furthers an agreement with a qualifying country identified in **DFARS 225.003.?**

205.302 Public Announcement.

(a) Requirement.

(i) The threshold for DoD awards is $9 million. Report all contractual actions, including modifications, that have a face value, excluding unexercised options, of more

than $9 million.

(A) For undefinitized contractual actions, report the not-to-exceed (NTE) amount. Later, if the definitized amount exceeds the NTE amount by more than $9 million, report only the amount exceeding the NTE.

(B) For indefinite delivery, time and material, labor hour, and similar contracts, report the initial award if the estimated face value, excluding unexercised options, is more than $9 million. Do not report orders up to the estimated value, but after the estimated value is reached, report subsequent modifications and orders that have a face value of more than $9 million.

(C) Do not report the same work twice.

(ii) See PGI 205.302 for reporting of contract actions in paragraph (a)(i) of this section.

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Defense FAR Supplement (DFARS) Part 205

SUBPART 205.70?RELEASE OF INFORMATION

205.701 Contract clause.

Insert the clause at 252.205-7000, Provision of Information to Cooperative Agreement Holders, in solicitations and contracts, including solicitations and contracts using FAR **part 12 procedures for the acquisition of commercial products and commercial services,** except for solicitations and contracts solely for the acquisition of commercially available off-the-shelf items, that are expected to exceed $1.5 million. This clause implements 10 **U.S.C. 4957.**

SUBPART 252?SOLICITATION PROVISIONS AND CONTRACT CLAUSES

SUBPART 252.2?TEXT OF PROVISIONS AND CLAUSES

252.205-7000 Provision of Information to Cooperative Agreement Holders.

As prescribed in 205.701, insert the following clause:

PROVISION OF INFORMATION TO COOPERATIVE AGREEMENT HOLDERS

(OCT 2024)

(a) Definition. As used in this clause?

?Cooperative agreement holder? means a State or local government; a nonprofit organization; a tribal organization (as defined in section 4(c) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304(l)); or an economic enterprise (as defined in section 3(e) of the Indian Financing Act of 1974 (25 U.S.C. 1452(e))) whether such economic enterprise is organized for profit or nonprofit purposes; which has an agreement with the Under Secretary of Defense for Acquisition and Sustainment to furnish procurement technical assistance to business entities (as defined in 10 U.S.C. 4951).

(b) The Contractor shall provide cooperative agreement holders, upon their request, with a list of those appropriate employees or offices responsible for entering into subcontracts under defense contracts. The list shall include the business address, telephone number, and area of responsibility of each employee or office.

(c) The Contractor need not provide the listing to a particular cooperative agreement holder more frequently than once a year.

(End of clause)

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Attachment A2

DARS Tracking Number: 2026-O0003

Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 5

Defense FAR Supplement (DFARS) Part 205

PGI 205?PUBLICIZING CONTRACT ACTIONS

PGI 205.0?SCOPE OF PART

PGI 205.002 Policy.

PGI 205.002-70 Preparation and transmittal of synopses.

(a) Notice numbering.

(1) For a particular procurement, when submitting notices at different stages of the acquisition (i.e., sources sought notice, pre-solicitation notice, award notice), ensure the solicitation number is entered exactly the same way in order to allow all to be retrieved when a search is performed.

(2) Use only alpha-numeric characters in the solicitation and award number data elements in the Governmentwide point of entry (GPE) at https://www.sam.gov. Do not include hyphens, slashes, or other special characters.

(b) Small business events. When advertising an event for small businesses, post a 'special notice' notice type and ensure the "title" data field begins with "Small Business Event". This will enable the public to easily search the GPE using the small business event calendar on the website.]

PGI 205.1?PRESOLICITATION

PGI 205.101-70 Availability of DoD solicitations.

(a) Policy. The Solicitation Module within the Procurement Integrated Enterprise Environment (PIEE), accessible at https://piee.eb.mil, provides DoD a secure and auditable mechanism to request and receive proposals or quotes from industry.

(1) The Solicitation Module?

(i) Provides a single face to industry for accessing DoD solicitations and attachments;

(ii) Ensures time stamps for submissions are collected electronically, and records are retained in the contract file;

(iii) Provides a means to upload very large and varied solicitation attachments;

(iv) Provides the ability to restrict access to a limited group of identified offerors; and

(v) Automatically posts the required synopsis or other presolicitation notice, solicitation, or combined synopsis and solicitation, as applicable, in the Governmentwide point of entry (GPE) (https://www.sam.gov) in accordance with FAR subpart 5.1.

(b) Procedures. Effective October 1, 2026, unless an exception applies, contracting officers must use the Solicitation Module for publishing unclassified solicitations and for receiving offers and quotes.

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Attachment A2
DARS Tracking Number: 2026-O0003
Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 5
Defense FAR Supplement (DFARS) Part 205

(1) Exceptions.

(i) The Solicitation Module is not required for?

(A) Requests for offers or quotes when limiting competition to a single source;

(B) Actions using simplified acquisition procedures in accordance with FAR **part 13;**

(C) Actions using emergency acquisition flexibilities in accordance with FAR **part 18; or**

(D) Actions to be awarded outside the United States.

(ii) Do not use the Solicitation Module for the following types of actions until the capability is developed in the Module:

(A) Broad agency announcements.

(B) Requests for offers or quotes for task orders or delivery orders under indefinite-delivery type contracts, blanket purchase agreements, or basic ordering agreements.

PGI 205.103 Special Notices.

PGI 205.103-70 Definitization of equitable adjustments for construction.

Notice regarding timely definitization of equitable adjustments for change orders under construction contracts. To obtain definitization data for requests for equitable adjustment to include in solicitations for construction contracts, access the Procurement Action Required Reporting Online Tools (PARROT)/Protest Tracker and REA module in the PIEE website at https://piee.eb.mil. Search the PARROT Protest Tracker and REA module for the applicable military department or defense agency data and?

(a) If data exists, download the table and include it as an attachment to the solicitation notice in the GPE; or

(b) If no data exists, then include the following statement in the Description section of the solicitation notice: ?No data is available regarding the timely definitization of equitable adjustments for change orders under construction contracts.? (See PGI **236.211) for reporting data on definitization of equitable adjustments.)**

(c) Include a description of military department or defense agency policies or procedures, in addition to that outlined in FAR part 43, that apply to definitization of equitable adjustments for change orders under construction contracts. This description may be provided in a notice by including an address of an agency-specific, publicly available website containing this information.

(d) If the military department or defense agency does not have agency-specific procedures, include the following statement: ?There are no agency-specific policies or procedures that apply to the definitization of equitable adjustments for change orders under construction contracts.?

DARS Tracking Number: 2026-O0003

Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 5

Defense FAR Supplement (DFARS) Part 205

205.3?SYNOPSES OF CONTRACT AWARDS

205.302 Public Announcement.

(a) Requirement.

(ii) Departments and agencies must report contract actions?

(A) To the Office of the Assistant to the Secretary of Defense for Public Affairs

(B) By the close of business the day before the date of the proposed award;

(C) Using report control symbol DD-LA-(AR) 1279;

(D) Including, as a minimum, the following?

(1) Contract data. Contract number, modification number, or delivery order number, face value of this action, total cumulative face value of the contract, description of what is being bought, contract type, whether any of the buy was for foreign military sales (FMS) and identification of the FMS customer;

(2) Competition information. Number of solicitations mailed and number of offers received;

(3) Contractor data. Name, address, and place of performance (if significant work is performed at a different location);

(4) Funding data. Type of appropriation and fiscal year of the funds, and whether the contract is multiyear (see FAR part 17); and

(5) Miscellaneous data. Identification of the contracting office, the contracting office point of contact, known congressional interest, and the information release date.

(iii) Departments and agencies, in accordance with department/agency procedures and concurrent with the public announcement, must provide information similar to that required by paragraph (a)(ii) of this section to members of Congress in whose State or district the contractor is located, and the work is to be performed.

PART 6

OFFICE OF THE ASSISTANT SECRETARY OF WAR

Status: Class D

OFFICE OF THE ASSISTANT SECRETARY OF WAR

3000 DEFENSE PENTAGON

WASHINGTON, DC 20301-3000

ACQUISITION

AND SUSTAINMENT

In reply refer to

DARS Tracking Number: 2026-O0017

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES SPECIAL OPERATIONS

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES TRANSPORTATION

COMMAND (ATTN: ACQUISITION EXECUTIVE)

DEPUTY ASSISTANT SECRETARY OF THE ARMY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE NAVY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE

(CONTRACTING)

DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Class Deviation?Revolutionary Federal Acquisition Regulation (FAR) Overhaul

Part 6, Defense FAR Supplement (DFARS) Part 206

Effective February 1, 2026, contracting officers shall use?

? The revised FAR Part 6, Competition Requirements published on the Revolutionary FAR Overhaul web page at https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6 in lieu of the text codified at 48 CFR chapter 1 (https://www.ecfr.gov).

? The attached DFARS Part 206, Competition Requirements in lieu of the text codified at 48 CFR chapter 2; and

? The attached DFARS Procedures, Guidance, and Information (PGI) 206, Competition Requirements in lieu of the PGI text published on the Defense Pricing, Contracting, and Acquisition Policy web page at https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.

This class deviation implements the following:

? Section 2 of E.O. 14275, Restoring Common Sense to Federal Procurement, which establishes the policy that the FAR ?should only contain provisions required by statute or essential to sound procurement, and any FAR provisions that do not

advance these objectives should be removed.
DARS Tracking Number: 2026-O0017
Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 6
Defense FAR Supplement (DFARS) Part 206
? Section 4(a) of E.O. 14265, Modernizing Defense Acquisitions and Spurring Innovation in the Defense Industrial Base which requires the Secretary of War to eliminate or revise any unnecessary supplemental regulations or any other internal guidance, such as relevant parts of the Financial Management Regulation and Defense Federal Acquisition Regulation Supplement.
? The Office of Management and Budget memorandum, M-25-26 issued on May 2, 2025, titled, Overhauling the Federal Acquisition Regulation, which provided additional guidance to federal agencies regarding the FAR overhaul.
This class deviation remains in effect until rescinded or incorporated into the FAR, DFARS, and DFARS PGI. Inquiries regarding this class deviation can be addressed to osd.pentagon.ousd-a-s.mbx.dfars@mail.mil.
John M. Tenaglia
Principal Director,
Defense Pricing, Contracting, and
Acquisition Policy
Attachments:
As stated
2
Attachment A1
DARS Tracking Number: 2026-O0017
Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 6
Defense FAR Supplement (DFARS) Part 206

PART 206?COMPETITION REQUIREMENTS

SUBPART 206.0?SCOPE OF PART

206.000 Scope of part.

For information on the various approaches that may be used to competitively fulfill DoD requirements, see PGI 206.000.

206.001 Applicability.

(b) As authorized by 10 U.S.C. 1091, contracts awarded to individuals using the procedures at 237.201-1(ii) are exempt from the competition requirements of FAR Part **6.**

206.001-70 Exception for prototype projects for follow-on production contracts.

(a) Also excepted from this part are follow-on production contracts for products developed pursuant to the ?other transactions? authority of 10 U.S.C. 4022 for prototype projects, when the contracting officer receives sufficient documentation from the agreements officer issuing the other transaction agreement for the prototype project that?

(1) The other transaction agreement included provisions for a follow-on production contract (10 U.S.C. 4022(f)(1)); and

(2) Where applicable, the threshold at 10 U.S.C. 4022(a)(2)(C) and the requirements at 10 U.S.C. 4022(f)(2)(A) and (B) have been met.

(b) See PGI 206.001-70 for additional guidance.

SUBPART 206.1?PRESOLICITATION

206.101 Full and open competition.

206.101-70 Other competitive procedures.

(a) In lieu of FAR 6.101(b)(3)(ii), competitive selection of science and technology proposals resulting from a broad agency announcement with peer or scientific review, as described in 235.102(a) (10 U.S.C. 3012(2)).

(b)Competitive selection of proposals based on a review by scientific, technological, or other subject-matter expert peers resulting from a commercial solutions opening as described in subpart 212.70 (10 U.S.C. 3458) is a competitive procedure.

(c) The award of a contract as a prize resulting from a competitive selection of prize recipients for advanced technology achievements is a competitive procedure (10 U.S.C. 4025(f)), when the solicitation is widely advertised, including through the Governmentwide point of entry (see FAR part 5). See PGI 206.101-70 for approval requirements.

206.102 Full and open competition after excluding sources.

206.102-1 Establishing or maintaining alternative sources.

(a) Agencies may use this authority to totally or partially exclude a particular source from a contract action.

(b) The determination and findings (D&F) and the documentation supporting the D&F must identify the excluded source. Include the information at PGI 206.102-1(b), as applicable, and any other information that may be pertinent, in the supporting documentation.

206.103. Other than full and open competition.

206.103-170 Only one responsible source and no other supplies or services will satisfy agency requirements.

(a) Authority. Section 8059 of Pub. L. 101-511 and similar sections in subsequent defense appropriations acts, prohibit departments and agencies from entering into contracts for studies, analyses, or consulting services (see FAR Subpart 37.4) on the basis of an unsolicited proposal without providing for full and open competition, unless?

(1) The head of the contracting activity, or a designee no lower than chief of the contracting office, determines that?

(i) Following thorough technical evaluation, only one source is fully qualified to perform the proposed work;

(ii) The unsolicited proposal offers significant scientific or technological promise, represents the product of original thinking, and was submitted in confidence;

or

(iii) The contract benefits the national defense by taking advantage of a unique and significant industrial accomplishment or by ensuring financial support to a new product or idea;

(A) A civilian official of the DoD, whose appointment has been confirmed by the Senate, determines the award to be in the interest of national defense; or

(B) The contract is related to improvement of equipment that is in development or production.

(b) Application. This authority may be used for acquisitions of test articles and associated support services from a designated foreign source under the DoD Foreign Comparative Testing Program.

(c) Application for brand-name descriptions. Notwithstanding FAR 6.103-1(d), in accordance with section 888(a) of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114-328), the justification and approval addressed in FAR 6.104 is required in order to use brand name or equal descriptions.

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Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 6

Defense FAR Supplement (DFARS) Part 206

(d) Limitations. Follow the procedures at PGI 206.103-170 prior to soliciting a proposal without providing for full and open competition under this authority.

(e) Application for proprietary specifications or standards. In accordance with section 888(a) of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114-328), the justification and approval addressed in FAR 6.104 is required in order to use proprietary specifications and standards.

206.103-270 Unusual and compelling urgency.

For guidance on circumstances under which use of this authority may be appropriate, see PGI 206.103-270).

206.103-370 Industrial mobilization; engineering, developmental, or research capability; or expert services.

Insert the provision at 252.206-7000, Domestic Source Restriction, in all solicitations that are restricted to domestic sources under the authority of FAR 6.103-3.

206.103-4 International agreement.

(c) Limitations. Pursuant to 10 U.S.C. 3204(e)(4)(E), the justifications and approvals described in FAR 6.104 are not required if the head of the contracting activity prepares a document that describes the terms of an agreement or treaty or the written directions, such as a Letter of Offer and Acceptance, that have the effect of requiring the use of other than competitive procedures for the acquisition.

206.103-5 Authorized or required by statute.

(c) Application. Agencies may use this authority to?

(i) Acquire supplies and services from military exchange stores outside the United States for use by the armed forces outside the United States in accordance with

10 U.S.C. 2424(a) and subject to the limitations of 10 U.S.C. 2424(b). The limitations of 10 U.S.C. 2424(b)(1) and (2) do not apply to the purchase of soft drinks that are manufactured in the United States. For the purposes of 10 U.S.C. 2424, soft drinks manufactured in the United States are brand name carbonated sodas, manufactured in the United States, as evidenced by product markings.

(ii) Acquire police, fire protection, airfield operation, or other community services from local governments at military installations to be closed under the circumstances in 237.7401 (section 2907 of Fiscal Year 1994 Defense Authorization Act (Pub. L. 103-160)).

(iii) Acquire products and services under the Pilot Program to Incentivize Contracting with Employee-Owned Businesses (see subpart 270.1).

(d) Limitations.

(i) 10 U.S.C. 4141 precludes use of this exception for awards to colleges or universities for the performance of research and development, or for the construction of any research or other facility, unless?

(A) The statute authorizing or requiring award specifically?

(1) States that the statute modifies or supersedes the provisions of 10 **U.S.C. 4141;**

(2) Identifies the particular college or university involved; and

(3) States that award is being made in contravention of 10 U.S.C. 4141(a); and

(B) The Secretary of Defense provides Congress written notice of intent to award. The contract cannot be awarded until 180 days have elapsed since the date Congress received the notice of intent to award. Contracting activities must submit a draft notice of intent with supporting documentation through channels to the Principal Director, Defense Pricing, Contracting, and Acquisition Policy, Office of the Under Secretary of Defense (Acquisition and Sustainment).

(ii) The limitation in paragraph (d)(i) of this section applies only if the statute authorizing or requiring award was enacted after September 30, 1989.

(iii) Subsequent statutes may provide different or additional constraints on the award of contracts to specified colleges and universities. Contracting officers should consult legal counsel on a case-by-case basis.

206.103-7 Public interest.

For the defense agencies, the written determination to use this authority must be made by the Secretary of Defense.

206.104-70 Justification and Approval.

(a) In accordance with section 823 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116-92), no justification and approval is required for a sole-source contract under the 8(a) authority (15 U.S.C. 637(a)) for an amount not exceeding

$100 million.

(b) In lieu of FAR 6.104-1(b), in accordance with section 823 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116-92), contracting officers shall not award a sole-source contract under the 8(a) authority (15 U.S.C. 637(a)) for an amount exceeding $100 million unless?

(1) The contracting officer justifies the use of a sole-source contract in writing in accordance with FAR 6.104-1;

(2) The justification is approved in accordance with 206.104-270(c); and

(3) The justification and related information are made public after award in accordance with FAR 6.301.

206.104-71 Justification content.

(a)(1) In lieu of the threshold at FAR 6.104-2(a) Table 6-1, each justification shall include the information at FAR 6.104-1(a), except for sole-source 8(a) contracts over $100 million (see paragraph (d) of this section).

(2) Include the information required by PGI 206.104-71(b) in justifications citing the authority at FAR 6.103-1.

(b) In lieu of the threshold at FAR 6.104-1(b), each justification for a sole-source 8(a) contract over $100 million shall include the information at FAR 6.104-1(b).

206.104-72 Approval of justification.

(a) The Under Secretary of Defense (Acquisition and Sustainment) may delegate this authority to?

(1) An Assistant Secretary of Defense; or

(2) For a defense agency, an officer or employee serving in, assigned, or detailed to that agency who?

(i) If a member of the armed forces, is serving in a rank above brigadier general or rear admiral (lower half); or

(ii) If a civilian, is serving in a position with a grade under the General Schedule (or any other schedule for civilian officers or employees) that is comparable to or higher than the grade of major general or rear admiral.

(b) For a non-competitive follow-on acquisition to a previous award for the same supply or service supported by a justification for other than full and open competition citing the authority at FAR 6.103-1, follow the procedures at PGI 206.104-270.

(c) In accordance with section 823 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116-92), the head of the procuring activity is the approval authority for a proposed sole-source 8(a) contract exceeding $100 million. This authority may only be delegated to an officer or employee who?

(1) If a member of the armed forces, is serving in a rank above brigadier general or rear admiral (lower half); or

(2) If a civilian, is serving in a position with a grade under the General Schedule

(or any other schedule for civilian officers or employees) that is comparable to or higher than the grade of major general or rear admiral.

206.301 Availability of the justification.

See PGI 206.301 for further guidance on the requirements for preparing, obtaining approval, and posting justification and approval documents for contracts awarded using the authority of FAR 6.103.

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Attachment A1

DARS Tracking Number: 2026-O0017

Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 6

Defense FAR Supplement (DFARS) Part 206

SUBPART 252?SOLICITATION PROVISIONS AND CONTRACT CLAUSES

SUBPART 252.2?TEXT OF PROVISIONS AND CLAUSES

252.206-7000 Domestic Source Restriction.

As prescribed at 206.103-370, insert the following provision:

DOMESTIC SOURCE RESTRICTION

(AUG 2023)

This solicitation is restricted to domestic sources under the authority of 10 U.S.C. 3204(a)(3). Foreign sources, except Canadian sources, are not eligible for award.

(End of provision)

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Attachment A2

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Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 6

Defense FAR Supplement (DFARS) Part 206

PGI 206?COMPETITION REQUIREMENTS

PGI 206.0?SCOPE OF PART

PGI 206.000 Scope of part.

For information on various approaches that may be used to competitively fulfill DoD requirements, see the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics Guidelines for Creating and Maintaining a Competitive Environment for Supplies and Services in the Department of Defense

(https://www.acq.osd.mil/asda/dpc/cp/policy/docs/comp/BBP_2-0_Comp_Guidelines_Update_(3_Dec_2014).pdf).

PGI 206.001-70 Exception for prototype projects for follow-on production contracts.

(b) The following documents provide additional information on other transaction agreements:

(1) The DoD Other Transaction Guide (https://www.acq.osd.mil/asda/dpc/cp/policy/other-policy-areas.html); and

(2) USD(A&S) Memorandum, titled Authority for Use of Other Transactions for Prototype Projects Under 10, United States Code, Section 4022, dated August 27, 2025 (https://www.acq.osd.mil/asda/dpc/cp/policy/docs/pa/USD(A&S)_Updated_Delegation_of_OT_Authority_Memo.pdf).

PGI 206.1?PRESOLICITATION

PGI 206.101 Full and open competition.

PGI 206.101-70 Other competitive procedures.

(c) Approval of the Under Secretary of Defense for Research and Engineering is required prior to the award of a contract resulting from a prize competition that exceeds $10,000 (see 10 U.S.C. 4025(c)(3)). Obtain the approval from the program office and include it in the contract file.

PGI 206.102?Full and open competition after excluding sources.

PGI 206.102-1 Establishing or maintaining alternative sources.

(b)(i) Include the following information, as applicable, and any other information that may be pertinent, in the supporting documentation:

(A) The acquisition history of the supplies or services, including sources, prices, quantities, and dates of award.

(B) The circumstances that make it necessary to exclude the particular source from the contract action, including?

(1) The reasons for the lack of or potential loss of alternative sources; e.g., the technical complexity and criticality of the supplies or services; and

(2) The current annual requirement and projected needs for the supplies or services.

(C) Whether the existing source must be totally excluded from the contract action or whether a partial exclusion is sufficient.

(D) The potential effect of exclusion on the excluded source in terms of loss of capability to furnish the supplies or services in the future.

(E) When FAR 6.102-1(a)(1) is the authority, the basis for?

(1) The determination of future competition; and

(2) The determination of reduced overall costs. Include, as a minimum, a discussion of start-up costs, facility costs, duplicative administration costs, economic order quantities, and life cycle cost considerations.

(F) When FAR 6.102-1(a)(2) is the authority?

(1) The current annual and mobilization requirements for the supplies or services, citing the source of, or the basis for, the data;

(2) A comparison of current production capacity with that necessary to meet mobilization requirements;

(3) An analysis of the risks of relying on the present source; and

(4) A projection of the time required for a new source to acquire the necessary facilities and achieve the production capacity necessary to meet mobilization requirements.

(ii) The following is a sample format for Determination and Findings citing the authority of FAR 6.102-1(a):

Attachment A2
DARS Tracking Number: 2026-O0017
Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 6
Defense FAR Supplement (DFARS) Part 206
Determination and Findings
Authority to Exclude a Source
In accordance with 10 U.S.C. 3203(a)(1), it is my determination that the following contract action may be awarded using full and open competition after exclusion of _____*:

(Describe requirement.)

Findings
The exclusion of _____*
Alternate 1: will increase or maintain competition for this requirement and is expected to result in a reduction of $_____ in overall costs for the present and future acquisition of these supplies or services. (Describe how estimate was derived.)
Alternate 2: is in the interest of national defense because it will result in having a supplier available for furnishing these supplies or services in case of a national emergency or industrial mobilization. (Explain circumstances requiring exclusion of source.)
Alternate 3: is in the interest of national defense because it will result in establishment or maintenance of an essential engineering, research or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center. (Explain circumstances requiring exclusion of source.)
* Identify source being excluded.
PGI 206.103 Other than full and open competition.
PGI 206.103-170 Only one responsible source and no other supplies or services will satisfy agency requirements.

(d) Limitations. When utilizing the authority at FAR 6.103-1, the contracting officer shall post a request for information or a sources sought notice, and shall include the results of this inquiry in the justification required by FAR 6.104. This requirement to post may be waived by the Head of the Contracting Activity, or designee. The waiver authority may not be delegated lower than a general or flag officer or a member of the Senior Executive Service.
PGI 206.103-270 Unusual and compelling urgency.
The circumstances under which use of this authority may be appropriate include, but are not limited to, the following:
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DARS Tracking Number: 2026-O0017
Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 6
Defense FAR Supplement (DFARS) Part 206

(i) Supplies, services, or construction needed at once because of fire, flood, explosion, or other disaster.

(ii) Essential equipment or repair needed at once to?

(A) Comply with orders for a ship;

(B) Perform the operational mission of an aircraft; or

(C) Preclude impairment of launch capabilities or mission performance of

missiles or missile support equipment.

(iii) Construction needed at once to preserve a structure or its contents from damage.

(iv) Purchase requests citing an issue priority designator under DoD Manual **4140.01, Volume 5, DoD Supply Chain Materiel Management Procedures: Delivery of** Material, of 4 or higher, or citing ?Electronic Warfare QRC Priority.?

PGI 206.104-70 Justification and Approval.

PGI 206.104-71 Justification content.

Justifications citing the authority at FAR 6.103-1 to permit the use of other than full and open competition, shall--

(1) Include the results of the request for information or sources sought notice posted in accordance with PGI 206.103-170 (unless the requirement to post has been waived); and

(2) For non-competitive follow-on acquisitions of supplies or services previously awarded on a non-competitive basis, include a copy of the previous justification to assist the approval authority in determining whether the planned actions to remove any barriers to competition cited on the previous justification were completed.

PGI 206.104-72 Approval of justification.

For a non-competitive follow-on to a previous award for the same supply or service supported by a justification for other than full and open competition citing the authority at **FAR 6.103-1?**

(a) The justification shall include a copy of the previous justification to assist the approval authority in determining whether the planned actions to remove any barriers to competition cited on the previous justification were completed; and

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Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 6

Defense FAR Supplement (DFARS) Part 206

(b) The approval authority shall determine whether the planned actions were completed. If the actions were not completed, the justification for the follow-on acquisition shall be approved by the approval authority one-level above the approval authority for the previous justification (see FAR 6.104-2). If the previous justification was approved by the Senior Procurement Executive (SPE), the approval remains at the SPE level.

PGI 206.301 Availability of the justification.

See OUSD(AT&L) DPAP memorandum, ?Noncompetitive Contracts Awarded Based on Urgency,? dated April 13, 2015, for further guidance on the justification and approval documents required for contracts awarded using the unusual and compelling urgency exception.

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PART 7

OFFICE OF THE ASSISTANT SECRETARY OF WAR

Status: Class D

OFFICE OF THE ASSISTANT SECRETARY OF WAR

3000 DEFENSE PENTAGON

WASHINGTON, DC 20301-3000

ACQUISITION

AND SUSTAINMENT

In reply refer to

DARS Tracking Number: 2026-O0020

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES SPECIAL OPERATIONS

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES TRANSPORTATION

COMMAND (ATTN: ACQUISITION EXECUTIVE)

DEPUTY ASSISTANT SECRETARY OF THE ARMY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE NAVY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE

(CONTRACTING)

DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Class Deviation?Revolutionary Federal Acquisition Regulation (FAR) Overhaul

Part 7, Defense FAR Supplement (DFARS) Part 207

Effective February 1, 2026, contracting officers shall use?

? The revised FAR Part 7, Acquisition Planning published on the Revolutionary FAR Overhaul web page at https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-7 in lieu of the text codified at 48 CFR chapter 1 (https://www.ecfr.gov).

? The attached DFARS Part 207, Acquisition Planning in lieu of the text codified at 48 CFR chapter 2; and

? The attached DFARS Procedures, Guidance, and Information (PGI) 207, Acquisition Planning in lieu of the PGI text published on the Defense Pricing, Contracting, and Acquisition Policy web page at https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.

This class deviation implements the following:

? Section 2 of E.O. 14275, Restoring Common Sense to Federal Procurement, which establishes the policy that the FAR ?should only contain provisions required by statute or essential to sound procurement, and any FAR provisions that do not

advance these objectives should be removed.
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? Section 4(a) of E.O. 14265, Modernizing Defense Acquisitions and Spurring Innovation in the Defense Industrial Base which requires the Secretary of War to eliminate or revise any unnecessary supplemental regulations or any other internal guidance, such as relevant parts of the Financial Management Regulation and Defense Federal Acquisition Regulation Supplement.
? The Office of Management and Budget memorandum, M-25-26 issued on May 2, 2025, titled, Overhauling the Federal Acquisition Regulation, which provided additional guidance to federal agencies regarding the FAR overhaul.
This class deviation remains in effect until rescinded or incorporated into the FAR, DFARS, and DFARS PGI. Inquiries regarding this class deviation can be addressed to osd.pentagon.ousd-a-s.mbx.dfars@mail.mil.
John M. Tenaglia
Principal Director,
Defense Pricing, Contracting, and
Acquisition Policy
Attachments:
As stated
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PART 207?ACQUISITION PLANNING

SUBPART 207.1?ACQUISITION PLANS

207.102 Requirements.

(b)(1) See 212.102 regarding requirements for a written determination that the commercial product or commercial service definition has been met when using FAR part 12 procedures.

207.103-70 Agency-head responsibilities.

(a) Prepare written acquisition plans for?

(1) Acquisitions for development, as defined in FAR 35.001, when the total price of all contracts for the acquisition program is estimated at $10 million or more;

(2) Acquisitions for production or services when the total price of all contracts for the acquisition program is estimated at $50 million or more for all fiscal years or $25 million or more for any fiscal year; and

(3) Any other acquisition considered appropriate by the department or agency.

(b) Written plans are not required for final buy out or one-time buy acquisitions. The terms "final buy out" and "one-time buy" refer to a single contract that covers all known present and future requirements. This exception does not apply to a multiyear contract or a contract with options or phases.

(c) Prepare written acquisition plans for acquisition programs meeting the thresholds of paragraphs (a) of this section on a program basis. Other acquisition plans may be written on either a program or an individual contract basis.

(d) For procurement of conventional ammunition, as defined in DoDD 5160.65, Single Manager for Conventional Ammunition (SMCA), the SMCA will review the acquisition plan to determine if it is consistent with retaining national technology and industrial base capabilities in accordance with 10 U.S.C. 3204(a)(3) and section 806 of Public Law 105-261. The department or agency?

(1) Must submit the acquisition plan to the address in PGI 207.103-70(d); and

(2) Must not proceed with the procurement until the SMCA provides written concurrence with the acquisition plan. In the case of a non-concurrence, the SMCA will resolve issues with the Army Office of the Executive Director for Conventional Ammunition.

207.104-70 General procedures.

(a) In developing an acquisition plan, agency officials must take into account the requirement for scheduling and conducting a Peer Review in accordance with 201.170.

(b) In addition to the requirements of FAR 7.104, planners must follow the procedures at PGI 207.104(b).

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207.106-70 Additional requirements for major systems.

(a) Contracting officers are prohibited by 10 U.S.C. 3208(d)(1) from requiring offers for development or production of major systems that would enable the Government to use technical data to competitively reprocure identical items or components of the system if the item or component were developed exclusively at private expense, unless the contracting officer determines that?

(1) The original supplier of the item or component will be unable to satisfy program schedule or delivery requirements;

(2) Proposals by the original supplier of the item or component to meet mobilization requirements are insufficient to meet the agency's mobilization needs; or

(3) The Government is otherwise entitled to unlimited rights in technical data.

(b) If the contracting officer makes a determination, under paragraphs (a)(1) and (2) of this section, for a competitive solicitation, 10 U.S.C. 3208(d)(2) requires that the evaluation of items developed at private expense be based on an analysis of the total value, in terms of innovative design, life-cycle costs, and other pertinent factors, of incorporating such items in the system.

(c) In accordance with 10 U.S.C. 3774(a) and DoD policy requirements, acquisition plans for major weapon systems and subsystems of major weapon systems must?

(1) Assess the long-term technical data and computer software needs of those systems and subsystems; and

(2) Establish acquisition strategies that provide for the technical data

deliverables and associated license rights needed to sustain those systems and subsystems over their life cycle. The strategy may include?

(i) The development of maintenance capabilities within DoD; or

(ii) Competition for contracts for sustainment of the systems or subsystems.

(d) Assessments and corresponding acquisition strategies developed under paragraph (c) of this section must?

(1) Be developed before issuance of a solicitation for the weapon system or subsystem;

(2) In accordance with 10 U.S.C. 4328, to emphasize reliability and maintainability in weapon system design, ensure that reliability and maintainability are included in the performance attributes of the key performance parameters on sustainment during the development of capabilities requirements. For additional guidance see PGI 207.104-70;

(3) Address the merits of including a priced contract option for the future delivery of technical data and computer software, and associated license rights, that were not acquired upon initial contract award;

(4) Address the potential for changes in the sustainment plan over the life cycle of the weapon system or subsystem; and

(5) Apply to weapon systems and subsystems that are to be supported by performance-based logistics arrangements as well as to weapon systems and subsystems that are to be supported by other sustainment approaches.

(e) See part 209 for policy applicable to acquisition strategies that consider the use of lead system integrators.

(f)(1) In accordance with section 202 of the Weapon Systems Acquisition Reform Act of 2009 (Pub. L. 111-23), acquisition plans for major defense acquisition programs as defined in 10 U.S.C. 4201, must include measures that?

(i) Ensure competition, or the option of competition, at both the prime contract level and subcontract level (at such tier or tiers as are appropriate) throughout the program life cycle as a means to improve contractor performance; and

(ii) Document the rationale for the selection of the appropriate subcontract tier or tiers under paragraph (f)(1)(i) of this section, and the measures which will be employed to ensure competition, or the option of competition.

(2) Measures to ensure competition, or the option of competition, may include, but are not limited to, cost-effective measures intended to achieve the following:

(i) Competitive prototyping.

(ii) Dual-sourcing.

(iii) Unbundling of contracts.

(iv) Funding of next-generation prototype systems or subsystems.

(v) Use of modular, open architectures to enable competition for upgrades.

(vi) Use of build-to-print approaches to enable production through multiple

sources.

(vii) Acquisition of complete technical data packages.

(viii) Periodic competitions for subsystem upgrades.

(ix) Licensing of additional suppliers.

(x) Periodic system or program reviews to address long-term competitive effects of program decisions.

(3) In order to ensure fair and objective ?make-or-buy? decisions by prime contractors, acquisition strategies and resultant solicitations and contracts must?

(i) Require prime contractors to give full and fair consideration to qualified

sources other than the prime contractor for the development or construction of major subsystems and components of major weapon systems;

(ii) Provide for Government surveillance of the process by which prime contractors consider such sources and determine whether to conduct such development or construction in-house or through a subcontract; and

(iii) Provide for the assessment of the extent to which the prime contractor has given full and fair consideration to qualified sources in sourcing decisions as a part of past performance evaluations.

(4) Whenever a source-of-repair decision results in a plan to award a contract for the performance of maintenance and sustainment services on a major weapon system, to the maximum extent practicable and consistent with statutory requirements, the acquisition plan must prescribe that award will be made on a competitive basis after giving full consideration to all sources (including sources that partner or subcontract with public or private sector repair activities).

(5) In accordance with 10 U.S.C. 4328, acquisition plans for engineering manufacturing and development and production of major systems defined in **10 U.S.C. 3041(a) and 4202 and for major defense acquisition programs, must** include performance measures that are developed using best practices for responding to the positive or negative performance of a contractor for the engineering and manufacturing development or production of a weapon system, including embedded software. At a minimum the contracting officer must?

(i) Encourage the use of incentive fees and penalties as appropriate; and

(ii) Allow the program manager or comparable requiring activity official exercising program management responsibilities, to base determinations of a contractor?s performance on reliability and maintainability data collected during the program. Such data collection and associated evaluation metrics must be described in detail in the contract; and to the maximum extent practicable, the data must be shared with appropriate contractor and Government organizations.

(g) In accordance with section 815 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417) and DoD policy requirements, acquisition plans for major weapons systems must include a plan for the preservation and storage of special

tooling associated with the production of hardware for major defense acquisition programs through the end of the service life of the related weapons system. The plan must include the identification of any contract clauses, facilities, and funding required for the preservation and storage of such tooling. The Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)) may waive this requirement if USD(A&S) determines that it is in the best interest of DoD.

(h) When selecting contract type, see 234.004 (section 811 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239)).

207.108 Additional requirements for teleworking.

See PGI 207.108 for additional guidance concerning places of performance.

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207.170 Public-Private Competitions.

See PGI 207.170 for policy on the Governmentwide moratorium and restrictions on public-private competitions conducted pursuant to Office of Management and Budget (OMB) Circular A-76.

207.171 Component breakout.

See PGI 207.171 for component breakout policy and procedures.

207.172 Human research.

Any DoD component sponsoring research involving human subjects?

(a) Is responsible for oversight of compliance with 32 CFR Part 219, Protection of Human Subjects; and

(b) Must have a Human Research Protection Official, as defined in the clause at **252.235-7004, Protection of Human Subjects, and identified in the DoD component?s** Human Research Protection Management Plan. This official is responsible for the oversight and execution of the requirements of the clause at 252.235-7004 and must be identified in the written acquisition plan.

SUBPART 207.4--EQUIPMENT ACQUISITION

207.401 Acquisition considerations.

If an equipment lease is expected to exceed 60 days, the requiring activity must provide the contracting officer with the justification supporting the decision to lease or purchase.

207.470 Statutory requirements.

(a) The contracting officer must not enter into any contract for the lease or charter of any vessel, aircraft, or combat vehicle, or any contract for services that would require the use of the contractor?s vessel, aircraft, or combat vehicle, unless the Secretary of the military department concerned has satisfied the requirements of **10 U.S.C. 3671-3677, when?**

(1) The contract will be a long-term lease or charter as defined in 10 U.S.C. 3674(a)(1); or

(2) The terms of the contract provide for a substantial termination liability as

defined in 10 U.S.C. 3674(b). Also see PGI 207.470.

(b) As required by 10 U.S.C. 3678, the contracting officer must not enter into any contract for any vessel, aircraft, or vehicle, through a lease, charter, or similar agreement with a term of 18 months or more, or extend or renew any such contract for a term of 18 months or more, unless the head of the contracting activity has?

(1) Considered all costs of such a contract (including estimated termination liability); and

(2) Determined in writing that the contract is in the best interest of the Government.

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(c) Except as provided in paragraphs (a) and (b) of this section, the contracting officer may use leasing in the acquisition of commercial vehicles and associated equipment whenever the contracting officer determines that leasing of such vehicles is practicable and efficient (10 U.S.C. 3681).

207.471 Funding requirements.

(a) Fund leases in accordance with DoD Financial Management Regulation (FMR) **7000.14-R, Volume 2A, Chapter 1.**

(b) DoD leases are either capital leases or operating leases. See FMR 7000.14-R, Volume 4, Chapter 6, Section 060206.

(c) Use procurement funds for capital leases, as these are essentially installment purchases of property.

SUBPART 207.5?INHERENTLY GOVERNMENTAL FUNCTIONS

207.500 Scope of subpart.

This subpart also implements 10 U.S.C. 4508.

207.503-70 Policy.

(a) Agency Determinations. The written determination required by FAR 7.503(e) must?

(1) Be prepared using DoD Instruction 1100.22, Guidance for Determining Workforce Mix; and

(2) Include a determination that none of the functions to be performed are exempt from private sector performance, as addressed in DoD Instruction 1100.22.

(b) Contracts for acquisition functions.

(1) In accordance with 10 U.S.C. 4508, the head of an agency may enter into a contract for performance of the acquisition functions closely associated with inherently governmental functions that are listed at FAR 7.503(d) only if?

(i) The contracting officer determines that appropriate military or civilian DoD personnel?

(A) Cannot reasonably be made available to perform the functions;

(B) Will oversee contractor performance of the contract; and

(C) Will perform all inherently governmental functions associated with

the functions to be performed under the contract; and

(ii) The contracting officer ensures that the agency addresses any potential organizational conflict of interest of the contractor in the performance of the functions under the contract (see FAR Subpart 9.5).

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(c) See related information at PGI 207.503-70.

SUBPART 207.70?BUY-TO-BUDGET?ADDITIONAL QUANTITIES OF END ITEMS

207.7001 Definition.

?End item,? as used in this subpart, means a production product assembled, completed, and ready for issue or deployment.

207.7002 Authority to acquire additional quantities of end items.

10 U.S.C. 3069 authorizes DoD to use available funds for the acquisition of an end item at a higher quantity than the quantity specified in a law providing the funding for the specific end item, if the head of an agency determines that?

(a) The agency has an established requirement for the end item that is expected to remain substantially unchanged throughout the period of the acquisition;

(b) It is possible to acquire the higher quantity of the end item without additional funding because of production efficiencies or other cost reductions;

(c) The amount of funds used for the acquisition of the higher quantity of the end item will not exceed the amount provided under that law for the acquisition of the end item; and

(d) The amount provided under that law for the acquisition of the end item is sufficient to ensure that each unit of the end item acquired within the higher quantity is fully funded as a complete end item.

207.7003 Limitation.

In accordance with 10 U.S.C. 3069, the acquisition of additional quantities is limited to not more than 10 percent of the quantity approved in the justification and approval of the use of other than competitive procedures prepared in accordance with FAR Part 6.

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PGI 207?ACQUISITION PLANNING

PGI 207.1?ACQUISITION PLANS

PGI 207.103-70 Agency-head responsibilities.

(d) Submit acquisition plans for procurement of conventional ammunition to?

Joint Program Executive Office Armaments and Ammunition

ATTN: SFAE-AA

Building 1
Picatinny Arsenal, NJ 07806-5000
Telephone: Commercial 973-724-7101; DSN 880-7101
Email: usarmy.pica.peo-ammo.list.zjs-section-806@army.mil
PGI 207.104-70 General procedures.

(b) For acquisitions covered by DFARS 207.103-70(a)(1) and (2), correlate the plan to the DoD Future Years Defense Program, applicable budget submissions, and the decision coordinating paper/program memorandum, as appropriate. It is incumbent upon the program manager to coordinate the plan with all those who have a responsibility for the development, management, or administration of the acquisition. The acquisition plan should be provided to the contract administration organization to facilitate resource allocation and planning for the evaluation, identification, and management of contractor performance risk.

(1) Acquisition background and objectives.

(i) Statement of need. Include?

(A) Applicability of an acquisition decision document, a milestone decision review, or a service review, as appropriate.

(B) The date approval for operational use has been or will be obtained. If waivers are requested, describe the need for the waivers.

(C) A milestone chart depicting the acquisition objectives.

(D) Milestones for updating the acquisition plan. Indicate when the plan will be updated. Program managers should schedule recurring reviews and updates to coincide with DAB reviews and the transition from one phase to another (e.g., system development and demonstration to production and deployment).

(E) Supplies and services. To determine if acquisitions for supplies or services are covered by DFARS 208.2, acquisition officials must use the AbilityOne Program Procurement List published by the Committee for Purchase From People Who Are Blind or Severely Disabled at http://www.abilityone.gov/procurement_list/index.html (see FAR Part **8.2).**

(ii) Life-cycle cost. When acquiring tents or other temporary structures, consider total life-cycle costs in accordance with DFARS 215.101.

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(iii) Acquisition streamlining. See DoDD 5000.1, The Defense Acquisition System, and guidebooks at https://aaf.dau.edu/guidebooks/.

(2) Plan of action.

(i) Competition. For information on various approaches that may be used to competitively fulfill DoD requirements, see the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics Actions to Improve Competition.

(ii) Acquisition considerations. When supplies or services will be acquired by placing an order under a non-DoD contract (e.g., a Federal Supply Schedule contract), regardless of whether the order is placed by DoD or by another agency on behalf of DoD, address the method of ensuring that the order will be consistent with DoD statutory and

regulatory requirements applicable to the acquisition and the requirements for use of DoD appropriated funds.

(iii) Budgeting and funding. Include specific references to budget line items and program elements, where applicable, estimated production unit cost, and the total cost for remaining production.

(iv) Product or service descriptions. For development acquisitions, describe the market research undertaken to identify commercial products or commercial services, commercial products or commercial services with modifications, or nondevelopmental items other than commercial products (see FAR part 10) that could satisfy the acquisition objectives.

(v) Logistics considerations.

(A) Describe the extent of integrated logistics support planning, including total life cycle system management and performance-based logistics. Reference approved plans. See PGI 245.103-73 for information on reporting requirements for Government inventory held by contractors under sustainment contracts in accordance with DoD Manual **4140.01, Volume 6, DoD Supply Chain Materiel Management Procedures: Materiel Returns,** Retention, and Disposition.

(B)(1) Discuss the mission profile, reliability, and maintainability (R&M) program plan, R&M predictions, redundancy, qualified parts lists, parts and material qualification, R&M requirements imposed on vendors, failure analysis, corrective action and feedback, and R&M design reviews and trade-off studies. Also discuss corrosion prevention and mitigation plans.

(2) See the Under Secretary of Defense Acquisition and Sustainment Policy Memo, dated January 31, 2019, entitled ?Implementation of 10 U.S.C. 2443? Sustainment Factors in Weapon System Design? and DoD Instruction 5000.02, Operation of the Adaptive Acquisition Framework, policies and procedures.

(C) For all acquisitions, see part 227 regarding technical data and associated license rights, and computer software and associated license rights. For acquisitions involving major weapon systems and subsystems of major weapon systems, see the additional requirements at DFARS 207.106-70.

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(D) See DoD 4120.24-M, Defense Standardization Program (DSP) Policies and Procedures.

(E) Describe the extent of Computer-Aided Acquisition and Logistics Support

(CALS) implementation (see MIL-STD-1840C, Automated Interchange of Technical Information).

(vi) Environmental and energy conservation objectives.

(A) Discuss actions taken to ensure either elimination of or authorization to use class I ozone-depleting chemicals and substances (see DFARS part 223).

(B) Ensure compliance with DoDI 4715.23, Integrated Recycling and Solid Waste Management.

(vii) Other considerations.

(A) National Technology and Industrial Base. For major defense acquisition programs, address the following (10 U.S.C. 4811(c))?

(1) An analysis of the capabilities of the national technology and industrial base to develop, produce, maintain, and support such program, including consideration of the following factors related to foreign dependency (10 U.S.C. 4816)?

(i) The availability of essential raw materials, special alloys, composite materials, components, tooling, and production test equipment for the sustained production of systems fully capable of meeting the performance objectives established for those systems; the uninterrupted maintenance and repair of such systems; and the sustained operation of such systems.

(ii) The identification of items specified in paragraph (b)(19)(A)(1)(i) of this section that are available only from sources outside the national technology and industrial base.

(iii) The availability of alternatives for obtaining such items from within the national technology and industrial base if such items become unavailable from sources outside the national technology and industrial base; and an analysis of any military vulnerability that could result from the lack of reasonable alternatives.

(iv) The effects on the national technology and industrial base that result from foreign acquisition of firms in the United States.

(2) Consideration of requirements for efficient manufacture during the design and production of the systems to be procured under the program.

(3) The use of advanced manufacturing technology, processes, and systems during the research and development phase and the production phase of the program.

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(4) To the maximum extent practicable, the use of contract solicitations that encourage competing offerors to acquire, for use in the performance of the contract, modern technology, production equipment, and production systems (including hardware and software) that increase the productivity of the offerors and reduce the life-cycle costs.

(5) Methods to encourage investment by U.S. domestic sources in advanced manufacturing technology production equipment and processes through?

(i) Recognition of the contractor?s investment in advanced manufacturing technology production equipment, processes, and organization of work systems that build on workers? skill and experience, and work force skill development in the development of the contract objective; and

(ii) Increased emphasis in source selection on the efficiency of production.

(6) Expanded use of commercial manufacturing processes rather than processes specified by DoD.

(7) Elimination of barriers to, and facilitation of, the integrated manufacture

of commercial products or commercial services and items being produced under DoD contracts.

(8) Expanded use of commercial products or commercial services, commercial products or commercial services with modifications, or to the extent commercial products or commercial services that meet the agency?s needs are not available, nondevelopmental items other than commercial products (see FAR part 10).

(9) Acquisition of major weapon systems as commercial products (see DFARS part 234).

(B) Industrial capability (IC).

(1) Provide the program?s IC strategy that assesses the capability of the U.S. industrial base to achieve identified surge and mobilization goals. If no IC strategy has been developed, provide supporting rationale for this position.

(2) If, in the IC strategy, the development of a detailed IC plan was determined to be applicable, include the plan by text or by reference. If the development of the IC plan was determined not to be applicable, summarize the details of the analysis forming the basis of this decision.

(3) If the program involves peacetime and wartime hardware configurations that are supported by logistics support plans, identify their impact on the IC plan.

(C) Special considerations for acquisition planning for crisis situations. Ensure that the requirements of DoD Instruction 1100.22, Policy and Procedures for Determining Workforce Mix, are addressed. Also?

(1) Acquisition planning must consider whether a contract is likely to be performed in crisis situations outside the United States and must develop appropriately

detailed measures for inclusion in the contract. Combatant commanders establish operational plans identifying essential services that must continue during crisis. DoDI **1100.22 requires Combatant Commanders to develop contingency plans if they have a** reasonable doubt that a contractor will continue to provide essential services during a mobilization or crisis. When planning the acquisition, consider these operational plans and the resources available to carry out these plans.

(2) During acquisition planning, identify which services have been declared so essential that they must continue during a crisis situation. A best practice is to create a separate section, paragraph, line, or other designation in the contract for these essential services so they can be tracked to an option or separate contract line item.

(3) The requirements for the contractor written plan for continuity of essential services and the criteria for assessing the sufficiency of the plan will be determined/tailored for each acquisition of essential services by the contracting officer in coordination with the functional manager. The contractor's written plan, including prices/cost, shall be considered and evaluated in conjunction with the technical evaluation of offers.

(4) Operational-specific contractor policies and requirements resulting from

combatant commander ?integrated planning? will be described in operation plans (OPLAN), operation orders (OPORD) or separate annexes, and must be incorporated into applicable contracts. The plans may include rules for theater entry, country clearance, use of weapons, living on-base, etc. Therefore, the requiring activity is responsible for obtaining pertinent OPLANs, OPORDs, and annexes (or unclassified extracts) from the affected combatant command or military service element or component and for ensuring that the contract is consistent with the theater OPLAN and OPORD.

(5) Ask the requiring activity to confirm that the appropriate personnel department has determined that inherently Governmental functions are not included in the contract requirements. If contract services will become inherently Governmental during a time of crisis, ensure that the contract states that work will be removed from the contract

(temporarily or permanently) upon the occurrence of a triggering event (specified in the contract) or upon notice from the contracting officer that informs the contractor when its responsibility to perform affected duties will stop or restart. The contract should require the contractor to have a plan for restarting performance after the crisis ends.

(6) If the combatant commander?s contingency plan requires military members to replace contractor employees during a crisis or contingency, acquisition planning must consider whether the contract should require the contractor to train military members to do that.

(7) For acquisitions that have or may have some portion of delivery of items or performance in a foreign country, address considerations and requirements set forth in DFARS 225.770, Contracts requiring performance or delivery in a foreign country; 225.771, Contractor personnel supporting U.S. Armed Forces deployed outside the United States; **225.772, Antiterrorism/force protection, and 225.773, Contract administration in support of** contingency operations.

(8) Contract administration planning considerations for contracts in support of contingency operations.

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(i) When delegation of contract administration services to a contracting officer located in a different geographic area to support a contract for the delivery of items or performance in a joint operations area will or may occur, address the resourcing of contract administration and oversight personnel, including administrative contracting officers, quality assurance specialists, contract administrators, property administrators, and contracting officers? representatives.

(ii) If contract delivery of items or performance in support of contingency operations will or may occur in an austere, uncertain, or hostile environment, address the need for logistics support of contract administration and oversight personnel.

(iii) When some portion of contract delivery of items or performance may take place in a contingency area, address pertinent combatant commander or joint force commander requirements and considerations for contract administration. Such requirements will be maintained on the particular combatant commander operational

contract support website, https://www.acq.osd.mil/asda/dpc/cp/cc/aor.html.

(iv) When contracts are awarded for performance in a contingency area, the head of the contracting activity is responsible for planning to ensure that contingency contracts will be closed in a timely manner considering personnel turnover and preaward, contract administration, and other contracting workload. A plan for reachback support of contract closeouts should be included, if required.

(9) For contracts that will incorporate the clause at DFARS 252.225-7040, Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States, in accordance with DFARS 225.771-5(a), or otherwise require accountability for contractor personnel, consider the requirements and resources necessary for both the Government and contractor to keep the Synchronized Predeployment and Operational Tracker (SPOT) current in accordance with the SPOT business rules available at the website provided at https://www.acq.osd.mil/asds/log/cso/ocs/spot.html .

(10) For contracts that will incorporate the clause at FAR 52.222-50, Combating Trafficking in Persons, consider the requirements and resources necessary for both the Government and contractor to implement and maintain compliance with Federal and DoD trafficking in persons requirements, including PGI 222.1703.

(D) Software and software maintenance. When acquiring software or software maintenance, see DFARS 212.

(E) Procurement Support for Theater Security Cooperation Efforts. When planning procurement support for theater security cooperation efforts (e.g., military exercises/training, base operations, weapons procurement, aviation fuels, construction, or the President's Emergency Plan for Aids Relief projects), planners should be aware that Department of State (DoS) missions (embassies and consulates) do not provide such contracting support; however, these missions can provide support for routine, non-complex services and supplies used by U.S. Government personnel, even if funded with foreign-military-sales case money (see DFARS PGI 225.78). Planners shall take the following steps:

(1) Become familiar with DoS Cable 11 STATE 030953, ?Procurement Roles and Responsibilities ? General Services Officer and DoD Personnel? (see also **DFARS PGI 225.78).**

(2) Request general guidance from the combatant-command coordinator on past practices in the particular location for which procurement support is to be requested;

(3) Contact the Defense Attaché Office and/or General Services Officer (normally the embassy/consulate contracting officer) at the DoS mission at least 60 days prior to the requirement, or as soon as practicable, to obtain information on?

(i) Availability of, and procedures associated with, requesting DoS mission procurement support;

(ii) Local sources of supplies and services; and

(iii) Business payment practices to support DoD procurement of

specific theater security cooperation procurement requirements.

(4) Ascertain whether payment support is available from the DoS mission.

(5) When DoS contracting support is determined to be unavailable or not allowed, ensure the party of DoD military and/or civilians deploying to support the particular Theater Security Cooperation effort either pre-arranges DoD contracting support through reach-back, if possible, or if necessary, includes a warranted contracting officer, field-ordering officer, or credit-card holder, and, if necessary, a paying agent.

PGI 207.108 Additional requirements for teleworking.

Contracting officers should avoid specifying unnecessarily restrictive places of performance, to the maximum extent practicable, in accordance with section 875 of the National Defense Authorization Act for Fiscal Year 2022.

PGI 207.170 Public-Private competitions.

PGI 207.170 Policy.

See the memorandum from Assistant Secretary of Defense (Manpower and Reserve Affairs) dated April 21, 2016, entitled ?Update on OMB Circular A-76 Public-Private Competition Prohibitions-FY 2016,? regarding the ongoing Governmentwide moratorium and restrictions on public-private competitions. The restrictions prohibit the conversion of any work currently performed (or designated for performance) by civilian personnel to contract perform

PGI 207.171 Component breakout.

DoD policy is to break out components of weapons systems or other major end items under certain circumstances.

(a) When it is anticipated that a prime contract will be awarded without adequate price competition, and the prime contractor is expected to acquire any component without adequate price competition, the agency must break out that component if?

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(1) Substantial net cost savings probably will be achieved; and

(2) Breakout action will not jeopardize the quality, reliability, performance, or timely delivery of the end item.

(b) Even when either or both the prime contract and the component will be acquired with adequate price competition, the agency must consider breakout of the component if substantial net cost savings will result from?

(1) Greater quantity acquisitions; or

(2) Such factors as improved logistics support (through reduction in varieties of spare parts) and economies in operations and training (through standardization of design).

(c) Breakout normally is not justified for a component that is not expected to exceed $1 million for the current year's requirement.

PGI 207.171-1 Procedures.

(1) Responsibility.

(i) Agencies are responsible for ensuring that?

(A) Breakout reviews are performed on components meeting the criteria in PGI

207.171(a) and (b);

(B) Components susceptible to breakout are earmarked for consideration in future acquisitions;

(C) Components earmarked for breakout are considered during requirements determination and appropriate decisions are made; and

(D) Components are broken out when required.

(ii) The program manager or other official responsible for the material program concerned is responsible for breakout selection, review, and decision.

(iii) The contracting officer or buyer and other specialists (e.g., small business specialist, engineering, production, logistics, and maintenance) support the program manager in implementing the breakout program.

(2) Breakout review and decision.

(i) A breakout review and decision includes?

(A) An assessment of the potential risks to the end item from possibilities such as delayed delivery and reduced reliability of the component;

(B) A calculation of estimated net cost savings (i.e., estimated acquisition savings less any offsetting costs); and

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(C) An analysis of the technical, operational, logistics, and administrative factors involved.

(ii) The decision must be supported by adequate explanatory information, including an assessment by the end item contractor when feasible.

(iii) The following questions should be used in the decision process:

(A) Is the end item contractor likely to do further design or engineering effort on the component?

(B) Is a suitable data package available with rights to use it for Government acquisition? (Note that breakout may be warranted even though competitive acquisition is not possible.)

(C) Can any quality control and reliability problems of the component be resolved without requiring effort by the end item contractor?

(D) Will the component require further technical support (e.g., development of specifications, testing requirements, or quality assurance requirements)? If so, does the Government have the resources (manpower, technical competence, facilities, etc.) to provide such support? Or, can the support be obtained from the end item contractor (even though the component is broken out) or other source?

(E) Will breakout impair logistics support (e.g., by jeopardizing standardization of components)?

(F) Will breakout unduly fragment administration, management, or performance of the end item contract (e.g., by complicating production scheduling or preventing identification of responsibility for end item failure caused by a defective component)?

(G) Can breakout be accomplished without jeopardizing delivery requirements

of the end item?

(H) If a decision is made to break out a component, can advance acquisition funds be made available to provide the new source any necessary additional lead time?

(I) Is there a source other than the present manufacturer capable of supplying the component?

(J) Has the component been (or is it going to be) acquired directly by the Government as a support item in the supply system or as Government-furnished equipment in other end items?

(K) Will the financial risks and other responsibilities assumed by the Government after breakout be acceptable?

(L) Will breakout result in substantial net cost savings? Develop estimates of probable savings in cost considering all offsetting costs such as increases in the cost of requirements determination and control, contracting, contract administration, data package

purchase, material inspection, qualification or preproduction testing, ground support and test equipment, transportation, security, storage, distribution, and technical support.

(iv) If answers to the questions reveal conditions unfavorable to breakout, the program manager should explore whether the unfavorable conditions can be eliminated. For example, where adequate technical support is not available from Government resources, consider contracting for the necessary services from the end item contractor or other qualified source.

(3) Records.

(i) The contracting activity shall maintain records on components reviewed for breakout. Records should evidence whether the components?

(A) Have no potential for breakout;

(B) Have been earmarked as potential breakout candidates; or

(C) Have been, or will be, broken out.

(ii) The program manager or other designated official must sign the records.

(iii) Records must reflect the facts and conditions of the case, including any assessment by the contractor, and the basis for the decision. The records must contain the assessments, calculations, and analyses discussed in paragraph 2 of this section, including the trade-off analysis between savings and increased risk to the Government because of responsibility for Government-furnished equipment.

PGI 207.4?EQUIPMENT ACQUISITION

PGI 207.470 Statutory requirements.

Contracting officers should obtain additional information on the definition of ?substantial termination liability? by contacting their respective legal adviser.

PGI 207.5?INHERENTLY GOVERNMENTAL FUNCTIONS

PGI 207.503-70 Policy.

Section 804 of the National Defense Authorization Act for Fiscal Year 2005 (Public Law 108-

375) limits contractor performance of acquisition functions closely associated with inherently Governmental functions.

PART 8

OFFICE OF THE ASSISTANT SECRETARY OF WAR

Status: Class D

OFFICE OF THE ASSISTANT SECRETARY OF WAR

3000 DEFENSE PENTAGON

WASHINGTON, DC 20301-3000

ACQUISITION

AND SUSTAINMENT

In reply refer to

DARS Tracking Number: 2026-O0049

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES SPECIAL OPERATIONS

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES TRANSPORTATION

COMMAND (ATTN: ACQUISITION EXECUTIVE)

DEPUTY ASSISTANT SECRETARY OF THE ARMY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE NAVY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE

(CONTRACTING)

DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Class Deviation?Revolutionary Federal Acquisition Regulation (FAR) Overhaul

Part 8, Defense FAR Supplement (DFARS) Part 208

Effective March 16, 2026, contracting officers shall use?

? The revised FAR Part 8, Required Sources of Supplies and Services, published on the Revolutionary FAR Overhaul web page at https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-8 in lieu of the text codified at 48 CFR chapter 1 (https://www.ecfr.gov);

? The attached DFARS Part 208, Required Sources of Supplies and Services, in lieu of the text codified at 48 CFR chapter 2, Parts 208 and 251, Use of Government Sources by Contractors; and

? The attached DFARS Procedures, Guidance, and Information (PGI) 208, Required Sources of Supplies and Services, in lieu of the PGI text for Parts 208 and 251, Use of Government Sources by Contractors, published on the Defense Pricing, Contracting, and Acquisition Policy web page https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.

FAR Parts 38, Federal Supply Schedule Contracting, and 51, Use of Government Sources by Contractors are consolidated in the RFO version of Part 8 and, as a result, are

?Reserved.? DFARS Part 251 and the associated PGI are consolidated in the attached and marked ?Reserved.?

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This class deviation implements the following:

? Section 2 of E.O. 14275, Restoring Common Sense to Federal Procurement, which establishes the policy that the FAR ?should only contain provisions required by statute or essential to sound procurement, and any FAR provisions that do not advance these objectives should be removed.?

? Section 4(a) of E.O. 14265, Modernizing Defense Acquisitions and Spurring Innovation in the Defense Industrial Base which requires the Secretary of War to eliminate or revise any unnecessary supplemental regulations or any other internal guidance, such as relevant parts of the Financial Management Regulation and Defense Federal Acquisition Regulation Supplement.

? The Office of Management and Budget memorandum, M-25-26 issued on May 2, 2025, titled, Overhauling the Federal Acquisition Regulation, which provided additional guidance to federal agencies regarding the FAR overhaul.

This class deviation remains in effect until rescinded or incorporated into the FAR, DFARS, and DFARS PGI. Inquiries regarding this class deviation can be addressed to osd.pentagon.ousd-a-s.mbx.dfars@mail.mil.

John M. Tenaglia

Principal Director,

Defense Pricing, Contracting, and

Acquisition Policy

Attachments:

As stated

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Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 8

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PART 208?REQUIRED SOURCES OF SUPPLIES AND SERVICES

SUBPART 208.1?PRESOLICITATION

208.103 Mandatory sources of supplies.

(a)(1) See PGI 208.103 for information on available items in DoD?s property inventories.

208.105 Contractor Use of Government supply sources.

208.105-2 Contractor permitted use of Government supply sources.

(c) Contract Clause. Insert the clause at 252.251-7999, Ordering From Government Supply Sources, in solicitations and contracts which include the clause at FAR 52.208-10, Government Supply Sources.

208.105-70 Fuel funded by the Defense Working Capital Fund

(a) If fuel is funded by the Defense Working Capital Fund, contracting officers

may authorize contractors to use Defense Logistics Agency Energy as a source of fuel in performance of other than cost-reimbursement contracts. When providing this authorization to contractors, follow the procedures at PGI 208.105-70.

(b) The contracting officer may also authorize the contractor to use the DD Form 1155 when requisitioning from the Department of Veterans Affairs.

(c) The authorizing agency is also responsible for promptly considering requests of the DoD supply source for authority to refuse to honor requisitions from a contractor that is indebted to DoD and has failed to pay proper invoices in a timely manner.

SUBPART 208.2?ACQUISITION FROM ABILITYONE PARTICIPATING NONPROFIT AGENCIES

208.201 General.

Follow the procedures at PGI 208.201 when placing orders with central nonprofit agencies.

208.270 Evaluation and award.

Evaluate service contracts awarded to Abilityone participating nonprofit agencies when the contract value exceeds the threshold at DFARS 215.104-70(g).

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SUBPART 208.3?ACQUISITIONS FROM FEDERAL PRISON INDUSTRIES, INC.

208.301-70 Acquisition of items for which Federal Prison Industries has a significant market share.

(a) Scope. This section implements 10 U.S.C. 3905.

(b) Definition. As used in this section?

?Item for which Federal Prison Industries (FPI) has a significant market share,? means an item for which FPI?s share of the DoD market for the federal supply class including that item is greater than 5 percent, as determined by DoD in consultation with the Office of Federal Procurement Policy. A list of the federal supply classes of items for which FPI has a significant market share is maintained at https://www.acq.osd.mil/asda/dpc/cp/policy/other-policy-areas.html.

(c) Policy.

(1) When acquiring an item for which FPI has a significant market share?

(i) Acquire the item using?

(A) Competitive procedures (e.g., the procedures in FAR 6.101, the set-aside procedures in FAR Subpart 19.1, or competition conducted in accordance with FAR Part 13); or

(B) The fair opportunity procedures in FAR 16.507-2, if placing an order under a multiple award delivery-order contract; and

(ii) Include FPI in the solicitation process, consider a timely offer from FPI, and make an award in accordance with the policy at FAR 8.304(b)(2) and 8.305.

(2) When acquiring an item for which FPI does not have a significant market share, acquire the item in accordance with the policy at FAR 8.3.

208.305 Evaluation and award.

Evaluate service contracts awarded to Federal Prison Industries, Inc., when the contract value exceeds the threshold at DFARS 215.104-70(g).

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SUBPART 208.4?ORDERING UNDER THE FEDERAL SUPPLY SCHEDULE

208.470 General.

(a)(1) If only one offer is received in response to an order exceeding the simplified acquisition threshold that is placed on a competitive basis, follow the procedures at **215.271.**

(2) When placing orders for supplies or services in amounts exceeding the simplified acquisition threshold, departments and agencies must comply with the review, approval, and reporting requirements established in accordance with subpart **217.6.**

(3) When a schedule lists both foreign and domestic items that will meet the needs of the requiring activity, the ordering office must apply the procedures of part 225 and FAR part 25, Foreign Acquisition. When purchase of an item of foreign origin is specifically required, the requiring activity must furnish the ordering office sufficient information to permit the determinations required by part 225 and FAR part 25 to be made.

(4) Insert the provisions at 252.215-7007, Notice of Intent to Resolicit, and **252.215-7008, Only One Offer, as prescribed at 215.371-6 and 215.408(3), respectively.**

(b) Include an evaluation factor regarding supply chain risk (see part 239) when acquiring information technology, whether as a service or as a supply, that is a covered system, is a part of a covered system, or is in support of a covered system, as defined in **part 239.**

(c) See 215.101-2-70 for the limitations and prohibitions on the use of the lowest price technically acceptable source selection process, which are applicable to orders placed under Federal Supply Schedules.

(d) Contracting officers must make a determination of fair and reasonable pricing when using the Federal Supply Schedules (FSS). The FSS prices of supplies and fixed-price services, and rates for services offered at hourly rates, were determined to be fair and reasonable for the purpose of establishing the schedule contract. The ordering activity contracting officer is responsible for making a determination of fair and reasonable pricing for individual orders, blanket purchase agreements (BPA), and orders under BPAs, using the proposal analysis techniques at 15.404-1. Do not rely on the determination of price reasonableness for the FSS schedule contract. The complexity and circumstances of each acquisition should determine the level of detail of the analysis required.

(e) See 217.7801 for the prohibition on the use of reverse auctions for personal protective equipment and aviation critical safety items.

(f) See 204.7603 for procedures on the required use of the Supplier Performance Risk System (SPRS) risk assessments.

(1) Ensure SPRS assessments of price risk and supplier risk are considered as a **part of the award decision.**

(2) When placing an order with a schedule contractor for an end product identified by a material identifier that is available as described at PGI 204.7603, and item risk was not previously considered during award of the schedule contract, consider SPRS assessments of item risk in the award decision.

(3) Insert the provision at 252.204-7024, Notice on the Use of the Supplier Performance Risk System, as prescribed in 204.7604 to the extent permitted by the **FSS.**

(g) Follow the procedures at PGI 208.470 for?

(1) An order or BPA exceeding the simplified acquisition threshold that is a follow-on to an order or BPA for the same supply or service previously issued based on a limiting sources justification; and

(2) Ordering from schedules.

SUBPART 208.70?ACQUISITION UNDER THE INTEGRATED MATERIAL MANAGEMENT PROGRAM

208.7000 Scope of subpart.

This subpart prescribes policy and procedures for acquisition of items for which contracting responsibility is assigned to a department, agency or the General Services Administration under the Integrated Material Management (IMM) Program. Contracting responsibility is assigned through the IMM in DoDM 4140.26, DoD Integrated Materiel Management Manual for Consumable Items, DoD 4140.68, Integrated Materiel Management of Nonconsumable Items and are listed in the FLIS Technical Procedures ? Volume 13.

208.7001 Definitions.

For purposes of this subpart?

?Acquiring department? means the department, agency, or General Services Administration which has contracting responsibility under the IMM Program.

?Integrated materiel management? means the materiel management responsibility that is integrated to eliminate duplicate national materiel management functions

for those consumable items that are used by more than one DoD Component or participating U.S. Government civil agency. The integrated management responsibility is assigned to an activity or agency for the DoD and participating U.S. Government civil agencies. IMM responsibilities include requirements determination, procurement, distribution, materiel overhaul and repair, and disposal of materiel.

?Requiring department? means the department or agency which has the requirement for an item.

208.7002 Assignment authority.

See PGI 208.7002 for assignment authority under the IMM.

208.7002-1 Acquiring department responsibilities.

See PGI 208.7002-1 for the acquiring department?s responsibilities.

208.7002-2 Requiring department responsibilities.

See PGI 208.7002-2 for the requiring department?s responsibilities.

208.7003 Applicability.

208.7003-1 Assignments under integrated materiel management.

(a) Acquire all items assigned for integrated materiel management (IMM) from the IMM manager except?

(1) Items purchased under circumstances of unusual and compelling urgency as defined in FAR 6.103-2. After such a purchase is made, the requiring activity must send one copy of the contract and a statement of the emergency to the IMM manager;

(2) Items for which the IMM manager assigns a supply system code for local purchase or otherwise grants authority to purchase locally; or

(3) When purchase by the requiring activity is in the best interest of the Government in terms of the combination of quality, timeliness, and cost that best meets the requirement. This exception does not apply to items?

(i) Critical to the safe operation of a weapon system;

(ii) With special security characteristics; or

(iii) Which are dangerous (e.g., explosives, munitions).

(4) When consumable items determined to be unique to a weapon system which have been included in a Performance Based Logistics (PBL) or Contractor Logistics Support (CLS) contract.

(b) Follow the procedures at PGI 208.7003-1(b) when an item assigned for IMM is to be acquired by the requiring department in accordance with paragraph (a)(3) of this subsection.

208.7003-2 Exceptions.

Requiring departments must submit to the acquiring department all contracting requirements for items assigned for IMM, except?

(a) Items obtained through the sources in FAR 8.103;

(b) Items obtained under 208.7003-1(a);

(c) Requirements not in excess of the simplified acquisition threshold, when contracting by the requiring department is in the best interest of the Government;

(d) In an emergency. When an emergency purchase is made, the requiring department must send one copy of the contract and a statement of the emergency to the contracting activity of the acquiring department;

(e) Requirements for which the IMM delegates contracting authority to the requiring department;

(f) Items in a research and development stage (as described in FAR Part 35). Under this exception, the military departments may contract for research and development requirements, including quantities for testing purposes and items undergoing in-service evaluation (not yet in actual production, but beyond prototype). Generally, this exception applies only when research and development funds are used.

(g) Items peculiar to nuclear ordnance material where design characteristics or test-inspection requirements are controlled by the Department of Energy (DoE) or by DoD to ensure reliability of nuclear weapons.

(1) This exception applies to all items designed for and peculiar to nuclear ordnance regardless of agency control, or to any item which requires test or inspection conducted or controlled by DoE or DoD.

(2) This exception does not cover items used for both nuclear ordnance and other purposes if the items are not subject to the special testing procedures.

(h) Items to be acquired under FAR 6.103-6 (national security requires limitation of sources);

(i) Items directly related to a major system and which are design controlled by and acquired from either the system manufacturer or a manufacturer of a major subsystem;

(j) Items subject to rapid design changes, or to continuous redesign or modification during the production and/or operational use phases, which require continual contact between industry and the requiring department to ensure that the item meets the requirements:

(1) This exception permits the requiring department to contract for items of highly unstable design. For use of this exception, it must be clearly impractical, both technically and contractually, to refer the acquisition to the acquiring department. Anticipation that contracting by negotiation will be appropriate, or that a number of design changes may occur during contract performance is not in itself sufficient reason for using this exception.

(2) This exception also applies to items requiring compatibility testing, provided such testing requires continual contact between industry and the requiring department;

(k) Containers acquired only with items for which they are designed;

(l) One-time buy of a noncataloged item.

(1) This exception permits the requiring departments to contract for a

nonrecurring requirement for a noncataloged item. This exception could cover a part or component for a prototype which may be stock numbered at a later date.

(2) This exception does not permit acquisitions of recurring requirements for an item, based solely on the fact that the item is not stock numbered, nor may it be used to acquire items which have only slightly different characteristics than previously cataloged items.

208.7004 Procedures.

Follow the procedures at PGI 208.7004 for processing IMM requirements.

208.7005 Military interdepartmental purchase requests.

Follow the procedures at?

(a) PGI 253.208-1 when using DD Form 448, Military Interdepartmental Purchase Request; and

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(b) PGI 253.208-2 when using DD Form 448-2, Acceptance of MIPR.

SUBPART 208.71?ACQUISITION FOR NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (NASA)

208.7100 Authorization.

NASA is authorized by Pub. L. 85-568 to use the acquisition services, personnel, equipment, and facilities of DoD departments and agencies with their consent, with or without reimbursement, and on a similar basis to cooperate with the departments/agencies in the use of acquisition services, equipment, and facilities.

208.7101 Policy.

Departments and agencies must cooperate fully with NASA in making acquisition services, equipment, personnel, and facilities available on the basis of mutual agreement.

208.7102 Procedures.

Follow the procedures at PGI 208.7102 when contracting or performing services for **NASA.**

SUBPART 208.73?USE OF GOVERNMENT-OWNED PRECIOUS METALS

208.7300 General.

See PGI 208.73 for guidance when using Government-owned precious metals.

208.7301 Contract clause.

(a) Insert the clause at 252.208-7000, Intent to Furnish Precious Metals as Government-Furnished Material, in all solicitations and contracts except?

(1) When the contracting officer has determined that the required precious metals are not available from Defense Supply Center Philadelphia;

(2) When the contracting officer knows that the items being acquired do not require precious metals in their manufacture; or

(3) For acquisitions at or below the simplified acquisition threshold.

(b) To make the determination in paragraph (a)(1) of this section, the contracting

officer must consult with the end item inventory manager and comply with the procedures in Chapter 11, DoD 4160.21-M, Defense Materiel Disposition Manual.

SUBPART 208.74?ENTERPRISE SOFTWARE AGREEMENTS

208.7400 Scope of subpart.

This subpart prescribes policy and procedures for acquisition of commercial software and software maintenance, including software and software maintenance that is acquired?

(a) As part of a system or system upgrade, where practicable;

(b) Under a service contract;

(c) Under a contract or agreement administered by another agency (e.g., under an interagency agreement); or

(d) Under a Federal Supply Schedule contract or blanket purchase agreement established in accordance with FAR 8.401.

208.7401 Definitions.

As used in this subpart?

?Enterprise software agreement? means an agreement or a contract that is used to acquire designated commercial software or related commercial software services such as software maintenance.

?Enterprise Software Initiative? means an initiative led by the DoD Chief Information Officer to develop processes for DoD-wide software asset management.

?Software maintenance? means services normally provided by a software company as standard services at established catalog or market prices, e.g., the right to receive and use upgraded versions of software, updates, and revisions.

208.7402 General.

(a) Departments and agencies must fulfill requirements for commercial software and commercial software services, such as software maintenance, in accordance with the DoD Enterprise Software Initiative (ESI) (see https://www.esi.mil/). ESI promotes the use of enterprise software agreements (ESAs) with contractors that allow DoD to obtain favorable terms and pricing for commercial software and commercial software services. ESI does not dictate the products or services to be acquired.

(b) Include an evaluation factor regarding supply chain risk (see Part 239)

when acquiring information technology, whether as a service or as a supply, that is a covered system, is a part of a covered system, or is in support of a covered system, as defined in Part 239.

208.7403 Acquisition procedures.

Follow the procedures at PGI 208.7403 when acquiring commercial software and commercial software services.

SUBPART 208.75--CONTRACTOR USE OF INTERAGENCY FLEET MANAGEMENT SYSTEM (IFMS)

208.7501 Authorization.

(a) Insurance requirements.

(1) See FAR 28.307-2(c) for policy on contractor insurance.

(2) See FAR 28.308 for policy on self-insurance.

(3) See FAR 31.205-19 for allowability of insurance costs.

(b) Insert the clause at 252.251-7001, Use of Interagency Fleet Management System (IFMS) Vehicles and Related Services, in solicitations and contracts which include are authorized to use an interagency fleet.

PART 251?[RESERVED]

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PART 252?SOLICITATION PROVISIONS AND CONTRACT CLAUSES

SUBPART 252.2?TEXT OF PROVISIONS AND CLAUSES

252.208-7000 Intent to Furnish Precious Metals as Government-Furnished Material.

As prescribed in 208.7301(a), use the following clause:

INTENT TO FURNISH PRECIOUS METALS AS GOVERNMENT-FURNISHED MATERIAL (DEC 1991)

(a) The Government intends to furnish precious metals required in the manufacture of items to be delivered under the contract if the Contracting Officer determines it to be in the Government's best interest. The use of Government-furnished silver is mandatory when the quantity required is one hundred troy ounces or more. The precious metal(s) will be furnished pursuant to the Government Furnished Property clause of the contract.

(b) The Offeror shall cite the type (silver, gold, platinum, palladium, iridium, rhodium, and ruthenium) and quantity in whole troy ounces of precious metals required in the performance of this contract (including precious metals required for any first article or production sample), and shall specify the national stock number (NSN) and nomenclature, if known, of the deliverable item requiring precious metals.

Deliverable Item

Precious Metal* Quantity (NSN and Nomenclature)

_____

_____

_____

_____

_____

_____

_____

*If platinum or palladium, specify whether sponge or granules are required.

(c) Offerors shall submit two prices for each deliverable item which contains precious metals--one based on the Government furnishing precious metals, and one based on the Contractor furnishing precious metals. Award will be made on the basis which is in the best interest of the Government.

(d) The Contractor agrees to insert this clause, including this paragraph (d), in solicitations for subcontracts and purchase orders issued in performance of this

contract, unless the Contractor knows that the item being purchased contains no precious metals.

(End of clause)

252.208-7999 Ordering From Government Supply Sources. (DEVIATION 2026-O0049)

As prescribed in 208.105-2(c), use the following clause:

ORDERING FROM GOVERNMENT SUPPLY SOURCES ((DEVIATION 2026-O0049) (MAR 2026)

(a) When placing orders under Federal Supply Schedules, Personal Property Rehabilitation Price Schedules, or Enterprise Software Agreements, the Contractor shall follow the terms of the applicable schedule or agreement and authorization. Include in each order:

(1) A copy of the authorization (unless a copy was previously furnished to the Federal Supply Schedule, Personal Property Rehabilitation Price Schedule, or Enterprise Software Agreement contractor).

(2) The following statement:

Any price reductions negotiated as part of an Enterprise Software Agreement issued under a Federal Supply Schedule contract shall control. In the event of any other inconsistencies between an Enterprise Software Agreement, established as a Federal Supply Schedule blanket purchase agreement, and the Federal Supply Schedule contract, the latter shall govern.

(3) The completed address(es) to which the Contractor's mail, freight, and billing documents are to be directed.

(b) When placing orders under nonmandatory schedule contracts and requirements contracts, issued by the General Services Administration (GSA) Office of Information Resources Management, for automated data processing equipment, software and maintenance, communications equipment and supplies, and teleprocessing services, the Contractor shall follow the terms of the applicable contract and the procedures in paragraph (a) of this clause.

(c) When placing orders for Government stock on a reimbursable basis, the

Contractor shall?

(1) Comply with the requirements of the Contracting Officer's authorization, using FEDSTRIP or MILSTRIP procedures, as appropriate;

(2) Use only the GSA Form 1948-A, Retail Services Shopping Plate, when ordering from GSA Self-Service Stores;

(3) Order only those items required in the performance of Government contracts; and

(4) The Contractor shall pay invoices from Government supply sources promptly.

(A) The Contractor shall pay purchases made from DoD supply sources within 30 days of the date of a proper invoice.

(B) The Contractor shall annotate each invoice with the date of receipt.

(C) For the purposes of computing interest for late Contractor payments, the Government?s invoice is deemed to be a demand for payment in accordance with the Interest clause of this contract.

(D) If the Contractor fails to pay or pays late that may also result in the DoD supply source refusing to honor the requisition (see DFARS 208-105-2(a)(4)(ii)) or in the Contracting Officer terminating the Contractor?s authorization to use DoD supply sources.

(1) In the event the Contracting Officer decides to terminate the authorization due to the Contractor?s failure to pay in a timely manner, the Contracting Officer will provide the Contractor with prompt written notice of the intent to terminate the authorization and the basis for such action.

(2) The Contractor shall have 10 days after receipt of the Government?s notice in which to provide additional information as to why the authorization should not be terminated.

(3) Any such termination does not provide the Contractor with an excusable delay for failure to perform or complete the contract in accordance with the terms of the contract, and the Contractor shall be solely responsible for any increased costs.

(d) When placing orders for Government stock on a non-reimbursable basis, the Contractor shall?

(1) Comply with the requirements of the Contracting Officer's authorization; and

(2) When using electronic transactions to submit requisitions on a

nonreimbursable basis only, place orders by authorizing contract number using the Defense Logistics Management System (DLMS) Supplement to Federal Implementation Convention 511R, Requisition; and acknowledge receipts by authorizing contract number using the DLMS Supplement 527R, Receipt, Inquiry, Response and Material Receipt Acknowledgement.

(e) Only the Contractor may request authorization for subcontractor use of Government supply sources. The Contracting Officer will not grant authorizations for subcontractor use without approval of the Contractor.

(f) Government invoices will be submitted to the Contractor?s billing address, and Contractor payments shall be sent to the Government remittance address specified below:

Contractor?s Billing Address (include point of contact and telephone number):

Government Remittance Address (include point of contact and telephone number):

(End of clause)

252.251-7001 Use of Interagency Fleet Management System (IFMS) Vehicles and Related Services.

As prescribed in 208.7501(b), use the following clause:

USE OF INTERAGENCY FLEET MANAGEMENT SYSTEM (IFMS) VEHICLES AND RELATED SERVICES (DEC 1991)

(a) The Contractor, if authorized use of IFMS vehicles, shall submit requests for five or fewer vehicles and related services in writing to the appropriate General Services Administration (GSA) Regional Customer Service Bureau, Attention: Motor Equipment Activity. Submit requests for more than five vehicles to GSA headquarters: General Services Administration, FTM, Washington, DC 20406. Include the following in each request:

(1) Two copies of the agency authorization to obtain vehicles and related services from GSA.

(2) The number of vehicles and related services required and the period of use.

(3) A list of the Contractor's employees authorized to request vehicles and related services.

(4) A list of the makes, models, and serial numbers of Contractor-owned or leased equipment authorized to be serviced.

(5) Billing instructions and address.

(b) The Contractor should make requests for any unusual quantities of vehicles as far in advance as possible.

(c) The Contractor shall establish and enforce suitable penalties for employees who use or authorize the use of Government vehicles for other than performance of Government contracts.

(d) The Contractor shall assume, without the right of reimbursement from the Government, the cost or expense of any use of IFMS vehicles and services not related to the performance of the contract.

(e) Only the Contractor may request authorization for subcontractor use of IFMS vehicles. The Contracting Officer will not grant authorization for subcontractor use without approval of the Contractor.

(End of clause)

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PGI 208?REQUIRED SOURCES OF SUPPLIES AND SERVICES

PGI 208.1?PRESOLICITATION

PGI 208.103 Mandatory sources of supplies.

(a)(1)(i) The DLA Disposition Services Reutilization, Transfer, or Donation (RTD) Office maintains the DoD-wide inventory of available property. Information on available property in the DoD-wide inventory can be obtained by?

(A) Sending a request to the DLA Disposition Services RTD Office at drmsrtd@dla.mil; or

(B) Searching the inventory on the DLA Disposition Service RTD website at https://amps.dla.mil/oim.

(ii) Information on gaining access to and searching for available property on the RTD website can be found at https://www.dla.mil/DispositionServices/DDSR/PropertySearch/PropertySearch/.

(iii) General information on DLA Disposition Service?s RTD Program can be found at https://www.dla.mil/DispositionServices/Offers/Reutilization.aspx.

PGI 208.105 Contractor use of Government supply sources.

PGI 208.105-70?Fuel funded by the Defense Working Capital Fund

(a)(4) When authorizing contractors to use Defense Logistics Agency (DLA) Energy as a source of fuel in performance of other than cost-reimbursement contracts, contracting officers must?

(i) Comply with the requirements of FAR 8.105-2 and DFARS 208.105-2 including the execution of a letter of authorization;

(ii) Include FAR clause 52.208-10, Government Supply Sources, and DFARS clause 252.208-7999, Ordering From Government Supply Sources, in the contract;

(iii) Obtain a current DLA Energy Fuel Purchase Authorization (FPA) from DLA Energy by emailing dlaenergyfpa@dla.mil;

(iv) Email to DLA Energy, at dlaenergyfpa@dla.mil, a copy of the?

(A) Completed FPA;

(B) Letter of authorization from the contracting officer; and

(C) Documentation showing the inclusion of FAR clause 52.208-10 and DFARS clause 252.208-7999 in the underlying contract.

(v) Upon receipt of the documentation in paragraph (a)(4)(iv)(A)-(C) of this

section, DLA Energy will work with all parties to review the FPA for accuracy and completion. If approved, DLA Energy will assign a Department of Defense Activity Address Code for the fuel sales.

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(vi) Use a format substantially the same as the following when authorizing contractor use of Government Supply Sources. Specify the terms of the purchase, including contractor acceptance of any Government materiel, payment terms, and the addresses required by paragraph (e) of the clause at 252.208-7999, Ordering from Government Supply Sources.

AUTHORIZATION TO PURCHASE FROM GOVERNMENT SUPPLY SOURCES

(SAMPLE FORMAT)

SUBJECT: Authorization to Purchase from Government Supply Sources

_____(Contractor's Name)

_____(Contractor's Address)

_____(CAGE Code)

1. You are hereby authorized to use Government sources in performing Contract No. _____ for [insert the requiring activity?s DoD Activity Address Code (DoDAAC)], as follows: [Insert applicable purchasing authority given to the contractor.]

2.a. Purchase Orders Under Federal Supply Schedules or Personal Property Rehabilitation Price Schedules. Place orders in accordance with the terms and conditions of the attached Schedule(s) and this authorization. Attach a copy of this authorization to the order (unless a copy was previously furnished to the Federal Supply Schedule or Personal Property Rehabilitation Price Schedule contractor). Insert the following statement in the order:

This order is placed under written authorization from _____ dated _____ (*_____). In the event of any inconsistency between the terms and conditions of this order and those of the Federal Supply Schedule or Personal Property Rehabilitation Price Schedule contract, the latter will govern.

b. Requisitioning from the General Services Administration (GSA) or the Department of Defense (DoD). Place orders in accordance with this authorization and, as appropriate, the following:

(1) Federal Standard Requisitioning and Issue Procedures (FEDSTRIP) (GSA FEDSTRIP Operating Guide: FPMR 101-26.2 (41 CFR 101-26.2)). Copies are available from the Superintendent of Documents, Government Printing Office, Washington, DC 20402; telephone (202) 512-1800; facsimile (202) 512-2250.

(2) Military Standard Requisitioning and Issue Procedures (MILSTRIP) (DoD **4000.25-1-M). Copies are available from the Defense Logistics Agency, Administrative**

Support Center East, ATTN: ASCE-WS, 14 Dedication Drive, Suite 3, POD 43, New Cumberland, PA 17070-5011; telephone 1-888-DLA-PUBS(352-7827), or (717) 770-6034; facsimile (717) 770-4817.

c. Enterprise Software Initiative. Place orders in accordance with the terms and conditions of the attached Enterprise Software Agreement(s), or instructions for obtaining commercial software or software maintenance from Enterprise Software Initiative inventories, and this authorization. Attach a copy of this authorization to the order (unless a copy was previously furnished to the Enterprise Software Agreement contractor). Insert the following statement in the order:

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This order is placed under written authorization from _____ dated_____ (*_____). In the event of any inconsistency between the terms and conditions of this order, and those of the Enterprise Software Agreement, the latter will govern.

3. [Insert other provisions as necessary.]

4. This authority is not transferable or assignable.

5. The DoD Activity Address Directory (DoDAAD) (DLM 4000.25, Volume 6, Chapter 2) Activity Address Code** to which this Authorization applies is _____.

6. This Authorization expires _____.

_____

(Contracting Officer)

* Insert ?a copy of which is attached,? ?a copy of which you have on file,? or other suitable language, as appropriate.

** The requiring activity assumes responsibility for monitoring and controlling all activity address codes used in the letters of authority.

PGI 208.105-270 Contracting office responsibilities.

(a) The DoD Activity Address Code (DoDAAC) assigned in accordance with paragraph 5 of the authorization format in PGI 208.105-2 must be assigned to the contractor for authorization to use Government supply sources only for the contract number cited in paragraph 1 of the authorization format.

(b) The authorization to use Government sources of supply is unique to each contract and must not be transferred or assigned to any other contractor or contract. Therefore, the same DoDAAC must not be assigned to any other contract number during the period of performance for the contract. After 24 months has lapsed beyond contract closeout, the DoDAAC may be reused for another contract.

PGI 208.2?ACQUISITION FROM ABILITYONE PARTICIPATING NONPROFIT AGENCIES

PGI 208.201 General.

Ordering offices may use DD Form 1155, Order for Supplies or Services, to place orders with central nonprofit agencies.

PGI 208.4?ORDERING UNDER THE FEDERAL SUPPLY SCHEDULE

PGI 208.470 General.

(1) When ordering from schedules, ordering offices?

(i) May use DD Form 1155, Order for Supplies or Services, to place orders for?

(A) Commercial products or commercial services at or below the simplified acquisition threshold; and

(B) Other than commercial products or commercial services at any dollar value.

(ii) Must use SF 1449, Solicitation/Contract/Order for Commercial Products and Commercial Services, to place orders for commercial products or commercial services exceeding the simplified acquisition threshold (see FAR 12.204); and

(iii) May use SF 1449 to place orders for other than commercial products or commercial services at any dollar value.

(2) Schedule orders may be placed orally if?

(i) The contractor agrees to furnish a delivery ticket for each shipment under the order (in the number of copies required by the ordering office). The ticket must include the?

(A) Contract number;

(B) Order number under the contract;

(C) Date of order;

(D) Name and title of person placing the order;

(E) Itemized listing of supplies or services furnished; and

(F) Date of delivery or shipment; and

(ii) Invoicing procedures are agreed upon. Optional methods of submitting invoices for payment are permitted, such as?

(A) An individual invoice with a receipted copy of the delivery ticket;

(B) A summarized monthly invoice covering all oral orders made during the month, with receipted copies of the delivery tickets (this option is preferred if there are many oral orders); or

(C) A contracting officer statement that the Government has received the supplies.

(3) For purchases where cash payment is an advantage, the use of imprest funds in accordance with DFARS 212.403 is authorized when the contractor agrees to the procedure.

(4) If permitted under the schedule contract, use of the Governmentwide commercial purchase card--

(i) Is mandatory for placement of orders valued at or below the micro-purchase threshold; and

(ii) Is optional for placement of orders valued above the micro-purchase

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PGI 208.70?ACQUISITION UNDER THE INTEGRATED MATERIAL MANAGEMENT PROGRAM

PGI 208.7002 Assignment authority.

Under the DoD IMM Program, contracting responsibility for certain commodities is assigned to a single department, agency, or the General Services Administration (GSA). Consumable and nonconsumable commodity assignments are made?

(1)(i)To the departments and agencies, by the Deputy Assistant Secretary of Defense (Logistics);

(ii) To the military departments for nonconsumable items (repair parts) under each commodity Federal Stock Class.

(2) To GSA, through agreement with GSA, by the Deputy Assistant Secretary of Defense (Logistics);

(3) For acquisitions to be made in the contiguous United States for commodities not assigned under paragraphs (a)(1) or(2), of this section, by the Deputy Assistant Secretary of Defense (Logistics).

(i) Agreement may be on either a one-time or a continuing basis. The submission of a military interdepartmental purchase request (MIPR) by a requiring activity and its acceptance by the contracting activity of another department, even though based on an oral communication, constitutes a one-time agreement.

(ii) Consider repetitive delegated acquisition responsibilities for coordinated acquisition assignment. If not considered suitable for coordinated acquisition assignment, formalize continuing agreements and distribute them to all activities concerned.

PGI 208.7002-1 Acquiring department responsibilities.

The acquiring department generally is responsible under the integrated material management (IMM) program for?

(1) Operational aspects of acquisition planning (phasing the submission of requirements to contracting, consolidating or dividing requirements, analyzing the market, and determining patterns for the phased placement of orders to avoid unnecessary production fluctuations and meet the needs of requiring departments at the lowest price);

(2) Purchasing;

(3) Performing or assigning contract administration, including follow-up and expediting of inspection and transportation; and

(4) Obtaining licenses under patents and settling patent infringement claims arising out of the acquisition. (Acquiring departments must obtain approval from the department whose funds are to be charged for obtaining licenses or settling claims.)

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PGI 208.7002-2 Requiring department responsibilities.

The requiring department is responsible for?

(1) Ensuring compliance with the order of priority in FAR 8.1 for use of Government supply sources before submitting a requirement to the acquiring department for contracting action; and

(2) Providing the acquiring department?

(i) The complete and certified documentation required by FAR 6.104. A requiring department official, equivalent to the appropriate level in FAR 6.104, must approve the documentation before submission of the military interdepartmental purchase request (MIPR) to the acquiring department;

(ii) Any additional supporting data that the acquiring department contracting officer requests (e.g., the results of any market survey or why none was conducted, and actions the requiring department will take to overcome barriers to competition in the future);

(iii) The executed determination and findings required by FAR 6.103-7;

(iv) When a requiring department requests an acquiring department to contract for supplies or services using full and open competition after exclusion of sources, all data required by FAR 6.102-1;

(v) When the requiring department specifies a foreign end product, any determinations required by DFARS Part 225 or FAR Part 25;

(vi) A complete definition of the requirements, including a list (or copies) of specifications, drawings, and other data required for the acquisition. The requiring department need not furnish Federal, military, departmental, or other specifications or drawings or data that are available to the acquiring department;

(vii) Justification required by FAR 17.2 for any option quantities requested;

(viii) A statement as to whether used or reconditioned material, former Government surplus property, or residual inventory will be acceptable, and if so?

(A) A list of any supplies that need not be new; and

(B) The basis for determining the acceptability of such supplies (see FAR **11.302(b));**

(ix) A statement as to whether the acquiring department may exceed the total MIPR estimate and, if so, by what amount; and

(x) Unless otherwise agreed between the departments, an original and six copies of each MIPR and its attachments (except specifications, drawings, and other data).

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PGI 208.7003 Applicability.

PGI 208.7003-1 Assignments under integrated materiel management.

(b) When an item assigned for IMM is to be acquired by the requiring activity under DFARS 208.7003-1(a)(3), the contracting officer must?

(i) Document the contract file with a statement of the specific advantage of local purchase for an acquisition exceeding the micro-purchase threshold; and

(ii) Ensure that a waiver is obtained from the IMM manager before initiating an acquisition exceeding the simplified acquisition threshold in FAR Part 2, if the IMM assignment is to the General Services Administration (GSA), the Defense Logistics Agency

(DLA), or another Service contracting office. Submit requests for waiver?

(A) For GSA, to: Commissioner (F)

Federal Supply Service

Washington, DC 20406

(B) For DLA, to: DLA Land and Maritime

ATTN: DSCC-BDL

P.O. Box 3990

Columbus, OH 43216-5000

DLA Energy

ATTN: DESC-CPA

8725 John J. Kingman Road

Fort Belvoir, VA 22060-6222

DLA Aviation

ATTN: DSCR-BA

8000 Jefferson Davis Highway

Richmond, VA 23297-5000

DLA Troop Support

ATTN: DSCP-ILSI (for General and Industrial)

DSCP-OCS (for Medical, Clothing, and Textiles)

700 Robbins Avenue, Bldg. 4

Philadelphia, PA 19111-5096

(iii) In addition, forward a copy of each request to:

Defense Logistics Agency

Logistics Operations

ATTN: J-335

8725 John J. Kingman Road

Fort Belvoir, VA 22060-6221

For AMC: HQ, Army Materiel Command

ATTN: AMCLG-SL

4400 Martin Road

Redstone Arsenal, AL 35898

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For Navy: Commanding Officer

Naval Inventory Control Point Code M0418

P.O. Box 2020

Mechanicsburg, PA 17055-0788

For Air Force: Commander

HQ Air Force Materiel Command (AFMC)

ATTN: A4SI

4375 Chidlaw Road

Wright-Patterson AFB (WPAFB), OH 45433
For Marine Corps: Commandant of the Marine Corps
HQ USMC ATTN: LPS-4
Washington, D.C. 20380-001
PGI 208.7004 Procedures.
PGI 208.7004-1 Purchase authorization from requiring department.

(1) Requiring departments send their requirements to acquiring departments on either a DD Form 448, Military Interdepartmental Purchase Request (MIPR), or a DD Form 416, Requisition for Coal, Coke or Briquettes. A MIPR or a DD Form 416 is the acquiring department's authority to acquire the supplies or services on behalf of the requiring department.

(2) The acquiring department is authorized to create obligations against the funds cited in a MIPR without further referral to the requiring department. The acquiring department has no responsibility to determine the validity of a stated requirement in an approved MIPR, but it should bring apparent errors in the requirement to the attention of the requiring department.

(3) Changes that affect the contents of the MIPR must be processed as a MIPR amendment regardless of the status of the MIPR. The requiring department may initially transmit changes electronically or by some other expedited means, but must confirm changes by a MIPR amendment.

(4) The requiring department must submit requirements for additional line items of supplies or services not provided for in the original MIPR as a new MIPR. The requiring department may use a MIPR amendment for increased quantities only if?

(i) The original MIPR requirements have not been released for solicitation; and

(ii) The acquiring department agrees.

PGI 208.7004-2 Acceptance by acquiring department.

(1) Acquiring departments formally accept a MIPR by DD Form 448-2, Acceptance of MIPR, as soon as practicable, but no later than 30 days after receipt of the MIPR. If the 30 day time limit cannot be met, the acquiring department must inform the requiring department of the reason for the delay, and the anticipated date the MIPR will be accepted. The acquiring department must accept MIPRs in writing before expiration of the funds.

(2) The acquiring department in accepting a MIPR will determine whether to use Category I (reimbursable funds citation) or Category II (direct funds citation) methods of funding.

(i) Category I method of funding is used under the following circumstances and results in citing the funds of the acquiring department in the contract:

(A) Delivery is from existing inventories of the acquiring department;

(B) Delivery is by diversion from existing contracts of the acquiring department;

(C) Production or assembly is through Government work orders in Government-owned plants;

(D) Production quantities are allocated among users from one or more

contracts, and the identification of specific quantities of the end item to individual contracts is not feasible at the time of MIPR acceptance;

(E) Acquisition of the end items involves separate acquisition of components to be assembled by the acquiring department;

(F) Payments will be made without reference to deliveries of end items (e.g., cost-reimbursement type contracts and fixed-price contracts with progress payment clauses); or

(G) Category II method of funding is not feasible and economical.

(ii) Category II method of funding is used in circumstances other than those in paragraph (2)(i) of this subsection. Category II funding results in citation of the requiring department's funds and MIPR number in the resultant contract.

(3) When the acquiring departments accepts a MIPR for Category I funding?

(i) The DD Form 448-2, Acceptance of MIPR, is the authority for the requiring department to record the obligation of funds;

(ii) The acquiring department will annotate the DD Form 448-2 if contingencies, price revisions, or variations in quantities are anticipated. The acquiring department will periodically advise the requiring department, prior to submission of billings, of any changes in the acceptance figure so that the requiring department may issue an amendment to the MIPR, and the recorded obligation may be adjusted to reflect the current price;

(iii) If the acquiring department does not qualify the acceptance of a MIPR for anticipated contingencies, the price on the acceptance will be final and will be billed at time of delivery; and

(iv) Upon receipt of the final billing (SF 1080, Voucher for Transferring Funds), the requiring department may adjust the fiscal records accordingly without authorization from or notice to the acquiring department.

(4) When the MIPR is accepted for Category II funding, a conformed copy of the contract (see DFARS 204.802(1)(ii)) is the authority to record the obligation. When all awards have been placed to satisfy the total MIPR requirement, any unused funds remaining on the MIPR become excess to the acquiring department. The acquiring

department will immediately notify the requiring department of the excess funds by submitting an Acceptance of MIPR (DD Form 448-2). This amendment is authorization for the requiring department to withdraw the funds. The acquiring department is prohibited from further use of such excess funds.

(5) When the acquiring department requires additional funds to complete the contracting action for the requiring department, the request for additional funds must identify the exact items involved, and the reason why additional funds are required. The requiring department must act quickly to?

(i) Provide the funds by an amendment of the MIPR; or

(ii) Reduce the requirements.

(6) The accepting activity of the acquiring department must remain responsible for the

MIPR even though that activity may split the MIPR into segments for action by other contracting activities.

PGI 208.7004-3 Use of advance MIPRs.

(1) An advance MIPR is an unfunded MIPR provided to the acquiring department in advance of the funded MIPR so that initial steps in planning the contract action can begin at an earlier date.

(2) In order to use an advance MIPR, the acquiring department and the requiring department must agree that its use will be beneficial. The departments may execute a blanket agreement to use advance MIPRs.

(3) The requiring department must not release an advance MIPR to the acquiring department without obtaining proper internal approval of the requirement.

(4) When advance MIPRs are used, mark ?ADVANCE MIPR? prominently on the DD Form 448.

(5) For urgent requirements, the advance MIPR may be transmitted electronically.

(6) On the basis of an advance MIPR, the acquiring department may take the initial steps toward awarding a contract, such as obtaining internal coordination and preparing an acquisition plan. Acquiring departments may determine the extent of these initial actions but must not award contracts on the basis of advance MIPRs.

PGI 208.7004-4 Cutoff dates for submission of Category II MIPRs.

(1) Unless otherwise agreed between the departments, May 31 is the cutoff date for the receipt of MIPRs citing expiring appropriations which must be obligated by September 30 of that fiscal year. If circumstances arise that require the submission of MIPRs citing expiring appropriations after the cutoff date, the requiring department will communicate with the acquiring department before submission to find out whether the acquiring department can execute a contract or otherwise obligate the funds by the end of the fiscal year. Acquiring departments will make every effort to obligate funds for all such MIPRs accepted after the cutoff date. However, acceptance of a late MIPR does not constitute assurance by the acquiring department that all such funds will be obligated.

(2) Nothing in these instructions is intended to restrict the processing of MIPRs when the acquiring department is capable of executing contracts or otherwise obligating funds before the end of the fiscal year.

(3) The May 31 cutoff date does not apply to MIPRs citing continuing appropriations.

PGI 208.7004-5 Notification of inability to obligate on Category II MIPRs.

On August 1, the acquiring department will advise the requiring department of any Category II MIPRs on hand citing expiring appropriations it will be unable to obligate prior to the fund expiration date. If an unforeseen situation develops after August 1 that will prevent execution of a contract, the acquiring department will notify the requiring department as quickly as possible and will return the MIPR. The letter of transmittal returning the MIPR will authorize purchase by the requiring department and state the reason that the acquisition could not be accomplished.

PGI 208.7004-6 Cancellation of requirements.

(1) Category I MIPRs. The requiring department will notify the acquiring department by electronic or other immediate means when cancelling all or part of the supplies or services requested in the MIPR. Within 30 days, the acquiring department will notify the requiring department of the quantity of items available for termination and the amount of funds in excess of the estimated settlement costs. Upon receipt of this information, the requiring department will issue a MIPR amendment to reduce the quantities and funds accordingly.

(2) Category II MIPRs. The requiring department will notify the acquiring department electronically or by other immediate means when cancelling all or any part of the supplies or services requested in the MIPR.

(i) If the acquiring department has not entered into a contract for the supplies or services to be cancelled, the acquiring department will immediately notify the requiring department. Upon receipt of such notification, the requiring department must initiate a MIPR amendment to revoke the estimated amount shown on the original MIPR for the cancelled items.

(ii) If the items to be cancelled have already been placed under contract?

(A) As soon as practicable, but in no event more than 45 days after receipt of the cancellation notice from the requiring department, the contracting officer must issue a termination data letter to the requiring department (original and four copies) containing, as a minimum, the information in Table 8-1, Termination Data Letter.

(B) The termination contracting officer (TCO) will review the proceedings at least every 60 days to reassess the Government's probable obligation. If any additional funds are excess to the probable settlement requirements, or if it appears that previous release of excess funds will result in a shortage of the amount that will be required for settlement, the TCO will promptly notify the contracting office which will amend the termination data letter. The requiring department will process a MIPR amendment to reflect the reinstatement of funds within 30 days after receiving the amended termination data letter.

(C) Upon receipt of a copy of the termination settlement agreement, the requiring department will prepare a MIPR amendment, if required, to remove any remaining excess funds.

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TABLE 8-1, TERMINATION DATA LETTER

SUBJECT: Termination Data Re:

Contract No.

_____ Termination

No. _____

Contract

_____

(a) As termination action is now in progress on the above contract, the following information is submitted:

(1) Brief Description of items terminated.

(2) You are notified that the sum of $_____ is available for release under the subject contract. This sum represents the difference between $_____, the value of items terminated under the contract, and $_____, estimated to be required for settlement of the terminated contract. The estimated amount available for release is allocated by the appropriations cited on the contract as follows:

MIPR NO._____ **ACCOUNTING CLASSIFICATION**_____ **AMOUNT**_____

Total available for release at this time $_____

(b) Request you forward an amendment to MIPR _____ on DD Form 448-2 to reflect the reduced quantity and amount of funds available for release.

(c) Periodic reviews (not less than 60 days) will be made as termination proceedings progress to redetermine the Government's probable obligation.

_____

Contracting Officer

PGI 208.7004-7 Termination for default.

(1) When the acquiring department terminates a contract for default, it will ask the requiring department if the supplies or services to be terminated are still required so that repurchase action can be started.

(2) The requiring department will not deobligate funds on a contract terminated for default until receipt of a settlement modification or other written evidence from the acquiring department authorizing release of funds.

(3) On the repurchase action, the acquiring department will not exceed the unliquidated funds on the defaulted contract without receiving additional funds from the requiring department.

PGI 208.7004-8 Transportation funding.

The requiring department will advise the acquiring department or the transportation officer in the contract administration office of the fund account to be charged for transportation costs. The requiring department may cite the fund account on each MIPR or provide the funding cite to the transportation officer at the beginning of each fiscal year for use on Government

bills of lading. When issuing a Government bill of lading, show the requiring department as the department to be billed and cite the appropriate fund account.

PGI 208.7004-9 Status reporting.

(1) The acquiring department will maintain a system of MIPR follow-up to inform the requiring department of the current status of its requests. In addition, the contract administration office will maintain a system of follow-up in order to advise the acquiring department on contract performance.

(2) If requested by the requiring department, the acquiring department will furnish the requiring department a copy of the solicitation when the MIPR is satisfied through Category II funding.

(3) Any reimbursement billings, shipping document, contractual documents, project

orders, or related documentation furnished to the requiring department will identify the requiring department's MIPR number, quantities of items, and funding information.
PGI 208.7004-10 Administrative costs.
The acquiring department bears the administrative costs of acquiring supplies for the requiring department. However, when an acquisition responsibility is transferred to another department, funds appropriated or to be appropriated for administrative costs will transfer to the successor acquiring department. The new acquiring department must assume budget cognizance as soon as possible.

PGI 208.71?ACQUISITION FOR NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (NASA)

PGI 208.7102 Procedures.
PGI 208.7102-1 General.

(1) Departments and agencies must not claim reimbursement for administrative costs incident to acquisitions for NASA, unless agreed otherwise prior to the time the services are performed.

(2) When contracting or performing field service functions for NASA, departments and agencies?

(i) Will use their own methods, except when otherwise required by the terms of the agreement; and

(ii) Normally will use their own funds and will not cite NASA funds on any defense obligation or payment document.

PGI 208.7102-2 Purchase request and acceptance.

(1) NASA will use NASA Form 523, NASA-Defense Purchase Request, to request acquisition of supplies or services.

(2) Except as provided in paragraph (4) of this subsection, departments and agencies will respond within 30 days to a NASA purchase request by forwarding DD Form 448-2, Acceptance of MIPR. Forward each DD Form 448-2 in quadruplicate and indicate action

status as well as the name and address of the DoD acquisition activity for future use by the NASA initiator.

(3) To the extent feasible, all documents related to the NASA action will reference the NASA-Defense Purchase Request number and the item number when appropriate.

(4) Departments and agencies are not required to accept NASA-Defense Purchase Requests for common-use standard stock items that the supplying department has on hand or on order for prompt delivery at published prices.

PGI 208.7102-3 Changes in estimated total prices.
When a department or agency determines that the estimated total price (Block 6F, NASA Form 523) for NASA items is not sufficient to cover the required reimbursement, or is in excess of the amount required, the department/agency will forward a request for amendment to the NASA originating office. Indicate in the request a specific dollar amount,

rather than a percentage, and include justification for any upward adjustment requested. Upon approval of a request, NASA will forward an amendment of its purchase request to the contracting activity.

PGI 208.7102-4 Payments.

Departments and agencies will submit SF 1080, Voucher for Transferring Funds, billings to the NASA office designated in Block 9 of the NASA-Defense Purchase Request, except where agreements provide that reimbursement is not required. Departments and agencies will support billings in the same manner as billings between departments and agencies.

PGI 208.73?USE OF GOVERNMENT-OWNED PRECIOUS METALS

a) Definitions.

As used in this subpart?

?Defense Supply Center, Philadelphia (DSCP)? means the Defense Logistics Agency field activity located at 700 Robbins Avenue, Philadelphia, PA 19111-5096, which is the assigned commodity integrated material manager for refined precious metals and is responsible for the storage and issue of such material.

?Dual pricing evaluation procedure? means a procedure where offerors submit two prices for precious metals bearing items--one based on Government-furnished precious metals and one based on contractor-furnished precious metals. The contracting officer evaluates the prices to determine which is in the Government's best interest.

?Precious Metals Indicator Code (PMIC)? means a single-digit, alpha-numeric code assigned to national stock numbered items in the Defense Integrated Data System Total Item Record used to indicate the presence or absence of precious metals in the item. PMICs and the content value of corresponding items are listed in DoD 4100.39-M, Federal Logistics Information System (FLIS) Procedures Manual, Volume 10, Chapter 4, Table 160.

?Refined precious metal? means recovered silver, gold, platinum, palladium, iridium, rhodium, or ruthenium, in bullion, granulation or sponge form, which has been purified to at least .999 percentage of fineness.

b) Policy.

DoD policy is for maximum participation in the Precious Metals Recovery Program. DoD components must furnish recovered precious metals contained in the DSCP inventory to production contractors rather than use contractor-furnished precious metals whenever the contracting officer determines it to be in the Government's best interest.

c) Procedures.

(1) Item managers and contracting officers will use the PMIC and/or other relevant data furnished with a purchase request to determine the applicability of this subpart.

(2) When an offeror advises of a precious metals requirement, the contracting officer must use the procedures in Chapter 11 of DoD 4160.21-M, Defense Materiel Disposition Manual, to determine availability of required precious metal assets and current Government-furnished materiel (GFM) unit prices. If the precious metals are available, the contracting officer must evaluate offers and award the contract on the basis of the offer that is in the best

interest of the Government.

(3) When the clause prescribed by DFARS 208.7305 is included in a solicitation, the contracting officer must ensure that Section B, Schedule of Supplies or Services and Prices, is structured to?

(i) Permit insertion of alternate prices for each deliverable contract line item number that uses precious metals; and

(ii) Use dual pricing evaluation procedures.

d) Refined precious metals.

The following refined precious metals are currently managed by DSCP:

Precious Metal National Stock Number (NSN)

Gold 9660-00-042-7733

Silver 9660-00-106-9432

Platinum Granules 9660-00-042-7768

Platinum Sponge 9660-00-151-4050

Palladium Granules 9660-00-042-7765

Palladium Sponge 9660-01-039-0320

Rhodium 9660-01-010-2625

Iridium 9660-00-011-1937

Ruthenium 9660-01-039-0313

PGI 208.74?ENTERPRISE SOFTWARE AGREEMENTS

PGI 208.7401 Definitions.

As used in this subpart?

?Golden Disk? means a purchased license or entitlement to distribute an unlimited or bulk number of copies of software throughout DoD.

?Software product manager? means the Government official who manages an enterprise software agreement.

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PGI 208.7403 Acquisition procedures.

(1) After requirements are determined, the requiring official must review the information at the ESI website to determine if the required commercial software or related services are available from DoD inventory (e.g., Golden Disks and DoD-wide software maintenance agreements). If the software or services are available, the requiring official must fulfill the requirement from the DoD inventory.

(2) If the required commercial software or related services are not in the DoD inventory, and not on an ESA, the contracting officer or requiring official may fulfill the requirement by other means. Existing ESAs are listed on the ESI website.

(3) If the commercial software or related services are on an ESA, the contracting officer or requiring official must review the terms and conditions and prices in accordance with otherwise applicable source selection requirements.

(4) If an ESA?s terms and conditions and prices represent the best value to the Government, the contracting officer or requiring official must fulfill the requirement for

software or services through the ESA.

(5) If existing ESAs do not represent the best value to the Government, the software product manager (SPM) must be given an opportunity to provide the same or a better value to the Government under the ESAs before the contracting officer or requiring official may continue with alternate acquisition methods.

(i) The contracting officer or requiring official must notify the SPM of specific concerns about existing ESA terms and conditions or prices through the ESI webpage.

(ii) The SPM must consider adjusting, within the scope of the ESA, terms and conditions or prices to provide the best value to the customer.

(A) Within 3 working days, the SPM must?

(1) Update the ESA;

(2) Provide an estimated date by which the update will be accomplished; or

(3) Inform the contracting officer or requiring official that no change will be made to the ESA.

(B) If the SPM informs the contracting officer or requiring official that no change will be made to the ESA terms and conditions or prices, the contracting officer or requiring official may fulfill the requirement by other means.

(C) If the SPM does not respond within 3 working days or does not plan to adjust the ESA within 90 days, the contracting officer or requiring official may fulfill the requirement by other means.

(iii) A management official designated by the department or agency may waive the requirement to obtain commercial software or related services through an ESA after the steps in paragraphs (5)(i) and (5)(ii)(A) of this section are complete. The rationale for use of an alternate source must be included in the waiver request and must be provided to the **SPM.**

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PART 9

OFFICE OF THE ASSISTANT SECRETARY OF WAR

Status: Class D

OFFICE OF THE ASSISTANT SECRETARY OF WAR

3000 DEFENSE PENTAGON

WASHINGTON, DC 20301-3000

ACQUISITION

AND SUSTAINMENT

In reply refer to

DARS Tracking Number: 2026-O0042

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES SPECIAL OPERATIONS

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES TRANSPORTATION

COMMAND (ATTN: ACQUISITION EXECUTIVE)

DEPUTY ASSISTANT SECRETARY OF THE ARMY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE NAVY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE

(CONTRACTING)

DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Class Deviation?Revolutionary Federal Acquisition Regulation (FAR) Overhaul

Part 9, Defense FAR Supplement (DFARS) Part 209

Effective February 17, 2026, contracting officers shall use?

? The revised FAR Part 9, Contractor Qualifications, published on the Revolutionary FAR Overhaul web page at https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-9 in lieu of the text codified at 48 CFR chapter 1 (https://www.ecfr.gov).

? The attached DFARS Part 209, Contractor Qualifications, in lieu of the text codified at 48 CFR chapter 2; and

? The attached DFARS Procedures, Guidance, and Information (PGI) 209, Contractor Qualifications, in lieu of the PGI text published on the Defense Pricing, Contracting, and Acquisition Policy web page at https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.

This class deviation implements the following:

? Section 2 of E.O. 14275, Restoring Common Sense to Federal Procurement, which establishes the policy that the FAR ?should only contain provisions required by statute or essential to sound procurement, and any FAR provisions that do not

advance these objectives should be removed.
DARS Tracking Number: 2026-O0042
Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 9
Defense FAR Supplement (DFARS) Part 209
? Section 4(a) of E.O. 14265, Modernizing Defense Acquisitions and Spurring Innovation in the Defense Industrial Base which requires the Secretary of War to eliminate or revise any unnecessary supplemental regulations or any other internal guidance, such as relevant parts of the Financial Management Regulation and Defense Federal Acquisition Regulation Supplement.
? The Office of Management and Budget memorandum, M-25-26 issued on May 2, 2025, titled, Overhauling the Federal Acquisition Regulation, which provided additional guidance to federal agencies regarding the FAR overhaul.
This class deviation remains in effect until rescinded or incorporated into the FAR, DFARS, and DFARS PGI. Inquiries regarding this class deviation can be addressed to osd.pentagon.ousd-a-s.mbx.dfars@mail.mil.
John M. Tenaglia
Principal Director,
Defense Pricing, Contracting, and
Acquisition Policy
Attachments:
As stated
2
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Defense FAR Supplement (DFARS) Part 209

PART 209?CONTRACTOR QUALIFICATIONS

SUBPART 209.1?RESPONSIBLE PROSPECTIVE CONTRACTORS

209.101 Definitions.

As used in this subpart?
?Effectively owned or controlled? means that a foreign government or any entity controlled by a foreign government has the power, either directly or indirectly, whether exercised or exercisable, to control the election, appointment, or tenure of the Offeror?s officers or a majority of the Offeror?s board of directors by any means, e.g., ownership, contract, or operation of law (or equivalent power for unincorporated organizations).
?Entity controlled by a foreign government??

(1) Means?

(i) Any domestic or foreign organization or corporation that is effectively owned or controlled by a foreign government; or

(ii) Any individual acting on behalf of a foreign government.

(2) Does not include an organization or corporation that is owned, but is not controlled, either directly or indirectly, by a foreign government if the ownership of that organization or corporation by that foreign government was effective before October 23, **1992.**

?Foreign government? includes the state and the government of any country (other than the United States and its outlying areas) as well as any political subdivision, agency, or instrumentality thereof.

?Proscribed information? means?

(1) Top Secret information;

(2) Communications security (COMSEC) material, excluding controlled cryptographic items when unkeyed or utilized with unclassified keys;

(3) Restricted Data as defined in the U.S. Atomic Energy Act of 1954, as amended;

(4) Special Access Program (SAP) information; or

(5) Sensitive Compartmented Information (SCI).

209.104 Standards.

209.104-1 General standards.

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(e) For cost-reimbursement or incentive type contracts, or contracts that provide for progress payments based on costs or on a percentage or stage of completion, the prospective contractor?s accounting system and related internal controls must provide reasonable assurance that?

(i) Applicable laws and regulations are complied with;

(ii) The accounting system and cost data are reliable;

(iii) Risk of misallocations and mischarges are minimized; and

(iv) Contract allocations and charges are consistent with invoice procedures.

(g)(i) Ownership or control by the government of a country that is a state sponsor of terrorism. (See part 240).

(ii) Ownership or control by a foreign government when access to proscribed information is required to perform the contract. (A) In accordance with 10 U.S.C. 4874(a), do not award a DoD contract under a national security program to an entity controlled by a foreign government if that entity requires access to proscribed information to perform the contract.

(B) For questions about applying the provision at 252.209-7002, seek advice from the Security Directorate, Office of the Deputy Under Secretary of Defense, Human Intelligence, Counterintelligence, and Security.

(C) In accordance with 10 U.S.C. 4874(b)(1)(A), the Secretary of Defense may waive the prohibition in paragraph (g)(ii)(A) of this section upon determining that the waiver is essential to the national security interests of the United States. The Secretary has delegated authority to grant this waiver to the Under Secretary of Defense for Intelligence. Waiver requests, prepared by the requiring activity in coordination with the contracting officer, must be processed through the Principal Director, Defense Pricing, Contracting, and Acquisition Policy, Office of the Under Secretary of Defense (Acquisition and Sustainment), and must include a proposed national interest determination. The proposed national interest determination,

prepared by the requiring activity in coordination with the contracting officer, must include?

(1) Identification of the proposed awardee, with a synopsis of its foreign ownership (include solicitation and other reference numbers to identify the action);

(2) General description of the acquisition and performance requirements;

(3) Identification of the national security interests involved and the ways award of the contract helps advance those interests;

(4) The availability of another entity with the capacity, capability and technical expertise to satisfy defense acquisition, technology base, or industrial base requirements; and

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(5) A description of any alternate means available to satisfy the requirement, e.g., use of substitute products or technology or alternate approaches to accomplish the program objectives.

(D) In accordance with 10 U.S.C. 4874(b)(1)(B), the Secretary of Defense may, in the case of a contract awarded for environmental restoration, remediation, or waste management at a DoD facility, waive the prohibition in paragraph (g)(ii)(A) of this section upon?

(1) Determining that?

(i) The waiver will advance the environmental restoration, remediation, or waste management objectives of DoD and will not harm the national security interests of the United States; and

(ii) The contract awardee is controlled by a foreign government with which the Secretary is authorized to exchange Restricted Data under section 144c. of the Atomic Energy Act of 1954 (42 U.S.C. 2164(c)); and

(2) Notifying Congress of the decision to grant the waiver. Award the contract only after the end of the 45-day period beginning on the date the appropriate Congressional committees receive notification.

209.104-4 Subcontractor responsibility.

Generally, the Canadian Commercial Corporation?s (CCC) proposal of a firm as its subcontractor forms a sufficient basis for an affirmative determination of responsibility. However, when the CCC determination of responsibility is not consistent with other information, request additional information necessary to make the responsibility determination from CCC and any other sources.

209.104-70 Solicitation provision.

Unless the solicitation includes the provision at FAR 52.204-7, insert the provision at **252.209-7002, Disclosure of Ownership or Control by a Foreign Government, in all** solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services, and solicitations using the procedures in

FAR part 13, when access to proscribed information is necessary for contract performance.

209.105 Procedures.

209.105-1 Obtaining information.

(1) For guidance on using the Exclusions section of the System for Award Management, see PGI 209.105-1.

(2) Consider the supplier risk assessment available in the Supplier Performance Risk System at https://piee.eb.mil/ when determining responsibility. See 204.7603(c).

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209.105-2 Determinations and documentation.

(a) Submit a copy of a determination of nonresponsibility to the appropriate debarring and suspending official listed in 209.403.

209.105-270 Inclusion of determination of contractor fault in the Integrity Records module in CPARS.

In accordance with section 834 of the National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111-383), if the contractor or a subcontractor at any tier is not subject to the jurisdiction of the U.S. courts, and the DoD appointing official that requested a DoD investigation makes a final determination that the contractor?s or subcontractor?s gross negligence or reckless disregard for the safety of Government personnel caused serious bodily injury or death of such personnel, then enter information regarding the determination in the Integrity Records module in CPARS within 3 days of receiving it. Information posted in the Integrity Records module in CPARS will be publicly available.

209.170 Restriction on the use of certain institutions of higher education.

209.170-0 Scope.

This section implements section 1062 of the National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116-283).

209.170-1 Definitions.

As used in this section?

?Confucius Institute? means?

(1) Any program that receives funding or support from?

(i) The Chinese International Education Foundation; or

(ii) The Center for Language Exchange Cooperation of the Ministry of Education of the People?s Republic of China; or

(2) Any cultural institute directly or indirectly funded by the government of the People?s Republic of China.

?Institution of higher education? has the meaning given in 20 U.S.C. 1002.

209.170-2 Restriction.

None of the funds authorized to be appropriated or otherwise made available for any fiscal year for DoD may be used to contract with an institution of higher education that

hosts a Confucius Institute, other than amounts provided directly to students as educational assistance. Do not enter into a contract with any institution of higher education that hosts a Confucius Institute, unless a waiver has been granted.

209.170-3 Waiver of restriction.

The Office of the Under Secretary of Defense (Research and Engineering) can, without power of delegation, waive the restriction in 209.170-2 in accordance with the Confucius

Institute Waiver Program guidance. The waiver authority terminates on October 1,

2026. Any waiver issued will not apply on or after that date. See PGI 209.170-3.

209.170-4 Solicitation provision.

Insert the provision at 252.209-7011, Representation for Restriction on the Use of Certain Institutions of Higher Education, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services, for acquisitions to an institution of higher education.

209.171 Preaward surveys.

Follow the procedures at PGI 209.171 when requesting a preaward survey.

SUBPART 209.2?QUALIFICATIONS REQUIREMENTS

209.202 Policy.

(a)(1) Except for aviation or ship critical safety items, obtain approval in accordance with PGI 209.202(a)(1) when establishing qualification requirements. See 209.270 for approval of qualification requirements for aviation or ship critical safety items.

209.270 Aviation and ship critical safety items.

209.270-1 Scope.

This section implements?

(a) Section 802 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136); and

(b) Section 130 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364); and

209.270-2 Definitions.

As used in this section?

?Aviation critical safety item? means a part, an assembly, installation equipment, launch equipment, recovery equipment, or support equipment for an aircraft or aviation weapon system if the part, assembly, or equipment contains a characteristic any failure, malfunction, or absence of which could cause?

(1) A catastrophic or critical failure resulting in the loss of or serious damage to the aircraft or weapon system;

(2) An unacceptable risk of personal injury or loss of life; or

(3) An uncommanded engine shutdown that jeopardizes safety.

?Design control activity??

(1) With respect to an aviation critical safety item, means the systems command of

a military department that is specifically responsible for ensuring the air worthiness of

an aviation system or equipment in which an aviation critical safety item is to be used; and

(2) With respect to a ship critical safety item, means the systems command of a military department that is specifically responsible for ensuring the seaworthiness of a ship or ship equipment in which a ship critical safety item is to be used.

?Ship critical safety item? means any ship part, assembly, or support equipment containing a characteristic the failure, malfunction, or absence of which could cause?

(1) A catastrophic or critical failure resulting in loss of or serious damage to the ship; or

(2) An unacceptable risk of personal injury or loss of life.

209.270-3 Policy.

(a) The head of the contracting activity responsible for procuring an aviation or ship critical safety item may enter into a contract for the procurement, modification, repair, or overhaul of such an item only with a source approved by the head of the design control activity.

(b) The approval authorities specified in this section apply in lieu of those otherwise specified in FAR 9.202(a)(1), 9.202(c), or 9.206-1(c), for the procurement, modification, repair, and overhaul of aviation or ship critical safety items.

209.270-4 Procedures.

(a) The head of the design control activity must?

(1) Identify items that meet the criteria for designation as aviation or ship critical safety items. See additional information at PGI 209.270-4;

(2) Approve qualification requirements in accordance with procedures established by the design control activity; and

(3) Qualify and identify aviation and ship critical safety item suppliers and products.

(b)(1) Ensure that the head of the design control activity has determined that a prospective contractor or its product meets or can meet the established qualification standards before the date specified for award of the contract;

(2) Refer any offers received from an unapproved source to the head of the design control activity for approval. The head of the design control activity will determine whether the offeror or its product meets or can meet the established qualification standards before the date specified for award of the contract; and

(3) Refer any requests for qualification to the design control activity.

(c) See 246.407 and 246.504 for quality assurance requirements.

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209.270-5 Contract clause.

Insert the clause at 252.209-7010, Critical Safety Items, in solicitations and contracts when the acquisition includes one or more items designated by the design control activity as critical safety items.

SUBPART 209.3 [RESERVED]

SUBPART 209.4?DEBARMENT, SUSPENSION, AND INELIGIBILITY

209.402 Policy.

(d) All debarring and suspending officials must follow the uniform suspension and debarment procedures provided at Appendix H to this chapter.

(e) The department or agency must provide a copy of the Debarment and Suspension Procedures at DFARS appendix H to contractors at the time of their suspension or when they are proposed for debarment, and to other interested parties upon request.

209.403 Definitions.

?Debarring and suspending official?. (1) For DoD, the designees are?

(i) Army?Director, Soldier & Family Legal Services.

(ii) Navy/Marine Corps?The Assistant General Counsel (Acquisition Integrity).

(iii) Air Force?Deputy General Counsel (Contractor Responsibility).

(iv) Defense Advanced Research Projects Agency?The Director.

(v) Defense Health Agency?The Principal Deputy General Counsel.

(vi) Defense Information Systems Agency?The General Counsel.

(vii) Defense Intelligence Agency?The Senior Procurement Executive.

(viii) Defense Logistics Agency?The Special Assistant for Contracting Integrity.

(ix) Defense Threat Reduction Agency?The Director.

(x) Missile Defense Agency?The General Counsel.

(xi) National Geospatial-Intelligence Agency?The General Counsel.

(xii) National Security Agency?The Senior Acquisition Executive.

(xiii) United States Cyber Command?The Staff Judge Advocate.

(xiv) Overseas installations?as designated by the agency head.

(2) Overseas debarring and suspending officials?

(i) Are authorized to debar or suspend contractors located within the official?s geographic area of responsibility under any delegation of authority they receive from their agency head.

(ii) Debar or suspend in accordance with the procedures in FAR subpart 9.4 or under modified procedures approved by the agency head based on consideration of the laws or customs of the foreign countries concerned.

(iii) In addition to the bases for debarment in FAR 9.406-2, may consider the following additional bases?

(A) The foreign country concerned determines that a contractor has engaged in bid-rigging, price-fixing, or other anti-competitive behavior; or

(B) The foreign country concerned declares the contractor to be formally debarred, suspended, or otherwise ineligible to contract with that foreign government or its instrumentalities.

(3) The Defense Logistics Agency Special Assistant for Contracting Integrity is the exclusive representative of the Secretary of Defense to suspend and debar contractors from the purchase of Federal personal property under the Federal Property Management Regulations (41 CFR 101-45.6) and the Defense Materiel Disposition Manual (DoD 4160.21-M).

209.405 Effect of listing.

(a) In accordance with 10 U.S.C. 4654(b), when a department or agency determines that a compelling reason exists to conduct business with a debarred or suspended contractor, it must provide written notice of the determination to the General Services Administration (GSA), GSA Suspension and Debarment Official, Office of Acquisition Policy, 1275 First Street, NE., Washington, DC 20417. Examples of compelling reasons are?

(i) Only a debarred or suspended contractor can provide the supplies or services;

(ii) Urgency requires contracting with a debarred or suspended contractor;

(iii) The contractor and a department or agency have an agreement covering the same events that resulted in the debarment or suspension and the agreement includes the department or agency decision not to debar or suspend the contractor; or

(iv) The national defense requires continued business dealings with the debarred or suspended contractor.

(b)(i) The Procurement Cause and Treatment Code ?H? annotation in the Exclusions section of the System for Award Management (SAM Exclusions) identifies contractor facilities where no part of a contract or subcontract may be performed

because of a violation of the Clean Air Act (42 U.S.C. 7606) or the Clean Water Act (33 **U.S.C. 1368).**

(ii) Under the authority of Section 8 of Executive Order 11738, the agency head may grant an exemption permitting award to a contractor using a Code ?H? ineligible facility if the agency head determines that such an exemption is in the paramount interest of the United States.

(A) The agency head may delegate this exemption authority to a level no lower than a general or flag officer or a member of the Senior Executive Service.

(B) The official granting the exemption?

(1) Must promptly notify the Environmental Protection Agency

suspending and debarring official of the exemption and the corresponding justification; and

(2) May grant a class exemption only after consulting with the Environmental Protection Agency suspending and debarring official.

(C) Exemptions must not exceed one year. Agencies must review the necessity for each exemption annually and, upon making of a new determination, may be extended for periods not to exceed one year.

(D) Agencies must report all exemptions annually to the Environmental Protection Agency suspending and debarring official.

(E) See PGI 209.405 for additional procedures and information.

209.405-2 Restrictions on subcontracting.

(a) Do not consent to any subcontract with a firm, or a subsidiary of a firm, identified in SAM Exclusions as owned or controlled by the government of a country that is a state sponsor of terrorism unless the agency head states in writing the compelling reasons for the subcontract. (See also part 240.)

209.406 Debarment.

209.406-1 General.

(a)(i) When the debarring official decides that debarment is not necessary, the official may require the contractor to enter into a written agreement that includes?

(A) A requirement for the contractor to establish, if not already established, and to maintain the standards of conduct and internal control systems prescribed by FAR subpart 3.10; and

(B) Other requirements the debarring official considers appropriate.

(ii) Before the debarring official decides not to suspend or debar in the case of an indictment or conviction for a felony, the debarring official must determine that the

contractor has addressed adequately the circumstances that gave rise to the misconduct, and that appropriate standards of ethics and integrity are in place and are working.

209.406-2 Causes for debarment.

(1) Consider any person for debarment if criminally convicted of intentionally affixing a label bearing a ?Made in America? inscription to any product sold in or shipped to the United States or its outlying areas that was not made in the United States or its outlying areas (10 U.S.C. 4658).

(i) The debarring official will make a determination concerning debarment not later than 90 days after determining that a person has been so convicted.

(ii) If the debarring official decides not to debar, the debarring official will report that decision to the Principal Director, Defense Pricing, Contracting, and Acquisition Policy, who will notify Congress within 30 days after the decision is made.

(2) A contractor that knowingly provides compensation to a former DoD official in

violation of section 847 of the National Defense Authorization Act for Fiscal Year 2008 may face suspension and debarment proceedings in accordance with 41 U.S.C. 2105(c)(1)(C).

209.406-3 Procedures.

Use the procedures at PGI 209.470 when referring a potential debarment to the agency debarring and suspending official identified in 209.403.

209.407 Suspension.

209.407-3 Procedures.

Use the procedures at PGI 209.470 when referring a potential suspension to the agency debarring and suspending official identified in 209.403.

209.409 Contract clause.

Insert the clause at 252.209-7004, Subcontracting with Firms that are Owned or Controlled by the Government of a Country that is a State Sponsor of Terrorism, in solicitations and contracts with a value of $200,000 or more.

209.470 [Reserved]

209.471 Congressional Medal of Honor.

In accordance with Section 8118 of Pub. L. 105-262, do not award a contract to, extend a contract with, or approve the award of a subcontract to any entity that, within the preceding 15 years, has been convicted under 18 U.S.C. 704 of the unlawful manufacture or sale of the Congressional Medal of Honor. Any entity so convicted will be listed as ineligible on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs published by the General Services Administration.

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SUBPART 209.5?ORGANIZATIONAL AND CONSULTANT CONFLICTS OF INTEREST

209.503-70 Waiver.

Notwithstanding FAR 9.503, for consulting services, as defined at 209.572(b), the waiver approval authority is the Secretary of Defense and the following officials, without power of delegation below an official appointed by the President and confirmed by the Senate:

(a) The Under Secretary of Defense (Acquisition and Sustainment).

(b) The assistant secretaries of the military departments. (See PGI 209.503-70.)

209.505 General rules.

209.505-4 Obtaining access to proprietary information.

(b)(i) For contractors, other than litigation support contractors, accessing third party proprietary technical data or computer software, non-disclosure requirements are addressed at 227.7103-7(b), through use of the clause at 252.227-7025 as prescribed at **227.7103-6(e). Pursuant to that clause, covered Government support contractors may** be required to enter into non-disclosure agreements directly with the third-party asserting restrictions on limited rights technical data, commercial technical data, or

restricted rights computer software. The contracting officer is not required to obtain copies of these agreements or to ensure that they are properly executed.

(ii) For litigation support contractors accessing litigation information, including that originating from third parties, use and non-disclosure requirements are addressed using the clause at 252.204-7014, as prescribed at 204.7403(a). Pursuant to the clause, litigation support contractors are not required to enter into non-disclosure agreements directly with any third-party asserting restrictions on any litigation information.

209.570 Limitations on contractors acting as lead system integrators.

209.570-1 Definitions.

As used in this section?

?Lead system integrator with system responsibility? means a prime contractor for the development or production of a major system, if the prime contractor is not expected at the time of award to perform a substantial portion of the work on the system and the major subsystems. (See PGI 209.570-1 for additional information.)

?Lead system integrator without system responsibility? means a prime contractor under a contract for the procurement of services, the primary purpose of which is to perform acquisition functions closely associated with inherently governmental functions (see section 7.503(d) of the Federal Acquisition Regulation) with respect to the development or production of a major system.

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209.570-2 Policy.

(a) Except as provided in paragraph (b) of this section, 10 U.S.C. 4292 prohibits any entity performing lead system integrator functions in the acquisition of a major system by DoD from having any direct financial interest in the development or construction of any individual system or element of any system of systems.

(b) The prohibition in paragraph (a) of this subsection does not apply if?

(1) The Secretary of Defense certifies to the Committees on Armed Services of the Senate and the House of Representatives that?

(i) The entity was selected by DoD as a contractor to develop or construct the system or element concerned through the use of competitive procedures; and

(ii) DoD took appropriate steps to prevent any organizational conflict of interest in the selection process; or

(2) The entity was selected by a subcontractor to serve as a lower-tier subcontractor, through a process over which the entity exercised no control.

(c) In accordance with section 802 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181; 10 U.S.C. 4292 note), DoD may award a new contract for lead system integrator functions in the acquisition of a major system only if?

(1) The major system has not yet proceeded beyond low-rate initial production; or

(2) The Secretary of Defense determines in writing that carrying out the acquisition without continuing to use a contractor to perform lead system integrator functions would be impracticable and that doing so is in the best interest of DoD. The authority to make this determination may not be delegated below the level of the Under Secretary of Defense for Acquisition and Sustainment. See also 209.570-3(b).

(d) Effective October 1, 2010, DoD is prohibited from awarding a new contract for lead system integrator functions in the acquisition of a major system to any entity that was not performing lead system integrator functions in the acquisition of the major system prior to January 28, 2008.

209.570-3 Procedures.

(a) In making a responsibility determination before awarding a contract for the acquisition of a major system?

(1) Determine whether the prospective contractor meets the definition of ?lead system integrator?;

(2) Consider all information regarding the prospective contractor?s direct financial interests in view of the prohibition at 209.570-2(a); and

(3) Follow the procedures at PGI 209.570-3.

(b) A determination to use a contractor to perform lead system integrator functions in accordance with 209.570-2(c)(2)?

(1) Must specify the reasons why conducting the acquisition without continuing to use a contractor to perform lead system integrator functions would be impracticable, including a discussion of alternatives, such as use of the DoD workforce or a system engineering and technical assistance contractor;

(2) Must include a plan for phasing out the use of contracted lead system integrator functions over the shortest period of time consistent with the interest of the national defense; and

(3) Must be provided to the Committees on Armed Services of the Senate and the House of Representatives at least 45 days before the award of a contract pursuant to the determination.

209.570-4 Solicitation provision and contract clause.

(a) Insert the provision at 252.209-7006, Limitations on Contractors Acting as Lead System Integrators, in solicitations for the acquisition of a major system when the acquisition strategy envisions the use of a lead system integrator.

(b) Insert the clause at 252.209-7007, Prohibited Financial Interests for Lead System Integrators?

(1) In solicitations that include the provision at 252.209-7006; and

(2) In contracts when the contractor will fill the role of a lead system integrator for the acquisition of a major system.

209.571 Organizational conflicts of interest in major defense acquisition

programs.

209.571-0 Scope of section.

This section implements section 207 of the Weapons System Acquisition Reform Act of 2009 (Pub. L. 111-23).

209.571-1 Definitions.

As used in this section?

?Lead system integrator? includes lead system integrator with system responsibility and lead system integrator without system responsibility.

(i) ?Lead system integrator with system responsibility? means a prime contractor for the development or production of a major system, if the prime contractor is not expected at the time of award to perform a substantial portion of the work on the system and the major subsystems.

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(ii) ?Lead system integrator without system responsibility? means a prime contractor under a contract for the procurement of services, the primary purpose of which is to perform acquisition functions closely associated with inherently governmental functions (see section 7.503(d) of the Federal Acquisition Regulation) with respect to the development or production of a major system.

?Major subcontractor? means a subcontractor that is awarded a subcontract that equals or exceeds?

(i) Both the certified cost or pricing data threshold and 10 percent of the value of the contract under which the subcontract is awarded; or

(ii) $55 million.

?Pre-Major Defense Acquisition Program? means a program that is in the Materiel Solution Analysis or Technology Development Phases preceding Milestone B of the Defense Acquisition System and has been identified to have the potential to become a major defense acquisition program.

?Systems engineering and technical assistance?.

(1) ?Systems engineering? means an interdisciplinary technical effort to evolve and verify an integrated and total life cycle balanced set of system, people, and process solutions that satisfy customer needs.

(2) ?Technical assistance? means the acquisition support, program management support, analyses, and other activities involved in the management and execution of an acquisition program.

(3) ?Systems engineering and technical assistance??

(i) Means a combination of activities related to the development of technical information to support various acquisition processes. Examples of systems engineering and technical assistance activities include, but are not limited to, supporting acquisition efforts such as?

(A) Deriving requirements;

(B) Performing technology assessments;

(C) Developing acquisition strategies;

(D) Conducting risk assessments;

(E) Developing cost estimates;

(F) Determining specifications;

(G) Evaluating contractor performance and conducting independent verification and validation;

(H) Directing other contractors? (other than subcontractors) operations;

(I) Developing test requirements and evaluating test data;

(J) Developing work statements (but see paragraph (ii)(B) of this definition).

(ii) Does not include?

(A) Design and development work of design and development contractors, in accordance with FAR 9.505-2(a)(3) or FAR 9.505-2(b)(3), and the guidance at PGI 209.571-7; or

(B) Preparation of work statements by contractors, acting as industry representatives, under the supervision and control of Government representatives, in accordance with FAR 9.505-2(b)(1)(ii).

209.571-2 Applicability.

(a) This section applies to major defense acquisition programs.

(b) To the extent that this section is inconsistent with FAR subpart 9.5, this section takes precedence.

209.571-3 Policy.

(a) Agencies must obtain advice on major defense acquisition programs and pre-major defense acquisition programs from sources that are objective and unbiased; and

(b) Generally, seek to resolve organizational conflicts of interest in a manner that will promote competition and preserve DoD access to the expertise and experience of qualified contractors. Accordingly, to the extent feasible, employ organizational conflict of interest resolution strategies that do not unnecessarily restrict the pool of potential offerors in current or future acquisitions. Further, contracting activities must not impose across-the-board restrictions or limitations on the use of particular resolution methods, except as required under 209.571-7 or as appropriate in particular acquisitions.

209.571-4 Mitigation.

(a) Mitigation is any action taken to minimize an organizational conflict of interest. Mitigation may require Government action, contractor action, or a combination of both.

(b) If the contracting officer and the contractor have agreed to mitigation of an organizational conflict of interest, incorporate into the contract a Government-approved Organizational Conflict of Interest Mitigation Plan, reflecting the actions a contractor

has agreed to take to mitigate a conflict.

(c) If determining, after consultation with legal counsel, that the otherwise successful offeror is unable to effectively mitigate an organizational conflict of interest, then , taking into account both the contract and longer term Government needs, use

another approach to resolve the organizational conflict of interest, select another offeror, or request a waiver in accordance with FAR 9.503 (but see statutory prohibition in **209.571-7).**

(d) For any acquisition exceeding $1 billion, brief the senior procurement executive before determining that an offeror?s mitigation plan is unacceptable.

209.571-5 Lead system integrators.

For limitations on contractors acting as lead systems integrators, see 209.570.

209.571-6 Identification of organizational conflicts of interest.

When evaluating organizational conflicts of interest for major defense acquisition programs or pre-major defense acquisition programs, consider?

(a) The ownership of business units performing systems engineering and technical assistance, professional services, or management support services to a major defense acquisition program or a pre-major defense acquisition program by a contractor who simultaneously owns a business unit competing (or potentially competing) to perform as?

(1) The prime contractor for the same major defense acquisition program; or

(2) The supplier of a major subsystem or component for the same major defense acquisition program.

(b) The proposed award of a major subsystem by a prime contractor to business units or other affiliates of the same parent corporate entity, particularly the award of a subcontract for software integration or the development of a proprietary software system architecture; and

(c) The performance by, or assistance of, contractors in technical evaluation.

209.571-7 Systems engineering and technical assistance contracts.

(a) Agencies must obtain advice on systems architecture and systems engineering matters with respect to major defense acquisition programs or pre-major defense acquisition programs from Federally Funded Research and Development Centers or other sources independent of the major defense acquisition program contractor.

(b) Limitation on Future Contracting. (1) Except as provided in paragraph (c) of this section, a contract for the performance of systems engineering and technical assistance for a major defense acquisition program or a pre-major defense acquisition program must prohibit the contractor or any affiliate of the contractor from participating as a contractor or major subcontractor in the development or production of a weapon system under such program.

(2) The requirement in paragraph (b)(1) of this section cannot be waived.

(c) Exception. (1) The requirement in paragraph (b)(1) of this section does not apply if the head of the contracting activity determines that?

(i) An exception is necessary because DoD needs the domain experience and expertise of the highly qualified, apparently successful offeror; and

(ii) Based on the agreed-to resolution strategy, the apparently successful offeror will be able to provide objective and unbiased advice, as required by 209.571-3(a), without a limitation on future participation in development and production.

(2) The authority to make this determination is non-delegable.

209.571-8 Solicitation provision and contract clause.

(a) Insert the provision at 252.209-7008, Notice of Prohibition Relating to Organizational Conflict of Interest?Major Defense Acquisition Program, if the solicitation includes the clause at 252.209-7009, Organizational Conflict of Interest?Major Defense Acquisition Program; and

(b) Insert the clause at 252.209-7009, Organizational Conflict of Interest?Major Defense Acquisition Program, in solicitations and contracts for systems engineering and technical assistance for major defense acquisition programs or pre-major defense acquisition programs.

209.572 Conflicts of interest in certain consulting services.

(a) Scope. (1) This section implements section 812 of the National Defense Authorization Act for Fiscal Year 2024 (Pub. L. 118-31).

(2) To the extent that this section is inconsistent with FAR subpart 9.5, this section takes precedence.

(b) Definitions. As used in this section?

?Consulting services? means advisory and assistance services, except that ?consulting services? does not include the provision of products or services related to?

(i) Compliance with legal, audit, accounting, tax, reporting, or other requirements of the laws and standards of countries; or

(ii) Participation in a judicial, legal, or equitable dispute resolution proceeding.

?Contract oversight entity? means any of the following:

(i) The contracting officer.

(ii) The contracting officer?s representative.

(iii) The Defense Contract Management Agency.

(iv) The Defense Contract Audit Agency.

(v) The DoD Office of Inspector General or any subcomponent of that office.

(vi) The Government Accountability Office.

?Covered contract? means a DoD contract involving consulting services.

?Covered foreign entity? means any of the following:

(i) The government of the People?s Republic of China, the Chinese Communist Party, the People?s Liberation Army, the Ministry of State Security, or other security service or intelligence agency of the People?s Republic of China.

(ii) The government of the Russian Federation or any entity sanctioned by the Secretary of the Treasury under Executive Order 13662, Blocking Property of Additional Persons Contributing to the Situation in Ukraine.

(iii) The government of any country if the Secretary of State determines that such government has repeatedly provided support for acts of international terrorism pursuant to any of the following:

(A) Section 1754(c)(1)(A) of the Export Control Reform Act of 2018 (50 U.S.C. 4318(c)(1)(A)).

(B) Section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371).

(C) Section 40 of the Arms Export Control Act (22 U.S.C. 2780).

(D) Any other provision of law.

(iv) Any entity included on any of the following lists maintained by the Department of Commerce (see the Export Administration Regulations at 15 CFR subchapter C):

(A) The Entity List in supplement no. 4 to 15 CFR part 744.

(B) The Denied Persons List as described in 15 CFR 764.3(a)(2).

(C) The Unverified List in supplement no. 6 to 15 CFR part 744.

(D) The Military End User List in supplement no. 7 to 15 CFR part 744.

(v) Any entity identified by the Secretary of Defense pursuant to section 1237(b) of the National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105-261; 50 U.S.C. 1701 note).

(vi) Any entity on the Non-Specially Designated Nationals Chinese Military-Industrial Complex Companies List maintained by the Office of Foreign Assets Control of the Department of the Treasury under Executive Order 14032, Addressing the Threat From Securities Investments That Finance Certain Companies of the People?s Republic of China.

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(c) Prohibition. The contracting officer shall not award a contract assigned a North American Industry Classification System (NAICS) code beginning with 5416 that involves consulting services to an offeror that both?

(1) Cannot certify that neither the offeror nor its subsidiaries or affiliates hold a contract or subcontract involving consulting services with one or more covered foreign entities; and

(2) Does not have a conflict-of-interest mitigation plan that is auditable by a contract oversight entity and approved by the contracting officer.

(d) Waiver. (1) If the prospective contractor(s) certified, in response to paragraph

(c) of the provision at 252.209-7012, Prohibition Relating to Conflicts of Interest in Consulting Services?Certification, that it or its subsidiaries or affiliates hold a contract or subcontract for consulting services with one or more covered foreign entities and the offeror has not submitted an acceptable conflict-of-interest mitigation plan, the contracting officer must?

(i) Notify the offeror of the potential withholding of award due to the unmitigated conflict of interest; and

(ii) Specify that the offeror has 10 days to respond to the notification.

(2) Request a waiver in accordance with 209.503-70, if the contracting officer determines that it is in the best interest of the United States to award the contract, notwithstanding the conflict of interest.

(3) The prohibition may be waived on a case-by-case basis if an official listed at **209.503-70 determines that a waiver is necessary for national security purposes.**

(4) The contracting officer must include the waiver request and the waiver in the contract file.

(5) Not later than 30 days after approval of the waiver, the agency must provide written notification to the House and Senate Armed Services Committees of the use of such waiver authority. The notification must include?

(i) The specific justification for providing the waiver;

(ii) The number of offerors that did not require a waiver;

(iii) The number of offerors that were granted a waiver;

(iv) Identification of the covered foreign entity that is the subject of the waiver; and

(v) The total dollar value of the covered contract.

(e) Solicitation provision. Insert the provision at 252.209-7012, Prohibition Relating to Conflicts of Interest in Consulting Services?Certification, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial services,

assigned a NAICS code beginning with 5416. Do not include the provision in solicitations for the acquisition of commercial products.

PART 252?SOLICITATION PROVISIONS AND CONTRACT CLAUSES

SUBPART 252.2?TEXT OF PROVISIONS AND CLAUSES

252.209-7000 [Reserved]

252.209-7001 [Reserved]

252.209-7002 Disclosure of Ownership or Control by a Foreign Government.

As prescribed in 209.104-70, use the following provision:

DISCLOSURE OF OWNERSHIP OR CONTROL BY A FOREIGN GOVERNMENT (DEC 2022)

(a) Definitions. As used in this provision?

(1) Effectively owned or controlled means that a foreign government or any

entity controlled by a foreign government has the power, either directly or indirectly, whether exercised or exercisable, to control the election, appointment, or tenure of the Offeror?s officers or a majority of the Offeror?s board of directors by any means, e.g., ownership, contract, or operation of law (or equivalent power for unincorporated organizations).

(2) Entity controlled by a foreign government?

(i) Means?

(A) Any domestic or foreign organization or corporation that is effectively owned or controlled by a foreign government; or

(B) Any individual acting on behalf of a foreign government.

(ii) Does not include an organization or corporation that is owned, but is not controlled, either directly or indirectly, by a foreign government if the ownership of that organization or corporation by that foreign government was effective before October 23, **1992.**

(3) Foreign government includes the state and the government of any country (other than the United States and its outlying areas) as well as any political subdivision, agency, or instrumentality thereof.

(4) Proscribed information means?

(i) Top Secret information;

(ii) Communications security (COMSEC) material, excluding controlled cryptographic items when unkeyed or utilized with unclassified keys;

(iii) Restricted Data as defined in the U.S. Atomic Energy Act of 1954, as amended;

(iv) Special Access Program (SAP) information; or

(v) Sensitive Compartmented Information (SCI).

(b) Prohibition on award. No contract under a national security program may be awarded to an entity controlled by a foreign government if that entity requires access to proscribed information to perform the contract, unless the Secretary of Defense or a designee has waived application of 10 U.S.C. 4874.

(c) Disclosure. The Offeror shall disclose any interest a foreign government has in the Offeror when that interest constitutes control by a foreign government as defined in this provision. If the Offeror is a subsidiary, it shall also disclose any reportable interest a foreign government has in any entity that owns or controls the subsidiary, including reportable interest concerning the Offeror?s immediate parent, intermediate parents, and the ultimate parent. Use separate paper as needed, and provide the information in the following format: Offeror?s Point of Contact for Questions about Disclosure (Name and Phone Number with Country Code, City Code and Area Code, as applicable) Offeror?s Point of Contact for Questions about Disclosure

(Name and Phone Number with Country Code, City Code and Area Code, as applicable)

Name and Address of Offeror
Name and Address of Entity Description of Interest, Ownership
Controlled by a Foreign Government Percentage, and Identification of
Foreign Government

(End of provision)

252.209-7003 [Reserved]

252.209-7004 Subcontracting with Firms that are Owned or Controlled by the Government of a Country that is a State Sponsor of Terrorism.

As prescribed in 209.409, use the following clause:

SUBCONTRACTING WITH FIRMS THAT ARE OWNED OR CONTROLLED BY THE GOVERNMENT OF A COUNTRY THAT IS A STATE SPONSOR OF TERRORISM (MAY 2019)

(a) Unless the Government determines that there is a compelling reason to do so, the Contractor shall not enter into any subcontract in excess of the threshold specified in Federal Acquisition Regulation 9.405-2(b) on the date of subcontract award with a firm, or a subsidiary of a firm, that is identified in the Exclusions section of the System for Award Management System (SAM Exclusions) as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a country that is a state sponsor of terrorism.

(b) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is identified, in SAM Exclusions, as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a country that is a state sponsor of terrorism. The notice must include the name of the proposed subcontractor and the compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion in SAM Exclusions.

(End of clause)

252.209-7005 [Reserved]

252.209-7006 Limitations on Contractors Acting as Lead System Integrators.

As prescribed in 209.570-4(a), use the following provision:

LIMITATIONS ON CONTRACTORS ACTING AS LEAD SYSTEM INTEGRATORS (DEC 2022)

(a) Definitions. Lead system integrator, lead system integrator with system responsibility, and lead system integrator without system responsibility, as used in this provision, have the meanings given in the clause of this solicitation entitled ?Prohibited Financial Interests for Lead System Integrators? (DFARS 252.209-7007).

(b) General. Unless an exception is granted, no contractor performing lead system integrator functions in the acquisition of a major system by the Department of Defense may have any direct financial interest in the development or construction of any

individual system or element of any system of systems.

(c) Representations. (1) The offeror represents that it does [ ] does not [ ] propose to perform this contract as a lead system integrator with system responsibility.

(2) The offeror represents that it does [ ] does not [ ] propose to perform this contract as a lead system integrator without system responsibility.

(3) If the offeror answered in the affirmative in paragraph (c)(1) or (2) of this provision, the offeror represents that it does [ ] does not [ ] have any direct financial interest as described in paragraph (b) of this provision with respect to the system(s), subsystem(s), system of systems, or services described in this solicitation.

(d) If the offeror answered in the affirmative in paragraph (c)(3) of this provision, the offeror should contact the Contracting Officer for guidance on the possibility of submitting a mitigation plan and/or requesting an exception.

(e) If the offeror does have a direct financial interest, the offeror may be prohibited from receiving an award under this solicitation, unless the offeror submits to the Contracting Officer appropriate evidence that the offeror was selected by a subcontractor to serve as a lower-tier subcontractor through a process over which the offeror exercised no control.

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(f) This provision implements the requirements of 10 U.S.C. 4292.

(End of provision)

252.209-7007 Prohibited Financial Interests for Lead System Integrators.

As prescribed in 209.570-4(b), use the following clause:

PROHIBITED FINANCIAL INTERESTS FOR LEAD SYSTEM INTEGRATORS (DEC 2022)

(a) Definitions. As used in this clause?

(1) Lead system integrator includes lead system integrator with system responsibility and lead system integrator without system responsibility.

(2) Lead system integrator with system responsibility means a prime contractor for the development or production of a major system, if the prime contractor is not expected at the time of award to perform a substantial portion of the work on the system and the major subsystems.

(3) Lead system integrator without system responsibility means a prime contractor under a contract for the procurement of services, the primary purpose of which is to perform acquisition functions closely associated with inherently governmental functions (see section 7.503(d) of the Federal Acquisition Regulation) with respect to the development or production of a major system.

(b) Limitations. The Contracting Officer has determined that the Contractor meets the definition of lead system integrator with [ ] without [ ] system responsibility. Unless an exception is granted, the Contractor shall not have any direct financial interest in

the development or construction of any individual system or element of any system of systems while performing lead system integrator functions in the acquisition of a major system by the Department of Defense under this contract.

(c) Agreement. The Contractor agrees that during performance of this contract it will not acquire any direct financial interest as described in paragraph (b) of this clause, or, if it does acquire or plan to acquire such interest, it will immediately notify the Contracting Officer. The Contractor further agrees to provide to the Contracting Officer all relevant information regarding the change in financial interests so that the Contracting Officer can determine whether an exception applies or whether the Contractor will be allowed to continue performance on this contract. If a direct financial interest cannot be avoided, eliminated, or mitigated to the Contracting Officer?s satisfaction, the Contracting Officer may terminate this contract for default for the Contractor?s material failure to comply with the terms and conditions of award or may take other remedial measures as appropriate in the Contracting Officer?s sole discretion.

(d) Notwithstanding any other clause of this contract, if the Contracting Officer determines that the Contractor misrepresented its financial interests at the time of award or has violated the agreement in paragraph (c) of this clause, the Government may terminate this contract for default for the Contractor?s material failure to comply

with the terms and conditions of award or may take other remedial measures as appropriate in the Contracting Officer?s sole discretion.

(e) This clause implements the requirements of 10 U.S.C. 4292.

(End of clause)

252.209-7008 Notice of Prohibition Relating to Organizational Conflict of Interest?Major Defense Acquisition Program.

As prescribed in 209.571-8(a), use the following provision:

NOTICE OF PROHIBITION RELATING TO ORGANIZATIONAL CONFLICT OF INTEREST?MAJOR DEFENSE ACQUISITION PROGRAM (DEC 2010)

(a) Definitions. ?Major subcontractor? is defined in the clause at 252.209-7009, Organizational Conflict of Interest?Major Defense Acquisition Program.

(b) This solicitation is for the performance of systems engineering and technical assistance for a major defense acquisition program or a pre-major defense acquisition program.

(c) Prohibition. As required by paragraph (b)(3) of section 207 of the Weapons System Acquisition Reform Act of 2009 (Pub. L. 111-23), if awarded the contract, the contractor or any affiliate of the contractor is prohibited from participating as a prime contractor or a major subcontractor in the development or production of a weapon system under the major defense acquisition program or pre-major defense acquisition program, unless the offeror submits, and the Government approves, an Organizational

Conflict of Interest Mitigation Plan.

(d) Request for an exception. If the offeror requests an exception to the prohibition of paragraph (c) of this provision, then the offeror shall submit an Organizational Conflict of Interest Mitigation Plan with its offer for evaluation.

(e) Incorporation of Organizational Conflict of Interest Mitigation Plan in contract. If the apparently successful offeror submitted an acceptable Organizational Conflict of Interest Mitigation Plan, and the head of the contracting activity determines that DoD needs the domain experience and expertise of the highly qualified, apparently successful offeror in accordance with FAR 209.571-7(c), then the Contracting Officer will incorporate the Organizational Conflict of Interest Mitigation Plan into the resultant contract, and paragraph (d) of the clause at 252.209-7009 will become applicable.

(End of provision)

252.209-7009 Organizational Conflict of Interest?Major Defense Acquisition Program.

As prescribed in 209.571-8(b), use the following clause:

ORGANIZATIONAL CONFLICT OF INTEREST?MAJOR DEFENSE ACQUISITION PROGRAM (MAY 2019)

(a) Definition. As used in this clause?

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Major subcontractor means a subcontractor that is awarded a subcontract that equals or exceeds?

(1) Both the certified cost or pricing data threshold and 10 percent of the value of the contract under which the subcontract is awarded; or

(2) The threshold specified in the definition of ?major subcontractor? at Defense Federal Acquisition Regulation Supplement 209.571-1 on the date of subcontract award.

(b) This contract is for the performance of systems engineering and technical assistance for a major defense acquisition program or a pre-major defense acquisition program.

(c) Prohibition. Except as provided in paragraph (d) of this clause, as required by paragraph (b)(3) of section 207 of the Weapons System Acquisition Reform Act of 2009

(Pub. L. 111-23), the Contractor or any affiliate of the Contractor is prohibited from participating as a prime contractor or major subcontractor in the development or production of a weapon system under the major defense acquisition program or pre-major defense acquisition program.

(d) Organizational Conflict of Interest Mitigation Plan. If the Contractor submitted an acceptable Organizational Conflict of Interest Mitigation Plan that has been incorporated into this contract, then the prohibition in paragraph (c) of this clause does not apply. The Contractor shall comply with the Organizational Conflict of Interest Mitigation Plan. Compliance with the Organizational Conflict of Interest Mitigation

Plan is a material requirement of the contract. Failure to comply may result in the Contractor or any affiliate of the Contractor being prohibited from participating as a contractor or major subcontractor in the development or production of a weapon system under the program, in addition to any other remedies available to the Government for noncompliance with a material requirement of a contract.

(End of clause)

252.209-7010 Critical Safety Items.

As prescribed in 209.270-5, use the following clause:

CRITICAL SAFETY ITEMS (AUG 2011)

(a) Definitions.

Aviation critical safety item means a part, an assembly, installation equipment, launch equipment, recovery equipment, or support equipment for an aircraft or aviation weapon system if the part, assembly, or equipment contains a characteristic any failure, malfunction, or absence of which could cause?

(i) A catastrophic or critical failure resulting in the loss of, or serious damage to, the aircraft or weapon system;

(ii) An unacceptable risk of personal injury or loss of life; or

(iii) An uncommanded engine shutdown that jeopardizes safety.

Design control activity. (i) With respect to an aviation critical safety item, means the systems command of a military department that is specifically responsible for ensuring the airworthiness of an aviation system or equipment, in which an aviation critical safety item is to be used; and

(ii) With respect to a ship critical safety item, means the systems command of a military department that is specifically responsible for ensuring the seaworthiness of a ship or ship equipment, in which a ship critical safety item is to be used.

Ship critical safety item means any ship part, assembly, or support equipment containing a characteristic, the failure, malfunction, or absence of which could cause?

(i) A catastrophic or critical failure resulting in loss of, or serious damage to, the ship; or

(ii) An unacceptable risk of personal injury or loss of life.

(b) Identification of critical safety items. One or more of the items being procured under this contract is an aviation or ship critical safety item. The following items have been designated aviation critical safety items or ship critical safety items by the designated design control activity:

??
??
??
??

(Insert additional lines as necessary)

(c) Heightened quality assurance surveillance. Items designated in paragraph (b) of this clause are subject to heightened, risk-based surveillance by the designated quality assurance representative.

(End of clause)

252.209-7011 Representation for Restriction on the Use of Certain Institutions of Higher Education.

As prescribed in 209.170-4, use the following provision:

REPRESENTATION FOR RESTRICTION ON THE USE OF CERTAIN INSTITUTIONS OF HIGHER EDUCATION (AUG 2025)

(a) Definitions. As used in this provision?

Confucius Institute means?

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(1) Any program that receives funding or support from?

(i) The Chinese International Education Foundation; or

(ii) The Center for Language Exchange Cooperation of the Ministry of Education of the People?s Republic of China; or

(2) Any cultural institute directly or indirectly funded by the government of the People?s Republic of China.

Institution of higher education has the meaning given in 20 U.S.C. 1002.

(b) Restriction. As required by section 1062 of the National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116-283), DoD may not award a contract with any institution of higher education that hosts a Confucius Institute. Section 1062 prohibits DoD from providing funding to any U.S. institution of higher education hosting a Confucius Institute unless that institution receives a waiver from the Department of Defense Office of the Under Secretary of Defense for Research and Engineering (OUSD(R&E)). The waiver authority terminates on October 1, 2026. Any waiver issued will not apply on or after that date. See the OUSD(R&E) Confucius Institute Waiver Program Guidance to U.S. Institutions of Higher Education at https://rt.cto.mil/wp-content/uploads/Confucius-Institute-Waiver-Program-Guidance-28Mar2023.pdf.

(c) Representation. By submission of an offer, the Offeror represents that?

(1) It is not an institution of higher education that hosts a Confucius Institute; or

(2) The Offeror has obtained a waiver approved by OUSD(R&E).

(End of provision)

252.209-7012 Prohibition Relating to Conflicts of Interest in Consulting Services?Certification.

As prescribed in 209.572(e), use the following provision:

PROHIBITION RELATING TO CONFLICTS OF INTEREST IN CONSULTING SERVICES?CERTIFICATION (OCT 2025)

(a) Definitions. As used in this provision?

Consulting services means advisory and assistance services, except that ?consulting services? does not include the provision of products or services related to?

(1) Compliance with legal, audit, accounting, tax, reporting, or other requirements of the laws and standards of countries; or

(2) Participation in a judicial, legal, or equitable dispute resolution proceeding.

Contract oversight entity means any of the following:

(1) The Contracting Officer.

(2) The Contracting Officer?s Representative.

(3) The Defense Contract Management Agency.

(4) The Defense Contract Audit Agency.

(5) The DoD Office of Inspector General or any subcomponent of that office.

(6) The Government Accountability Office.

Covered contract means a DoD contract involving consulting services.

Covered foreign entity means any of the following:

(1) The government of the People?s Republic of China, the Chinese Communist Party, the People?s Liberation Army, the Ministry of State Security, or other security service or intelligence agency of the People?s Republic of China.

(2) The government of the Russian Federation or any entity sanctioned by the Secretary of the Treasury under Executive Order 13662, Blocking Property of Additional Persons Contributing to the Situation in Ukraine.

(3) The government of any country, if the Secretary of State determines that such government has repeatedly provided support for acts of international terrorism, pursuant to any of the following:

(i) Section 1754(c)(1)(A) of the Export Control Reform Act of 2018 (50 U.S.C. 4318(c)(1)(A)).

(ii) Section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371).

(iii) Section 40 of the Arms Export Control Act (22 U.S.C. 2780).

(iv) Any other provision of law.

(4) Any entity included on any of the following lists maintained by the Department of Commerce (see the Export Administration Regulations at 15 CFR subchapter C):

(i) The Entity List in supplement no. 4 to 15 CFR part 744.

(ii) The Denied Persons List as described in 15 CFR 764.3(a)(2).

(iii) The Unverified List in supplement no. 6 to 15 CFR part 744.

(iv) The Military End User List in supplement no. 7 to 15 CFR part 744.

(5) Any entity identified by the Secretary of Defense pursuant to section 1237(b) of the National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105-261; 50 U.S.C. 1701 note).

(6) Any entity on the Non-Specially Designated Nationals Chinese Military-Industrial Complex Companies List maintained by the Office of Foreign Assets Control of the Department of the Treasury under Executive Order 14032, Addressing the Threat From Securities Investments That Finance Certain Companies of the People?s Republic of China.

(b) Prohibition. DoD cannot award to the Offeror a contract assigned a North American Industry Classification System code beginning with 5416 if the Offeror?

(1) Cannot certify that neither the Offeror nor any of its subsidiaries or affiliates hold a contract or subcontract that involves consulting services with one or more covered foreign entities; and

(2) Does not maintain a conflict-of-interest mitigation plan as described in paragraph (d) of this provision.

(c) Certification. The Offeror certifies that?

(1)(i) It does [ ] does not [ ] hold a contract or subcontract that involves consulting services with one or more covered foreign entities; and

(ii) Its subsidiaries or affiliates do [ ] do not [ ] hold a contract or subcontract that involves consulting services with one or more covered foreign entities; and

(2) It does [ ] does not [ ] maintain a conflict-of-interest mitigation plan described in paragraph (d) of this provision.

(d) Conflict-of-interest mitigation plan. If the Offeror answered in the affirmative in paragraphs (c)(1) and (2) of this provision, then the Offeror shall submit its conflict-of-interest mitigation plan to the Contracting Officer for approval. The Offeror may contact the Contracting Officer for guidance on submitting the Offeror?s conflict-of-interest mitigation plan.

(1) The Offeror?s conflict-of-interest mitigation plan shall be auditable by a contract oversight entity and shall include?

(i) An identification, unless otherwise prohibited by law or regulation, of any covered contracts of the Offeror or its subsidiaries or affiliates with a covered foreign entity. If the Offeror is unable to identify one or more covered foreign entities due to confidentiality obligations, the Offeror shall identify such entities as a covered foreign entity;

(ii) A written analysis, including a course of action for avoiding, neutralizing, or mitigating the actual or potential conflict of interest of such a covered contract;

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(iii) A description of the procedures by which the Offeror or its subsidiaries or affiliates will ensure that individuals who will perform the scope of a covered contract will not, for the duration of such contract, also provide any consulting services to any

covered foreign entity; and

(iv) A description of the procedures by which the Offeror or its subsidiaries or affiliates will submit to the contract oversight entities a notice of an unmitigated conflict of interest with respect to a covered contract within 15 days of determining that such a conflict has arisen.

(2) The Contracting Officer will incorporate the Offeror?s approved conflict-of-interest mitigation plan into any contract awarded to the Offeror resulting from this solicitation.

(End of provision)

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PGI PART 209.1?RESPONSIBLE PROSPECTIVE CONTRACTORS

PGI 209.105-1 Obtaining information.

(1) GSA's System for Award Management (SAM), which is available at https://sam.gov/, identifies entities excluded throughout the U.S. Government (unless otherwise noted) from receiving Federal contracts or certain subcontracts and from certain types of Federal financial and non-financial assistance and benefits. The SAM website provides useful documents and online training to assist with SAM navigation and data entry. User Guides and Demonstration Videos can be found in the User Help section after clicking the HELP link at the top of the website homepage. The former Excluded Parties List System (EPLS) information is within the Performance Information functional area of SAM maintained as ?Exclusions? data. Exclusions are in the Data Access area of SAM which can be accessed by navigating the following path after logging into the SAM website. Select Tab ? MYSAM, Tab ? Data Access, and Tab ? Exclusions.

(i) Multiple agencies have the authority to suspend or debar entities from ?doing business? with the Government. There are approximately 71 separate cause and treatment codes under which entities have been suspended or debarred or excluded. New exclusion records created in SAM will no longer be identified with cause and treatment codes. Exclusions will be associated with one of four exclusion types: Preliminarily Ineligible

(Proceedings Pending), Ineligible (Proceedings Completed), Prohibition/Restriction, Voluntary Exclusion. Each cause and treatment code is linked to one exclusion type.

(ii) The exclusion type advises readers of the nature of the exclusion, debarment, or suspension and how those listed in the SAM Exclusions should be treated. However, the fact that an entity is listed in the SAM Exclusions does not necessarily mean the entity is ineligible for contract award. Review of the exclusion type is crucial in ensuring that listed entities are not deprived of their ?liberty interest? in conducting business with the Government.

(iii) When the Department of Justice Bureau of Justice Assistance debars individuals under 10 U.S.C. 4656, they are placed in the SAM Exclusions under cause and treatment code FF (Reciprocal), which is now linked to exclusion type, Ineligible

(Proceedings Completed). The records for individuals currently entered into EPLS and listed under this cause and treatment code can be found in the SAM Exclusions. Records

created in EPLS have both a cause and treatment code and an exclusion type listed.

(2) The contracting officer shall consider the information available in the Supplier Performance Risk System during the evaluation of quotations and offers received in response to a solicitation and in the determination of the contractor?s responsibility. In addition, the contracting officer shall document the contract file regarding any action taken as a result of information obtained from the Supplier Performance Risk System.

PGI 209.170-3 Waiver of restriction.

The waiver authority terminates on October 1, 2026. For information on the roles of requiring activities and the Confucius Institute Waiver Program in the waiver process, see the Confucius Institute Waiver Program Guidance to U.S. Institutions of Higher Education, issued by the Office of the Under Secretary of Defense (Research and Engineering),

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Confucius Institute Waiver Program and available at https://rt.cto.mil/wp-content/uploads/Confucius-Institute-Waiver-Program-Guidance-28Mar2023.pdf.

PGI 209.171 Preaward surveys.

PGI 209.171-1 Conditions for preaward surveys.

(a) If a preaward survey is requested, include the rationale in Block 23 of the SF 1403, Preaward Survey of Prospective Contractor (General).

PGI 209.171-2 Requests for preaward surveys.

(1) The surveying activity is the cognizant contract administration office as listed in the Federal Directory of Contract Administration Services Components, available at https://pubapp.dcma.mil/CASD/main.jsp. When information is required as part of the survey on the adequacy of the contractor's accounting system or its suitability for administration of the proposed type of contract, the surveying activity will obtain the information from the auditor.

(2) Limited information may be requested by telephone.

(3) The contracting officer may request a formal survey by telephone but must confirm immediately with SF 1403, Preaward Survey of Prospective Contractor (General). For a formal survey, send original and three copies of SF 1403, including necessary drawings and specifications.

(i) List additional factors in Item H, Section III of the SF 1403 and explain them in Block 23. For example?

(A) Information needed to determine a prospective contractor's eligibility under the Walsh-Healey Public Contracts Act. (Note that the Walsh-Healey Public Contracts Act, Block 12 of Section I, only indicates what the contractor has represented its classification to be under Walsh-Healey.)

(B) Evaluation of a contractor as a planned producer when the offered item is or may appear on the Industrial Preparedness Planning List (IPPL). When the preaward survey results in a recommendation for award, ask the office responsible for industrial preparedness planning to consider designating the prospective contractor as a planned producer. If the item is already on the IPPL or the prospective contractor is already a

planned producer, note the information in Block 23.

(C) Evaluation of the prospective contractor?s performance against small business subcontracting plans.

(4) On base level preaward surveys, technical personnel from the requiring installation should participate when there is concern about the ability of a prospective contractor to perform a base level service or construction contract.

(5) Allow more time for?

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(i) Complex items;

(ii) New or inexperienced DoD contractors; and

(iii) Surveys with time-consuming requirements, e.g., secondary survey, accounting system review, financial capability analysis, or purchasing office participation.

(6) Only request those factors essential to the determination of responsibility. See DFARS 253.209-1(a) for an explanation of the factors in Section III, Blocks 19 and 20 of the **SF 1403.**

PGI 209.2?QUALIFICATIONS REQUIREMENTS

PGI 209.202 Policy.

(a)(1) The inclusion of qualification requirements in specifications for products that are to be included on a Qualified Products List, or manufactured by business firms included on a Qualified Manufacturers List, requires approval by the departmental standardization office in accordance with DoD 4120.24-M, Defense Standardization Program (DSP) Policies and Procedures. The inclusion of other qualification requirements in an acquisition or group of acquisitions requires approval by the chief of the contracting office.

PGI 209.270 Aviation and ship critical safety items.

PGI 209.270-4 Procedures.

(1) Policies and procedures applicable to aviation critical safety item design control activities are in DoD Manual 4140.01, Volume 11, DoD Supply Chain Materiel Management Procedures: Inventory Accountability and Special Management and Handling, DoD Aviation Critical Safety Item (CSI)/Flight Safety Critical Aircraft Part (FSCAP) Program. This regulation provides direction on establishing criticality determinations, identification of aviation critical safety items in the Federal Logistics Information System, and related requirements.

(2) [Reserved]

PGI 209.4?DEBARMENT, SUSPENSION, AND INELIGIBILITY

PGI 209.405 Effect of listing.

(1) Environmental Protection Agency (EPA) responsibilities under Executive Order 11738, Providing for Administration of the Clean Air Act and the Federal Water Pollution Control Act With Respect to Federal Contracts, Grants, or Loans, have been delegated to the EPA Suspending and Debarring Official (EPA SDO).

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(i) Submit notifications and reports required by DFARS 209.405(b) to the EPA SDO at the following address:
Office of Grants and Debarments
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue NW
Washington, DC 20640
Telephone: 202-564-5399

(ii) Unless agency procedures specify otherwise, coordinate submissions to the EPA SDO through the applicable agency suspending and debarring official.

(2) Executive Order 11738 is available at https://www.archives.gov/federal-register/codification/executive-order/11738.html .

(3) Contracting officers are required to review the System for Award Management

(SAM) Exclusions twice, once after opening of bids/receipt of proposals (FAR 9.405(d)(1)) and again immediately prior to award (FAR 9.405(d)(4)). The contracting officer shall document the contract file for both searches; the documentation may include a copy of the SAM Exclusions search results.

PGI 209.470 Debarment and Suspension Procedures.

(a) Investigation and referral.

(1) When referring any matter to the agency debarring and suspending official for consideration, provide the following specific information and documentation, to the extent practicable. Send two copies (one paper and one electronic) of each report, including enclosures.

(2) For all referrals, provide the following:

(i) Name, address, and telephone number of the point of contact for the activity making the report.

(ii) Name and address of the referred individual/contractor, CAGE code, and unique entity identifier, if applicable.

(iii) Name and addresses of the members of the board, principal officers, partners, owners, and managers of the referred contractor.

(iv) Name and addresses of all known affiliates, subsidiaries, or parent firms, and the nature of the business relationship to the referred individual/contractor.

(v) If a contracting office initiates the report, the comments and recommendations of the contracting officer and of each higher-level contracting review authority regarding?

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(A) Whether to suspend or debar the contractor;

(B) Whether to apply limitations to the suspension or debarment;

(C) The period of any recommended debarment; and

(D) Whether to continue any current contracts with the contractor (or explain why a recommendation regarding current contracts is not included).

(vi) To the extent that this information is available through FPDS-NG, a list of other agencies that hold current contracts with the referred individual/contractor.

(3) For referrals based on judicial actions (indictments, convictions, civil judgments, etc.), provide the following:

(i) Copies of indictments, judgments, and sentencing actions.

(ii) Copies of investigative reports when authorized by the investigative agency.

(iii) Witness statements or affidavits when authorized by the investigative agency.

(iv) If judicial action is contract-related, the contract number, description of supplies or services, and contract amount.

(4) For ?fact-based? referrals (no judicial action), for each contract affected by the misconduct or poor performance being reported, provide the following:

(i) The contract number, description of supplies or services, contract amount, percentage of completion, and amounts paid to and withheld from the contractor.

(ii) Whether the contract is assigned under the Assignment of Claims Act and, if so, to whom.

(iii) The contract fund citations involved, to expedite accurate return of funds to open accounts and commands, as appropriate.

(iv) For any other contracts outstanding with the contractor or any of its affiliates, the contract number, description of supplies or services, and contract amount.

(v) A complete summary of all pertinent evidence and the status of any legal proceedings involving the contractor.

(vi) An estimate of any damages sustained by the Government as a result of the contractor?s action (explain how the estimate was calculated).

(vii) A copy of pertinent extracts of each pertinent contract.

(viii) Copies of investigative reports when authorized by the investigative agency.

(ix) Witness statements or affidavits when authorized by the investigative agency.

(x) A copy of any available determinations of nonresponsibility in accordance with FAR 9.105-2(a)(1).

(xi) Any other appropriate exhibits or documentation.

(b) Decisionmaking process.

(1) The agency debarring and suspending official shall follow the procedures and decisionmaking process stated in FAR 9.406-3(c) for proposed debarments and debarments) and FAR 9.407-3 (for suspensions), DFARS Appendix H, and any agency-

specific procedures that are to be provided to the individual/contractor with the notice of proposed debarment or suspension, either by enclosure or electronic reference.

(2) The absence of a referral in accordance with this section, or the absence of any information specified in this section, will not preclude the debarring and suspending official from making decisions to suspend, propose for debarment, or debar an individual/contractor.

(3) The signature of the debarring and suspending official on the notice of suspension, proposed debarment, or debarment is sufficient evidence that the debarring and suspending official has made the specified decision.

(4) If a debarring and suspending official determines that a referral lacks sufficient evidence of a cause for suspension or debarment, the debarring and suspending official may refer the matter for further review or investigation, as appropriate, by an appropriate agency or other Government entity, including a contracting activity, inspector general, auditing agency, or a criminal investigative agency.

PGI 209.5?ORGANIZATIONAL AND CONSULTANT CONFLICTS OF INTEREST

PGI 209.503-70 Waiver.

To process a waiver under DFARS 209.503-70, submit the waiver, in accordance with agency procedures, to the Office of the Principal Director, Defense Pricing, Contracting, and Acquisition Policy (Contract Policy) (DPCAP/CP) at osd.pentagon.ousd-a-s.mbx.asda-dp-c-contractpolicy@mail.mil.

PGI 209.570 Limitations on contractors acting as lead system integrators.

PGI 209.570-1 Definitions.

The phrase ?substantial portion of the work,? as used in the definition of ?lead system integrator with system responsibility? in the clause at DFARS 252.209-7007, may relate to the dollar value of the effort or to the criticality of the effort to be performed.

PGI 209.570-3 Procedures.

(1) After assessing the offeror?s direct financial interests in the development or construction of any individual system or element of any system of systems, if the offeror?

(i) Has no direct financial interest in such systems, the contracting officer shall document the contract file to that effect and may then further consider the offeror for award of the contract;

(ii) Has a direct financial interest in such systems, but the exception in DFARS **209.570-2(b)(2) applies, the contracting officer shall document the contract file to that effect** and may then further consider the offeror for award of the contract;

(iii) Has a direct financial interest in such systems and the exception in DFARS **209.570-2(b)(2) does not apply, but the conditions in DFARS 209.570-2(b)(1)(i) and (ii) do** apply, the contracting officer?

(A) Shall document the contract file to that effect;

(B) May, in coordination with program officials, request an exception for the offeror from the Secretary of Defense, in accordance with paragraph (2) of this subsection;

and

(C) Shall not award to the offeror unless the Secretary of Defense grants the exception and provides the required certification to Congress; or

(iv) Has a direct financial interest in such systems and the exceptions in DFARS **209.570-2(b)(1) and (2) do not apply, the contracting officer shall not award to the offeror.**

(2)(i) To process an exception under DFARS 209.570-2(b)(1), the contracting officer shall submit the request and appropriate documentation to the Office of the Principal Director, Defense Pricing, Contracting, and Acquisition Policy (Contract Policy) (DPCAP/CP) at osd.pentagon.ousd-a-s.mbx.asda-dp-c-contractpolicy@mail.mil.

(ii) The DPCAP/CP action officer will process the request through the Office of the Secretary of Defense and, if approved, to the appropriate committees of Congress. The contracting officer shall not award a contract to the affected offeror until notified by the DPCAP/CP action officer that the exception has been approved and transmitted to Congress.

PGI 209.571 Organizational conflicts of interest in major defense acquisition programs.

PGI 209.571-7 Systems engineering and technical assistance contracts.

Because of the special organizational conflict of interest restrictions that relate to systems engineering and technical assistance contracts, consider separating systems engineering and technical assistance-type work from design- and development-type work, and consider not including both types of work in the same task order or other contract vehicle.

PART 10

OFFICE OF THE ASSISTANT SECRETARY OF WAR

Status: Class D

OFFICE OF THE ASSISTANT SECRETARY OF WAR

3000 DEFENSE PENTAGON

WASHINGTON, DC 20301-3000

ACQUISITION

AND SUSTAINMENT

In reply refer to

DARS Tracking Number: 2026-O0021

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES SPECIAL OPERATIONS

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES TRANSPORTATION

COMMAND (ATTN: ACQUISITION EXECUTIVE)

DEPUTY ASSISTANT SECRETARY OF THE ARMY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE NAVY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE

(CONTRACTING)

DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Class Deviation?Revolutionary Federal Acquisition Regulation (FAR) Overhaul

Part 10, Defense FAR Supplement (DFARS) Part 210

Effective February 1, 2026, contracting officers shall use?

? The revised FAR Part 10, Market Research published on the Revolutionary FAR Overhaul web page at https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-10 in lieu of the text codified at 48 CFR chapter 1 (https://www.ecfr.gov).

? The attached DFARS Part 210, Market Research in lieu of the text codified at 48 CFR chapter 2; and

? The attached DFARS Procedures, Guidance, and Information (PGI) 210, Market Research in lieu of the PGI text published on the Defense Pricing, Contracting, and Acquisition Policy web page at https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.

This class deviation implements the following:

? Section 2 of E.O. 14275, Restoring Common Sense to Federal Procurement, which establishes the policy that the FAR ?should only contain provisions required by statute or essential to sound procurement, and any FAR provisions that do not

advance these objectives should be removed.
DARS Tracking Number: 2026-O0021
Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 10
Defense FAR Supplement (DFARS) Part 210
? Section 4(a) of E.O. 14265, Modernizing Defense Acquisitions and Spurring Innovation in the Defense Industrial Base which requires the Secretary of War to eliminate or revise any unnecessary supplemental regulations or any other internal guidance, such as relevant parts of the Financial Management Regulation and Defense Federal Acquisition Regulation Supplement.
? The Office of Management and Budget memorandum, M-25-26 issued on May 2, 2025, titled, Overhauling the Federal Acquisition Regulation, which provided additional guidance to federal agencies regarding the FAR overhaul.
This class deviation remains in effect until rescinded or incorporated into the FAR, DFARS, and DFARS PGI. Inquiries regarding this class deviation can be addressed to osd.pentagon.ousd-a-s.mbx.dfars@mail.mil.
John M. Tenaglia
Principal Director,
Defense Pricing, Contracting, and
Acquisition Policy
Attachments:
As stated
2
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PART 210?MARKET RESEARCH

210.001 Market research requirements.

(b) In addition to the requirements of FAR 10.001(b)?

(i)(A) Agencies must conduct market research appropriate to the circumstances before issuing a solicitation with tiered evaluation of offers (section 816 of Pub. L. 109-163); and

(B) Contracting officers must use the results of market research to determine whether the criteria in FAR part 19 are met for setting aside the acquisition for small business or, for a task or delivery order, whether there are a sufficient number of qualified small business concerns available to justify limiting competition under the terms of the contract. If the contracting officer cannot determine whether the criteria are met, the contracting officer must include a written explanation in the contract file as to why such a determination could not be made (section 816 of Pub. L. 109-163); and

(ii) Contracting officers must use market research, where appropriate, to inform price reasonableness determinations (see 212.204(a) and 215.4).

(e) Follow the procedures at PGI 210.001(e) regarding contract file documentation.

210.070 Market research report guide for improving the tradecraft in services acquisition.

When acquiring services, see PGI 210.070, for the ?Market Research Report Guide for Improving the Tradecraft in Services Acquisition?.

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Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 10

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PGI 210?MARKET RESEARCH

PGI 210.001 Market research requirements.

(e) When documenting the results of market research?

(1) Contracting officers should retain information on potential offerors that express an interest, in order to solicit feedback in instances when only one offer is received on a competitive solicitation (see PGI 215.371).

(2) Contracting officers should ensure the contract file includes the?

(i) Methods used to conduct market research;

(ii) Timeframe in which market research was conducted;

(iii) Analysis of the capabilities of the potential offerors that were identified during market research; and

(iv) Any conclusion(s) reached as a result of market research analysis.

PGI 210.070 Market research report guide for improving the tradecraft in services acquisition.

The ?Market Research Report Guide for Improving the Tradecraft in Services Acquisition? is designed to aid in the collection and sharing of standardized market research information across the Department. The guide is available for download at https://www.acq.osd.mil/asda/dpc/cp/policy/docs/sa/2017_Market_Research_Guide_(Final).pdf.

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PART 11

OFFICE OF THE ASSISTANT SECRETARY OF WAR

Status: Class D

OFFICE OF THE ASSISTANT SECRETARY OF WAR

3000 DEFENSE PENTAGON

WASHINGTON, DC 20301-3000

ACQUISITION

AND SUSTAINMENT

In reply refer to

DARS Tracking Number: 2026-O0013

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES SPECIAL OPERATIONS

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES TRANSPORTATION

COMMAND (ATTN: ACQUISITION EXECUTIVE)

DEPUTY ASSISTANT SECRETARY OF THE ARMY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE NAVY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE

(CONTRACTING)

DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Class Deviation?Revolutionary Federal Acquisition Regulation (FAR) Overhaul

Part 11, Defense FAR Supplement (DFARS) Part 211

Effective February 1, 2026, contracting officers shall use?

? The revised FAR Part 11, Describing Agency Needs published on the Revolutionary FAR Overhaul web page at https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-26 in lieu of the text codified at 48 CFR chapter 1 (https://www.ecfr.gov).

? The attached DFARS Part 211, Describing Agency Needs in lieu of the text codified at 48 CFR chapter 2; and

? The attached DFARS Procedures, Guidance, and Information (PGI) 211, Describing Agency Needs in lieu of the PGI text published on the Defense Pricing, Contracting, and Acquisition Policy web page at https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.

This class deviation implements the following:

? Section 2 of E.O. 14275, Restoring Common Sense to Federal Procurement, which establishes the policy that the FAR ?should only contain provisions required by statute or essential to sound procurement, and any FAR provisions that do not

advance these objectives should be removed.
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? Section 4(a) of E.O. 14265, Modernizing Defense Acquisitions and Spurring Innovation in the Defense Industrial Base which requires the Secretary of War to eliminate or revise any unnecessary supplemental regulations or any other internal guidance, such as relevant parts of the Financial Management Regulation and Defense Federal Acquisition Regulation Supplement.
? The Office of Management and Budget memorandum, M-25-26 issued on May 2, 2025, titled, Overhauling the Federal Acquisition Regulation, which provided additional guidance to federal agencies regarding the FAR overhaul.
This class deviation remains in effect until rescinded or incorporated into the FAR, DFARS, and DFARS PGI. Inquiries regarding this class deviation can be addressed to osd.pentagon.ousd-a-s.mbx.dfars@mail.mil.
John M. Tenaglia
Principal Director,
Defense Pricing, Contracting, and
Acquisition Policy
Attachments:
As stated
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PART 211?DESCRIBING AGENCY NEEDS

SUBPART 211.1?PREAWARD

211.102 Policy.

DoD technology and acquisition programs are subject to the policies and procedures in DoDD 5000.01, The Defense Acquisition System, and DoDI 5000.02, Operation of the Adaptive Acquisition Framework.

SUBPART 211.2?SELECTING AND DEVELOPING REQUIREMENTS DOCUMENTS

211.204 Items peculiar to one manufacturer.

To partially implement section 888 of fiscal year (FY) 2017 National Defense Authorization Act (NDAA) (Pub. L. 114?328), a justification and approval is required to use brand name or equal purchase descriptions?

(1) When using sealed bidding or negotiated acquisition procedures (see **206.103-1(d); or**

(2) When using the simplified procedures for certain commercial products and commercial services at FAR 12.201-1 (see part 212).

211.270 Purchase descriptions for service contracts.

To partially implement section 831 of FY 2009 NDAA (Pub. L. 110-417), agencies

must require that purchase descriptions and requirements documents for service contracts include language to provide a clear distinction between Government employees and contractor employees as follows:

(a) Agencies must be guided by the characteristics and descriptive elements of personal-services contracts.

(b) Service contracts must require contractor employees to identify themselves as contractor personnel by introducing themselves or being introduced as contractor personnel and displaying distinguishing badges or other visible identification for meetings with Government personnel.

(c) Services contracts must require contractor personnel to appropriately identify themselves as contractor employees in telephone conversations and in formal and informal written correspondence.

211.271 Alternatives to Government-Unique Standards

211.271-1 Solicitation provision.

Insert the provision at FAR 52.211-7, Alternatives to Government-Unique Standards, in DoD solicitations that include military or Government-unique specifications and standards to implement section 875(c) of the National Defense Authorization Act for Fiscal Year 2017 (Pub. 114-328).

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211.272 Use of proprietary specifications or standards.

To comply with section 888(b)(1) of FY 2017 NDAA, a justification and approval is required to use proprietary specifications and standards?

(a) When using sealed bidding or negotiated acquisition procedures (see **206.103-1); or**

(b) When using the simplified procedures for certain commercial products or commercial services at FAR 12.201-1 (see part 212).

211.273 Using and maintaining requirements documents.

211.273-1 Identification and availability of specifications.

Follow the procedures at PGI 211.211-273-1 for obtaining specifications, standards, and data item descriptions from the Acquisition Streamlining and Standardization Information System (ASSIST) database, including DoD adoption notices on voluntary consensus standards.

211.273-2 Solicitation provisions and contract clauses.

Insert a provision, as appropriate, substantially the same as 252.211-7002, Availability for Examination of Specifications, Standards, Plans, Drawings, Data Item Descriptions, and Other Pertinent Documents when contract performance requires use of specifications, standards, and data item descriptions that are not listed in the ASSIST database.

211.274 Item identification and valuation requirements.

211.274-1 General.

Item unique identification and valuation is a system of marking, valuing, and tracking items delivered to DoD that enhances logistics, contracting, and financial business transactions supporting the United States and coalition troops.

211.274-2 Requirements for item unique identification.

(a) DoD item unique identification, or a DoD recognized unique identification equivalent, is required for all delivered items, including items of contractor-acquired property delivered on line items (see PGI 245.402-71 for guidance when delivery of contractor acquired property is required).

(b) The primary inventory control activity (PICA) determines that an item requires unique item-level traceability. The PICA will designate the item as a ?DoD serially managed item.? DoD serially managed items are identified by the Federal Logistics Information System DoD serially managed item indicator set to ?Y?.

(c) Procedures for identifying items that require unique item-level traceability can be found in department of Defense Instruction (DoDI) 8320.04, DoD Serially Managed Items of Tangible Personal Property and Item Unique Identification 2.0 Standard.

211.274-3 Requirements for valuation.

(a) The statement of work or requirement document must require contractors to identify the Government's unit acquisition cost for all deliverable end items to which item unique identification applies.

(b) The Government's unit acquisition cost is?

(1) For fixed-price type line, subline, or exhibit line items, the unit price identified in the contract at the time of delivery;

(2) For cost-type or undefinitized line, subline, or exhibit line items, the contractor's estimated fully burdened unit cost to the Government at the time of delivery; and

(3) For items delivered under a time-and-materials contract, the contractor's estimated fully burdened unit cost to the Government at the time of delivery.

(c) The Government's unit acquisition cost of subassemblies, components, and parts embedded in delivered items must not be separately identified.

211.274-4 Requirements for assignment of Government-assigned serial numbers.

The statement of work or requirement document must require contractors to apply Government-assigned serial numbers, such as tail numbers/hull numbers and equipment registration numbers, in human-readable format on major end items when required by law, regulation, or military operational necessity. Contractors are required to use the latest version of MIL-STD-130, Marking of U.S. Military Property, for the marking of human-readable information.

211.274-5 Contract clauses.

(a) Insert the clause at 252.211-7003, Item Unique Identification and Valuation, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, for supplies, and for services involving the furnishing of supplies in accordance with **211.274 (a).**

(b) Insert the clause at 252.211-7008, Use of Government-Assigned Serial Numbers, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that?

(1) Contain the clause at 252.211-7003, Item Unique Identification and Valuation; and

(2) Require the contractor to mark major end items under the terms and conditions of the contract.

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211.275 Elimination of use of class I ozone-depleting substances.

See 223.107-4 for restrictions on contracting for ozone-depleting substances

SUBPART 211.4?LIQUIDATED DAMAGES

211.400 Scope.

To implement 15 USC 637(d)(4)(F), this subpart and FAR subpart 11.4 do not apply to liquidated damages for comprehensive subcontracting plans under the Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans. See 219.702-70 for coverage of liquidated damages for comprehensive subcontracting plans.

211.403 Contract clause.

(b) Insert the clause at FAR 52.211-12, Liquidated Damages?Construction, in all construction contracts exceeding $900,000, except cost-plus-fixed-fee contracts or contracts where the contractor cannot control the pace of the work. Use of the clause in contracts of $900,000 or less is optional.

SUBPART 211.5?PRIORITIES AND ALLOCATIONS

211.502 General.

DoD implementation of the Defense Priorities and Allocations System is in DoDD **4400.1, Defense Production Act Programs.**

SUBPART 211.70?PURCHASE REQUESTS

211.7001 Procedures.

Follow the procedures at PGI 211.7001 for developing and distributing purchase requests, except for the requirements for Military Interdepartmental Purchase Requests (DD Form 448) addressed in 253.208-1.

PART 252?SOLICITATION PROVISIONS AND CONTRACT CLAUSES

SUBPART 252.2?TEXT OF PROVISIONS AND CLAUSES

252.211-7000 Reserved.

252.211-7001 Reserved.

252.211-7002 Availability for Examination of Specifications, Standards, Plans, Drawings, Data Item Descriptions, and Other Pertinent Documents.

As prescribed in 211.273-2, use the following provision:

AVAILABILITY FOR EXAMINATION OF SPECIFICATIONS, STANDARDS, PLANS, DRAWINGS, DATA ITEM DESCRIPTIONS, AND OTHER PERTINENT DOCUMENTS (DEC 1991)

The specifications, standards, plans, drawings, data item descriptions, and other pertinent documents cited in this solicitation are not available for distribution but may be examined at the following location:

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(Insert complete address)

(End of provision)

252.211-7003 Item Unique Identification and Valuation.

As prescribed in 211.274-5(a), use the following clause:

ITEM UNIQUE IDENTIFICATION AND VALUATION (JAN 2023)

(a) Definitions. As used in this clause?

?Automatic identification device? means a device, such as a reader or interrogator, used to retrieve data encoded on machine-readable media.

?Concatenated unique item identifier? means?

(1) For items that are serialized within the enterprise identifier, the linking together of the unique identifier data elements in order of the issuing agency code, enterprise identifier, and unique serial number within the enterprise identifier; or

(2) For items that are serialized within the original part, lot, or batch number, the linking together of the unique identifier data elements in order of the issuing agency code; enterprise identifier; original part, lot, or batch number; and serial number within the original part, lot, or batch number.

?Data matrix? means a two-dimensional matrix symbology, which is made up of square or, in some cases, round modules arranged within a perimeter finder pattern and uses the Error Checking and Correction 200 (ECC200) specification found within International Standards Organization (ISO)/International Electrotechnical Commission **(IEC) 16022.**

?Data qualifier? means a specified character (or string of characters) that immediately precedes a data field that defines the general category or intended use of the data that follows.

?DoD recognized unique identification equivalent? means a unique identification method that is in commercial use and has been recognized by DoD. All DoD recognized unique identification equivalents are listed at https://www.acq.osd.mil/asda/dpc/ce/ds/unique-id.html.

?DoD item unique identification? means a system of marking items delivered to DoD with unique item identifiers that have machine-readable data elements to distinguish an item from all other like and unlike items. For items that are serialized within the enterprise identifier, the unique item identifier shall include the data elements of the enterprise identifier and a unique serial number. For items that are serialized within the part, lot, or batch number within the enterprise identifier, the unique item identifier shall include the data elements of the enterprise identifier; the original part, lot, or batch number; and the serial number.

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?Enterprise? means the entity (e.g., a manufacturer or vendor) responsible for assigning unique item identifiers to items.

?Enterprise identifier? means a code that is uniquely assigned to an enterprise by an issuing agency.

?Government?s unit acquisition cost? means?

(1) For fixed-price type line, subline, or exhibit line items, the unit price identified in the contract at the time of delivery;

(2) For cost-type or undefinitized line, subline, or exhibit line items, the Contractor?s estimated fully burdened unit cost to the Government at the time of delivery; and

(3) For items produced under a time-and-materials contract, the Contractor?s estimated fully burdened unit cost to the Government at the time of delivery.

?Issuing agency? means an organization responsible for assigning a globally unique identifier to an enterprise, as indicated in the Register of Issuing Agency Codes for ISO/IEC 15459, located at http://www.aimglobal.org/?Reg_Authority15459.

?Issuing agency code? means a code that designates the registration (or controlling) authority for the enterprise identifier.

?Item? means a single hardware article or a single unit formed by a grouping of subassemblies, components, or constituent parts.

?Lot or batch number? means an identifying number assigned by the enterprise to a designated group of items, usually referred to as either a lot or a batch, all of which were manufactured under identical conditions.

?Machine-readable? means an automatic identification technology media, such as bar codes, contact memory buttons, radio frequency identification, or optical memory cards.

?Original part number? means a combination of numbers or letters assigned by the enterprise at item creation to a class of items with the same form, fit, function, and interface.

?Parent item? means the item assembly, intermediate component, or subassembly that has an embedded item with a unique item identifier or DoD recognized unique identification equivalent.

?Serial number within the enterprise identifier? means a combination of numbers, letters, or symbols assigned by the enterprise to an item that provides for the differentiation of that item from any other like and unlike item and is never used again within the enterprise.

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?Serial number within the part, lot, or batch number? means a combination of numbers or letters assigned by the enterprise to an item that provides for the differentiation of that item from any other like item within a part, lot, or batch number assignment./

?Serialization within the enterprise identifier? means each item produced is assigned a serial number that is unique among all the tangible items produced by the enterprise and is never used again. The enterprise is responsible for ensuring unique serialization within the enterprise identifier.

?Serialization within the part, lot, or batch number? means each item of a particular part, lot, or batch number is assigned a unique serial number within that part, lot, or batch number assignment. The enterprise is responsible for ensuring unique serialization within the part, lot, or batch number within the enterprise identifier.

?Type designation? means a combination of letters and numerals assigned by the Government to a major end item, assembly or subassembly, as appropriate, to provide a convenient means of differentiating between items having the same basic name and to indicate modifications and changes thereto.

?Unique item identifier? means a set of data elements marked on items that is globally unique and unambiguous. The term includes a concatenated unique item identifier or a DoD recognized unique identification equivalent.

?Unique item identifier type? means a designator to indicate which method of uniquely identifying a part has been used. The current list of accepted unique item identifier types is maintained at https://www.acq.osd.mil/asda/dpc/ce/ds/unique-id.html.

(b) The Contractor shall deliver all items under a contract line, subline, or exhibit line item.

(c) Unique item identifier.

(1) The Contractor shall provide a unique item identifier for the following:

(i) Delivered items for which the Government?s unit acquisition cost is $5,000 or more, except for the following line items:

Contract Line, Subline, or Exhibit Line Item Number | Item Description

_____

_____

_____

(ii) Items for which the Government?s unit acquisition cost is less than

$5,000 that are identified in the Schedule or the following table:
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Contract Line, Subline, or
Exhibit Line Item Number Item Description

_____

_____

_____

(If items are identified in the Schedule, insert ?See Schedule? in this table.)

(iii) Subassemblies, components, and parts embedded within delivered items, items with warranty requirements, DoD serially managed reparables and DoD serially managed nonreparables as specified in Attachment Number ____.

(iv) Any item of special tooling or special test equipment as defined in FAR **2.101 that have been designated for preservation and storage for a Major Defense** Acquisition Program as specified in Attachment Number ____.

(v) Any item not included in (i), (ii), (iii), or (iv) for which the contractor creates and marks a unique item identifier for traceability.

(2) The unique item identifier assignment and its component data element combination shall not be duplicated on any other item marked or registered in the DoD Item Unique Identification Registry by the contractor.

(3) The unique item identifier component data elements shall be marked on an item using two dimensional data matrix symbology that complies with ISO/IEC International Standard 16022, Information technology ? International symbology specification ? Data matrix; ECC200 data matrix specification.

(4) Data syntax and semantics of unique item identifiers. The Contractor shall ensure that?

(i) The data elements (except issuing agency code) of the unique item identifier are encoded within the data matrix symbol that is marked on the item using one of the following three types of data qualifiers, as determined by the Contractor:

(A) Application Identifiers (AIs) (Format Indicator 05 of ISO/IEC International Standard 15434), in accordance with ISO/IEC International Standard 15418, Information Technology ? EAN/UCC Application Identifiers and Fact Data Identifiers and Maintenance and ANSI MH 10.8.2 Data Identifier and Application Identifier Standard.

(B) Data Identifiers (DIs) (Format Indicator 06 of ISO/IEC International Standard 15434), in accordance with ISO/IEC International Standard 15418, Information Technology ? EAN/UCC Application Identifiers and Fact Data Identifiers and Maintenance and ANSI MH 10.8.2 Data Identifier and Application Identifier Standard.

(C) Text Element Identifiers (TEIs) (Format Indicator 12 of ISO/IEC International Standard 15434), in accordance with the Air Transport Association
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Common Support Data Dictionary; and

(ii) The encoded data elements of the unique item identifier conform to the transfer structure, syntax, and coding of messages and data formats specified for Format Indicators 05, 06, and 12 in ISO/IEC International Standard 15434, Information Technology ? Transfer Syntax for High Capacity Automatic Data Capture Media.

(5) Unique item identifier.

(i) The Contractor shall?

(A) Determine whether to?

(1) Serialize within the enterprise identifier;

(2) Serialize within the part, lot, or batch number; or

(3) Use a DoD recognized unique identification equivalent (e.g. Vehicle Identification Number); and

(B) Place the data elements of the unique item identifier (enterprise identifier; serial number; DoD recognized unique identification equivalent; and for serialization within the part, lot, or batch number only: original part, lot, or batch number) on items requiring marking by paragraph (c)(1) of this clause, based on the criteria provided in MIL-STD-130, Identification Marking of U.S. Military Property, latest version;

(C) Label shipments, storage containers and packages that contain uniquely identified items in accordance with the requirements of MIL-STD-129, Military Marking for Shipment and Storage, latest version; and

(D) Verify that the marks on items and labels on shipments, storage containers, and packages are machine readable and conform to the applicable standards. The contractor shall use an automatic identification technology device for this verification that has been programmed to the requirements of Appendix A, MIL-STD-130, latest version.

(ii) The issuing agency code?

(A) Shall not be placed on the item; and

(B) Shall be derived from the data qualifier for the enterprise identifier.

(d) For each item that requires item unique identification under paragraph (c)(1)(i), (ii), or (iv) of this clause or when item unique identification is provided under paragraph (c)(1)(v), in addition to the information provided as part of the Material Inspection and Receiving Report specified elsewhere in this contract, the Contractor shall report at the time of delivery, as part of the Material Inspection and Receiving Report, the following information:

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(1) Unique item identifier.

(2) Unique item identifier type.

(3) Issuing agency code (if concatenated unique item identifier is used).

(4) Enterprise identifier (if concatenated unique item identifier is used).

(5) Original part number (if there is serialization within the original part number).

(6) Lot or batch number (if there is serialization within the lot or batch number).

(7) Current part number (optional and only if not the same as the original part number).

(8) Current part number effective date (optional and only if current part number is used).

(9) Serial number (if concatenated unique item identifier is used).

(10) Government?s unit acquisition cost.

(11) Unit of measure.

(12) Type designation of the item as specified in the contract schedule, if any.

(13) Whether the item is an item of Special Tooling or Special Test Equipment.

(14) Whether the item is covered by a warranty.

(e) For embedded subassemblies, components, and parts that require DoD item unique identification under paragraph (c)(1)(iii) of this clause or when item unique identification is provided under paragraph (c)(1)(v), the Contractor shall report as part of the Material Inspection and Receiving Report specified elsewhere in this contract, the following information:

(1) Unique item identifier of the parent item under paragraph (c)(1) of this clause that contains the embedded subassembly, component, or part.

(2) Unique item identifier of the embedded subassembly, component, or part.

(3) Unique item identifier type.**

(4) Issuing agency code (if concatenated unique item identifier is used).**

(5) Enterprise identifier (if concatenated unique item identifier is used).**

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(6) Original part number (if there is serialization within the original part number).**

(7) Lot or batch number (if there is serialization within the lot or batch number).**

(8) Current part number (optional and only if not the same as the original part number).**

(9) Current part number effective date (optional and only if current part number is used).**

(10) Serial number (if concatenated unique item identifier is used).**

(11) Description.

** Once per item.

(f) The Contractor shall submit the information required by paragraphs (d) and (e) of this clause as follows:

(1) End items shall be reported using the receiving report capability in Wide Area WorkFlow (WAWF) in accordance with the clause at 252.232-7003. If WAWF is not required by this contract, and the contractor is not using WAWF, follow the procedures at http://dodprocurementtoolbox.com/site/uidregistry/.

(2) Embedded items shall be reported by one of the following methods?

(i) Use of the embedded items capability in WAWF;

(ii) Direct data submission to the IUID Registry following the procedures and formats at http://dodprocurementtoolbox.com/site/uidregistry/; or

(iii) Via WAWF as a deliverable attachment for exhibit line item number

(fill in) ___, Unique Item Identifier Report for Embedded Items, Contract Data Requirements List, DD Form 1423.

(g) Subcontracts. If the Contractor acquires by subcontract, any item(s) for which item unique identification is required in accordance with paragraph (c)(1) of this clause, the Contractor shall include this clause, including this paragraph (g), in the applicable subcontract(s), including subcontracts for commercial products or commercial services.

(End of clause)

252.211-7004 Reserved.

252.211-7005 Reserved.

252.211-7006 Reserved.

252.211-7007 Reserved.

252.211-7008 Use of Government-Assigned Serial Numbers

As prescribed in 211.274-5(b), use the following clause:

USE OF GOVERNMENT-ASSIGNED SERIAL NUMBERS (SEP 2010)

(a) Definitions. As used in this clause?

?Government-assigned serial number? means a combination of letters or numerals in a fixed human-readable information format (text) conveying information about a major end item, which is provided to a contractor by the requiring activity with accompanying technical data instructions for marking the Government-assigned serial number on major end items to be delivered to the Government.

?Major end item? means a final combination of component parts and/or materials which is ready for its intended use and of such importance to operational readiness that review and control of inventory management functions (procurement, distribution, maintenance, disposal, and asset reporting) is required at all levels of life cycle management. Major end items include aircraft; ships; boats; motorized wheeled, tracked, and towed vehicles for use on highway or rough terrain; weapon and missile end items; ammunition; and sets, assemblies, or end items having a major end item as a component.

?Unique item identifier (UII)? means a set of data elements permanently marked on an item that is globally unique and unambiguous and never changes in order to provide traceability of the item throughout its total life cycle. The term includes a concatenated UII or a DoD-recognized unique identification equivalent.

(b) The Contractor shall mark the Government-assigned serial numbers on those major end items as specified by line item in the Schedule, in accordance with the technical instructions for the placement and method of application identified in the terms and conditions of the contract.

(c) The Contractor shall register the Government-assigned serial number along with the major end item?s UII at the time of delivery in accordance with the provisions of the clause at DFARS 252.211-7003(d).

(d) The Contractor shall establish the UII for major end items for use throughout the life of the major end item. The Contractor may elect, but is not required, to use the Government-assigned serial number to construct the UII.

(End of clause)

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PGI 211?DESCRIBING AGENCY NEEDS

PGI 211.2?SELECTING AND DEVELOPING REQUIREMENTS DOCUMENTS

PGI 211.204 Items peculiar to one manufacturer.

Office of Federal Procurement Policy memorandum of April 11, 2005, Subject: Use of Brand Name Specifications, reinforces the need to maintain vendor and technology neutral contract specifications, and asks agencies to publish the supporting justification when using brand name specifications in a solicitation.

Office of Federal Procurement Policy memorandum of April 17, 2006, Subject: Publication of Brand Name Justifications, provides additional guidance regarding publication of justifications for use of brand name specifications.

PGI 211.273 ?USING AND MAINTAINING REQUIREMENTS DOCUMENTS

PGI 211.273-1 Identification and availability of specifications.

(1) Specifications, standards, and data item descriptions are indexed in the Acquisition Streamlining and Standardization Information System (ASSIST).

(2) Most unclassified specifications, standards, and data item descriptions, and DoD adoption notices on voluntary consensus standards may be downloaded from the ASSIST database (https://assist.dla.mil or http://quicksearch.dla.mil). Documents contained in ASSIST that are not available for download may be identified and obtained by following the instructions at http://assist.dla.mil/online/faqs/overview.cfm .

PGI 211.70 -PURCHASE REQUESTS

PGI 211.7001 Procedures.

Requiring activities are responsible for developing and distributing purchase requests, except for the requirements for Military Interdepartmental Purchase Requests (MIPRs)

(DD Form 448) addressed in 253.208-1 .

(a) Agencies may use a combined numbering series for MIPRs and internal purchase requests, following the rules at 253.208-1 (c)(1) for both. If using a separate numbering sequence for internal purchase requests, agencies must have procedures that ensure the same number cannot be assigned to both a MIPR and an internal purchase request. Use of a purely internal tracking number in addition to the purchase request number is authorized and supported by the data standards. Number the purchase request by using?

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(1) The requiring activity?s Department of Defense Activity Address Code (DODAAC), as described in DLM 4000.25 Volume 6, Chapter 2. DODAACs may be verified at https://home.daas.dla.mil/eDoDAAD/s_search/search_menu.asp.

(2) A serial number of eight alphanumeric characters, excluding ?I? and ?O?; and

(3) A revision number, with the original request being assigned zero and subsequent revisions or amendments being numbered consecutively.

(b) Prior to taking action on a purchase request, contracting officers must ensure that the requiring activity has prepared the purchase requests in uniform contract format

(see FAR 14.201-1 and 15.109), except for procurement of construction (see part 36), which should follow the current edition of the Construction Specifications Institute format. Purchase requests shall include all supporting documentation required by local contract procedures.

(c) Prior to taking action on a purchase request, contracting officers must ensure that the purchase requests follow the line item rules and data requirements in DFARS 204.71 . Purchase requests for individual supplies (i.e., not bulk commodities such as oil) must identify whether the item to be acquired is subject to the item unique identification requirements of DFARS 211.274-2.

(d)(1) Purchase requests may be unfunded for planning purposes, partially funded, or fully funded.

(2) Funding data in purchase requests will, at a minimum, identify the following elements of the funding source: Department Code (e.g. 21 Army), Main Account (e.g. 1804, Operation and Maintenance, Navy), Subaccount (where applicable), and Fiscal Year. Lists of these codes are published in Supplement 1 to Volume I of the Treasury Financial Manual, Federal Account Symbols and Titles, generally referred to as The FAST Book at https://tfx.treasury.gov/reference-books/fast-book.

(3) Agencies must have sufficient procedures in place to enable traceability of line items identified in the purchase request to those in the resulting contract. In developing such procedures, agencies must ensure that provisions are made for circumstances in which the deliverables may be more completely defined during the process of soliciting offers and making an award.

(e) Contracting officers must not obligate funds that have not been certified as currently available and suitable. Review purchase requests to ensure they are certified after agreement on price and prior to award to ensure that the funds are?

(1) Suitable and available for the purpose and amount of the contract; and

(2) Traceable from the purchase request to the resultant contract.

(f) Purchase requests transmitted between requiring systems and contract writing systems must be transmitted via the Global EXchange system (GEX) using the

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Defense FAR Supplement (DFARS) Part 211

Purchase Request Data Standard Extensible Markup Language (XML) format at https://www.acq.osd.mil/asda/dpc/ce/ds/procurement-data-standard.html . Copies must be sent via the GEX to the Electronic Data Access (EDA) system at http://eda.ogden.disa.mil . Requiring systems and contract writing systems may use a format that can be translated to or from the purchase request Data Standard (XML) format.

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PART 12

OFFICE OF THE ASSISTANT SECRETARY OF WAR

Status: Class D

OFFICE OF THE ASSISTANT SECRETARY OF WAR

3000 DEFENSE PENTAGON

WASHINGTON, DC 20301-3000

ACQUISITION

AND SUSTAINMENT

In reply refer to

DARS Tracking Number: 2026-O0028

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES SPECIAL OPERATIONS

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES TRANSPORTATION

COMMAND (ATTN: ACQUISITION EXECUTIVE)

DEPUTY ASSISTANT SECRETARY OF THE ARMY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE NAVY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE

(CONTRACTING)

DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Class Deviation?Revolutionary Federal Acquisition Regulation (FAR) Overhaul

Part 12, Defense FAR Supplement (DFARS) Part 212

Effective February 1, 2026, contracting officers shall use?

? The revised FAR Part 12, Acquisition of Commercial Products and Commercial Services, published on the Revolutionary FAR Overhaul web page at https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-12 in lieu of the text codified at 48 CFR chapter 1 (https://www.ecfr.gov).

? The attached DFARS Part 212, Acquisition of Commercial Products and Commercial Services, in lieu of the text codified at 48 CFR chapter 2; and

? The attached DFARS Procedures, Guidance, and Information (PGI) 212, Acquisition of Commercial Products and Commercial Services, in lieu of the PGI text published on the Defense Pricing, Contracting, and Acquisition Policy web page at https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.

This class deviation implements the following:

? Section 2 of E.O. 14275, Restoring Common Sense to Federal Procurement, which establishes the policy that the FAR ?should only contain provisions required by statute or essential to sound procurement, and any FAR provisions that do not

advance these objectives should be removed.?
DARS Tracking Number: 2026-O0028
Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 12
Defense FAR Supplement (DFARS) Part 212
? Section 4(a) of E.O. 14265, Modernizing Defense Acquisitions and Spurring Innovation in the Defense Industrial Base which requires the Secretary of War to eliminate or revise any unnecessary supplemental regulations or any other internal guidance, such as relevant parts of the Financial Management Regulation and Defense Federal Acquisition Regulation Supplement.
? The Office of Management and Budget memorandum, M-25-26 issued on May 2, 2025, titled, Overhauling the Federal Acquisition Regulation, which provided additional guidance to federal agencies regarding the FAR overhaul.
This class deviation remains in effect until rescinded or incorporated into the FAR, DFARS, and DFARS PGI. Inquiries regarding this class deviation can be addressed to osd.pentagon.ousd-a-s.mbx.dfars@mail.mil.
John M. Tenaglia
Principal Director,
Defense Pricing, Contracting, and
Acquisition Policy
Attachments:
As stated
2
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Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 12
Defense FAR Supplement (DFARS) Part 212

PART 212?ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

SUBPART 212.1?PRESOLICITATION

212.001-70 Applicability.

(a) FAR part 12 procedures. Use of FAR part 12 procedures is based on applicability of one of the following statutes that provide for treatment as a commercial product or commercial service and use of FAR part 12 procedures, even though the item may not meet the definition of ?commercial product? or ?commercial service? at FAR 2.101 and does not require a commercial product or commercial service determination:

(1) 41 U.S.C. 1903 ? Supplies or services to be used to facilitate defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack pursuant to FAR 12.001(b).

(2) 10 U.S.C. 3457 ? Supplies or services from nontraditional defense contractors pursuant to paragraph (d) of this section.

(3) 10 U.S.C. 3458 ? Supplies or services resulting from a commercial solutions opening pursuant to subpart 212.70.

(b) Prior commercial product or commercial service determinations.

(1) Pursuant to 10 U.S.C. 3456(c), except as provided in paragraph (b)(2)(i) of

this section or unless the item was acquired pursuant to paragraph (a) of this section, if the Commercial Item Database (for website see PGI 212.001-70(b)(A)(1) contains a prior commerciality determination, or the contracting officer has other evidence that an item has previously been acquired by DoD using commercial product and commercial service acquisition procedures under FAR part 12, then the prior contract must serve as a prior determination that an item is a commercial product or commercial service. The contracting officer must document the file accordingly.

(2)(i) If the item to be acquired meets the criteria in paragraph (b)(1) of this section, the item may not be acquired using other than FAR part 12 procedures unless the head of the contracting activity issues a determination as specified in paragraph (b)(2)(ii)(B) of this section.

(ii) Pursuant to 10 U.S.C. 3703(d)(1), the contracting officer may presume that a prior commercial product or commercial service determination made by a DoD department, agency, or component serves as a determination for subsequent procurements of such item. In accordance with 10 U.S.C. 3703(d) and 10 U.S.C. 3456(c), if the contracting officer questions a prior determination to use FAR part 12 procedures and instead chooses to proceed with a procurement of an item previously determined to be a commercial product or commercial service using procedures other than FAR part 12 procedures, the contracting officer must request a review by the head of the contracting activity that will conduct the procurement. Not later than 30 days after receiving a request for review, the head of the contracting activity will?

(A) Confirm that the prior use of FAR part 12 procedures was appropriate and still applicable; or

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(B) Issue a determination that the prior use of FAR part 12 procedures was improper or that it is no longer appropriate to acquire the item using FAR part 12 procedures, with a written explanation of the basis for the determination.

(c) Commercial product or commercial service determination. Unless the procedures in paragraph (b) of this section are applicable, when using FAR part 12 procedures for acquisitions of commercial products and commercial services that exceed the simplified acquisition threshold, the contracting officer must?

(1) Determine in writing that the acquisition meets the ?commercial product? or ?commercial service? definition in FAR 2.101;

(2) Include the written determination in the contract file;

(3) Obtain approval at one level above the contracting officer when a commercial product or commercial service determination relies on paragraphs (1)(ii),

(3), or (4) of the ?commercial product? definition at FAR 2.101 or paragraph (2) of the ?commercial service? definition at FAR 2.101; and

(4) Follow the procedures and guidance at PGI 212.001-70(b) regarding file documentation and commercial product or commercial service determinations.

(d) Nontraditional defense contractors. In accordance with 10 U.S.C. 3457,

contracting officers?

(1) Except as provided in paragraph (d)(2) of this section, may treat supplies and services provided by nontraditional defense contractors as commercial products or commercial services (see PGI 212.001-70(d)(1));

(2) Will treat services provided by a business unit that is a nontraditional defense contractor as commercial services, to the extent that such services use the same pool of employees as used for commercial customers and are priced using methodology similar to methodology used for commercial pricing; and

(3) Will document the file when treating supplies or services from a nontraditional defense contractor as commercial products or commercial services in accordance with paragraph (d)(1) or (2) of this section.

(e) Commercial item guidebook. For a link to the commercial item guidebook, see **PGI 212.001-70.**

212.070 Definition.

As used in this part?

?Market research? means a review of existing systems, subsystems, capabilities, and technologies that are available or could be made available to meet the needs of DoD in whole or in part. The review must include, at a minimum, contacting knowledgeable individuals in Government and industry regarding existing market capabilities and pricing information, and may include any of the techniques for conducting market

research provided in FAR part 10 (section 855 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114-92)).

SUBPART 212.1?PRESOLICITATION

212.102-70 Restricting competition. See PGI 212.102-70 for guidance on promoting competition.

(a) For non-competitive follow-on acquisitions of supplies or services previously awarded on a non-competitive basis, include the additional documentation required by **206.104-71 and follow the procedures at PGI 206.104-71.**

(b) In accordance with section 888(a) of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114-328), the documentation addressed in FAR 12.102 is required to use brand name or equal descriptions or proprietary specifications and standards.

212.102-71 Only one offer.

If only one offer is received in response to a competitive solicitation issued using simplified acquisition procedures for commercial products and commercial services, follow the procedures at 215.202-71.

212.104-70 Contract type.

In accordance with section 805 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181), use of time-and-materials and labor-hour contracts for the

acquisition of commercial services is authorized only for the following:

(a) Services acquired for support of a commercial product, as described in paragraph

(1) of the definition of ?commercial service? at FAR 2.101 (41 U.S.C. 103a).

(b) Emergency repair services.

(c) Any other commercial services only to the extent that the head of the agency concerned approves a written determination by the contracting officer that?

(1) The services to be acquired are commercial services as defined in paragraph

(2) of the definition of ?commercial service? at FAR 2.101 (41 U.S.C. 103a);

(2) If the services to be acquired are subject to FAR 15.403-2, the offeror of the services has submitted sufficient information in accordance with that subsection;

(3) Such services are commonly sold to the public through use of time-and-materials or labor-hour contracts; and

(4) The use of a time-and-materials or labor-hour contract type is in the best interest of the Government.

212.106 Technical data.

The DoD policy for acquiring technical data for commercial products or commercial services is at 227.7102.

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Defense FAR Supplement (DFARS) Part 212

212.107-70 Computer software.

(a) Departments and agencies must identify and evaluate, at all stages of the acquisition process (including concept refinement, concept decision, and technology development), opportunities for the use of commercial computer software and other non-developmental software in accordance with Section 803 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417).

(b) See Subpart 208.74 when acquiring commercial software or software maintenance. See 227.7202 for policy on the acquisition of commercial computer software and commercial computer software documentation.

212.170 Major weapon systems as commercial products.

The DoD policy for acquiring major weapon systems as commercial products is in **subpart 234.70.**

212.171 Limitation on acquisition of right-hand drive passenger sedans.

10 U.S.C. 2253(a)(2) limits the authority to purchase right-hand drive passenger sedans to a cost of not more than $55,000 per vehicle.

212.172 Preference for certain commercial products and commercial services.

(a) As required by section 855 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114-92), for requirements relating to the acquisition of commercial information technology products and services, see 239.101.

(b)(1) As required by section 876 of the National Defense Authorization Act of Fiscal Year 2017 (Pub. L. 114-328), a contracting officer may not enter into a contract above the simplified acquisition threshold for facilities-related services, knowledge-based

services (except engineering services), medical services, or transportation services that are not commercial services unless the appropriate official specified in paragraph (b)(2) of this section determines in writing that no commercial services are suitable to meet the agency?s needs as provided in 10 U.S.C. 3453(c)(2).

(2) The following officials are authorized to make the determination specified in paragraph (b)(1) of this section:

(i) For contracts above $10 million, the head of the contracting activity, the combatant commander of the combatant command concerned, or the Under Secretary of Defense for Acquisition and Sustainment (as applicable).

(ii) For contracts in an amount above the simplified acquisition threshold and at or below $10 million, the contracting officer.

212.173 Procedures for solicitation.

(a) See 215.103-270 for the limitations and prohibitions on the use of the lowest price technically acceptable source selection process, which are applicable to the acquisition of commercial products and commercial services.

(b) See 217.7801 for the prohibition on the use of reverse auctions for personal protective equipment and aviation critical safety items.

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Defense FAR Supplement (DFARS) Part 212

(c) See 204.7603 for procedures on the required use of Supplier Performance Risk System risk assessments as part of the award decision.

(d) See subpart 212.70 for acquisitions resulting from a commercial solutions opening.

(e) See 215.103-170 and 225.7024 for the acquisition of fuel for overseas contingency operations.

(f) See the procedures at PGI 205.102-70 for use of the Solicitation Module within the Procurement Integrated Enterprise Environment.

(g) See limitations on the use of tiered evaluation of offers at 215.102-70.

SUBPART 212.2?SOLICITATION, EVALUATION, AND AWARD

212.201 Solicitation procedures.

212.201-1 Simplified procedures.

(e) Other flexibilities.

(3) Blanket purchase agreement. See PGI 212.201-1 Simplified Procedures.

212.203 Evaluation.

(a)(1)(i) Include an evaluation factor regarding supply chain risk (see subpart **239.70) when acquiring information technology, whether as a service or as a supply,** that is a covered system, is a part of a covered system, or is in support of a covered system, as defined in 239.7001.

(ii) When acquiring transportation or transportation related services, see **PGI 212.203.**

212.204 Award.

(a) Price reasonableness.

(1) In accordance with 10 U.S.C. 3453(d), agencies must conduct or obtain market research to support the determination of the reasonableness of price for commercial products and commercial services contained in any bid or offer submitted in response to an agency solicitation. To the extent necessary to support such market research, the contracting officer?

(i) 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, must use information submitted under 234.7002(e); and**

(ii) In the case of other items, may require the offeror to submit other relevant information.

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(2) If the contracting officer determines that the information obtained through market research pursuant to paragraph (1) of this section is insufficient to determine the reasonableness of price, the contracting officer must consider information submitted by the offeror of recent purchase prices paid by the Government and commercial customers for the same or similar commercial products or commercial services under comparable terms and conditions in establishing price reasonableness on a subsequent purchase if the contracting officer is satisfied that the prices previously paid remain a valid reference for comparison. In assessing whether the prices previously paid remain a valid reference for comparison, the contracting officer must consider the totality of other relevant factors such as the time elapsed since the prior purchase and any differences in the quantities purchased (10 U.S.C. 3703(e)).

(3) If the contracting officer determines that the offeror cannot provide sufficient information as described in paragraph (2) of this section to determine the reasonableness of price, the contracting officer should request the offeror to submit information on?

(i) Prices paid for the same or similar items sold under different terms and conditions;

(ii) Prices paid for similar levels of work or effort on related products or services;

(iii) Prices paid for alternative solutions or approaches; and

(iv) Other relevant information that can serve as the basis for determining the reasonableness of price.

(4) The contracting officer is not restricted from requiring the contractor to supply sufficient information to determine the reasonableness of price, regardless of whether or not the contractor was required to provide such information in connection with any earlier procurement. If the contracting officer determines that the pricing information submitted is not sufficient to determine the reasonableness of price, the contracting officer should request other information regarding the basis for price or cost,

including uncertified cost or pricing data such as labor costs, material costs, and other direct and indirect costs.

212.205 Solicitation provisions and contract clauses.

See DoD Class Deviation 2023-O0008, Commercial Products and Commercial Services Omnibus Clause for Acquisitions Using the Procurement Desktop-Defense System, issued September 18, 2023. This class deviation allows the contracting officer to use the PD2 clause logic capability to automatically select the clauses that are applicable to the specific solicitation and contract. The contracting officer must ensure that the deviation clause is incorporated into these solicitations and contracts because the deviation clause fulfills the statutory requirements on auditing and subcontract clauses applicable to commercial products and commercial services. The deviation also authorizes adjustments to the deviation clause required by future changes to the clause at FAR **52.212-5 that are published in the FAR. This deviation is effective for 3 years, or until** otherwise rescinded.

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Defense FAR Supplement (DFARS) Part 212

(a) Required Provisions. Refer to Table 212.2 for a list of provisions to be included in solicitations for commercial products and commercial services.

TABLE 212.2

Number Title Source

252.203-7005 Representation Relating to Compensation of Section 847

Former DoD Officials of FY 2008

NDAA

252.204-7019 Notice of NIST SP 800-171 DoD Assessment Federal CUI

Requirements standards

252.204-7024 Notice on the Use of the Supplier Performance Other

Risk System

252.209-7021 Prohibition Relating to Conflicts of Interest in Section 812

Consulting Services?Certification of the FY

2024 NDAA

(Pub. L. 118-

31

252.215-7008 Only One Offer 10 USC

3703(a)(1)(A)

252.215-7010 Requirements for Certified Cost or Pricing Data 10 USC

and Data Other Than Certified Cost or Pricing 3705

Data

252.215-7016 Notification to Offerors?Postaward Debriefings Section 818

of the FY

2018 NDAA

252.219-7000 Advancing Small Business Growth 10 U.S.C.

4959

252.225-7000 Buy American?Balance of Payments Program 41 U.S.C.

Certificate chapter 83

252.225-7020 Trade Agreements Certificate 19 U.S.C.

2501-2518

252.225-7031 Secondary Arab Boycott of Israel 10 U.S.C.

4659

252.225-7035 Buy American?Free Trade Agreements? 41 U.S.C.

Balance of Payments Program Certificate chapter 83

252.225-7050 Disclosure of Ownership or Control by the 10 U.S.C.

Government of a Country that is a State Sponsor 4871(b)

of Terrorism

252.225-7055 Representation Regarding Business Operations Section 890

with the Maduro Regime of FY 2020

NDAA

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252.225-7059 Prohibition on Certain Procurements from the Section 855

Xinjiang Uyghur Autonomous Region? of FY 2023

Representation NDAA

(b) Required Clauses. Refer to Table 212.3 for a list of clauses to be included in contracts for commercial products and commercial services.

TABLE 212.3

Number Title Source

52.203-3 Gratuities 10 U.S.C.

4651

252.203-7000 Requirements Relating to Compensation of Former Section 847

DoD Officials of FY 2008

NDAA

252.203-7002 Requirement to Inform Employees of 10 USC

Whistleblower Rights 4701

252.204-7020 DoD Assessment Requirements DOD CUI

Standards

252.204-7021 Cybersecurity Maturity Model Certification DOD Cyber

Requirements Standards

252.204-7022 Expediting Contract Closeout Other

252.204-7023 Reporting Requirements for Contracted Services 10 U.S.C.

4505

252.205-7000 Provision of Information to Cooperative Agreement 10 U.S.C.

Holders 4957

252.211-7003 Item Unique Identification and Valuation Other

252.211-7008 Use of Government-Assigned Serial Numbers Other

252.216-7010 Postaward Debriefings for Task Orders and Section 818

Delivery Orders of the FY

2018

NDAA

252.219-7003 Small Business Subcontracting Plan (DoD 15 U.S.C.

Contracts) 637

252.223-7008 Prohibition of Hexavalent Chromium Other

252.225-7001 Buy American and Balance of Payments Program 41 U.S.C.

chapter 83

252.225-7012 Preference for Certain Domestic Commodities 10 U.S.C.

4862

252.225-7021 Trade Agreements 19 U.S.C.

2501-2518

252.225-7036 Buy American?Free Trade Agreements?Balance 41 U.S.C.

of Payments Program chapter 83

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252.225-7052 Restriction on the Acquisition of Certain Magnets, 10 U.S.C.

Tantalum, and Tungsten 4872

252.225-7056 Prohibition Regarding Business Operations with Section 890

the Maduro Regime of FY 2020

NDAA

252.225-7060 Prohibition on Certain Procurements from the Section 855

Xinjiang Uyghur Autonomous Region of FY 2023

NDAA

252.226-7001 Utilization of Indian Organizations, Indian-Owned Recurring

Economic Enterprises, and Native Hawaiian Small Approps.

Business Concerns

252.227-7015 Technical Data?Commercial Products and 10 USC

Commercial Services 3772

252.227-7037 Validation of Restrictive Markings on 10 USC

Technical Data 3781

252.232-7003 Electronic Submission of Payment Requests and 10 USC

Receiving Reports 4601

252.232-7006 Wide Area WorkFlow Payment Instructions Other

252.232-7010 Levies on Contract Payments 26 USC

6331(h)

252.237-7010 Prohibition on Interrogation of Detainees by Section

Contractor Personnel 1038 of FY

2010

NDAA

252.237-7019 Training for Contractor Personnel Interacting with Section

Detainees 1092 of FY

2005

NDAA

252.243-7002 Requests for Equitable Adjustment 10 USC

3862

252.244-7000 Subcontracts for Commercial Products and Section 874

Commercial Services of FY 2017

NDAA

252.247-7023 Transportation of Supplies by Sea 10 U.S.C.

2631(a)

252.247-7028 Application for U.S. Government Shipping Other

Documentation/Instructions

212.205-70 Provisions and clauses required in limited categories of

contracts and solicitations.

Refer to Table 212.4 for a list of clauses to be included in specified categories of contracts for commercial products and commercial services.

TABLE 212.4

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Defense FAR Supplement (DFARS) Part 212

Number Title Source

252.204-7004 Contracts Providing Access to DoD DOD security

Classified Systems directives

252.204-7008 Contracts Providing Access to DoD Section 1632 of FY

Classified Systems 2015 NDAA

252.204-7009 Contracts Providing Access to DoD Section 1632 of FY

Classified Systems 2015 NDAA

252.204-7012 Contracts Providing Access to DoD Section 1632 of FY

Classified Systems 2015 NDAA

252.204-7014 Litigation Support Contracts 10 USC 129d

252.204-7015 Litigation Support Contracts 10 USC 129d

252.204-7016 Support to Nuclear Deterrence and 1656 of FY 2018

Missile Defense Contracts

252.204-7017 Support to Nuclear Deterrence and 1656 of FY 2018

Missile Defense Contracts

252.204-7018 Support to Nuclear Deterrence and 1656 of FY 2018

Missile Defense Contracts

252.209-7011 Contracts with Institutions of Higher Section 1062 of FY

Education 2021 NDAA

252.215-7003 Contracts with Canadian Commercial US-Canada defense

Corporation trade agreements

252.215-7004 Contracts with Canadian Commercial US-Canada defense

Corporation trade agreements

252.219-7004 Contracts with Contractors Section 834 of the

Participating in the Small Business FY 1990-1991

Subcontracting Test Program NDAA, as amended

252.219-7012 Contracts for Religious Services Section 898 of FY

2016 NDAA

252.223-7009 Firefighting Contracts on Military section 322 of FY

Installations 2020 NDAA

252.225-7006 Contracts for The Acquisition of Recurring Approps.

American Flags

252.225-7007 Contracts for Items on the U.S. Section 1211 of FY

Munitions List or the 600 Series of the 2006 NDAA

Commerce Control List

252.225-7008 Contracts for Delivery of Specialty 10 U.S.C. 4863

Metals As End Items

252.225-7009 Contracts for Delivery of Weapon 10 USC 4863

Systems Containing Specialty Metals

252.225-7010 Contracts for Delivery of Weapon 10 USC 4863

Systems Containing Specialty Metals

252.225-7015 Contracts Requiring the Delivery of 10 USC 4862

Hand or Measuring Tools

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Defense FAR Supplement (DFARS) Part 212

252.225-7016 Contracts for Ball or Roller Bearings Recurring Approps.

or Items Containing Ball or Roller

Bearings

252.225-7017 Contracts Resulting in DOD Section 846 of FY

Ownership of Photovoltaic Devices 2011 NDAA

252.225-7018 Contracts Resulting in DOD Section 846 of FY

Ownership of Photovoltaic Devices 2011 NDAA

252.225-7019 Contracts that Require Welded 10 U.S.C. 4864

Shipboard Anchor or Mooring Chain

252.225-7023 Products or Services for use by Afghan Section 886 of FY

Forces or US Operations in 2008 NDAA

Afghanistan

252.225-7024 Products or Services for use by Afghan Section 886 of FY

Forces or US Operations in 2008 NDAA

Afghanistan

252.225-7026 Products or Services for use by Afghan Section 886 of FY

Forces or US Operations in 2008 NDAA

Afghanistan

252.225-7027 Contracts for Foreign Military Sales 22 U.S.C. 2779

252.225-7029, Products or Services for use by Afghan Section 826 of FY

Forces or US Operations in 2013 NDAA

Afghanistan

252.225-7039 Contracts for Private Security Section 862 of FY

Functions Outside the US 2008 NDAA

252.225-7040 Contracts for Personnel Supporting Section 1205 of FY

US Armed Forces Deployed Outside 2005 NDAA

the US

252.225-7043 Contractors Performing Outside the Other

US

252.225-7049 Contracts for Commercial Satellite 10 USC 2279

Services

252.225-7051 Contracts for Commercial Satellite 10 USC 2279

Services

252.225-7053 Contracts for Furnished Energy on an Section 2821 of FY

Installation 2020 NDAA

252.225-7054 Contracts for Furnished Energy on an Section 2821 of FY

Installation 2020 NDAA

252.225-7061 Contracts for Personal Protective 10 U.S.C. 4875

Equipment

252.225-7062 Contracts for Large, Medium-Speed 10 U.S.C. 4864

Diesel Engines

252.225-7063 Contracts for Components of T-AO 205 10 USC 4864

and T-ARC Class Vessels

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252.225-7064 Contracts for the Acquisition of Star 10 USC 4864

Trackers

252.225-7065 Contracts for The Acquisition of Fuel Section 843 of FY

for Overseas Contingency Operations 2022 NDAA

252.226-7002 Contracts for Demonstration Project Section 853 of FY

for Contractors Employing Persons 2004 NDAA

with Disabilities

252.227-7013 Contracts where the Government will 10 USC 3771

have Paid for any Portion of the

Development Costs of Commercial

Products or Services

252.227-7015 Contracts for Vessel Design 10 USC 8687

Alternate

I

252.227-7018 SBIR/STTR Contracts 10 USC 3771

252.227-7040 SBIR/STTR Contracts 10 USC 3771

252.227-7041 SBIR/STTR Contracts 10 USC 3771

252.229-7014 Contracts with Foreign Persons 26 USC 5000C

252.232-7009 Credit Card Purchases Other

252.232-7011 Emergencies and Contingency Other

Operations

252.237-7025 Contracts for Audit Services Section 1006 of FY

2019 NDAA

252.237-7026 Contracts for Audit Services Section 1006 of FY

2019 NDAA

252.237-7027 Contracts for Working Dogs 10 USC 2387

252.239-7009 Contracts for IT Services Other

252.239-7010 Contracts for IT Services Other

252.239-7017 Contracts for National Security 10 U.S.C. 3252

Systems

252.239-7018 Contracts for National Security 10 U.S.C. 3252

Systems

252.245-7005 Contracts Providing for Government- Other

Furnished Property

252.246-7003 Contracts for Critical Safety Items Other

252.246-7004 Contracts for Facilities for Military Section 807 of FY

Operations 2010 NDAA

252.246-7008 Contracts for Electronic Parts Section 818 of FY

2012 NDAA

252.247-7003 Contracts for Shipping/Transportation Section 884 of FY

2009 NDAA

252.247-7026 Contracts for Shipping/Transportation Section 1017 of FY

2007 NDAA

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252.247-7027 Contracts for Shipping/Transportation Section 33504 of FY 2009 NDAA

252.270-7000 Contracts in Pilot Program for Section 874 of FY Employee-Owned Businesses 2022 NDAA

252.270-7001 Contracts in Pilot Program for Section 874 of FY Employee-Owned Businesses 2022 NDAA

252.270-7002 Contracts in Pilot Program for Section 874 of FY Employee-Owned Businesses 2022 NDAA

212.205-71 Additional provisions and clauses that apply to DoD solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services.

If the offeror has completed any of the following provisions listed in this paragraph electronically as part of its annual representations and certifications at https://www.sam.gov, the contracting officer must consider this information instead of requiring the offeror to complete these provisions for a particular solicitation. The contracting officer must not use other FAR or DFARS provisions and clauses unless required by the FAR or DFARS or consistent with customary commercial practices (section 874(b)(1)(A), Pub. L. 114-328).

(a) Insert the clause at 252.225-7028, Exclusionary Policies and Practices of Foreign Governments, as prescribed in 225.7307(b), to comply with 22 U.S.C. 2755.

(b) Insert the clause 252.247-7025, Reflagging or Repair Work, as prescribed in **247.574(b), to comply with 10 U.S.C. 2631(b).**

SUBPART 212.4?MICRO-PURCHASES

212.401-70 General.

See DoD Class Deviation 2024-O0011, Special Acquisition Authority for Rapid Contracting for Combatant Commanders, issued April 15, 2024. When approved in accordance with this class deviation, contracting officers may use certain temporary special acquisition authorities for covered contracts, including purchases and/or payments made with the Governmentwide commercial purchase card, that directly support covered operations through September 30, 2028. Combatant commanders will provide a written determination requesting use of the special acquisition authorities. These authorities include higher micro-purchase thresholds for purchases that directly support covered operations, as defined in the class deviation. This deviation is effective until September 30, 2028, unless otherwise rescinded.

(a) Apply the prohibition at 223.7402 to purchases at or below the micro-purchase threshold.

(b) See PGI 212.401-70 for guidance on use of the higher micro-purchase thresholds to support a declared contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack.

212.403 Methods.

(a)(1) The Governmentwide commercial purchase card.

(i) Follow the procedures at PGI 212.403(a)(1)(i)(A) for authorizing, establishing, and operating a Governmentwide commercial purchase card program.

(ii) ?United States,? as used in this section, means the 50 States and the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, Wake Island, Johnston Island, Canton Island, the outer Continental Shelf, and any other place subject to the jurisdiction of the United States (but not including leased bases).

(iii) Use the Governmentwide commercial purchase card as the method of purchase and/or method of payment for purchases valued at or below the micro-purchase threshold. This policy applies to all types of contract actions authorized by the FAR unless?

(A) The Deputy Secretary of Defense has approved an exception for an electronic commerce/electronic data interchange system or operational requirement that results in a more cost-effective payment process;

(B)(1) A general or flag officer or a member of the Senior Executive Service (SES) makes a written determination that?

(i) The source or sources available for the supply or service do not accept the purchase card; and

(ii) The contracting office is seeking a source that accepts the purchase card.

(2) To prevent mission delays, if an activity does not have a resident general or flag officer or SES member, delegation of this authority to the level of the senior local commander or director is permitted; or

(C) The purchase or payment meets one or more of the following criteria:

(1) The place of performance is entirely outside the United States and its outlying areas.

(2) The purchase is a Standard Form 44 purchase for aviation fuel or oil.

(3) The purchase is an overseas transaction by a contracting officer in support of a contingency operation as defined in 10 U.S.C. 101(a)(13) or a humanitarian or peacekeeping operation as defined in 10 U.S.C. 3015(2).

(4) The purchase is a transaction in support of intelligence or other specialized activities addressed by Part 2.7 of Executive Order 12333.

(5) The purchase is for training exercises in preparation for overseas contingency, humanitarian, or peacekeeping operations.

(6) The payment is made with an accommodation check.

(7) The payment is for a transportation bill.

(8) The purchase is under a Federal Supply Schedule contract that does not permit use of the Governmentwide commercial purchase card.

(9) The purchase is for medical services and?

(i) It involves a controlled substance or narcotic;

(ii) It requires the submission of a Health Care Summary Record to document the nature of the care purchased;

(iii) The ultimate price of the medical care is subject to an independent determination that changes the price paid based on application of a mandatory CHAMPUS Maximum Allowable Charge determination that reduces the Government liability below billed charges;

(iv) The Government already has entered into a contract to pay for the services without the use of a purchase card;

(v) The purchaser is a beneficiary seeking medical care; or

(vi) The senior local commander or director of a hospital or laboratory determines that use of the purchase card is not appropriate or cost-effective. The Medical Prime Vendor Program and the DoD Medical Electronic Catalog Program are two examples where use of the purchase card may not be cost-effective.

(iv) An individual appointed in accordance with 201.403-2(a)(1) also may use the Governmentwide commercial purchase card to make a purchase that exceeds the micro-purchase threshold but does not exceed $25,000, if?

(A) The purchase?

(1) Is made outside the United States for use outside the United States; and

(2) Is for a commercial product or commercial service; but

(3) Is not for work to be performed by employees recruited within the United States;

(4) Is not for supplies or services originating from, or transported from or through, sources identified in FAR Subpart 25.7;

(5) Is not for ball or roller bearings as end items;

(6) Does not require access to classified or Privacy Act information; and

(7) Does not require transportation of supplies by sea; and

(B) The individual making the purchase?

(1) Is authorized and trained in accordance with agency procedures;

(2) Complies with the requirements of FAR 8.103 in making the purchase; and

(3) Seeks maximum practicable competition for the purchase in accordance with FAR 12.201-4(c).

(v) A contracting officer supporting a contingency operation as defined in 10

U.S.C. 101(a)(13) or a humanitarian or peacekeeping operation as defined in 10 U.S.C. 3015(2) may use the Governmentwide commercial purchase card to make a purchase that exceeds the micro-purchase threshold but does not exceed the simplified acquisition threshold, if?

(A) The supplies or services being purchased are immediately available;

(B) One delivery and one payment will be made; and

(C) The requirements of paragraphs (iv)(A) and (B) of this section are met.

(vi) The contracting officer must not authorize the Governmentwide commercial purchase card as a method of payment if the contract includes the clause at FAR 52.229-12, Tax on Certain Foreign Procurements, unless the contract also includes the clause at 252.229-7014, Full Exemption from Two-Percent Excise Tax on Certain Foreign Procurements, indicating that the contractor is fully exempt from the tax.

(vii) Guidance on DoD purchase, travel, and fuel card programs is available in the ?Department of Defense Government Charge Card Guidebook for Establishing and Managing Purchase, Travel, and Fuel Card Programs? at https://www.acq.osd.mil/asda/dpc/ce/pc/docs-guides.html. Additional guidance on the fuel card programs is available at https://www.dla.mil/Energy/Offers/Products/GovernmentFuel/.

(viii) When the Governmentwide commercial purchase card is used as a method of payment for contracts or orders, follow the procedures at 232.7002(a)(5) and PGI 242.302(a)(13)(B)(3).

(a)(2) Purchase orders.

(i) Contracting officers must obtain written acceptance of purchase orders and modifications of purchase orders for classified acquisitions.

(ii) See PGI 213.403(a)(2)(ii)(A) for guidance on the use of unilateral modifications.

(iii) A supplemental agreement converts a unilateral purchase order to a bilateral agreement. If not previously included in the purchase order, incorporate the clause at 252.243-7001, Pricing of Contract Modifications, in the Standard Form 30, and obtain the contractor?s acceptance by signature on the Standard Form 30.

(iv) Clauses.

(A) Insert the clause at 252.243-7001, Pricing of Contract Modifications, in all bilateral purchase orders.

(B) When using the clause at FAR 52.213-4, delete the reference to the clause at FAR 52.225-1, Buy American?Supplies. Instead, if the Buy American statute applies to the acquisition, insert the clause at?

(1) 252.225-7001, Buy American and Balance of Payments Program, or the appropriate alternate, as prescribed at 225.1101(2); or

(2) 252.225-7036, Buy American?Free Trade Agreements?Balance of

Payments Program, or the appropriate alternate, as prescribed at 225.1101(10).

(b)(2)(i) The micro-purchase limitation applies to all purchases, except that purchases not exceeding the simplified acquisition threshold may be made for?

(A) Fuel and oil. U.S. Government fuel cards may be used in lieu of an SF 44 for fuel, oil, and authorized refueling-related items (see PGI 212.403(b)(2)(i)(1) for procedures on use of fuel cards);

(B) Overseas transactions by contracting officers in support of a contingency operation as defined in 10 U.S.C. 101(a)(13) or a humanitarian or peacekeeping operation as defined in 10 U.S.C. 3015(2); and

(C) Transactions in support of intelligence and other specialized activities addressed by Part 2.7 of Executive Order 12333.

(ii) See PGI 212.403(b)(2)(ii)(2) for procedures on use of forms for purchases made using simplified acquisition procedures.

(c)(1) On a very limited basis, installation commanders and commanders of other activities with contracting authority may be granted authority to establish imprest funds and third party draft (accommodation check) accounts. Use of imprest funds and third party drafts must comply with?

(i) DoD 7000.14-R, DoD Financial Management Regulation, Volume 5, Disbursing Policy and Procedures; and

(ii) The Treasury Financial Manual, Volume I, Part 4, Chapter 3000.

(2) Use of imprest funds requires approval by the Director for Financial Commerce, Office of the Deputy Chief Financial Officer, Office of the Under Secretary of Defense (Comptroller), except as provided in paragraph (c)(3) of this subsection.

(3) Imprest funds are authorized for use without further approval for?

(i) Overseas transactions at or below the micro-purchase threshold in support of a contingency operation as defined in 10 U.S.C. 101(a)(13) or a humanitarian or peacekeeping operation as defined in 10 U.S.C. 3015(2); and

(ii) Classified transactions.

SUBPART 212.70?DEFENSE COMMERCIAL SOLUTIONS OPENING

(Added August 17, 2023)

212.7000 Scope of subpart.

This subpart implements 10 U.S.C. 3458 for the acquisition of innovative commercial products or commercial services through the use of a general solicitation known as a commercial solutions opening (CSO).

212.7001 Definition.

As used in this subpart?

?Innovative? means?

(a) Any technology, process, or method, including research and development, that is new as of the date of submission of a proposal; or

(b) Any application that is new as of the date of submission of a proposal of a technology, process, or method existing as of such date.

212.7002 Policy.

(a) Contracting officers may only use a CSO?

(1) To obtain innovative solutions or potential capabilities that fulfill requirements;

(2) To close capability gaps, or provide potential innovative technological advancements; and

(3) When meaningful proposals with varying technical or scientific approaches can be reasonably anticipated.

(b) Notwithstanding FAR 12.104, contracting officers must use fixed-price type contracts, including fixed-price incentive contracts, for awards resulting from a CSO. When using a fixed-price incentive contract, see subpart 16.4 for additional requirements.

(c) Contracting officers must treat products and services acquired using a CSO as commercial products or commercial services.

(d) When using a CSO to acquire research and development, contracting officers must use the procedures of this subpart in conjunction with FAR part 35 and part 235. A CSO is not subject to the limitations at 235.016 and may be used to fulfill requirements for research and development, ranging from advanced component development through operational systems development.

212.7003 Limitations.

Contracting officers must follow the procedures at PGI 212.7003 to obtain senior procurement executive approval to award a contract in excess of $100 million resulting from a CSO.

212.7004 Procedures.

This section prescribes procedures for the use of a CSO.

(a) The CSO must?

(1) Describe the agency's interest for an individual program requirement or for broadly defined areas of interest covering the full range of the agency's requirements;

(2) Specify the technical data required that may be necessary to meet DoD?s minimum requirements (see 227.7102 and 227.7202);

(3) Describe the evaluation factors for selecting proposals to include?

(i) Technical and importance to agency programs as the primary evaluation factors;

(ii) Price to the extent appropriate, but at a minimum to determine that the price is fair and reasonable; and

(iii) Relative importance of the factors, and the method of evaluation;

(4) Specify the period of time during which proposals submitted in response to

the CSO will be accepted; and

(5) Contain instructions for the preparation and submission of proposals.

(b) The contracting officer must publicize the CSO through the Governmentwide point of entry and, if authorized pursuant to FAR subpart 5.5, may also publish a notice regarding the CSO in noted scientific, technical, or engineering periodicals. The contracting officer must publish the notice at least annually.

(c) Proposals received in response to the CSO must be evaluated in accordance with evaluation factors specified therein through a scientific, technological, or other subject-matter expert peer review process. Written evaluation reports on individual proposals are required, but proposals need not be evaluated against each other since they are not submitted in response to a common performance work statement or statement of work.

(d) Synopsis of proposed contract actions under FAR subpart 5.1 of individual contract actions based upon proposals received in response to the CSO is not required.

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The notice published pursuant to paragraph (b) of this section fulfills the synopsis requirement.

(e) When a small business concern would otherwise be selected for award but is considered not responsible, follow the Small Business Administration Certificate of Competency procedure (see FAR subpart 19.204).

(f) The contracting officer must document the decision that the requirements of this **subpart have been met and include the documentation in the contract file.**

212.7005 Congressional notification.

See PGI 212.7005 for congressional notification requirements for contracts valued at more than $100 million that are awarded pursuant to a CSO.

SUBPART 212.72?APPLICABILITY OF CERTAIN LAWS, PROVISIONS, AND CLAUSES TO THE ACQUISITION OF COMMERCIAL PRODUCTS, COMMERCIAL SERVICES, AND COMMERCIALLY AVAILABLE OFF-THE-SHELF ITEMS

212.7201 Applicability of certain laws to executive agency contracts for the acquisition of commercial products and commercial services.

See PGI 212.7201 Applicability of Certain Laws to Executive Agency Contracts for the Acquisition of Commercial Products and Commercial Services.

212.7202 Applicability of certain laws to subcontracts for the acquisition of commercial products and commercial services.

See PGI 212.7202 applicability of certain laws to subcontracts for the acquisition of commercial products and commercial services.

212.7203 Applicability of certain laws to contracts for the acquisition of COTS items. Commercially available off-the-shelf (COTS) items are a subset of commercial products.

See PGI 212.7203 Applicability of certain laws to contracts for the acquisition of COTS

items. Commercially available off-the-shelf (COTS) items are a subset of commercial products.

212.7204 Inapplicability of certain provisions and clauses to contracts and subcontracts for the acquisition of commercial products, commercial services, and commercially available off-the-shelf items.

The following provisions and clauses, not expressly authorized in law, are not applicable to contracts for the acquisition of commercial products and commercial services:

(a) FAR 52.204-22, Alternative Line Item Proposal.

(b) 252.203-7003, Agency Office of the Inspector General.

(c) 252.215-7007, Notice of Intent to Resolicit.

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212.7205 Inapplicability of certain provisions and clauses to contracts for the acquisition of commercially available off-the-shelf items.

Commercially available off-the-shelf (COTS) items are a subset of commercial products. Therefore, the provisions and clauses listed in 212.7204 as not applicable to contracts or subcontracts for the acquisition of commercial products are also not applicable to contracts or subcontracts for the acquisition of COTS items. In addition, the following provisions and clauses published after October 13, 1994, not expressly authorized in law, are not applicable or are modified in their applicability to contracts for the acquisition of COTS items:

(a) FAR 52.204-21, Basic Safeguarding of Covered Contractor Information Systems.

(b) 252.204-7008, Compliance with Safeguarding Covered Defense Information Controls.

(c) 252.204-7012, Safeguarding Covered Defense Information and Cyber Incident Reporting.

(d) 252.204-7019, Notice of NIST SP 800-171 DoD Assessment Requirements.

(e) 252.204-7020, NIST SP 800-171 DoD Assessment Requirements.

(f) 252.204-7021, Cybersecurity Maturity Model Certification Requirements.

(g) 252.205-7000, Provision of Information to Cooperative Agreement Holders.

(h) 252.270-7000, Pilot Program to Incentivize Contracting with Employee-Owned Businesses?Representation.

(i) 252.270-7001, Pilot Program to Incentivize Contracting with Employee-Owned Businesses?Subcontracting Certification.

(j) 252.270-7002, Pilot Program to Incentivize Contracting with Employee-Owned Businesses.

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PGI 212?ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

PGI 212.1?PRESOLICITATION

PGI 212.001-70 Applicability.

(b) Commercial product or commercial service determination.

(A) Making the commercial product or commercial service determination.

(1) Before making a commercial product or commercial service determination, the contracting officer must search the DoD Commercial Item Database at https://piee.eb.mil for the item and an associated commercial product or commercial service determination or the decision that the item is not commercial in accordance with the commercial product or commercial service definition at FAR 2.101.

(2) In accordance with 10 U.S.C. 3456(b)(1), the contracting officer may?

(i) Request support from the Defense Contract Management Agency (DCMA) by sending an email to DCMA Commercial Item Group (CIG) at dcma.boston-ma.eastern-rc.mbx.Commercial@mail.mil;

(ii) Request support from the cognizant Defense Contract Audit Agency (DCAA) office;

(iii) Request support from other appropriate experts in DoD such as program office technical evaluators, program managers, cognizant engineers, or other contracting officers; or

(iv) Consider the views of appropriate public and private sector entities such as documents provided by the contractor asserting commerciality to include technical drawings, product or catalog descriptions, or national stock numbers.

(3) The contracting officer may make the commercial product or commercial service determination or the decision that the item is other than commercial in accordance with the commercial product or commercial service definition at FAR **2.101 or request a DCMA CIG contracting officer make the determination or the decision** that the product or service is other than commercial in accordance with the commercial product or commercial service definition at FAR 2.101 by submitting a request to dcma.boston-ma.eastern-rc.mbx.Commercial@mail.mil. The contracting officer may withdraw the request at any point prior to the determination being made.

(B) Documenting the commercial product or commercial service determination.

(1) The contracting officer making the determination must document the market research and rationale supporting a conclusion that the product or service is commercial or is other than commercial and include it in the contract file.

(2) Particular care must be taken when documenting determinations

involving items that are of a type customarily used by the general public or by nongovernmental entities, modifications of a type customarily available in the marketplace, and items only offered for sale, lease, or license to the general public but not yet actually sold, leased, or licensed. In these situations, the documentation must clearly detail the particulars of the items and modifications of a type and sales offers. When such items lack sufficient market pricing information, additional diligence must be given to determinations that prices are fair and reasonable as required by FAR subpart 15.4.

(3) The contracting officer must include the part number, the national stock number, or both, as applicable, in the commercial product or commercial service determination or the decision that the product or service does not meet the commercial product or commercial service definition at FAR 2.101.

(4) The contracting officer must include the commercial product or commercial service determination or the decision that the product or service does not meet the commercial product or commercial service definition at FAR 2.101 in the contract file.

(C) DoD commercial item database. In accordance with 10 U.S.C. 3456(b)(2), within 30 days of contract award, the contracting officer making the determination must upload the signed commercial product or service determination or the decision that the item does not meet the commercial product or commercial service definition at FAR 2.101 to the DoD Commercial Item Database at https://piee.eb.mil. The only documentation that is required to be uploaded to the database is the commercial product or service determination or the decision that the item is other than commercial. Contracting officers must avoid uploading any data marked as proprietary or controlled unclassified information to the Commercial Item Database. Additional information is available at https://www.dcma.mil/commercial-item-group/.

(D) Prior commercial product or commercial service determination.

(1) If a prior DoD commercial product or commercial service determination for the same product or service is made by a military department, defense agency, or another component of DoD, contracting officers may presume that the prior commercial product or commercial service determination must serve as a determination for subsequent procurements of such product or service, unless the process is followed to overturn the prior determination.

(2) If the DoD Commercial Item Database contains a prior decision that a product or service does not meet the definition of a commercial product or commercial service at FAR 2.101, the contracting officer may use the prior decision to serve as the decision for subsequent procurements of the same product or service. To promote consistent acquisition procedures across DoD, contracting officers should consult contracting activities that regularly procure the product or service to understand the basis for determining that the product or service does not meet the commercial product or commercial service definition at FAR 2.101.

(v) Commercial product or commercial service guidebook. See the Department of Defense Guidebook for Acquiring Commercial Items, Part A: Commercial Item Determination, for detailed guidance and practical examples on improving the

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consistency and timeliness of commercial product or commercial service determinations to include a template for new commercial product or commercial service determinations and for general information related to commercial products or commercial services.

(d)(1) This permissive authority is intended to enhance defense innovation and investment, enable DoD to acquire items that otherwise might not have been available, and create incentives for nontraditional defense contractors to do business with DoD. It is not intended to recategorize current other than commercial products or commercial services; however, when appropriate, contracting officers may consider applying commercial product or commercial service procedures to the procurement of supplies and services from business segments that meet the definition of ?nontraditional defense contractor? even though they have been established under traditional defense contractors. The decision to apply commercial product and commercial service procedures to the procurement of supplies and services from nontraditional defense contractors does not require a commercial product or commercial service determination and does not mean the item is commercial.

PGI 212.102-70 Promoting competition.

For more information on the approaches that may be used to competitively fulfill DoD requirements, see the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics Guidelines for Creating and Maintaining a Competitive Environment for Supplies and Services in the Department of Defense, https://www.acq.osd.mil/asda/dpc/cp/policy/competition.html.

PGI 212.2?SOLICITATION, EVALUATION, AND AWARD

PGI 212.201 Solicitation procedures.

PGI 212.201-1 Simplified procedures.

(e) Other flexibilities

(3) Blanket purchase agreement. Individual purchases for subsistence may be made at any dollar value; however, the contracting officer must satisfy the competition requirements of FAR part 6 for any action not using simplified acquisition procedures.

PGI 212.203 Evaluation.

(a) Factors.

(1) Technical.

(A) When acquiring transportation or transportation-related services, also consider evaluating offers in accordance with the criteria at 247.206(1).

(B) For the acquisition of transportation in supply contracts that will include a significant requirement for transportation of items outside the contiguous United States, also evaluate offers in accordance with the criterion at 247.301-71.

(C) For the direct purchase of ocean transportation services, also evaluate

offers in accordance with the criteria at 247.573-2(c).

PGI 212.4?MICRO PURCHASES

PGI 212.401-70 General.

(b)(i) Higher micro-purchase thresholds are authorized for purchases that have a clear and direct relationship to the support of a contingency operation; to facilitate defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack; to support a request from the Secretary of State or the Administrator of the United States Agency for International Development to facilitate provision of international disaster assistance pursuant to 22 U.S.C. 2292 et seq.; or to support response to an emergency or major disaster (42 U.S.C. 5122).

(ii) ?United States,? as used in this section, is defined in FAR 2.101.

(iii) Except as provided in paragraph (iv) of this section, the following tables illustrate the higher micro-purchase threshold based on the physical location of the Government purchaser and, for services, the place of performance:

(A) For supplies?

Government Purchaser Physical Location Authorized Micro-Purchase Threshold
Inside United States $25,000
Outside United States $40,000

(B) For services?

Government Purchaser Place of Authorized
Physical Location Performance Micro-Purchase Threshold
Inside United States Inside or outside United States $25,000
Outside United States Inside United States $25,000
Outside United States Outside United States $40,000

(iv)(A) Unless authorized by statute, Government purchasers physically located inside the United States are prohibited from using the higher micro-purchase threshold authorized for purchases made and/or with a place of performance outside the United States.

(B) The micro-purchase threshold for acquisitions subject to 41 U.S.C. chapter 67, Service Contract Labor Standards, remains at $2,500.

(C) The micro-purchase threshold for acquisitions of construction subject to 40 U.S.C. chapter 31, subchapter IV, Wage Rate Requirements

(Construction), remains at $2,000.

(D) The higher micro-purchase thresholds in paragraph (g)(iii) of this section are not authorized for acquisitions supporting humanitarian or peacekeeping operations.

PGI 212.403 Methods.

(a)(1)(i)(A) A Governmentwide commercial purchase card program is authorized pursuant to a delegation of contracting authority and designation as a DoD contracting activity for the purpose of streamlining the purchase and payment processes for supplies

and services by use of a Government-issued purchase card.

(B) Governmentwide commercial purchase card programs cannot be established or operated unless contracting authority is granted in accordance with governing laws and regulations, and delegated through a contracting activity identified at PGI 202.101. Further guidance regarding establishment, operation, and oversight of Governmentwide commercial purchase card programs can be found in the ?Department of Defense Government Charge Card Guidebook for Establishing and Managing Purchase, Travel, and Fuel Card Programs? at https://www.acq.osd.mil/asda/dpc/ce/pc/docs-guides.html.

(a)(2)(ii)(A) Generally, use unilateral modifications (see far 43.103) for?

(1) No-cost amended shipping instructions if?

(i) The amended shipping instructions modify a unilateral purchase order; and

(ii) The contractor agrees orally or in writing; and

(2) Any change made before work begins if?

(i) The change is within the scope of the original order;

(ii) The contractor agrees;

(iii) The modification references the contractor?s oral or written agreement; and

(iv) Block 13d of Standard Form 30, Amendment of Solicitation/Modification of Contract, is annotated to reflect the authority for issuance of the modification.

(b)(2)(i)(1) Establish fuel card accounts?

(i) For DoD customers, contact the service or agency component program manager for fuel cards (see http://www.desc.dla.mil/dcm/files/cpmpocs06022010.pdf; and

(ii) For non-DoD customers, contact the designated account manager identified at http://www.desc.dla.mil/dcm/dcmpage.asp?pageid=41.

(2) Purchasers using the air card® and sea card® must follow the guidance found at http://www.desc.dla.mil/dcm/dcmpage.asp?pageid=28.

(b)(2)(ii)(2) Commercial products and commercial services. If SF 1449 is not used, use DD Form 1155 in accordance with paragraph (b)(2)(ii)(2)(3) of this section.

(3) The DD Form 1155 is authorized for use for?

(i) Orders placed in accordance with FAR part 8 and 16; and

(ii) Classified acquisitions when the purchase is made within the United States. Attach the DD Form 254, Contract Security Classification Specification, to the purchase order.

(iii) Do not use Optional Form 347, Order for Supplies or Services, or Optional Form 348, Order for Supplies or Services Schedule--Continuation.

(iv) Use Standard Form 30, Amendment of Solicitation/Modification of Contract, to?

(A) Modify a purchase order; or

(B) Cancel a unilateral purchase order.

PGI 212.70?DEFENSE COMMERCIAL SOLUTIONS OPENING

PGI 212.7003 Limitations.

(a) Prior to awarding a contract in excess of $100 million pursuant to a commercial solutions opening (CSO), contracting officers must prepare a written determination for approval by the senior procurement executive that includes?

(1) A description of the innovative commercial product, commercial service, or technology acquired;

(2) A description of the requirement, capability gap, or potential technological advancement with respect to which the innovative commercial product, commercial service, or technology acquired provides a solution or a potential new capability;

(3) A description of the efficacy of the effort to meet the mission needs of DoD or the relevant military department or defense agency;

(4) The proposed contract award amount; and

(5) The prospective contractor.

(b) Include a copy of the approved determination in the contract file.

PGI 212.7005 Congressional notification.

Military departments and defense agencies must provide notification to the congressional defense committees no later than 45 days after the award of a contract valued at more than $100 million resulting from a CSO.

(a) The contracting officer must prepare a notice of award for the congressional defense committees that includes?

(1) A description of the innovative commercial product, commercial service, or technology acquired;

(2) A description of the requirement, capability gap, or potential technological advancement with respect to which the innovative commercial product, commercial service, or technology acquired provides a solution or a potential new capability;

(3) The contract award amount; and

(4) The contractor awarded the contract.

(b) Submit the notice of award in accordance with department/agency procedures.

(c) Include a copy of the notice of award in the contract file.

PGI 212.72?APPLICABILITY OF CERTAIN LAWS TO THE ACQUISITION OF COMMERCIAL PRODUCTS, COMMERCIAL SERVICES, AND COMMERCIALLY AVAILABLE OFF-THE-SHELF ITEMS

PGI 212.7201 Applicability of certain laws to Executive agency contracts for the acquisition of commercial products and commercial services.

(a) The following laws are not applicable to contracts for the acquisition of commercial products or commercial services:

(i) 10 U.S.C. 3321(b), Prohibition on Contingent Fees.

(ii) 10 U.S.C. 3741-3750, Allowable Costs Under Defense Contracts.

(iii) 10 U.S.C. 3845, Contractor Inventory Accounting System Standards (see **252.242-7004).**

(iv) 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.

(v) 10 U.S.C. 4656(a), Prohibition on Persons Convicted of Defense Related Felonies.

(vi) 10 U.S.C. 4753(b), Requirement to Identify Suppliers.

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(vii) 10 U.S.C. 4864, Miscellaneous Limitations on the Procurement of Goods Other Than United States Goods. 10 U.S.C. 4864 is not applicable to contracts valued at or below the simplified acquisition threshold.

(viii) Section 8116 of the Defense Appropriations Act for Fiscal Year 2010 (Pub. L. 111-118) (prohibits mandatory arbitration) and similar sections in subsequent DoD appropriations acts.

(ix) Domestic Content Restrictions in the National Defense Appropriations Acts for Fiscal Years 1996 and Subsequent Years, unless the restriction specifically applies to commercial products or commercial services. For the restriction that specifically applies to commercial ball or roller bearings as end items, see 225.7009-3 (section 8065 of Pub. L. 107-117).

(c) The applicability of the following laws has been modified in regard to contracts for the acquisition of commercial products and commercial services:

(i) 10 U.S.C. 3703, Truthful Cost or Pricing Data (see FAR 15.403-1(c)(3)).

(ii) 10 U.S.C. 4655, Prohibition on Limiting Subcontractor Direct Sales to the United States (see FAR 3.503 and 52.203-6).

PGI 212.7202 Applicability of certain laws to subcontracts for the acquisition of commercial products and commercial services.

(a) The following laws are not applicable to subcontracts at any tier for the acquisition of commercial products, commercial services, or commercial components:

(i) 10 U.S.C. 2391 note, Notification of Substantial Impact on Employment.

(ii) 10 U.S.C. 2631, Transportation of Supplies by Sea (except as provided in the clause at 252.247-7023, Transportation of Supplies by Sea).

(iii) 10 U.S.C. 3321(b), Prohibition on Contingent Fees.

(iv) 10 U.S.C. 3741-3750, Allowable Costs Under Defense Contracts.

(v) 10 U.S.C. 3841(d), Examination of Records of a Contractor.

(vi) 10 U.S.C. 3845, Contractor Inventory Accounting System Standards.

(vii) 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.

(viii) 10 U.S.C. 4654, Prohibition Against Doing Business with Certain Offerors or Contractors.

(ix) 10 U.S.C. 4656(a), Prohibition on Persons Convicted of Defense Related Felonies.

(x) 10 U.S.C. 4753(b), Requirement to Identify Suppliers.

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DARS Tracking Number: 2026-O0028

Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 12

Defense FAR Supplement (DFARS) Part 212

(xi) 10 U.S.C. 4801 note prec., Notification of Proposed Program Termination.

(xii) 10 U.S.C. 4864, Miscellaneous Limitations on the Procurement of Goods Other Than United States Goods. 10 U.S.C. 4864 is not applicable to subcontracts valued at or below the simplified acquisition threshold.

(xiii) Section 8116 of the Defense Appropriations Act for Fiscal Year 2010 (Pub. L. 111-118) (prohibits mandatory arbitration) and similar sections in subsequent DoD appropriations acts.

(xiv) Domestic Content Restrictions in the National Defense Appropriations Acts for Fiscal Years 1996 and Subsequent Years, unless the restriction specifically applies to commercial products and commercial services. For the restriction that specifically applies to commercial ball or roller bearings as end items, see 225.7009-3

(section 8065, Pub. L. 107-117).

(b) Certain requirements of the following laws have been eliminated for subcontracts at any tier for the acquisition of commercial products, commercial services, or commercial components:

(i) 10 U.S.C. 4654(d), Subcontractor Reports Under Prohibition Against Doing Business with Certain Offerors (see FAR 52.209-6).

(ii) 10 U.S.C. 4655, Prohibition on Limiting Subcontractor Direct Sales to the United States (see FAR 3.503 and 52.203-6).

(iii) 10 U.S.C. 4864, Miscellaneous Limitations on the Procurement of Goods Other Than United States Goods. 10 U.S.C. 4864 is not applicable to subcontracts at any tier valued at or below the simplified acquisition threshold.

PGI 212.7203 Applicability of certain laws to contracts for the acquisition of COTS items. Commercially available off-the-shelf (COTS) items are a subset of commercial products.

Therefore, any laws listed at https://www.acquisition.gov/inapplicable laws, PGI 212.7201, or **212.7202 are also not applicable or are modified in their applicability to contracts for the** acquisition of COTS items. In addition to the laws listed at https://www.acquisition.gov/inapplicable laws as specifically not applicable to COTS items, the following laws are not applicable to contracts for the acquisition of COTS items:

(1) 10 U.S.C. 391, Reporting on Cyber Incidents with Respect to Networks and Information Systems of Operationally Critical Contractors and Certain Other Contractors, and 10 U.S.C. 393, Reporting on Penetrations of Networks and Information Systems of Certain Contractors.

(2) Paragraph (a)(1) of 10 U.S.C. 4863, Requirement to buy strategic materials critical to national security from American sources, except as provided at 225.7003-3(b)(2)(i).

(3) Paragraph (a)(1) of 10 U.S.C. 4872, Prohibition on acquisition of sensitive materials

from non-allied foreign nations, except as provided at 225.7018-3(c)(1).

PART 13

OFFICE OF THE ASSISTANT SECRETARY OF WAR

Status: Class D

OFFICE OF THE ASSISTANT SECRETARY OF WAR

3000 DEFENSE PENTAGON

WASHINGTON, DC 20301-3000

ACQUISITION

AND SUSTAINMENT

In reply refer to

DARS Tracking Number: 2026-O0029

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES SPECIAL OPERATIONS

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES TRANSPORTATION

COMMAND (ATTN: ACQUISITION EXECUTIVE)

DEPUTY ASSISTANT SECRETARY OF THE ARMY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE NAVY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE

(CONTRACTING)

DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Class Deviation?Revolutionary Federal Acquisition Regulation (FAR) Overhaul

Part 13, Defense FAR Supplement (DFARS) Part 213

Effective February 1, 2026, contracting officers shall use?

? The revised FAR Part 13, Simplified Procedures for Noncommercial Acquisitions, published on the Revolutionary FAR Overhaul web page at https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-13 in lieu of the text codified at 48 CFR chapter 1 (https://www.ecfr.gov).

? The attached DFARS Part 213, Simplified Procedures for Noncommercial Acquisitions, in lieu of the text codified at 48 CFR chapter 2; and

? The DFARS Procedures, Guidance, and Information (PGI) 213, Simplified Procedures for Noncommercial Acquisitions in lieu of the PGI text published on the Defense Pricing, Contracting, and Acquisition Policy web page at https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.

This class deviation implements the following:

? Section 2 of E.O. 14275, Restoring Common Sense to Federal Procurement, which establishes the policy that the FAR ?should only contain provisions required by statute or essential to sound procurement, and any FAR provisions that do not

advance these objectives should be removed.?
DARS Tracking Number: 2026-O0029
Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 13
Defense FAR Supplement (DFARS) Part 213
? Section 4(a) of E.O. 14265, Modernizing Defense Acquisitions and Spurring Innovation in the Defense Industrial Base which requires the Secretary of War to eliminate or revise any unnecessary supplemental regulations or any other internal guidance, such as relevant parts of the Financial Management Regulation and Defense Federal Acquisition Regulation Supplement.
? The Office of Management and Budget memorandum, M-25-26 issued on May 2, 2025, titled, Overhauling the Federal Acquisition Regulation, which provided additional guidance to federal agencies regarding the FAR overhaul.
This class deviation remains in effect until rescinded or incorporated into the FAR, DFARS, and DFARS PGI. Inquiries regarding this class deviation can be addressed to osd.pentagon.ousd-a-s.mbx.dfars@mail.mil.
John M. Tenaglia
Principal Director,
Defense Pricing, Contracting, and
Acquisition Policy
Attachments:
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DARS Tracking Number: 2026-O0029
Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 13
Defense FAR Supplement (DFARS) Part 213

PART 213 ? SIMPLIFIED PROCEDURES FOR NONCOMMERCIAL ACQUISITIONS

See DoD Class Deviation 2024-O0011, Special Acquisition Authority for Rapid Contracting for Combatant Commanders, issued April 15, 2024. When approved in accordance with this class deviation, contracting officers may use certain temporary special acquisition authorities for covered contracts, including purchases and/or payments made with the Governmentwide commercial purchase card, that directly support covered operations through September 30, 2028. Combatant commanders will provide a written determination requesting use of the special acquisition authorities. These authorities include higher micro-purchase thresholds for purchases that directly support covered operations, as defined in the class deviation. This deviation is effective until September 30, 2028, unless otherwise rescinded.
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DARS Tracking Number: 2026-O0029
Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 13
Defense FAR Supplement (DFARS) Part 213

PGI 213 SIMPLIFIED PROCEDURES FOR NONCOMMERCIAL ACQUISITIONS

[RESERVED]

PART 14

OFFICE OF THE ASSISTANT SECRETARY OF WAR

Status: Class D

OFFICE OF THE ASSISTANT SECRETARY OF WAR

3000 DEFENSE PENTAGON

WASHINGTON, DC 20301-3000

ACQUISITION

AND SUSTAINMENT

In reply refer to

DARS Tracking Number: 2026-O0012

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES SPECIAL OPERATIONS

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES TRANSPORTATION

COMMAND (ATTN: ACQUISITION EXECUTIVE)

DEPUTY ASSISTANT SECRETARY OF THE ARMY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE NAVY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE

(CONTRACTING)

DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Class Deviation?Revolutionary Federal Acquisition Regulation (FAR) Overhaul

Part 14, Defense FAR Supplement (DFARS) Part 214

Effective February 1, 2026, contracting officers shall use?

? The revised FAR Part 14, Sealed Bidding published on the Revolutionary FAR Overhaul web page at https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-14 in lieu of the text codified at 48 CFR chapter 1 (https://www.ecfr.gov); and

? The attached DFARS Part 214, Sealed Bidding in lieu of the text codified at 48 CFR chapter 2.

? The attached new DFARS Procedures, Guidance, and Information (PGI) 214, Sealed Bidding.

This class deviation implements the following:

? Section 2 of E.O. 14275, Restoring Common Sense to Federal Procurement, which establishes the policy that the FAR ?should only contain provisions required by statute or essential to sound procurement, and any FAR provisions that do not advance these objectives should be removed.

? Section 4(a) of E.O. 14265, Modernizing Defense Acquisitions and Spurring

Innovation in the Defense Industrial Base which requires the Secretary of War to
DARS Tracking Number: 2026-O0012
Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 14,
Defense FAR Supplement (DFARS) Part 214
eliminate or revise any unnecessary supplemental regulations or any other internal guidance, such as relevant parts of the Financial Management Regulation and Defense Federal Acquisition Regulation Supplement.
? The Office of Management and Budget memorandum, M-25-26 issued on May 2, 2025, titled, Overhauling the Federal Acquisition Regulation, which provided additional guidance to federal agencies regarding the FAR overhaul.
This class deviation remains in effect until rescinded or incorporated into the FAR, DFARS, and DFARS PGI. Inquiries regarding this class deviation can be addressed to osd.pentagon.ousd-a-s.mbx.dfars@mail.mil.
John M. Tenaglia
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Acquisition Policy
Attachments:
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Attachment A1
DARS Tracking Number: 2026-O0012
Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 14
Defense FAR Supplement (DFARS) Part 214

PART 214?SEALED BIDDING

SUBPART 214.2?PRESOLICITATION

214.202-4 Part IV?Representations and instructions.

(c) Include an evaluation factor regarding supply chain risk (see part 239) when acquiring information technology, whether as a service or as a supply, that is a covered system, is a part of a covered system, or is in support of a covered system, as defined in part 239.

214.206 Descriptive literature.

(f) When using brand name purchase descriptions, see FAR 6.103-1.

214.207-70 Solicitation provisions.

Insert the provisions at 252.215-7007, Notice of Intent to Resolicit, and 252.215-7008, Only One Offer, as prescribed at 215.371-6 and 215.408(3), respectively.

214.209 Soliciting bids.

(b) See the procedures at PGI 205.101-70 for use of the Solicitation Module within the Procurement Integrated Enterprise Environment.

214.209-70 Policy.

If an Invitation for Bids (IFB), that exceeds the simplified acquisition threshold, allowed less than 30 days for receipt of bids, or resulted in only one bid, the contracting officer shall cancel and resolicit. The new IFB must allow at least 30 days for receipt of bids (see section 215.371).

214.211-370 Procedures.

In addition to the requirements at FAR 14.211-3(a)(1)(iv), include an evaluation factor for supply chain risk (see 214.202-4(c)).

SUBPART 214.3?EVALUATION AND AWARD.

214.304-3 Other mistakes disclosed before award.

See PGI 214.304-3 for the delegation authority to approve determinations.

214.305 Cancellation of invitations after opening.

(1) The contracting officer must make the written determinations required by **FAR 14.305.**

214.305-70 Only one offer received.

If only one offer is received, follow the procedures at 215.371 in lieu of the procedures at FAR 14.305(e).

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Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 14

Defense FAR Supplement (DFARS) Part 214

214.307 Award

214.307-70 Only one offer received.

If only one offer is received for acquisitions that exceed the simplified acquisition threshold, follow the procedures at 215.371.

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Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 14

Defense FAR Supplement (DFARS) Part 214

1

2 PGI 214?SEALED BIDDING

3

4 PGI 214.3?EVALUATION AND AWARD

5

6 PGI 214.304 Mistakes in Bids.

7

8 PGI 214.304-3 Other mistakes disclosed before award.

9

10 (e) For the defense agencies, authority for making the determination under FAR 14.304-3 is
11 delegated, without power of redelegation, as follows:

12

13 (i) Defense Advanced Research Projects Agency: General Counsel, DARPA.

14

15 (ii) Defense Information Systems Agency: General Counsel, DISA.

16

17 (iii) Defense Intelligence Agency: Principal Assistant for Acquisition.

18

19 (iv) Defense Logistics Agency:

20

21 (A) General Counsel, DLA; and

22

23 (B) Associate General Counsel, DLA.

24

25 (v) National Geospatial-Intelligence Agency: General Counsel, NGA.

26

27 (vi) Defense Threat Reduction Agency: General Counsel, DTRA.

28

29 (vii) National Security Agency: Director of Procurement, NSA.

30

31 (viii) Missile Defense Agency: General Counsel, MDA.

32

33 (ix) Defense Contract Management Agency: General Counsel, DCMA.

PART 15

OFFICE OF THE ASSISTANT SECRETARY OF WAR

Status: Class D

OFFICE OF THE ASSISTANT SECRETARY OF WAR

3000 DEFENSE PENTAGON

WASHINGTON, DC 20301-3000

ACQUISITION

AND SUSTAINMENT

In reply refer to

DARS Tracking Number: 2026-O0048

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES SPECIAL OPERATIONS

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES TRANSPORTATION

COMMAND (ATTN: ACQUISITION EXECUTIVE)

DEPUTY ASSISTANT SECRETARY OF THE ARMY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE NAVY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE

(CONTRACTING)

DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Class Deviation?Revolutionary Federal Acquisition Regulation (FAR) Overhaul

Part 15, Defense FAR Supplement (DFARS) Part 215

Effective March 16, 2026, contracting officers shall use?

? The revised FAR Part 15, Contracting by negotiation, published on the Revolutionary FAR Overhaul web page at https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-15 in lieu of the text codified at 48 CFR chapter 1 (https://www.ecfr.gov).

? The attached DFARS Part 215, Contracting by negotiation, in lieu of the text codified at 48 CFR chapter 2; and

? The attached DFARS Procedures, Guidance, and Information (PGI) 215, Contracting by negotiation and the associated direction at PGI 253, in lieu of the PGI text published on the Defense Pricing, Contracting, and Acquisition Policy web page at https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.

This class deviation implements the following:

? Section 2 of E.O. 14275, Restoring Common Sense to Federal Procurement, which establishes the policy that the FAR ?should only contain provisions required by statute or essential to sound procurement, and any FAR provisions that do not

advance these objectives should be removed.?
DARS Tracking Number: 2026-O0048
Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 15
Defense FAR Supplement (DFARS) Part 215
? Section 4(a) of E.O. 14265, Modernizing Defense Acquisitions and Spurring Innovation in the Defense Industrial Base which requires the Secretary of War to eliminate or revise any unnecessary supplemental regulations or any other internal guidance, such as relevant parts of the Financial Management Regulation and Defense Federal Acquisition Regulation Supplement.
? The Office of Management and Budget memorandum, M-25-26 issued on May 2, 2025, titled, Overhauling the Federal Acquisition Regulation, which provided additional guidance to federal agencies regarding the FAR overhaul.
This class deviation remains in effect until rescinded or incorporated into the FAR, DFARS, and DFARS PGI. Inquiries regarding this class deviation can be addressed to osd.pentagon.ousd-a-s.mbx.dfars@mail.mil.
John M. Tenaglia
Principal Director,
Defense Pricing, Contracting, and
Acquisition Policy
Attachments:
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Attachment A1
DARS Tracking Number: 2026-O0048
Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 15
Defense FAR Supplement (DFARS) Part 215

PART 215?CONTRACTING BY NEGOTIATION

SUBPART 215.1?PRESOLICITATION AND SOLICITATION

215.100 Scope.

215.102 Structuring a request for proposals.

See PGI 205.101-70 for use of the Solicitation Module within the Procurement Integrated Enterprise Environment.

215.103 Developing a competitive source selection approach.

215.103-1 Tradeoff approach.

215.103-170 Tradeoff approach when acquiring fuel for overseas contingency operations.

(a) Consider using a tradeoff approach as described at FAR 15.103-1 when conducting a source selection for the acquisition of fuel for an overseas contingency operation that is expected to exceed the simplified acquisition threshold (section 843 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2022 (Pub. L. 117-81)). Consider using the following evaluation factors for the acquisition:

(1) Past performance.

(2) Cost.

(3) Anticorruption training.

(4) Anticorruption compliance.

(b) If not considered, prior to the issuance of the solicitation, prepare a written justification describing the reasons why a tradeoff approach was not considered.

(1) Obtain approval by an official one level above the contracting officer.

(2) Include the approved justification in the contract file.

215.103-2 Lowest price technically acceptable approach.

215.103-270 Limitations and prohibitions.

The following limitations and prohibitions apply when considering the use of the lowest price technically acceptable source selection procedures.

(a) Limitations. Section 813 of the NDAA for FY 2017 (Pub. L. 114-328) limits use of the lowest price technically acceptable source selection approach.

(1) Use the lowest price technically acceptable source selection approach when?

(i) Minimum requirements can be described clearly and comprehensively and expressed in terms of performance objectives, measures, and standards that will be used to determine the acceptability of offers,

(ii) No, or minimal, value will be realized from a proposal that exceeds the minimum technical or performance requirements,

(iii) The proposed technical approaches will require no, or minimal, subjective judgment by the source selection authority as to the desirability of one offeror?s proposal versus a competing proposal,

(iv) The source selection authority has a high degree of confidence that reviewing the technical proposals of all offerors would not result in the identification of characteristics that could provide value or benefit,

(v) No, or minimal, additional innovation or future technological advantage will be realized by using a different source selection approach,

(vi) The acquisition consists of goods that are predominantly expendable in nature, are nontechnical, or have a short life expectancy or short shelf life (See PGI 215.103.270(a)(1)(vi))

(vii) The contract file contains a determination that the lowest price reflects full life-cycle costs (as defined at FAR 7.101) of the product(s) or service(s) being acquired (see PGI 215.103.270(a)(1)(vii) for information on obtaining this determination), and

(viii) The contracting officer documents the contract file describing the circumstances justifying the use of the lowest price technically acceptable source selection approach.

(2) Avoid using the lowest price technically acceptable source selection approach, to the maximum extent practicable, for acquisitions that are predominately for?

(i) Information technology services, cybersecurity services, systems engineering and technical assistance services, advanced electronic testing, or other knowledge-based professional services;

(ii) Items designated by the requiring activity as personal protective equipment (except see paragraph (b)(1) of this section); or

(iii) Services designated by the requiring activity as knowledge-based training or logistics services in contingency operations or other operations outside the United States.

(b) Prohibitions. Do not use the lowest price technically acceptable source selection approach to procure?

(1) Items designated by the requiring activity as personal protective equipment or as an aviation critical safety item, for which the level of quality or failure of the equipment or item could result in combat casualties. (Section 814 of the NDAA for FY 2017 (Pub. L. 114-328) and section 882 of the NDAA for FY 2018

(Pub. L. 115-91)). See 252.209-7010 for the definition and identification of critical safety items.

(2) Engineering and manufacturing development for a major defense acquisition program (10 U.S.C. 4232).

(3) Auditing services. Make award decisions based on best value factors and criteria, as determined by the resource sponsor in accordance with agency procedures. (10 U.S.C. 240f)

215.103-70 Source selection approach when acquiring tents or other temporary structures.

(a) When acquiring tents or other temporary structures for use by the Armed Forces, award contracts that provide the best value to the Government (section 368 of the NDAA for FY 2012 (Pub. L. 112-81)).

(1) Temporary structures are nonpermanent buildings, including tactical shelters, nonpermanent modular or pre-fabricated buildings, or portable or relocatable buildings, such as trailers or equipment configured for occupancy (see also 246.270-2).

(2) Determination of best value includes consideration of the total life-cycle costs of such tents or structures, including the costs associated with any equipment, fuel, or electricity needed to heat, cool, or light such tents or structures (see FAR **7.103(a)(6) and PGI 207.104-70 (b)(1)(ii)).**

(b) The requirements of this section apply to any agency or department that acquires tents or other temporary structures on behalf of DoD (see FAR **17.503(d)(2)).**

215.104-70 Establishing competitive evaluation factors and significant subfactors.

Required factors.

(a) In acquisitions that require use of the clause at FAR 52.219-9, Small Business Subcontracting Plan, other than those based on the lowest price technically acceptable source selection process (see FAR 15.103-2), the extent of participation of small businesses to include service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns in performance of the contract must be addressed in source selection. The contracting officer must evaluate the extent to which offerors identify and commit to small business performance of the contract, whether as a joint venture, teaming arrangement, or subcontractor.

(1) See PGI 215.104-70(a)(1) for examples of evaluation factors.

(2) Proposals addressing the extent of small business performance must be separate from subcontracting plans submitted pursuant to the clause at FAR **52.219-9 and must be structured to allow for consideration of offers from small** businesses.

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Attachment A1

DARS Tracking Number: 2026-O0048

Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 15

Defense FAR Supplement (DFARS) Part 215

(3) When an evaluation assesses the extent that small businesses are specifically identified in proposals, the small businesses considered in the evaluation must be listed in any subcontracting plan submitted pursuant to FAR **52.219-9 to facilitate compliance with 252.219-7996(e) (15 U.S.C. 637(d)(7) and (9)).**

(b) Consider the purchase of capital assets (including machine tools) manufactured in the United States, in source selections for all major defense acquisition programs (10 U.S.C. 4293).

(c) Include an evaluation factor regarding supply chain risk (see subpart **240.271) when acquiring information technology, whether as a service or as a** upplyc that is a covered system, is a part of a covered system, or is in support of a covered system (See 240.271-2). For additional guidance see PGI 215.104-70(c).

(d) Ensure source selections emphasize sustainment factors and objective reliability and maintainability evaluation criteria in competitive contracts for the?

(1) Technical maturation and risk reduction phase of weapon system design (see guidance at PGI 207.104-70(b)(2)(v)(B)(2));

(2) Engineering and manufacturing development phase of a weapon system, including embedded software (10 U.S.C. 4328); or

(3) Production and deployment phase of a weapon system, including embedded software (10 U.S.C. 4328).

(e) See PGI 226.7202-1 for an additional evaluation factor required in solicitations when using the Demonstration Project for Contractors Employing Persons with Disabilities (section 888 of the NDAA for FY 2019).

(f) Supplier Performance Risk System

(1) When procuring supplies or services, use Supplier Performance Risk System (SPRS) assessments of price risk and supplier risk as a part of the award decision. See 204.7603.

(2) When procuring an end product identified by a material identifier that is available as described at PGI 204.7603, the contracting officer must also consider SPRS assessments of item risk in the award decision.

(g) In lieu of the direction at FAR 15.104(b)(3)(i), evaluate past performance for negotiated acquisitions when the value of the contract, task order or delivery order exceeds the following thresholds:

(1) Systems and operations support (including fuels) expected to exceed $5 million.

(2) Services (including health care) expected to exceed $1 million.

(3) Information technology expected to exceed $1 million.

(4) Ship repair and overhaul expected to exceed $500,000.

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215.104-71 Evaluation factor for employing or subcontracting with members of the Selected Reserve.

(a) Definition. As used in this section?

?Selected Reserve,? has the meaning given that term in 10 U.S.C. 10143. Selected Reserve members normally attend regular drills throughout the year and are the group of Reserves most readily available to the President.

(b) Evaluation factor.

Contracting officers may use an evaluation factor that considers whether an offeror intends to perform the contract using employees or individual subcontractors who are members of the Selected Reserve (section 819 of the NDAA for FY 2006). See PGI 215.104-71(b) for guidance on use of this evaluation factor.

(c) Contract clause.

Insert the clause at 252.215-7006, Use of Employees or Individual Subcontractors Who Are Members of the Selected Reserve, in solicitations and resulting contracts that include an evaluation factor considering whether an offeror intends to perform the contract using employees or individual subcontractors who are members of the Selected Reserve.

215.105 Other considerations.

215.105-470 Request for cost or pricing data.

(a) When following the contract cost principles in FAR subpart 31.2, Contracts With Commercial Organizations (see FAR 42.1301(b)), request contractors submit forward pricing rate proposals using the checklist at Table 215.105-470 (FAR **15.105-4(b)(1)(ii)). Provide the checklist to the contractor and require submission of** the forward pricing rate proposal at least 90 days prior to the proposed effective

date of the rates.

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Table 215.105-470 ? Contractor Forward Pricing Rate Proposal Adequacy Checklist

Complete the following checklist, providing the location of requested information, or an explanation of why the requested information is not provided, and submit it with the forward pricing rate proposal.

Contractor Forward Pricing Rate Proposal Adequacy Checklist	If not provided, PROPOSAL EXPLAIN (may **SUBMISSION** PAGE No. (if use **ITEM** applicable) continuation pages)
GENERAL INSTRUCTIONS	
Is there a properly completed first page Proposal of the proposal as specified by the Cover Page contracting officer?	
Initial proposal elements include:	
a. Name and address of contractor;	
b. Name and telephone number of point of contact;	
c. Period covered;	
d. The page of the proposal that addresses?	
1. Whether your organization is subject to cost accounting standards (CAS);	
2. Whether your organization has submitted a CAS Disclosure Statement, and whether it has been determined adequate;	
3. Whether you have been notified that	
1. you are or may be in noncompliance with your Disclosure Statement or CAS (other than a noncompliance that the cognizant Federal agency official had determined to have an immaterial cost impact), and if yes, an explanation;	
4. Whether any aspect of this proposal	

is inconsistent with your disclosed
practices or applicable CAS, and, if so,
an explanation; and whether the
proposal is consistent with established
estimating and accounting principles
and procedures and FAR part 31, Cost
Principles, and, if not, an explanation;
e. The following statement: ?This
forward pricing rate proposal reflects
our estimates, as of the date of
submission entered in (f) below and
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If not provided,
PROPOSAL EXPLAIN (may
SUBMISSION
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applicable) continuation
pages)
GENERAL INSTRUCTIONS
conforms with Table 215.105-470. By
submitting this proposal, we grant the
Contracting Officer and authorized
representative(s) the right to examine
those records, which include books,
documents, accounting procedures and
practices, and other data, regardless of
type and form or whether such
supporting information is specifically
referenced or included in the proposal
as the basis for each estimate, that will
permit an adequate evaluation of the
proposed rates and factors.?;
f. Date of submission; and
g. Name, title, and signature of
authorized representative.
Summary of proposed direct and Immediately
indirect rates and factors, including the following the
2.
proposed pool and base costs for each proposal

proposed indirect rate and factor. cover page
Table of Contents or index.
a. Does the proposal include a table of
contents or index identifying and
referencing all supporting data
accompanying or identified in the
proposal?
3. b. For supporting documentation not
provided with the proposal, does the
basis of each estimate in the proposal
include the location of the
documentation and the point of contact
(custodian) name, phone number, and
email address?
Does the proposal disclose known or
anticipated changes in business
activities or processes that could
4. materially impact the proposed rates (if
not previously provided)? For
example?
a. Management initiatives to reduce
costs;
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If not provided,
PROPOSAL EXPLAIN (may
SUBMISSION
PAGE No. (if use
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applicable) continuation
pages)
GENERAL INSTRUCTIONS
b. Changes in management objectives
as a result of economic conditions and
increased competitiveness;
c. Changes in accounting policies,
procedures, and practices including (i)
reclassification of expenses from direct
to indirect or vice versa; (ii) new
methods of accumulating and allocating
indirect costs and the related impact;

and (iii) advance agreements;
d. Company reorganizations (including
acquisitions or divestitures);
e. Shutdown of facilities; or
f. Changes in business volume and/or
contract mix/type.
Do proposed costs based on judgmental
factors include an explanation of the
5. estimating processes and methods used,
including those used in projecting from
known data?
Does the proposal show trends and
budgetary data? Does the proposal
6. provide an explanation of how the data,
as well as any adjustments to the data,
were used?
The proposal should reconcile to the
supporting data referenced. If the
7. proposal does not reconcile to the
supporting data referenced, identify
applicable page(s) and explain.
The proposal should be internally
consistent. If the proposal is not
8.
internally consistent, identify
applicable page(s) and explain.
Direct Labor
Direct Labor Rates Methodology and
Basis of Each Estimate.
a. Does the proposal include an
9.
explanation of the methodology used to
develop the direct labor rates and
identify the basis of each estimate?
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applicable) continuation
pages)
GENERAL INSTRUCTIONS
b. Does the proposal include or identify
the location of the supporting
documents for the base-period labor
rates (e.g., payroll records)?
Does the proposal identify escalation
factors for the out-year labor rates, the
10.
costs to which escalation is applicable,
and the basis of each factor used?
Does the proposal identify planned or
anticipated changes in the composition
of labor rates, labor categories, union
11.
agreements, headcounts, or other
factors that could significantly impact
the direct labor rates?
Indirect Rates (Fringe, Overhead, G&A, etc.)
Indirect Rates Methodology and Basis
of Each Estimate.
a. Does the proposal identify the basis
of each estimate and provide an
12. explanation of the methodology used to
develop the indirect rates?
b. Does the proposal include or identify
the location of the supporting
documents for the proposed rates?
Does the proposal identify indirect
expenses by burden center, by cost
element, by year (including any
13. voluntary deletions, if applicable) in a
format that is consistent with the
accounting system used to accumulate
actual expenses?
Does the proposal identify any
14.
contingencies?
Does the proposal identify planned or
anticipated changes in the nature, type,
15.
or level of indirect costs, including
fringe benefits?

Does the proposal identify corporate,

16.

home office, shared services, or other

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pages)

GENERAL INSTRUCTIONS

incoming allocated costs and the source

for those costs, including location and

point of contact (custodian) name,

phone number, and email address?

Does the proposal separately identify

all intermediate cost pools and provide

17.

a reconciliation to show where the costs

will be allocated?

Does the proposal identify the

escalation factors used to escalate

18. indirect costs for the out-years, the

costs to which escalation is applicable,

and the basis of each factor used?

Does the proposal provide details of the

19.

development of the allocation base?

Does the proposal include or reference

the supporting data for the allocation

20. base such as program budgets,

negotiation memoranda, proposals,

contract values, etc.?

Does the proposal identify how the

proposed allocation bases reconcile with

21. its long-range plans, strategic plan,

operating budgets, sales forecasts,

program budgets, etc.?

Cost of Money (COM)

Cost of Money.
a. Are Cost of Money rates submitted
on Form CASB-CMF, with the Treasury
Rate used to compute COM identified
and a summary of the net book value of
assets, identified as distributed and
22.
non-distributed?
b. Does the proposal identify the
support for the Form CASB-CMF, for
example, the underlying reports and
records supporting the net book value of
assets contained in the form?
OTHER
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GENERAL INSTRUCTIONS
Does the proposal include a comparison
of prior forecasted costs to actual
23. results in the same format as the
proposal and an explanation/analysis of
any differences?
If this is a revision to a previous rate
proposal or a forward pricing rate
agreement, does the new proposal
24. provide a summary of the changes in
the circumstances or the facts that the
contractor asserts require the change to
the rates?

215.105-5 Make-or-buy decision.

(c)(2) RFP requirements. See PGI 215.105-5, for guidance on factors to consider when deciding whether to request a make-or-buy plan.

(d) Required information from offerors.

(1)(i) The minimum dollar amount is $1.5 million.

215.110 Solicitation provisions and contract clauses.

(a)(1) For source selections when the procurement is valued at $100 million or more, contracting officers should use the provision at FAR 52.215-1, Instructions to Offerors?Competitive Acquisition, with its Alternate I.

215.110-70 Solicitation provisions and contract clauses.

(a) Insert the clause at 252.215-7002, Cost Estimating System Requirements, in all solicitations and contracts to be awarded on the basis of certified cost or pricing data.

(b) When contracting with the Canadian Commercial Corporation, including solicitations using part 12 procedures for the acquisition of commercial products and commercial services?

(1)(i) Insert the provision at 252.215-7990, Requirement for Submission of Data Other Than Certified Cost or Pricing Data?Canadian Commercial Corporation?

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(A) In lieu of 252.215-7994, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data, in a solicitation for a sole source acquisition that is?

(1) Cost-reimbursement, if the contract value is expected to exceed $700,000; or

(2) Fixed-price, if the contract value is expected to exceed $500 million; or

(B) In lieu of 252.215-7994 for a sole source acquisition that does not meet the thresholds specified in paragraph (b)(1)(i)(A), if approval is obtained as required at 225.870-4(c)(2)(ii); and

(ii) Do not use 252.225-7990 in lieu of 252.215-7994 in competitive acquisitions; and

(2)(i) Insert the clause at 252.215-7991, Requirement for Submission of Data Other Than Certified Cost or Pricing Data?Modifications?Canadian Commercial Corporation?

(A) In a solicitation for a sole source acquisition and resultant contract that is?

(1) Cost-reimbursement, if the contract value is expected to exceed $700,000; or

(2) Fixed-price, if the contract value is expected to exceed $500 million;

(B) In a solicitation for a sole source acquisition and resultant contract that does not meet the thresholds specified in paragraph (b)(2)(i)(A), if approval is obtained as required at 225.870-4(c)(2)(ii); or

(C)(1) In a solicitation for a competitive acquisition that includes

FAR 52.215-21, Requirement for Data Other Than Certified Cost or Pricing Data? Modifications, or that meets the thresholds specified in paragraph (b)(2)(i)(A) of this section.

(2) Insert the appropriate clause to include in the contract

(52.215-21 only if award is not to the Canadian Commercial Corporation; or **252.215-7991 if award is to the Canadian Commercial Corporation and necessary** approval is obtained in accordance with 225.870-4(c)(2)(ii)); and

(ii) Contracting officers may specify a higher threshold in paragraph (b) of the clause 252.215-7991.

(c) Insert the provision at 252.215-7992, Only One Offer, in competitive solicitations that exceed the simplified acquisition threshold, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services.

(d) When the solicitation requires the submission of certified cost or pricing data, the contracting officer should include 252.215-7993, Proposal Adequacy

Checklist, in the solicitation to facilitate submission of a thorough, accurate, and complete proposal.

(e) When reasonably certain that the submission of certified cost or pricing data or data other than certified cost or pricing data will be required or when inserting the provision at 252.215-7992?

(1) Insert the basic or alternate of the provision at 252.215-7994, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data, in lieu of the provision at FAR 52.215-20, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services.

(i) Insert the basic provision when submission of certified cost or pricing data is required to be in the FAR Table 15-1 format, or if it is anticipated, at the time of solicitation, that the submission of certified cost or pricing data may not be required.

(ii) Insert the alternate I provision to specify a format for certified cost or pricing data other than the format required by FAR Table 15-1.

(2) Insert the provision at 252.215-7011, Requirements for Submission of Proposals to the Administrative Contracting Officer and Contract Auditor, when using the basic or alternate of the provision at 252.215-7994 and copies of the proposal are to be sent to the ACO and contract auditor; and

(3) Insert the provision at 252.215-7012, Requirements for Submission of Proposals via Electronic Media, when using the basic or alternate of the provision at **252.215-7994 and submission via electronic media is required.**

(f) Insert the provision at 252.215-7013, Supplies and Services Provided by Nontraditional Defense Contractors, in all solicitations.

(g) Insert 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 252.215-7994, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data, when it is reasonably certain that?

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

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

(h) Insert the clause at 252.215-7995, Program Should-Cost Review, in all solicitations and contracts for the development or production of a major weapon system, as defined in 234.7001.

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SUBPART 215.2?EVALUATION AND AWARD

215.200 Scope.

Follow the procedures at PGI 215.200 when conducting negotiated, competitive acquisitions using FAR part 15 procedures.

215.201 Source selection responsibilities.

(b)(2) For high-dollar value and other acquisitions, as prescribed by agency procedures, the source selection authority must approve a source selection plan before the solicitation is issued. Follow the procedures at PGI 215.201(b)(2) for preparation of the source selection plan.

215.202-70 Evaluating competitive proposals.

(a) Past performance evaluation.

(1) When a past performance evaluation is required by FAR 15.104, and the solicitation includes the clause at FAR 52.219-8, Utilization of Small Business Concerns, the evaluation factors must include the past performance of offerors in complying with requirements of that clause. When a past performance evaluation is required by FAR 15.104, and the solicitation includes the clause at FAR 52.219-9, Small Business Subcontracting Plan, the evaluation factors must include the past performance of offerors in complying with requirements of that clause.

(2) Contracting officers will consider an offeror?s failure to make a good faith effort to comply with its comprehensive subcontracting plan under the Test Program described at 219.702-70 as part of the evaluation of the past performance.

(3) When evaluating the past performance of an offeror that is a small business concern in response to a competitive solicitation, contracting officers will consider relevant past performance information provided for affiliates of the offeror (section 865 of Pub. L. 118-31).

215.202-71 Only one offer.

(a) Policy. If only one offer is received in response to a competitive solicitation?

(1) Take actions to promote competition (see 215.202-71(b)); and

(2) Ensure that the price is fair and reasonable (see 215.202-71(c)) and complies with the statutory requirement for certified cost or pricing data (see FAR **15.403-3 and DFARS 215.403-3(a)).**

(b) Promote competition. Except as provided in paragraphs 215.202-71(d) and **215.202-71(e) of this section?**

(1) If only one offer is received when competitive procedures were used and the solicitation allowed fewer than 30 days for receipt of proposals, the contracting officer must?

(i) Consult with the requiring activity as to whether the requirements document should be revised to promote more competition (see FAR 6.003(a) and **11.102); and**

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(ii) Resolicit, allowing an additional period of at least 30 days for receipt of proposals; and

(2) For competitive solicitations in which more than one potential offeror expressed an interest in an acquisition, but only one offer was ultimately received, follow the procedures at PGI 215.202-71(b)(2).

(c) Fair and reasonable price and the requirement for additional cost or pricing data. For acquisitions that exceed the simplified acquisition threshold, if only one offer is received when competitive procedures were used and it is not necessary to resolicit in accordance with 215.202-71(b)(1), then the contracting officer must comply with the following:

(1) If no additional cost or pricing data are required to determine through cost or price analysis that the offered price is fair and reasonable, the contracting officer must require that any cost or pricing data provided in the proposal be certified if the acquisition exceeds the certified cost or pricing data threshold and an exception to the requirement for certified cost or pricing data at FAR 15.403-2(b)(2) through (5) does not apply.

(2) Otherwise, the contracting officer must obtain additional cost or pricing data to determine a fair and reasonable price. If the acquisition exceeds the certified cost or pricing data threshold and an exception to the requirement for certified cost or pricing data at FAR 15.403-2(b)(2) through (5) does not apply, the cost or pricing data must be certified.

(3) If the contracting officer is still unable to determine that the offered price is fair and reasonable, the contracting officer must enter into negotiations with the offeror to establish a fair and reasonable price. The negotiated price should not exceed the offered price.

(4) If the contracting officer is unable to negotiate a fair and reasonable price, see FAR 15.407(d).

(d) Exceptions.

(1) The requirements at 215.202-71(b) do not apply to?

(i) Acquisitions at or below the simplified acquisition threshold;

(ii) Acquisitions, as determined by the head of the contracting activity, in support of contingency or humanitarian or peacekeeping operations; to facilitate defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack; to facilitate the provision of international disaster assistance; or to support response to an emergency or major disaster;

(iii) Small business set-asides under FAR 19.104, set-asides offered and accepted into the 8(a) Program under FAR 19.108, or set-asides under the HUBZone Program (see FAR 19.105-2), the Service-Disabled Veteran-Owned Small Business Procurement Program (see FAR 19.106-2), or the Women-Owned Small Business Program (see FAR 19.107-2);

(iv) Acquisitions of science and technology, as specified in 235.172;

(v) Acquisitions of architect-engineer services (see FAR 36.102-2);

(vi) Acquisitions under a commercial solutions opening pursuant to **subpart 212.70; or**

(vii) Acquisitions of commercial products and commercial services using FAR part 12 procedures.

(2) An exception in paragraph (d)(1) of this section does not eliminate the need for the contracting officer to seek maximum practicable competition and to ensure that the price is fair and reasonable.

(e) Waiver.

(1) The head of the contracting activity is authorized to waive the requirement at 215.202-71(b) to resolicit for an additional period of at least 30 days.

(2) This waiver authority cannot be delegated below one level above the contracting officer.

(f) Solicitation provision. Insert the provision at 252.215-7007, Notice of Intent to Resolicit, in competitive solicitations that will be solicited for fewer than 30 days, unless an exception at 215.202-71(d) applies or the requirement is waived in accordance with 215.202-71(e).

215.204-2 Competitive negotiations.

(a) General. For acquisitions with an estimated value of $100 million or more, contracting officers should conduct negotiations. Follow the procedures at FAR **15.204.**

215.206-1 Preaward notices.

If the Government exercises the authority provided in 240.271-6, the notifications to

unsuccessful offerors must not reveal any information that is determined to be withheld from disclosure in accordance with 10 U.S.C. 3252 (see subpart 240.271).

215.207-2 Award notice.

If the Government exercises the authority provided in 240.271-6, the notifications to unsuccessful offerors must not reveal any information that is determined to be withheld from disclosure in accordance with 10 U.S.C. 3252 (see subpart 240.271).

SUBPART 215.3?POSTAWARD

215.301 Postaward debriefing of offerors.

215.301-170 Debriefing process.

(a) Notwithstanding FAR 15.301-1(b), when requested by a successful or unsuccessful offeror, a written or oral debriefing is required for contract awards valued at $15 million or more (section 818 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 (Pub. L. 115-91).

(b) In addition to the requirements of FAR 15.301-1(c), the minimum debriefing information must include the following:

(1) For award of a contract in excess of $15 million and not in excess of $150 million with a small business or nontraditional defense contractor, an option for the small business or nontraditional defense contractor to request disclosure of the agency?s written source selection decision document, redacted to protect the confidential and proprietary information of other offerors for the contract award.

(2) For award of a contract in excess of $150 million, disclosure of the agency?s written source selection decision document, redacted to protect the confidential and proprietary information of other offerors for the contract award.

(c) If the Government exercises the authority provided in 240.271-6, the notifications to unsuccessful offerors must not reveal any information that is determined to be withheld from disclosure in accordance with 10 U.S.C. 3252 (see **subpart 240.271).**

215.301-270 Opportunity for follow-up questions.

When providing a required postaward debriefing to successful and unsuccessful offerors, contracting officers must?

(a) Provide an opportunity to submit additional written questions related to the required debriefing not later than 2 business days after receiving the postaward debriefing;

(b) Respond in writing to timely submitted additional questions within 5 business days after receipt of the questions; and

(c) Not consider the postaward debriefing to be concluded until the later of?

(1) The date that the postaward debriefing is delivered, orally or in writing; or

(2) If additional written questions related to the debriefing are timely

received, the date the agency delivers its written response.

215.301-70 Solicitation provision.

Insert the provision at 252.215-7996, Notification to Offerors?Postaward Debriefings, in competitive negotiated solicitations for contract awards valued at $15 million or more, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services.

215.304-70 Voluntary disclosure of defective certified cost or pricing data after award.

Use PGI 215.304-70 when a contractor voluntarily discloses defective pricing after contract award.

215.305 Estimating systems.

215.305-70 Disclosure, maintenance, and review requirements.

(a) Definitions. As used in this section?

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?Acceptable estimating system? means an estimating system that complies with the system criteria in paragraph (d) of 252.215-7002, Cost Estimating System Requirements, and provides for a system that?

(1) Is maintained, reliable, and consistently applied;

(2) Produces verifiable, supportable, documented, and timely cost estimates that are an acceptable basis for negotiation of fair and reasonable prices;

(3) Is consistent with and integrated with the contractor?s related management systems; and

(4) Is subject to applicable financial control systems.

?Contractor? means a business unit as defined in FAR 2.101.

?Estimating system? means the contractor?s policies, procedures, and practices for budgeting and planning controls and for generating estimates of costs and other data included in proposals submitted to customers in the expectation of receiving contract awards. Estimating system includes the contractor?s?

(1) Organizational structure;

(2) Established lines of authority, duties, and responsibilities;

(3) Internal controls and managerial reviews;

(4) Flow of work, coordination, and communication; and

(5) Budgeting, planning, estimating methods, techniques, accumulation of historical costs, and other analyses used to generate cost estimates.

(b) Applicability.

(1) Contractors are required to have acceptable estimating systems that consistently produce well-supported proposals that are acceptable as a basis for negotiation of fair and reasonable prices.

(2) A large business contractor is subject to estimating system disclosure, maintenance, and review requirements if?

(i) In its preceding fiscal year, the contractor received DoD prime contracts or subcontracts totaling $50 million or more for which certified cost or pricing were required; or

(ii) In its preceding fiscal year, the contractor received DoD prime contracts or subcontracts totaling $10 million or more (but less than $50 million) for which certified cost or pricing data were required and the contracting officer, with concurrence or at the request of the ACO, determines it to be in the best interest of the Government (e.g., significant estimating problems are believed to exist or the contractor's sales are predominantly Government).

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(c) Policy.

(1) The contracting officer must?

(i) Insert the cause at 252.215-7002, Cost Estimating System Requirements, to apply the disclosure, maintenance, and review requirements to large business contractors meeting the criteria in paragraph (b)(2)(i) of this section,

(ii) Consider whether to apply the disclosure, maintenance, and review requirements to large business contractors under paragraph (b)(2)(ii) of this section, and

(iii) Not apply the disclosure, maintenance, and review requirements to other than large business contractors.

(2) The cognizant contracting officer, in consultation with the auditor, for contractors subject to paragraph (b)(2) of this section, must?

(i) Determine the acceptability of the disclosure and approve or disapprove the system, and

(ii) Pursue correction of any weaknesses or deficiencies.

(3) The auditor conducts estimating system reviews.

(4) An acceptable system must provide for the use of appropriate source data, utilize sound estimating techniques and good judgment, maintain a consistent approach, and adhere to established policies and procedures.

(5) In evaluating the acceptability of a contractor's estimating system, the contracting officer, in consultation with the auditor, must determine whether the contractor's estimating system complies with the system criteria for an acceptable estimating system as prescribed in the clause at 252.215-7002, Cost Estimating System Requirements.

(d) Disposition of findings?

(1) Reporting of findings. The auditor must document findings and recommendations in a report to the contracting officer. If the auditor identifies any material weaknesses, the report must describe the underlying deficiencies in sufficient detail to ensure the contracting officer understands the weaknesses or deficiencies.

(2) Initial determination.

(i) Review all findings and recommendations and, if there are no material weaknesses, promptly notify the contractor, in writing, that the contractor's estimating system is acceptable and approved; or

(ii) If there are one or more material weaknesses due to the contractor?s failure to meet one or more of the estimating system criteria in the clause at **252.215-7002, the contracting officer must?**

(A) Promptly make an initial written determination on any material weaknesses and notify the contractor, in writing, providing a description of each material weakness in sufficient detail to allow the contractor to understand the deficiency (see PGI 215.305-70(d)(2));

(B) Require the contractor to respond, in writing, to the initial determination within 30 days; and

(C) Promptly evaluate the contractor?s responses to the initial determination, in consultation with the auditor or functional specialist, and make a final determination.

(3) Final determination.

(i) Make a final determination and notify the contractor, in writing, that?

(A) The contractor's estimating system is acceptable and approved, and no material weaknesses remain; or

(B) Material weaknesses remain. Identify any remaining material weaknesses and indicate the adequacy of any proposed or completed corrective action. The contracting officer must?

(1) Request that the contractor, within 45 days of receipt of the final determination, either correct the deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the weaknesses;

(2) Disapprove the system in accordance with the clause at **252.215-7002; and**

(3) Withhold payments in accordance with the clause at **252.242-7005, Contractor Business Systems, if the clause is included in the** contract.

(ii) Follow the procedures relating to monitoring a contractor's corrective action and the correction of material weaknesses in PGI 215.305-70(d)(3).

(e) System approval. Promptly approve a previously disapproved estimating system and notify the contractor there are no remaining material weaknesses.

(f) Contracting officer notifications. Distribute copies of a determination to approve a system, disapprove a system and withhold payments, or approve a previously disapproved system and release withheld payments, to the auditor; payment office; affected contracting officers at the buying activities; and cognizant

contracting officers in contract administration activities.

SUBPART 215.4?CONTRACT PRICING

215.401 Definitions.

As used in this subpart?

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?Market prices? means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors.

?Relevant sales data? means information on sales of the same or similar items that can be used to establish price reasonableness taking into consideration the age, volume, and nature of the transactions (including any related discounts, refunds, rebates, offsets or other adjustments).

215.402-70 General.

Requirement for cost or pricing data.

(a) Pursuant to section 831 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 (Pub. L. 112-239)?

(1) The contracting officer is responsible for determining if the information provided by the offeror is sufficient to determine price reasonableness. This responsibility includes determining whether information on the prices at which the same or similar items have previously been sold is adequate for evaluating the reasonableness of price, and determining the extent of uncertified cost data that should be required in cases in which price information is not adequate,

(2) Do not limit the Government?s ability to obtain information that may be necessary to support a determination of fair and reasonable pricing by agreeing to contract terms that preclude obtaining necessary supporting information, and

(3) When obtaining uncertified cost data, require the offeror to provide the information in the form in which it is regularly maintained in the offeror?s business operations.

(b) Follow the procedures at PGI 215.402-70(b) when conducting cost or price analysis, particularly for sole source acquisitions of commercial products or commercial services.

215.403 Obtaining cost or pricing data.

215.403-1 Data other than certified cost or pricing data.

(b)(1) Follow the procedures at PGI 215.403-1(b)(1) for clarification of terms used in this subpart.

215.403-170 Contracting officer responsibilities.

(a) Do not determine the price of a contract or subcontract to be fair and reasonable based solely on historical prices paid by the Government (10 U.S.C. 3705(a)). See 215.404-170 and PGI 215.403-170(a).

(b) If an offeror does not respond to a request for other than certified cost or

pricing data, follow the procedures at PGI 215.403-170(b). In lieu of the factors for consideration listed in FAR 15.403-1(d), the head of the contracting activity must make a determination that it is in the best interest of the Government to make the award to an offeror that does not make a good faith effort to comply with a reasonable request to submit data other than certified cost or pricing data based on consideration of pertinent factors, including the following (10 U.S.C. 3705(b)):
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(1) The effort to obtain the data.

(2) Availability of other sources of supply of the item or service.

(3) The urgency or criticality of the Government?s need for the item or service.

(4) Reasonableness of the price of the contract, subcontract, or modification of the contract or subcontract based on information available to the contracting officer.

(5) Rationale or justification made by the offeror for not providing the requested data.

(6) Risk to the Government if award is not made.

(c) For determinations of price reasonableness of major weapon systems acquired as commercial products, see 234.7002(e).

215.403-270 Prohibition on obtaining certified cost or pricing data.

(a) Exceptions to certified cost or pricing data requirements.

(1) Follow the procedures at PGI 215.403-270(a)(1).

(2) Submission of certified cost or pricing data is not 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 (10 U.S.C. 3703).

(3) Adequate price competition.

(i) For acquisitions under dual or multiple source programs?

(A) Make the determination of adequate price competition on a case-by-case basis. Even when adequate price competition exists, in certain cases it may be appropriate to obtain additional data to assist in price analysis, and

(B) Adequate price competition normally exists when?

(1) Prices are solicited across a full range of step quantities, normally including a 0-100 percent split, from at least two offerors that are individually capable of producing the full quantity, and

(2) The reasonableness of all prices awarded is clearly established on the basis of price analysis (see FAR 15.404-1).

(ii) If only one offer is received in response to a competitive solicitation, see 215.202-71(c).

(4) Commercial products or commercial services. When applying the commercial product or commercial service exception under FAR 15.403-2(b)(3), see

212.001-70(b)(2)(ii) regarding prior commercial product or commercial service determinations.

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(b) Waivers.

(1) Pursuant to section 817 of the NDAA for FY 2003, the head of the contracting activity may, without power of delegation, apply the exceptional circumstances authority when a determination is made that?

(i) The property or services cannot reasonably be obtained under the contract, subcontract, or modification, without granting a waiver,

(ii) The price can be determined to be fair and reasonable without the submission of certified cost or pricing data, and

(iii) There are demonstrated benefits to granting the waiver. Follow the procedures at PGI 215.403-270(b)(1) for determining when an exceptional case waiver is appropriate, for approval of such waivers, for partial waivers, and for waivers applicable to unpriced supplies or services.

(2) See PGI 215.403-270(b)(2) for annual reporting requirements.

(3) DoD has waived the requirement for submission of certified cost or pricing data for the Canadian Commercial Corporation and its subcontractors. Follow the procedures at PGI 215.403-270(b)(3) but see 215.110-70(c) and 225.870-**4(c).**

(4) DoD has waived certified cost or pricing data requirements for nonprofit organizations (including educational institutions) on cost-reimbursement-no-fee contracts. Require contractors to?

(A) Submit other than certified cost or pricing data to the extent necessary to determine price reasonableness and cost realism; and

(B) Submit subcontractor certified cost or pricing data from subcontractors that are not nonprofit organizations when the subcontractor?s proposal exceeds the certified cost or pricing data threshold at 215.403-3(a).

215.403-3 Certified cost or pricing data.

(a) Threshold. In lieu of the requirements of FAR 15.403-3(a), obtain certified cost or pricing data when a prime contract is expected to exceed $10 million and is awarded after June 30, 2026, unless an exception at FAR 15.403-2 or DFARS **215.403-270 applies. The threshold is $2.5 million when the prime contract is** awarded on or before June 30, 2026, unless otherwise stated in the contract (10 **U.S.C. 3702)**

(1) Use the same criteria for contract modifications or changes as the prime contract being modified or changed.

(2) Require an offeror for a subcontract at any tier to submit certified cost or pricing data before the award of the subcontract if the prime contractor and each higher tier subcontractor are required to submit certified cost or pricing data, and

the prime contract was entered into?
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(i) After June 30, 2026, and the price of the subcontract is expected to exceed $10 million, or

(ii) On or before June 30, 2026, and the price of the subcontract is expected to exceed $2.5 million, unless otherwise stated in the prime contract.

(3) Require the subcontractor for a subcontract covered by paragraph (2) of this section to submit certified cost or pricing data before the pricing of a change or modification to the subcontract if the price adjustment is expected to exceed $2.5 million.

215.403-4 Certificate of current cost or pricing data.

See PGI 215.403-4 for additional information and guidance on Certificates of Current Cost or Pricing Data.

215.404 Cost and/or price analysis.

215.404-170 Price analysis

(a) In the absence of adequate price competition in response to the solicitation, pricing based on market prices is the preferred method to establish a fair and reasonable price (see PGI 215.404-170).

(b) If the information obtained through market research is insufficient to determine the reasonableness of price, the contracting officer must consider information submitted by the offeror of recent purchase prices paid by the Government and commercial customers for the same or similar commercial products or commercial services under comparable terms and conditions. When establishing price reasonableness for the subsequent purchase, determine if the prices previously paid remain a valid reference for comparison. Do not base price reasonableness solely on historical prices paid by the Government (see PGI 215.403-170(a)). **Consider the totality of other relevant factors such as the time elapsed** since the prior purchase, any differences in the quantities purchased, or applicable terms and conditions (10 U.S.C. 3703(e)).

(c) If the offeror cannot provide sufficient information as described in paragraph (b) of this section to determine the reasonableness of price, request the offeror submit information on?

(1) Prices paid for the same or similar items sold under different terms and conditions;

(2) Prices paid for similar levels of work or effort on related products or services;

(3) Prices paid for alternative solutions or approaches; and

(4) Other relevant information that can serve as the basis for determining the reasonableness of price.

(d) If the pricing information submitted is not sufficient to determine the

reasonableness of price, request other relevant information, to include cost data. However, no 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 (section 831 of the NDAA for FY 2013 (Pub. L. 112-239).

(e) When evaluating pricing data, consider materially differing terms and conditions, quantities, and market and economic factors (see PGI 215.404-170(e)). For similar items, consider material differences between the similar item and the item being procured (see FAR 15.404-1(b)(2)(ii)). Material differences are those that could reasonably be expected to influence the determination of price reasonableness. Consider the following factors when evaluating the relevance of the information available:

(1) Market prices.

(2) Age of data.

(i) Whether data is too old to be relevant depends on the industry (e.g., rapidly evolving technologies), product maturity (e.g., stable), economic factors (e.g., new sellers in the marketplace), and various other considerations.

(ii) A pending sale may be relevant if, in the judgement of the contracting officer, it is probable at the anticipated price, and the sale could reasonably be expected to materially influence the contracting officer?s determination of price reasonableness. The contracting officer may consult with the cognizant administrative contracting officers (ACOs) as they may have information about pending sales.

(3) Volume and completeness of transaction data. Data must include a sufficient number of transactions to represent the range of relevant sales to all types of customers. The data must also include key information, such as date, quantity sold, part number, part nomenclature, sales price, and customer. If the number of transactions is insufficient or the data is incomplete, request additional sales data to evaluate price reasonableness. If the contractor cannot provide sufficient sales data, request other relevant information.

(4) Nature of transactions. The nature of a sales transaction includes the information necessary to understand the transaction, such as terms and conditions, date, quantity sold, sale price, unique requirements, the type of customer

(government, distributor, retail end-user, etc.), and related agreements. It also includes warranties, key product technical specifications, maintenance agreements, and preferred customer rewards.

(f) Consider catalog prices to be reliable when they are regularly maintained and supported by relevant sales data (including any related discounts, refunds, rebates, offsets, or other adjustments). Request that the offeror support differences between the proposed price(s), catalog price(s), and relevant sales data.

(g) See PGI 215.404-170(g) for assistance with commercial product, commercial

service, and price reasonableness determinations.

(h) When procuring a service or an end product identified by a material identifier that is available (see PGI 204.7603), consider the Supplier Performance Risk System price risk assessments in determining if a proposed price is consistent with historical prices paid for an item or otherwise creates a risk to the Government. See also 215.403-170(a).

215.404-2 Cost analysis

Follow the procedures at PGI 215.404-2 when conducting a cost analysis.

215.404-4 Technical cost or price analysis

Follow the procedures at PGI 215.404-4 for use of technical assistance.

215.404-7 Review and justification of pass-through contracts.

Follow the procedures at PGI 215.404-7 when considering alternative approaches or making the determination that the contracting approach selected is in the best interest of the Government (FAR 15.404-7).

215.404-8 Subcontract pricing considerations.

Follow the procedures at PGI 215.404-8 when reviewing a subcontractor?s proposal.

215.404-970 Profit.

(a) Policy. Use a structured approach for developing a prenegotiation profit or fee objective on any negotiated contract action when certified cost or pricing data is obtained, except for cost-plus-award-fee contracts (see PGI 215.404-974, 216.402-4, and FAR 16.402-4) or contracts with Federally Funded Research and Development Centers (FFRDCs) (see PGI 215.404-975). See PGI 215.404-970 for use of DD Form 1547, Record of Weighted Guidelines Method Application, whenever a structured approach to profit analysis is required. There are three structured approaches?

(1) The weighted guidelines method,

(2) The modified weighted guidelines method, and

(3) An alternate structured approach.

(b) Contracting officer responsibilities.

(1) Do not perform a profit analysis when assessing cost realism in competitive acquisitions.

(2) When using a structured approach, contracting officers?

(i) Must use the weighted guidelines method (see PGI 215.404-971), except as provided in paragraphs (b)(2)(ii) and (b)(2)(iii) of this section.

(ii) Must use the modified weighted guidelines method (see PGI 215.404-972) on contract actions with nonprofit organizations other than FFRDCs.

(iii) May use an alternate structured approach (see PGI 215.404-973) when?

(A) The contract action is?

(1) At or below the certified cost or pricing data threshold (see

DFARS 215.403-3(a)),

(2) For architect-engineer or construction work,

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(3) Primarily for delivery of material from subcontractors, or

(4) A termination settlement; or

(B) The weighted guidelines method does not produce a reasonable overall profit objective, and the head of the contracting activity approves use of the alternate approach in writing.

(iv) Must use the weighted guidelines method to establish a basic profit rate under a formula-type pricing agreement and may then use the basic rate on all actions under the agreement, provided that conditions affecting profit do not change.

(v) Must document the profit analysis in the contract file.

(3) Do not attempt to reach agreement on the applied weights or values for individual profit factors, but do encourage the contractor to?

(i) Present the details of its proposed profit amounts in the weighted guidelines format or similar structured approach; and

(ii) Use the weighted guidelines method in developing profit objectives for negotiated subcontracts.

(4) Verify that relevant variables have not materially changed (e.g., performance risk, interest rates, progress payment rates, distribution of facilities capital).

(c) Profit-analysis factors. See PGI 215.404-971 through 215.404-973.

(d) Statutory fee limitations. In lieu of the limitation at FAR 15.404-9(c)(4)(ii), see 236.202-371 for the Departments of the Army, Navy and Air Force architect-engineer services.

215.404-70 Cost and/or price analysis.

(a) Follow the procedures at PGI 215.404-70 for cost and/or price analysis.

(b) For spare parts or support equipment, perform an analysis of?

(1) Line items where the proposed price exceeds by 25 percent or more the lowest price the Government has paid within the most recent 12-month period based on reasonably available data (section 1215 of the NDAA for FY 1984 (Pub. L. 98-94)),

(2) Line items where a comparison of the item description and the proposed price indicates a potential for overpricing,

(3) Significant high-dollar-value items. If there are no obvious high-dollar-value items, include an analysis of a random sample of items, and

(4) A random sample of the remaining low-dollar value items. Sample size may be determined by subjective judgment, e.g., experience with the offeror and the reliability of its estimating and accounting systems.

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215.405 Special cost or pricing areas.

215.405-2 Make-or-buy programs.

See PGI 215.405-2 for factors to consider when evaluating make-or-buy plan submissions.

215.405-3 Forward pricing rate agreements.

(b)(1) Use forward pricing rate agreement (FPRA) rates when such rates are available, unless waived on a case-by-case basis by the head of the contracting activity.

(2) Advise the ACO of each case waived.

(3) Contact the ACO for questions on FPRAs or recommended rates.

215.405-470 Should-cost review.

(a) General. See PGI 215.405-470 for guidance on determining whether to perform a program or overhead should-cost review.

(b) Program should-cost review. Major weapon system should-cost program reviews must be conducted in a manner that is transparent, objective, and provides for the efficiency of the DoD systems acquisition process (section 837 of the NDAA for FY 2018 (Pub. L. 115-91)).

(1) Major weapon system should-cost reviews may include the following features?

(i) A thorough review of each contributing element of the program cost and the justification for each cost.

(ii) An analysis of non-value added overhead and unnecessary reporting requirements.

(iii) Benchmarking against similar DoD programs, similar commercial programs (where appropriate), and other programs by the same contractor at the same facility.

(iv) An analysis of supply chain management to encourage competition and incentive cost performance at lower tiers.

(v) A review of how to restructure the program (Government and contractor) team in a streamlined manner, if necessary.

(vi) Identification of opportunities to break out Government-furnished equipment versus prime contractor-furnished materials.

(vii) Identification of items or services contracted through third parties that result in unnecessary pass-through costs.

(viii) Evaluation of ability to use integrated developmental and operational testing and modeling and simulation to reduce overall costs.

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(ix) Identification of alternative technology and materials to reduce developmental or lifecycle costs for a program.

(x) Identification and prioritization of cost savings opportunities.

(xi) Establishment of measurable targets and ongoing tracking systems.

(2) The should-cost review must provide for sufficient analysis while minimizing the impact on program schedule by engaging stakeholders early, relying on information already available before requesting additional data, and establishing a team with the relevant expertise early.

(3) The should cost review team must?

(i) Be comprised of members, including third-party experts if necessary, with the training, skills, and experience in analysis of cost elements, production or sustainment processes, and technologies relevant to the program under review. The review team may include members from the Defense Contract Management Agency, the department or agency?s cost analysis center, and appropriate functional organizations, as necessary.

(ii) Establish a process for communicating and collaborating with the contractor throughout the should-cost review, including notification to the contractor regarding which elements of the contractor?s operations will be reviewed and what information will be necessary to perform the review, as soon as practicable, both prior to and during the review.

(iii) Prepare a report, which must ensure, to the maximum extent practicable, review of current, accurate, and complete data, and identify cost savings opportunities associated with specific engineering or business changes that can be quantified and tracked.

215.406 Data to support proposal analysis.

See PGI 215.406 for guidance on obtaining field pricing or audit assistance.

215.408 Documentation.

215.408-1 Prenegotiation objectives.

Follow the procedures at PGI 215.408-1 for establishing prenegotiation objectives.

215.408-2 Documenting the negotiation.

Follow the procedures at PGI 215.408-2 for documenting the negotiation.

215.470 Estimated data prices.

(a) DoD requires estimated prices for data to evaluate the cost to the Government of data items in terms of their management, product, or engineering value.

(b) When data are required to be delivered under a contract, include DD Form 1423, Contract Data Requirements List, in the solicitation. See PGI 215.470(b) for guidance on the use of DD Form 1423.

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(c) Do not include a requirement for data in a contract that the contractor has delivered or is obligated to deliver to the Government under another contract or subcontract, and that the successful offeror identifies any such data required by the solicitation. However, where duplicate data are desired, the contract price shall include the costs of duplication, but not of preparation, of such data.

SUBPART 215.5?UNSOLICITED PROPOSALS

215.502 General

(d)(3) The guidance at FAR 15.502(d)(3) applies to commercial solutions openings.

215.503-1 Scope of proposals.

The policy at FAR 15.503-1(a) applies to commercial solutions openings.

PART 252?SOLICITATION PROVISIONS AND CONTRACT CLAUSES

SUBPART 252.2?TEXT OF PROVISIONS AND CLAUSES

252.215-7000 Reserved.

252.215-7001 Reserved.

252.215-7002 Cost Estimating System Requirements.

As prescribed in 215.110-70(a), use the following clause:

COST ESTIMATING SYSTEM REQUIREMENTS (JAN 2025)

(a) Definitions.

?Acceptable estimating system? means an estimating system that complies with the system criteria in paragraph (d) of this clause, and provides for a system that?

(1) Is maintained, reliable, and consistently applied;

(2) Produces verifiable, supportable, documented, and timely cost estimates that are an acceptable basis for negotiation of fair and reasonable prices;

(3) Is consistent with and integrated with the Contractor?s related management systems; and

(4) Is subject to applicable financial control systems.

?Estimating system? means the Contractor's policies, procedures, and practices for budgeting and planning controls, and generating estimates of costs and other data included in proposals submitted to customers in the expectation of receiving contract awards. Estimating system includes the Contractor's?

(1) Organizational structure;

(2) Established lines of authority, duties, and responsibilities;

(3) Internal controls and managerial reviews;

(4) Flow of work, coordination, and communication; and

(5) Budgeting, planning, estimating methods, techniques, accumulation of historical costs, and other analyses used to generate cost estimates.

?Material weakness? means a deficiency or combination of deficiencies in the internal control over information in contractor business systems, such that there is

a reasonable possibility that a material misstatement of such information will not be prevented, or detected and corrected, on a timely basis. A reasonable possibility exists when the likelihood of an event occurring is?

(1) Probable; or

(2) More than remote but less than likely (Section 806 of Pub. L. 116-283).

(b) General. The Contractor shall establish, maintain, and comply with an acceptable estimating system.

(c) Applicability. Paragraphs (d) and (e) of this clause apply if the Contractor is a large business and either?

(1) In its fiscal year preceding award of this contract, received Department of Defense (DoD) prime contracts or subcontracts, totaling $50 million or more for which certified cost or pricing data were required; or

(2) In its fiscal year preceding award of this contract?

(i) Received DoD prime contracts or subcontracts totaling $10 million or more (but less than $50 million) for which certified cost or pricing data were required; and

(ii) Was notified, in writing, by the Contracting Officer that paragraphs

(d) and (e) of this clause apply.

(d) System requirements.

(1) The Contractor shall disclose its estimating system to the Administrative Contracting Officer (ACO), in writing. If the Contractor wishes the Government to protect the data and information as privileged or confidential, the Contractor must mark the documents with the appropriate legends before submission.

(2) An estimating system disclosure is acceptable when the Contractor has provided the ACO with documentation that?

(i) Accurately describes those policies, procedures, and practices that the Contractor currently uses in preparing cost proposals; and

(ii) Provides sufficient detail for the Government to reasonably make an informed judgment regarding the acceptability of the Contractor's estimating practices.

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(3) The Contractor shall?

(i) Comply with its disclosed estimating system; and

(ii) Disclose significant changes to the cost estimating system to the ACO on a timely basis.

(4) The Contractor?s estimating system shall provide for the use of appropriate source data, utilize sound estimating techniques and good judgment, maintain a consistent approach, and adhere to established policies and procedures. An acceptable estimating system shall accomplish the following functions:

(i) Establish clear responsibility for preparation, review, and approval of

cost estimates and budgets.

(ii) Provide a written description of the organization and duties of the personnel responsible for preparing, reviewing, and approving cost estimates and budgets.

(iii) Ensure that relevant personnel have sufficient training, experience, and guidance to perform estimating and budgeting tasks in accordance with the Contractor's established procedures.

(iv) Identify and document the sources of data and the estimating methods and rationale used in developing cost estimates and budgets.

(v) Provide for adequate supervision throughout the estimating and budgeting process.

(vi) Provide for consistent application of estimating and budgeting techniques.

(vii) Provide for detection and timely correction of errors.

(viii) Protect against cost duplication and omissions.

(ix) Provide for the use of historical experience, including historical vendor pricing data, where appropriate.

(x) Require use of appropriate analytical methods.

(xi) Integrate data and information available from other management systems.

(xii) Require management review, including verification of compliance with the company's estimating and budgeting policies, procedures, and practices.

(xiii) Provide for internal review of, and accountability for, the acceptability of the estimating system, including the budgetary data supporting indirect cost estimates and comparisons of projected results to actual results, and an analysis of any differences.

(xiv) Provide procedures to update cost estimates and notify the Contracting Officer in a timely manner throughout the negotiation process.

(xv) Provide procedures that ensure subcontract prices are reasonable based on a documented review and analysis provided with the prime proposal, when practicable.

(xvi) Provide estimating and budgeting practices that consistently generate sound proposals that are compliant with the provisions of the solicitation and are adequate to serve as a basis to reach a fair and reasonable price.

(xvii) Have an adequate system description, including policies, procedures, and estimating and budgeting practices, that comply with the Federal Acquisition Regulation and Defense Federal Acquisition Regulation Supplement.

(e) Material weaknesses.

(1) The Contracting Officer will provide an initial determination to the Contractor, in writing, of any material weaknesses. The initial determination will

describe the underlying deficiency in sufficient detail to allow the Contractor to understand the weakness or deficiency.

(2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies material weaknesses in the Contractor's estimating system. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing.

(3) The Contracting Officer will evaluate the Contractor's response and notify the Contractor, in writing, of the Contracting Officer?s final determination concerning?

(i) Remaining material weaknesses;

(ii) The adequacy of any proposed or completed corrective action; and

(iii) System disapproval, if the Contracting Officer determines that one or more material weaknesses remain.

(f) If the Contractor receives the Contracting Officer?s final determination of material weaknesses, the Contractor shall, within 45 days of receipt of the final determination, either correct the material weaknesses or submit an acceptable corrective action plan showing milestones and actions to eliminate the material weaknesses.

(g) Withholding payments. If the Contracting Officer makes a final determination to disapprove the Contractor?s estimating system, and the contract includes the clause at 252.242-7005, Contractor Business Systems, the Contracting Officer will withhold payments in accordance with that clause.

(End of clause)

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252.215-7990 Requirement for Submission of Data Other Than Certified Cost or Pricing Data?Canadian Commercial Corporation. (DEVIATION **2026-O0048)**

As prescribed at 215.110-70(b)(1)(i), use the following provision:

REQUIREMENT FOR SUBMISSION OF DATA OTHER THAN CERTIFIED COST OR PRICING DATA?CANADIAN COMMERCIAL CORPORATION (DEVIATION 2026-O0048) (MAR 2026)

(a) Submission of certified cost or pricing data is not required.

(b) Canadian Commercial Corporation shall obtain and provide the following:

(i) Profit rate or fee (as applicable).

(ii) Analysis provided by Public Works and Government Services Canada to the Canadian Commercial Corporation to determine a fair and reasonable price (comparable to the analysis required at FAR 15.404).

(iii) Data other than certified cost or pricing data necessary to permit a determination by the U.S. Contracting Officer that the proposed price is fair and reasonable [U.S. Contracting Officer to insert description of the data required in

accordance with FAR 15.403-1].

(c) As specified in 15.403-1(d), an offeror who does not comply with a requirement to submit data that the U.S. Contracting Officer has deemed necessary to determine price reasonableness or cost realism is ineligible for award unless the head of the contracting activity determines that it is in the best interest of the Government to make the award to that offeror.

(End of provision)

252.215-7991 Requirement for Submission of Data Other Than Certified Cost or Pricing Data?Modifications?Canadian Commercial Corporation.

(DEVIATION 2026-O0048)

As prescribed at 215.110-70(b)(2)(i), use the following clause:

REQUIREMENT FOR SUBMISSION OF DATA OTHER THAN CERTIFIED COST OR PRICING DATA?MODIFICATIONS?CANADIAN COMMERCIAL CORPORATION (DEVIATION 2026-O0048) (MAR 2026)

This clause, in lieu of FAR 52.215-21, applies only if award is to the Canadian Commercial Corporation.

(a) Submission of certified cost or pricing data is not required.

(b) Canadian Commercial Corporation shall obtain and provide the following for modifications that exceed the $150,000 [or higher dollar value specified by the U.S. Contracting Officer in the solicitation].

(i) Profit rate or fee (as applicable).

(ii) Analysis provided by Public Works and Government Services Canada to the Canadian Commercial Corporation to determine a fair and reasonable price

(comparable to the analysis required at FAR 15.404).

(iii) Data other than certified cost or pricing data necessary to permit a determination by the U.S. Contracting Officer that the proposed price is fair and reasonable [U.S. Contracting Officer to insert description of the data required in accordance with FAR 15.403-1].

(End of clause)

252.215-7005 Reserved.

252.215-7006 Use of Employees or Individual Subcontractors Who Are Members of the Selected Reserve.

As prescribed in 215.104-71(c), use the following clause:

USE OF EMPLOYEES OR INDIVIDUAL SUBCONTRACTORS WHO ARE MEMBERS OF THE SELECTED RESERVE (MAR 2022)

(a) Definition. As used in this clause?

?Selected Reserve? has the meaning given that term in 10 U.S.C. 10143. Selected Reserve members normally attend regular drills throughout the year and are the group of Reserves most readily available to the President.

(b) If the Contractor stated in its offer that it intends to use members of the Selected Reserve in the performance of this contract?

(1) The Contractor shall use employees, or individual subcontractors, who are members of the Selected Reserve in the performance of the contract to the fullest extent consistent with efficient contract performance; and

(2) The Government has the right to terminate the contract for default if the Contractor willfully or intentionally fails to use members of the Selected Reserve, as employees or individual subcontractors, in the performance of the contract.

(End of clause)

252.215-7007 Notice of Intent to Resolicit.

As prescribed at 215.202-71(f), use the following provision:

NOTICE OF INTENT TO RESOLICIT (JUN 2012)

This solicitation provides offerors fewer than 30 days to submit proposals. In the event that only one offer is received in response to this solicitation, the Contracting Officer may cancel the solicitation and resolicit for an additional period of at least 30 days in accordance with 215.202-71(b).

(End of provision)

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252.215-7992 Only One Offer. (DEVIATION 2026-O0048)

As prescribed at 215.110-70(c), use the following provision:

ONLY ONE OFFER (DEVIATION 2026-O0048) (MAR 2026)

(a) Cost or pricing data requirements. After initial submission of offers, if the Contracting Officer notifies the Offeror that only one offer was received, the Offeror agrees to?

(1) Submit any additional cost or pricing data that is required in order to determine whether the price is fair and reasonable (10 U.S.C. 3705) or to comply with the statutory requirement for certified cost or pricing data (10 U.S.C. 3702); and

(2) Except as provided in paragraph (b) of this provision, if the acquisition exceeds the certified cost or pricing data threshold and an exception to the requirement for certified cost or pricing data at FAR 15.403-2(b)(2) through (5) does not apply, certify all cost or pricing data in accordance with paragraph (c) of DFARS provision 252.215-7994, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data, of this solicitation.

(b) Canadian Commercial Corporation. If the Offeror is the Canadian Commercial Corporation, certified cost or pricing data are not required. If the Contracting Officer notifies the Canadian Commercial Corporation that additional data other than certified cost or pricing data are required in accordance with DFARS 225.870-4(c), the Canadian Commercial Corporation shall obtain and provide the following:

(1) Profit rate or fee (as applicable).

(2) Analysis provided by Public Works and Government Services Canada to the Canadian Commercial Corporation to determine a fair and reasonable price (comparable to the analysis required at 15.404).

(3) Data other than certified cost or pricing data necessary to permit a determination by the U.S. Contracting Officer that the proposed price is fair and reasonable [U.S. Contracting Officer to provide description of the data required in accordance with FAR 15.403-1 with the notification].

(4) As specified in FAR 15.403-1(d), an offeror who does not comply with a requirement to submit data that the U.S. Contracting Officer has deemed necessary to determine price reasonableness or cost realism is ineligible for award unless the head of the contracting activity determines that it is in the best interest of the Government to make the award to that offeror.

(c) Subcontracts. Unless the Offeror is the Canadian Commercial Corporation, the Offeror shall insert the substance of this provision, including this paragraph (c), in all subcontracts exceeding the simplified acquisition threshold defined in FAR **part 2.**

(End of provision)

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252.215-7993 Proposal Adequacy Checklist. (DEVIATION 2026-O0048)

As prescribed in 215.110-70(d), use the following provision:

PROPOSAL ADEQUACY CHECKLIST (DEVIATION 2026-O0048) (MAR 2026)

The offeror shall complete the following checklist, providing location of requested information, or an explanation of why the requested information is not provided. In preparation of the offeror?s checklist, offerors may elect to have their prospective subcontractors use the same or similar checklist as appropriate.

PROPOSAL ADEQUACY CHECKLIST

If not provided

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GENERAL INSTRUCTIONS

1. FAR 15.408-2, Is there a properly completed

Table 15-1, first page of the proposal per

Section I FAR 15.408-2 Table 15-1 I.A

Paragraph A or as specified in the

solicitation?

2. FAR 15.408-2, Does the proposal identify the

Table 15-1, need for Government-

Section I furnished
Paragraph A(7) material/tooling/test
equipment? Include the
accountable contract number
and contracting officer contact
information if known.

3. FAR 15.408-2, Does the proposal identify

Table 15-1, and explain notifications of
Section I noncompliance with Cost
Paragraph A(8) Accounting Standards Board
or Cost Accounting Standards
(CAS); any proposal
inconsistencies with your
disclosed practices or
applicable CAS; and
inconsistencies with your
established estimating and
accounting principles and
procedures?

4. FAR 15.408-2, Does the proposal disclose

Table 15-1, any other known activity that
Section I, could materially impact the
Paragraph C(1) costs?
This may include, but is not
FAR 2.101, ?Cost limited to, such factors as?
or pricing data? (1) Vendor quotations;
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(2) Nonrecurring costs;
(3) Information on changes in
production methods and in
production or purchasing
volume;
(4) Data supporting
projections of business
prospects and objectives and

related operations costs;

(5) Unit-cost trends such as those associated with labor efficiency;

(6) Make-or-buy decisions;

(7) Estimated resources to attain business goals; and

(8) Information on management decisions that could have a significant bearing on costs.

5. FAR 15.408-2, Is an Index of all certified cost
Table 15-1, or pricing data and
Section I information accompanying or
Paragraph B identified in the proposal
provided and appropriately
referenced?

6. FAR 15.403- Are there any exceptions to
2(b) submission of certified cost or
pricing data pursuant to FAR
15.403-2(b)? If so, is
supporting documentation
included in the proposal?
(Note questions 18-20.)

7. FAR 15.408-2, Does the proposal disclose the
Table 15-1, judgmental factors applied
Section I and the mathematical or
Paragraph other methods used in the
C(2)(i) estimate, including those
used in projecting from
known data?

8. FAR 15.408-2, Does the proposal disclose the
Table 15-1, nature and amount of any
Section I contingencies included in the
Paragraph proposed price?
C(2)(ii)
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9. FAR 15.408-2, Does the proposal explain the
Table 15-1, basis of all cost estimating
Section II, relationships (labor hours or
Paragraph A or material) proposed on other
B than a discrete basis?

10. FAR 15.408- Is there a summary of total
2, Table 15-1, cost by element of cost and
Section I are the elements of cost cross-
Paragraphs D referenced to the supporting
and E cost or pricing data?
(Breakdowns for each cost
element must be consistent
with your cost accounting
system, including breakdown
by year.)

11. FAR 15.408- If more than one Contract
2, Table 15-1, Line Item Number (CLIN) or
Section I sub Contract Line Item
Paragraphs D Number (sub-CLIN) is
and E proposed as required by the
RFP, are there summary total
amounts covering all line
items for each element of cost
and is it cross-referenced to
the supporting cost or pricing
data?

12. FAR 15.408- Does the proposal identify
2, Table 15-1, any incurred costs for work
Section I performed before the
Paragraph F submission of the proposal?

13. FAR 15.408- Is there a Government
2, Table 15-1, forward pricing rate
Section I agreement (FPRA)? If so, the
Paragraph G offeror shall identify the
official submittal of such rate
and factor data. If not, does
the proposal include all rates
and factors by year that are
utilized in the development of
the proposal and the basis for
those rates and factors?

COST ELEMENTS

MATERIALS AND SERVICES

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14. FAR 15.408- Does the proposal include a

2, Table 15-1, consolidated summary of

Section II individual material and

Paragraph A services, frequently referred

to as a Consolidated Bill of

Material (CBOM), to include

the basis for pricing? The

offeror?s consolidated

summary shall include raw

materials, parts, components,

assemblies, subcontracts and

services to be produced or

performed by others,

identifying as a minimum the

item, source, quantity, and

price.

SUBCONTRACTS (Purchased materials or services)

15. DFARS Has the offeror identified in

215.404-8 the proposal those

subcontractor proposals, for

which the contracting officer

has initiated or may need to

request field pricing analysis?

16. FAR 15.404- Per the thresholds of FAR

8(b) 15.404-8(b), Subcontract

Pricing Considerations, does

FAR 52.244-2 the proposal include a copy of

the applicable subcontractor?s

certified cost or pricing data?

17. FAR 15.408- Is there a price/cost analysis

2, Table 15-1, establishing the

Note 1; reasonableness of each of the

Section II proposed subcontracts

Paragraph A included with the proposal?
If the offeror?s price/cost
analyses are not provided
with the proposal, does the
proposal include a matrix
identifying dates for receipt of
subcontractor proposal,
completion of fact finding for
purposes of price/cost
analysis, and submission of
the price/cost analysis?

EXCEPTIONS TO CERTIFIED COST OR PRICING DATA

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18. FAR 52.215- Has the offeror submitted an
20, exception to the submission of
FAR 2.101, certified cost or pricing data
?commercial for commercial products or
product? or commercial services proposed
?commercial either at the prime or
service? subcontractor level, in
accordance with provision
52.215-20?

a. Has the offeror
specifically identified the type
of commercial product or
commercial service claim
(FAR 2.101 ?commercial
product? or ?commercial
service? definition), and the
basis on which the
commercial product or
commercial service meets the
definition?
b. For modified commercial
products (FAR 2.101

?commercial product?
definition); did the offeror
classify the modification(s) as
either?
i. A modification of a type
customarily available in the
commercial marketplace
(paragraph (3)(i)); or
ii. A minor modification
(paragraph (3)(ii)) of a type
not customarily available in
the commercial marketplace
made to meet Federal
Government requirements
not exceeding the thresholds
in FAR 15.403-2(c)(3)(iii)(B)?
c. For proposed commercial
products ?of a type?, or
?evolved? or modified (FAR
2.101 ?commercial product?
definition), did the contractor
provide a technical
description of the differences
between the proposed item
and the comparison item(s)?
19. [Reserved]
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20. FAR 15.408- Does the proposal support the
2, Table 15-1, degree of competition and the
Section II basis for establishing the
Paragraph A(1) source and reasonableness of
price for each subcontract or
purchase order priced on a
competitive basis exceeding
the threshold for certified cost

or pricing data?

INTERORGANIZATIONAL TRANSFERS

21. FAR 15.408- For inter-organizational

2, Table 15-1, transfers proposed at cost,
Section II does the proposal include a
Paragraph A.(2) complete cost proposal in
compliance with Table 15-1?

22. FAR 15.408- For inter-organizational

2, Table 15-1, transfers proposed at price in
Section II accordance with FAR 31.205-
Paragraph A(1) 26(e), does the proposal
provide an analysis by the
prime that supports the
exception from certified cost
or pricing data in accordance
with FAR15.403-2?

DIRECT LABOR

23. FAR 15.408- Does the proposal include a

2, Table 15-1, time phased (i.e.; monthly,
Section II quarterly) breakdown of labor
Paragraph B hours, rates and costs by
category or skill level? If
labor is the allocation base for
indirect costs, the labor cost
must be summarized in order
that the applicable overhead
rate can be applied.

24. FAR 15.408- For labor Basis of Estimates

2, Table 15-1, (BOEs), does the proposal
Section II include labor categories, labor
Paragraph B hours, and task descriptions,
(e.g.; Statement of Work
reference, applicable CLIN,
Work Breakdown Structure,
rationale for estimate,
applicable history, and time-
phasing)?

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25. FAR subpart If covered by the Service

22.10 Contract Labor Standards

statute (41 U.S.C. chapter
67), are the rates in the
proposal in compliance with
the minimum rates specified
in the statute?

INDIRECT COSTS

26. FAR 15.408- Does the proposal indicate the

2, Table 15-1, basis of estimate for proposed
Section II indirect costs and how they
Paragraph C are applied? (Support for the
indirect rates could consist of
cost breakdowns, trends, and
budgetary data.)

OTHER COSTS

27. FAR 15.408- Does the proposal include

2, Table 15-1, other direct costs and the
Section II basis for pricing? If travel is
Paragraph D included does the proposal
include number of trips,
number of people, number of
days per trip, locations, and
rates (e.g. airfare, per diem,
hotel, car rental, etc)?

28. FAR 15.408- If royalties exceed $1,500 does

2, Table 15-1, the proposal provide the
Section II information/data identified by
Paragraph E Table 15-1?

29. FAR 15.408- When facilities capital cost of

2, Table 15-1, money is proposed, does the
Section II proposal include submission
Paragraph F of Form CASB-CMF or
reference to an FPRA/FPRP
and show the calculation of
the proposed amount?

FORMATS FOR SUBMISSION OF LINE ITEM SUMMARIES

30. FAR 15.408- Are all cost element

2, Table 15-1, breakdowns provided using
Section III the applicable format
prescribed in FAR 15.408-2,

Table 15-1 III? (or
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alternative format if specified
in the request for proposal)

31. FAR 15.408- If the proposal is for a
2, Table 15-1, modification or change order,
Section III have cost of work deleted
Paragraph B (credits) and cost of work
added (debits) been provided
in the format described in
FAR 15.408-2, Table 15-
1.III.B?

32. FAR 15.408- For price
2, Table 15-1, revisions/redeterminations,
Section III does the proposal follow the
Paragraph C format in FAR 15.408-2,
Table 15-1.III.C?

OTHER

33. FAR 16.4 If an incentive contract type,
does the proposal include
offeror proposed target cost,
target profit or fee, share
ratio, and, when applicable,
minimum/maximum fee,
ceiling price?

34. FAR 16.203- If Economic Price
4 and FAR Adjustments are being
15.408-2, Table proposed, does the proposal
15-1, Section II, show the rationale and
Paragraphs A, B, application for the economic
C, and D price adjustment?

35. FAR 52.232- If the offeror is proposing
28 Performance-Based Payments
did the offeror comply with
FAR 52.232-28?

36. FAR Excessive Pass-through

15.110(v) Charges? Identification of

Subcontract Effort: If the
FAR 52.215-22 offeror intends to subcontract
more than 70% of the total
FAR 52.215-23 cost of work to be performed,
does the proposal identify: (i)
the amount of the offeror?s
indirect costs and profit
applicable to the work to be
performed by the proposed
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subcontractor(s); and (ii) a
description of the added value
provided by the offeror as
related to the work to be
performed by the proposed
subcontractor(s)?

(End of provision)

252.215-7994 Requirements for Certified Cost of Pricing Data and Data

Other Than Certified Cost or Pricing Data. (DEVIATION 2026-O0048)

Basic. As prescribed in 215.110-70(e)(1) and (e)(1)(i), use the following provision:

REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA AND DATA OTHER THAN CERTIFIED COST OR PRICING DATA?BASIC (DEVIATION 2026-O0048) (MAR 2026)

(a) Definitions. As used in this provision?

?Market prices? means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors.

?Non-Government sales? means sales of the supplies or services to non-Governmental entities for purposes other than governmental purposes.

?Relevant sales data? means information provided by an offeror on sales of the same or similar items that can be used to establish price reasonableness taking into consideration the age, volume, and nature of the transactions (including any related discounts, refunds, rebates, offsets, or other adjustments).

?Sufficient non-Government sales? means relevant sales data that reflects market pricing and contains enough information to make adjustments covered by FAR 15.404-1(b)(2)(ii).
?Uncertified cost data? means the subset of ?data other than certified cost or pricing data? (see FAR 2.101) that relates to cost.

(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.

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(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.

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(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 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.

(2) The Offeror grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this provision, and to determine the reasonableness of price.

(c) Requirements for certified cost or pricing data. If the Offeror is not granted

an exception from the requirement to submit certified cost or pricing data, the following applies:

(1) The Offeror shall prepare and submit certified cost or pricing data and supporting attachments in accordance with the instructions contained in Table 15-1 of FAR 15.408-2, which is incorporated by reference with the same force and effect as though it were inserted here in full text. The instructions in Table 15-1 are incorporated as a mandatory format to be used in any resultant contract, unless the Contracting Officer and the Offeror agree to a different format and change this provision to use Alternate I.

(2) As soon as practicable after agreement on price, but before contract award (except for unpriced actions such as letter contracts), the Offeror shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.403-4.

(3) The Offeror is responsible for determining whether a subcontractor qualifies for an exception from the requirement for submission of certified cost or pricing data on the basis of adequate price competition, i.e., two or more responsible offerors, competing independently, submit priced offers that satisfy the Government?s expressed requirement in accordance with FAR 15.403-2(c)(1)(ii).

(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) **215.402-70(a)(1), 215.404-170, 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 15.403-1 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.

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

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(1) Paragraphs (c) and (d) of this provision for subcontracts above the threshold for submission of certified cost or pricing data in 215-403-3(a); and

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

(End of provision)

Alternate I. (DEVIATION 2026-O0048) As prescribed in 215.110-70(e)(1) and(e)(1)(ii), use the following provision, which includes a different paragraph (c)(1).

REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA AND DATA OTHER THAN CERTIFIED COST OR PRICING DATA?ALTERNATE I (DEVIATION 2026-O0048) (MAR 2026)

(a) Definitions. As used in this provision?

?Market prices? means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors.

?Non-Government sales? means sales of the supplies or services to non-Governmental entities for purposes other than governmental purposes.

?Relevant sales data? means information provided by an offeror on sales of the same or similar items that can be used to establish price reasonableness taking into consideration the age, volume, and nature of the transactions (including any related discounts, refunds, rebates, offsets, or other adjustments).

?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).
?Uncertified cost data? means the subset of ?data other than certified cost or pricing data? (see FAR 2.101) that relates to cost.

(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
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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 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.

(2) The Offeror grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this provision, and to determine the reasonableness of price.

(c) Requirements for certified cost or pricing data. If the Offeror is not granted an exception from the requirement to submit certified cost or pricing data, the

following applies:

(1) The Offeror shall submit certified cost or pricing data and supporting attachments in the following format: [Insert description of the data and format that are required, and include access to records necessary to permit an adequate evaluation of the proposed price in accordance with FAR 15.408-2, Table 15-1, Note **2. The Contracting Officer shall insert the description at the time of issuing the** solicitation or specify that the format regularly maintained by the offeror or prospective subcontractor in its business operations will be acceptable. The Contracting Officer may amend the description as the result of negotiations.]

(2) As soon as practicable after agreement on price, but before contract award (except for unpriced actions such as letter contracts), the Offeror shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.403-4.

(3) The Offeror is responsible for determining whether a subcontractor qualifies for an exception from the requirement for submission of certified cost or pricing data on the basis of adequate price competition, i.e., two or more responsible offerors, competing independently, submit priced offers that satisfy the Government?s expressed requirement in accordance with FAR 15.403-2(c)(1)(ii).

(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) 215.402-70(a)(1), 215.404-170, and 234.7002(e).

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(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 **15.403-1 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.

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

(1) Paragraph (c) and (d) of this provision for subcontracts above the threshold for submission of certified cost or pricing data in 215.403-3(a); and

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

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(End of provision)

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

As prescribed in 215.110-70(e)(2), use the following provision:

REQUIREMENTS FOR SUBMISSION OF PROPOSALS TO THE ADMINISTRATIVE CONTRACTING OFFICER AND CONTRACT AUDITOR (JAN 2018)

When the proposal is submitted, the Offeror shall also submit one copy each to?

(a) The Administrative Contracting Officer; and

(b) The Contract Auditor.

(End of provision)

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

As prescribed in 215.110-70(e)(3), use the following provision:

REQUIREMENTS FOR SUBMISSION OF PROPOSALS VIA ELECTRONIC

MEDIA (JAN 2018)

The Offeror shall submit the cost portion of the proposal via the following electronic media: [Insert media format, e.g., electronic spreadsheet format, electronic mail, etc.]

(End of provision)

252.215-7013 Supplies and Services Provided by Nontraditional Defense

Contractors.

As prescribed in 215.110-70(f), use the following provision:

SUPPLIES AND SERVICES PROVIDED BY NONTRADITIONAL DEFENSE CONTRACTORS (JAN 2023)

Offerors are advised that in accordance with 10 U.S.C. 3457, supplies and services provided by a nontraditional defense contractor, as defined in DFARS 202.101, may be treated as commercial products or commercial services. The decision to apply commercial product or commercial service procedures to the procurement of supplies and services from a nontraditional defense contractor does not require a commercial product or commercial service determination and does not mean the supplies or services are commercial.

(End of provision)

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252.215-7014 Exception from Certified Cost or Pricing Data Requirements

for Foreign Military Sales Indirect Offsets.

As prescribed in 215.110-70(g), use the following clause:

EXCEPTION FROM CERTIFIED COST OR PRICING DATA REQUIREMENTS FOR FOREIGN MILITARY SALES INDIRECT OFFSETS (DEC 2022)

(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.

(1) 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.

(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.

(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. 3703(a)(4)).

(End of clause)

252.215-7995 Program Should-Cost Review. (DEVIATION 2026-O0048)

As prescribed in 215.110-70(h), use the following clause:

PROGRAM SHOULD-COST REVIEW (DEVIATION 2026-O0048) (MAR 2026)

(a) The Government has the right to perform a program should-cost review, as described in Federal Acquisition Regulation (FAR) 15.405-4(b). The review may be conducted in support of a particular contract proposal or during contract performance to find opportunities to reduce program costs. The Government will

communicate the elements of the proposed should-cost review to the prime contractor (Pub. L. 115-91).

(b) If the Government performs a program should-cost review, upon the Government?s request, the Contractor shall provide access to accurate and complete cost data and Contractor facilities and personnel necessary to permit the Government to perform the program should-cost review.

(c) The Government has the right to use third-party experts to supplement the program should-cost review team. The Contractor shall provide access to the Contractor?s facilities and information necessary to support the program should-cost review to any third-party experts who have signed non-disclosure agreements in accordance with the FAR 52.203-16.

(End of clause)

252.215-7996 Notification to Offerors?Postaward Debriefings. (DEVIATION 2026-O0048)

As prescribed in 215.301-70, use the following provision:

NOTIFICATION TO OFFERORS?POSTAWARD DEBRIEFINGS (DEVIATION 2026-O0048) (MAR 2026)

(a) Definition. As used in this provision?

?Nontraditional defense contractor? means an entity that is not currently performing and has not performed 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, for at least the 1-**year period preceding the solicitation of sources by DoD for the procurement (10 **U.S.C. 3014).**

(b) Postaward debriefing.

(1) Upon timely request, the Government will provide a written or oral postaward debriefing to successful or unsuccessful offerors for contract awards valued at $15 million

(2) When required, the minimum postaward debriefing information will include the following:

(i) For contracts in excess of $15 million and not in excess of $150 million with a small business or nontraditional defense contractor, an option for the small business or nontraditional defense contractor to request disclosure of the agency?s written source selection decision document, redacted to protect the confidential and proprietary information of other offerors for the contract award.

(ii) For contracts in excess of $150 million, disclosure of the agency?s written source selection decision document, redacted to protect the confidential and proprietary information of other offerors for the contract award.

(3) If a required postaward debriefing is provided?

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(i) The debriefed Offeror may submit additional written questions related to the debriefing not later than 2 business days after the date of the debriefing;

(ii) The agency will respond in writing to timely submitted additional questions within 5 business days after receipt by the contracting officer; and

(iii) The postaward debriefing will not be considered to be concluded until the later of?

(A) The date that the postaward debriefing is delivered, orally or in writing; or

(B) If additional written questions related to the debriefing are timely received, the date the agency delivers its written response.

(c) Contract performance. The Government may suspend performance of or terminate the awarded contract upon notice from the Government Accountability Office of a protest filed within the time periods listed in paragraphs (c)(1) through

(3) of this provision, whichever is later:

(1) Within 10 days after the date of contract award.

(2) Within 5 days after a debriefing date offered to the protestor under a timely debriefing request in accordance with Federal Acquisition Regulation (FAR)

15.301 unless an earlier debriefing date is negotiated as a result.

(3) Within 5 days after a postaward debriefing under FAR 15.301 is concluded in accordance with Defense Federal Acquisition Regulation Supplement **215.301-170.**

(End of provision)

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PGI 215?CONTRACTING BY NEGOTIATION

PGI 215.1?PRESOLICITATION AND SOLICITATION

PGI 215.103 Developing a competitive source selection approach

PGI 215.103-270 Limitations and prohibitions.

(a) Limitations.

(1)(vi) Obtain guidance from the requiring activity when it is unclear whether a supply is ?predominately expendable in nature? or ?nontechnical,? or has a ?short life expectancy? or ?short shelf life.? In such situations, only use the lowest price technically acceptable source selection process if the requiring activity establishes that the goods to be procured are predominantly expendable in nature, are nontechnical, or have a short life expectancy or short shelf life.

(vii) Document the contract file with a determination from the requiring activity that the lowest priced offer reflects full life-cycle costs for the supply or service. For services, full life-cycle costs are equal to the contract cost of the services.

PGI 215.104 Establishing competitive evaluation factors and significant subfactors.

PGI 215.104-70 Establishing competitive evaluation factors and significant subfactors.

(a)(1) Evaluation factors may include?

(i) The extent to which such firms are specifically identified in proposals,

(ii) The extent of commitment to use such firms (for example, enforceable commitments are to be weighted more heavily than non-enforceable ones),

(iii) The complexity and variety of the work small firms are to perform,

(iv) The realism of the proposal,

(v) Past performance of the offerors in complying with requirements of the clauses at FAR 52.219-8, Utilization of Small Business Concerns, and 52.219-9, Small Business Subcontracting Plan, and

(vi) Participation of such firms in terms of the value of the total acquisition.

(c) Using authority granted in section 806 of Pub. L. 111-383 to exclude a source based on supply chain risk requires an evaluation factor for supply chain risk, as specified at DFARS 240.271-6. Evaluating supply chain risk requires review of the supply chain, including all information technology subcontractors and suppliers that are proposed for use at any time in the performance of the contract and may involve the use of all-source intelligence information. The requiring activity is responsible for obtaining any necessary all-source intelligence information and must inform the contracting officer and source selection

authority of the results of the review for use in evaluating offers.

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PGI 215.104-71 Evaluation factor for employing or subcontracting with members of the Selected Reserve.

(b) Evaluation factor.

(1) This evaluation factor may be used as an incentive to encourage contractors to use employees or individual subcontractors who are members of the Selected Reserve.

(2) As with all evaluation factors and subfactors, the contracting officer should consider the impact the inclusion of this factor will have on the resulting contract and weight it accordingly.

PGI 215.105 Other considerations.

PGI 215.105-5 Make-or-buy decision.

(c)(2) RFP requirements. Consider the following factors when deciding whether to request a make-or-buy plan?

(i) The prime contractor?s assumption of risk;

(ii) The prime contractor?s plant capacity;

(iii) The prime contractor?s degree of vertical integration;

(iv) The prime contractor?s internal resources;

(v) The anticipated contract type;

(vi) The complexity, uniqueness, or configuration maturity associated with the end item or its subsystems;

(vii) Critical path items;

(viii) The impact on contract overhead rates with respect to maintaining work in-house;

(ix) The industrial base that could potentially satisfy some system requirements, based on market survey;

(x) Proprietary data and/or trade secrets;

(xi) Potential product quality concerns associated with items that would be subject to subcontracting;

(xii) Integrated master schedule timelines and their tolerances for variation;

(xiii) The availability and experience of program office personnel to credibly analyze and evaluate a submission; and

(xiv) Socioeconomic considerations, e.g. small business or labor surplus area concerns.

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PGI 215.2?EVALUATION AND AWARD

PGI 215.200 Scope.

See the policy tab for Principal Director, Defense Pricing and Contracting memorandum dated August 20, 2022, entitled ?Department of Defense Source Selection Procedures? that provides the procedures for conducting negotiated, competitive acquisitions utilizing FAR **part 15 procedures.**

PGI 215.201 Source selection responsibilities.

(b)(2) The source selection plan is ?

(A) Prepared and maintained by a person designated by the source selection authority or as prescribed by agency procedures; and

(B) Coordinated with the contracting officer and senior advisory group, if any, within the source selection organization.

PGI 215.202-71 Only one offer.

(b) Promote competition.

(2) For competitive solicitations in which more than one potential offeror expressed an interest in an acquisition, but only one offer was ultimately received?

(i) Seek feedback (e.g., issue an RFI) after award from potential offerors expected to submit an offer; and

(ii) Document any feedback received in the contract file.

(3) Agencies must use any feedback received when considering how to overcome barriers to competition for future requirements.

PGI 215.3?POSTAWARD

PGI 215.300 Scope.

PGI 215.304-70 Voluntary disclosure of defective certified cost or pricing data after award.

(a) Contact the Defense Contract Audit Agency (DCAA) to determine the appropriate level of audit assistance required for the circumstances (e.g., nature or dollar amount of the defective pricing disclosure): limited-scope audit (e.g., limited to the affected cost elements of the defective pricing disclosure), full-scope audit, or technical assistance. Discussion topics must include:

(1) Completeness of the contractor?s voluntary disclosure on the affected contract.

(2) Accuracy of the contractor?s cost impact calculation for the affected contract.

(3) Potential impact on existing contracts, task or deliver orders, or other proposals the contractor has submitted to the Government.

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(b) Voluntary disclosure of defective pricing is not a voluntary refund as defined in **242.7100 and does not waive the Government?s entitlement to the recovery of any** overpayment plus interest on the overpayments in accordance with FAR 15.304(a)(1).

(c) Voluntary disclosure of defective pricing does not waive the Government?s rights to pursue defective pricing claims on the affected contract or any other Government contract.

PGI 215.305 Estimating systems.

PGI 215.305-70 Disclosure, maintenance, and review requirements.

(d) Disposition of findings.

(2) Initial determination.

(ii)(A) Within 30 days of receiving the report, provide an initial determination of material weaknesses and a copy of the report to the contractor.

(C) Evaluation of contractor's response. Within 30 days of receiving the contractor?s response to the initial determination, evaluate the contractor?s response and make a final determination.

(3) Final determination.

(ii)(A) Monitoring contractor's corrective action. Monitor, with the auditor, the contractor's progress in correcting material weaknesses. If the contractor fails to make adequate progress, the contracting officer shall take whatever action is necessary to ensure that the contractor corrects the weaknesses and deficiencies, including withdrawing or withholding approval of the system; elevating the issue to the attention of higher level management; reducing or suspending progress payments (see FAR 32.503-6); recommending non-award of potential contracts, as applicable; and increasing the withholding in accordance with 252.242-7005, Contractor Business Systems.

(B) Correction of material weaknesses.

(1) The contractor is required to notify the contracting officer that it has corrected the material weaknesses. Upon receiving notification, request the auditor review the correction to determine if the material weaknesses have been resolved.

(2) Make a determination if the contractor has corrected the material weaknesses.

(3) If the contractor has corrected the material weaknesses, send the contracting officer's notification to the auditor; payment office; appropriate action officers responsible for reporting past performance at the requiring activities; and each contracting and contract administration office having substantial business with the contractor, as applicable.

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PGI 215.4?CONTRACT PRICING

PGI 215.400 Scope of subpart.

PGI 215.402 General.

PGI 215.402-70 Contract pricing?General.

(b)(1) Contracting officers must purchase supplies and services from responsible sources at fair and reasonable prices. The Truthful Cost and Pricing statutes (10 U.S.C. chapter 271 and 41 U.S.C. chapter 35) require offerors to submit certified cost or pricing data if a procurement exceeds the Truthful Cost and Pricing threshold, and none of the exceptions to certified cost or pricing data requirements applies. Under the Truthful Cost and Pricing statute, the contracting officer obtains accurate, complete, and current data from offerors to establish a fair and reasonable price (see FAR 15.403-3 and 215.403-3(a)). The Truthful Cost and Pricing statutes also allow for a price adjustment remedy if it is later found that a contractor did not provide accurate, complete, and current data.

(2) When certified cost or pricing data are not required, and the contracting officer does not have sufficient data to determine price reasonableness, FAR 15.402(a)(2) requires the offeror to provide whatever data the contracting officer needs in order to determine fair and reasonable prices.

(3) Obtaining sufficient data from the offeror is particularly critical in situations where a product or service is determined to be a commercial product or commercial service in accordance with FAR 2.101 and the contract is being awarded on a sole source basis. This includes commercial sales data of products or services sold in similar quantities and, if such data is insufficient, cost data to support the proposed price.

(4) See PGI 215.404-70 and the Department of Defense Guidebook for Acquiring Commercial Items, Part B: Pricing Commercial Items, for more detailed procedures and guidance on obtaining data needed to determine fair and reasonable prices.
PGI 215.403 Obtaining cost or pricing data.
PGI 215.403-1 Data other than certified cost or pricing data.

(b)(1) If certified cost or pricing data are not required by FAR 15.403-3 or 215.403-3(a) and there is no other means for the contracting officer to determine that prices are fair and reasonable, the offeror is required to submit ?data other than certified cost or pricing data?

(see definition at FAR 2.101). In accordance with FAR 15.403-1(b), the offeror must provide appropriate data on the prices at which the same or similar items have previously been sold, adequate for determining the reasonableness of the price. The following clarifies the requirements of this section?

(i) Data other than certified cost or pricing data. When certified cost or pricing data are not required, obtain whatever data is necessary in order to determine the reasonableness of the price. The FAR defines this as ?data other than certified cost or pricing data.? When TINA does not apply and there is no other means of determining that prices are fair and reasonable, obtain appropriate data on the prices at which the same or similar items have been sold previously, adequate for evaluating the reasonableness of the price. Sales data must be comparable to the quantities, capabilities, specifications, etc., of the product or service proposed. Sufficient steps must be taken to verify the integrity of the

sales data, to include assistance from the Defense Contract Management Agency, the Defense Contract Audit Agency, and/or other agencies if required. See PGI 215.404-70 for more detailed procedures for obtaining data from offerors to determine price reasonableness.

(ii) Previously been sold. Request offerors provide data related to prior sales (or ?offered for sale?) in support of price reasonableness determinations.

(iii) Adequacy of sales data for pricing. Determine if the prior sales data is sufficient for determining that prices are fair and reasonable. If the sales data is not sufficient, obtain additional data, including cost data if necessary. See PGI 215.404-70 for more detailed procedures for obtaining whatever data is needed to determine fair and reasonable prices.

(c) Prepare a written request that clearly describes the required data, the reason the data is required to determine fair and reasonable pricing, and the due date for submission. Request data in the offeror?s existing format but require appropriate explanations if necessary to enable analysis (see FAR 15.105-4(b)(2)). When a request for proposal contains solicitation provision DFARS 252.215-7994, offerors are to respond to data requests within 10 days.

PGI 215.403-170 Contracting officer responsibilities.

(a) Analysis of historical prices paid by the Government.

(i) Consider prices paid by the Government and commercial customers. Do not rely solely on a prior price paid by the Government without further analysis (see FAR 15.404-1).

(A) Verify and document that sufficient analysis was performed on the prior price to determine that the prior price was fair and reasonable. Sometimes, due to urgent situations, supplies or services are purchased even though an adequate price or cost analysis could not be performed. The problem is exacerbated when other contracting officers assume these prices were adequately analyzed and determined to be fair and reasonable.

(B) Investigate and document the following considerations:

(1) Verify that the quantities were similar for pricing purposes, making adjustments as necessary to ensure comparability with the current quantity requirement;

(2) Consider whether the historical purchases were recent enough to be relevant for the purpose of establishing price reasonableness of the current acquisition, and escalate or deflate the historical prices as appropriate to facilitate comparison to the current proposed price; and

(3) Validate that the terms and conditions associated with the historical purchases were comparable to the current terms and conditions, or adjust the historical prices in a manner that accounts for the materially differing terms and conditions.

(ii) Not verifying that a previous analysis was performed, or the consistencies in quantities, has been a recurring issue on sole source commercial products and commercial services reported by oversight organizations. Sole source commercial products and

commercial services require extra attention to verify that previous prices paid on Government contracts were sufficiently analyzed and determined to be fair and reasonable.

(iii) At a minimum, review price history and discuss the basis of previous prices paid with the contracting organization that previously bought the item. Document the discussions in the contract file.

(b) Refusals to submit data.

(i) When additional data is required to determine price reasonableness and the offeror does not respond to data requests (see PGI 215.403-1(c)), use the following sequence of steps?

(A) If the offeror does not submit the requested data on time, document any missed deadlines in the contract file. If the offeror does not respond or refuses to provide

the requested data, elevate the issue within the contracting activity.

(B) The contracting activity, with support from the contracting officer, may engage the offeror?s leadership for resolution.

(C) If the offeror continues to refuse to provide the data, the contracting activity will elevate the issue to the head of the contracting activity for a determination in accordance with DFARS 215.403-170(b).

(D) Document the contract file to describe?

(1) The data requested and the need for that data;

(2) Why there is currently no other alternative but to procure the item from this particular source; and

(3) A written plan for avoiding this situation in the future (e.g., develop a second source by...; bring the procurement in house to the Government by...).

(E) Consistent with the requirements at FAR 15.104 and 42.1102 and the Contractor Performance Assessment Reporting System (CPARS), unless exempted by the HCA, provide input into the past performance system, noting the offeror?s refusal to provide requested information.

(ii) Delegation. The HCA may delegate, no lower than one level above the contracting officer, the authority to determine whether it is in the best interest of the Government to issue an award in accordance with DFARS 215.403-170(b). This individual may be the individual responsible for approval of the prenegotiation objective (see DFARS **215.408-1), unless that individual is the contacting officer.**

(iii) Reporting requirements.

(A) Document, collect, and provide a report in the standard digital format (see paragraph (b)(iii)(B) of this subsection) to the HCA of all denials of contracting officer requests to offerors or contractors for data other than certified cost or pricing data that are not resolved through the elevation process at (b)(i) of this section and, therefore, require a determination by the HCA in accordance with DFARS 215.403-170(b). Place the HCA determination in the contract file.

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(B) The HCA shall consolidate and validate this information for all impacted contracts and modifications regardless of dollar value and submit the information in the standard digital format available at https://www.acq.osd.mil/dpap/dars/pgi/docs/Data_Denials_Template_9-26-23.xlsx. A completed report or note of no findings is required to fulfill the reporting requirement to the Principal Director, Defense Pricing, Contracting, and Acquisition Policy (DPCAP). Reports are due to DPCAP 30 days after the end of each quarterly reporting period. HCAs must transmit reports electronically to DPCAP at osd.pentagon.ousd-a-s.mbx.dpc-pcf@mail.mil for incorporation into the ?Annual Report to Congress on Denials of Contracting Officer Uncertified Cost or Pricing Data Requests? submitted by the Under Secretary of Defense for Acquisition and Sustainment in accordance with 10 U.S.C. 3705(b)(2)(B).

(C) HCAs must provide only the data denial section of the report that is

applicable to the contractor or offeror reported within than 30 calendar days after receiving sections of the report in (B) from the Under Secretary of Defense for Acquisition and Sustainment. For subcontractors and interorganizational transfers, the HCA must provide a copy directly to the prime contractor for submittal to the applicable subcontractor or transferring organization.

PGI 215.403-2 Prohibitions on obtaining certified cost or pricing data.

PGI 215.403-270 Prohibition on obtaining certified cost or pricing data

(a)(1) Exceptions to certified cost or pricing data requirements. Even if an exception to certified cost or pricing data applies, the contracting officer is still required to determine price reasonableness.

(b) Waivers.

(1) Exceptional case TINA waiver.

(i) In determining that an exceptional case TINA waiver is appropriate, the HCA must ensure that the supplies or services could not be obtained without the waiver and that the determination is clearly documented. The intent is not to relieve entities that normally perform Government contracts subject to TINA from an obligation to certify that cost or pricing data are accurate, complete, and current. Instead, use waivers judiciously, in situations where the Government could not otherwise obtain a needed item without a waiver. A prime example would be when a particular company offers an item that is essential to DoD?s mission but is not available from other sources, and the company refuses to submit certified cost or pricing data. In such cases, a waiver may be appropriate. However, the procuring agency should, in conjunction with the waiver, develop a strategy for procuring the item in the future that will not require such a waiver (e.g., develop a second source, develop an alternative product that satisfies the department?s needs, or have DoD produce the item).

(ii) Senior procurement executive coordination. An exceptional case TINA waiver that exceeds $100 million shall be coordinated with the senior procurement executive prior to granting the waiver.

(iii) Waiver for part of a proposal. The requirement for submission of certified cost or pricing data may be waived for part of an offeror?s proposed price when it is possible to clearly identify that part of the offeror?s cost proposal to which the waiver applies as separate and distinct from the balance of the proposal. In granting a partial waiver, in

addition to complying with the requirements in DFARS 215.403-270(b)(3), the HCA must address why it is in the Government?s best interests to grant a partial waiver, given that the offeror has no objection to certifying to the balance of its cost proposal.

(iv) Waivers for unpriced supplies or services. Because there is no price, unpriced supplies or services cannot be subject to cost or pricing data certification requirements. The Government cannot agree in advance to waive certification requirements for unpriced supplies or services, and may only consider a waiver at such time as an offeror proposes a price that would otherwise be subject to certification requirements.

(2) Annual Reporting Requirement. By November 30th of each year, departments

and agencies must provide a report to the Office of the Principal Director, Defense Pricing, Contracting, and Acquisition Policy (Price, Cost and Finance), of all waivers granted during the previous fiscal year under FAR 15.403-2(b)(4) and DFARS 215.403-270(b)(1) for any contract, subcontract, or modification expected to have a value of $25 million or more. The annual report of waiver of TINA requirements shall include the following?
Title: Waiver of TINA Requirements

(A) Contract number, including modification number, if applicable, and program name.

(B) Contractor name.

(C) Contracting activity.

(D) Total dollar amount waived.

(E) Brief description of why the item(s) could not be obtained without a waiver.

(F) Brief description of the specific steps taken to ensure price reasonableness.

(G) Brief description of the demonstrated benefits of granting the waiver.

(3) Waivers applicable to the Canadian Commercial Corporation. All contracts with the Canadian Commercial Corporation (CCC) are placed in accordance with the practices, policies and procedures of the Government of Canada covering procurement for defense purposes (see PGI 225.870). Contracting Officers may rely on the confirmation and endorsement of the offer from the Canadian Commercial Corporation at 225.870-3(a) as an endorsement of the cost/price as no more than would be charged to the Canadian government.

(i) When 252.215-7990 or 252.215-7991 are included in a solicitation with the Canadian Commercial Corporation, the data required by paragraph (b)(i) and (ii), in concert with the confirmation and endorsement of the offer, is intended to meet the requirements of FAR 15.408-2 for documentation of fair and reasonable pricing.

(ii) Support the Use of 252.215-7990 or 252.215-7991 in sole source acquisitions not meeting the threshold at 215.110-70(b)(1)(i)(A) or (b)(2)(i)(A) or competitive acquisitions at any dollar value with a determination and finding justifying the anticipated

need for data other than certified cost or pricing data to determine a fair and reasonable price.

(iii) When the need for additional data to establish a fair and reasonable price, specific data is anticipated, request the data in the solicitation using 252.215-7990.

(iv) Examples of clause use:

Scenario	Requirement
Sole source to CCC, fixed price, with estimated value of $600 million.	Include provision and clause in accordance with 215.110-70(b)(1)(i)(A)(2) and (b)(2)(i)(A)(2), respectively, because estimated value exceeds $500 million.

Sole source to CCC, cost reimbursement, Include provision and clause in
with estimated value of $800,000. accordance with215.110-70(b)(1)(i)(A)(1)
and (b)(2)(i)(A)(1), respectively, because
estimated value exceeds $700,000.
Sole source to CCC ,cost-reimbursement, Do not include provision and clause,
with estimated value of $500,000. unless D&F is approved in accordance
with215.110-70(b)(1)(i)(B) and
(b)(2)(i)(B), respectively, because
estimated value does not exceed
$700,000.
Sole source to CCC ,fixed price, with Do not include provision and clause,
estimated value of $800,000 unless D&F is approved in accordance
with215.110-70(b)(1)(i)(B) and
(b)(2)(i)(B), respectively, because
estimated value does not exceed $500
million.
Modifications to contracts that include the If 252.215-7991 is included in the
clause 252.215-7991. contract, then data are required for
modifications valued above the simplified
acquisition threshold, or a higher
threshold specified in the solicitation by
the contracting officer, in accordance with
252.215-7991(b).
PGI 215.403-4 Certificate of current cost or pricing data.

(a) Prior to the start of negotiations, contracting officers should notify offerors and contractors that?

(1) A Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.403-4, must be submitted as soon as practicable after agreement on price (preferably within 5 days after price agreement), but before contract award or execution of a modification (except for unpriced actions such as letter contracts).

(2) A Certificate of Current Cost or Pricing Data that deviates from the language specified in FAR 15.403-4 or has been amended to include certification of data submitted after the date of price agreement, will not be accepted.

(b) If any data is submitted after the date of price agreement, contracting officers must?

(1) Notify offerors in writing that such data will not be reviewed until after contract award and will be dispositioned in accordance with FAR 15.304 and FAR clause 52.215-10 or 52.215-11, as applicable, or

(2) Consider the previous price agreement null and void, and prior to award?

(i) Reopen negotiations to assess the impact of the data submitted after the date of price agreement (?sweep data?),

(ii) Reestablish price agreement based on cost or pricing data that is accurate, complete, and current as of the date of the revised agreement on price, and

(iii) Obtain a new Certificate of Current Cost or Pricing Data for any new or revised data submitted after the previous certification.

(3) If a contractor persistently submits untimely ?sweep? data or fails to timely submit cost or pricing data or the certification that the data are accurate, complete, and current as of the data of price agreement, the contracting officer should refer the matter to the Defense Contract Audit Agency (DCAA) via the Administrative Contracting Officer, Divisional Administrative Contracting Officer, or Corporate Administrative Contracting Officer, as appropriate, for consideration in DCAA?s review of the adequacy of the contractor?s estimating system.

PGI 215.404 Cost and/or price analysis.

PGI 215.404-170 Price Analysis.

(a) See the Department of Defense Guidebook for Acquiring Commercial Items, **Part B: Pricing Commercial Items, for detailed guidance about techniques and approaches** to pricing commercial products and commercial services.

(e) Contracting officers must obtain and document sufficient data to confirm that previous prices paid by the Government were based on a thorough price and/or cost analysis. For example, it would not be sufficient to use price(s) from a database paid by another contracting officer without understanding the type of analysis that was performed to determine the reasonableness of the price(s), and without verifying that the quantities were similar for pricing purposes. This does not necessarily need to be another analysis, but there should be coordination with the other office that acknowledges an analysis was performed previously.

(g) DoD?s cadre of experts within the Defense Contract Management Agency (DCMA) will provide assistance with commercial product or commercial service determinations and price reasonableness determinations. Information about how to obtain advisory assistance from DCMA?s Commercial Item Group is available via email at dcma.boston-ma.easterrn-rc.mbx.Commercial@mail.mil or at http://www.dcma.mil/commercial-item-group/.

PGI 215.404-2 Cost Analysis.

(a)(1) When the contracting officer cannot obtain sufficient data to perform a price analysis in accordance with FAR 15.404-1, a cost analysis is required.

(2) When a solicitation is not subject to TINA and a cost analysis is required, clearly communicate to the offeror or contractor the cost data that will be needed to determine if the proposed price is fair and reasonable. See PGI 215.403-1(c).

(3) Consider the need for field pricing support from the Defense Contract Management Agency, the Defense Contract Audit Agency, and/or other agencies. See PGI **215.404-4 and 215.406.**

PGI 215.404-4 Technical cost or price analysis.
Technical review can assist in evaluating the changes that are required to get from the ?similar to? item to the item being solicited. This may establish sufficient price/cost analysis techniques to determine the price for the item being solicited is fair and reasonable. Information about how to obtain advisory assistance from the DoD cadre of experts in the DCMA CIG is available via email at dcma.boston-ma.eastern-rc.mbx.Commercial@mail.mil or at http://www.dcma.mil/commercial-item-group/.
PGI 215.404-7 Review and justification of pass-through contracts.

(a) This requirement applies to acquisitions that include the clause at FAR 52.215-23, Limitations on Pass-Through Charges, as prescribed at FAR 15.110(v)(2)(i). When considering alternative approaches or making the determination that the contracting approach selected is in the best interest of the Government as required by FAR 15.404-7, consider the following elements?

(1) The requirement, proposed prime contractor, and overall proposed contract value.

(2) The information provided in response to the provision at FAR 52.215-22, Limitations on Pass-Through Charges?Identification of Subcontract Effort, regarding the subcontracts, and the estimated value of the proposed subcontracts.

(3) The availability of alternative existing contracts that would allow direct access to the subcontractor, such as existing indefinite delivery/indefinite quantity contracts, Federal Supply Schedule contracts, or Governmentwide agency contracts. Perform market research as appropriate.

(4) Potential cost savings of directly contracting with the subcontractor.

(5) Feasibility of competition for the subcontracted effort or justification for single source procurement.

(6) Potential impacts to the contracting and program schedule for implementing a direct contract with the subcontractors or conducting a competition for the subcontracted effort.

(7) Changes in performance risk as result of eliminating prime contractor oversight and substituting direct government oversight. Risks may include loss of prime contractor knowledge of integration and program requirements, availability of government contracting and contract administration personnel, reduced system or program accountability of the prime contractor who is no longer responsible for the entire effort, impact on warranties.

(8) Subcontractor past performance and experience directly managing programs of this size.

(b) DoD components must include reviews of compliance in routine procurement management reviews or other inspections.
PGI 215.404-8 Subcontract pricing considerations.

(a) Consider the need for field pricing analysis and evaluation of lower-tier subcontractor proposals, and assistance to prime contractors when they are being denied access to lower-

tier subcontractor records.

(1) When obtaining field pricing assistance on a prime contractor?s proposal, the contracting officer should request audit or field pricing assistance to analyze and evaluate the proposal of a subcontractor at any tier (notwithstanding availability of data or analyses performed by the prime contractor) if the contracting officer believes that such assistance is necessary to ensure the reasonableness of the total proposed price. Such assistance may be appropriate when, for example?

(i) There is a business relationship between the contractor and the subcontractor not conducive to independence and objectivity;

(ii) The contractor is a sole source supplier and the subcontract costs represent a substantial part of the contract cost;

(iii) The contractor has been denied access to the subcontractor?s records;

(iv) The contracting officer determines that, because of factors such as the size of the proposed subcontract price, audit or field pricing assistance for a subcontract at any tier is critical to a fully detailed analysis of the prime contractor?s proposal;

(v) The contractor or higher-tier subcontractor has been cited for having significant estimating system deficiencies in the area of subcontract pricing, especially the failure to perform adequate cost analyses of proposed subcontract costs or to perform subcontract analyses prior to negotiation of the prime contract with the Government; or

(vi) A lower-tier subcontractor has been cited as having significant estimating system deficiencies.

(2) It may be appropriate for the contracting officer or the ACO to provide assistance to a contractor or subcontractor at any tier, when the contractor or higher-tier subcontractor has been denied access to a subcontractor?s records in carrying out the responsibilities at FAR 15.404-8 to conduct price or cost analysis to determine the reasonableness of proposed subcontract prices. Under these circumstances, the contracting officer or the ACO should consider whether providing audit or field pricing assistance will serve a valid Government interest.

(3) When DoD performs the subcontract analysis, DoD must furnish to the prime contractor or higher-tier subcontractor, with the consent of the subcontractor reviewed, a summary of the analysis performed in determining any unacceptable costs included in the subcontract proposal. If the subcontractor withholds consent, DoD shall furnish a range of unacceptable costs for each element in such a way as to prevent disclosure of subcontractor proprietary data.

(4) Price redeterminable or fixed-price incentive contracts may include subcontracts placed on the same basis. When the contracting officer wants to reprice the prime contract even though the contractor has not yet established final prices for the subcontracts, the contracting officer may negotiate a firm contract price?

(i) If certified cost or pricing data on the subcontracts show the amounts to be reasonable and realistic; or

(ii) If certified cost or pricing data on the subcontracts are too indefinite to determine whether the amounts are reasonable and realistic, but?

(A) Circumstances require prompt negotiation; and

(B) A statement substantially as follows is included in the repricing modification of the prime contract:

As soon as the Contractor establishes firm prices for each subcontract listed below, the Contractor shall submit (in the format and with the level of detail specified by the Contracting Officer) to the Contracting Officer the subcontractor's cost incurred in performing the subcontract and the final subcontract price. The Contractor and the Contracting Officer shall negotiate an equitable adjustment in the total amount paid or to be paid under this contract to reflect the final subcontract price.

(5) If the selection of the subcontractor is based on a trade-off among cost or price and other non-cost factors rather than lowest price, the analysis supporting subcontractor selection should include a discussion of the factors considered in the selection (also see FAR 15.103 and 15.104 and DFARS 215.104-70). If the contractor?s analysis is not adequate, return it for correction of deficiencies.

(6) Do not permit fees negotiated by contractors for cost-plus-fixed-fee subcontracts to exceed the statutory fee limitations in FAR 15.404-9(c)(4).

PGI 215.404-970 DD Form 1547, Record of Weighted Guidelines Method Application.

(a) The DD Form 1547?

(1) Provides a vehicle for performing the analysis necessary to develop a profit objective, and

(2) Provides a format for summarizing profit amounts subsequently negotiated as **part of the contract price.**

(b)(1) Use and prepare a DD Form 1547 whenever a structured approach to profit analysis is required by DFARS 215.404-970 (see PGI 215.404-971, 215.404-972, and **215.404-973 for guidance on using the structured approaches). Administrative instructions** for completing the form are in PGI 253.215-70.

(2) Ensure that the DD Form 1547 is accurately completed. The contracting officer is responsible for the correction of any errors detected by the management system auditing process.

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PGI 215.404-971 Weighted guidelines method.

(a) General.

(1) The weighted guidelines method focuses on four profit factors?

(i) Performance risk,

(ii) Contract type risk,

(iii) Facilities capital employed, and

(iv) Cost efficiency.

(2) Assign values to each profit factor; the value multiplied by the base results in the profit objective for that factor. Except for the cost efficiency special factor, each profit factor has a normal value and a designated range of values. The normal value is representative of average conditions on the prospective contract when compared to all goods and services acquired by DoD. The designated range provides values based on above normal or below normal conditions. In the price negotiation documentation, address conditions that justify assignment of other than the normal value. The cost efficiency special factor has no normal value. Exercise sound business judgment in selecting a value when this special factor is used (see 215.404-971(e)).

(b) Performance risk.

(1) Description. This profit factor addresses the contractor's degree of risk in fulfilling the contract requirements. The factor consists of two parts:

(i) Technical--the technical uncertainties of performance.

(ii) Management/cost control--the degree of management effort necessary?

(A) To ensure that contract requirements are met; and

(B) To reduce and control costs.

(2) Determination. The following extract from the DD Form 1547 is annotated to describe the process.

Assigned Assigned Base Profit

Item Contractor Risk Factors Weighting Value (Item 20) Objective

21. Technical (1) (2) N/A N/A

22. Management/ (1) (2) N/A N/A

Cost Control

23. Performance Risk N/A (3) (4) (5)

(Composite)

(i) Assign a weight (percentage) to each element according to its input to the total performance risk. The total of the two weights equals 100 percent.

(ii) Select a value for each element from the list in paragraph (b)(3) of this section using the evaluation criteria in paragraphs (b)(4) and (b)(5) of this section.

(iii) Compute the composite as shown in the following example:

Assigned Assigned Weighted

Weighting Value Value

Technical 60% 5.0% 3.0%

Management/ 40% 4.0% 1.6%

Cost Control

Composite Value 100% 4.6%

(iv) Insert the amount from Block 20 of the DD Form 1547. Block 20 is total

contract costs, excluding facilities capital cost of money.

(v) Multiply (b)(2)(iii) by (b)(2)(iv).

(3) Values: Normal and designated ranges.

Normal Value Designated Range

Standard 5% 3% to 7%

Technology 9% 7% to 11%

Incentive

(i) Standard. The standard designated range should apply to most contracts.

(ii) Technology incentive. For the technical factor only, contracting officers may use the technology incentive range for acquisitions that include development, production, or application of innovative new technologies. The technology incentive range does not apply to efforts restricted to studies, analyses, or demonstrations that have a technical report as their primary deliverable.

(4) Evaluation criteria for technical.

(i) Review the contract requirements and focus on the critical performance elements in the statement of work or specifications. Factors to consider include?

(A) Technology being applied or developed by the contractor,

(B) Technical complexity,

(C) Program maturity,

(D) Performance specifications and tolerances,

(E) Delivery schedule, and

(F) Extent of a warranty or guarantee.

(ii) Above normal conditions.

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(A) The contracting officer may assign a higher than normal value in those cases where there is a substantial technical risk. Indicators are?

(1) Items are being manufactured using specifications with stringent tolerance limits,

(2) The efforts require highly skilled personnel or require the use of state-of-the-art machinery,

(3) The services and analytical efforts are extremely important to the Government and must be performed to exacting standards,

(4) The contractor's independent development and investment has reduced the Government's risk or cost,

(5) The contractor has accepted an accelerated delivery schedule to meet DoD requirements, or

(6) The contractor has assumed additional risk through warranty provisions.

(B) Extremely complex, vital efforts to overcome difficult technical obstacles that require personnel with exceptional abilities, experience, and professional credentials may justify a value significantly above normal.

(C) The following may justify a maximum value?

(1) Development or initial production of a new item, particularly if performance or quality specifications are tight, or

(2) A high degree of development or production concurrency.

(iii) Below normal conditions.

(A) The contracting officer may assign a lower than normal value in those cases where the technical risk is low. Indicators are?

(1) Requirements are relatively simple,

(2) Technology is not complex,

(3) Efforts do not require highly skilled personnel,

(4) Efforts are routine,

(5) Programs are mature, or

(6) Acquisition is a follow-on effort or a repetitive type acquisition.

(B) The contracting officer may assign a value significantly below normal for?

(1) Routine services,

(2) Production of simple items,

(3) Rote entry or routine integration of Government-furnished information, or

(4) Simple operations with Government-furnished property.

(iv) Technology incentive range.

(A) The contracting officer may assign values within the technology incentive range when contract performance includes the introduction of new, significant technological innovation. Use the technology incentive range only for the most innovative contract efforts. Innovation may be in the form of?

(1) Development or application of new technology that fundamentally changes the characteristics of an existing product or system and that results in increased technical performance, improved reliability, or reduced costs, or

(2) New products or systems that contain significant technological advances over the products or systems they are replacing.

(B) When selecting a value within the technology incentive range, the contracting officer should consider the relative value of the proposed innovation to the acquisition as a whole. When the innovation represents a minor benefit, the contracting officer should consider using values less than the norm. For innovative efforts that will have a major positive impact on the product or program, the contracting officer may use values above the norm.

(5) Evaluation criteria for management/cost control.

(i) The contracting officer should evaluate?

(A) The contractor's management and internal control systems using contracting office data, information and reviews made by field contract administration offices

or other DoD field offices,

(B) The management involvement expected on the prospective contract action,

(C) The degree of cost mix as an indication of the types of resources applied and value added by the contractor,

(D) The contractor's support of Federal socioeconomic programs,

(E) The expected reliability of the contractor's cost estimates (including the contractor's cost estimating system),

(F) The adequacy of the contractor's management approach to controlling cost and schedule, and

(G) Any other factors that affect the contractor's ability to meet the cost targets (e.g., foreign currency exchange rates and inflation rates).

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(ii) Above normal conditions.

(A) The contracting officer may assign a higher than normal value when there is a high degree of management effort. Indicators of this are?

(1) The contractor's value added is both considerable and reasonably difficult,

(2) The effort involves a high degree of integration or coordination,

(3) The contractor has a good record of past performance,

(4) The contractor has a substantial record of active participation in Federal socioeconomic programs,

(5) The contractor provides fully documented and reliable cost estimates,

(6) The contractor makes appropriate make-or-buy decisions, or

(7) The contractor has a proven record of cost tracking and control.

(B) The contracting officer may justify a maximum value when the effort?

(1) Requires large scale integration of the most complex nature,

(2) Involves major international activities with significant management coordination (e.g., offsets with foreign vendors), or

(3) Has critically important milestones.

(C) If the contractor demonstrates efficient management and cost control through the submittal of a timely, qualifying proposal (as defined in 217.7401) in furtherance of definitization of an undefinitized contract action, and the proposal demonstrates effective cost control from the time of award to the present, the contracting officer may add 1 percentage point to the value determined for management/cost control up to the maximum of 7 percent.

(iii) Below normal conditions.

(A) The contracting officer may assign a lower than normal value when the management effort is minimal. Indicators of this are?

(1) The program is mature and many end item deliveries have been

made;

(2) The contractor adds minimal value to an item;

(3) The efforts are routine and require minimal supervision;

(4) The contractor provides poor quality, untimely proposals;

(5) The contractor fails to provide an adequate analysis of subcontractor costs;

(6) The contractor does not cooperate in the evaluation and negotiation of the proposal;

(7) The contractor's cost estimating system is marginal;

(8) The contractor has made minimal effort to initiate cost reduction programs;

(9) The contractor's cost proposal is inadequate;

(10) The contractor has a record of cost overruns or another indication of unreliable cost estimates and lack of cost control; or

(11) The contractor has a poor record of past performance.

(B) The following may justify a value significantly below normal?

(1) Reviews performed by the field contract administration offices disclose unsatisfactory management and internal control systems (e.g., quality assurance, property control, safety, security); or

(2) The effort requires an unusually low degree of management involvement.

(c) Contract type risk and working capital adjustment.

(1) Description. The contract type risk factor focuses on the degree of cost risk accepted by the contractor under varying contract types. The working capital adjustment is an adjustment added to the profit objective for contract type risk. It only applies to fixed-price contracts that provide for progress payments. Though it uses a formula approach, it is not intended to be an exact calculation of the cost of working capital. Its purpose is to give general recognition to the contractor's cost of working capital under varying contract circumstances, financing policies, and the economic environment.

(2) Determination. The following extract from the DD 1547 is annotated to explain the process.

Contractor Assigned Base Profit

Item	Risk Factors	Value	Objective
24a	Contract Type Risk (1) (2)(i) (3) (based on incurred		

costs at the time of
qualifying proposal
submission)
24b Contract Type Risk (1) (2)(ii) (3)
(based on
Government
estimated cost to
complete)
24c Totals (3) (3)
Contractor Costs Length Interest Profit
Item Risk Factors Financed Factor Rate Objective
25 Working Capital (4) (5) (6) (7) (8)

(i) Select a value from the list of contract types in paragraph (c)(3) of this section using the evaluation criteria in paragraph (c)(4) of this section. See paragraph (c)(4)(ii) of this section.

(ii)(A) Insert the amount of costs incurred as of the date the contractor submits a qualifying proposal, such as under an undefinitized contract action (excluding facilities capital cost of money) into the Block 24a column titled Base.

(B) Insert the amount of Government estimated cost to complete (excluding facilities capital cost of money) into the Block 24b column titled Base.

(iii) Multiply (1) by (c)(2)(ii)(A) and (c)(2)(ii)(B), respectively for blocks 24a and **24b. Add Blocks 24a and 24b and insert the totals in Block 24c.**

(iv) Only complete this block when the prospective contract is a fixed-price contract containing provisions for progress payments.

(v) Insert the amount computed per paragraph (c)(5) of this section.

(vi) Insert the appropriate figure from paragraph (c)(6) of this section.

(vii) Use the interest rate established by the Secretary of the Treasury (see https://www.fiscal.treasury.gov/prompt-payment/rates.html). Do not use any other interest rate.

(viii) Multiply (c)(2)(v) by (c)(2)(vi) by (c)(2)(vii). This is the working capital adjustment. It shall not exceed 4 percent of the contract costs in Block 20.

(3) Values: Normal and designated ranges.

Normal Designated
Contract Type Notes Value Range
(percent) (percent)
Firm-fixed-price, no financing (i) 5 4 to 6
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Firm-fixed-price, with performance-based (vi) 4 2.5 to 5.5
payments
Firm-fixed-price, with progress payments (ii) 3 2 to 4
Fixed-price incentive, no financing (i) 3 2 to 4

Fixed-price incentive, with performance- (vi) 2 0.5 to 3.5
based payments
Fixed-price with redetermination provision (iii)
Fixed-price incentive, with progress (ii) 1 0 to 2
payments
Cost-plus-incentive-fee (iv) 1 0 to 2
Cost-plus-fixed-fee (iv) 0.5 0 to 1
Time-and-materials (including overhaul (v) 0.5 0 to 1
contracts priced on time-and-materials
basis)
Labor-hour (v) 0.5 0 to 1
Firm-fixed-price, level-of-effort (v) 0.5 0 to 1

(i) ?No financing? means either that the contract does not provide progress payments or performance-based payments, or that the contract provides them only on a limited basis, such as financing of first articles. Do not compute a working capital adjustment.

(ii) When the contract contains provisions for progress payments, compute a working capital adjustment (Block 25).

(iii) For the purposes of assigning profit values, treat a fixed-price contract with redetermination provisions as if it were a fixed-price incentive contract with below normal conditions.

(iv) Cost-plus contracts shall not receive the working capital adjustment.

(v) These types of contracts are considered cost-plus-fixed-fee contracts for the purposes of assigning profit values. They shall not receive the working capital adjustment in Block 25. However, they may receive higher than normal values within the designated range to the extent that portions of cost are fixed.

(vi) When the contract contains provisions for performance-based payments, do not compute a working capital adjustment.

(4) Evaluation criteria.

(i) General. The contracting officer should consider elements that affect contract type risk such as?

(A) Length of contract,

(B) Adequacy of cost data for projections,

(C) Economic environment,

(D) Nature and extent of subcontracted activity,

(E) Protection provided to the contractor under contract provisions (e.g., economic price adjustment clauses),

(F) The ceilings and share lines contained in incentive provisions,

(G) Risks associated with contracts for foreign military sales (FMS) that are not funded by U.S. appropriations, and

(H) When the contract contains provisions for performance-based payments?

(1) The frequency of payments,

(2) The total amount of payments compared to the maximum allowable amount specified at FAR 32.1004(b)(2), and

(3) The risk of the payment schedule to the contractor.

(ii) Mandatory.

(A) Assess the extent to which costs have been incurred prior to definitization of the contract action (also see 217.7404-6 and 243.370-6). When considering the reduced cost risks associated with allowable incurred costs on an undefinitized contract action, it is appropriate to apply separate contract risk factors for allowable incurred costs and estimated costs to complete when completing the contract risk sections of DD Form 1547, Record of Weighted Guidelines. When costs have been incurred prior to definitization, generally regard the contract type risk to be in the low end of the designated range. If a substantial portion of the costs has been incurred prior to definitization, the contracting officer may assign a value as low as zero percent, regardless of contract type. However, if a contractor submits a qualifying proposal to definitize an undefinitized contract action and the contracting officer for such action definitizes the contract after the end of the 180-day period beginning on the date on which the contractor submitted the qualifying proposal as defined in 217.7401, the profit allowed on the contract shall accurately reflect the cost risk of the contractor as such risk existed on the date the contractor submitted the qualifying proposal.

(B) Document in the price negotiation memorandum the reason for assigning a specific contract type risk value, to include the extent to which any reduced cost risk during the undefinitized period of performance was considered, in determining the negotiation objective.

(iii) Above normal conditions. The contracting officer may assign a higher than normal value when there is substantial contract type risk. Indicators of this are?

(A) Efforts where there is minimal cost history,

(B) Long-term contracts without provisions protecting the contractor, particularly when there is considerable economic uncertainty.

(C) Incentive provisions (e.g., cost and performance incentives) that place a high degree of risk on the contractor,

(D) FMS sales (other than those under DoD cooperative logistics support arrangements or those made from U.S. Government inventories or stocks) where the contractor can demonstrate that there are substantial risks above those normally present in DoD contracts for similar items, or

(E) An aggressive performance-based payment schedule that increases risk.

(iv) Below normal conditions. The contracting officer may assign a lower than

normal value when the contract type risk is low. Indicators of this are?

(A) Very mature product line with extensive cost history,

(B) Relatively short-term contracts,

(C) Contractual provisions that substantially reduce the contractor's risk,

(D) Incentive provisions that place a low degree of risk on the contractor,

(E) Performance-based payments totaling the maximum allowable amount(s) specified at FAR 32.1004(b)(2), or

(F) A performance-based payment schedule that is routine with minimal risk.

(5) Costs financed.

(i) Costs financed equal total costs multiplied by the portion (percent) of costs financed by the contractor.

(ii) Total costs equal Block 20 (i.e., all allowable costs excluding facilities capital cost of money), reduced as appropriate when?

(A) The contractor has little cash investment (e.g., subcontractor progress payments liquidated late in period of performance),

(B) Some costs are covered by special financing provisions, such as advance payments, or

(C) The contract is multiyear and there are special funding arrangements.

(iii) The portion that the contractor finances is generally the portion not covered by progress payments, i.e., 100 percent minus the customary progress payment rate (see FAR 32.501-1). For example, if a contractor receives progress payments at 80 percent, the portion that the contractor finances is 20 percent. On contracts that provide progress payments to small businesses, use the customary progress payment rate for large businesses.

(6) Contract length factor.

(i) This is the period of time that the contractor has a working capital investment in the contract. It?

(A) Is based on the time necessary for the contractor to complete the substantive portion of the work,

(B) Is not necessarily the period of time between contract award and final delivery (or final payment), as periods of minimal effort should be excluded,

(C) Should not include periods of performance contained in option provisions, and

(D) Should not, for multiyear contracts, include periods of performance beyond that required to complete the initial program year's requirements.

(ii) The contracting officer?

(A) Should use the following table to select the contract length factor,

(B) Should develop a weighted average contract length when the contract has multiple deliveries, and

(C) May use sampling techniques provided they produce a representative result.

TABLE

Period to Perform Substantive Contract Length
Portion (in months) Factor
21 or less .40
22 to 27 .65
28 to 33 .90
34 to 39 1.15
40 to 45 1.40
46 to 51 1.65
52 to 57 1.90
58 to 63 2.15
64 to 69 2.40
70 to 75 2.65
76 or more 2.90

(iii) Example: A prospective contract has a performance period of 40 months with end items being delivered in the 34th, 36th, 38th, and 40th months of the contract. The average period is 37 months and the contract length factor is 1.15.

(d) Facilities capital employed.

(1) Description. This factor focuses on encouraging and rewarding capital investment in facilities that benefit DoD. It recognizes both the facilities capital that the contractor will employ in contract performance and the contractor's commitment to improving productivity.

(2) Contract facilities capital estimates. Estimate the facilities capital cost of money and capital employed using?

(i) An analysis of the appropriate Forms CASB-CMF and cost of money factors (48 CFR 9904.414 and FAR 31.205-10), and

(ii) DD Form 1861, Contract Facilities Capital Cost of Money.

(3) Use of DD Form 1861.

(i) Purpose. The DD Form 1861 provides a means of linking the Form CASB-CMF and DD Form 1547, Record of Weighted Guidelines Application. It?

(A) Enables the contracting officer to differentiate profit objectives for various types of assets (land, buildings, equipment). The procedure is similar to applying overhead rates to appropriate overhead allocation bases to determine contract overhead costs.

(B) Is designed to record and compute the contract facilities capital cost of money and capital employed which is carried forward to DD Form 1547.

(ii) Completion instructions. Complete a DD Form 1861 only after evaluating the contractor's cost proposal, establishing cost of money factors, and establishing a

prenegotiation objective on cost. Complete the form as follows?

(A) List overhead pools and direct-charging service centers (if used) in the same structure as they appear on the contractor's cost proposal and Form CASB-CMF. The structure and allocation base units-of-measure must be compatible on all three displays.

(B) Extract appropriate contract overhead allocation base data, by year, from the evaluated cost breakdown or prenegotiation cost objective and list against each overhead pool and direct-charging service center.

(C) Multiply each allocation base by its corresponding cost of money factor to get the facilities capital cost of money estimated to be incurred each year. The sum of these products represents the estimated contract facilities capital cost of money for the year's effort.

(D) Total contract facilities cost of money is the sum of the yearly amounts.

(E) Since the facilities capital cost of money factors reflect the applicable cost of money rate in Column 1 of Form CASB-CMF, divide the contract cost of money by that same rate to determine the contract facilities capital employed.

(iii) Field pricing support.

(A) May ask the ACO to complete the forms as part of field pricing support.

(B) When the Weighted Guidelines Method is used, completion of the DD Form 1861 requires data not included on the Form CASB-CMF, i.e., distribution percentages of land, building, and equipment for the business unit performing the contract. Choose the most practical method for obtaining this data, for example?

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(1) Contract administration offices could obtain the data through the process used to establish factors for facilities capital cost of money or could establish advance agreements on distribution percentages for inclusion in field pricing reports,

(2) The corporate ACO could obtain distribution percentages, or

(3) The contracting officer could request the data through a solicitation provision.

(4) Preaward facilities capital applications. To establish cost and price objectives, apply the facilities capital cost of money and capital employed as follows?

(i) Cost of Money.

(A) Cost Objective. Use the imputed facilities capital cost of money, with normal, booked costs, to establish a cost objective or the target cost when structuring an incentive type contract. Do not adjust target costs established at the outset even though actual cost of money rates become available during the period of contract performance.

(B) Profit Objective. When measuring the contractor's effort for the purpose of establishing a prenegotiation profit objective, restrict the cost base to normal, booked costs. Do not include cost of money as part of the cost base.

(ii) Facilities Capital Employed. Assess and weight the profit objective for risk associated with facilities capital employed in accordance with the profit guidelines at **215.404-971(d).**

(5) Determination. The following extract from the DD Form 1547 has been annotated to explain the process.

Contractor Facilities Assigned Amount Profit

Item Capital Employed Value Employed Objective

26. Land N/A (2) N/A

27. Buildings N/A (2) N/A

28. Equipment (1) (2) (3)

(i) Select a value from the list in paragraph (d)(6) of this section using the evaluation criteria in paragraph (d)(7) of this section.

(ii) Use the allocated facilities capital attributable to land, buildings, and equipment, as derived in DD Form 1861, Contract Facilities Capital Cost of Money.

(A) In addition to the net book value of facilities capital employed, consider facilities capital that is part of a formal investment plan if the contractor submits reasonable evidence that?

(1) Achievable benefits to DoD will result from the investment, and

(2) The benefits of the investment are included in the forward pricing structure.

(B) If the value of intracompany transfers has been included in Block 20 at cost (i.e., excluding general and administrative (G&A) expenses and profit), add to the

contractor's allocated facilities capital, the allocated facilities capital attributable to the buildings and equipment of those corporate divisions supplying the intracompany transfers. Do not make this addition if the value of intracompany transfers has been included in Block 20 at price (i.e., including G&A expenses and profit).

(iii) Multiply (d)(5)(i) by (d)(5)(ii).

(6) Values: Normal and designated ranges.

Asset Type Normal Value Designated Range

Land 0% N/A

Buildings 0% N/A

Equipment 17.5% 10% to 25%

(7) Evaluation criteria.

(i) In evaluating facilities capital employed, the contracting officer?

(A) Should relate the usefulness of the facilities capital to the goods or services being acquired under the prospective contract,

(B) Should analyze the productivity improvements and other anticipated industrial base enhancing benefits resulting from the facilities capital investment, including?

(1) The economic value of the facilities capital, such as physical age, undepreciated value, idleness, and expected contribution to future defense needs, and

(2) The contractor's level of investment in defense related facilities as compared with the portion of the contractor's total business that is derived from DoD; and

(C) Should consider any contractual provisions that reduce the contractor's risk of investment recovery, such as termination protection clauses and capital investment indemnification.

(ii) Above normal conditions.

(A) The contracting officer may assign a higher than normal value if the facilities capital investment has direct, identifiable, and exceptional benefits. Indicators are?

(1) New investments in state-of-the-art technology that reduce acquisition cost or yield other tangible benefits such as improved product quality or accelerated deliveries, or

(2) Investments in new equipment for research and development applications.

(B) The contracting officer may assign a value significantly above normal when there are direct and measurable benefits in efficiency and significantly reduced acquisition costs on the effort being priced. Maximum values apply only to those cases where the benefits of the facilities capital investment are substantially above normal.

(iii) Below normal conditions.

(A) The contracting officer may assign a lower than normal value if the facilities capital investment has little benefit to DoD. Indicators are?

(1) Allocations of capital apply predominantly to commercial product lines,

(2) Investments are for such things as furniture and fixtures, home or group level administrative offices, corporate aircraft and hangars, gymnasiums, or

(3) Facilities are old or extensively idle.

(B) The contracting officer may assign a value significantly below normal when a significant portion of defense manufacturing is done in an environment characterized by outdated, inefficient, and labor-intensive capital equipment.

(e) Cost efficiency factor.

(1) This special factor provides an incentive for contractors to reduce costs. To the extent that the contractor can demonstrate cost reduction efforts that benefit the pending contract, the contracting officer may increase the prenegotiation profit objective by an amount not to exceed 4 percent of total objective cost (Block 20 of the DD Form 1547) to recognize these efforts (Block 29).

(2) To determine if using this factor is appropriate, consider criteria, such as the following, to evaluate the benefit the contractor?s cost reduction efforts will have on the pending contract:

(i) The contractor?s participation in Single Process Initiative improvements;

(ii) Actual cost reductions achieved on prior contracts;

(iii) Reduction or elimination of excess or idle facilities;

(iv) The contractor?s cost reduction initiatives (e.g., competition advocacy programs, technical insertion programs, obsolete parts control programs, spare parts pricing

reform, value engineering, outsourcing of functions such as information technology). Metrics developed by the contractor such as fully loaded labor hours (i.e., cost per labor hour, including all direct and indirect costs) or other productivity measures may provide the basis for assessing the effectiveness of the contractor?s cost reduction initiatives over time;

(v) The contractor?s adoption of process improvements to reduce costs;

(vi) Subcontractor cost reduction efforts;

(vii) The contractor?s effective incorporation of commercial products or commercial services and commercial processes; or

(viii) The contractor?s investment in new facilities when such investments contribute to better asset utilization or improved productivity.

(3) When selecting the percentage to use for this special factor, the contracting officer has maximum flexibility in determining the best way to evaluate the benefit the contractor?s cost reduction efforts will have on the pending contract. However, the

contracting officer shall consider the impact that quantity differences, learning, changes in scope, and economic factors such as inflation and deflation will have on cost reduction.

PGI 215.404-972 Modified weighted guidelines method for nonprofit organizations other than FFRDCs.

(a) Definition. As used in this subpart, a nonprofit organization is a business entity?

(1) That operates exclusively for charitable, scientific, or educational purposes,

(2) Whose earnings do not benefit any private shareholder or individual,

(3) Whose activities do not involve influencing legislation or political campaigning for any candidate for public office, and

(4) That is exempted from Federal income taxation under section 501 of the Internal Revenue Code.

(b) For nonprofit organizations that are entities that have been identified by the Secretary of Defense or a Secretary of a Department as receiving sustaining support on a cost-plus-fixed-fee basis from a particular DoD department or agency, compute a fee objective for covered actions using the weighted guidelines method in 215.404-971, with the following modifications?

(1) Modifications to performance risk (Blocks 21-23 of the DD Form 1547).

(i) If the contracting officer assigns a value from the standard designated range

(see 215.404-971(b)(3)), reduce the fee objective by an amount equal to 1 percent of the costs in Block 20 of the DD Form 1547. Show the net (reduced) amount on the DD Form **1547.**

(ii) Do not assign a value from the technology incentive designated range.

(2) Modifications to contract type risk (Block 24 of the DD Form 1547). Use a designated range of ?1 percent to 0 percent instead of the values in 215.404-971(c). There is no normal value.

(c) For all other nonprofit organizations except FFRDCs, compute a fee objective for covered actions using the weighted guidelines method in 215.404-971, modified as

described in paragraph (b)(1) of this section.

PGI 215.404-973 Alternate structured approaches.

(a) The contracting officer may use an alternate structured approach under 215.404-**970(b).**

(b) The contracting officer may design the structure of the alternate, but it must include?

(1) Consideration of the three basic components of profit--performance risk, contract type risk (including working capital), and facilities capital employed. However, the contracting officer is not required to complete Blocks 21 through 30 of the DD Form 1547.

(2) Offset for facilities capital cost of money.

(i) Reduce the overall prenegotiation profit objective by the amount of facilities capital cost of money under Cost Accounting Standard (CAS) 414, Cost of Money as an Element of the Cost of Facilities Capital (48 CFR 9904.414). Cost of money under CAS 417, Cost of Money as an Element of the Cost of Capital Assets Under Construction (48 CFR 9904.417), should not be used to reduce the overall prenegotiation profit objective. The profit amount in the negotiation summary of the DD Form 1547 must be net of the offset.

(ii) This adjustment is needed for the following reason: The values of the profit factors used in the weighted guidelines method were adjusted to recognize the shift in facilities capital cost of money from an element of profit to an element of contract cost (see FAR 31.205-10) and reductions were made directly to the profit factors for performance risk. In order to ensure that this policy is applied to all DoD contracts that allow facilities capital cost of money, similar adjustments shall be made to contracts that use alternate structured approaches.

PGI 215.404-974 Fee requirements for cost-plus-award-fee contracts.

In developing a fee objective for cost-plus-award-fee contracts, the contracting officer must?

(a) Follow the guidance in FAR 16.402-4 and 216.402-4,

(b) Not use the weighted guidelines method or alternate structured approach,

(c) Apply the offset policy in 215.404-973(b)(2) for facilities capital cost of money, i.e., reduce the base fee by the amount of facilities capital cost of money, and

(d) Not complete a DD Form 1547.

PGI 215.404-975 Fee requirements for FFRDCs.

For nonprofit organizations that are FFRDCs?

(a) Consider whether any fee is appropriate. Considerations shall include the FFRDC?s?

(1) Proportion of retained earnings (as established under generally accepted accounting methods) that relates to DoD contracted effort,

(2) Facilities capital acquisition plans,

(3) Working capital funding as assessed on operating cycle cash needs, and

(4) Provision for funding unreimbursed costs deemed ordinary and necessary to the **FFRDC.**

(b) When a fee is considered appropriate, establish the fee objective in accordance with FFRDC fee policies in the DoD Instruction 5000.77, DoD Federally Funded Research and Development Center Program.

(c) Do not use the weighted guidelines method or an alternate structured approach.

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PGI 215.404-70 Cost and/or price analysis.

(a)(1) General.

(i) The objective of proposal analysis is to ensure that the final agreed-to price is fair and reasonable.

(ii) In some cases, supplies or services that are not subject to TINA may require a cost analysis (see PGI 215.404-2). This will occur when a price analysis is not sufficient for determining prices to be fair and reasonable. In such cases, the contracting officer should consider the need for a Defense Contract Audit Agency audit of the cost data.

(iii) Particular attention should be paid to sole source commercial products or commercial services. While the order of preference at FAR 15.403-1(a) must be followed, if the contracting officer cannot determine price reasonableness without obtaining data other than cost or pricing data from the offeror, at a minimum, the contracting officer must obtain appropriate data on the prices at which the same or similar items have been sold previously

(often previous sales data was the basis of the commercial product or commercial service determination and must be requested during price analysis of the data provided by the offeror). If previous sales data is not sufficient to determine price reasonableness, the contracting officer must obtain ?data other than certified cost or pricing data? and should perform a cost analysis.

(iv) Analysis of termination proposals, including termination of any contract scope, should not rely solely on earned value management budgets or estimates for estimating the costs of all work deleted, or the cost of deleted work already performed

(reference FAR 15.408-2, Table 15-1?Instructions for Submitting Cost/Price Proposals When Certified Cost or Pricing Data are Required, columns (2) and (3) of section III.B., Change Orders, Modifications, and Claims).

PGI 215.405-2 Make-or-buy programs.

(a) Evaluation, negotiation, and Agreement. When a make-or-buy plan is required, listed below are factors that may be considered when evaluating a submission?

(1) Prime contractor past performance, especially with respect to subcontract management;

(2) Prime contractor make-or-buy history;

(3) Adequacy of contractor?s existing make-or-buy processes, including cost and technical risk considerations;

(4) Component availability through existing sources, e.g. available inventory, or other Government contracts;

(5) Prime contractor plant capacity;

(6) The adequacy of the prime contractor?s technical, financial and personnel capabilities; and

(7) Prime contractor justification that is provided with respect to items it does not normally make.

PGI 215.405-470 Should-cost review.

(b) Program should-cost review. DoD contracting activities should consider performing a program should-cost review before award of a definitive contract for a major system as defined by 234.7001.

(c) Overhead should-cost review.

(1) Contact the Defense Contract Management Agency (DCMA)

(http://www.dcma.mil/) for questions on overhead should-cost analysis.

(2)(i) DCMA or the military department responsible for performing contract administration functions (e.g., Navy SUPSHIP) should consider, based on risk assessment, performing an overhead should-cost review of a contractor business unit (as defined in FAR **2.101) when all of the following conditions exist:**

(A) Projected annual sales to DoD exceed $1 billion;

(B) Projected DoD versus total business exceeds 30 percent;

(C) Level of sole-source DoD contracts is high;

(D) Significant volume of proposal activity is anticipated;

(E) Production or development of a major weapon system or program is anticipated; and

(F) Contractor cost control/reduction initiatives appear inadequate.

(ii) The head of the contracting activity may request an overhead should-cost review for a business unit that does not meet the criteria in paragraph (c)(2)(i) of this subsection.

(iii) Overhead should-cost reviews are labor intensive. These reviews generally involve participation by the contracting, contract administration, and contract audit elements. The extent of availability of military department, contract administration, and contract audit resources to support DCMA-led teams should be considered when determining whether a review will be conducted. Overhead should-cost reviews generally should not be conducted at a contractor business segment more frequently than every 3 years.

PGI 215.406 Data to support proposal analysis.

(a) Field pricing assistance. See PGI 215.406(b) regarding when to request audit assistance.

(1) The contracting officer should consider requesting field pricing assistance for?

(i) Fixed-price proposals exceeding the certified cost or pricing data threshold,

(ii) Cost-type proposals exceeding the certified cost or pricing data threshold

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from offerors with material weaknesses, or

(iii) Cost-type proposals exceeding $10 million from offerors without material weaknesses.

(2) The contracting officer should not request field pricing support for proposed contracts or modifications in an amount less than that specified in paragraph (a)(i) of this subsection. An exception may be made when a reasonable pricing result cannot be established because of?

(i) A lack of knowledge of the particular offeror, or

(ii) Sensitive conditions (e.g., a change in, or unusual problems with, an offeror?s internal systems).

(b) Audit assistance for prime contracts or subcontracts.

(1) The contracting officer should consider requesting audit assistance from DCAA for?

(i) Fixed-price proposals exceeding $10 million,

(ii) Cost-type proposals exceeding $100 million.

(2) The contracting officer should not request DCAA audit assistance for proposed contracts or modifications in an amount less than that specified in paragraph (c)(i) of this subsection unless there are exceptional circumstances explained in the request for audit.

(See PGI 215.406(a) for requesting field pricing assistance without a DCAA audit.)

(3) If, in the opinion of the contracting officer or auditor, the review of a prime contractor's proposal requires further review of subcontractors' cost estimates at the subcontractors' plants (after due consideration of reviews performed by the prime contractor), the contracting officer should inform the administrative contracting officer (ACO) having cognizance of the prime contractor before the review is initiated.

(4) Notify the appropriate contract administration activities when extensive, special, or expedited field pricing assistance will be needed to review and evaluate subcontractors? proposals under a major weapon system acquisition. If audit reports are received on contracting actions that are subsequently cancelled, notify the cognizant auditor in writing.

(5) Requests for audit assistance for subcontracts should use the same criteria as established in paragraphs (b)(1) and (b)(2) of this subsection.

PGI 215.408 Documentation.

PGI 215.408-1 Prenegotiation objectives.

(a) The contracting officer should consider the following in establishing prenegotiation objectives?

(1) Data resulting from application of work measurement systems in developing prenegotiation objectives; and

(2) Field pricing assistance personnel participation in planned prenegotiation and

negotiation activities.

(b) Prenegotiation objectives, including objectives related to disposition of findings and recommendations contained in preaward and postaward contract audit and other advisory reports, must be documented and reviewed in accordance with departmental procedures.

(1) Significant Disagreements. (i) Contracting officers and contract auditors have complementary roles in the contracting process and are expected to collaborate to determine fair and reasonable contract values. When a significant disagreement arises on questioned costs, the contracting officer and the auditor will discuss the basis of the disagreement. Document that discussion and their disagreement in a written communication to the auditor. Document the disagreement in the prenegotiation objective

(or pre-business clearance). The contracting officer may then proceed with negotiations when the prenegotiation objectives are approved.

(ii) A significant disagreement is defined as the contracting officer planning to sustain less than 75-percent of the total recommended questioned costs in a Defense Contract Audit Agency (DCAA) audit report of a contractor proposal for an initial contract or a contract modification with a value equal to or greater than $10 million. It does not apply to costs that DCAA has categorized as unsupported or unresolved in its audit report.

(2) Adjudication Procedures. DCAA has 3 days to elevate the issues within the contracting officer?s activity after receipt of the contracting officer?s written communication confirming the disagreement. Furthermore, DCAA may appeal the significant issues up the chain of command as established in each component?s ?Resolving Contract Audit Recommendations? policy. If issues remain, the Director, DCAA may escalate from the Defense component?s head of contracting activity or senior procurement executive, to the Principal Director, DPCAP. If the DCAA Director believes that the Principal Director, DPCAP has not adequately addressed the matter, the disagreement may finally be elevated to the Under Secretary of Defense for Acquisition and Sustainment, and the Comptroller.

(3) Notwithstanding the above, the Director, DCAA, may always raise audit issues to the Principal Director, DPCAP.

(c) Cost estimates for program baselines and contract negotiations for major defense acquisition programs.

(1) For the purpose of contract negotiations and obligation of funds under this paragraph, the Government will prepare cost analyses and targets based on the Government's reasonable expectation of successful contractor performance in accordance with the contractor's proposal and previous experience.

(2) Cost estimates developed for baseline descriptions and other program purposes by the Director of Cost Assessment and Program Evaluation pursuant to its functions, do not meet the criteria described in paragraph (c)(1) of this section and, thus, must not be used for purposes of developing the Government?s contract negotiation position or for the obligation of funds. However, the Government may consider the data used to develop such estimates when developing the cost analyses and targets described in paragraph (c)(1) of this subsection.

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PGI 215.408-2 Documenting the negotiation.

(a)(1) Include the principal factors related to the disposition of findings and recommendations contained in preaward and postaward contract audit and other advisory reports. Use ?CUI? markings as appropriate, in accordance with www.dodcui.mil.

(2) The documentation for fee or profit negotiated must include?

(i) Significant deviations from the prenegotiation profit objective;

(ii) The DD Form 1547, Record of Weighted Guidelines Application (see PGI **215.404-970), if used, with supporting rationale;**

(iii) Rationale for not using the weighted guidelines method when its use would otherwise be required by DFARS 215.404-970; and

(3) Ensure the approved prenegotiation and postnegotiation noncompetitive business clearance documents (e.g., price negotiation memoranda) are uploaded into the Contract Business Analysis Repository (CBAR) at https://piee.eb.mil for the purpose of sharing negotiation experience with other contracting officers preparing to negotiate. This includes both noncompetitive actions using the procedures at FAR part 12, Acquisition of Commercial Products and Commercial Services, as well as noncompetitive actions using the procedures at FAR part 15, Contracting by Negotiation, that are valued in excess of $25 million and awarded on or after June 24, 2013 (and for all definitized or awarded actions over $100 million, which occurred on or after October 1, 2012).

(i) Business clearance documents uploaded to CBAR must be marked "CUI" (see www.dodcui.mil).

(ii) The business clearance documents uploaded to CBAR must be signed by the contracting officer and include all other signatures required by local policy/procedure.

(iii) Upload the documentation to CBAR no later than 30 days after award of the contract action associated with the negotiation and include both the prenegotiation objectives required by FAR 15.408-1 and PGI 215.408-1, and the record of negotiations (i.e. the Price Negotiation Memoranda required by FAR 15.408-2 and PGI 215.408-2). Complete the ?description of acquisition? field with keywords and searchable terms to identify the products and services acquired. Also complete the ?comments? field of the CBAR record to summarize unique features and aspects of the negotiation in order to prompt other contracting teams to inquire further to learn from their peers? prior experience.

(iv) If an initial indefinite-delivery indefinite-quantity (IDIQ) task or delivery order contract contemplates issuance of task or delivery orders that will invoke negotiated rates or values from the basic contract, then the business clearance record for the basic IDIQ contract shall be uploaded if the estimated value of the contract (e.g. ceiling price) exceeds the prescribed dollar threshold. To the extent individual task or delivery orders entail a negotiation (i.e. did not simply incorporate prices established at the basic contract level), a business clearance record for the individual task or delivery orders that exceed the prescribed dollar thresholds shall be uploaded to CBAR.

(v) Training for the CBAR database may be found at https://pieetraining.eb.mil/wbt/xhtml/wbt/eda/cbar/overview.xhtml.

Attachment A2
DARS Tracking Number: 2026-O0048

Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 15
Defense FAR Supplement (DFARS) Part 215
PGI 215.470 Estimated data prices.

(b)(i) The form and the provision included in the solicitation request the offeror to state what portion of the total price is estimated to be attributable to the production or development of the listed data for the Government (not to the sale of rights in the data). However, offerors' estimated prices may not reflect all such costs; and different offerors may reflect these costs in a different manner, for the following reasons?

(A) Differences in business practices in competitive situations;

(B) Differences in accounting systems among offerors;

(C) Use of factors or rates on some portions of the data;

(D) Application of common effort to two or more data items; and

(E) Differences in data preparation methods among offerors.

(ii) Data price estimates should not be used for contract pricing purposes without further analysis.

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Attachment A2
DARS Tracking Number: 2026-O0048
Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 15
Defense FAR Supplement (DFARS) Part 215
1 PGI 253.215 ? Contracting by negotiation.
2
3 PGI 253.215-70 ? DD Form 1547, Record of Weighted Guidelines Application
4
5 (a) Use the DD Form 1547 as prescribed in DFARS 215.404-970 and PGI 215.404-970.
6
7 (b) General instructions.
8
9 (1) Report amounts as they relate to the price of the contract action without regard
10 to funding status (e.g., amounts obligated).
11
12 (2) Express all dollar values to the nearest whole value (e.g., $200,008.55 =
13 $200,009).
14
15 (3) Do not express percentages beyond the nearest thousandth (e.g., interest rate--
16 8.257%).
17
18 (4) Reserved.
19
20 (5) Report an option amount for additional quantities as a separate contract action
21 when exercised.
22
23 (6) Even though fixed-price type contract actions are negotiated on the basis of total
24 price, prepare the negotiation summary portion of the DD Form 1547 showing the
25 contracting officer's best estimates of cost and profit.

(7) For indefinite-delivery type contracts, prepare a consolidated DD Form 1547 for annual requirements expected to exceed the certified cost or pricing data threshold.

(8) Prepare a consolidated DD Form 1547, if possible, when multiple profit rates apply to a single negotiation.

(c) Specific instructions for completion of DD Form 1547.

(1) BLOCK 1--REPORT NO. Enter the four-digit local control number followed by a dash and the last two digits of the fiscal year (e.g., 0004-06 for 4th action in fiscal year 2006). Each field contracting office participating in profit reporting shall establish a control system for consecutively numbering completed DD Forms 1547. Always start with 0001 at the beginning of each fiscal year and always use four digits. This number will identify the specific DD Form 1547 in DoD's management information system and will be used for follow-up actions.

(2) BLOCK 2--BASIC PROCUREMENT INSTRUMENT IDENTIFICATION NO. Enter the identifying contract number, or Procurement Instrument Identifier (PIID), assigned per PGI 204.201.

(3) BLOCK 3--SPIIN. Enter the supplementary PIIDs for supplemental agreements or other modifications, assigned per PGI 204.201.

(4) BLOCK 4--DATE OF ACTION.

(i) Year. Enter the last two digits of the year the action was negotiated (e.g., 06 for 2006).

(ii) Month. Enter the two-digit number for the month the action was negotiated **(e.g., 09 for September).**

(5) BLOCK 5--CONTRACTING OFFICE CODE. Enter the code assigned the contracting office per DoD Procurement Coding Manual, Volume III.

(6) BLOCK 6--NAME OF CONTRACTOR. Enter the contractor's name (including division name).

(7) BLOCK 7--UNIQUE ENTITY IDENTIFIER. Enter the contractor UEI.

65

66 (8) BLOCK 8--FEDERAL SUPPLY CODE.

67

68 (9) BLOCK 9--DOD CLAIMANT PROGRAM.

69

70 (10) BLOCK 10--CONTRACT TYPE CODE. Enter the appropriate code?

71

Description Code

FPR (all types) A

FPI (all types) L

FFP J

FP(E) K

CPFF U

CPIF (all types) V

72

73 (11) BLOCK 11--TYPE EFFORT. Enter the appropriate code?

74

Description Code

Manufacturing 1

Research and 2

Development

Services 3

75

76 (12) BLOCK 12--USE CODE. Enter the appropriate code for use of the weighted

77 guidelines method?

78

Description Code

Standard weighted guidelines method (PGI 215.404- 2

971(b)(3)(i)

Alternate structured approach (PGI 215.404-973) 4

Modified weighted guidelines approach (PGI 215.404-972) 5

Technology incentive (PGI 215.404-971(b)(3)(ii)) 6

79

80 (13) BLOCKS 13 through 20--COST CATEGORY OBJECTIVE. Enter the

81 prenegotiation objectives. Include contractor independent research and development/bid

82 and proposal in the general and administrative expenses in Block 19.

83

84 (14) BLOCKS 21 through 29--WEIGHTED GUIDELINES PROFIT FACTORS.

85 Enter the amounts determined in accordance with PGI 215.404-971 or 215.404-972. This

86 section is not required to be completed when using an alternate structured approach (PGI
87 215.404-973).
88
89 (15) BLOCK 30--TOTAL PROFIT OBJECTIVE. Enter the total of Blocks 23, 24, 25,
90 27, 28, and 29. This section is not required to be completed when using an alternate
91 structured approach (PGI 215.404-973).
92
93 (16) BLOCKS 31 through 35--NEGOTIATION SUMMARY. Complete as indicated
94 on the form. For fixed-price type contracts negotiated on a total price basis, enter the
95 contracting officer's best estimates of cost and profit. When using an alternate structured
96 approach, see PGI 215.404-973(b)(2) for offsets.
97
98 (17) BLOCKS 36 through 39--CONTRACTING OFFICER APPROVAL. The
99 contracting officer shall sign the form. Include a complete (with area code) commercial
100 telephone number to facilitate any follow-up actions.
101
102 (18) BLOCKS 96 through 99--OPTIONAL USE. Complete in accordance with
103 department/agency procedures, if any.
104
105
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PART 16

OFFICE OF THE ASSISTANT SECRETARY OF WAR

Status: Class D

OFFICE OF THE ASSISTANT SECRETARY OF WAR

3000 DEFENSE PENTAGON

WASHINGTON, DC 20301-3000

ACQUISITION

AND SUSTAINMENT

In reply refer to

DARS Tracking Number: 2026-O0045

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES SPECIAL OPERATIONS

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES TRANSPORTATION

COMMAND (ATTN: ACQUISITION EXECUTIVE)

DEPUTY ASSISTANT SECRETARY OF THE ARMY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE NAVY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE

(CONTRACTING)

DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Class Deviation?Revolutionary Federal Acquisition Regulation (FAR) Overhaul

Part 16, Defense FAR Supplement (DFARS) Part 216

Effective March 16, 2026, contracting officers shall use?

? The revised FAR Part 16, Types of Contracts, published on the Revolutionary FAR Overhaul web page at https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-16 in lieu of the text codified at 48 CFR chapter 1 (https://www.ecfr.gov).

? The attached DFARS Part 216, Types of Contracts, in lieu of the text codified at 48 CFR chapter 2; and

? The attached DFARS Procedures, Guidance, and Information (PGI) 216, Types of Contracts, in lieu of the PGI text published on the Defense Pricing, Contracting, and Acquisition Policy web page at https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.

This class deviation implements the following:

? Section 2 of E.O. 14275, Restoring Common Sense to Federal Procurement, which establishes the policy that the FAR ?should only contain provisions required by statute or essential to sound procurement, and any FAR provisions that do not

advance these objectives should be removed.?
DARS Tracking Number: 2026-O0045
Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 16
Defense FAR Supplement (DFARS) Part 216
? Section 4(a) of E.O. 14265, Modernizing Defense Acquisitions and Spurring Innovation in the Defense Industrial Base which requires the Secretary of War to eliminate or revise any unnecessary supplemental regulations or any other internal guidance, such as relevant parts of the Financial Management Regulation and Defense Federal Acquisition Regulation Supplement.
? The Office of Management and Budget memorandum, M-25-26 issued on May 2, 2025, titled, Overhauling the Federal Acquisition Regulation, which provided additional guidance to federal agencies regarding the FAR overhaul.
This class deviation remains in effect until rescinded or incorporated into the FAR, DFARS, and DFARS PGI. Inquiries regarding this class deviation can be addressed to osd.pentagon.ousd-a-s.mbx.dfars@mail.mil.
John M. Tenaglia
Principal Director,
Defense Pricing, Contracting, and
Acquisition Policy
Attachments:
As stated
2
Attachment A1
DARS Tracking Number: 2026-O0045
Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 16
Defense FAR Supplement (DFARS) Part 216

PART 216?TYPES OF CONTRACTS

SUBPART 216.1?SELECTING CONTRACT TYPES

216.101 Policies.

Do not use a cost-reimbursement line item for the acquisition of production of major defense acquisition programs, unless the exception at 234.7202(b)(2) applies. (Section 811 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239))

216.102 Negotiating contract type.

See PGI 216.102 for selecting and negotiating the most appropriate contract type for a given procurement.

216.102-70 Research and development.

Follow the procedures at PGI 216.102-70 for selecting the appropriate research and development contract type. See 235.170 for additional requirements when selecting contract type.

SUBPART 216.2?FIXED-PRICE CONTRACTS

216.203 Fixed-price contracts with economic price adjustment.

216.203-4 Contract clauses.

(1) Insert the clauses at FAR 52.216-2, Economic Price Adjustment?Standard Supplies, FAR 52.216-3, Economic Price Adjustment?Semistandard Supplies, and

FAR 52.216-4, Economic Price Adjustment?Labor and Material, only when?

(i) The total contract price exceeds the simplified acquisition threshold; and

(ii) Delivery or performance will not be completed within 6 months after contract award.

(2) Follow the procedures at PGI 216.203-4 when inserting an economic price adjustment clause based on cost indexes of labor or material.

216.203-470 Additional provisions and clauses.

(a) Price adjustment for basic steel, aluminum, brass, bronze, or copper mill products.

(1)(i) Contracting officers may insert the price adjustment clause at 252.216-7000, Economic Price Adjustment?Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products, in fixed-price supply solicitations and contracts for basic steel, aluminum, brass, bronze, or copper mill products, such as sheets, plates, and bars, when an established catalog or market price exists for the particular product being acquired.

(ii) Do not exceed the 10 percent figure in paragraph (d)(1) of the clause unless approved at a level above the contracting officer.

(2) Insert the price adjustment provision at 252.216-7007, Economic Price Adjustment?Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products?

Representation, in solicitations that include the clause at 252.216-7000, Economic Price Adjustment?Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products.

(b) Price adjustment for nonstandard steel items.

(1) The contracting officer may insert the price adjustment clause at 252.216-7001, Economic Price Adjustment?Nonstandard Steel Items, in fixed-price supply contracts when?

(i) The contractor is a steel producer and actually manufacturers the standard steel mill item referred to in the ?base steel index? definition of the clause; and

(ii) The items being acquired are nonstandard steel items made wholly or in **part of standard steel mill items.**

(2) When this clause is included in invitations for bids, remove Note 6 of the clause and all references to Note 6.

(3) Instruct offerors to complete all blanks in accordance with the applicable notes.

(4) Verify the price, when the clause is to provide for adjustment on a basis other than ?established price? (see Note 6 of the clause).

(5) Do not exceed the 10 percent figure in paragraph (e)(4) of the clause unless approved at a level above the contracting officer.

(c) Price adjustment for wage rates or material prices controlled by a foreign government.

(1)(i) Contracting officers may insert the price adjustment clause at 252.216-

7003, Economic Price Adjustment?Wage Rates or Material Prices Controlled by a Foreign Government, in fixed-price supply and service solicitations and contracts when?

(A) The contract is to be performed wholly or in part in a foreign country; and

(B) A foreign government controls wage rates or material prices and may, during contract performance, impose a mandatory change in wages or prices of material.

(ii) Verify the base wage rates and material prices prior to contract award and prior to making any adjustment in the contract price.

(2) Insert the provision at 252.216-7008, Economic Price Adjustment?Wage Rates or Material Prices Controlled by a Foreign Government?Representation, in solicitations that include the clause at 252.216-7003, Economic Price Adjustment?Wage Rates or Material Prices Controlled by a Foreign Government. If the solicitation includes the provision at FAR 52.204-7, do not separately list the provision 252.216-7008 in the solicitation.

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Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 16

Defense FAR Supplement (DFARS) Part 216

SUBPART 216.3?COST-REIMBURSEMENT CONTRACTS

216.301-3 Limitations.

For contracts in connection with a military construction project or a military family housing project, contracting officers must not use cost-plus-fixed-fee, cost-plus-award-fee, or cost-plus-incentive-fee contract types (10 U.S.C 3323). This applies notwithstanding a declaration of war or the declaration by the President of a national emergency under section 201 of the National Emergencies Act (50 U.S.C. 1621) that includes the use of the Armed Forces.

216.304 Cost-plus-fixed-fee contracts.

216.304-2 Limitations.

For contracts in connection with a military construction project or military family housing project, see the prohibition at 216.301-3.

(1) Except as provided in paragraph (2) of this section, annual military construction appropriations acts prohibit the use of cost-plus-fixed-fee contracts that?

(i) Are funded by a military construction appropriations act;

(ii) Are estimated to exceed $25,000; and

(iii) Will be performed within the United States, except Alaska.

(2) The prohibition in paragraph (1) of this section does not apply to a contract if it is specifically approved in writing. That written approval must explain the reasons for granting an exception and follow the approval process described below:

(i) The Secretaries of the military departments are authorized to approve such contracts that are for environmental work only, provided the environmental work is not classified as construction, as defined by 10 U.S.C. 2801.

(ii) The Secretary of Defense or designee must approve such contracts that are not for environmental work only or are for environmental work classified as construction.

216.305 Contract clauses.

(a) As required by section 827 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239), insert the clause at 252.216-7009, Allowability of Costs Incurred in Connection With a Whistleblower Proceeding?

(1) (A) In task orders entered pursuant to contracts awarded before September 30, 2013, that include the clause at FAR 52.216-7, Allowable Cost and Payment; and

(B) In contracts awarded before September 30, 2013, that?

(1) Include the clause at FAR 52.216-7, Allowable Cost and Payment; and

(2) Are modified to include the clause at DFARS 252.203-7002,

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Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 16

Defense FAR Supplement (DFARS) Part 216

Requirement to Inform Employees of Whistleblower Rights, dated September 2013 or later.

SUBPART 216.4?INCENTIVE CONTRACTS

216.401 General.

216.401-1 Description.

(c) See PGI 216.401-1(c) for information on incentive contracts.

216.401-2 Limitations.

The determination and findings justifying that the use of an incentive- or award-fee contract is in the best interest of the Government, may be signed by the head of contracting activity but no lower than?

(1) One level below the head of the contracting activity for award-fee contracts; or

(2) One level above the contracting officer for incentive-fee contracts.

216.401-71 Objective criteria.

(a) Use objective criteria to the maximum extent possible to measure contract performance. Objective criteria are associated with cost-plus-incentive-fee and fixed-price-incentive contracts.

(b) When objective criteria exist but the contracting officer determines that it is in the best interest of the Government to also incentivize subjective elements of performance, the most appropriate contract type is a multiple-incentive contract containing both objective incentives and subjective award-fee criteria (i.e., cost-plus-incentive-fee/award-fee or fixed-price-incentive/award-fee).

(c) See PGI 216.402-2(c) for guidance on the use of award-fee contracts.

216.402 Award fee.

216.402-2 Limitations.

(c) Award-fee plans required in FAR 16.402-2(c) must be incorporated into all award-fee type contracts. Follow the procedures at PGI 216.402-2(c) when planning to award an award-fee contract.

216.402-4 Cost-plus-award-fee contracts.

(1) Award-fee pool. The award-fee pool is the total available award fee for each evaluation period for the life of the contract. The contracting officer must perform an analysis of appropriate fee distribution to ensure at least 40 percent of the award fee is available for the final evaluation so that the award fee is appropriately distributed over all evaluation periods to incentivize the contractor throughout performance of the contract. The percentage of award fee available for the final evaluation may be set below 40 percent if the contracting officer determines that a lower percentage is

appropriate and obtains the head of the contracting activity (HCA) approval. The HCA approval is not delegable.

(2) Award-fee evaluation and payments. Award-fee payments other than payments resulting from the evaluation at the end of an award-fee period are prohibited. This prohibition does not apply to base-fee payments. Provide the fee-determining official?s rating for award-fee evaluations to the contractor within 45 calendar days of the end of the evaluation period. The final award-fee payment will be consistent with the fee-determining official?s final evaluation of the contractor?s overall performance against the cost, schedule, and performance outcomes specified in the award-fee plan.

(3) Limitations.

(i) The cost-plus-award-fee contract must not be used?

(A) To avoid?

(1) Establishing cost-plus-fixed-fee contracts when the criteria for cost-plus-fixed-fee contracts apply; or

(2) Developing objective targets so a cost-plus-incentive-fee contract can be used; or

(B) For either engineering development or operational system development acquisitions that have specifications suitable for simultaneous research and development and production. A contracting officer may use a cost-plus-award-fee contract for individual engineering development or operational system development acquisitions ancillary to the development of a major weapon system or equipment, where?

(1) It is more advantageous; and

(2) The purpose of the acquisition is clearly to determine or solve specific problems associated with the major weapon system or equipment.

(ii) Do not apply the weighted guidelines method to cost-plus-award-fee contracts for either the base (fixed) fee or the award fee.

(iii) The base fee must not exceed three percent of the estimated cost of the

contract exclusive of the fee.

(4) See PGI 216.402-4 for guidance on the use of cost-plus-award-fee contracts.

216.402-470 Award fee reduction or denial for jeopardizing the health or safety of Government personnel.

(a) Definitions. As used in this section?

?Covered incident? and ?serious bodily injury,? are defined in the clause at 252.216-7004, Award Fee Reduction or Denial for Jeopardizing the Health or Safety of Government Personnel.

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(b) The contracting officer must include in the evaluation criteria of any award-fee plan, a review of contractor and subcontractor actions that jeopardized the health or safety of Government personnel, through gross negligence or reckless disregard for the safety of such personnel, as determined through?

(1) Conviction in a criminal proceeding, or finding of fault and liability in a civil or administrative proceeding (in accordance with section 823 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2010 (Pub. L. 111-84)); or

(2) If a contractor or a subcontractor at any tier is not subject to the jurisdiction of the U.S. courts, a final determination of contractor or subcontractor fault resulting from a DoD investigation (in accordance with section 834 of the NDAA for FY 2011 (Pub. L. 111-383)).

(c) In evaluating the contractor?s performance under a contract that includes the clause at 252.216-7004, Award Fee Reduction or Denial for Jeopardizing the Health or Safety of Government Personnel, the contracting officer must consider reducing or denying award fees for a period, if contractor or subcontractor actions cause serious bodily injury or death of civilian or military Government personnel during such period. The contracting officer?s evaluation must consider recovering all or part of award fees previously paid for such period.

216.402-471 Award fee reduction or denial for failure to comply with requirements relating to performance of private security functions.

(a) In accordance with section 862 of the NDAA for FY 2008, and section 831 of the NDAA for FY 2011, include a requirement to review contractor compliance with, or violation of, applicable requirements of the contract in any award-fee plan with regard to the performance of private security functions in an area of contingency operations, complex contingency operations, or other military operations or exercises that are designated by the combatant commander (see PGI 225.770).

(b) In evaluating the contractor?s performance under a contract that includes the clause at 252.225-7039, Defense Contractors Performing Private Security Functions Outside the United States, the contracting officer must consider reducing or denying award fees for a period if the contractor fails to comply with the requirements of the clause during such period. The contracting officer?s evaluation also must consider

recovering all or part of award fees previously paid for such period.

216.402-472 Contract clauses.

Insert the clause at 252.216-7004, Award Fee Reduction or Denial for Jeopardizing the Health or Safety of Government Personnel, in all solicitations and contracts containing award-fee provisions.

216.402-473 Other applications of award fees.

See PGI 216.402-473 for guidance on other applications of award fees.

216.403 Application of predetermined, formula-type incentives.

216.403-2 Performance incentives.

(1) See PGI 216.403-2 for guidance on establishing performance incentives.

(2) Contracting officers must ensure requirements for the payment of incentive fees or the imposition of penalties are included in the solicitation for the engineering and manufacturing development or production of a weapon system, including embedded software, if the program manager or comparable requiring activity official exercising program manager responsibilities includes?

(i) Provisions for the payment of incentive fees based on achievement of design specification requirements for reliability and maintainability of weapons systems under the contract; or

(ii) The imposition of penalties to be paid by the contractor to the Government for failure to achieve such design specification requirements **(10 U.S.C. 4328).**

216.404 Fixed-price incentive contracts.

216.404-170 Fixed-price incentive (firm target) contracts.

See PGI 215.404-170 for guidance on the selection and use of fixed-price incentive (firm target) contracts.

216.404-2 Fixed-price incentive (successive targets) contracts.

See PGI 216.404-2 for guidance on the use of fixed-price incentive (successive targets) contracts.

216.405 Cost-plus-incentive-fee contracts.

See PGI 216.405 for guidance on the use of cost-plus-incentive-fee contracts.

SUBPART 216.5?INDEFINITE-DELIVERY CONTRACTS

216.500 Scope.

(d)(i) When awarding task orders or delivery orders for architect-engineer services under a multiple-award contract, follow the procedures for the selection of contractors and placement of orders at FAR 36.102 to implement 10 U.S.C. 3406(h)(1).

(ii) Contracting officers must not request additional information related to contractor qualifications, unless it is necessary to determine the most highly qualified contractor for the particular task order or delivery order (10 U.S.C. 3406(h)(2)).

216.501 General.

216.501-270 Policies.

(a)(i) For items with a shelf-life of less than six months, consider the use of indefinite-delivery type contracts with orders to be placed either?

(A) Directly by the users; or

(B) By central purchasing offices with deliveries direct to users.

(ii) Whenever an indefinite-delivery contract is issued, the issuing office must furnish all ordering offices sufficient information for the ordering office to complete its contract reporting responsibilities under 204.301. This data must be

furnished to the ordering activity in sufficient time for the activity to prepare its report for the action within three working days of the order.

(b) See 217.201-71(a) for limitations on the period for task order or delivery order contracts awarded by DoD pursuant to 10 U.S.C. 3403.

216.504 Indefinite-quantity contracts.

216.504-3 Multiple award preference.

(a)(4)(i) The senior procurement executive has the authority to make the determination authorized in FAR 16.504-3(a)(4)(i).

(A) In accordance with 10 U.S.C. 3403(d)(3), when making the determination at FAR 16.504-3(a)(4)(i)(A), the senior procurement executive must determine that the task or delivery orders expected under the contract are so integrally related that only a single source can ?efficiently perform the work,? instead of ?reasonably perform the work? as required by the FAR.

(a)(4)(ii) The congressional notification requirement at FAR 16.504-3(a)(4)(ii) does not apply to DoD.

(a)(4)(iii) In accordance with 10 U.S.C. 3403(d)(3), the determination at FAR 16.504-3(a)(4)(iii) is not required if a justification has been executed, in accordance with FAR 6.104 and section 206.104.

216.505 Solicitation provisions and contract clauses.

216.505-70 Additional solicitation provisions and contract clause.

(a) Insert the provisions at 252.215-7007, Notice of Intent to Resolicit, and 252.215-7008, Only One Offer, as prescribed at 215.271-6 and 215.110(3), respectively.

(b) Insert the clause at 252.216-7010, Postaward Debriefings for Task Orders and Delivery Orders, in competitive negotiated solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, when a multiple-award contract is contemplated and task orders or delivery orders placed under the contract may be valued at $10 million or more.

216.506-70 Postaward procedures for placement of task and delivery orders.

216.506-701 Orders placed under indefinite-delivery contracts may be issued on DD Form 1155, Order for Supplies or Services.

216.506-702 Departments and agencies must comply with the review, approval, and reporting requirements established in accordance with subpart 217.6 when placing orders under non-DoD contracts in amounts exceeding the simplified acquisition threshold.

216.506-703 See 204.7603 for procedures on the required use of the Supplier Performance Risk System (SPRS) risk assessments.

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(i) The contracting officer must ensure SPRS assessments of price risk and supplier risk are considered as a part of the award decision.

(ii) When placing an order for an end product identified by a material identifier that is available as described at PGI 204.7603, and item risk was not previously considered during award of the contract, the contracting officer must also consider SPRS assessments of item risk in the award decision.

(iii) Insert the provision at 252.204-7024, Notice on the Use of the Supplier Performance Risk System, as prescribed in 204.7604 to the extent permitted by the contract.

216.507 Additional ordering procedures for multiple-award contracts.

216.507-2 Fair opportunity procedures.

(A) See 215.103-270 for the limitations and prohibitions on the use of the lowest price technically acceptable source selection process, which are applicable to orders placed against multiple award indefinite delivery contracts.

(B) See 217.870 for the prohibition on the use of reverse auctions for personal protective equipment and aviation critical safety items.

216.507-5 Orders valued above $7.5 million

(c) Postaward notices and debriefing. In addition to the notice required by FAR **part 15 and 16.507-5(c), a written or oral postaward debriefing of successful and** unsuccessful awardees is required for task orders and delivery orders valued at $10 million or more (section 818 of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91)).

(ii) Follow the procedures at 215.301-1 and 215.301-270 when providing the postaward debriefing to successful and unsuccessful awardees for task orders or delivery orders valued at $10 million or more.

216.507-6 Exceptions to fair opportunity.

(b) Exceptions. For an order exceeding the simplified acquisition threshold, that is a follow-on to an order previously issued for the same supply or service based on a justification for an exception to fair opportunity citing the authority at FAR 16.507-6(b)(2) or (3), follow the procedures at PGI 216.507-6(b).

216.507-70 Orders under multiple award contracts.

(a) If only one offer is received in response to an order exceeding the simplified acquisition threshold that is placed on a competitive basis, the contracting officer must

follow the procedures at 215.271-6.

(b) See PGI 216.507-7 for guidance regarding minimum labor category qualifications for orders issued under multiple-award services contracts.

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SUBPART 216.6?TIME-AND-MATERIALS, LABOR-HOUR, AND LETTER CONTRACTS

216.601 Time-and-materials contracts.

216.601-370 Limitations.

(a)(1) Approval of determination and findings for time-and-materials or labor-hour contracts.

(i) Base period plus any option periods is three years or less.

(A) For contracts (including indefinite-delivery contracts) and orders in which the portion of the requirement performed on a time-and-materials or labor-hour basis exceeds $1 million, the approval authority for the determination and findings must be the senior contracting official within the contracting activity. This authority may not be delegated.

(B) For contracts (including indefinite-delivery contracts) and orders in which the portion of the requirement performed on a time-and-materials or labor-hour basis is less than or equal to $1 million, the determination and findings must be approved one level above the contracting officer.

(ii) Base period plus any option periods exceeds three years. The head of the contracting activity is the authority to approve the determination and findings. This authority may not be delegated.

(iii) Exception. The approval requirements in paragraphs (a)(1)(i) of this section do not apply to contracts that, as determined by the head of the contracting activity?

(A) Support contingency or humanitarian or peacekeeping operations; or

(B) Facilitate defense against or recovery from conventional, cyber, nuclear, biological, chemical or radiological attack;

(C) Facilitate the provision of international disaster assistance; or

(D) Support response to an emergency or major disaster.

(2) Content of determination and findings. The determination and findings must contain sufficient facts and rationale to justify that no other contract type is suitable. At a minimum, the determination and findings must?

(i) Include a description of the market research conducted;

(ii) Establish that it is not possible at the time of placing the contract or order to accurately estimate the extent or duration of the work or to anticipate costs with any reasonable degree of certainty;

(iii) Address why a cost-plus-fixed-fee term or other cost-reimbursement,

incentive, or fixed-price contract or order is not appropriate; for contracts (including

indefinite-delivery contracts) and orders for other than commercial products or commercial services awarded to contractors with adequate accounting systems, a cost-plus-fixed-fee term contract type must be preferred over a time-and-materials or labor-hour contract type;

(iv) Establish that the requirement has been structured to minimize the use of time-and-materials and labor-hour requirements (e.g., limiting the value or length of the time-and-materials or labor-hour portion of the contract or order; establishing fixed prices for portions of the requirement); and

(v) Describe the actions planned to minimize the use of time-and-materials and labor-hour contracts on future acquisitions for the same requirements.

(3) Indefinite-delivery contracts. For indefinite-delivery contracts, structure contracts that authorize time-and-materials orders to also authorize orders on a cost-reimbursement, incentive, or fixed-price basis, to the maximum extent practicable.

216.601-4 Solicitation provisions.

(a) Insert the provision at FAR 52.216-29, Time-and-Materials/Labor-Hour Proposal Requirements?Other Than Commercial Acquisition with Adequate Price Competition, with 252.216-7002, Alternate A, in solicitations contemplating the use of a time-and-materials or labor-hour contract type for other than commercial products or commercial services if the price is expected to be based on adequate competition.

216.603 Letter contracts.

216.603-2 Application.

(c) In accordance with 10 U.S.C. 3372, establish definitization schedules for letter contracts following the requirements at 217.7404-3(a) instead of the requirements at FAR 16.603-2(c).

216.603-3 Limitations.

See Subpart 217.74 for additional limitations on the use of letter contracts.

216.603-4 Contract clauses.

(b)(2) See 217.7405(a) for additional guidance regarding use of the clause at FAR **52.216-24, Limitation of Government Liability.**

(3) Insert the clause at 252.217-7027, Contract Definitization, in accordance with its prescription at 217.7406(b), instead of the clause at FAR 52.216-25, Contract Definitization.

SUBPART 216.7?AGREEMENTS

216.703 Basic ordering agreements.

216.703-3 Limitations.

The period during which orders may be placed against a basic ordering agreement may not exceed 5 years.

(d) Follow the procedures at PGI 216.703-3(d) for issuing orders under basic ordering agreements.

SUBPART 252?SOLICITATION PROVISIONS AND CONTRACT CLAUSES

SUBPART 252.2?TEXT OF PROVISIONS AND CLAUSES

252.216-7000 Economic Price Adjustment?Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products.

As prescribed in 216.203-470(a)(1), use the following clause:

ECONOMIC PRICE ADJUSTMENT?BASIC STEEL, ALUMINUM, BRASS, BRONZE, OR COPPER MILL PRODUCTS (JAN 2023)

(a) Definitions. As used in this clause?

?Established price? means a price which is an established catalog or market price for a commercial product sold in substantial quantities to the general public.

?Unit price? excludes any part of the price which reflects requirements for preservation, packaging, and packing beyond standard commercial practice.

(b) As represented by the Contractor in its offer, the unit price stated for _____(Identify the item) is not in excess of the Contractor's established price in effect on the date set for opening of bids (or the contract date if this is a negotiated contract) for like quantities of the same item. This price is the net price after applying any applicable standard trade discounts offered by the Contractor from its catalog, list, or schedule price.

(c) The Contractor shall promptly notify the Contracting Officer of the amount and effective date of each decrease in any established price.

(1) Each corresponding contract unit price shall be decreased by the same percentage that the established price is decreased.

(2) This decrease shall apply to items delivered on or after the effective date of the decrease in the Contractor's established price.

(3) This contract shall be modified accordingly.

(d) If the Contractor's established price is increased after the date set for opening of bids (or the contract date if this is a negotiated contract), upon the Contractor's written request to the Contracting Officer, the corresponding contract unit price shall be increased by the same percentage that the established price is increased, and this contract shall be modified accordingly, provided?

(1) The aggregate of the increases in any contract unit price under this contract shall not exceed 10 percent of the original contract unit price;

(2) The increased contract unit price shall be effective on the effective date of the increase in the applicable established price if the Contractor's written request is received by the Contracting Officer within ten days of the change. If it is not, the

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effective date of the increased unit price shall be the date of receipt of the request by the Contracting Officer; and

(3) The increased contract unit price shall not apply to quantities scheduled for delivery before the effective date of the increased contract unit price unless the Contractor's failure to deliver before that date results from causes beyond the control and without the fault or negligence of the Contractor, within the meaning of the Default clause of this contract.

(4) The Contracting Officer shall not execute a modification incorporating an increase in a contract unit price under this clause until the increase is verified.

(e) Within 30 days after receipt of the Contractor's written request, the Contracting Officer may cancel, without liability to either party, any portion of the contract affected by the requested increase and not delivered at the time of such cancellation, except as follows?

(1) The Contractor may, after that time, deliver any items that were completed or in the process of manufacture at the time of receipt of the cancellation notice, provided the Contractor notifies the Contracting Officer of such items within 10 days after the Contractor receives the cancellation notice.

(2) The Government shall pay for those items at the contract unit price increased to the extent provided by paragraph (d) of this clause.

(3) Any standard steel supply item shall be deemed to be in the process of manufacture when the steel for that item is in the state of processing after the beginning of the furnace melt.

(f) Pending any cancellation of this contract under paragraph (e) of this clause, or if there is no cancellation, the Contractor shall continue deliveries according to the delivery schedule of the contract. The Contractor shall be paid for those deliveries at the contract unit price increased to the extent provided by paragraph (d) of this clause.

(End of clause)

252.216-7001 Economic Price Adjustment?Nonstandard Steel Items.

As prescribed in 216.203-470(b), use the following clause:

ECONOMIC PRICE ADJUSTMENT?NONSTANDARD STEEL ITEMS (JAN 2023)

(a) Definitions. As used in this clause?

?Base labor index? means the average of the labor indices for the three months which consist of the month of bid opening (or offer submission) and the months immediately preceding and following that month.

?Base steel index? means the Contractor's established price (see Note 6) including all applicable extras of $_____ per _____ (see Note 1) for _____ (see Note 2) on the date set for bid opening (or the date of submission of the offer).

?Current labor index? means the average of the labor indices for the month in which delivery of supplies is required to be made and the month preceding.

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?Current steel index? means the Contractor's established price (see Note 6) for that item, including all applicable extras in effect ___ days (see Note 3) prior to the first day of the month in which delivery is required.
?Established price? is?

(1) A price which is an established catalog or market price of a commercial product sold in substantial quantities to the general public; and

(2) The net price after applying any applicable standard trade discounts offered by the Contractor from its catalog, list, or schedule price. (But see Note 6.)
?Labor index? means the average straight time hourly earnings of the Contractor's employees in the _____ shop of the Contractor's _____ plant (see Note 4) for any particular month.
?Month? means calendar month. However, if the Contractor's accounting period does not coincide with the calendar month, then that accounting period shall be used in lieu of ?month.?

(b) Each contract unit price shall be subject to revision, under the terms of this clause, to reflect changes in the cost of labor and steel. For purpose of this price revision, the proportion of the contract unit price attributable to costs of labor not otherwise included in the price of the steel item identified under the ?base steel index? definition in paragraph (a) shall be _____ percent, and the proportion of the contract unit price attributable to the cost of steel shall be _____ percent. (See Note 5.)

(c)(1) Unless otherwise specified in this contract, the labor index shall be computed by dividing the total straight time earnings of the Contractor's employees in the shop identified in paragraph (a) for any given month by the total number of straight time hours worked by those employees in that month.

(2) Any revision in a contract unit price to reflect changes in the cost of labor shall be computed solely by reference to the ?base labor index? and the ?current labor index.?

(d) Any revision in a contract unit price to reflect changes in the cost of steel shall be computed solely by reference to the ?base steel index? and the ?current steel index.?

(e)(1) Each contract unit price shall be revised for each month in which delivery of supplies is required to be made.

(2) The revised contract unit price shall apply to the deliveries of those quantities required to be made in that month regardless of when actual delivery is made.

(3) Each revised contract unit price shall be computed by adding?

(i) The adjusted cost of labor (obtained by multiplying ____ percent of the contract unit price by a fraction, of which the numerator shall be the current labor index and the denominator shall be the base labor index);

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(ii) The adjusted cost of steel (obtained by multiplying ____ percent of the contract unit price by a fraction, of which the numerator shall be the current steel index and the denominator shall be the base steel index); and

(iii) The amount equal to ____ percent of the original contract unit price

(representing that portion of the unit price which relates neither to the cost of labor nor the cost of steel, and which is therefore not subject to revision (see Note 5)).

(4) The aggregate of the increases in any contract unit price under this contract shall not exceed ten percent of the original contract unit price.

(5) Computations shall be made to the nearest one-hundredth of one cent.

(f)(1) Pending any revisions of the contract unit prices, the Contractor shall be paid the contract unit price for deliveries made.

(2) Within 30 days after final delivery (or such other period as may be authorized by the Contracting Officer), the Contractor shall furnish a statement identifying the correctness of?

(i) The average straight time hourly earnings of the Contractor's employees in the shop identified in paragraph (a) that are relevant to the computations of the ?base labor index? and the ?current labor index;? and

(ii) The Contractor's established prices (see Note 6), including all applicable extras for like quantities of the item that are relevant to the computation of the ?base steel index? and the ?current steel index.?

(3) Upon request of the Contracting Officer, the Contractor shall make available all records used in the computation of the labor indices.

(4) Upon receipt of the statement, the Contracting Officer will compute the revised contract unit prices and modify the contract accordingly. No modification to this contract will be made pursuant to this clause until the Contracting Officer has verified the revised established price (see Note 6).

(g)(1) In the event any item of this contract is subject to a total or partial termination for convenience, the month in which the Contractor receives notice of the termination, if prior to the month in which delivery is required, shall be considered the month in which delivery of the terminated item is required for the purposes of determining the current labor and steel indices under paragraphs (c) and (d).

(2) For any item which is not terminated for convenience, the month in which delivery is required under the contract shall continue to apply for determining those indices with respect to the quantity of the non-terminated item.

(3) If this contract is terminated for default, any price revision shall be limited to the quantity of the item which has been delivered by the Contractor and accepted by the Government prior to receipt by the Contractor of the notice of termination.

(h) If the Contractor's failure to make delivery of any required quantity arises out of causes beyond the control and without the fault or negligence of the Contractor, within

the meaning of the clause of this contract entitled ?Default,? the quantity not delivered shall be delivered as promptly as possible after the cessation of the cause of the failure, and the delivery schedule set forth in this contract shall be amended accordingly.

NOTES:

1 Offeror insert the unit price and unit measure of the standard steel mill item to be used in the manufacture of the contract item.

2 Offeror identify the standard steel mill item to be used in the manufacture of the contract item.

3 Offeror insert best estimate of the number of days required for processing the standard steel mill item in the shop identified under the ?labor index? definition.

4 Offeror identify the shop and plant in which the standard steel mill item identified under the ?base steel index? definition will be finally fabricated or processed into the contract item.

5 Offeror insert the same percentage figures for the corresponding blanks in paragraphs (b), (e)(3)(i), and (e)(3)(ii). In paragraph (e)(3)(iii), insert the percentage representing the difference between the sum of the percentages inserted in paragraph (b) and 100 percent.

6 In negotiated acquisitions of nonstandard steel items, when there is no ?established price? or when it is not desirable to use this price, this paragraph may refer to another appropriate price basis, e.g., an established interplant price.

(End of clause)

252.216-7002 Alternate A, Time-and-Materials/Labor-Hour Proposal

Requirements?Other Than Commercial Acquisition with Adequate Price Competition.

As prescribed in 216.601-4(a), substitute the following paragraph (c) for paragraph (c) of the provision at FAR 52.216-29:

ALTERNATE A, TIME-AND-MATERIALS/LABOR-HOUR PROPOSAL REQUIREMENTS?OTHER THAN COMMERCIAL ACQUISITION WITH ADEQUATE PRICE COMPETITION (JAN 2023)

(c) The offeror must establish fixed hourly rates using separate rates for each category of labor to be performed by each subcontractor and for each category of labor to be performed by the offeror, and for each category of labor to be transferred between divisions, subsidiaries, or affiliates of the offeror under a common control.

252.216-7003 Economic Price Adjustment?Wage Rates or Material Prices

Controlled by a Foreign Government.

As prescribed in 216.203-470(c)(1), use the following clause:

ECONOMIC PRICE ADJUSTMENT?WAGE RATES OR MATERIAL PRICES CONTROLLED BY A FOREIGN GOVERNMENT (MAR 2012)

(a) As represented by the Contractor in its offer, the prices set forth in this

contract?

(1) Are based on the wage rate(s) or material price(s) established and controlled by the government of the country specified by the Contractor in its offer; and

(2) Do not include contingency allowances to pay for possible increases in wage rates or material prices.

(b) If wage rates or material prices are revised by the government named in paragraph (a) of this clause, the Contracting Officer shall make an equitable adjustment in the contract price and shall modify the contract to the extent that the Contractor?s actual costs of performing this contract are increased or decreased, as a direct result of the revision, subject to the following:

(1) For increases in established wage rates or material prices, the increase in contract unit price(s) shall be effective on the same date that the government named in paragraph (a) of this clause increased the applicable wage rate(s) or material price(s), but only if the Contracting Officer receives the Contractor?s written request for contract adjustment within 10 days of the change. If the Contractor?s request is received later, the effective date shall be the date that the Contracting Officer received the Contractor?s request.

(2) For decreases in established wage rates or material prices, the decrease in contract unit price(s) shall be effective on the same date that the government named in paragraph (a) of this clause decreased the applicable wage rate(s) or material price(s). The decrease in contract unit price(s) shall apply to all items delivered on and after the effective date of the government?s rate or price decrease.

(c) No modification changing the contract unit price(s) shall be executed until the Contracting Officer has verified the applicable change in the rates or prices set by the government named in paragraph (a) of this clause. The Contractor shall make available its books and records that support a requested change in contract price.

(d) Failure to agree to any adjustment shall be a dispute under the Disputes clause of this contract.

(End of clause)

252.216?7004 Award Fee Reduction or Denial for Jeopardizing the Health or Safety of Government Personnel.

As prescribed in 216.402-472, use the following clause:

AWARD FEE REDUCTION OR DENIAL FOR JEOPARDIZING THE HEALTH OR SAFETY OF GOVERNMENT PERSONNEL (SEP 2011)

(a) Definitions. As used in this clause?

?Covered incident??

(i) Means any incident in which the Contractor, through a criminal, civil, or administrative proceeding that results in a disposition listed in paragraph (a) (ii) of this definition?

(A) Has been determined in the performance of this contract to have caused serious bodily injury or death of any civilian or military personnel of the Government through gross negligence or with reckless disregard for the safety of such personnel; or

(B) Has been determined to be liable for actions of a subcontractor of the Contractor that caused serious bodily injury or death of any civilian or military personnel of the Government through gross negligence or with reckless disregard for the safety of such personnel.

(ii) Includes those incidents that have resulted in any of the following dispositions:

(A) In a criminal proceeding, a conviction.

(B) In a civil proceeding, a finding of fault or liability that results in the payment of a monetary fine, penalty, reimbursement, restitution, or damage of $5,000 or more.

(C) In an administrative proceeding, a finding of fault and liability that results in?

(1) The payment of a monetary fine or penalty of $5,000 or more; or

(2) The payment of a reimbursement, restitution, or damages in excess of $100,000.

(D) In a criminal, civil, or administrative proceeding, a disposition of the matter by consent or compromise with an acknowledgment of fault by the Contractor if the proceeding could have led to any of the outcomes specified in subparagraphs (a)(ii)(A), (a) (ii)(B), or (a)(ii)(C).

(E) In a DoD investigation of the Contractor or its subcontractors at any tier not subject to the jurisdiction of the U.S. courts, a final determination by the Secretary of Defense of Contractor or subcontractor fault (see DFARS 216.402-470).

?Serious bodily injury? means a grievous physical harm that results in a permanent disability.

(b) If, in the performance of this contract, the Contractor?s or its subcontractor?s actions cause serious bodily injury or death of civilian or military Government personnel, the Government may reduce or deny the award fee for the relevant award fee period in which the covered incident occurred, including the recovery of all or part of any award fees paid for any previous period during which the covered incident occurred.

(End of clause)

252.216-7005 Reserved.

252.216-7006 Reserved

252.216-7007 Economic Price Adjustment?Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products?Representation.

As prescribed in 216.203-470(a)(2), use the following provision:

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ECONOMIC PRICE ADJUSTMENT?BASIC STEEL, ALUMINUM, BRASS,

BRONZE, OR COPPER MILL PRODUCTS?REPRESENTATION

(MAR 2012)

(a) Definitions. The terms ?established price? and ?unit price,? as used in this provision, have the meaning given in the clause 252.216-7000, Economic Price Adjustment--Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products.

(b) By submission of its offer, the offeror represents that the unit price stated in this offer for _____(Identify the item) is not in excess of the offeror?s established price in effect on the date set for opening of bids (or the contract date if this is to be a negotiated contract) for like quantities of the same item. This price is the net price after applying any applicable standard trade discounts offered by the offeror from its catalog, list, or schedule price.

(End of provision)

252.216-7008 Economic Price Adjustment?Wage Rates or Material Prices

Controlled by a Foreign Government?Representation.

As prescribed in 216.203-470(c)(2), use the following provision:

ECONOMIC PRICE ADJUSTMENT?WAGE RATES OR MATERIAL PRICES

CONTROLLED BY A FOREIGN GOVERNMENT?REPRESENTATION

(MAR 2012)

(a) By submission of its offer, the offeror represents that the prices set forth in this offer?

(1) Are based on the wage rate(s) or material price(s) established and controlled by the government of _____ (Offeror insert name of host country); and

(2) Do not include contingency allowances to pay for possible increases in wage rates or material prices.

(End of provision)

252.216-7009 Allowability of Legal Costs Incurred in Connection with a

Whistleblower Proceeding.

As prescribed in 216.305, use the following clause:

ALLOWABILITY OF LEGAL COSTS INCURRED IN CONNECTION WITH A

WHISTLEBLOWER PROCEEDING (DEC 2022)

Pursuant to 10 U.S.C. 3750, notwithstanding FAR clause 52.216-7, Allowable Cost and Payment?

(a) The restrictions of FAR 31.205-47(b) on allowability of costs related to legal and other proceedings also apply to any proceeding brought by a contractor employee submitting a complaint under 10 U.S.C. 4701, entitled ?Contractor employees: protection from reprisal for disclosure of certain information;? and

(b) Costs incurred in connection with a proceeding that is brought by a contractor employee submitting a complaint under 10 U.S.C. 4701 are also unallowable if the

result is an order to take corrective action under 10 U.S.C. 4701.

(End of clause)

252.216-7010 Postaward Debriefings for Task Orders and Delivery Orders.

As prescribed at 216.505-70, use the following clause:

POSTAWARD DEBRIEFINGS FOR TASK ORDERS AND DELIVERY ORDERS

(OCT 2025)

(a) Postaward debriefing.

(1) Upon timely request, the Government will provide a written or oral postaward debriefing for task orders or delivery orders valued at $15 million or more to the Contractor, regardless of whether the Contractor?s offer for the task order or delivery order was successful or unsuccessful, while protecting the confidential and proprietary information of other contractors. The request is considered timely if received within 3 days of notification of task order or delivery order award.

(2) If a required postaward debriefing is provided?

(i) The debriefed Contractor may submit additional written questions related to the required and provided debriefing within 2 business days after the date of the debriefing;

(ii) The agency will respond in writing to timely submitted additional questions within 5 business days after receipt; and

(iii) The postaward debriefing will not be considered to be concluded until the later of?

(A) The date that the postaward debriefing is delivered, orally or in writing; or

(B) If additional written questions related to the debriefing are timely received, the date the agency delivers its written response.

(b) Task order or delivery order performance. The Government may suspend performance of or terminate the awarded task order or delivery order upon notice from the Government Accountability Office of a protest filed within the time periods listed in paragraphs (b)(1) through (3) of this clause, whichever is later:

(1) Within 10 days after the date a task order or delivery order is issued, where the value exceeds $25 million (10 U.S.C. 3406(e)).

(2) Within 5 days after a debriefing date offered to the protestor under a timely debriefing request in accordance with Federal Acquisition Regulation (FAR) 15.506 unless an earlier debriefing date is negotiated as a result.

(3) Within 5 days after a postaward debriefing under FAR 15.506 is concluded in accordance with Defense Federal Acquisition Regulation Supplement 215.506-70(b).

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(End of clause)

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PGI 216?TYPES OF CONTRACTS

PGI 216.1?SELECTING CONTRACT TYPES

PGI 216.102 Negotiating contract type.

Follow the procedures in the Director, Defense Procurement and Acquisition Policy memorandum dated April 1, 2016, entitled ?Guidance on Using Incentive and Other Contract Types,? when selecting and negotiating the most appropriate contract type for a given procurement.

PGI 216.102-70 Research and development.

(1) General. There are several categories of research and development (R&D) contracts: research, exploratory development, advanced development, engineering development, and operational systems development (see DFARS 235.001 for the definition of research and development). Each category has a primary technical or functional objective. Different parts of a project may fit several categories. The contract type must fit the work required, not just the classification of the overall program.

(2) Research and exploratory development.

(i) Price is not necessarily the primary factor in determining the contract type.

(ii) The nature of the work to be performed will usually result in a cost-plus award fee, cost-plus fixed fee term, cost-no-fee, or cost-sharing contract.

(iii) If the Government and the contractor can identify and agree upon the level of contractor effort required, the contracting officer may select a firm fixed-price level-of-effort contract, except see DFARS 235.170.

(iv) If the Government and the contractor agree that an incentive arrangement is desirable and capable of being evaluated after completion of the work, the contracting officer may use an incentive type contract.

(3) Advanced development.

(i) The nature of the work to be performed often results in a cost-plus fixed fee completion type contract.

(ii) Contracting officers may select incentive contracts if?

(A) Realistic and measurable targets are identified; and

(B) Achievement of those targets is predictable with a reasonable degree of accuracy.

(iii) Contracting officers should not use contracts with only cost incentives where?

(A) There will be a large number of major technical changes; or

(B) Actions beyond the control of the contractor may influence the contractor's achievement of cost targets.

(4) Engineering development and operational systems development.

(i) When selecting contract types, also consider?

(A) The degree to which the project is clearly defined, which in turn affects the contractor's ability to provide accurate cost estimates;

(B) The need for effort that will overlap that of earlier stages;

(C) The need for firm technical direction by the Government; and

(D) The degree of configuration control the Government will exercise.

(ii) For development efforts, particularly for major defense systems, the preferred contract type is cost reimbursement.

(iii) Contracting officers should use fixed-price type contracts when risk has been reduced to the extent that realistic pricing can occur; e.g., when a program has reached the final stages of development and technical risks are minimal, except see DFARS 235.170.

PGI 216.2?FIXED-PRICE CONTRACTS

PGI 216.203 Fixed-price contracts with economic price adjustment.

PGI 216.203-4 Contract clauses.

Contracting officers should use caution when incorporating Economic Price Adjustment

(EPA) provisions in contracts. EPA provisions can result in significant and unanticipated price increases which can have major adverse impacts to a program. EPA provisions should be used only when general economic factors make the estimating of future costs too unpredictable within a fixed-price contract. The primary factors that should be considered before using an EPA provision include volatility of labor and/or material costs and contract length. In cases where cost volatility and/or contract length warrant using an EPA provision, the provision must be carefully crafted to ensure an equitable adjustment to the contract. Accordingly, contracting officers should always request assistance from their local pricing office, the Defense Contract Management Agency, or the Defense Contract Audit Agency when contemplating the use of an EPA provision.

For adjustments based on cost indexes of labor or material, use the following guidelines:

(1) Do not make the clause unnecessarily complex.

(2) Normally, the clause should not provide either a ceiling or a floor for adjustment unless adjustment is based on indices below the six-digit level of the Bureau of Labor Statistics (BLS)?

(i) Producer Price Index;

(ii) Employment Cost Index for wages and salaries, benefits, and compensation costs for aerospace industries (but see paragraphs (3) and (6) of this subsection); or

(iii) North American Industry Classification System (NAICS) Code.

(3) DoD contracting officers may no longer use the BLS employment cost index for total compensation, aircraft manufacturing (NAICS Code 336411, formerly Standard Industrial Classification Code 3721, Aircraft) in any EPA clause in DoD contracts. This index is ineffective for use as the basis for labor cost adjustments in EPA clauses in DoD contracts. The BLS employment cost index for wages and salaries, aircraft manufacturing may still be used in EPA clauses for labor costs. If a BLS index for benefits is desired, contracting

officers should use a broader based index that will smooth the effects of any large pension contributions, such as the employment cost index for benefits, total private industry. If a total compensation index is desired, contracting officers should consider the creation of a hybrid index by combining the above referenced indices at a predetermined percentage. For example, a hybrid total compensation index could consist of 68 percent employment cost index for wages and salaries, aircraft manufacturing, and 32 percent of the employment cost index for benefits, private industry.

(4) Normally, the clause should cover potential economic fluctuations within the original contract period of performance using a trigger band. Unless the economic fluctuation exceeds the trigger value, no EPA clause adjustments are made.

(5) The clause must accurately identify the index(es) upon which adjustments will be based.

(i) It must provide for a means to adjust for appropriate economic fluctuation in the event publication of the movement of the designated index is discontinued. This might include the substitution of another index if the time remaining would justify doing so and an appropriate index is reasonably available, or some other method for repricing the remaining portion of work to be performed.

(ii) Normally, there should be no need to make an adjustment if computation of the identified index is altered. However, it may be appropriate to provide for adjustment of the economic fluctuation computations in the event there is such a substantial alteration in the method of computing the index that the original intent of the parties is negated.

(iii) When an index to be used is subject to revision (e.g., the BLS Producer Price Indexes), the EPA clause must specify that any economic price adjustment will be based on a revised index and must identify which revision to the index will be used.

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(6) The basis of the index should not be so large and diverse that it is significantly affected by fluctuations not relevant to contract performance, but it must be broad enough to minimize the effect of any single company, including the anticipated contractor(s).

(7) Construction of an index is largely dependent upon three general series published by the U.S. Department of Labor, BLS. These are the?

(i) Industrial Commodities portion of the Producer Price Index;

(ii) Employment Cost Index for wages and salaries, benefits, and compensation costs for aerospace industries (but see paragraphs (3) and (6) of this subsection); and

(iii) NAICS Code.

(8) Normally, do not use more than two indices, i.e., one for labor and one for material.

(9) The clause must establish and properly identify a base period comparable to the contract periods for which adjustments are to be made as a reference point for application of an index.

(10) The clause should not provide for an adjustment beyond the original contract performance period, including options. The start date for the adjustment may be the beginning of the contract or a later time, as appropriate, based on the projected rate of

expenditures.

(11) The expenditure profile for both labor and material should be based on a predetermined rate of expenditure (expressed as the percentage of material or labor usage as it relates to the total contract price) in lieu of actual cost incurred.

(i) If the clause is to be used in a competitive acquisition, determine the labor and material allocations, with regard to both mix of labor and material and rate of expenditure by percentage, in a manner which will, as nearly as possible, approximate the average expenditure profile of all companies to be solicited so that all companies may compete on an equal basis.

(ii) If the clause is to be used in a noncompetitive acquisition, the labor and material allocations may be subject to negotiation and agreement.

(iii) For multiyear contracts, establish predetermined expenditure profile tables for each of the annual increments in the multiyear buy. Each of the second and subsequent year tables must be cumulative to reflect the total expenditures for all increments funded through the latest multiyear funding.

(12) The clause should state the percentage of the contract price subject to price adjustment.

(i) Normally, do not apply adjustments to the profit portion of the contract.

(ii) Examine the labor and material portions of the contract to exclude any areas that do not require adjustment. For example, it may be possible to exclude?

(A) Subcontracting for short periods of time during the early life of the contract which could be covered by firm-fixed-priced subcontracting;

(B) Certain areas of overhead, e.g., depreciation charges, prepaid insurance costs, rental costs, leases, certain taxes, and utility charges;

(C) Labor costs for which a definitive union agreement exists; and

(D) Those costs not likely to be affected by fluctuation in the economy.

(iii) Allocate that part of the contract price subject to adjustment to specific periods of time (e.g., quarterly, semiannually, etc.) based on the most probable expenditure or commitment basis (expenditure profile).

(13) The clause should provide for definite times or events that trigger price adjustments. Adjustments should be frequent enough to afford the contractor appropriate economic protection without creating a burdensome administrative effort. The adjustment period should normally range from quarterly to annually.

(14) When the contract contains cost incentives, any sums paid to the contractor on account of EPA provisions must be subtracted from the total of the contractor's allowable costs for the purpose of establishing the total costs to which the cost incentive provisions apply. If the incentive arrangement is cited in percentage ranges, rather than dollar ranges, above and below target costs, structure the EPA clause to maintain the original contract incentive range in dollars.

(15) The EPA clause should provide that once the labor and material allocations and the

portion of the contract price subject to price adjustment have been established, they remain fixed through the life of the contract and must not be modified except in the event of significant changes in the scope of the contract. The clause should state that pricing actions pursuant to the Changes clause or other provisions of the contract will be priced as though there were no provisions for economic price adjustment. However, subsequent modifications may include a change to the delivery schedule or significantly change the amount of, or mix of, labor or material for the contract. In such cases, it may be appropriate to prospectively apply EPA coverage. This may be accomplished by?

(i) Using an EPA clause that applies only to the effort covered by the modification;

(ii) Revising the baseline data or period in the EPA clause for the basic contract to include the new work; or

(iii) Using an entirely new EPA clause for the entire contract, including the new work.

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(16) Consistent with the factors in paragraphs (1) through (15) of this subsection, it may also be appropriate to provide in the prime contract for similar EPA arrangements between the prime contractor and affected subcontractors to allocate risks properly and ensure that those subcontractors are provided similar economic protection.

(17) When EPA clauses are included in contracts that do not require submission of certified cost or pricing data as provided for in FAR 15.403-2, the contracting officer must obtain adequate data to establish the baseline from which adjustments will be made. The contracting officer may require verification of the data submitted to the extent necessary to permit reliance upon the data as a reasonable baseline.

PGI 216.4?INCENTIVE CONTRACTS

PGI 216.401 General.

PGI 216.401-1 Description.

(c) Incentive contracts. See the DPCAP Price, Cost, and Finance ?Pricing Topics? webpage at https://www.acq.osd.mil/asda/dpc/pcf/pricing-topics.html for links to contract incentives training, tools, and a guidebook.

PGI 216.402 Award fee.

PGI 216.402-2 Limitations.

(c) Award-fee contracts.

(i) It is DoD policy to utilize objective criteria, whenever possible, to measure contract performance. In cases where an award-fee contract must be used due to lack of objective criteria, the contracting officer must consult with the program manager and the fee determining official when developing the award-fee plan. Award-fee criteria must be linked directly to contract cost, schedule, and performance outcomes objectives.

(ii) Award fees must be tied to identifiable interim outcomes, discrete events or milestones, as much as possible. Examples of such interim milestones include timely completion of preliminary design review, critical design review, and successful system demonstration. In situations where there may be no identifiable milestone for a year or more, consideration should be given to apportioning some of the award fee pool for a

predetermined interim period of time based on assessing progress toward milestones. In any case, award fee provisions must clearly explain how a contractor?s performance will be evaluated.

(iii) The head of the contracting activity for each defense agency must retain the D&F for (a) all acquisition category (ACAT) I or II programs, and (b) all non-ACAT I or II contracts with an estimated value of $50 million or more. The head of the contracting activity must forward the D&Fs for ACAT I programs to Defense Pricing, Contracting, and Acquisition Policy/Contract Policy directorate (DPCAP/CP) within 1 month of the end of the quarter. Copies of D&Fs on all contracts must also be included in the contract file.

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PGI 216.402-4 Cost-plus-award-fee contracts.

(1) Although weighted guidelines do not apply per DFARS 216.402-4(3)(ii) when definitizing a contract action, the contracting officer must, nevertheless, separately assess and document the reduced cost risk on the contract for?

(i) The period up to the date of definitization; as well as

(ii) The remaining period of performance (see DFARS 217.7404-6).

(2) Normally, award fee is not earned when the fee-determining official has determined that contractor performance has been submarginal or unsatisfactory.

(3) The basis for all award fee determinations must be documented in the contract file.

(4) The cost-plus-award-fee contract is also suitable for level of effort contracts where mission feasibility is established but measurement of achievement must be by subjective evaluation rather than objective measurement. See Table 16-1, Performance Evaluation Criteria, for sample performance evaluation criteria and Table 16-2, Contractor Performance Evaluation Report, for a sample evaluation report.

(5) The contracting activity may?

(i) Establish a board to?

(A) Evaluate the contractor's performance; and

(B) Determine the amount of the award or recommend an amount to the contracting officer; and

(ii) Afford the contractor an opportunity to present information on its own behalf.

PGI 216.402-473 Other applications of award fees.

The ?award amount? portion of the fee may be used in other types of contracts under the following conditions:

(1) The Government wishes to motivate and reward a contractor for?

(i) Purchase of capital assets (including machine tools) manufactured in the United States, on major defense acquisition programs; or

(ii) Management performance in areas which cannot be measured objectively and where normal incentive provisions cannot be used. For example, logistics support, quality, timeliness, ingenuity, and cost effectiveness are areas under the control of management which may be susceptible only to subjective measurement and evaluation.

(2) The ?base fee? (fixed amount portion) is not used.

(3) The chief of the contracting office approves the use of the ?award amount.?

(4) An award review board and procedures are established for conduct of the evaluation.

(5) The administrative costs of evaluation do not exceed the expected benefits.

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TABLE 16-1, PERFORMANCE EVALUATION CRITERIA

Submarginal Marginal Good Very Good Excellent

A (A-1) Consistently Late on 10% Occasional Meets plan Delivers all
Time of Adherence to late on 20% plans w/o plan late w/o schedule. plans on
Delivery. plan plans prior justification. schedule &
schedule. agreement meets prod.
Change
requirements
on schedule.

(A-2) Does not Exposes Anticipates Keeps Anticipates in
Action on expose changes but changes, Shipyard good time,
Anticipated changes or is dilatory in advise posted on advises Ship-
delays. resolve them resolution on Shipyard but delays, yard, resolves
as soon as plans. misses resolves independently
recognized. completion of independently and meets
design plans on plans. production
10%. requirements.

(A-3) Does not System Major work Design Design
Plan Main- complete studies plans changes from changes,
tenance. interrelated completed coordinated studies and studies
systems but constr. in time to interrelated resolved, and
studies Plan meet plant issued test data
concurrently. changes production in time to issued ahead
delayed. schedules. meet product of production
schedules. requirements.

B (B-1) 25% dwgs. 20% not 10% not 0% dwgs 0% dwgs.
Quality of Work Not compatible compatible prepared by Presented
Work. Appearance. compatible with Shipyard with Shipyard Des. Agent incl. Des.
with Shipyard repro. repro. not Agent,
repro. processes processes compatible vendors,
processes and use. and use. with Shipyard subcontr. Not
and use. repro. compatible
processes with Shipyard
and use. repro
processes

and use.

(B-2) Is brief on Has followed Has followed Work Work of
Thoroughness plans tending guidance, guidance, complete with highest
and Accuracy to leave type and type and notes and caliber
of Work. questionable standard standard thorough incorporating
situations for dwgs. dwgs. explanations all pertinent
Shipyard to Questioning for anticipated data required
resolve. and resolving questionable including
doubtful areas. related
areas. activities.

(B-3) Tendency to Adequate Engineered Displays Exceptional
Engineering follow past engrg. To to satisfy excellent knowledge of
Competence. practice with use & adapt specs., knowledge of Naval
no variation existing guidance constr. shipwork &
to meet designs to plans and Reqmts. adaptability to
reqmts. job in suit job on material considering work process
hand. provided. systems incorporating

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TABLE 16-1, PERFORMANCE EVALUATION CRITERIA

Submarginal Marginal Good Very Good Excellent
hand for aspect, cost, knowledge of
routine work. shop future
capabilities, planning in
and Design.
procurement
problems.
B (B-4) Indifferent to Satisfactory Maintains Maintains Maintains
Quality of Liaison requirements but normal independent expert
Work Effectiveness of associated dependent contract with contact with contact,

(Cont?d) activities, on Shipyard associated all associated keeping
related of force activities activities, Shipyard
systems, and resolution of depending keeping them informed,
Shipyard problems on Shipyard informed to obtaining info
advice. without for problems produce from equip,
constructive requiring compatible supplies w/o
recommen-- military design with prompting of
dations to resolution. little Shipyard.
subcontr. or assistance
vendors. from
Shipyard.

(B-5) Constant Requires Normal Complete & Develops

surveillance occasional interest and accurate job. complete and
required to prodding to desire to Free of accurate
keep job from stay on provide incom- plans, seeks
slipping? schedule & workable patibilities out problem
assign to low expects plans with with little or areas and
priority to Shipyard average no direction resolves with
satisfy needs. resolution of assistance & by Shipyard. assoc. act.
most direction by ahead of
problems. Shipyard. schedule.
C (C-1) Planning of Supervision System Design Mods. to
Effective- Utilization of work left to sets & planning by parameters design plans
ness in Personnel designers on reviews supervisory, established limited to less
Control- drafting goals for personnel, by system than 5% as
ling boards. designers. studies engineers & result lack
and/or checked by held in design engrg.
Reducing engineers. plans. System
Costs correlation.
(C-2) Expenditures Expenditures Direct Provides No cost
Control Direct not controlled reviewed charges set services as overruns on
Charges for services. occasionally & accounted part of normal original
(Except by for on each design estimates
Labor) supervision. work function w/o absorbs
package. extra service
charges. demands by
Shipyard.
(C-3) Does not Does not Exceeds Exceeds Never
Performance meet cost meet cost original est. original est. exceeds
to Cost estimate for estimate for on change on changing estimates of
Estimate original work original work orders 10% original
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TABLE 16-1, PERFORMANCE EVALUATION CRITERIA

Submarginal Marginal Good Very Good Excellent
or changes or changes time and orders 5% package or
30% time. 20% time. meets time. change
original orders.
design costs.
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TABLE 16-2, CONTRACTOR PERFORMANCE EVALUATION REPORT

Ratings Period of _____

Excellent Contract Number

_____

Very Good Contractor

_____

Marginal Date of Report

_____

Submarginal PNS Technical Monitor/s_____

_____

CATEGORY CRITERIA RATING ITEM EVALUATION CATEGORY EFFICIENCY

FACTOR RATING FACTOR RATING

A TIME OF

DELIVERY

A-1 Adher-

ence to Plan

Schedule _____ x .40 = _____

A-2 Action on

Anticipated

Delays _____ x .30 = _____

A-3 Plan

Maintenance _____ x .30 = _____

Total Item Weighted Rating _____ x .30 = _____

B QUALITY OF

WORK

B-1 Work

Appearance _____ x .15 = _____

B-2 Thorough-

ness and

Accuracy of

Work

_____ x .30 = _____

B-3

Engineering

Competence _____ x .20 = _____

B-4 Liaison

Effectiveness _____ x .15 = _____

B-5 Indepen-

dence and

Initiative _____ x .15 = _____

Total Item Weighted Rating _____ x .40 = _____

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C EFFECTIVE-
NESS IN
CONTROL-
LING AND/OR
REDUCING
COSTS

C-1 Utilization of
Personnel
_____ x .30 = _____
C-2 Control of
all Direct
Charges Other
than Labor
_____ x .30 = _____
C-3
Performance to
Cost Estimate
_____ x .40 = _____
Total Item Weighted Rating _____ x .30 = _____
TOTAL WEIGHT RATING _____
Rated by: _____
Signature(s) _____
NOTE: Provide supporting data and/or justification for below average or outstanding item ratings.
PGI 216.403 Application of predetermined, formula-type incentives.
PGI 216.403-2 Performance incentives.
Contractor performance incentives should relate to specific performance areas of milestones, such as delivery or test schedules, quality controls, maintenance requirements, and reliability standards.
PGI 216.404 Fixed-price incentive contracts.
PGI 216.404-170 Fixed-price incentive (firm target) contracts.

(1) Use of FPIF contract.

(i) Not mandatory. Contracting officers must carefully consider whether to use a fixed-price incentive (firm target) (FPIF) contract, especially for acquisitions moving from development to production. DFARS does not mandate the use of FPIF for initial production and each acquisition situation must be evaluated in terms of the degree and nature of the risk presented in order to select the proper contract type.

(ii) Considerations. Volume 4, chapter 1, of the Contract Pricing Reference Guide provides a detailed discussion of the considerations involved in selecting the proper contract type. For example:

(A) It is not in the Government?s best interest to use FPIF when the cost risk is so great that establishing a ceiling price is unrealistic.

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(B) It is also not in the Government?s best interest to use firm-fixed-price (FFP) contracts on production programs until costs have become stable. Therefore, FPIF contracts should be considered in production and sole source follow-on programs where actual costs on prior FFP contracts have varied by more than 3-4 percent from the costs considered negotiated. Contracting officers are reminded that actual costs on prior contracts for the same item or essentially the same item, regardless of contract type or data reporting requirements of the prior contract, are cost and pricing data on the pending contract, and must be obtained from the contractor on production programs when certified cost or pricing data are required.

(C) For sole source major systems procurements, contracting officers should utilize FPIF contracts instead of FFP contracts unless the reasons for significant variation are well understood and actions have been taken to ensure that significant variation will not recur. In addition, when options are included as described in PGI 217.201-70, the use of FPIF contracts is both highly recommended and encouraged, because both parties will be assuming more risk in pricing multiple years of requirements.

(2) Incentive arrangement. Contracting officers should consider share lines and ceiling prices for fixed-price incentive (firm target) contracts, with 120 percent ceiling and a 50/50 share ratio as the point of departure for establishing the incentive arrangement. While the DFARS does not mandate the use of these share ratios or ceiling percentage, it is not unreasonable to expect that upon entering into production, risks have been mitigated to the point that the DFARS recommended point of departure for an FPIF incentive arrangement would be normal.

(3) Analyzing risk.

(i) Quantification of risk.

(A) The first step is establishing a target cost for which the probability of an underrun and overrun are considered equal and therefore, the risks and rewards are shared equally, hence the 50/50 share is the point of departure. Equally important is determining that the contractor has a high probability of being able to accomplish the effort within a ceiling percentage of 120 percent. In accomplishing both these steps, the analysis of risk is essential.

(B) Too often, risk is evaluated only in general terms without attempting to quantify the risk posed by the various elements of cost. Also, a contracting officer may incorrectly fall back on the share ratios and ceiling percentages negotiated on prior contracts or other programs, without examining the specific risks.

(C) Whether being used to select the proper contract type or establishing share lines and ceiling price on an FPIF contract, the analysis of risk as it pertains to the prime contractor is key. From a contractor?s perspective, all risks, including technical and schedule risk, have financial ramifications. Technical and schedule risks, if realized, generally translate into increased effort, which means increased cost. Therefore, all risk can be translated into cost risk and quantified. Risk always has two components that must be considered in the quantification: the magnitude of the impact and the probability that it will

occur.

(D) When cost risk is quantified, it is much easier to establish a reasonable ceiling percentage. The ceiling percentage is applicable to the target cost on the prime contract. It is important to understand the degree of risk that various cost elements pose in

relation to that target cost. A discussion of the major cost elements and the risk implications follows in paragraphs (3)(ii) through (iv) of this section.

(ii) Subcontracts and material cost and risk.

(A) In many prime contractors? contracts, a substantial amount of risk is borne by subcontractors, not the prime contractor, via negotiated firm-fixed-price (FFP) subcontracts. In the case of FFP subcontracts, the subcontractor is obligated to deliver at the negotiated price. The risk to the prime contractor is the supplier?s failure to perform or perform on time. Generally, that risk is considered to be low by both the prime and the subcontractor as evidenced by the FFP contract type. In addition, the prime contractor will normally have priced effort for material management or subcontract administration to ensure timely performance on the part of the suppliers. This effort may be bid directly or indirectly

(e.g., as part of an overhead expense) depending on the contractor?s accounting practices.

(B) The impact of negotiated FFP subcontracts on the prime contractor?s risk can be significant. A prime contract with a 120 percent ceiling price provides overrun protection to the prime contractor equal to 20 percent of the target cost on the contract. However, if FFP subcontracts represent half of the total contract cost, then half of the target cost is subject to little or no cost risk on the part of the prime contractor. Therefore, the overrun protection provided by 20 percent of the target cost is really closer to 40 percent protection of the prime?s cost that is truly at risk to the prime contractor, which likely is significantly overstated. Thus, a ceiling price less than 120 percent in this risk situation would be more appropriate.

(C) For subcontracts that have not yet been negotiated between the prime and subcontractor at the time of negotiation of the prime contract, the degree of risk is essentially limited to the difference between the price proposed by the subcontractor and the subcontract value included in the prime contractor?s proposal.

(D) For subcontracts that are not FFP, the risk to the prime is based on the risk represented by the subcontractors? contractual relationship with the prime. If the subcontract is FPIF and has a 50/50 share ratio and 120 percent ceiling, the prime?s risk is 50 percent of each dollar of overrun up to the ceiling amount. An analysis of the subcontractor?s risk would be necessary to determine the probability of reaching the ceiling price.

(iii) Direct labor cost and risk.

(A) The risk in direct labor is in the hours needed to perform the effort and the risk in the labor rates paid to employees. There is generally little risk in the direct labor rates. However, there are various levels of risk in the direct labor hours needed by the prime contractor to accomplish the contract requirements. This risk can be driven by a number of

factors including technical complexity, schedule constraints, or availability of personnel, parts, or tooling. Risks vary by task and the key is to identify the major tasks and assess the ?what if? impact at the total contract cost level.

(B) Schedule is often correctly cited as a risk factor, but it is important to understand and quantify the probability and impact of a potential schedule slip. Generally, any schedule slip can only affect the prime contractor?s in-house cost. Therefore, any schedule impact should be assessed on the impact it would have on the prime contractor?s performance of its tasks.

(C) However, it is wrong to assume the worst-case scenario that a schedule delay results in an extension of the entire prime contractor workforce for the period of the delay. A responsible contractor will take steps to minimize both the delay and the impact of that delay. For instance, a production schedule assumes an optimal sequencing of tasks which presumes the timely arrival and availability of parts from suppliers or other in-house sources. A delay in receiving parts as planned could require a resequencing of tasks and could adversely affect the efficiency of performing a number of tasks, but it will not cause the entire workforce to be idle during the delay.

(iv) Indirect (e.g., overhead) cost and risk. Overhead and other indirect costs (e.g., general and administrative expense) can represent a significant portion of the prime contractor?s in-house cost. Indirect expense (hereafter referred to as overhead) poses potential cost growth risk or the opportunity for cost reduction from the following two perspectives:

(A) Actual overhead rate. (1) First, the actual overhead rate could be different than that proposed. Proposed overhead rates, even those covered by a forward pricing rate agreement, are based on forecasts of overhead expenses and the bases to which they are applied. The final overhead rate that is actually applied (charged) to a contract will be based on the actual overhead expenses and the actual base, each of which could be considerably different than estimated. The net effect could be a higher or lower overhead rate than estimated.

(2) In general, the risk in an overhead rate tends to be driven more by fluctuations in the base than in the expenses. This is because overhead expenses are made up of expenses that consist of ?fixed? (e.g., depreciation) and variable (e.g., fringe benefits) in nature. When the actual base turns out to be lower than the estimated base, the fixed costs are spread over a smaller base resulting in a higher overhead rate. In general, if the actual base is greater than estimated, a lower overhead rate will result.

(3) In assessing this risk, the contracting officer should consider the contractor?s ability to predict overhead rates based on comparing proposed versus actual rates for prior years. In making this comparison, it is important to do so in a manner consistent with the proposal being reviewed. For instance, if the majority of overhead costs on the proposal being reviewed occur two years in the future, the comparison should look at the contractor?s accuracy in predicting overhead rates two years in advance. For example,

in looking at the 2009 actual overhead rate, what did the contractor propose for 2009 in its 2007 forward pricing rate proposal?

(B) Actual base cost. If the actual base cost on the contract (e.g., direct labor dollars) is different than that proposed, the contract will be charged overhead costs according to the actual base costs on that contract. If the contractor overruns direct labor, even if the actual labor overhead rate was the same as proposed, that rate would be applied to a higher base resulting in increased overhead dollars on that contract. The opposite would be true if the contractor underruns direct labor on the contract. Since this aspect of risk is tied to the base cost on the contract, the risk is the same as it is for those base costs (e.g., direct labor, material).

PGI 216.404-2 Fixed-price incentive (successive targets) contracts.

The formula specified in FAR 16.404-2(a)(3) does not apply for the life of the contract. It is used to fix the firm target profit for the contract. To provide an incentive consistent with the circumstances, the formula should reflect the relative risk involved in establishing an incentive arrangement where cost and pricing information were not sufficient to permit the negotiation of firm targets at the outset.

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PGI 216.405 Cost-plus-incentive-fee contracts.

Give appropriate weight to basic acquisition objectives in negotiating the range of fee and the fee adjustment formula. For example?

(1) In an initial product development contract, it may be appropriate to provide for relatively small adjustments in fee tied to the cost incentive feature, but provide for significant adjustments if the contractor meets or surpasses performance targets; and

(2) In subsequent development and test contracts, it may be appropriate to negotiate an incentive formula tied primarily to the contractor's success in controlling costs.

PGI 216.5 INDEFINITE-DELIVERY CONTRACTS

PGI 216.507 Additional ordering procedures for multiple-award contracts.

PGI 216.507-6 Exceptions to fair opportunity.

(b) Exceptions. For an order exceeding the simplified acquisition threshold, that is a follow-on to an order previously issued for the same supply or service based on a justification for an exception to fair opportunity citing the authority FAR 16.507-6(b)(2) or (3)?

(i) The justification must include a copy of the previous justification to assist the approval authority in determining whether the actions to remove or overcome any barriers that led to the exception to fair opportunity cited on the previous justification were completed; and

(ii) The approval authority must determine whether the planned actions were completed. If the actions were not completed, the justification for the follow-on action must be approved by the approval authority one-level above the approval authority for the previous justification (see FAR 16.507-6(e)). If the previous justification was approved by the Senior Procurement Executive (SPE), the approval remains at the SPE level.

PGI 216.507-70 Orders under multiple-award contracts.

(b) For task orders issued under multiple-award indefinite-delivery indefinite-quantity services contracts, contracting officers must, when minimum labor category qualifications exist in the underlying contract?

(1) Ensure solicitations contain minimum labor category qualifications deemed necessary for successful task order performance, such as education and years of work experience, that are consistent with the contract?s requirements;

(2) When allowed under the terms of the contract, identify any exceptions from labor category qualifications, such as education and years of work experience, proposed by the contractor as an alternative. When exceptions exist, contracting officers must?

(i) Identify any proposed exception from the labor category qualifications in the contract file, considering any potential performance and price impacts on the agency?s requirements, and

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(ii) Document the reasons for accepting any proposed alternatives to the contract requirements; and

(3) Include verification procedures within the quality assurance surveillance plan to ensure contractor personnel providing the service meet qualification requirements identified for the labor categories specified in the task order and contract. Verification, such as validation of contractor personnel education and years of relevant work experience, ensures the Government receives adequate services, as identified in task order and contract performance requirements (see FAR 46.104 and 46.407).

PGI 216.7?AGREEMENTS

PGI 216.703 Basic ordering agreements.

PGI 216.703-3 Limitations.

(d)(i) Individual orders under a basic ordering agreement must be individually closed following completion of the orders (see FAR 4.804).

(ii) The office issuing the agreement must furnish all authorized ordering offices sufficient information for the ordering office to complete its contract reporting responsibilities under DFARS 204.602 or, in the case of civilian agencies, the Federal Procurement Data System reporting requirement. Data furnished to civilian agencies must contain uncoded information about the data elements and the meanings of the codes to permit these users to translate the data into the federal format. This data must be furnished to the ordering activity in sufficient time for the activity to prepare its report for the action within 3 working days of the order.

(iii) Any activity listed in the agreement may issue orders on DD Form 1155, Order for Supplies or Services, or Standard Form 26, Award/Contract.

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PART 17

OFFICE OF THE ASSISTANT SECRETARY OF WAR

Status: Class D

OFFICE OF THE ASSISTANT SECRETARY OF WAR

3000 DEFENSE PENTAGON

WASHINGTON, DC 20301-3000

ACQUISITION

AND SUSTAINMENT

In reply refer to

DARS Tracking Number: 2026-O0027

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES SPECIAL OPERATIONS

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES TRANSPORTATION

COMMAND (ATTN: ACQUISITION EXECUTIVE)

DEPUTY ASSISTANT SECRETARY OF THE ARMY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE NAVY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE

(CONTRACTING)

DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Class Deviation?Revolutionary Federal Acquisition Regulation (FAR) Overhaul

Part 17, Defense FAR Supplement (DFARS) Part 217

Effective February 1, 2026, contracting officers shall use?

? The revised FAR Part 17, Special Contracting Methods published on the Revolutionary FAR Overhaul web page at https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-17 in lieu of the text codified at 48 CFR chapter 1 (https://www.ecfr.gov).

? The attached DFARS Part 217, Special Contracting Methods, in lieu of the text codified at 48 CFR chapter 2; and

? The attached DFARS Procedures, Guidance, and Information (PGI) 217, Special Contracting Methods, in lieu of the PGI text published on the Defense Pricing, Contracting, and Acquisition Policy web page at https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.

This class deviation implements the following:

? Section 2 of E.O. 14275, Restoring Common Sense to Federal Procurement, which establishes the policy that the FAR ?should only contain provisions required by statute or essential to sound procurement, and any FAR provisions that do not

advance these objectives should be removed.?
DARS Tracking Number: 2026-O0017
Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 17
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? Section 4(a) of E.O. 14265, Modernizing Defense Acquisitions and Spurring Innovation in the Defense Industrial Base which requires the Secretary of War to eliminate or revise any unnecessary supplemental regulations or any other internal guidance, such as relevant parts of the Financial Management Regulation and Defense Federal Acquisition Regulation Supplement.
? The Office of Management and Budget memorandum, M-25-26 issued on May 2, 2025, titled, Overhauling the Federal Acquisition Regulation, which provided additional guidance to federal agencies regarding the FAR overhaul.
This class deviation remains in effect until rescinded or incorporated into the FAR, DFARS, and DFARS PGI. Inquiries regarding this class deviation can be addressed to osd.pentagon.ousd-a-s.mbx.dfars@mail.mil.
John M. Tenaglia
Principal Director,
Defense Pricing, Contracting, and
Acquisition Policy
Attachments:
As stated
2
Attachment A1
DARS Tracking Number: 2026-O0027
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PART 217?SPECIAL CONTRACTING METHODS

SUBPART 217.1?MULTIYEAR CONTRACTING

217.102 Definitions.

As used in this subpart?
?Advance procurement? means an exception to the full funding policy that allows acquisition of long lead time items (advance long lead acquisition) or economic order quantities (EOQ) of items (advance EOQ acquisition) in a fiscal year in advance of that in which the related end item is to be acquired. Advance procurements may include materials, parts, components, and effort that must be funded in advance to maintain a planned production schedule.
?Congressional defense committees,? means?

(1) The Committee on Armed Services of the Senate;
(2) The Committee on Appropriations of the Senate;
(3) The Subcommittee on Defense of the Committee on Appropriations of the Senate;
(4) The Committee on Armed Services of the House of Representatives;
(5) The Committee on Appropriations of the House of Representatives; and
(6) The Subcommittee on Defense of the Committee on Appropriations of the House

of Representatives.

?Military installation? means a base, camp, post, station, yard, center, or other activity under the jurisdiction of the Secretary of a military department or, in the case of an activity in a foreign country, under the operational control of the Secretary of a military department or the Secretary of Defense (10 U.S.C. 2801(c)(4)).

217.103 Presolicitation.

217.103-1 Policy.

217.103-170 Multiyear contract cost analysis.

Before awarding a multiyear contract, the head of the agency must compare the cost of that contract to the cost of an annual procurement approach, using a present value analysis. Only award the multiyear contract if the analysis shows that it will result in a lower cost (10 U.S.C. 3501(l)(7); section 8008(a) of Pub. L. 105-56, and similar sections in subsequent DoD appropriations acts).

217.103-171 Multiyear contracts for services.

(a) The head of the agency has the authority to enter into multiyear contracts for a period of not more than 5 years for covered services and items of supply relating to such services, even though funds are limited by statute to obligation only during the fiscal year for which they were appropriated (10 U.S.C. 3531(a). Covered services are?

(1) Operation, maintenance, and support of facilities and installations;

(2) Maintenance or modification of aircraft, ships, vehicles, and other highly complex military equipment;

(3) Specialized training requiring high quality instructor skills (e.g., training for pilots and aircrew members or foreign language training);

(4) Base services (e.g., ground maintenance, in-plane refueling, bus transportation, and refuse collection and disposal); and

(5) Environmental remediation services for?

(i) An active military installation;

(ii) A military installation being closed or realigned under a base closure law as defined in 10 U.S.C. 2667(h)(2); or

(iii) A site formerly used by DoD (10 U.S.C. 3531(b)).

(b) See PGI 217.103-171(b) for considerations for using multiyear contracts for services.

(c) Before entering into a multiyear contract for services, the head of the agency must make a written determination that?

(1) There will be a continuing requirement for the services that is consistent with current plans for the proposed contract period;

(2) Furnishing the services will require?

(i) A substantial initial investment in plant or equipment; or

(ii) The incurrence of substantial contingent liabilities for the assembly,

training, or transportation of a specialized work force; and

(3) Using a multiyear contract will promote the best interests of the United States by encouraging effective competition and promoting economies in operations (10 U.S.C. 3531(a)).

(d) The head of an agency may not initiate a multiyear contract for services if the value of the multiyear contract exceeds $900 million unless specifically authorized by law (10 U.S.C. 3531(d)(2)).

217.103-172 Multiyear contracts for supplies.

(a) This section applies to all multiyear contracts for supplies, including weapon systems and other multiyear acquisitions specifically authorized by law (10 U.S.C. **3501).**

(b) Multiyear contracts in amounts exceeding $900 million must be specifically authorized by law in an act other than an appropriations act (10 U.S.C. 3501(i)(1)).

(c) The head of the agency may not initiate a multiyear procurement contract for any system (or component thereof) if the value of the multiyear contract exceeds $900 million unless authority for the contract is specifically provided in an appropriations act

(10 U.S.C. 3501(l)(3)).

(d) The head of the agency must not enter into a multiyear contract unless?

(1) The Secretary of Defense has submitted to Congress a budget request for full funding of units to be procured through the contract;

(2) In the case of a contract for procurement of aircraft, the budget request includes full funding of procurement funds for production beyond advance procurement activities of aircraft units to be produced in the fiscal year covered by the budget;

(3) Cancellation provisions in the contract do not include consideration of the contractor?s recurring manufacturing costs associated with the production of unfunded units to be delivered under the contract;

(4) The contract provides that payments to the contractor under the contract must not be made in advance of incurred costs on funded units; and

(5) The contract does not provide for a price adjustment based on a failure to award a follow-on contract (section 8010 of Division C, Title VIII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and similar sections in subsequent DoD appropriations acts).

(e)(1) The head of the agency must not enter into or extend a multiyear contract that exceeds $900 million (when entered into or extended) until the Secretary of Defense identifies the contract and any extension in a report submitted to the congressional defense committees (10 U.S.C. 3501(l)(5)).

(2) In addition, for contracts equal to or greater than $900 million, the head of the contracting activity must determine that the conditions required by paragraphs

(g)(2)(i) through (vii) of this section will be met by such contract, in accordance with the

Secretary?s certification and determination required by paragraph (g)(2) of this section.

(f) The head of the agency may enter into a multiyear contract for?

(1) A weapon system and associated items, services, and logistics support for a weapon system (10 U.S.C. 3501(h)(1)); and

(2) Advance procurement of components, parts, and materials necessary to manufacture a weapon system, including advance procurement to achieve economic lot purchases or more efficient production rates (see paragraphs (g)(3) and (4) of this section regarding economic order quantity procurements) (10 U.S.C. 3501(h)(2)). Before initiating an advance procurement, the contracting officer must verify that it is consistent with DoD policy (e.g., the full funding policy in Volume 2A, chapter 1, of DoD **7000.14-R, Financial Management Regulation).**

(g) The head of the agency must ensure that the following conditions are satisfied before awarding a multiyear contract for a defense acquisition program that has been specifically authorized by law to be carried out using multiyear contract authority:

(1) The multiyear exhibits required by DoD 7000.14-R, Financial Management Regulation, are included in the agency?s budget estimate submission and the President?s budget request.

(2) The Secretary of Defense certifies to Congress in writing, by no later than 30 days before entry into such contracts, that each of the conditions in paragraphs (g)(2)(i) through (vii) of this section is satisfied (10 U.S.C. 3501(i)(3)).

(i) The Secretary has determined that each of the requirements in FAR **17.103-1, paragraphs (b)(1) through (b)(7), will be met by such contract and has** provided the basis for such determination to the congressional defense committees (10 U.S.C. 3501(i)(3)(A)).

(ii) The Secretary?s determination under paragraph (g)(2)(i) of this section was made after the completion of a cost analysis performed by the Defense Cost and Resource Center of the Department of Defense and such analysis supports the findings

(10 U.S.C. 3501(i)(3)(B)).

(iii) The system being acquired pursuant to such contract has not been determined to have experienced cost growth in excess of the critical cost growth threshold pursuant to 10 U.S.C. 4371(a)(3) within 5 years prior to the date the Secretary anticipates such contract (or a contract for advance procurement entered into consistent with the authorization for such contract) will be awarded (10 U.S.C. 3501(i)(3)(C)).

(iv) A sufficient number of end items of the system being acquired under such contract have been delivered at or within the most current estimates of the program acquisition unit cost or procurement unit cost for such system to determine that current estimates of such unit costs are realistic (10 U.S.C. 3501(i)(3)(D)).

(v) Sufficient funds will be available in the fiscal year in which the contract

will be awarded to perform the contract, and the future-years defense program for such fiscal year will include the funding required to execute the program without cancellation (10 U.S.C. 3501(i)(3)(E)).

(vi) The contract is a fixed price type contract (10 U.S.C. 3501(i)(3)(F)).

(vii) The proposed multiyear contract provides for production at not less than minimum economic rates, given the existing tooling and facilities (10 U.S.C. 3501(i)(3)(G)). The head of the agency must submit to OUSD(C)(P/B) information supporting the agency?s determination that this requirement has been met.

(viii) The head of the agency must submit information supporting this certification to OUSD(C)(P/B) for transmission to Congress through the Secretary of Defense.

(A) The head of the agency must, as part of this certification, give written notification to the congressional defense committees of?

(1) The cancellation ceiling amounts planned for each program year in the proposed multiyear contract, together with the reasons for the amounts planned;

(2) The extent to which costs of contract cancellation are not included in the budget for the contract; and

(3) A financial risk assessment of not including the budgeting for costs of contract cancellation (10 U.S.C. 3501(g)); and

(B) The head of the agency must provide copies of the notification to the Office of Management and Budget at least 14 days before contract award.

(3) The contract is for the procurement of a complete and usable end item (10 U.S.C. 3501(i)(5)(A)).

(4) Funds appropriated for any fiscal year for advance procurement are obligated only for the procurement of those long-lead items that are necessary in order to meet a planned delivery schedule for complete major end items that are programmed under the contract to be acquired with funds appropriated for a subsequent fiscal year

(including an economic order quantity of such long-lead items when authorized by law

(10 U.S.C. 3501(i)(5)(B)).

(5) The Secretary may make the certification under paragraph (g)(2) of this section notwithstanding the fact that one or more of the conditions of such certification are not met if the Secretary determines that, due to exceptional circumstances, proceeding with a multiyear contract under this section is in the best interest of the Department of Defense and the Secretary provides the basis for such determination with the certification (10 U.S.C. 3501(i)(6)).

(6) The Secretary of Defense may not delegate this authority to make the certification under paragraph (g)(2) of this section or the determination under paragraph (g)(5) of this section to an official below the level of the Under Secretary of Defense for Acquisition and Sustainment (10 U.S.C. 3501(i)(7)).

(7) If the agency finds, after negotiations with the contractor(s), that the

specified savings cannot be achieved, the head of the agency must assess the savings that, nevertheless, could be achieved by using a multiyear contract. If the savings are substantial, the head of the agency may request relief from the law?s specific savings requirement (10 U.S.C. 3501(i)(4)). The request must?

(i) Quantify the savings that can be achieved;

(ii) Explain any other benefits to the Government of using the multiyear contract;

(iii) Include details regarding the negotiated contract terms and conditions; and

(iv) Be submitted to OUSD(A&S)/DPCAP for transmission to Congress via the Secretary of Defense and the President.

(i) The Secretary of Defense may instruct the head of the agency proposing a multiyear contract to include in that contract negotiated priced options for varying the quantities of end items to be procured over the life of the contract (10 U.S.C. 3501(j)).

(j) Any requests for increased funding or reprogramming for procurement of a

major system under a multiyear contract must be accompanied by an explanation of how the request for increased funding affects the determinations made by the Secretary of Defense under paragraph (g)(2) of this section (10 U.S.C. 3501(m)).

217.103-173 Multiyear contracts for military family housing.

The head of the agency may enter into multiyear contracts for periods up to 4 years for supplies and services required for management, maintenance, and operation of military family housing and may pay the costs of such contracts for each year from annual appropriations for that year (10 U.S.C. 2829).

217.103-174 Multiyear contracts for electricity from renewable energy sources.

(a) The head of the contracting activity may enter into a contract for a period not to exceed 10 years for the purchase of electricity from sources of renewable energy, as that term is defined in section 203(b)(2) of the Energy Policy Act of 2005 (42 U.S.C. 15852(b)(2)).

(b) The head of the contracting activity may exercise the authority in paragraph (a) of this section to enter into a contract for a period in excess of five years only if the head of the contracting activity determines, on the basis of a business case analysis prepared by the requiring activity, that?

(1) The proposed purchase of electricity under such contract is cost effective; and

(2) It would not be possible to purchase electricity from the source in an economical manner without the use of a contract for a period in excess of five years.

(c) Nothing in this section shall be construed to preclude the DoD from using other multiyear contracting authority of DoD to purchase renewable energy.

(d) See PGI 217.103-174 for a business case analysis template and guidance.

217.103-2 Procedures.

(b)(1)(A) Every multiyear contract must comply with FAR 17.103-2(b)(1), unless an exception is approved through the budget process in coordination with the cognizant comptroller.

217.104 Evaluation and award.

217.104-370 Congressional notification.

(a) The head of the agency must provide written notice to the congressional defense committees at least 30 days before termination of any multiyear contract (section 8010 of Pub. L. 113-235, and similar sections in subsequent DoD appropriations acts).

(b)(1) DoD must provide notification to the congressional defense committees at least 30 days before awarding a multiyear contract for certain procurements, including those expected to?

(i) Employ an unfunded contingent liability in excess of $20 million (see 10 U.S.C. 3501(l)(1), 10 U.S.C. 3531(d)(1), and section 8008(a) of Pub. L. 105-56 and similar sections in subsequent DoD appropriations acts);

(ii) Employ economic order quantity procurement in excess of $20 million in any one year of the contract (see 10 U.S.C. 3501(l)(1)) and section 8008(a) of Pub. L. 105-56 and similar sections in subsequent DoD appropriations acts);

(iii) Involve a contract for advance procurement leading to a multiyear contract that employs economic order quantity procurement in excess of $20 million in any one year (see 10 U.S.C. 3501(l)(1) and section 8008(a) of Pub. L. 105-56 and similar sections in subsequent DoD appropriations acts); or

(iv) Include a cancellation ceiling in excess of $200 million (see 10 U.S.C. 3531(d)(4) and 10 U.S.C. 3501(g)(1).

(2) A DoD component must request authority to enter into multiyear contracts (described in paragraphs (b)(1)(i) through (iv)) when submitting its budget for the fiscal year in which the contract will start.

(3) See PGI 217.104-370(b) for multiyear contract congressional notifications, budget submission, and reporting procedures.

SUBPART 217.2?OPTIONS

217.201 Presolicitation.

217.201-170 Use of options.

(a) The sealed bidding requirement at FAR 17.201-1(a) also applies to sealed bid solicitations for contracts excluded by FAR 17.200.

(b) See PGI 217.201-170 for guidance on the use of options for foreign military sales and for use with sole source major systems for U.S. and U.S.-FMS combined procurements.

(c) For a contract that is initially awarded from the competitive selection of a

proposal resulting from a broad agency announcement, see 234-7202(e) for the use of contract options for the development and demonstration or initial production of technology developed under the contract or the delivery of initial or additional items.

217.201-270 Contracts.

(a) Notwithstanding FAR 17.201-2(b)(2), the ordering period of a task order or delivery order contract (including a contract for information technology) awarded by DoD pursuant to 10 U.S.C. 3403?

(1) May be for any period up to 5 years;

(2) May be subsequently extended for one or more successive periods in accordance with an option provided in the contract or a modification of the contract; and

(3) Must not exceed 10 years unless the head of the agency determines in writing that exceptional circumstances require a longer ordering period.

(b) Paragraph (a) of this section does not apply to the following:

(1) Contracts, including task or delivery order contracts, awarded under other statutory authority.

(2) Advisory and assistance service task order contracts (authorized by 10 U.S.C. 3405 that are limited by statute to 5 years, with the authority to extend an additional 6 months (see FAR 16.501-2(c)(2)).

(3) Definite-quantity contracts.

(4) GSA schedule contracts.

(5) Multi-agency contracts awarded by agencies other than NASA, DoD, or the Coast Guard.

(c) Obtain approval from the senior procurement executive before issuing an order against a task or delivery order contract subject to paragraph (a) of this section, if performance under the order is expected to extend more than 1 year beyond the 10-year limit or extended limit described in paragraph (a)(3) of this section (see FAR 37.803-2 for funding and term of service contracts).

217.204 Postaward.

217.204-170 Exercise of options.

In addition to the requirements at FAR 17.204-1(b), exercise an option only after:

(a) Determining that the contractor?s record in the System for Award Management database is active and the contractor?s unique entity identifier, Commercial and Government Entity (CAGE) code, name, and physical address are accurately reflected in the contract document. See PGI 217.204-170 for the requirement to perform cost or price analysis of spare parts prior to exercising any option for firm-fixed-price contracts containing spare parts.

(b) Verifying in the Supplier Performance Risk System (SPRS) (https://www.sprs.csd.disa.mil/) that?

(1) The summary level score of a current NIST SP 800-171 DoD Assessment

(i.e., not more than 3 years old, unless a lesser time is specified in the solicitation) for each covered contractor information system that is relevant to an offer, contract, task order, or delivery order are posted.

(2) The contractor has a CMMC certificate at the level required by the contract, and that it is current (i.e., not more than 3 years old).

217.203-70 Solicitation provisions and contract clauses.

(a) Insert the basic or the alternate of the clause at 252.217-7000, Exercise of Option to Fulfill Foreign Military Sales Commitments, in solicitations and contracts when an

option may be used for foreign military sales requirements. Do not insert the basic or the alternate of this clause in contracts for establishment or replenishment of DoD inventories or stocks, or acquisitions made under DoD cooperative logistics support arrangements.

(1) Insert the basic clause when the foreign military sales country is known at the time of solicitation or award.

(2) Insert the alternate I clause when the foreign military sale country is not known at the time of solicitation or award.

(b) When a surge option is needed in support of industrial capability production planning, insert the clause at 252.217-7001, Surge Option, in solicitations and contracts.

(1) Insert the percentage or quantity of increase the option represents in paragraph (a) of the clause to ensure adequate quantities are available to meet item requirements.

(2) Change 30 days in paragraphs (b)(2) and (d)(1) to longer periods, if appropriate.

(3) Change the 24-month period in paragraph (c)(3), if appropriate.

SUBPART 217.5?INTERAGENCY ACQUISITIONS

217.500 Scope of subpart.

(a) Unless more specific statutory authority exists, the procedures in FAR subpart **17.5 and this subpart apply to all purchases, except micro-purchases, made for DoD by** another agency. This includes orders under a task or delivery order contract entered into by the other agency. (Pub. L. 105-261, Section 814.)

(b) A contracting activity from one DoD Component may provide acquisition assistance to deployed DoD units or personnel from another DoD Component. See PGI **217.502-1 for guidance and procedures.**

217.502 Procedures.

217.502-1 General.

(a) Written agreement on responsibility for management and administration?

(1) Assisted acquisitions. Follow the procedures at PGI 217.502-1(a)(1), when a contracting activity from a DoD Component provides acquisition assistance to deployed

DoD units or personnel from another DoD Component.

217.503 Ordering procedures.

(d) Follow the procedures at PGI 217.503 determination and findings guidance when the requesting agency is within DoD or when a DoD contracting office is acting as the servicing agency.

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SUBPART 217.6?INTERAGENCY ACQUISITIONS: ACQUISITIONS BY NONDEFENSE AGENCIES ON BEHALF OF THE DEPARTMENT OF DEFENSE

217.600 Scope of subpart.

This subpart implements Section 854 of Pub. L. 108-375, Section 801 of Pub. L. 110-181, and Section 806 of Pub. L. 111-84.

217.601 Definitions.

As used in this subpart?

?Assisted acquisition? means the type of interagency contracting through which acquisition officials of a non-DoD agency award a contract or a task or delivery order for the acquisition of supplies or services on behalf of DoD.

?Direct acquisition? means the type of interagency contracting through which DoD orders a supply or service from a Governmentwide acquisition contract maintained by a non-DoD agency.

?Governmentwide acquisition contract? means a task or delivery order contract that?

(i) Is entered into by a non-defense agency; and

(ii) May be used as the contract under which property or services are procured for one or more other departments or agencies of the Federal Government.

217.670 Procedures.

Departments and agencies must establish and maintain procedures for reviewing and approving orders placed for supplies and services under non-DoD contracts, whether through direct acquisition or assisted acquisition, when the amount of the order exceeds the simplified acquisition threshold. These procedures must include?

(a) Evaluating whether using a non-DoD contract for the acquisition is in the best interest of DoD. Factors to be considered include?

(1) Satisfying customer requirements;

(2) Schedule;

(3) Cost effectiveness (taking into account discounts and fees). In order to ensure awareness of the total cost of fees associated with use of a non-DoD contract, follow the procedures at PGI 217.670(a)(3); and

(4) Contract administration (including oversight);

(b) Determining that the tasks to be accomplished or supplies to be provided are within the scope of the contract to be used;

(c) Reviewing funding to ensure that it is used in accordance with appropriation

limitations; and

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(d) Collecting and reporting data on the use of assisted acquisition for analysis. Follow the reporting requirements in 204.301.

SUBPART 217.7?MANAGEMENT AND OPERATING CONTRACTS

217.700 Scope of subpart.

FAR subpart 17.7 does not apply to DoD.

SUBPART 217.8?REVERSE AUCTIONS

217.802-2--Applicability.

(d) Reverse auctions are prohibited when procuring personal protective equipment or aviation critical safety items when the requiring activity advises that quality issues or failure could result in combat casualties (See 252.209-7010 for the definition and identification of critical safety items).

SUBPART 217.70?EXCHANGE OF PERSONAL PROPERTY

217.7000 Scope of subpart.

This subpart prescribes policy and procedures for exchange of non-excess personal property concurrent with an acquisition. 40 U.S.C. 503 permits exchange of personal property and application of the exchange allowance to the acquisition of similar property. This subpart does not authorize the sale of non-excess personal property.

217.7001 Definitions.

As used in this subpart?

(a) ?Exchange (trade-in) property? means property which?

(1) Is not excess but is eligible for replacement (because of obsolescence, unserviceability, or other reason); and

(2) Is applied as whole or partial payment toward the acquisition of similar items (i.e., items designed and constructed for the same purpose).

(b) ?Property? means items that fall within one of the generic categories listed in DoD Manual 4140.01, Volume 9, DoD Supply Chain Materiel Management Procedures: Materiel Programs.

217.7002 Policy.

DoD policy is to exchange, rather than replace, eligible non-excess property whenever exchange promotes economical and efficient program accomplishment. Exchange policy, authority, and applicability are governed by?

(a) The Federal Property Management Regulations issued by the Administrator of the General Services Administration; and

(b) DoD Manual 4140.01, Volume 9, DoD Supply Chain Materiel Management Procedures: Materiel Programs.

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217.7003 Purchase request.

See PGI 217.7003 for information provided by the requiring activity to support purchase requests.

217.7004 Solicitation and award.

Follow the procedures at PGI 217.7004 for solicitations, exchanges with offerors, and awards guidance.

217.7005 Solicitation provision.

Insert the provision at 252.217-7002, Offering Property for Exchange, when offering nonexcess personal property for exchange. Allow a minimum of 14 calendar days for the inspection period in paragraph (b) of the clause if the exchange property is in the contiguous United States. Allow at least 21 calendar days outside the contiguous United States.

SUBPART 217.71?MASTER AGREEMENT FOR REPAIR AND ALTERATION OF VESSELS

217.7100 Scope of subpart.

This subpart contains acquisition policies and procedures for master agreements for repair and alteration of vessels.

217.7101 Definitions.

(a) ?Master agreement for repair and alteration of vessels??

(1) Is a written instrument of understanding, negotiated between a contracting activity and a contractor that?

(A) Contains contract clauses, terms, and conditions applying to future contracts for repairs, alterations, and/or additions to vessels; and

(B) Contemplates separate future contracts that will incorporate by reference or attachment the required and applicable clauses agreed upon in the master agreement.

(2) Is not a contract.

(b) ?Job order??

(1) Is a fixed price contract incorporating, by reference or attachment, a master agreement for repair and alteration of vessels;

(2) May include clauses pertaining to subjects not covered by the master agreement; but applicable to the job order being awarded; and

(3) Applies to a specific acquisition and sets forth the scope of work, price, delivery date, and other appropriate terms that apply to the particular job order.

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217.7102 General.

(a) Activities will enter into master agreements for repair and alteration of vessels with all prospective contractors located within the United States or its outlying areas,

which?

(1) Request ship repair work; and

(2) Possess the organization and facilities to perform the work satisfactorily.

(Issuance of a master agreement does not indicate approval of the contractor's facility for any particular acquisition and is not an affirmative determination of responsibility under FAR subpart 9.1 for any particular acquisition.)

(b) Activities may use master agreements in work with prospective contractors located outside the United States and its outlying areas.

(c) Activities may issue job orders under master agreements to effect repairs, alterations, and/or additions to vessels belonging to foreign governments.

(1) Contractors shall treat vessels of a foreign government as if they were vessels of the U.S. Government when requested by the contracting officer.

(2) Identify the vessel and the foreign government in the solicitation and job order.

217.7103 Master agreements and job orders.

217.7103-1 Content and format of master agreements.

Follow the procedures at PGI 217.7103-1 for preparation of master agreements.

217.7103-2 Period of agreement.

(a) Master agreements remain in effect until cancelled by either the contractor or the contracting officer.

(b) Either the contractor or contracting officer may cancel a master agreement by giving 30 days written notice to the other.

(c) Cancellation of a master agreement does not affect the rights and liabilities under any job order existing at the time of cancellation. The contractor must continue to perform all work covered by any job order issued before the effective date of cancellation of the master agreement.

217.7103-3 Solicitations for job orders.

(a) When a requirement for the type of work covered by the master agreement is identified within the United States or its outlying areas, solicit offers from prospective contractors that?

(1) Previously executed a master agreement; or

(2) Possess the necessary qualifications to perform the work and agree to execute a master agreement before award of a job order.

(b) Follow the procedures at PGI 217.7103-3 when preparing solicitations for job orders.

217.7103-4 Emergency work.

(a) The contracting officer, without soliciting offers, may issue a written job order to a contractor that has previously executed a master agreement when?

(1) Delay in the performance of necessary repair work would endanger a vessel,

its cargo or stores; or

(2) Military necessity requires immediate work on a vessel.

(b) Follow the procedures at PGI 217.7103-4 when processing this type of undefinitized contract action.

217.7103-5 Repair costs not readily ascertainable.

Follow the procedures at PGI 217.7103-5 if the nature of any repairs is such that their extent and probable cost cannot be determined readily.

217.7103-6 Modification of master agreements.

(a) Review each master agreement at least annually before the anniversary of its effective date and revise it as necessary to conform to the requirements of the FAR and DFARS. Statutory or other mandatory changes may require review and revision earlier than one year.

(b) A master agreement must be changed by modifying the master agreement itself. A job order cannot modify a master agreement.

(c) A modification to a master agreement shall not affect job orders issued before the effective date of the modification.

217.7104 Contract clauses.

(a) Insert the following clauses in solicitations for, and in, master agreements for repair and alteration of vessels:

(1) 252.217-7003, Changes.

(2) 252.217-7004, Job Orders and Compensation.

(3) 252.217-7005, Inspection and Manner of Doing Work.

(4) 252.217-7006, Title.

(5) 252.217-7007, Payments.

(6) 252.217-7008, Bonds.

(7) 252.217-7009, Default.

(8) 252.217-7010, Performance.

(9) 252.217-7011, Access to Vessel.

(10) 252.217-7012, Liability and Insurance.

(11) 252.217-7013, Guarantees.

(12) 252.217-7014, Discharge of Liens.

(13) 252.217-7015, Safety and Health.

(14) 252.217-7016, Plant Protection, as applicable.

(b)(1) Incorporate in solicitations for, and in, job orders, the clauses in the master agreement, and any other clauses on subjects not covered by the master agreement, but applicable to the job order to be awarded.

(2) Insert the clause at 252.217-7016, Plant Protection, in job orders where performance is to occur at the contractor's facility.

SUBPART 217.73?IDENTIFICATION OF SOURCES OF SUPPLY

217.7300 Scope.

This subpart implements 10 U.S.C. 4753. It contains policy and procedures for requiring contractors to identify the actual manufacturer of supplies furnished to DoD.

217.7301 Policy.

Contractors are required to identify their sources of supply in contracts for supplies. Contractor identification of sources of supply enables solicitation, in subsequent acquisitions, of actual manufacturers or other suppliers of items. This enhances competition and potentially avoids payment of additional costs for no significant added value.

217.7302 Procedures.

(a) Whenever practicable, include a requirement for contractor identification of sources of supply in contracts for the delivery of supplies. Contractors are required to identify?

(1) The item's actual manufacturer or producer, or all the contractor's sources for the item;

(2) The item's national stock number, if applicable;

(3) The item identification number used by?

(i) The actual manufacturer or producer of the item; or

(ii) Each of the contractor's sources for the item; and

(4) The source of any technical data delivered under the contract.

(b) The requirement in paragraph (a) of this section does not apply to contracts that are?

(1) For commercial products; or

(2) Valued at or below the simplified acquisition threshold.

217.7303 Solicitation provision.

(a) Insert the provision at 252.217-7026, Identification of Sources of Supply, or one substantially the same, in solicitations for supplies conducted under other than full and open competition, except when?

(1) Using FAR 6.103-5;

(2) The contracting officer already has the information required by the provision (e.g., the information was obtained under other acquisitions);

(3) The contract is for subsistence, clothing or textiles, fuels, or supplies purchased and used outside the United States;

(4) The contracting officer determines that it would not be practicable to require offerors/contractors to provide the information, e.g., nonrepetitive local purchases; or

(5) The contracting officer determines that the exception at 217.7302(b) applies to all items under the solicitation.

(b) If appropriate, insert the provision at 252.217-7026, Identification of Sources of Supply, or one substantially the same, in service contracts requiring the delivery of

supplies.

SUBPART 217.74?UNDEFINITIZED CONTRACT ACTIONS

217.7400 Scope.

This subpart prescribes policies and procedures implementing 10 U.S.C. 3371, et seq.

217.7401 Definitions.

As used in this subpart?

?Contract action? means an action which results in a contract.

(1) It includes contract modifications for additional supplies or services.

(2) It includes task orders and delivery orders.

(3) It does not include change orders, administrative changes, funding modifications, or any other contract modifications that are within the scope and under the terms of the contract, e.g., engineering change proposals, value engineering change proposals, and over and above work requests as described in subpart 217.77.

?Definitization? means the agreement on, or determination of, contract terms, specifications, and price, which converts the undefinitized contract action to a definitive contract.

?Qualifying proposal? means a proposal that contains sufficient information to enable DoD to conduct meaningful analyses and audits of the information contained in the proposal.

?Undefinitized contract action? means any contract action for which the contract terms, specifications, or price are not agreed upon before performance is begun under the action. Examples are letter contracts, orders under basic ordering agreements, and provisioned item orders, for which the price has not been agreed upon before performance has begun.

217.7402 Exceptions.

(a) The following undefinitized contract actions (UCAs) are not subject to this subpart. However, the contracting officer will apply the policy and procedures to them to the maximum extent practicable (also see paragraph (b) of this section):

(1) Purchases at or below the simplified acquisition threshold.

(2) Special access programs.

(3) Congressionally mandated long-lead procurement contracts.

(b) If the contracting officer determines that it is impracticable to adhere to the procedures of this subpart for a particular contract action that falls within one of the categories in paragraph (a) of this section, the contracting officer will provide prior notice, through agency channels, electronically via email to the Principal Director, Defense Pricing, Contracting, and Acquisition Policy (Contract Policy), at osd.pentagon.ousd-a-s.mbx.asda-dp-c-contractpolicy@mail.mil.

217.7403 Policy.

DoD policy is that undefinitized contract actions will?

(a) Be used only when?

(1) The negotiation of a definitive contract action is not possible in sufficient time to meet the Government's requirements; and

(2) The Government's interest demands that the contractor be given a binding commitment so that contract performance can begin immediately.

(b) Be as complete and definite as practicable under the particular circumstances.

217.7404 Limitations.

See PGI 217.7404 for additional guidance on obtaining approval to authorize use of an undefinitized contact action, documentation requirements, and other limitations on their use.

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(a) Foreign military sales contracts.

(1) A contracting officer may not enter into a UCA for a foreign military sale unless?

(i) The UCA provides for agreement upon contractual terms, specifications, and price by the end of the 180-day period beginning on the date on which the contractor submits a qualifying proposal; and

(ii) The contracting officer obtains approval from the head of the contracting activity to enter into a UCA in accordance with 217.7404-1.

(2) The head of the contracting activity may waive the requirements of paragraph (a)(1) of this section, if a waiver is necessary in order to support any of the following operations:

(i) A contingency operation.

(ii) A humanitarian or peacekeeping operation.

(b) Unilateral definitization by a contracting officer. Any UCA with a value greater than $50 million may not be unilaterally definitized until?

(1) The earlier of?

(i) The end of the 180-day period, beginning on the date on which the contractor submits a qualifying proposal to definitize the contractual terms, specifications, and price; or

(ii) The date on which the amount of funds expended under the contractual action is equal to more than 50 percent of the negotiated overall not-to-exceed price for the contractual action;

(2) The head of the contracting activity, without power of redelegation, approves the definitization in writing;

(3) The contracting officer provides a copy of the written approval to the contractor; and

(4) A period of 30 calendar days has elapsed after the written approval is provided to the contractor.

217.7404-1 Authorization.

The contracting officer will obtain approval from the head of the contracting activity before?

(a) Entering into a UCA. The request for approval must fully explain the need to begin performance before definitization, including the adverse impact on agency requirements resulting from delays in beginning performance.

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(b) Including requirements for non-urgent spare parts and support equipment in a UCA. The request should show that inclusion of the non-urgent items is consistent with good business practices and in the best interest of the United States.

(c) Modifying the scope of a UCA when performance has already begun. The request should show that the modification is consistent with good business practices and in the best interests of the United States.

217.7404-2 Price ceiling.

UCAs must include a not-to-exceed price. See PGI 217.7404-2 for additional guidance on establishing the not-to-exceed price.

217.7404-3 Definitization schedule.

(a) UCAs must contain definitization schedules that provide for definitization by the earlier of?

(1) The date that is 180 days after the contractor submits a qualifying proposal. This date may not be extended beyond an additional 90 days without a written determination by the head of the contracting activity without power of redelegation, the commander of the combatant command concerned, or the Under Secretary of Defense for Acquisition and Sustainment that it is in the best interests of the military department or the defense agency, the combatant command, or the Department of Defense, respectively, to continue the actions; or

(2) The date on which the amount of funds obligated under the contract action is equal to more than 50 percent of the not-to-exceed price.

(b)(1) Submission of a qualifying proposal in accordance with the definitization schedule is a material element of the contract. If the contractor does not submit a qualifying proposal in accordance with the contract definitization schedule, notwithstanding FAR 52.216-26, Payments of Allowable Costs Before Definitization, the contracting officer may withhold an amount necessary to protect the interests of the Government, not to exceed 5 percent of all subsequent financing requests, or take other appropriate actions (e.g., documenting the noncompliance in the contractor?s past performance evaluation or terminating the contract for default).

(2) Contracting officers must document in the contract file the justification for withholding or not withholding payments if the qualifying proposal was not submitted in accordance with the contract definitization schedule.

217.7404-4 Limitations on obligations.

(a) The Government must not obligate more than 50 percent of the not-to-exceed

price before definitization. However, if a contractor submits a qualifying proposal before 50 percent of the not-to-exceed price has been obligated by the Government, then the limitation on obligations before definitization may be increased to no more than 75 percent (see 232.102-70 for coverage on provisional delivery payments).

(b) In determining the appropriate amount to obligate, the contracting officer will assess the contractor?s proposal for the undefinitized period and will obligate funds only in an amount consistent with the contractor?s requirements for the undefinitized period.

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217.7404-5 Exceptions.

(a) The limitations in 217.7404-2, 217.7404-3, and 217.7404-4 do not apply to UCAs for the purchase of initial spares.

(b) The head of an agency may waive the limitations in 217.7404(a), 217.7404-2, **217.7404-3, and 217.7404-4 for UCAs if the head of the agency determines that the** waiver is necessary to support?

(1) A contingency operation; or

(2) A humanitarian or peacekeeping operation.

217.7404-6 Allowable profit.

When the final price of a UCA is negotiated after a substantial portion of the required performance has been completed, the head of the contracting activity will ensure the profit allowed reflects?

(a) Any reduced cost risk to the contractor for costs incurred during contract performance before negotiation of the final price. However, if a contractor submits a qualifying proposal to definitize a UCA, and the contracting officer for such action definitizes the contract after the end of the 180-day period beginning on the date on which the contractor submitted the qualifying proposal, the profit allowed on the contract must accurately reflect the cost risk of the contractor as such risk existed on the date the contractor submitted the qualifying proposal;

(b) Any reduced cost risk to the contractor for costs expected to be incurred during performance of the remainder of the contract after negotiation of the final price; and

(c) The requirements at 215.409 (see PGI 217.7404-6). Document the risk assessment in the price negotiation memorandum.

217.7405 Plans and reports.

(a) To provide for enhanced management and oversight of UCAs, departments and agencies must?

(1) Prepare and maintain a Consolidated UCA Management Plan; and

(2) Prepare semi-annual Consolidated UCA Management Reports addressing each UCA with an estimated value exceeding $5 million following the procedures at **PGI 217.7405.**

(b) Consolidated UCA Management Reports shall include information about all change orders that are not forward priced (i.e., unpriced) and have an estimated value

exceeding $5 million.

217.7406 Contract clauses.

(a) Insert the clause at FAR 52.216-24, Limitation of Government Liability, in?

(1) All UCAs;

(2) Solicitations associated with UCAs;

(3) Basic ordering agreements;

(4) Indefinite delivery contracts;

(5) Any other type of contract providing for the use of UCAs; and

(6) Unpriced change orders with an estimated value exceeding $5 million.

(b)(1) Insert the clause at 252.217-7027, Contract Definitization, in?

(i) All UCAs;

(ii) Solicitations associated with UCAs;

(iii) Basic ordering agreements;

(iv) Indefinite delivery contracts;

(v) Any other type of contract providing for the use of UCAs; and

(vi) Unpriced change orders with an estimated value exceeding $5 million.

(2) Insert the applicable information in paragraphs (a), (b), and (d) of the clause.

(3) If, at the time of entering into the UCA or unpriced change order, the contracting officer knows that the definitive contract action will meet the criteria of FAR 15.403-1 or 15.403-2 for not requiring submission of certified cost or pricing data, the words ?and certified cost or pricing data? may be deleted from paragraph (a) of the clause.

SUBPART 217.75?ACQUISITION OF REPLENISHMENT PARTS

217.7500 Scope of subpart.

This subpart provides guidance on additional requirements related to acquisition of replenishment parts.

217.7501 Definition.

As used in this subpart?

?Replenishment parts? means repairable or consumable parts acquired after the initial provisioning process.

217.7502 General.

(a) See PGI 217.7502 for more information on replenishment parts.

(b) Departments and agencies?

(1) May acquire replenishment parts concurrently with production of the end item.

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(2) Must provide for full and open competition when fully adequate drawings and any other needed data are available with the right to use for acquisition purposes (see Part 227). However, when data is not available for a competitive acquisition, follow the procedures at PGI 217.7504.

(3) Shall follow the limitations on price increases in 217.7505.

217.7503 Spares acquisition integrated with production.

Follow the procedures at PGI 217.7503 for acquiring spare parts concurrently with the end item.

217.7504 Acquisition of parts when data is not available.

Follow the procedures at PGI 217.7504 when acquiring parts for which the Government does not have the necessary data.

217.7505 Limitations on price increases.

This section provides implementing guidance for Section 1215 of Pub. L. 98-94 (10 U.S.C. 2452 note).

(a) Do not award, on a sole source basis, a contract for any centrally managed replenishment part when the price of the part has increased by 25 percent or more over the most recent 12-month period.

(1) Before computing the percentage difference between the current price and the prior price, adjust for quantity, escalation, and other factors necessary to achieve comparability.

(2) Departments and agencies may specify an alternate percentage or percentages for contracts at or below the simplified acquisition threshold.

(b) The contracting officer may award a contract for a part, the price of which exceeds the limitation in paragraph (a) of this section, if the contracting officer certifies in writing to the head of the contracting activity before award that?

(1) The contracting officer has evaluated the price of the part and concluded that the price increase is fair and reasonable; or

(2) The national security interests of the United States require purchase of the **part despite the price increase.**

(c) The fact that a particular price has not exceeded the limitation in paragraph (a) of this section does not relieve the contracting officer of the responsibility for obtaining a fair and reasonable price.

(d) Contracting officers may include a provision in sole source solicitations requiring that the offeror supply with its proposal, price and quantity data on any Government orders for the replenishment part issued within the most recent 12 months.

217.7506 Spare parts breakout program.

See PGI 217.7506 and DoD Manual 4140.01, Volume 9, DoD Supply Chain Materiel Management Procedures: Materiel Programs, for spare parts breakout requirements.

SUBPART 217.76?CONTRACTS WITH PROVISIONING REQUIREMENTS

217.7601 Provisioning.

(a) Follow the procedures at PGI 217.7601 for contracts with provisioning requirements.

(b) For technical requirements of provisioning, see DoD Manual 4140.01, Volume 2, DoD Supply Chain Materiel Management Procedures: Demand and Supply Planning.

SUBPART 217.77?OVER AND ABOVE WORK

217.7701 Procedures.

Follow the procedures at PGI 217.7701 when acquiring over and above work.

217.7702 Contract clause.

Insert the clause at 252.217-7028, Over and Above Work, in solicitations and contracts containing requirements for over and above work, except as provided for in subpart **217.71.**

PART 252? SOLICITATION PROVISIONS AND CONTRACT CLAUSES

SUBPART 252.2?TEXT OF PROVISIONS AND CLAUSES

252.217-7000 Exercise of Option to Fulfill Foreign Military Sales

Commitments.

Basic. As prescribed in 217.203-70(a) and (a)(1), use the following clause:

EXERCISE OF OPTION TO FULFILL FOREIGN MILITARY SALES

COMMITMENTS?BASIC (NOV 2014)

(a) The Government may exercise the option(s) of this contract to fulfill foreign military sales commitments.

(b) The foreign military sales commitments are for:

(Insert name of country) (Insert applicable CLIN)

(End of clause)

Alternate I. As prescribed in 217.203-70(a) and (a)(2), use the following clause, which uses a different paragraph (b) than paragraph (b) of the basic clause:

EXERCISE OF OPTION TO FULFILL FOREIGN MILITARY SALES

COMMITMENTS?ALTERNATE I (NOV 2014)

(a) The Government may exercise the option(s) of this contract to fulfill foreign military sales commitments.

(b) On the date the option is exercised, the Government shall identify the foreign country for the purpose of negotiating any equitable adjustment attributable to foreign military sales. Failure to agree on an equitable adjustment shall be treated as a dispute under the Disputes clause of this contract.

(End of clause)

252.217-7001 Surge Option.

As prescribed in 217.203-70(b), use the following clause:

SURGE OPTION (DEC 2018)

(a) General. The Government has the option to?

(1) Increase the quantity of supplies or services called for under this contract by no more than ___ percent or _____ [insert quantity and description of services or supplies to be increased]; and/or

(2) Accelerate the rate of delivery called for under this contract, at a price or cost established before contract award or to be established by negotiation as provided in this clause.

(b) Schedule.

(1) When the Capabilities Analysis Plan (CAP) is included in the contract, the option delivery schedule shall be the production rate provided with the Plan. If the Plan was negotiated before contract award, then the negotiated schedule shall be used.

(2) If there is no CAP in the contract, the Contractor shall, within 30 days from the date of award, furnish the Contracting Officer a delivery schedule showing the maximum sustainable rate of delivery for items in this contract. This delivery schedule shall provide acceleration by month up to the maximum sustainable rate of delivery achievable within the Contractor's existing facilities, equipment, and subcontracting structure.

(3) The Contractor shall not revise the option delivery schedule without approval from the Contracting Officer.

(c) Exercise of option.

(1) The Contracting Officer may exercise this option at any time before acceptance by the Government of the final scheduled delivery.

(2) The Contracting Officer will provide a preliminary oral or written notice to the Contractor stating the quantities to be added or accelerated under the terms of this clause, followed by a contract modification incorporating the transmitted information and instructions. The notice and modification will establish a not-to-exceed price equal to the highest contract unit price or cost of the added or accelerated items as of the date of the notice.

(3) The Contractor will not be required to deliver at a rate greater than the maximum sustainable delivery rate under paragraph (b)(2) of this clause, nor will the

exercise of this option extend delivery more than 24 months beyond the scheduled final delivery.

(d) Price negotiation.

(1) Unless the option cost or price was previously agreed upon, the Contractor shall, within 30 days from the date of option exercise, submit to the Contracting Officer a cost or price proposal (including a cost breakdown) for the added or accelerated items.

(2) Failure to agree on a cost or price in negotiations resulting from the exercise of this option shall constitute a dispute concerning a question of fact within the meaning of the Disputes clause of this contract. However, nothing in this clause shall excuse the

Contractor from proceeding with the performance of the contract, as modified, while any resulting claim is being settled.

(End of clause)

252.217-7002 Offering Property for Exchange.

As prescribed in 217.7005, use the following provision:

OFFERING PROPERTY FOR EXCHANGE (JUN 2012)

(a) The property described in item number _____, is being offered in accordance with the exchange provisions of 40 U.S.C. 503.

(b) The property is located at (insert address) .

Offerors may inspect the property during the period (insert beginning and ending dates and insert hours during day) .

(End of provision)

252.217-7003 Changes.

As prescribed in 217.7104(a), use the following clause:

CHANGES (DEC 1991)

(a) The Contracting Officer may, at any time and without notice to the sureties, by written change order, make changes within the general scope of any job order issued under the Master Agreement in?

(1) Drawings, designs, plans, and specifications;

(2) Work itemized;

(3) Place of performance of the work;

(4) Time of commencement or completion of the work; and

(5) Any other requirement of the job order.

(b) If a change causes an increase or decrease in the cost of, or time required for, performance of the job order, whether or not changed by the order, the Contracting

Officer shall make an equitable adjustment in the price or date of completion, or both, and shall modify the job order in writing.

(1) Within ten days after the Contractor receives notification of the change, the Contractor shall submit to the Contracting Officer a request for price adjustment, together with a written estimate of the increased cost.

(2) The Contracting Officer may grant an extension of this period if the Contractor requests it within the ten day period.

(3) If the circumstances justify it, the Contracting Officer may accept and grant a request for equitable adjustment at any later time prior to final payment under the job order, except that the Contractor may not receive profit on a payment under a late request.

(c) If the Contractor includes in its claim the cost of property made obsolete or excess as a result of a change, the Contracting Officer shall have the right to prescribe the manner of disposition of that property.

(d) Failure to agree to any adjustment shall be a dispute within the meaning of the Disputes clause.

(e) Nothing in this clause shall excuse the Contractor from proceeding with the job order as changed.

(End of clause)

252.217-7004 Job Orders and Compensation.

As prescribed in 217.7104(a), use the following clause:

JOB ORDERS AND COMPENSATION (MAY 2006)

(a) The Contracting Officer shall solicit bids or proposals and make award of job orders. The issuance of a job order signed by the Contracting Officer constitutes award. The job order shall incorporate the terms and conditions of the Master Agreement.

(b) Whenever the Contracting Officer determines that a vessel, its cargo or stores, would be endangered by delay, or whenever the Contracting Officer determines that military necessity requires that immediate work on a vessel is necessary, the Contracting Officer may issue a written order to perform that work and the Contractor hereby agrees to comply with that order and to perform work on such vessel within its capabilities.

(1) As soon as practicable after the issuance of the order, the Contracting Officer and the Contractor shall negotiate a price for the work and the Contracting Officer shall issue a job order covering the work.

(2) The Contractor shall, upon request, furnish the Contracting Officer with a breakdown of costs incurred by the Contractor and an estimate of costs expected to be incurred in the performance of the work. The Contractor shall maintain, and make available for inspection by the Contracting Officer or the Contracting Officer's representative, records supporting the cost of performing the work.

(3) Failure of the parties to agree upon the price of the work shall constitute a dispute within the meaning of the Disputes clause of the Master Agreement. In the meantime, the Contractor shall diligently proceed to perform the work ordered.

(c)(1) If the nature of any repairs is such that their extent and probable cost cannot be ascertained readily, the Contracting Officer may issue a job order (on a sealed bid or negotiated basis) to determine the nature and extent of required repairs.

(2) Upon determination by the Contracting Officer of what work is necessary, the Contractor, if requested by the Contracting Officer, shall negotiate prices for performance of that work. The prices agreed upon shall be set forth in a modification of the job order.

(3) Failure of the parties to agree upon the price shall constitute a dispute under the Disputes clause. In the meantime, the Contractor shall diligently proceed to perform the work ordered.

(End of clause)

252.217-7005 Inspection and Manner of Doing Work.

As prescribed in 217.7104(a), use the following clause:

INSPECTION AND MANNER OF DOING WORK (JUL 2009)

(a) The Contractor shall perform work in accordance with the job order, any drawings and specifications made a part of the job order, and any change or modification issued under the Changes clause of the Master Agreement.

(b)(1) Except as provided in paragraph (b)(2) of this clause, and unless otherwise specifically provided in the job order, all operational practices of the Contractor and all workmanship, material, equipment, and articles used in the performance of work under the Master Agreement shall be in accordance with the best commercial marine practices and the rules and requirements of the American Bureau of Shipping, the U.S. Coast Guard, and the Institute of Electrical and Electronic Engineers, in effect at the time of Contractor's submission of bid (or acceptance of the job order, if negotiated).

(2) When Navy specifications are specified in the job order, the Contractor shall follow Navy standards of material and workmanship. The solicitation shall prescribe the Navy standard whenever applicable.

(c) The Government may inspect and test all material and workmanship at any time during the Contractor's performance of the work.

(1) If, prior to delivery, the Government finds any material or workmanship is defective or not in accordance with the job order, in addition to its rights under the Guarantees clause of the Master Agreement, the Government may reject the defective or nonconforming material or workmanship and require the Contractor to correct or replace it at the Contractor's expense.

(2) If the Contractor fails to proceed promptly with the replacement or correction of the material or workmanship, the Government may replace or correct the defective or nonconforming material or workmanship and charge the Contractor the excess costs incurred.

(3) As specified in the job order, the Contractor shall provide and maintain an inspection system acceptable to the Government.

(4) The Contractor shall maintain complete records of all inspection work and shall make them available to the Government during performance of the job order and for 90 days after the completion of all work required.

(d) The Contractor shall not permit any welder to work on a vessel unless the welder is, at the time of the work, qualified to the standards established by the U.S. Coast Guard, American Bureau of Shipping, or Department of the Navy for the type of welding being performed. Qualifications of a welder shall be as specified in the job order.

(e) The Contractor shall?

(1) Exercise reasonable care to protect the vessel from fire;

(2) Maintain a reasonable system of inspection over activities taking place in the vicinity of the vessel's magazines, fuel oil tanks, or storerooms containing flammable materials;

(3) Maintain a reasonable number of hose lines ready for immediate use on the vessel at all times while the vessel is berthed alongside the Contractor's pier or in dry dock or on a marine railway;

(4) Unless otherwise provided in a job order, provide sufficient security patrols to reasonably maintain a fire watch for protection of the vessel when it is in the Contractor's custody;

(5) To the extent necessary, clean, wash, and steam out or otherwise make safe, all tanks under alteration or repair;

(6) Furnish the Contracting Officer or designated representative with a copy of the ?gas-free? or ?safe-for-hotwork? certificate, provided by a Marine Chemist or Coast Guard authorized person in accordance with Occupational Safety and Health Administration regulations (29 CFR 1915.14) before any hot work is done on a tank;

(7) Treat the contents of any tank as Government property in accordance with the Government Property clause; and

(8) Dispose of the contents of any tank only at the direction, or with the concurrence, of the Contracting Officer.

(f) Except as otherwise provided in the job order, when the vessel is in the custody of the Contractor or in dry dock or on a marine railway and the temperature is expected to go as low as 35 oF, the Contractor shall take all necessary steps to?

(1) Keep all hose pipelines, fixtures, traps, tanks, and other receptacles on the vessel from freezing; and

(2) Protect the stern tube and propeller hubs from frost damage.

(g) The Contractor shall, whenever practicable?

(1) Perform the required work in a manner that will not interfere with the berthing and messing of Government personnel attached to the vessel; and

(2) Provide Government personnel attached to the vessel access to the vessel at all times.

(h) Government personnel attached to the vessel shall not interfere with the Contractor's work or workers.

(i)(1) The Government does not guarantee the correctness of the dimensions, sizes, and shapes set forth in any job order, sketches, drawings, plans, or specifications prepared or furnished by the Government, unless the job order requires that the Contractor perform the work prior to any opportunity to inspect.

(2) Except as stated in paragraph (i)(1) of this clause, and other than those parts furnished by the Government, the Contractor shall be responsible for the correctness of the dimensions, sizes, and shapes of parts furnished under this agreement.

(j) The Contractor shall at all times keep the site of the work on the vessel free from accumulation of waste material or rubbish caused by its employees or the work. At the completion of the work, unless the job order specifies otherwise, the Contractor shall remove all rubbish from the site of the work and leave the immediate vicinity of the work area ?broom clean.?

(End of clause)

252.217-7006 Title.

As prescribed in 217.7104(a), use the following clause:

TITLE (DEC 1991)

(a) Unless otherwise provided, title to all materials and equipment to be incorporated in a vessel in the performance of a job order shall vest in the Government upon delivery at the location specified for the performance of the work.

(b) Upon completion of the job order, or with the approval of the Contracting Officer during performance of the job order, all Contractor-furnished materials and equipment not incorporated in, or placed on, any vessel, shall become the property of the Contractor, unless the Government has reimbursed the Contractor for the cost of the materials and equipment.

(c) The vessel, its equipment, movable stores, cargo, or other ship's materials shall not be considered Government-furnished property.

(End of clause)

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Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 17

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252.217-7007 Payments.

As prescribed in 217.7104(a), use the following clause:

PAYMENTS (DEC 1991)

(a) ?Progress payments,? as used in this clause, means payments made before completion of work in progress under a job order.

(b) Upon submission by the Contractor of invoices in the form and number of copies directed by the Contracting Officer, and as approved by the Contracting Officer, the Government will make progress payments as work progresses under the job order.

(1) Generally, the Contractor may submit invoices on a semi-monthly basis, unless expenditures justify a more frequent submission.

(2) The Government need not make progress payments for invoices aggregating less than $5,000.

(3) The Contracting Officer shall approve progress payments based on the value, computed on the price of the job order, of labor and materials incorporated in the work, materials suitably stored at the site of the work, and preparatory work completed, less the aggregate of any previous payments.

(4) Upon request, the Contractor will furnish the Contracting Officer any reports concerning expenditures on the work to date that the Contracting Officer may require.

(c) The Government will retain until final completion and acceptance of all work covered by the job order, an amount estimated or approved by the Contracting Officer under paragraph (b) of this clause. The amount retained will be in accordance with the rate authorized by Congress for Naval vessel repair contracts at the time of job order award.

(d) The Contracting Officer may direct that progress payments be based on the price of the job order as adjusted as a result of change orders under the Changes clause of the Master Agreement. If the Contracting Officer does not so direct?

(1) Payments of any increases shall be made from time to time after the amount of the increase is determined under the Changes clause of the Master Agreement; and

(2) Reductions resulting from decreases shall be made for the purposes of subsequent progress payments as soon as the amounts are determined under the Changes clause of the Master Agreement.

(e) Upon completion of the work under a job order and final inspection and acceptance, and upon submission of invoices in such form and with such copies as the Contracting Officer may prescribe, the Contractor shall be paid for the price of the job order, as adjusted pursuant to the Changes clause of the Master Agreement, less any performance reserves deemed necessary by the Contracting Officer, and less the amount of any previous payments.

(f) All materials, equipment, or any other property or work in process covered by the progress payments made by the Government, upon the making of those progress

payments, shall become the sole property of the Government, and are subject to the provisions of the Title clause of the Master Agreement.

(End of clause)

252.217-7008 Bonds.

As prescribed in 217.7104(a), use the following clause:

BONDS (DEC 1991)

(a) If the solicitation requires an offeror to submit a bid bond, the Offeror may furnish, instead, an annual bid bond (or evidence thereof) or an annual performance and payment bond (or evidence thereof).

(b) If the solicitation does not require a bid bond, the Offeror shall not include in the price any contingency to cover the premium of such a bond.

(c) Even if the solicitation does not require bonds, the Contracting Officer may nevertheless require a performance and payment bond, in form, amount, and with a surety acceptable to the Contracting Officer. Where performance and payment bond is required, the offer price shall be increased upon the award of the job order in an amount not to exceed the premium of a corporate surety bond.

(d) If any surety upon any bond furnished in connection with a job order under this agreement fails to submit requested reports as to its financial condition or otherwise

becomes unacceptable to the Government, the Contracting Officer may require the Contractor to furnish whatever additional security the Contracting Officer determines necessary to protect the interests of the Government and of persons supplying labor or materials in the performance of the work contemplated under the Master Agreement.

(End of clause)

252.217-7009 Default.

As prescribed in 217.7104(a), use the following clause:

DEFAULT (DEC 1991)

(a) The Government may, subject to the provisions of paragraph (b) of this clause, by written notice of default to the Contractor, terminate the whole or any part of a job order if the Contractor fails to?

(1) Make delivery of the supplies or to perform the services within the time specified in a job order or any extension;

(2) Make progress, so as to endanger performance of the job order; or

(3) Perform any of the other provisions of this agreement or a job order.

(b) Except for defaults of subcontractors, the Contractor shall not be liable for any excess costs if failure to perform the job order arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include acts of God or of the public enemy, acts of the Government in either its sovereign or

contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

(c) If the Contractor's failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to perform the job order within the time specified.

(d) If the Government terminates the job order in whole or in part as provided in paragraph (a) of this clause?

(1) The Government may, upon such terms and in such manner as the Contracting Officer may deem appropriate, arrange for the completion of the work so terminated, at such plant or plants, including that of the Contractor, as may be designated by the Contracting Officer.

(i) The Contractor shall continue the performance of the job order to the extent not terminated under the provisions of this clause.

(ii) If the work is to be completed at the plant, the Government may use all tools, machinery, facilities, and equipment of the Contractor determined by the Contracting Office to be necessary for that purpose.

(iii) If the cost to the Government of the work procured or completed (after

adjusting such cost to exclude the effect of changes in the plans and specifications made subsequent to the date of termination) exceeds the price fixed for work under the job order (after adjusting such price on account of changes in the plans and specifications made before the date of termination), the Contractor, or the Contractor's surety, if any, shall be liable for such excess.

(2) The Government, in addition to any other rights provided in this clause, may require the Contractor to transfer title and delivery to the Government, in the manner and to the extent directed by the Contracting Officer, any completed supplies and such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (hereinafter called ?manufacturing materials?) as the Contractor has specifically produced or specifically acquired for the performance of the terminated part of the job order.

(i) The Contractor shall, upon direction of the Contracting Officer, protect and preserve property in possession of the Contractor in which the Government has an interest.

(ii) The Government shall pay to the Contractor the job order price for completed items of work delivered to and accepted by the Government, and the amount agreed upon by the Contractor and the Contracting Officer for manufacturing materials delivered to and accepted by the Government, and for the protection and preservation of property. Failure to agree shall be a dispute concerning a question of fact within the meaning of the Disputes clause.

(e) If, after notice of termination of the job order, it is determined that the Contractor was not in default, or that the default was excusable, the rights and

obligations of the parties shall be the same as if the notice of termination had been issued for the convenience of the Government.

(f) If the Contractor fails to complete the performance of a job order within the time specified, or any extension, the actual damage to the Government for the delay will be difficult or impossible to determine.

(1) In lieu of actual damage, the Contractor shall pay to the Government as fixed, agreed, and liquidated damages for each calendar day of delay the amount, if any, set forth in the job order (prorated to the nearest hour for fractional days).

(2) If the Government terminates the job order, the Contractor shall be liable, in addition to the excess costs provided in paragraph (d) of this clause, for liquidated damages accruing until such time as the Government may reasonably obtain completion of the work.

(3) The Contractor shall not be charged with liquidated damages when the delay arises out of causes beyond the control and without the fault or negligence of the Contractor. Subject to the provisions of the Disputes clause of the Master Agreement, the Contracting Officer shall ascertain the facts and the extent of the delay and shall extend the time for performance when in the judgment of the Contracting Officer, the

findings of fact justify an extension.

(g) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law under this agreement.

(End of clause)

252.217-7010 Performance.

As prescribed in 217.7104(a), use the following clause:

PERFORMANCE (JUL 2009)

(a) Upon the award of a job order, the Contractor shall promptly start the work specified and shall diligently prosecute the work to completion. The Contractor shall not start work until the job order has been awarded except in the case of emergency work ordered by the Contracting Officer under the Job Orders and Compensation clause of the Master Agreement.

(b) The Government shall deliver the vessel described in the job order at the time and location specified in the job order. Upon completion of the work, the Government shall accept delivery of the vessel at the time and location specified in the job order.

(c) The Contractor shall, without charge and without specific requirement in a job order?

(1) Make available at the plant to personnel of the vessel while in dry dock or on a marine railway, sanitary lavatory and similar facilities acceptable to the Contracting Officer;

(2) Supply and maintain suitable brows and gangways from the pier, dry dock, or marine railway to the vessel;

(3) Treat salvage, scrap or other ship's material of the Government resulting from performance of the work as items of Government-furnished property, in accordance with the Government Property clause;

(4) Perform, or pay the cost of, any repair, reconditioning or replacement made necessary as the result of the use by the Contractor of any of the vessel's machinery, equipment or fittings, including, but not limited to, winches, pumps, rigging, or pipelines; and

(5) Furnish suitable offices, office equipment and telephones at or near the site of the work for the Government's use.

(d) The job order will state whether dock and sea trials are required to determine whether or not the Contractor has satisfactorily performed the work.

(1) If dock and sea trials are required, the vessel shall be under the control of the vessel's commander and crew.

(2) The Contractor shall not conduct dock and sea trials not specified in the job order without advance approval of the Contracting Officer. Dock and sea trials not specified in the job order shall be at the Contractor's expense and risk.

(3) The Contractor shall provide and install all fittings and appliances necessary for dock and sea trials. The Contractor shall be responsible for care, installation, and removal of instruments and apparatus furnished by the Government for use in the trials.

(End of clause)

252.217-7011 Access to Vessel.

As prescribed at 217.7104(a), use the following clause:

ACCESS TO VESSEL (DEC 1991)

(a) Upon the request of the Contracting Officer, the Contractor shall grant admission to the Contractor's facilities and access to vessel, on a non-interference basis, as necessary to perform their respective responsibilities, to a reasonable number of:

(1) Government and other Government contractor employees (in addition to those Government employees attached to the vessel); and

(2) Representatives of offerors on other contemplated Government work.

(b) All personnel granted access shall comply with Contractor rules governing personnel at its shipyard.

(End of clause)

252.217-7012 Liability and Insurance.

As prescribed in 217.7104(a), use the following clause:

LIABILITY AND INSURANCE (AUG 2003)

(a) The Contractor shall exercise its best efforts to prevent accidents, injury, or damage to all employees, persons, and property, in and about the work, and to the vessel or part of the vessel upon which work is done.

(b) Loss or damage to the vessel, materials, or equipment.

(1) Unless otherwise directed or approved in writing by the Contracting Officer, the Contractor shall not carry insurance against any form of loss or damage to the vessel(s) or to the materials or equipment to which the Government has title or which have been furnished by the Government for installation by the Contractor. The Government assumes the risks of loss of and damage to that property.

(2) The Government does not assume any risk with respect to loss or damage compensated for by insurance or otherwise or resulting from risks with respect to which the Contractor has failed to maintain insurance, if available, as required or approved by the Contracting Officer.

(3) The Government does not assume risk of and will not pay for any costs of the following:

(i) Inspection, repair, replacement, or renewal of any defects in the vessel(s) or material and equipment due to?

(A) Defective workmanship performed by the Contractor or its subcontractors;

(B) Defective materials or equipment furnished by the Contractor or its subcontracts; or

(C) Workmanship, materials, or equipment which do not conform to the requirements of the contract, whether or not the defect is latent or whether or not the nonconformance is the result of negligence.

(ii) Loss, damage, liability, or expense caused by, resulting from, or incurred as a consequence of any delay or disruption, willful misconduct or lack of good faith by the Contractor or any of its representatives that have supervision or direction of?

(A) All or substantially all of the Contractor's business; or

(B) All or substantially all of the Contractor's operation at any one plant.

(4) As to any risk that is assumed by the Government, the Government shall be subrogated to any claim, demand or cause of action against third parties that exists in favor of the Contractor. If required by the Contracting Officer, the Contractor shall execute a formal assignment or transfer of the claim, demand, or cause of action.

(5) No party other than the Contractor shall have any right to proceed directly against the Government or join the Government as a co-defendant in any action.

(6) Notwithstanding the foregoing, the Contractor shall bear the first $50,000 of loss or damage from each occurrence or incident, the risk of which the Government would have assumed under the provisions of this paragraph (b).

(c) Indemnification. The Contractor indemnifies the Government and the vessel and its owners against all claims, demands, or causes of action to which the Government, the vessel or its owner(s) might be subject as a result of damage or injury

(including death) to the property or person of anyone other than the Government or its employees, or the vessel or its owner, arising in whole or in part from the negligence or other wrongful act of the Contractor or its agents or employees, or any subcontractor, or its agents or employees.

(1) The Contractor's obligation to indemnify under this paragraph shall not exceed the sum of $300,000 as a consequence of any single occurrence with respect to any one vessel.

(2) The indemnity includes, without limitation, suits, actions, claims, costs, or demands of any kind, resulting from death, personal injury, or property damage occurring during the period of performance of work on the vessel or within 90 days after redelivery of the vessel. For any claim, etc., made after 90 days, the rights of the parties shall be as determined by other provisions of this agreement and by law. The indemnity does apply to death occurring after 90 days where the injury was received during the period covered by the indemnity.

(d) Insurance.

(1) The Contractor shall, at its own expense, obtain and maintain the following insurance?

(i) Casualty, accident, and liability insurance, as approved by the Contracting Officer, insuring the performance of its obligations under paragraph (c) of this clause.

(ii) Workers Compensation Insurance (or its equivalent) covering the employees engaged on the work.

(2) The Contractor shall ensure that all subcontractors engaged on the work obtain and maintain the insurance required in paragraph (d)(1) of this clause.

(3) Upon request of the Contracting Officer, the Contractor shall provide evidence of the insurance required by paragraph (d) of this clause.

(e) The Contractor shall not make any allowance in the job order price for the inclusion of any premium expense or charge for any reserve made on account of self-insurance for coverage against any risk assumed by the Government under this clause.

(f) The Contractor shall give the Contracting Officer written notice as soon as practicable after the occurrence of a loss or damage for which the Government has assumed the risk.

(1) The notice shall contain full details of the loss or damage.

(2) If a claim or suit is later filed against the Contractor as a result of the event, the Contractor shall immediately deliver to the Government every demand, notice, summons, or other process received by the Contractor or its employees or representatives.

(3) The Contractor shall cooperate with the Government and, upon request, shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses, and in the conduct of suits. The Government shall reimburse the Contractor for expenses incurred in this effort, other than the cost of maintaining the Contractor's usual organization.

(4) The Contractor shall not, except at its own expense, voluntarily make any payment, assume any obligation, or incur any expense other than what would be imperative for the protection of the vessel(s) at the time of the event.

(g) In the event or loss of or damage to any vessel(s), material, or equipment which may result in a claim against the Government under the insurance provisions of this contract, the Contractor shall promptly notify the Contracting Officer of the loss or damage. The Contracting Officer may, without prejudice to any other right of the Government, either?

(1) Order the Contractor to proceed with replacement or repair, in which event the Contractor shall effect the replacement or repair;

(i) The Contractor shall submit to the Contracting Officer a request for reimbursement of the cost of the replacement or repair together with whatever supporting documentation the Contracting Officer may reasonably require, and shall identify the request as being submitted under the Insurance clause of the agreement.

(ii) If the Government determines that the risk of the loss or damage is

within the scope of the risks assumed by the Government under this clause, the Government will reimburse the Contractor for the reasonable, allowable cost of the replacement or repair, plus a reasonable profit (if the work or replacement or repair was performed by the Contractor) less the deductible amount specified in paragraph (b) of this clause.

(iii) Payments by the Government to the Contractor under this clause are outside the scope of and shall not affect the pricing structure of the contract, and are additional to the compensation otherwise payable to the Contractor under this contract; or

(2) In the event the Contracting Officer decides that the loss or damage shall not be replaced or repaired, the Contracting Officer shall?

(i) Modify the contract appropriately, consistent with the reduced requirements reflected by the unreplaced or unrepaired loss or damage; or

(ii) Terminate the repair of any part or all of the vessel(s) under the Termination for Convenience of the Government clause of this agreement.

(End of clause)

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252.217-7013 Guarantees.

As prescribed in 217.7104(a), use the following clause:

GUARANTEES (DEC 1991)

(a) In the event any work performed or materials furnished by the contractor under the Master Agreement prove defective or deficient within 90 days from the date of redelivery of the vessel(s), the Contractor, as directed by the Contracting Officer and at its own expense, shall correct and repair the deficiency to the satisfaction of the Contracting Officer.

(b) If the Contractor or any subcontractor has a guarantee for work performed or materials furnished that exceeds the 90 day period, the Government shall be entitled to rely upon the longer guarantee until its expiration.

(c) With respect to any individual work item identified as incomplete at the time of redelivery of the vessel(s), the guarantee period shall run from the date the item is completed.

(d) If practicable, the Government shall give the Contractor an opportunity to correct the deficiency.

(1) If the Contracting Officer determines it is not practicable or is otherwise not advisable to return the vessel(s) to the Contractor, or the Contractor fails to proceed with the repairs promptly, the Contracting Officer may direct that the repairs be performed elsewhere, at the Contractor's expense.

(2) If correction and repairs are performed by other than the Contractor, the Contracting Officer may discharge the Contractor's liability by making an equitable deduction in the price of the job order.

(e) The Contractor's liability shall extend for an additional 90 day guarantee period on those defects or deficiencies that the Contractor corrected.

(f) At the option of the Contracting Officer, defects and deficiencies may be left uncorrected. In that event, the Contractor and Contracting Officer shall negotiate an equitable reduction in the job price. Failure to agree upon an equitable reduction shall constitute a dispute under the Disputes clause of this agreement.

(End of clause)

252.217-7014 Discharge of Liens.

As prescribed in 217.7104(a), use the following clause:

DISCHARGE OF LIENS (DEC 1991)

(a) The Contractor shall immediately discharge, or cause to be discharged, any lien or right in rem of any kind, other than in favor of the Government, that exists or arises in connection with work done or material furnished under any job order under this agreement.

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(b) If any lien or right in rem is not immediately discharged, the Government, at the expense of the Contractor, may discharge, or cause to be discharged, the lien or right.

(End of clause)

252.217-7015 Safety and Health.

As prescribed in 217.7104(a), use the following clause:

SAFETY AND HEALTH (DEC 1991)

Nothing contained in the Master Agreement or any job order shall relieve the Contractor of any obligations it may have to comply with?

(a) The Occupational Safety and Health Act of 1970 (29 U.S.C. 651, et seq.);

(b) The Safety and Health Regulations for Ship Repairing (29 CFR 1915); or

(c) Any other applicable Federal, State, and local laws, codes, ordinances, and regulations.

(End of clause)

252.217-7016 Plant Protection.

As prescribed in 217.7104(a), use the following clause:

PLANT PROTECTION (DEC 1991)

(a) The Contractor shall provide, for the plant and work in process, reasonable safeguards against all hazards, including unauthorized entry, malicious mischief, theft, vandalism, and fire.

(b) The Contractor shall also provide whatever additional safeguards are necessary to protect the plant and work in process from espionage, sabotage, and enemy action.

(1) The Government shall reimburse the Contractor for that portion of the costs of the additional safeguards that is allocable to the contract in the same manner as if the Contracting Officer had issued a change order for the additional safeguards.

(2) The costs reimbursed shall not include any overhead allowance, unless the

overhead is incident to the construction or installation of necessary security devices or equipment.

(c) Upon payment by the Government of the cost of any device or equipment required or approved under paragraph (b) of this clause, title shall vest in the Government.

(1) The Contractor shall comply with the instructions of the Contracting Officer concerning its identification and disposition.

(2) No such device or equipment shall become a fixture as a result of its being affixed to realty not owned by the Government.

(End of clause)

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252.217-7026 Identification of Sources of Supply.

As prescribed in 217.7303, use the following provision:

IDENTIFICATION OF SOURCES OF SUPPLY (JAN 2023)

(a) The Government is required under 10 U.S.C. 4753 to obtain certain information on the actual manufacturer or sources of supplies it acquires.

(b) The apparently successful Offeror agrees to complete and submit the following table before award:

TABLE

National Commercial Source of Supply Actual

Line Stock Product or Company Address Part No. Mfg?

Items Number Commercial

Service

(Y or N)

(1) (2) (3) (4) (4) (5) (6)

_____ _____ _____ _____ _____ _____ _____

(1) List each deliverable item of supply and item of technical data.

(2) If there is no national stock number, list ?none?.

(3) Use ?Y? if the item is a commercial product or commercial service; otherwise use ?N.? If ?Y? is listed, the Offeror need not complete the remaining columns in the table.

(4) For items of supply, list all sources. For technical data, list the source.

(5) For items of supply, list each source's part number for the item.

(6) Use ?Y? if the source of supply is the actual manufacturer; ?N? if it is not; and ?U? if unknown.

(End of provision)

252.217-7027 Contract Definitization.

As prescribed in 217.7406(b), use the following clause:

CONTRACT DEFINITIZATION (MAY 2023)

(a) A _____ [insert specific type of contract action] is contemplated. The

Contractor agrees to begin promptly negotiating with the Contracting Officer the terms of a definitive contract that will include?

(1) All clauses required by the Federal Acquisition Regulation (FAR) on the date of execution of the undefinitized contract action;

(2) All clauses required by law on the date of execution of the definitive contract action; and

(3) Any other mutually agreeable clauses, terms, and conditions.

(b) The Contractor agrees to submit a _____ [insert type of proposal; e.g., fixed-price or cost-and-fee] proposal and certified cost or pricing data supporting its proposal. Notwithstanding FAR 52.216-26, Payments of Allowable Costs Before Definitization, failure to meet the qualifying proposal date in the contract definitization schedule could result in the Contracting Officer withholding an amount up to 5 percent of all subsequent requests for financing until the Contracting Officer determines that a proposal is qualifying.

(c) The schedule for definitizing this contract action is as follows [insert target date for definitization of the contract action and dates for submission of proposal, beginning of negotiations, and, if appropriate, submission of the make-or-buy and subcontracting plans and certified cost or pricing data]:

(d) If agreement on a definitive contract action to supersede this undefinitized contract action is not reached by the target date in paragraph (c) of this clause, or within any extension of it granted by the Contracting Officer, the Contracting Officer may, with the approval of the head of the contracting activity, determine a reasonable price or fee in accordance with FAR subpart 15.4 and part 31, subject to Contractor appeal as provided in the Disputes clause. In any event, the Contractor shall proceed with completion of the contract, subject only to the Limitation of Government Liability clause.

(1) After the Contracting Officer?s determination of price or fee, the contract shall be governed by?

(i) All clauses required by the FAR on the date of execution of this undefinitized contract action for either fixed-price or cost-reimbursement contracts, as determined by the Contracting Officer under this paragraph (e);

(ii) All clauses required by law as of the date of the Contracting Officer?s determination; and

(iii) Any other clauses, terms, and conditions mutually agreed upon.

(2) To the extent consistent with paragraph (d)(1) of this clause, all clauses, terms, and conditions included in this undefinitized contract action shall continue in effect, except those that by their nature apply only to an undefinitized contract action.

(e) The definitive contract resulting from this undefinitized contract action will include a negotiated _____ [insert ?cost/price ceiling? or ?firm-fixed price?] in no event to exceed _____ [insert the not-to-exceed amount].

(End of clause)

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252.217-7028 Over and Above Work.

As prescribed in 217.7702, use a clause substantially as follows:

OVER AND ABOVE WORK (DEC 1991)

(a) Definitions. As used in this clause?

(1) ?Over and above work? means work discovered during the course of performing overhaul, maintenance, and repair efforts that is?

(i) Within the general scope of the contract;

(ii) Not covered by the line item(s) for the basic work under the contract; and

(iii) Necessary in order to satisfactorily complete the contract.

(2) ?Work request? means a document prepared by the Contractor which describes over and above work being proposed.

(b) The Contractor and Administrative Contracting Officer shall mutually agree to procedures for Government administration and Contractor performance of over and above work requests. If the parties cannot agree upon the procedures, the Administrative Contracting Officer has the unilateral right to direct the over and above work procedures to be followed. These procedures shall, as a minimum, cover?

(1) The format, content, and submission of work requests by the Contractor. Work requests shall contain data on the type of discrepancy disclosed, the specific location of the discrepancy, and the estimated labor hours and material required to correct the discrepancy. Data shall be sufficient to satisfy contract requirements and obtain the authorization of the Contracting Officer to perform the proposed work;

(2) Government review, verification, and authorization of the work; and

(3) Proposal pricing, submission, negotiation, and definitization.

(c) Upon discovery of the need for over and above work, the Contractor shall prepare and furnish to the Government a work request in accordance with the agreed-to procedures.

(d) The Government shall?

(1) Promptly review the work request;

(2) Verify that the proposed work is required and not covered under the basic contract line item(s);

(3) Verify that the proposed corrective action is appropriate; and

(4) Authorize over and above work as necessary.

(e) The Contractor shall promptly submit to the Contracting Officer, a proposal for the over and above work. The Government and Contractor will then negotiate a

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settlement for the over and above work. Contract modifications will be executed to definitize all over and above work.

(f) Failure to agree on the price of over and above work shall be a dispute within the meaning of the Disputes clause of this contract.

(End of clause)

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PGI 217?SPECIAL CONTRACTING METHODS

PGI 217.1?MULTIYEAR CONTRACTING

PGI 217.103-171 Multiyear contracts for services.

(b) The head of the agency must consider the following principles when entering into a multiyear contract for services:

(1) The portion of the cost of any plant or equipment amortized as a cost of contract performance should not exceed the ratio between the period of contract performance and the anticipated useful commercial life of the plant or equipment. As used in this section, "useful commercial life" means the commercial utility of the facilities rather than the physical life, with due consideration given to such factors as the location, specialized nature, and obsolescence of the facilities.

(2) The desirability of obtaining an option to extend the term of the contract for a reasonable period not to exceed 3 years at prices that do not include charges for plant, equipment, or other nonrecurring costs already amortized.

(3) The desirability of reserving the right to take title, under the appropriate circumstances, to the plant or equipment upon payment of the unamortized portion of the cost (10 U.S.C. 3531(c)).

PGI 217.103-174 Multiyear contracts for electricity from renewable energy sources.
The business case analysis template and guidance for the head of the contracting activity determination to enter into a contract for a period in excess of 5 years is available here: Renewable Electricity Acquisition Business Case Analysis Template and Guidance.

PGI 217.104-370 Congressional notification.

(b)(1) The head of the agency must submit a copy of each notice to the Principal Director, Defense Pricing, Contracting, and Acquisition Policy (DPCAP), Office of the Under Secretary of Defense (Acquisition and Sustainment) (OUSD(A&S)), and to the Deputy Under Secretary of Defense (Comptroller) (Program/Budget) (OUSD(C)(P/B)).

(2)(i) DoD will include the request, for each candidate it supports, as part of the President?s Budget for that year and in the Appendix to that budget as part of proposed legislative language for the appropriations bill for that year (section 8008(b) of Pub. L. 105-**56).**

(ii) If the advisability of using a multiyear contract becomes apparent too late to satisfy the requirements 217.170(b)(2), the request for authority to use a multiyear contract

must be?

(A) Formally submitted by the President as a budget amendment; or

(B) Made by the Secretary of Defense, in writing, to the congressional defense committees (section 8008(b) of Pub. L. 105-56).

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(iii) If the budget for a contract that contains a cancellation ceiling in excess of $200 million does not include proposed funding for the costs of contract cancellation up to the cancellation ceiling established in the contract?

(A) The notification required by paragraph (b)(1) of this section must include?

(1) The cancellation ceiling amounts planned for each program year in the proposed multiyear contract, together with the reasons for the amounts planned;

(2) The extent to which costs of contract cancellation are not included in the budget for the contract; and

(3) A financial risk assessment of not including budgeting for costs of contract cancellation (10 U.S.C. 3501(g) and 10 U.S.C. 3531(d)); and

(B) The head of the agency must provide copies of the notification to the Office of Management and Budget at least 14 days before contract award.

PGI 217.2?OPTIONS

PGI 217.201 Presolicitation.

PGI 217.201-170 Use of options.

(1) Options may be used for foreign military sales requirements.

(2) Consider use of surge options to support industrial capability. A surge option allows the Government, prior to final delivery, to?

(i) Accelerate the contractor's production rate in accordance with a surge production plan or a delivery schedule provided by the contractor under the terms of the contract; and

(ii) Purchase additional quantities of supplies or services.

(3) See DFARS Subpart 217.74 for limitations on the use of undefinitized options.

PGI 217.204 Postaward.

PGI 217.204-170 Exercise of options.

Before exercising an option for firm-fixed-price contracts containing spare parts, the contracting officer must perform a cost or price analysis of the proposed spare parts. The contracting officer must use an appropriate sampling technique or request field pricing assistance and document the contract file with the results of the cost or price analysis.

PGI 217.5?INTERAGENCY ACQUISITIONS

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PGI 217.502 Procedures.

PGI 217.502-1 General.

(a) Written agreement on responsibility for management and administration?

(1) Assisted acquisitions. When the contracting activity of one DoD Component provides acquisition assistance to deployed units or personnel from another DoD Component?

(A) The written interagency agreement between the servicing DoD Component and the requesting DoD Component, required by FAR 17.502-1(a)(1), must be documented on the FS Form 7600A, United States Government Interagency Agreement (see template at https://www.fiscal.treasury.gov/files/forms/form-7600a.pdf);

(B) Procurement support should be on a nonreimbursable basis, unless the parties mutually agree, in writing, for reimbursable support; and

(C) The DD Form 448, Military Interdepartmental Purchase Request (MIPR), must be used to provide a description of the supplies/services and certification of funds available to support the requirement.

PGI 217.503 Ordering procedures.

When the requesting agency is within DoD, a copy of the executed determination and findings required by FAR 17.502-2 must be furnished to the servicing agency as an attachment to the order. When a DoD contracting office is acting as the servicing agency, a copy of the executed determination and findings must be obtained from the requesting agency and placed in the contract file for the Economy Act order.

PGI 217.6?INTERAGENCY ACQUISITIONS: ACQUISITIONS BY NONDEFENSE AGENCIES ON BEHALF OF THE DEPARTMENT OF DEFENSE

PGI 217.670 Procedures.

(a)(3)(i) Departments and agencies must ensure full awareness of the total costs of all fees associated with use of a non-DoD contracting vehicle. To ensure full awareness, the DoD acquisition official must require the servicing agency to?

(A) Provide notification if its acquisition approach will use another agency?s contract vehicle; and

(B) Identify all fees (direct and indirect) associated with the assisted acquisition.

(ii) The DoD acquisition official must document in the business decision the rationale to continue with the assisted acquisition given the total fees (direct and indirect) involved.

PGI 217.70?EXCHANGE OF PERSONAL PROPERTY

PGI 217.7003 Purchase request.

Ensure that the requiring activity provides all of the following in support of the purchase request?

(a) A certification that the property is eligible for exchange and complies with all conditions and limitations of DoD Manual 4140.01, Volume 9, DoD Supply Chain Materiel

Management Procedures: Materiel Programs.

(b) A written determination of economic advantage indicating?

(1) The anticipated economic advantage to the Government from use of the exchange authority;

(2) That exchange allowances shall be applied toward, or in partial payment of, the items to be acquired; and

(3) That, if required, the exchange property has been rendered safe or innocuous or has been demilitarized;

(c) All applicable approvals for the exchange; and

(d) A description of the property available for exchange (e.g., nomenclature, location, serial number, estimated travel value).

PGI 217.7004 Solicitation and award.

(a) Ensure solicitations require offerors to state prices?

(1) For the new items being acquired without any exchange; and

(2) For the new items with the exchange (trade-in allowance) for the exchange property listed.

(b) The contracting officer is not obligated to award on an exchange basis. If the lowest evaluated offer is an offer for the new items without any exchange, the contracting officer may award on that basis and forgo the exchange.

(c) Exchanges may be made only with the successful offeror. When the successful offer includes an exchange, award one contract for both the acquisition of the new property and the trade-in of the exchange property. The only exception is when the items must be acquired against a mandatory Federal supply schedule contract, in which case, award a separate contract for the exchange.

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PGI 217.71?MASTER AGREEMENT FOR REPAIR AND ALTERATION OF VESSELS

PGI 217.7103 Master agreements and job orders.

PGI 217.7103-1 Content and format of master agreements.

(1) A master agreement must contain all clauses required by DFARS 217.7104(a), statute, and Executive order.

(2) The following format may be adapted to fit specific circumstances:

MASTER AGREEMENT FOR REPAIR AND ALTERATION OF VESSELS

1. This agreement is entered into this ____ day of _____ ,____, by the United States of America (the ?Government?:) represented by _____, the Contracting Officer, and _____, a corporation organized and existing under the laws of the State of _____ (the ?Contractor?).

2. The clauses in this agreement, must be incorporated, by reference or attachment, in job orders issued under this agreement to effect repairs, alterations, and/or additions to vessels.

3. By giving 30 days written notice, either party to this agreement has the right to

cancel it without affecting the rights and liabilities under any job order existing at the time of cancellation. The Contractor shall perform, under the terms of this agreement, all work covered by any job order awarded before the effective date of the cancellation.

4. This agreement may be modified only by mutual agreement of the parties. A modification of this agreement must not affect any job order in existence at the time of modification, unless the parties agree otherwise.

5. The rights and obligations of the parties to this agreement are set forth in this agreement and the clauses of any job orders issued under this agreement. In the event there is an inconsistency between this agreement and any job order, the provisions of this agreement shall govern.

6. This agreement shall remain in effect until cancelled by either party.

THE UNITED STATES OF AMERICA

by (Contracting Officer)

(Contractor)

by (Authorized Individual)

(Title)

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PGI 217.7103-3 Solicitations for job orders.

(1) Include in the solicitation?

(i) The nature of the work to be performed;

(ii) The date the vessel will be available to the contractor;

(iii) The date the work is to be completed; and

(iv) Whether bulk ammunition is aboard the vessel.

(2) Unless the solicitation states otherwise, offers are to be based on performance at the contractor's site.

(3) Solicitations processed under negotiated acquisition procedures must require offerors to include a breakdown of the price with reasonable supporting detail in whatever format and detail the contracting officer may request.

(4) Where practicable, afford potential offerors an opportunity to inspect the item needing repair or alteration.

PGI 217.7103-4 Emergency work.

Process this type of undefinitized contract action in accordance with DFARS Subpart **217.74. Negotiate a price as soon as practicable after the issuance of an undefinitized order** and definitize the job order upon completing negotiations.

PGI 217.7103-5 Repair costs not readily ascertainable.

If the nature of any repairs is such that their extent and probable cost cannot be ascertained readily, the solicitation should?

(1) Solicit offers for determining the nature and extent of the repairs;

(2) Provide that upon determination by the contracting officer of what work is necessary, the contractor, if requested by the contracting officer, shall negotiate prices for performance

of the repairs; and

(3) Provide that prices for the repairs, if ordered, will be set forth in a modification of the job order.

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PGI 217.74?UNDEFINITIZED CONTRACT ACTIONS

PGI 217.7404 Limitations.

PGI 217.7404-1 Authorization.

(1) The requiring activity, in coordination with the contracting office, prepares the request for approval package for an undefinitized contract action (UCA) requirement. The approval package must?

(i) Document why a UCA is required (for letter contracts see DFARS 216.603);

(ii) Provide a detailed explanation for the need to begin performance before definitization;

(iii) Address the adverse impact on agency requirements that would result from delays in beginning performance;

(iv) Identify the risk of using a UCA and the means by which the Government will mitigate such risk;

(v) Identify and justify the specific contractual instrument to be used;

(vi) Establish limitations on the obligation of funds; and

(vii) Provide the definitization schedule of agreed-upon events that support timely definitization.

(2) A sample format with certain variations for letter contracts is provided at this website: http://www.acq.osd.mil/dpap/dars/pgi/docs/Template_for_UCA_Authorization_Requests.pdf.

PGI 217.7404-2 Price ceiling.

(1) The rationale for the not-to-exceed price will be documented and retained in the contract file. Examples of such supporting rationale include?

(i) The Independent Government Cost Estimate;

(ii) Price analysis based on prior buys; and

(iii) The contractor?s proposal.

(2) The maximum not-to-exceed price is the firm-fixed price for firm-fixed price contracts, the ceiling price for fixed-price incentive contracts, and the estimated cost and fee for cost-reimbursement contracts.

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PGI 217.7404-6 Allowable profit.

To improve the documentation and provide guidance on determining the profit for UCAs with substantial incurred cost, contracting officers will follow the mandatory instructions at DFARS

215.409 regarding lowering contract type risk assessments for the incurred costs when performing weighted guidelines analysis. Additional guidance on analyzing profit or fee is provided in DAU course, CON 7170V, Analyzing Profit or Fee, found at: https://www.dau.edu/courses/con-7170v.

PGI 217.7405 Plans and reports.

By October 31 and April 30 of each year, departments and agencies must prepare a Consolidated UCA Management Report, identifying each UCA/UCO with a value exceeding $5 million. In addition, departments and agencies must submit to the Office of the Principal Director, Defense Pricing, Contracting, and Acquisition Policy (Contract Policy) a copy of the record of weighted guidelines for each definitized UCA with a value of $100 million or more. If there is no record of weighted guidelines (e.g., not required for a cost plus award fee contract per DFARS 215.409), then departments and agencies must submit alternative documentation that addresses appropriate recognition of the contractor?s reduced cost risk during the undefinitized performance period. Submit the required information via email to osd.pentagon.ousd-a-s.mbx.asda-dp-c-contractpolicy@mail.mil.

PGI 217.75?ACQUISITION OF REPLENISHMENT PARTS

PGI 217.7502 General.

Replenishment parts must be acquired to ensure the safe, dependable, and effective operation of the equipment. Where this assurance is not possible with new sources, competition may be limited to the original manufacturer of the equipment or other sources that have previously manufactured or furnished the parts if the action is justified. See **209.270 for requirements applicable to replenishment parts for aviation or ship critical safety** items.

PGI 217.7503 Spares acquisition integrated with production.

(1) Spares acquisition integrated with production (SAIP) is a technique used to acquire replenishment parts concurrently with parts being produced for the end item.

(2) Include appropriately tailored provisions in the contract when SAIP is used.

PGI 217.7504 Acquisition of parts when data is not available.

When acquiring a part for which the Government does not have necessary data with rights to use in a specification or drawing for competitive acquisition, use one of the following procedures:

(1) When items of identical design are not required, the acquisition may still be conducted through full and open competition by using a performance specification or other similar technical requirement or purchase description that does not contain data with restricted rights. Two methods are?

(i) Two-step sealed bidding; and

(ii) Brand name or equal purchase descriptions.

(2) When other than full and open competition is authorized under FAR part 6, acquire the part from the firm that developed or designed the item or process, or its licensees,

provided productive capacity and quality are adequate and the price is fair and reasonable.

(3) When additional sources are needed and the procedures in paragraph (1) are not practicable, consider the following alternatives:

(i) Encourage the developer to license others to manufacture the parts;

(ii) Acquire the necessary rights in data;

(iii) Use a leader company acquisition technique (FAR subpart 17.4) when complex technical equipment is involved and establishing satisfactory additional sources will require technical assistance as well as data; or

(iv) Incorporate a priced option in the contract that allows the Government to require the contractor to establish a second source.

(4) A design specification may be developed for competitive acquisition through reverse engineering. Contracting and requiring activities must not do reverse engineering unless?

(i) Significant cost savings can be demonstrated; and

(ii) The action is authorized by the head of the contracting activity.

PGI 217.7506?SPARE PARTS BREAKOUT PROGRAM

PART 1--GENERAL

1-101 Applicability.

(a) The Spare Parts Breakout Program applies to?

(1) Any centrally managed replenishment or provisioned part (hereinafter referred to as ?part?) for military systems and equipment; and

(2) All DoD personnel involved with design control, acquisition, and management of such parts including, but not limited to, project/program/system managers, technical personnel, contracting officers, legal counsel, inventory managers, inspectors, and small business specialists and technical advisors.

(b) The Spare Parts Breakout Program does not apply to?

(1) Component breakout (see DFARS 207.171);

(2) Foreign military sale peculiar items;

(3) Insurance items (e.g., one-time buy);

(4) Obsolete items;

(5) Phase-out items (e.g., life-of-type buy);

(6) Items with annual buy values below the thresholds developed by DoD components or field activities;

(7) Parts being acquired under other specifically defined initial support programs; or

(8) Parts acquired through local purchase.

1-102 General.

(a) Significant resources are dedicated to the acquisition and management of parts for military systems and equipment. The ability to competitively buy spares must be considered early in a weapon system acquisition. Initially, repairable or consumable parts are identified and acquired through a provisioning process; repairable or consumable parts acquired

thereafter are for replenishment.

(b) The objective of the DoD Spare Parts Breakout Program is to reduce costs through the use of competitive procurement methods, or the purchase of parts directly from the actual manufacturer rather than the prime contractor, while maintaining the integrity of the systems and equipment in which the parts are to be used. The program is based on the application of sound management and engineering judgment in?

(1) Determining the feasibility of acquiring parts by competitive procedures or direct purchase from actual manufacturers; and

(2) Overcoming or removing constraints to breakout identified through the screening process (technical review) described in 3-302.

(c) The breakout program includes procedures for screening and coding parts in order to provide contracting officers summary information regarding technical data and sources of supply to meet the Government's minimum requirements. This information assists the contracting officer in selecting the method of contracting, identifying sources of supply, and making other decisions in the preaward and award phases, with consideration for established parameters of system and equipment integrity, readiness, and the opportunities to competitively acquire parts (see FAR part 6 and DFARS part 206). The identification of sources for parts, for example, requires knowledge of manufacturing sources, additional operations performed after manufacture of parts possessing safety or other critical characteristics, and the availability of technical data.

(d) The result of the screening process (technical review is indicated by an acquisition method code (AMC) and an acquisition method suffix code (AMSC). The breakout program provides procedures for both the initial assignment of an AMC and an AMSC to a part, and for the recurring review of these codes (see 2-202 and 2-203(b)).

(e) For up-to-date Standards (STD) included in this section for the Spare Parts Breakout Program, utilize the ASSIST application at website:
https://quicksearch.dla.mil/qsSearch.aspx.

1-103 Definitions.

1-103.1 Acquisition method code (AMC).

A single digit numeric code, assigned by a DoD activity, to describe to the contracting officer

and other Government personnel the results of a technical review of a part and its suitability for breakout.

1-103.2 Acquisition method code conference.

A conference that is generally held at the contractor's facility for the purpose of reviewing contractor technical information codes (CTICs) and corresponding substantiating data for breakout.

1-103.3 Acquisition method suffix code (AMSC).

A single digit alpha code, assigned by a DoD activity, that provides the contracting officer and other Government personnel with engineering, manufacturing, and technical

information.

1-103.4 Actual manufacturer.

An individual, activity, or organization that performs the physical fabrication processes that produce the deliverable part or other items of supply for the Government. The actual manufacturer must produce the part in-house. The actual manufacturer may or may not be the design control activity.

1-103.5 Altered item drawing.

Refer to the current version of DoD STD-100, paragraphs 201.4.4 and 703 (see 1-102(e)).

1-103.6 Annual buy quantity.

The forecast quantity of a part required for the next 12 months.

1-103.7 Annual buy value (ABV).

The annual buy quantity of a part multiplied by its unit price.

1-103.8 Bailment.

The process whereby a part is loaned to a recipient with the agreement that the part will be returned at an appointed time. The government retains legal title to such material even though the borrowing organization has possession during the stated period.

1-103.9 Breakout.

The improvement of the acquisition status of a part resulting from a technical review and a deliberate management decision. Examples are?

(a) The competitive acquisition of a part previously purchased noncompetitively; and

(b) The direct purchase of a part previously purchased from a prime contractor who is not the actual manufacturer of the part.

1-103.10 Competition.

A contract action where two or more responsible sources, acting independently, can be solicited to satisfy the Government's requirement.

1-103.11 Contractor technical information code (CTIC).

A two-digit alpha code assigned to a part by a prime contractor to furnish specific information regarding the engineering, manufacturing, and technical aspects of that part.

1-103.12 Design control activity.

A contractor or Government activity having responsibility for the design of a given part, and for the preparation and currency of engineering drawings and other technical data for that

part. The design control activity may or may not be the actual manufacturer. The design control activity is synonymous with design activity as used by DoD STD-100 (see 1-102(e)).

1-103.13 Direct purchase.

The acquisition of a part from the actual manufacturer, including a prime contractor who is an actual manufacturer of the part.

1-103.14 Engineering drawings.

Refer to the current version of DoD STD-100 (see 1-102(e)).

1-103.15 Extended dollar value.

The contract unit price of a part multiplied by the quantity purchased.

1-103.16 Full and open competition.

A contract action where all responsible sources are permitted to compete.

1-103.17 Full screening.

A detailed parts breakout process, including data collection, data evaluation, data completion, technical evaluation, economic evaluation, and supply feedback, used to determine if parts can be purchased directly from the actual manufacturer(s) or can be competed.

1-103.18 Immediate (live) buy.

A buy that must be executed as soon as possible to prevent unacceptable equipment readiness reduction, unacceptable disruption in operational capability, and increased safety risks, or to avoid other costs.

1-103.19 Life cycle buy value.

The total dollar value of all acquisitions that are estimated to occur over a part's remaining life cycle.

1-103.20 Limited competition.

A competitive contract action where the provisions of full and open competition do not exist.

1-103.21 Limited screening.

A parts breakout process covering only selected points of data and technical evaluations, and should only be used to support immediate buy requirements (see 3-301.3).

1-103.22 Manufacture.

The physical fabrication process that produces a part, or other item of supply. The physical fabrication processes include, but are not limited to, machining, welding, soldering, brazing, heat treating, braking, riveting, pressing, and chemical treatment.

1-103.23 Prime contractor.

A contractor having responsibility for design control and/or delivery of a system/equipment such as aircraft, engines, ships, tanks, vehicles, guns and missiles, ground communications and electronics systems, and test equipment.

1-103.24 Provisioning.

The process of determining and acquiring the range and quantity (depth) of spare and repair parts, and support and test equipment required to operate and maintain an end item of materiel for an initial period of service.

1-103.25 Qualification.

Any action (contractual or precontractual) that results in approval for a firm to supply items to the Government without further testing beyond quality assurance demonstrations incident to acceptance of an item. When prequalification is required, the Government must have a justification on file?

(a) Stating the need for qualification and why it must be done prior to award;

(b) Estimating likely cost of qualification; and

(c) Specifying all qualification requirements.

1-103.26 Replenishment part.

A part, repairable or consumable, purchased after provisioning of that part, for: replacement; replenishment of stock; or use in the maintenance, overhaul, and repair of equipment such as aircraft, engines, ships, tanks, vehicles, guns and missiles, ground communications and electronic systems, ground support, and test equipment. As used in the breakout program, except when distinction is necessary, the term ?part? includes subassemblies, components, and subsystems as defined by the current version of MIL-STD-280 (see 1-102(e)).

1-103.27 Reverse engineering.

A process by which parts are examined and analyzed to determine how they were manufactured, for the purpose of developing a complete technical data package. The normal, expected result of reverse engineering is the creation of a technical data package suitable for manufacture of an item by new sources.

1-103.28 Selected item drawing.

Refer to the current version of DoD-STD-100, paragraph 201.4.5 (see 1-102(e)).

1-103.29 Source.

Any commercial or noncommercial organization that can supply a specified part. For coding purposes, sources include actual manufacturers, prime contractors, vendors, dealers, surplus dealers, distributors, and other firms.

1-103.30 Source approval.

The Government review that must be completed before contract award.

1-103.31 Source control drawing.

Refer to the current version of DoD-STD-100, paragraph 201.4.3 (see 1-102(e)).

1-103.32 Technical data.

Specifications, plans, drawings, standards, purchase descriptions, and such other data to describe the Government's requirements for acquisition.

1-104 General policies.

(a) The identification, selection, and screening of parts for breakout must be made as early as possible to determine the technical and economic considerations of the opportunities for breakout to competition or direct purchase. Full and open competition is the preferred result of breakout screening.

(b) A part must be made a candidate for breakout screening based on its cost

effectiveness for breakout. Resources should be assigned and priority given to those parts with the greatest expected return given their annual buy value, life cycle buy value, and likelihood of successful breakout, given technical characteristics such as design and performance stability. Consideration of all such factors is necessary to ensure the maximum return on investment in a given breakout program. Occasionally, an item will not meet strict economic considerations for breakout, but action may be required due to other considerations to avoid overpricing situations. Accordingly, there is no minimum DoD

threshold for breakout screening actions. DoD components and field activities will develop annual buy thresholds for breakout screening that are consistent with economic considerations and resources. Every effort should be made to complete the full screening of parts that are expected to be subsequently replenished as they enter the inventory.

(c) Breakout improvement efforts must continue through the life cycle of a part to improve its breakout status (see 2-203) or until such time as the part is coded 1G, 2G, 1K, 2K, 1M, 2M, 1N, 2N, 1T, 2T, 1Z, or 2Z.

(d) No firm shall be denied the opportunity to demonstrate its ability to furnish a part that meets the Government's needs, without regard to a part's annual buy value, where a restrictive AMC/AMSC is assigned (see FAR 9.202). A firm must clearly demonstrate, normally at its own expense, that it can satisfy the Government's requirements. The Government will make a vigorous effort to expedite its evaluation of such demonstration and to furnish a decision to the demonstrating firm within a reasonable period of time. If a resolution cannot be made within 60 days, the offeror must be advised of the status of the request and be provided with a good faith estimate of the date the evaluation will be completed. Every reasonable effort will be made to complete the review before a subsequent acquisition is made. Also, restrictive codes and low annual buy value do not preclude consideration of a surplus dealer or other nonmanufacturing source when the part offered was manufactured by an approved source (see FAR 11.301). A potential surplus dealer or other nonmanufacturing source must provide the Government with all the necessary evidence that proves the proposed part meets the Government's requirements.

(e) The experience and knowledge accrued by contractors in the development, design, manufacture and test of equipment may enhance the breakout decision making process. DoD activities may obtain technical information from contractors when it is considered requisite to an informed coding decision. The procedure for contracting for this information is provided in Part 4 of this document. Contractor's technical information will be designated by CTICs. Only DoD activities shall assign AMCs and AMSCs.

(f) DoD activities with breakout screening responsibilities will develop, document, and advertise programs that promote the development of qualified sources for parts that are currently being purchased sole source. These programs should provide fair and reasonable technical assistance (engineering or other technical data, parts on bailment, etc.) to contractors who prove they have potential for becoming a qualified second source for an item. These programs should also provide specially tailored incentives to successful firms so as to stimulate their investment in becoming qualified, e.g., Government furnished equipment (GFE) or Government furnished material (GFM) for reverse engineering and technical data package review and assistance.

(g) Departments and agencies must identify the engineering support activity, design control activity, actual manufacturer, and prime contractor for each part such that the information is readily available to breakout and acquisition personnel.

1-105 Responsibilities.

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(a) The Under Secretary of Defense (Acquisition and Sustainment) has authority for direction and management of the DoD Spare Parts Breakout Program, including the establishment and maintenance of implementing regulations.

(b) Departments and agencies must perform audits to ensure that their respective activities comply with the provisions of this program.

(c) Commanders of DoD activities with breakout screening responsibility must?

(1) Implement a breakout program consistent with the requirements of this document.

(2) Assist in the identification and acquisition of necessary data rights and technical data, and the review of restrictive legends on technical data, during system/equipment development and production to allow, when feasible, breakout of parts.

(3) Designate a program manager to serve as the central focal point, communicate breakout policy, ensure cost-effectiveness of screening actions and breakout program, provide assistance in implementing breakout screening, monitor ongoing breakout efforts and achievements, and provide surveillance over implementation of the breakout program. The program manager must report only to the Commander, or deputy, of the activity with breakout screening responsibility.

(4) Ensure that actions to remove impediments to breakout are continued as long as it is cost-effective, or until no further breakout improvements can be made.

(5) Invite the activity's small business specialist and the resident small business administration's procurement center representative, if any, to participate in all acquisition method coding conferences at Government and contractor locations.

(6) Ensure timely engineering and technical support to other breakout activities regardless of location.

(i) In the case of parts where contracting or inventory management responsibility has been transferred, support must include?

(A) Assignment of an AMC/AMSC prior to the transfer;

(B) Assignment of an AMC/AMSC when requested by the receiving activity to parts transferred without such codes. The requesting activity may recommend an AMC/AMSC; and

(C) Full support of the receiving activities' breakout effort by providing timely engineering support in revising existing AMC/AMSCs.

(ii) In all cases, support must include, but not be limited to, furnishing all necessary technical data and other information (such as code suspense date and procurement history) to permit acquisition in accordance with the assigned AMC/AMSC (see 1-105(d)(6)).

(7) Ensure that appropriate surveillance is given to first time breakout parts.

(d) Breakout program managers shall be responsible for?

(1) Initiating the breakout process during the early phases of development and continuing the process during the life of the part;

(2) Considering the need for contractor technical information codes (CTICs) and, when needed, initiating a contract data requirement;

(3) Identifying, selecting, and screening in accordance with Part 3 of this document;

(4) Assigning an AMC/AMSC, using all available data, including CTICs;

(5) Responding promptly to a request for evaluation of additional sources or a review of assigned codes. An evaluation not completed prior to an immediate buy must be promptly completed for future buys; and

(6) Documenting all assignments and changes, to include rationale for assigning the chosen code, in a permanent file for each part. As a minimum, the file should identify the engineering support activity, cognizant design control activity, actual manufacturer, prime contractor, known sources of supply, and any other information needed to support AMC/AMSC assignments.

(e) Contracting officers responsible for the acquisition of replenishment parts will?

(1) Consider the AMC/AMSC when developing the method of contracting, the list of sources to be solicited, the type of contract, etc.; and

(2) Provide information that is inconsistent with the assigned AMC/AMSC (e.g., availability of technical data or possible sources) to the activity responsible for code assignment with a request for timely evaluation of the additional information. An urgent immediate buy need not be delayed if an evaluation of the additional information cannot be completed in time to meet the required delivery date.

PART 2--BREAKOUT CODING

2-200 Scope.

This part provides parts breakout codes and prescribes responsibilities for their assignment and management.

2-201 Coding.

Three types of codes are used in the breakout program.

2-201.1 Acquisition method codes.

The following codes must be assigned by DoD activities to describe the results of the spare parts breakout screening:

(a) AMC 0. The part was not assigned AMC 1 through 5 when it entered the inventory, nor has it ever completed screening. Use of this code is sometimes necessary but discouraged. Maximum effort to determine the applicability of an alternate AMC is the objective. This code will never be used to recode a part that already has AMC 1 through 5 assigned, and must never be assigned as a result of breakout screening. Maximum effort to determine the applicability of AMC 1 through 5 is the objective.

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(b) AMC 1. Suitable for competitive acquisition for the second or subsequent time.

(c) AMC 2. Suitable for competitive acquisition for the first time.

(d) AMC 3. Acquire, for the second or subsequent time, directly from the actual manufacturer.

(e) AMC 4. Acquire, for the first time, directly from the actual manufacturer.

(f) AMC 5. Acquire directly from a sole source contractor which is not the actual manufacturer.

2-201.2 Acquisition method suffix codes.

The following codes must be assigned by DoD activities to further describe the acquisition method code. Valid combinations of AMCs/AMSCs are indicated in paragraphs (a) through

(z) of this subsection and summarized in Exhibit I.

(a) AMSC A. The Government's right to use data in its possession is questionable. This code is only applicable to parts under immediate buy requirements and for as long thereafter as rights to data are still under review for resolution and appropriate coding. This code is assigned only at the conclusion of limited screening, and it remains assigned until the full screening process resolves the Government's rights to use data and results in assignment of a different AMSC. If one source is available, AMCs 3, 4, or 5 are valid. If at least two sources exist, or if the data is adequate for an alternate source to qualify in accordance with the design control activity's procedures, AMCs 1 or 2 are valid.

(b) AMSC B. This part must be acquired from a manufacturing source(s) specified on a source control or selected item drawing as defined by the current version of DoD-STD-100. Suitable technical data, Government data rights, or manufacturing knowledge are not available to permit acquisition from other sources, nor qualification testing of another part, nor use of a second source part in the intended application. Although altered and selected items must have an adequate technical data package, data review discloses that required data or data rights are not in Government possession and cannot be economically obtained. If one source is available, AMCs 3, 4, or 5 are valid. If at least two sources exist, AMCs 1 or 2 are valid.

(c) AMSC C. This part requires engineering source approval by the design control activity in order to maintain the quality of the part. Existing unique design capability, engineering skills, and manufacturing knowledge by the qualified source(s) require acquisition of the part from the approved source(s). The approved source(s) retain data rights, manufacturing knowledge, or technical data that are not economically available to the Government, and the data or knowledge is essential to maintaining the quality of the part. An alternate source must qualify in accordance with the design control activity's procedures, as approved by the cognizant Government engineering activity. The qualification procedures must be approved by the Government engineering activity having jurisdiction over the part in the intended application. If one source is approved, AMCs 3, 4, or 5 are valid. If at least two sources are approved or if data is adequate for an alternate source to qualify in accordance with the design control activity's procedures, AMCs 1 or 2 are valid.

(d) AMSC D. The data needed to acquire this part competitively is not physically available, it cannot be obtained economically, nor is it possible to draft adequate specifications or any other adequate, economical description of the material for a competitive solicitation. AMCS 3, 4, or 5 are valid.

(e) AMSC E. (Reserved)

(f) AMSC F. (Reserved)

(g) AMSC G. The Government has rights to the technical data, the data package is complete, and there are no technical data, engineering, tooling or manufacturing restrictions.

(This is the only AMSC that implies that parts are candidates for full and open competition. Other AMSCs such as K, M, N, Q, and S may imply limited competition when two or more independent sources exist yet the technical data package is inadequate for full and open competition.) AMCs 1 or 2 are valid.

(h) AMSC H. The Government physically does not have in its possession sufficient, accurate, or legible data to purchase this part from other than the current source(s). This code is applicable only to parts under immediate buy requirements and only for as long thereafter as the deficiency is under review for resolution and appropriate recoding. This code is only assigned at the conclusion of limited screening, and it remains assigned until the full screening process resolves physical data questions and results in assignment of a different AMSC. If one source is available, AMCs 3, 4, or 5 are valid. If at least two sources exist, AMCs 1 or 2 are valid.

(i) AMSC I. (Not authorized)

(j) AMSC J. (Reserved)

(k) AMSC K. This part must be produced from class 1 castings and similar type forgings as approved (controlled) by procedures contained in the current version of MIL-STD-2175

(see 1-102(e)). If one source has such castings and cannot provide them to other sources, AMCs 3, 4, or 5 are valid. If at least two sources have such castings or they can be provided to other sources AMCs 1 or 2 or valid.

(l) AMSC L. The annual buy value of this part falls below the screening threshold established by DoD components and field activities. However, this part has been screened for additional known sources, resulting in either confirmation that the initial source exists or that other sources may supply the part. No additional screening was performed to identify the competitive or noncompetitive conditions that would result in assignment of a different AMSC. This code must not be used when screening parts entering the inventory. This code must be used only to replace AMSC O for parts under the established screening threshold. If one source is available, AMCs 3, 4, or 5 are valid. If at least two sources exist, AMCs 1 or 2 are valid.

(m) AMSC M. Manufacture of this part requires use of master or coordinated tooling. If only one set of tooling exists and cannot be made available to another source for manufacture of this part, AMCs 3, 4, or 5 are valid. When the availability of existent or refurbishable tooling is available to two or more sources, then AMCs 1 or 2 are valid.

(n) AMSC N. Manufacture of this part requires special test and/or inspection facilities to determine and maintain ultra-precision quality for its function or system integrity. Substantiation and inspection of the precision or quality cannot be accomplished without such specialized test or inspection facilities. If the test cannot be made available for the competitive manufacture of the part, the required test or inspection knowledge cannot be documented for reliable replication, or the required physical test or inspection facilities and processes cannot be economically documented in a TDP, valid AMCs are 3, 4, or 5. If the

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facilities or tests can be made available to two or more competitive sources, AMCs 1 or 2 are valid.

(o) AMSC O. The part was not assigned an AMSC when it entered the inventory, nor has it ever completed screening. Use of this code in conjunction with AMC 0 is sometimes necessary but discouraged. Maximum effort to determine the applicability of an alternate AMSC is the objective. Only AMC O is valid.

(p) AMSC P. The rights to use the data needed to purchase this part from additional source(s) are not owned by the Government and cannot be purchased, developed, or otherwise obtained. It is uneconomical to reverse engineer this part. This code is used in situations where the Government has the data but does not own the rights to the data. If only one source has the rights or data to manufacture this item, AMCs 3, 4, or 5 are valid. If two or more sources have the rights or data to manufacture this item, AMCs 1 or 2 are valid.

(q) AMSC Q. The Government does not have adequate data, lacks rights to data, or both needed to purchase this part from additional sources. The Government has been unable to economically buy the data or rights to the data, although the part has been undergoing full screening for 12 or more months. Breakout to competition has not been achieved, but current, continuing actions to obtain necessary rights to data or adequate, reprocurement technical data indicate breakout to competition is expected to be achieved. This part may be a candidate for reverse engineering or other techniques to obtain technical data. All AMSC Q items are required to be reviewed within the timeframes cited in 2-203(b). If one source is available, AMCs 3, 4, or 5 are valid. If at least two sources exist, AMCs 1 or 2 are valid.

(r) AMSC R. The Government does not own the data or the rights to the data needed to purchase this part from additional sources. It has been determined to be uneconomical to buy the data or rights to the data. It is uneconomical to reverse engineer the part. This code is used when the Government did not initially purchase the data and/or rights. If only one source has the rights or data to manufacture this item, AMCs 3, 4, or 5 are valid. If two or more sources have the rights or data to manufacture this item, AMCs 1 or 2 are valid.

(s) AMSC S. Acquisition of this item is restricted to Government approved source(s) because the production of this item involves unclassified but militarily sensitive technology

(see FAR Subpart 6.3). If one source is approved, AMCs 3, 4, or 5 are valid. If at least two sources are approved, AMCs 1 or 2 are valid.

(t) AMSC T. Acquisition of this part is controlled by qualified products list (QPL) procedures. Competition for this part is limited to sources which are listed on or are qualified for listing on the QPL at the time of award (see FAR part 9 and DFARS part 209). AMCs 1 or 2 are valid.

(u) AMSC U. The cost to the Government to breakout this part and acquire it competitively has been determined to exceed the projected savings over the life span of the part. If one source is available, AMCs 3, 4, or 5 are valid. If at least two sources exist, AMCs 1 or 2 are valid.

(v) AMSC V. This part has been designated a high reliability part under a formal reliability program. Probability of failure would be unacceptable from the standpoint of safety

of personnel and/or equipment. The cognizant engineering activity has determined that data to define and control reliability limits cannot be obtained nor is it possible to draft adequate specifications for this purpose. If one source is available, AMCs 3, 4, or 5 are valid. If at

least two sources are available, AMCs 1 or 2 are valid.

(w) AMSC W. (Reserved)

(x) AMSC X. (Not authorized)

(y) AMSC Y. The design of this part is unstable. Engineering, manufacturing, or performance characteristics indicate that the required design objectives have not been achieved. Major changes are contemplated because the part has a low process yield or has demonstrated marginal performance during tests or service use. These changes will render the present part obsolete and unusable in its present configuration. Limited acquisition from the present source is anticipated pending configuration changes. If one source is available, AMCs 3, 4, or 5 are valid. If at least two sources exist, AMCs 1 or 2 are valid.

(z) AMSC Z. This part is a commercial product, nondevelopmental item, or commercially available off-the-shelf item. Commercial product descriptions, commercial vendor catalog or price lists, or commercial manuals assigned a technical manual number apply. If one source is available, AMCs 3, 4, or 5 are valid. If at least two sources are available, AMCs 1 or 2 are valid.

2-201.3 Contractor technical information codes.

The following two-digit alpha codes must be used by contractors, when contractor's assistance is requested. These codes are assigned in accordance with the current version of MIL-STD-789 (see 1-102(e)) and must be considered during the initial assignment of an AMC/AMSC. For spare parts breakout, requirements for contractor assistance through CTIC submission must be accomplished as stated in Part 4 of this document. Each CTIC submitted by a contractor must be accompanied by supporting documentation that justifies the proposed code. These codes and supporting documentation are useful not only for code assignment during acquisition coding conferences, but also for personnel conducting both full and limited screening of breakout candidates. Personnel conducting full and limited screening of breakout candidates should use the supporting documentation provided with CTICs as a source of information. However, they should not allow this information to substitute for careful analysis and further investigation of the possibilities of acquiring a part through competition or by direct purchase. The definitions for CTICs are?

(a) CTIC CB. Source(s) are specified on source control, altered item, or selected item drawings/documents. (The contractor shall furnish a list of the sources with this code.)

(b) CTIC CC. Requires engineering source approval by the design control activity in order to maintain the quality of the part. An alternate source must qualify in accordance with the design control activity's procedures, as approved by the cognizant Government engineering activity.

(c) CTIC CG. There are no technical restrictions to competition.

(d) CTIC CK. Produced from class 1 castings (see the current version of MIL-STD-2175

and 1-102(e)) and similar type forgings. The process of developing and proving the acceptability of high-integrity castings and forgings requires repetitive performance by a controlled source. Each casting or forging must be produced along identical lines to those that resulted in initial acceptability of the part. (The contractor shall furnish a list of known sources for obtaining castings/forgings with this code.)

(e) CTIC CM. Master or coordinated tooling is required to produce this part. This

tooling is not owned by the Government or, where owned, cannot be made available to other sources. (The contractor shall furnish a list of the firms possessing the master or coordinated tooling with this code.)

(f) CTIC CN. Requires special test and/or inspection facilities to determine and maintain ultra-precision quality for function or system integrity. Substantiation and inspection of the precision or quality cannot be accomplished without such specialized test or inspection facilities. Other sources in industry do not possess, nor would it be economically feasible for them to acquire facilities. (The contractor shall furnish a list of the required facilities and their locations with this code.)

(g) CTIC CP. The rights to use the data needed to purchase this part from additional sources are not owned by the Government and cannot be purchased.

(h) CTIC CV. A high reliability part under a formal reliability program. Probability of failure would be unacceptable from the standpoint of safety of personnel and/or equipment. The cognizant engineering activity has determined that data to define and control reliability limits cannot be obtained nor is it possible to draft adequate specifications for this purpose. Continued control by the existing source is necessary to ensure acceptable reliability. (The contractor shall identify the existing source with this code.)

(i) CTIC CY. The design of this part is unstable. Engineering, manufacturing, or performance characteristics indicate that the required design objectives have not been achieved. Major changes are contemplated because the part has a low process yield or has demonstrated marginal performance during tests or service use. These changes will render the present part obsolete and unusable in its present configuration. Limited acquisition from the present source is anticipated pending configuration changes. (The contractor shall identify the existing source with this code.)

2-202 Assignment of codes.

The purpose of AMC/AMSC assignments is to provide the best possible technical assessment of how a part can be acquired. The technical assessment should not be based on issues such as: are the known sources actual manufacturers, or are there two actual manufacturers in existence; but rather on factors such as the availability of adequate technical data, the Government's rights to use the data, technical restrictions placed on the hardware (criticality, reliability, special testing, master tooling, source approval, etc.) and the cost to breakout vice projected savings. In cases where there is additional technical information that affects the way a part can be acquired, it should be made available to the contracting officer, with the AMC/AMSC. Concerning the assignment of AMCs and AMSCs,

it is DoD policy that?

(a) The assignment of AMC/AMSCs to parts is the responsibility of the DoD component introducing the equipment or system for which the parts are needed in the inventory. Subsequent screening is the responsibility of the DoD component assigned technical responsibility.

(b) When two or more AMSCs apply, the most technically restrictive code will be assigned.

(c) Restricted combinations of AMC/AMSCs are reflected in the AMSC definitions. The Defense Logistics Information Service will reject invalid code combinations, as shown in Exhibit I, submitted for entry into the Federal catalog program (see 2-204.2).

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(d) One-time acquisition of a part by a method other than indicated by the code does not require a change to the AMC (e.g., when only one of a number of sources can meet a short delivery date, or when only one manufacturing source is known but acceptable surplus parts are available from other sources).

(e) After the first acquisition under AMC 2 or 4, the AMC must be recoded 1 or 3 respectively.

(f) Both full and limited screening will result in the assignment or reassignment of an AMC/AMSC. This assignment must be based on the best technical judgment of breakout personnel and on information gathered during the screening process.

(g) A part need not be coded as noncompetitive based on an initial market survey that only uncovers one interested source. If the Government has sufficient technical data in its possession to enable other sources to manufacture an acceptable part, and there are no technical restrictions on the part that would preclude other sources from manufacturing it, the part should be coded competitive.

2-203 Improving part status.

(a) General. An effective breakout program requires that all reasonable actions be taken to improve the acquisition status of parts. The potential for improvement of the acquisition status will vary with individual circumstances. On one end of the spectrum are those parts with acquisition method suffix codes of a temporary nature requiring vigorous follow-through improvement action (e.g., AMSCs A and H); on the other end are those parts with codes suggesting a relative degree of permanence (e.g., AMSC P). A code assigned to a part should never be considered fixed with respect to either technical circumstance or time; today's technical constraint may be overcome by tomorrow's technology and a contractor's rights to data, so zealously protected today, often become less important with time. The application of breakout improvement effort must always consider individual circumstances and overall benefits expected to be obtained.

(b) Code suspense dates. Every part whose breakout status can be improved must be suspensed for rescreening as appropriate. In general, the following codes cannot be improved: 1G, 2G, 1K, 2K, 1M, 2M, 1N, 2N, 1T, 2T, 1Z, or 2Z. The period between suspenses is a period for which an assigned AMC/AMSC is considered active, and routine

rescreening of parts with ?valid? codes is not required. Suspense dates may vary with the circumstance surrounding each part. A code reached as a result of limited screening (3-304) must not be assigned a suspense date exceeding 12 months; a code reached as a result of full screening (3-303) must not be assigned a suspense date exceeding 3 years. In exceptional cases, where circumstances indicate that no change can be expected in a code over an extended period, a suspense date not exceeding 5 years may be assigned in accordance with controls established by the breakout activity. Items with a 1G or 2G code do not require a suspense date.

2-204 Communication of codes.

2-204.1 Communication media.

Use the Federal catalog program formats, set forth in DoD Manual 4100.39-M, Federal Logistics Information System (FLIS) Procedures, communication media and operating instructions as augmented by this document to disseminate AMCs and AMSCs.

2-204.2 Responsibilities.

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(a) The Defense Logistics Agency (DLA) Logistics Information Services will?

(1) Receive and disseminate AMCs and AMSCs for each national stock number (NSN) to all appropriate Government activities in consonance with scheduled Federal catalog program computer cycles;

(2) Make the AMCs and AMSCs a part of the data bank of NSN item intelligence;

(3) Perpetuate the codes in all subsequent Federal catalog program transactions; e.g., entry of new NSNs and Federal supply code (FSC) changes; and

(4) Reject invalid code combinations submitted for entry into the Federal catalog program.

(b) DoD activities responsible for the assignment of AMCs and AMSCs will?

(1) Transmit assigned codes for each NSN through normal cataloging channels to DLIS under existing Federal catalog program procedures; and

(2) Notify DLA Logistics Information Services by normal Federal catalog program maintenance procedures when a change in coding is made.

PART 3--IDENTIFICATION, SELECTION, AND SCREENING OF PARTS

3-300 General.

This part sets forth procedures for the identification, selection, and screening of parts.

3-301 Identification and selection procedures.

3-301.1 Parts entering the inventory.

The breakout process should begin at the earliest possible stage of weapon systems acquisition. Generally, a provisioned part will require subsequent replenishment. Provisioning or similar lists of new parts are, therefore, the appropriate bases for selecting parts for screening. This is not to imply that breakout must be done on all items as part of the provisioning process. Priorities must be applied to those parts offering the greatest opportunity for breakout and potential savings. The major factors in making this

determination are?

(a) The unit price;

(b) The projected quantity to be purchased over the part's life cycle; and

(c) The potential for screening to result in a part being successfully broken out, e.g., item stability, cost, and completeness of technical data, etc.

3-301.2 Annual buy forecasts.

Annually, lists must be prepared that identify all parts projected for purchase during the subsequent 12-month period. Priority should be given to those parts with the greatest expected return given their annual buy value, life cycle buy value, and likelihood of successful breakout, given technical characteristics such as design and performance stability and the availability of technical data. Parts with an expired suspense date or a suspense date that will expire during the forecast period (see 2-203(b)), need only be

subjected to the necessary steps of the full screening procedure (see 3-303). Parts with a valid code that will not expire during the forecast period need not be screened. Parts coded 0O must be selected for full screening.

3-301.3 Immediate buy requirements.

An immediate buy requirement will be identified by the user or the item manager in consonance with department/agency regulations. When an immediate buy requirement meeting the screening criteria (see 1-104(b)) is generated for a part not assigned a current AMC/AMSC, the part must be promptly screened in accordance with either the full or limited screening procedures (see 3-303 and 3-304).

3-301.4 Suspect AMC/AMSC.

Whenever an AMC/AMSC is suspected of being inaccurate by anyone, including the contracting officer, a rescreening must be conducted for that part. Suspect codes include codes composed of invalid combinations of AMCs and AMSCs, those which do not truly reflect how a part is actually being acquired, and those suspected of being more restrictive than necessary for the next buy.

3-302 Screening.

(a) Screening procedures include consideration and recording of the relevant facts pertaining to breakout decisions. The objective of screening is to improve the acquisition status by determining the potential for competition, or purchase from an actual manufacturer. Consideration of any reasonable approach to establishing competition should be an integral **part of the breakout process.**

(b) Screening procedures may vary depending on circumstances related to the parts. No set rules will provide complete guidance for making acquisition method decisions under all conditions encountered in actual practice. An informed coding decision can be made without following the procedures step-by-step in every case.

(c) Activities involved in screening are encouraged to develop supplemental procedures that prove effective in meeting this program's objectives. These procedures should be

tailored to the particular activity's operating environment and the characteristics of the parts for which it is responsible. Nevertheless, care should be taken in all cases to assure that?

(1) Responsible judgment is applied to all elements involved in the review of a part;

(2) The necessary supporting facts are produced, considered, and recorded in the breakout screening file. The breakout screening file contains technical data and other documents concerning screening of the part;

(3) All cost-effective alternatives are considered for establishing competition, or purchase from an actual manufacturer (see 1-105(d)(6)); and

(4) When possible, the sequence of the review allows for accomplishing several screening steps concurrently.

(d) Contractor participation in the decision making process extends only to providing technical information. This technical information is provided by supporting documentation which includes the CTIC assignment. Government personnel must substantiate the breakout decision by reference to the CTIC and by careful review of the supporting documentation. However, the CTIC provides guidance only, and it should be used as one of

the inputs to arrive at an acceptable AMC and AMSC coding.

(e) Contractor's technical information furnished in accordance with MIL-STD-789 may indicate areas requiring additional research by the Government before screening can be completed. Seldom will industry's contribution to the screening process enable the Government to assign an AMC or AMSC without additional review.

(f) During the screening process, it may be appropriate to communicate with industry, particularly potential manufacturers of a part, to determine the feasibility of establishing a competitive source and to estimate the costs and technical risks involved.

(g) Coding conferences with industry must be documented.

(h) Screening may disclose that a part is not suitable for competitive acquisition, but it may be possible to break out the part for direct purchase from the actual manufacturer or to establish a second source. Parts particularly suited to direct purchase are those where neither the design control activity nor the prime contractor contribute additional value or whose data belong to the actual manufacturer and will not be acquired by the Government, and where that manufacturer exercises total responsibility for the part (design and quality control, testing, etc.), and where additional operations performed by the prime contractor can be performed by the actual manufacturer or by the Government.

(i) For each part that is screened, a file must be established to document and justify the decisions and results of all screening effort (see 1-105(d)(6)).

(j) Full and limited screening procedures are two elements of breakout programs. Other spare parts initiatives to enhance breakout are reverse engineering, bailment, data rights challenges, and publication of intended buy lists. Integration of other initiatives within the screening processes developed at each activity is encouraged.

3-303 Full screening procedures.

(a) Full screening procedures should be developed so that the potential is fully

evaluated for establishing competition or purchase from an actual manufacturer. Also, full screening procedures should facilitate accurate and consistent acquisition method code assignment. It is expected that each activity will develop its own operational screening procedures. A general model, full screening decision process is provided below to support the development of activity level procedures and to provide guidance regarding the general scope of these procedures. The full screening procedures involve 65 steps in the decision process, and are divided into the following phases:

(1) Data collection.

(2) Data evaluation.

(3) Data completion.

(4) Technical evaluation.

(5) Economic evaluation.

(6) Supply feedback.

(b) The six phases describe different functions that must be achieved during screening. The nature of the screening process does not permit clear distinction of one phase from another. Further, the order of performance of these phases may not correspond to the order listed here. In fact, the phases will often overlap and may be performed simultaneously. Their purpose is to identify the different functions comprising the screening process.

(c) A summary flow chart of the decision steps is provided as Exhibit II to assist in understanding the logical order of the full screening steps for various conditions. Use of the flow chart in connection with the text that follows is essential to fully understand the order of the steps in the process.

3-303.1 Data collection phase (step 1).

(a) Assemble all available data and establish a file for each part. Collect identification data, relevant data obtained from industry, contracting and technical history data and current status of the part, including?

(1) Normal identification required for cataloging and standardization review;

(2) All known sources;

(3) Historical contracting information, including the more recent awards, date of awards, and unit price(s) for the quantities prescribed;

(4) Identification of the actual manufacturer(s), the latest unit price, and the quantity on which the price is based. (When the actual manufacturer is not the design control activity, the design control activity may be consulted to ensure the latest version of the item is being procured from the actual manufacturer);

(5) Identification of the activity, Government or industry, having design control over the part and, if industry, the cognizant Government engineering activity;

(6) The expected life in the military supply system;

(7) Record of any prior review for breakout, with results or findings; and

(8) Annual demand.

(b) In the case of complex items requiring large numbers of drawings, collection of a

reasonable technical data sample is sufficient for the initial technical data evaluation phase (steps 2-14).

3-303.2 Data evaluation phase (steps 2-14).

(a) Data evaluation is crucial to the whole review procedure. It involves determination of the adequacy of the technical data package and the Government's rights to use the data for acquisition purposes.

(b) The data evaluation process may be divided into two stages:

(1) A brief but intensive analysis of available data and documents regarding both technical matters and data rights, leading to a decision whether to proceed with screening; and

(2) If the decision is to proceed with screening, further work is necessary to produce an adequate technical data package, such as research of contract provisions, engineering work on data and drawings, and requests to contractors for additional data.

(c) The steps in this phase are?

(1) Step 2. Are full Government rights established by the available data package? Evidence for an affirmative answer would include the identification of Government drawings, incorporation by reference of Government specifications or process descriptions in the public domain, or reference to contract provisions giving the Government rights to data. If the answer is negative, proceed to step 3; if positive, proceed to step 6.

(2) Step 3. Are the contractor's limitations of the Government's rights to data established by the available data package?

(i) The questions in step 2 and 3 are not exclusive. The incorporation in a drawing of contract provisions reserving rights to the manufacturer, either in the whole design or in certain manufacturing processes, would establish a clear affirmative answer to step 3 where there is substantiating Government documentation. Parts not in this group must be retained for further processing (see step 20). Data rights that cannot be substantiated must be challenged (see DFARS Part 227, validation procedures).

(ii) In the case of clear contractor ownership of rights, proceed with steps 4 and **5.**

(3) Step 4. Are there bases for competitive acquisition without using data subject to limitations on use? This question requires consideration, for example, of the possibility of using performance specifications or substitution of military or commercial specifications or bulletins for limited elements of the manufacturing process. The use of sample copies is another possibility.

(4) Step 5. Can the Government buy the necessary rights to data? This is a preliminary question to the full analysis (in steps 20 and 21 below) and is designed primarily to eliminate from further consideration those items which incorporate established data restrictions and for which there are no other bases for competitive acquisition nor is purchase of rights possible or feasible.

(5) Steps 6 and 7. Is the present technical data package adequate for competitive acquisition of a reliable part?

(6) Steps 8 and 9. Specify omissions. The question in steps 6 and 7 requires a critical engineering evaluation and should deal first with the physical completeness of the date--are any essential dimensions, tolerances, processes, finishes, material specifications, or other vital elements of data lacking from the package? If so, these omissions should be specified. A second element deals with adequacy of the existing package to produce a part of the required performance, compatibility, quality, and reliability. This will, of course, be related to the completeness of data. In some cases, qualified engineering judgment may decide that, in spite of apparently complete data, the high performance or other critical characteristics of the item require retention of the present source. If such decision is made, the file must include documentation in the form of specific information, such as difficulties experienced by the present manufacturer in producing a satisfactory item or the existence of unique production skills in the present source.

(7) Steps 10 and 11. Can the data be developed to make up a reliable technical data package? This implies a survey of the specified omissions with careful consideration to determine the resources available to supply each missing element. Such resources will vary from simple referencing of standard engineering publications to more complex development of drawings with the alternatives of either obtaining such drawings or developing performance specifications. In some cases, certain elements of data are missing because they have been properly restricted. If, however, there has been no advance substantiation of the right to restrict, the part should be further researched. If the answer to this question is negative, proceed to step 12; if positive, proceed to step 13 or 14.

(8) Step 12. If the answer to the question in steps 10 and 11 is no, which condition is the prime element in this decision, the lack of data or the unreliability of the data? Specific documentation is needed to support this decision.

(9) Step 13 and 14. Estimate the time required to complete the data package. In those cases where the data package is found inadequate and specific additions need to be developed, an estimate of the time required for completion must be made in order to determine if breakout of the part is feasible during this review cycle and to estimate at what point in the remaining life of the part the data package could be available.

3-303.3 Data completion phase (steps 15-21).

(a) The data completion phase involves acquiring or developing the missing elements of information to reach a determination on both adequacy of the technical data package and the restriction of rights to data. It may involve various functional responsibilities, such as examination of past contracts, queries directed to industry or to other Government agencies, inspection of the part, reverse or other engineering work to develop drawings and write specifications, arrangements with the present source for licensing or technical assistance to new manufacturers, and negotiations for purchase of rights to data. Additional research and information requests should be expeditiously initiated on those parts where there is a

reasonable expectation of breakout. Because this phase is time-consuming, it should take place concurrently with other phases of the review.

(b) At the beginning of the data completion phase, the part falls into one of the following four steps:

(1) Step 15. The data package is complete and adequate and the Government has sufficient rights for acquisition purposes. Such parts require no further data analysis. Proceed to step 22.

(2) Step 16. The Government has rights to existing data. The data package is incomplete but there is a reasonable expectation that the missing elements can be supplied. Proceed to step 19.

(3) Step 17. The data package is complete, but suitable Government rights to the data have not been established. Proceed to step 20.

(4) Step 18. Neither rights nor completeness of data is adequately established; therefore, the part requires further research. Proceed to step 20.

(c) Step 19. Obtain or develop the necessary data for a suitable data package. Reverse engineering to develop acquisition data may be used if there is a clear indication

that the costs of reverse engineering will be less than the savings anticipated from competitive acquisition. If there is a choice between reverse engineering and the purchase of data (step 21), the decision must be made on the basis of relative costs, quality, time, and other pertinent factors.

(d) Step 20. Establish the Government's and contractor's rights to the data. Where drawings and data cannot be identified to a contract, the following guidelines should be applied:

(1) Where drawings and data bear legends that warn of copyright or patent rights, the effect of such legends must be resolved according to law and policy; however, the existence of patent or copyright restrictions does not per se preclude securing competition with respect to the parts described (see FAR subpart 27.3/DFARS subpart 227.3).

(2) If the technical data bears legends that limit the Government's right to use the data for breakout and it is determined that reasonable grounds exist to question the current validity of the restrictive markings, the contracting officer will be notified to initiate the validation procedures at DFARS subpart 227.4.

(3) Where drawings and data are unmarked and, therefore, free of limitation on their use, they must be considered available for use in acquisition, unless the acquiring office has clear evidence to the contrary (see DFARS subpart 227.4).

(4) The decision process in situations described in paragraphs (d)(1), (2), and (3) of this subsection requires the exercise of sound discretion and judgment and embraces legal considerations. In no case shall a decision be made without review and approval of that decision by legal counsel.

(5) If the validation procedures in paragraph (d)(2) of this subsection establish the Government's right to use the data for breakout, the Government must attempt to obtain

competition pursuant to the decisions resulting from concurrent technical and economic evaluation.

(e) Step 21. If restrictions on the use of data are established, determine whether the Government can buy rights to the required data. Use the procedure in DFARS subpart **227.4.**

3-303.4 Technical evaluation phase (steps 22-37).

(a) Introduction.

(1) The purposes of technical evaluation are to determine the development status, design stability, high performance, and/or critical characteristics such as safety of personnel and equipment; the reliability and effective operation of the system and equipment in which the parts are to be used; and to exercise technical judgment as to the feasibility of breaking out the parts. No simple and universal rules apply to each determination. The application of experience and responsible judgment is required. Technical considerations arise in several elements of the decision process, e.g., in determining adequacy of the data package (steps **6-14).**

(2) Certain manufacturing conditions may reduce the field of potential sources. However, these conditions do not justify the restriction of competition by the assignment of restrictive AMCs for the following reasons:

(i) Parts produced from class 1 castings and similar type forgings. The process of developing and providing the acceptability of high-integrity castings and forgings requires repetitive performance by a controlled source for each casting or forging along identical lines to those which result in initial acceptability of the item. The particular manufacturer's process becomes the controlling factor with regard to the acceptability of any such item. However, other firms can produce class 1 castings and similar type forgings and provide the necessary inspection, or the part may be acquired from other sources that use castings or forgings from approved (controlled) source(s).

(ii) Parts produced from master or coordinated tooling, e.g., numerically controlled tapes. Such parts have features (contoured surfaces, hole locations, etc.) delineated according to unique master tooling or tapes and are manufactured to minimum/maximum limits and must be replaceable without additional tailoring or fitting. These parts cannot be manufactured or configured by a secondary pattern or jigs independent of the master tooling and cannot be manufactured to requisite tolerances of fit by use of commercial precision machinery. In this context, jigs and fixtures used only for ease of production are not considered master tooling. However, master tooling may be reproduced.

(iii) Parts requiring special test and/or inspection facilities to determine and maintain ultra-precision quality for the function or system integrity. Substantiation and inspection of the precision or quality cannot be accomplished without specialized test or inspection facilities. Testing is often done by the actual manufacturer under actual operating

use. However, such special test inspection facilities may be available at other firms.

(b) Design procedures (steps 22-31).

(1) Step 22. Will a design change occur during anticipated lead time? If affirmative, proceed to step 23; if negative, proceed to step 24.

(2) Step 23. Specify the design change and assign an appropriate code.

(3) Step 24. Is a satisfactory part now being produced? Concurrently with the research and completion of data, a technical determination is required as to the developmental status of the part. With the frequent telescoping of the development production cycle as well as constant product improvement throughout the active life of equipment, parts are frequently subject to design changes. The present source, if a prime contractor, is usually committed to incorporate the latest changes in any deliveries under a production order. In considering the part for breakout, an assessment must be made of the stability of design, so that in buying from a new source the Government will not be purchasing an obsolete or incompatible part. The question of obsolescence or noncompatibility is to some extent under Government control. Screening for breakout on parts that are anticipated to undergo design change should be deferred until design stability is attained.

(4) Step 25. Can a satisfactory part be produced by a new source? Determine whether technical reasons prohibit seeking a new source. The fact that the present source has not yet been able to produce a satisfactory part (step 24) does not preclude another source from being successful. If the answer to steps 24 or 25 is affirmative, proceed simultaneously to steps 27 and 38. If the answer to step 25 is negative, proceed to step 26.

(5) Step 26. If the present source is producing an unsatisfactory part, but technical

reasons prohibit seeking a new source, specify the reasons.

(6) Step 27. Does the part require prior qualification or other approval testing? If the answer is positive, proceed to step 28; if negative, proceed to step 32.

(8) Step 28. Specify the requirement.

(9) Step 29. Estimate the time required to qualify a new source.

(10) Step 30. Is there currently a qualified source?

(11) Step 31. Who is responsible for qualifications of the subcontractor, present prime contractor, the Government, or an independent testing agency?

(i) If a qualified source is currently in existence, the review should consider who will be responsible for qualification in the event of competitive acquisition. If qualification testing is such that it can be performed by the selected source under a preproduction or first article clause in the contract, the costs of initial approval should be reflected in the offers received. If the part requires initial qualification tests by some other agency such as the present prime contractor, the Government, an independent testing agent outside the Government, or by technical facilities within the departments, out-of-pocket costs may be incurred if the part is competed. An estimate of qualification costs should then be made and recorded in such cases.

(ii) Where facilities within the Government are not adequate for testing or qualification, or outside agencies such as the equipment contractor cannot or will not do the job, the economics of qualification may be unreasonable, and a narrative statement of these facts should replace the cost estimate. Whenever possible, such as in the case of engine qualification tests, economy of combined qualification tests should be considered.

(c) Quality assurance procedures (steps 32-33). Quality control and inspection is a primary consideration when making a decision to breakout. Where the prime contractor performs quality assurance functions beyond those of the part manufacturer or other sources, the Government may?

(1) Develop the same quality control and inspection capability in the manufacturer's plant;

(2) Assume the responsibility for quality; or

(3) Undertake to obtain the quality assurance services from another source, possibly the prime contractor.

(4) Step 32. Who is now responsible for quality control and inspection of the part?

(5) Step 33. Can a new source be assigned responsibility for quality control? Is the level of the quality assurance requirements specified in the system contract necessary for the screened part? The minimum quality assurance procedures for each part must be confirmed.

(i) A new source must be considered if?

(A) Any essential responsibility (e.g., burn-in, reliability, maintainability)

retained by the prime contractor for the part and its relationship to the end item can be eliminated, shifted to the new source, or assumed by the Government;

(B) The prime contractor will provide the needed quality assurance services;

(C) The Government can obtain competent, impartial services to perform quality assurance responsibility; or

(D) The new source can maintain an adequate quality assurance program, inspection system, or inspection appropriate for the part.

(ii) If the prime contractor has responsibility for quality that a new source cannot assume or obtain, or that the Government cannot undertake or eliminate, consideration of the new source is precluded.

(d) Tooling procedures (steps 34-37).

(1) Step 34. Is tooling or other special equipment required?

(2) Step 35. Specify the type of tooling.

(3) Step 36. Estimate additional acquisition leadtime for setup and for tooling.

(4) Step 37. Does the Government possess this tooling? If tooling or special equipment is required for production of the part, the types and quantities should be specified. Investigation can then be made as to whether the Government possesses such tooling and can make it available to a new source. A requirement for special tooling is not

necessarily a deterrent to competitive solicitation for parts. The Government may find it desirable to purchase the needed tooling and furnish it to the new source. In this case, the costs can be determined with reasonable accuracy. However, if new sources can provide the tooling or special equipment, this will be reflected in competitive prices and should not normally require further analysis.

3-303.5 Economic evaluation phase (steps 38-56).

(a) Economic evaluation concerns identification and estimation of breakout savings and direct cost offsets to breakout. The economic evaluation phase is composed of the three segments detailed in paragraphs (b) through (d) of this subsection.

(b) Development of savings data (steps 38-40).

(1) Step 38. Estimate remaining program life cycle buy value.

(2) Step 39. Apply either a savings factor of 25 percent or one determined under local conditions and experience.

(3) Step 40. Multiply the remaining program life cycle buy value by the savings factor to obtain the expected future savings, if the part is coded for breakout.

(c) Computation of breakout costs (steps 41-47). Several groups of costs must be collected, summarized and compared to estimated savings to properly determine the economics of breakout. These costs include?

(1) Direct costs (steps 41-45). Direct costs of breakout normally include all expenditures that are direct and wholly identifiable to a specific, successful breakout action, and that are not reflected in the part unit price. Examples of direct costs include Government tooling or special test equipment, qualification testing, quality control expenses, and industry participation costs (such as completion of the Contractor Technical Information Data Record) if borne by the Government.

(i) Step 41. Estimate the cost to the Government for tooling or special equipment.

(ii) Step 42. Estimate the cost, if any, to the Government for qualifying the new source.

(iii) Step 43. Estimate the cost, if any, to the Government for assuring quality control, or the cost of contracting for quality control.

(iv) Step 44. Estimate the cost to the Government for purchasing rights to data.

(v) Step 45. Add estimated total direct costs to the Government to breakout the item.

(2) Performance specification costs (steps 46-47).

(i) Step 46. Is the breakout candidate constructed to a performance specification?

(ii) Step 47. If the answer is yes in step 46, add performance specification breakout cost estimate elements to the result of step 45. The addition of an unknown number of nonstocked parts that must be stocked by the supply system for repairs is a significant element of cost associated with the decision to compete a performance

specification assembly. (The same situation does not arise with respect to a design specification assembly, since virtually all spare parts used to repair such an assembly are essentially identical to parts already in the assembly.) The cost of introducing these nonstocked parts into the system includes?

(A) Additional catalog costs. The number of nonstocked parts forecasted to be in the competed assembly, multiplied by the variable cost of cataloging per line item.

(B) Additional bin opening costs. The number of nonstocked parts forecasted to be in the competed assembly, multiplied by the variable cost of a bin opening at each of the locations where the part is to be stocked.

(C) Additional management costs. The number of nonstocked parts forecasted to be in the competed assembly, multiplied by the variable cost of management per line item.

(D) Additional technical data costs. The cost of a new set of technical data for the competed assembly, including the variable expenses of its production, reproduction, and distribution.

(E) Additional repair tools and test equipment costs. The costs of additional special tools and test equipment not otherwise required by the existing assembly.

(F) Additional logistics support costs. The costs associated with the new item such as spare and repair parts, technical manuals, and training.

(d) Comparison of savings and costs (steps 48-56). Compare estimated breakout costs to forecasted breakout savings. If costs exceed estimated savings, it will be uneconomical to compete the part. Performance specification parts should be analyzed to ensure that pertinent breakout costs have been considered and, if it is not economical to breakout the part, whether an appropriate detailed design data package reduces costs sufficiently to make breakout economical.

(1) Step 48. Compare total costs of breakout (step 47) to estimated savings (step **40).**

(2) Step 49. Are costs of breakout greater or less than estimated savings? If greater, proceed to step 50; if yes, proceed to step 51.

(3) Step 50. Is the breakout candidate constructed to a performance specification? If no, proceed to step 54; if yes, proceed to step 57.

(4) Step 51. Is it appropriate to obtain a detailed design data package? If yes, proceed to step 52; if no, proceed to step 54. The decision to change a performance specification part to a detailed design part obviously requires a critical engineering examination of the part itself, as well as a review of the impact such a change might have on the operational effectiveness of the system in which the equipment is to be employed. Acquisition of a performance specification part by a subsequently acquired design specification subjects the Government to the additional hazard of losing the money paid for the development of the design specification, should the design be altered during the contracting leadtime period. Accordingly, the engineering evaluation should closely review

design stability over the anticipated contracting leadtime in order to avoid acquiring an obsolete or nonstandard part if the decision is made to compete it.

(5) Step 52. Add the estimated cost of obtaining a detailed design data package to the results of step 45.

(6) Step 53. If the results of step 52 are less than the estimated savings, initiate action to obtain a detailed design data package. Proceed to step 54 to code the part for a period until it can be rescreened using the design specification package. The code determined in this screening must be assigned a suspense date commensurate with the leadtime required to obtain the detailed design data package (see 2-203(b)).

(7) Step 54. Is the part manufactured by the prime contractor? If yes, code the part AMC 3; if no, proceed to step 55.

(8) Step 55. Can the part be acquired directly from the actual manufacturer? If no, proceed to step 56; if yes, code the part AMC 3 or 4, as applicable.

(9) Step 56. Specify the reasons for inability to obtain the part from the actual manufacturer. Code the part AMC 5.

3-303.6 Supply feedback phase (steps 57-65).

(a) The supply feedback phase of the analysis is the final screening phase for breakout

parts. This phase in completed for all AMC 2 parts to determine if sufficient time is available to break out on the immediate buy and to communicate this information to the inventory manager responsible for the requirement. First, all additional time factors required to break out the part are added. Total time is subtracted from the immediate and future buy date and the result compared to the current date. (Note: Not all time factors listed apply to each part screened.) If the result is the same or earlier than the required contract date, the part is coded competitive and action is begun to qualify additional sources as necessary. If the result is later than the required contract date, action to compete the immediate buy quantity should be initiated if the inventory manager can find some means of accepting later delivery. If this is impossible, the appropriate records should be annotated for competitive acquisition of the next replenishment buy quantity. If late delivery is acceptable, the inventory manager should compute requirements for the part and initiate an appropriate purchase requisition.

(b) Procedures.

(1) Step 57. Add all additional time factors required to break out the part (steps 13, 14, 29, and 36).

(2) Step 58. Add the results of step 57 to the date of this review.

(3) Step 59. Compare the result of step 58 to the date that the contract or order must be placed.

(4) Step 60. Is the result of step 59 earlier than, later than, or the same as the contract or order date? (If earlier or the same, proceed to step 61; if later, proceed to step **63.)**

(5) Step 61. Can supply accept late delivery? If yes, proceed to step 62; if no,

proceed to step 63.

(6) Step 62. Notify the inventory manager to compute requirements and initiate a purchase requisition. Proceed to step 64.

(7) Step 63. Code the part AMC 2. Insufficient time to compete on this buy.

(8) Step 64. Code the part AMC 2.

(9) Step 65. Begin actions to qualify new sources, if required and possible.

3-304 Limited screening procedures.

(a) Limited screening procedures are only appropriate when the full screening process cannot be completed for a part in sufficient time to support an immediate buy requirement. If limited screening does not result in a competitive AMC and the part is characterized by a high buy value and high buy quantity in the annual buy forecast, full screening procedures must be immediately initiated.

(b) Limited screening procedures cover only the essential points of data and technical evaluations more completely described in full screening procedures (see 3-303). Extensive legal review of rights or technical review of data is not required; nor is backup information on type and extent of qualification testing, quality control procedures and master tooling required. A summary flow chart of the limited screening decision steps is provided at Exhibit **III.**

(c) The limited screening decision steps are followed sequentially if the answer to the question in each step is affirmative. If any step is answered in the negative, proceed directly to step 10.

(1) Step 1. Assemble all available data and establish a file for each part. Collect identification data, relevant data obtained from industry, contracting and technical history data and current status of the part (see 3-303.1).

(2) Step 2. Do the available documents establish Government rights to use the data for acquisition purposes? If the Government's rights to use data in its possession is questionable, resolution of the rights must continue beyond award of the immediate buy.

(3) Step 3. Is the data package sufficient, accurate, and legible? If the Government does not have in its possession sufficient, accurate, or legible data, action must be promptly initiated to resolve the deficiency for the next buy.

(4) Step 4. Is the design of the part stable over the anticipated acquisition lead time?

(5) Step 5. Is a satisfactory part now being produced?

(6) Step 6. Can the part be acquired from a new source without prior qualification testing or other approval testing?

(7) Step 7. Can the Government or a new source be responsible for quality assurance?

(8) Step 8. Can the part be manufactured without master or coordinated tooling or other special equipment; if no, is there more than one source that has the tooling or special equipment?

(9) Step 9. Assign AMC 2. Proceed to step 11.

(10) Step 10. Assign AMC 3, 4, or 5, as appropriate.

(11) Step 11. Establish the date of the next review (see 1-104(c) and 2-203(b)).

PART 4--CONTRACTOR'S ASSISTANCE

4-400 General.

(a) Contractor's assistance in screening must be requested on provisioned and replenishment parts after consideration of the benefit expected from the contractor's technical information and the cost to the Government of obtaining such assistance.

(b) Contractor's assistance must not be requested for parts covered by Government/industry specifications, commercially available parts or parts for which data is already available.

(c) Arrangements entered into with contractors to obtain technical information must provide that?

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(1) Contractors will exert their best effort to make impartial technical evaluations using applicable technical data and the experience of competent personnel; and

(2) No costs to the Government will be incurred for duplicate screening of parts.

4-401 Contractor's technical evaluation procedures.

(a) Contractor's technical evaluation for the screening process must be required contractually by incorporating MIL-STD-789 (see 1-102(e)), which delineates the contractor's responsibilities and other substantive data that was used in developing the contractor's recommendations.

(b) When MIL-STD-789 is incorporated in a contract, the DD Form 1423, Contract Data Requirements List, must specify the requirement for the submission of technical information and technical data identification in accordance with MIL-STD-789 (see 1-102(e)).

PART 5--REPORTING SYSTEM

5-500 General.

This part prescribes reports regarding the breakout program that cannot be obtained from other sources. These reports are used to evaluate the effectiveness of breakout programs, establish a baseline for all spare part acquisitions, and identify trends in spare parts acquisition.

5-501 Reports.

(a) Spare Parts Breakout Screening Report (RCS DD P&L(Q&SA)714A). This is a cumulative semi-annual report reflecting the accomplishments of the breakout program. The report describes the results of full and limited screening for provisioning and replenishment parts by number of different NSNs for each AMC. Departments and agencies must also maintain actual cost data attributable to the Spare Parts Breakout Program which shall be forwarded on this report semi-annually.

(b) Spare Parts Acquisition Report (RCS DD P&L(Q&SA) 714B). This is a cumulative semi-annual report for all purchases made of spare parts during the current fiscal year. This

report describes the number and extended dollar value of different NSNs purchased for each AMC. Departments and agencies must also maintain actual savings (or cost avoidance) data attributable to the Spare Parts Breakout Program which shall be forwarded on this report semi-annually. Because of extraneous factors such as contracting leadtimes and changes in spare parts requirements, this report will not always reflect the acquisition of the parts screened during a reporting period (contained on the Spare Parts Breakout Screening Report). Also, it will not show in all instances how the part was actually acquired. This report is intended to be an indication of the success of the breakout program, and designed to show trends in the coding and data available to buyers in the acquisition package.

5-502 Reporting procedures.

(a) Departments and agencies must maintain and forward semi-annual reports. The second semi-annual report in a fiscal year shall reflect cumulative totals for the current fiscal year using the formats in Exhibits IV and V.

(b) The reports will be due no later than 45 days after the end of each period

designated.

(c) Submissions will be made to the Under Secretary of Defense (Acquisition and Sustainment).

5-503 Reporting instructions.

(a) Spare parts breakout screening report. Using the format in Exhibit IV, provide the following?

(1) Enter reporting activity name, fiscal year, and period ending.

(2) For each AMC/AMSC listed, enter the number of different NSNs for which screening was completed during the period. Show zeros where applicable. This should be done for both full and limited screening.

(3) Report the total costs of the breakout program incurred for the period. Although this will be primarily labor costs, it should also include appropriate prorated costs of ADP services, office overhead, data retrieval service costs, etc. (see 3-303.5).

(b) Spare parts acquisition report. Using the format in Exhibit V, provide the following:

(1) Enter reporting activity name, fiscal year, and period ending.

(2) For each AMC/AMSC listed, enter the number of different NSNs purchased during the current fiscal year and their extended dollar value.

(3) Report the actual breakout program savings or cost avoidances as measured by completed acquisition (not anticipated acquisitions). Price differentials should be measured on each acquisition where a breakout action has taken place. They should equal the difference between the previous contract unit price and the current contract unit price, times the number of units purchased.

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EXHIBIT I--VALID AMC/AMSC COMBINATIONS

Acquisition Method Code (AMC)

AMSC 0 1 2 3 4 5

A X o o o o o

B X o o o o o

C X o o o o o

D X X X o o o

G X o o X X X

H X o o o o o

K X o o o o o

L X o o o o o

M X o o o o o

N X o o o o o

O o X X X X X

P X o o o o o

Q X o o o o o

R X o o o o o

S X o o o o o

T X o o X X X

U X o o o o o

V X o o o o o

Y X o o o o o

Z X o o o o o

o = VALID COMBINATION

X = INVALID COMBINATIONS

EXHIBIT II--FULL SCREENING DECISION PROCESS SUMMARY FLOW CHART

Exhibit II is available here.

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EXHIBIT III--LIMITED SCREENING DECISION PROCESS SUMMARY

FLOW CHART

Yes

Yes

9. Code AMC

3. Is the

2.

data package

4. Is design 8. Can part

No

sufficient,
No
stable for be acquired
Local accurate, and
anticipated without
Data legible?
acquisition qualification
Files
lead time? or other
approval
Yes Yes Yes
No 5. Is a 7. Can the
satisfactory Government No
1. Assemble 2. Are Govt
Central part now or a new
available Rights in No
Data being source be
data Data
Files produced? responsible
package. established
for quality
by available
package?
6. Can part
Yes be No
manufacture
Other
d without
Input
special
Data
tooling or
10. Code 11. Establish
AMC 3, 4 or date for next
5 as review.
applicable.
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EXHIBIT IV--SPARE PARTS BREAKOUT SCREENING REPORT
SPARE PARTS BREAKOUT SCREENING REPORT
Report Fiscal Period

Activity_____ Year_____ Ending_____

N U M B E R O F N S N s

AMC/AMSC LIMITED SCREENING FULL SCREENING TOTAL SCREENING

*1G Only

1

**2G Only

2

3

4

5

TOTAL

SPARE PARTS BREAKOUT PROGRAM COSTS $_____

* Excluded from AMC 1 data

** Excluded from AMC 2 data

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EXHIBIT V--SPARE PARTS ACQUISITION REPORT

SPARE PARTS ACQUISITION REPORT

Report Fiscal Period

Activity_____ Year_____ Ending_____

P U R C H A S E M A D E

AMC/AMSC NUMBER OF NSNs EXTENDED DOLLAR VALUE

*1G Only

1

**2G Only

2

3

4

5

TOTAL

SPARE PARTS BREAKOUT PROGRAM

SAVINGS OR COST AVOIDANCES

$_____

* Excluded from AMC 1 data

** Excluded from AMC 2 data

PGI 217.76?CONTRACTS WITH PROVISIONING REQUIREMENTS

PGI 217.7601 Provisioning.

(1) Definitions. As used in this section?

(i) ?Provisioning? means the process of determining and acquiring the range and quantity of spare and repair parts, and support and test equipment required to operate and maintain an end item for an initial period of service.

(ii) ?Provisioned item? means any item selected under provisioning procedures.

(iii) ?Provisioned items order? means an undefinitized order issued under a contract that includes the Government's requirements for provisioned items. (Provisioned items with

firm prices are acquired by supplemental agreement or by separate contract.)

(iv) ?Provisioning activity? means the organization responsible for selecting and determining requirements for provisioned items.

(v) ?Provisioning requirements statement? means the contractual document listing the specific provisioning requirements for that contract. The statement normally includes?

(A) Instructions, such as the provisioning method to be used;

(B) The extent of provisioning technical documentation and data needed (including administrative requirements for submission and distribution);

(C) The type and location of provisioning conferences;

(D) Sample article requirements;

(E) The delivery schedule;

(F) Packaging and marking requirements for provisioned items; and

(G) Requirements for provisioning screening.

(vi) ?Provisioning technical documentation? means the data needed for the identification, selection, determination of initial requirements, and cataloging of support items to be acquired through the provisioning process. It includes such things as provisioning lists and logistics support analysis summaries. Descriptive data such as drawings and photographs are referred to as ?supplementary provisioning technical documentation.?

(2) Contractual provisions. Contracts containing provisioning requirements must?

(i) List the provisioning functions to be performed and who will perform them;

(ii) Include a provisioning requirements statement or specify a time limit for its incorporation into the contract by modification (revisions to the provisioning requirements statement must also be incorporated by contract modification);

(iii) Include on the DD Form 1423, Contract Data Requirements List, a schedule for delivery of provisioning technical documentation, or provide for the schedule to be incorporated later by contract modification;

(iv) Require flowdown of the appropriate provisioning technical documentation requirement when the subcontractor prepares the documentation;

(v) Specify any applicable procedures for interim release by the contractor of long lead time items, and include ordering and funding instructions for such items. As a

minimum, the instructions must require the contractor to advise the contracting officer or provisioning activity at least 30 days before release of the items, their estimated costs, and

the effective date of release;

(vi) Specify the activity designated to issue provisioned items orders, i.e., contracting officer, provisioning activity, or administrative contracting officer. When it is expected that more than one activity will place provisioned items orders against the contract, state the requirements for provisioned items of each activity as separate contract line items;

(vii) Provide a definitization schedule (normally 120 days after receipt of the contractor's proposal) and a timeframe for the contractor to furnish price proposals for provisioned items orders (normally 60 days after order issuance);

(viii) Specify exhibit identifiers applicable to the contract line/subline items; and

(ix) Include procedures for processing changes (including cancellations) in quantities of items ordered.

(3) Issuance of provisioned items orders.

(i) Use the Standard Form 30, Amendment of Solicitation/Modification of Contract, to?

(A) Issue provisioned items orders;

(B) Decrease or cancel quantities of items ordered; and

(C) Cover the contractor's interim release of long lead items when the contracting officer approves the release (if the release is not approved, the contracting officer will notify the contractor to cancel the items).

(ii) Include in Block 14 of the Standard Form 30?

(A) The term PROVISIONED ITEMS ORDER in capital letters and underlined; and

(B) The appropriate exhibit identifier(s) for all attached exhibits.

(iii) Obligate funds to cover the estimated price of the items being ordered. Show individual estimated prices for each exhibit line item on the accounting and payment office copies.

(iv) Distribution is the same as for the basic contract (see FAR subpart 4.2). However, if the exhibits are voluminous, the contracting officer may restrict distribution of the exhibits to the contract administration office.

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Defense FAR Supplement (DFARS) Part 217

(v) See DFARS Subpart 217.74 for additional guidance and limitations on the use of undefinitized contract actions.

(4) Provisioning conferences. When requested by the contracting officer or provisioning activity, the contract administration office will assist the contracting officer or provisioning activity in scheduling and determining the types of provisioning conferences required, e.g., guidance meetings, long lead time items conferences, source coding meetings.

(5) Contract administration office monitoring.

The contract administration office (CAO) will monitor contracts containing provisioning requirements. As a minimum the CAO will?

(i) Ensure that the contractor understands the provisioning requirements;

(ii) Review contractor progress in the preparation of provisioning technical

documentation and, if requested by the contracting officer or provisioning activity, inspect it for format and content;

(iii) Ensure the prime contractor flows down provisioning requirements to any subcontractor charged with preparation of documentation;

(iv) Advise the contracting office or provisioning activity of delays in delivery of provisioning technical documentation or other related problems (see FAR subpart 42.8);

(v) Ensure contractor compliance with contract requirements concerning the assignment of national stock numbers; and

(vi) Ensure that the contractor complies with contractual criteria for release of long lead time items.

(6) Negotiating and executing supplemental agreements.

(i) The administrative contracting officer (ACO) will definitize provisioned items orders within the prescribed schedule.

(ii) If the provisioned items order does not contain a delivery date, or the contractor cannot meet the date, the ACO will coordinate the negotiated schedule with the contracting officer or provisioning activity before execution of the supplemental agreement.

(iii) The ACO will maintain records of provisioned items orders showing?

(A) The adequacy of obligated funds;

(B) Due dates for price proposals; and

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Defense FAR Supplement (DFARS) Part 217

(C) Actions taken to obtain additional funds or to deobligate excess funds.

PGI 217.77?OVER AND ABOVE WORK

PGI 217.7701 Procedures.

(1) Contracts for the performance of maintenance, overhaul, modification, and repair of various items (e.g., aircraft, engines, ground support equipment, ships) generally contain over and above work requirements. When they do, establish a separate contract line item for the over and above work.

(2) Over and above requirements task the contractor to identify needed repairs and recommend corrective action during contract performance. The contractor submits a work request to identify the over and above work and, as appropriate, the Government authorizes the contractor to proceed.

(3) The clause at DFARS 252.217-7028, Over and Above Work, requires the contractor and the contracting officer responsible for administering the contract to negotiate specific procedures for Government administration and contractor performance of over and above work requests.

(4) The contracting officer may issue a blanket work request authorization describing the manner in which individual over and above work requests will be administered and setting forth a dollar limitation for all over and above work under the contract. The blanket work request authorization may be in the form of a letter or contract modification (Standard Form **30).**

(5) Over and above work requests are within the scope of the contract. Therefore, procedures in DFARS subpart 217.74, Undefinitized Contract Actions, do not apply.

(6) To the maximum extent practical, over and above work must be negotiated prior to performance of the work.

PART 18

OFFICE OF THE ASSISTANT SECRETARY OF WAR

Status: Class D

OFFICE OF THE ASSISTANT SECRETARY OF WAR

3000 DEFENSE PENTAGON

WASHINGTON, DC 20301-3000

ACQUISITION

AND SUSTAINMENT

In reply refer to

DARS Tracking Number: 2026-O0004

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES SPECIAL OPERATIONS

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES TRANSPORTATION

COMMAND (ATTN: ACQUISITION EXECUTIVE)

DEPUTY ASSISTANT SECRETARY OF THE ARMY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE NAVY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE

(CONTRACTING)

DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Class Deviation?Revolutionary Federal Acquisition Regulation (FAR) Overhaul

Part 18, Defense FAR Supplement (DFARS) Part 218

Effective February 1, 2026, contracting officers shall use?

? The revised FAR Part 18, Emergency Acquisitions published on the Revolutionary FAR Overhaul web page at https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-18 in lieu of the text codified at 48 CFR chapter 1 (https://www.ecfr.gov).

? The attached DFARS Part 218, Emergency Acquisitions in lieu of the text codified at 48 CFR chapter 2; and

? The attached DFARS Procedures, Guidance, and Information (PGI) 218, Emergency Acquisitions in lieu of the PGI text published on the Defense Pricing, Contracting, and Acquisition Policy web page at https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.

This class deviation implements the following:

? Section 2 of E.O. 14275, Restoring Common Sense to Federal Procurement, which establishes the policy that the FAR ?should only contain provisions required by statute or essential to sound procurement, and any FAR provisions that do not

advance these objectives should be removed.
DARS Tracking Number: 2026-O0004
Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 18,
Defense FAR Supplement (DFARS) Part 218
? Section 4(a) of E.O. 14265, Modernizing Defense Acquisitions and Spurring Innovation in the Defense Industrial Base which requires the Secretary of War to eliminate or revise any unnecessary supplemental regulations or any other internal guidance, such as relevant parts of the Financial Management Regulation and Defense Federal Acquisition Regulation Supplement.
? The Office of Management and Budget memorandum, M-25-26 issued on May 2, 2025, titled, Overhauling the Federal Acquisition Regulation, which provided additional guidance to federal agencies regarding the FAR overhaul.
This class deviation remains in effect until rescinded or incorporated into the FAR, DFARS, and DFARS PGI. Inquiries regarding this class deviation can be addressed to osd.pentagon.ousd-a-s.mbx.dfars@mail.mil.
John M. Tenaglia
Principal Director,
Defense Pricing, Contracting, and
Acquisition Policy
Attachments:
As stated
2
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DARS Tracking Number: 2026-O0004
Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 18
Defense FAR Supplement (DFARS) Part 218

PART 218?EMERGENCY ACQUISITIONS

SUBPART 218.70?AVAILABLE ACQUISITION FLEXIBILITIES

218.7001 Additional acquisition flexibilities.

Additional acquisition flexibilities are available to DoD when supporting emergency acquisitions.

218.7001-1 General emergency flexibilities.

See the list of flexibilities at PGI 218.7001-1.

218.7001-2 Contingency operation.

See the list of flexibilities at PGI 218.7001-2.

218.7001-3 Defense or recovery from certain events.

For acquisitions that, as determined by the head of the contracting activity, are to facilitate defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack; to facilitate provision of international disaster assistance; or to support response to an emergency or major disaster, see the list of flexibilities at **PGI 218.7001-3.**

218.7001-4 Emergency declaration or major disaster declaration.

See the list of flexibilities at PGI 218.7001-4.

218.7001-5 Humanitarian or peacekeeping operation.

See the list of flexibilities at PGI 218.7001-5.

218.7001-6 Head of contracting activity determinations.

See PGI 218.7001-6 for delegations of authority.

218.7001-7 Use of electronic business tools.

When supporting a contingency operation or humanitarian or peacekeeping operation, follow the procedures at PGI 218.7001-7 concerning the use of electronic business tools.

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Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 18

Defense FAR Supplement (DFARS) Part 218

PGI 218?EMERGENCY ACQUISITIONS

PGI 218.70?AVAILABLE ACQUISITION FLEXIBILITIES

PGI 218.7001 Additional acquisition flexibilities.

PGI 218.7001-1 General emergency flexibilities.

(a) Circumstances permitting other than full and open competition. Use of the authority at FAR 6.103-2, Unusual and compelling urgency, may be appropriate under certain circumstances. See PGI 206.

(b) Use of advance Military Interdepartmental Purchase Request (MIPR). For urgent requirements, the advance MIPR may be transmitted electronically. See PGI **208.**

(c) Use of the Governmentwide commercial purchase card. Governmentwide commercial purchase cards use is not required for purchases valued at or below the micro-purchase threshold if the place of performance is entirely outside the United States. See part 213.

(d) Master agreement for repair and alteration of vessels. The contracting officer, without soliciting offers, may issue a written job order for emergency work to a contractor that has previously executed a master agreement, when delay would endanger a vessel, its cargo or stores, or when military necessity requires immediate work on a vessel. See part 217 and PGI 217.

(e) Spare parts breakout program. An urgent immediate buy need not be delayed if an evaluation of the additional information cannot be completed in time to meet the required delivery date. See PGI 217.

(f) Storage and disposal of toxic and hazardous materials. Under certain emergency situations, exceptions apply with regard to the prohibition on storage or disposal of non-DoD-owned toxic or hazardous materials on DoD installations. See part **223.**

(g) Authorization Acts, Appropriations Acts, and other statutory restrictions on foreign acquisition. Acquisitions in the following categories are not subject to the restrictions of part 225, Restrictions on food, clothing, fabrics, specialty metals, and hand or measuring tools: (1) Acquisitions at or below the simplified acquisition threshold; (2) Acquisitions outside the United States in support of combat operations;

(3) Acquisitions of perishable foods by or for activities located outside the United States

for personnel of those activities; (4) Acquisitions of food, specialty metals, or hand or measuring tools in support of contingency operations, or for which the use of other than competitive procedures has been approved on the basis of unusual and compelling urgency in accordance with FAR part 6; (5) Emergency acquisitions by activities located outside the United States for personnel of those activities; and (6) Acquisitions by vessels in foreign waters. See part 225.

(h) Rights in technical data. The agency head may notify a person asserting a restriction that urgent or compelling circumstances (e.g., emergency repair or overhaul)

do not permit the Government to continue to respect the asserted restriction. See part **227.**

(i) Tax exemption in Spain. If copies of a contract are not available and duty-free import of equipment or materials is urgent, the contracting officer may send the Joint United States Military Group copies of the Letter of Intent or a similar document indicating the pending award. See PGI 229.

(j) Electronic submission and processing of payment requests. Exceptions to the use of Wide Area WorkFlow are at part 232.

(k) Mortuary services. In an epidemic or other emergency, the contracting activity may obtain services beyond the capacity of the contractor's facilities from other sources. See part 237.

PGI 218.7001-2 Contingency operations.

(a) Selecting appointing, and terminating the appointment for contracting officers. See **part 201 and DoD Instruction 5000.6 for waivers to the contracting officer qualification** requirements pertaining to baccalaureate degrees.

(b) Policy for item unique identification. Contractors will not be required to provide DoD item unique identification if the items, as determined by the head of the contracting activity, are to be used to support a contingency operation. See part 211.

(c) Use of the Governmentwide commercial purchase card. Governmentwide commercial purchase cards use is not required for purchases valued at or below the micro-purchase threshold if the purchase or payment is for an overseas transaction by a contracting officer in support of a contingency operation, or for training exercises in preparation for overseas contingency, humanitarian, or peacekeeping operations. See part **213.**

(d) Governmentwide commercial purchase card. A contracting office supporting a contingency operation or a humanitarian or peacekeeping operation may use the Governmentwide commercial purchase card to make a purchase that exceeds the micro-purchase threshold but does not exceed the simplified acquisition threshold if certain conditions are met. See part 213.

(e) Imprest funds and third party drafts. Imprest funds are authorized for use without further approval for overseas transactions at or below the micro-purchase threshold in

support of a contingency operation or a humanitarian or peacekeeping operation. See part **213.**

(f) Standard Form (SF) 44, Purchase Order-Invoice-Voucher. SF 44s may be used for purchases not exceeding the simplified acquisition threshold for overseas transactions by contracting officers in support of a contingency operation or a humanitarian or peacekeeping operation. See part 213.

(g) Only one offer. The requirements at sections 215.371-2 do not apply to acquisitions, as determined by the head of the contracting activity, in support of a contingency operation. See 215.371-4(a)(2).

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(h) Approval of determination and findings for time-and-materials or labor-hour contracts. The approval requirements in subpart 216.6 do not apply to contracts that, as determined by the head of the contracting activity, support contingency.

(i) Undefinitized contract actions. The head of the agency may waive certain limitations for undefinitized contract actions if the head of the agency determines that the waiver is necessary to support a contingency operation or a humanitarian or peacekeeping operation. See part 217.

(j) Prohibited sources. DoD personnel are authorized to make emergency acquisitions in direct support of U.S. or allied forces deployed in military contingency, humanitarian, or peacekeeping operations in a country or region subject to economic sanctions administered by the Department of the Treasury, Office of Foreign Assets Control. See part 225.

(k) Authorization Acts, Appropriations Acts, and other statutory restrictions on foreign acquisition. Acquisitions in the following categories are not subject to the restrictions of 225, Restrictions on food, clothing, fabrics, specialty metals, and hand or measuring tools: (1) Acquisitions at or below the simplified acquisition threshold; (2) Acquisitions outside the United States in support of combat operations; (3) Acquisitions of perishable foods by or for activities located outside the United States for personnel of those activities; (4) Acquisitions of food, specialty metals, or hand or measuring tools in support of contingency operations, or for which the use of other than competitive procedures has been approved on the basis of unusual and compelling urgency in accordance with FAR part 6; (5) Emergency acquisitions by activities located outside the United States for personnel of those activities; and (6) Acquisitions by vessels in foreign waters. See part 225.

(l) Electronic submission and processing of payment requests. Contractors do not have to submit payment requests in electronic form for contracts awarded by deployed contracting officers in the course of military operations, including contingency operations or humanitarian or peacekeeping operations. See part 232.

PGI 218.7001-3 Defense or recovery from certain events.

For acquisitions that, as determined by the head of the contracting activity, are to facilitate defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack; to facilitate provision of international disaster assistance; or to support response to an emergency or major disaster, the following requirements do not

apply:

(a) Policy for unique item identification. Contractors are not required to provide DoD unique item identification if the items are to be used to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack. However, contractors are not exempt from this requirement if the items are to be used to facilitate defense against or recovery from cyber attack. See part 211.

(b) Only one offer requirements. See subpart 215.3.

(c) Approval of determination and findings for time-and-materials or labor-hour contracts. See subpart 216.6.

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DARS Tracking Number: 2026-O0004

Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 18

Defense FAR Supplement (DFARS) Part 218

PGI 218.7001-4 Emergency declaration or major disaster declaration.

(a) Establishing or maintaining alternative sources. PGI contains a sample format for Determination and Findings citing the authority of FAR part 6, regarding exclusion of a particular source in order to establish or maintain an alternative source or sources. Alternate 2 of the sample format addresses having a supplier available for furnishing supplies or services in case of a national emergency. See PGI 206.

(b) Electronic submission and processing of payment requests. Contractors do not have to submit payment requests in electronic form for contracts awarded by contracting officers in the conduct of emergency operations, such as responses to natural disasters or national or civil emergencies. See part 232.

PGI 218.7001-5 Humanitarian or peacekeeping operation.

The following requirements do not apply to acquisitions that, as determined by the head of the contracting activity, are in support of humanitarian or peacekeeping operations:

(a) Policy for item unique identification. See part 211.

(b) Only one offer requirements at sections. See subpart 215.3.

(c) Approval of determination and findings for time-and-materials or labor-hour contracts. See subpart 216.6.

PGI 218.7001-6 Head of contracting activity determinations.

(a) The term ?head of the agency? is replaced with ?head of the contracting activity,? in the following locations:

(1) FAR 2.101: definition of ?simplified acquisition threshold.?

(2) FAR part 12: Treatment as a commercial product or service.

(3) FAR part 13.

(4) FAR part 18: Micro-purchase threshold and simplified acquisition threshold.

(b) The term ?head of the executive agency? and ?head of the contracting activity? have the following meaning.

(1) Head of the executive agency means the Secretary, unless otherwise indicated.

(2) Head of the contracting activity means the official who has overall responsibility for managing the contracting activity.]

PGI 218.7001-7 Use of electronic business tools.

(a) Use of electronic business (e-business) acquisition tools greatly enhances the

efficacy of the contracting process in emergency-type operations (ETOs). ETOs can benefit from specific tools, policies, roles and responsibilities, and processes necessary to streamline delivery of goods and services to the end user. ETOs also can benefit from

implementing an e-business program with the capabilities necessary to support an end-to-end electronic acquisition process in order to quickly obtain goods and services for the warfighter in an operational area. For additional information and resources pertaining to contingency e-business tools, see the Defense Pricing, Contracting, and Acquisition Policy contingency contracting resources page at: https://www.acq.osd.mil/asda/dpc/cp/cc/cc-resources.html.

(b) Use of the following contingency e-business tools is mandatory when automating the respective acquisition process during a contingency or humanitarian or peacekeeping operation:

(1) The 3in1 Tool. The 3in1 Tool automates the field order, receipt, and purchase processes previously executed manually using the paper Standard Form (SF) 44. The 3in1 handheld device records and transmits cash and carry type purchases and payment data to the prime database for remote reconciliation and review, when conducting on-the-spot, over-the-counter field purchases where use of the Government Purchase Card is appropriate, but not feasible. The 3in1 database may be accessed on the Joint Contingency and Expeditionary Services (JCXS) website at https://www.jccs.gov/JCCSCOE.

(2) The Acquisition Cross-Servicing Agreements (ACSA) Global Automated Tracking and Reporting System (AGATRS). AGATRS is an automated tool that tracks and provides visibility into worldwide ACSAs that may satisfy a requirement through support from the host nation or other nations supporting the operation. ACSA transactions that are used in support of contingency or humanitarian or peacekeeping operations are required to be documented and tracked in AGATRS as required by the Chairman of the Joint Chiefs of Staff Instruction 2120.01D, Acquisition and Cross Servicing Agreements

(https://www.jcs.mil/Portals/36/Documents/Library/Instructions/CJCSI%202120.01E.pdf). AGATRS is accessible on the JCXS website at https://www.jccs.gov/JCCSCOE.

(c) No other electronic tools may be used to fulfill the same capabilities as 3in1 and **AGATRS.**

(d) See PGI 225 regarding use of the Theater Business Clearance e-business tool.

PART 19

OFFICE OF THE ASSISTANT SECRETARY OF WAR

Status: Class D

OFFICE OF THE ASSISTANT SECRETARY OF WAR

3000 DEFENSE PENTAGON

WASHINGTON, DC 20301-3000

ACQUISITION

AND SUSTAINMENT

In reply refer to

DARS Tracking Number: 2026-O0037

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES SPECIAL OPERATIONS

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES TRANSPORTATION

COMMAND (ATTN: ACQUISITION EXECUTIVE)

DEPUTY ASSISTANT SECRETARY OF THE ARMY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE NAVY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE

(CONTRACTING)

DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Class Deviation?Revolutionary Federal Acquisition Regulation (FAR) Overhaul

Part 19, Defense FAR Supplement (DFARS) Part 219

Effective February 1, 2026, contracting officers shall use?

? The revised FAR Part 19, Small Business published on the Revolutionary FAR Overhaul web page at https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-19 in lieu of the text codified at 48 CFR chapter 1 (https://www.ecfr.gov);

? The attached DFARS Part 219, Small Business in lieu of the text codified at 48 CFR chapter 2;

? The attached DFARS Procedures, Guidance, and Information (PGI) 219, Small Business, in lieu of the PGI text published on the Defense Pricing, Contracting, and Acquisition Policy web page at https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html; and

? The attached Appendix I, Policy and Procedures for the DoD Mentor-Protégé Program, in lieu of the Appendix I published on the Defense Pricing, Contracting, and Acquisition Policy web page at https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html

DARS Tracking Number: 2026-O0037
Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 19
Defense FAR Supplement (DFARS) Part 219
This class deviation implements the following:
? Section 2 of E.O. 14275, Restoring Common Sense to Federal Procurement, which establishes the policy that the FAR ?should only contain provisions required by statute or essential to sound procurement, and any FAR provisions that do not advance these objectives should be removed.
? Section 4(a) of E.O. 14265, Modernizing Defense Acquisitions and Spurring Innovation in the Defense Industrial Base which requires the Secretary of War to eliminate or revise any unnecessary supplemental regulations or any other internal guidance, such as relevant parts of the Financial Management Regulation and Defense Federal Acquisition Regulation Supplement.
? The Office of Management and Budget memorandum, M-25-26 issued on May 2, 2025, titled, Overhauling the Federal Acquisition Regulation, which provided additional guidance to federal agencies regarding the FAR overhaul.
This class deviation remains in effect until rescinded or incorporated into the FAR, DFARS, and DFARS PGI. Inquiries regarding this class deviation can be addressed to osd.pentagon.ousd-a-s.mbx.dfars@mail.mil.
John M. Tenaglia
Principal Director,
Defense Pricing, Contracting, and
Acquisition Policy
Attachments:
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DARS Tracking Number: 2026-O0037
Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 19
Defense FAR Supplement (DFARS) Part 219

PART 219?SMALL BUSINESS

SUBPART 219.1?PRESOLICITATION

219.101 Small business goals.

(b)(2) See PGI 205.002-70(b) for details on advertising a small business event on the Government point of entry.

219.102 Coordination.

(a) The contracting activity small business specialist is the primary point of contact for communication with the SBA. See PGI 219.102(a) for further information.

(d)(i) Unless the contracting activity requests a review, SBA procurement center representatives will not review acquisitions conducted by or for DoD if the acquisition is?

(A) For foreign military sales (see 225.7300);

(B) In support of humanitarian and civic assistance;

(C) In support of a contingency operation;

(D) Awarded pursuant to a Status of Forces Agreement or other agreement with the government of a foreign country in which U.S. Armed Forces are deployed; or

(E) Both awarded and performed outside the United States and its outlying areas.

(ii) As used in this section, ?Humanitarian and civic assistance? means any of the following activities carried out in conjunction with authorized military operations in a foreign country:

(A) Medical, surgical, dental, and veterinary care provided in areas of a country that are rural or underserved by professionals in those fields, including education, training, and technical assistance related to the care provided.

(B) Construction of rudimentary surface transportation systems.

(C) Well drilling and construction of basic sanitation facilities.

(D) Rudimentary construction and repair of public facilities (10 U.S.C. **401(e)).**

(f)(1) The head of the contracting activity may not delegate this authority lower than the chief of the contracting office.

(g) See PGI 219.102(g)(1) for review and recommendation procedures, including dollar thresholds.

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DARS Tracking Number: 2026-O0037

Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 19

Defense FAR Supplement (DFARS) Part 219

219.104 Small business set-asides.

219.104-1 Total small business set-asides.

(a) The requirements at FAR 19.104-1(a) and (b) apply to acquisitions for?

(i) Construction, including maintenance and repairs, under $3.5 million;

(ii) Dredging under $2 million; and

(iii) Architect-engineer services for military construction or family housing projects under $1 million (10 U.S.C. 2855).

(c) The requirement at FAR 19.104-1(a) does not apply to acquisitions?

(i) For supplies that were developed and financed, in whole or in part, by Canadian sources under the U.S.-Canadian Defense Development Sharing Program; or

(ii) Excluded from procurement center representative review (see **219.102(d)(i).**

219.104-70 Set asides for religious-related services.

(a) When acquiring religious-related services for a U.S. military base, allow nonprofit organizations to compete on set-asides for small business concerns and avoid using sole-source exceptions.

(b) If the apparently successful offeror does not identify as a small business, verify that it is registered in SAM as a nonprofit organization.

(c) Insert the provision at 252.219-7012, Competition for Religious-Related Services, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial services, for religious-related services to be performed on U.S. military

installations, when the acquisition is set aside for any of the small business concerns identified in FAR 19.000(a)(3).

219.108 Contracting with the Small Business Administration (the 8(a) Program).

219.108-1 General.

(d)(i) The SBA has delegated its authority under 15 U.S.C. 637(a)(1) to the Under Secretary of Defense (Acquisition and Sustainment) to award 8(a) contracts to eligible 8(a) participants. This delegation, based on a Partnership Agreement (PA) between the SBA and DoD, redelegates this authority to DoD contracting officers and only covers contract signing on the SBA's behalf. The SBA remains the prime contractor, determines eligibility, and retains appeal rights. The PA, including its expiration date, is available at PGI 219.108-1.

(ii) Contracts awarded on either a sole source or competitive basis under the PA may be awarded directly to the 8(a) participant; an SBA signature on the contract is not required.

(iii) Notwithstanding the PA, contracting officers may award a contract following the procedures at FAR 19.108 and 19.208.

219.108-3 Selecting acquisitions for the 8(a) Program.

Follow the procedures at PGI 219.108-3 when selecting acquisitions for the 8(a) Program.

219.108-4 Evaluation, offering, and acceptance.

Follow the procedures at PGI 219.108-4 when processing requirements under the PA.

219.108-7 Competitive 8(a) and sole source 8(a) policy.

(b)(i) For acquisitions exceeding the competitive threshold (see FAR 19.108-7(a)(2)), the SBA may accept the requirement for a sole source 8(a) award on behalf of a small business concern owned by a Native Hawaiian Organization (Section 8020 of Pub. L. 109-148).

(ii) ?Native Hawaiian Organization,? as used in this section, means any community service organization serving Native Hawaiians in the State of Hawaii that is a not-for-profit organization chartered by the State of Hawaii, controlled by Native Hawaiians, and whose business activities will principally benefit Native Hawaiians (15 U.S.C. 637(a)(15) and 13 CFR 124.3).

219.108-10 Contract clauses.

(1) Insert the clause at 252.219-7009, Section 8(a) Direct Award, instead of clauses FAR 52.219-11, Special 8(a) Contract Conditions, FAR 52.219-12, Special 8(a) Subcontract Conditions, and FAR 52.219-17, Section 8(a) Award, in solicitations and contracts processed in accordance with the PA.

(2) Insert the clause at 252.219-7010, Notification of Competition Limited to Eligible 8(a) Participants?Partnership Agreement, instead of the clause at FAR

52.219-18, Notification of Competition Limited to Eligible 8(a) Participants, in competitive solicitations and contracts, including those using FAR part 12 procedures for the acquisition of commercial products and commercial services, when the acquisition is accomplished using the procedures of FAR 19.108-7 and processed in accordance with the PA.

(3) Insert the clause at 252.219-7011, Notification to Delay Performance, in solicitations and purchase orders issued under the PA.

219.109 Small business subcontracting plans.

(e)(2)(A) Insert the clause at 252.219-7996 , Small Business Subcontracting Plan (DoD Contracts), in solicitations and contracts, including those using FAR part 12 procedures for the acquisition of commercial products and commercial services, that contain the clause at FAR 52.219-9, Small Business Subcontracting Plan.

(1) Insert the basic clause at 252.219-7996, when using the basic, alternate I, or alternate II of FAR 52.219-9.

(2) Use the alternate I clause at 252.219-7996, when using Alternate III of FAR 52.219-9.

(3) Use the alternate II clause at 252.219-7996 when using the Demonstration Project described at 226.72.

(B) For contracts with comprehensive subcontracting plans approved under the Test Program described in 219.206-70, including contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, insert the clause at 252.219-7997, Small Business Subcontracting Plan (Test Program), instead of the clauses at?

(1) 252.219-7996 , Small Business Subcontracting Plan (DoD Contracts);

(2) FAR 52.219-9, Small Business Subcontracting Plan; and

(3) FAR 52.219-16, Liquidated Damages?Subcontracting Plan.

(f) Do not use the clause at FAR 52.219-10, Incentive Subcontracting Program, in contracts with comprehensive subcontracting plans approved under the Test Program described in 219.206-70.

219.110 Price evaluation preference for HUBZone small business concerns.

(a) In tiered evaluations, do not apply the price evaluation preference until a tier is reached where offers from other than small businesses are being considered.

219.170 Advancing small business growth.

Insert the provision at 252.219-7000, Advancing Small Business Growth, in solicitations when the estimated annual value of the contract is expected to exceed?

(a) The small business size standard, if expressed in dollars, for the North American Industry Classification System (NAICS) code assigned by the contracting officer; or

(b) $70 million, if the small business size standard is expressed as number of

employees for the NAICS code assigned by the contracting officer.

SUBPART 219.2?EVALUATION AND AWARD

219.204 Certificate of Competency.

When making a nonresponsibility determination for a small business concern, follow the procedures at PGI 219.204.

219.206 Evaluating small business subcontracting plans.

219.206-3 Reviewing the subcontracting plan.

The contracting officer may use the checklist at PGI 219.206-3 when reviewing subcontracting plans in accordance with FAR 19.206-3. The checklist does not apply to the DoD Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans (219.206-70).

219.206-70 Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans.

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(a)(1) Test Program. In accordance with 15 U.S.C. 637 note, the DoD Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans (Test Program) aims to determine whether comprehensive subcontracting plans on a corporate, division, or plant-wide basis will reduce administrative burdens while enhancing subcontracting opportunities for small and small disadvantaged business concerns.

(2) Expiration date. The Test Program expires on December 31, 2027.

(b) Eligibility requirements. To become and remain an eligible participant in the Test Program, a business concern must have furnished supplies or services (including construction) under at least three DoD contracts during the preceding fiscal year with a minimum aggregate value of $100 million.

(c) Comprehensive subcontracting plans.

(1) The Defense Contract Management Agency will designate a contracting officer to negotiate, approve, and monitor compliance of a comprehensive subcontracting plan with an eligible participant on an annual basis.

(2) Test Program participants use their comprehensive subcontracting plans, in lieu of individual subcontracting plans, when performing any DoD contract or subcontract that requires a subcontracting plan.

219.208 Evaluating and awarding under the 8(a) Program.

219.208-1 Procedures for competitive 8(a).

(b)(1) For requirements processed under the PA, follow the procedures at PGI **219.208-1(b)(1)(A) for requesting eligibility determinations.**

219.208-2 Contract negotiation.

For sole-source requirements processed under the PA, follow the procedures at PGI **219.208-2.**

(a)(1) In lieu of the threshold at FAR 19.208-2(a), the SBA may not accept for negotiation a DoD sole-source 8(a) contract that exceeds $150 million unless the DoD

has completed a justification in accordance with the requirements of FAR 6.104 and

206.104-70.

219.208-3 Pricing the 8(a) contract.

(a) For requirements processed under the PA?

(i) Obtain certified cost or pricing data from the 8(a) contractor, if required by FAR subpart 15.4; and

(ii) SBA concurrence in the negotiated price is not required. However, notify the SBA prior to withdrawing a requirement from the 8(a) Program due to failure to agree on price or other terms and conditions, the . Such notification is not required for purchase orders not exceeding the simplified acquisition threshold.

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219.208-7 Preparing the contracts.

When preparing contracts under the PA, follow the procedures at PGI 219.208-7.

SUBPART 219.3?POSTAWARD

219.301 Small business size rerepresentations.

(c) Follow the procedures at PGI 204.301 for reporting modifications for rerepresentation actions.

219.302 Small business subcontracting plans.

219.302-2 Compliance with the plan.

(a) See PGI 219.302-2 for guidance on reviewing subcontracting reports.

(1)(A) In accordance with 10 U.S.C. 3903, section 9077 of Pub. L. 102-396, and subsequent Defense appropriations acts, subcontracts awarded to qualified nonprofit agencies (NPA) approved by the Committee for Purchase from People Who Are Blind or Severely Disabled (41 U.S.C. chapter 85) may be counted toward the prime contractor?s small business subcontracting goal.

(B) Unless the prime contractor has reason to question the representations, it may accept a subcontractor's written representations of its status as a qualified NPA approved by the Committee for Purchase from People Who Are Blind or Severely Disabled, or a historically black college or university or minority institution.

(2) With respect to subcontracting plans approved under the Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans (see 219.206-70), the designated contracting officer will conduct a compliance review during the fiscal year after the close of the fiscal year for which the plan is applicable by comparing the approved percentage or dollar goals to the total, actual subcontracting dollars covered by the comprehensive subcontracting plan. The requirements at FAR 19.302-2(b) and

(c) apply to compliance assessments of comprehensive subcontracting plans.

(e) If a prime contractor listed a small business subcontractor in its bid or proposal and replaces that small business with an other than small business, it must notify the administrative contracting officer in writing within a reasonable amount of time after the subcontract is awarded.

SUBPART 219.71?DOD MENTOR-PROTÉGÉ PROGRAM

219.7100 Scope.

This subpart implements the DoD Mentor-Protégé Program (referred to as the Program) to incentivize DoD contractors to help protégé firms grow their capabilities and increase participation in Government and commercial contracts (10 U.S.C. 4902).

219.7101 Policy.

See Appendix I, Policy and Procedures for the DoD Mentor-Protégé Program, for DoD policy and procedures for implementing the Program.

219.7102 General.

The Program provides?

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(a) Mentor-protégé agreements that establish a developmental assistance program for a protégé firm; and

(b) Incentives for mentor firms that include?

(1) Reimbursement for developmental assistance costs through?

(i) A separately priced line item on a DoD contract; or

(ii) A separate contract, if the Director, OSBP, of the cognizant military department or defense agency determines in writing that unusual circumstances justify reimbursement using a separate contract; or

(2) Credit toward applicable subcontracting goals, established under a subcontracting plan negotiated under FAR 19.206 or under the DoD Comprehensive Subcontracting Test Program, for developmental assistance costs that are not reimbursed.

219.7103 Contracting officer responsibilities.

(a) Negotiate an advance agreement on the treatment of developmental assistance costs for either credit or reimbursement if the mentor firm proposes such an agreement, or delegate authority to negotiate to the administrative contracting officer (see FAR **31.110).**

(b) Modify applicable contract(s) to incorporate the clause at 252.232-7005, Reimbursement of Subcontractor Advance Payments?DoD Mentor-Protégé Program, without consideration, when a mentor firm provides advance payments to a protégé firm under the Program and the mentor firm requests reimbursement of advance payments.

(c) Modify, without consideration, applicable contract(s) to incorporate other than customary progress payments for protégé firms in accordance with FAR 32.504(c) if a mentor firm provides such payments to a protégé firm and the mentor firm requests reimbursement.

(d) Modify applicable contract(s) to establish a line item for reimbursement of developmental assistance costs if?

(1) A DoD program manager or the Director, OSBP, of the cognizant military

department or defense agency has made funds available for that purpose; and

(2) The contractor has an approved mentor-protégé agreement.

(e) Negotiate and award a separate contract for reimbursement of developmental assistance costs only if?

(1) Funds are available for that purpose;

(2) The contractor has an approved mentor-protégé agreement; and

(3) The Director, OSBP, of the military department or defense agency has made a determination in accordance with 219.7102(b)(1)(ii).

(f) Do not authorize reimbursement for costs of assistance furnished to a protégé firm in excess of $1 million in a fiscal year unless a written determination from the Director, OSBP, of the military department or defense agency is obtained.

(g) Advise contractors of reporting requirements in Appendix I.

(h) Provide a copy of the approved mentor-protégé agreement to the Defense Contract Management Agency (DCMA) small business professional responsible for conducting the annual performance review (see Appendix I, section I-113).

219.7104 Developmental assistance costs eligible for reimbursement or credit.

(a) Developmental assistance under a mentor-protégé agreement must be separate from, and not replicate, typical subcontract administration. The mentor firm must charge subcontract costs according to its standard accounting practices. Appendix I lists reimbursable mentor firm costs.

(b) For mentor-protégé agreements before December 23, 2022, eligible developmental assistance costs incurred by September 30, 2026, can be credited toward subcontracting goals. For agreements on or after December 23, 2022, eligible developmental assistance costs may be credited toward subcontracting goals. See Appendix I.

219.7105 Reporting.

Mentor and protégé firms are required to report on the progress made under mentor-protégé agreements (See Appendix I, section I-112).

219.7106 Performance reviews.

DCMA will conduct annual performance reviews of all mentor-protege agreements as indicated in Appendix I, Section I-113. The determinations made in these reviews contribute to the determinations of amounts of reimbursement, if any, that the mentor firm is eligible to receive in the remaining years of the Program participation term under the agreement.

PART 252? SOLICITATION PROVISIONS AND CONTRACT CLAUSES

SUBPART 252.2?TEXT OF PROVISIONS AND CLAUSES

252.219-7000 Advancing Small Business Growth.

As prescribed in 219.170(a), use the following provision:

ADVANCING SMALL BUSINESS GROWTH (JUN 2023)

(a) This provision implements 10 U.S.C. 4959.

(b) The Offeror acknowledges by submission of its offer that by acceptance of the contract resulting from this solicitation, the Offeror may exceed the applicable small business size standard of the North American Industry Classification System (NAICS) code assigned to the contract and would no longer qualify as a small business concern for that NAICS code. Small business size standards matched to industry NAICS codes

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are published by the Small Business Administration and are available at 13 CFR **121.201 and https://www.sba.gov/document/support-table-size-standards. The Offeror** is therefore encouraged to develop the capabilities and characteristics typically desired in contractors that are competitive as other-than-small contractors in this industry.

(c) For procurement technical assistance, the Offeror may contact the nearest APEX Accelerator. APEX Accelerator locations are available at https://www.apexaccelerators.us.

(End of provision)

252.219-7996 Small Business Subcontracting Plan (DoD Contracts).

(DEVIATION 2026-O0037)

Basic. As prescribed in 219.109(e)(2)(A)(1), use the following clause:

SMALL BUSINESS SUBCONTRACTING PLAN (DOD CONTRACTS)?BASIC

(DEVIATION 2026-O0037) (FEB 2026)

This clause supplements the Federal Acquisition Regulation 52.219-9, Small Business Subcontracting Plan, clause of this contract.

(a) Definitions. As used in this clause?

?Summary Subcontract Report (SSR) Coordinator? means the individual who is registered in the Electronic Subcontracting Reporting System (eSRS) at the Department of Defense level and is responsible for acknowledging receipt or rejecting SSRs submitted under an individual subcontracting plan in eSRS for the Department of Defense.

(b) Subcontracts awarded to qualified nonprofit agencies designated by the Committee for Purchase From People Who Are Blind or Severely Disabled (41 U.S.C. 8502-8504), may be counted toward the Contractor?s small business subcontracting goal.

(c) A mentor firm, under the Pilot Mentor-Protege Program established under section 831 of Public Law 101-510, as amended, may count toward its small disadvantaged business goal, subcontracts awarded to?

(1) Protege firms which are qualified organizations employing the severely disabled; and

(2) Former protege firms that meet the criteria in section 831(g)(4) of Public Law 101-510.

(d) The master plan is approved by the Contractor's cognizant contract

administration activity.

(e) In those subcontracting plans which specifically identify small businesses, the Contractor shall notify the Administrative Contracting Officer of any substitutions of firms that are not small business firms, for the small business firms specifically identified in the subcontracting plan. Notifications shall be in writing and shall occur

within a reasonable period of time after award of the subcontract. Contractor-specified formats shall be acceptable.

(f)(1) For DoD, the Contractor shall submit reports in eSRS as follows:

(i) Submit the Individual Subcontract Report (ISR) to the contracting officer at the procuring contracting office, even when contract administration has been delegated to the Defense Contract Management Agency.

(ii) Submit the consolidated SSR for an individual subcontracting plan to the ?Department of Defense.?

(2) For DoD, the authority to acknowledge receipt or reject reports in eSRS is as follows:

(i) The authority to acknowledge receipt or reject the ISR resides with the contracting officer who receives it, as described in paragraph (f)(1)(i) of this clause.

(ii) The authority to acknowledge receipt of or reject SSRs submitted under an individual subcontracting plan resides with the SSR Coordinator.

(g) Insert the clause at Defense Federal Acquisition Regulation Supplement (DFARS) 252.219-7997, Small Business Subcontracting Plan (Test Program), in subcontracts with subcontractors that participate in the Test Program described in DFARS 219.206-70, if the subcontract is expected to exceed the applicable threshold specified in Federal Acquisition Regulation 19.109(a)(1) and to have further subcontracting opportunities.

(End of clause)

Alternate I. As prescribed in 219.109(e)(2)(A)(2), use the following clause, which uses a different paragraph (f) than the basic clause.

SMALL BUSINESS SUBCONTRACTING PLAN (DOD CONTRACTS)?ALTERNATE I (DEVIATION 2026-O0037) (FEB 2026)

This clause supplements the Federal Acquisition Regulation 52.219-9, Small Business Subcontracting Plan, clause of this contract.

(a) Definitions. As used in this clause?

?Summary Subcontract Report (SSR) Coordinator? means the individual who is registered in the Electronic Subcontracting Reporting System (eSRS) at the Department of Defense level and is responsible for acknowledging receipt or rejecting SSRs submitted under an individual subcontracting plan in eSRS for the Department of Defense.

(b) Subcontracts awarded to qualified nonprofit agencies designated by the

Committee for Purchase From People Who Are Blind or Severely Disabled (41 U.S.C. 8502-8504), may be counted toward the Contractor?s small business subcontracting goal.

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(c) A mentor firm, under the Pilot Mentor-Protege Program established under section 831 of Public Law 101-510, as amended, may count toward its small disadvantaged business goal, subcontracts awarded to?

(1) Protege firms which are qualified organizations employing the severely disabled; and

(2) Former protege firms that meet the criteria in section 831(g)(4) of Public Law 101-510.

(d) The master plan is approved by the Contractor's cognizant contract administration activity.

(e) In those subcontracting plans which specifically identify small businesses, the Contractor shall notify the Administrative Contracting Officer of any substitutions of firms that are not small business firms, for the small business firms specifically identified in the subcontracting plan. Notifications shall be in writing and shall occur within a reasonable period of time after award of the subcontract. Contractor-specified formats shall be acceptable.

(f)(1) For DoD, the Contractor shall submit reports in eSRS as follows:

(i) The Standard Form 294, Subcontracting Report for Individual Contracts, shall be submitted in accordance with the instructions on that form.

(ii) Submit the consolidated SSR to the ?Department of Defense.?

(2) For DoD, the authority to acknowledge receipt of or reject SSRs submitted under an individual subcontracting plan in eSRS resides with the SSR Coordinator.

(g) Insert the clause at Defense Federal Acquisition Regulation Supplement (DFARS) 252.219-7997, Small Business Subcontracting Plan (Test Program), in subcontracts with subcontractors that participate in the Test Program described in DFARS 219.206-70, if the subcontract is expected to exceed the applicable threshold specified in Federal Acquisition Regulation 19.109(a)(1) and to have further subcontracting opportunities.

(End of clause)

Alternate II. As prescribed in 219.109(e)(2)(A)(3), use the following clause, which uses different paragraphs (a) and (b) than the basic clause.

SMALL BUSINESS SUBCONTRACTING PLAN (DOD CONTRACTS)?ALTERNATE II (DEVIATION 2026-O0037) (FEB 2026)

(a) Definitions. As used in this clause?

?Eligible contractor? means a business entity operated on a for-profit or nonprofit basis that?

(1) Employs severely disabled individuals at a rate that averages not less than

33 percent of its total workforce over the 12-month period prior to issuance of the solicitation;
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(2) Pays not less than the minimum wage prescribed pursuant to 29 U.S.C. 206 to the employees who are severely disabled individuals; and

(3) Provides, for its employees, health insurance and a retirement plan comparable to those provided for employees by business entities of similar size in its industrial sector or geographic region.

?Summary Subcontract Report (SSR) Coordinator? means the individual who is registered in the Electronic Subcontracting Reporting System (eSRS) at the Department of Defense level and is responsible for acknowledging receipt or rejecting SSRs submitted under an individual subcontracting plan in eSRS for the Department of Defense.

(b)(1) Subcontracts awarded to qualified nonprofit agencies designated by the Committee for Purchase From People Who are Blind or Severely Disabled (41 U.S.C. 8502-8504), may be counted toward the Contractor's small business subcontracting goal

(section 8025 of Pub. L. 108-87).

(2) Subcontracts awarded to eligible contractors under the Demonstration Project for Contractors Employing Persons with Disabilities (see Defense Federal Acquisition Regulation Supplement (DFARS) 226.72) may be counted toward the Contractor's small disadvantaged business subcontracting goal (section 853 of Pub. L. 108-136, as amended by division H, section 110 of Pub. L. 108-199).

(c) A mentor firm, under the Pilot Mentor-Protege Program established under section 831 of Public Law 101-510, may count toward its small disadvantaged business goal, subcontracts awarded to?

(1) Protege firms which are qualified organizations employing the severely disabled; and

(2) Former protege firms that meet the criteria in section 831(g)(4) of Public Law 101-510.

(d) The master plan is approved by the cognizant contract administration activity for the Contractor.

(e) In those subcontracting plans which specifically identify small businesses, the Contractor shall notify the Administrative Contracting Officer of any substitutions of firms that are not small business firms, for the small business firms specifically identified in the subcontracting plan. Notifications shall be in writing and shall occur within a reasonable period of time after award of the subcontract. Contractor-specified formats shall be acceptable.

(f)(1) For DoD, the Contractor shall submit reports in eSRS as follows:

(i) Submit the Individual Subcontract Report (ISR) to the contracting officer at the procuring contracting office, even when contract administration has been delegated to the Defense Contract Management Agency.

(ii) Submit the consolidated SSR for an individual subcontracting plan to the ?Department of Defense.?

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(2) For DoD, the authority to acknowledge receipt or reject reports in eSRS is as follows:

(i) The authority to acknowledge receipt or reject the ISR resides with the contracting officer who receives it, as described in paragraph (f)(1)(i) of this clause.

(ii) The authority to acknowledge receipt of or reject SSRs submitted under an individual subcontracting plan resides with the SSR Coordinator.

(g) Include the clause at DFARS 252.219-7997, Small Business Subcontracting Plan (Test Program), in subcontracts with subcontractors that participate in the Test Program described in DFARS 219.206-70, if the subcontract is expected to exceed the applicable threshold specified in Federal Acquisition Regulation 19.109(a)(1) and to have further subcontracting opportunities.

(End of clause)

252.219-7997 Small Business Subcontracting Plan (Test Program). (DEVIATION 2026-O0037)

As prescribed in 219.109(e)(2)(B), use the following clause:

SMALL BUSINESS SUBCONTRACTING PLAN (TEST PROGRAM) (DEVIATION 2026-O0037) (FEB 2026)

(a) Definitions. As used in this clause?

?Covered small business concern? means a small business concern, veteran-owned small business concern, service-disabled veteran-owned small business concern, HUBZone small business concern, women-owned small business concern, or small disadvantaged business concern, as these terms are defined in FAR 2.101.

?Electronic Subcontracting Reporting System (eSRS)? means the Governmentwide, electronic, web-based system for small business subcontracting program reporting.

?Failure to make a good faith effort to comply with a comprehensive subcontracting plan? means a willful or intentional failure to perform in accordance with the requirements of the Contractor?s approved comprehensive subcontracting plan or willful or intentional action to frustrate the plan.

?Subcontract? means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(b) Test Program. The Contractor?s comprehensive small business subcontracting plan and its successors, which are authorized by and approved under the Test Program of 15 U.S.C. 637 note, as amended, shall be included in and made a part of this contract. Upon expulsion from the Test Program or expiration of the Test Program, the Contractor shall negotiate an individual subcontracting plan for all future contracts

that meet the requirements of 15 U.S.C. 637(d).
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(c) Eligibility requirements. To become and remain eligible to participate in the Test Program, a business concern is required to have furnished supplies or services

(including construction) under at least three DoD contracts during the preceding fiscal year, having an aggregate value of at least $100 million.

(d) Reports.

(1) The Contractor shall report semiannually for the 6-month periods ending March 31 and September 30, the information in paragraphs (d)(1)(i) through (v) of this section within 30 days after the end of the reporting period.

(i) A list of contracts covered under its comprehensive small business subcontracting plan, to include the Commercial and Government Entity (CAGE) code and unique entity identifier.

(ii) The amount of first-tier subcontract dollars awarded during the 6-month period covered by the report to covered small business concerns, with the information set forth separately by?

(A) North American Industrial Classification System (NAICS) code;

(B) Major defense acquisition program, as defined in 10 U.S.C. 4201;

(C) Contract number, if the contract is for maintenance, overhaul, repair, servicing, rehabilitation, salvage, modernization, or modification of supplies, systems, or equipment, and the total value of the contract, including options, exceeds $100 million; and

(D) Military department.

(iii) Total number of subcontracts active under the Test Program that would have otherwise required a subcontracting plan.

(iv) Costs incurred in negotiating, complying with, and reporting on its comprehensive subcontracting plan.

(v) Costs avoided through the use of a comprehensive subcontracting plan.

(2) The Contractor shall?

(i) Ensure that subcontractors with subcontracting plans agree to submit an Individual Subcontract Report (ISR) and/or Summary Subcontract Report (SSR) using the Electronic Subcontracting Reporting System (eSRS).

(ii) Provide its contract number, its unique entity identifier, and the email address of the Contractor?s official responsible for acknowledging or rejecting the ISR to all first-tier subcontractors, who will be required to submit ISRs, so they can enter this information into the eSRS when submitting their reports.

(iii) Require that each subcontractor with a subcontracting plan provide the prime contract number, its own unique entity identifier, and the email address of the subcontractor?s official responsible for acknowledging or rejecting the ISRs to its subcontractors with subcontracting plans who will be required to submit ISRs.
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(iv) Acknowledge receipt or reject all ISRs submitted by its subcontractors using eSRS.

(3) The Contractor shall submit SSRs using eSRS. The reports shall provide information on subcontract awards to small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns. Purchases from a corporation, company, or subdivision that is an affiliate of the prime Contractor or subcontractor are not included in these reports. Subcontract award data reported by prime contractors and subcontractors shall be limited to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made to lower-tier subcontractors unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from a member firm of the Alaska Native Corporations or an Indian tribe. Only subcontracts involving performance in the U.S. or its outlying areas should be included in these reports.

(i) This report may be submitted on a corporate, company, or subdivision

(e.g., plant or division operating as a separate profit center) basis, as negotiated in the comprehensive subcontracting plan with the Defense Contract Management Agency.

(ii) This report encompasses all subcontracting under prime contracts and subcontracts with the Department of Defense, regardless of the dollar value of the subcontracts, and is based on the negotiated comprehensive subcontracting plan.

(iii) The report shall be submitted semi-annually for the six months ending March 31 and the twelve months ending September 30. Reports are due 30 days after the close of each reporting period.

(iv) The authority to acknowledge receipt of or reject the SSR resides with the Defense Contract Management Agency.

(e) Failure to comply. The failure of the Contractor or subcontractor to comply in good faith with the clause of this contract entitled ?Utilization of Small Business Concerns,? or an approved plan required by this clause, shall be a material breach of the contract.

(f) Liquidated damages. The Contracting Officer designated to manage the comprehensive subcontracting plan will exercise the functions of the Contracting Officer, as identified in paragraphs (f)(1) through (4) of this clause, on behalf of all DoD departments and agencies that awarded contracts covered by the Contractor?s comprehensive subcontracting plan.

(1) To determine the need for liquidated damages, the Contracting Officer will conduct a compliance review during the fiscal year after the close of the fiscal year for which the plan is applicable. The Contracting Officer will compare the approved percentage or dollar goals to the total, actual subcontracting dollars covered by the plan.

(2) If the Contractor has failed to meet its approved subcontracting goal(s), the Contracting Officer will provide the Contractor written notice specifying the failure,

advising of the potential for assessment of liquidated damages, and permitting the Contractor to demonstrate what good faith efforts have been made. The Contracting
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Officer may take the Contractor?s failure to respond to the notice within 15 working days (or longer period at the Contracting Officer?s discretion) as an admission that no valid explanation exists.

(3) If, after consideration of all relevant information, the Contracting Officer determines that the Contractor failed to make a good faith effort to comply with the comprehensive subcontracting plan, the Contracting Officer will issue a final decision to the Contractor to that effect and require the Contractor to pay liquidated damages to the Government in the amount identified in the comprehensive subcontracting plan.

(4) The Contractor shall have the right of appeal under the clause in this contract entitled ?Disputes? from any final decision of the Contracting Officer.

(g) Subcontracts. The Contractor shall include in subcontracts that offer subcontracting opportunities, are expected to exceed the applicable threshold specified in FAR 19.109(a)(1) on the date of subcontract award, and are required to include the clause at FAR 52.219-8, Utilization of Small Business Concerns, the clauses at?

(1) FAR 52.219-9, Small Business Subcontracting Plan, and Defense Federal Acquisition Regulation Supplement (DFARS) 252.219-7996, Small Business Subcontracting Plan (DoD Contracts)?Basic;

(2) FAR 52.219-9, Small Business Subcontracting Plan, with its Alternate III, and DFARS 252.219-7996, Small Business Subcontracting Plan (DoD Contracts)? Alternate I, to allow for submission of SF 294s in lieu of ISRs; or

(3) DFARS 252.219-7997, Small Business Subcontracting Plan (Test Program), in subcontracts with subcontractors that participate in the Test Program described in **DFARS 219.206-70.**

(End of clause)

252.219-7009 Section 8(a) Direct Award.

As prescribed in 219.108-10(1), use the following clause:

SECTION 8(a) DIRECT AWARD (OCT 2018)

(a) This contract is issued as a direct award between the contracting office and the 8(a) Contractor pursuant to the Partnership Agreement between the Small Business Administration (SBA) and the Department of Defense. Accordingly, the SBA, even if not identified in Section A of this contract, is the prime contractor and retains responsibility for 8(a) certification, for 8(a) eligibility determinations and related issues, and for providing counseling and assistance to the 8(a) Contractor under the 8(a) Program. The cognizant SBA district office is:

_____

_____

_____

_____

[To be completed by the Contracting Officer
at the time of award]
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(b) The contracting office is responsible for administering the contract and for taking any action on behalf of the Government under the terms and conditions of the contract; provided that the contracting office shall give advance notice to the SBA before it issues a final notice terminating performance, either in whole or in part, under the contract. The contracting office also shall coordinate with the SBA prior to processing any novation agreement. The contracting office may assign contract administration functions to a contract administration office.

(c) The 8(a) Contractor agrees that it will notify the Contracting Officer, simultaneous with its notification to the SBA (as required by SBA?s 8(a) regulations at 13 CFR 124.515), when the owner or owners upon whom 8(a) eligibility is based plan to relinquish ownership or control of the concern. Consistent with section 407 of Public Law 100-656, transfer of ownership or control shall result in termination of the contract for convenience, unless the SBA waives the requirement for termination prior to the actual relinquishing of ownership and control.

(End of clause)

252.219-7010 Notification of Competition Limited to Eligible 8(a)
Participants?Partnership Agreement.
As prescribed in 219.108-10(2), use the following clause:

NOTIFICATION OF COMPETITION LIMITED TO ELIGIBLE 8(A)

PARTICIPANTS?PARTNERSHIP AGREEMENT (OCT 2019)

(a) Offers are solicited only from small business concerns expressly certified by the Small Business Administration (SBA) for participation in SBA?s 8(a) Program and which meet the following criteria at the time of submission of offer:

(1) The Offeror is in conformance with the 8(a) support limitation set forth in its approved business plan.

(2) The Offeror is in conformance with the Business Activity Targets set forth in its approved business plan or any remedial action directed by SBA.

(3) If the competition is to be limited to 8(a) concerns within one or more specific SBA regions or districts, then the offeror?s approved business plan is on the file and serviced by _____. [Contracting Officer completes by inserting the appropriate SBA District and/or Regional Office(s) as identified by SBA.]

(b) By submission of its offer, the Offeror represents that it meets all of the criteria set forth in paragraph (a) of this clause.

(c) Any award resulting from this solicitation will be made directly by the Contracting Officer to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.

(d)(1) Unless SBA has waived the requirements of paragraphs (d)(1)(i) through (iii) and (d)(2) of this clause in accordance with 13 CFR 121.1204, a small business concern that provides an end item it did not manufacture, process, or produce, shall?

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(i) Provide an end item that a small business has manufactured, processed, or produced in the United States or its outlying areas; for kit assemblers, see paragraph

(d)(2) of this clause instead;

(ii) Be primarily engaged in the retail or wholesale trade and normally sell the type of item being supplied; and

(iii) Take ownership or possession of the item(s) with its personnel, equipment, or facilities in a manner consistent with industry practice; for example, providing storage, transportation, or delivery.

(2) When the end item being acquired is a kit of supplies, at least 50 percent of the total cost of the components of the kit shall be manufactured, processed, or produced by small businesses in the United States or its outlying areas.

(3) The requirements of paragraphs (d)(1)(i) through (iii) and (d)(2) of this clause do not apply to construction or service contracts.

(e) The _____ [insert name of SBA's contractor] will notify the _____ [insert name of contracting agency] Contracting Officer in writing immediately upon entering an agreement (either oral or written) to transfer all or part of its stock or other ownership interest to any other party.

(End of clause)

252.219-7011 Notification to Delay Performance.

As prescribed in 219.108-10(3), use the following clause:

NOTIFICATION TO DELAY PERFORMANCE (JUN 1998)

The Contractor shall not begin performance under this purchase order until 2 working days have passed from the date of its receipt. Unless the Contractor receives notification from the Small Business Administration that it is ineligible for this 8(a) award, or otherwise receives instructions from the Contracting Officer, performance under this purchase order may begin on the third working day following receipt of the purchase order. If a determination of ineligibility is issued within the 2-day period, the purchase order shall be considered canceled.

(End of clause)

252.219-7012 Competition for Religious-Related Services.

As prescribed in 219.104-70(c), use the following provision:

COMPETITION FOR RELIGIOUS-RELATED SERVICES (APR 2018)

(a) Definition. As used in this provision?

?Nonprofit organization? means any organization that is?

(1) Described in section 501(c) of the Internal Revenue Code of 1986; and

(2) Exempt from tax under section 501(a) of that Code.

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(b) A nonprofit organization is not precluded from competing for a contract for religious-related services to be performed on a United States military installation notwithstanding that a nonprofit organization is not a small business concern as identified in FAR 19.000(a)(3).

(c) If the apparently successful offeror has not represented in its quotation or offer that it is a small business concern identified in FAR 19.000(a)(3), as appropriate to the solicitation, the Contracting Officer will verify that the offeror is registered in the System for Award Management database as a nonprofit organization.

(End of provision)

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PGI 219?SMALL BUSINESS

PGI 219.1?PRESOLICITATION

PGI 219.102 Coordination

(a)(1) Small business specialists are appointed and perform functions in accordance with DoD Instruction (DoDI) 4205.01, DoD Small Business Programs. In the DoDI, small business specialists are called ?small business professionals.?

(2) The responsibility for assigning small business technical advisors is delegated to the head of the contracting activity.

(g)(1) Small business specialists?

(i) Review and make recommendations for all acquisitions over the micro-purchase threshold, except those under the simplified acquisition threshold that are totally set aside for small business concerns (see FAR 19.104-1);

(ii) Review acquisitions before issuance of the solicitation or contract modification, and document it on DD Form 2579, Small Business Coordination Record (see PGI 253.219-70 for instructions on completing the form); and

(iii) Refer recommendations that have been rejected by the contracting officer to the Small Business Administration (SBA) procurement center representative. If an SBA procurement center representative is not assigned, see FAR 19.102(b)(2).

(2)(i) Agencies may require small business specialists to review actions over the micro-purchase threshold, but under the simplified acquisition threshold, that are totally set aside for small business. Such reviews may be conducted when the agency determines a review is necessary to assist contracting officers in identifying opportunities for other small business set-aside programs (e.g., HUBZone, service-disabled veteran-owned, small disadvantaged business, women-owned small business) to meet small business goals.

(ii) Small business specialists should review contract or order modifications that

increase the scope. At a minimum, these modifications can impact subcontracting plans. Funding-only modifications or those not increasing scope generally should not be reviewed due to minimal added value.

PGI 219.108 Contracting With the Small Business Administration (the 8(a) Program).

PGI 219.108-1 General.

A copy of the Partnership Agreement (PA) between DoD and the Small Business Administration (SBA) is available here.

PGI 219.108-3 Selecting acquisitions for the 8(a) Program.

(1) Contracting activities should respond to SBA requests for contract support within 30 calendar days after receipt.

(2) Before considering a small business set-aside, review the acquisition for offering under the 8(a) Program.

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PGI 219.108-4 Evaluation, offering, and acceptance.

(1) For requirements processed under the PA cited in DFARS 219.108-1, the notification to the SBA shall clearly indicate that the requirement is being processed under the PA. See DFARS 219.208-3(a)(ii) for procedures related to purchase orders that do not exceed the simplified acquisition threshold. All notifications should be submitted in writing and shall specify that?

(i) Under the PA, an SBA acceptance or rejection of the offering is required within 5 working days of receipt of the offering; and

(ii)(A) For sole source requirements, an SBA acceptance shall include a size verification and a determination of the 8(a) firm?s program eligibility, and, upon acceptance, the contracting officer will solicit a proposal, conduct negotiations, and make award directly to the 8(a) firm; or

(B) For competitive requirements, upon acceptance, the contracting officer will solicit offers, conduct source selection, and, upon receipt of an eligibility verification, award a contract directly to the selected 8(a) firm.

(2) Under the PA cited in DFARS 219.108-1, no separate agency offering or SBA acceptance is needed for requirements that are issued under purchase orders that do not exceed the simplified acquisition threshold. After an 8(a) contractor has been identified, the contracting officer will establish the prices, terms, and conditions with the 8(a) contractor and prepare a purchase order, including the applicable clauses required by DFARS 219.108-10. No later than the day that the purchase order is provided to the 8(a) contractor, the contracting officer will provide to the cognizant SBA Business Opportunity Specialist via email or any other means acceptable to the SBA district office?

(i) A copy of the signed purchase order; and

(ii) A notice stating that the purchase order is being processed under the PA. The notice also shall indicate that the 8(a) contractor will be deemed eligible for award and will automatically begin work under the purchase order unless, within 2 working days after SBA?s receipt of the purchase order, the 8(a) contractor and the contracting officer are notified that

the 8(a) contractor is ineligible for award.

(3) The notification to SBA must identify any joint venture proposed for performance of the contract. SBA must approve a joint venture before award of an 8(a) contract involving the joint venture.

(4) For competitive requirements for construction to be performed overseas, submit the notification to SBA Headquarters.

(5) For requirements processed under the PA cited in DFARS 219.108-1, SBA?s acceptance is required within 5 working days (but see DFARS 219.208-3(a)(ii) for procedures related to purchase orders that do not exceed the simplified acquisition threshold).

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PGI 219.2?EVALUATION AND AWARD

PGI 219.204 Certificate of Competency.

When making a small business concern nonresponsibility determination, the contracting officer will notify the contracting activity?s small business specialist.

(1) Resolving differences between the agency and the Small Business Administration.

(i) If the contracting officer believes the agency should appeal, the contracting officer must immediately inform the department or agency director of the Office of Small Business Programs (OSBP) and send to the director, through departmental channels?

(A) A request for appeal, summarizing the issues. The director OSBP must receive the request within 5 working days after receipt of the SBA Headquarters? written position; and

(B) An appeal file, documenting the contracting activity's position. The director OSBP must receive the appeal file within 5 working days after transmission of the request for appeal.

(ii) The department or agency director OSBP will determine whether the agency will appeal and will notify the SBA of the agency's intent.

PGI 219.206 Evaluating small business subcontracting plans.

PGI 219.206-3 Reviewing the subcontracting plan.

When reviewing the subcontracting plan, contracting officers may use the document entitled ?DoD Checklist for Reviewing Subcontracting Plans.? The document is available at https://business.defense.gov/Acquisition/Subcontracting/DoD-CSP/Subcontracting-Guide/.

PGI 219.208 Evaluating and awarding under the 8(a) Program.

PGI 219.208-1 Procedures for competitive 8(a).

(b)(1)(A) For requirements processed under the PA cited in DFARS 219.108-1?

(1) For sealed bid and negotiated acquisitions, the SBA will determine the eligibility of the firms and will advise the contracting officer within 2 working days after its receipt of a request for an eligibility determination; and

(2) For negotiated acquisitions, the contracting officer may submit a request for an eligibility determination on all firms in the competitive range if discussions are to be conducted, or on all firms with a realistic chance of award if no discussions are to be

conducted.

PGI 219.208-2 Contract negotiation.

For requirements processed under the PA cited in DFARS 219.108-1?

(1) The agency may negotiate directly with the 8(a) contractor. The contracting officer is responsible for initiating negotiations;

(2) The 8(a) contractor is responsible for negotiating within the time established by the contracting officer;

(3) If the 8(a) contractor does not negotiate within the established time and the agency cannot allow additional time, the contracting officer may, after notifying the SBA, proceed with the acquisition from other sources;

(4) If requested by the 8(a) contractor, the SBA may participate in negotiations; and

(5) SBA approval of the contract is not required.

PGI 219.208-7 Preparing the contracts.

(1) Sole source or competitive awards under the PA cited in DFARS 219.108-1 may be made directly to the 8(a) contractor and, except as provided in paragraph (2) of this subsection, award documents shall be prepared in accordance with procedures established for non-8(a) contracts, using any otherwise authorized award forms. The ?Issued by? block shall identify the awarding DoD contracting office. The contractor?s name and address shall be that of the 8(a) participant.

(2) Use the following alternative procedures for direct awards made under the PA:

(i) Cite 10 U.S.C. 3204(a)(5) as the authority for use of other than full and open competition.

(ii) Include the clause at DFARS 252.219-7009, Section 8(a) Direct Award, in accordance with the prescription at DFARS 219.108-10(1). Identify the cognizant SBA district office for the 8(a) contractor.

(iii) No SBA contract number is required.

(iv) Do not require an SBA signature on the award document.

PGI 219.3?POSTAWARD

PGI 219.302 Small business subcontracting plans.

PGI 219.302-2 Compliance with the plan.

When reviewing subcontracting reports, contracting officers may use the document entitled ?DoD Subcontracting Program?Business Rules and Processes for (1) Electronic Subcontracting Reporting System (eSRS) and (2) Preparing and Reviewing Related Subcontract Reports.? The document is available at https://business.defense.gov/Acquisition/Subcontracting/DoD-CSP/Subcontracting-Guide/.

PGI 253?FORMS

PGI 253.219 Small Business Programs.

PGI 253.219-70 DD Form 2579, Small Business Coordination Record.

(a) Use the DD Form 2579 as prescribed in PGI 219.102(g)(1)(ii).

(b) General instructions.

(1) The Contracting Officer is responsible for coordinating and the completion of the form.

(2) Coordination on this form is not required when the agency will satisfy a requirement through the use of a mandatory source listed at FAR 8.101, 8.102, or 8.103.

(c) Specific instructions for completion of DD Form 2579.

(1) BLOCK 1?CONTROL NO. Reserved for use by the Small Business Professional to create a unique identification number for each coordination record.

(2) BLOCK 2?PURCHASE REQUEST/REQUISITION NO. Locally assigned purchase request/requisition number.

(3) BLOCK 3?TOTAL ESTIMATED VALUE. Enter the total estimated value for the acquisition, including all options. For multiple award task or delivery order contracts, enter the total estimated value of the entire acquisition including all orders expected to be awarded.

(4) BLOCKS 4a and 4b:

(i) Block 4a?PROCUREMENT INSTRUMENT IDENTIFIER (PIID). Enter the PIID assigned to the solicitation, contract, or order in Block 4a. (FAR 4.201, DFARS **204.201).**

(ii) Block 4b?INDEFINITE DELIVERY VEHICLE (IDV) PIID. If applicable, enter the PIID assigned to the IDV against which the solicitation or order identified in Block 4a is issued.

(5) BLOCK 5?MODIFICATION/AMENDMENT NUMBER (MOD/AMDMT No.). Enter the contract or order modification number or solicitation amendment number. (FAR **4.201, DFARS 204.201).**

(6) BLOCKS 6a through 6e?CONTRACTING OFFICER NAME, DOD ACTIVITY ADDRESS CODE (DODAAC), OFFICE SYMBOL, EMAIL ADDRESS, PHONE NO. Enter the appropriate information in Blocks 6a through 6e.

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(7) BLOCKS 7a through 7d:

(i) BLOCK 7a?ITEM and/or SERVICE DESCRIPTION. Enter description of planned acquisition, including quantity, unique delivery requirements, and other descriptors. For services, include the type of service and place of performance, and attach a copy of the Performance Work Statement (PWS), Statement of Work (SOW), Statement of Objectives (SOO), or other specifications and statements as appropriate.

(ii) BLOCK 7b?PRODUCT OR SERVICE CODE (PSC). For the Product and Service Codes Manual, go to http://acquisition.gov.

(iii) BLOCK 7c?NORTH AMERICAN INDUSTRY CLASSIFICATION (NAICS) CODE. For the NAICS codes and definitions, go to www.census.gov/naics.

(iv) BLOCK 7d?SMALL BUSINESS SIZE STANDARD. For the applicable small business size standard, go to http://www.sba.gov/content/table-small-business-size-standards.

(8) BLOCK 8?PERIOD OF PERFORMANCE/DELIVERY DATES. Enter the estimated beginning and end dates.

(9) BLOCK 9?PURPOSE OF COORDINATION. Check one box indicating the purpose of the action being reviewed: Initial Coordination, Withdrawal (see FAR **19.205(d)(2)), or a Change to the form. Note: Any significant change in the acquisition** strategy or plan described on this form will require reevaluation by the Small Business Professional and the Small Business Administration (SBA) Procurement Center Representative (PCR), if applicable.

(10) BLOCKS 10a through 10j?RECOMMENDATION. Check all that apply, e.g., a small business set-aside could also be a multiple-award. For Blocks 10c through 10f, attach justification if applicable in accordance with FAR 19.105-3, 19.106-3, or 19.107-3.

(11) BLOCKS 11a through 11c:

(i) BLOCK 11a?ACQUISITION PLAN/MARKET RESEARCH. Attach the written acquisition plan (FAR 7.103), if required, and the results of market research, including any resulting justification and approval (FAR 6.104) or sole source/brand name justification (FAR 12.102). Include findings that demonstrate efforts to locate qualified small business sources, such as results of presolicitation notices (FAR 5.101) or waivers to the nonmanufacturer rule (FAR 19.104-1(f)(3)(i)), and attach additional pages as necessary.

(ii) BLOCK 11b?SYNOPSIS REQUIRED. See FAR 5.101, Presolicitation notice. Check ?Yes? or ?No.? If ?No,? provide explanation and the exception under FAR **5.101(b), if applicable.**

(iii) BLOCK 11c?SMALL BUSINESS PROGRESS PAYMENTS. Check ?Yes? or ?No? (DFARS 232.501-1(a)).

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(12) BLOCK 12?CONSOLIDATED OR BUNDLED. Select either ?Consolidated? or ?Bundled,? and check ?Yes? or ?No? for each. If ?Yes,? attach required documentation for consolidation or bundling (FAR 7.107).

(13) BLOCK 13?SUBCONTRACTING PLAN REQUIRED. See FAR 19.109. Check ?Yes? or ?No.? For recommendations 10g, 10h, or 10i, or if Block 12 recommendation is ?Yes,? specify actions that will be taken to maximize small business participation. Consider requirements of FAR 19.109, acquisition history, anticipated subcontracting goals, market research to identify small business capability at the subcontract level, source selection evaluation factor for small business utilization (FAR 15.104, DFARS215.104), incentives, contract performance metrics, etc. State detailed objectives for subcontract

(attach additional pages as necessary).

(14) BLOCKS 14a through 14c?ACQUISITION HISTORY:

(i) BLOCK 14a?NEW REQUIREMENT. Check ?Yes? or ?No? and follow the applicable guidance for each selection.

(ii) BLOCK 14b?PREVIOUSLY CONSOLIDATED OR BUNDLED. Check ?Yes? or ?No? for each. If ?Yes,? attach required documentation for previous acquisition. (See FAR 7.107.)

(iii) BLOCK 14c?DETAILS OF PREVIOUS AWARD(S). For each contractor that received an award for any portion of the immediately preceding acquisition, include the following information (attach additional pages as necessary)?

?Name and CAGE code.

?Small business socioeconomic categories of the awardee.

?PIID.

?NAICS code and size standard.

?Contract type.

?Period of performance.

?Total contract value.

?Subcontracting History. (Small business subcontracting goal achievement (CPARS and eSRS data) and any additional small business utilization requirements included in the contract resulting from a source selection factor used when making the previous contract award.)

(15) BLOCK 15a through 15d?CONTRACTING OFFICER SIGNATURE. Complete 15a through 15d. Digital signature is desired.

(16) BLOCKS 16 through 16f?SMALL BUSINESS PROFESSIONAL/SMALL BUSINESS DIRECTOR REVIEW. Complete 16 through 16f. Digital signature is desired. If ?non-concur? is checked, attach rationale or include in Block 16f, along with any other remarks. Block 16e must be completed when any of the conditions in FAR 19.102(e) applies to indicate when the acquisition package was provided to the Small Business

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Administration (SBA).

(17) BLOCKS 17 through 17e?SBA PROCUREMENT CENTER REPRESENTATIVE (PCR) REVIEW. Complete 17 through 17e (see FAR 19.102(b)(2) when a PCR is not assigned to the contracting activity or administration office). Digital signature is desired. If ?non-concur? is checked, the PCR shall attach rationale and recommendations or include in Block 17e, along with any other remarks (see FAR **19.102(e)(4)).**

(18) BLOCKS 18 through18c?CONTRACTING OFFICER REVIEW. The Contracting Officer shall complete this block if the Small Business Professional and/or the SBA PCR have ?non-concurred? in Blocks 16 and 17. Block 18c shall include the Contracting Officer?s rationale for decision. Send copies of the completed form to the Small Business Professional and the SBA PCR within 5 working days if rejecting the PCR?s

recommendation, in accordance with FAR 19.102(f).

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APPENDIX I?POLICY AND PROCEDURES FOR THE DOD MENTOR-PROTÉGÉ PROGRAM

I-100 Purpose.

(a) This appendix implements the DoD Mentor-Protégé Program (referred to as the Program) authorized under 10 U.S.C. 4902. The purpose of the Program is to provide incentives to DoD contractors to furnish eligible small business concerns with assistance designed to?

(1) Enhance the capabilities of eligible small business concerns to perform as subcontractors and suppliers under DoD contracts and other contracts and subcontracts; and

(2) Increase the participation of such business concerns as subcontractors and suppliers under DoD contracts, other Federal Government contracts, and commercial contracts.

(b) Under the Program, eligible companies approved as mentor firms will enter into mentor-protégé agreements with eligible protégé firms to provide appropriate developmental assistance to enhance the capabilities of the protégé firms to perform as subcontractors and suppliers. DoD may provide the mentor firm with either cost reimbursement or credit against applicable subcontracting goals established under contracts with DoD or other Federal agencies.

(c) DoD will measure the overall success of the Program by the extent to which the Program results in?

(1) An increase in the dollar value of contract and subcontract awards to protégé firms (under DoD contracts, contracts awarded by other Federal agencies, and commercial contracts) from the date of their entry into the Program until 5 years after the conclusion of the agreement;

(2) An increase in the number and dollar value of subcontracts awarded to a protégé firm (or former protégé firm) by its mentor firm (or former mentor firm);

(3) An increase in protégé participation in DoD science and technology programs; and

(4) An increase in job creation of protégé firms from the date of execution of the mentor-protégé agreement until 5 years after completion of the mentor-protégé agreement.

(d) This policy sets forth the procedures for participation in the Program applicable to companies that are interested in receiving?

(1) Reimbursement through a separate contract line item in a DoD contract or a separate contract with DoD; or

(2) Credit toward applicable subcontracting goals for costs incurred under the Program.

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I-101 Definitions.
As used in this appendix?
?Affiliation? means, with respect to a relationship between a mentor firm and a protégé firm, a relationship described under 13 CFR 121.103.
?Eligible entity employing the severely disabled? means a business entity operated on a for-profit or nonprofit basis that?

(1) Uses rehabilitative engineering to provide employment opportunities for severely disabled individuals and integrates severely disabled individuals into its workforce;

(2) Employs severely disabled individuals at a rate that averages not less than 20 percent of its total workforce;

(3) Employs each severely disabled individual in its workforce generally on the basis of 40 hours per week; and

(4) Pays not less than the minimum wage prescribed pursuant to section 6 of the Fair Labor Standards Act (29 U.S.C. 206) to those employees who are severely disabled individuals.

?Severely disabled individual? means an individual who is blind or severely disabled as defined in 41 U.S.C. 8501.
I-102 Participant eligibility.

(a) To be eligible to participate as a mentor, an entity must?

(1) Be a for-profit entity that is eligible for the award of Federal contracts;

(2) Demonstrate that it?

(i) Is qualified to provide assistance that will contribute to the purpose of the Program;

(ii) Is of good financial health and character;

(iii) Is not on a Federal list of debarred or suspended contractors; and

(iv) Is an other than small business concern, unless approved by the Director of the Office of Small Business Programs (OSBP), Office of the Assistant Secretary of Defense, Industrial Base Policy (OASD(IBP)), in accordance with 13 CFR **121.103 regarding ?affiliation and relationship?; and**

(3) Be capable of imparting value to a protégé firm because of experience gained as a DoD contractor or through knowledge of general business operations and Government contracting, as demonstrated by evidence that such entity?

(i) Received DoD contracts and subcontracts equal to or greater than $25 million during the previous fiscal year;

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(ii) Is a prime contractor to DoD with an active subcontracting plan;

(iii) Has graduated from the 8(a) Business Development Program and provides documentation of its ability to serve as a mentor; or

(iv) Is otherwise capable to assist in the development of protégé firms and is approved by the Director OSBP, OASD(IBP).

(b) To be eligible to participate as a protégé, an entity must be?

(1) A small business concern;

(2) Eligible for the award of Federal contracts;

(3) Not more than the Small Business Administration (SBA) size standard for its primary North American Industry Classification System (NAICS) code;

(4) Not owned or managed by individuals or entities that directly or indirectly have stock options or convertible securities in the mentor firm; and

(5) At least one of the following:

(i) A qualified HUBZone small business concern.

(ii) A women-owned small business concern.

(iii) A service-disabled veteran-owned small business concern.

(iv) An entity owned and controlled by an Indian tribe.

(v) An entity owned and controlled by a Native Hawaiian organization.

(vi) An entity owned and controlled by socially and economically disadvantaged individuals.

(vii) A qualified organization employing severely disabled individuals.

(viii) A nontraditional defense contractor.

(ix) An entity that currently provides goods or services in the private sector that are critical to enhancing the capabilities of the defense supplier base and fulfilling key DoD needs.

(c) Mentor firms may rely in good faith on a written representation that the entity meets the requirements of paragraph (b) of this section, except that a mentor firm is required to confirm a protégé?s status as a HUBZone small business concern (see FAR **19.302-2).**

(d) If at any time the SBA (or DoD in the case of entities employing severely disabled individuals) determines that a protégé is ineligible, assistance the mentor firm furnishes to the protégé after the date of the determination may not be considered assistance furnished under the Program.

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(e) A mentor firm may not enter into an agreement with a protégé firm if SBA has made a determination of affiliation. If SBA has not made such a determination and if the DoD OSBP has reason to believe, based on SBA?s regulations regarding affiliation, that the mentor firm is affiliated with the protégé firm, then DoD OSBP will request a determination regarding affiliation from SBA.

(f) A company may not be approved for participation in the Program as a mentor firm if, at the time of requesting participation in the Program, it is currently debarred

or suspended from contracting with the Federal Government pursuant to FAR subpart **9.4.**

(g) If the mentor firm is suspended or debarred while performing under an approved mentor-protégé agreement, the mentor firm?

(1) May continue to provide assistance to its protégé firms in accordance with the approved mentor-protégé agreement entered into prior to the imposition of such suspension or debarment;

(2) May not be reimbursed or take credit for any costs of providing developmental assistance to its protégé firm, incurred more than 30 days after the imposition of such suspension or debarment; and

(3) Must promptly give notice of its suspension or debarment to its protégé firm and the Director, OSBP, of the cognizant military department or defense agency.

(h) Within 30 days of any change in status affecting eligibility, mentors and protégés must give notice and explanation of pertinent facts to each other, the Director of OSBP, OASD(IBP), and the Director, OSBP, of the military department or defense agency.

I-103 Incentives for mentors.

Mentors incurring costs through September 30, 2026, pursuant to a mentor-protégé agreement approved prior to December 23, 2022, and mentors incurring costs pursuant to a mentor-protégé agreement approved on or after December 23, 2023, may be eligible for?

(a) Credit toward the attainment of its applicable subcontracting goals for unreimbursed costs incurred in providing developmental assistance to its protégé firm(s);

(b) Reimbursement pursuant to the execution of a separately priced contract line item added to a DoD contract; or

(c) Reimbursement pursuant to entering into a separate DoD contract upon determination by the Director, OSBP, of the cognizant military department or defense agency that unusual circumstances justify using a separate contract.

I-104 Selection of protégé firms.

(a) Mentor firms will be solely responsible for selecting protégé firms that qualify under I-102(b). Mentor firms are encouraged to identify and select concerns that have not previously received significant prime contract awards from DoD or any other Federal agency.

(b) The selection of protégé firms by mentor firms may not be protested, except as in paragraph (c) of this section.

(c) Any interested party may file a protest of the selection of a protégé firm directly with the Director, OSBP, OASD (IBP) or the Director, OSBP, of the cognizant military department or defense agency. In the event of a protest regarding the size or status of an entity selected to be a protégé firm, the Director, OSBP, OASD(IBP), or the Director,

OSBP, of the military department or defense agency must refer the protest to the SBA to resolve in accordance with 13 CFR part 121 (with respect to size) or other parts of title 13 of the CFR or this appendix (with respect to the protégé?s socioeconomic status). The Director, OSBP, OASD(IBP), or the Director, OSBP, of the military department or defense agency shall decide protests concerning all other aspects of a protégé?s eligibility for the Program (e.g., nontraditional defense contractor or entity employing the severely disabled).

(d) For purposes of the Small Business Act, no determination of affiliation or control

(either direct or indirect) may be found between a protégé firm and its mentor firm on the basis that the mentor firm has agreed to furnish (or has furnished) to its protégé firm, pursuant to a mentor-protégé agreement, any form of developmental assistance described in I-106(d).

(e) A protégé firm may not be a party to more than one DoD mentor-protégé agreement at a time and may only participate in the Program during the 5-year period beginning on the date the protégé firm enters into its first mentor-protégé agreement. This does not preclude a protégé firm from concurrent participation in mentor-protégé programs with other agencies.

I-105 Mentor approval process.

(a) An entity seeking to participate as a mentor must apply to the Mentor-Protégé Program Director, OSBP, OASD(IBP), to establish its initial eligibility as a mentor.

(b) The application must provide the following information:

(1) A statement that the entity meets the requirements in I-102(a), specifying the criteria in I-102(a)(3) under which the entity is applying.

(2) A summary of the entity?s historical and recent activities and accomplishments under its small and disadvantaged business utilization program.

(3) The total dollar amount of DoD contracts and subcontracts that the entity received during the 2 preceding fiscal years. (Show prime contracts and subcontracts separately per year.)

(4) The total dollar amount of all other Federal agency contracts and subcontracts that the entity received during the 2 preceding fiscal years. (Show prime contracts and subcontracts separately per year.)

(5) The total dollar amount of subcontracts that the entity awarded under DoD contracts during the 2 preceding fiscal years.

(6) The total dollar amount of subcontracts that the entity awarded under all other Federal agency contracts during the 2 preceding fiscal years.

(7) The total dollar amount and percentage of subcontracts that the entity awarded to firms qualifying under I-102(b)(5)(ii) through (viii) during the 2 preceding fiscal years. (Show DoD subcontract awards separately.) If the entity was required to submit a Summary Subcontract Report (SSR) in the Electronic Subcontracting Reporting System, the request must include copies of the final reports for the 2

preceding fiscal years.

(8) Information on the company?s ability to provide developmental assistance to eligible protégés.

(c) A template of the mentor application is available at https://business.defense.gov/Programs/Mentor-Protégé-Program/MPP-Resources/.

(d) Companies that apply for participation and are not approved will be provided the reasons and an opportunity to submit additional information for reconsideration.

I-106 Development of mentor-protégé agreements.

(a) Prospective mentors and their protégés may choose to execute letters of intent prior to negotiation of mentor-protégé agreements.

(b) The agreements should be structured after completion of a preliminary assessment of the developmental needs of the protégé firm and mutual agreement regarding the developmental assistance to be provided to address those needs and enhance the protégé?s ability to perform successfully under contracts or subcontracts.

(c) A mentor firm may not require a protégé firm to enter into a mentor-protégé agreement as a condition for award of a contract by the mentor firm, including a subcontract under a DoD contract awarded to the mentor firm.

(d) The mentor-protégé agreement may provide for the mentor firm to furnish any or all of the following types of developmental assistance:

(1) Assistance by mentor firm personnel in?

(i) General business management, including organizational management, financial management, and personnel management, marketing and technology commercialization, compliance systems, and overall business planning;

(ii) Engineering and technical matters such as production, inventory control, manufacturing, test and evaluation, quality assurance; acquisition or transfer of hardware, tooling, or software; and technology transfer and transition; and

(iii) Any other assistance designed to develop the capabilities of the protégé firm under the developmental program described in I-107(g).

(2) Award of subcontracts to the protégé firm under DoD contracts or other contracts on a noncompetitive basis.

(3) Payment of progress payments for the performance of subcontracts by a protégé firm in amounts as provided for in the subcontract; but in no event may any such progress payment exceed 100 percent of the costs incurred by the protégé firm for the performance of the subcontract. Provision of progress payments by a mentor firm to a protégé firm at a rate other than the customary rate for the firm must be implemented in accordance with FAR 32.504(c).

(4) Advance payments under such subcontracts. The mentor firm must administer advance payments in accordance with FAR subpart 32.4.

(5) Loans.

(6) Assistance that the mentor firm obtains for the protégé firm from one or

more of the following:

(i) Small Business Development Centers (15 U.S.C. 648).

(ii) Entities providing procurement technical assistance under the Procurement Technical Assistance Cooperative Agreement Program (10 U.S.C. Chapter **388).**

(iii) Historically Black colleges and universities.

(iv) Minority institutions of higher education.

(v) Women?s business centers (15 U.S.C. 656).

(vi) Manufacturing innovation institutes.

(e) Pursuant to FAR 31.109, approved mentor firms seeking either reimbursement or credit are strongly encouraged to enter into an advance agreement with the contracting officer responsible for determining final indirect cost rates under FAR 42.5. The purpose of the advance agreement is to establish the accounting treatment of the costs of the developmental assistance pursuant to the mentor-protégé agreement prior to the incurring of any costs by the mentor firm. An advance agreement is an attempt by both the Government and the mentor firm to avoid possible subsequent dispute based on questions related to reasonableness, allocability, or allowability of the costs of developmental assistance under the Program. Absent an advance agreement, mentor firms are advised to establish the accounting treatment of such costs and to address the need for any changes to their cost accounting practices that may result from the implementation of a mentor-protégé agreement, prior to incurring any costs, and irrespective of whether costs will be reimbursed or credited.

(f) Developmental assistance provided under an approved mentor-protégé agreement is distinct from, and must not duplicate, any effort that is the normal and expected product of the award and administration of the mentor firm's subcontracts. Costs associated with the latter must be accumulated and charged in accordance with the contractor's approved accounting practices; they are not considered developmental assistance costs eligible for either credit or reimbursement under the Program.

(g) The agreement shall demonstrate, through its execution, how it will contribute to the overall mission of DoD and/or fill or address an identified critical gap or

vulnerability. Focus areas include, but are not limited to, manufacturing, research and development, and knowledge-based services.

I-107 Elements of a mentor-protégé agreement.

Each mentor-protégé agreement shall contain?

(a) The name, address, email address, and telephone number of the mentor and protégé points of contact;

(b) The NAICS code(s) that represent the contemplated supplies or services to be provided by the protégé firm to the mentor firm and a statement that, at the time the agreement is submitted for approval, the protégé firm does not exceed the size standard in I-102(b)(3);

(c) A statement that the protégé firm is eligible to participate in accordance with I-102(b);

(d) A statement that the mentor is eligible to participate in accordance with I-102(a);

(e) Assurances that?

(1) The mentor firm does not share, directly or indirectly, with the protégé firm ownership or management of the protégé firm;

(2) The mentor firm does not have an agreement, at the time the mentor firm enters into a mentor-protégé agreement, to merge with the protégé firm;

(3) The owners and managers of the mentor firm are not the parent, child, spouse, sibling, aunt, uncle, niece, nephew, grandparent, grandchild, or first cousin of an owner or manager of the protégé firm;

(4) The mentor firm has not, during the 2-year period before entering into a mentor-protégé agreement, employed any officer, director, principal stockholder, managing member, or key employee of the protégé firm;

(5) The mentor firm has not engaged in a joint venture with the protégé firm during the 2-year period before entering into a mentor-protégé agreement, unless such joint venture was approved by SBA prior to making any offer on a contract;

(6) The mentor firm is not, directly or indirectly, the primary party providing contracts to the protégé firm, as measured by the dollar value of the contracts; and

(7) The SBA has not made a determination of affiliation or control;

(f) A preliminary assessment of the developmental needs of the protégé firm;

(g) A developmental program for the protégé firm, including?

(1) The type of assistance the mentor will provide to the protégé and how that assistance will?

(i) Increase the protégé?s ability to participate in DoD, Federal, and/or commercial contracts and subcontracts; and

(ii) Increase small business subcontracting opportunities in industry categories where eligible protégés or other small business firms are not dominant in the company?s vendor base;

(iii) Increase the protégé firm?s cybersecurity readiness posture and ability to comply with Federal acquisition regulations.

(2) Factors to assess the protégé firm's developmental progress under the Program, including specific milestones for providing each element of the identified assistance;

(3) A description of the quantitative and qualitative benefits to DoD from the agreement, if applicable; and

(4) Goals for additional awards for which the protégé firm can compete outside the Program;

(h) The assistance the mentor will provide to the protégé firm in understanding

Federal contract regulations, including the FAR and DFARS, after award of a subcontract under the Program, if applicable;

(i) An estimate of the dollar value and type of subcontracts that the mentor firm will award to the protégé firm, and the period of time over which the subcontracts will be awarded;

(j) A statement from the protégé firm indicating its commitment to comply with the requirements for reporting and for review of the agreement during the duration of the agreement and for 5 years thereafter;

(k) A program participation term for the agreement that does not exceed 3 years. The agreement may be extended for a period not to exceed 2 years if approved by the Director, OSBP, OASD(IBP). The Director, OSBP, of the cognizant military department or defense agency will submit requests for an extension of the agreement to the Director, OSBP, OASD(IBP) for approval. The request will include a justification describing the unusual circumstances that warrant a term in excess of 3 years;

(l) Procedures for the mentor firm to notify the protégé firm in writing at least 30 days in advance of the mentor firm's intent to voluntarily withdraw its participation in the Program. A mentor firm may voluntarily terminate its mentor-protégé agreement(s) only if it no longer wants to be a participant in the Program as a mentor firm. Otherwise, a mentor firm must terminate a mentor-protégé agreement for cause;

(m) Procedures for the mentor firm to terminate the mentor-protégé agreement for cause which provide that?

(1) The mentor firm must furnish the protégé firm a written notice of the proposed termination, stating the specific reasons for such action, at least 30 days in advance of the effective date of such proposed termination;

(2) The protégé firm must have 30 days to respond to such notice of proposed termination, and may rebut any findings believed to be erroneous and offer a remedial program;

(3) Upon prompt consideration of the protégé firm's response, the mentor firm must either withdraw the notice of proposed termination and continue the protégé firm's participation, or issue the notice of termination; and

(4) The decision of the mentor firm regarding termination for cause, conforming with the requirements of this section, will be final and is not reviewable by DoD;

(n) Procedures for a protégé firm to notify the mentor firm in writing at least 30 days in advance of the protégé firm's intent to voluntarily terminate the mentor-protégé agreement;

(o) Additional terms and conditions as may be agreed upon by both parties; and

(p) Signatures and dates for both parties to the mentor-protégé agreement.

I-108 Submission and approval of mentor-protégé agreements.

(a) Upon solicitation or as determined by the cognizant military department or defense agency, mentors will submit?

(1) A mentor application pursuant to I-105, if the mentor has not been previously approved to participate;

(2) A signed mentor-protégé agreement pursuant to I-107;

(3) A statement as to whether the mentor is seeking credit or reimbursement of costs incurred;

(4) The estimated cost of the technical assistance to be provided, broken out per year;

(5) A justification if program participation term is greater than 3 years (agreements may not exceed 5 years) (see I-107(k)); and

(6) For reimbursable agreements, a specific justification for developmental costs in excess of $1 million per year.

(b) When seeking reimbursement of costs, the military department or defense agency may require additional information.

(c) The mentor-protégé agreement must be approved by the Director, OSBP, of the military department or defense agency prior to incurring costs eligible for credit.

(d) The military department or defense agency will execute a contract modification or a separate contract, if justified pursuant to I-103(b)(3), prior to the mentor?s incurring costs eligible for reimbursement.

(e) Credit agreements that are not associated with an existing DoD program and/or military department or defense agency will be submitted for approval to the Director,

OSBP, Defense Contract Management Agency (DCMA), via the mentor?s cognizant administrative contracting officer.

(f) A prospective mentor that has identified Program funds to be made available from a DoD program manager must provide the information in paragraph (a) of this section through the program manager to the Director, OSBP, of the military department or defense agency with a letter signed by the program manager indicating the amount of funding that has been identified for the developmental assistance program.

I-109 Reimbursable agreements.

The following provisions apply to all reimbursable mentor-protégé agreements including agreements that provide for both reimbursement and subcontracting credit:

(a) Assistance provided in the form of progress payments to a protégé firm in excess of the customary progress payment rate for the firm will be reimbursed only if implemented in accordance with FAR 32.504(c).

(b) Assistance provided in the form of advance payments will be reimbursed only if the payments have been provided to a protégé firm under subcontract terms and conditions similar to those in the clause at FAR 52.232-12, Advance Payments. Reimbursement of any advance payments will be made pursuant to the inclusion of the clause at DFARS 252.232-7005, Reimbursement of Subcontractor Advance Payments? DoD Mentor-Protégé Program, in appropriate contracts. In requesting reimbursement,

the mentor firm agrees that the risk of any financial loss due to the failure or inability of a protégé firm to repay any unliquidated advance payments will be the sole responsibility of the mentor firm.

(c) The primary forms of developmental assistance authorized for reimbursement under the Program are identified in I-106(d). On a case-by-case basis, Directors, OSBP, of the military departments or defense agencies at their discretion, may approve additional incidental expenses for reimbursement, provided these expenses do not exceed 10 percent of the total estimated cost of the agreement.

(d) The total amount reimbursed to a mentor firm for costs of assistance furnished to a protégé firm in a fiscal year may not exceed $1 million unless the Director, OSBP, of the military department or defense agency determines in writing that unusual circumstances justify reimbursement at a higher amount. Request for authority to reimburse in excess of $1 million must detail the unusual circumstances and must be endorsed and submitted by the program manager to the Director, OSBP, of the military department or defense agency.

(e) DoD may not reimburse any fee to the mentor firm for services provided to the protégé firm pursuant to I-106(d)(6) or for business development expenses incurred by the mentor firm under a contract awarded to the mentor firm while participating in a joint venture with the protégé firm.

(f) Developmental assistance costs that are incurred pursuant to an approved reimbursable mentor-protégé agreement, and have been charged to, but not reimbursed through, a separate contract, or through a separately priced contract line item added to a DoD contract, will not be otherwise reimbursed, as either a direct or indirect cost, under any other DoD contract, irrespective of whether the costs have been recognized for credit against applicable subcontracting goals.

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I-110 Credit agreements.

Sections I-110.1 and I-110.2 apply to all credit agreements, including agreements that provide for both credit and reimbursement.

I-110.1 Program provisions applicable to credit agreements.

(a) Developmental assistance costs incurred by a mentor firm for providing assistance to a protégé firm pursuant to an approved credit mentor-protégé agreement may be credited as if the costs were incurred under a subcontract award to that protégé, for the purpose of determining the performance of the mentor firm in attaining an applicable subcontracting goal established under any contract containing a subcontracting plan pursuant to the clause at FAR 52.219-9, Small Business Subcontracting Plan, or the provisions of the DoD Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans. Unreimbursed developmental assistance costs incurred for a protégé firm that is an eligible entity employing severely disabled individuals may be credited toward the mentor firm's small disadvantaged business subcontracting goal, even if the protégé firm is not a small disadvantaged

business concern.

(b) Costs that have been reimbursed through inclusion in indirect expense pools may also be credited as subcontract awards for determining the performance of the mentor firm in attaining an applicable subcontracting goal established under any contract containing a subcontracting plan. However, costs that have not been reimbursed because they are not reasonable, allocable, or allowable will not be recognized for crediting purposes.

(c) Other costs that are not eligible for reimbursement pursuant to I-106(d) may be recognized for credit only if requested, identified, and incorporated in an approved mentor-protégé agreement.

(d) The amount of credit a mentor firm may receive for any such unreimbursed developmental assistance costs must be equal to?

(1) Four times the total amount of such costs attributable to assistance provided by small business development centers, historically Black colleges and universities, minority institutions, and procurement technical assistance centers.

(2) Three times the total amount of such costs attributable to assistance furnished by the mentor's employees.

(3) Two times the total amount of other such costs incurred by the mentor in carrying out the developmental assistance program.

I-110.2 Credit adjustments.

(a) Adjustments may be made to the amount of credit claimed if the Director, OSBP, OASD(IBP), determines that?

(1) A mentor firm's performance in the attainment of its subcontracting goals through actual subcontract awards declined from the prior fiscal year without justifiable cause; and

(2) Imposition of such a limitation on credit appears to be warranted to prevent abuse of this incentive for the mentor firm's participation in the Program.

(b) The mentor firm must be afforded the opportunity to explain the decline in small business subcontract awards before imposition of any such limitation on credit. In making the final decision to impose a limitation on credit, the Director, OSBP, OASD(IBP), must consider?

(1) The mentor firm's overall small business participation rates (in terms of percentages of subcontract awards and dollars awarded) as compared to the participation rates existing during the 2 fiscal years prior to the firm's admission to the Program;

(2) The mentor firm's aggregate prime contract awards during the prior 2 fiscal years and the total amount of subcontract awards under such contracts; and

(3) Such other information the mentor firm may wish to submit.

(c) The decision of the Director, OSBP, OASD(IBP), regarding the imposition of a limitation on credit will be final.

I-111 Agreement terminations.

(a) Mentors and/or protégés must send a copy of any termination notices to the Director, OSBP, OASD(IBP) or the Director, OSBP, of the cognizant military department or defense agency that approved the agreement, and the DCMA small business professional responsible for conducting the annual review pursuant to I-113.

(b) For reimbursable agreements, mentors must also send copies of any termination to the program manager and to the contracting officer.

(c) Termination of a mentor-protégé agreement will not impair the obligations of the mentor firm to perform pursuant to its contractual obligations under Government contracts and subcontracts.

(d) Termination of all or part of the mentor-protégé agreement will not impair the obligations of the protégé firm to perform pursuant to its contractual obligations under any contract awarded to the protégé firm by the mentor firm.

(e) Mentors and protégés will follow provisions of the mentor-protégé agreement developed in compliance with I-107(l) through (n).

(f) The Director, OSBP, OASD(IBP) or the Director, OSBP, of the military department or defense agency is authorized to terminate the mentor-protégé agreement for the convenience of the Government (to include national security grounds, funding limits, statutory requirements, or other considerations), as well as for cause upon written findings (e.g., either of the participants? failure to perform or provide adequate assurance of performance; failure to comply with laws, regulations, and policies; conflicts of interest; or default under any provisions of a DoD contract or agreement).

I-112 Reporting requirements.

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I-112.1 Reporting requirements applicable to Individual Subcontract Reports (ISR), Summary Subcontract Reports (SSR) and Standard Forms 294.

(a) Amounts credited toward applicable subcontracting goal(s) for unreimbursed costs under the Program must be separately identified on the appropriate ISR, SSR or SF 294 reports from the amounts credited toward the goal(s) resulting from the award of actual subcontracts to protégé firms. The combination of the two must equal the mentor firm's overall accomplishment toward the applicable goal(s).

(b) A mentor firm may receive credit toward the attainment of an applicable subcontracting goal for each subcontract awarded by the mentor firm to an entity that qualifies as a protégé firm pursuant to I-102(b).

I-112.2 Program specific reporting requirements.

(a) Mentors must report on the progress made under active mentor-protégé agreements semiannually for the periods ending March 31st and September 30th throughout the Program participation term of the agreement. The September 30th report must address the entire fiscal year.

(1) Reports are due 30 days after the close of each reporting period.

(2) Each report must include the following data on performance under the

mentor-protégé agreement:

(i) Dollars obligated (for reimbursable agreements).

(ii) Expenditures.

(iii) Dollars credited, if any, toward applicable subcontracting goals as a result of developmental assistance provided to the protégé and a copy of the ISR or SF 294 and/or SSR for each contract where developmental assistance was credited.

(iv) Any new awards of subcontracts on a competitive or noncompetitive basis to the protégé firm under DoD contracts or other contracts, including the value of such subcontracts.

(v) All technical or management assistance provided by mentor firm personnel for the purposes described in I-106(d).

(vi) Any extensions, increases in the scope of work, or additional payments not previously reported for prior awards of subcontracts on a competitive or noncompetitive basis to the protégé firm under DoD contracts or other contracts, including the value of such subcontracts.

(vii) The amount of any payment of progress payments or advance payments made to the protégé firm for performance under any subcontract made under the Program.

(viii) Any loans made by the mentor firm to the protégé firm.

(ix) All Federal contracts awarded to the mentor firm and the protégé firm as a joint venture, designating whether the award was a restricted competition or a full and open competition.

(x) Any assistance obtained by the mentor firm for the protégé firm from the entities listed at I-106(d)(6).

(xi) Whether there have been any changes to the terms of the mentor-protégé agreement.

(xii) A narrative describing the following:

(A) The success developmental assistance provided under I-106(d) has had in addressing the developmental needs of the protégé firm.

(B) The impact on DoD contracts, including but not limited to the transition of innovative technology into a program of record.

(C) Any problems encountered.

(D) Any milestones achieved in the protégé firm?s developmental program.

(E) Impact of the agreement in terms of capabilities enhanced, certifications received, and technology transferred.

(3) A recommended reporting format and guidance for its submission are available at https://business.defense.gov/Programs/Mentor-Protégé-Program/MPP-Resources/.

(b) The protégé must provide data, annually by October 31st, on the progress made

during the prior fiscal year by the protégé in employment, revenues, and participation in DoD contracts during?

(1) Each fiscal year of the Program participation term; and

(2) Each of the 5 fiscal years following the expiration of the Program participation term.

(c) The protégé report required by paragraph (b) of this section may be provided as **part of the mentor report for the period ending September 30th required by paragraph** (a) of this section.

(d) Progress reports must be submitted?

(1) For credit agreements, to the Director, OSBP, of the military department or defense agency that approved the agreement, and the mentor?s cognizant DCMA administrative contracting officer; and

(2) For reimbursable agreements, to the Director, OSBP, of the military department or defense agency, the contracting officer, the DCMA administrative contracting officer, and the program manager.

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I-113 Performance reviews.

DCMA will conduct annual performance reviews of the progress and accomplishments realized under approved mentor-protégé agreements. These reviews must verify data provided on the semiannual reports and must provide information as to?

(a) Whether all costs reimbursed to the mentor firm under the agreement were reasonably incurred to furnish assistance to the protégé in accordance with the mentor-protégé agreement and applicable regulations and procedures; and

(b) Whether the mentor and protégé accurately reported progress made by the protégé in employment, revenues, and participation in DoD contracts during the Program participation term and for 5 fiscal years following the expiration of the Program participation term.

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PART 22

OFFICE OF THE ASSISTANT SECRETARY OF WAR

Status: Class D

OFFICE OF THE ASSISTANT SECRETARY OF WAR

3000 DEFENSE PENTAGON

WASHINGTON, DC 20301-3000

ACQUISITION

AND SUSTAINMENT

In reply refer to

DARS Tracking Number: 2026-O0040

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES SPECIAL OPERATIONS

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES TRANSPORTATION

COMMAND (ATTN: ACQUISITION EXECUTIVE)

DEPUTY ASSISTANT SECRETARY OF THE ARMY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE NAVY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE

(CONTRACTING)

DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Class Deviation?Revolutionary Federal Acquisition Regulation (FAR) Overhaul

Part 22, Defense FAR Supplement (DFARS) Part 222

Effective February 17, 2026, contracting officers shall use?

? The revised FAR Part 22, Application of Labor Laws to Government Acquisitions, published on the Revolutionary FAR Overhaul web page at https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-22 in lieu of the text codified at 48 CFR chapter 1 (https://www.ecfr.gov).

? The attached DFARS Part 222, Application of Labor Laws to Government Acquisitions, in lieu of the text codified at 48 CFR chapter 2; and

? The attached DFARS Procedures, Guidance, and Information (PGI) 222, Application of Labor Laws to Government Acquisitions, in lieu of the PGI text published on the Defense Pricing, Contracting, and Acquisition Policy web page at https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.

This class deviation implements the following:

? Section 2 of E.O. 14275, Restoring Common Sense to Federal Procurement, which establishes the policy that the FAR ?should only contain provisions required by statute or essential to sound procurement, and any FAR provisions that do not

advance these objectives should be removed.?
DARS Tracking Number: 2026-O0040
Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 22
Defense FAR Supplement (DFARS) Part 222
? Section 4(a) of E.O. 14265, Modernizing Defense Acquisitions and Spurring Innovation in the Defense Industrial Base, which requires the Secretary of War to eliminate or revise any unnecessary supplemental regulations or any other internal guidance, such as relevant parts of the Financial Management Regulation and Defense Federal Acquisition Regulation Supplement.
? The Office of Management and Budget memorandum, M-25-26 issued on May 2, 2025, titled, Overhauling the Federal Acquisition Regulation, which provided additional guidance to federal agencies regarding the FAR overhaul.
This class deviation remains in effect until rescinded or incorporated into the FAR, DFARS, and DFARS PGI. Inquiries regarding this class deviation can be addressed to osd.pentagon.ousd-a-s.mbx.dfars@mail.mil.
John M. Tenaglia
Principal Director,
Defense Pricing, Contracting, and
Acquisition Policy
Attachments:
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PART 222?APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

222.001 Definitions.

As used in this part?
?Labor advisor? means the departmental or agency headquarters labor advisor.

SUBPART 222.1?BASIC LABOR POLICIES

222.101-1 Labor relations.

Follow the procedures at PGI 222.101-1 for referral of labor relations matters to the appropriate authorities.

222.101-170 Department of Labor regulations.

Direct all questions regarding Department of Labor regulations to the labor advisor.

222.104 Postaward.

222.104-1 General.

(c) Follow the procedures at PGI 222.104-1 for reporting labor disputes.

222.104-170 Impact of labor disputes on defense programs.

(a) Each department and agency must determine the degree of impact of potential or actual labor disputes on its own programs and requirements. For guidance on determining the degree of impact, see PGI 222.104-170.

(b) Each contracting activity must obtain and develop data reflecting the impact of a labor dispute on its requirements and programs. Upon determining that the impact of the labor dispute is significant, the head of the contracting activity must submit a report of findings and recommendations to the labor advisor in accordance with departmental procedures.

222.104-171 Removal of items from contractors' facilities affected by work stoppages.

Follow the procedures at PGI 222.104-171 when a work stoppage prevents the delivery of urgent and critical items.

222.104-172 Acquisition of stevedoring services during labor disputes.

Follow the procedures at PGI 222.104-172 when a labor dispute delays the performance of urgently needed stevedoring services.

222.104-2 Overtime approvals.

(a) The department/agency approving official must?

(i) Obtain the concurrence of other appropriate approving officials; and

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(ii) Seek agreement as to the contracts under which overtime premiums will be approved when?

(A) Two or more contracting offices have current contracts at the same contractor facility; and

(B) The approval of overtime by one contracting office will affect the performance or cost of contracts of another office. In the absence of evidence to the contrary, a contracting officer may rely on a contractor's statement that approval of overtime premium pay for one contract will not affect performance or payments under any other contract.

SUBPART 222.3?CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

222.302 Postaward.

Upon receipt of notification of Contract Work Hours and Safety Standards violations?

(1) Immediately withhold any available funds;

(2) Give the contractor written notification of the withholding and a statement of the basis for the liquidated damages assessment. The written notification must also inform the contractor of the right to appeal the assessment within 60 days, through the contracting officer, to the agency official responsible for acting on such appeals; and

(3) If funds available for withholding are insufficient to cover liquidated damages, ask the contractor to pay voluntarily the funds necessary to cover the total liquidated damage assessment.

(d)(i) The assessment must become the final administrative determination of contractor liability for liquidated damages when?

(A) The contractor fails to appeal to the contracting agency within 60 days

from the date of the withholding of funds;

(B) The agency, following the contractor's appeals, either issues a final order affirming the assessment of liquidated damages or waives damages of $500 or less; or

(C) The Secretary of Labor takes final action on a recommendation of the agency head to waive or adjust liquidated damages in excess of $500.

(ii) Upon final administrative determination of the contractor's liability for liquidated damages, transmit withheld or collected funds owed the Government as liquidated damages to the servicing finance and accounting officer for crediting to the appropriate Government Treasury account. Return any excess withheld funds to the contractor.

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SUBPART 222.4?LABOR STANDARDS FOR CONTRACTS INVOLVING CONSTRUCTION

222.402 Presolicitation.

222.402-1 Applicability.

222.402-170 Installation support contracts.

(a) Apply both the Service Contract Labor Standards statute and the Construction Wage Rate Requirements statute to installation support contracts if?

(1) The contract is principally for services but also requires a substantial and segregable amount of construction, alteration, renovation, painting, or repair work; and

(2) The aggregate dollar value of such construction work exceeds or is expected to exceed $2,000.

(b) Service Contract Labor Standards statute coverage under the contract. Contract installation support requirements, such as plant operation and installation services (i.e., custodial, snow removal, etc.) are subject to the Service Contract Labor Standards. Apply Service Contract Labor Standards clauses and minimum wage and fringe benefit requirements to all contract service calls or orders for such maintenance and support work.

(c) Construction Wage Rate Requirements statute coverage under the contract. Contract construction, alteration, renovation, painting, and repair requirements (i.e., roof shingling, building structural repair, paving repairs, etc.) are subject to the Construction Wage Rate Requirements statute. Apply Construction Wage Rate Requirements clauses and minimum wage requirements to all contract service calls or orders for construction, alteration, renovation, painting, or repairs to buildings or other works.

(d) Repairs versus maintenance. Some contract work may be characterized as either Construction Wage Rate Requirements painting/repairs or Service Contract Labor Standards maintenance. For example, replacing broken windows, spot painting, or minor patching of a wall could be covered by either the Construction Wage Rate Requirements or the Service Contract Labor Standards. In instances where a contract

service call or order requires construction trade skills (i.e., carpenter, plumber, painter, etc.), but uncertainty exists whether the work required is Service Contract Labor Standards maintenance or Construction Wage Rate Requirements painting/repairs, apply the following rules:

(1) Consider individual service calls or orders requiring a total of 32 or more work hours to be repair work subject to the Construction Wage Rate Requirements.

(2) Consider individual service calls or orders requiring fewer than 32 work hours to be maintenance subject to the Service Contract Labor Standards.

(3) Consider painting work of 200 square feet or more, to be performed under an individual service call or order, subject to the Construction Wage Rate Requirements statute regardless of the total work hours required.

(e) Where requirements are identifiable, make the determination of labor standards application when of drafting the solicitation. Otherwise, make the determination when placing the service call or order. The service call or order must identify the labor standards law and contract wage determination that applies to the work required.

(f) Do not avoid application of the Construction Wage Rate Requirements statute by splitting individual tasks between orders or contracts.

222.402-3 Construction Wage Rate Requirements statute.

(d) Follow the procedures at PGI 222.402-3(d) when seeking clarification of the proper application of construction wage rate schedules.

222.402-370 Reporting to the Department of Labor.

See PGI 222.402-370 for guidance on reporting requirements.

222.404 Postaward.

222.404-1 Administration.

(b)(1) Upon award of the contract, provide the prime contractor a preconstruction letter to describing the following, as appropriate?

(i) Indicate that the labor standards requirements contained in the contract are based on the following statutes and regulations?

(A) Construction Wage Rate Requirements statute.

(B) Contract Work Hours and Safety Standards statute;

(C) Copeland (Anti-Kickback) Act;

(D) Parts 3 and 5 of the Secretary of Labor's Regulations (parts 3 and 5, subtitle A, title 29, CFR);

(ii) Call attention to the labor standards requirements in the contract, which relate to?

(A) Employment of foremen, laborers, mechanics, and others;

(B) Wages and fringe benefits payments, payrolls, and statements;

(C) Differentiation between subcontractors and suppliers;

(D) Additional classifications;

(E) Benefits to be realized by contractors and subcontractors in keeping complete work records;

(F) Penalties and sanctions for violations of the labor standards provisions; and

(G) The applicable provisions of FAR 22.402; and

(iii) Ensure that the contractor sends a copy of the preconstruction letter to each subcontractor.

(2) Before construction begins, discuss the labor standards obligations under the contract with the prime contractor, and any subcontractor the prime designated, when?

(A) The prime contractor has not performed previous Government contracts;

(B) The prime contractor experienced difficulty in complying with labor standards requirements on previous contracts; or

(C) Uncertainty exists whether the contractor and its subcontractors intend either to pay any required fringe benefits in the manner specified in the wage determination or to elect a different method of payment. If the latter, inform the contractor of the requirements of FAR 22.404-1.

222.404-2 Enforcement.

(a) Policy. The proposed construction program must also include?

(i) Training appropriate contract administration, labor relations, inspection, and other labor standards enforcement personnel in their responsibilities; and

(ii) Periodic review of field enforcement activities to ensure compliance with applicable regulations and instructions.

(c) Investigations.

(1) Contracting Agency investigations. Before beginning an investigation, the investigator must inform the contractor of the general scope of the investigation, and that the investigation will include examining pertinent records and interviewing employees. In conducting the investigation, follow the procedures at PGI 222.404-2(c).

(vi)(A) Notify the contractor by certified mail of any finding that it is liable for liquidated damages under the Contract Work Hours and Safety Standards

(CWHSS) statute. The notification must inform the contractor that?

(1) It has 60 days after receipt of the notice to appeal the assessment of liquidated damages; and

(2) The appeal must demonstrate either that the alleged violations did not occur at all, occurred inadvertently notwithstanding the exercise of due care, or

the assessment was computed improperly.

(C)(1) Upon receiving an appeal, process the appeal in accordance with agency regulations.

(vii)(A) Forward a detailed enforcement report or summary report to the agency head in accordance with agency procedures. Include in the report, as a minimum, the information specified at PGI 222.404-2(d).

(d) Report. Forward these reports through the head of the contracting activity to the labor advisor within 15 days following the end of the reporting period. These reports must not include information from investigations conducted by the Department of Labor. These reports must contain the following information, as applicable, for construction work subject to the Construction Wage Rate Requirements statute and the CWSS statute?

(i) Period covered;

(ii) Number of prime contracts awarded;

(iii) Total dollar amount of prime contracts awarded;

(iv) Number of contractors/subcontractors against whom complaints were received;

(v) Number of investigations conducted;

(vi) Number of contractors/subcontractors found in violation;

(vii) Amount of wage restitution found due under?

(A) Construction Wage Rate Requirements statute; and

(B) CWSS statute;

(vii) Number of employees due wage restitution under?

(A) Construction Wage Rate Requirements statute; and

(B) CWHSS statute;

(ix) Amount of liquidated damages assessed under the CWSS statute?

(i) Total amount; and

(ii) Number of contracts involved;

(x) Number of employees and amount paid/withheld under?

(A) Construction Wage Rate Requirements statute;

(B) CWSS statute;

(C) Copeland Act; and

(xi) Regarding preconstruction activities?

(A) Number of compliance checks performed; and

(B) Preconstruction letters sent.

(e) Withholding payments

(1) Contact the labor advisor for assistance when payments due a contractor are not available to satisfy that contractor's liability for Construction Wage Rate Requirements or CWHSS statute wage underpayments or liquidated damages.

(g) Disposition of contract payments withheld or suspended. When disposition of

withheld funds remains the final action necessary to close out a contract, the Department of Labor will retain withheld funds pending completion of an investigation or other administrative proceedings.

(3) Liquidated damages.

(A) The agency head may either adjust liquidated damages of $500 or less when the amount assessed is incorrect or waive the assessment when the violations?

(1) Were nonwillful or inadvertent; and

(2) Occurred notwithstanding the exercise of due care by the contractor, its subcontractor, or their agents.

(B) The agency head may recommend to the Administrator, Wage and Hour Division, that the liquidated damages over $500 be adjusted when the amount assessed is incorrect. The agency head may also recommend waiving the assessment when the violations?

(1) Were nonwillful or inadvertent; and

(2) Occurred notwithstanding the exercise of due care by the contractor, the subcontractor, or their agents.

SUBPART 222.6?CONTRACTS FOR MATERIALS, SUPPLIES, ARTICLES, AND EQUIPMENT

222.601 Presolicitation.

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222.601-3 Exemptions.

(c) Submit all applications for such exemptions through contracting channels to the labor advisor.

SUBPART 222.10?SERVICE CONTRACT LABOR STANDARDS

222.1002 Presolicitation

222.1002-1 Applicability.

(b) For contracts having a substantial amount of construction, alteration, renovation, painting, or repair work, see 222.402-170.

222.1002-3 Wage determinations.

Follow the procedures at PGI 222.1002-3 regarding use of the Service Contract Act Directory of Occupations when preparing the e98.

SUBPART 222.13?EQUAL OPPORTUNITY FOR VETERANS

222.1302 Presolitation

222.1302-2 Solicitation provision and contract clauses.

(a)(1) Insert the clause at FAR 52.222-35, Equal Opportunity for Veterans, with its paragraph (c), Listing Openings, also satisfies the requirement of 10 U.S.C. 4704.

222.1302-3 Waivers.

(c) Follow the procedures at PGI 222.1302-3(c) for submission of waiver requests.

222.1304 Postaward.

(c)(1) Forward each complaint received as indicated in FAR 22.1304(c) and (d); and

(2) Notify the complainant of the referral. The contractor in question must not be informed in any manner or for any reason of the complainant's name, the nature of the complaint, or the fact that the complaint was received.

SUBPART 222.14?EMPLOYMENT OF WORKERS WITH DISABILITIES

222.1401 Presolicitation.

222.1401-3 Waivers.

(c) Submit a waiver request through contracting channels to the labor advisor. If the request is justified, the labor advisor will endorse the request and forward it for action to?

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(i) The agency head for waivers under FAR 22.1403(a). For the defense agencies, waivers must be approved by the Assistant Secretary of Defense for Acquisition.

(ii) The Secretary of Defense, without the power of redelegation, for waivers under FAR 22.1403(b).

222.1402 Postaward

(c)(1) Notify the complainant of such referral. The contractor in question must not be informed in any manner or for any reason of the complainant's name, the nature of the complaint, or the fact that the complaint was received.

SUBPART 222.17?COMBATING TRAFFICKING IN PERSONS

222.1703 Presolicitation

222.1703-1 Requirements.

(a) See PGI 222.1703-1 for additional information regarding DoD policy for combating trafficking in persons outside the United States.

22.1704 Postaward.

222.1704(a) Violations.

Follow the procedures at PGI 222.1704(a) for notifying the Combatant Commander if a violation occurs.

222.1770 Procedures.

For a sample checklist for auditing compliance with Combating Trafficking in Persons policy, see PGI 222.17.

SUBPART 222.70?RESTRICTIONS ON THE EMPLOYMENT OF PERSONNEL FOR WORK ON CONSTRUCTION AND SERVICE CONTRACTS IN NONCONTIGUOUS STATES

222.7000 Scope of subpart.

(a) This subpart implements Section 8071 of the Fiscal Year 2000 Defense Appropriations Act, Public Law 106-79, and similar sections in subsequent Defense Appropriations Acts.

(b) This subpart applies only?

(1) To construction and service contracts to be performed in whole or in part within a noncontiguous State; and

(2) When the unemployment rate in the noncontiguous State exceeds the national average rate of unemployment as determined by the Secretary of Labor.

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222.7001 Definition.

As used in this subpart?

Noncontiguous State means Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Islands, Navassa Island, Palmyra Atoll, and Wake Island.

222.7002 General.

A contractor awarded a contract subject to this subpart must employ, for the purpose of performing that portion of the contract work within the noncontiguous State, individuals who are residents of that noncontiguous State and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills to perform this contract.

222.7003 Waivers.

The head of the agency may waive the requirements of 222.7002 on a case-by-case basis in the interest of national security.

222.7004 Contract clause.

Insert the clause at 252.222-7000, Restrictions on Employment of Personnel, in all solicitations and contracts subject to this subpart. Insert the name of the appropriate noncontiguous State in paragraph (a) of the clause.

SUBPART 222.71 [RESERVED]

SUBPART 222.72?COMPLIANCE WITH LABOR LAWS OF FOREIGN GOVERNMENTS

222.7201 Contract clauses.

(a) Insert the clause at 252.222-7002, Compliance with Local Labor Laws (Overseas), in solicitations and contracts for services or construction to be performed outside the United States and its outlying areas.

(b) Insert the clause at 252.222-7003, Permit from Italian Inspectorate of Labor, in solicitations and contracts for porter, janitorial, or ordinary facility and equipment maintenance services to be performed in Italy.

(c) Insert the clause at 252.222-7004, Compliance with Spanish Social Security Laws and Regulations, in solicitations and contracts for services or construction to be performed in Spain.

SUBPART 222.73?LIMITATIONS APPLICABLE TO CONTRACTS PERFORMED ON GUAM

222.7300 Scope of subpart.

This subpart?

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(a) Implements Section 390 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105-85); and

(b) Applies to contracts for base operations support on Guam that?

(1) Are awarded upon a competition conducted under OMB Circular A-76; and

(2) Are entered into or modified on or after November 18, 1997.

222.7301 Prohibition on use of nonimmigrant aliens.

(a) An alien who is issued a visa or otherwise provided nonimmigrant status under Section 101(a)(15)(H)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)) is prohibited from performing work under a contract for base operations support on Guam.

(b) Lawfully admitted citizens of the freely associated states of the Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau are not subject to the prohibition in paragraph (a) of this section.

222.7302 Contract clause.

Insert the clause at 252.222-7005, Prohibition on Use of Nonimmigrant Aliens?Guam, in solicitations and contracts subject to this subpart.

SUBPART 222.74?RESTRICTIONS ON THE USE OF MANDATORY ARBITRATION AGREEMENTS

222.7400 Scope of subpart.

This subpart implements section 8116 of the Defense Appropriations Act for Fiscal Year 2010 (Pub. L. 111-118) and similar sections in subsequent DoD appropriations acts.

222.7401 Definition.

As used in this subpart?

Covered subcontractor, means any entity that has a subcontract valued in excess of $1 million, except a subcontract for the acquisition of commercial products or commercial services, including commercially available off-the-shelf items.

222.7402 Policy.

(a) Do not use funds appropriated or otherwise made available by the Fiscal Year 2010 Defense Appropriations Act (Pub. L. 111-118) or subsequent DoD appropriations acts for any contract (including task or delivery orders and bilateral modifications adding new work) in excess of $1 million, unless the contractor agrees not to?

(1) Enter into any agreement with any of its employees or independent contractors that requires, as a condition of employment, that the employee or independent contractor agree to resolve through arbitration?

(i) Any claim under title VII of the Civil Rights Act of 1964; or

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(ii) Any tort related to or arising out of sexual assault or harassment, including assault and battery, intentional infliction of emotional distress, false imprisonment, or negligent hiring, supervision, or retention; or

(2) Take any action to enforce any provision of an existing agreement with an employee or independent contractor that mandates that the employee or independent contractor resolve through arbitration?

(i) Any claim under title VII of the Civil Rights Act of 1964; or

(ii) Any tort related to or arising out of sexual assault or harassment, including assault and battery, intentional infliction of emotional distress, false imprisonment, or negligent hiring, supervision, or retention.

(b) No funds appropriated or otherwise made available by the Fiscal Year 2010 Defense Appropriations Act (Pub. L. 111-118) or subsequent DoD appropriations acts may be expended unless the contractor certifies that it requires each covered subcontractor to agree not to enter into, and not to take any action to enforce, any provision of any agreement, as described in paragraph (a) of this section, with respect to any employee or independent contractor performing work related to such subcontract.

222.7403 Applicability.

This requirement does not apply to the acquisition of commercial products or commercial services (including commercially available off-the-shelf items).

222.7404 Waiver.

(a) The Secretary of Defense may waive, in accordance with paragraphs (b) through

(d) of this section, the applicability of paragraphs (a) or (b) of 222.7402 to a particular contract or subcontract, if the Secretary or the Deputy Secretary personally determines that the waiver is necessary to avoid harm to national security interests of the United States, and that the term of the contract or subcontract is no longer than necessary to avoid such harm.

(b) The waiver determination must specify the grounds for the waiver, alternatives considered, and an explanation why each of the alternatives would not avoid harm to national security interests.

(c) Submit requests for waivers in accordance with agency procedures and PGI **222.7404(c).**

(d) The Secretary of Defense will transmit the determination to Congress and simultaneously publish it in the Federal Register, not less than 15 business days before the contract or subcontract addressed in the determination may be awarded.

222.7405 Contract clause.

Insert the clause at 252.222-7006, Restrictions on the Use of Mandatory Arbitration Agreements, in all solicitations and contracts (including task orders or delivery orders and bilateral modifications adding new work) valued in excess of $1 million utilizing funds appropriated or otherwise made available by the Defense Appropriations Act for Fiscal Year 2010 (Pub. L. 111-118) or subsequent DoD appropriations acts, except in

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contracts for the acquisition of commercial products, including commercially available off-the-shelf items, or commercial services.

PART 252?SOLICITATION PROVISIONS AND CONTRACT CLAUSES

SUBPART 252.2?TEXT OF PROVISIONS AND CLAUSES

252.222-7000 Restrictions on employment of personnel.

As prescribed in 222.7004, use the following clause:

RESTRICTIONS ON EMPLOYMENT OF PERSONNEL (MAR 2000)

(a) The Contractor shall employ, for the purpose of performing that portion of the contract work in _____, individuals who are residents thereof and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills to perform the contract.

(b) The Contractor shall insert the substance of this clause, including this paragraph (b), in each subcontract awarded under this contract.

(End of clause)

252.222-7001 [Reserved]

252.222-7002 Compliance with local labor laws (overseas).

As prescribed in 222.7201(a), use the following clause:

COMPLIANCE WITH LOCAL LABOR LAWS (OVERSEAS) (JUN 1997)

(a) The Contractor shall comply with all?

(1) Local laws, regulations, and labor union agreements governing work hours; and

(2) Labor regulations including collective bargaining agreements, workers' compensation, working conditions, fringe benefits, and labor standards or labor contract matters.

(b) The Contractor indemnifies and holds harmless the United States Government from all claims arising out of the requirements of this clause. This indemnity includes the Contractor's obligation to handle and settle, without cost to the United States Government, any claims or litigation concerning allegations that the Contractor or the United States Government, or both, have not fully complied with local labor laws or regulations relating to the performance of work required by this contract.

(c) Notwithstanding paragraph (b) of this clause, consistent with paragraphs 31.205-15(a) and 31.205-47(d) of the Federal Acquisition Regulation, the Contractor will be reimbursed for the costs of all fines, penalties, and reasonable litigation expenses incurred as a result of compliance with specific contract terms and conditions or written instructions from the Contracting officer.

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(End of clause)

252.222-7003 Permit from Italian Inspectorate of Labor.

As prescribed in 222.7201(b), use the following clause:

PERMIT FROM ITALIAN INSPECTORATE OF LABOR (JUN 1997)

Prior to the date set for commencement of work and services under this contract, the Contractor shall obtain the prescribed permit from the Inspectorate of Labor having jurisdiction over the work site, in accordance with Article 5g of Italian Law Number 1369, dated October 23, 1960. The Contractor shall ensure that a copy of the permit is available at all reasonable times for inspection by the Contracting Officer or an authorized representative. Failure to obtain such permit may result in termination of the contract for the convenience of the United States Government, at no cost to the United States Government.

(End of clause)

252.222-7004 Compliance with Spanish social security laws and regulations.

As prescribed in 222.7201(c), use the following clause:

COMPLIANCE WITH SPANISH SOCIAL SECURITY LAWS AND REGULATIONS (JUN 1997)

(a) The Contractor shall comply with all Spanish Government social security laws and regulations. Within 30 calendar days after the start of contract performance, the Contractor shall ensure that copies of the documents identified in paragraph (a)(1) through (a)(5) of this clause are available at all reasonable times for inspection by the Contracting Officer or an authorized representative. The Contractor shall retain the records in accordance with the Audit and Records clause of this contract.

(1) TC1?Certificate of Social Security Payments;

(2) TC2?List of Employees;

(3) TC2/1?Certificate of Social Security Payments for Trainees;

(4) Nominal (pay statements) signed by both the employee and the Contractor; and

(5) Informa de Situacion de Empressa (Report of the Condition of the Enterprise) from the Ministerio de Trabajo y S.S., Tesoreria General de la Seguridad Social (annotated with the pertinent contract number(s) next to the employee's name).

(b) All TC1's, TC2's, and TC2/1's shall contain a representation that they have been paid by either the Social Security Administration office or the Contractor's bank or savings institution. Failure by the Contractor to comply with the requirements of this clause may result in termination of the contract under the clause of the contract entitled ?Default.?

(End of clause)

252.222-7005 Prohibition on use of nonimmigrant aliens?Guam.

As prescribed in 222.7302, use the following clause:

PROHIBITION ON USE OF NONIMMIGRANT ALIENS?GUAM (SEP 1999)

The work required by this contract shall not be performed by any alien who is issued a visa or otherwise provided nonimmigrant status under Section 101(a)(15)(H)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)). This prohibition does not apply to the performance of work by lawfully admitted citizens of the freely associated states of the Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau.

(End of clause)

252.222-7006 Restrictions on the Use of Mandatory Arbitration Agreements.

As prescribed in 222.7405, use the following clause:

RESTRICTIONS ON THE USE OF MANDATORY ARBITRATION AGREEMENTS (JAN 2023)

(a) Definitions. As used in this clause?

Covered subcontractor means any entity that has a subcontract valued in excess of $1 million, except a subcontract for the acquisition of commercial products or commercial services, including commercially available off-the-shelf items.

Subcontract means any contract, as defined in Federal Acquisition Regulation subpart **2.1, to furnish supplies or services for performance of this contract or a higher-tier** subcontract thereunder.

(b) The Contractor?

(1) Agrees not to?

(i) Enter into any agreement with any of its employees or independent contractors that requires, as a condition of employment, that the employee or independent contractor agree to resolve through arbitration?

(A) Any claim under title VII of the Civil Rights Act of 1964; or

(B) Any tort related to or arising out of sexual assault or harassment, including assault and battery, intentional infliction of emotional distress, false imprisonment, or negligent hiring, supervision, or retention; or

(ii) Take any action to enforce any provision of an existing agreement with an employee or independent contractor that mandates that the employee or independent contractor resolve through arbitration?

(A) Any claim under title VII of the Civil Rights Act of 1964; or

(B) Any tort related to or arising out of sexual assault or harassment, including assault and battery, intentional infliction of emotional distress, false imprisonment, or negligent hiring, supervision, or retention; and

(2) Certifies, by signature of the contract, that it requires each covered subcontractor to agree not to enter into, and not to take any action to enforce, any provision of any existing agreements, as described in paragraph (b)(1) of this clause, with respect to any employee or independent contractor performing work related to

such subcontract.

(c) The prohibitions of this clause do not apply with respect to a contractor's or subcontractor's agreements with employees or independent contractors that may not be enforced in a court of the United States.

(d) The Secretary of Defense may waive the applicability of the restrictions of paragraph (b) of this clause in accordance with Defense Federal Acquisition Regulation Supplement 222.7404.

(End of clause)

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PGI PART 222?APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

PGI 222.1?BASIC LABOR POLICIES

PGI 222.101-1 Labor relations.

Obtain approval from the labor advisor before?

(1) Contacting a national office of a labor organization, a Government agency headquarters, or any other organization on labor relations matters or disputes; or

(2) Making recommendations for plant seizure or injunctive action relating to potential or actual work stoppages.

PGI 222.104 Postaward.

PGI 222.104-1 General.

The contract administration office must?

(1) Notify the labor advisor, the contracting officer, and the head of the contracting activity when interference is likely; and

(2) Disseminate information on labor disputes in accordance with departmental procedures.

PGI 222.104-170 Impact of labor disputes on defense programs.

(a) If the dispute involves a product, project (including construction), or service that must be obtained in order to meet schedules for urgently needed military programs or requirements, each department and agency must consider the degree of impact of potential or actual labor disputes, and each contracting activity involved must obtain and develop data reflecting the impact of a labor dispute. Upon determining the impact, the head of the contracting activity must submit a report of findings and recommendations to the labor advisor.

(b)(i) The report to the labor advisor must be in narrative form and must include?

(A) Location of dispute and name of contractor or subcontractor involved;

(B) A description of the impact, including how the specific items or services affect the specific programs or requirements;

(C) Identity of alternate sources available to furnish the supply or service within the time required; and

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(D) A description of any action taken to reduce the impact.

(ii) The head of the contracting activity must submit impact reports to the agency head when?

(A) Specifically requested; or

(B) The department or agency considers the impact to be of sufficient urgency to warrant the attention of the agency head.

(iii) The labor advisor will expand the report submitted under paragraph (b)(ii) of this subsection by addressing the following, as appropriate:

(A) Description of military program, project, or service. Identify item, project, or service that will be or is being affected by the work stoppage. Describe its normal use and current functions in combat, combat support, or deterrent operations. For components or raw materials, identify the end item(s) for which they are used.

(B) Requirements and assets. Identify requirements and assets in appropriate detail in terms commonly used by the DoD component.

(1) For production programs, include requirements for each using military service. Where applicable, state in detail production schedule, inventory objectives, assets against these objectives, and critical shortages. For spares and highly expendable items, such as ground and air ammunition, show usage (consumption) rates and assets in absolute terms and in terms of daily, weekly, or monthly supplies. For components, include requirements for spares.

(2) For projects, describe the potential adverse effects of a delay in meeting schedules, and its impact on the national security.

(3) For services, describe how a loss or interruption affects the ability to support Defense operations in terms of traffic requirements, assets, testing programs, etc.

(C) Possible measures to minimize strike impact. Describe?

(1) Capabilities, if any, to substitute items or to use alternate sources and indicate the number of other facilities available and the relative capabilities of such facilities in meeting total requirements;

(2) How much time would be required to replace the loss of the facilities or service affected by a work stoppage; and

(3) The feasibility of transferring assets from theater to theater to relieve deficits in some areas of urgency.

(D) Conclusion.

(1) Describe the impact on operations of a 15-30, 30-60, and a 60-90 day work stoppage.

(2) Estimate the degree of criticality of a program, project, or service resulting from a work stoppage on a calendar basis, indicating the increased impact, if any,

as the stoppage lengthens. Criticality is measured by the number of days required for the work stoppage to have an effect on operational capability. This time must be stated in terms of days.

PGI 222.104-171 Removal of items from contractors' facilities affected by work stoppages.

(a) When a contractor is unable to deliver urgent and critical items because of a work stoppage at its facility, before removing any items from the facility?

(i) Contact the labor advisor to obtain the opinion of the national office of the Federal Mediation and Conciliation Service or other mediation agency regarding the effect movement of the items would have on labor negotiations. Normally removals will not be made if they will adversely affect labor negotiations.

(ii) Provide a written request for removal of the material to the cognizant contract administration office. The request should include the following information:

(A) Contract number.

(B) A statement as to the urgency and criticality of the item needed.

(C) A description of the items to be moved (nature of the item, amount, approximate weight and cubic feet, item number, etc.).

(D) Mode of transportation by which the items are to be moved, if different than in the contract, and whether by Government or commercial bill of lading.

(E) Destination of the material, if different from that specified in the contract.

(iii) With the assistance of the labor advisor or the contract administration office, attempt to have both the management and the labor representatives involved agree to shipment of the material by normal means.

(iv) If agreement for removal of the needed items cannot be reached following the procedures in paragraphs (a) (i) through (iii) of this section, the commander of the contract administration office, after obtaining approval from the labor advisor, may seek the concurrence of the parties to the dispute to permit movement of the material by military vehicles with military personnel. On receipt of such concurrences, the commander may proceed to make necessary arrangements to move the material.

(v) If agreement for removal of the needed items cannot be reached following any of the procedures in paragraphs (a) (i) through (iv) of this section, refer the matter to the

labor advisor with the information required by 222.104-170(b). If the labor advisor is unsuccessful in obtaining concurrence of the parties for the movement of the material and further action to obtain the material is necessary, refer the matter to the agency head. Upon review and verification that the items are urgently or critically needed and cannot be moved with the consent of the parties, the agency head, on a nondelegable basis, may order removal of the items from the facility.

PGI 222.104-172 Acquisition of stevedoring services during labor disputes.

(a) Use the following procedures only in the order listed when a labor dispute delays performance of a contract for stevedoring services that are urgently needed.

(1) Attempt to have management and labor voluntarily agree to exempt military supplies from the labor dispute by continuing the movement of such material.

(2) Divert vessels to alternate ports able to provide necessary stevedoring services.

(3) Consider contracting with reliable alternative sources of supply within the stevedoring industry.

(4) Utilize civil service stevedores to perform the work performed by contract stevedores.

(5) Utilize military personnel to handle the cargo which was being handled by contract stevedores prior to the labor dispute.

(b) Notify the labor advisor when a deviation from the procedures in paragraph (a) of this subsection is required.

PGI 222.4?LABOR STANDARDS FOR CONTRACTS INVOLVING CONSTRUCTION

PGI 222.402-3 Construction Wage Rate Requirements statute .

(d) Obtain clarification concerning the proper application of wage rate schedules to the type or types of construction involved from?

(i) For the Army - The appropriate district commander, Corps of Engineers.

(ii) For the Navy - The cognizant Naval Facilities Engineering Command division.

(iii) For the Air Force - The appropriate Regional Industrial Relations Office.

PGI 222.402-370 Reporting to the Department of Labor.

Not later than April 1 of each year, each agency must furnish the Administrator, Wage and Hour Division, with a general outline of its proposed construction program for the coming fiscal year. The Department of Labor uses this information to determine where it will conduct general wage determination surveys.

(a) For individual projects of $500,000 or more, the agency must indicate?

(1) The anticipated type of construction;

(2) The estimated dollar value; and

(3) The location in which the work is to be performed (city, town, village, county, or other civil subdivision of the state).

(b) The report format is contained in Department of Labor All Agency Memo 144, December 27, 1985.

(c) The report control number is 1671-DOL-AN.

PGI 222.404 Postaward.

PGI 222.404-2 Enforcement.

(c) Investigations. (1) Under Reorganization Plan No. 14 of 1950, contracting agencies are tasked with the primary responsibility for the conduct of labor standards compliance activities for construction contracts subject to the Construction Wage Rate Requirements statute. When such compliance assurance activities disclose potential violations that are substantial in amount (wage underpayments in excess of $1,000) or when requested by the Department of Labor, the contracting officer or a designee should take the following steps to ensure compliance with the investigative requirements of the Department of Labor:

(i) Beginning of the investigation. The investigator must?

(A) Inform the contractor of the investigation in advance;

(B) Verify the exact legal name of the contractor, its address, and the names and titles of its principal officers;

(C) Outline the general scope of the investigation, including the examination of pertinent records and the interview of employees;

(D) Inform the contractor that the names of the employees to be interviewed will not be divulged to the contractor; and

(E) When requested, provide a letter from the contracting officer verifying the investigator's authority.

(ii) Conduct of the investigation. Labor standards investigations are comprised of the following essential components:

(A) Review of the contract.

(1) Verify that all required labor standards and clauses and wage determinations are included in the contract.

(2) Review the following items in the contract file, if applicable:

(i) List of subcontractors.

(ii) Payroll statements for the contractor and subcontractors.

(iii) Approvals of additional classifications.

(iv) Data regarding apprentices and trainees as required by FAR **22.404-1(f)(1) and 22.404-1(f)(3)(i).**

(v) Daily inspector's report or other inspection reports.

(vi) Employee interview statements.

(vii) Standard Form (SF) 1413, Statement and Acknowledgement.

(B) Interview of the complainant. If the investigation is based upon the receipt of a complaint, the investigator should interview the complainant unless this is impractical. The interview must cover all aspects of the complaint to ensure that all pertinent information is obtained. Whenever an investigation does not include an interview of the complainant, explain such omission in the investigator's report.

(C) Interview of employees and former employees.

(1) Interview a sufficient number of employees or former employees, who represent all classifications, to develop information regarding the method and amount of payments, deductions, hours worked, and the type of work performed.

(2) Interview employees at the job site if the interviews can be conducted privately and in such a manner so as to cause the least inconvenience to the employer and employees.

(3) Former employees may be interviewed elsewhere.

(4) Do not disclose to any employee any information, finding, recommendation, or conclusion relating to the investigation except to the extent necessary to obtain required information.

(5) Do not disclose any employee's statement to anyone, except a Government representative working on the case, without the employee's written permission.

(6) Obtain information by mail when personal interviews are impractical.

(7) Use SF 1445, Labor Standards Interview, for employee interviews.

(8) Ask employees to sign their statements and to initial any changes.

(9) Provide an evaluation of each employee's credibility.

(D) Interview of foremen. Interview foremen to obtain information concerning the contractor's compliance with the labor standards provisions with respect to employees under the foreman's supervision and the correctness of the foreman's classification as a supervisory employee. All procedures established for the conduct of employee interviews, and the recording and use of information obtained, apply to foremen interviews.

(E) Interview of the contractor.

(1) Interview the contractor whenever the investigation indicates the possibility of a violation.

(2) Inform the contractor that?

(i) The interview does not mean that a violation has been found or that a requirement for corrective action exists; and

(ii) The purpose of the interview is to obtain only such data as the contractor may desire to present in connection with the investigation.

(3) Do not disclose the identity of any individual who filed a complaint or was interviewed.

(F) Review of contractor and subcontractor records.

(1) Review contractor and subcontractor records such as basic time cards, books, cancelled payroll checks, fringe benefits, and payment records. Compare them with submitted payrolls. When discrepancies are found, include pertinent excerpts or copies of the records in the investigation report with a statement of the discrepancy and any explanation the investigator obtains. When wages include contributions or anticipated costs for fringe payments requiring approval of the Secretary of Labor, examine the contractor records to ensure such approval has been obtained and that any requirements specified in the approval have been met.

(2) Review contractor's and subcontractor's weekly payrolls and payroll statements for completeness and accuracy regarding the following:

(i) Identification of employees, payroll amount, the contract, contractor, subcontractor, and payroll period.

(ii) Inclusion of only job classifications and wage rates specified in the contract specifications, or otherwise established for the contract or subcontract.

(iii) Computation of daily and weekly hours.

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(iv) Computation of time-and-one half for work in excess of 40 hours per week in accordance with FAR 22.404-2(b).

(v) Gross weekly wages.

(vi) Deductions.

(vii) Computation of net weekly wages paid to each employee.

(viii) Ratio of helpers, apprentices, and trainees to laborers and mechanics.

(ix) Apprenticeship and trainee registration and ratios.

(x) Computation of fringe benefits payments.

(3) Transcribe the contractor's records whenever they contain information at variance with payrolls or other submitted documents.

(i) Make the transcriptions in sufficient detail to permit them to be used to check computations of restitution and to determine amounts to be withheld from the contractor.

(ii) Follow the form used by the contractor.

(iii) Place comments or explanations concerning the transcriptions on separate memoranda or in the narrative report.

(iv) Determine whether the wage determination, any modifications of the determination, and any additional classifications are posted as required.

(iii) Submission of the report of investigation. The investigator must submit a report of the investigation in accordance with agency procedures. Each report must include at least?

(A) The basis for the investigation, including the name of the complainant;

(B) Names and addresses of prime contractors and subcontractors involved, and names and titles of their principal officers;

(C) Contract number, date, dollar value of prime contract, and date and number of wage determination included in the contract;

(D) Description of the contract and subcontract work involved;

(E) Summary of the findings with respect to each of the items listed in PGI **222.406-8(1)(ii);**

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(F) Concluding statement concerning?

(1) The types of violations, including the amount of kickbacks under the Copeland Act, underpayments of basic hourly rates and fringe benefits under the Wage Rate Requirements statute, or underpayments and liquidated damages under the Contract Work Hours and Safety Standards statute;

(2) Whether violations are considered to be willful or due to the negligence of the contractor or its agent;

(3) The amount of funds withheld from the contractor; and

(4) Other violations found; and

(G) Exhibits indexed and appropriately tabbed, including copies of the following, when applicable?

(1) Complaint letter;

(2) Contract wage determination;

(3) Preconstruction letter and memorandum of preconstruction conference;

(4) Payrolls and statements indicating violations;

(5) Transcripts of pertinent records of the contractor, and approvals of fringe benefit payments;

(6) Employee interview statements;

(7) Foreman interview statements;

(8) Statements of others interviewed, including Government personnel;

(9) Detailed computations showing kickbacks, underpayments, and liquidated damages;

(10) Summary of all payments due to each employee or to a fund plan or program, and liquidated damages; and

(11) Receipts and cancelled checks.

(d) This report must include at least--

(i) SF 1446, Labor Standards Investigation Summary Sheet;

(ii) Contracting officer's findings;

(iii) Statement as to the disposition of any contractor rebuttal to the findings;

(iv) Statement as to whether the contractor has accepted the findings and has paid any restitution or liquidated damages;

(v) Statement as to the disposition of funds available;

(vi) Recommendations as to disposition or further handling of the case (when appropriate, include recommendations as to the reduction, waiver, or assessment of liquidated damages, whether the contractor should be debarred, and whether the file should be referred for possible criminal prosecution); and

(vii) When applicable, the following exhibits:

(A) Investigator's report.

(B) Copy of the contractor's written rebuttal or a summary of the contractor's oral rebuttal of the contracting officer's findings.

(C) Copies of correspondence between the contractor and contracting officer, including a statement of specific violations found, corrective action requested, and the contractor's letter of acceptance or rejection.

(D) Evidence of the contractor's payment of restitution or liquidated damages (copies of receipts, cancelled checks, or supplemental payrolls).

(E) Letter from the contractor requesting relief from the liquidated damage provisions of the Contract Work Hours and Safety Standards statute.

(e) Withholding payments.

(1) Contact the labor advisor for assistance when payments due a contractor are not available to satisfy that contractor's liability for Construction Wage Rate Requirements or CWHSS statute wage underpayments or liquidated damages.

PGI 222.10?SERVICE CONTRACT LABOR STANDARDS

PGI 222.1002-3 Obtaining wage determinations.

(1) Secure the assistance of cognizant customer/technical personnel to ensure maximum use of the Service Contract Act Directory of Occupations (Directory) and incorporation of all service employee classes (Directory and non-Directory) expected to be utilized.

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(2) When the statement of work job title, for which there is a Directory equivalent, differs from the Directory job title, provide a cross-reference on the e98.

(3) Include and note as such any classifications and minimum hourly wage rates conformed under any predecessor contract. When a previously conformed classification is not included in the Directory, include the job description on the e98.

PGI 222.13?EQUAL OPPORTUNITIES FOR VETERANS

PGI 222.1302 Presolicitation.

PGI 222.1302-3 Waivers.

(c) When seeking a waiver of any of the terms of the clause at FAR 52.222-35, Equal Opportunity for Veterans, submit a waiver request through contracting channels to the labor advisor. If the request is justified, the labor advisor will endorse the request and forward it for action to?

(i) The agency head for waivers under FAR 22.1305(a); or

(ii) The Secretary of Defense, without the power of redelegation, for waivers under FAR 22.1305(b).

PGI 222.17?COMBATING TRAFFICKING IN PERSONS

For a sample checklist for auditing compliance with Combating Trafficking in Persons policy, click here.

PGI 222.1703-1 Policy.

(1) The Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)) is responsible for developing overall guidance on personnel policy issues relating to Combating Trafficking in Persons (CTIP). The DoD CTIP website is http://ctip.defense.gov/. The website includes DoD policy on CTIP, CTIP training information, and links to the National TIP hotline, the DoD IG website, the Department of State Office to Monitor and Combat Trafficking in Persons, and other Government and non-Government organization websites.

(2) Department of Defense Instruction 2200.01, reissued June 21, 2019, entitled Combating Trafficking in Persons (CTIP), (located at https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/220001p.pdf?ver=2019-06-21-102951-257), requires the incorporation of terms and conditions in contracts

performed either inside or outside the United States that?

(i) Prohibit any activities on the part of contractor employees that support or promote trafficking in persons; and

(ii) Impose suitable penalties on contractors who fail to monitor the conduct of their employees.

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(3) DoD Instruction 5525.11, Criminal Jurisdiction Over Civilians Employed By or Accompanying the Armed Forces Outside the United States, Certain Service Members, and Former Service Members, dated March 3, 2005, located at http://www.dtic.mil/whs/directives/corres/pdf/552511p.pdf, and as supplemented by Directive-Type Memorandum 09-015 at http://www.dtic.mil/whs/directives/corres/pdf/DTM-**09-015.pdf, implements policies and procedures, and assigns responsibilities, under the** Military Extraterritorial Jurisdiction Act of 2000, as amended by section 1088 of the National Defense Authorization Act for Fiscal Year 2005, for exercising extraterritorial criminal jurisdiction over certain current and former members of the U.S. Armed Forces, and over civilians employed by or accompanying the U.S. Armed Forces outside the United States.

(4) Quality assurance surveillance plans (QASPs) that are developed in accordance with DFARS 237.172 should appropriately describe how the contracting officer?s representative will monitor the contractor?s performance regarding trafficking in persons such that non-compliance with FAR clause 52.222-50, Combating Trafficking in Persons, is brought to the immediate attention of the contracting officer.

(5) PD2 users must not use system overrides or other administrative methods of developing clauses for use in PD2-generated contracts to avoid the inclusion of the clause at FAR 52.222-50, with its Alternate I, if appropriate, in solicitations and contracts.

(6) Rely on the requiring activity to ascertain the existence of any additional Geographic Combatant Commander?s (GCC?s)/Subordinate Joint Force Commander, Trafficking In Persons, Directives or Notices, as required under PGI 225.370, checklist item #12, that would require the use of Alternate I with the clause at FAR 52.222-50, Combating Trafficking in Persons, as required by FAR 22.1705 for contracts performed outside the United States. The webpage is provided at https://www.acq.osd.mil/asda/dpc/cp/cc/aor.html and by clicking on the pertinent GCC Area of Responsibility.

PGI 222.1704 Violations.

(a)(1) If the contracting officer receives information indicating that the contractor, a contractor employee, a subcontractor, or a subcontractor employee has failed to comply with the requirements of the clause at FAR 52.222-50, then?

(i) Through the contracting officer's local commander or other designated representative, immediately notify the Combatant Commander responsible for the geographical area in which the incident has occurred; and

(ii) Provide information about any investigation and enforcement to?

(A) Program Manager, DoD CTIP Policy and Programs Support at https://ctip.defense.gov/ or by email to dodctip@mail.mil; and

(B) Defense Pricing, Contracting, and Acquisition Policy (Contract Policy) by email to osd.pentagon.ousd-a-s.mbx.asda-dp-c-contractpolicy@mail.mil.

(2) Reports may be made to the DoD Inspector General Hotline at http://www.dodig.mil/hotline/ or 800-424-9098.

(3) Reports also may be made to the National Human Trafficking Hotline at 1-888-373-7888 or to the Hotline website at https://humantraffickinghotline.org/.

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PGI 222.74?RESTRICTIONS ON THE USE OF MANDATORY ARBITRATION AGREEMENTS

PGI 222.7404 Waiver.

(c) Requests for waivers to the policy at DFARS 222.7402 must be submitted to the Secretary of Defense through the Office of the Principal Director, Defense Pricing, Contracting, and Acquisition Policy (Contract Policy). Requests for waivers may be submitted via email at osd.pentagon.ousd-a-s.mbx.asda-dp-c-contractpolicy@mail.mil. Include ?Waiver-Mandatory Arbitration? in the subject line of the message.

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PART 23

OFFICE OF THE ASSISTANT SECRETARY OF WAR

Status: Class D

OFFICE OF THE ASSISTANT SECRETARY OF WAR

3000 DEFENSE PENTAGON

WASHINGTON, DC 20301-3000

ACQUISITION

AND SUSTAINMENT

In reply refer to

DARS Tracking Number: 2026-O0018

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES SPECIAL OPERATIONS

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES TRANSPORTATION

COMMAND (ATTN: ACQUISITION EXECUTIVE)

DEPUTY ASSISTANT SECRETARY OF THE ARMY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE NAVY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE

(CONTRACTING)

DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Class Deviation?Revolutionary Federal Acquisition Regulation (FAR) Overhaul

Part 23, Defense FAR Supplement (DFARS) Part 223

Effective February 1, 2026, contracting officers shall use?

? The revised FAR Part 23, Sustainable Acquisition, Material Safety, and Pollution Prevention, published on the Revolutionary FAR Overhaul web page at https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-23 in lieu of the text codified at 48 CFR chapter 1 (https://www.ecfr.gov).

? The attached DFARS Part 223, Sustainable Acquisition, Material Safety, and Pollution Prevention in lieu of the text codified at 48 CFR chapter 2; and

? The attached DFARS Procedures, Guidance, and Information (PGI) 223, Sustainable Acquisition, Material Safety, and Pollution Prevention in lieu of the PGI text published on the Defense Pricing, Contracting, and Acquisition Policy web page at https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.

This class deviation implements the following:

? Section 2 of E.O. 14275, Restoring Common Sense to Federal Procurement, which establishes the policy that the FAR ?should only contain provisions required by statute or essential to sound procurement, and any FAR provisions that do not

advance these objectives should be removed.
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? Section 4(a) of E.O. 14265, Modernizing Defense Acquisitions and Spurring Innovation in the Defense Industrial Base which requires the Secretary of War to eliminate or revise any unnecessary supplemental regulations or any other internal guidance, such as relevant parts of the Financial Management Regulation and Defense Federal Acquisition Regulation Supplement.
? The Office of Management and Budget memorandum, M-25-26 issued on May 2, 2025, titled, Overhauling the Federal Acquisition Regulation, which provided additional guidance to federal agencies regarding the FAR overhaul.
This class deviation remains in effect until rescinded or incorporated into the FAR, DFARS, and DFARS PGI. Inquiries regarding this class deviation can be addressed to osd.pentagon.ousd-a-s.mbx.dfars@mail.mil.
John M. Tenaglia
Principal Director,
Defense Pricing, Contracting, and
Acquisition Policy
Attachments:
As stated
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PART 223?SUSTAINABLE ACQUISITION, MATERIAL SAFETY, AND POLLUTION PREVENTION

SUBPART 223.1?SUSTAINABLE PRODUCTS

223.107 Agency Programs.

(a)(i) When procuring, or specifying the use of, EPA-designated items that contain recovered material, follow the procedures at PGI 223.107-1(a)(i).

223.170 Products that contain, use, or are manufactured with ozone-depleting substances or products that contain or use high global warming potential hydrofluorocarbons.

No DoD contract may include a specification or standard that requires the use of a class I ozone-depleting substance or that can be met only through the use of such a substance unless the inclusion of the specification or standard is specifically authorized at a level no lower than a general or flag officer or a member of the Senior Executive Service of the requiring activity in accordance with section 326, Public Law 102-484 (10 U.S.C. 3201 note prec.). This restriction is in addition to any imposed by the Clean Air Act and applies after June 1, 1993, to all DoD contracts, regardless of place of performance.

SUBPART 223.3?MATERIAL SAFETY

223.302 Hazardous material identification and safety data.

(e) Provide hazard warning labels, received from apparent successful offerors, to the cognizant safety officer.

223.304 Contract clauses.

Use the clause at 252.223-7001, Hazard Warning Labels, in solicitations and contracts which require submission of hazardous material data sheets (see FAR 23.302(c)).

223.370 Safety precautions for ammunition and explosives.

223.370-1 Scope.

(a) This section applies to all acquisitions involving the use of ammunition and explosives, including acquisitions for?

(1) Development;

(2) Testing;

(3) Research;

(4) Manufacturing;

(5) Handling or loading;

(6) Assembling;

(7) Packaging;

(8) Storage;

(9) Transportation;

(10) Renovation;

(11) Demilitarization;

(12) Modification;

(13) Repair;

(14) Disposal;

(15) Inspection; or

(16) Any other use, including acquisitions requiring the use or the incorporation of materials listed in paragraph (b) of this subsection for initiation, propulsion, or detonation as an integral or component part of an explosive, an ammunition, or explosive end item or weapon system.

(b) This section does not apply to acquisitions solely for?

(1) Inert components containing no explosives, propellants, or pyrotechnics;

(2) Flammable liquids;

(3) Acids;

(4) Oxidizers;

(5) Powdered metals; or

(6) Other materials having fire or explosive characteristics.

223.370-2 Definition.

Ammunition and explosives, as used in this section, is defined in the clause at 252.223-7002, Safety Precautions for Ammunition and Explosives.

223.370-3 Policy.

(a) DoD policy is to ensure that its contractors take reasonable precautions in handling ammunition and explosives so as to minimize the potential for mishaps.
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(b) DoD Manual 4145.26, DoD Contractors' Safety Manual for Ammunition and Explosives implements this policy, and it contains mandatory safety requirements for contractors. Contracts under which ammunition and explosives are handled must reflect this policy.

(c) When work is to be performed on a Government-owned installation, the contracting officer may use the ammunition and explosives regulation of the DoD component or installation as a substitute for, or supplement to, DoD Manual 4145.26, as long as the contract cites the ammunition and explosives regulation of the DoD component or installation.

223.370-4 Procedures.

Follow the procedures at PGI 223.370-4.

223.370-5 Contract clauses.

Use the clauses at 252.223-7002, Safety Precautions for Ammunition and Explosives, and 252.223-7003, Change in Place of Performance?Ammunition and Explosives, in all solicitations and contracts for acquisition to which this section applies.

SUBPART 223.4-223.5 [Reserved]

SUBPART 223.70 [Reserved]

SUBPART 223.71?STORAGE, TREATMENT, AND DISPOSAL OF TOXIC OR HAZARDOUS MATERIALS

223.7101 Definitions.

As used in this subpart, the terms storage and toxic or hazardous materials are defined in the clause at 252.223-7006, Prohibition on Storage, Treatment, and Disposal of Toxic or Hazardous Materials.

223.7102 Policy.

(a) 10 U.S.C. 2692 prohibits storage, treatment, or disposal on DoD installations of toxic or hazardous materials that are not owned either by DoD or by a member of the armed forces (or a dependent of the member) assigned to or provided military housing on the installation, unless an exception in 223.7104 applies.

(b) When storage of toxic or hazardous materials is authorized based on an imminent danger, the storage provided must be temporary and must cease once the imminent danger no longer exists. In all other cases of storage or disposal, the storage or disposal must be terminated as determined by the Secretary of Defense.

223.7103 Procedures.

(a) (1) Storage, treatment, or disposal of toxic or hazardous materials not owned by DoD on a DoD installation is prohibited unless?

(i) One or more of the exceptions set forth in 223.7104(a) is met including requisite approvals; or

(ii) Secretary of Defense authorization is obtained under the conditions set forth in 223.7104(b).

(2) If a contract authorizes a contractor to store, treat, or dispose of toxic or hazardous materials not owned by DoD, then the contract must explicitly identify the specific types and quantities of materials permitted. It must also outline the conditions under which these activities are allowed at DoD installations or space launch facilities. All solicitations and resulting contracts must include these requirements to ensure compliance with applicable environmental and safety regulations.

(b) If the contracting officer is uncertain as to whether particular activities are prohibited or fall under one of the exceptions in 223.7104, the contracting officer should seek advice from the cognizant office of counsel.

223.7104 Exceptions.

(a) The prohibition of 10 U.S.C. 2692 does not apply to any of the following:

(1) The storage, treatment, or disposal of materials that will be or have been used in connection with an activity of DoD or in connection with a service to be performed on a DoD installation for the benefit of DoD.

(2) The storage of strategic and critical materials in the National Defense Stockpile under an agreement for such storage with the Administrator of General Services Administration.

(3) The temporary storage or disposal of explosives in order to protect the public or to assist agencies responsible for Federal, State, or local law enforcement in storing or disposing of explosives when no alternative solution is available, if such storage or disposal is made in accordance with an agreement between the Secretary of Defense and the head of the Federal, State, or local agency concerned.

(4) The temporary storage or disposal of explosives in order to provide emergency lifesaving assistance to civil authorities.

(5) The disposal of excess explosives produced under a DoD contract, if the head of the military department concerned determines, in each case, that an alternative feasible means of disposal is not available to the contractor, taking into consideration public safety, available resources of the contractor, and national defense production requirements.

(6) The temporary storage of nuclear materials or nonnuclear classified materials in accordance with an agreement with the Secretary of Energy.

(7) The storage of materials that constitute military resources intended for use during peacetime civil emergencies in accordance with applicable DoD regulations.

(8) The temporary storage of materials of other Federal agencies in order to provide assistance and refuge for commercial carriers of such material during a transportation emergency.

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(9) The storage of any material that is not owned by DoD, if the Secretary of the military department concerned determines that the material is required or generated in connection with the authorized and compatible use of a facility of DoD, including the use of such a facility for testing material or training personnel.

(10) The treatment and disposal of any toxic or hazardous materials not owned by DoD, if the Secretary of the military department concerned determines that the material is required or generated in connection with the authorized and compatible use of a facility of that military department and the Secretary enters into a contract or agreement with the prospective user that?

(i) Is consistent with the best interest of national defense and environmental security; and

(ii) Provides for the prospective user's continued financial and environmental responsibility and liability with regard to the material.

(11) The storage of any material that is not owned by DoD if the Secretary of the military department concerned determines that the material is required or generated in connection with the use of a space launch facility located on a DoD installation or on other land controlled by the United States.

(b) The Secretary of Defense may grant an exception to the prohibition in 10 U.S.C. 2692 when essential to protect the health and safety of the public from imminent danger if the Secretary otherwise determines the exception is essential and if the storage or disposal authorized does not compete with private enterprise.

223.7105 Reimbursement.

The Secretary of Defense may assess a charge for any storage or disposal provided under this subpart. If a charge is assessed, then the contract must identify the assessment with payment to the Government on a reimbursable cost basis.

223.7106 Contract clause.

Insert the basic or the alternate of the clause at 252.223-7006, Prohibition on Storage, Treatment, and Disposal of Toxic or Hazardous Materials, in all solicitations and contracts which require, may require, or permit contractor access to a DoD installation.

(a) Insert the basic clause, unless a determination is made under 223.7104(a)(10).

(b) Insert the alternate I clause when the Secretary of the military department issues a determination under the exception at 223.7104(a)(10).

SUBPART 223.72?SAFEGUARDING SENSITIVE CONVENTIONAL ARMS, AMMUNITION, AND EXPLOSIVES

223.7200 Definition.

As used in this subpart?

Arms, ammunition, and explosives (AA&E) means those items within the scope of DoD Manual 5100.76, Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives.

223.7201 Policy.

(a) The requirements of DoD Manual 5100.76, Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives, applies to contracts when?

(1) AA&E will be provided to the contractor or subcontractor as Government-furnished property; or

(2) The principal development, production, manufacture, or purchase of AA&E is for DoD use.

(b) The requirements of DoD Manual 5100.76 do not apply to contracts when?

(1) The AA&E to be acquired under the contract is a commercial product within the meaning of FAR 2.101; or

(2) The contract will be performed in a Government-owned contractor-operated ammunition production facility. However, the requirements of DoD Manual 5100.76 apply where subcontracts issued under such a contract meet the criteria of paragraph

(a) of this section.

223.7202 Preaward responsibilities.

When an acquisition involves AA&E, technical or requirements personnel must specify in the purchase request?

(a) That AA&E is involved; and

(b) Which physical security requirements of DoD Manual 5100.76 apply.

223.7203 Contract clause.

Insert the clause at 252.223-7007, Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives, in all solicitations and contracts to which DoD Manual **5100.76 applies, in accordance with the policy at 223.7201. Complete paragraph (b) of** the clause based on information provided by cognizant technical or requirements personnel.

SUBPART 223.73?MINIMIZING THE USE OF MATERIALS CONTAINING HEXAVALENT CHROMIUM

223.7300 Definition.

As used in this subpart?

Legacy system means any program that has passed Milestone A in the defense acquisition management system, as defined in DoD Instruction 5000.02.

223.7301 Policy.

In accordance with the DoD policy memorandum of April 8, 2009, Minimizing the Use of Hexavalent Chromium, DoD policy is to minimize hexavalent chromium (an anti-corrosive) in items acquired by DoD (deliverables and construction material), due to the serious human health and environmental risks related to its use.

223.7302 [Reserved]

223.7303 Prohibition.

(a) Except as provided in 223.7304 and 223.7305, no contract may include a specification or standard that results in a deliverable or construction material containing more than 0.1 percent hexavalent chromium by weight in any homogeneous material in the deliverable or construction material where proven substitutes are available that provide acceptable performance for the application.

(b) This prohibition is in addition to any imposed by the Clean Air Act regardless of the place of performance.

223.7304 Exceptions.

The prohibition in 223.7303 does not apply to?

(a) Legacy systems and their related parts, subsystems, and components that already contain hexavalent chromium. However, the appropriate official must consider alternatives to hexavalent chromium during system modifications, follow-on procurements of legacy systems, or maintenance procedure updates; and

(b) Additional sustainment related contracts (e.g., parts, services) for a system in which use of hexavalent chromium was previously approved.

223.7305 Authorization and approval.

(a) The prohibition in 223.7303 does not apply to critical defense applications if no substitute can meet performance requirements. The DoD policy of April 8, 2009, ?Minimizing the Use of Hexavalent Chromium,? contains requirements for weighing use of hexavalent chromium versus substitutes. DoD Program Managers must consider the following factors?

(1) Cost effectiveness of alternative materials or processes;

(2) Technical feasibility of alternative materials or processes;

(3) Environment, safety, and occupational health risks associated with the use of the hexavalent chromium or substitute materials in each specific application;

(4) Achieving a DoD Manufacturing Readiness Level of at least eight for any qualified alternative;

(5) Materiel availability of hexavalent chromium and the proposed alternatives over the projected life span of the system; and

(6) Corrosion performance difference of alternative materials or processes as determined by agency corrosion subject matter experts.

(b) However, unless an exception in 223.7304 applies, the incorporation of hexavalent chromium in items acquired by DoD must be specifically authorized at a level no lower than a general or flag officer or a member of the Senior Executive Service from the Program Executive Office or equivalent level, in coordination with the component Corrosion Control and Prevention Executive. Follow the procedures in PGI **223.7305.**

223.7306 Contract clause.

Unless an exception in 223.7304 applies, or use has been authorized in accordance with **223.7305, use the clause at 252.223-7008, Prohibition of Hexavalent Chromium, in** solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that are for supplies, maintenance and repair services, or construction.

SUBPART 223.74?PROHIBITION ON PROCUREMENT OF CERTAIN ITEMS CONTAINING PERFLUOROALKYL OR POLYFLUOROALKYL SUBSTANCES

223.7400 Scope of subpart.

This subpart implements section 322(b), (c), and (d) of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116-92).

223.7401 Definition.

As used in this subpart?

Ocean-going vessel means a vessel over 59 feet in length owned or operated by DoD or the U.S. Coast Guard, other than vessels that are chartered by the Armed Forces on a time or voyage basis.

223.7402 Prohibition.

Do not procure any fire-fighting agent that contains in excess of one part per billion perfluoroalkyl substances or polyfluoroalkyl substances. Procurements of fire-fighting agent for use solely onboard ocean-going vessels are exempt from this prohibition.

223.7403 Procedures.

Do not issue a solicitation for any fire-fighting agent that contains perfluoroalkyl or polyfluoroalkyl substances in excess of one part per billion, unless the requiring activity provides documentation of the exemption at 223.7402. Maintain the documentation in the contract file.

223.7404 Contract clause.

Use the clause at 252.223-7009, Prohibition of Procurement of Fluorinated Fire-Fighting Agent for Use on Military Installations, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, relating to fire-fighting on military installations.

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PART 252?SOLICITATION PROVISIONS AND CONTRACT CLAUSES

SUBPART 252.2?TEXT OF PROVISIONS AND CLAUSES

252.223-7000 Reserved.

252.223-7001 Hazard Warning Labels.

As prescribed in 223.304, use the following clause:

HAZARD WARNING LABELS (DEC 1991)

(a) ?Hazardous material,? as used in this clause, is defined in the Hazardous

Material Identification and Material Safety Data clause of this contract.

(b) The Contractor shall label the item package (unit container) of any hazardous material to be delivered under this contract in accordance with the Hazard Communication Standard (29 CFR 1910.1200 et seq). The Standard requires that the hazard warning label conform to the requirements of the standard unless the material is otherwise subject to the labelling requirements of one of the following statutes:

(1) Federal Insecticide, Fungicide and Rodenticide Act;

(2) Federal Food, Drug and Cosmetics Act;

(3) Consumer Product Safety Act;

(4) Federal Hazardous Substances Act; or

(5) Federal Alcohol Administration Act.

(c) The Offeror shall list which hazardous material listed in the Hazardous Material Identification and Material Safety Data clause of this contract will be labelled in accordance with one of the Acts in paragraphs (b)(1) through (5) of this clause instead of the Hazard Communication Standard. Any hazardous material not listed will be interpreted to mean that a label is required in accordance with the Hazard Communication Standard.

MATERIAL (If None, Insert ?None.?) ACT

(d) The apparently successful Offeror agrees to submit, before award, a copy of the hazard warning label for all hazardous materials not listed in paragraph (c) of this clause. The Offeror shall submit the label with the Material Safety Data Sheet being furnished under the Hazardous Material Identification and Material Safety Data clause of this contract.

(e) The Contractor shall also comply with MIL-STD-129, Marking for Shipment and Storage (including revisions adopted during the term of this contract).

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(End of clause)

252.223-7002 Safety Precautions for Ammunition and Explosives.

As prescribed in 223.370-5, use the following clause:

SAFETY PRECAUTIONS FOR AMMUNITION AND EXPLOSIVES (NOV 2023)

(a) Definition. ?Ammunition and explosives,? as used in this clause?

(1) Means liquid and solid propellants and explosives, pyrotechnics, incendiaries and smokes in the following forms:

(i) Bulk,

(ii) Ammunition;

(iii) Rockets;

(iv) Missiles;

(v) Warheads;

(vi) Devices; and

(vii) Components of (i) through (vi), except for wholly inert items.

(2) This definition does not include the following, unless the Contractor is using or incorporating these materials for initiation, propulsion, or detonation as an integral or component part of an explosive, an ammunition or explosive end item, or of a weapon system?

(i) Inert components containing no explosives, propellants, or pyrotechnics;

(ii) Flammable liquids;

(iii) Acids;

(iv) Oxidizers;

(v) Powdered metals; or

(vi) Other materials having fire or explosive characteristics.

(b) Safety requirements.

(1) The Contractor shall comply with the requirements of DoD Manual 4145.26, DoD Contractors? Safety Manual for Ammunition and Explosives, hereafter referred to as ?the manual,? in effect on the date of the solicitation for this contract. The Contractor shall also comply with any other additional requirements included in the schedule of this contract.

(2) The Contractor shall allow the Government access to the Contractor's facilities, personnel, and safety program documentation. The Contractor shall allow authorized Government representatives to evaluate safety programs, implementation, and facilities.

(c) Noncompliance with the manual.

(1) If the Contracting Officer notifies the Contractor of any noncompliance with the manual or schedule provisions, the Contractor shall take immediate steps to correct the noncompliance. The Contractor is not entitled to reimbursement of costs incurred to correct noncompliances unless such reimbursement is specified elsewhere in the contract.

(2) The Contractor has 30 days from the date of notification by the Contracting Officer to correct the noncompliance and inform the Contracting Officer of the actions taken. The Contracting Officer may direct a different time period for the correction of noncompliances.

(3) If the Contractor refuses or fails to correct noncompliances within the time period specified by the Contracting Officer, the Government has the right to direct the Contractor to cease performance on all or part of this contract. The Contractor shall not resume performance until the Contracting Officer is satisfied that the corrective action was effective and the Contracting Officer so informs the Contractor.

(4) The Contracting Officer may remove Government personnel at any time the Contractor is in noncompliance with any safety requirement of this clause.

(5) If the direction to cease work or the removal of Government personnel results in increased costs to the Contractor, the Contractor shall not be entitled to an adjustment in the contract price or a change in the delivery or performance schedule

unless the Contracting Officer later determines that the Contractor had in fact complied with the manual or schedule provisions. If the Contractor is entitled to an equitable adjustment, it shall be made in accordance with the Changes clause of this contract.

(d) Mishaps. If a mishap involving ammunition or explosives occurs, the Contractor shall?

(1) Notify the Contracting Officer immediately;

(2) Conduct an investigation in accordance with other provisions of this contract or as required by the Contracting Officer; and

(3) Submit a written report to the Contracting Officer.

(e) Contractor responsibility for safety.

(1) Nothing in this clause, nor any Government action or failure to act in surveillance of this contract, shall relieve the Contractor of its responsibility for the safety of?

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(i) The Contractor's personnel and property;

(ii) The Government's personnel and property; or

(iii) The general public.

(2) Nothing in this clause shall relieve the Contractor of its responsibility for complying with applicable Federal, State, and local laws, ordinances, codes, and regulations (including those requiring the obtaining of licenses and permits) in connection with the performance of this contract.

(f) Contractor responsibility for contract performance.

(1) Neither the number or frequency of inspections performed by the Government, nor the degree of surveillance exercised by the Government, relieve the Contractor of its responsibility for contract performance.

(2) If the Government acts or fails to act in surveillance or enforcement of the safety requirements of this contract, this does not impose or add to any liability of the Government.

(g) Subcontractors.

(1) The Contractor shall insert this clause, including this paragraph (g), in every subcontract that involves ammunition or explosives.

(i) The clause shall include a provision allowing authorized Government safety representatives to evaluate subcontractor safety programs, implementation, and facilities as the Government determines necessary.

(ii) NOTE: The Government Contracting Officer or authorized representative shall notify the prime Contractor of all findings concerning subcontractor safety and compliance with the manual. The Contracting Officer or authorized representative may furnish copies to the subcontractor. The Contractor in turn shall communicate directly with the subcontractor, substituting its name for references to ?the Government?. The Contractor and higher tier subcontractors shall also include provisions to allow direction to cease performance of the subcontract if a serious

uncorrected or recurring safety deficiency potentially causes an imminent hazard to DoD personnel, property, or contract performance.

(2) The Contractor agrees to ensure that the subcontractor complies with all contract safety requirements. The Contractor will determine the best method for verifying the adequacy of the subcontractor's compliance.

(3) The Contractor shall ensure that the subcontractor understands and agrees to the Government's right to access to the subcontractor's facilities, personnel, and safety program documentation to perform safety surveys. The Government performs these safety surveys of subcontractor facilities solely to prevent the occurrence of any mishap which would endanger the safety of DoD personnel or otherwise adversely impact upon the Government's contractual interests.

(4) The Contractor shall notify the Contracting Officer or authorized representative before issuing any subcontract when it involves ammunition or explosives. If the proposed subcontract represents a change in the place of performance, the Contractor shall request approval for such change in accordance with the clause of this contract entitled ?Change in Place of Performance--Ammunition and Explosives?.

(End of clause)

252.223-7003 Change in Place of Performance--Ammunition and Explosives.

As prescribed in 223.370-5, use the following clause:

CHANGE IN PLACE OF PERFORMANCE--AMMUNITION AND EXPLOSIVES (DEC 1991)

(a) The Offeror shall identify, in the ?Place of Performance? provision of this solicitation, the place of performance of all ammunition and explosives work covered by the Safety Precautions for Ammunition and Explosives clause of this solicitation. Failure to furnish this information with the offer may result in rejection of the offer.

(b) The Offeror agrees not to change the place of performance of any portion of the offer covered by the Safety Precautions for Ammunition and Explosives clause contained in this solicitation after the date set for receipt of offers without the written approval of the Contracting Officer. The Contracting Officer shall grant approval only if there is enough time for the Government to perform the necessary safety reviews on the new proposed place of performance.

(c) If a contract results from this offer, the Contractor agrees not to change any place of performance previously cited without the advance written approval of the Contracting Officer.

(End of clause)

252.223-7004 Reserved

252.223-7005 Reserved.

252.223-7006 Prohibition on Storage, Treatment, and Disposal of Toxic or Hazardous Materials.

Basic. As prescribed in 223.7106 and 223.7106(a), use the following clause:

PROHIBITION ON STORAGE, TREATMENT, AND DISPOSAL OF TOXIC OR HAZARDOUS MATERIALS?BASIC (SEP 2014)

(a) Definitions. As used in this clause?

?Storage? means a non-transitory, semi-permanent or permanent holding, placement, or leaving of material. It does not include a temporary accumulation of a limited quantity of a material used in or a waste generated or resulting from authorized activities, such as servicing, maintenance, or repair of Department of Defense (DoD) items, equipment, or facilities.

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?Toxic or hazardous materials? means?

(i) Materials referred to in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 (42 U.S.C. 9601(14)) and materials designated under section 102 of CERCLA (42 U.S.C. 9602) (40 CFR Part 302);

(ii) Materials that are of an explosive, flammable, or pyrotechnic nature; or

(iii) Materials otherwise identified by the Secretary of Defense as specified in DoD regulations.

(b) In accordance with 10 U.S.C. 2692, the Contractor is prohibited from storing, treating, or disposing of toxic or hazardous materials not owned by DoD on a DoD installation, except to the extent authorized by a statutory exception to 10 U.S.C. 2692 or as authorized by the Secretary of Defense. A charge may be assessed for any storage or disposal authorized under any of the exceptions to 10 U.S.C. 2692. If a charge is to be assessed, then such assessment shall be identified elsewhere in the contract with payment to the Government on a reimbursable cost basis.

(c) The Contractor shall include the substance of this clause, including this paragraph (c), in all subcontracts that require, may require, or permit a subcontractor access to a DoD installation, at any subcontract tier.

(End of clause)

Alternate I. As prescribed in 223.7106 and 223.7106(b), use the following clause, which adds a new paragraph (c) and revises and redesignates paragraph (c) of the basic clause as paragraph (d):

PROHIBITION ON STORAGE, TREATMENT, AND DISPOSAL OF TOXIC OR HAZARDOUS MATERIALS?ALTERNATE I (SEP 2014)

(a) Definitions. As used in this clause?

?Storage? means a non-transitory, semi-permanent or permanent holding, placement, or leaving of material. It does not include a temporary accumulation of a limited quantity of a material used in or a waste generated or resulting from authorized activities, such as servicing, maintenance, or repair of Department of Defense (DoD) items, equipment, or facilities.

?Toxic or hazardous materials? means?

(i) Materials referred to in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 (42 U.S.C. 9601(14)) and materials designated under section 102 of CERCLA (42 U.S.C. 9602) (40 CFR Part 302);

(ii) Materials that are of an explosive, flammable, or pyrotechnic nature; or

(iii) Materials otherwise identified by the Secretary of Defense as specified in DoD regulations.

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(b) In accordance with 10 U.S.C. 2692, the Contractor is prohibited from storing, treating, or disposing of toxic or hazardous materials not owned by DoD on a DoD installation, except to the extent authorized by a statutory exception to 10 U.S.C. 2692 or as authorized by the Secretary of Defense. A charge may be assessed for any storage or disposal authorized under any of the exceptions to 10 U.S.C. 2692. If a charge is to be assessed, then such assessment shall be identified elsewhere in the contract with payment to the Government on a reimbursable cost basis.

(c) With respect to treatment or disposal authorized pursuant to DFARS **223.7104(10) (10 U.S.C. 2692(b)(10), and notwithstanding any other provision of the** contract, the Contractor assumes all financial and environmental responsibility and liability resulting from any treatment or disposal of toxic or hazardous materials not owned by DoD on a military installation. The Contractor shall indemnify, defend, and hold the Government harmless for all costs, liability, or penalties resulting from the Contractor?s treatment or disposal of toxic or hazardous materials not owned by DoD on a military installation.

(d) The Contractor shall include the substance of this clause, including this paragraph (d), in all subcontracts that require, may require, or permit a subcontractor access to a DoD installation, at any tier. Inclusion of the substance of this clause in subcontracts does not relieve the prime Contractor of liability to the Government under paragraph (c).

(End of clause)

252.223-7007 Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives.

As prescribed in 223.7203, use the following clause:

SAFEGUARDING SENSITIVE CONVENTIONAL ARMS, AMMUNITION, AND EXPLOSIVES (NOV 2023)

(a) Definition. As used in this clause?

?Arms, ammunition, and explosives (AA&E),? means those items within the scope of DoD Manual 5100.76, Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives.

(b) The requirements of DoD Manual 5100.76 apply to the following items of AA&E being developed, produced, manufactured, or purchased for the Government, or provided to the Contractor as Government-furnished property under this contract:

NATIONAL SENSITIVITY/

NOMENCLATURE STOCK NUMBER CATEGORY

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(c) The Contractor shall comply with the requirements of DoD Manual 5100.76, as specified in the statement of work. The edition of DoD Manual 5100.76 in effect on the date of issuance of the solicitation for this contract shall apply.

(d) The Contractor shall allow representatives of the Defense Counterintelligence and Security Agency (DCSA) and representatives of other appropriate offices of the Government, access at all reasonable times into its facilities and those of its subcontractors, for the purpose of performing surveys, inspections, and investigations necessary to review compliance with the physical security standards applicable to this contract.

(e) The Contractor shall notify the cognizant DCSA field office of any subcontract involving AA&E within 10 days after award of the subcontract.

(f) Subcontracts. The Contractor shall ensure that the requirements of this clause are included in all subcontracts, at every tier?

(1) For the development, production, manufacture, or purchase of AA&E; or

(2) When AA&E will be provided to the subcontractor as Government-furnished property.

(g) Nothing in this clause shall relieve the Contractor of its responsibility for complying with applicable Federal, state, and local laws, ordinances, codes, and regulations (including requirements for obtaining licenses and permits) in connection with the performance of this contract.

(End of clause)

252.223-7008 Prohibition of Hexavalent Chromium.

As prescribed in 223.7306, use the following clause:

PROHIBITION OF HEXAVALENT CHROMIUM (JAN 2023)

(a) Definitions. As used in this clause?

?Homogeneous material? means a material that cannot be mechanically disjointed into different materials and is of uniform composition throughout.

(1) Examples of homogeneous materials include individual types of plastics, ceramics, glass, metals, alloys, paper, board, resins, and surface coatings.

(2) Homogeneous material does not include conversion coatings that chemically modify the substrate.

?Mechanically disjointed? means that the materials can, in principle, be separated by mechanical actions such as unscrewing, cutting, crushing, grinding, and abrasive processes.

(b) Prohibition.

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(1) Unless otherwise specified by the Contracting Officer, the Contractor shall not provide any deliverable or construction material under this contract that?

(i) Contains hexavalent chromium in a concentration greater than 0.1 percent by weight in any homogenous material; or

(ii) Requires the removal or reapplication of hexavalent chromium materials during subsequent sustainment phases of the deliverable or construction material.

(2) This prohibition does not apply to hexavalent chromium produced as a by-product of manufacturing processes.

(c) If authorization for incorporation of hexavalent chromium in a deliverable or construction material is required, the Contractor shall submit a request to the Contracting Officer.

(d) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (d), in all subcontracts, including subcontracts for commercial products or commercial services, that are for supplies, maintenance and repair services, or construction materials.

(End of clause)

252.223-7009 Prohibition of Procurement of Fluorinated Aqueous Film-

Forming Foam Fire-Fighting Agent for Use on Military Installations.

As prescribed in 223.7404, use the following clause:

PROHIBITION OF PROCUREMENT OF FLUORINATED AQUEOUS FILM-FORMING FOAM FIRE-FIGHTING AGENT FOR USE ON MILITARY INSTALLATIONS (FEB 2024)

(a) Definitions. As used in this clause, ?perfluoroalkyl substances? and ?polyfluoroalkyl substances? have the meanings given in section 322(f) of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116-92).

(b) Prohibition. The Contractor shall not provide or use under this contract any aqueous film-forming foam fire-fighting agent that contains perfluoroalkyl substances or polyfluoroalkyl substances in excess of one part per billion.

(c) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (c), in all subcontracts, including subcontracts for commercial products and commercial services, relating to fire-fighting on a military installation.

(End of clause)

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PGI 223?SUSTAINABLE ACQUISITION, MATERIAL SAFETY, AND POLLUTION PREVENTION

PGI 223.1?SUSTAINABLE PRODUCTS

PGI 223.107 Agency Programs.

(a)(i) Departments and agencies must centrally collect information submitted in accordance with the clause at FAR 52.223-9 for reporting to the Office of the Deputy Under Secretary of Defense (Installations and Environment). The information is collected in the Federal Procurement Data System (FPDS).

PGI 223.3?MATERIAL SAFETY

PGI 223.370 Safety precautions for ammunition and explosives.

PGI 223.370-4 Procedures.

(1) Preaward phase.

(i) Waiver of the mandatory requirements.

(A) Before either omitting the clause at DFARS 252.223-7002, Safety Precautions for Ammunition and Explosives, from solicitations and contracts or waiving the mandatory requirements of the manual, obtain approval of?

(1) The safety personnel responsible for ammunition and explosives safety; and

(2) The head of the contracting activity.

(B) If the contracting officer decides to waive the mandatory requirements before award, then state in the solicitation, or in an amendment of the solicitation, the specific requirements to be waived.

(C) If the head of the contracting activity declines to approve a request for waiver, but the prospective contractor agrees to take corrective action to bring the operation into compliance, make the corrective action a part of the resulting contract.

(ii) Transportation considerations. If shipment of ammunition and explosives is involved in the contract, address in the Schedule of the contract the applicable Department of Transportation or Military Surface Deployment and Distribution Command requirements and any other requirements for transportation, packaging, marking, and labeling.

(iii) Disposition of excess. Include instructions within the contract concerning final disposition of excess Government furnished material containing ammunition and explosives, including defective or rejected supplies.

(iv) Preaward safety survey. Before awarding any contract, including purchase orders, involving ammunition and explosives, obtain a preaward ammunition and explosives safety survey. If the prospective contractor proposes subcontracting any ammunitions or

explosive work, include a review of the subcontractor's facility in the preaward safety survey.

(2) Postaward phase.

(i) Contract administration office responsibility.

(A) The contract administration office is responsible for verifying that the safety requirements of the clause at DFARS 252.223-7002, Safety Precautions for Ammunition and Explosives, are being implemented in a manner that will reduce, to the maximum extent practicable, or eliminate the probability of a mishap occurring.

(B) The clause at DFARS 252.223-7002, Safety Precautions for Ammunition and Explosives, requires compliance with DoD Manual 4145.26, Contractors? Safety Manual

for Ammunition and Explosives. This manual requires the contractor to submit to the administrative contracting officer (ACO) any postaward requests for a waiver of the contract safety standards, a site plan modification, or a construction review. The ACO shall review any request and make recommendations to the contracting officer, who must decide after considering recommendations of the ACO and safety personnel responsible for ammunition and explosive safety.

(1) If the request arrives at the contracting office without evidence that the ACO has seen it, immediately send it to the ACO for review and recommendations.

(2) Upon making a determination approving or disapproving the contractor's request, send the determination to the ACO for transmission to the contractor.

(ii) Subcontracts.

(A) The clause at DFARS 252.223-7002, Safety Precautions for Ammunition and Explosives, requires the contractor to notify the contracting officer when placing a subcontract for ammunition and explosives. The contracting officer should coordinate with the safety personnel and request supporting contract administration in accordance with FAR **42.202(e). If the contracting officer believes the nature of the subcontract work poses a** potential danger to Government property, Government personnel, production capability, or contract completion, request supporting contract administration.

(B) If the preaward safety survey identified areas in which a subcontractor was not complying with the manual, and the subcontractor was supposed to correct the deficiencies before start-up, require a preoperations survey to verify that the subcontractor made the corrections.

(C) When postaward safety reviews by the Government uncover any safety deficiencies in the subcontractor's operation, the review team must inform the ACO cognizant of the subcontractor, who must immediately notify the ACO cognizant of the prime contractor. The ACO cognizant of the prime shall inform the prime contractor of deficiencies requiring correction. The notifications shall be made by the most expeditious means appropriate to the circumstance. If a critical safety deficiency poses an imminent danger, the ACO cognizant of the prime must make the notifications by the most expeditious means available.

PGI 223.4?RESERVED

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Attachment A2

DARS Tracking Number: 2026-O0018

Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 23

Defense FAR Supplement (DFARS) Part 223

PGI 223.73?MINIMIZING THE USE OF MATERIALS CONTAINING HEXAVALENT CHROMIUM

PGI 223.7305 Authorization and approval.

Ensure that the appropriate authorizations from the program executive office are included in the solicitation and contract. Forward proposals submitted by an offeror or requests from a Contractor seeking authorization to use hexavalent chromium in a deliverable item, to the cognizant program executive office for evaluation and, if necessary, authorization by the appropriate official.

PART 24

OFFICE OF THE ASSISTANT SECRETARY OF WAR

Status: Class D

OFFICE OF THE ASSISTANT SECRETARY OF WAR

3000 DEFENSE PENTAGON

WASHINGTON, DC 20301-3000

ACQUISITION

AND SUSTAINMENT

In reply refer to

DARS Tracking Number: 2026-O0009

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES SPECIAL OPERATIONS

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES TRANSPORTATION

COMMAND (ATTN: ACQUISITION EXECUTIVE)

DEPUTY ASSISTANT SECRETARY OF THE ARMY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE NAVY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE

(CONTRACTING)

DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Class Deviation?Revolutionary Federal Acquisition Regulation (FAR) Overhaul

Part 24, Defense FAR Supplement (DFARS) Part 224

Effective February 1, 2026, contracting officers shall use?

? The revised FAR Part 24, Protection of Privacy and Freedom of Information published on the Revolutionary FAR Overhaul web page at https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-24 in lieu of the text codified at 48 CFR chapter 1 (https://www.ecfr.gov); and

? The attached DFARS Part 224, Protection of Privacy and Freedom of Information in lieu of the text codified at 48 CFR chapter 2.

This class deviation implements the following:

? Section 2 of E.O. 14275, Restoring Common Sense to Federal Procurement, which establishes the policy that the FAR ?should only contain provisions required by statute or essential to sound procurement, and any FAR provisions that do not advance these objectives should be removed.

? Section 4(a) of E.O. 14265, Modernizing Defense Acquisitions and Spurring Innovation in the Defense Industrial Base which requires the Secretary of War to eliminate or revise any unnecessary supplemental regulations or any other internal

guidance, such as relevant parts of the Financial Management Regulation and Defense Federal Acquisition Regulation Supplement.

DARS Tracking Number: 2026-O0009

Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 24

Defense FAR Supplement (DFARS) Part 224

? The Office of Management and Budget memorandum, M-25-26 issued on May 2, 2025, titled, Overhauling the Federal Acquisition Regulation, which provided additional guidance to federal agencies regarding the FAR overhaul.

This class deviation remains in effect until rescinded or incorporated into the FAR, DFARS, and DFARS PGI. Inquiries regarding this class deviation can be addressed to osd.pentagon.ousd-a-s.mbx.dfars@mail.mil.

John M. Tenaglia

Principal Director,

Defense Pricing, Contracting, and

Acquisition Policy

Attachments:

As stated

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Attachment A1

DARS Tracking Number: 2026-O0009

Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 24

Defense FAR Supplement (DFARS) Part 224

PART 224?PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

SUBPART 224.1?PROTECTION OF INDIVIDUAL PRIVACY

224.103 Procedures.

(b)(2) DoD rules and regulations are contained in DoDI 5400.11, DoD Privacy and Civil Liberties Programs; DoD 5400.11-R, Department of Defense Privacy Program; and DoDM 5400.11, DoD Privacy and Civil Liberties Programs: Breach Preparedness and Response Plan.

Subpart 224.2?Freedom of Information Act

224.203 Policy.

(a) DoD implementation is in DoDD 5400.7, DoD Freedom of Information Act Program, and DoDM 5400.7, DoD Freedom of Information Act Program.

PART 25

OFFICE OF THE ASSISTANT SECRETARY OF WAR

Status: Class D

OFFICE OF THE ASSISTANT SECRETARY OF WAR

3000 DEFENSE PENTAGON

WASHINGTON, DC 20301-3000

ACQUISITION

AND SUSTAINMENT

In reply refer to

DARS Tracking Number: 2026-O0041

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES SPECIAL OPERATIONS

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES TRANSPORTATION

COMMAND (ATTN: ACQUISITION EXECUTIVE)

DEPUTY ASSISTANT SECRETARY OF THE ARMY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE NAVY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE

(CONTRACTING)

DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Class Deviation?Revolutionary Federal Acquisition Regulation (FAR) Overhaul

Part 25, Defense FAR Supplement (DFARS) Part 225

Effective February 17, 2026, contracting officers shall use?

? The revised FAR Part 25, Foreign Acquisition, published on the Revolutionary FAR Overhaul web page at https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-25 in lieu of the text codified at 48 CFR chapter 1 (https://www.ecfr.gov).

? The attached DFARS Part 225, Foreign Acquisition, in lieu of the text codified at 48 CFR chapter 2; and

? The attached DFARS Procedures, Guidance, and Information (PGI) 225, Foreign Acquisition, in lieu of the PGI text published on the Defense Pricing, Contracting, and Acquisition Policy web page at https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.

This class deviation implements the following:

? Section 2 of E.O. 14275, Restoring Common Sense to Federal Procurement, which establishes the policy that the FAR ?should only contain provisions required by statute or essential to sound procurement, and any FAR provisions that do not

advance these objectives should be removed.?
DARS Tracking Number: 2026-O0041
Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 25
Defense FAR Supplement (DFARS) Part 225
? Section 4(a) of E.O. 14265, Modernizing Defense Acquisitions and Spurring Innovation in the Defense Industrial Base, which requires the Secretary of War to eliminate or revise any unnecessary supplemental regulations or any other internal guidance, such as relevant parts of the Financial Management Regulation and Defense Federal Acquisition Regulation Supplement.
? The Office of Management and Budget memorandum, M-25-26 issued on May 2, 2025, titled, Overhauling the Federal Acquisition Regulation, which provided additional guidance to federal agencies regarding the FAR overhaul.
This class deviation remains in effect until rescinded or incorporated into the FAR, DFARS, and DFARS PGI. Inquiries regarding this class deviation can be addressed to osd.pentagon.ousd-a-s.mbx.dfars@mail.mil.
John M. Tenaglia
Principal Director,
Defense Pricing, Contracting, and
Acquisition Policy
Attachments:
As stated
2
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DARS Tracking Number: 2026-O0041
Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 25
Defense FAR Supplement (DFARS) Part 225

PART 225?FOREIGN ACQUISITION

225.001 General.

For guidance on evaluating offers of foreign end products, see PGI 225.001.

225.003 Definitions.

As used in this part?
?600 series of the Commerce Control List? means the series of 5-character export control classification numbers (ECCNs) of the Commerce Control List of the Export Administration Regulations in 15 CFR part 774, supplement no. 1, that have a ?6? as the third character. The 600 series constitutes the munitions and munitions-related ECCNs within the larger Commerce Control List. (See definition of ?600 series? in 15 **CFR 772.)**
?Caribbean Basin country end product? includes petroleum or any product derived from petroleum.
?Defense equipment? means any equipment, item of supply, component, or end product purchased by DoD.
?Domestic concern? means?
(1) A concern incorporated in the United States (including a subsidiary that is incorporated in the United States, even if the parent corporation is a foreign concern);

or

(2) An unincorporated concern having its principal place of business in the United States.

?Domestic end product? means?

(1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both?

(i) An unmanufactured end product mined or produced in the United States; or

(ii) An end product manufactured in the United States if?

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract in accordance with FAR 25.101(d); or award is made before January 1, 2030, for a foreign end product that exceeds 55 percent domestic content (see 225.103(b)(ii)). The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Components of unknown origin are treated as foreign. Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is

considered to have been mined, produced, or manufactured in the United States

(regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that?

(1) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(2) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a commercially available off-the-shelf (COTS) item; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of iron and steel not produced in the United States or a qualifying country constitutes less than 5 percent of the cost of all the components used in the end product (produced in the United States or a qualifying country means that all manufacturing processes of the iron or steel must take place in the United States or a qualifying country, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States or a qualifying country includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States or a qualifying country, utilized in the manufacture of the end product and a good faith estimate of the cost of

all iron or steel components not produced in the United States or a qualifying country, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the explanation of cost of components in paragraph (1)(ii)(A) of this definition.

?Eligible product? means, instead of the definition in FAR 25.003?

(1) A foreign end product that?

(i) Is in a category listed in 225.401-70; and

(ii) Is not subject to discriminatory treatment, due to the applicability of a trade agreement to a particular acquisition;

(2) A foreign construction material that is not subject to discriminatory treatment, due to the applicability of a trade agreement to a particular acquisition; or

(3) A foreign service that is not subject to discriminatory treatment, due to the applicability of a trade agreement to a particular acquisition.

?Foreign concern? means any concern other than a domestic concern.

?Free Trade Agreement country? does not include Oman.

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Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 25

Defense FAR Supplement (DFARS) Part 225

?Nonqualifying country? means a country other than the United States or a qualifying country.

?Nonqualifying country component? means a component mined, produced, or manufactured in a nonqualifying country.

?Qualifying country? means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

? Australia

? Austria (see 225.872-1(b) for additional guidance)

? Belgium

? Canada

? Czech Republic

? Denmark

? Egypt

? Estonia

? Finland

? France

? Germany

? Greece

? Israel

? Italy
? Japan
? Latvia
? Lithuania
? Luxembourg
? Netherlands
? Norway
? Poland
? Portugal
? Slovenia
? Spain
? Sweden
? Switzerland
? Turkey
? United Kingdom of Great Britain and Northern Ireland.
?Qualifying country component? means a component mined, produced, or manufactured in a qualifying country.
?Qualifying country end product? means?
(1) An unmanufactured end product mined or produced in a qualifying country; or
(2) An end product manufactured in a qualifying country if?
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Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 25
Defense FAR Supplement (DFARS) Part 225
(i) The cost of the following types of components exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract:
(A) Components mined, produced, or manufactured in a qualifying country.
(B) Components mined, produced, or manufactured in the United States.
(C) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States. Components of unknown origin are treated as foreign; or
(ii) The end product is a COTS item. Qualifying country end product is also defined in the clause at 252.225-7021, Trade Agreements.
?Qualifying country offer? means an offer of a qualifying country end product, including the price of transportation to destination.
?Source?, when restricted by words such as foreign, domestic, or qualifying country, means the actual manufacturer or producer of the end product or component.
?United States Munitions List? means the munitions list of the International Traffic in Arms Regulation in 22 CFR part 121.
225.070 Reporting of acquisition of end products manufactured outside the United States.

Follow the procedures at PGI 225.070 for entering the data on the acquisition of end products manufactured outside the United States.

SUBPART 225.1?BUY AMERICAN?SUPPLIES

225.101 General.

(a) For DoD, the following two-part test determines whether a manufactured end product is a domestic end product:

(i) The end product is manufactured in the United States; and

(ii)(A) Except for an end product that consists wholly or predominantly of iron or steel or a combination of both, the cost of its U.S. and qualifying country components exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, but see paragraph (d) of this section. This test is applied to end products only and not to individual components.

(B) For an end product that consists wholly or predominantly of iron or steel or a combination of both, the cost of iron and steel not produced in the United States or a qualifying country must constitute less than 5 percent of the cost of all the

components used in the end product. The cost of iron and steel not produced in the United States or a qualifying country includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States or a qualifying country, utilized in the manufacture of the end product and a good faith estimate of the cost of all iron or steel components not produced in the United States or a qualifying country, excluding commercially available off-the-shelf (COTS) fasteners. The domestic content test of the Buy American statute has not been waived for acquisitions of COTS items in this category, except for COTS fasteners.

(c) Additional exceptions that allow the purchase of foreign end products are listed at 225.103.

(d)(1) In lieu of the threshold increases in FAR 25.101(a)(2)(i), use the domestic content threshold increases in paragraph (a)(ii) of this section. The senior procurement executive may approve application of an alternate domestic content test, under which the domestic content threshold in effect at the time of contract award will apply to the entire period of performance of the contract, following consultation with the Office of Management and Budget?s Made in America Office. See PGI 225.101 for guidance on documentation requirements when the senior procurement executive approves application of an alternate domestic content test.

(2) When the senior procurement executive allows for application of an alternate domestic content test for the contract pursuant to FAR 25.101(d)(1) (but see paragraph (d)(1) of this section)?

(A) See 225.601(2)(ii) for use of alternate II of the clause at 252.225-7001,

Buy American and Balance of Payments Program;

(B) See 225.601(9) for use of the basic or alternate provision at 252.225-7035, Buy American?Free Trade Agreements?Balance of Payments Program Certificate, or the basic or alternate clause at 252.225-7036, Buy American?Free Trade Agreements?Balance of Payments Program; and

(C) See 225.601(10)(i) for use of the basic or alternate clause at 252.225-7036, Buy American?Free Trade Agreements?Balance of Payments Program.

225.103 Exceptions.

(a)(i)(A) 225.872 lists public interest exceptions for certain countries.

(B) For procurements covered by the World Trade Organization Government Procurement Agreement, the Under Secretary of Defense (Acquisition and Sustainment) has determined that applying the Buy American statute to end products that are substantially transformed in the United States is inconsistent with the public interest.

(ii)(A) Normally, use the evaluation procedures in subpart 225.5, but consider recommending a public interest exception if the purposes of the Buy American statute are not served, or to meet a need set forth in 10 U.S.C. 4861. For example, a public interest exception may be appropriate?

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Defense FAR Supplement (DFARS) Part 225

(1) If accepting the low domestic offer will involve substantial foreign expenditures, or accepting the low foreign offer will involve substantial domestic expenditures;

(2) To ensure access to advanced state-of-the-art commercial technology; or

(3) To maintain the same source of supply for spare and replacement parts (also see paragraph (b)(iii)(B) of this section)?

(i) For an end item that qualifies as a domestic end product; or

(ii) In order not to impair integration of the military and commercial industrial base.

(B) Except as provided in PGI 225.872-4, process a determination for a public interest exception after consideration of the factors in 10 U.S.C. 4861?

(1) At a level above the contracting officer for acquisitions valued at or below the simplified acquisition threshold;

(2) By the head of the contracting activity for acquisitions with a value greater than the simplified acquisition threshold but less than $2 million; or

(3) By the agency head for acquisitions valued at $2 million or more.

(b)(i) A determination is required that an article, material, or supply is not reasonably available when?

(A) Domestic offers are insufficient to meet the requirement; and

(B) Award will be made on other than a qualifying country or eligible end product.

(ii) A determination is not required before January 1, 2030, if an offer is received for a foreign end product that exceeds 55 percent domestic content. The determination must be approved?

(A) At a level above the contracting officer for acquisitions valued at or below the simplified acquisition threshold;

(B) By the chief of the contracting office for acquisitions with a value greater than the simplified acquisition threshold but less than $2 million; or

(C) By the head of the contracting activity or immediate deputy for acquisitions valued at $2 million or more.

(iii) A separate determination whether an article is reasonably available is not required for the following articles because DoD has already determined that these articles are not reasonably available from domestic sources:

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Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 25

Defense FAR Supplement (DFARS) Part 225

(A) Spare or replacement parts that must be acquired from the original foreign manufacturer or supplier.

(B) Foreign drugs acquired by the Defense Supply Center, Philadelphia, when the Director, Pharmaceuticals Group, Directorate of Medical Materiel, determines that only the requested foreign drug will fulfill the requirements.

(iv) Under coordinated acquisition (see subpart 208.70), the determination is the responsibility of the requiring department when the requiring department specifies acquisition of a foreign end product.

(c) The cost of a domestic end product is unreasonable if it is not the low evaluated offer when evaluated under subpart 225.5.

225.106 Determining reasonableness of cost.

(b) Use an evaluation factor of 50 percent instead of the factors specified in FAR **25.106(b)(1)(i) and (c)(1)(i).**

225.170 Acquisition from or through other Government agencies.

Contracting activities must apply the evaluation procedures in subpart 225.5 when using Federal supply schedules.

SUBPART 225.2?BUY AMERICAN?CONSTRUCTION MATERIALS

225.202 Exceptions.

(a)(2) A nonavailability determination is not required for construction materials listed in FAR 25.104(a). For other materials, a nonavailability determination must be approved at the levels specified in 225.103(b)(ii). Use the estimated value of the construction materials to determine the approval level. A nonavailability determination is not required before January 1, 2030, if an offer is received for foreign construction material that exceeds 55 percent domestic content.

225.206 Noncompliance.

(c)(4) Prepare any report of noncompliance in accordance with the procedures at **209.406-3 or 209.407-3.**

225.270 Energy savings service contracts.

If construction and construction materials will be used during the performance of a contract for DoD energy savings service requirements, see PGI 225.270 for additional guidance.

SUBPART 225.3?[RESERVED]

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Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 25

Defense FAR Supplement (DFARS) Part 225

SUBPART 225.4?TRADE AGREEMENTS

225.401 Exceptions.

(a)(2)(A) If a department or agency considers an individual acquisition of a product to be indispensable for national security or national defense purposes and appropriate for exclusion from the provisions of FAR subpart 25.4, it may submit a request with supporting rationale to the Principal Director, Defense Pricing, Contracting, and Acquisition Policy (DPCAP), Office of the Under Secretary of Defense (Acquisition and Sustainment) (OUSD(A&S)DPCAP). Approval by OUSD(A&S)DPCAP is not required if?

(1) Purchase from foreign sources is restricted by statute (see subpart **225.70);**

(2) Another exception in FAR 25.401 applies to the acquisition; or

(3) Competition from foreign sources is restricted under subpart 225.71.

(B) [Reserved].

225.401-70 End products subject to trade agreements.

Acquisitions of end products in the following product service groups (PSGs) are covered by trade agreements if the value of the acquisition is at or above the applicable trade agreement threshold and no exception applies. If an end product is not in one of the listed groups, the trade agreements do not apply. The definition of Caribbean Basin country end products in FAR 25.003 excludes those end products that are not eligible for duty-free treatment under 19 U.S.C. 2703(b). Therefore, certain watches, watch parts, and luggage from certain Caribbean Basin countries are not eligible products. However, 225.003 expands the definition of Caribbean Basin country end products to include petroleum and any product derived from petroleum, in accordance with Section 8094 of Pub. L. 103-139.

PSG Category/Description

22 Railway equipment

23 Motor vehicles, trailers, and cycles (except 2305, 2350, and buses under 2310)

24 Tractors

25 Vehicular equipment components

26 Tires and tubes

29 Engine accessories

30 Mechanical power transmission equipment

32 Woodworking machinery and equipment

34 Metalworking machinery
35 Service and trade equipment
36 Special industry machinery (except 3690)
37 Agricultural machinery and equipment
38 Construction, mining, excavating, and highway maintenance equipment
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Defense FAR Supplement (DFARS) Part 225
PSG Category/Description
39 Materials handling equipment
40 Rope, cable, chain, and fittings
41 Refrigeration, air conditioning, and air circulating equipment
Fire fighting, rescue, and safety equipment; and environmental protection
42
equipment and materials
43 Pumps and compressors
44 Furnace, steam plant, and drying equipment (except 4470)
45 Plumbing, heating, and waste disposal equipment
46 Water purification and sewage treatment equipment
47 Pipe, tubing, hose, and fittings
48 Valves
Maintenance and repair shop equipment (except 4920-4927, 4931-4935, 4960,
49
4970)
53 Hardware and abrasives
54 Prefabricated structures and scaffolding
55 Lumber, millwork, plywood, and veneer
56 Construction and building materials
61 Electric wire, and power and distribution equipment
62 Lighting fixtures and lamps
63 Alarm, signal, and security detection systems
65 Medical, dental, and veterinary equipment and supplies
Instruments and laboratory equipment (except aircraft clocks under 6645)?See
66 FAR 25.003 exclusion of certain watches and watch parts for certain Caribbean
Basin countries
67 Photographic equipment
68 Chemicals and chemical products
69 Training aids and devices
Automatic data processing equipment (including firmware), software, supplies
70
and support equipment
71 Furniture
72 Household and commercial furnishings and appliances

73 Food preparation and serving equipment
74 Office machines, text processing systems and visible record equipment
75 Office supplies and devices
76 Books, maps, and other publications
77 Musical instruments, phonographs, and home-type radios
78 Recreational and athletic equipment
79 Cleaning equipment and supplies
80 Brushes, paints, sealers, and adhesives
81 Containers, packaging, and packing supplies (except 8140)
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Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 25
Defense FAR Supplement (DFARS) Part 225
PSG Category/Description
Pins, needles, and sewing kits (only part of 8315) and flagstaffs, flagpoles, and
83
flagstaff trucks (only part of 8345)
Luggage (only 8460)?See FAR 25.003 for exclusion of luggage for Caribbean
84
Basin countries
85 Toiletries
87 Agricultural supplies
88 Live animals
89 Tobacco products (only 8975)
91 Fuels, lubricants, oils, and waxes
93 Nonmetallic fabricated materials
94 Nonmetallic crude materials
96 Ores, minerals, and their primary products
99 Miscellaneous

225.402 General.

To estimate the value of the acquisition, use the total estimated value of end products covered by trade agreements (see 225.401-70).

225.403 World Trade Organization Government Procurement Agreement and

Free Trade Agreements.

(c) For acquisitions of supplies covered by the World Trade Organization Government Procurement Agreement, acquire only U.S.-made, qualifying country, or designated country end products unless?

(i) The contracting officer determines that offers of U.S.-made, qualifying country, or designated country end products from responsive, responsible offerors are either?

(A) Not received; or

(B) Insufficient to fill the Government?s requirements. In this case, accept all responsive, responsible offers of U.S.-made, qualifying country, and eligible products

before accepting any other offers; or

(ii) A national interest waiver under 19 U.S.C. 2512(b)(2) is granted. Such waivers are on a case-by-case basis. Except as delegated in paragraphs (c)(i)(A) and (B) of this section, submit any request for a national interest waiver to the Principal Director, Defense Pricing, Contracting, and Acquisition Policy in accordance with department or agency procedures. Include supporting rationale with the request.

(A) The head of the contracting activity may approve a national interest waiver for a purchase by an overseas purchasing activity. A written statement from the requiring activity that the products being acquired are critical for the support of U.S. forces stationed abroad must accompany the waiver request.

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(B) The Commander or Director, Defense Energy Support Center, may approve national interest waivers for purchases of fuel for use by U.S. forces overseas.

225.408 Procedures.

(a)(4) The requirements of FAR 25.408(a)(4), on submission of offers in U.S. dollars, do not apply to overseas acquisitions or to Defense Energy Support Center post, camp, or station overseas requirements.

SUBPART 225.5?EVALUATING FOREIGN OFFERS?SUPPLY CONTRACTS

225.502 Application.

(a) [Reserved]

(b) Use the following procedures instead of the procedures in FAR 25.502(b) for acquisitions subject to the World Trade Organization Government Procurement Agreement:

(i) Consider only offers of U.S.-made, qualifying country, or designated country end products, except as permitted by 225.403.

(ii) If price is the determining factor, award on the low offer.

(c) Use the following procedures instead of those in FAR 25.502(c) for acquisitions subject to the Buy American statute or the Balance of Payments Program:

(i)(A) If the acquisition is subject only to the Buy American statute or the Balance of Payments Program, then only qualifying country end products are exempt from application of the Buy American or Balance of Payments Program evaluation factor.

(B) If the acquisition is also subject to a Free Trade Agreement, then eligible products of the applicable Free Trade Agreement country are also exempt from application of the Buy American or Balance of Payments Program evaluation factor (but see 225.106).

(ii) If price is the determining factor, use the following procedures:

(A) If the low offer is a domestic offer, award on that offer.

(B) If no domestic offers exist, award on the low offer (see example in PGI **225.504(1)).**

(C) If the low offer is a foreign offer that is exempt from application of the Buy American or Balance of Payments Program evaluation factor, award on that offer. If the low offer is a qualifying country offer from a country listed at 225.872-1(b), execute a determination in accordance with 225.872-4. A qualifying country offer is subject to the domestic content requirement for end products that are wholly or predominantly of iron or steel or a combination of both.

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(D) If the low offer is a foreign offer that is not exempt from application of the Buy American or Balance of Payments Program evaluation factor, and another foreign offer is received that is exempt and is lower than the lowest domestic offer, award on the low foreign offer (see example in PGI 225.504(2)).

(E) Otherwise, apply the 50 percent evaluation factor to the low foreign offer.

(1) If the price of the low domestic offer is less than the evaluated price of the low foreign offer, award on the low domestic offer (see example in PGI **225.504(3)).**

(2) If the evaluated price of the low foreign offer remains less than the low domestic offer, award on the low foreign offer (see example in PGI 225.504(4)).

(iii) If price is not the determining factor, use the following procedures:

(A) If domestic offers are received, apply the 50 percent Buy American or Balance of Payments Program evaluation factor to all foreign offers unless an exemption applies.

(B) Evaluate in accordance with the criteria of the solicitation.

(C) If these procedures will not result in award on a domestic offer, reevaluate offers without the 50 percent factor. If this will result in award on an offer to which the Buy American statute or Balance of Payments Program applies, but evaluation in accordance with paragraph (c)(ii) of this section would result in award on a domestic offer, proceed with award only after execution of a determination in accordance with 225.103(a)(ii)(B) (domestic preference would be inconsistent with the public interest).

225.503 Group offers.

Evaluate group offers in accordance with FAR 25.503, but also apply the evaluation procedures of 225.502.

225.504 Evaluation examples.

For examples that illustrate the evaluation procedures in 225.502(c)(ii), see PGI **225.504.**

SUBPART 225.6?SOLICITATION PROVISIONS AND CONTRACT CLAUSES

225.600 Scope of subpart.

This subpart prescribes the clauses that implement subparts 225.1 through 225.5 and **225.7 through 225.10. The clauses that implement subparts 225.70 through 225.75 are**

prescribed within those subparts.

225.601 Acquisition of supplies.

(1) Insert the provision at 252.225-7000, Buy American?Balance of Payments Program Certificate, instead of the provision at FAR 52.225-2, Buy American Certificate, in any solicitation, including solicitations using FAR part 12 procedures for

the acquisition of commercial products and commercial services, that includes the basic or the alternate of the clause at 252.225-7001, Buy American and Balance of Payments Program.

(2)(i) Insert the basic or the alternate of the clause at 252.225-7001, Buy American and Balance of Payments Program, instead of the clause at FAR 52.225-1, Buy American ?Supplies, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, unless?

(A) All line items will be acquired from a particular source or sources under the authority of FAR 6.103-3;

(B) All line items require domestic or qualifying country end products in accordance with subpart 225.70, but note that this exception does not apply if subpart **225.70 only requires manufacture of the end product in the United States or in the** United States or Canada, without a corresponding requirement for use of domestic components;

(C) The acquisition is for supplies for use within the United States and an exception to the Buy American statute applies, e.g., nonavailability or public interest (see FAR 25.103 and 225.103);

(D) The acquisition is for supplies for use outside the United States and an exception to the Balance of Payments Program applies (see 225.7501); or

(E) One or more of the basic or the alternates of the following clauses will apply to all line items in the contract:

(1) 252.225-7021, Trade Agreements.

(2) 252.225-7036, Buy American ?Free Trade Agreements?Balance of Payments Program.

(ii) Insert alternate II of the clause in lieu of the basic clause in solicitations and contracts if an alternate domestic content threshold will apply to the entire period of performance as approved by the senior procurement executive (see 225.101(d)).

(3) Insert the clause at 252.225-7002, Qualifying Country Sources as Subcontractors, in solicitations and contracts that include the basic or one of the alternates of the following clauses:

(i) 252.225-7001, Buy American and Balance of Payments Program.

(ii) 252.225-7021, Trade Agreements.

(iii) 252.225-7036, Buy American ?Free Trade Agreements?Balance of

Payments Program.
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(4) Insert the clause at 252.225-7013, Duty-Free Entry, instead of the clause at FAR **52.225-8. Do not use the clause for acquisitions of supplies that will not enter the** customs territory of the United States.

(5) Insert the provision at 252.225-7020, Trade Agreements Certificate, instead of the provision at FAR 52.225-6, Trade Agreements Certificate, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services, that include the clause at 252.225-7021, Trade Agreements. Do not include the provision if the solicitation includes alternate III of the clause at **252.225-7021. If the solicitation includes the provision at FAR 52.204-7, do not** separately list the provision 252.225-7020 in the solicitation.

(6) Insert the basic or the alternate of the clause at 252.225-7021, Trade Agreements, instead of the clause at FAR 52.225-5, Trade Agreements, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, if the World Trade Organization Government Procurement Agreement applies, i.e., the acquisition is of end products listed at 225.401-70, the value of the acquisition equals or exceeds $174,000, and none of the exceptions at FAR 25.401(a) applies.

(i) Insert the alternate III clause in lieu of the basic clause in solicitations and contracts when an alternate domestic content threshold will apply to the entire period of performance as approved by the senior procurement executive (see 225.101(d)).

(ii) Do not insert the basic or the alternate of the clause if purchase from foreign sources is restricted, unless the contracting officer anticipates a waiver of the restriction.

(iii) The acquisition of eligible and noneligible products under the same contract may result in the application of trade agreements to only some of the items acquired. In such case, indicate in the Schedule those items covered by the Trade Agreements clause.

(7) Insert the provision at 252.225-7032, Waiver of United Kingdom Levies? Evaluation of Offers, in solicitations if a U.K. firm is expected to?

(i) Submit an offer; or

(ii) Receive a subcontract exceeding $1 million.

(8) Insert the clause at 252.225-7033, Waiver of United Kingdom Levies, in solicitations and contracts if a U.K. firm is expected to?

(i) Submit an offer; or

(ii) Receive a subcontract exceeding $1 million.

(9) Insert the basic or an alternate of the provision at 252.225-7035, Buy American?Free Trade Agreements?Balance of Payments Program Certificate, instead of the provision at FAR 52.225-4, Buy American?Free Trade Agreements?Israeli

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procedures for the acquisition of commercial products and commercial services, that include the basic or an alternate of the clause at 252.225-7036, Buy American?Free Trade Agreements?Balance of Payments Program.

(i) Insert the basic provision in solicitations when the basic or alternate VI of the clause at 252.225-7036 is used.

(ii) Insert the alternate I provision when the solicitation includes alternate I or alternate VII of the clause at 252.225-7036.

(iii) Insert the alternate IV provision when the solicitation includes alternate IV or alternate X of the clause at 252.225-7036.

(10)(i) Except as provided in paragraph (10)(ii) of this section, insert the basic or an alternate of the clause at 252.225-7036, Buy American?Free Trade Agreements? Balance of Payments Program, instead of the clause at FAR 52.225-3, Buy American? Free Trade Agreements?Israeli Trade Act, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, for the items listed at 225.401-70, when the estimated value is less than $174,000, unless an exception at FAR 25.401 or 225.401 applies.

(A) Insert the basic clause in solicitations and contracts when the estimated value equals or exceeds $100,000, but is less than $174,000.

(B) Insert the alternate I clause in solicitations and contracts when the estimated value is less than $102,280.

(C) Insert the alternate IV clause in solicitations and contracts when the estimated value equals or exceeds $102,280 but is less than $174,000.

(D) Insert the alternate VI clause in lieu of the basic clause in solicitations and contracts, when?

(1) The estimated value equals or exceeds $100,000 but is less than $174,000; and

(2) An alternate domestic content threshold will apply to the entire period of performance as approved by the senior procurement executive (see 225.101(d)).

(E) Insert the alternate VII clause in lieu of the alternate I clause in solicitations and contracts when?

(1) The estimated value is less than $102,280; and

(2) An alternate domestic content threshold will apply to the entire period of performance as approved by the senior procurement executive (see 225.101(d)).

(F) Insert the alternate X clause in lieu of the alternate IV clause in solicitations and contracts, when?

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(1) The estimated value equals or exceeds $102,280 but is less than $174,000; and

(2) An alternate domestic content threshold will apply to the entire period of performance as approved by the senior procurement executive (see 225.101(d)).

(ii) Do not insert the basic or an alternate of the clause in paragraph (10)(i) of this section if?

(A) Purchase from foreign sources is restricted (see 225.401(a)(2)), unless the contracting officer anticipates a waiver of the restriction; or

(B) Acquiring information technology that is a commercial product, using fiscal year 2004 or subsequent funds section 535 of Division F of the Consolidated Appropriations Act, 2004 (Pub. L. 108-199), and the same provision in subsequent appropriations acts).

(iii) The acquisition of eligible and noneligible products under the same contract may result in the application of a Free Trade Agreement to only some of the items acquired. In such case, indicate in the Schedule those items covered by the Buy American?Free Trade Agreements?Balance of Payments Program clause.

225.603 Other provisions and clauses.

(1) Unless the contracting officer knows that the prospective contractor is not a domestic concern, insert the clause at 252.225-7005, Identification of Expenditures in the United States, in solicitations and contracts that?

(i) Exceed the simplified acquisition threshold; and

(ii) Are for the acquisition of?

(A) Supplies for use outside the United States;

(B) Construction to be performed outside the United States; or

(C) Services to be performed primarily outside the United States.

(2) Insert the clause at 252.225-7041, Correspondence in English, in solicitations and contracts when contract performance will be wholly or in part in a foreign country.

(3) Insert the provision at 252.225-7042, Authorization to Perform, in solicitations when contract performance will be wholly or in part in a foreign country. If the solicitation includes the provision at FAR 52.204-7, do not separately list the provision **252.225-7042 in the solicitation.**

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SUBPART 225.7?CONTRACTS PERFORMED OUTSIDE THE UNITED STATES

225.701 Contractor personnel in a designated operational area or supporting a diplomatic or consular mission outside the United States.

225.701-1 Scope.

(a) Performance in a designated operational area, as used in this section, means

performance of a service or construction, as required by the contract. For supply contracts, the term includes services associated with the acquisition of supplies (e.g., installation or maintenance), but does not include production of the supplies or associated overhead functions.

(c) For DoD, this section also applies to all personal services contracts.

225.701-4 Contract clause.

(1) Use the clause at FAR 52.225-19, Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission Outside the United States, in accordance with the prescription at FAR 25.701-4, except that?

(i) Use the clause also in personal services contracts with individuals; and

(ii) Do not use the clause when all contractor personnel performing outside the United States will be covered by the clause at 252.225-7040.

(2) When using the clause at FAR 52.225-19, inform the contractor that the Synchronized Predeployment and Operational Tracker (SPOT) is the appropriate automated system to use for the list of contractor personnel required by paragraph (g) of the clause. Information on the SPOT system is available at https://www.acq.osd.mil/asds/log/cso/ocs/spot.html.

225.702 Contractors performing private security functions outside the United States.

225.702-6 Contract clause.

Use the clause at 252.225-7039, Defense Contractors Performing Private Security Functions Outside the United States, instead of FAR clause 52.225-26, Contractors Performing Private Security Functions Outside the United States, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, when private security functions are to be performed outside the United States in?

(1) Contingency operations;

(2) Combat operations, as designated by the Secretary of Defense;

(3) Other significant military operations (as defined in 32 CFR part 159), designated by the Secretary of Defense, and only upon agreement of the Secretary of Defense and the Secretary of State;

(4) Peace operations, consistent with Joint Publication 3-07.3; or

(5) Other military operations or military exercises, when designated by the Combatant Commander.

225.770 Contracts requiring performance or delivery in a foreign country.

(a) If the acquisition requires the performance of services or delivery of supplies in an area outside the United States, follow the procedures at PGI 225.770(a).

(b) For work performed in Germany, eligibility for logistics support or base privileges of contractor employees is governed by U.S.-German bilateral agreements.

(c) For work performed in Japan or Korea, see PGI 225.770(c) for information on bilateral agreements and policy relating to contractor employees in Japan or Korea.

(d) For work performed in the U.S. Central Command area of responsibility, follow the procedures for theater business clearance/contract administration delegation instructions at PGI 225.770(d).

225.771 Contractor personnel supporting U.S. Armed Forces deployed outside the United States.

For additional information on contractor personnel supporting U.S. Armed Forces, see **PGI 225.771.**

225.771-1 Scope.

(a) This section applies to contracts that involve contractor personnel supporting U.S. Armed Forces deployed outside the United States in?

(1) Contingency operations;

(2) Humanitarian or peacekeeping operations; or

(3) Other military operations or military exercises, when designated by the combatant commander.

(b) Any of the types of operations listed in paragraph (a) of this section may include stability operations such as?

(1) Establishment or maintenance of a safe and secure environment; or

(2) Provision of emergency infrastructure reconstruction, humanitarian relief, or essential governmental services (until feasible to transition to local government).

225.771-2 Definition.

As used in this section?

?Designated operational area? means a geographic area designated by the combatant commander or subordinate joint force commander for the conduct or support of specified military operations. (See PGI 225.771-2 for additional information on designated operational areas.)

225.771-3 Government support.

(a) Government support that may be authorized or required for contractor personnel performing in a designated operational area may include, but is not limited to, the types of support listed in PGI 225.771-3(a).

(b) The agency must provide logistical or security support only when the appropriate agency official, in accordance with agency guidance, determines in coordination with the combatant commander that?

(1) Such Government support is available and is needed to ensure continuation of essential contractor services; and

(2) The contractor cannot obtain adequate support from other sources at a reasonable cost.

(c) Specify in the solicitation and contract?

(1) Valid terms, approved by the combatant commander, that specify the responsible party, if a party other than the combatant commander is responsible for providing protection to the contractor personnel performing in the designated operational area; and

(2) Any other Government support to be provided, and whether this support will be provided on a reimbursable basis, citing the authority for the reimbursement.

(d) Medical support of contractor personnel. Provide direction to the contractor when the contractor is required to reimburse the Government for medical treatment or transportation of contractor personnel to a selected civilian facility in accordance with paragraph (c)(2)(ii) of the clause at 252.225-7040. For additional information, see PGI **225.771-3(d).**

(e) Letter of authorization. Contractor personnel must have a Synchronized Predeployment and Operational Tracker (SPOT)-generated letter of authorization

(LOA) signed by the contracting officer in order to process through a deployment center or to travel to, from, or within the designated operational area. The LOA also will identify any additional authorizations, privileges, or Government support that the contractor personnel are entitled to under the contract. For additional information on LOAs, see PGI 225.771-3(e).

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225.771-4 Law of war training.

(a) Basic training. Basic law of war training is required for all contractor personnel supporting U.S. Armed Forces deployed outside the United States. The basic training normally will be provided through a military-run training center. The contracting officer may authorize the use of an alternate basic training source, provided the servicing DoD legal advisor concurs with the course content.

(b) Advanced law of war training. (1) The types of personnel that must obtain advanced law of war training include the following:

(i) Private security contractors.

(ii) Security guards in or near areas of military operations.

(iii) Interrogators, linguists, interpreters, guards, report writers, information technology technicians, or others who will come into contact with enemy prisoners of war, civilian internees, retained persons, other detainees, terrorists, or criminals who are captured, transferred, confined, or detained during or in the aftermath of hostilities.

(iv) Other personnel when deemed necessary by the contracting officer.

(2) If contractor personnel will be required to obtain advanced law of war training, the solicitation and contract must specify?

(i) The types of personnel subject to advanced law of war training requirements;

(ii) Whether the training will be provided by the Government or the

contractor;

(iii) If the training will be provided by the Government, the source of the training; and

(iv) If the training will be provided by the contractor, a requirement for coordination of the content with the servicing DoD legal advisor to ensure that training content is commensurate with the duties and responsibilities of the personnel to be trained.

225.771-5 Contract clauses.

Unless otherwise stated, the following deviation provisions and clauses remain in effect until incorporated in the FAR or DFARS or otherwise rescinded:

Use the clause 252.225-7980, Contractor Personnel Performing in the United States Africa Command Area of Responsibility (DEVIATION 2016-O0008)(JUN 2016), in lieu of the clause at DFARS 252.225-7040, Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States, in all solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of

commercial items, that will require contractor personnel to perform in the United States Africa Command (AFRICOM) area of responsibility.

Use the clause 252.225-7995, Contractor Personnel Performing in the United States Central Command Area of Responsibility (DEVIATION 2017-O0004) (SEP 2017), in lieu of DFARS 252.225-7040, Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States, in solicitations and contracts that will require contractor personnel to perform in the United States Central Command area of responsibility.

See Class Deviation 2017-O0009 (SEP 2017), Products and Services from the African Host Nation?Djibouti, implementing section 889A of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017, Enhanced Authority to Acquire Products and Services Produced in Africa in Support of Certain Activities. Contracting officers shall use the procedures and clauses provided when acquiring products and services from the African host nation-Djibouti in support of the covered activities in Djibouti. This authority is not available for procurement of any product on the Ability One Procurement List.

Use the provision at 252.225-7985, Preference for Products or Services from the African Host Nation?Djibouti (SEP 2017) (DEVIATION 2017-O0009), in solicitations that include the clause at 252.225-7986, Requirement for Products or Services from the African Host Nation?Djibouti (SEP 2017) (DEVIATION 2017-O0009).

Use the clause at 252.225-7986, Requirement for Products or Services from the African Host Nation?Djibouti (SEP 2017) (DEVIATION 2017-O0009), in solicitations and contracts that provide a preference for products or services from the African host nation?Djibouti in accordance with Class Deviation 2017-O0009.

Use the clause at 252.225-7977, Acquisition Restricted to Products or Services from the

African Host Nation?Djibouti (SEP 2017) (DEVIATION 2017-O0009), in solicitations and contracts that limit competition to products or services from the African host nation?Djibouti in accordance with Class Deviation 2017-O0009.

Use the clause at 252.225-7976, Contractor Personnel Performing in Japan (DEVIATION 2018-O0019) (AUG 2018), in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that will require contractor personnel to perform in Japan. The clause requires DoD contractors to account for contractor personnel and dependents in the Synchronized Predeployment and Operational Tracker, in order for the contractor personnel and dependents to be eligible for coverage under the Status of Forces Agreement.

Use the clause 252.225-7987, Requirements for Contractor Personnel Performing in the U.S. Southern Command Area of Responsibility (DEVIATION 2021-O0004) (FEB 2021), in lieu of the clause at DFARS 252.225-7040, Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States, in solicitations and contracts that require contractor performance in the U.S. Southern Command area of responsibility.

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(a) Use the clause at 252.225-7040, Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States, instead of the clause at FAR 52.225-19, Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission Outside the United States, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, for performance in a designated operational area that authorize contractor personnel (including both contractors authorized to accompany the Force (CAAF) and non-CAAF) to support U.S. Armed Forces deployed outside the United States in?

(1) Contingency operations;

(2) Peace operations consistent with Joint Publication 3-07.3; or

(3) Other military operations or military exercises, when designated by the combatant commander or as directed by the Secretary of Defense.

(b) [Reserved]

225.772 Antiterrorism/force protection.

225.772-1 General.

Information and guidance pertaining to DoD antiterrorism/force protection policy for contracts that require performance or travel outside the United States can be obtained from the offices listed in PGI 225.772-1.

225.772-2 Contract clause.

Use the clause at 252.225-7963, Antiterrorism/Force Protection Policy for Defense Contractors Outside the United States, in solicitations and contracts, including

solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that require performance or travel outside the United States, except for contracts with?

(a) Foreign governments;

(b) Representatives of foreign governments; or

(c) Foreign corporations wholly owned by foreign governments.

225.773 Contract administration in support of contingency operations.

For additional guidance on contract administration considerations when supporting contingency operations, see PGI 225.773.

225.774 Use of electronic business tools.

See 218.271 concerning the use of electronic business tools in support of a contingency operation or humanitarian or peacekeeping operation.

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SUBPART 225.8?OTHER INTERNATIONAL AGREEMENTS AND COORDINATION

225.802 Procedures.

(b) Information on memoranda of understanding and other international agreements is available at PGI 225.802(b).

225.802-70 Contracts for performance outside the United States and Canada.

Follow the procedures at PGI 225.802-70 when placing a contract requiring performance outside the United States and Canada. See also subpart 225.7, Contracts Performed Outside the United States.

225.802-71 End use certificates.

Contracting officers considering the purchase of an item from a foreign source may encounter a request for the signing of a certificate to indicate that the Armed Forces of the United States is the end user of the item, and that the U.S. Government will not transfer the item to third parties without authorization from the Government of the country selling the item. When encountering this situation, refer to DoD Instruction **2040.03, End Use Certificates, for guidance.**

225.870 Contracting with Canadian contractors.

225.870-1 General.

(a) The Canadian government guarantees to the U.S. Government all commitments, obligations, and covenants of the Canadian Commercial Corporation under any contract or order issued to the Corporation by any contracting office of the U.S. Government. The Canadian government has waived notice of any change or modification that may be made, from time to time, in these commitments, obligations, or covenants.

(b) For production planning purposes, Canada is part of the defense industrial base (see 225.870-2(b)).

(c) The Canadian Commercial Corporation will award and administer contracts with contractors located in Canada, except for?

(1) Negotiated acquisitions for experimental, developmental, or research work under projects other than the Defense Development Sharing Program;

(2) Acquisitions of unusual or compelling urgency;

(3) Acquisitions at or below the simplified acquisition threshold; or

(4) Acquisitions made by DoD activities located in Canada.

(d) For additional information on production rights, data, and information; services provided by Canadian Commercial Corporation; audit; and inspection, see PGI 225.870-**1(d).**

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225.870-2 Solicitation of Canadian contractors.

(a) If requested, furnish a solicitation to the Canadian Commercial Corporation even if no Canadian firm is solicited.

(b) Handle acquisitions at or below the simplified acquisition threshold directly with Canadian firms and not through the Canadian Commercial Corporation.

225.870-3 Submission of offers.

(a) As indicated in 225.870-4, the Canadian Commercial Corporation is the prime contractor. To indicate acceptance of offers by individual Canadian companies, the Canadian Commercial Corporation issues a letter supporting the Canadian offer and containing the following information:

(1) Name of the Canadian offeror.

(2) Confirmation and endorsement of the offer in the name of the Canadian Commercial Corporation.

(3) A statement that the Corporation shall subcontract 100 percent with the offeror.

(b) When a Canadian offer cannot be processed through the Canadian Commercial Corporation in time to meet the date for receipt of offers, the Corporation may permit Canadian firms to submit offers directly. However, the contracting officer must receive the Canadian Commercial Corporation?s endorsement before contract award.

(c) The Canadian Commercial Corporation will submit all sealed bids in terms of U.S. currency. Do not adjust contracts awarded under sealed bidding for losses or gains from fluctuation in exchange rates.

(d) Except for sealed bids, the Canadian Commercial Corporation normally will submit offers and quotations in terms of Canadian currency. The Corporation may, at the time of submitting an offer, elect to quote and receive payment in terms of U.S. currency, in which case the contract?

(1) Must provide for payment in U.S. currency; and

(2) Must not be adjusted for losses or gains from fluctuation in exchange rates.

225.870-4 Contracting procedures.

(a) Except for contracts described in 225.870-1(c)(1) through (4), award individual contracts covering purchases from suppliers located in Canada to the Canadian

Commercial Corporation, 350 Albert Street, Suite 700, Ottawa, ON K1R 1A4.

(b) Direct communication with the Canadian supplier is authorized and encouraged in connection with all technical aspects of the contract, provided the Corporation?s approval is obtained on any matters involving changes to the contract.

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(c) Requirement for data other than certified cost or pricing data. (1) DoD has waived the requirement for submission of certified cost or pricing data for the Canadian Commercial Corporation and its subcontractors.

(2) The Canadian Commercial Corporation is not exempt from the requirement to submit data other than certified cost or pricing data, as defined in FAR 2.101. Require the offeror to submit data other than certified cost or pricing data to the extent necessary to determine a fair and reasonable price.

(i) No further approval is required to request data other than certified cost or pricing data from the Canadian Commercial Corporation in the following circumstances:

(A) In a solicitation for a sole source acquisition that is?

(1) Cost-reimbursement, if the contract value is expected to exceed $700,000; or

(2) Fixed-price, if the contract value is expected to exceed $500 million.

(B) If the Canadian Commercial Corporation submits the only offer in response to a competitive solicitation that meets the thresholds specified in paragraph (c)(2)(i)(A) of this section.

(C) For modifications that exceed $150,000 in contracts that meet the criteria in paragraph (c)(2)(i)(A) or (B) of this section.

(D) In competitive solicitations in which data other than certified cost or pricing data are required from all offerors.

(ii) In any circumstances other than those specified in paragraph (c)(2)(i) of this section, require data other than certified cost or pricing data from the Canadian Commercial Corporation if the head of the contracting activity, or designee no lower than two levels above the contracting officer, determines that data other than certified cost or pricing data are needed (or in the case of modifications that it is reasonably certain that data other than certified cost or pricing data will be needed) in order to determine that the price is fair and reasonable).

(3) Use the provision at 252.215-7003, Requirement for Submission of Data Other Than Certified Cost or Pricing Data?Canadian Commercial Corporation, and the clause at 252.215-7004, Requirement for Submission of Data Other Than Certified Cost or Pricing Data?Modifications?Canadian Commercial Corporation, as prescribed at 215.110(2)(i) and (ii), respectively.

(4) Except for contracts described in 225.870-1(c)(1) through (4), Canadian suppliers will provide required data other than certified cost or pricing data exclusively

through the Canadian Commercial Corporation.

(5) If an offeror does not comply with a requirement to submit data necessary to determine price reasonableness or cost realism, see FAR 15.403-1(d).

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(d) Identify in the contract, the type of currency, i.e., U.S. or Canadian. Contracts that provide for payment in Canadian currency must?

(1) Quote the contract price in terms of Canadian dollars and identify the amount by the initials ?CN?, e.g., $1,647.23CN; and

(2) Clearly indicate on the face of the contract the U.S./Canadian conversion rate at the time of award and the U.S. dollar equivalent of the Canadian dollar contract amount.

225.870-5 Contract administration.

Follow the contract administration procedures at PGI 225.870-5.

225.870-6 Termination procedures.

When contract termination is necessary, follow the procedures at 249.7000.

225.870-7 Acceptance of Canadian supplies.

For information on the acceptance of Canadian supplies, see PGI 225.870-7.

225.870-8 Industrial security.

Industrial security for Canada must accord with the U.S.-Canada Industrial Security Agreement of March 31, 1952, as amended.

225.871 North Atlantic Treaty Organization (NATO) cooperative projects.

225.871-1 Scope.

This section implements 22 U.S.C. 2767 and 10 U.S.C. 2350b.

225.871-2 Definitions.

As used in this section?

?Cooperative project? means a jointly managed arrangement?

(1) Described in a written agreement between the parties;

(2) Undertaken to further the objectives of standardization, rationalization, and interoperability of the armed forces of NATO member countries; and

(3) Providing for?

(i) One or more of the other participants to share with the United States the cost of research and development, testing, evaluation, or joint production (including follow-on support) of certain defense articles;

(ii) Concurrent production in the United States and in another member country of a defense article jointly developed; or

(iii) Acquisition by the United States of a defense article or defense service from another member country.

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?Other participant? means a cooperative project participant other than the United States.

225.871-3 General.

(a) Cooperative project authority. (1) Departments and agencies possessing the necessary authority may enter into cooperative project agreements with NATO or with one or more member countries of NATO under DoDD 5530.3, International Agreements.

(2) Under laws and regulations governing the negotiation and implementation of cooperative project agreements, departments and agencies may enter into contracts, or incur other obligations, on behalf of other participants without charge to any appropriation or contract authorization.

(3) Agency heads are authorized to solicit and award contracts to implement cooperative projects.

(b) Contracts implementing cooperative projects must comply with all applicable laws relating to Government acquisition, unless a waiver is granted under 225.871-4. A waiver of certain laws and regulations may be obtained if the waiver?

(1) Is required by the terms of a written cooperative project agreement;

(2) Will significantly further NATO standardization, rationalization, and interoperability; and

(3) Is approved by the appropriate DoD official.

225.871-4 Statutory waivers.

(a) For contracts or subcontracts placed outside the United States, the Deputy Secretary of Defense may waive any provision of law that specifically prescribes?

(1) Procedures for the formation of contracts;

(2) Terms and conditions for inclusion in contracts;

(3) Requirements or preferences for?

(i) Goods grown, produced, or manufactured in the United States or in U.S. Government-owned facilities; or

(ii) Services to be performed in the United States; or

(4) Requirements regulating the performance of contracts.

(b) No authority exists for waiver of?

(1) Any provision of the Arms Export Control Act (22 U.S.C. 2751);

(2) Any provision of 10 U.S.C. 3201-3205;

(3) The cargo preference laws of the United States, including the Military Cargo Preference Act of 1904 (10 U.S.C. 2631) and the Cargo Preference Act of 1954 (46 U.S.C. 1241(b)); or

(4) Any of the financial management responsibilities administered by the

Secretary of the Treasury.

(c) To request a waiver under a cooperative project, follow the procedures at PGI **225.871-4.**

(d) Obtain the approval of the Deputy Secretary of Defense before committing to make a waiver in an agreement or a contract.

225.871-5 Directed subcontracting.

(a) The Principal Director, Defense Pricing, Contracting, and Acquisition Policy may authorize the direct placement of subcontracts with particular subcontractors. Directed subcontracting is not authorized unless specifically addressed in the cooperative project agreement.

(b) In some instances, it may not be feasible to name specific subcontractors at the time the agreement is concluded. However, the agreement must clearly state the general provisions for work sharing at the prime and subcontract level. For additional information on cooperative project agreements, see PGI 225.871-5.

225.871-6 Disposal of property.

Dispose of property jointly acquired by the members of a cooperative project under the procedures established in the agreement or in a manner consistent with the terms of the agreement, without regard to any laws of the United States applicable to the disposal of property owned by the United States.

225.871-7 Congressional notification.

(a) Congressional notification is required when DoD makes a determination to award a contract or subcontract to a particular entity, if the determination was not part of the certification made under 22 U.S.C. 2767(f) before finalizing the cooperative agreement.

(1) Departments and agencies must provide a proposed Congressional notice to the Principal Director, Defense Pricing, Contracting, and Acquisition Policy in sufficient time to forward to Congress before the time of contract award.

(2) The proposed notice must include the reason using the authority to designate a particular contractor or subcontractor is necessary.

(b) Congressional notification is also required each time a statutory waiver under **225.871-4 is incorporated in a contract or a contract modification, if such information** was not provided in the certification to Congress before finalizing the cooperative agreement.

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225.872 Contracting with qualifying country sources.

225.872-1 General.

(a) As a result of memoranda of understanding and other international agreements, DoD has determined it inconsistent with the public interest to apply restrictions of the Buy American statute or the Balance of Payments Program to the acquisition of qualifying country end products from the following qualifying countries:

? Australia
? Belgium
? Canada
? Czech Republic
? Denmark
? Egypt
? Estonia
? Federal Republic of Germany
? Finland
? France
? Greece
? Israel
? Italy
? Japan
? Latvia
? Lithuania
? Luxembourg
? Netherlands
? Norway
? Poland
? Portugal
? Slovenia
? Spain
? Sweden
? Switzerland
? Turkey
? United Kingdom of Great Britain and Northern Ireland.

(b) Individual acquisitions of qualifying country end products or qualifying country components from the following qualifying country may, on a purchase-by-purchase basis (see 225.872-4), be exempted from application of the Buy American statute and the Balance of Payments Program as inconsistent with the public interest:
? Austria.

(c) The determination in paragraph (a) of this subsection does not limit the authority of the Secretary concerned to restrict acquisitions to domestic sources or reject an otherwise acceptable offer from a qualifying country source when considered necessary for national defense reasons.

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225.872-2 Applicability.

(a) This section applies to all acquisitions of supplies except those restricted by?

(1) U.S. National Disclosure Policy, DoDD 5230.11, Disclosure of Classified Military Information to Foreign Governments and International Organizations;

(2) U.S. defense mobilization base requirements purchased under the authority of FAR 6.103-3(b)(1), except for quantities in excess of that required to maintain the defense mobilization base. This restriction does not apply to Canadian planned producers.

(i) Review individual solicitations to determine whether this restriction applies.

(ii) Information concerning restricted items may be obtained from the Deputy Assistant Secretary of Defense for Industrial Base Policy;

(3) Other U.S. laws or regulations (e.g., the annual DoD appropriations act); and

(4) U.S. industrial security requirements.

(b) This section does not apply to construction contracts.

225.872-3 Solicitation procedures.

(a) Except for items developed under the U.S./Canadian Development Sharing Program, use the criteria for soliciting and awarding contracts to small business concerns under FAR Part 19 without regard to whether potential qualifying country sources exist for the end product. Do not consider an offer of a qualifying country end product if the solicitation is identified for the exclusive participation of small business concerns.

(b) Send solicitations directly to qualifying country sources. Solicit Canadian sources through the Canadian Commercial Corporation in accordance with 225.870.

(c) Use international air mail if solicitation destinations are outside the United States and security classification permits such use.

(d) If unusual technical or security requirements preclude the acquisition of otherwise acceptable defense equipment from qualifying country sources, review the need for such requirements. Do not impose unusual technical or security requirements solely for the purpose of precluding the acquisition of defense equipment from qualifying countries.

(e) Do not automatically exclude qualifying country sources from submitting offers because their supplies have not been tested and evaluated by the department or agency.

(1) Consider the adequacy of qualifying country service testing on a case-by-case basis. Departments or agencies that must limit solicitations to sources whose items

have been tested and evaluated by the department or agency must consider supplies from qualifying country sources that have been tested and accepted by the qualifying country for service use.

(2) The department or agency may perform a confirmatory test, if necessary.

(3) Apply U.S. test and evaluation standards, policies, and procedures when the department or agency decides that confirmatory tests of qualifying country end products are necessary.

(4) If these provisions might adversely delay service programs, obtain the

concurrence of the Under Secretary of Defense (Acquisition and Sustainment), before excluding the qualifying country source from consideration.

(f) Permit industry representatives from a qualifying country to attend symposia, program briefings, prebid conferences (see 15.101), and similar meetings that address U.S. defense equipment needs and requirements. When practical, structure these meetings to allow attendance by representatives of qualifying country concerns.

225.872-4 Individual determinations.

If the offer of an end product from a qualifying country source listed in 225.872-1(b), as evaluated, is low or otherwise eligible for award, prepare a determination and findings exempting the acquisition from the Buy American statute and the Balance of Payments Program as inconsistent with the public interest, unless another exception such as the Trade Agreements Act applies. Follow the procedures at PGI 225.872-4.

225.872-5 Contract administration.

(a) Arrangements exist with some qualifying countries to provide reciprocal contract administration services. Some arrangements are at no cost to either government. To determine whether such an arrangement has been negotiated and what contract administration functions are covered, contact the Office of the Principal Director, Defense Pricing, Contracting, and Acquisition Policy (Contract Policy) via email at osd.pentagon.ousd-a-s.mbx.asda-dp-c-contractpolicy@mail.mil.

(b) Follow the procedures at PGI 225.872-5(b).

(c) Information on quality assurance delegations to foreign governments is in subpart, Government Contract Quality Assurance.

225.872-6 Request for audit services.

Handle requests for audit services in France, Germany, the Netherlands, or the United Kingdom in accordance with PGI 215.406, but follow the additional procedures at PGI **225.872-6.**

225.872-7 Industrial security for qualifying countries.

The required procedures for safeguarding classified defense information necessary for the performance of contracts awarded to qualifying country sources are in the National Industrial Security Program Operating Manual, 32 CFR part 117 (implemented for the Army by AR 380-49; for the Navy by SECNAV Instruction 5510.1H; for the Air Force by

AFI 31-601; for the Defense Information Systems Agency by DCA Instruction 240-110-8; and for the National Imagery and Mapping Agency by NIMA Instruction 5220.22).

225.872-8 Subcontracting with qualifying country sources.

In reviewing contractor subcontracting procedures, ensure that the contract does not preclude qualifying country sources from competing for subcontracts, except when restricted by national security interest reasons, mobilization base considerations, or applicable U.S. laws or regulations (see the clause at 252.225-7002, Qualifying Country Sources as Subcontractors).

225.873 Waiver of United Kingdom commercial exploitation levies.

225.873-1 Policy.

DoD and the Government of the United Kingdom (U.K.) have agreed to waive U.K. commercial exploitation levies and U.S. nonrecurring cost recoupment charges on a reciprocal basis. For U.K. levies to be waived, the offeror or contractor must identify the levies and the contracting officer must request a waiver before award of the contract or subcontract under which the levies are charged.

225.873-2 Procedures.

When an offeror or a contractor identifies a levy included in an offered or contract price, follow the procedures at PGI 225.873-2.

SUBPART 225.9?CUSTOMS AND DUTIES

225.900-70 Definition.

As used in this subpart?

?Component? means any item supplied to the Government as part of an end product or of another component.

225.901 Policy.

Unless the supplies are entitled to duty-free treatment under a special category in the Harmonized Tariff Schedule of the United States (e.g., the Caribbean Basin Economic Recovery Act or a Free Trade Agreement), or unless the supplies already have entered into the customs territory of the United States and the contractor already has paid the duty, DoD will issue duty-free entry certificates for?

(1) Qualifying country supplies (end products and components);

(2) Eligible products (end products but not components) under contracts covered by the World Trade Organization Government Procurement Agreement or a Free Trade Agreement; and

(3) Other foreign supplies for which the contractor estimates that duty will exceed $300 per shipment into the customs territory of the United States.

225.902 Procedures.

Follow the entry and release procedures at PGI 225.902.

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225.903 Exempted supplies.

(b)(i) For an explanation of the term ?supplies,? see PGI 225.903(b)(i).

(ii) The duty-free certificate must be printed, stamped, or typed on the face of, or attached to, Customs Form 7501. A duly designated officer or civilian official of the appropriate department or agency must execute the certificate in the format provided at PGI 225.903(b)(ii).

SUBPART 225.10?ADDITIONAL FOREIGN ACQUISITION REGULATIONS

225.1070 Clause deviations in overseas contracts.

See 201.305 for approval authority for clause deviations in overseas contracts with governments of North Atlantic Treaty Organization (NATO) countries or other allies or

with United Nations or NATO organizations.

SUBPART 225.11?[RESERVED]

SUBPART 225.70?AUTHORIZATION ACTS, APPROPRIATIONS ACTS, AND OTHER STATUTORY RESTRICTIONS ON FOREIGN ACQUISITION

225.7000 Scope of subpart.

(a) This subpart states restrictions on the acquisition of foreign products and services, imposed by DoD appropriations and authorization acts and other statutes. Refer to the acts to verify current applicability of the restrictions.

(b) Nothing in this subpart affects the applicability of the Buy American statute or the Balance of Payments Program.

225.7001 Definitions.

As used in this subpart?

?Assembly? means an item forming a portion of a system or subsystem that?

(1) Can be provisioned and replaced as an entity; and

(2) Incorporates multiple, replaceable parts.

?Bearing components? means the bearing element, retainer, inner race, or outer race.

?Component? means any item supplied to the Government as part of an end item or of another component, except that for use in 225.7004-2(b)(6), the term means an article, material, or supply incorporated directly into an end product.

?Covered country? means?

(1) The Democratic People?s Republic of North Korea;

(2) The People?s Republic of China;

(3) The Russian Federation; and

(4) The Islamic Republic of Iran (10 U.S.C. 4872 and 4875).

?End item?, as used in sections 225.7003 and 225.7018, means the final production product when assembled or completed and ready for delivery under a line item of the contract (10 U.S.C. 4863(m)).

?End product? means supplies delivered under a line item of the contract.

?Large medium-speed diesel engines? means diesel engines whose revolutions per minute (RPM) fall between 300 and 1500 RPM with a displacement greater than 1500 cubic inches per cylinder.

?Structural component of a tent??

(1) Means a component that contributes to the form and stability of the tent (e.g., poles, frames, flooring, guy ropes, pegs); and

(2) Does not include equipment such as heating, cooling, or lighting.

?Subsystem? means a functional grouping of items that combine to perform a major function within an end item, such as electrical power, altitude control, and propulsion.

225.7002 Restrictions on food, clothing, fabrics, hand or measuring tools, and flags.

225.7002-1 Restrictions.

(a) The following restrictions implement 10 U.S.C. 4862 (the ?Berry Amendment?). Except as provided in 225.7002-2, do not acquire?

(1) Any of the following items, either as end products or components, unless the items have been grown, reprocessed, reused, or produced in the United States:

(i) Food.

(ii) Clothing and the materials and components thereof, other than sensors, electronics, or other items added to, and not normally associated with, clothing and the materials and components thereof. Clothing includes items such as outerwear, headwear, underwear, nightwear, footwear, hosiery, handwear, belts, badges, and insignia. For additional guidance and examples, see PGI 225.7002-1(a)(1)(ii).

(iii)(A) Tents and the structural components of tents;

(B) Tarpaulins; or

(C) Covers.

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(iv) Cotton and other natural fiber products.

(v) Woven silk or woven silk blends.

(vi) Spun silk yarn for cartridge cloth.

(vii) Synthetic fabric or coated synthetic fabric, including all textile fibers and yarns that are for use in such fabrics.

(viii) Canvas products.

(ix) Wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles).

(x) Any item of individual equipment (Product or Service Code (PSC) 8465) manufactured from or containing any of the fibers, yarns, fabrics, or materials listed in this paragraph (a)(1).

(2) Hand or measuring tools, unless the tools were produced in the United States. For additional guidance, see PGI 225.7002-1(a)(2).

(b) In accordance with section 8123 of the Department of Defense Appropriations Act, 2014 (Pub. L. 113-76, division C, title VIII), and the same provision in subsequent Defense appropriations acts, except as provided in 225.7002-2, do not acquire a flag of the United States (PSC 8345), unless such flag, including the materials and components thereof, is manufactured in the United States, consistent with the requirements at 10 U.S.C. 4862. This restriction does not apply to the acquisition of any end items or components related to flying or displaying the flag (e.g., flag poles and accessories).

225.7002-2 Exceptions.

Acquisitions in the following categories are not subject to the restrictions in 225.7002-1:

(a) Acquisitions not exceeding $200,000, except for athletic footwear purchased by DoD for use by members of the Army, Navy, Air Force, or Marine Corps upon their initial entry into the Armed Forces (37 U.S.C. 418(b)(4)).

(b) Acquisitions of any of the items in 225.7002-1, if the secretary concerned determines that items grown, reprocessed, reused, or produced in the United States cannot be acquired as and when needed in a satisfactory quality and sufficient quantity at U.S. market prices. (See the requirement in 205.301 for synopsis within 7 days after contract award when using this exception.)

(1) The following officials are authorized, without power of redelegation, to make such a domestic nonavailability determination:

(i) The Under Secretary of Defense (Acquisition and Sustainment).

(ii) The Secretary of the Army.

(iii) The Secretary of the Navy.

(iv) The Secretary of the Air Force.

(v) The Director of the Defense Logistics Agency.

(2) The supporting documentation for the determination must include an analysis and written certification by the requiring activity, with specificity, why alternatives that would not require a domestic nonavailability determination are unacceptable.

(3) Defense agencies other than the Defense Logistics Agency must follow the procedures at PGI 225.7002-2(b)(3) when submitting a request for a domestic nonavailability determination.

(c) Acquisitions of items listed in FAR 25.104(a).

(d) Acquisitions outside the United States in support of combat operations.

(e) Acquisitions of perishable foods by or for activities located outside the United States for personnel of those activities.

(f) Acquisitions of food or hand or measuring tools?

(1) In support of contingency operations; or

(2) For which the use of other than competitive procedures are approved on the basis of unusual and compelling urgency in accordance with FAR 6.103-2.

(g) Emergency acquisitions by activities located outside the United States for personnel of those activities.

(h) Acquisitions by vessels in foreign waters.

(i) Acquisitions of items specifically for commissary resale.

(j) Acquisitions of incidental amounts of cotton, other natural fibers, or wool incorporated in an end product, for which the estimated value of the cotton, other natural fibers, or wool?

(1) Is not more than 10 percent of the total price of the end product; and

(2) Does not exceed the threshold at 225.7002-2(a).

(k) Acquisitions of waste and byproducts of cotton or wool fiber for use in the production of propellants and explosives.

(l) Acquisitions of foods manufactured or processed in the United States, regardless of where the foods (and any component if applicable) were grown or produced.

However, in accordance with section 8118 of the DoD Appropriations Act for Fiscal Year 2005 (Pub. L. 108-287), this exception does not apply to fish, shellfish, or seafood

manufactured or processed in the United States or fish, shellfish, or seafood contained in foods manufactured or processed in the United States.

(m) Acquisitions of fibers and yarns that are for use in synthetic fabric or coated synthetic fabric (but not the purchase of the synthetic or coated synthetic fabric itself), if?

(1) The fabric is to be used as a component of an end product that is not a textile product. Examples of textile products, made in whole or in part of fabric, include?

(i) Draperies, floor coverings, furnishings, and bedding PSG 72, Household and Commercial Furnishings and Appliances);

(ii) Items made in whole or in part of fabric in PSG 83, Textile/leather/furs/apparel/findings/tents/flags, or Federal Supply Group 84, Clothing, Individual Equipment and Insignia;

(iii) Upholstered seats (whether for household, office, or other use); and

(iv) Parachutes (Product or Service Group (PSG) 1670); or

(2) The fibers and yarns are para-aramid fibers and continuous filament para-aramid yarns manufactured in a qualifying country.

(n) Acquisitions of chemical warfare protective clothing when the acquisition furthers an agreement with a qualifying country. (See 225.003(10) and the requirement in 205.301 for synopsis within 7 days after contract award when using this exception.)

(o) Acquisitions that are interagency, State, or local purchases that are executed by DoD as a result of the transfer of contracts from the General Services Administration or for which DoD serves as an item manager for products on behalf of the General Services Administration. According to section 897 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114-92), such contracts must not be subject to requirements under subchapter II of chapter 385 (including 10 U.S.C. 4862), to the extent such contracts are for purchases of products by other Federal agencies or State or local governments.

225.7002-3 Contract clauses.

Unless an exception at 225.7002-2 applies?

(a) Insert the clause at 252.225-7012, Preference for Certain Domestic Commodities, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services.

(b) Insert the clause at 252.225-7015, Restriction on Acquisition of Hand or Measuring Tools, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that exceed the threshold at 225.7002-2(a) that require delivery of hand or measuring tools.

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(c) Insert the clause at 252.225-7006, Acquisition of the American Flag, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that are for the acquisition of the American flag, with an estimated value that exceeds the threshold at 225.7002-2(a).

225.7003 Restrictions on acquisition of specialty metals.

225.7003-1 Definitions.

As used in this section?

?Alloy? means a metal consisting of a mixture of a basic metallic element and one or more metallic, or non-metallic, alloying elements.

(1) For alloys named by a single metallic element (e.g., titanium alloy), it means that the alloy contains 50 percent or more of the named metal (by mass).

(2) If two metals are specified in the name (e.g., nickel-iron alloy), those metals are the two predominant elements in the alloy, and together they constitute 50 percent or more of the alloy (by mass).

?Automotive item? ?

(1) Means a self-propelled military transport tactical vehicle, primarily intended for use by military personnel or for carrying cargo, such as?

(i) A high-mobility multipurpose wheeled vehicle;

(ii) An armored personnel carrier; or

(iii) A troop/cargo-carrying truckcar, truck, or van; and

(2) Does not include?

(i) A commercially available off-the-shelf vehicle; or

(ii) Construction equipment (such as bulldozers, excavators, lifts, or loaders) or other self-propelled equipment (such as cranes or aircraft ground support equipment).

?Commercial derivative military article? means an item acquired by the Department of Defense that is or will be produced using the same production facilities, a common supply chain, and the same or similar production processes that are used for the production of articles predominantly used by the general public or by nongovernmental entities for purposes other than governmental purposes.

?Electronic component? means an item that operates by controlling the flow of electrons or other electrically charged particles in circuits, using interconnections of electrical devices such as resistors, inductors, capacitors, diodes, switches, transistors, or integrated circuits. The term does not include structural or mechanical parts of an assembly containing an electronic component and does not include any high performance magnets that may be used in the electronic component.

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?High performance magnet? means a permanent magnet that obtains a majority of its magnetic properties from rare earth metals (such as samarium).
?Produce? means?
(1) Atomization;
(2) Sputtering; or
(3) Final consolidation of non-melt derived metal powders.
?Specialty metal? means?
(1) Steel?
(i) With a maximum alloy content exceeding one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent; or
(ii) Containing more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, molybdenum, nickel, niobium (columbium), titanium, tungsten, or vanadium;
(2) Metal alloys consisting of?
(i) Nickel or iron-nickel alloys that contain a total of alloying metals other than nickel and iron in excess of 10 percent; or
(ii) Cobalt alloys that contain a total of alloying metals other than cobalt and iron in excess of 10 percent;
(3) Titanium and titanium alloys; or
(4) Zirconium and zirconium alloys.
?Steel? means an iron alloy that includes between .02 and 2 percent carbon and may include other elements.

225.7003-2 Restrictions.

(a) The following restrictions implement 10 U.S.C. 4863. Except as provided in **225.7003-3?**
(1) Do not acquire the following items, or any components of the following items, unless any specialty metals contained in the items or components are melted or produced in the United States (also see guidance at PGI 225.7003-2(a)):
(i) Aircraft.
(ii) Missile or space systems.
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(iii) Ships.
(iv) Tank or automotive items.
(v) Weapon systems.
(vi) Ammunition.
(2) Do not acquire a specialty metal (e.g., raw stock, including bar, billet, slab, wire, plate, and sheet; castings; and forgings) as an end item, unless the specialty metal is melted or produced in the United States. This restriction applies to specialty metal acquired by a contractor for delivery to DoD as an end item, in addition to specialty

metal acquired by DoD directly from the entity that melted or produced the specialty metal.

(b) For more information on specialty metals restrictions and reporting of noncompliances, see https://www.acq.osd.mil/asda/dpc/cp/ic/specialty-metals-restrictions.html.

225.7003-3 Exceptions.

(a) Acquisitions in the following categories are not subject to the restrictions in **225.7003-2:**

(1) Acquisitions at or below the simplified acquisition threshold.

(2) Acquisitions outside the United States in support of combat operations.

(3) Acquisitions in support of contingency operations.

(4) Acquisitions for which the use of other than competitive procedures has been approved on the basis of unusual and compelling urgency in accordance with FAR **6.103-2.**

(5) Acquisitions of items specifically for commissary resale.

(6) Acquisitions of items for test and evaluation under the foreign comparative testing program (10 U.S.C. 2350a(g)). However, this exception does not apply to any acquisitions under follow-on production contracts.

(b) One or more of the following exceptions may apply to an end item or component that includes any of the following, under a prime contract or subcontract at any tier. The restrictions in 225.7003-2 do not apply to the following:

(1) Electronic components, unless the Secretary of Defense, upon the recommendation of the Strategic and Critical Materials Board of Directors pursuant to **50 U.S.C. 98h-1, determines that the domestic availability of a particular electronic** component is critical to national security.

(2)(i) Commercially available off-the-shelf (COTS) items containing specialty metals, except the restrictions do apply to contracts or subcontracts for the acquisition of?

(A) Specialty metal mill products, such as bar, billet, slab, wire, plate, and sheet, that have not been incorporated into end items, subsystems, assemblies, or components. Specialty metal supply contracts issued by COTS producers are not subcontracts for the purposes of this exception;

(B) Forgings or castings of specialty metals, unless the forgings or castings are incorporated into COTS end items, subsystems, or assemblies;

(C) Commercially available high performance magnets that contain specialty metal, unless such high performance magnets are incorporated into COTS end items or subsystems (see PGI 225.7003-3(b)(6) for a table of applicability of specialty metals restrictions to magnets); and

(D) COTS fasteners, unless?

(1) The fasteners are incorporated into COTS end items, subsystems, or assemblies; or

(2) The fasteners qualify for the commercial product exception in paragraph (b)(3) of this section.

(ii) If this exception is used for an acquisition of COTS end items valued at $5 million or more per item, the acquiring department or agency must submit an annual report to the Principal Director, Defense Pricing, Contracting, and Acquisition Policy, in accordance with the procedures at PGI 225.7003-3(b)(2).

(3) Fasteners that are commercial products and are acquired under a contract or subcontract with a manufacturer of such fasteners, if the manufacturer has certified that it will purchase, during the relevant calendar year, an amount of domestically melted or produced specialty metal, in the required form, for use in the production of fasteners for sale to DoD and other customers, that is not less than 50 percent of the total amount of the specialty metal that the manufacturer will purchase to carry out the production of such fasteners for all customers.

(4) Items listed in 225.7003-2(a), manufactured in a qualifying country or containing specialty metals melted or produced in a qualifying country.

(5) Specialty metal in any of the items listed in 225.7003-2 if the USD(A&S), or an official authorized in accordance with paragraph (b)(5)(i) of this section, determines that specialty metal melted or produced in the United States cannot be acquired as and when needed at a fair and reasonable price in a satisfactory quality, a sufficient quantity, and the required form (i.e., a domestic nonavailability determination). In accordance with 10 U.S.C. 4863(m)(4), the term ?required form? in this section refers to the form of the mill product, such as bar, billet, wire, slab, plate, or sheet, in the grade appropriate for the production of a finished end item to be delivered to the Government under this contract; or a finished component assembled into an end item to be delivered to the Government under the contract. See guidance in PGI 225.7003-3(b)(5).

(i) The secretary of the military department concerned is authorized, without power of redelegation, to make a domestic nonavailability determination that applies to only one contract. The supporting documentation for the determination must include an analysis and written documentation by the requiring activity, with specificity, why alternatives that would not require a domestic nonavailability determination are unacceptable.

(ii) A domestic nonavailability determination that applies to more than one contract (i.e., a class domestic nonavailability determination), requires the approval of the USD(A&S).

(A) At least 30 days before making a domestic nonavailability determination that would apply to more than one contract, the USD(A&S) will, to the maximum extent practicable, and in a manner consistent with the protection of national security and confidential business information?

(1) Publish a notice in the Governmentwide point of entry (GPE) (https://www.sam.gov) of the intent to make the domestic nonavailability determination; and

(2) Solicit information relevant to such notice from interested parties, including producers of specialty metal mill products.

(B) The USD(A&S)?

(1) Will take into consideration all information submitted in response to the notice in making a class domestic nonavailability determination;

(2) May consider other relevant information that cannot be made **part of the public record consistent with the protection of national security information** and confidential business information; and

(3) Will ensure that any such domestic nonavailability determination and the rationale for the determination are made publicly available to the maximum extent consistent with the protection of national security and confidential business information.

(6) End items containing a minimal amount of otherwise noncompliant specialty metals (i.e., specialty metals not melted or produced in the United States that are not covered by another exception listed in this paragraph (b)), if the total weight of noncompliant specialty metal does not exceed 2 percent of the total weight of all specialty metal in the end item. This exception does not apply to high performance magnets containing specialty metals. See PGI 225.7003-3(b)(6) for a table of applicability of specialty metals restrictions to magnets.

(c) Compliance for commercial derivative military articles. The restrictions at **225.7003-2(a) do not apply to an item acquired under a prime contract if?**

(1) The offeror has certified, and subsequently demonstrates, that the offeror and its subcontractor(s) will individually or collectively enter into a contractual

agreement or agreements to purchase a sufficient quantity of domestically melted or produced specialty metal in accordance with the provision at 252.225-7010; and

(2) The USD(A&S), or the secretary of the military department concerned, determines that the item is a commercial derivative military article (defense agencies see procedures at PGI 225.7003-3(c)). Submit the offeror?s certification and a request for a determination to the appropriate official, through agency channels, and notify the offeror when a decision has been made.

(d) National security waiver. The USD(A&S) may waive the restrictions at **225.7003-2 if the USD(A&S) determines in writing that acceptance of the item is** necessary to the national security interests of the United States (see procedures at PGI **225.7003-3(d). This authority may not be delegated.**

(1) The written determination of the USD(A&S)?

(i) Must specify the quantity of end items to which the national security

waiver applies;

(ii) Must specify the time period over which the national security waiver applies; and

(iii) Must be provided to the congressional defense committees before the determination is executed, except that in the case of an urgent national security requirement, the determination may be provided to the congressional defense committees up to 7 days after it is executed.

(2) After making such a determination, the USD(A&S) will?

(i) Ensure that the contractor or subcontractor responsible for the noncompliant specialty metal develops and implements an effective plan to ensure future compliance; and

(ii) Determine whether the noncompliance was knowing and willful. If the USD(A&S) determines that the noncompliance was knowing and willful, the appropriate debarring and suspending official must consider suspending or debarring the contractor or subcontractor until such time as the contractor or subcontractor has effectively addressed the issues that led to the noncompliance.

(3) Because national security waivers will only be granted when the acquisition in question is necessary to the national security interests of the United States, the requirement for a plan will be applied as a condition subsequent, and not a condition precedent, to the granting of a waiver.

225.7003-4 [Reserved]

225.7003-5 Solicitation provision and contract clauses.

(a) Unless the acquisition is wholly exempt from the specialty metals restrictions at **225.7003-2 because the acquisition is covered by an exception in 225.7003-3(a) or (d)**

(see paragraph (d) of this section)?

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(1) Insert the clause at 252.225-7008, Restriction on Acquisition of Specialty Metals, in solicitations and contracts, including solicitations and contracts using FAR **part 12 procedures for the acquisition of commercial products and commercial services,** that?

(i) Exceed the simplified acquisition threshold; and

(ii) Require the delivery of specialty metals as end items.

(2) Insert the clause at 252.225-7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that?

(i) Exceed the simplified acquisition threshold; and

(ii) Require delivery of any of the following items, or components of the following items, if such items or components contain specialty metal:

(A) Aircraft.

(B) Missile or space systems.

(C) Ships.

(D) Tank or automotive items.

(E) Weapon systems.

(F) Ammunition.

(b) Insert the provision at 252.225-7010, Commercial Derivative Military Article? Specialty Metals Compliance Certificate, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services?

(1) That contain the clause at 252.225-7009; and

(2) For which the contracting officer anticipates that one or more offers of commercial derivative military articles may be received.

(c) If an agency cannot reasonably determine at time of acquisition whether some or all of the items will be used in support of combat operations or in support of contingency operations, the contracting officer should not rely on the exception at 225.7003-3(a)(2) or

(3) but should include the appropriate specialty metals clause or provision in the solicitation and contract.

(d) If the solicitation and contract require delivery of a variety of contract line items containing specialty metals, but only some of the items are subject to domestic specialty

metals restrictions, identify in the Schedule those items that are subject to the restrictions.

225.7004 Restrictions on the procurement of goods other than U.S. goods.

225.7004-0 Scope.

This section implements 10 U.S.C. 4864.

225.7004-1 Definitions.

As used in this section?

?National technology and industrial base? means the persons and organizations that are engaged in production activities conducted within the United States, Australia, Canada, New Zealand, and the United Kingdom of Great Britain and Northern Ireland (United Kingdom). (10 U.S.C. 4801)

?Star tracker? means a navigational tool used in a satellite weighing more than 400 pounds whose principal purpose is to support the national security, defense, or intelligence needs of the U.S. Government.

225.7004-2 Restrictions.

Except as provided in 225.7004-3, do not acquire any of the following items, either as end products or components, unless the manufacturer of the items is part of the national technology and industrial base:

(a) Buses, if multipassenger motor vehicles are purchased, leased, rented, or made available under contracts for transportation services.

(b) Components for naval vessels, to the extent they are unique to marine applications (see also 225.7004-4 for implementation of the restriction for naval vessels):

(1) Gyrocompasses.

(2) Electronic navigation chart systems.

(3) Steering controls.

(4) Propulsion and machinery control systems.

(5) Totally enclosed lifeboats.

(6) Welded shipboard anchor and mooring chain. See also 225.7004-5.

(c) Large medium-speed diesel engines for new construction of auxiliary ships using funds available for National Defense Sealift Fund programs or Shipbuilding and Conversion, Navy.

(d) For T-AO 205 and T-ARC class vessels:

(1) Auxiliary equipment, including pumps, for all shipboard services.

(2) Propulsion system components, including engines, reduction gears, and propellers.

(3) Shipboard cranes.

(4) Spreaders for shipboard cranes.

(e) Star trackers.

225.7004-3 Exceptions.

(a) Contracts under the simplified acquisition threshold. The restrictions at **225.7004-2 do not apply to a contract or subcontract that does not exceed the simplified** acquisition threshold.

(b) Buses. The restriction at 225.7004-2(a) does not apply in the following circumstances:

(1) Buses manufactured outside the national technology and industrial base are needed for temporary use because buses manufactured in the national technology and industrial base are not available to satisfy requirements that cannot be postponed. Such use may not, however, exceed the lead time required for acquisition and delivery of buses manufactured in the national technology and industrial base.

(2) The requirement for buses is temporary in nature. For example, to meet a special, nonrecurring requirement or a sporadic and infrequent recurring requirement, buses manufactured outside the national technology and industrial base may be used for temporary periods of time. Such use may not however, exceed the period of time needed to meet the special requirement.

(3) Buses manufactured outside the national technology and industrial base are available at no cost to the U.S. Government.

(c) Components for naval vessels. The restriction at 225.7004-2(b) does not apply to acquisition of spare or repair parts needed to support components for naval vessels manufactured outside the United States. Support includes the purchase of spare

gyrocompasses, electronic navigation chart systems, steering controls, propulsion and machinery control systems, totally enclosed lifeboats, and welded shipboard anchor and mooring chain.

(d) Components for auxiliary ships. The restriction at 225.7004-2(c) does not apply to large medium-speed engines for icebreakers or special mission ships.

(e) Star trackers. The restriction at 225.7004-2(e) does not apply to acquisition programs that have received Milestone A approval as defined in 10 U.S.C. 4211 before October 1, 2021, as documented by the requiring activity official performing program management responsibilities. Include the Milestone A approval documentation in the contract file.

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225.7004-4 Implementation of restriction on certain naval vessel components.

(a) The statute at 10 U.S.C. 4864(h) prohibits the use of contract clauses or certifications to implement the restriction at 225.7004-2(b) for naval vessel components.

(b) Agencies must accomplish implementation of the restriction at 225.7004-2(b) through use of management and oversight techniques that achieve the objectives of this section without imposing a significant management burden on the Government or the contractor involved.

225.7004-5 Additional restrictions on anchor and mooring chain.

(a) In accordance with section 8041 of the Fiscal Year 1991 DoD Appropriations Act (Pub. L. 101-511) and similar sections in subsequent DoD appropriations acts, do not acquire welded shipboard anchor and mooring chain, unless?

(1) It is manufactured in the United States, including cutting, heat treating, quality control, testing, and welding (both forging and shot blasting process); and

(2) The cost of the components manufactured in the United States exceeds 50 percent of the total cost of components.

(b) The statute at 10 U.S.C. 4864 also restricts acquisition of welded shipboard anchor and mooring chain, when used as a component of a naval vessel; however, the Appropriations Act restriction described in paragraph (a) of this section takes precedence over the restriction of 10 U.S.C. 4864 cited in 225.7004-2(b)(6).

225.7004-6 Waiver of restrictions.

(a) Welded shipboard anchor and mooring chain. (1) In accordance with section 8016 of the Consolidated Appropriations Act, 2023 (Pub. L. 117-328), the secretary of the department responsible for acquisition may waive the restrictions in 225.7004-2(b)(6) and 225.7004-5, on a case-by-case basis, if?

(i) Sufficient domestic suppliers are not available to meet DoD requirements on a timely basis; and

(ii) The acquisition is necessary to acquire capability for national security purposes.

(2) Document the waiver in a written determination and findings containing?

(i) The factors supporting the waiver; and

(ii) A certification that the acquisition must be made in order to acquire capability for national security purposes.

(3) Provide a copy of the determination and findings to the House and Senate Committees on Appropriations.

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(b) Star trackers . The waiver criteria at paragraph (c) of this section apply, except that the USD(A&S) may delegate the authority to waive a restriction for a star tracker for a particular foreign country to the service acquisition executive, without power of redelegation (section 1603, National Defense Authorization Act for Fiscal Year 2021

(Pub. L. 116-283)).

(c) Waiver of restrictions of 10 U.S.C. 4864(a). The restrictions on certain foreign purchases at 225.7004-2 may be waived, except as provided in paragraphs (a) and (b) of this section, as follows:

(1)(i) USD(A&S), without power of delegation, may waive a restriction for a particular item for a particular foreign country upon determination that?

(A) U.S. producers of the item would not be jeopardized by competition from a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country; or

(B) Application of the restriction would impede cooperative programs entered into between DoD and a foreign country, or would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items under 225.872, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(ii) A notice of the determination to exercise the waiver authority must be published in the Federal Register and submitted to the congressional defense committees at least 15 days before the effective date of the waiver.

(iii) The effective period of the waiver must not exceed 1 year.

(iv) For contracts entered into prior to the effective date of a waiver, provided adequate consideration is received to modify the contract, the waiver must be applied as directed or authorized in the waiver to?

(A) Subcontracts entered into on or after the effective date of the waiver; and

(B) Options for the procurement of items that are exercised after the effective date of the waiver, if the option prices are adjusted for any reason other than the application of the waiver.

(2) The head of the contracting activity may waive a restriction on a case-by-case basis upon execution of a determination and findings that any of the following applies:

(i) The restriction would cause unreasonable delays.

(ii) Satisfactory quality items manufactured in the national technology and industrial base are not available.

(iii) Application of the restriction would result in the existence of only one source for the item in the national technology and industrial base.

(iv) Application of the restriction is not in the national security interests of the United States.

(v) Application of the restriction would adversely affect a U.S. company.

(3) A restriction is waived when it would cause unreasonable costs. The cost of an item of national technology and industrial base origin is unreasonable if it exceeds 150 percent of the offered price, inclusive of duty, of items that are not of national technology and industrial base origin.

225.7004-7 Contract clauses.

(a) Unless a waiver has been granted, insert the clause at 252.225-7019, Restriction on Acquisition of Anchor and Mooring Chain, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that exceed the simplified acquisition threshold and that require welded shipboard anchor or mooring chain.

(b) Insert the clause at 252.225-7062, Restriction on Acquisition of Large Medium-Speed Diesel Engines, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that exceed the simplified acquisition threshold and that require large medium-speed diesel engines for new construction of auxiliary ships using funds available for National Defense Sealift Fund programs or Shipbuilding and Conversion, Navy unless?

(1) An exception at 225.7004-3(d) applies; or

(2) A waiver has been granted.

(c) Unless a waiver has been granted, insert the clause at 252.225-7063, Restriction on Acquisition of Components of T-AO 205 and T-ARC Class Vessels, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that exceed the simplified acquisition threshold and that require components of T-AO 205 and T-ARC class vessels.

(d) Insert the clause at 252.225-7064, Restriction on Acquisition of Certain Satellite Components, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that exceed the simplified acquisition threshold and that include the acquisition of star trackers unless?

(1) An exception at 225.7004-3(e) applies; or

(2) A waiver has been granted.

225.7005-225.7008 [Reserved]

225.7009 Restriction on ball and roller bearings.

225.7009-1 Scope.

This section implements section 8065 of the Fiscal Year 2002 DoD Appropriations Act (Pub. L. 107-117) and the same restriction in subsequent DoD appropriations acts.

225.7009-2 Restriction.

(a) Do not acquire ball and roller bearings unless?

(1) The bearings are manufactured in the United States or Canada; and

(2) For each ball or roller bearing, the cost of the bearing components manufactured in the United States or Canada exceeds 50 percent of the total cost of the bearing components of that ball or roller bearing.

(b) The restriction at 225.7003-2 may also apply to bearings that are made from specialty metals, such as high carbon chrome steel (bearing steel).

225.7009-3 Exception.

The restriction in 225.7009-2 does not apply to contracts or subcontracts for the acquisition of commercial products, except for commercial ball and roller bearings acquired as end items.

225.7009-4 Waiver.

The secretary of the department responsible for acquisition or, for the Defense Logistics Agency, the Component Acquisition Executive, may waive the restriction in 225.7009-2, on a case-by-case basis, by certifying to the House and Senate Committees on Appropriations that?

(a) Adequate domestic supplies are not available to meet DoD requirements on a timely basis; and

(b) The acquisition must be made in order to acquire capability for national security purposes.

225.7009-5 Contract clause.

Insert the clause at 252.225-7016, Restriction on Acquisition of Ball and Roller Bearings, in solicitations and contracts, including solicitations and contracts using FAR **part 12 procedures for the acquisition of commercial products and commercial services,** unless?

(a) The items being acquired are commercial products other than ball or roller bearings acquired as end items;

(b) The items being acquired do not contain ball and roller bearings; or

(c) A waiver has been granted in accordance with 225.7009-4.

225.7010 [Reserved]

225.7011 Restriction on carbon, alloy, and armor steel plate.

225.7011-1 Restriction.

(a) In accordance with Section 8111 of the Fiscal Year 1992 DoD Appropriations Act (Pub. L. 102-172) and similar sections in subsequent DoD appropriations acts, do not acquire any of the following types of carbon, alloy, or armor steel plate for use in a Government-owned facility or a facility under the control of (e.g., leased by) DoD, unless it is melted and rolled in the United States or Canada:

(1) Carbon, alloy, or armor steel plate in Federal Supply Class 9515.

(2) Carbon, alloy, or armor steel plate described by specifications of the American Society for Testing Materials or the American Iron and Steel Institute.

(b) This restriction?

(1) Applies to the acquisition of carbon, alloy, or armor steel plate as a finished steel mill product that may be used ?as is? or may be used as an intermediate material for the fabrication of an end product; and

(2) Does not apply to the acquisition of an end product (e.g., a machine tool), to be used in the facility, that contains carbon, alloy, or armor steel plate as a component.

225.7011-2 Waiver.

The secretary of the department responsible for acquisition may waive this restriction, on a case-by-case basis, by certifying to the House and Senate Committees on Appropriations that?

(a) Adequate U.S. or Canadian supplies are not available to meet DoD requirements on a timely basis; and

(b) The acquisition must be made in order to acquire capability for national security purposes.

225.7011-3 Contract clause.

Unless a waiver has been granted, insert the clause at 252.225-7030, Restriction on Acquisition of Carbon, Alloy, and Armor Steel Plate, in solicitations and contracts that?

(a) Require the delivery to the Government of carbon, alloy, or armor steel plate that will be used in a Government-owned facility or a facility under the control of DoD; or

(b) Require contractors operating in a Government-owned facility or a facility under the control of DoD to purchase carbon, alloy, or armor steel plate.

225.7012 Restriction on supercomputers.

225.7012-1 Restriction.

In accordance with Section 8112 of Public Law 100-202, and similar sections in subsequent DoD appropriations acts, do not purchase a supercomputer unless it is manufactured in the United States.

225.7012-2 Waiver.

The Secretary of Defense may waive this restriction, on a case-by-case basis, after certifying to the Armed Services and Appropriations Committees of Congress that?

(a) Adequate U.S. supplies are not available to meet requirements on a timely basis; and

(b) The acquisition must be made in order to acquire capability for national security purposes.

225.7012-3 Contract clause.

Unless a waiver has been granted, insert the clause at 252.225-7011, Restriction on Acquisition of Supercomputers, in solicitations and contracts for the acquisition of supercomputers.

225.7013 Restrictions on construction or repair of vessels in foreign shipyards.

225.7013-0 Scope.

This section implements 10 U.S.C. 8679 and 10 U.S.C. 8680.

225.7013-1 Definitions.

As used in this section?

?Corrective and preventive maintenance or repair? means?

(1) Maintenance or repair actions performed as a result of a failure in order to return or restore equipment to acceptable performance levels; and

(2) Scheduled maintenance or repair actions to prevent or discover functional failures.

?Facilities maintenance? means the effort required to?

(1) Provide housekeeping services throughout the ship;

(2) Perform coating maintenance and repair to exterior and interior surfaces due to normal environmental conditions; and

(3) Clean mechanical spaces, mission zones, and topside spaces.

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225.7013-2 Restrictions.

(a) Contract award (10 U.S.C. 8679). Do not award a contract to construct in a foreign shipyard?

(1) A vessel for any of the armed forces; or

(2) A major component of the hull or superstructure of a vessel for any of the armed forces.

(b) Overhaul, repair, or maintenance (10 U.S.C. 8680). (1) Do not overhaul, repair, or maintain, in a shipyard outside the United States or Guam, a naval vessel (or any other vessel under the jurisdiction of the Secretary of the Navy) homeported in the United States or Guam.

(2) This restriction on overhaul, repair, or maintenance does not apply to?

(i) Voyage repairs; or

(ii) Repairs necessary to correct damage sustained due to hostile actions or interventions.

(3) For a naval vessel classified as a littoral combat ship and operating on deployment?

(i) Corrective and preventive maintenance or repair, whether intermediate or depot level, and facilities maintenance may be performed if the work is performed by U.S. Government personnel or U.S. contractor personnel?

(A) In a foreign shipyard;

(B) At a facility outside of a foreign shipyard; or

(C) At any other facility convenient to the vessel;

(ii) Foreign workers may be used to perform corrective and preventive maintenance or repair, only if the Secretary of the Navy, without power of delegation, determines that travel by U.S. Government or contractor personnel to perform the maintenance or repair is not advisable for health or safety reasons; and

(iii) Foreign contractors may perform facilities maintenance only as approved by the Secretary of the Navy.

225.7014 Restrictions on military construction.

(a) For restriction on award of military construction contracts to be performed in the United States outlying areas in the Pacific and on Kwajalein Atoll, or in countries bordering the Arabian Gulf, see 236.273(a).

(b) For restriction on acquisition of steel for use in military construction projects, see **236.274.**

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225.7015 Restriction on overseas architect-engineer services.

For restriction on award of architect-engineer contracts to be performed in Japan, in any North Atlantic Treaty Organization member country, or in countries bordering the Arabian Gulf, see 236.602-70.

225.7017 Utilization of domestic photovoltaic devices.

225.7017-1 Definitions.

As used in this section?

?Caribbean Basin country photovoltaic device? means a photovoltaic device that?

(1) Is wholly manufactured in a Caribbean Basin country; or

(2) In the case of a photovoltaic device that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed, provided that the photovoltaic device is not subsequently substantially transformed outside of a Caribbean Basin country.

?Covered contract? means an energy savings performance contract, a utility services contract, or a private housing contract awarded by DoD, to be performed in the United

States, if such contract results in DoD ownership of photovoltaic devices, by means other than DoD purchase as end products. DoD is deemed to own a photovoltaic device if the device is?

(1) Installed in the United States on DoD property or in a facility owned by DoD; and

(2) Reserved for the exclusive use of DoD in the United States for the full economic life of the device.

?Designated country photovoltaic device? means a World Trade Organization Government Procurement Agreement (WTO GPA) country photovoltaic device, a Free Trade Agreement country photovoltaic device, a least developed country photovoltaic device, or a Caribbean Basin country photovoltaic device.

?Domestic photovoltaic device? means a photovoltaic device that is manufactured in the United States.

?Foreign photovoltaic device? means a photovoltaic device other than a domestic photovoltaic device.

?Free Trade Agreement country photovoltaic device? means a photovoltaic device that?

(1) Is wholly manufactured in a Free Trade Agreement country; or

(2) In the case of a photovoltaic device that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement

country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed, provided that the photovoltaic device is not subsequently substantially transformed outside of a Free Trade Agreement country.

?Least developed country photovoltaic device? means a photovoltaic device that?

(1) Is wholly manufactured in a least developed country; or

(2) In the case of a photovoltaic device that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed, provided that the photovoltaic device is not subsequently substantially transformed outside of a least developed country.

?Photovoltaic device? means a device that converts light directly into electricity through a solid-state, semiconductor process.

?Qualifying country photovoltaic device? means a photovoltaic device manufactured in a qualifying country.

?U.S.-made photovoltaic device? means a photovoltaic device that?

(1) Is manufactured in the United States; or

(2) Is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed, provided that the photovoltaic device is not

subsequently substantially transformed outside of the United States.

?WTO GPA country photovoltaic device? means a photovoltaic device that?

(1) Is wholly manufactured in a WTO GPA country; or

(2) In the case of a photovoltaic device that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed, provided that the photovoltaic device is not subsequently substantially transformed outside of a WTO GPA country.

225.7017-2 Restriction.

In accordance with section 846 of the National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111-383), photovoltaic devices provided under any covered contract must comply with 41 U.S.C. chapter 83, Buy American, subject to the exceptions to that statute provided in the Trade Agreements Act of 1979 (19 U.S.C. 2501 et seq.).

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225.7017-3 Exceptions.

DoD requires the contractor to utilize domestic photovoltaic devices in covered contracts that exceed the simplified acquisition threshold, with the following exceptions:

(a) Qualifying country. Qualifying country photovoltaic devices may be utilized in any covered contract, because 225.103(a)(i)(A) provides an exception to the Buy American statute for products of qualifying countries, as defined in 225.003.

(b) Buy American?unreasonable cost. For a covered contract that utilizes photovoltaic devices valued at less than $174,000, the exception for unreasonable cost may apply (see FAR 25.103(c)). If the cost of a foreign photovoltaic device plus 50 percent is less than the cost of a domestic photovoltaic device, then the foreign photovoltaic device may be utilized.

(c) Trade agreements?(1) Free Trade Agreements. For a covered contract that utilizes photovoltaic devices, photovoltaic devices may be utilized from a country covered under the acquisition by a Free Trade Agreement, depending upon dollar threshold (see FAR subpart 25.4).

(2) World Trade Organization?Government Procurement Agreement. For covered contracts that utilize photovoltaic devices that are valued at $174,000 or more, only U.S.-made photovoltaic devices, designated country photovoltaic devices, or qualifying country photovoltaic devices may be utilized.

225.7017-4 Solicitation provision and contract clause.

(a)(1) Insert the clause at 252.225-7017, Photovoltaic Devices, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services, for a contract expected to exceed the simplified acquisition threshold that may be a covered contract, e.g., an energy savings performance contract, a utility service contract, or a private housing contract awarded

by DoD, if such contract will result in DoD ownership of photovoltaic devices, by means other than DoD purchase as end products.

(2) Insert the clause in the resultant contract, including contracts using FAR **part 12 procedures for the acquisition of commercial products and commercial services,** if it is a covered contract.

(b) Insert the provision at 252.225-7018, Photovoltaic Devices?Certificate, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services, that contain the clause at 252.225-7017.

225.7018 Restriction on acquisition of certain magnets, tantalum, and tungsten.

225.7018-0 Scope.

This section implements 10 U.S.C. 4872.

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225.7018-1 Definitions.

As used in this section?

?Covered material? means?

(1) Samarium-cobalt magnets;

(2) Neodymium-iron-boron magnets;

(3) Tantalum metals and alloys;

(4) Tungsten metal powder; and

(5) Tungsten heavy alloy or any finished or semi-finished component containing tungsten heavy alloy.

?Electronic device? means an item that operates by controlling the flow of electrons or other electrically charged particles in circuits, using interconnections such as resistors, inductors, capacitors, diodes, switches, transistors, or integrated circuits.

?Tungsten heavy alloy? means a tungsten base pseudo alloy that?

(1) Meets the specifications of ASTM B777 or SAE-AMS-T-21014 for a particular class of tungsten heavy alloy; or

(2) Contains at least 90 percent tungsten in a matrix of other metals (such as nickel-iron or nickel-copper) and has density of at least 16.5 g/cm3).

225.7018-2 Restriction.

(a) General. Except as provided in 225.7018-3 and 225.7018-4?

(1) Effective through December 31, 2026, do not acquire any covered material melted or produced in any covered country, or any end item, manufactured in any covered country, that contains a covered material; and

(2) Effective January 1, 2027, do not acquire any covered material mined, refined, separated, melted, or produced in any covered country, or any end item, manufactured in any covered country, that contains a covered material. (Section 854, Pub. L. 118-31; 10 U.S.C. 4872.)

(b) Samarium-cobalt magnets and neodymium-iron-boron magnets. (1) Effective

through December 31, 2026, for samarium-cobalt magnets and neodymium-iron-boron magnets, this restriction includes?

(i) Melting samarium with cobalt to produce the samarium-cobalt alloy or melting neodymium with iron and boron to produce the neodymium-iron-boron alloy; and

(ii) All subsequent phases of production of the magnets, such as powder formation, pressing, sintering or bonding, and magnetization.

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(2) Effective January 1, 2027, for samarium-cobalt magnets this restriction includes the entire supply chain from mining or production of a cobalt and samarium ore or feedstock, including recycled material, through production of finished magnets, except as provided at 225.7018-3.

(3) The restriction on melting and producing of samarium-cobalt magnets is in addition to any applicable restrictions on melting of specialty metals at 225.7003 and the clause at 252.225-7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals.

(4) Effective January 1, 2027, for neodymium-iron-boron magnets, this restriction includes the entire supply chain from mining of neodymium, iron, and boron through production of finished magnets, except as provided at 225.7018-3.

(c) Tantalum metals and alloys. (1) Effective through December 31, 2026, for production of tantalum metals of any kind and alloys, this restriction includes the reduction or melting of any form of tantalum to create tantalum metal including unwrought, powder, mill products, and alloys. The restriction also covers all subsequent phases of production of tantalum metals and alloys.

(2) Effective January 1, 2027, for production of tantalum metals of any kind and alloys, this restriction includes mining or production of a tantalum ore or feedstock, including recycled material, through production of metals of any kind and alloys, except as provided at 225.7018-3.

(d) Tungsten metal powder and tungsten heavy alloy. (1) Effective through December 31, 2026, for production of tungsten metal powder and tungsten heavy alloy, this restriction includes?

(i) Atomization;

(ii) Calcination and reduction into powder;

(iii) Final consolidation of non-melt derived metal powders; and

(iv) All subsequent phases of production of tungsten metal powder, tungsten heavy alloy, or any finished or semi-finished component containing tungsten heavy alloy.

(2) Effective January 1, 2027, for production of tungsten metal powder, tungsten heavy alloy, or any finished or semi-finished component containing tungsten heavy alloy, this restriction includes mining or production of a tungsten ore or feedstock, including recycled material, through production of tungsten metal powders,

except as provided at 225.7018-3.

225.7018-3 Exceptions.

The restriction in section 225.7018-2 does not apply to an acquisition?

(a) At or below the simplified acquisition threshold;

(b) Outside the United States of an item for use outside the United States; or

(c) Of an end item containing a covered material that is?

(1) A commercially available off-the-shelf item (but see PGI 225.7018-3(c)(1) with regard to commercially available samarium-cobalt magnets), other than?

(i) A commercially available off-the-shelf item that is?

(A) 50 percent or more tungsten by weight effective through December 31, 2026; or

(B) 50 percent or more covered material by weight effective January 1, 2027;

(ii) Effective through December 31, 2026, a tantalum metal, tantalum alloy, or tungsten heavy alloy mill product, such as bar, billet, slab, wire, cube, sphere, block, blank, plate, or sheet, that has not been incorporated into an end item, subsystem, assembly, or component; or

(iii) Effective January 1, 2027, a covered material that is a mill product such as bar, billet, slab, wire, cube, sphere, block, blank, plate, or sheet, that has not been incorporated into an end item, subsystem, assembly, or component;

(2) An electronic device, unless the Secretary of Defense, upon the recommendation of the Strategic and Critical Materials Board of Directors pursuant to **50 U.S.C. 98h-1 determines that the domestic availability of a particular electronic** device is critical to national security (but see PGI 225.7018-3(c)(2) with regard to samarium-cobalt magnets used in electronic components); or

(3) A neodymium-iron-boron magnet manufactured from recycled material if the milling of the recycled material and sintering of the final magnet takes place in the United States.

(d) If the authorized agency official concerned, as specified in 225.7018-4, determines that compliant covered materials of satisfactory quality and quantity, in the required form, cannot be procured as and when needed at a reasonable price.

(1) For tantalum metal, tantalum alloy, or tungsten heavy alloy, the term ?required form? refers to the form of the mill product, such as bar, billet, wire, slab, plate, or sheet, in the grade appropriate for the production of a finished end item to be delivered to the Government under the contract; or a finished component assembled into an end item to be delivered to the Government under the contract.

(2) For samarium-cobalt magnets or neodymium-iron-boron magnets, the term ?required form? refers to the form and properties of the magnets.

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225.7018-4 Nonavailability determination.

(a) Individual nonavailability determinations. (1) The head of the contracting activity is authorized to make a nonavailability determination described in 225.7018-3(d) on an individual basis (e.g., applies to only one contract).

(2) The supporting documentation for the determination must include an analysis and written certification by the requiring activity that describes, with specificity, why alternatives that would not require a nonavailability determination are unacceptable. The template for an individual nonavailability determination is available at PGI 225.7018-4(a)(2).

(3) Provide to USD(A&S) DASD (Industrial Policy), in accordance with the procedures at PGI 225.7018-4(a)(3)?

(i) A copy of individual nonavailability determinations with supporting documentation; and

(ii) Notification when individual nonavailability determinations are requested but denied.

(b) Class nonavailability determinations. A class nonavailability determination

(e.g., a nonavailability determinations that applies to more than one contract) requires the approval of the USD(A&S). Follow the procedures at PGI 225.7018-4(b) when submitting a request for a class nonavailability determination.

(1) At least 30 days before making a nonavailability determination that would apply to more than one contract, the USD(A&S) will, to the maximum extent practicable, and in a manner consistent with the protection of national security and confidential business information?

(i) Publish a notice in the GPE (https://www.sam.gov) of the intent to make the nonavailability determination; and

(ii) Solicit information relevant to such notice from interested parties, including producers of mill products from covered materials.

(2) The USD(A&S)?

(i) Will take into consideration all information submitted in response to the notice in making a class nonavailability determination;

(ii) May consider other relevant information that cannot be made part of the public record consistent with the protection of national security information and confidential business information; and

(iii) Will ensure that any such nonavailability determination and the rationale for the determination are made publicly available to the maximum extent consistent with the protection of national security and confidential business information.

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225.7018-5 Contract clause.

Unless acquiring items outside the United States for use outside the United States or a nonavailability determination has been made in accordance with 225.7018-4, insert the clause at 252.225-7052, Restriction on Acquisition of Certain Magnets, Tantalum, and Tungsten , in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that exceed the simplified acquisition threshold.

225.7019 Prohibition on use of certain energy sourced from inside the Russian Federation.

225.7019-1 Definitions.

As used in this section?

?Covered military installation? means a military installation in Europe identified by DoD as a main operating base.

?Furnished energy? means energy furnished to a covered military installation in any form and for any purpose, including heating, cooling, and electricity.

?Main operating base? means a facility outside the United States and its territories with permanently stationed operating forces and robust infrastructure.

225.7019-2 Prohibition.

In accordance with section 2821 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116-92), contracts for the acquisition of furnished energy for a covered military installation must not use any energy sourced from inside the Russian Federation as a means of generating the furnished energy for the covered military installation. The prohibition?

(a) Applies to all forms of energy that are furnished to a covered military installation; and

(b) Does not apply to energy converted by a third party into another form of energy and not directly delivered to a covered military installation.

225.7019-3 Waiver.

(a) Request and approval of waiver. The requiring activity may submit to the contracting activity a request for waiver of the prohibition in 225.7019-2 for a specific contract for the acquisition of furnished energy for a covered military installation. The head of the contracting activity, without power of redelegation, may approve the waiver, upon certification to the congressional defense committees that?

(1) The waiver of section 2821 is necessary to ensure an adequate supply of furnished energy for the covered military installation; and

(2) National security requirements have been balanced against the potential risk associated with reliance upon the Russian Federation for furnished energy.

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(b) Submission of waiver notice. (1) Not later than 14 days before the execution of

any energy contract for which a waiver is granted under paragraph (a) of this section, the head of the contracting activity must submit to the congressional defense committees a notice of the waiver. See PGI 225.7019-3 for waiver procedures.

(2) The waiver notice must include the following:

(i) The rationale for the waiver, including the basis for the certifications required by paragraph (a) of this section.

(ii) An assessment of how the waiver may impact DoD?s European energy resilience strategy.

(iii) An explanation of the measures DoD is taking to mitigate the risk of using Russian Federation furnished energy.

225.7019-4 Solicitation provision and contract clause.

Unless a waiver has been granted in accordance with 225.7019-3?

(a) Insert the provision at 252.225-7053, Representation Regarding Prohibition on Use of Certain Energy Sourced from Inside the Russian Federation, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services and solicitations at or below the simplified acquisition threshold, that are for the acquisition of furnished energy for a covered military installation; and

(b) Insert the clause at 252.225-7054, Prohibition on Use of Certain Energy Sourced from Inside the Russian Federation, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services and solicitations and contracts at or below the simplified acquisition threshold, that are for the acquisition of furnished energy for a covered military installation.

225.7020 Prohibition on contracting with the Maduro regime.

225.7020-1 Definitions.

As used in this section?

?Agency or instrumentality of the government of Venezuela? means an agency or instrumentality of a foreign state as defined in 28 U.S.C. 1603(b), with each reference in section 1603(b) to a foreign state deemed to be a reference to Venezuela.

?Business operations? means engaging in commerce in any form, including acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.

?Government of Venezuela? means the government of any political subdivision of Venezuela, and any agency or instrumentality of the government of Venezuela.

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?Person? means?

(1) A natural person, corporation, company, business association, partnership, society, trust, or any other nongovernmental entity, organization, or group;

(2) Any governmental entity or instrumentality of a government, including a multilateral development institution (as defined in section 1701(c)(3) of the International Financial Institutions Act (22 U.S.C. 262r(c)(3)); and

(3) Any successor, subunit, parent entity, or subsidiary of, or any entity under common ownership or control with, any entity described in paragraph (1) or (2) of this definition.

225.7020-2 Prohibition.

In accordance with section 890 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116-92), do not enter into a contract for the procurement of products or services with any person that has business operations with an authority of the government of Venezuela that is not recognized as the legitimate government of Venezuela by the U.S. Government, except as provided in 225.7020-3 or 225.7020-4.

225.7020-3 Exceptions.

The prohibition in 225.7020-2 does not apply if?

(a) The person has a valid license to operate in Venezuela issued by the Office of Foreign Assets Control of the Department of the Treasury; or

(b) The acquisition is related to the operation and maintenance of the U.S. Government?s consular office and diplomatic posts in Venezuela.

225.7020-4 Joint determination.

(a) The prohibition in section 225.7020-2 does not apply to an acquisition jointly determined by the Secretary of Defense and Secretary of State, without power of redelegation, to be?

(1) Necessary for purposes of?

(i) Providing humanitarian assistance to the people of Venezuela;

(ii) Disaster relief and other urgent lifesaving measures; or

(iii) Carrying out noncombatant evacuations; or

(2) Vital to the national security interests of the United States.

(b) Follow the procedures at PGI 225.7020-4(b) when entering into a contract on the basis of a joint determination.

225.7020-5 Solicitation provision and contract clause.

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(a) Insert the provision at 252.225-7055, Representation Regarding Business Operations with the Maduro Regime, in solicitations, including solicitations using FAR **part 12 procedures for the acquisition of commercial products and commercial services,** that include the clause at 252.225-7056, Prohibition Regarding Business Operations with the Maduro Regime.

(b) Unless the exception at 225.7020-3(b) applies or a joint determination has been made in accordance with 225.7020-4, insert the clause at 252.225-7056, Prohibition Regarding Business Operations with the Maduro Regime, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of

commercial products and commercial services.

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 products and commercial services.

?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 is not delegable. 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) Insert 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, insert 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.

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225.7022 Prohibition on certain procurements from the Xinjiang Uyghur

Autonomous Region.

225.7022-1 Scope.

This section implements section 855 of the National Defense Authorization Act for Fiscal Year 2023 (Pub. L. 117-263) and 10 U.S.C. 4661.

225.7022-2 Definitions.

As used in this section?

?Forced labor? means any work or service that is exacted from any person under the

menace of any penalty for nonperformance and that the worker does not offer to perform (10 U.S.C. 2496).

?XUAR? means the Xinjiang Uyghur Autonomous Region of the People?s Republic of China (10 U.S.C. 2496).

225.7022-3 Prohibition.

Do not award a contract utilizing funds appropriated or otherwise made available for any fiscal year for any products mined, produced, or manufactured wholly or in part by forced labor from XUAR or from an entity that has used labor from within or transferred from XUAR as part of any forced labor programs, unless an exception applies.

225.7022-4 Exceptions.

The prohibition at 225.7022-3 does not apply to?

(a) Purchases under the micro-purchase threshold made using the Governmentwide commercial purchase card; or

(b) Purchases using the SF 44 in accordance with 213.306.

225.7022-5 Solicitation provision and contract clause.

(a) Insert the provision at 252.225-7059, Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region?Representation, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial products, commercial services, and COTS items, that contain the clause at 252.225-7060, Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region.

(b) Insert the clause at 252.225-7060, Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region, in solicitations, contracts, and orders for products utilizing funds appropriated or otherwise made available for any fiscal year, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products, commercial services, and COTS items.

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225.7023 Restriction on acquisition of personal protective equipment and certain other items from non-allied foreign nations.

225.7023-1 Definitions.

As used in this section?

?Covered item? means an article or item of?

(1) Personal protective equipment for use in preventing spread of disease, such as by exposure to infected individuals or contamination or infection by infectious material, including?

(i) Nitrile and vinyl gloves;

(ii) Surgical masks;

(iii) Respirator masks and powered air purifying respirators and required filters;

(iv) Face shields and protective eyewear;

(v) Surgical and isolation gowns and head and foot coverings; or

(vi) Clothing; and

(vii) The materials and components thereof, other than sensors, electronics, or other items added to and not normally associated with such personal protective equipment or clothing; or

(2) Sanitizing and disinfecting wipes, testing swabs, gauze, and bandages.

225.7023-2 Restriction.

Except as provided in 225.7023-3, do not acquire a covered item from a covered country in accordance with 10 U.S.C. 4875.

225.7023-3 Exceptions.

The restriction in section 225.7023-2 does not apply to acquisitions?

(a) Of covered items for use outside of the United States;

(b) At or below $200,000; or

(c)(1) If the head of the contracting activity determines that a covered item of satisfactory quality and quantity, in the required form, cannot be procured as and when needed from nations other than a covered country to meet requirements at a reasonable price.

(2) Include a copy of any such determination in the contract file.

225.7023-4 Contract clause.

Unless an exception applies, use the clause at 252.225-7061, Restriction on the Acquisition of Personal Protective Equipment and Certain Other Items from Non-Allied Foreign Nations, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products, including COTS items, and commercial services, and that?

(a) Are for the acquisition of covered items;

(b) Are for use within the United States; and

(c) Have an estimated value greater than $200,000.

225.7024 Restriction on acquisition of fuel for overseas contingency operations.

225.7024-1 Scope.

This section implements section 843 of the National Defense Authorization Act for Fiscal Year 2022 (Pub. L. 117-81), for the acquisition of fuel for overseas contingency operations.

225.7024-2 Prohibition.

Do not award, for an overseas contingency operation, a contract for fuel, in whole or in part, or derivatives of such fuel, that is sourced from nations or regions prohibited from selling petroleum to the United States. See FAR subpart 40.2 and the Office of Foreign Assets Control website at https://ofac.treasury.gov/sanctions-programs-and-country-information for prohibited sources.

225.7024-3 Procedures.

(a) For contracts for the acquisition of fuel for overseas contingency operations, including contracts using FAR part 12 procedures, expected to exceed the simplified acquisition threshold, the contracting officer?

(1) May request records from the prospective contractor to verify compliance with the following statutes and regulations only when the head of the contracting activity determines in writing that the request is necessary:

(i) The Foreign Corrupt Practices Act (15 U.S.C. 78dd-1 et seq.).

(ii) International Traffic in Arms Regulations at 22 CFR parts 120 through 130 (see PGI 225.7901-2).

(iii) Export Administration Regulations at 15 CFR parts 730 through 774 (see PGI 225.7901-2).

(iv) Relevant regulations promulgated by the Office of Foreign Assets Control of the Department of the Treasury. Sanction information for specific countries and programs is available at https://ofac.treasury.gov/sanctions-programs-and-country-information.

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(2) To the maximum extent practicable, must not disqualify an otherwise responsible offeror on the basis of an unsupported denial of access to a facility or equipment by a host-nation government. The provision at 252.225-7964, Restriction on Acquisition of Fuel for Overseas Contingency Operations, requires offerors to report promptly to the contracting officer, prior to award, any instance of unsupported denial of access to a facility or equipment by a host-nation government that may prevent it from complying with the terms and conditions of the solicitation.

(b) See 215.103-1-71 for the requirement to consider using a tradeoff process.

225.7024-4 Solicitation provision.

Insert the provision at 252.225-7964, Restriction on Acquisition of Fuel for Overseas Contingency Operations, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services, that are for the acquisition of fuel for overseas contingency operations and are expected to exceed the simplified acquisition threshold.

SUBPART 225.71?OTHER RESTRICTIONS ON FOREIGN ACQUISITION

225.7100 Scope of subpart.

This subpart contains foreign product restrictions that are based on policies designed to protect the defense industrial base.

225.7101 Definitions.

As used in this subpart?

?Component? means any item supplied to the Government as part of an end product or of another component.

?Domestic manufacture? means manufactured in the United States, its outlying areas;

or Canada.

225.7102 Forgings.

225.7102-1 Policy.

When acquiring the following forging items, whether as end items or components, acquire items that are of domestic manufacture to the maximum extent practicable:

Items Categories

Ship propulsion shafts Excludes service and landing craft shafts.

Periscope tubes All.

Ring forgings for bull gears All greater than 120 inches in diameter.

225.7102-2 Exceptions.

The policy in 225.7102-1 does not apply to acquisitions?

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(a) Using simplified acquisition procedures, unless the restricted item is the end item being purchased;

(b) Overseas for overseas use; or

(c) When the quantity acquired exceeds the amount needed to maintain the U.S. defense mobilization base (provided the excess quantity is an economical purchase quantity). The requirement for domestic manufacture does not apply to the quantity above that required to maintain the base, in which case, qualifying country sources may compete.

225.7102-3 Waiver.

Upon request from a contractor, the contracting officer may waive the requirement for domestic manufacture of the items listed in 225.7102-1.

225.7102-4 Contract clause.

Insert the clause at 252.225-7025, Restriction on Acquisition of Forgings, in solicitations and contracts, unless?

(a) The supplies being acquired do not contain any of the items listed in 225.7102-1; or

(b) An exception in 225.7102-2 applies. If an exception applies to only a portion of the acquisition, specify the excepted portion in the solicitation and contract.

SUBPART 225.72?REPORTING CONTRACT PERFORMANCE OUTSIDE THE UNITED STATES

225.7201 Policy.

10 U.S.C. 4603 requires offerors and contractors to notify DoD of any intention to perform any part of a DoD contract outside the United States and Canada that?

(a) Exceeds $900,000 in value; and

(b) Could be performed inside the United States or Canada.

225.7202 Exception.

This subpart does not apply to contracts for commercial products, commercial services, construction, ores, natural gas, utilities, petroleum products and crudes, timber (logs),

or subsistence.

225.7203 Contracting officer distribution of reports.

Follow the procedures at PGI 225.7203 for distribution of reports submitted with offers in accordance with the provision at 252.225-7003, Report of Intended Performance Outside the United States and Canada?Submission with Offer.

225.7204 Solicitation provision and contract clauses.

Except for acquisitions described in 225.7202?

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(a) Insert the provision at 252.225-7003, Report of Intended Performance Outside the United States and Canada?Submission with Offer, in solicitations with a value exceeding $20 million; and

(b) Insert the clause at 252.225-7004, Report of Intended Performance Outside the United States and Canada?Submission after Award, in solicitations and contracts with a value exceeding $20 million.

SUBPART 225.73?ACQUISITIONS FOR FOREIGN MILITARY SALES

225.7300 Scope of subpart.

(a) This subpart contains policies and procedures for acquisitions for foreign military sales (FMS) under the Arms Export Control Act (22 U.S.C. Chapter 39). Section 22 of the Arms Export Control Act (22 U.S.C. 2762) authorizes DoD to enter into contracts for resale to foreign countries or international organizations.

(b) This subpart does not apply to?

(1) FMS made from inventories or stocks;

(2) Acquisitions for replenishment of inventories or stocks; or

(3) Acquisitions made under DoD cooperative logistic supply support arrangements.

225.7301 General.

(a) The U.S. Government sells defense articles and services to foreign governments or international organizations through FMS agreements. The agreement is documented in a Letter of Offer and Acceptance (LOA) (see the Defense Security Cooperation Agency (DSCA) Security Assistance Management Manual (DSCA 5105.38-**M)).**

(b) Conduct FMS acquisitions under the same acquisition and contract management procedures used for other defense acquisitions.

(c) Follow the additional procedures at PGI 225.7301(c) for preparation of solicitations and contracts that include FMS requirements.

(d) See 229.170 for policy on contracts financed under U.S. assistance programs that involve payment of foreign country value added taxes or customs duties.

225.7301-1 [Reserved]

225.7301-2 Solicitation approval for sole source contracts.

Coordinate through agency channels with the Principal Director, Defense Pricing,

Contracting, and Acquisition Policy, prior to issuing a solicitation for a sole source contract for U.S./FMS combined requirements for a major system that has an estimated contract value that exceeds $500 million. See also 201.170.

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225.7302 Preparation of letter of offer and acceptance.

For FMS programs that will require an acquisition, assist the DoD implementing agency responsible for preparing the Letter of Offer and Acceptance (LOA) by?

(1) Working with prospective contractors to?

(i) Identify, in advance of the LOA, any unusual provisions or deviations (such as those requirements for Pseudo LOAs identified at PGI 225.7301);

(ii) Advise the contractor if the DoD implementing agency expands, modifies, or does not accept any key elements of the prospective contractor?s proposal;

(iii) Identify any logistics support necessary to perform the contract (such as those requirements identified at PGI 225.7301); and

(iv) For noncompetitive acquisitions over $10,000, ask the prospective contractor for information on price, delivery, and other relevant factors. The request for information must identify the fact that the information is for a potential foreign military sale and must identify the foreign customer; and

(2) Working with the DoD implementing agency responsible for preparing the LOA, as specified in PGI 225.7302.

225.7303 Pricing acquisitions for FMS.

(a) Price FMS contracts using the same principles used in pricing other defense contracts. However, application of the pricing principles in FAR parts 15 and 31 to an FMS contract may result in prices that differ from other defense contract prices for the same item due to the considerations in this section.

(b) If the foreign government has conducted a competition resulting in adequate price competition (see FAR 15.403-2(b)(1)), do not require the submission of certified cost or pricing data. The contracting officer should consult with the foreign government through security assistance personnel to determine if adequate price competition has occurred.

225.7303-1 Contractor sales to other foreign customers.

If the contractor has made sales of the item required for the foreign military sale to foreign customers under comparable conditions, including quantity and delivery, price the FMS contract in accordance with FAR part 15.

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

(a) In pricing FMS contracts where non-U.S. Government prices as described in **225.7303-1 do not exist, except as provided in 225.7303-5, recognize the reasonable and** allocable costs of doing business with a foreign government or international organization, even though such costs might not be recognized in the same amounts in

pricing other defense contracts. Examples of such costs include, but are not limited to, the following:

(1) Selling expenses (not otherwise limited by FAR Part 31), such as?

(i) Maintaining international sales and service organizations;

(ii) Sales commissions and fees in accordance with FAR subpart 3.4;

(iii) Sales promotions, demonstrations, and related travel for sales to foreign governments. Section 126.8 of the International Traffic in Arms Regulations (22 CFR **126.8) may require Government approval for these costs to be allowable, in which case** the appropriate Government approval must be obtained; and

(iv) Configuration studies and related technical services undertaken as a direct selling effort to a foreign country.

(2) Product support and post-delivery service expenses, such as?

(i) Operations or maintenance training, training or tactics films, manuals, or other related data; and

(ii) Technical field services provided in a foreign country related to accident investigations, weapon system problems, or operations/tactics enhancement, and related travel to foreign countries.

(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

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placed on notice through the LOA that indirect offset costs are deemed reasonable without any further analysis by the contracting officer.

(4) Costs that are the subject of advance agreement under the appropriate provisions of FAR part 31; or where the advance understanding places a limit on the amounts of cost that will be recognized as allowable in defense contract pricing, and the agreement contemplated that it will apply only to DoD contracts for the U.S. Government?s own requirement (as distinguished from contracts for FMS).

(b) Costs not allowable under FAR part 31 are not allowable in pricing FMS contracts, except as noted in paragraphs (c) and (e) of this section.

(c) The limitations for all contractors described in 231.205-18(c)(iii) and (iv) do not apply to FMS contracts, except as provided in 225.7303-5. The allowability of independent research and development (IR&D) costs and bid and proposal (B&P) costs on contracts for FMS not wholly paid for from funds made available on a nonrepayable basis is limited to the contract?s allocable share of the contractor?s total IR&D expenditures and total B&P expenditures. In pricing contracts for such FMS?

(1) Use the best estimate of reasonable costs in forward pricing; and

(2) Use actual expenditures, to the extent that they are reasonable, in determining final cost.

(d) Under paragraph (e)(1)(A) of Section 21 of the Arms Export Control Act (22 U.S.C. 2761), the United States must charge for administrative services to recover the estimated cost of administration of sales made under the Army Export Control Act.

(e) The limitations in 231.205-1 on allowability of costs associated with leasing Government equipment do not apply to FMS contracts.

225.7303-3 Government-to-government agreements.

If a government-to-government agreement between the United States and a foreign government for the sale, coproduction, or cooperative logistic support of a specifically defined weapon system, major end item, or support item, contains language in conflict with the provisions of this section, the language of the government-to-government agreement prevails.

225.7303-4 Contingent fees.

(a) Except as provided in paragraph (b) of this subsection, contingent fees are generally allowable under DoD contracts, provided?

(1) The fees are paid to a bona fide employee or a bona fide established commercial or selling agency maintained by the prospective contractor for the purpose of securing business (see FAR part 31 and FAR subpart); and

(2) The contracting officer determines that the fees are fair and reasonable.

(b)(1) Under DoD 5105.38-M, LOAs for requirements for the governments of Australia, Taiwan, Egypt, Greece, Israel, Japan, Jordan, Republic of Korea, Kuwait,
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Pakistan, Philippines, Saudi Arabia, Turkey, Thailand, or Venezuela (Air Force) must provide that all U.S. Government contracts resulting from the LOAs prohibit the reimbursement of contingent fees as an allowable cost under the contract, unless the contractor identifies the payments and the foreign customer approves the payments in writing before contract award (see 225.7307(a)).

(2) For FMS to countries not listed in paragraph (b)(1) of this subsection, contingent fees exceeding $50,000 per FMS case are unallowable under DoD contracts, unless the contractor identifies the payment, and the foreign customer approves the payment in writing before contract award.

225.7303-5 Acquisitions wholly paid for from nonrepayable funds.

(a) In accordance with 22 U.S.C. 2762(d), price FMS wholly paid for from funds made available on a nonrepayable basis on the same costing basis regarding profit, overhead, IR&D/B&P, and other costing elements as is applicable to acquisitions of like items purchased by DoD for its own use.

(b) Direct costs associated with meeting a foreign customer?s additional or unique requirements are allowable under such contracts. Indirect burden rates applicable to such direct costs are permitted at the same rates applicable to acquisitions of like items purchased by DoD for its own use.

(c) A U.S. defense contractor may not recover costs incurred for offset agreements with a foreign government or international organization if the LOA is financed with funds made available on a nonrepayable basis.

225.7304 FMS customer involvement.

(a) FMS customers may request that a defense article or defense service be obtained from a particular contractor. In such cases, FAR 6.103-4 provides authority to contract without full and open competition. The FMS customer may also request that a subcontract be placed with a particular firm. Honor such requests from the FMS customer only if the LOA or other written direction sufficiently fulfills the requirements of FAR subpart 6.1.

(b) FMS customers should be encouraged to participate with U.S. Government acquisition personnel in discussions with industry to?

(1) Develop technical specifications;

(2) Establish delivery schedules;

(3) Identify any special warranty provisions or other requirements unique to the FMS customer; and

(4) Review prices of varying alternatives, quantities, and options needed to make price-performance tradeoffs.

(c) Do not disclose to the FMS customer any data, including certified cost or pricing data, that is contractor proprietary unless the contractor authorizes its release.

(d) Except as provided in paragraph (e)(3) of this section, the degree of FMS customer participation in contract negotiations is left to the discretion of the contracting officer after consultation with the contractor. Provide an explanation to the FMS customer if its participation in negotiations will be limited. Factors that may limit FMS customer participation include situations where?

(1) The contract includes requirements for more than one FMS customer;

(2) The contract includes unique U.S. requirements; or

(3) Contractor proprietary data is a subject of negotiations.

(e) Do not allow representatives of the FMS customer to?

(1) Direct the exclusion of certain firms from the solicitation process (they may suggest the inclusion of certain firms);

(2) Interfere with a contractor?s placement of subcontracts; or

(3) Observe or participate in negotiations between the U.S. Government and the contractor involving certified cost or pricing data, unless a deviation is granted in accordance with subpart 201.4.

(f) Do not accept directions from the FMS customer on source selection decisions or contract terms (except that, upon timely notice, the contracting officer may attempt to obtain any special contract provisions, warranties, or other unique requirements requested by the FMS customer).

(g) Do not honor any requests by the FMS customer to reject any bid or proposal.

(h) If an FMS customer requests additional data concerning FMS contract prices, after consultation with the contractor, provide sufficient data to demonstrate the reasonableness of the price and reasonable responses to relevant questions concerning contract price. This data?

(1) May include tailored responses, top-level pricing summaries, historical prices, or an explanation of any significant differences between the actual contract price and the estimated contract price included in the initial LOA; and

(2) May be provided orally, in writing, or by any other method acceptable to the contracting officer.

225.7305 Limitation of liability.

Advise the contractor when the foreign customer will assume the risk for loss or damage under the appropriate limitation of liability clause(s) (see FAR subpart 46.8). Consider the costs of necessary insurance, if any, obtained by the contractor to cover the risk of loss or damage in establishing the FMS contract price.

225.7306 Offset arrangements.

In accordance with the Presidential policy statement of April 16, 1990, DoD does not encourage, enter into, or commit U.S. firms to FMS offset arrangements. The decision whether to engage in offsets, and the responsibility for negotiating and implementing offset arrangements, resides with the companies involved. (See also 225.7303-2(a)(3).)

225.7307 Contract clauses.

(a) Insert the clause at 252.225-7027, Restriction on Contingent Fees for Foreign Military Sales, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that are for FMS. Insert in paragraph (b)(1) of the clause the name(s) of any foreign country customer(s) listed in 225.7303-4(b).

(b) Insert the clause at 252.225-7028, Exclusionary Policies and Practices of Foreign Governments, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that are for the purchase of supplies and services for international military education training and FMS.

SUBPART 225.74 [RESERVED]

SUBPART 225.75?BALANCE OF PAYMENTS PROGRAM

225.7500 Scope of subpart.

This subpart states policies and procedures implementing the Balance of Payments Program. It applies to contracts for the acquisition of?

(a) Supplies for use outside the United States; and

(b) Construction to be performed outside the United States.

225.7501 Policy.

Acquire only domestic end products for use outside the United States, and use only domestic construction material for construction to be performed outside the United States, including end products and construction material for foreign military sales, unless?

(a) Before issuing the solicitation?

(1) The estimated cost of the acquisition or the value of a particular construction material is at or below the simplified acquisition threshold;

(2) The end product or particular construction material is?

(i) Listed in FAR 25.104;

(ii) A petroleum product;

(iii) A spare part for foreign-manufactured vehicles, equipment, machinery, or systems, provided the acquisition is restricted to the original manufacturer or its supplier;

(iv) An industrial gas;

.

(v) A brand drug specified by the Defense Medical Materiel Board; or

(vi) Information technology that is a commercial product, using fiscal year 2004 or subsequent funds (section 535 of Division F of the Consolidated Appropriations Act, 2004 (Pub. L. 108-199), and the same provision in subsequent appropriations acts);

(3) The acquisition is covered by the World Trade Organization Government

Procurement Agreement;

(4) The acquisition of foreign end products or construction material is required by a treaty or executive agreement between governments;

(5) [Reserved];

(6) The end product is acquired for commissary resale; or

(7) The contracting officer determines that a requirement can best be filled by a foreign end product or construction material, including determinations that?

(i) A subsistence product is perishable and delivery from the United States would significantly impair the quality at the point of consumption;

(ii) An end product or construction material, by its nature or as a practical matter, can best be acquired in the geographic area concerned, e.g., ice or books; or bulk material, such as sand, gravel, or other soil material, stone, concrete masonry units, or fired brick;

(iii) A particular domestic construction material is not available;

(iv) The cost of domestic construction material would exceed the cost of foreign construction material by more than 50 percent, calculated on the basis of?

(A) A particular construction material; or

(B) The comparative cost of application of the Balance of Payments Program to the total acquisition; or

(v) Use of a particular domestic construction material is impracticable;

(b) After receipt of offers?

(1) The evaluated low offer (see subpart 225.5) is an offer of an end product that?

(i) Is a qualifying country end product;

(ii) Is an eligible product; or

(iii) [Reserved]

(iv) Is a nonqualifying country end product, but application of the Balance of Payments Program evaluation factor would not result in award on a domestic offer; or

(2) [Reserved]

(c) At any time during the acquisition process, the head of the agency determines that applying the restrictions of the Balance of Payments Program to the end product or construction material is not in the public interest.

225.7502 Procedures.

If the Balance of Payments Program applies to the acquisition, follow the procedures at **PGI 225.7502.**

225.7503 Contract clauses.

Unless the entire acquisition is exempt from the Balance of Payments Program?

(a) Insert the basic or an alternate of the clause at 252.225-7044, Balance of Payments Program?Construction Material, in solicitations and contracts for

construction to be performed outside the United States, including acquisitions of commercial products or commercial components, with an estimated value greater than the simplified acquisition threshold but less than $6,708,000.

(1) [Reserved]

(2) [Reserved]

(3) Insert the alternate II clause in lieu of the basic clause if an alternate domestic content threshold will apply to the entire period of performance as approved by the senior procurement executive (see 225.101(d)).

(4) [Reserved]

(b) Insert the basic or an alternate of the clause at 252.225-7045, Balance of Payments Program?Construction Material Under Trade Agreements, in solicitations and contracts for construction to be performed outside the United States with an estimated value of $6,708,000 or more, including acquisitions of commercial products or commercial components.

(1) Insert the basic clause in solicitations and contracts with an estimated value of $13,296,489 or more.

(2) Insert the alternate I clause in solicitations and contracts with an estimated value of $6,708,000 or more, but less than $13,296,489.

(3) [Reserved]

(4) [Reserved]

(5) Insert the alternate IV clause in lieu of the basic clause in solicitations and contracts when?

(i) The estimated value is $13,296,489 or more; and

(ii) An alternate domestic content threshold will apply to the entire period of performance as approved by the senior procurement executive (see 225.101(d)).

(6) Insert the alternate V clause in lieu of the alternate I clause in solicitations and contracts when?

(i) The estimated value is $6,708,000 or more, but less than $13,296,489; and

(ii) An alternate domestic content threshold will apply to the entire period of performance as approved by the senior procurement executive (see 225.101(d)).

(7) [Reserved]

(8) [Reserved]

SUBPART 225.76?SECONDARY ARAB BOYCOTT OF ISRAEL

225.7601 Restriction.

In accordance with 10 U.S.C. 4659, do not enter into a contract with a foreign entity unless it has certified that it does not comply with the secondary Arab boycott of Israel.

225.7602 Procedures.

For contracts awarded to the Canadian Commercial Corporation (CCC), the CCC will

submit a certification from its proposed subcontractor with the other required precontractual information (see 225.870).

225.7603 Exceptions.

This restriction does not apply to?

(a) Purchases at or below the simplified acquisition threshold;

(b) Contracts for consumable supplies, provisions, or services for the support of United States forces or of allied forces in a foreign country; or

(c) Contracts pertaining to the use of any equipment, technology, data, or services for intelligence or classified purposes, or to the acquisition or lease thereof, in the interest of national security.

225.7604 Waivers.

The Secretary of Defense may waive this restriction on the basis of national security interests. To request a waiver, follow the procedures at PGI 225.7604.

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225.7605 Solicitation provision.

Unless an exception at 225.7603 applies or a waiver has been granted in accordance with 225.7604, insert the provision at 252.225-7031, Secondary Arab Boycott of Israel, in all solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services. If the solicitation includes the provision at FAR 52.204-7, do not separately list 252.225-7031 in the solicitation.

SUBPART 225.78?ACQUISITIONS IN SUPPORT OF GEOGRAPHIC COMBATANT COMMAND?S THEATER SECURITY COOPERATION EFFORTS

225.7801 Policy.

For guidance on procurement support of the geographic combatant command?s theater security cooperation efforts, see PGI 225.78.

SUBPART 225.79?EXPORT CONTROL

225.7900 Scope of subpart.

This subpart implements?

(a) Section 890(a) of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181); and

(b) The requirements regarding export control of Title I of the Security Cooperation Act of 2010 (Pub. L. 111-266); the Treaty Between the Government of the United States of America and the Government of Australia Concerning Defense Trade Cooperation (the U.S.-Australia DTC Treaty); and the Treaty Between the Government of the United States of America and the Government the United Kingdom of Great Britain and Northern Ireland Concerning Defense Trade Cooperation (the U.S.-U.K. DTC Treaty). See PGI 225.7902 for additional information.

225.7901 Export-controlled items.

This section implements section 890(a) of the National Defense Authorization Act for

Fiscal Year 2008 (Pub. L. 110-181).

225.7901-1 Definitions.

As used in this section?

?Export-controlled items? means items subject to the Export Administration Regulations (EAR) (15 CFR Parts 730-774) or the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120-130). The term includes:

(1) ?Defense items?, defined in the Arms Export Control Act, 22 U.S.C. 2778(j)(4)(A), as defense articles, defense services, and related technical data, and further defined in the ITAR, 22 CFR Part 120.

(2) ?Items?, defined in the EAR as ?commodities?, ?software?, and ?technology,? terms that are also defined in the EAR, 15 CFR 772.1.

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225.7901-2 General.

Certain types of items are subject to export controls in accordance with the Arms Export Control Act (22 U.S.C. 2751, et seq.), the International Traffic in Arms Regulations (22 CFR parts 120-130), the Export Administration Act of 1979, as amended (50 U.S.C. App. 2401 et seq.), and the Export Administration Regulations (15 CFR parts 730-774). See PGI 225.7901-2 for additional information.

225.7901-3 Policy.

(a) Both the Government and the contractor should be aware of export controls as they apply to the performance of DoD contracts.

(b) The contractor bears responsibility to comply with all applicable laws and regulations regarding export-controlled items. This responsibility exists independent of, and is not established or limited by, this section.

225.7901-4 Contract clause.

Insert the clause at 252.225-7048, Export-Controlled Items, in all solicitations and contracts.

225.7902 Defense Trade Cooperation Treaties.

This section implements the Defense Trade Cooperation (DTC) Treaties with Australia and the United Kingdom and the associated Implementing Arrangements for DoD solicitations and contracts that authorize prospective contractors and contractors to use the DTC Treaties to respond to DoD solicitations and in the performance of DoD contracts.

225.7902-1 Definitions.

As used in this section?

?Approved Community? means the U.S. Government, U.S. entities that are registered and eligible exporters, and certain government and industry facilities in Australia or the United Kingdom that are approved and listed by the U.S. Government.

?Defense articles? means articles, services, and related technical data, including software, in tangible or intangible form, listed on the United States Munitions List of

the International Traffic in Arms Regulations (ITAR), as modified or amended.
?Defense Trade Cooperation (DTC) Treaty? means?

(1) The Treaty Between the Government of the United States of America and the government of the United Kingdom of Great Britain and Northern Ireland concerning Defense Trade Cooperation, signed at Washington and London on June 21 and 26, 2007; or

(2) The Treaty Between the Government of the United States of America and the Government of Australia Concerning Defense Trade Cooperation, signed at Sydney on September 5, 2007.

?Export? means the initial movement of defense articles from the United States Community to the United Kingdom Community and the Australia community.

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?Qualifying defense articles? means defense articles that are not exempt from the scope of the DTC Treaties as defined in 22 CFR 126.16(g) and 22 CFR 126.17(g).

?Transfer? means the movement of previously exported defense articles within the Approved Community. ?United Kingdom Community member? means a United Kingdom government authority or nongovernmental entity or facility on the United Kingdom Community list accessible at http://pmddtc.state.gov.

?U.S. DoD Treaty-eligible requirements? means any defense article acquired by the DoD for use in a combined military or counterterrorism operation, cooperative research, development, production or support program, or DoD end use, as described in Article 3 of the U.S.-U.K. DTC Treaty and sections 2 and 3 of the associated Implementing Arrangement; and Article 3 of the U.S.-Australia DTC Treaty and sections 2 and 3 of the associated Implementing Arrangement.

225.7902-2 Purpose.

The DTC Treaties permit the export of certain U.S. defense articles, technical data, and defense services, without U.S. export licenses or other written authorization under the International Traffic in Arms Regulation (ITAR) into and within the Approved Community, as long as the exports are in support of purposes specified in the DTC Treaties. All persons must continue to comply with statutory and regulatory requirements outside of DFARS and ITAR concerning the import of defense articles and defense services or the possession or transfer of defense articles, including, but not limited to, regulations issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives found at 27 CFR parts 447, 478, and 479, which are unaffected by the DTC Treaties. The Approved Community consists of U.S. entities that are registered with the Department of State and are eligible exporters, the U.S. Government, and certain governmental and commercial facilities in Australia and the United Kingdom that are approved and listed by the U.S. Government. See PGI 225.7902-2 for additional information.

225.7902-3 Policy.

DoD will facilitate maximum use of the DTC Treaties by prospective contractors responding to DoD solicitations and by contractors eligible to export qualifying defense articles under DoD contracts in accordance with 22 CFR 126.16(g) and 22 CFR **126.17(g).**

225.7902-4 Procedures.

(a) For all solicitations and contracts that may be eligible for DTC Treaty coverage (see PGI 225.7902-4(1)), the program manager must identify in writing and submit to the contracting officer prior to issuance of a solicitation and prior to award of a contract?

(1) The qualifying DTC Treaty Scope paragraph (Article 3(1)(a), 3(1)(b), or 3(1)(d) of the U.S.-Australia DTC Treaty or Article (3)(1)(a), (3(1)(b), or 3(1)(d) of the U.S.-U.K. DTC Treaty); and

(2) The qualifying defense article(s) using the categories described in 22 CFR **126.16(g) and 22 CFR 126.17(g).**

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(b) If applicable, the program manager must also identify in writing and submit to the contracting officer any specific Part C, DTC Treaty-exempted technology list items, terms and conditions for applicable contract line item numbers (See PGI 225.7902-4(2)).

225.7902-5 Solicitation provision and contract clause.

(a) Insert the provision at 252.225-7046, Exports by Approved Community Members in Response to the Solicitation, in solicitations containing the clause at 252.225-7047.

(b)(1) Insert the clause at 252.225-7047, Exports by Approved Community Members in Performance of the Contract, in solicitations and contracts when?

(i) Export-controlled items are expected to be involved in the performance of the contract and the clause at 252.225-7048 is used; and

(ii) At least one contract line item is intended to satisfy a U.S. DoD Treaty-eligible requirement.

(2) Complete paragraph (b) of the clause using information the program manager provided as required by 225.7902-4(a).

PART 252?SOLICITATION PROVISIONS AND CONTRACT CLAUSES

SUBPART 252.2?TEXT OF PROVISIONS AND CLAUSES

252.225-7000 Buy American--Balance of Payments Program Certificate.

Basic. As prescribed in 225.601(1), use the following provision:

BUY AMERICAN?BALANCE OF PAYMENTS PROGRAM CERTIFICATE?BASIC (FEB 2024)

(a) Definitions. ?Commercially available off-the-shelf (COTS) item,? ?component,? ?critical component,? ?critical item,? ?domestic end product,? ?foreign end product,? ?qualifying country,? ?qualifying country end product,? and ?United States,? as used in this provision, have the meanings given in the 252.225-7001, Buy American and Balance of Payments Program?Basic clause of this solicitation.

(b) Evaluation. The Government?

(1) Will evaluate offers in accordance with the policies and procedures of Part 225 of the Defense Federal Acquisition Regulation Supplement; and

(2) Will evaluate offers of qualifying country end products without regard to the restrictions of the Buy American statute or the Balance of Payments Program.

(c) Certifications and identification of country of origin.

(1) For all line items subject to the Buy American and Balance of Payments Program?Basic clause of this solicitation, the Offeror certifies that?

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(i) Each end product, except those listed in paragraphs (c)(2) or (3) of this provision, is a domestic end product and that each domestic end product listed in paragraph (c)(4) of this provision contains a critical component or a critical item; and

(ii) For end products other than COTS items, components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country. For those end products that do not consist wholly or predominantly of iron or steel or a combination of both, the Offeror shall also indicate whether these foreign end products exceed 55 percent domestic content, except for those that are COTS items. If the percentage of the domestic content is unknown, select ?no?.

(2) The Offeror certifies that the following end products are qualifying country end products:

Line Item Number Country of Origin

(3) The following end products are other foreign end products, including end products manufactured in the United States that do not qualify as domestic end products. For those foreign end products that do not consist wholly or predominantly of iron or steel or a combination of both, the Offeror shall also indicate whether these foreign end products exceed 55 percent domestic content, except for those that are COTS items. If the percentage of the domestic content is unknown, select ?no?.

Country of Origin Exceeds 55% Domestic Content

Line Item Number (If known) (yes/no)

(4) The Offeror shall separately list the line item numbers of domestic end products that contain a critical component or a critical item (see Federal Acquisition Regulation 25.105).

Domestic end products containing a critical component or a critical item:

Line Item Number _____

[List as necessary]

(End of provision)

Alternate I. [Reserved]

252.225-7001 Buy American and Balance of Payments Program.

Basic. As prescribed in 225.601(2)(i), use the following clause:

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BUY AMERICAN AND BALANCE OF PAYMENTS PROGRAM?BASIC

(FEB 2024)

(a) Definitions. As used in this clause?

?Commercially available off-the-shelf (COTS) item??

(1) Means any item of supply (including construction material) that is?

(i) A commercial product (as defined in paragraph (1) of the definition of ?commercial product? in section 2.101 of the Federal Acquisition Regulation (FAR));

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

?Component? means an article, material, or supply incorporated directly into an end product.

?Critical component? means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

?Critical item? means a domestic construction material or domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

?Domestic end product? means?

(1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both?

(i) An unmanufactured end product mined or produced in the United States; or

(ii) An end product manufactured in the United States if?

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract in accordance with FAR 25.101(d), or award is made before January 1, 2030, for a foreign end product that exceeds 55 percent domestic content (see Defense Federal Acquisition Regulation Supplement 225.103(b)(ii)). The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty

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(whether or not a duty-free entry certificate is issued). Components of unknown origin

are treated as foreign. Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that?

(1) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(2) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of iron and steel not produced in the United States or a qualifying country constitutes less than 5 percent of the cost of all the components used in the end product (produced in the United States or a qualifying country means that all manufacturing processes of the iron or steel must take place in the United States or a qualifying country, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States or a qualifying country includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States or a qualifying country, utilized in the manufacture of the end product and a good faith estimate of the cost of all iron or steel components not produced in the United States or a qualifying country, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the explanation of cost of components in paragraph (1)(ii)(A) of this definition.

?End product? means those articles, materials, and supplies to be acquired under this contract for public use.

?Foreign end product? means an end product other than a domestic end product.

?Predominantly of iron or steel or a combination of both? means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

?Qualifying country? means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

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Australia
Austria
Belgium
Canada
Czech Republic
Denmark
Egypt
Estonia
Finland
France
Germany
Greece
Israel
Italy
Japan
Latvia
Lithuania
Luxembourg
Netherlands
Norway
Poland
Portugal
Slovenia
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland.
?Qualifying country component? means a component mined, produced, or manufactured in a qualifying country.
?Qualifying country end product? means?
(1) An unmanufactured end product mined or produced in a qualifying country; or
(2) An end product manufactured in a qualifying country if?
(i) The cost of the following types of components exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract:
(A) Components mined, produced, or manufactured in a qualifying country.
(B) Components mined, produced, or manufactured in the United States.

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(C) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States. Components of unknown origin are treated as foreign; or

(ii) The end product is a COTS item.

?Steel? means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

?United States? means the 50 States, the District of Columbia, and outlying areas.

(b) This clause implements 41 U.S.C chapter 83, Buy American. In accordance with **41 U.S.C. 1907, the component test of the Buy American statute is waived for an end** product that is a COTS item . Unless otherwise specified, this clause applies to all line items in the contract.

(c) The Contractor shall deliver only domestic end products unless, in its offer, it specified delivery of other end products in the Buy American?Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product, the Contractor shall deliver a qualifying country end product or, at the Contractor?s option, a domestic end product.

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(End of clause)

Alternate I. [Reserved]

Alternate II. As prescribed in 225.601(2)(i) and (2)(ii), use the following clause, which includes, in the definitions of ?domestic end product? at paragraph (1)(ii)(A) and ?qualifying country end product? at paragraph (2)(i), the domestic content threshold that will apply to the entire contract period of performance.

BUY AMERICAN AND BALANCE OF PAYMENTS PROGRAM?

ALTERNATE II (FEB 2024)

(a) Definitions. As used in this clause?

?Commercially available off-the-shelf (COTS) item??

(1) Means any item of supply (including construction material) that is?

(i) A commercial product (as defined in paragraph (1) of the definition of ?commercial product? in section 2.101 of the Federal Acquisition Regulation (FAR));

(ii) Sold in substantial quantities in the commercial marketplace; and

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(iii) Offered to the Government, under a contract or subcontract at any tier,

without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

?Component? means an article, material, or supply incorporated directly into an end product.

?Critical component? means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

?Critical item? means a domestic construction material or domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

?Domestic end product? means?

(1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both?

(i) An unmanufactured end product mined or produced in the United States; or

(ii) An end product manufactured in the United States if?

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Components of unknown origin are treated as foreign. Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that?

(1) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(2) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of

iron and steel not produced in the United States or a qualifying country constitutes less than 5 percent of the cost of all the components used in the end product (produced in the United States or a qualifying country means that all manufacturing processes of the

iron or steel must take place in the United States or a qualifying country, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States or a qualifying country includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States or a qualifying country, utilized in the manufacture of the end product and a good faith estimate of the cost of all iron or steel components not produced in the United States or a qualifying country, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the explanation of cost of components in paragraph (1)(ii)(A) of this definition.

?End product? means those articles, materials, and supplies to be acquired under this contract for public use.

?Foreign end product? means an end product other than a domestic end product.

?Predominantly of iron or steel or a combination of both? means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

?Qualifying country? means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia
Austria
Belgium
Canada
Czech Republic
Denmark
Egypt
Estonia
Finland
France
Germany
Greece
Israel
Italy
Japan
Latvia

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Lithuania
Luxembourg
Netherlands
Norway
Poland
Portugal
Slovenia
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland.
Qualifying country component? means a component mined, produced, or manufactured in a qualifying country.
?Qualifying country end product? means?

(1) An unmanufactured end product mined or produced in a qualifying country; or

(2) An end product manufactured in a qualifying country if?

(i) The cost of the following types of components exceeds, for the entire period of performance for a contract awarded in calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 percent of the cost of all its components:

(A) Components mined, produced, or manufactured in a qualifying country.

(B) Components mined, produced, or manufactured in the United States.

(C) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States. Components of unknown origin are treated as foreign; or

(ii) The end product is a COTS item.

?Steel? means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.
?United States? means the 50 States, the District of Columbia, and outlying areas.

(b) This clause implements 41 U.S.C. chapter 83, Buy American. In accordance with 41 U.S.C. 1907, the component test of the Buy American statute is waived for an end product that is a COTS item. Unless otherwise specified, this clause applies to all line items in the contract.

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(c) The Contractor shall deliver only domestic end products unless, in its offer, it specified delivery of other end products in the Buy American?Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product, the Contractor shall deliver a qualifying country end product or, at the Contractor?s option, a domestic end product.

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(End of clause)

252.225-7002 Qualifying Country Sources as Subcontractors.

As prescribed in 225.601(3), use the following clause:

QUALIFYING COUNTRY SOURCES AS SUBCONTRACTORS (MAR 2022)

(a) Definition. ?Qualifying country,? as used in this clause, means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia
Austria
Belgium
Canada
Czech Republic
Denmark
Egypt
Estonia
Finland
France
Germany
Greece
Israel
Italy
Japan
Latvia
Lithuania
Luxembourg
Netherlands
Norway
Poland
Portugal
Slovenia
Spain

Sweden
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Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland.

(b) Subject to the restrictions in section 225.872 of the Defense FAR Supplement, the Contractor shall not preclude qualifying country sources or U.S. sources from competing for subcontracts under this contract.

(End of clause)

252.225-7003 Report of Intended Performance Outside the United States and Canada?Submission with Offer.

As prescribed in 225.7204(a), use the following provision:

REPORT OF INTENDED PERFORMANCE OUTSIDE THE UNITED STATES AND CANADA?SUBMISSION WITH OFFER (OCT 2025)

(a) Definition. ?United States,? as used in this provision, means the 50 States, the District of Columbia, and outlying areas.

(b) The Offeror shall submit, with its offer, a report of intended performance outside the United States and Canada if?

(1) The offer exceeds $20 million in value; and

(2) The Offeror is aware that the Offeror or a first-tier subcontractor intends to perform any part of the contract outside the United States and Canada that?

(i) Exceeds $900,000 in value; and

(ii) Could be performed inside the United States or Canada.

(c) Information to be reported includes that for?

(1) Subcontracts;

(2) Purchases; and

(3) Intracompany transfers when transfers originate in a foreign location.

(d) The Offeror shall submit the report using?

(1) DD Form 2139, Report of Contract Performance Outside the United States; or

(2) A computer-generated report that contains all information required by DD Form 2139.

(e) The Offeror may obtain a copy of DD Form 2139 from the Contracting Officer or via the Internet at http://www.dtic.mil/whs/directives/infomgt/forms/formsprogram.htm.

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(End of provision)

252.225-7004 Report of Intended Performance Outside the United States and Canada?Submission after Award.

As prescribed in 225.7204(b), use the following clause:

REPORT OF INTENDED PERFORMANCE OUTSIDE THE UNITED STATES AND CANADA?SUBMISSION AFTER AWARD (JUL 2024)

(a) Definition. ?United States,? as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

(b) Reporting requirement. The Contractor shall submit a report in accordance with this clause, if the Contractor or a first-tier subcontractor will perform any part of this contract outside the United States and Canada that?

(1) Exceeds the threshold specified in Defense Acquisition Regulation Supplement 225.7201(a); and

(2) Could be performed inside the United States or Canada.

(c) Submission of reports. The Contractor?

(1) Shall submit a report as soon as practical after the information is known;

(2) To the maximum extent practicable, shall submit a report regarding a first-tier subcontractor at least 30 days before award of the subcontract;

(3) Need not resubmit information submitted with its offer, unless the information changes;

(4) Shall submit all reports to the Contracting Officer; and

(5) Shall submit a copy of each report to: Principal Director, Defense Pricing, Contracting, and Acquisition Policy (Contract Policy), OUSD(A&S) DPCAP/CP, Washington, DC 20301-3060.

(d) Report format. The Contractor?

(1) Shall submit reports using?

(i) DD Form 2139, Report of Contract Performance Outside the United States; or

(ii) A computer-generated report that contains all information required by DD Form 2139; and

(2) May obtain copies of DD Form 2139 from the Contracting Officer or via the Internet at https://www.esd.whs.mil/Directives/forms/.

(End of clause)

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252.225-7005 Identification of Expenditures in the United States.

As prescribed in 225.603(1), use the following clause:

IDENTIFICATION OF EXPENDITURES IN THE UNITED STATES (JUN 2005)

(a) Definition. ?United States,? as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

(b) This clause applies only if the Contractor is?

(1) A concern incorporated in the United States (including a subsidiary that is

incorporated in the United States, even if the parent corporation is not incorporated in the United States); or

(2) An unincorporated concern having its principal place of business in the United States.

(c) On each invoice, voucher, or other request for payment under this contract, the Contractor shall identify that part of the requested payment that represents estimated expenditures in the United States. The identification?

(1) May be expressed either as dollar amounts or as percentages of the total amount of the request for payment;

(2) Should be based on reasonable estimates; and

(3) Shall state the full amount of the payment requested, subdivided into the following categories:

(i) U.S. products?expenditures for material and equipment manufactured or produced in the United States, including end products, components, or construction material, but excluding transportation;

(ii) U.S. services?expenditures for services performed in the United States, including all charges for overhead, other indirect costs, and profit under construction or service contracts;

(iii) Transportation on U.S. carriers?expenditures for transportation furnished by U.S. flag, ocean, surface, and air carriers; and

(iv) Expenditures not identified under paragraphs (c)(3)(i) through (iii) of this clause.

(d) Nothing in this clause requires the establishment or maintenance of detailed accounting records or gives the U.S. Government any right to audit the Contractor?s books or records.

(End of clause)

252.225-7006 Acquisition of the American Flag.

As prescribed in 225.7002-3(c), insert the following clause:

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ACQUISITION OF THE AMERICAN FLAG (DEC 2022)

(a) Definition. ?United States,? as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

(b) If the Contractor is required to deliver under this contract one or more American flags (Product or Service Code 8345), such flag(s), including the materials and components thereof, shall be manufactured in the United States, consistent with the requirements at 10 U.S.C. 4862 (commonly known as the ?Berry Amendment?).

(c) This clause does not apply to the acquisition of any end items or components related to flying or displaying the flag (e.g., flagpoles and accessories).

(End of clause)

252.225-7008 Restriction on Acquisition of Specialty Metals.

As prescribed in 225.7003-5(a)(1), use the following clause:

RESTRICTION ON ACQUISITION OF SPECIALTY METALS (MAR 2013)

(a) Definitions. As used in this clause?

?Alloy? means a metal consisting of a mixture of a basic metallic element and one or more metallic, or non-metallic, alloying elements.

(i) For alloys named by a single metallic element (e.g., titanium alloy), it means that the alloy contains 50 percent or more of the named metal (by mass).

(ii) If two metals are specified in the name (e.g, nickel-iron alloy), those metals are the two predominant elements in the alloy, and together they constitute 50 percent or more of the alloy (by mass).

?Produce? means?

(i) Atomization;

(ii) Sputtering; or

(iii) Final consolidation of non-melt derived metal powders.

?Specialty metal? means?

(i) Steel?

(A) With a maximum alloy content exceeding one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent; or

(B) Containing more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, molybdenum, nickel, niobium (columbium), titanium, tungsten, or vanadium;

(ii) Metal alloys consisting of?

(A) Nickel or iron-nickel alloys that contain a total of alloying metals other than nickel and iron in excess of 10 percent; or

(B) Cobalt alloys that contain a total of alloying metals other than cobalt and iron in excess of 10 percent;

(iii) Titanium and titanium alloys; or

(iv) Zirconium and zirconium alloys.

?Steel? means an iron alloy that includes between .02 and 2 percent carbon and may include other elements.

(b) Any specialty metal delivered under this contract shall be melted or produced in the United States or its outlying areas.

(End of clause)

252.225-7009 Restriction on Acquisition of Certain Articles Containing Specialty Metals.

As prescribed in 225.7003-5(a)(2), use the following clause:

RESTRICTION ON ACQUISITION OF CERTAIN ARTICLES CONTAINING SPECIALTY METALS (JAN 2023)

(a) Definitions. As used in this clause?

?Alloy? means a metal consisting of a mixture of a basic metallic element and one or more metallic, or non-metallic, alloying elements.

(i) For alloys named by a single metallic element (e.g., titanium alloy), it means that the alloy contains 50 percent or more of the named metal (by mass).

(ii) If two metals are specified in the name (e.g, nickel-iron alloy), those metals are the two predominant elements in the alloy, and together they constitute 50 percent or more of the alloy (by mass).

?Assembly? means an item forming a portion of a system or subsystem that?

(i) Can be provisioned and replaced as an entity; and

(ii) Incorporates multiple, replaceable parts.

?Commercial derivative military article? means an item acquired by the Department of Defense that is or will be produced using the same production facilities, a common supply chain, and the same or similar production processes that are used for the production of articles predominantly used by the general public or by nongovernmental entities for purposes other than governmental purposes.

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?Commercially available off-the-shelf item??

(i) Means any item of supply that is?

(A) A commercial product (as defined in paragraph (1) of the definition of ?commercial product? in section 2.101 of the Federal Acquisition Regulation);

(B) Sold in substantial quantities in the commercial marketplace; and

(C) Offered to the Government, under this contract or a subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(ii) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

?Component? means any item supplied to the Government as part of an end item or of another component.

?Electronic component? means an item that operates by controlling the flow of electrons or other electrically charged particles in circuits, using interconnections of electrical devices such as resistors, inductors, capacitors, diodes, switches, transistors, or integrated circuits. The term does not include structural or mechanical parts of an assembly containing an electronic component, and does not include any high performance magnets that may be used in the electronic component.

?End item? means the final production product when assembled or completed and ready for delivery under a line item of this contract.

?High performance magnet? means a permanent magnet that obtains a majority of its magnetic properties from rare earth metals (such as samarium).

?Produce? means?

(i) Atomization;

(ii) Sputtering; or

(iii) Final consolidation of non-melt derived metal powders.

?Qualifying country? means any country listed in the definition of ?Qualifying country? at 225.003 of the Defense Federal Acquisition Regulation Supplement **(DFARS).**

?Specialty metal? means?

(i) Steel?

(A) With a maximum alloy content exceeding one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent; or

(B) Containing more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, molybdenum, nickel, niobium (columbium), titanium, tungsten, or vanadium;

(ii) Metal alloys consisting of?

(A) Nickel or iron-nickel alloys that contain a total of alloying metals other than nickel and iron in excess of 10 percent; or

(B) Cobalt alloys that contain a total of alloying metals other than cobalt and iron in excess of 10 percent;

(iii) Titanium and titanium alloys; or

(iv) Zirconium and zirconium alloys.

?Steel? means an iron alloy that includes between .02 and 2 percent carbon and may include other elements.

?Subsystem? means a functional grouping of items that combine to perform a major function within an end item, such as electrical power, attitude control, and propulsion.

(b) Restriction. Except as provided in paragraph (c) of this clause, any specialty metals incorporated in items delivered under this contract shall be melted or produced in the United States, its outlying areas, or a qualifying country.

(c) Exceptions. The restriction in paragraph (b) of this clause does not apply to?

(1) Electronic components.

(2)(i) Commercially available off-the-shelf (COTS) items, other than?

(A) Specialty metal mill products, such as bar, billet, slab, wire, plate, or sheet, that have not been incorporated into COTS end items, subsystems, assemblies, or components;

(B) Forgings or castings of specialty metals, unless the forgings or castings are incorporated into COTS end items, subsystems, or assemblies;

(C) Commercially available high performance magnets that contain specialty metal, unless such high performance magnets are incorporated into COTS end items or subsystems; and

(D) COTS fasteners, unless?

(1) The fasteners are incorporated into COTS end items, subsystems, assemblies, or components; or

(2) The fasteners qualify for the commercial product exception in

paragraph (c)(3) of this clause.
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(ii) A COTS item is considered to be ?without modification? if it is not modified prior to contractual acceptance by the next higher tier in the supply chain.

(A) Specialty metals in a COTS item that was accepted without modification by the next higher tier are excepted from the restriction in paragraph (b) of this clause, and remain excepted, even if a piece of the COTS item subsequently is removed (e.g., the end is removed from a COTS screw or an extra hole is drilled in a COTS bracket).

(B) Specialty metals that were not contained in a COTS item upon acceptance, but are added to the COTS item after acceptance, are subject to the restriction in paragraph (b) of this clause (e.g., a special reinforced handle made of specialty metal is added to a COTS item).

(C) If two or more COTS items are combined in such a way that the resultant item is not a COTS item, only the specialty metals involved in joining the COTS items together are subject to the restriction in paragraph (b) of this clause (e.g., a COTS aircraft is outfitted with a COTS engine that is not the COTS engine normally provided with the aircraft).

(D) For COTS items that are normally sold in the commercial marketplace with various options, items that include such options are also COTS items. However, if a COTS item is offered to the Government with an option that is not normally offered in the commercial marketplace, that option is subject to the restriction in paragraph (b) of this clause (e.g. - An aircraft is normally sold to the public with an option for installation kits. The Department of Defense requests a military-unique kit. The aircraft is still a COTS item, but the military-unique kit is not a COTS item and must comply with the restriction in paragraph (b) of this clause unless another exception applies).

(3) Fasteners that are commercial products, if the manufacturer of the fasteners certifies it will purchase, during the relevant calendar year, an amount of domestically melted or produced specialty metal, in the required form, for use in the production of fasteners for sale to the Department of Defense and other customers, that is not less than 50 percent of the total amount of the specialty metal that it will purchase to carry out the production of such fasteners for all customers.

(4) Items manufactured in a qualifying country.

(5) Specialty metals for which the Government has determined in accordance with DFARS 225.7003-3 that specialty metal melted or produced in the United States, its outlying areas, or a qualifying country cannot be acquired as and when needed in?

(i) A satisfactory quality;

(ii) A sufficient quantity; and

(iii) The required form. In accordance with 10 U.S.C. 4863(m)(4), the term ?required form? in this clause refers to the form of the mill product, such as bar, billet,

wire, slab, plate, or sheet, in the grade appropriate for the production of a finished end item to be delivered to the Government under this contract; or a finished component

assembled into an end item to be delivered to the Government under this contract.

(6) End items containing a minimal amount of otherwise noncompliant specialty metals (i.e., specialty metals not melted or produced in the United States, an outlying area, or a qualifying country, that are not covered by one of the other exceptions in this paragraph (c)), if the total weight of such noncompliant metals does not exceed 2 percent of the total weight of all specialty metals in the end item, as estimated in good faith by the Contractor. This exception does not apply to high performance magnets containing specialty metals.

(d) Compliance for commercial derivative military articles.

(1) As an alternative to the compliance required in paragraph (b) of this clause, the Contractor may purchase an amount of domestically melted or produced specialty metals in the required form, for use during the period of contract performance in the production of the commercial derivative military article and the related commercial article, if?

(i) The Contracting Officer has notified the Contractor of the items to be delivered under this contract that have been determined by the Government to meet the definition of ?commercial derivative military article?; and

(ii) For each item that has been determined by the Government to meet the definition of ?commercial derivative military article,? the Contractor has certified, as specified in the provision of the solicitation entitled ?Commercial Derivative Military Article?Specialty Metals Compliance Certificate? (DFARS 252.225-7010), that the Contractor and its subcontractor(s) will enter into a contractual agreement or agreements to purchase an amount of domestically melted or produced specialty metal in the required form, for use during the period of contract performance in the production of each commercial derivative military article and the related commercial article, that is not less than the Contractor?s good faith estimate of the greater of?

(A) An amount equivalent to 120 percent of the amount of specialty metal that is required to carry out the production of the commercial derivative military article (including the work performed under each subcontract); or

(B) An amount equivalent to 50 percent of the amount of specialty metal that will be purchased by the Contractor and its subcontractors for use during such period in the production of the commercial derivative military article and the related commercial article.

(2) For the purposes of this alternative, the amount of specialty metal that is required to carry out production of the commercial derivative military article includes specialty metal contained in any item, including COTS items.

(e) Subcontracts.

(1) The Contractor shall exclude and reserve paragraph (d) and this paragraph

(e)(1) when flowing down this clause to subcontracts.

(2) The Contractor shall insert paragraphs (a) through (c) and this paragraph

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(e)(2) of this clause in subcontracts, including subcontracts for commercial products, that are for items containing specialty metals to ensure compliance of the end products that the Contractor will deliver to the Government. When inserting this clause in subcontracts, the Contractor shall?

(i) Modify paragraph (c)(6) of this clause only as necessary to facilitate management of the minimal content exception at the prime contract level. The minimal content exception does not apply to specialty metals contained in high-performance magnets; and

(ii) Not further alter the clause other than to identify the appropriate parties.

(End of clause)

252.225-7010 Commercial Derivative Military Article?Specialty Metals

Compliance Certificate.

As prescribed in 225.7003-5(b), use the following provision:

COMMERCIAL DERIVATIVE MILITARY ARTICLE?SPECIALTY METALS

COMPLIANCE CERTIFICATE (JUL 2009)

(a) Definitions. ?Commercial derivative military article,? ?commercially available off-the-shelf item,? ?produce,? ?required form,? and ?specialty metal,? as used in this provision, have the meanings given in the clause of this solicitation entitled ?Restriction on Acquisition of Certain Articles Containing Specialty Metals? (DFARS 252.225-7009).

(b) The offeror shall list in this paragraph any commercial derivative military articles it intends to deliver under any contract resulting from this solicitation using the alternative compliance for commercial derivative military articles, as specified in paragraph (d) of the clause of this solicitation entitled ?Restriction on Acquisition of Certain Articles Containing Specialty Metals? (DFARS 252.225-7009). The offeror?s designation of an item as a ?commercial derivative military article? will be subject to Government review and approval.

_____

_____.

(c) If the offeror has listed any commercial derivative military articles in paragraph

(b) of this provision, the offeror certifies that, if awarded a contract as a result of this solicitation, and if the Government approves the designation of the listed item(s) as commercial derivative military articles, the offeror and its subcontractor(s) will demonstrate that individually or collectively they have entered into a contractual agreement or agreements to purchase an amount of domestically melted or produced specialty metal in the required form, for use during the period of contract performance in the production of each commercial derivative military article and the related commercial article, that is not less than the Contractor?s good faith estimate of the

greater of?

(1) An amount equivalent to 120 percent of the amount of specialty metal that is required to carry out the production of the commercial derivative military article

(including the work performed under each subcontract); or

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(2) An amount equivalent to 50 percent of the amount of specialty metal that will be purchased by the Contractor and its subcontractors for use during such period in the production of the commercial derivative military article and the related commercial article.

(d) For the purposes of this provision, the amount of specialty metal that is required to carry out the production of the commercial derivative military article includes specialty metal contained in any item, including commercially available off-the-shelf items, incorporated into such commercial derivative military articles.

(End of provision)

252.225-7011 Restriction on Acquisition of Supercomputers.

As prescribed in 225.7012-3, use the following clause:

RESTRICTION ON ACQUISITION OF SUPERCOMPUTERS (JUN 2005)

Supercomputers delivered under this contract shall be manufactured in the United States or its outlying areas.

(End of clause)

252.225-7012 Preference for Certain Domestic Commodities.

As prescribed in 225.7002-3(a), use the following clause:

PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES (APR 2022)

(a) Definitions. As used in this clause?

?Component? means any item supplied to the Government as part of an end product or of another component.

?End product? means supplies delivered under a line item of this contract.

?Qualifying country? means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia

Austria

Belgium

Canada

Czech Republic

Denmark

Egypt
Estonia
Finland
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France
Germany
Greece
Israel
Italy
Japan
Latvia
Lithuania
Luxembourg
Netherlands
Norway
Poland
Portugal
Slovenia
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland.
?Structural component of a tent??

(1) Means a component that contributes to the form and stability of the tent (e.g., poles, frames, flooring, guy ropes, pegs); and

(2) Does not include equipment such as heating, cooling, or lighting.

?United States? means the 50 States, the District of Columbia, and outlying areas.
?U.S.-flag vessel? means a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.

(b) The Contractor shall deliver under this contract only such of the following items, either as end products or components, that have been grown, reprocessed, reused, or produced in the United States:

(1) Food.

(2) Clothing and the materials and components thereof, other than sensors, electronics, or other items added to, and not normally associated with, clothing and the materials and components thereof. Clothing includes items such as outerwear, headwear, underwear, nightwear, footwear, hosiery, handwear, belts, badges, and insignia.

(3)(i) Tents and structural components of tents;

(ii) Tarpaulins; or

(iii) Covers.

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(4) Cotton and other natural fiber products.

(5) Woven silk or woven silk blends.

(6) Spun silk yarn for cartridge cloth.

(7) Synthetic fabric, and coated synthetic fabric, including all textile fibers and yarns that are for use in such fabrics.

(8) Canvas products.

(9) Wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles).

(10) Any item of individual equipment (Federal Supply Class 8465) manufactured from or containing fibers, yarns, fabrics, or materials listed in this paragraph (b).

(c) This clause does not apply?

(1) To items listed in section 25.104(a) of the Federal Acquisition Regulation, or other items for which the Government has determined that a satisfactory quality and sufficient quantity cannot be acquired as and when needed at U.S. market prices;

(2) To incidental amounts of cotton, other natural fibers, or wool incorporated in an end product, for which the estimated value of the cotton, other natural fibers, or wool?

(i) Is not more than 10 percent of the total price of the end product; and

(ii) Does not exceed the threshold at Defense Federal Acquisition Regulation Supplement 225.7002-2(a);

(3) To waste and byproducts of cotton or wool fiber for use in the production of propellants and explosives;

(4) To foods, other than fish, shellfish, or seafood, that have been manufactured or processed in the United States, regardless of where the foods (and any component if applicable) were grown or produced. Fish, shellfish, or seafood manufactured or processed in the United States and fish, shellfish, or seafood contained in foods manufactured or processed in the United States shall be provided in accordance with paragraph (d) of this clause;

(5) To chemical warfare protective clothing produced in a qualifying country; or

(6) To fibers and yarns that are for use in synthetic fabric or coated synthetic fabric (but does apply to the synthetic or coated synthetic fabric itself), if?

(i) The fabric is to be used as a component of an end product that is not a textile product. Examples of textile products, made in whole or in part of fabric, include?

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(A) Draperies, floor coverings, furnishings, and bedding (Federal Supply Group 72, Household and Commercial Furnishings and Appliances);

(B) Items made in whole or in part of fabric in Federal Supply Group 83, Textile/leather/furs/apparel/findings/tents/flags, or Federal Supply Group 84, Clothing, Individual Equipment and Insignia;

(C) Upholstered seats (whether for household, office, or other use); and

(D) Parachutes (Federal Supply Class 1670); or

(ii) The fibers and yarns are para-aramid fibers and continuous filament para-aramid yarns manufactured in a qualifying country.

(d)(1) Fish, shellfish, and seafood delivered under this contract, or contained in foods delivered under this contract?

(i) Shall be taken from the sea by U.S.-flag vessels; or

(ii) If not taken from the sea, shall be obtained from fishing within the United States; and

(2) Any processing or manufacturing of the fish, shellfish, or seafood shall be performed on a U.S.-flag vessel or in the United States.

(End of clause)

252.225-7013 Duty-Free Entry.

As prescribed in 225.601(4), use the following clause:

DUTY-FREE ENTRY (AUG 2025)

(a) Definitions. As used in this clause?

?Component,? means any item supplied to the Government as part of an end product or of another component.

?Customs territory of the United States? means the 50 States, the District of Columbia, and Puerto Rico.

?Eligible product? means?

(1) ?Designated country end product,? as defined in the Trade Agreements (either basic or alternate) clause of this contract;

(2) ?Free Trade Agreement country end product,? other than a ?Bahraini end product,? a ?Moroccan end product,? a Panamanian end product,? or a ?Peruvian end product,? as defined in the Buy American?Free Trade Agreements?Balance of Payments Program (either basic or alternate II) clause of this contract, basic or its Alternate II; or

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(3) ?Free Trade Agreement country end product? other than a ?Bahraini end product,? ?Korean end product,? ?Moroccan end product,? ?Panamanian end product,? or ?Peruvian end product,? as defined in of the Buy American?Free Trade Agreements? Balance of Payments Program (either alternate IV or alternate V) clause of this

contract.
?Qualifying country? and ?qualifying country end product? have the meanings given in the Trade Agreements clause, the Buy American and Balance of Payments Program clause, or the Buy American?Free Trade Agreements?Balance of Payments Program clause of this contract, basic or alternate.

(b) Except as provided in paragraph (i) of this clause, or unless supplies were imported into the customs territory of the United States before the date of this contract or the applicable subcontract, the price of this contract shall not include any amount for duty on?

(1) End items that are eligible products or qualifying country end products;

(2) Components (including, without limitation, raw materials and intermediate assemblies) produced or made in qualifying countries, that are to be incorporated in U.S.- made end products to be delivered under this contract; or

(3) Other supplies for which the Contractor estimates that duty will exceed $300 per shipment into the customs territory of the United States.

(c) The Contractor shall?

(1) Claim duty-free entry only for supplies that the Contractor intends to deliver to the Government under this contract, either as end items or components of end items; and

(2) Pay duty on supplies, or any portion thereof, that are diverted to nongovernmental use, other than?

(i) Scrap or salvage; or

(ii) Competitive sale made, directed, or authorized by the Contracting Officer.

(d) Except as the Contractor may otherwise agree, the Government will execute duty-free entry certificates and will afford such assistance as appropriate to obtain the duty-free entry of supplies?

(1) For which no duty is included in the contract price in accordance with paragraph (b) of this clause; and

(2) For which shipping documents bear the notation specified in paragraph (e) of this clause.

(e) For foreign supplies for which the Government will issue duty-free entry certificates in accordance with this clause, shipping documents submitted to Customs

shall?

(1) Consign the shipments to the appropriate?

(i) Military department in care of the Contractor, including the Contractor?s delivery address; or

(ii) Military installation; and

(2) Include the following information:

(i) Prime contract number and, if applicable, delivery order number.

(ii) Number of the subcontract for foreign supplies, if applicable.

(iii) Identification of the carrier.

(iv)(A) For direct shipments to a U.S. military installation, the notation: ?UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE Duty-Free Entry to be claimed pursuant to Section XXII, Chapter 98, Subchapter VIII, Item 9808.00.30 of the Harmonized Tariff Schedule of the United States. Upon arrival of shipment at the appropriate port of entry, District Director of Customs, please release shipment under 19 CFR Part 142 and notify Defense Contract Management Agency (DCMA) St. Louis, St. Louis, MO, ATTN: Duty Free Entry Team, 1222 Spruce Street, Room 9.300, St. Louis, MO 63103-2812, for execution of Customs Form 7501, 7501A, or 7506 and any required duty-free entry certificates.?

(B) If the shipment will be consigned to other than a military installation, e.g., a domestic contractor?s plant, the shipping document notation shall be altered to include the name and address of the contractor, agent, or broker who will notify DCMA St. Louis, Duty Free Entry Team, for execution of the duty-free entry certificate. (If the shipment will be consigned to a contractor?s plant and no duty-free entry certificate is required due to a trade agreement, the Contractor shall claim duty-free entry under the applicable trade agreement and shall comply with the U.S. Customs Service requirements. No notification to DCMA St. Louis, Duty Free Entry Team, is required.)

(v) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight).

(vi) Estimated value in U.S. dollars.

(vii) Activity address number of the contract administration office administering the prime contract, e.g., for DCMA Dayton, S3605A.

(f) Preparation of customs forms.

(1)(i) Except for shipments consigned to a military installation, the Contractor shall?

(A) Prepare any customs forms required for the entry of foreign supplies

into the customs territory of the United States in connection with this contract; and

(B) Submit the completed customs forms to the District Director of Customs, with a copy to DCMA St. Louis, Duty Free Entry Team for execution of any required duty-free entry certificates.

(ii) Shipments consigned directly to a military installation will be released in accordance with sections 10.101 and 10.102 of the U.S. Customs regulations.

(2) For shipments containing both supplies that are to be accorded duty-free entry and supplies that are not, the Contractor shall identify on the customs forms those items that are eligible for duty-free entry.

(g) The Contractor shall?

(1) Prepare (if the Contractor is a foreign supplier), or shall instruct the foreign

supplier to prepare, a sufficient number of copies of the bill of lading (or other shipping document) so that at least two of the copies accompanying the shipment will be available for use by the District Director of Customs at the port of entry;

(2) Consign the shipment as specified in paragraph (e) of this clause; and

(3) Mark on the exterior of all packages?

(i) ?UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE?; and

(ii) The activity address number of the contract administration office administering the prime contract.

(h) The Contractor shall notify the Administrative Contracting Officer (ACO) in writing of any purchase of eligible products or qualifying country supplies to be accorded duty-free entry, that are to be imported into the customs territory of the United States for delivery to the Government or for incorporation in end items to be delivered to the Government. The Contractor shall furnish the notice to the ACO immediately upon award to the supplier and shall include in the notice?

(1) The Contractor?s name, address, and Commercial and Government Entity (CAGE) code;

(2) Prime contract number and, if applicable, delivery order number;

(3) Total dollar value of the prime contract or delivery order;

(4) Date of the last scheduled delivery under the prime contract or delivery order;

(5) Foreign supplier?s name and address;

(6) Number of the subcontract for foreign supplies;

(7) Total dollar value of the subcontract for foreign supplies;

(8) Date of the last scheduled delivery under the subcontract for foreign supplies;

(9) List of items purchased;

(10) An agreement that the Contractor will pay duty on supplies, or any portion thereof, that are diverted to nongovernmental use other than?

(i) Scrap or salvage; or

(ii) Competitive sale made, directed, or authorized by the Contracting Officer;

(11) Country of origin; and

(12) Scheduled delivery date(s).

(i) This clause does not apply to purchases of eligible products or qualifying country supplies in connection with this contract if?

(1) The supplies are identical in nature to supplies purchased by the Contractor or any subcontractor in connection with its commercial business; and

(2) It is not economical or feasible to account for such supplies so as to ensure that the amount of the supplies for which duty-free entry is claimed does not exceed the

amount purchased in connection with this contract.

(j) The Contractor shall?

(1) Insert the substance of this clause, including this paragraph (j), in all subcontracts for?

(i) Qualifying country components; or

(ii) Nonqualifying country components for which the Contractor estimates that duty will exceed $200 per unit;

(2) Require subcontractors to include the number of this contract on all shipping documents submitted to Customs for supplies for which duty-free entry is claimed pursuant to this clause; and

(3) Include in applicable subcontracts?

(i) The name and address of the ACO for this contract;

(ii) The name, address, and activity address number of the contract administration office specified in this contract; and

(iii) The information required by paragraphs (h)(1), (2), and (3) of this

clause.

(End of clause)

252.225-7014 Reserved.

252.225-7015 Restriction on Acquisition of Hand or Measuring Tools.

As prescribed in 225.7002-3(b), use the following clause:

RESTRICTION ON ACQUISITION OF HAND OR MEASURING TOOLS

(JUN 2005)

Hand or measuring tools delivered under this contract shall be produced in the United States or its outlying areas.

(End of clause)

252.225-7016 Restriction on Acquisition of Ball and Roller Bearings.

As prescribed in 225.7009-5, use the following clause:

RESTRICTION ON ACQUISITION OF BALL AND ROLLER BEARINGS

(JAN 2023)

(a) Definitions. As used in this clause?

(1) ?Bearing components? means the bearing element, retainer, inner race, or outer race.

(2) ?Component,? other than a bearing component, means any item supplied to the Government as part of an end product or of another component.

(3) ?End product? means supplies delivered under a line item of this contract.

(b) Except as provided in paragraph (c) of this clause?

(1) Each ball and roller bearing delivered under this contract shall be manufactured in the United States, its outlying areas, or Canada; and

(2) For each ball or roller bearing, the cost of the bearing components

manufactured in the United States, its outlying areas, or Canada shall exceed 50 percent of the total cost of the bearing components of that ball or roller bearing.
.

(c) The restriction in paragraph (b) of this clause does not apply to ball or roller bearings that are acquired as?

(1) Commercial components of an other than commercial end product; or

(2) Commercial or other than commercial components of a commercial component of an other than commercial end product.

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(d) The restriction in paragraph (b) of this clause may be waived upon request from the Contractor in accordance with subsection 225.7009-4 of the Defense Federal Acquisition Regulation Supplement.

(e) If this contract includes DFARS clause 252.225-7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals, all bearings that contain specialty metals, as defined in that clause, must meet the requirements of that clause.

(f) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (f), in all subcontracts, except those for?

(1) Commercial products; or

(2) Items that do not contain ball or roller bearings.

(End of clause)

252.225-7017 Photovoltaic Devices.

As prescribed in 225.7017-4(a), use the following clause:

PHOTOVOLTAIC DEVICES (MAR 2024)

(a) Definitions. As used in this clause?

?Bahraini photovoltaic device? means a photovoltaic device that?

(1) Is wholly manufactured in Bahrain; or

(2) In the case of a photovoltaic device that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed, provided that the photovoltaic device is not subsequently substantially transformed outside of Bahrain.

?Caribbean Basin country photovoltaic device? means a photovoltaic device that?

(1) Is wholly manufactured in a Caribbean Basin country; or

(2) In the case of a photovoltaic device that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed, provided that the photovoltaic device is not subsequently substantially transformed outside of a Caribbean Basin country.

?Designated country? means?

(1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany,
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Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, New Zealand, North Macedonia, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as ?the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu? (Chinese Taipei)), Ukraine, or the United Kingdom);

(2) A Free Trade Agreement country (Australia, Bahrain, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore);

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

?Designated country photovoltaic device? means a WTO GPA country photovoltaic device, a Free Trade Agreement country photovoltaic device, a least developed country photovoltaic device, or a Caribbean Basin country photovoltaic device.

?Domestic photovoltaic device? means a photovoltaic device that is manufactured in the United States

?Foreign photovoltaic device? means a photovoltaic device other than a domestic photovoltaic device.

?Free Trade Agreement country? means Australia, Bahrain, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore.

?Free Trade Agreement country photovoltaic device? means a photovoltaic device that?

(1) Is wholly manufactured in a Free Trade Agreement country; or

(2) In the case of a photovoltaic device that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different article of commerce with a name,

character, or use distinct from that of the article or articles from which it was transformed, provided that the photovoltaic device is not subsequently substantially transformed outside of a Free Trade Agreement country.

?Korean photovoltaic device? means a photovoltaic device that?

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(1) Is wholly manufactured in Korea (Republic of); or

(2) In the case of a photovoltaic device that consists in whole or in part of materials from another country, has been substantially transformed in Korea (Republic of) into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed, provided that the photovoltaic device is not subsequently substantially transformed outside of Korea (Republic of).

?Least developed country photovoltaic device? means a photovoltaic device that?

(1) Is wholly manufactured in a least developed country; or

(2) In the case of a photovoltaic device that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed, provided that the photovoltaic device is not subsequently substantially transformed outside of a least developed country.

?Moroccan photovoltaic device? means a photovoltaic device that?

(1) Is wholly manufactured in Morocco; or

(2) In the case of a photovoltaic device that consists in whole or in part of materials from another country, has been substantially transformed in Morocco into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed, provided that the photovoltaic device is not subsequently substantially transformed outside of Morocco.

?Panamanian photovoltaic device? means a photovoltaic device that?

(1) Is wholly manufactured in Panama; or

(2) In the case of a photovoltaic device that consists in whole or in part of materials from another country, has been substantially transformed in Panama into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed, provided that the photovoltaic device is not subsequently substantially transformed outside of Panama.

?Peruvian photovoltaic device? means a photovoltaic device that?

(1) Is wholly manufactured in Peru; or

(2) In the case of a photovoltaic device that consists in whole or in part of materials from another country, has been substantially transformed in Peru into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed, provided that the photovoltaic

device is not subsequently substantially transformed outside of Peru.
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?Photovoltaic device? means a device that converts light directly into electricity through a solid-state, semiconductor process.
?Qualifying country? means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:
Australia
Austria
Belgium
Canada
Czech Republic
Denmark
Egypt
Estonia
Finland
France
Germany
Greece
Israel
Italy
Japan
Latvia
Lithuania
Luxembourg
Netherlands
Norway
Poland
Portugal
Slovenia
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland.
?Qualifying country photovoltaic device? means a photovoltaic device manufactured in a qualifying country.

?United States? means the 50 States, the District of Columbia, and outlying areas.
?U.S.-made photovoltaic device? means a photovoltaic device that?

(1) Is manufactured in the United States; or

(2) Is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed, provided that the photovoltaic device is not subsequently substantially transformed outside of the United States.
?WTO GPA country photovoltaic device? means a photovoltaic device that?

(1) Is wholly manufactured in a WTO GPA country; or

(2) In the case of a photovoltaic device that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed, provided that the photovoltaic device is not subsequently substantially transformed outside of a WTO GPA country.

(b) This clause implements section 846 of the National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111-383).

(c) Restriction. If the Contractor specified in its offer in the Photovoltaic Devices? Certificate provision of the solicitation that the estimated value of the photovoltaic devices to be utilized in performance of this contract would be?

(1) More than the micro-purchase threshold but less than $100,000, then the Contractor shall utilize only domestic photovoltaic devices unless, in its offer, it specified utilization of qualifying country or other foreign photovoltaic devices in paragraph (d)(2) of the Photovoltaic Devices?Certificate provision of the solicitation.

(2) $100,000 or more but less than $102,280, then the Contractor shall utilize under this contract only domestic photovoltaic devices unless, in its offer, it specified utilization of Free Trade Agreement country photovoltaic devices (other than Bahraini, Korean, Moroccan, Panamanian, or Peruvian photovoltaic devices), qualifying country photovoltaic devices, or other foreign photovoltaic devices in paragraph (d)(4) of the Photovoltaic Devices?Certificate provision of the solicitation. If the Contractor certified in its offer that it will utilize a Free Trade Agreement country photovoltaic device (other than a Bahraini, Korean, Moroccan, Panamanian, or Peruvian photovoltaic device) or a qualifying country photovoltaic device, then the Contractor shall utilize a Free Trade Agreement country photovoltaic device (other than a Bahraini, Korean, Moroccan, Panamanian, or Peruvian photovoltaic device) or a qualifying country photovoltaic device; or, at the Contractor?s option, a domestic photovoltaic device;

(3) $100,000 or more but less than $174,000, then the Contractor shall utilize under this contract only domestic photovoltaic devices, unless, in its offer it specified utilization of Free Trade Agreement country photovoltaic devices (other than Bahraini,

Moroccan, Panamanian, or Peruvian photovoltaic devices), qualifying country photovoltaic devices, or other foreign photovoltaic devices in paragraph (d)(5) of the Photovoltaic Devices?Certificate provision of the solicitation. If the Contractor certified in its offer that it will utilize a Free Trade Agreement country photovoltaic device (other than a Bahraini, Moroccan, Panamanian, or Peruvian photovoltaic device) or a qualifying country photovoltaic device, then the Contractor shall utilize a Free
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Trade Agreement country photovoltaic device (other than a Bahraini, Moroccan, Panamanian, or Peruvian photovoltaic device) or a qualifying country photovoltaic device; or, at the Contractor?s option, a domestic photovoltaic device; or

(4) $174,000 or more, then the Contractor shall utilize under this contract only U.S.-made, designated country, or qualifying country photovoltaic devices.

(End of clause)

252.225-7018 Photovoltaic Devices?Certificate.

As prescribed in 225.7017-4(b), use the following provision:

PHOTOVOLTAIC DEVICES?CERTIFICATE (MAR 2024)

(a) Definitions. ?Bahraini photovoltaic device,? ?Caribbean Basin photovoltaic device,? ?designated country,? ?designated country photovoltaic device,? ?domestic photovoltaic device,? ?foreign photovoltaic device,? ?Free Trade Agreement country,? ?Free Trade Agreement photovoltaic device,? ?Korean photovoltaic device,? ?least developed country photovoltaic device,? ?Moroccan photovoltaic device,? ?Panamanian photovoltaic device,? ?Peruvian photovoltaic device,? ?photovoltaic device,? ?qualifying country,? ?qualifying country photovoltaic device,? ?United States,? ?U.S.-made photovoltaic device,? and ?WTO GPA country photovoltaic device? have the meanings given in the Photovoltaic Devices clause of this solicitation.

(b) Restrictions. The following restrictions apply, depending on the estimated aggregate value of photovoltaic devices to be utilized under a resultant contract:

(1) If more than the micro-purchase threshold but less than $174,000, then the Government will not accept an offer specifying the use of other foreign photovoltaic devices in paragraph (d)(2)(ii), (d)(3)(ii), (d)(4)(ii), or (d)(5)(ii) of this provision, unless the Offeror documents to the satisfaction of the Contracting Officer that the price of the foreign photovoltaic device plus 50 percent is less than the price of a comparable domestic photovoltaic device.

(2) If $174,000 or more, then the Government will consider only offers that utilize photovoltaic devices that are U.S.-made, qualifying country, or designated country photovoltaic devices.

(c) Country in which a designated country photovoltaic device was wholly manufactured or was substantially transformed. If the estimated value of the photovoltaic devices to be utilized under a resultant contract exceeds $102,280, the Offeror?s certification that such photovoltaic device (e.g., solar panel) is a designated

country photovoltaic device shall be consistent with country of origin determinations by the U.S. Customs and Border Protection with regard to importation of the same or similar photovoltaic devices into the United States. If the Offeror is uncertain as to what the country of origin would be determined to be by the U.S. Customs and Border Protection, the Offeror shall request a determination from U.S. Customs and Border Protection. (See https://www.cbp.gov/trade/rulings.)

(d) Certification and identification of country of origin.

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[The Offeror shall check the block and fill in the blank for one of the following paragraphs, based on the estimated value and the country of origin of photovoltaic devices to be utilized in performance of the contract:]

___ (1) No photovoltaic devices will be utilized in performance of the contract, or such photovoltaic devices have an estimated value that does not exceed the micro-purchase threshold.

(2) If more than the micro-purchase threshold but less than $100,000?

___ (i) The Offeror certifies that each photovoltaic device to be utilized in performance of the contract is a domestic photovoltaic device;

___ (ii) The Offeror certifies that each photovoltaic device to be utilized in performance of the contract is a qualifying country photovoltaic device [Offeror to specify country of origin_____]; or

___ (iii) The foreign (other than qualifying country) photovoltaic devices to be utilized in performance of the contract are the product of _____. [Offeror to specify country of origin, if known, and provide documentation that the cost of a domestic photovoltaic device would be unreasonable in comparison to the cost of the proposed foreign photovoltaic device, i.e. that the price of the foreign photovoltaic device plus 50 percent is less than the price of a comparable domestic photovoltaic device.]

(3) If less than $100,000?

___ (i) The Offeror certifies that each photovoltaic device to be utilized in performance of the contract is a domestic photovoltaic device;

___ (ii) The Offeror certifies that each photovoltaic device to be utilized in performance of the contract is a qualifying country photovoltaic device [Offeror to specify country of origin_____]; or

___ (iii) The foreign photovoltaic devices to be utilized in performance of the contract are the product of _____. [Offeror to specify country of origin, if known, and provide documentation that the cost of a domestic photovoltaic device would be unreasonable in comparison to the cost of the proposed foreign photovoltaic device, i.e. that the price of the foreign photovoltaic device plus 50 percent is less than the price of a comparable domestic photovoltaic device.]

(4) If $100,000 or more but less than $102,280?

___ (i) The Offeror certifies that each photovoltaic device to be utilized in performance of the contract is a domestic photovoltaic device;

___ (ii) The Offeror certifies that each photovoltaic device to be utilized in performance of the contract is a Free Trade Agreement country photovoltaic device (other than a Bahraini, Korean, Moroccan, Panamanian, or Peruvian photovoltaic device) or a qualifying country photovoltaic device [Offeror to specify country of origin_____]; or

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___ (iii) The offered foreign photovoltaic devices (other than those from countries listed in paragraph (d)(4)(ii) of this provision) are the product of _____. [Offeror to specify country of origin, if known, and provide documentation that the cost of a domestic photovoltaic device would be unreasonable in comparison to the cost of the proposed foreign photovoltaic device, i.e. that the price of the foreign photovoltaic device plus 50 percent is less than the price of a comparable domestic photovoltaic device.]

(5) If $100,000 or more but less than $174,000?

___ (i) The Offeror certifies that each photovoltaic device to be utilized in performance of the contract is a domestic photovoltaic device;

___ (ii) The Offeror certifies that each photovoltaic device to be utilized in performance of the contract is a Free Trade Agreement country photovoltaic device (other than a Bahraini, Moroccan, Panamanian, or Peruvian photovoltaic device) or a qualifying country photovoltaic device [Offeror to specify country of origin_____]; or

___ (iii) The offered foreign photovoltaic devices (other than those from countries listed in paragraph (d)(5)(ii) of this provision) are the product of _____. [Offeror to specify country of origin, if known, and provide documentation that the cost of a domestic photovoltaic device would be unreasonable in comparison to the cost of the proposed foreign photovoltaic device, i.e. that the price of the foreign photovoltaic device plus 50 percent is less than the price of a comparable domestic photovoltaic device.]

(6) If $174,000 or more, the Offeror certifies that each photovoltaic device to be used in performance of the contract is?

___ (i) A U.S.-made photovoltaic device; or

___ (ii) A designated country photovoltaic device or a qualifying country photovoltaic device. [Offeror to specify country of origin_____.]

(End of provision)

252.225-7019 Restriction on Acquisition of Anchor and Mooring Chain.

As prescribed in 225.7004-7(a), use the following clause:

RESTRICTION ON ACQUISITION OF ANCHOR AND MOORING CHAIN

(MAY 2024)

(a) Definition. As used in this clause?

?Component? means an article, material, or supply incorporated directly into an end product.

(b) Welded shipboard anchor and mooring chain delivered under this contract?

(1) Shall be manufactured in the United States or its outlying areas, including cutting, heat treating, quality control, testing, and welding (both forging and shot blasting process); and

(2) The cost of the components manufactured in the United States or its outlying areas shall exceed 50 percent of the total cost of components.

(c) The Contractor may request a waiver of this restriction if adequate domestic supplies meeting the requirements in paragraph (a) of this clause are not available to meet the contract delivery schedule.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts for items containing welded shipboard anchor and mooring chain.

(End of clause)

252.225-7020 Trade Agreements Certificate.

Basic. As prescribed in 225.601(5), use the following provision:

TRADE AGREEMENTS CERTIFICATE?BASIC (NOV 2014)

(a) Definitions. ?Designated country end product,? ?nondesignated country end product,? ?qualifying country end product,? and ?U.S.-made end product? as used in this provision have the meanings given in the Trade Agreements?Basic clause of this solicitation.

(b) Evaluation. The Government?

(1) Will evaluate offers in accordance with the policies and procedures of Part 225 of the Defense Federal Acquisition Regulation Supplement; and

(2) Will consider only offers of end products that are U.S.-made, qualifying country, or designated country end products unless?

(i) There are no offers of such end products;

(ii) The offers of such end products are insufficient to fulfill the Government?s requirements; or

(iii) A national interest waiver has been granted.

(c) Certification and identification of country of origin.

(1) For all line items subject to the Trade Agreements?Basic clause of this solicitation, the offeror certifies that each end product to be delivered under this contract, except those listed in paragraph (c)(2) of this provision, is a U.S.-made, qualifying country, or designated country end product.

(2) The following supplies are other nondesignated country end products:

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(Line Item Number) (Country of Origin)

(End of provision)

Alternate I. [Reserved]

252.225-7021 Trade Agreements.

Basic. As prescribed in 225.601(6), use the following clause:

TRADE AGREEMENTS?BASIC (FEB 2024)

(a) Definitions. As used in this clause?

?Caribbean Basin country end product??

(1) Means an article that?

(i) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself; and

(2) Excludes products, other than petroleum and any product derived from petroleum, that are not granted duty-free treatment under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(b)). These exclusions presently consist of?

(i) Textiles, apparel articles, footwear, handbags, luggage, flat goods, work gloves, leather wearing apparel, and handloomed, handmade, or folklore articles that are not granted duty-free status in the Harmonized Tariff Schedule of the United States **(HTSUS);**

(ii) Tuna, prepared or preserved in any manner in airtight containers; and

(iii) Watches and watch parts (including cases, bracelets, and straps) of whatever type, including, but not limited to, mechanical, quartz digital, or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the HTSUS column 2 rates of duty (HTSUS General Note 3(b)) apply.

?Commercially available off-the-shelf (COTS) item??

(1) Means any item of supply (including construction material) that is?

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(i) A commercial product (as defined in paragraph (1) of the definition of ?commercial product? in section 2.101 of the Federal Acquisition Regulation);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial

marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

?Component? means an article, material, or supply incorporated directly into an end product.

?Designated country? means?

(1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, New Zealand, North Macedonia, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as ?the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu? (Chinese Taipei)), Ukraine, or the United Kingdom);

(2) A Free Trade Agreement country (Australia, Bahrain, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore);

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

?Designated country end product? means a WTO GPA country end product, a Free Trade Agreement country end product, a least developed country end product, or a Caribbean Basin country end product.

?End product? means those articles, materials, and supplies to be acquired under this contract for public use.

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?Free Trade Agreement country end product? means an article that?

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different article of commerce with a name, character, or use

distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

?Least developed country end product? means an article that?

(1) Is wholly the growth, product, or manufacture of a least developed country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

?Nondesignated country end product? means any end product that is not a U.S.-made end product or a designated country end product.

?Qualifying country? means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia
Austria
Belgium
Canada
Czech Republic
Denmark
Egypt
Estonia
Finland
France
Germany

Greece
Israel
Italy
Japan

Latvia
Lithuania
Luxembourg
Netherlands
Norway
Poland
Portugal
Slovenia
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland.
?Qualifying country end product? means?

(1) An unmanufactured end product mined or produced in a qualifying country; or

(2) An end product manufactured in a qualifying country if?

(i) The cost of the following types of components exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract:

(A) Components mined, produced, or manufactured in a qualifying country.

(B) Components mined, produced, or manufactured in the United States.

(C) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(ii) The end product is a COTS item.

?United States? means the 50 States, the District of Columbia, and outlying areas.
?U.S.-made end product? means an article that?

(1) Is mined, produced, or manufactured in the United States; or

(2) Is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

?WTO GPA country end product? means an article that?

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(2) In the case of an article that consists in whole or in part of materials from

another country, has been substantially transformed in a WTO GPA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(b) Unless otherwise specified, this clause applies to all items in the Schedule.

(c) The Contractor shall deliver under this contract only U.S.-made, qualifying country, or designated country end products unless?

(1) In its offer, the Contractor specified delivery of other nondesignated country end products in the Trade Agreements Certificate provision of the solicitation; and

(2)(i) Offers of U.S.-made, qualifying country, or designated country end products from responsive, responsible offerors are either not received or are insufficient to fill the Government?s requirements; or

(ii) A national interest waiver has been granted.

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(e) The HTSUS is available at http://www.usitc.gov/tata/hts/bychapter/index.htm. The following sections of the HTSUS provide information regarding duty-free status of articles specified in the definition of ?Caribbean Basic country end product? within paragraph (a) of this clause:

(1) General Note 3(c), Products Eligible for Special Tariff Treatment.

(2) General Note 17, Products of Countries Designated as Beneficiary Countries Under the United States?Caribbean Basin Trade Partnership Act of 2000.

(3) Section XXII, Chapter 98, Subchapter II, Articles Exported and Returned, Advanced or Improved Abroad, U.S. Note 7(b).

(4) Section XXII, Chapter 98, Subchapter XX, Goods Eligible for Special Tariff Benefits Under the United States?Caribbean Basin Trade Partnership Act.

(End of clause)

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Alternate I. [Reserved.]

Alternate II. [Reserved.]

Alternate III. As prescribed in 225.601(6) and (6)(i), use the following clause, which includes, in the definition of ?qualifying country end product? at paragraph (2)(i), the domestic content threshold that will apply to the entire contract period of performance.

TRADE AGREEMENTS?ALTERNATE III (FEB 2024)

(a) Definitions. As used in this clause?

?Caribbean Basin country end product??

(1) Means an article that?

(i) Is wholly the growth, product, or manufacture of a Caribbean Basin

country; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself; and

(2) Excludes products, other than petroleum and any product derived from petroleum, that are not granted duty-free treatment under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(b)). These exclusions presently consist of?

(i) Textiles, apparel articles, footwear, handbags, luggage, flat goods, work gloves, leather wearing apparel, and handloomed, handmade, or folklore articles that are not granted duty-free status in the Harmonized Tariff Schedule of the United States **(HTSUS);**

(ii) Tuna, prepared or preserved in any manner in airtight containers; and

(iii) Watches and watch parts (including cases, bracelets, and straps) of whatever type, including, but not limited to, mechanical, quartz digital, or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the HTSUS column 2 rates of duty (HTSUS General Note 3(b)) apply.

?Commercially available off-the-shelf (COTS) item??

(1) Means any item of supply (including construction material) that is?

(i) A commercial product (as defined in paragraph (1) of the definition of ?commercial product? in section 2.101 of the Federal Acquisition Regulation);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

?Component? means an article, material, or supply incorporated directly into an end product.

?Designated country? means?

(1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, New Zealand, North Macedonia, Norway, Poland, Portugal, Romania,

Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as ?the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu? (Chinese Taipei)), Ukraine, or the United Kingdom);

(2) A Free Trade Agreement country (Australia, Bahrain, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore);

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

?Designated country end product? means a WTO GPA country end product, a Free Trade Agreement country end product, a least developed country end product, or a Caribbean Basin country end product.

?End product? means those articles, materials, and supplies to be acquired under this contract for public use.

?Free Trade Agreement country end product? means an article that?

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(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

?Least developed country end product? means an article that?

(1) Is wholly the growth, product, or manufacture of a least developed country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product

offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

?Nondesignated country end product? means any end product that is not a U.S.-made end product or a designated country end product.

?Qualifying country? means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia
Austria
Belgium
Canada
Czech Republic
Denmark
Egypt
Estonia
Finland
France
Germany
Greece
Israel
Italy

Japan
Latvia
Lithuania
Luxembourg
Netherlands
Norway
Poland
Portugal
Slovenia
Spain
Sweden
Switzerland
Turkey

United Kingdom of Great Britain and Northern Ireland
?Qualifying country end product? means?

(1) An unmanufactured end product mined or produced in a qualifying country; or

(2) An end product manufactured in a qualifying country if?

(i) The cost of the following types of components exceeds, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 percent of the cost of all its components:

(A) Components mined, produced, or manufactured in a qualifying country.

(B) Components mined, produced, or manufactured in the United States.

(C) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(ii) The end product is a COTS item.
?United States? means the 50 States, the District of Columbia, and outlying areas.
?U.S.-made end product? means an article that?

(1) Is mined, produced, or manufactured in the United States; or

(2) Is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

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?WTO GPA country end product? means an article that?

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(b) Unless otherwise specified, this clause applies to all items in the Schedule.

(c) The Contractor shall deliver under this contract only U.S.-made, qualifying country, or designated country end products unless?

(1) In its offer, the Contractor specified delivery of other nondesignated country end products in the Trade Agreements Certificate provision of the solicitation; and

(2)(i) Offers of U.S.-made, qualifying country, or designated country end products from responsive, responsible offerors are either not received or are insufficient to fill the Government?s requirements; or

(ii) A national interest waiver has been granted.

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(e) The HTSUS is available at http://www.usitc.gov/tata/hts/bychapter/index.htm. The following sections of the HTSUS provide information regarding duty-free status of articles specified in the definition of ?Caribbean Basin country end product? within paragraph (a) of this clause:

(1) General Note 3(c), Products Eligible for Special Tariff Treatment.

(2) General Note 17, Products of Countries Designated as Beneficiary Countries Under the United States-Caribbean Basin Trade Partnership Act of 2000.

(3) Section XXII, Chapter 98, Subchapter II, Articles Exported and Returned, Advanced or Improved Abroad, U.S. Note 7(b).

(4) Section XXII, Chapter 98, Subchapter XX, Goods Eligible for Special Tariff Benefits Under the United States-Caribbean Basin Trade Partnership Act.

(End of clause)

Alternate IV. [Reserved]

252.225-7022 Reserved.

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252.225-7023 [Reserved]

252.225-7024 [Reserved]

252.225-7025 Restriction on Acquisition of Forgings.

As prescribed in 225.7102-4, use the following clause:

RESTRICTION ON ACQUISITION OF FORGINGS (DEC 2009)

(a) Definitions. As used in this clause?

(1) ?Component? means any item supplied to the Government as part of an end product or of another component.

(2) ?Domestic manufacture? means manufactured in the United States, its outlying areas; or Canada.

(3) ?Forging items? means?

ITEMS CATEGORIES

Ship propulsion shafts Excludes service and landing craft shafts

Periscope tubes All

Ring forgings for bull gears All greater than 120 inches in diameter

(b) End products and their components delivered under this contract shall contain forging items that are of domestic manufacture only.

(c) The restriction in paragraph (b) of this clause may be waived upon request from the Contractor in accordance with subsection 225.7102-3 of the Defense Federal

Acquisition Regulation Supplement.

(d) The Contractor shall retain records showing compliance with the restriction in paragraph (b) of this clause until 3 years after final payment and shall make the records available upon request of the Contracting Officer.

(e) The Contractor shall insert the substance of this clause, including this paragraph (e), in subcontracts for forging items or for other items that contain forging items.

(End of clause)

252.225-7026 [Reserved]

252.225-7027 Restriction on Contingent Fees for Foreign Military Sales.

As prescribed in 225.7307(a), use the following clause.

RESTRICTION ON CONTINGENT FEES FOR FOREIGN MILITARY SALES

(APR 2003)

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(a) Except as provided in paragraph (b) of this clause, contingent fees, as defined in the Covenant Against Contingent Fees clause of this contract, are generally an allowable cost, provided the fees are paid to?

(1) A bona fide employee of the Contractor; or

(2) A bona fide established commercial or selling agency maintained by the Contractor for the purpose of securing business.

(b) For foreign military sales, unless the contingent fees have been identified and payment approved in writing by the foreign customer before contract award, the following contingent fees are unallowable under this contract:

(1) For sales to the Government(s) of _____, contingent fees in any amount.

(2) For sales to Governments not listed in paragraph (b)(1) of this clause, contingent fees exceeding $50,000 per foreign military sale case.

(End of clause)

252.225-7028 Exclusionary Policies and Practices of Foreign Governments.

As prescribed in 225.7307(b), use the following clause:

EXCLUSIONARY POLICIES AND PRACTICES OF FOREIGN GOVERNMENTS

(APR 2003)

The Contractor and its subcontractors shall not take into account the exclusionary policies or practices of any foreign government in employing or assigning personnel, if?

(a) The personnel will perform functions required by this contract, either in the United States or abroad; and

(b) The exclusionary policies or practices of the foreign government are based on race, religion, national origin, or sex.

(End of clause)

252.225-7030 Restriction on Acquisition of Carbon, Alloy, and Armor Steel

Plate.

As prescribed in 225.7011-3, use the following clause:

RESTRICTION ON ACQUISITION OF CARBON, ALLOY, AND ARMOR STEEL PLATE (DEC 2006)

(a) Carbon, alloy, and armor steel plate shall be melted and rolled in the United States or Canada if the carbon, alloy, or armor steel plate?

(1) Is in Federal Supply Class 9515 or is described by specifications of the American Society for Testing Materials or the American Iron and Steel Institute; and

(2)(i) Will be delivered to the Government for use in a Government-owned

facility or a facility under the control of the Department of Defense; or

(ii) Will be purchased by the Contractor for use in a Government-owned facility or a facility under the control of the Department of Defense.

(b) This restriction?

(1) Applies to the acquisition of carbon, alloy, or armor steel plate as a finished steel mill product that may be used ?as is? or may be used as an intermediate material for the fabrication of an end product; and

(2) Does not apply to the acquisition of an end product (e.g., a machine tool), to be used in the facility, that contains carbon, alloy, or armor steel plate as a component.

(End of clause)

252.225-7031 Secondary Arab Boycott of Israel.

As prescribed in 225.7605, use the following provision:

SECONDARY ARAB BOYCOTT OF ISRAEL (JUN 2005)

(a) Definitions. As used in this provision?

(1) ?Foreign person? means any person (including any individual, partnership, corporation, or other form of association) other than a United States person.

(2) ?United States? means the 50 States, the District of Columbia, outlying areas, and the outer Continental Shelf as defined in 43 U.S.C. 1331.

(3) ?United States person? is defined in 50 U.S.C. App. 2415(2) and means?

(i) Any United States resident or national (other than an individual resident outside the United States who is employed by other than a United States person);

(ii) Any domestic concern (including any permanent domestic establishment of any foreign concern); and

(iii) Any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern that is controlled in fact by such domestic concern.

(b) Certification. If the offeror is a foreign person, the offeror certifies, by submission of an offer, that it?

(1) Does not comply with the Secondary Arab Boycott of Israel; and

(2) Is not taking or knowingly agreeing to take any action, with respect to the Secondary Boycott of Israel by Arab countries, which 50 U.S.C. App. 2407(a) prohibits a

United States person from taking.

(End of provision)

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252.225-7032 Waiver of United Kingdom Levies?Evaluation of Offers.

As prescribed in 225.601(7), use the following provision:

WAIVER OF UNITED KINGDOM LEVIES ? EVALUATION OF OFFERS

(APR 2003)

(a) Offered prices for contracts or subcontracts with United Kingdom (U.K.) firms may contain commercial exploitation levies assessed by the Government of the U.K. The offeror shall identify to the Contracting Officer all levies included in the offered price by describing?

(1) The name of the U.K. firm;

(2) The item to which the levy applies and the item quantity; and

(3) The amount of levy plus any associated indirect costs and profit or fee.

(b) In the event of difficulty in identifying levies included in a price from a prospective subcontractor, the offeror may seek advice through the Director of Procurement, United Kingdom Defence Procurement Office, British Embassy, 3100 Massachusetts Avenue NW, Washington, DC 20006.

(c) The U.S. Government may attempt to obtain a waiver of levies pursuant to the U.S./U.K. reciprocal waiver agreement of July 1987.

(1) If the U.K. waives levies before award of a contract, the Contracting Officer will evaluate the offer without the levy.

(2) If levies are identified but not waived before award of a contract, the Contracting Officer will evaluate the offer inclusive of the levies.

(3) If the U.K. grants a waiver of levies after award of a contract, the U.S. Government reserves the right to reduce the contract price by the amount of the levy waived plus associated indirect costs and profit or fee.

(End of provision)

252.225-7033 Waiver of United Kingdom Levies.

As prescribed in 225.601(8), use the following clause:

WAIVER OF UNITED KINGDOM LEVIES (APR 2003)

(a) The U.S. Government may attempt to obtain a waiver of any commercial exploitation levies included in the price of this contract, pursuant to the U.S./United Kingdom (U.K.) reciprocal waiver agreement of July 1987. If the U.K. grants a waiver of levies included in the price of this contract, the U.S. Government reserves the right to reduce the contract price by the amount of the levy waived plus associated indirect costs and profit or fee.

(b) If the Contractor contemplates award of a subcontract exceeding $1 million to a

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U.K. firm, the Contractor shall provide the following information to the Contracting Officer before award of the subcontract:

(1) Name of the U.K. firm.

(2) Prime contract number.

(3) Description of item to which the levy applies.

(4) Quantity being acquired.

(5) Amount of levy plus any associated indirect costs and profit or fee.

(c) In the event of difficulty in identifying levies included in a price from a prospective subcontractor, the Contractor may seek advice through the Director of Procurement, United Kingdom Defence Procurement Office, British Embassy, 3100 Massachusetts Avenue NW, Washington, DC 20006.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in any subcontract for supplies where a lower-tier subcontract exceeding $1 million with a U.K. firm is anticipated.

(End of clause)

252.225-7034 Reserved.

252.225-7035 Buy American--Free Trade Agreements--Balance of Payments

Program Certificate.

Basic. As prescribed in 225.601(9) and (9)(i), use the following provision:

BUY AMERICAN?FREE TRADE AGREEMENTS?BALANCE OF PAYMENTS PROGRAM CERTIFICATE?BASIC (FEB 2024)

(a) Definitions. ?Bahraini end product,? ?commercially available off-the-shelf (COTS) item,? ?component,? ?critical component,? ?critical item,? ?domestic end product,? ?Free Trade Agreement country,? ?Free Trade Agreement country end product,? ?foreign end product,? ?Moroccan end product,? ?Panamanian end product,? ?Peruvian end product,? ?qualifying country end product,? and ?United States,? as used in this provision, have the meanings given in the 252.225-7036, Buy American?Free Trade Agreements?Balance of Payments Program?Basic clause of this solicitation.

(b) Evaluation. The Government?

(1) Will evaluate offers in accordance with the policies and procedures of part 225 of the Defense Federal Acquisition Regulation Supplement; and

(2) For line items subject to the Buy American?Free Trade Agreements?Balance of Payments Program?Basic clause of this solicitation, will evaluate offers of qualifying country end products or Free Trade Agreement country end products other than Bahraini end products, Moroccan end products, Panamanian end products, or

Peruvian end products without regard to the restrictions of the Buy American or the

Balance of Payments Program.

(c) Certifications and identification of country of origin.

(1) For all line items subject to the Buy American?Free Trade Agreements? Balance of Payments Program?Basic clause of this solicitation, the Offeror certifies that?

(i) Each end product, except the end products listed in paragraph (c)(2) of this provision, is a domestic end product;

(ii) Each domestic end product listed in paragraph (c)(3) of this provision contains a critical component or a critical item; and

(iii) Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The Offeror shall identify all end products that are not domestic end products.

(i) The Offeror certifies that the following supplies are qualifying country (except Australian) end products:

(Line Item Number) (Country of Origin)

(ii) The Offeror certifies that the following supplies are Free Trade Agreement country end products other than Bahraini end products, Moroccan end products, Panamanian end products, or Peruvian end products:

(Line Item Number) (Country of Origin)

(iii) The following supplies are other foreign end products, including end products manufactured in the United States that do not qualify as domestic end products. For those foreign end products that do not consist wholly or predominantly of iron or steel or a combination of both, the Offeror shall also indicate whether these foreign end products exceed 55 percent domestic content, except those that are COTS items. If the percentage of the domestic content is unknown, select ?no?.

Country of Origin Exceeds 55% Domestic

Line Item Number (If known) Content (yes/no)

(3) The Offeror shall list the line item numbers of domestic end products that contain a critical component or a critical item (see section 25.105 of the Federal Acquisition Regulation).

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Line Item Number: _____[List as necessary]_____

(End of provision)

Alternate I. As prescribed in 225.601(9) and (9)(ii), use the following provision, which does not use the phrases ?Bahraini end product,? ?Free Trade Agreement country,? ?Free Trade Agreement country end product,? ?Moroccan end product,? ?Panamanian end product,? and ?Peruvian end products? in paragraph (a); does not use?Free Trade Agreement country end products other than Bahraini end products, Moroccan end products, Panamanian end products, or Peruvian end products? in paragraphs (b)(2) and (c)(2)(ii); does not use ?Australian or? in paragraph (c)(2)(i); and

includes ?that are mined, produced, or manufactured in the United States? in paragraph (c)(2)(ii):

BUY AMERICAN?FREE TRADE AGREEMENTS?BALANCE OF PAYMENTS PROGRAM CERTIFICATE?ALTERNATE I (FEB 2024)

(a) Definitions. ?Commercially available off-the-shelf (COTS) item,? ?component,? ?critical component,? ?critical item,? ?domestic end product,? ?foreign end product,? ?qualifying country end product,? and ?United States,? as used in this provision, have the meanings given in the 252.225-7036 Buy American?Free Trade Agreements? Balance of Payments Program?Alternate I clause of this solicitation.

(b) Evaluation. The Government?

(1) Will evaluate offers in accordance with the policies and procedures of part 225 of the Defense Federal Acquisition Regulation Supplement; and

(2) For line items subject to the Buy American?Free Trade Agreements? Balance of Payments Program?Alternate I clause of this solicitation, will evaluate offers of qualifying country end products without regard to the restrictions of the Buy American or the Balance of Payments Program.

(c) Certifications and identification of country of origin.

(1) For all line items subject to the Buy American?Free Trade Agreements? Balance of Payments Program?Alternate I clause of this solicitation, the Offeror certifies that?

(i) Each end product, except the end products listed in paragraph (c)(2) of this provision, is a domestic end product;

(ii) Each domestic end product listed in paragraph (c)(3) of this provision contains a critical component or a critical item; and

(iii) Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The Offeror shall identify all end products that are not domestic end products.

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(i) The Offeror certifies that the following supplies are qualifying country end products:

(Line Item Number) (Country of Origin)

(ii) The following supplies are other foreign end products, including end products manufactured in the United States that do not qualify as domestic end products. For those foreign end products that do not consist wholly or predominantly of iron or steel or a combination of both, the Offeror shall also indicate whether these foreign end products exceed 55 percent domestic content, except those that are COTS items that are mined, produced, or manufactured in the United States. If the percentage of the domestic content is unknown, select ?no?.

Country of Origin Exceeds 55% Domestic

Line Item Number (If known) Content (yes/no)

(3) The Offeror shall list the line item numbers of domestic end products that contain a critical component or a critical item (see section 25.105 of the Federal Acquisition Regulation).

Line Item Number: _____[List as necessary]_____

(End of provision)

Alternate II. [Reserved]

Alternate III. [Reserved]

Alternate IV. As prescribed in 225.601(9) and (9)(iii), use the following provision, which adds ?Korean end product? to paragraph (a) and uses ?Free Trade Agreement country end products other than Bahraini end products, Korean end products, Moroccan end products, Panamanian end products, or Peruvian end products? in paragraphs (b)(2) and (c)(2)(ii), rather than ?Free Trade Agreement country end products other than Bahraini end products, Moroccan end products, Panamanian end products, or Peruvian end products? in paragraphs (b)(2) and (c)(2)(ii) of the basic provision:

BUY AMERICAN?FREE TRADE AGREEMENTS?BALANCE OF PAYMENTS PROGRAM CERTIFICATE?ALTERNATE IV (FEB 2024)

(a) Definitions. ?Bahraini end product,? ?commercially available off-the-shelf (COTS) item,? ?component,? ?critical component,? ?critical item,? ?domestic end product,? ?Free Trade Agreement country,? ?Free Trade Agreement country end product,? ?foreign end product,? ?Korean end product,? ?Moroccan end product,? ?Panamanian end

product,? ?Peruvian end product,? ?qualifying country end product,? and ?United States,? as used in this provision, have the meanings given in the 252.225-7036, Buy American?Free Trade Agreements?Balance of Payments Program?Alternate IV clause of this solicitation.

(b) Evaluation. The Government?

(1) Will evaluate offers in accordance with the policies and procedures of part 225 of the Defense Federal Acquisition Regulation Supplement; and

(2) For line items subject to the Buy American?Free Trade Agreements? Balance of Payments Program?Alternate IV clause of this solicitation, will evaluate offers of qualifying country end products or Free Trade Agreement country end products other than Bahraini end products, Korean end products, Moroccan end products, Panamanian end products, or Peruvian end products without regard to the restrictions of the Buy American or the Balance of Payments Program.

(c) Certifications and identification of country of origin.

(1) For all line items subject to the Buy American?Free Trade Agreements? Balance of Payments Program?Alternate IV clause of this solicitation, the Offeror certifies that?

(i) Each end product, except the end products listed in paragraph (c)(2) of this provision, is a domestic end product;

(ii) Each domestic end product listed in paragraph (c)(3) of this provision contains a critical component or a critical item; and

(iii) Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The Offeror shall identify all end products that are not domestic end products.

(i) The Offeror certifies that the following supplies are qualifying country (except Australian) end products:

(Line Item Number) (Country of Origin)

(ii) The Offeror certifies that the following supplies are Free Trade Agreement country end products other than Bahraini end products, Korean end products, Moroccan end products, Panamanian end products, or Peruvian end products:

(Line Item Number) (Country of Origin)

(iii) The following supplies are other foreign end products, including end products manufactured in the United States that do not qualify as domestic end products. For those foreign end products that do not consist wholly or predominantly of iron or steel or a combination of both, the Offeror shall also indicate whether these foreign end products exceed 55 percent domestic content, except those that are COTS

items. If the percentage of the domestic content is unknown, select ?no?.

Country of Origin Exceeds 55% Domestic
Line item Number (If known) Content (yes/no)

(3) The Offeror shall list the line item numbers of domestic end products that contain a critical component or a critical item (see section 25.105 of the Federal Acquisition Regulation).

Line Item Number: _____[List as necessary]_____

(End of provision)

Alternate V. [Reserved]

252.225-7036 Buy American?Free Trade Agreements?Balance of Payments Program.

Basic. As prescribed in 225.601(10)(i) and (10)(i)(A), use the following clause:

BUY AMERICAN?FREE TRADE AGREEMENTS?BALANCE OF PAYMENTS PROGRAM?BASIC (FEB 2024)

(a) Definitions. As used in this clause?

?Bahraini end product? means an article that?

(1) Is wholly the growth, product, or manufacture of Bahrain; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain into a new and

different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

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?Commercially available off-the-shelf (COTS) item??

(1) Means any item of supply (including construction material) that is?

(i) A commercial product (as defined in paragraph (1) of the definition of ?commercial product? in section 2.101 of the Federal Acquisition Regulation (FAR));

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

?Component? means an article, material, or supply incorporated directly into an end product.

?Critical component? means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

?Critical item? means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

?Domestic end product? means?

(1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both?

(i) An unmanufactured end product mined or produced in the United States; or

(ii) An end product manufactured in the United States if?

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract in accordance with Defense Federal Acquisition Regulation Supplement (DFARS) 225.101(d); or award is made before January 1, 2030, for a foreign end product that exceeds 55 percent domestic content (see DFARS 225.103(b)(ii)). The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Components of unknown origin are treated as foreign. Scrap generated, collected, and

prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States

(regardless of its source in fact) if the end product in which it is incorporated is

manufactured in the United States and the component is of a class or kind for which the Government has determined that?

(1) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(2) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of iron and steel not produced in the United States or a qualifying country constitutes less than 5 percent of the cost of all the components used in the end product (produced in the United States or a qualifying country means that all manufacturing processes of the iron or steel must take place in the United States or a qualifying country, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States or a qualifying country includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States or a qualifying country, utilized in the manufacture of the end product and a good faith estimate of the cost of all iron or steel components not produced in the United States or a qualifying country, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the explanation of cost of components in paragraph (1)(ii)(A) of this definition.

?End product? means those articles, materials, and supplies to be acquired under this contract for public use.

?Foreign end product? means an end product other than a domestic end product.

?Free Trade Agreement country? means Australia, Bahrain, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore.

?Free Trade Agreement country end product? means an article that?

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of

calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

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?Moroccan end product? means an article that?

(1) Is wholly the growth, product, or manufacture of Morocco; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Morocco into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

?Panamanian end product? means an article that?

(1) Is wholly the growth, product, or manufacture of Panama; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Panama into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

?Peruvian end product? means an article that?

(1) Is wholly the growth, product, or manufacture of Peru; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Peru into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

?Predominantly of iron or steel or a combination of both? means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

?Qualifying country? means a country with a reciprocal defense procurement

memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of
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section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457.
Accordingly, the following are qualifying countries:
Australia
Austria
Belgium
Canada
Czech Republic
Denmark
Egypt
Estonia
Finland
France
Germany
Greece
Israel
Italy
Japan
Latvia
Lithuania
Luxembourg
Netherlands
Norway
Poland
Portugal
Slovenia
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland.
?Qualifying country component? means a component mined, produced, or manufactured in a qualifying country.
?Qualifying country end product? means?

(1) An unmanufactured end product mined or produced in a qualifying country; or

(2) An end product manufactured in a qualifying country if?

(i) The cost of the following types of components exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract:

(A) Components mined, produced, or manufactured in a qualifying country.

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(B) Components mined, produced, or manufactured in the United States.

(C) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States. Components of unknown origin are treated as foreign; or

(ii) The end product is a COTS item.

?Steel? means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

?United States? means the 50 States, the District of Columbia, and outlying areas.

(b) Unless otherwise specified, this clause applies to all items in the Schedule.

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country end products, Free Trade Agreement country end products other than Bahraini end products, Moroccan end products, Panamanian end products, or Peruvian end products, or other foreign end products in the Buy American?Free Trade Agreements?Balance of Payments Program Certificate?Basic provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product or a Free Trade Agreement country end product other than a Bahraini end product, a Moroccan end product, a Panamanian end product, or a Peruvian end product, the Contractor shall deliver a qualifying country end product, a Free Trade Agreement country end product other than a Bahraini end product, a Moroccan end product, a Panamanian end product, or a Peruvian end product, or, at the Contractor?s option, a domestic end product.

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(End of clause)

Alternate I. As prescribed in 225.601(10)(i) and (10)(i)(B), use the following clause, which uses a different paragraph (c) than the basic clause:

BUY AMERICAN?FREE TRADE AGREEMENTS?BALANCE OF PAYMENTS PROGRAM?ALTERNATE I (FEB 2024)

(a) Definitions. As used in this clause?

?Bahraini end product? means an article that?

(1) Is wholly the growth, product, or manufacture of Bahrain; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a

product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

?Commercially available off-the-shelf (COTS) item??

(1) Means any item of supply (including construction material) that is?

(i) A commercial product (as defined in paragraph (1) of the definition of ?commercial product? in section 2.101 of the Federal Acquisition Regulation (FAR));

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

?Component? means an article, material, or supply incorporated directly into an end product.

?Critical component? means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

?Critical item? means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

?Domestic end product? means?

(1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both?

(i) An unmanufactured end product mined or produced in the United States; or

(ii) An end product manufactured in the United States if?

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract in accordance with Defense Federal Acquisition Regulation Supplement

(DFARS) 225.101(d); or award is made before January 1, 2030, for a foreign end product that exceeds 55 percent domestic content (see DFARS 225.103(b)(ii)). The cost of

components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued).
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Components of unknown origin are treated as foreign. Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States

(regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that?

(1) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(2) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of iron and steel not produced in the United States or a qualifying country constitutes less than 5 percent of the cost of all the components used in the end product (produced in the United States or a qualifying country means that all manufacturing processes of the iron or steel must take place in the United States or a qualifying country, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States or a qualifying country includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States or a qualifying country, utilized in the manufacture of the end product and a good faith estimate of the cost of all iron or steel components not produced in the United States or a qualifying country, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the explanation of cost of components in paragraph (1)(ii)(A) of this definition.

?End product? means those articles, materials, and supplies to be acquired under this contract for public use.

?Foreign end product? means an end product other than a domestic end product.

?Free Trade Agreement country? means Australia, Bahrain, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore.

?Free Trade Agreement country end product? means an article that?

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement

country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of
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calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

?Moroccan end product? means an article that?

(1) Is wholly the growth, product, or manufacture of Morocco; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Morocco into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

?Panamanian end product? means an article that?

(1) Is wholly the growth, product, or manufacture of Panama; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Panama into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

?Peruvian end product? means an article that?

(1) Is wholly the growth, product, or manufacture of Peru; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Peru into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

?Predominantly of iron or steel or a combination of both? means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product

and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.
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?Qualifying country? means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:
Australia
Austria
Belgium
Canada
Czech Republic
Denmark
Egypt
Estonia
Finland
France
Germany
Greece
Israel
Italy
Japan
Latvia
Lithuania
Luxembourg
Netherlands
Norway
Poland
Portugal
Slovenia
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland.
?Qualifying country component? means a component mined, produced, or manufactured in a qualifying country.
?Qualifying country end product? means?

(1) An unmanufactured end product mined or produced in a qualifying country; or

(2) An end product manufactured in a qualifying country if?

(i) The cost of the following types of components exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered

starting in calendar year 2029, unless an alternate percentage is established for a contract:

(A) Components mined, produced, or manufactured in a qualifying country.

(B) Components mined, produced, or manufactured in the United States.

(C) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States. Components of unknown origin are treated as foreign; or

(ii) The end product is a COTS item.

?Steel? means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

?United States? means the 50 States, the District of Columbia, and outlying areas.

(b) Unless otherwise specified, this clause applies to all items in the Schedule.

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country or other foreign end products in the Buy American?Free Trade Agreements?Balance of Payments Program Certificate?Alternate I provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product, the Contractor shall deliver a qualifying country end product or, at the Contractor?s option, a domestic end product.

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(End of clause)

Alternate II. [Reserved]

Alternate III. [Reserved]

Alternate IV. As prescribed in 225.601(10)(i) and (10)(i)(C), use the following clause, which adds ?Korean end product? to paragraph (a), and uses a different paragraph (c) than the basic clause:

BUY AMERICAN?FREE TRADE AGREEMENTS?BALANCE OF PAYMENTS PROGRAM?ALTERNATE IV (FEB 2024)

(a) Definitions. As used in this clause?

?Bahraini end product? means an article that?

(1) Is wholly the growth, product, or manufacture of Bahrain; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

?Commercially available off-the-shelf (COTS) item??

(1) Means any item of supply (including construction material) that is?

(i) A commercial product (as defined in paragraph (1) of the definition of ?commercial product? in section 2.101 of the Federal Acquisition Regulation (FAR));

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

?Component? means an article, material, or supply incorporated directly into an end product.

?Critical component? means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

?Critical item? means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

?Domestic end product? means?

(1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both?

(i) An unmanufactured end product mined or produced in the United States; or

(ii) An end product manufactured in the United States if?

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered

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starting in calendar year 2029, unless an alternate percentage is established for a contract in accordance with Defense Federal Acquisition Regulation Supplement (DFARS) 225.101(d)); or award is made before January 1, 2030, for a foreign end product that exceeds 55 percent domestic content (see DFARS 225.103(b)(ii)). The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Components of unknown origin are treated as foreign. Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that?

(1) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(2) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of iron and steel not produced in the United States or a qualifying country constitutes less than 5 percent of the cost of all the components used in the end product (produced in the United States or a qualifying country means that all manufacturing processes of the iron or steel must take place in the United States or a qualifying country, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States or a qualifying country includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States or a qualifying country, utilized in the manufacture of the end product and a good faith estimate of the cost of all iron or steel components not produced in the United States or a qualifying country, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the explanation of cost of components in paragraph (1)(ii)(A) of this definition.

?End product? means those articles, materials, and supplies to be acquired under this contract for public use.

?Foreign end product? means an end product other than a domestic end product.

?Free Trade Agreement country? means Australia, Bahrain, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore.

?Free Trade Agreement country end product? means an article that?

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

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(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

?Korean end product? means an article that?

(1) Is wholly the growth, product, or manufacture of Korea; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Korea (Republic of) into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product, includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

?Moroccan end product? means an article that?

(1) Is wholly the growth, product, or manufacture of Morocco; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Morocco into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

?Panamanian end product? means an article that?

(1) Is wholly the growth, product, or manufacture of Panama; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Panama into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

?Peruvian end product? means an article that?

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(1) Is wholly the growth, product, or manufacture of Peru; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Peru into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

?Predominantly of iron or steel or a combination of both? means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

?Qualifying country? means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia
Austria
Belgium
Canada
Czech Republic
Denmark
Egypt
Estonia
Finland
France
Germany
Greece
Israel
Italy
Japan
Latvia
Lithuania
Luxembourg
Netherlands
Norway

Poland
Portugal
Slovenia
Spain
Sweden
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Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland.
?Qualifying country component? means a component mined, produced, or manufactured in a qualifying country.
?Qualifying country end product? means?

(1) An unmanufactured end product mined or produced in a qualifying country; or

(2) An end product manufactured in a qualifying country if?

(i) The cost of the following types of components exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract:

(A) Components mined, produced, or manufactured in a qualifying country.

(B) Components mined, produced, or manufactured in the United States.

(C) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States. Components of unknown origin are treated as foreign; or

(ii) The end product is a COTS item.

?Steel? means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.
?United States? means the 50 States, the District of Columbia, and outlying areas.

(b) Unless otherwise specified, this clause applies to all items in the Schedule.

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country end products, Free Trade Agreement country end products other than Bahraini end products, Korean end products, Moroccan end products, Panamanian end products, or Peruvian end products, or other foreign end products in the Buy American?Free Trade Agreements?Balance of Payments Program Certificate?Alternate IV provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product or a Free Trade Agreement country end product other than a Bahraini end product, a

Korean end product, a Moroccan end product, a Panamanian end product, or a Peruvian end product, the Contractor shall deliver a qualifying country end product, a Free Trade Agreement country end product other than a Bahraini end product, a Korean end

product, a Moroccan end product, a Panamanian end product, or a Peruvian end product, or, at the Contractor?s option, a domestic end product.

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(End of clause)

Alternate V. [Reserved]

Alternate VI. As prescribed in 225.601(10)(i) and (10)(i)(D), use the following clause, which includes, in the definitions of ?domestic end product? at paragraph (1)(ii)(A) and ?qualifying country end product? at paragraph (2)(i), the domestic content threshold that will apply to the entire contract period of performance:

BUY AMERICAN?FREE TRADE AGREEMENTS?BALANCE OF PAYMENTS PROGRAM?ALTERNATE VI (FEB 2024)

(a) Definitions. As used in this clause?

?Bahraini end product? means an article that?

(1) Is wholly the growth, product, or manufacture of Bahrain; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

?Commercially available off-the-shelf (COTS) item??

(1) Means any item of supply (including construction material) that is?

(i) A commercial product (as defined in paragraph (1) of the definition of ?commercial product? in section 2.101 of the Federal Acquisition Regulation (FAR));

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

?Component? means an article, material, or supply incorporated directly into an end product.

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?Critical component? means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.
?Critical item? means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.
?Domestic end product? means?

(1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both?

(i) An unmanufactured end product mined or produced in the United States; or

(ii) An end product manufactured in the United States if?

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Components of unknown origin are treated as foreign. Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that?

(1) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(2) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of iron and steel not produced in the United States or a qualifying country constitutes less than 5 percent of the cost of all the components used in the end product (produced in the United States or a qualifying country means that all manufacturing processes of the iron or steel must take place in the United States or a qualifying country, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States or a qualifying country includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States or a qualifying country, utilized in the manufacture of the end product and a good faith estimate of the cost of

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all iron or steel components not produced in the United States or a qualifying country, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the explanation of cost of components in paragraph (1)(ii)(A) of this definition.

?End product? means those articles, materials, and supplies to be acquired under this contract for public use.

?Foreign end product? means an end product other than a domestic end product.

?Free Trade Agreement country? means Australia, Bahrain, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore.

?Free Trade Agreement country end product? means an article that?

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

?Moroccan end product? means an article that?

(1) Is wholly the growth, product, or manufacture of Morocco; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Morocco into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

?Panamanian end product? means an article that?

(1) Is wholly the growth, product, or manufacture of Panama; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Panama into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the

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end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.
?Peruvian end product? means an article that?

(1) Is wholly the growth, product, or manufacture of Peru; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Peru into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

?Predominantly of iron or steel or a combination of both? means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.
?Qualifying country? means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:
Australia
Austria
Belgium
Canada
Czech Republic
Denmark
Egypt
Estonia
Finland
France
Germany
Greece
Israel
Italy
Japan
Latvia

Lithuania
Luxembourg
Netherlands
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Norway
Poland
Portugal
Slovenia
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland.
?Qualifying country component? means a component mined, produced, or manufactured in a qualifying country.
?Qualifying country end product? means?

(1) An unmanufactured end product mined or produced in a qualifying country; or

(2) An end product manufactured in a qualifying country if?

(i) The cost of the following types of components exceeds, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 percent of the cost of all its components:

(A) Components mined, produced, or manufactured in a qualifying country.

(B) Components mined, produced, or manufactured in the United States.

(C) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States. Components of unknown origin are treated as foreign; or

(ii) The end product is a COTS item.

?Steel? means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.
?United States? means the 50 States, the District of Columbia, and outlying areas.

(b) Unless otherwise specified, this clause applies to all items in the Schedule.

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country end products, Free Trade Agreement country end products other than Bahraini end products, Moroccan end products, Panamanian end products, or Peruvian end products, or other foreign end

products in the Buy American?Free Trade Agreements?Balance of Payments
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Program Certificate?Basic provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product or a Free Trade Agreement country end product other than a Bahraini end product, a Moroccan end product, a Panamanian end product, or a Peruvian end product, the Contractor shall deliver a qualifying country end product, a Free Trade Agreement country end product other than a Bahraini end product, a Moroccan end product, a Panamanian end product, or a Peruvian end product, or, at the Contractor?s option, a domestic end product.

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(End of clause)

Alternate VII. As prescribed in 225.601(10)(i) and (10)(i)(E), use the following clause, which includes, in the definitions of ?domestic end product? at paragraph (1)(ii)(A) and ?qualifying country end product? at paragraph (2)(i), the domestic content threshold that will apply to the entire contract period of performance and uses a different paragraph (c) than the basic clause:

BUY AMERICAN?FREE TRADE AGREEMENTS?BALANCE OF PAYMENTS PROGRAM?ALTERNATE VII (FEB 2024)

(a) Definitions. As used in this clause?

?Bahraini end product? means an article that?

(1) Is wholly the growth, product, or manufacture of Bahrain; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

?Commercially available off-the-shelf (COTS) item??

(1) Means any item of supply (including construction material) that is?

(i) A commercial product (as defined in paragraph (1) of the definition of ?commercial product? in section 2.101 of the Federal Acquisition Regulation (FAR));

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

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(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

?Component? means an article, material, or supply incorporated directly into an end product.

?Critical component? means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

?Critical item? means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

?Domestic end product? means?

(1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both?

(i) An unmanufactured end product mined or produced in the United States; or

(ii) An end product manufactured in the United States if?

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Components of unknown origin are treated as foreign. Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that?

(1) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(2) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of iron and steel not produced in the United States or a qualifying country constitutes less than 5 percent of the cost of all the components used in the end product (produced in the United States or a qualifying country means that all manufacturing processes of the iron or steel must take place in the United States or a qualifying country, except

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metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States or a qualifying country includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States or a qualifying country, utilized in the manufacture of the end product and a good faith estimate of the cost of all iron or steel components not produced in the United States or a qualifying country, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the explanation of cost of components in paragraph (1)(ii)(A) of this definition.
?End product? means those articles, materials, and supplies to be acquired under this contract for public use.
?Foreign end product? means an end product other than a domestic end product.
?Free Trade Agreement country? means Australia, Bahrain, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore.
?Free Trade Agreement country end product? means an article that?

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.
?Moroccan end product? means an article that?

(1) Is wholly the growth, product, or manufacture of Morocco; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Morocco into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.
?Panamanian end product? means an article that?

(1) Is wholly the growth, product, or manufacture of Panama; or

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(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Panama into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

?Peruvian end product? means an article that?

(1) Is wholly the growth, product, or manufacture of Peru; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Peru into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

?Predominantly of iron or steel or a combination of both? means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

?Qualifying country? means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia
Austria
Belgium
Canada
Czech Republic
Denmark
Egypt
Estonia
Finland
France
Germany
Greece
Israel

Italy
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Japan
Latvia
Lithuania
Luxembourg
Netherlands
Norway
Poland
Portugal
Slovenia
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland.
?Qualifying country component? means a component mined, produced, or manufactured in a qualifying country.
?Qualifying country end product? means?
(1) An unmanufactured end product mined or produced in a qualifying country; or
(2) An end product manufactured in a qualifying country if?
(i) The cost of the following types of components exceeds, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 percent of the cost of all its components:
(A) Components mined, produced, or manufactured in a qualifying country.
(B) Components mined, produced, or manufactured in the United States.
(C) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States. Components of unknown origin are treated as foreign; or
(ii) The end product is a COTS item.
?Steel? means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.
?United States? means the 50 States, the District of Columbia, and outlying areas.
(b) Unless otherwise specified, this clause applies to all items in the Schedule.
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(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country or other foreign end products in the Buy American?Free Trade Agreements?Balance of Payments Program Certificate?Alternate I provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product, the Contractor shall deliver a qualifying country end product or, at the Contractor?s option, a domestic end product.

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(End of clause)

Alternate VIII. [Reserved]

Alternate IX. [Reserved]

Alternate X. As prescribed in 225.601(10)(i) and (10)(i)(F), use the following clause, which includes, in the definitions of ?domestic end product? at paragraph (1)(ii)(A) and ?qualifying country end product? at paragraph (2)(i), the domestic content threshold that will apply to the entire contract period of performance; adds ?Korean end product? to paragraph (a); and uses a different paragraph (c) than the basic clause:

BUY AMERICAN?FREE TRADE AGREEMENTS?BALANCE OF PAYMENTS PROGRAM?ALTERNATE X (FEB 2024)

(a) Definitions. As used in this clause?

?Bahraini end product? means an article that?

(1) Is wholly the growth, product, or manufacture of Bahrain; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

?Commercially available off-the-shelf (COTS) item??

(1) Means any item of supply (including construction material) that is?

(i) A commercial product (as defined in paragraph (1) of the definition of ?commercial product? in section 2.101 of the Federal Acquisition Regulation (FAR));

(ii) Sold in substantial quantities in the commercial marketplace; and

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(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

?Component? means an article, material, or supply incorporated directly into an end product.

?Critical component? means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

?Critical item? means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

?Domestic end product? means?

(1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both?

(i) An unmanufactured end product mined or produced in the United States; or

(ii) An end product manufactured in the United States if?

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Components of unknown origin are treated as foreign. Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that?

(1) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(2) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of

iron and steel not produced in the United States or a qualifying country constitutes less than 5 percent of the cost of all the components used in the end product (produced in the

United States or a qualifying country means that all manufacturing processes of the iron or steel must take place in the United States or a qualifying country, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States or a qualifying country includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States or a qualifying country, utilized in the manufacture of the end product and a good faith estimate of the cost of all iron or steel components not produced in the United States or a qualifying country, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the explanation of cost of components in paragraph (1)(ii)(A) of this definition.

?End product? means those articles, materials, and supplies to be acquired under this contract for public use.

?Foreign end product? means an end product other than a domestic end product.

?Free Trade Agreement country? means Australia, Bahrain, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore.

?Free Trade Agreement country end product? means an article that?

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

?Korean end product? means an article that?

(1) Is wholly the growth, product, or manufacture of Korea; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Korea (Republic of) into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product, includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

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?Moroccan end product? means an article that?

(1) Is wholly the growth, product, or manufacture of Morocco; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Morocco into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

?Panamanian end product? means an article that?

(1) Is wholly the growth, product, or manufacture of Panama; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Panama into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

?Peruvian end product? means an article that?

(1) Is wholly the growth, product, or manufacture of Peru; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Peru into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

?Predominantly of iron or steel or a combination of both? means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

?Qualifying country? means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of

section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia
Austria
Belgium
Canada
Czech Republic
Denmark
Egypt
Estonia
Finland
France
Germany
Greece
Israel
Italy
Japan
Latvia
Lithuania
Luxembourg
Netherlands
Norway
Poland
Portugal
Slovenia
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland.

?Qualifying country component? means a component mined, produced, or manufactured in a qualifying country.

?Qualifying country end product? means?

(1) An unmanufactured end product mined or produced in a qualifying country; or

(2) An end product manufactured in a qualifying country if?

(i) The cost of the following types of components exceeds, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 percent of the cost of all its components:

(A) Components mined, produced, or manufactured in a qualifying country.

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(B) Components mined, produced, or manufactured in the United States.

(C) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States. Components of unknown origin are treated as foreign; or

(ii) The end product is a COTS item.

?Steel? means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

?United States? means the 50 States, the District of Columbia, and outlying areas.

(b) Unless otherwise specified, this clause applies to all items in the Schedule.

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country end products, Free Trade Agreement country end products other than Bahraini end products, Korean end products, Moroccan end products, Panamanian end products, or Peruvian end products, or other foreign end products in the Buy American?Free Trade Agreements?Balance of Payments Program Certificate?Alternate IV provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product or a Free Trade Agreement country end product other than a Bahraini end product, a Korean end product, a Moroccan end product, a Panamanian end product, or a Peruvian end product, the Contractor shall deliver a qualifying country end product, a Free Trade Agreement country end product other than a Bahraini end product, a Korean end product, a Moroccan end product, a Panamanian end product, or a Peruvian end product, or, at the Contractor?s option, a domestic end product.

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(End of clause)

Alternate XI. [Reserved]

252.225-7037 Reserved.

252.225-7038 Reserved.

252.225-7039 Defense Contractors Performing Private Security Functions

Outside the United States.

As prescribed in 225.702-6, insert the following clause:

DEFENSE CONTRACTORS PERFORMING PRIVATE SECURITY FUNCTIONS OUTSIDE THE UNITED STATES (JAN 2023)

(a) Definitions. As used in this clause?

?Full cooperation??

(1) Means disclosure to the Government of the information sufficient to identify the nature and extent of the incident and the individuals responsible for the conduct. It includes providing timely and complete response to Government auditors? and investigators? requests for documents and access to employees with information;

(2) Does not foreclose any contractor rights arising in law, the FAR or the terms of the contract. It does not require?

(i) The contractor to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine; or

(ii) Any officer, director, owner, or employee of the contractor, including a sole proprietor, to waive his or her attorney-client privilege or Fifth Amendment rights; and

(3) Does not restrict the contractor from?

(i) Conducting an internal investigation; or

(ii) Defending a proceeding or dispute arising under the contract or related to a potential or disclosed violation.

?Private security functions? means the following activities engaged in by a contractor:

(1) Guarding of personnel, facilities, designated sites or property of a Federal agency, the contractor or subcontractor, or a third party.

(2) Any other activity for which personnel are required to carry weapons in the performance of their duties in accordance with the terms of this contract.

(b) Applicability. If this contract is performed both in a designated area and in an area that is not designated, the clause only applies to performance in the designated area. Designated areas are areas outside the United States of?

(1) Contingency operations;

(2) Combat operations, as designated by the Secretary of Defense;

(3) Other significant military operations (as defined in 32 CFR part 159), designated by the Secretary of Defense upon agreement of the Secretary of State;

(4) Peace operations, consistent with Joint Publication 3-07.3; or

(5) Other military operations or military exercises, when designated by the Combatant Commander.

(c) Requirements. The Contractor shall?

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(1) Ensure that all Contractor personnel who are responsible for performing private security functions under this contract comply with 32 CFR part 159 and any orders, directives, or instructions to contractors performing private security functions that are identified in the contract for?

(i) Registering, processing, accounting for, managing, overseeing and keeping appropriate records of personnel performing private security functions;

(ii) Authorizing, accounting for and registering in Synchronized Predeployment and Operational Tracker (SPOT), weapons to be carried by or available to be used by personnel performing private security functions;

(iii) Identifying and registering in SPOT armored vehicles, helicopters and other military vehicles operated by Contractors performing private security functions; and

(iv) In accordance with orders and instructions established by the applicable Combatant Commander, reporting incidents in which?

(A) A weapon is discharged by personnel performing private security functions;

(B) Personnel performing private security functions are attacked, killed, or injured;

(C) Persons are killed or injured or property is destroyed as a result of conduct by Contractor personnel;

(D) A weapon is discharged against personnel performing private security functions or personnel performing such functions believe a weapon was so discharged; or

(E) Active, non-lethal countermeasures (other than the discharge of a weapon) are employed by personnel performing private security functions in response to a perceived immediate threat;

(2) Ensure that Contractor personnel who are responsible for performing private security functions under this contract are briefed on and understand their obligation to comply with?

(i) Qualification, training, screening (including, if applicable, thorough background checks) and security requirements established by 32 CFR part 159;

(ii) Applicable laws and regulations of the United States and the host country and applicable treaties and international agreements regarding performance of private security functions;

(iii) Orders, directives, and instructions issued by the applicable Combatant Commander or relevant Chief of Mission relating to weapons,

equipment, force protection, security, health, safety, or relations and interaction with locals; and

(iv) Rules on the use of force issued by the applicable Combatant Commander or relevant Chief of Mission for personnel performing private security functions;

(3) Provide full cooperation with any Government-authorized investigation of incidents reported pursuant to paragraph (c)(1)(iv) of this clause and incidents of alleged misconduct by personnel performing private security functions under this contract by providing?

(i) Access to employees performing private security functions; and

(ii) Relevant information in the possession of the Contractor regarding the incident concerned; and

(4) Comply with ANSI/ASIS PSC.1-2012, American National Standard, Management System for Quality of Private Security Company Operations? Requirements with Guidance or the International Standard ISO 18788, Management System for Private Security Operations?Requirements with Guidance (located at http://www.acq.osd.mil/log/PS/psc.html).

(d) Remedies. In addition to other remedies available to the Government?

(1) The Contracting Officer may direct the Contractor, at its own expense, to remove and replace any Contractor or subcontractor personnel performing private security functions who fail to comply with or violate applicable requirements of this clause or 32 CFR part 159. Such action may be taken at the Government?s discretion without prejudice to its rights under any other provision of this contract;

(2) The Contractor?s failure to comply with the requirements of this clause will be included in appropriate databases of past performance and considered in any responsibility determination or evaluation of past performance; and

(3) If this is an award-fee contract, the Contractor?s failure to comply with the requirements of this clause shall be considered in the evaluation of the Contractor?s performance during the relevant evaluation period, and the Contracting Officer may treat such failure to comply as a basis for reducing or denying award fees for such period or for recovering all or part of award fees previously paid for such period.

(e) Rule of construction. The duty of the Contractor to comply with the requirements of this clause shall not be reduced or diminished by the failure of a higher- or lower-tier Contractor or subcontractor to comply with the clause requirements or by a failure of the contracting activity to provide required oversight.

(f) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (f), in subcontracts, including subcontracts for commercial

products or commercial services, when private security functions will be performed outside the United States in areas of?

(1) Contingency operations;

(2) Combat operations, as designated by the Secretary of Defense;

(3) Other significant military operations (as defined in 32 CFR part 159), designated by the Secretary of Defense upon agreement of the Secretary of State;

(4) Peace operations, consistent with Joint Publication 3-07.3; or

(5) Other military operations or military exercises, when designated by the Combatant Commander.

(End of clause)

252.225-7040 Contractor Personnel Supporting U.S. Armed Forces Deployed

Outside the United States.

As prescribed in 222.771-5(a), use the following clause:

CONTRACTOR PERSONNEL SUPPORTING U.S. ARMED FORCES DEPLOYED OUTSIDE THE UNITED STATES (AUG 2025)

(a) Definitions. As used in this clause?

?Combatant Commander? means the commander of a unified or specified combatant command established in accordance with 10 U.S.C. 161.

?Contractors authorized to accompany the Force,? or ?CAAF,? means contractor personnel, including all tiers of subcontractor personnel, who are authorized to accompany U.S. Armed Forces in applicable operations and have been afforded CAAF status through a letter of authorization. CAAF generally include all U.S. citizen n and third-country national employees not normally residing within the operational area whose area of performance is in the direct vicinity of U.S. Armed Forces and who routinely are collocated with the U.S. Armed Forces (especially in non-permissive environments). Personnel collocated with U.S. Armed Forces shall be afforded CAAF status through a letter of authorization. In some cases, Combatant Commander subordinate commanders may designate mission-essential host nation or local national contractor employees (e.g., interpreters) as CAAF. CAAF includes contractors previously identified as contractors deploying with the U.S. Armed Forces. CAAF status does not apply to contractor personnel in support of applicable operations within the boundaries and territories of the United States.

?Designated operational area? means a geographic area designated by the combatant commander or subordinate joint force commander for the conduct or support of specified military operations.

?Designated reception site? means the designated place for the reception, staging, integration, and onward movement of contractors deploying during a contingency. The designated reception site includes assigned joint reception centers

and other Service or private reception sites.

?Law of war? means that part of international law that regulates the conduct of armed hostilities. The law of war encompasses all international law for the conduct of hostilities binding on the United States or its individual citizens, including treaties and international agreements to which the United States is a party, and applicable customary international law.

?Non-CAAF? means personnel who are not designated as CAAF, such as local national (LN) employees and non-LN employees who are permanent residents in the operational area or third-country nationals not routinely residing with U.S. Armed Forces (and third-country national expatriates who are permanent residents in the operational area) who perform support functions away from the close proximity of, and do not reside with, U.S. Armed Forces. Government-furnished

support to non-CAAF is typically limited to force protection, emergency medical care, and basic human needs (e.g., bottled water, latrine facilities, security, and food when necessary) when performing their jobs in the direct vicinity of U.S. Armed Forces. Non-CAAF status does not apply to contractor personnel in support of applicable operations within the boundaries and territories of the United States. ?Subordinate joint force commander? means a sub-unified commander or joint task force commander.

(b) General.

(1) This clause applies to both CAAF and non-CAAF when performing in a designated operational area outside the United States to support U.S. Armed Forces deployed outside the United States in?

(i) Contingency operations;

(ii) Peace operations, consistent with Joint Publication 3-07.3; or

(iii) Other military operations or military exercises, when designated by the Combatant Commander or as directed by the Secretary of Defense.

(2) Contract performance in support of U.S. Armed Forces deployed outside the United States may require work in dangerous or austere conditions. Except as otherwise provided in the contract, the Contractor accepts the risks associated with required contract performance in such operations.

(3) When authorized in accordance with paragraph (j) of this clause to carry arms for personal protection, Contractor personnel are only authorized to use force for individual self-defense.

(4) Unless immune from host nation jurisdiction by virtue of an international agreement or international law, inappropriate use of force by contractor personnel supporting the U.S. Armed Forces can subject such personnel to United States or host nation prosecution and civil liability (see paragraphs (d) and (j)(3) of this clause).

(5) Service performed by Contractor personnel subject to this clause is not

active duty or service under 38 U.S.C. 106 note.

(c) Support.

(1)(i) The Combatant Commander will develop a security plan for protection of Contractor personnel in locations where there is not sufficient or legitimate civil authority, when the Combatant Commander decides it is in the interests of the Government to provide security because?

(A) The Contractor cannot obtain effective security services;

(B) Effective security services are unavailable at a reasonable cost; or

(C) Threat conditions necessitate security through military means.

(ii) In appropriate cases, the Combatant Commander may provide security through military means, commensurate with the level of security provided DoD civilians.

(2)(i) Generally, CAAF will be afforded emergency medical and dental care if

injured while supporting applicable operations. Additionally, non-CAAF employees who are injured while in the vicinity of U. S. Armed Forces will normally receive emergency medical and dental care. Emergency medical and dental care includes medical care situations in which life, limb, or eyesight is jeopardized. Examples of emergency medical and dental care include examination and initial treatment of victims of sexual assault; refills of prescriptions for life-dependent drugs; repair of broken bones, lacerations, infections; and traumatic injuries to the dentition. Hospitalization will be limited to stabilization and short-term medical treatment with an emphasis on return to duty or placement in the patient movement system.

(ii) When the Government provides medical treatment or transportation of Contractor personnel to a selected civilian facility, the Contractor shall ensure that the Government is reimbursed for any costs associated with such treatment or transportation.

(iii) Medical or dental care beyond this standard is not authorized.

(3) Contractor personnel must have a Synchronized Predeployment and Operational Tracker (SPOT)-generated letter of authorization signed by the Contracting Officer in order to process through a deployment center or to travel to, from, or within the designated operational area. The letter of authorization also will identify any additional authorizations, privileges, or Government support that Contractor personnel are entitled to under this contract. Contractor personnel who are issued a letter of authorization shall carry it with them at all times while deployed.

(4) Unless specified elsewhere in this contract, the Contractor is responsible for all other support required for its personnel engaged in the designated operational area under this contract.

(d) Compliance with laws and regulations.

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(1) The Contractor shall comply with, and shall ensure that its personnel supporting U.S. Armed Forces deployed outside the United States as specified in paragraph (b)(1) of this clause are familiar with and comply with, all applicable?

(i) United States, host country, and third country national laws;

(ii) Provisions of the law of war, as well as any other applicable treaties and international agreements;

(iii) United States regulations, directives, instructions, policies, and procedures; and

(iv) Orders, directives, and instructions issued by the Combatant Commander, including those relating to force protection, security, health, safety, or relations and interaction with local nationals.

(2) The Contractor shall institute and implement an effective program to prevent violations of the law of war by its employees and subcontractors, including law of war training in accordance with paragraph (e)(1)(vii) of this clause.

(3) The Contractor shall ensure that CAAF and non-CAAF are aware?

(i) Of the DoD definition of ?sexual assault? in DoD Directive 6495.01, Sexual Assault Prevention and Response Program;

(ii) That the offenses addressed by the definition are covered under the Uniform Code of Military Justice (see paragraph (e)(2)(iv) of this clause). Other sexual misconduct may constitute offenses under the Uniform Code of Military Justice, Federal law, such as the Military Extraterritorial Jurisdiction Act, or host nation laws; and

(iii) That the offenses not covered by the Uniform Code of Military Justice may nevertheless have consequences to the contractor employees (see paragraph (h)(1) of this clause).

(4) The Contractor shall report to the appropriate investigative authorities, identified in paragraph (d)(6) of this clause, any alleged offenses under?

(i) The Uniform Code of Military Justice (chapter 47 of title 10, United States Code) (applicable to contractors serving with or accompanying an armed force in the field during a declared war or contingency operations); or

(ii) The Military Extraterritorial Jurisdiction Act (chapter 212 of title 18, United States Code).

(5) The Contractor shall provide to all contractor personnel who will perform work on a contract in the deployed area, before beginning such work, information on the following:

(i) How and where to report an alleged crime described in paragraph (d)(4) of this clause.

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(ii) Where to seek victim and witness protection and assistance available to contractor personnel in connection with an alleged offense described in paragraph (d)(4) of this clause.

(iii) That this section does not create any rights or privileges that are not authorized by law or DoD policy.

(6) The appropriate investigative authorities to which suspected crimes shall be reported include the following?

(i) US Army Criminal Investigation Command at http://www.cid.army.mil/;

(ii) Air Force Office of Special Investigations at https://www.osi.af.mil/;

(iii) Navy Criminal Investigative Service at http://www.ncis.navy.mil/;

(iv) Defense Criminal Investigative Service at http://www.dodig.mil/;

(v) To any command of any supported military element or the command of any base.

(7) Personnel seeking whistleblower protection from reprisals for reporting criminal acts shall seek guidance through the DoD Inspector General hotline at 800-424-9098 or www.dodig.mil/. Personnel seeking other forms of victim or witness protections should contact the nearest military law enforcement office.

(8)(i) The Contractor shall ensure that Contractor employees supporting the U.S.

Armed Forces are aware of their rights to?

(A) Hold their own identity or immigration documents, such as passport or driver?s license, regardless of the documents? issuing authority;

(B) Receive agreed upon wages on time;

(C) Take lunch and work-breaks;

(D) Elect to terminate employment at any time;

(E) Identify grievances without fear of reprisal;

(F) Have a copy of their employment contract in a language they understand;

(G) Receive wages that are not below the legal host-country minimum wage;

(H) Be notified of their rights, wages, and prohibited activities prior to signing their employment contract; and

(I) If housing is provided, live in housing that meets host-country housing and safety standards.

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(ii) The Contractor shall post these rights in employee work spaces in English and in any foreign language(s) spoken by a significant portion of the workforce.

(iii) The Contractor shall enforce the rights of Contractor personnel supporting the U.S. Armed Forces.

(e) Preliminary personnel requirements.

(1) The Contractor shall ensure that the following requirements are met prior to deploying CAAF (specific requirements for each category will be specified in the statement of work or elsewhere in the contract):

(i) All required security and background checks are complete and acceptable.

(ii) All CAAF deploying in support of an applicable operation?

(A) Are medically, dentally, and psychologically fit for deployment and performance of their contracted duties;

(B) Meet the minimum medical screening requirements, including theater-specific medical qualifications as established by the geographic Combatant Commander (as posted to the Geographic Combatant Commander?s website or other venue); and

(C) Have received all required immunizations as specified in the contract.

(1) During predeployment processing, the Government will provide, at no cost to the Contractor, any military-specific immunizations and/or medications not available to the general public.

(2) All other immunizations shall be obtained prior to arrival at the deployment center.

(3) All CAAF and selected non-CAAF, as specified in the statement of work, shall bring to the designated operational area a copy of the U.S. Centers for Disease Control and Prevention (CDC) Form 731, International Certificate of Vaccination or Prophylaxis as Approved by the World Health Organization, (also known as ?shot record? or ?Yellow Card?) that shows vaccinations are current.

(iii) Deploying personnel have all necessary passports, visas, and other documents required to enter and exit a designated operational area and have a Geneva Conventions identification card, or other appropriate DoD identity credential, from the deployment center.

(iv) Special area, country, and theater clearance is obtained for all personnel deploying. Clearance requirements are in DoD Directive 4500.54E, DoD Foreign Clearance Program. For this purpose, CAAF are considered non-DoD contactor
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personnel traveling under DoD sponsorship.

(v) All deploying personnel have received personal security training. At a minimum, the training shall?

(A) Cover safety and security issues facing employees overseas;

(B) Identify safety and security contingency planning activities; and

(C) Identify ways to utilize safety and security personnel and other resources appropriately.

(vi) All personnel have received isolated personnel training, if specified in the contract, in accordance with DoD Instruction 1300.23, Isolated Personnel Training for DoD Civilian and Contractors.

(vii) Personnel have received law of war training as follows:

(A) Basic training is required for all CAAF. The basic training will be provided through?

(1) A military-run training center; or

(2) A web-based source, if specified in the contract or approved by the Contracting Officer.

(B) Advanced training, commensurate with their duties and responsibilities, may be required for some Contractor personnel as specified in the contract.

(2) The Contractor shall notify all personnel who are not a host country national, or who are not ordinarily resident in the host country, that?

(i) Such employees, and dependents residing with such employees, who engage in conduct outside the United States that would constitute an offense punishable by imprisonment for more than one year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States, may potentially be subject to the criminal jurisdiction of the United States in accordance with the Military Extraterritorial Jurisdiction Act of 2000 (18 U.S.C. 3621, et seq.);

(ii) Pursuant to the War Crimes Act (18 U.S.C. 2441), Federal criminal

jurisdiction also extends to conduct that is determined to constitute a war crime when committed by a civilian national of the United States;

(iii) Other laws may provide for prosecution of U.S. nationals who commit offenses on the premises of U.S. diplomatic, consular, military or other U.S. Government missions outside the United States (18 U.S.C. 7(9)); and

(iv) In time of declared war or a contingency operation, CAAF are subject to the jurisdiction of the Uniform Code of Military Justice under 10 U.S.C. 802(a)(10).

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(v) Such employees are required to report offenses alleged to have been committed by or against Contractor personnel to appropriate investigative authorities.

(vi) Such employees will be provided victim and witness protection and assistance.

(f) Processing and departure points. CAAF shall?

(1) Process through the deployment center designated in the contract, or as otherwise directed by the Contracting Officer, prior to deploying. The deployment center will conduct deployment processing to ensure visibility and accountability of Contractor personnel and to ensure that all deployment requirements are met, including the requirements specified in paragraph (e)(1) of this clause;

(2) Use the point of departure and transportation mode directed by the Contracting Officer; and

(3) Process through a designated reception site (DRS) upon arrival at the deployed location. The DRS will validate personnel accountability, ensure that specific designated operational area entrance requirements are met, and brief Contractor personnel on theater-specific policies and procedures.

(g) Personnel data.

(1) The Contractor shall use the Synchronized Predeployment and Operational Tracker (SPOT) web-based system, to enter and maintain the data for all CAAF and, as designated by the Under Secretary of Defense (Acquisition and Sustainment) or the Combatant Commander, non-CAAF supporting U.S. Armed Forces deployed outside the United States as specified in paragraph (b)(1) of this clause.

(2) The Contractor shall enter the required information about their contractor personnel prior to deployment and shall continue to use the SPOT web-based system at https://spot.dmdc.mil to maintain accurate, up-to-date information throughout the deployment for all Contractor personnel. Changes to status of individual Contractor personnel relating to their in-theater arrival date and their duty location, to include closing out the deployment with their proper status (e.g., mission complete, killed, wounded) shall be annotated within the SPOT database in accordance with the timelines established in the SPOT Business Rules at https://www.acq.osd.mil/asds/log/cso/ocs/spot.html.

(h) Contractor personnel.

(1) The Contracting Officer may direct the Contractor, at its own expense, to remove and replace any Contractor personnel who jeopardize or interfere with mission accomplishment or who fail to comply with or violate applicable requirements of this contract. Such action may be taken at the Government?s discretion without prejudice to its rights under any other provision of this contract, including the Termination for Default clause.

(2) The Contractor shall identify all personnel who occupy a position designated

as mission essential and ensure the continuity of essential Contractor services during designated operations, unless, after consultation with the Contracting Officer, Contracting Officer?s representative, or local commander, the Contracting Officer directs withdrawal due to security conditions.

(3) The Contractor shall ensure that Contractor personnel follow the guidance at paragraph (e)(2)(v) of this clause and any specific Combatant Commander guidance on reporting offenses alleged to have been committed by or against Contractor personnel to appropriate investigative authorities.

(4) Contractor personnel shall return all U.S. Government-issued identification, to include the Common Access Card, to appropriate U.S. Government authorities at the end of their deployment (or, for non-CAAF, at the end of their employment under this contract).

(i) Military clothing and protective equipment.

(1) Contractor personnel are prohibited from wearing military clothing unless specifically authorized in writing by the Combatant Commander. If authorized to wear military clothing, Contractor personnel must?

(i) Wear distinctive patches, arm bands, nametags, or headgear, in order to be distinguishable from military personnel, consistent with force protection measures; and

(ii) Carry the written authorization with them at all times.

(2) Contractor personnel may wear military-unique organizational clothing and individual equipment (OCIE) required for safety and security, such as ballistic, nuclear, biological, or chemical protective equipment.

(3) The deployment center, or the Combatant Commander, shall issue OCIE and shall provide training, if necessary, to ensure the safety and security of Contractor personnel.

(4) The Contractor shall ensure that all issued OCIE is returned to the point of issue, unless otherwise directed by the Contracting Officer.

(j) Weapons.

(1) If the Contractor requests that its personnel performing in the designated operational area be authorized to carry weapons for individual self-defense, the request shall be made through the Contracting Officer to the Combatant Commander, in accordance with DoD Instruction 3020.41, Operational Contractor Support. The

Combatant Commander will determine whether to authorize in-theater Contractor personnel to carry weapons and what weapons and ammunition will be allowed.

(2) If Contractor personnel are authorized to carry weapons in accordance with paragraph (j)(1) of this clause, the Contracting Officer will notify the Contractor what weapons and ammunition are authorized.

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(3) The Contractor shall ensure that its personnel who are authorized to carry weapons?

(i) Are adequately trained to carry and use them?

(A) Safely;

(B) With full understanding of, and adherence to, the rules of the use of force issued by the Combatant Commander; and

(C) In compliance with applicable agency policies, agreements, rules, regulations, and other applicable law;

(ii) Are not barred from possession of a firearm by 18 U.S.C. 922;

(iii) Adhere to all guidance and orders issued by the Combatant Commander regarding possession, use, safety, and accountability of weapons and ammunition;

(iv) Comply with applicable Combatant Commander and local commander force-protection policies; and

(v) Understand that the inappropriate use of force could subject them to U.S. or host-nation prosecution and civil liability.

(4) Whether or not weapons are Government-furnished, all liability for the use of any weapon by Contractor personnel rests solely with the Contractor and the Contractor employee using such weapon.

(5) Upon redeployment or revocation by the Combatant Commander of the Contractor?s authorization to issue firearms, the Contractor shall ensure that all Government-issued weapons and unexpended ammunition are returned as directed by the Contracting Officer.

(k) Vehicle or equipment licenses. Contractor personnel shall possess the required licenses to operate all vehicles or equipment necessary to perform the contract in the designated operational area.

(l) Purchase of scarce goods and services. If the Combatant Commander has established an organization for the designated operational area whose function is to determine that certain items are scarce goods or services, the Contractor shall coordinate with that organization local purchases of goods and services designated as scarce, in accordance with instructions provided by the Contracting Officer.

(m) Evacuation.

(1) If the Combatant Commander orders a mandatory evacuation of some or all personnel, the Government will provide assistance, to the extent available, to United States and third country national Contractor personnel.

(2) In the event of a non-mandatory evacuation order, unless authorized in writing by the Contracting Officer, the Contractor shall maintain personnel on location

sufficient to meet obligations under this contract.

(n) Next of kin notification and personnel recovery.

(1) The Contractor shall be responsible for notification of the employee-designated next of kin in the event an employee dies, requires evacuation due to an injury, or is isolated, missing, detained, captured, or abducted.

(2) In the case of isolated, missing, detained, captured, or abducted Contractor personnel, the Government will assist in personnel recovery actions in accordance with DoD Directive 3002.01E, Personnel Recovery in the Department of Defense.

(o) Mortuary affairs. Contractor personnel who die while in support of the U.S. Armed Forces shall be covered by the DoD mortuary affairs program as described in DoD Directive 1300.22, Mortuary Affairs Policy, and DoD Instruction 3020.41, Operational Contractor Support.

(p) Changes. In addition to the changes otherwise authorized by the Changes clause of this contract, the Contracting Officer may, at any time, by written order identified as a change order, make changes in the place of performance or Government-furnished facilities, equipment, material, services, or site. Any change order issued in accordance with this paragraph (p) shall be subject to the provisions of the Changes clause of this contract.

(q) Subcontracts. The Contractor shall incorporate the substance of this clause, including this paragraph (q), in all subcontracts when subcontractor personnel are supporting U.S. Armed Forces deployed outside the United States in?

(1) Contingency operations;

(2) Peace operations consistent with Joint Publication 3-07.3; or

(3) Other military operations or military exercises, when designated by the Combatant Commander or as directed by the Secretary of Defense.

(End of clause)

252.225-7041 Correspondence in English.

As prescribed in 225.603(2), use the following clause:

CORRESPONDENCE IN ENGLISH (JUN 1997)

The Contractor shall ensure that all contract correspondence that is addressed to the United States Government is submitted in English or with an English translation.

(End of clause)

252.225-7042 Authorization to Perform.

As prescribed in 225.603(3), use the following provision:

AUTHORIZATION TO PERFORM (APR 2003)

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The offeror represents that it has been duly authorized to operate and to do business in the country or countries in which the contract is to be performed.

(End of provision)

252.225-7963 Antiterrorism/Force Protection for Defense Contractors Outside the United States.

As prescribed in 225.772-2, use the following clause:

ANTITERRORISM/FORCE PROTECTION POLICY FOR DEFENSE CONTRACTORS OUTSIDE THE UNITED STATES (DEVIATION 2026-O0041) (FEB 2026)

(a) Definition. ?United States,? as used in this clause, means, the 50 States, the District of Columbia, and outlying areas.

(b) Except as provided in paragraph (c) of this clause, the Contractor and its subcontractors, if performing or traveling outside the United States under this contract, shall?

(1) Affiliate with the Overseas Security Advisory Council, if the Contractor or subcontractor is a U.S. entity;

(2) Ensure that Contractor and subcontractor personnel who are U.S. nationals and are in-country on a non-transitory basis, register with the U.S. Embassy, and that Contractor and subcontractor personnel who are third country nationals comply with any security related requirements of the Embassy of their nationality;

(3) Provide, to Contractor and subcontractor personnel, antiterrorism/force protection awareness information commensurate with that which the Department of Defense (DoD) provides to its military and civilian personnel and their families, to the extent such information can be made available prior to travel outside the United States; and

(4) Obtain and comply with the most current antiterrorism/force protection guidance for Contractor and subcontractor personnel.

(c) The requirements of this clause do not apply to any subcontractor that is?

(1) A foreign government;

(2) A representative of a foreign government; or

(3) A foreign corporation wholly owned by a foreign government.

(d) Information and guidance pertaining to DoD antiterrorism/force protection can be obtained from (Contracting Officer to insert applicable information cited in **PGI 225.772-1).**

(End of clause)

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252.225-7044 Balance of Payments Program--Construction Material.

Basic. As prescribed in 225.7503(a) and (a)(1), use the following clause:

BALANCE OF PAYMENTS PROGRAM?CONSTRUCTION MATERIAL?BASIC (FEB 2024)

(a) Definitions. As used in this clause?

?Commercially available off-the-shelf (COTS) item??

(1) Means any item of supply (including construction material) that is?

(i) A commercial product (as defined in paragraph (1) of the definition of ?commercial product? in section 2.101 of the Federal Acquisition Regulation (FAR));

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

?Component? means any article, material, or supply incorporated directly into construction material.

?Construction material? means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

?Cost of components? means?

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost

of components does not include any costs associated with the manufacture of the construction material.

?Critical component? means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

?Critical item? means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.
?Domestic construction material? means?

(1) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both?

(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States, if?

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract in accordance with FAR 25.201(c). Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic. Components of unknown origin are treated as foreign; or

(B) The construction material is a COTS item; or

(2) For construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost of iron and steel not produced in the United States (excluding fasteners) as estimated in good faith by the contractor, constitutes less than 5 percent of the cost of all the components used in such construction material (produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States, utilized in the manufacture of the end product and a good faith estimate of the cost of all iron or steel components not produced in the United States, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the construction material contains multiple components, the cost of all the materials used in such construction material is calculated in accordance with the definition of ?cost of components? in this clause.
?Predominantly of iron or steel or a combination of both? means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab,
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wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.
?Steel? means an alloy that includes at least 50 percent iron, between 0.02 and 2

percent carbon, and may include other elements.
?United States? means the 50 States, the District of Columbia, and outlying areas.
(b) Domestic preference. This clause implements the Balance of Payments Program by providing a preference for domestic construction material. The Contractor shall use only domestic construction material in performing this contract, except for?
(1) Construction material valued at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation;
(2) Information technology that is a commercial product; or
(3) The construction material or components listed by the Government as follows:

_____

[Contracting Officer to list applicable excepted materials or indicate ?none?]
(End of clause)
Alternate I. [Reserved]
Alternate II. As prescribed in 225.7503(a) and (a)(3), use the following clause, which includes, in the definition of ?domestic construction material? at paragraph (1)(ii)(A), the domestic content threshold that will apply to the entire contract period of performance:
BALANCE OF PAYMENTS PROGRAM?CONSTRUCTION MATERIAL?
ALTERNATE II (FEB 2024)
(a) Definitions. As used in this clause?
?Commercially available off-the-shelf (COTS) item??
(1) Means any item of supply (including construction material) that is?
(i) A commercial product (as defined in paragraph (1) of the definition of ?commercial product? in section 2.101 of the Federal Acquisition Regulation (FAR));
(ii) Sold in substantial quantities in the commercial marketplace; and
(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
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(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.
?Component? means any article, material, or supply incorporated directly into construction material.
?Construction material? means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how

the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

?Cost of components? means?

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

?Critical component? means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

?Critical item? means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

?Domestic construction material? means?

(1) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both?

(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States, if?

(A) The cost of its components mined, produced, or manufactured in the United States exceeds, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or

later, 75 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic. Components of unknown origin are treated as foreign; or

(B) The construction material is a COTS item; or

(2) For construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost of iron and steel not produced in the United States (excluding fasteners) as estimated in good faith by the contractor, constitutes less than 5 percent of the cost of all the components used in such construction material (produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States includes but is

not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States, utilized in the manufacture of the end product and a good faith estimate of the cost of all iron or steel components not produced in the United States, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the construction material contains multiple components, the cost of all the materials used in such construction material is calculated in accordance with the definition of ?cost of components? in this clause.

?Predominantly of iron or steel or a combination of both? means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

?Steel? means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

?United States? means the 50 States, the District of Columbia, and outlying areas.

(b) Domestic preference. This clause implements the Balance of Payments Program by providing a preference for domestic construction material. The Contractor shall use only domestic construction material in performing this contract, except for?

(1) Construction material valued at or below the simplified acquisition threshold in FAR part 2;

(2) Information technology that is a commercial product; or

(3) The construction material or components listed by the Government as follows:

[Contracting Officer to list applicable excepted materials or indicate ?none?].

(End of clause)

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Alternate III. [Reserved]

252.225-7045 Balance of Payments Program--Construction Material Under Trade Agreements.

Basic. As prescribed in 225.7503(b) and (b)(1), use the following clause:

BALANCE OF PAYMENTS PROGRAM?CONSTRUCTION MATERIAL UNDER TRADE AGREEMENTS?BASIC (FEB 2024)

(a) Definitions. As used in this clause?

?Caribbean Basin country construction material? means a construction material that?

(1) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(2) In the case of a construction material that consists in whole or in part of

materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different construction material distinct from the materials from which it was transformed.

?Commercially available off-the-shelf (COTS) item??

(1) Means any item of supply (including construction material) that is?

(i) A commercial product (as defined in paragraph (1) of the definition of ?commercial product? in section 2.101 of the Federal Acquisition Regulation (FAR));

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. 40102), such as agricultural products and petroleum products.

?Component? means any article, material, or supply incorporated directly into construction material.

?Construction material? means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction

site. Materials purchased directly by the Government are supplies, not construction material.

?Cost of components? means?

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

?Critical component? means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

?Critical item? means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

?Designated country? means?

(1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, New Zealand, North Macedonia, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as ?the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu? (Chinese Taipei)), Ukraine, or the United Kingdom);

(2) A Free Trade Agreement country (Australia, Bahrain, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore);

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

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?Designated country construction material? means a construction material that is a WTO GPA country construction material, a Free Trade Agreement country construction material, a least developed country construction material, or a Caribbean Basin country construction material.

?Domestic construction material? means?

(1) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both?

(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States, if?

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract in accordance with FAR 25.201(c). Components of foreign origin of the same class or kind for which nonavailability determinations have

been made are treated as domestic. Components of unknown origin are treated as foreign; or

(B) The construction material is a COTS item; or

(2) For construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost of iron and steel not produced in the United States (excluding fasteners) as estimated in good faith by the contractor, constitutes less than 5 percent of the cost of all the components used in such construction material (produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States, utilized in the manufacture of the construction material and a good faith estimate of the cost of all iron or steel components not produced in the United States, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the construction material contains multiple components, the cost of all the materials used in such construction material is calculated in accordance with the definition of ?cost of components? in this clause.

?Free Trade Agreement country construction material? means a construction material that?

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different construction material distinct from the material from which it was transformed.

?Least developed country construction material? means a construction material that?

(1) Is wholly the growth, product, or manufacture of a least developed country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

?Predominantly of iron or steel or a combination of both? means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS

fasteners.

?Steel? means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

?United States? means the 50 States, the District of Columbia, and outlying areas.

?WTO GPA country construction material? means a construction material that?

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

(b) This clause implements the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA and Free Trade Agreements apply to this acquisition. Therefore, the Balance of Payments Program restrictions are waived for designated country construction materials.

(c) The Contractor shall use only domestic or designated country construction material in performing this contract, except for?

(1) Construction material valued at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation;

(2) Information technology that is a commercial product; or

(3) The construction material or components listed by the Government as follows:

[Contracting Officer to list applicable excepted materials or indicate ?none?]

(End of clause)

Alternate I. As prescribed in 225.7503(b) and (b)(2), use the following clause, which adds ?Bahraini or Mexican construction material? to paragraph (a), and uses a different paragraph (b) and (c) than the basic clause:

BALANCE OF PAYMENTS PROGRAM?CONSTRUCTION MATERIAL UNDER TRADE AGREEMENTS?ALTERNATE I (FEB 2024)

(a) Definitions. As used in this clause?

?Bahraini or Mexican construction material? means a construction material that?

(1) Is wholly the growth, product, or manufacture of Bahrain or Mexico; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain or Mexico into a new and different construction material distinct from the materials from which it was transformed.

?Caribbean Basin country construction material? means a construction material that?

(1) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different construction material distinct from the materials from which it was transformed.

?Commercially available off-the-shelf (COTS) item??

(1) Means any item of supply (including construction material) that is?

(i) A commercial product (as defined in paragraph (1) of the definition of ?commercial product? in section 2.101 of the Federal Acquisition Regulation (FAR));

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

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(2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. 40102), such as agricultural products and petroleum products.

?Component? means any article, material, or supply incorporated directly into construction material.

?Construction material? means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

?Cost of components? means?

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

?Critical component? means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical

components is at FAR 25.105.
?Critical item? means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.
?Designated country? means?

(1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, New Zealand, North Macedonia, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as ?the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu? (Chinese Taipei)), Ukraine, or the United Kingdom);
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(2) A Free Trade Agreement country (Australia, Bahrain, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore);

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).
?Designated country construction material? means a construction material that is a WTO GPA country construction material, a Free Trade Agreement country construction material, a least developed country construction material, or a Caribbean Basin country construction material.
?Domestic construction material? means?

(1) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both?

(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States, if?

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028

and 75 percent for items delivered starting in calendar year 2029, unless an alternate percentage is established for a contract in accordance with FAR 25.201(c). Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic. Components of unknown origin are treated as foreign; or

(B) The construction material is a COTS item; or

(2) For construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost of iron and steel not produced in the United States (excluding fasteners) as estimated in good faith by the contractor, constitutes less than 5 percent of the cost of all the components used in such construction material (produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States includes but is

not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States, utilized in the manufacture of the construction material and a good faith estimate of the cost of all iron or steel components not produced in the United States, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the construction material contains multiple components, the cost of all the materials used in such construction material is calculated in accordance with the definition of ?cost of components? in this clause.

?Free Trade Agreement country construction material? means a construction material that?

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different construction material distinct from the material from which it was transformed.

?Least developed country construction material? means a construction material that?

(1) Is wholly the growth, product, or manufacture of a least developed country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

?Predominantly of iron or steel or a combination of both? means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost

of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

?Steel? means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

?United States? means the 50 States, the District of Columbia, and outlying areas.

?WTO GPA country construction material? means a construction material that?

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

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(b) This clause implements the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA and all Free Trade Agreements except United States-Mexico-Canada Agreement and the Bahrain Free Trade Agreement apply to this acquisition. Therefore, the Balance of Payments Program restrictions are waived for designated country construction material other than Bahraini or Mexican construction material.

(c) The Contractor shall use only domestic or designated country construction material other than Bahraini or Mexican construction material in performing this contract, except for?

(1) Construction material valued at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation; or

(2) Information technology that is a commercial product; or

(3) The construction material or components listed by the Government as follows:

_____

[Contracting Officer to list applicable excepted materials or indicate ?none?].

(End of clause)

Alternate II. [Reserved]

Alternate III. [Reserved]

Alternate IV. As prescribed in 225.7503(b) and (b)(5), use the following clause, which includes, in the definition of ?domestic construction material? at paragraph (1)(ii)(A), the domestic content threshold that will apply to the entire contract period of performance:

BALANCE OF PAYMENTS PROGRAM?CONSTRUCTION MATERIAL UNDER TRADE AGREEMENTS?ALTERNATE IV (FEB 2024)

(a) Definitions. As used in this clause?

?Caribbean Basin country construction material? means a construction material that?

(1) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different construction material distinct from the materials from which it was transformed.

?Commercially available off-the-shelf (COTS) item??

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(1) Means any item of supply (including construction material) that is?

(i) A commercial product (as defined in paragraph (1) of the definition of ?commercial product? in section 2.101 of the Federal Acquisition Regulation (FAR));

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. 40102), such as agricultural products and petroleum products.

?Component? means any article, material, or supply incorporated directly into construction material.

?Construction material? means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

?Cost of components? means?

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

?Critical component? means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.
?Critical item? means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.
?Designated country? means?
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(1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, New Zealand, North Macedonia, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as ?the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu? (Chinese Taipei)), Ukraine, or the United Kingdom);

(2) A Free Trade Agreement country (Australia, Bahrain, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore);

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

?Designated country construction material? means a construction material that is a WTO GPA country construction material, a Free Trade Agreement country construction material, a least developed country construction material, or a Caribbean Basin country construction material.
?Domestic construction material? means?.

(1) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both?

(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States, if?

(A) The cost of its components mined, produced, or manufactured in the

United States exceeds, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic. Components of unknown origin are treated as foreign; or

(B) The construction material is a COTS item; or

(2) For construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost of iron and steel not produced in the United States (excluding fasteners) as estimated in good faith by the contractor, constitutes less than 5 percent of the cost of all the components used in such construction material (produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States, utilized in the manufacture of the construction material and a good faith estimate of the cost of all iron or steel components not produced in the United States, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the construction material contains multiple components, the cost of all the materials used in such construction material is calculated in accordance with the definition of ?cost of components? in this clause.

?Free Trade Agreement country construction material? means a construction material that?

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different construction material distinct from the material from which it was transformed.

?Least developed country construction material? means a construction material that?

(1) Is wholly the growth, product, or manufacture of a least developed country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

?Predominantly of iron or steel or a combination of both? means that the cost of the

iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

?Steel? means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

?United States? means the 50 States, the District of Columbia, and outlying areas.

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?WTO GPA country construction material? means a construction material that?

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

(b) This clause implements the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA and Free Trade Agreements apply to this acquisition. Therefore, the Balance of Payments Program restrictions are waived for designated country construction materials.

(c) The Contractor shall use only domestic or designated country construction material in performing this contract, except for?

(1) Construction material valued at or below the simplified acquisition threshold in FAR part 2;

(2) Information technology that is a commercial product; or

(3) The construction material or components listed by the Government as follows:

[Contracting Officer to list applicable excepted materials or indicate ?none?].

(End of clause)

Alternate V. As prescribed in 225.7503(b) and (b)(6), use the following clause, which includes, in the definition of ?domestic construction material? at paragraph (1)(ii)(A), the domestic content threshold that will apply to the entire contract period of performance; adds ?Bahraini or Mexican construction material? to paragraph (a); and uses different paragraphs (b) and (c) than the basic clause:

BALANCE OF PAYMENTS PROGRAM?CONSTRUCTION MATERIAL UNDER TRADE AGREEMENTS?ALTERNATE V (FEB 2024)

(a) Definitions. As used in this clause?

?Bahraini or Mexican construction material? means a construction material that?

(1) Is wholly the growth, product, or manufacture of Bahrain or Mexico; or

(2) In the case of a construction material that consists in whole or in part of

materials from another country, has been substantially transformed in Bahrain or Mexico into a new and different construction material distinct from the materials from which it was transformed.

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?Caribbean Basin country construction material? means a construction material that?

(1) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different construction material distinct from the materials from which it was transformed.

?Commercially available off-the-shelf (COTS) item??

(1) Means any item of supply (including construction material) that is?

(i) A commercial product (as defined in paragraph (1) of the definition of ?commercial product? in section 2.101 of the Federal Acquisition Regulation (FAR));

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. 40102), such as agricultural products and petroleum products.

?Component? means any article, material, or supply incorporated directly into construction material.

?Construction material? means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

?Cost of components? means?

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in

paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost

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of components does not include any costs associated with the manufacture of the construction material.

?Critical component? means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

?Critical item? means domestic construction material or a domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

?Designated country? means?

(1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, New Zealand, North Macedonia, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as ?the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu? (Chinese Taipei)), Ukraine, or the United Kingdom);

(2) A Free Trade Agreement country (Australia, Bahrain, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore);

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

?Designated country construction material? means a construction material that is a WTO GPA country construction material, a Free Trade Agreement country construction material, a least developed country construction material, or a Caribbean Basin country construction material.

?Domestic construction material? means?

(1) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both?

(i) An unmanufactured construction material mined or produced in the

United States; or
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(ii) A construction material manufactured in the United States, if?

(A) The cost of its components mined, produced, or manufactured in the United States exceeds, for the entire period of performance for a contract awarded in: calendar year 2023, 60 percent of the cost of all its components; calendar years 2024 through 2028, 65 percent of the cost of all its components; or calendar year 2029 or later, 75 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic. Components of unknown origin are treated as foreign; or

(B) The construction material is a COTS item; or

(2) For construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost of iron and steel not produced in the United States (excluding fasteners) as estimated in good faith by the contractor, constitutes less than 5 percent of the cost of all the components used in such construction material (produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States, utilized in the manufacture of the construction material and a good faith estimate of the cost of all iron or steel components not produced in the United States, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the construction material contains multiple components, the cost of all the materials used in such construction material is calculated in accordance with the definition of ?cost of components? in this clause.

?Free Trade Agreement country construction material? means a construction material that?

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different construction material distinct from the material from which it was transformed.

?Least developed country construction material? means a construction material that?

(1) Is wholly the growth, product, or manufacture of a least developed country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country has been substantially transformed in a least developed

country into a new and different construction material distinct from the materials from which it was transformed.

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?Predominantly of iron or steel or a combination of both? means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

?Steel? means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

?United States? means the 50 States, the District of Columbia, and outlying areas.

?WTO GPA country construction material? means a construction material that?

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

(b) This clause implements the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA and all Free Trade Agreements except United States-Mexico-Canada Agreement and the Bahrain Free Trade Agreement apply to this acquisition. Therefore, the Balance of Payments Program restrictions are waived for designated country construction material other than Bahraini or Mexican construction material.

(c) The Contractor shall use only domestic or designated country construction material other than Bahraini or Mexican construction material in performing this contract, except for?

(1) Construction material valued at or below the simplified acquisition threshold in FAR part 2; or

(2) Information technology that is a commercial product; or

(3) The construction material or components listed by the Government as follows:

[Contracting Officer to list applicable excepted materials or indicate ?none?].

(End of clause)

Alternate VI. [Reserved]

Alternate VII. [Reserved]

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252.225-7046 Exports by Approved Community Members in Response to the Solicitation.

As prescribed in 225.7902-5(a), use the following provision:

EXPORTS BY APPROVED COMMUNITY MEMBERS IN RESPONSE TO THE SOLICITATION (JUNE 2013)

(a) Definitions. The definitions of ?Approved Community?, ?defense articles?, Defense Trade Cooperation (DTC) Treaty?, ?export?, ?Implementing Arrangement?, ?qualifying defense articles?, ?transfer?, and ?U.S. DoD Treaty-eligible requirements? in DFARS clause 252.225-7047 apply to this provision.

(b) All contract line items in the contemplated contract, except any identified in this paragraph, are intended to satisfy U.S. DoD Treaty-eligible requirements. Specific defense articles that are not U.S. DoD Treaty-eligible will be identified as such in those contract line items that are otherwise U.S. DoD Treaty-eligible.

CONTRACT LINE ITEMS NOT INTENDED TO SATISFY

U.S. DoD TREATY-ELIGIBLE REQUIREMENTS:

_____

[Enter Contract Line Item Number(s) or enter ?None?]

(c) Approved Community members responding to the solicitation may only export or transfer defense articles that specifically respond to the stated requirements of the solicitation.

(d) Subject to the other terms and conditions of the solicitation and the contemplated contract that affect the acceptability of foreign sources or foreign end products, components, parts, or materials, Approved Community members are permitted, but not required, to use the DTC Treaties for exports or transfers of qualifying defense articles in preparing a response to this solicitation.

(e) Any conduct by an offeror responding to this solicitation that falls outside the scope of the DTC Treaties, the Implementing Arrangements, and the implementing regulations of the Department of State in 22 CFR 126.16 (Australia), 22 C.F.R. 126.17 (United Kingdom), and 22 C.F.R. 126 Supplement No. 1 (exempted technologies list) is subject to all applicable International Traffic in Arms Regulations (ITAR) requirements, including any criminal, civil, and administrative penalties or sanctions, as well as all other United States statutory and regulatory requirements outside of ITAR.

(f) If the offeror uses the procedures established pursuant to the DTC Treaties, the offeror agrees that, with regard to the export or transfer of a qualifying defense article associated with responding to the solicitation, the offeror shall?

(1) Comply with the requirements and provisions of the applicable DTC Treaties, the Implementing Arrangements, and corresponding regulations (including the ITAR) of the U.S. Government and the government of Australia or of the United Kingdom, as applicable;

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(2) Prior to the export or transfer of a qualifying defense article?

(i) Mark, identify, transmit, store, and handle any defense articles provided for the purpose of responding to such solicitations, as well as any defense articles provided with or developed pursuant to their responses to such solicitations, in accordance with the DTC Treaties, the Implementing Arrangements, and corresponding regulations of the United States Government and the government of Australia or the government of the United Kingdom, as applicable, including, but not limited to, the marking and classification requirements described in the applicable regulations;

(ii) Comply with the re-transfer or re-export provisions of the DTC Treaties, the Implementing Arrangements, and corresponding regulations of the United States Government and the government of Australia or the government of the United Kingdom, as applicable, including, but not limited to, the re-transfer and re-export requirements described in the applicable regulations; and

(iii) Acknowledge that any conduct that falls outside or in violation of the DTC Treaties, Implementing Arrangements, and implementing regulations of the applicable government including, but not limited to, unauthorized re-transfer or re-export in violation of the procedures established in the applicable Implementing Arrangement and implementing regulations, remains subject to applicable licensing requirements of the government of Australia, the government of the United Kingdom, and the United States Government, as applicable, including any criminal, civil, and administrative penalties or sanctions contained therein; and

(g) Representation. The offeror shall check one of the following boxes and sign the representation:

? The offeror represents that export(s) or transfer(s) of qualifying defense articles were made in preparing its response to this solicitation and that such export(s) or transfer(s) complied with the requirements of this provision.

_____

Name/Title of Duly Authorized Representative Date

? The offeror represents that no export(s) or transfer(s) of qualifying defense articles were made in preparing its response to this solicitation.

_____

Name/Title of Duly Authorized Representative Date

(h) Subcontracts. Flow down the substance of this provision, including this paragraph (h), but excluding the representation at paragraph (g), to any subcontractor at any tier intending to use the DTC Treaties in responding to this solicitation.

(End of provision)

252.225-7047 Exports by Approved Community Members in Performance of the Contract.

As prescribed in 225.7902-5(b), use the following clause:

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EXPORTS BY APPROVED COMMUNITY MEMBERS IN PERFORMANCE OF THE CONTRACT (JUNE 2013)

(a) Definitions. As used in this clause?

?Approved Community? means the U.S. Government, U.S. entities that are registered and eligible exporters, and certain government and industry facilities in Australia or the United Kingdom that are approved and listed by the U.S. Government.

?Australia Community member? means an Australian government authority or nongovernmental entity or facility on the Australia Community list accessible at http://pmddtc.state.gov/treaties/index.html .

?Defense articles? means articles, services, and related technical data, including software, in tangible or intangible form, listed on the United States Munitions List of the International Traffic in Arms Regulations (ITAR), as modified or amended.

?Defense Trade Cooperation (DTC) Treaty? means?

(1) The Treaty Between the Government of the United States of America and the government of the United Kingdom of Great Britain and Northern Ireland concerning Defense Trade Cooperation, signed at Washington and London on June 21 and 26, 2007; or

(2) The Treaty Between the Government of the United States of America and the Government of Australia Concerning Defense Trade Cooperation, signed at Sydney on September 5, 2007.

?Export? means the initial movement of defense articles from the United States Community to the United Kingdom Community and the Australia community.

?Implementing Arrangement? means?

(1) The Implementing Arrangement Pursuant to the Treaty between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland Concerning Defense Trade Cooperation, signed on February 14, 2008; or

(2) The Implementing Arrangement Pursuant to the Treaty between the Government of the United States of America and the Government of Australia Concerning Defense Trade Cooperation, signed on March 14, 2008.

?Qualifying defense articles? means defense articles that are not exempt from the scope of the DTC Treaties as defined in 22 CFR 126.16(g) and 22 CFR 126.17(g).

?Transfer? means the movement of previously exported defense articles within the Approved Community.

?United Kingdom Community member? means a United Kingdom government authority or nongovernmental entity or facility on the United Kingdom Community list accessible at http://pmddtc.state.gov.

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?United States Community? means?

(1) Departments and agencies of the U.S. Government, including their

personnel, with, as appropriate, security accreditation and a need-to-know; and

(2) Nongovernmental U.S. entities registered with the Department of State and eligible to export defense articles under U.S. law and regulation, including their employees, with, as appropriate, security accreditation and a need-to-know.

?U.S. DoD Treaty-eligible requirements? means any defense article acquired by the DoD for use in a combined military or counterterrorism operation, cooperative research, development, production or support program, or DoD end use, as described in Article 3 of the U.S.-U.K. DTC Treaty and sections 2 and 3 of the associated Implementing Arrangement; and Article 3 of the U.S.-Australia DTC Treaty and sections 2 and 3 of the associated Implementing Arrangement.

(b) All contract line items in this contract, except any identified in this paragraph, are intended to satisfy U.S. DoD Treaty-eligible requirements. Specific defense articles that are not U.S. DoD Treaty-eligible will be identified as such in those contract line items that are otherwise U.S. DoD Treaty-eligible.

CONTRACT LINE ITEMS NOT INTENDED TO SATISFY

U.S. DoD TREATY-ELIGIBLE REQUIREMENTS:

_____

[Enter Contract Line Item Number(s) or enter ?None?]

(c) Subject to the other terms and conditions of this contract that affect the acceptability of foreign sources or foreign end products, components, parts, or materials, Approved Community members are permitted, but not required, to use the DTC Treaties for exports or transfers of qualifying defense articles in performance of the contract.

(d) Any conduct by the Contractor that falls outside the scope of the DTC Treaties, the Implementing Arrangements, and 22 CFR 126.16(g) and 22 CFR 126.17(g) is subject to all applicable ITAR requirements, including any criminal, civil, and administrative penalties or sanctions, as well as all other United States statutory and regulatory requirements outside of ITAR, including, but not limited to, regulations issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives found at 27 C.F.R. Parts 447, 478, and 479, which are unaffected by the DTC Treaties.

(e) If the Contractor is an Approved Community member, the Contractor agrees that?

(1) The Contractor shall comply with the requirements of the DTC Treaties, the Implementing Arrangements, the ITAR, and corresponding regulations of the U.S. Government and the government of Australia or the government of the United Kingdom, as applicable; and

(2) Prior to the export or transfer of a qualifying defense article the Contractor?

(i) Shall mark, identify, transmit, store, and handle any defense articles provided for the purpose of responding to such solicitations, as well as any defense

articles provided with or developed pursuant to their responses to such solicitations, in accordance with the DTC Treaties, the Implementing Arrangements, and corresponding regulations of the United States Government and the government of Australia or the government of the United Kingdom, as applicable, including, but not limited to, the marking and classification requirements described in the applicable regulations;

(ii) Shall comply with the re-transfer or re-export provisions of the DTC Treaties, the Implementing Arrangements, and corresponding regulations of the United States Government and the government of Australia or the government of the United Kingdom, as applicable, including, but not limited to, the re-transfer and re-export requirements described in the applicable regulations; and

(iii) Shall acknowledge that any conduct that falls outside or in violation of the DTC Treaties, Implementing Arrangements, and implementing regulations of the applicable government including, but not limited to, unauthorized re-transfer or re-export in violation of the procedures established in the applicable Implementing Arrangement and implementing regulations, remains subject to applicable licensing requirements of the government of Australia, the government of the United Kingdom, and the United States Government, including any criminal, civil, and administrative penalties or sanctions contained therein.

(f) The contractor shall include the substance of this clause, including this paragraph (f), in all subcontracts that may require exports or transfers of qualifying defense articles in connection with deliveries under the contract.

(End of clause)

252.225-7048 Export-Controlled Items.

As prescribed in 225.7901-4, use the following clause:

EXPORT CONTROLLED ITEMS (JUNE 2013)

(a) Definition. ?Export-controlled items,? as used in this clause, means items subject to the Export Administration Regulations (EAR) (15 CFR Parts 730-774) or the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120-130). The term includes:

(1) ?Defense items,? defined in the Arms Export Control Act, 22 U.S.C. 2778(j)(4)(A), as defense articles, defense services, and related technical data, and further defined in the ITAR, 22 CFR Part 120.

(2) ?Items,? defined in the EAR as ?commodities?, ?software?, and ?technology,? terms that are also defined in the EAR, 15 CFR 772.1.

(b) The Contractor shall comply with all applicable laws and regulations regarding export-controlled items, including, but not limited to, the requirement for contractors to

register with the Department of State in accordance with the ITAR. The Contractor shall consult with the Department of State regarding any questions relating to compliance with the ITAR and shall consult with the Department of Commerce

regarding any questions relating to compliance with the EAR.

(c) The Contractor?s responsibility to comply with all applicable laws and regulations regarding export-controlled items exists independent of, and is not established or limited by, the information provided by this clause.

(d) Nothing in the terms of this contract adds, changes, supersedes, or waives any of the requirements of applicable Federal laws, Executive orders, and regulations, including but not limited to?

(1) The Export Administration Act of 1979, as amended (50 U.S.C. App. 2401, et seq.);

(2) The Arms Export Control Act (22 U.S.C. 2751, et seq.);

(3) The International Emergency Economic Powers Act (50 U.S.C. 1701, et seq.);

(4) The Export Administration Regulations (15 CFR Parts 730-774);

(5) The International Traffic in Arms Regulations (22 CFR Parts 120-130); and

(6) Executive Order 13222, as extended.

(e) The Contractor shall include the substance of this clause, including this paragraph (e), in all subcontracts.

(End of clause)

252.225-7049 [Reserved]

252.225-7050 [Reserved]

252.225-7051 [Reserved]

252.225-7052 Restriction on the Acquisition of Certain Magnets, Tantalum, and Tungsten.

As prescribed in 225.7018-5, use the following clause:

RESTRICTION ON THE ACQUISITION OF CERTAIN MAGNETS, TANTALUM, AND TUNGSTEN (MAY 2024)

(a) Definitions. As used in this clause?

?Assembly? means an item forming a portion of a system or subsystem that?

(1) Can be provisioned and replaced as an entity; and

(2) Incorporates multiple, replaceable parts.

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?Commercially available off-the-shelf item??

(1) Means any item of supply that is?

(i) A commercial product (as defined in paragraph (1) of the definition of ?commercial product? in section 2.101 of the Federal Acquisition Regulation);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under this contract or a subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as

agricultural products and petroleum products.

?Component? means any item supplied to the Government as part of an end item or of another component.

?Covered country? means?

(1) The Democratic People?s Republic of North Korea;

(2) The People?s Republic of China;

(3) The Russian Federation; or

(4) The Islamic Republic of Iran.

?Covered material? means?

(1) Samarium-cobalt magnets;

(2) Neodymium-iron-boron magnets;

(3) Tantalum metals and alloys;

(4) Tungsten metal powder; and

(5) Tungsten heavy alloy or any finished or semi-finished component containing tungsten heavy alloy.

?Electronic device? means an item that operates by controlling the flow of electrons or other electrically charged particles in circuits, using interconnections such as resistors, inductors, capacitors, diodes, switches, transistors, or integrated circuits.

?End item? means the final production product when assembled or completed and ready for delivery under a line item of this contract.

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?Subsystem? means a functional grouping of items that combine to perform a major function within an end item, such as electrical power, attitude control, and propulsion.

?Tungsten heavy alloy? means a tungsten base pseudo alloy that?

(1) Meets the specifications of ASTM B777 or SAE-AMS-T-21014 for a particular class of tungsten heavy alloy; or

(2) Contains at least 90 percent tungsten in a matrix of other metals (such as nickel-iron or nickel-copper) and has density of at least 16.5 g/cm3).

(b) Restriction.

(1) Except as provided in paragraph (c) of this clause?

(i) Effective through December 31, 2026, the Contractor shall not deliver under this contract any covered material melted or produced in any covered country, or any end item, manufactured in any covered country, that contains a covered material; and

(ii) Effective January 1, 2027, the Contractor shall not deliver under this contract any covered material mined, refined, separated, melted, or produced in any covered country, or any end item, manufactured in any covered country, that contains a covered material (section 854, Pub. L. 118-31; 10 U.S.C. 4872).

(2)(i)(A) Effective through December 31, 2026, for samarium-cobalt magnets

and neodymium-iron-boron magnets, this restriction includes?

(1) Melting samarium with cobalt to produce the samarium-cobalt alloy or melting neodymium with iron and boron to produce the neodymium-iron-boron alloy; and

(2) All subsequent phases of production of the magnets, such as powder formation, pressing, sintering or bonding, and magnetization.

(B) Effective January 1, 2027, for samarium-cobalt magnets this restriction includes the entire supply chain from mining or production of a cobalt and samarium ore or feedstock, including recycled material, through production of finished magnets.

(ii) The restriction on melting and producing of samarium-cobalt magnets is in addition to any applicable restrictions on melting of specialty metals if the clause at 252.225-7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals, is included in the contract.

(3) Effective January 1, 2027, for neodymium-iron-boron magnets, this restriction includes the entire supply chain from mining of neodymium, iron, and boron through production of finished magnets.

(4)(i) Effective through December 31, 2026, for production of tantalum

metals of any kind and alloys, this restriction includes the reduction or melting of any form of tantalum to create tantalum metal including unwrought, powder, mill products, and alloys. The restriction also covers all subsequent phases of production of tantalum metals and alloys.

(ii) Effective January 1, 2027, for production of tantalum metals of any kind and alloys, this restriction includes mining or production of a tantalum ore or feedstock, including recycled material, through production of metals of any kind and alloys.

(5)(i) Effective through December 31, 2026, for production of tungsten metal powder and tungsten heavy alloy, this restriction includes?

(A) Atomization;

(B) Calcination and reduction into powder;

(C) Final consolidation of non-melt derived metal powders; and

(D) All subsequent phases of production of tungsten metal powder, tungsten heavy alloy, or any finished or semi-finished component containing tungsten heavy alloy.

(ii) Effective January 1, 2027, for production of tungsten metal powder, tungsten heavy alloy, or any finished or semi-finished component containing tungsten heavy alloy, this restriction includes mining or production of a tungsten ore or feedstock, including recycled material, through production of tungsten metal powders, tungsten heavy alloy, or any finished or semi-finished component containing tungsten heavy alloy.

(c) Exceptions. This clause does not apply?

(1) To an end item containing a covered material that is?

(i) A commercially available off-the-shelf item, other than?

(A) A commercially available off-the-shelf item that is?

(1) 50 percent or more tungsten by weight effective through December 31, 2026; or

(2) 50 percent or more covered material by weight effective January 1, 2027;

(B) Effective through December 31, 2026, a tantalum metal, tantalum alloy, or tungsten heavy alloy mill product, such as bar, billet, slab, wire, cube, sphere, block, blank, plate, or sheet, that has not been incorporated into an end item, subsystem, assembly, or component;

(ii) Effective January 1, 2027, a covered material that is a mill product, such as bar, billet, slab, wire, cube, sphere, block, blank, plate, or sheet, that has

not been incorporated into an end item, subsystem, assembly, or component;

(iii) An electronic device, unless otherwise specified in the contract; or

(iv) A neodymium-iron-boron magnet manufactured from recycled material if the milling of the recycled material and sintering of the final magnet takes place in the United States.

(2) If the authorized agency official concerned has made a nonavailability determination, in accordance with section 225.7018-4 of the Defense Federal Acquisition Regulation Supplement, that compliant covered materials of satisfactory quality and quantity, in the required form, cannot be procured as and when needed at a reasonable price.

(i) For tantalum metal, tantalum alloy, or tungsten heavy alloy, the term ?required form? refers to the form of the mill product, such as bar, billet, wire, slab, plate, or sheet, in the grade appropriate for the production of a finished end item to be delivered to the Government under this contract; or a finished component assembled into an end item to be delivered to the Government under the contract.

(ii) For samarium-cobalt magnets or neodymium-iron-boron magnets, the term ?required form? refers to the form and properties of the magnets.

(d) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (d), in subcontracts and other contractual instruments that are for items containing a covered material, including subcontracts and other contractual instruments for commercial products, unless an exception in paragraph

(c) of this clause applies. The Contractor shall not alter this clause other than to identify the appropriate parties.

(End of clause)

252.225-7053 Representation Regarding Prohibition on Use of Certain Energy Sourced from Inside the Russian Federation.

As prescribed in 225.7019-4(a), use the following provision:

REPRESENTATION REGARDING PROHIBITION ON USE OF CERTAIN ENERGY SOURCED FROM INSIDE THE RUSSIAN FEDERATION (AUG 2021)

(a) Definitions. As used in this provision?

?Covered military installation? means a military installation in Europe identified by DoD as a main operating base.

?Furnished energy? means energy furnished to a covered military installation in any form and for any purpose, including heating, cooling, and electricity.

?Main operating base? means a facility outside the United States and its territories with permanently stationed operating forces and robust infrastructure.

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(b) Prohibition. In accordance with section 2821 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116-92), contracts for the acquisition of furnished energy for a covered military installation shall not use any energy sourced from inside the Russian Federation as a means of generating the furnished energy for the covered military installation, unless a waiver is approved. The prohibition?

(1) Applies to all forms of energy that are furnished to a covered military installation; and

(2) Does not apply to energy converted by a third party into another form of energy and not directly delivered to a covered military installation.

(c) Representation. By submission of its offer, the Offeror represents that the Offeror will not use or provide any energy sourced from inside the Russian Federation as a means of generating the furnished energy for the covered military installation in the performance of any contract, subcontract, or other contractual instrument resulting from this solicitation.

(End of provision)

252.225-7054 Prohibition on Use of Certain Energy Sourced from Inside the Russian Federation.

As prescribed in 225.7019-4(b), use the following clause:

PROHIBITION ON USE OF CERTAIN ENERGY SOURCED FROM INSIDE THE RUSSIAN FEDERATION (JAN 2023)

(a) Definitions. As used in this clause?

?Covered military installation? means a military installation in Europe identified by DoD as a main operating base.

?Furnished energy? means energy furnished to a covered military installation in any form and for any purpose, including heating, cooling, and electricity.

?Main operating base? means a facility outside the United States and its territories with permanently stationed operating forces and robust infrastructure.

(b) Prohibition. In accordance with section 2821 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116-92), the Contractor shall not use in

the performance of this contract any energy sourced from inside the Russian Federation as a means of generating the furnished energy for the covered military installation unless a waiver is approved. The prohibition?

(1) Applies to all forms of energy that are furnished to a covered military installation; and

(2) Does not apply to energy converted by a third party into another form of energy and not directly delivered to a covered military installation.

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(c) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts and other commercial instruments that are for furnished energy at a covered military installation, including subcontracts and commercial instruments for commercial products.

(End of clause)

252.225-7055 Representation Regarding Business Operations with the Maduro Regime.

As prescribed in 225.7020-5(a), use the following provision:

REPRESENTATION REGARDING BUSINESS OPERATIONS WITH THE MADURO REGIME (MAY 2022)

(a) Definitions. As used in this provision?

?Agency or instrumentality of the government of Venezuela,? ?business operations,? ?government of Venezuela,? and ?person? have the meaning given in the clause 252.225-7056, Prohibition Regarding Business Operations with the Maduro Regime, of this solicitation.

(b) Prohibition. In accordance with section 890 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116-92), DoD is prohibited from entering into a contract for the procurement of products or services with any person that has business operations with an authority of the government of Venezuela that is not recognized as the legitimate government of Venezuela by the U.S. Government, unless the person has a valid license to operate in Venezuela issued by the Office of Foreign Assets Control of the Department of the Treasury.

(c) Representation. By submission of its offer, the Offeror represents that the Offeror is a person that?

(1) Does not have any business operations with an authority of the Maduro regime or the government of Venezuela that is not recognized as the legitimate government of Venezuela by the U.S. Government; or

(2) Has a valid license to operate in Venezuela issued by the Office of Foreign Assets Control of the Department of the Treasury.

(End of provision)

252.225-7056 Prohibition Regarding Business Operations with the Maduro Regime.

As prescribed in 225.7020-5(b), use the following clause:

PROHIBITION REGARDING BUSINESS OPERATIONS WITH THE MADURO REGIME (JAN 2023)

(a) Definitions. As used in this clause?

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?Agency or instrumentality of the government of Venezuela? means an agency or instrumentality of a foreign state as defined in 28 U.S.C. 1603(b), with each reference in section 1603(b) to a foreign state deemed to be a reference to Venezuela.

?Business operations? means engaging in commerce in any form, including acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.

?Government of Venezuela? means the government of any political subdivision of Venezuela, and any agency or instrumentality of the government of Venezuela.

?Person? means?

(1) A natural person, corporation, company, business association, partnership, society, trust, or any other nongovernmental entity, organization, or group;

(2) Any governmental entity or instrumentality of a government, including a multilateral development institution (as defined in section 1701(c)(3) of the International Financial Institutions Act (22 U.S.C. 262r(c)(3)); and

(3) Any successor, subunit, parent entity, or subsidiary of, or any entity under common ownership or control with, any entity described in paragraph (1) or

(2) of this definition.

(b) Prohibition. In accordance with section 890 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116-92), DoD is prohibited from entering into a contract for the procurement of products or services with any person that has business operations with an authority of the government of Venezuela that is not recognized as the legitimate government of Venezuela by the U.S. Government, unless the person has a valid license to operate in Venezuela issued by the Office of Foreign Assets Control of the Department of the Treasury.

(c) The Contractor shall?

(1) Not have any business operations with an authority of the Maduro regime or the government of Venezuela that is not recognized as the legitimate government of Venezuela by the U.S. Government; or

(2) Have a valid license to operate in Venezuela issued by the Office of Foreign Assets Control of the Department of the Treasury.

(d) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts, including subcontracts for the

acquisition of commercial products.

(End of clause)

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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 (JAN 2023)

(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 products and commercial services.

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?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)

252.225-7059 Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region?Representation.

As prescribed in 225.7022-5(a), use the following provision:

PROHIBITION ON CERTAIN PROCUREMENTS FROM THE XINJIANG UYGHUR AUTONOMOUS REGION?REPRESENTATION (JUN 2023)

(a) Definitions. ?Forced labor? and ?XUAR?, as used in this provision, have the meaning given in the 252.225-7060, Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region, clause of this solicitation.

(b) Prohibition. DoD may not knowingly procure any products mined, produced, or manufactured wholly or in part by forced labor from XUAR or from an entity that has used labor from within or transferred from XUAR as part of any forced labor programs, as specified in paragraph (b) of the 252.225-7060, Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region, clause of this solicitation.

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(c) Representation. By submission of its offer, the Offeror represents that it has made a good faith effort to determine that forced labor from XUAR will not be used in the performance of a contract resulting from this solicitation.

(End of provision)

252.225-7060 Prohibition on Certain Procurements from the Xinjiang
Uyghur Autonomous Region.

As prescribed in 225.7022-5(b), use the following clause:

PROHIBITION ON CERTAIN PROCUREMENTS FROM THE XINJIANG UYGHUR AUTONOMOUS REGION (JUN 2023)

(a) Definitions. As used in this clause?

?Forced labor? means any work or service that is exacted from any person under the menace of any penalty for nonperformance and that the worker does not offer to perform (10 U.S.C. 2496).

?XUAR? means the Xinjiang Uyghur Autonomous Region of the People?s Republic of China (10 U.S.C. 2496).

(b) Prohibition. In accordance with 10 U.S.C. 4661, none of the funds appropriated or otherwise made available for DoD may be used to knowingly procure any products mined, produced, or manufactured wholly or in part by forced labor from XUAR or from an entity that has used labor from within or transferred from XUAR. The Contractor shall make a good faith effort to determine that forced labor from XUAR will not be used in the performance of this contract (section 855, Pub. L. 117-263).

(c) Subcontracts. The Contractor shall insert this clause, including this paragraph (c), without alteration other than to identify the appropriate parties, in subcontracts including subcontracts for commercial products, commercial services, and commercially available off-the-shelf items.

(End of clause)

252.225-7061 Restriction on the Acquisition of Personal Protective
Equipment and Certain Other Items from Non-Allied Foreign Nations.

As prescribed in 225.7023-4, use the following clause:

RESTRICTION ON THE ACQUISITION OF PERSONAL PROTECTIVE EQUIPMENT AND CERTAIN OTHER ITEMS FROM NON-ALLIED FOREIGN NATIONS (JAN 2023)

(a) Definitions. As used in this clause?

?Covered country? means?

(1) The Democratic People?s Republic of North Korea;

(2) The People?s Republic of China;

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(3) The Russian Federation; and

(4) The Islamic Republic of Iran.

?Covered item? means an article or item of?

(1) Personal protective equipment for use in preventing spread of disease, such as by exposure to infected individuals or contamination or infection by infectious material, including?

(i) Nitrile and vinyl gloves;

(ii) Surgical masks;

(iii) Respirator masks and powered air purifying respirators and required filters;

(iv) Face shields and protective eyewear;

(v) Surgical and isolation gowns and head and foot coverings; or

(vi) Clothing; and

(vii) The materials and components thereof, other than sensors, electronics, or other items added to and not normally associated with such personal protective equipment or clothing; or

(2) Sanitizing and disinfecting wipes, testing swabs, gauze, and bandages.

(b) Restriction. The Contractor shall not deliver under this contract a covered item from a covered country (10 U.S.C. 4875).

(c) Subcontracts. The Contractor shall insert this clause, including this paragraph (c), without alteration other than to identify the appropriate parties, in subcontracts valued above $150,000 that are for the acquisition of covered items, including subcontracts for commercial products, including commercially available off-the-shelf items, and commercial services.

(End of clause)

252.225-7062 Restriction on Acquisition of Large Medium-Speed Diesel Engines.

As prescribed in 225.7004-7(b), use the following clause:

RESTRICTION ON ACQUISITION OF LARGE MEDIUM-SPEED DIESEL ENGINES (JUL 2023)

(a) Definition. As used in this clause?

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?Large medium-speed diesel engines? means diesel engines whose revolutions per minute (RPM) fall between 300 and 1500 RPM with a displacement greater than 1500 cubic inches per cylinder.

(b) Restriction. As required by 10 U.S.C. 4864, the Contractor shall deliver under this contract large medium-speed diesel engines manufactured in the United States, Australia, Canada, New Zealand, or the United Kingdom.

(c) Subcontracts. The Contractor shall include the substance of this clause,

including this paragraph (c), in subcontracts that exceed the simplified acquisition threshold, including subcontracts for commercial products and commercial services, that require large medium-speed diesel engines for new construction of auxiliary ships.

(End of clause)

252.225-7063 Restriction on Acquisition of Components of T-AO 205 and T-ARC Class Vessels.

As prescribed in 225.7004-7(c), use the following clause:

RESTRICTION ON ACQUISITION OF COMPONENTS OF T-AO 205 AND T-ARC CLASS VESSELS (MAY 2024)

(a) Restriction.

(1) In accordance with 10 U.S.C. 4864, the following components of T-AO 205 and T-ARC class vessels must be manufactured in the United States, Australia, Canada, New Zealand, or the United Kingdom of Great Britain and Northern Ireland (United Kingdom):

(i) Auxiliary equipment, including pumps, for all shipboard services.

(ii) Propulsion system components, including engines, reduction gears, and propellers.

(iii) Shipboard cranes.

(iv) Spreaders for shipboard cranes.

(2) The Contractor shall deliver under this contract only T-AO 205 and T-ARC class vessel components, as described in paragraph (a)(1) of this clause, manufactured in the United States, Australia, Canada, New Zealand, or the United Kingdom (10 U.S.C. 4864).

(b) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (b), in subcontracts for the components described in paragraph (a)(1) of this clause that exceed the simplified acquisition threshold, including subcontracts for commercial products and commercial services.

(End of clause)

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252.225-7064 Restriction on Acquisition of Certain Satellite Components.

As prescribed in 225.7004-7(d), use the following clause:

RESTRICTION ON ACQUISITION OF CERTAIN SATELLITE COMPONENTS (MAY 2024)

(a) Definition. As used in this clause?

?Star tracker? means a navigational tool used in a satellite weighing more than 400 pounds whose principal purpose is to support the national security, defense, or intelligence needs of the U.S. Government.

(b) Restriction. In accordance with 10 U.S.C. 4864, a star tracker must be manufactured in the United States, Australia, Canada, New Zealand, or the United

Kingdom of Great Britain and Northern Ireland (United Kingdom). The Contractor shall deliver under this contract only star trackers manufactured in the United States, Australia, Canada, New Zealand, or the United Kingdom.

(c) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts for star trackers that exceed the simplified acquisition threshold, including subcontracts for commercial products and commercial services.

(End of clause)

252.225-7964 Restriction on Acquisition of Fuel for Overseas Contingency Operations.

As prescribed in 225.7024-4, use the following provision:

RESTRICTION ON ACQUISITION OF FUEL FOR OVERSEAS CONTINGENCY OPERATIONS (DEVIATION 2026-O0041)(FEB 2026)

(a) Prohibition. For an overseas contingency operation, DoD may not procure fuel in whole or in part, or derivatives of such fuel, that is sourced from nations or regions prohibited from selling petroleum to the United States. See Federal Acquisition Regulation subpart 40.2 and the Office of Foreign Assets Control website at https://ofac.treasury.gov/sanctions-programs-and-country-information for prohibited sources.

(b) Certification. Offerors shall complete the certification in paragraph (b)(1) of this provision and submit the certification with their offer.

(1) The Offeror does [ ] does not [ ] certify that the fuel, in whole or in part, or derivatives of such fuel, to be provided under any contract resulting from this solicitation is not sourced from a nation or region prohibited from selling petroleum to the United States.

(2) Only Offerors who certify that the fuel to be provided is not sourced from a prohibited nation or region will be eligible for award.

(c) Compliance.

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(1) When requested by the Contracting Officer, the prospective Contractor shall submit records necessary to demonstrate compliance with applicable laws and regulations regarding export-controlled items and anticorruption statutes and regulations including?

(i) The Foreign Corrupt Practices Act (15 U.S.C. 78dd-1 et seq.);

(ii) International Traffic in Arms Regulations (ITAR) at 22 CFR 120 through 130 (also see Defense Federal Acquisition Regulation Supplement (DFARS) clause 252.225-7048, Export-Controlled Items);

(iii) Export Administration Regulations (EAR) at 15 CFR 730 through 774 (also see DFARS clause 252.225-7048); and

(iv) Relevant regulations promulgated by the Office of Foreign Assets

Control of the Department of the Treasury. Sanction information for specific countries and programs is available at https://ofac.treasury.gov/sanctions-programs-and-country-information.

(2) The Offeror shall contact the Department of State regarding ITAR compliance and the Department of Commerce regarding EAR compliance.

(d) Reporting requirement. The Offeror shall, prior to contract award, promptly report to the Contracting Officer any instance of unsupported denial of access to a facility or equipment by a host-nation government that may prevent it from complying with the terms and conditions of the solicitation.

(End of provision)

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PGI PART 225?FOREIGN ACQUISITION

PGI 225.001 General.

Consider the following when evaluating offers of foreign end products:

(1) Statutory or policy restrictions.

(i) Determine whether the product is restricted by?

(A) Statute (see DFARS subpart 225.70); or

(B) DoD policy (see DFARS subpart 225.71, FAR 6.103-3, and DoD Directive **5230.11, Disclosure of Classified Military Information to Foreign Governments and** International Organizations).

(ii) If an exception to or waiver of a restriction in DFARS subpart 225.70 or 225.71 would result in award of a foreign end product, apply the policies and procedures of the Buy American statute or the Balance of Payments Program, and, if applicable, the trade agreements.

(2) Memoranda of understanding or other international agreements. Determine whether the offered product is the product of one of the qualifying countries listed in DFARS 225.872-**1.**

(3) Trade agreements. If the product is not an eligible product, a qualifying country end product, or a U.S.-made end product, purchase of the foreign end product may be prohibited (see FAR 25.403(c) and DFARS 225.403(c)).

(4) Other trade sanctions and prohibited sources.

(i) Determine whether the offeror complies with the secondary Arab boycott of Israel. Award to such offerors may be prohibited (see DFARS subpart 225.76).

(ii) Determine whether the offeror is a prohibited source (see FAR subpart 40.2 and DFARS Subpart 240.2).

(5) Buy American and Balance of Payments Program. See the evaluation procedures in DFARS subpart 225.5.

PGI 225.070 Reporting of acquisition of end products manufactured outside the United States.

(1) Definitions. ?Manufactured end product? and ?place of manufacture? are defined in

the provision at FAR 52.225-18, Place of Manufacture.

(2) Use the Federal Procurement Data System data field ?Place of Manufacture,? under the section on Product or Service Information, to enter data on the acquisition of end products manufactured outside the United States for contracts awarded and orders issued in fiscal year 2007 and subsequent fiscal years. Select the appropriate description in

accordance with the following table:

Place of Manufacture Short Description	Long Description as viewed in drop down box
Manufactured or performed outside United States	The action is for (i) Any foreign end product manufactured outside the United States; or (ii) Services performed outside the United States by a foreign concern. (Actions prior to FY 2007 only)
Mfg in U.S.	The action is predominantly for acquisition of manufactured end products that are manufactured in the United States.
Mfg outside U.S. - Commercial information technology	The foreign manufactured end products are predominantly commercial commercial information technology items (FAR 25.103(e)).
Mfg outside U.S. - Domestic nonavailability	The foreign manufactured end products were predominantly not domestically available as shown by one of the following: ? The item is listed at FAR 25.104 (FAR 25.103(b)(1)). ? The agency did an individual determination (FAR **25.103(b)(2)).**
Mfg outside U.S Public interest determination	The head of the agency has made a determination that domestic preferences would be inconsistent with the public interest (FAR 25.103(a)).

Mfg outside U.S. - Qualifying country	For DoD only, the foreign manufactured end products are predominantly qualifying country end products (DFARS **225.003 and 225.872-1).**
Mfg outside U.S. -	The foreign manufactured end products acquired are

Resale predominantly for resale (FAR 25.103(d)).
Mfg outside U.S. - The foreign manufactured end products are predominantly
Trade Agreements eligible products acquired under Trade Agreements (FAR
25.402(a)(1)).
Mfg outside U.S. - The cost of the offered domestic end products was
Unreasonable cost unreasonable (FAR 25.103(c), 25.106, and Subpart 25.5).
Mfg outside U.S. - The foreign manufactured end products acquired are
Use outside the predominantly for use outside the United States (FAR
United States 25.100).
More than 50% of The action is for (i) A foreign end product that is
foreign content, but manufactured in the United States but still determined to be
manufactured in foreign because 50 percent or more of the cost of the
United States components is not mined, produced, or manufactured inside
(Actions prior to FY the United States or qualifying countries; or (ii) Services
2007 only) performed in the United States by a foreign concern.
Not applicable The action is NOT predominantly for acquisition of
manufactured end products.

(3) Note that the first and second from the last options in the drop down box are to be used only for reporting of contracts awarded or orders issued prior to October 1, 2006.

(4) The other options in the drop down box apply only to contracts awarded and orders issued on or after October 1, 2006. If the solicitation for the contract contains the provision at FAR 52.225-18, Place of Manufacture , review the successful offeror?s response to this provision to select the correct option.

(i) Enter ?Mfg in U.S.? if the offeror has checked the box ?In the United States.?

(ii) If the offeror has checked the box ?Outside the United States,? enter one of the other options, depending on the predominant reason for acquiring end products manufactured outside the United States. These reasons correspond to the exceptions to the Buy American statute (FAR subpart 25.1 and DFARS subpart 225.1). Further explanation of these exceptions to the Buy American statute are available at the FAR and DFARS references provided in the long description for each option.

(5) For any contract awarded on or after October 1, 2006, when the solicitation did not include the provision at FAR 52.225-18, Place of Manufacture , and for any order placed on or after October 1, 2006, under a contract that did not include one of these provisions, use

best judgment in estimating whether the acquisition is predominantly for manufactured end products and whether the end products were predominantly end products manufactured in the United States or outside the United States, using the place of performance or other information that may be available to the contracting officer to assist in forming this judgment.

PGI 225.1?BUY AMERICAN?SUPPLIES

PGI 225.101 General.

(d)(1) When the contracting officer obtains the approval from the senior procurement executive (this authority is not delegable) to allow for the application of an alternate domestic content test for the contract, ensure the documentation evidencing the senior procurement executive?s consultation with the Office of Management and Budget?s Made in America Office and subsequent allowance for the application of an alternate domestic content test is included in the contract file.

PGI 225.2?BUY AMERICAN?CONSTRUCTION MATERIALS

PGI 225.270 Energy savings service contracts.

(a) For DoD energy savings service contracts, the requirements documents from the requiring activity are required to specify if construction and construction materials will be used during the performance of the contract. If specified, then?

(1) Include the FAR provisions and clauses regarding construction materials that implement the Buy American statute; and

(2) Enforce them based on the associated terms and conditions of the contract.

(b) See FAR subpart 23.2, Energy Savings Performance Contracts.

PGI 225.3?[Reserved]

PGI 225.5?EVALUATING FOREIGN OFFERS?SUPPLY CONTRACTS

PGI 225.504 Evaluation examples.

The following examples illustrate the evaluation procedures in DFARS 225.502(c)(ii). The examples assume that the contracting officer has eliminated all offers that are unacceptable for reasons other than price or a trade agreement and that price is the determining factor in contract award. The same evaluation procedures and the 50 percent evaluation factor apply regardless of whether the acquisition is subject to the Buy American Act (BAA) or the Balance of Payments Program (BOPP).

(1) Example 1.

Offer A $945,000 Foreign offer subject to BAA/BOPP

Offer B $950,000 Foreign offer exempt from BAA/BOPP

Since no domestic offers are received, do not apply the evaluation factor. Award on Offer A.

(2) Example 2.

Offer A $950,000 Domestic offer

Offer B $890,000 Foreign offer exempt from BAA/BOPP

Offer C $880,000 Foreign offer subject to BAA/BOPP

Since the exempt foreign offer is lower than the domestic offer, do not apply the evaluation factor. Award on Offer C.

(3) Example 3.

Offer A $9,100 Foreign offer exempt from BAA/BOPP

Offer B $8,900 Domestic offer

Offer C $6,000 Foreign offer subject to BAA/BOPP

Since the domestic offer is lower than the exempt foreign offer, apply the 50 percent

evaluation factor to Offer C. This results in an evaluated price of $9,000 for Offer C. Award on Offer B.

(4) Example 4.

Offer A $910,000 Foreign offer exempt from BAA/BOPP

Offer B $890,000 Domestic offer

Offer C $590,000 Foreign offer subject to BAA/BOPP

Since the domestic offer is lower than the exempt foreign offer, apply the 50 percent evaluation factor to Offer C. This results in an evaluated price of $885,000 for Offer C. Award on Offer C.

(5) Example 5.

Offer A $900,000 Foreign offer exempt from BAA/BOPP

Offer B $850,000 Domestic offer (complies with the required domestic content)

Offer C $550,000 Foreign offer subject to BAA/BOPP (exceeds the required domestic content)

Since the domestic offer complies with the required domestic content and is lower than the exempt foreign offer, apply the 50 percent evaluation factor to Offer C. This results in an evaluated price of $825,000 for Offer C. Award on Offer C.

PGI 225.7?CONTRACTS PERFORMED OUTSIDE THE UNITED STATES

PGI 225.770 Contracts requiring performance or delivery in a foreign country.

(a) If the acquisition requires the performance of services or delivery of supplies in an area outside the United States, then?

(i) Ensure that the solicitation and contract include any applicable host country and designated operational area performance considerations. Failure to provide such information?

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(A) May result in a contract that does not reflect the respective support relationships between the contractor and the Government, ultimately affecting the ability of the contractor to fulfill the contract terms and conditions;

(B) May result in unplanned support burdens being placed on the Government in a theater of operations;

(C) May result in contractor personnel conflicting with theater operations or performing in violation of a theater commander?s directives or host country laws; or

(D) May cause contractor personnel to be wrongly subjected to host country laws;

(ii) Comply with any theater business clearance and contract administration delegation requirements, and set forth by the combatant commander, and consistent with the Combat Support Agency?s established functions and responsibilities.

(A) Theater business clearance ensures?

(1) Contracted effort to be accomplished in designated area(s) of operations, along with any associated contractor personnel, is visible to the combatant commander;

(2) Contracted effort is in consonance with in-country commanders? plans;

(3) Solicitations and contracts contain appropriate terms and conditions;

(4) Contracted effort will be properly overseen in designated area(s) of operation;

(5) Any Government-furnished support requirements associated with contractor personnel are properly addressed in the contract terms and conditions.

(B) Contract administration delegation?

(1) Allows the combatant commander to exercise control over the assignment of contract administration (which must be consistent with the combat support agency?s established functions and responsibilities) for that portion of contracted effort that relates to performance in, or delivery to, designated area(s) of operation.

(2) Allows the combatant commander to exercise oversight to ensure the contractor?s compliance with combatant commander and subordinate task force commander policies, directives, and terms and conditions;

(iii) [Reserved]

(iv) Follow specific guidance for the combatant command in whose area the contractor will be performing services or delivering supplies. This guidance is contained

on the respective combatant commander?s operational contract support webpage, which is linked to the procedures at https://www.acq.osd.mil/asda/dpc/cp/cc/aor.html, at the weblink for the combatant command for the area in which the contractor will be performing services or delivering items. These pages list prevailing regulations, policies, requirements, host nation laws, orders/fragmentary orders, combatant commander?s directives, unique clauses, and other considerations necessary for soliciting and awarding a contract for performance in, or delivery of items to, that combatant commander?s area of responsibility;

(v) To determine the appropriate point(s) of contact for contracting matters within the combatant commander?s area of responsibility, contact the overseas contracting office by accessing the link for the combatant command in whose area of responsibility the contractor will be performing services or delivering items. From the combatant command website, link to the contracting office supporting the combatant command to identify the appropriate point of contact; and

(vi) Use the following checklist as a guide to document consideration of each listed issue, as applicable, and retain a copy of the completed checklist in the contract file.

CHECKLIST

Verify that the requiring activity has considered the following when building its requirements package, as applicable:

____ (1) Whether the contemplated acquisition will duplicate or otherwise conflict with

existing work being performed or items already provided in the area, and whether economies of scope/schedule can be leveraged if there are already existing contracts in place for similar work or items.

____ (2) The availability of technically qualified and properly trained Government civilian and/or military personnel to oversee the performance of the contract in the combatant commander?s area of responsibility (e.g., contracting officer?s representatives, quality assurance representatives, and property administrators).

____ (3) The applicability of any international agreements to the acquisition. (Some agreements may be classified and must be handled appropriately.)

____ (4) Compliance with area-specific, anti-terrorism security guidance set forth by the command anti-terrorism officer, to include soliciting anti-terrorism officer guidance on the particular requirement and the location of delivery and/or execution of services, and incorporating recommended security measures into the requirements package.

____ (5) Whether there are any requirements for use of foreign currencies, including applicability of U.S. holdings of excess foreign currencies.

____ (6) Information on taxes and duties from which the Government may be exempt.

____ (7) If the acquisition requires performance of work in the foreign country, whether there are standards of conduct for the prospective contractor and, if so, the consequences for violation of such standards of conduct.

____ (8) The availability of logistical and other Government-furnished support and equipment for contractor personnel. This includes, but is not limited to: berthing and messing; intra-theater transportation; medical support; morale, welfare, and recreation support; postal support; force protection support; organizational clothing and personal protective gear (e.g., body armor and gas masks.)

____ (9) If the contractor will employ foreign workers, whether a waiver of the Defense Base Act will be required (see FAR 28.305).

____ (10) Whether contractor personnel will need authorization to carry weapons for the performance of the contract.

____ (11) If the contract will include the clause at DFARS 252.225-7040, Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States, the Government official authorized to receive DD Form 93, Record of Emergency Data Card, to enable the contracting officer to provide that information to the contractor, as required by paragraph (g) of the clause.

____ (12) Ascertain the existence of and detail any Geographic Combatant Commander?s (GCC?s)/Subordinate Joint Force Commander Combating Trafficking in Persons Directives or Notices applying to Combating Trafficking in Persons (as required by FAR 22.1703 for contracts performed outside the United States) that would require the contracting officer to use Alternate I of the clause at FAR 52.222-50 detailing these requirements. This information can be ascertained from review of content on the cognizant Geographic Combatant Command Operational Contract Support webpage

referred to in (a)(iv) of this PGI section.

____ (13) Other requirements associated with contractor personnel to include deployment -related training, accountability (registration in Synchronized Pre-deployment and Operational Tracker), medical and dental qualifications, theater entrance and country clearance requirements.

____ (14) Any other requirements of the website for the country in which the contract will be performed or the designated operational area to which deliveries will be made. Provide the following information to the applicable overseas contracting office (see PGI **225.770(a)(v)):**

____ (1) The solicitation number, the estimated dollar value of the acquisition, and a brief description of the work to be performed or the items to be delivered.

____ (2) Notice of contract award, including contract number, dollar value, and a brief description of the work to be performed or the items to be delivered.

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____ (3) Any additional information requested by the applicable contracting office to ensure full compliance with policies, procedures, and objectives of the applicable country or designated operational area.

(c) For work performed in Japan or Korea, U.S.-Japan or U.S.-Korea bilateral agreements govern the status of contractors and employees, criminal jurisdiction, and taxation. U.S. Forces Japan (USFJ) and U.S. Forces Korea (USFK) are sub-unified commands of Pacific Command (PACOM). The PACOM Staff Judge Advocate contact information is available at https://www.pacom.mil/Contact/Directory/ or by clicking on Staff Directory/Special Staff on the PACOM website. Links to USFJ and USFK websites can be found at the PACOM website at https://www.pacom.mil/Resources/Useful-Links/ .

(i) For work performed in Japan?

(A) U.S.-Japan bilateral agreements govern the status of contractors and employees, criminal jurisdiction, and taxation;

(B) USFJ and component policy, as well as U.S.-Japan bilateral agreements, govern logistic support and base privileges of contractor employees;

(C) The Commander, USFJ, is primarily responsible for interpreting the Status of Forces Agreement (SOFA) and local laws applicable to U.S. Forces in Japan and for requirements in support of USFJ; and

(D)(1) To ensure that the solicitation and resultant contract reflect an accurate description of available logistics support and application of the U.S.-Japan SOFA, review the information on Contract Performance in Japan at the USFJ website, http://www.usfj.mil; or

(2) Contact the Staff Judge Advocate at (commercial) 011-81-3117-55-7717, or DSN 315-225-7717.

(ii) For work performed in Korea?

(A) U.S.-Korea bilateral agreements govern the status of contractors and

employees, criminal jurisdiction, and taxation;

(B) USFK and component policy, as well as U.S.-Korea bilateral agreements, govern logistics support and base privileges of contractor employees;

(C) The Commander, USFK, is primarily responsible for interpreting the SOFA and local laws applicable to U.S. Forces in Korea and for requirements in support of USFK; and

(D) To ensure that the solicitation and resultant contract reflect an accurate description of available logistics support and application of the U.S.-Korea SOFA, review the SOFA information found at the USFK website at https://www.usfk.mil/ under ?Publications?, or at https://www.usfk.mil/Portals/105/Documents/411%20CSB/1%20U.S.-

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ROK%20SOFA.PDF Contact information for the Commander is also available at http://www.usfk.mil/usfk/leadership.aspx; and

(E) Additional applicable directives and regulations are available at http://www.usfk.mil/ , click on the drop down menu for ?Publications?.

(d) For work performed in specified countries in the USCENTCOM area of responsibility, follow theater business clearance/ contract administration delegation policy as set forth in OSD policy letters linked to this PGI, and specific theater business clearance/contract administration delegation instructions as implemented by USCENTCOM?s Joint Theater Support Contracting Command and found under contracting guidance at https://www.acq.osd.mil/asda/dpc/cp/cc/aor.html (click on CENTCOM area of responsibility).

PGI 225.771 Contractor personnel supporting U.S. Armed Forces deployed outside the United States.

(1) DoDI 3020.41, Operational Contract Support (OCS), establishes policy, assigns responsibilities and provides procedures for OCS, including OCS Program Management, contract support integration, and integration of defense contractor personnel into contingency operations outside the United States. This instruction serves as a comprehensive source of DoD policy and procedures concerning DoD contractor and subcontractor personnel supporting the U.S. Armed Forces deployed outside the United States.

(2) Also see PGI 207.105(b)(20)(C)(9) for special considerations for acquisition planning for crisis situations outside the United States.

PGI 225.771-2 Definitions.

?Designated operational areas? include, but are not limited to, such descriptors as theater of war, theater of operations, joint operations area, amphibious objective area, joint special operations area, and area of operations. See DoD Joint Publication 3-0, Joint Operations, Chapter IV, Paragraph 1, ?Understanding the Operational Environment,? at https://jdeis.js.mil/jdeis/index.jsp?pindex=27&pubId=932# .

PGI 225.771-3 Government support.

(a) Support that may be authorized or required when contractor personnel are deployed with or otherwise provide support in the theater of operations to U.S. military forces deployed outside the United States may include, but are not limited to?

(i) Deployment in-processing centers;

(ii) Training;

(iii) Transportation to operation area;

(iv) Transportation within operation area;

(v) Physical security;

(vi) Force protection;

(vii) Organizational clothing and individual equipment;

(viii) Emergency medical care;

(ix) Mess operations;

(x) Quarters;

(xi) Postal service;

(xii) Phone service;

(xiii) Emergency notification;

(xiv) Laundry; and

(xv) Religious services.

(d) Medical support of contractor personnel.

(1) Contractors are required to ensure that the Government is reimbursed for any costs associated with medical or dental care provided to contractor employees accompanying the forces (see 252.225-7040(c)(2)).

(2) If questions arise concerning Defense Finance and Accounting Services

(DFAS) billing to contractors for medical or dental care provided, contracting officers may refer the individual to any of the following resources:

(i) For in-patient and out-patient billing rates, go to http://comptroller.defense.gov/FinancialManagement/Reports/rates2013.aspx, click on the appropriate fiscal year, and select Deployed/Non-Fixed Medical Facility Billing Rates.

(ii) For Military Service-appointed points of contact (POCs) responsible for resolving medical billing disputes, see the POCs listed in the memoranda of agreements between DFAS and the military services).

(iii) For general information on medical support of deployed contractor personnel in applicable contingency operations, see DoDI 3020.41.

(3) Contracting officers are not responsible for adjudicating DFAS bills to contractors for such medical or dental reimbursement. However, contracting officers are required to assist the Military Service POCs in resolving billing disputes.

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(e) Letter of authorization.

(i) If authorized by the contracting officer, a contracting officer?s representative may approve a SPOT-generated LOA. Contractor travel orders will be prepared by the supporting installation.

(ii) The LOA will state the intended length of assignment in the theater of operations and will identify planned use of Government facilities and privileges in the theater of operations, as authorized by the contract. Authorizations may include such privileges as access to the exchange facilities and the commissary, and use of Government messing and billeting. The LOA must include the name of the approving Government official.

(iii) Approved, standard DoD format for LOA. See sample LOA, Business Rules for the Synchronized Predeployment and Operational Tracker, at https://www.acq.osd.mil/asds/log/cso/ocs/spot.html .

PGI 225.771-5 Contract clauses.

?Performance,? as used in Class Deviation 2017-O0004 Contractor Personnel Performing in the United States Central Command Area of Responsibility, means performance of a service or construction, as required by the contract. For supply contracts, production of the supplies or associated overhead functions are not covered by the Class Deviation, but services associated with the acquisition of the supplies are covered (e.g., installation or maintenance).

(b) [Reserved]

PGI 225.772 Antiterrorism/force protection.

PGI 225.772-1 General.

Information and guidance pertaining to DoD antiterrorism/force protection policy for contracts that require performance or travel outside the United States can be obtained from the following offices:

(1) For Army contracts: HQDA-AT; telephone, DSN 222-9832 or commercial (703) 692-9832.

(2) For Navy contracts: Naval Criminal Investigative Service (NCIS), Code 21; telephone, DSN 288-9077 or commercial (202) 433-9077.

(3) For Marine Corps contracts: CMC Code POS-10; telephone, DSN 224-4177 or commercial (703) 614-4177.

(4) For Air Force and Combatant Command contracts: The appropriate Antiterrorism/Force Protection Office at the Command Headquarters.

(5) For defense agency contracts: The appropriate agency security office.

(6) For additional information: Assistant Secretary of Defense for Special Operations and Low Intensity Conflict, ASD (SOLIC); telephone, DSN 227-7205 or commercial (703) 697-7205.

PGI 225.773 Contract administration in support of contingency operations.

(1) In accordance with Joint Publication 1, Doctrine for the Armed Forces of the United States, at https://jdeis.js.mil/jdeis/index.jsp?pindex=27&pubId=930 , the geographic combatant commander or subordinate joint force commander, through his command authority to exercise operational control, has the authority to exercise control over the assignment of contract administration during contingency operations, consistent with the combat support agency?s established mission functions, responsibilities, and core competencies, for contracts requiring delivery of items or performance within the area of operations.

(2) In certain contingency operations, the combatant commander or joint force commander may promulgate theater or joint operations area guidance for contracting that may include establishing?

(i) A contracting command and control structure;

(ii) Head of contracting activity responsibilities, specific orders, and policies, including local clauses;

(iii) Roles and responsibilities of DoD components and supporting agencies in contract formation and execution; and

(iv) Procedures and requirements for contract clearance and contract administration of contracts requiring delivery of items and performance within the area of operations.

(3) When a combat support agency is tasked by the combatant commander to provide contingency contract administration services in support of contingency operations and such support will be required for a long duration, the combat support agency must initiate a memorandum of agreement with the combatant commander or joint force commander. This agreement must clearly delineate the purpose of the support, respective responsibilities of the combat support agency and the joint, lead service, or service contracting activity requesting the support, combat support agency support parameters, and a resolution process for resolving support issues.

(i) The memorandum of agreement should focus on maximizing the combat support agency?s core competencies to address the more critical, complex, high-risk, and specialized oversight requirements.

(ii) The memorandum of agreement should take into consideration the combat support agency?s core competencies, workload priorities, and contract administration services support parameters for accepting requests for contract administration services support.

(iii) A combat support agency must not be assigned to perform tasks outside its mission functions, responsibilities, or core competencies.

(iv) Contracting officers contemplating requesting contract administration support in a contingency area from a combat support agency should first ascertain whether such a memorandum of agreement exists by contacting their combat support

agency point of contact and/or checking the combatant commander operational contract support website (referenced in DFARS PGI 225.770).

(v) The following is a notional format for a memorandum of agreement for contract administration services support;

(A) Purpose: Outline formal procedures for requesting contract administration services support, describe objectives associated with combat support agency providing such support.

(B) Reference: Key documents or reference(s) associated with the execution of the contract administration services support.

(C) Clearing-house functions performed by the designated joint or lead component contracting activity in the operational area?

(1) Contract clearance parameters ? when required;

(2) Contract delegation parameters ? when required.

(D) Contract administration services support parameters?

(1) Acceptable for delegation - contract types that will be accepted by the combat support agency based on risk, dollar threshold, geographic dispersion of performance, service type, criticality of acceptance, or other criteria;

(2) Generally not be delegated ? below-threshold contract types;

(3) Will not be delegated ? no agency expertise to oversee.

(E) Delegation process ? process for accepting and assigning contract administration services tasks within the combat support agency.

(F) Joint resolution process ? procedures in the event of disagreement on actions to be supported by the combat support agency.

(G) Term of the Agreement and Modification - length of time the agreement will be in effect and procedures for the parties to modify or terminate it.

(4) Disputes regarding requested support should be resolved at the lowest management level possible, through a predetermined resolution process. When support issues arise that affect the ability of a combat support agency to provide contract administration support that cannot be resolved at lower management levels, follow procedures set forth in DoDI 3000.06, Combat Support Agencies, paragraphs

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5.6.8 and 5.6.9,

(https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/300006p.pdf).

(5) Responsibilities of the head of the contracting activity for contingency contract closeout are addressed at DFARS 204.804(2). See also planning considerations at PGI **207.105(b)(20)(C)(8).**

PGI 225.8?OTHER INTERNATIONAL AGREEMENTS AND COORDINATION

PGI 225.802 Procedures.

(b) Information on specific memoranda of understanding and other international agreements is available as follows:

(i) Memoranda of understanding and other international agreements between the United States and the countries listed in DFARS 225.872-1 are maintained in the Office of the Principal Director, Defense Pricing, Contracting, and Acquisition Policy (Contract Policy) and are available at https://www.acq.osd.mil/asda/dpc/cp/ic/reciprocal-procurement-mou.html.

(ii) Military Assistance Advisory Groups, Naval Missions, and Joint U.S. Military Aid Groups normally have copies of the agreements applicable to the countries concerned.

(iii) Copies of international agreements covering the United Kingdom of Great Britain and Northern Ireland, Western European countries, North Africa, and the Middle East are filed with the U.S. European Command.

(iv) Agreements with countries in the Pacific and Far East are filed with the U.S. Pacific Command.

PGI 225.802-70 Contracts for performance outside the United States and Canada.

When a contracting office anticipates placement of a contract for performance outside the United States and Canada, and the contracting office is not under the jurisdiction of a command for the country involved, the contracting office must maintain liaison with the cognizant contract administration office (CAO) during preaward negotiations and postaward administration. The cognizant CAO can be found at https://www.dcma.mil/About/Contact-Us/. The CAO will provide pertinent information for contract negotiations, effect appropriate coordination, and obtain required approvals for the performance of the contract.

PGI 225.870 Contracting with Canadian contractors.

PGI 225.870-1 General.

(d)(i) The Canadian Commercial Corporation uses provisions in contracts with Canadian or U.S. concerns that give DoD the same production rights, data, and information that DoD would obtain in contracts with U.S. concerns.

(ii) The Government of Canada will provide the following services under contracts with the Canadian Commercial Corporation without charge to DoD:

(A) Contract administration services, including?

(1) Cost and price analysis;

(2) Industrial security;

(3) Accountability and disposal of Government property;

(4) Production expediting;

(5) Compliance with Canadian labor laws;

(6) Processing of termination claims and disposal of termination inventory;

(7) Customs documentation;

(8) Processing of disputes and appeals; and

(9) Such other related contract administration functions as may be required with respect to the Canadian Commercial Corporation contract with the Canadian supplier.

(B) Audits. The Public Works and Government Services Canada (PWGSC) performs audits when needed, for contracts overseen by the Canadian Commercial

Corporation in accordance with international agreement.

(C) Inspection. The Department of National Defence (Canada) provides inspection personnel, services, and facilities, at no charge to DoD departments and agencies (see DFARS 225.870-7).

(iii) In accordance with DPAP Policy Memorandum dated June 5, 2013, PWGSC will perform audits without charge to DoD, including accounting system and interim voucher reviews, when needed for?

(A) DoD contracts awarded directly to Canadian firms;

(B) Subcontracts with Canadian firms under such direct contracts with Canadian firms; and

(C) Subcontracts with Canadian firms under DoD contracts with U.S. contractors.

PGI 225.870-5 Contract administration.

(1) Assign contract administration in accordance with DFARS part 242. When the Defense Contract Management Agency will perform contract administration in Canada, name in the contract the following payment office for disbursement of DoD funds (DoD Department Code: 17-Navy; 21-Army; 57-Air Force; 97-all other DoD components), whether payment is in Canadian or U.S. dollars:

DFAS Columbus Center

DFAS-CO

PO Box 182317

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Columbus, OH 43218-2317.

(2) The following procedures apply to cost-reimbursement type contracts:

(i) The PWGSC automatically arranges audits on contracts with the Canadian Commercial Corporation. Upon advice from PWGSC, the Canadian Commercial Corporation certifies the invoice and forwards it with Standard Form (SF) 1034, Public Voucher, to the administrative contracting officer for further processing and transmittal to the disbursing office.

(ii) For contracts placed directly with Canadian firms, the administrative contracting officer requests audits from the PWGSC, Ottawa, Ontario, Canada. Route requests for audit of non-Canadian Commercial Corporation contracts and subcontracts with Canadian contractors through the cognizant contract management office of the Defense Contract Management Agency.

(A) Within 25 days of the date of the audit request, PWGSC will provide?

(1) An acknowledgement of receipt form;

(2) An estimate of completion form; and

(3) A single point of contact to report the status of audit requests and the progress of audits.

(B) Audits will be completed within 24 months of the requested date for post-award audits.

(C) PWGSC will provide information to support the determination that the price is fair and reasonable.

(D) The PWGSC?

(1) Approves invoices on a provisional basis pending completion of the contract and final audit;

(2) Forwards these invoices, accompanied by SF 1034, Public Voucher, to the administrative contracting officer for further processing and transmittal to the disbursing officer; and

(3) Furnishes periodic advisory audit reports directly to the administrative contracting officer.

(A) Approves invoices on a provisional basis pending completion of the contract and final audit;

(B) Forwards these invoices, accompanied by SF 1034, Public Voucher, to the administrative contracting officer for further processing and transmittal to the disbursing officer; and

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(C) Furnishes periodic advisory audit reports directly to the administrative contracting officer.

PGI 225.870-7 Acceptance of Canadian supplies.

(1) For contracts placed in Canada, either with the Canadian Commercial Corporation or directly with Canadian suppliers, the Department of National Defence (Canada) will perform any necessary contract quality assurance and/or acceptance, as applicable.

(2) Signature by the Department of National Defence (Canada) quality assurance representative on the DoD inspection and acceptance form is satisfactory evidence of acceptance for payment purposes.

PGI 225.871 North Atlantic Treaty Organization (NATO) cooperative projects.

PGI 225.871-4 Statutory waivers.

Forward any request for waiver under a cooperative project to the Deputy Secretary of Defense, through the Principal Director, Defense Pricing, Contracting, and Acquisition Policy. The waiver request must include a draft Determination and Findings for signature by the Deputy Secretary of Defense establishing that the waiver is necessary to significantly further NATO standardization, rationalization, and interoperability.

PGI 225.871-5 Directed subcontracting.

The cooperative project agreement is the authority for a contractual provision requiring the contractor to place certain subcontracts with particular subcontractors. No separate justification and approval during the acquisition process is required.

PGI 225.872 Contracting with qualifying country sources.

PGI 225.872-4 Individual determinations.

(1) Obtain signature of the determination and findings?

(i) At a level above the contracting officer, for acquisitions valued at or below the simplified acquisition threshold; or

(ii) By the chief of the contracting office, for acquisitions with a value greater than the simplified acquisition threshold.

(2) Prepare the determination and findings substantially as follows:

SERVICE OR AGENCY

Exemption of the Buy American and Balance of Payments Program

Determination and Findings

Upon the basis of the following findings and determination which I hereby make in accordance with the provisions of FAR 25.103(a), the acquisition of a qualifying country end

product may be made as follows:

Findings

1. The (contracting office) proposes to purchase under contract number _____, (describe item) mined, produced, or manufactured in (qualifying country of origin). The total estimated cost of this acquisition is _____.

2. The United States Government and the Government of _____ have agreed to remove barriers to procurement at the prime and subcontract level for defense equipment produced in each other's countries insofar as laws and regulations permit.

3. The agreement provides that the Department of Defense will evaluate competitive offers of qualifying country end products mined, produced, or manufactured in (qualifying country) without imposing any price differential under the Buy American statute or the Balance of Payments Program and without taking applicable U.S. customs and duties into consideration so that such items may better compete for sales of defense equipment to the Department of Defense. In addition, the Agreement stipulates that acquisitions of such items must fully satisfy Department of Defense requirements for performance, quality, and delivery and must cost the Department of Defense no more than would comparable U.S. source or other foreign source defense equipment eligible for award.

4. To achieve the foregoing objectives, the solicitation contained the clause (title and number of the Buy American clause contained in the contract). Offers were solicited from other sources and the offer received from (offeror) is found to be otherwise eligible for award.

Determination

I hereby determine that it is inconsistent with the public interest to apply the restrictions of the Buy American statute or the Balance of Payments Program to the offer described in this determination and findings.

(Date)

PGI 225.872-5 Contract administration.

(b)(i) When contract administration services are required on contracts to be performed in qualifying countries, direct the request to the cognizant activity listed in the Federal Directory of Contract Administration Services. The cognizant activity also will arrange contract administration services for DoD subcontracts that qualifying country sources place in the

United States.

(ii) The contract administration activity receiving a delegation must determine whether any portions of the delegation are covered by memoranda of understanding annexes and, if so, must delegate those functions to the appropriate organization in the qualifying country's government.

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PGI 225.872-6 Request for audit services.

(1) Send requests for audit services in France, Germany, the Netherlands, or the United Kingdom to the administrative contracting officer at the cognizant activity listed in Section 2B of the Federal Directory of Contract Administration Services. See DFARS 225.870, PGI **225.870-1, and PGI 225.870-5 for procedures to request audit services for contracts** overseen by the Canadian Commercial Corporation.

(2) Complete requests for audit services in France, Germany, the Netherlands, or the United Kingdom using the form and information sheet with form completion instructions available at https://www.dcma.mil/About/Contact-Us/ (click on ?International Command?). Links to the form and information sheet are listed under ?International Pricing Request.?

PGI 225.873 Waiver of United Kingdom commercial exploitation levies.

PGI 225.873-2 Procedures.

(1) The Government of the U.K. must approve waiver of U.K. levies. When an offeror or contractor identifies a levy included in an offered or contract price, provide written notification to the Defense Security Cooperation Agency, ATTN: PSD-PMD, 1111 Jefferson Davis Highway, Arlington, VA 22202-4306, telephone (703) 601-3864. The Defense Security Cooperation Agency will request a waiver of the levy from the Government of the U.K. The notification must include?

(i) Name of the U.K. firm;

(ii) Prime contract number;

(iii) Description of item for which waiver is being sought;

(iv) Quantity being acquired; and

(v) Amount of levy.

(2) Waiver may occur after contract award. If levies are waived before contract award, evaluate the offer without the levy. If levies are identified but not waived before contract award, evaluate the offer inclusive of the levies.

PGI 225.9?CUSTOMS AND DUTIES

PGI 225.902 Procedures.

(1) Formal entry and release.

(i) The administrative contracting officer must?

(A) Ensure that contractors are aware of and understand any Duty-Free Entry clause requirements. Contractors should understand that failure by them or their subcontractors to provide the data required by the clause will result in treatment of the shipment as without benefit of free entry under Section XXII, Chapter 98, Subchapter VIII,

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Item 9808.00.30 of the Harmonized Tariff Schedule of the United States.

(B) Upon receipt of the required notice of purchase of foreign supplies from the contractor or any tier subcontractor?

(1) Verify the duty-free entitlement of supplies entering under the contract; and

(2) Review the prime contract to ensure that performance of the contract requires the foreign supplies (quantity and price) identified in the notice.

(C) Within 20 days after receiving the notification of purchase of foreign supplies, forward the following information in the format indicated to the Commander, DCMA New York, ATTN: Customs Team, DCMAE-GNTF, 201 Varick Street, Room 905C, New York, NY 10014:

We have received a contractor notification of the purchase of foreign supplies. I have verified that foreign supplies are required for the performance of the contract.

PGI 225.903 Exempted supplies.

(b)(i) The term ?supplies??

(A) Includes--

(1) Articles known as ?stores,? such as food, medicines, and toiletries; and

(2) All consumable articles necessary and appropriate for the propulsion, operation, and maintenance of the vessel or aircraft, such as fuel, oil, gasoline, grease, paint, cleansing compounds, solvents, wiping rags, and polishes; and

(B) Does not include portable articles necessary and appropriate for the navigation, operation, or maintenance of the vessel or aircraft and for the comfort and safety of the persons on board, such as rope, bolts and nuts, bedding, china and cutlery, which are included in the term ?equipment.?

(ii) Format for duty-free certificate.

(Date) _____

I certify that the acquisition of this material constituted a purchase of supplies by the United States for vessels or aircraft operated by the United States, and is admissible free of duty pursuant to 19 U.S.C. 1309.

(Name)

(Title)

(Organization)

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PGI 225.70?AUTHORIZATION ACTS, APPROPRIATIONS ACTS, AND OTHER

STATUTORY RESTRICTIONS ON FOREIGN ACQUISITION

PGI 225.7002 Restrictions on food, clothing, fabrics, and hand or measuring tools.

PGI 225.7002-1 Restrictions.

(a)(1)(ii)(1) The following are examples, not all-inclusive, of Product and Service Codes (PSCs) that contain items of clothing:

(i) Clothing apparel (such as outerwear, headwear, underwear, nightwear, footwear, hosiery, or handwear) listed in PSC 8405, 8410, 8415, 8420, 8425, 8450, or 8475.

(ii) Footwear listed in PSC 8430 or 8435.

(iii) Hosiery, handwear, or other items of clothing apparel, such as belts and suspenders, listed in PSC 8440 or 8445.

(iv) Badges or insignia listed in PSC 8455.

(2) The PSCs listed in paragraph (a)(1)(ii)(1) of this section also contain items that are not clothing, such as?

(i) Visors;

(ii) Kevlar helmets;

(iii) Handbags; and

(iv) Plastic identification tags.

(3) Each item should be individually analyzed to determine if it is clothing, rather than relying on the PSC alone to make that determination.

(4) The fact that an item is excluded from the foreign source restriction of the Berry Amendment applicable to clothing does not preclude application of another Berry Amendment restriction in DFARS 225.7002-1 to the components of the item.

(5) Small arms protective inserts (SAPI plates) are an example of items added to, and not normally associated with, clothing. Therefore, SAPI plates are not covered under the Berry Amendment as clothing. However, fabrics used in the SAPI plate are still subject to the foreign source restrictions of the Berry Amendment. If the fabric used in the SAPI plate is a synthetic fabric or a coated synthetic fabric, the fibers and yarns used in the fabric are not covered by the Berry Amendment, because the fabric is a component of an end product that is not a textile product (see DFARS 225.7002-2(m). Example: A SAPI plate is compliant with the Berry Amendment if the synthetic fiber or yarn is obtained from foreign country X and woven into synthetic fabric in the United States, which is then incorporated into a SAPI plate manufactured in foreign country Y.

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(2) Hand or measuring tools.

(A) As applied to hand or measuring tools, ?produced in the United States? means that the hand or measuring tool was assembled in the United States out of components, or otherwise made from raw materials into the finished product that is to be provided to the Government.

(B) If a hand or measuring tool was assembled in a country other than the United States, then disassembled and reassembled in the United States, the hand or measuring tool was not produced in the United States.

(C) The requirement to buy hand or measuring tools produced in the United States does not impose any restriction on the source of the components of the hand or measuring tools. This is unlike the Berry Amendment restriction on clothing (see 225.7002-1(a)(1)(ii)), which explicitly requires domestic source for the materials and components of clothing (other than unusual components such as sensors or electronics), as well as the additional separate restrictions on various types of fibers and fabrics that might be components of the clothing.

(D) If the acquisition of the hand or measuring tools is also subject to the Buy American statute (see FAR subpart 25.1), then in order to qualify as a domestic end product, the cost of the components mined, produced, or manufactured in the United States or a qualifying country, must exceed 50 percent of the cost of all the components of the hand or measuring tool.

PGI 225.7002-2 Exceptions.

(b) Domestic nonavailability determinations.

(3) Defense agencies other than the Defense Logistics Agency.

(A) A defense agency requesting a domestic nonavailability determination must submit the request, including the proposed determination, to?

Principal Director, Defense Pricing, Contracting, and Acquisition Policy

ATTN: OUSD(A&S) DPCAP/CP

3060 Defense Pentagon

Washington, DC 20301-3060.

(B) The Principal Director, Defense Pricing, Contracting, and Acquisition Policy, will forward the request to the Under Secretary of Defense (Acquisition and Sustainment)

(USD(A&S)) as appropriate.

PGI 225.7003 Restrictions on acquisition of specialty metals.

PGI 225.7003-2 Restrictions.

(a)(i) This restriction applies to the item containing the specialty metal, not just the specialty metal, as was true when the restriction was part of 10 U.S.C. 4862. The previous practice of withholding payment while conditionally accepting noncompliant items is not permissible for?

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(A) Contracts entered into on or after November 16, 2006; or

(B) New procurements or out-of-scope changes accomplished on or after November 16, 2006, through the use of bilateral modifications to contracts originally awarded prior to November 16, 2006.

(ii) Consistent with the definition of ?component? in the clause at DFARS 252.225-7009, a component is any item supplied to the Government as part of an end item or of another component. Items that are not incorporated into any of the items listed in DFARS **225.7003-2(a) are not components of those items. For example, test equipment, ground** support equipment, or shipping containers are not components of the missile system.

PGI 225.7003-3 Exceptions.

(b)(2) Report of COTS items.

If a department or agency uses the exception at DFARS 225.7003-3(b)(2) for an acquisition of COTS end items valued at $5 million or more per item, the department or agency must address use of the exception in a year-end report, to be prepared and submitted as follows:

(A) Entitle the report ?COTS Specialty Metal Exceptions Granted During Fiscal Year ____.?

(B) For each excepted COTS item purchased during the fiscal year, include in the report, at a minimum, the applicable?

(1) Contract number and any applicable delivery order number;

(2) Dollar value; and

(3) Item description.

(C) Submit the report by October 31 of each year to:

Principal Director, Defense Pricing, Contracting, and Acquisition Policy

ATTN: OUSD(A&S) DPCAP/CP

3060 Defense Pentagon

Washington, DC 20301-3060.

(4) For samarium-cobalt magnets contained in an item listed in 225.7003-2(a) manufactured in a qualifying country, see paragraph (b)(6)(C) of this section.

(5) Domestic specialty metals nonavailable as and when needed.

(A) Determining availability.

(1) FAR 15.402 requires that contracting officers purchase supplies and services at fair and reasonable prices. Thus, contracting officers must determine whether

any increase in contract price that results from providing compliant specialty metal is fair and reasonable, given the circumstances of the particular situation. In those cases where the contracting officer determines that the price would not be fair and reasonable, the Secretary of the military department concerned may use that information in determining whether the unreasonable price causes the compliant metal to be effectively ?nonavailable.? Where these ?reasonableness? limits should be drawn is a case-by-case decision.

(2) A similar approach may be used to determine whether delays associated with incorporating compliant specialty metals into items being acquired results in the metals being effectively nonavailable.

(B)(1) A department or agency requesting a determination or approval from USD(A&S) in accordance with DFARS 225.7003-3(b)(5) must submit the request, including the proposed determination, to?

Principal Director, Defense Pricing, Contracting, and Acquisition Policy

ATTN: OUSD(A&S) DPCAP/CP

3060 Defense Pentagon

Washington, DC 20301-3060.

(2) The Principal Director, Defense Pricing, Contracting, and Acquisition Policy (DPCAP), will forward the request to USD(A&S) as appropriate.

(C) For domestic nonavailability determinations with regard to samarium-cobalt high performance magnets, see paragraph (b)(6)(D) of this section.

(6) Application of specialty metals restrictions to magnets.

(A) The two most common types of high performance magnets are samarium-cobalt magnets and neodymium-iron-boron magnets. Only samarium-cobalt magnets contain specialty metals and are subject to the restrictions of 10 U.S.C. 4863 in this section, as well as the restrictions of 10 U.S.C. 4872 at 225.7018. Neodymium-iron-boron magnets are only subject to the restrictions of 10 U.S.C. 4872 at 225.7018, because they do not contain specialty metals. There are no other commonly used magnets that contain specialty metals.

(B) Table.

HPM = High performance magnet
COTS = Commercially available off-the-shelf
SmCo = Samarium Cobalt
NOT Commercially
Commercially available,
Magnet made of specialty metal is: available,
SmCo HPM
SmCo HPM
Incorporated into COTS subsystem NOT restricted
or COTS end item *
NOT incorporated into COTS Restricted Restricted
subsystem or COTS end item
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Included in 2 percent minimum Cannot be included in Cannot be included in 2
content? 2 percent minimum content percent minimum
content

* By definition, COTS assemblies and COTS end items will not include a HPM that is not commercially available.

(C) Samarium-cobalt magnets contained in an item manufactured in a qualifying country are still subject to the requirements of 10 U.S.C. 4872, because there is no exception in 10 U.S.C. 4872 for items manufactured in a qualifying country comparable to the exception at 225.7003-3(b)(4) to the specialty metal restrictions of 10 U.S.C. 4863.

(D) Even if samarium-cobalt magnets are determined to be domestically nonavailable under this section, the restrictions of 10 U.S.C. 4872 still apply unless samarium-cobalt magnets melted or produced outside a covered country are also determined to be nonavailable in accordance with 225.7018-4.

(c) Compliance for commercial derivative military articles.

(i) A department or agency requesting a determination or approval from USD(A&S)

in accordance with DFARS 225.7003-3(c) must submit the request, including the proposed determination, to?

Principal Director, Defense Pricing, Contracting, and Acquisition Policy

ATTN: OUSD(A&S) DPCAP/CP

3060 Defense Pentagon

Washington, DC 20301-3060.

(ii) The Principal Director, DPCAP, will forward the request to USD(A&S) as appropriate.

(d) National security waiver.

(i) A department or agency must request a national security waiver of the restrictions of 10 U.S.C. 4863 from USD(A&S) in accordance with DFARS 225.7003-3(d) in a timely manner after discovering or being informed of a specialty metals noncompliance in an item, or component thereof, listed at 225.7003-2(a) and covered by 10 U.S.C. 4863. The department or agency must submit the request, via the chain of command, including the draft determination and draft letters of notification to the congressional defense committees, as follows:

Principal Director, Defense Pricing, Contracting, and Acquisition Policy

ATTN: OUSD(A&S) DPCAP/CP

3060 Defense Pentagon

Washington, DC 20301-3060.

(ii) The request must include?

(A) The quantity of end items to which the waiver would apply;

(B) The time period that the waiver will cover;

(C) How and when the noncompliance was discovered?

(1) By the subcontractor(s);

(2) By the contractor; and

(3) By the department or agency;

(D) A complete description of all of the items or systems containing noncompliant specialty metals;

(E) The contract number(s), date(s), duration, and subcontractor(s) associated with the noncompliance;

(F) The manufacturer and country of origin of the noncompliant material, if known;

(G) Whether the contractor flowed down the DFARS clause to the subcontractors and in what format (e.g., exact quote or substantially the same?);

(H) A technical description of the affected parts, their role in the larger assembly, and their function in the end item;

(I) Estimated cost and schedule to replace noncompliant parts if a national security waiver is not granted;

(J) Operational and safety implications;

(K) Other national security considerations (such as how the requested waiver will contribute to national security policy or operational security);

(L) A description of the contractor?s efforts to develop and implement a corrective plan to ensure future compliance; and

(M) Information helpful to a determination as to whether any noncompliance was knowing and willful.

(iii) The Director, Defense Procurement and Acquisition Policy, will forward the request to USD(AT&L) as appropriate.

PGI 225.7018 Restriction on acquisition of certain magnets, tantalum, and tungsten.

PGI 225.7018-3 Exceptions.

(c)(1) Commercially available off-the-shelf samarium-cobalt magnets are still subject to the restrictions of 10 U.S.C. 4863 unless incorporated into commercially available off-the-shelf end items or subsystems (see 225.7003-3(b)(2)(i)(C)).

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(2) A samarium-cobalt magnet that is exempt from 10 U.S.C. 4872 because it is incorporated in an electronic device is still subject to the restrictions of 10 U.S.C. 4863, because the exemption under that statute applies to ?electronic component,? which excludes any high performance magnet used in the electronic component (see definition of ?electronic component? at 225.7003-1).

PGI 225.7018-4 Nonavailability determination.

(a) Individual nonavailability determinations.

(2) Contracting officers may use the following template for individual nonavailability determinations under this section:

SUBJECT: Individual Nonavailability Determination Exception under DFARS 225.7018-4

PROGRAM, ITEM, OR PART DESCRIPTION:

CONTRACT OR SOLICITATION NUMBER:

BACKGROUND: Per the requirements of 10 U.S.C. 4872, DFARS 252.225-7052 prohibits acquisition of samarium-cobalt magnets, neodymium-iron-boron magnets, tantalum metal and alloys, tungsten metal powder, and tungsten heavy alloy or any finished or semi-finished component containing tungsten heavy alloy melted or produced in North Korea, China, Russia, and Iran. Per DFARS 225.7018-4, the Head of Contracting Activity (HCA) can authorize an exception to DFARS 252.225-7052 through an ?Individual Nonavailability Determination? if they determine that covered materials of satisfactory quality and quantity, in the required form, cannot be procured as and when needed at a reasonable price from a source other than a covered country.

ANALYSIS OF ALTERNATIVES:

See Attachment A for an analysis of why alternatives that would not require a nonavailability determination are unacceptable.

CERTIFICATION: Based on the satisfactory quality, quantity, required form, timeliness, and/or reasonable price issues described in Attachment A, I hereby certify that the requirements for an

individual nonavailability determination under DFARS 225.7018-4 have been met.

_____

Signature of Government Contracting Officer or Program Representative

Date

Official Action on Request: __ Approved __ Disapproved [If disapproved, give reason.]

_____

Signature of Head of Contracting Activity

Date

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ATTACHMENT A: Analysis of Alternatives Required for an Individual Nonavailability Determination as per DFARS 225.7018-4

PART A: Data on Alternative Sources. [Can be completed either by Government or Contractor.]

1. Detailed information on current or proposed non-compliant DFARS 225.7018 source(s).

MATERIAL DELIVERY PRICE

COMPONENT COVERED CURRENT COUNTRY QUANTITY TOTAL

ITEM # SPECIFICATION DATE AND PER

NAME MATERIAL MANUFACTURER(S) OF ORIGIN REQUIRED PRICE

OR GRADE LEAD TIME UNIT

1

2. Detailed market research conducted on alternative compliant DFARS 225.7018 source(s).

PROPOSE RE-

RE-

POTENTIAL D DESIGN

DELIVERY QUANTITY PRICE DESIGN

COVERED ALTERNATIVE COUNTRY MATERIAL TOTAL OR RE-

ITEM # DATE AND PROPOSE PER OR RE-

MATERIAL MANUFACTURE OF ORIGIN SPECIFICA PRICE QUALIFICA

LEAD TIME D UNIT QUALIFICA

R(S) TION OR TION COST

TION COST

GRADE TIMELINE

1

3. Other pertinent information regarding the need for a nonavailability determination based on satisfactory quality, quantity, required form, timeliness, and/or reasonable price:

_____

_____

_____

_____

PART B: Analysis of Alternatives?Must be completed by a Government Representative

I have verified the information in Part A and a nonavailability determination is requested for the following reason(s):

DOES NOT DOES NOT MEET UNREASONABLE

NON- INSUFFICENT

COVERED MET TIMELINESS UNREASONABLE PRICE FOR RE-

ITEM # SATISFACTORY AVAILABLE

MATERIAL REQUIRED REQUIREMENTS FOR PRICE PER UNIT DESIGN OR RE-

QUALITY QUANTITY

FORM PROGRAM/CUSTOMER QUALIFICATION

1

_____

Signature of Government Contracting Officer or Program Representative

____

Date:

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ATTACHMENT B: Definitions and Instructions

As used in this document?

? ?Number? means the National Stock Number (NSN) or other part number applicable to a given component name;

? ?Component name? includes a description of the part and the name of the end item incorporating that part (e.g., ?Actuator ? Joint Direct Attack Munition? or ?Sphere - M1028 Canister CTG?);

? ?Covered material? means samarium-cobalt magnets, neodymium-iron-boron magnets, tantalum metal and alloys, tungsten metal powder, and tungsten heavy alloy or any finished / semi-finished component containing tungsten heavy alloy;

? ?Tungsten heavy alloy? means a tungsten base pseudo alloy that (1) meets the specifications of ASTM B777 or SAE-AMS-T-21014 for a particular class of tungsten heavy alloy or (2) contains at least 90% tungsten in a matrix of other metals (such as nickel-iron or nickel-copper) and has a density of at least 16.5 g/cm3

? ?Current manufacturer? means the entity that produces the covered material;

? ?Country of origin? means the location of the facility in which the current manufacturer produces the covered material;

? Delivery date and lead time? includes (1) the date by which the covered material is required to produce the component name and (2) the administrative lead time and procurement lead time required by the manufacturer of the component name, to secure appropriate covered material; and

? ?Price per unit? means the unit price of the covered material;

For any determination under ?Part B?, the Head of Contracting Activity is required to produce a separate report describing why a particular exception is applicable to a given action.

(3) Provide a copy of signed individual nonavailability determination and supporting

documentation or notification when an individual waiver is requested, but denied to:

OUSD(A&S)

DASD, Industrial Policy

U.S. Department of Defense

3330 Defense Pentagon, Room 3B854

Washington, DC 20301-3330

(b)(i) When requesting a class nonavailability determination, submit the request, including the proposed determination, to?

Principal Director, Defense Pricing, Contracting, and Acquisition Policy

ATTN: OUSD(A&S) DPCAP/CP

3060 Defense Pentagon

Washington, DC 20301-3060.

(ii) The Principal Director, DPCAP, will forward the request to the Under Secretary of Defense (Acquisition and Sustainment) (USD(A&S)) as appropriate.

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PGI 225.7019-3 Waiver.

(a) The following are factors to take into consideration for granting a waiver:

(1) The energy supply system is physically incapable of segregating Russian Federation energy from non-Russian Federation energy.

(2) The installation can only obtain the necessary energy from its current supplier without the unaffordable expense of constructing new supply lines.

(3) The price of requiring the supplier to segregate the energy is unaffordable and would result in the installation being unable to perform its mission within its budget authority.

(4) Consideration, by the requiring activity, of installation energy and security resilience has been taken into account (e.g., on-site sources of energy and fuel resupply would allow the installation to continue to perform its mission even with disruption of Russian Federation-sourced energy, the installation has addressed energy resilience and security risks and vulnerabilities, etc.).

(b) The head of the contracting activity must submit to the congressional defense committees a notice of the waiver with a copy to DPCAP, Contract Policy, via email at osd.pentagon.ousd-a-s.mbx.dpc-cp@mail.mil, at least 14 days before the award of an energy contract on the basis of an approved waiver. The notification must include a copy of the waiver. Include a copy of the approved waiver in the contract file.

PGI 225.7020 Prohibition on contracting with the Maduro regime.

PGI 225.7020-4 Joint determination.

(b)(1) Notify DPCAP, Contract Policy, via email at osd.pentagon.ousd-a-s.mbx.dpc-cp@mail.mil, upon entering into a contract on the basis of a joint determination made by the Secretary of Defense and the Secretary of State in accordance with agency procedures for the review and coordination, and include a copy of the joint determination in the notification; and

(2) Include a copy of the joint determination in the contract file.

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

Provide disclosures received from a covered entity in response to the provision at DFARS **252.225-7057 and the clause at DFARS 252.225-7058 to Defense Pricing, Contracting, and** Acquisition Policy, Contract Policy (DPCAP/CP) via email at osd.pentagon.ousd-a-s.mbx.dpc-cp@mail.mil.

PGI 225.7021-3 National security waiver of disclosure.

(b) Determination. The national security waiver request to the senior procurement executive shall include?

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(1) The disclosure requirements to which the national security waiver applies;

(2) The time period that the waiver will cover;

(3) A description of the contract requirement;

(4) Impacts if a national security waiver is not granted;

(5) Operational and national security implications;

(6) Other national security considerations, such as how the requested waiver will contribute to national security policy or operational security.

(c) Include a copy of the signed determination in the contract file.

(d) For a military department or defense agency provide a copy of the approved national security waiver to the Principal Director, Defense Pricing, Contracting, and Acquisition Policy, Contract Policy (DPCAP/CP) via email at osd.pentagon.ousd-a-s.mbx.dpc-cp@mail.mil.

(e) The following defense field activities must submit requests for national security waivers to DPCAP/CP via email at osd.pentagon.ousd-a-s.mbx.dpc-cp@mail.mil:

(1) Department of Defense Education Activity.

(2) Defense Human Resources Activity.

(3) Defense Microelectronics Activity.

(4) Defense Media Activity.

(5) Uniformed Services University of the Health Sciences.

PGI 225.72?REPORTING CONTRACT PERFORMANCE OUTSIDE THE UNITED STATES

PGI 225.7203 Contracting officer distribution of reports.

(a) Before contract award, forward a copy of any reports that are submitted with offers in accordance with the provision at 252.225-7003, Report of Intended Performance Outside the United States and Canada?Submission with Offer, to the Office of the Principal Director, Defense Pricing, Contracting, and Acquisition Policy (Contract Policy) via email to osd.pentagon.ousd-a-s.mbx.asda-dp-c-contractpolicy@mail.mil.

(b) Forwarding the reports as described in paragraph (a) of this section is necessary to satisfy the requirement of 10 U.S.C. 4603 that notifications (or copies) of contract performance outside the United States and Canada be maintained in compiled form for 5

years after the date of submission.

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PGI 225.73--ACQUISITIONS FOR FOREIGN MILITARY SALES

PGI 225.7300 Scope of subpart.

(a) The Foreign Military Sales (FMS) acquisition infrastructure is also used to execute cases funded with U.S. appropriated funds under special authority to build international partner capacity. These Building Partner Capacity (BPC) cases are implemented using Pseudo Letter of Offer and Acceptance (LOA) documents.

PGI 225.7301 General.

(c)(i) Separately identify known FMS requirements and the FMS customer in solicitations.

(ii) For economies of scale and efficiency, combine U.S. and FMS requirements under the same contract whenever possible. It is not in the taxpayer?s interest to concurrently use mixed contract types for the same or similar items.

(iii) Clearly identify contracts for known FMS requirements by the case identifier code in section B of the Schedule.

(iv) Ensure that the FMS LOA terms and conditions are incorporated into the signed contract.

(v) Ensure that the shipping terms for any contract for FMS materiel are stated as free on board (f.o.b.) origin.

(vi) For Pseudo LOAs, ensure that the period of performance in the contract is consistent with the period of availability of appropriated funds, as provided by the financial resource manager.

(vii) Consistent with the Defense Transportation Regulations (DTR) 4500.9-R-Part II, Cargo Movement, https://www.ustranscom.mil/dtr/part-ii/dtr_part_ii_toc.pdf , Appendix E, ensure that contracts involving the acquisition and delivery of FMS materiel comply with the policies, procedures, packaging, labeling, and documentation requirements specified by the **DTR.**

(viii) The Government representative responsible for acceptance must ensure that the contractor prepares material inspection and receiving reports in compliance with?

(A) Appendix F, F-301(b)(15)(iv)(K) for a Wide Area WorkFlow (WAWF) Receiving Report; or

(B) F-401(b)(16)(iv)(L) for a paper DD Form 250, Material Inspection and Receiving Report, if an exception to the use of WAWF at 232.7003 applies.

(ix) Prior to contract award, ensure that?

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(A) If a contracting officer?s representative is assigned, detailed point of contact information (email, phone number with international dialing protocols, and physical and mailing address) must be clearly visible;

(B) Unique country requirements are specified in the contract (i.e., additional documentation requirements for use in country customs clearance (Levy Exemption waiver));

(C) Commodity-unique requirements are specified in the contract (i.e., responsibility for obtaining/paying for/affixing active Radio Frequency Identification tags and Transportation Control Number construction/usage); and

(D) The FMS Transportation Accounting Code is stated in the contract.

PGI 225.7302 Preparation of Letter of Offer and Acceptance.

(2)(i) Assist the DoD implementing agency, as necessary, in preparation of the Letter of Offer and Acceptance;

(ii) Identify and explain all unusual contractual requirements or requests for deviations; and

(iii) Assist in preparing the price and availability data.

PGI 225.7303 Pricing acquisitions for FMS.

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

(a)(3) Offsets.

(A) Offsets are the entire range of industrial and commercial benefits provided to foreign governments as an inducement or condition to purchase military supplies or services, including benefits such as coproduction, licensed production, subcontracting, technology transfer, in-county procurement, marketing and financial assistance, and joint ventures (Defense Offsets Disclosure Act of 1999, Pub. L. 106-113, section 1243(3)). There are two types of offsets: direct offsets and indirect offsets.

(i) A direct offset involves benefits, including supplies or services that are directly related to the item being purchased. For example, as a condition of a U.S. sale, the contractor may require or agree to permit the purchaser 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, including supplies or services that are unrelated to the item being purchased. For example, as a condition of a sale the contractor may agree to purchase certain of the customer's manufactured products, agricultural commodities, raw materials, or services. Indirect offsets may be accomplished without a clearly defined period of performance.

(B) Offset costs are the costs to the contractor of providing any direct or indirect offsets required (explicitly or implicitly) as a condition of purchase in a government-to-government sale of defense articles and/or defense services as defined by the Arms Export

Control Act and the International Traffic in Arms Regulations.

(C) 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).**

PGI 225.75?BALANCE OF PAYMENTS PROGRAM

PGI 225.7502 Procedures.

If the Balance of Payments Program applies, use the following procedures:

(1) Solicitation of offers. Identify, in the solicitation, supplies and construction material known in advance to be exempt from the Balance of Payments Program.

(2) Evaluation of offers.

(i) Supplies. Unless the entire acquisition is exempt from the Balance of Payments Program, evaluate offers for supplies that are subject to the Balance of Payments Program using the evaluation procedures in DFARS Subpart 225.5. However, treatment of duty may differ when delivery is overseas.

(A) Duty may not be applicable to nonqualifying country offers.

(B) The U.S. Government cannot guarantee the exemption of duty for components or end products imported into foreign countries.

(C) Foreign governments may impose duties. Evaluate offers including such duties as offered.

(ii) Construction. Because the contracting officer evaluates the estimated cost of foreign and domestic construction material in accordance with DFARS 225.7501(a)(7)(iv) before issuing the solicitation, no special procedures are required for evaluation of construction offers.

(3) Postaward. For construction contracts, the procedures at FAR 25.206, for noncompliance under the Buy American statute, also apply to noncompliance under the Balance of Payments Program.

PGI 225.76?SECONDARY ARAB BOYCOTT OF ISRAEL

PGI 225.7604 Waivers.

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Forward waiver requests to the Office of the Principal Director, Defense Pricing, Contracting, and Acquisition Policy (Contract Policy) via email to osd.pentagon.ousd-a-s.mbx.asda-dp-c-contractpolicy@mail.mil.

PGI 225.78?ACQUISITIONS IN SUPPORT OF GEOGRAPHIC COMBATANT COMMAND?S THEATER SECURITY COOPERATION EFFORTS

PGI 225.7801 Policy.

DoD components are responsible for providing procurement and contracting support of

theater security cooperation efforts conducted in support of combatant commander/Chief of Mission, to include military exercises/training, base operations, weapons procurement, aviation fuels and construction and the President's Emergency Plan for Aids relief. By Director, Defense Procurement and Acquisition Policy (DPAP) memorandum dated May 6, 2011 and its attachment, Department of State (DoS) Cable 11 STATE 030953, ?Procurement Roles and Responsibilities ? General Services Officer and DoD Personnel,? DoS procurement support is normally restricted to those routine non-complex supplies and services used by U. S. Government personnel permanently assigned at post and acquired for U. S. Government employee direct use. Follow all guidance set forth in this Director, DPAP-approved cable and associated planning considerations at PGI 207.105 (b)(20)(E).

PGI 225.79?EXPORT CONTROL

PGI 225.7901 Export-controlled items.

PGI 225.7901-2 General.

(1) DoD Focal Point on Export Controls.

(i) Within DoD, the focal point on export controls is the Defense Technology Security Administration (DTSA). Official authorities and responsibilities of DTSA are established in DoD Directive 5105.72.

(ii) Initial DoD acquisition workforce questions regarding the applicability of the Export Administration Regulations (EAR) or the International Traffic in Arms Regulations (ITAR) to specific procurements or items, or interpretation of DoD issuances regarding export controls, may be directed to the DTSA Policy Directorate, by phone at 571-372-2438/2377 or by visiting the DTSA web site at: http://www.dtsa.mil/SitePages/contact-us/default.aspx.

(2) Regulations. The Department of State and the Department of Commerce are the lead agencies responsible for regulations governing the export of defense articles, commercial products or commercial services, and dual use items.

(i) The International Traffic in Arms Regulations (ITAR), issued by the Department of State, control the export of defense-related articles and services, including technical data, ensuring compliance with the Arms Export Control Act (22 U.S.C. 2751 et seq.). The United States Munitions List (USML) identifies defense articles, services, and related technical data that are inherently military in character and could, if exported, jeopardize national security or foreign policy interests of the United States.

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(A) The ITAR is published in Title 22 of the Code of Federal Regulations (CFR), Parts 120 through 130 (22 CFR 120-130). The official version of the ITAR is maintained at https://www.ecfr.gov/current/title-22.

(B) The USML is part of the ITAR, in 22 CFR Part 121, and is available at the web sites in paragraph (2) (i) (A) of this section.

(C) The Department of State is responsible for compliance with the ITAR. Depending on the nature of questions you may have, you may contact the following Department of State office to obtain additional information:

U.S. Department of State
Bureau of Political Military Affairs
Directorate of Defense Trade Controls
Office of Defense Trade Controls Compliance
https://www.state.gov/bureaus-offices/under-secretary-for-arms-control-and-international-security-affairs/bureau-of-political-military-affairs/directorate-of-defense-trade-controls-pm-ddtc/.

(D) Contracting officers should not answer any questions a contractor may ask regarding how to comply with the ITAR. If asked, the contracting officer should direct the contractor?s attention to paragraph (c) of the clause at DFARS 252.225-7048 and may inform the contractor that the Department of State publishes guidance regarding ITAR compliance at https://www.state.gov/bureaus-offices/under-secretary-for-arms-control-and-international-security-affairs/bureau-of-political-military-affairs/directorate-of-defense-trade-controls-pm-ddtc/.

(E) Contracting officers should not answer any questions a contractor may ask regarding the State Department requirement, mentioned in the clause at 252.225-7048, for contractors to register with the Department of State in accordance with the ITAR. If asked, the contracting officer should direct the contractor?s attention to paragraph (b) of the clause, which directs the contractor to consult with the Department of State regarding any questions relating to compliance with the ITAR. (The registration requirements are in Subpart 122.1 of the ITAR. Subpart 122.1 requires any person who engages in the United States in the business of either manufacturing or exporting defense articles or furnishing defense services to register with the Directorate of Defense Trade Controls.)

(ii) The Export Administration Regulations (EAR), issued by the Department of Commerce, control the export of dual-use items, (items that have both commercial and military or proliferation applications) and purely commercial products or commercial services. These items include commodities, software, and technology. Many items subject to the EAR are set forth by Export Control Classification Number on the Commerce Control List.

(A) The EAR is published in Title 15 of the Code of Federal Regulations, Parts 730 through 774 (15 CFR Parts 730-774), available at https://www.ecfr.gov/current/title-15/subtitle-B/chapter-VII/subchapter-C.

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(B) The Commerce Control List is part of the EAR, in Supplement No. 1 to 15 CFR Part 774, and is available at https://www.ecfr.gov/current/title-15/subtitle-B/chapter-VII/subchapter-C.

(C) The Department of Commerce is responsible for compliance with the EAR. Depending on the nature of questions you may have, you may contact the following Department of Commerce office to obtain additional information:
U.S. Department of Commerce

Bureau of Industry and Security
Office of Exporter Services (OExS)
OExS Hotline: 202-482-4811.

(D) Contracting officers should not answer any questions a contractor may ask regarding how to comply with the EAR. If asked, the contracting officer should direct the contractor?s attention to paragraph (b) of the clause at DFARS 252.225-7048 and may inform the contractor that the Department of Commerce publishes guidance regarding EAR compliance at http://www.bis.doc.gov/.

(3) National Security Decision Directive (NSDD) 189, National Policy on the Transfer of Scientific, Technical, and Engineering Information.

(i) NSDD 189 establishes a national policy that, to the maximum extent possible, the products of fundamental research must remain unrestricted. NSDD 189 provides that no restrictions may be placed upon the conduct or reporting of federally funded fundamental research that has not received national security classification, except as provided in applicable U.S. statutes. As a result, contracts confined to the performance of unclassified fundamental research generally do not involve any export-controlled items, as defined in paragraph (a) of the clause at DFARS 252.225-7048.

(ii) NSDD 189 does not take precedence over statutes. NSDD 189 does not exempt any research, whether basic, fundamental, or applied, from statutes that apply to export controls such as the Arms Export Control Act, the Export Administration Act of 1979, as amended, or the U.S. International Emergency Economic Powers Act, or the regulations that implement those statutes (the ITAR and the EAR). Thus, if export-controlled items are used to conduct research or are generated as part of the research efforts, the export control laws and regulations apply to the controlled items.

(iii) NSDD 189 is available at http://www.fas.org/irp/offdocs/nsdd/nsdd-189.htm.

(4) DoD Instruction 2040.02, International Transfers of Technology, Articles, and Services. This DoD instruction provides guidance to manage and control transfers of technology, articles, and services consistent with U.S. foreign policy and national security objectives. DoD Instruction 2040.02 is available at https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/204002p.pdf?ver=2019-01-28-141235-830.

(5) Other DoD Issuances. Other DoD issuances that address export control matters include those listed below. Except as otherwise noted, these issuances are available at https://www.esd.whs.mil/DD/.

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Attachment A2
DARS Tracking Number: 2026-O0041
Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 25
Defense FAR Supplement (DFARS) Part 225

? DoD Instruction 2015.4, Defense Research, Development, Test and Evaluation (RDT&E) Information Exchange Program (IEP).
? DoD Directive 5000.1, The Defense Acquisition System.
? DoD Instruction 5000.2, Operation of the Defense Acquisition System.
? DoD Directive 5105.72, Defense Technology Security Administration (DTSA).
? DoD Publication 5200.1-M, Acquisition Systems Protection Program.

? DoD Instruction 5200.39, Critical Program Information (CPI) Protection Within the Department of Defense.
? The National Industrial Security Program Operating Manual (NISPOM) at 32 CFR part **117.**
? DoD Directive 5230.25, Withholding of Unclassified Technical Data From Public Disclosure.
? DoD Instruction 5230.27, Presentation of DoD-Related Scientific and Technical Papers at Meetings.
? Acquisition Guidebooks & References, available at https://aaf.dau.edu/guidebooks/ .
? Under Secretary of Defense (Intelligence) Memorandum, Subject: Policy and Procedures for Sanitization of Department of Defense (DoD) Classified or Controlled Unclassified Information Prior to Public Release, is available here
Link to online training on export controls:
CLI 007 Technology Transfer and Export Control, https://www.dau.edu/courses/cli-007
PGI 225.7902 Defense Trade Cooperation Treaties.
The following documents are accessible at: http://pmddtc.state.gov/:
? DTC Treaties.
? Implementing Arrangements.
? The provisions of the International Traffic in Arms Regulations (ITAR) (22 CFR 126.16 (Australia) and 22 CFR 126.17 (United Kingdom)) pertaining to the DTC Treaties.
? List of Defense Articles Exempted from DTC Treaty Coverage (also in 22 CFR 126 Supplement No. 1).
? List of Approved Community Members.
? Definitions.
PGI 225.7902-2 Purpose.
(1) Background.
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Attachment A2
DARS Tracking Number: 2026-O0041
Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 25
Defense FAR Supplement (DFARS) Part 225

(i) The U.S. Government controls exports of defense articles, technical data, and defense services. The controls are imposed by the Arms Export Control Act (AECA) and the Department of State regulation that implements the AECA export controls, also known as the ITAR.

(ii) Under the ITAR, the Department of State manages an export licensing system in which government approvals are often necessary for companies to hold discussions about potential projects, pursue joint activities, ship hardware, or transfer know-how to one another, and even sometimes to move engineers and other personnel within branches of the same company located in different countries. This process can be challenging for U.S. exporters and for foreign firms in their supply chains.

(iii) Given the close allied relationship of the United States with Australia and the United Kingdom, the President and the respective Prime Ministers decided to reform the defense trade system between their countries with the goal of facilitating the exchange of certain defense articles, technical data, and defense services between their militaries and

security authorities, and their industries. They negotiated bilateral Defense Trade Cooperation DTC Treaties to achieve this goal. These bilateral DTC Treaties establish permissions for export without export licenses for each country, if an export meets the DTC Treaty requirements. Other exports remain under the AECA and the ITAR. The DTC Treaties are intended solely to waive certain requirements of the ITAR for specific transactions within the scope of the DTC Treaties not remove any requirements for contractors to comply with domestic U.S. law.

(iv) The Department of State regulations implementing the DTC Treaties are in the **ITAR.**

(2) How the DTC Treaties work.

(i) The DTC Treaties establish Approved Communities. The ?Approved Community? for each DTC Treaty is defined in DFARS clause 252.225-7047. Exports of most U.S. defense articles, technical data, and defense services are permitted to go into and to move within the Approved Community, without the need for government approvals and export licenses (provided that all persons comply with statutory and regulatory requirements outside of DFARS and ITAR concerning the import of defense articles and defense services or the possession or transfer of defense articles, including, but not limited to, regulations issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives found at 27 C.F.R. Parts 447, 478, and 479, which are unaffected by the DTC Treaties) when in support of the following:

? Combined U.S.-Australia or U.S.-U.K. military or counterterrorism operations.

? U.S.-Australia or U.S.-U.K. cooperative security and defense research, development, production, and support programs.

? Specific security and defense projects that are for the government of Australia or the government of the United Kingdom use only.

? U.S. Government end use.

(ii) Under the DTC Treaties, instead of a U.S. exporter preparing and requesting Department of State approval of an export license or other written authorization for a project, the exporter may elect to use the applicable DTC Treaty if Treaty conditions are met. If

using a DTC Treaty, the exporter will check the Department of State website or other appropriate reference and verify that?

? The Australian or U.K. partner is on the list of approved companies/facilities (i.e., a member of the Approved Community);

? The effort is in support of at least one of the scope areas identified in paragraph (2)(i) of this section; and

? The defense article is not on the exempted technology list. (Also in 22 CFR 126 Supplement No. 1).

If all three conditions are met, then the U.S. exporter and the Australian or U.K. partner may use the DTC Treaty exemptions in the ITAR to move qualifying defense articles without the need to obtain export licenses or other written authorizations, provided compliance with

paragraph (2)(i) of this section.

(iii) A company using a DTC Treaty, in addition to checking the three lists (as explained in paragraph (2)(ii) of this section), must also comply with requirements in the applicable DTC Treaty and the associated Implementing Arrangements, and the provisions of the ITAR pertaining to the DTC Treaty. These include marking and recordkeeping requirements to ensure that export-controlled items are recognized as such and treated accordingly. For example, instead of normal ITAR requirements, the provisions of the ITAR pertaining to the DTC Treaties establish the requirements that apply. Similarly, DFARS **225.7902 implements requirements that relate to exports that a prospective contractor may** make under a DoD solicitation or that a contractor may make in performance of a DoD contract. The company must continue to comply with domestic laws and regulations, including those pertaining to the movement of defense articles within the United States.

PGI 225.7902-4 Procedures.

(1) Since the DTC Treaties apply only to eligible items, a solicitation or contract falls within the scope of the DTC Treaties, and is thus eligible for DTC Treaty coverage (i.e., falls within the scope of the DTC Treaties) if it will acquire at least one defense article that is not otherwise exempt from the DTC Treaties and is required for?

(i) Combined military or counterterrorism operations as described in the Implementing Arrangements;

(ii) Cooperative security and defense research, development, production, and support programs that are identified pursuant to the Implementing Arrangements;

(iii) Cases where the government or Australia or the government of the United Kingdom is the end user in mutually agreed specific security and defense projects, that are identified pursuant to the Implementing Arrangements; or

(iv) U.S. Government end use under a solicitation or contract.

(2) Since the DTC Treaties apply only to eligible items, a solicitation or contract falls within the scope of the DTC Treaties and is thus eligible for DTC Treaty coverage when it will acquire at least one defense article that is DTC Treaty-eligible and the contract falls within the scope of the DTC Treaties. Article 3, section (2) of each DTC Treaty and Section

4 of each Implementing Arrangement require the DTC Treaty Participants to maintain lists of defense articles to be exempted from the scope of the DTC Treaties. These exempted technology lists are incorporated in Supplement No. 1 to part of the ITAR.

(3) The DTC Treaties do not apply to defense articles initially being acquired pursuant to the U.S. Foreign Military Sales (FMS) program, although, once the defense articles are acquired by the Australia or United Kingdom under an FMS case, the DTC Treaty applies as though the defense articles were exported under the DTC Treaty, subject to PGI 225.7902-**2.**

(4) If a company obtains an export license, or other authorization, for the export of defense articles that might otherwise have been eligible for export without a license under a

DTC Treaty, the terms of the export license, or other authorization, must apply unless and until the company obtains approval to transition to DTC Treaty coverage. The process and requirements for transition are described in 22 CFR 126.16(i) and 22 CFR 126.17(i), respectively.

PART 26

OFFICE OF THE ASSISTANT SECRETARY OF WAR

Status: Class D

OFFICE OF THE ASSISTANT SECRETARY OF WAR

3000 DEFENSE PENTAGON

WASHINGTON, DC 20301-3000

ACQUISITION

AND SUSTAINMENT

In reply refer to

DARS Tracking Number: 2026-O0008

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES SPECIAL OPERATIONS

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES TRANSPORTATION

COMMAND (ATTN: ACQUISITION EXECUTIVE)

DEPUTY ASSISTANT SECRETARY OF THE ARMY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE NAVY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE

(CONTRACTING)

DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Class Deviation?Revolutionary Federal Acquisition Regulation (FAR) Overhaul

Part 26, Defense FAR Supplement (DFARS) Part 226

Effective February 1, 2026, contracting officers shall use?

? The revised FAR Part 26, Other Socioeconomic Programs published on the Revolutionary FAR Overhaul web page at https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-26 in lieu of the text codified at 48 CFR chapter 1 (https://www.ecfr.gov).

? The attached DFARS Part 226, Other Socioeconomic Programs in lieu of the text codified at 48 CFR chapter 2; and

? The attached DFARS Procedures, Guidance, and Information (PGI) 226, Other Socioeconomic Programs in lieu of the PGI text published on the Defense Pricing, Contracting, and Acquisition Policy web page at https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.

This class deviation implements the following:

? Section 2 of E.O. 14275, Restoring Common Sense to Federal Procurement, which establishes the policy that the FAR ?should only contain provisions required by statute or essential to sound procurement, and any FAR provisions that do not

advance these objectives should be removed.
DARS Tracking Number: 2026-O0008
Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 26
Defense FAR Supplement (DFARS) Part 226
? Section 4(a) of E.O. 14265, Modernizing Defense Acquisitions and Spurring Innovation in the Defense Industrial Base which requires the Secretary of War to eliminate or revise any unnecessary supplemental regulations or any other internal guidance, such as relevant parts of the Financial Management Regulation and Defense Federal Acquisition Regulation Supplement.
? The Office of Management and Budget memorandum, M-25-26 issued on May 2, 2025, titled, Overhauling the Federal Acquisition Regulation, which provided additional guidance to federal agencies regarding the FAR overhaul.
This class deviation remains in effect until rescinded or incorporated into the FAR, DFARS, and DFARS PGI. Inquiries regarding this class deviation can be addressed to osd.pentagon.ousd-a-s.mbx.dfars@mail.mil.
John M. Tenaglia
Principal Director,
Defense Pricing, Contracting, and
Acquisition Policy
Attachments:
As stated
2
Attachment A1
DARS Tracking Number: 2026-O0008
Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 26
Defense FAR Supplement (DFARS) Part 226

PART 226?OTHER SOCIOECONOMIC PROGRAMS

SUBPART 226.1?INDIAN INCENTIVE PROGRAM

226.102-2 Contract clause.

Insert the clause at 252.226-7001, Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that are for supplies or services exceeding $500,000 in value.

226.103 Postaward.

Follow the procedures at PGI 226.103 when submitting a request for funding of an Indian incentive.

SUBPART 226.5?DRUG-FREE WORKPLACE

226.570 Drug-free work force.

226.570-1 Policy.

DoD policy is to ensure that its contractors maintain a program for achieving a drug-free work force.

226.570-2 Contract clause.

(a) Insert the clause at 252.226-7003, Drug-Free Work Force, in all solicitations and

contracts?

(1) That involve access to classified information; or

(2) When the contracting officer determines that the clause is necessary for reasons of national security or for the purpose of protecting the health or safety of those using or affected by the product of, or performance of, the contract.

(b) Do not use the clause in solicitations and contracts?

(1) For commercial products and commercial services;

(2) When performance or partial performance will be outside the United States and its outlying areas, unless the contracting officer determines such inclusion to be in the best interest of the Government; or

(3) When the value of the acquisition is at or below the simplified acquisition threshold.

SUBPART 226.71?PREFERENCE FOR LOCAL AND SMALL BUSINESSES

226.7100 Scope of subpart.

This subpart implements Section 2912 of the Fiscal Year 1994 Defense Authorization Act (Pub. L. 103-160) and Section 817 of the Fiscal Year 1995 Defense Authorization Act (Pub. L. 103-337).

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Attachment A1

DARS Tracking Number: 2026-O0008

Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 26

Defense FAR Supplement (DFARS) Part 226

226.7101 Definition.

?Vicinity,? as used in this subpart, means the county or counties in which the military installation to be closed or realigned is located and all adjacent counties, unless otherwise defined by the agency head.

226.7102 Policy.

Provide businesses within the vicinity, including small and small disadvantaged businesses the maximum practicable opportunity to participate in acquisitions, including those for environmental restoration and mitigation, that support the closure or realignment of a military installation (10 U.S.C. 2687).

226.7103 Procedure.

In considering acquisitions for award through the 8(a) program (see 219.108 and FAR **19.108) or in making set-aside decisions under 219.104 and FAR 19.104 for acquisitions** in support of a base closure or realignment?

(a) Determine whether there is a reasonable expectation of receiving offers from responsible business concerns located in the vicinity of the military installation that is being closed or realigned.

(b) If offers are not expected from business concerns in the vicinity, consider 8(a) or other set-aside programs provided in part 219 and FAR part 19.

(c) If offers are expected from business concerns in the vicinity?

(1) Consider the 8(a) program only if at least one eligible 8(a) contractor is located in the vicinity.

(2) Set aside the acquisition for small business only if at least one of the

expected offers is from a small business located in the vicinity.

226.7104 Other considerations.

When planning for contracts for services related to base closure activities at a military installation affected by a closure or realignment under a base closure law, consider including, as a factor in source selection, the extent to which offerors specifically identify and commit, in their proposals, to a plan to hire residents of the vicinity of the military installation that is being closed or realigned.

SUBPART 226.72?DEMONSTRATION PROJECT FOR CONTRACTORS EMPLOYING PERSONS WITH DISABILITIES

226.7200 Scope of subpart.

This subpart implements section 853 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136, 10 U.S.C. 3901 note prec.). This subpart does not supersede the requirement to use the mandatory sources in FAR part 8 or the small business programs in FAR part 19.

226.7201 Definitions.

As used in this subpart?

?Eligible contractor? means a business entity operated on a for-profit or nonprofit basis that?

(1) Employs severely disabled individuals at a rate that averages not less than 33 percent of its total workforce over the 12-month period prior to issuance of the solicitation;

(2) Pays not less than the minimum wage prescribed pursuant to 29 U.S.C. 206 to the employees who are severely disabled individuals; and

(3) Provides, for its employees, health insurance and a retirement plan comparable to those provided for employees by business entities of similar size in its industrial sector or geographic region.

?Severely disabled individual? means an individual with a disability (as defined in **42 U.S.C. 12102) who has a severe physical or mental impairment that seriously limits** one or more functional capacities.

226.7202 Policy.

Contracting officers may use this Demonstration Project to award one or more contracts to an eligible contractor for the purpose of providing defense contracting opportunities for entities that employ severely disabled individuals. To determine if there are eligible contractors capable of fulfilling the agency?s requirement, conduct market research as described in part 210 and FAR part 10. When electing to use this Demonstration Project, see PGI 226.7202.

226.7203 Solicitation provision.

Insert the provision at 252.226-7002, Representation for Demonstration Project for Contractors Employing Persons with Disabilities, in solicitations when using this

Demonstration Project, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services.

PART 252?SOLICITATION PROVISIONS AND CONTRACT CLAUSES

SUBPART 252.2?TEXT OF PROVISIONS AND CLAUSES

252.226-7001 Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns.

As prescribed in 226.102-2, use the following clause:

UTILIZATION OF INDIAN ORGANIZATIONS, INDIAN-OWNED ECONOMIC ENTERPRISES, AND NATIVE HAWAIIAN SMALL BUSINESS CONCERNS (JAN 2023)

(a) Definitions. As used in this clause?

?Indian? means?

(1) Any person who is a member of any Indian tribe, band, group, pueblo, or community that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs (BIA) in accordance with 25 U.S.C. 1452(c); and

(2) Any ?Native? as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

?Indian organization? means the governing body of any Indian tribe or entity established or recognized by the governing body of an Indian tribe for the purposes of 25 U.S.C. Chapter 17.

?Indian-owned economic enterprise? means any Indian-owned (as determined by the Secretary of the Interior) commercial, industrial, or business activity established or organized for the purpose of profit, provided that Indian ownership constitutes not less than 51 percent of the enterprise.

?Indian tribe? means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, that is recognized by the Federal Government as eligible for services from BIA in accordance with 25 U.S.C. 1452(c).

?Interested party? means a contractor or an actual or prospective offeror whose direct economic interest would be affected by the award of a subcontract or by the failure to award a subcontract.

?Native Hawaiian small business concern? means an entity that is?

(1) A small business concern as defined in Section 3 of the Small Business Act (15 U.S.C. 632) and relevant implementing regulations; and

(2) Owned and controlled by a Native Hawaiian as defined in 25 U.S.C. 4221(9).

(b) The Contractor shall use its best efforts to give Indian organizations, Indian-owned economic enterprises, and Native Hawaiian small business concerns the maximum practicable opportunity to participate in the subcontracts it awards, to the

fullest extent consistent with efficient performance of the contract.

(c) The Contracting Officer and the Contractor, acting in good faith, may rely on the representation of an Indian organization, Indian-owned economic enterprise, or Native Hawaiian small business concern as to its eligibility, unless an interested party challenges its status or the Contracting Officer has independent reason to question that status.

(d) In the event of a challenge to the representation of a subcontractor, the Contracting Officer will refer the matter to?

(1)(i) For matters relating to Indian organizations or Indian-owned economic enterprises:

U.S. Department of the Interior
Bureau of Indian Affairs
Attn: Bureau Procurement Chief
12220 Sunrise Valley Drive
Reston, VA 20191
Phone: 703-390-6433
Website: https://www.bia.gov/

(ii) The BIA will determine the eligibility and will notify the Contracting Officer.

(2)(i) For matters relating to Native Hawaiian small business concerns:

Department of Hawaiian Home Lands
PO Box 1879
Honolulu, HI 96805
Phone: 808-620-9500
Website: http://dhhl.hawaii.gov/

(ii) The Department of Hawaiian Home Lands will determine the eligibility and will notify the Contracting Officer.

(e) No incentive payment will be made?

(1) While a challenge is pending; or

(2) If a subcontractor is determined to be an ineligible participant.

(f)(1) The Contractor, on its own behalf or on behalf of a subcontractor at any tier, may request an incentive payment in accordance with this clause.

(2) The incentive amount that may be requested is 5 percent of the estimated cost, target cost, or fixed price included in the subcontract at the time of award to the Indian organization, Indian-owned economic enterprise, or Native Hawaiian small business concern.

(3) In the case of a subcontract for commercial products or commercial services, the Contractor may receive an incentive payment only if the subcontracted items are produced or manufactured in whole or in part by an Indian organization, Indian-owned economic enterprise, or Native Hawaiian small business concern.

(4) The Contractor has the burden of proving the amount claimed and shall assert its request for an incentive payment prior to completion of contract performance.

(5) The Contracting Officer, subject to the terms and conditions of the contract and the availability of funds, will authorize an incentive payment of 5 percent of the estimated cost, target cost, or fixed price included in the subcontract awarded to the Indian organization, Indian-owned economic enterprise, or Native Hawaiian small business concern.

(6) If the Contractor requests and receives an incentive payment on behalf of a subcontractor, the Contractor is obligated to pay the subcontractor the incentive amount.

(g) The Contractor shall insert the substance of this clause, including this paragraph (g), in all subcontracts exceeding $500,000.

(End of clause)

252.226-7002 Representation for Demonstration Project for Contractors

Employing Persons with Disabilities.

As prescribed in 226.7203, use the following provision:

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Attachment A1

DARS Tracking Number: 2026-O0008

Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 26

Defense FAR Supplement (DFARS) Part 226

REPRESENTATION FOR DEMONSTRATION PROJECT FOR CONTRACTORS EMPLOYING PERSONS WITH DISABILITIES (DEC 2019)

(a) Definitions. As used in this provision?

?Eligible contractor? means a business entity operated on a for-profit or nonprofit basis that?

(1) Employs severely disabled individuals at a rate that averages not less than 33 percent of its total workforce over the 12-month period prior to issuance of the solicitation;

(2) Pays not less than the minimum wage prescribed pursuant to 29 U.S.C. 206 to the employees who are severely disabled individuals; and

(3) Provides, for its employees, health insurance and a retirement plan comparable to those provided for employees by business entities of similar size in its industrial sector or geographic region.

?Severely disabled individual? means an individual with a disability (as defined in **42 U.S.C. 12102) who has a severe physical or mental impairment that seriously limits** one or more functional capacities.

(b) Demonstration Project. This solicitation is issued pursuant to the Demonstration Project for Contractors Employing Persons with Disabilities. The purpose of the Demonstration Project is to provide defense contracting opportunities for entities that employ severely disabled individuals. To be eligible for award, an offeror must be an eligible contractor as defined in paragraph (a) of this provision.

(c) Representation. The offeror represents that it [ ] is [ ] is not an eligible contractor as defined in paragraph (a) of this provision.

(End of provision)

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Attachment A2

DARS Tracking Number: 2026-O0008

Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 26

Defense FAR Supplement (DFARS) Part 226

PGI 226?OTHER SOCIOECONOMIC PROGRAMS

PGI 226.1?INDIAN INCENTIVE PROGRAM

PGI 226.103 Postaward.

(1) For more information on the Indian Incentive Program and to submit a request for funding, see the DoD Office of Small Business Programs website at https://business.defense.gov/Programs/Indian-Incentive-Program/.

(2) Upon receipt of funding from the Office of the Deputy Assistant Secretary of Defense (Industrial Policy), Office of Small Business Programs, issue a contract modification to add the Indian incentive funding for payment of the contractor?s request for adjustment as described in the clause at DFARS 252.226-7001, Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns.

PGI 226.72?DEMONSTRATION PROJECT FOR CONTRACTORS EMPLOYING PERSONS WITH DISABILITIES

PGI 226.7202 Procedures.

PGI 226.7202-1 Presolicitation

When electing to use the Demonstration Project?

(a) Prepare a written justification, in accordance with FAR part 6.103-5, limiting the competition to eligible contractors. The statutory basis for the Demonstration Project is 10 U.S.C. 3901 note prec.

(b) Establish an evaluation factor based upon the percentage of the offeror?s total workforce that consists of severely disabled individuals employed by the offeror. Contracting officers may use a rating method in which a higher percentage of the offeror?s total workforce consisting of severely disabled individuals would result in a higher rating for this evaluation factor.

PGI 226.7202-2 Postaward

(a) Contracts awarded to eligible contractors under this Demonstration Project are counted toward DoD?s small disadvantaged business goal. The contractor must be an eligible contractor when options under the contract are exercised, in order for DoD to continue to receive credit for the contract toward its small disadvantaged business goal.

(b) Contracting officers may exercise the option if the contractor has represented that it is not an eligible contractor; however, the contract will not count toward DoD?s small disadvantaged business goal.

Page 1 of 1

PART 27

OFFICE OF THE ASSISTANT SECRETARY OF WAR

Status: Class D

OFFICE OF THE ASSISTANT SECRETARY OF WAR

3000 DEFENSE PENTAGON

WASHINGTON, DC 20301-3000

ACQUISITION

AND SUSTAINMENT

In reply refer to

DARS Tracking Number: 2026-O0036

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES SPECIAL OPERATIONS

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES TRANSPORTATION

COMMAND (ATTN: ACQUISITION EXECUTIVE)

DEPUTY ASSISTANT SECRETARY OF THE ARMY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE NAVY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE

(CONTRACTING)

DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Class Deviation?Revolutionary Federal Acquisition Regulation (FAR) Overhaul

Part 27, Defense FAR Supplement (DFARS) Part 227

Effective February 1, 2026, contracting officers shall use?

? The revised FAR Part 27, Patents, Data, and Copyrights published on the Revolutionary FAR Overhaul web page at https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-27 in lieu of the text codified at 48 CFR chapter 1 (https://www.ecfr.gov).

? The attached DFARS Part 227, Patents, Data, and Copyrights in lieu of the text codified at 48 CFR chapter 2; and

? The attached DFARS Procedures, Guidance, and Information (PGI) 227, Patents, Data, and Copyrights in lieu of the PGI text published on the Defense Pricing, Contracting, and Acquisition Policy web page at https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.

This class deviation implements the following:

? Section 2 of E.O. 14275, Restoring Common Sense to Federal Procurement, which establishes the policy that the FAR ?should only contain provisions required by statute or essential to sound procurement, and any FAR provisions that do not

advance these objectives should be removed.
DARS Tracking Number: 2026-O0036
Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 27
Defense FAR Supplement (DFARS) Part 227
? Section 4(a) of E.O. 14265, Modernizing Defense Acquisitions and Spurring Innovation in the Defense Industrial Base which requires the Secretary of War to eliminate or revise any unnecessary supplemental regulations or any other internal guidance, such as relevant parts of the Financial Management Regulation and Defense Federal Acquisition Regulation Supplement.
? The Office of Management and Budget memorandum, M-25-26 issued on May 2, 2025, titled, Overhauling the Federal Acquisition Regulation, which provided additional guidance to federal agencies regarding the FAR overhaul.
This class deviation remains in effect until rescinded or incorporated into the FAR, DFARS, and DFARS PGI. Inquiries regarding this class deviation can be addressed to osd.pentagon.ousd-a-s.mbx.dfars@mail.mil.
John M. Tenaglia
Principal Director,
Defense Pricing, Contracting, and
Acquisition Policy
Attachments:
As stated
2
Attachment A1
DARS Tracking Number: 2026-O0036
Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 27
Defense FAR Supplement (DFARS) Part 227

PART 227?PATENTS, DATA, AND COPYRIGHTS

SUBPART 227.3?PATENT RIGHTS UNDER GOVERNMENT CONTRACTS

227.300 Scope of subpart.

In addition to FAR 27.300, this subpart provides patent-related procedures and contract clauses for use in Government contracts.

227.303 Contract clauses.

(1) Insert the clause at 252.227-7039, Patents?Reporting of Subject Inventions, in solicitations and contracts containing the clause at FAR 52.227-11, Patent Rights?Ownership by the Contractor.

(2)(i) Insert the clause at 252.227-7038, Patent Rights?Ownership by the Contractor (Large Business), instead of the clause at FAR 52.227-11, in solicitations and contracts for experimental, developmental, or research work if?

(A) The contractor is other than a small business concern or nonprofit organization; and

(B) No alternative patent rights clause is used in accordance with FAR **27.303(c) or (e).**

(ii) Insert the clause with its Alternate I if?

(A) The acquisition of patent rights for the benefit of a foreign government

is required under a treaty or executive agreement;

(B) The agency head determines at the time of award that it would be in the national interest to acquire the right to sublicense foreign governments or international organizations pursuant to any existing or future treaty or agreement; or

(C) Other rights are necessary to effect a treaty or agreement, in which case Alternate I may be modified.

(iii) Insert the clause with its Alternate II in long-term contracts if necessary to effect treaty or agreements to be entered into.

227.304 Procedures.

227.304-70 Reporting.

Interim and final invention reports and notification of all subcontracts for experimental, developmental, or research work may be submitted on DD Form 882, Report of Inventions and Subcontracts.

SUBPART 227.4?RIGHTS IN DATA AND COPYRIGHTS

227.400 Scope of subpart.

Use the procedures in subparts 227.71 and 227.72 instead of the guidance in FAR **subpart 27.4.**

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SUBPART 227.6?FOREIGN LICENSE AND TECHNICAL ASSISTANCE AGREEMENTS

227.670 [Reserved]

227.671 [Reserved]

227.672 [Reserved]

227.673 Foreign license and technical assistance agreements between the Government and domestic concerns.

See PGI 227.673 for guidance on foreign license and technical assistance agreements between the Government and domestic concerns.

227.674 Supply contracts between the Government and a foreign government or concern.

See PGI 227.674 for guidance on supply contracts between the Government and a foreign government or concern.

227.675 Foreign license and technical assistance agreements between a domestic concern and a foreign government or concern.

227.675-1 Statutes, regulations, and guidance.

See PGI 227.675-1 for a list of applicable export control statutes, regulations, and guidance.

227.675-2 Review of agreements.

See PGI 227.675-2 for guidance on review of foreign license and technical assistance agreements between a domestic concern and a foreign government or concern.

227.676 [Reserved]

SUBPART 227.70?[Reserved]

SUBPART 227.71?TECHNICAL DATA, COMPUTER SOFTWARE, COMPUTER SOFTWARE DOCUMENTATION, AND ASSOCIATED RIGHTS RELATED TO OTHER THAN COMMERCIAL PRODUCTS, COMPONENTS, SERVICES, PROCESSES, AND COMPUTER SOFTWARE

227.7100 Scope of subpart.

This subpart?

(a) Prescribes policies and procedures for the acquisition of technical data, computer software, computer software documentation, and the rights to use, modify, reproduce, release, perform, display, or disclose technical data. It implements the following laws and Executive Order:

(1) 10 U.S.C. 3013.

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(2) 10 U.S.C. 3208(d).

(3) 10 U.S.C. 3771-3775.

(4) 10 U.S.C. 3781-3786.

(5) 10 U.S.C. 8687.

(6) 17 U.S.C. 1301, et seq.

(7) Public Law 103-355.

(8) Executive Order 12591 (subsection 1(b)(7)).

(b) Does not apply to?

(1) Releases of technical data, computer software, and computer software documentation to litigation support contractors (see subpart 204.74); or

(2) Computer software or computer software documentation acquired under Federal Supply Schedule contracts or orders.

227.7101 Definitions.

As used in this subpart?

?Commercial computer software? means software developed or regularly used for nongovernmental purposes which?

(1) Has been sold, leased, or licensed to the public;

(2) Has been offered for sale, lease, or license to the public;

(3) Has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this contract; or

(4) Satisfies a criterion expressed in paragraph (1), (2), or (3) of this definition and would require only minor modification to meet the requirements of this contract.

?Computer program? means a set of instructions, rules, or routines recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.

?Computer software? means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer data bases or computer software documentation.

?Computer software documentation? means owner?s manuals, user?s manuals, installation instructions, operating instructions, and other similar items, regardless of

storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

?Contractor? means a contractor to include a contractor?s subcontractors, suppliers, or potential subcontractors or suppliers at any tier.

?Covered Government support contractor? means a contractor (other than a litigation support contractor covered by 252.204-7014) under a contract, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government?s management and oversight of a program or effort, rather than to directly furnish an end item or service to accomplish a program or effort, provided that the contractor?

(1) Is not affiliated with the prime contractor or a first-tier subcontractor on the program or effort, or with any direct competitor of such prime contractor or any such first-tier subcontractor in furnishing end items or services of the type developed or produced on the program or effort; and

(2) Receives access to technical data or computer software for performance of a Government contract that contains the clause at 252.227-7994, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

?Detailed manufacturing or process data? means technical data that describe the steps, sequences, and conditions of manufacturing, processing or assembly used by the manufacturer to produce an item or component or to perform a process.

?Developed? means?

(1) (Applicable to technical data other than computer software documentation.) An item, component, or process exists and is workable. Thus, the item or component must have been constructed or the process practiced. Workability is generally established when the item, component, or process has been analyzed or tested sufficiently to demonstrate to reasonable people skilled in the applicable art that there is a high probability that it will operate as intended. Whether, how much, and what type of analysis or testing is required to establish workability depends on the nature of the item, component, or process, and the state of the art. To be considered ?developed,? the item, component, or process need not be at the stage where it could be offered for sale or sold on the commercial market, nor must the item, component, or process be actually reduced to practice within the meaning of Title 35 of the United States Code;

(2) A computer program has been successfully operated in a computer and tested to

the extent sufficient to demonstrate to reasonable persons skilled in the art that the program can reasonably be expected to perform its intended purpose;

(3) Computer software, other than computer programs, has been tested or analyzed to the extent sufficient to demonstrate to reasonable persons skilled in the art that the software can reasonably be expected to perform its intended purpose; or

(4) Computer software documentation the contractor must deliver under a contract has been written, in any medium, in sufficient detail to comply with requirements under that contract.

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?Developed exclusively at private expense? means development was accomplished entirely with costs charged to indirect cost pools, costs not allocated to a Government contract, or any combination thereof.

(1) Private expense determinations should be made at the lowest practicable level.

(2) Under fixed-price contracts, when total costs are greater than the firm-fixed-price or ceiling price of the contract, the additional development costs necessary to complete development shall not be considered when determining whether development was at Government, private, or mixed expense.

?Developed exclusively with Government funds? means development was not accomplished exclusively or partially at private expense.

?Developed with mixed funding? means development was accomplished partially with costs charged to indirect cost pools and/or costs not allocated to a government contract, and partially with costs charged directly to a government contract.

?Form, fit, and function data? means technical data that describe the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.

?Generated means?, with regard to technical data or computer software, first created in the performance of this contract.

?Government purpose? means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations, or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose technical data, computer software, or computer software documentation for commercial purposes or authorize others to do so.

?Government purpose rights? means the rights to?

(1) Use, modify, reproduce, release, perform, display, or disclose technical data, computer software, or computer software documentation within the Government without restriction; and

(2) Release or disclose technical data, computer software, or computer software documentation outside the Government and authorize persons to whom release or

disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data or software for United States Government purposes.
?Limited rights? means the rights to use, modify, reproduce, release, perform, display, or disclose technical data, in whole or in part, within the Government. The Government may not, without the written permission of the party asserting limited rights, release or disclose the technical data outside the Government, use the technical data for manufacture, or authorize the technical data to be used by another party, except that

the Government may reproduce, release, or disclose such data or authorize the use or reproduction of the data by persons outside the Government if?

(1) The reproduction, release, disclosure, or use is?

(i) Necessary for emergency repair and overhaul; or

(ii) A release or disclosure to?

(A) A covered Government support contractor in performance of its covered Government support contract for use, modification, reproduction, performance, display, or release or disclosure to a person authorized to receive limited rights technical data; or

(B) A foreign government, of technical data other than detailed manufacturing or process data, when use of such data by the foreign government is in the interest of the Government and is required for evaluational or informational purposes;

(2) The recipient of the technical data is subject to a prohibition on the further reproduction, release, disclosure, or use of the technical data; and

(3) The contractor or subcontractor asserting the restriction is notified of such reproduction, release, disclosure, or use.

?Offeror? means an offeror to include an offeror?s subcontractors, suppliers, or potential subcontractors or suppliers at any tier.
?Other than commercial computer software? means software that does not qualify as commercial computer software under the definition of ?commercial computer software? of this clause.
?Restricted rights? apply only to other than commercial computer software and mean the Government?s rights to?

(1) Use a computer program with one computer at one time. The program may not be accessed by more than one terminal or central processing unit or time shared unless otherwise permitted by this contract;

(2) Transfer a computer program to another Government agency without the further permission of the Contractor if the transferor destroys all copies of the program and related computer software documentation in its possession and notifies the licensor of the transfer. Transferred programs remain subject to the provisions of this clause;

(3) Make a reasonable number of copies of the computer software required for the purposes of safekeeping (archive), backup, modification, or other activities authorized in paragraphs (1), (2), (4) and (5) of this definition;

(4) Modify computer software provided that the Government may?

(i) Use the modified software only as provided in paragraphs (1) and (3) of this definition; and

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(ii) Not release or disclose the modified software except as provided in paragraphs (2) and (5) of this clause;

(5) Use, modify, reproduce, perform, display, or release or disclose the computer software, and permit contractors, subcontractors, or covered Government support contractors to do so, for purposes set forth in subparagraph (i) of this paragraph, subject to the conditions set forth in subparagraphs (ii) of this paragraph:

(i)(A) In performance of service contracts (see FAR 37.101), to diagnose and correct deficiencies, to modify the software to enable a computer program to be combined with, adapted to, or merged with other computer programs, or when necessary to respond to urgent tactical situations, provided that the Government notifies the party which has granted restricted rights that any such release or disclosure to particular contractors or subcontractors was made;

(B) To perform emergency repairs or overhaul of items or components procured under this or a related contract, when necessary to perform such repairs or overhaul; or

(C) For the management and oversight of a program or effort by a person authorized to receive restricted rights computer software, including in the performance of covered Government support contracts.

(ii)(A) Any contractor, subcontractor, or covered Government support contractor receiving access to the software for the purposes of subparagraphs (i), (ii), or (iii) of this paragraph must either be subject to the use and nondisclosure agreement at 227.7103-7 or be performing a Government contract that contains the clause at 252.227-7994, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends;

(B) The Government must not permit any recipient of the software under this paragraph to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (4) of this definition, for any other purpose; and

(C) Any use, modification, reproduction, performance, display, release, or disclosure of the computer software under this paragraph remains subject to the limitations in paragraphs (1) through (4) of this definition.

?Small Business Innovation Research/Small Business Technology Transfer

(SBIR/STTR) data? means all technical data or computer software developed or generated in the performance of a phase I, II, or III SBIR/STTR contract or subcontract.

?SBIR/STTR data protection period? means the time period during which the Government is obligated to protect SBIR/STTR data against unauthorized use and disclosure in accordance with SBIR/STTR data rights. The SBIR/STTR data protection

period begins on the date of award of the contract under which the SBIR/STTR data are developed or generated and ends 20 years after that date unless, after the award, the agency and the Contractor negotiate for some other protection period for the SBIR/STTR data developed or generated under that contract.
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?Technical data? means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or financial, administrative, cost or pricing, or management information, or information incidental to contract administration.
?Unlimited rights? means rights to use, modify, reproduce, perform, display, release, or disclose technical data, computer software, or computer software documentation in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

227.7102 [Reserved]

227.7103 Other than commercial products, commercial services, commercial processes, commercial computer software, or commercial computer software documentation.

227.7103-1 Policy.

(a) DoD policy is to acquire only the technical data, computer software, and computer software documentation, and the associated rights, necessary to satisfy agency needs.

(b) Contracting officers must ensure that solicitations and contracts?

(1) Specify the technical data, computer software, and computer software documentation the contractor must deliver under a contract and delivery schedules for the data;

(2) Specify procedures for determining the acceptability of technical data, computer software, and computer software documentation;

(3) Specify separate line items, to the extent practicable, for the technical data, computer software, and computer software documentation the contractor must deliver under a contract and require offerors and contractors to price each deliverable data or computer software item separately; and

(4) Require offerors and contractors to identify, to the extent practicable, technical data and computer software they will furnish or deliver with restrictions on the Government?s rights in the technical data or computer software.

(c) Do not require offerors, either as a condition of being responsive to a solicitation or as a condition for award, to sell or otherwise relinquish to the Government any rights in computer software developed at private expense or technical data related to items, components or processes developed at private expense except for the data or the software identified at 227.7103-5(a)(2), (4) through (9), and (12) through (15).

(d) Do not prohibit offerors and contractors from furnishing or offering to furnish computer software, items, components, or processes developed at private expense solely

because the Government?s rights to use, modify, release, reproduce, perform, display, or disclose computer software or technical data related to those items may be restricted.

(e) Solicitations for major systems development contracts must not require offerors to submit proposals that would permit the Government to competitively acquire items identical to items developed at private expense unless a determination is made at a level above the contracting officer (10 U.S.C. 3208). The determination must address the following:

(1) The offeror will not be able to satisfy program schedule or delivery requirements.

(2) The offeror?s proposal to meet mobilization requirements does not satisfy mobilization needs.

(f) For acquisitions involving major weapon systems or subsystems of major weapon systems, the acquisition plan must address acquisition strategies that provide for technical data, computer software, computer software documentation, and the associated license rights in accordance with 207.106-70.

(g) The Government?s rights in a vessel design, and in any useful article embodying a vessel design, must be consistent with the Government?s rights in technical data related to the design (10 U.S.C. 8687; 17 U.S.C. 1301(a)(3)).

227.7103-3 Identification of restrictions on the Government?s right to use, reproduce or disclose technical data or computer software.

(a)(1)(i) Offerors are required to identify to the contracting officer, prior to contract award, any technical data or computer software that the offeror asserts should be provided to the Government with restrictions on use, modification, reproduction, release or disclosure. Offerors are required to attach the notification and identification to their offer.

(ii)(A) An offeror?s failure to submit the attachment or to complete it in accordance with the provision?

(1) Constitutes a minor informality within the meaning of FAR **part 14; or**

(2) Provides reason to seek clarification within the meaning of FAR **part 15.**

(B) Provide the offeror an opportunity to remedy the failure under the procedures in FAR part 14 or 15. If the offeror does not correct the error, its offer will be ineligible for award.

(2)(i) Contracting officers may request information to enable the review and evaluation of any offeror-provided assertion. Resolve questions regarding the validity of asserted restrictions prior to contract award.

(ii) After award of the contract, use the procedures at 227.7103-13 to evaluate an asserted restriction or asserted rights category.

(3) The Government may use information that offerors provide in response to the provision at 252.227-7992 during source selection to evaluate the impact of restrictions on the Government?s ability to use or disclose technical data or computer software. Do not?

(i) Prohibit offerors from offering products for which the offeror is entitled to provide the technical data or computer software with restrictions; or

(ii) Require offerors, either as a condition of being responsive to a solicitation or as a condition for award, to sell or otherwise relinquish rights in technical data or computer software except for the standard rights specified in the applicable clauses.

(4) Attach the successful offeror?s assertions to the contract unless, in accordance with the procedures at 227.7103-13, the parties have agreed that an asserted restriction is not justified. Validate that the contract attachment contains the same information regarding identification of the technical data, the asserted rights category, the basis for the assertion, and the name of the person asserting the restrictions that the offeror provided in response to the solicitation.

(5) Neither the contractor?s pre- or post-award assertions, nor the fact that the attachment to the contract identifies certain assertions, determines the respective rights of the parties. As provided at 227.7103-13, the Government has the right to review, verify, challenge and validate restrictive markings.

(b) [Reserved]

(c) After award of the contract, the contractor may make additional assertions under certain conditions. The contractor is required to make any additional assertions in accordance with the applicable clause.

227.7103-4 License rights.

(a) Grant of license. (1)(i) The Government obtains rights in technical data, computer software, and computer software documentation, including a copyright license, under an irrevocable license granted or obtained for the Government by the contractor. The contractor or licensor retains all rights in the data or software not granted to the Government.

(ii) For technical data related to items, components, or processes, the source of funds used to develop the item, component, or process generally determines the scope of the license.

(iii) When the technical data do not relate to items, components, or processes, the source of funds used to create the data determines the scope of the license.

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(iv) For computer software licenses, the source of funds used to develop the software generally determines the scope of the license.

(2) Technical data and computer software.

(i) Development exclusively at private expense; limited rights and restricted rights.

(A) Contractors or licensors may restrict the Government's rights to use, modify, release, reproduce, perform, display or disclose:

(1) Technical data related to items, components, or processes developed exclusively at private expense unless an exception at 227.7103-5(a) applies; or

(2) Computer software developed exclusively at private expense, except as provided at 227.7103-5(a)(12) through (15).

(B) The Government has a limited rights or restricted rights license in such technical data or computer software described in paragraph (A).

(ii) Development exclusively at Government expense; unlimited rights.

(A) Contractors or licensors may not restrict the Government?s rights in technical data related to items, components, processes developed exclusively at Government expense without the Government?s approval.

(B) Contractors or licensors may not, without the Government?s agreement, restrict the Government?s rights in computer software developed exclusively with Government funds or in computer software documentation that is a required deliverable under a contract.

(C) The Government has an unlimited rights license in such technical data or computer software described in paragraphs (A) and (B).

(iii) Development with mixed funding; government purpose rights.

(A) When an item, component, or process is developed with mixed funding, except as provided at 227.7103-5(a)(2), (a)(4) through (9), and (a)(11), the Government may use, modify, release, reproduce, perform, display or disclose the technical data related to such items, components, or processes within the Government without restriction but may release or disclose the data outside the Government only for government purposes.

(B) When computer software is developed with mixed funding, except as provided at 227.7103-5(a)(12) through (15), the Government may use, modify, release, reproduce, perform, display or disclose the computer software within the Government without restriction but may release or disclose the computer software outside the Government only for government purposes.

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(C) The Government has a government purpose rights license in such

technical data or computer software described in paragraphs (A) and (B).

(3) Technical data that do not relate to items, components, or processes. Technical data may be created during the performance of a contract for a conceptual design or similar effort that does not require the development, manufacture, construction, or production of items, components or processes. The Government generally obtains unlimited rights in such data when the data were created exclusively with Government funds, government purpose rights when the data were created with mixed funding, and limited rights when the data were created exclusively at private expense.

(b) Source of funds determination. (1) Agencies should make the determination of the source of development funds for technical data related to items, components, or processes at any practical sub-item or subcomponent level or for any segregable portion of a process. Contractors may assert limited rights in a segregable sub-item, sub-component, or portion of a process which otherwise qualifies for limited rights under the clause at 252.227-7989, Rights in Technical Data, Computer Software, and Computer Software Documentation?Other Than Commercial Products and Commercial Services.

(2) Agencies should make the determination of the source of funds used to develop computer software at the lowest practicable segregable portion of the software or documentation (e.g., a software sub-routine that performs a specific function). Contractors may assert restricted rights in a segregable portion of computer software which otherwise qualifies for restricted rights.

227.7103-5 Government rights.

The standard license rights that a licensor grants to the Government are unlimited rights, government purpose rights, limited rights, or restricted rights. In unusual situations, the standards rights may not satisfy the Government?s needs, or the Government may be willing to accept lesser rights in data or computer software in return for other consideration. In those cases, a special license may be negotiated. However, the licensor is not obligated to provide the Government greater rights, and the contracting officer is not required to accept lesser rights than the rights provided in the standard grant of license. The situations under which a particular grant of license applies are listed in paragraphs (a) through (d) of this section.

(a) Unlimited rights. The Government obtains unlimited rights in technical data, computer software, or computer software documentation that are?

(1) Technical data related to an item, component, or process which has been or will be developed exclusively with Government funds;

(2) Studies, analyses, test data, or similar data produced in the performance of a contract when the study, analysis, test, or similar work was specified as an element of performance;

(3) Created exclusively with Government funds in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes;

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(4) Form, fit, and function data;

(5) Necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data);

(6) Corrections or changes to?

(i) Government-furnished technical data; or

(ii) Government-furnished computer software or computer software documentation;

(7) Technical data, computer software, or computer software documentation that?

(i) Is publicly available; or

(ii) Was previously released or disclosed by the contractor or subcontractor without restrictions on further use, release or disclosure other than a release or disclosure resulting from?

(A) The sale, transfer, or other assignment of interest in the technical data or computer software to another party; or

(B) The sale or transfer of some or all of a business entity or its assets to another party;

(8) Technical data, computer software, or computer software documentation in which the Government has obtained unlimited rights under another Government contract or as a result of negotiations; or

(9) Technical data, computer software, or computer software documentation furnished to the Government, under a Government contract or subcontract , with?

(i) Restricted rights in computer software, limited rights in technical data, or government purpose license rights and the restrictive conditions have expired; or

(ii) Government purpose rights and the contractor?s exclusive right to use such technical data or computer software for commercial purposes has expired.

(10) Computer software developed exclusively with Government funds; or

(11) Computer software documentation the contractor must deliver under a Government contract.

(b) Government purpose rights. (1) The Government obtains government purpose rights in?

(i) Technical data related to items, components, or processes developed with mixed funding except when the Government is entitled to unlimited rights as provided in paragraphs (a)(2) and (a)(4) through (9) of this section; or

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(ii) Technical data created with mixed funding in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes; or

(iii) Computer software developed with mixed funding.

(2) The period during which government purpose rights are effective is

negotiable. A five year period is nominal. Either the Government or the contractor may request a different period.

(3) The government purpose rights period begins upon execution of the contract, subcontract, or similar contractual instrument that required the development. Upon expiration of the Government rights period, the Government has unlimited rights in the data or software including the right to authorize others to use the data or software for commercial purposes.

(4) During the government purpose rights period, the Government may not use, or authorize other persons to use, technical data or computer software marked with government purpose rights legends for commercial purposes. The Government will not release or disclose data or software in which it has government purpose rights to any person, or authorize others to do so, unless?

(i) Prior to release or disclosure, the intended recipient is subject to the use and nondisclosure agreement at 227.7103-7; or

(ii) The intended recipient is a Government contractor receiving access to the data or software for performance of a Government contract that contains the clause at 252.227-7994, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

(5) When the Government will release or disclose technical data or computer software marked with government purpose rights legends to a contractor performing under a contract that does not include the clause at 252.227-7994, modify the contract prior to release or disclosure, to include that clause in lieu of requiring the contractor to complete a use and nondisclosure agreement.

(6)(i) Agencies must establish procedures to prevent the release or disclosure of marked technical data or computer software with government purpose rights legends to entities that are not subject to use and disclosure restrictions. .

(ii) Public announcements in the System for Award Management or other publications must provide notice of the use and nondisclosure requirements.

(iii) Consider using class use and nondisclosure agreements (e.g., agreements covering all solicitations received by the XYZ company within a reasonable period). Enter into class agreements at any time prior to release or disclosure of the government purpose rights data or software. Documents transmitting government purpose rights data or software to persons under class agreements must identify the technical data or computer software subject to government purpose rights and the class agreement providing such data or software.

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(c) Limited rights. (1) The Government obtains limited rights in technical data?

(i) Related to items, components, or processes developed exclusively at private expense except when the Government is entitled to unlimited rights as provided in paragraphs (a)(2) and (a)(4) through (9) of this section; or

(ii) Created exclusively at private expense in the performance of a contract

that does not require the development, manufacture, construction, or production of items, components, or processes.

(2) Do not use, release, or disclose data in which the Government has limited rights outside the Government without the permission of the contractor asserting the restriction except when it is?

(i) Necessary for emergency repair and overhaul;

(ii) To a covered Government support contractor; or

(iii) To a foreign government, other than detailed manufacturing or process data, when use, release, or disclosure is in the interest of the United States and is required for evaluational or informational purposes.

(3) The Government must notify the person asserting limited rights of its intent to release, disclose, or authorize others to use such data prior to release or disclosure of the data, except for emergency repair or overhaul. For emergency repair or overhaul, the Government will make the notification as soon as practicable.

(4) If the person asserting limited rights permits the Government to release, disclose, or have others use the data subject to restrictions on further use, release, or disclosure, or for a release under paragraph (c)(2)(i), (ii), or (iii) of this section, the intended recipient must, prior to receiving the limited rights data, either?

(i) Complete the use and nondisclosure agreement at 227.7103-7; or

(ii) Be performing under a Government contract that contains the clause at **252.227-7994.**

(d) Restricted rights. (1) The Government obtains restricted rights in other than commercial computer software the contractor must deliver or otherwise provide to the Government under a contract that was developed exclusively at private expense.

(2)(i) Contractors are not required to provide the Government additional rights in computer software delivered or otherwise provided to the Government with restricted rights.

(ii) When the Government has a need for additional rights, negotiate with the contractor to determine acceptable terms for transferring such rights. Any resulting license agreement, made part of the contract (see paragraph (e) of this section), must list or describe all software for which the contractor has granted the Government additional rights, and specify the additional rights granted.

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(e) Specifically negotiated license rights. (1)(i) Negotiate specific licenses when the parties agree to modify the standard license rights granted to the Government or when the Government needs to obtain rights in data or software in which it does not have rights.

(ii) When negotiating to obtain, relinquish, or increase the Government?s rights in technical data, consider the acquisition strategy for the item, component, or process, including logistics support and other factors relevant to a particular procurement.

(iii) When negotiating to obtain, relinquish, or increase the Government?s rights in computer software, consider the planned software maintenance philosophy, anticipated time or user sharing requirements, and other factors relevant to a particular procurement.

(iv) The Government may accept lesser rights when it has unlimited or government purpose rights in data or software but may not accept less than limited rights or restricted rights in such data or software, respectively.

(v) The negotiated license rights must stipulate what rights the Government has to release or disclose the data or software to other persons or to authorize others to use the data or software.

(vi) Identify all negotiated rights in a license agreement that are made part of the contract.

(2)(i) When the Government needs additional rights in data or software acquired with government purpose, limited rights, or restricted rights, negotiate with the contractor to determine acceptable terms for transferring such rights. Generally, conduct such negotiations only when?

(A) A need exists to disclose the data or software outside the Government; or

(B) The additional rights are required for competitive reprocurement and the anticipated savings through competition will likely exceed the acquisition cost of the additional rights.

(ii) Prior to negotiating for additional rights in limited rights data, consider alternatives such as?

(A) Using performance specifications and form, fit, and function data to acquire or develop functionally equivalent items, components, or processes;

(B) Obtaining a contractor?s contractual commitment to qualify additional sources and maintain adequate competition among the sources; or

(C) Reverse engineering, or providing items from Government inventories to contractors who request the items to facilitate the development of equivalent items through reverse engineering.

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227.7103-6 Solicitation provisions and contract clauses.

(a)(1) Insert the clause at 252.227-7989, Rights in Technical Data, Computer Software, and Computer Software Documentation?Other Than Commercial Products and Commercial Services, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures, when the contract requires delivery of technical data?

(i) Related to other than commercial products or commercial services; or

(ii) Related to commercial products or commercial services for which the Government will have paid for any portion of the development costs. For such contracts?

(A) The clause at 252.227-7989 will govern the technical data related to any portion of a commercial product or commercial service that was developed in any **part at Government expense; and**

(B) The clause at 252.227-7990will govern the technical data related to any portion of a commercial product or commercial service that was developed exclusively at private expense.

(2) Do not use the clause when the only deliverable items are commercial products or commercial services developed exclusively at private expense (see 227.7102-4), existing works (see 227.7105), or special works (see 227.7106).

(3) When contracting under the Small Business Innovation Research (SBIR) Program or the Small Business Technology Transfer (STTR) Program, see 227.7104-**4(a).**

(b)(1) Insert the clause at 252.227-7989 with its Alternate I in research solicitations and contracts, including research solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, upon determining that public dissemination by the contractor would be?

(i) In the interest of the government; and

(ii) Facilitated by the Government relinquishing its right to publish the work for sale, or to have others publish the work for sale on behalf of the Government.

(2) Insert the clause at 252.227-7989 with its Alternate II in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, for the development or delivery of a vessel design or any useful article embodying a vessel design.

(c) Insert the clause at 252.227-7989 in solicitations and contracts when the contract will require the successful offeror to deliver other than commercial computer software or other than commercial computer software documentation.

(d) [Reserved]

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(e) Insert the clause at 252.227-7994, Limitations on the Use or Disclosure of Government Furnished Information Marked with Restrictive Legends, in solicitations and contracts if the Government anticipates providing the contractor, other than a litigation support contractor, technical data marked with another contractor?s restrictive legend for performance of its contract.

(f) Insert the provision at 252.227-7028, Technical Data or Computer Software Previously Delivered to the Government, in solicitations when the resulting contract will require the contractor to deliver technical data.

(g) Insert the following provisions and clauses in solicitations and contracts that include the clause at 252.227-7989:

(1) 252.227-7991, Rights in Bid or Proposal Information.

(2) 252.227-7992, Identification and Assertion of Use, Release, or Disclosure

Restrictions.

(3) 252.227-7996, Technical Data?Withholding of Payment.

(4) 252.227-7997, Validation of Asserted Restrictions (paragraph (e) of the clause contains information that must be included in a challenge).

(h) Insert the clause at 252.227-7995, Deferred Ordering of Technical Data or Computer Software, when a potential need exists for technical data, computer software or computer software documentation, but a firm requirement for the particular data item is not established prior to contract award.

227.7103-7 Use and nondisclosure agreement.

(a) Except as provided in paragraph (b) of this section, agencies may not provide technical data or computer software delivered to the Government with restrictions on use, modification, reproduction, release, performance, display, or disclosure to third parties, until the intended recipient completes and signs the use and nondisclosure agreement at paragraph (c) of this section.

(1) In an attachment to the use and nondisclosure agreement, the Government must stipulate the specific conditions under which an intended recipient will be authorized to use, modify, reproduce, release, perform, display, or disclose technical data or computer software subject to limited rights, restricted rights, or SBIR/STTR data rights.

(2) Modify paragraph (1)(d) of the use and nondisclosure agreement in paragraph (c) of this section to enter the conditions for an intended release, disclosure or authorized use of technical data or computer software subject to special license rights, consistent with the license requirements, governing the recipient?s obligations regarding use, modification, reproduction, release, performance, display, or disclosure of the data or software.

(b) Requirements for use and nondisclosure agreements does not apply to Government contractors needing access to a third party?s data or software for the performance of a Government contract that contains the clause at 252.227-7994, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

(c) The prescribed use and nondisclosure agreement is:

Use and NonDisclosure Agreement

The undersigned, _____ (Insert Name) _____, an authorized representative of the _____ (Insert Company Name) _____,

(which is hereinafter referred to as the ?Recipient?) requests the Government to provide the Recipient with technical data or computer software (hereinafter referred to as ?Data?) in which the Government?s use, modification, reproduction, release, performance, display or disclosure rights are restricted. Those Data are identified in an attachment to this Agreement. In consideration for receiving such Data, the Recipient agrees to use the Data strictly in accordance with this Agreement:

(1) The Recipient shall?

(a) Use, modify, reproduce, release, perform, display, or disclose Data marked with government purpose rights or SBIR/STTR data rights legends (after expiration of the SBIR/STTR data protection period provided in the SBIR/STTR data rights legend) only for government purposes and shall not do so for any commercial purpose. The Recipient shall not release, perform, display, or disclose these Data, without the express written permission of the contractor whose name appears in the restrictive legend (the ?Contractor?), to any person other than its subcontractors or suppliers, or prospective subcontractors or suppliers, who require these Data to submit offers for, or perform, contracts with the Recipient. The Recipient shall require its subcontractors or suppliers, or prospective subcontractors or suppliers, to sign a use and nondisclosure agreement prior to disclosing or releasing these Data to such persons. Such agreement must be consistent with the terms of this agreement.

(b) Use, modify, reproduce, release, perform, display, or disclose technical data marked with limited rights legends or SBIR/STTR data rights legends only as specified in the attachment to this Agreement. Release, performance, display, or disclosure to other persons is not authorized unless specified in the attachment to this Agreement or expressly permitted in writing by the Contractor. The Recipient shall promptly notify the Contractor of the execution of this Agreement and identify the Contractor?s Data that has been or will be provided to the Recipient, the date and place the Data were or will be received, and the name and address of the Government office that has provided or will provide the Data.

(c) Use computer software marked with restricted rights or SBIR/STTR data rights legends only in performance of Contract Number ____[insert contract number(s))]. The recipient shall not, for example, enhance, decompile, disassemble, or reverse engineer the software; time share, or use a computer program with more than one computer at a time. The recipient may not release, perform, display, or disclose such software to others unless expressly permitted in writing by the licensor whose name appears in the restrictive legend. The Recipient shall promptly notify the software licensor of the

execution of this Agreement and identify the software that has been or will be provided to the Recipient, the date and place the software were or will be received, and the name and address of the Government office that has provided or will provide the software.

(d) Use, modify, reproduce, release, perform, display, or disclose Data marked with special license rights legends. [To be completed by the contracting officer. See 227.7103-**7(a)(2). Omit if none of the data requested is marked with special license rights** legends.]

(2) The Recipient agrees to adopt or establish operating procedures and physical security measures designed to protect these Data from inadvertent release or disclosure to unauthorized third parties.

(3) The Recipient agrees to accept these Data ?as is? without any Government

representation as to suitability for intended use or warranty whatsoever. This disclaimer does not affect any obligation the Government may have regarding Data specified in a contract for the performance of that contract.

(4) The Recipient may enter into any agreement directly with the Contractor with respect to the use, modification, reproduction, release, performance, display, or disclosure of these Data.

(5) The Recipient agrees to indemnify and hold harmless the Government, its agents, and employees from every claim or liability, including attorneys? fees, court costs, and expenses arising out of, or in any way related to, the misuse or unauthorized modification, reproduction, release, performance, display, or disclosure of Data received from the Government with restrictive legends by the Recipient or any person to whom the Recipient has released or disclosed the Data.

(6) The Recipient is executing this Agreement for the benefit of the Contractor. The Contractor is a third party beneficiary of this Agreement who, in addition to any other rights it may have, is intended to have the rights of direct action against the Recipient or any other person to whom the Recipient has released or disclosed the Data, to seek damages from any breach of this Agreement or to otherwise enforce this Agreement.

(7) The Recipient agrees to destroy these Data, and all copies of the Data in its possession, no later than 30 days after the date shown in paragraph (8) of this Agreement, to have all persons to whom it released the Data do so by that date, and to notify the Contractor that the Data have been destroyed.

(8) This Agreement shall be effective for the period commencing with the Recipient?s execution of this Agreement and ending upon _____ (Insert Date) _____. The obligations imposed by this Agreement shall survive the expiration or termination of the Agreement.

Recipient?s Business Name _____

By _____

Authorized Representative _____

Date

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Representative?s Typed Name _____

and Title _____

(End of use and nondisclosure agreement)

227.7103-8 Deferred ordering of technical data.

Order as necessary any technical data, computer software or computer software documentation generated in the performance of the contract or subcontract at any time until three years after acceptance of all items (other than technical data or computer software) under the contract or contract termination, whichever is later. See the clause at 252.227-7995, Deferred Ordering of Technical Data or Computer Software.

227.7103-9 Copyright.

(a) Copyright license. (1) Contractors are required to grant or obtain for the Government license rights permitting the Government to reproduce data, distribute copies of the data, software, or software documentation, publicly perform or display the data, software, or software documentation or, through the right to modify data, prepare derivative works. The extent to which the Government, and others acting on its behalf, may exercise these rights varies for each of the standard data rights licenses obtained under the contract. When negotiating non-standard license rights in technical data or computer software, negotiate the extent of the copyright license as a part of the negotiations for the data rights license. Do not negotiate a copyright license that provides less rights than the standard limited rights license in technical data or restricted rights license in computer software.

(2) Contractors are not permitted to incorporate a third party?s copyrighted data into a deliverable data or software item unless the contractor has obtained an appropriate license for the Government and, when applicable, others acting on the Government?s behalf. Grant approval to use third-party copyrighted data or software in which the Government will not receive a copyright license only when the Government?s requirements cannot be satisfied without the third-party material or when the use of the third-party material will result in cost savings to the Government which outweigh the lack of a copyright license.

(b) Copyright considerations?acquisition of existing and special works. See **227.7105 or 227.7106 for copyright considerations when acquiring existing or special** works that are not SBIR/STTR data.

227.7103-10 Contractor identification and marking of technical data or computer software to be delivered with restrictive markings.

(a) Contractor marking requirements. Contractors are required to?

(1) Place restrictive markings on the data or software, provide instructions for the placement of the restrictive markings, and authorize the use of certain restrictive markings when restricting the Government?s rights in technical data or computer software; and

(2) Deliver, furnish, or otherwise provide to the Government any technical data or computer software in which the Government has previously obtained rights with the

Government?s preexisting rights in that data or software, unless restrictions on the Government?s rights have expired. When restrictions still apply, the contractor is permitted to mark the data or software with the appropriate restrictive legend for which the data or software qualified.

(b) Unmarked technical data. (1) Presume technical data or computer software delivered or otherwise provided with unlimited rights under a contract without restrictive markings may be released or disclosed without restriction. To the extent practicable, if a contractor has requested permission (see paragraph (b)(2) of this

section) to correct an inadvertent omission of markings, do not release or disclose the technical data or computer software pending evaluation of the request.

(2) A contractor may request permission to have appropriate legends placed on unmarked technical data or computer software at its expense. The request must be received by the contracting officer within 6 months following the furnishing or delivery of such data or software, or any extension of that time approved by the contracting officer. The person making the request must:

(i) Identify the technical data or computer software that should have been marked;

(ii) Demonstrate that the omission of the marking was inadvertent, the proposed marking is justified and conforms with the requirements for the marking of technical data or computer software contained in the contract; and

(iii) Acknowledge, in writing, that the Government has no liability with respect to any disclosure, reproduction, or use of the technical data or computer software made prior to the addition of the marking or resulting from the omission of the marking.

(3) Contracting officers should grant permission to mark only if the technical data or computer software were not distributed outside the Government or were distributed outside the Government with restrictions on further use or disclosure.

227.7103-11 Contractor procedures and records.

(a) Contractors, and their subcontractors or suppliers that will deliver technical data or computer software with other than unlimited rights, are required to establish and follow written procedures to assure that restrictive markings are used only when authorized and to maintain records to justify the validity of asserted restrictions on delivered data or software.

(b) Contractors are required to maintain sufficient records to justify the validity of restrictive markings on technical data or computer software the contractor must deliver under a Government contract.

227.7103-12 Government right to establish conformity of markings.

(a) Nonconforming markings. (1) The marking requirements in the applicable clauses prescribe the content and format of authorized markings on technical data and computer software. All other markings are nonconforming markings. An authorized

marking that is not in the form, or differs in substance, from the marking requirements in the clauses at 252.227-7989 and 252.227-7993 is also a nonconforming marking.

(2) Notify the contractor or offeror of technical data or computer software bearing nonconforming markings to provide that person an opportunity to correct or strike the nonconforming marking at that person?s expense. If the contractor or offeror fails to correct the nonconformity and deliver the corrected data within 60 days following the person?s receipt of the data or software, the contracting officer may correct

or strike the nonconformity at that person?s expense. Prior to correction, the Government may use the data in accordance with the proper restrictive marking.

(b) Unjustified markings. (1) An unjustified marking is an authorized marking that does not accurately depict restrictions applicable to the Government?s use, modification, reproduction, release, performance, display, or disclosure of the marked technical data or computer software. Accordingly, a limited rights legend placed on technical data related to items, components, or processes developed under a Government contract either exclusively at Government expense or with mixed funding

(situations under which the Government obtains unlimited or government purpose rights) is an unjustified marking. Similarly, a restricted rights legend placed on computer software developed under a Government contract either exclusively at Government expense or with mixed funding is an unjustified marking.

(2) The contracting officer has the right to review and challenge the validity of unjustified markings. However, at any time during performance of a contract and notwithstanding existence of a challenge, the contracting officer and the person who has asserted a restrictive marking may agree that the restrictive marking is not justified. Upon such agreement, the contracting officer may either?

(i) Strike or correct the unjustified marking at that person?s expense; or

(ii) Instruct the person asserting the restriction to correct the technical data or computer software at that person?s expense. If the person fails to correct or strike the unjustified restriction and deliver the corrected data or software to the contracting officer within 60 days following this instruction, strike or correct the unjustified marking at that person?s expense.

227.7103-13 Government right to review, verify, challenge, and validate asserted restrictions.

(a) General. (1) An offeror?s assertion of restrictions on the Government?s rights to use, modify, reproduce, release, or disclose technical data or computer software do not, by themselves, determine the extent of the Government?s rights in the technical data or computer software.

(2) Review asserted restrictions before acceptance of technical data and computer software deliverables under a contract.

(3) The contracting officer may challenge asserted restrictions when reasonable grounds exist to believe an assertion is not valid.

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(b) Pre-award considerations. See 227.7103-3(a) for guidance on pre-award review of asserted restrictions.

(c) Challenge considerations and presumption.

(1) Requirements to initiate a challenge. (i) Contracting officers must have reasonable grounds to challenge the validity of an asserted restriction. Before issuing a challenge to an asserted restriction, carefully consider all available information related to the assertion.

(ii) A need for additional license rights is not, by itself, a sufficient basis for requesting information concerning an asserted restriction.

(iii) Follow the procedures at 227.7103-5(e) when the Government needs additional license rights but has no grounds to challenge an asserted restriction.

(2) Commercial products and commercial services?presumption regarding development exclusively at private expense.

(i) Presume that a commercial product or commercial service was developed exclusively at private expense whether or not a contractor or subcontractor submits a justification in response to a challenge notice. Under 10 U.S.C. 3772(a)(1) and 3784, there is a presumption and procedures regarding validation of asserted restrictions for technical data related to commercial products or commercial services on the basis of development exclusively at private expense.

(ii) Do not challenge a contractor?s assertion that a commercial product or commercial service was developed exclusively at private expense unless the Government can specifically state the reasonable grounds to question the validity of the assertion. The challenge notice must include sufficient information to demonstrate that the commercial product or commercial service was not developed exclusively at private expense. To sustain the challenge, provide information demonstrating that the commercial product or commercial service was not developed exclusively at private expense.

(ii) The challenge notice and all related correspondence are subject to handling procedures for classified information and controlled unclassified information.

(iv) A contractor?s or subcontractor?s failure to respond to the challenge notice cannot be the sole basis for issuing a final decision denying the validity of an asserted restriction.

(d) Challenge and validation.

(1) Challenge period. Review asserted restrictions before acceptance of technical data or computer software deliverable under the contract. Challenge assertions within six years after final payment under the contract or six years after delivery of the data or software, whichever is later. There is no time limit for challenging restrictive markings if the technical data or computer software?

(i) Are publicly available without restrictions;

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(ii) Have been provided to the United States without restriction;

(iii) Have been otherwise made available without restriction other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data or computer software to another party or the sale or transfer of some or all of a business entity or its assets to another party; or

(iv) Is the subject of a fraudulently asserted use or release restriction.

(2) Pre-challenge requests for information.

(i) Contracting officers may request the person asserting a restriction to

furnish a written explanation of the facts and supporting documentation for the assertion in detail to enable the contracting officer to determine the basis of the restrictive markings. Request additional supporting documentation when the explanation does not, in the contracting officer?s opinion, establish the validity of the assertion.

(ii) Consider challenging the assertion when?

(A) The person asserting the restriction fails to respond to the contracting officer?s request for information or additional supporting documentation; or

(B) The information submitted, or any other available information related to the validity of a restrictive marking, does not justify the asserted restriction.

(3) Transacting matters directly with subcontracts. Contracting officers should permit, after obtaining the contractor?s agreement, a subcontractor or supplier to transact challenge and validation matters directly with the Government when?

(i) A subcontractor?s or supplier?s business interests in its technical data or computer software would be compromised if the data were disclosed to a higher tier contractor;

(ii) The contractor will unlikely respond in a timely manner to a challenge, and an untimely response would jeopardize a subcontractor?s or suppliers right to assert restrictions; or

(iii) A subcontractor or supplier requests it.

(4) Challenge notice.

(i) Do not issue a challenge notice unless reasonable grounds exist to question the validity of an assertion. For commercial products or commercial services, also see paragraph (c)(2) of this section.

(ii) No requirement exists to request information under paragraph (d)(2) of this section before issuing a challenge.

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(iii) Issue challenge notices, in writing, to the contractor or, after consideration of the situations described in paragraph (d)(3) of this section, the person asserting the restriction. See PGI 227.7103-13(d)(4)(iii) for procedures regarding challenge notices.

(5) Extension of response time. If the contractor submits a written request for additional time to prepare a response, the contracting officer will extend the time for response as appropriate, in accordance with paragraph (f)(2) of the clause at 252.225-**7999.**

(6) Contracting officer?s final decision. Issue a final decision for each challenged assertion, whether or not the contractor justified the assertion.

(i) Failure to respond. If the person asserting the restriction fails to respond to the challenge within 60 days or any extension of time the contracting officer granted, issue a final decision that the assertion is not justified as soon as practicable.

(ii) Assertion justified. If the assertion is determined to be justified based on

the response to the challenge notice, issue the final decision sustaining the validity of the restriction. The contracting officer will issue this final decision within 60 days after receipt of the response to the challenge notice, or within a longer period that the contracting officer has notified the contractor or subcontractor that the Government will require. The contracting officer will provide notification of any longer period for issuance of a final decision within 60 days after receipt of the response to the challenge notice. The Contracting Officer will provide notification of any longer period for issuance of a final decision within 60 days after receipt of the response to the challenge notice. If the contractor made the asserted restriction subsequent to submitting its offer, then add the asserted restriction to the contract attachment.

(iii) Assertion not justified. If the assertion is determined not to be justified based on the information provided, issue a final decision. The decision must be issued within 60 days after receipt of the response to the challenge notice, or within a longer period that the contracting officer has notified the contractor or subcontractor that the Government will require. The Contracting Officer will provide notification of any longer period for issuance of a final decision within 60 days after receipt of the response to the challenge notice. As provided in paragraph (h) of the clause, the Government is obligated to continue to respect the asserted restrictions through final disposition of any appeal unless the agency head notifies the person asserting the restriction that urgent or compelling circumstances dictate otherwise.

(7) Multiple challenges to an asserted restriction. When more than one contracting officer challenges an asserted restriction, the contracting officer who made the earliest challenge is responsible for coordinating the Government challenges. That contracting officer must consult with all other contracting officers making challenges, verify that all challenges apply to the same asserted restriction and, after consulting with the contractor, subcontractor, or supplier asserting the restriction, issue a schedule that provides that person a reasonable opportunity to respond to each challenge.

(8) Validation. Only a contracting officer?s final decision, actions of an agency board of contract appeals, or a court of competent jurisdiction sustaining the validity of an asserted restriction, constitutes validation of the asserted restriction.

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227.7103-14 Conformity, acceptance, and warranty of technical data and computer software.

(a) [Reserved]

(b) Conformity and acceptance. (1) Solicitations and contracts requiring the delivery of technical data, including computer software documentation, must specify the requirements that the data must satisfy to be acceptable. Contracting officers, or their authorized representatives, are responsible for determining whether technical data tendered for acceptance conform to the contractual requirements.

(2) The clause at 252.227-7996, Technical Data?Withholding of Payment, provides for withholding up to 10 percent of the contract price pending either correction

or replacement of the nonconforming technical data, or negotiation of an equitable reduction in contract price. The amount subject to withholding may be expressed as a fixed dollar amount or as a percentage of the contract price. In either case, consider the relative value and importance of the data when determining the amount.

(3) Do not accept technical data that do not conform to the contractual requirements in all respects. Except for nonconforming restrictive markings (see paragraph (b)(4) of this section), require correction or replacement of nonconforming data (or an equitable reduction in contract price when correction or replacement of the nonconforming data is not practicable or is not in the Government?s interests) in accordance with?

(i) The provisions of a contract clause providing for inspection and acceptance of deliverables and remedies for nonconforming deliverables; or

(ii) The procedures at FAR 46.407(c) through (g), if the contract does not contain an inspection clause providing remedies for nonconforming deliverables.

(4) Follow the procedures at 227.7103-12(a)(2) if nonconforming markings are the sole reason technical data fail to conform to contractual requirements. The contracting officer may withhold an amount for payment, consistent with the terms of the clause at 252.227-7996, pending correction of the nonconforming markings.

(5)(i) Specify, in solicitations and contracts requiring the delivery of computer software, requirements the software must satisfy to be acceptable under the contract.

(ii) Contracting officers, or their authorized representatives, are responsible for determining whether computer software tendered for acceptance conforms to the contractual requirements.

(iii) Except for nonconforming restrictive markings, do not accept software that does not conform in all respects to applicable contractual requirements. However, follow the procedures at 227.7103-12(a) if nonconforming markings are the sole reason computer software tendered for acceptance fails to conform to contractual requirements.

(iv) Require correction or replacement of nonconforming software (or an equitable reduction in contract price when correction or replacement of the

nonconforming data is not practicable or is not in the Government?s interests) in accordance with?

(A) The provisions of a contract clause providing for inspection and acceptance of deliverables and remedies for nonconforming deliverables; or

(B) The procedures at FAR part 46.407(c) through (g), if the contract does not contain an inspection clause providing remedies for nonconforming deliverables.

(c) Warranty. (1) Consider the intended use of the technical data (including repair and maintenance) and the costs to obtain the warranty before deciding to obtain a data warranty (see FAR part 46).

(2) As prescribed in 246.710, insert the clause at 252.246-7001, Warranty of

Data, and its alternates, or a substantially similar clause when the Government needs a specific warranty of technical data.

(3) Warranties for Computer Software. (i) Weapon systems. Computer software that is a component of a weapon system or major subsystem should be warranted as **part of the weapon system warranty. Follow the procedures at 246.7.**

(ii) Non-weapon systems. The contracting officer must approve use of a computer software warranty other than a weapon system warranty. Consider the factors at FAR 46.703 when deciding whether to obtain a computer software warranty. When approval for a warranty is obtained, modify the clause at 252.246-7001, Warranty of Data, and its alternates, as necessary for use with computer software.

227.7103-15 Subcontractor rights in technical data, computer software, or computer software documentation.

(a) Subcontractors and suppliers at all tiers should receive the same protection for their rights in technical data, computer software or computer software documentation as are provided to prime contractors (10 U.S.C. 3771).

(b) When a subcontractor or supplier exercises its right to transact validation matters directly with the Government, contracting officers must deal directly with such persons, as provided at 227.7103-13(d)(3) (10 U.S.C. 3782).

(c) Require prime contractors whose contracts include the following clauses to include those clauses, without modification except for appropriate identification of the parties, in contracts with subcontractors or suppliers, at all tiers, if furnishing technical data for other than commercial products or commercial services or other than commercial computer software in response to a Government requirement:

(1) 252.227-7989, Rights in Technical Data, Computer Software, and Computer Software Documentation?Other Than Commercial Products and Commercial Services.

(2) 252.227-7994, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

(3) 252.227-7028, Technical Data or Computer Software Previously Delivered to the Government.

(4) 252.227-7997, Validation of Asserted Restrictions.

(d) Do not require, as a condition of award of any contract action, that a contractor compel its subcontractors or suppliers at any tier to relinquish rights in technical data or computer software. This limitation does not apply to the Government?s license rights obtained under the clause at 252.227-7989, Rights in Technical Data, Computer Software, and Computer Software Documentation?Other Than Commercial Products and Commercial Services.

227.7103-16 Providing technical data, computer software, or computer software documentation to foreign governments, foreign contractors, or international organizations.

Technical data, computer software, or computer software documentation may be released or disclosed to foreign governments, foreign contractors, or international organizations only if release or disclosure is otherwise permitted both by Federal export controls and other national security laws or regulations. Subject to such laws and regulations, DoD?

(a) May release or disclose technical data, computer software, or computer software documentation in which it has obtained unlimited rights to such foreign entities or authorize the use of such data or software by those entities; and

(b) May not release or disclose technical data, computer software, or computer software documentation that have asserted restrictions on use, release, or disclosure to foreign entities, or authorize the use of technical data, computer software, or computer software documentation by those entities, unless the intended recipient is subject to the same provisions as included in the use and nondisclosure agreement at 227.7103-7 and the requirements of the clause at 252.227-7989, Rights in Technical Data, Computer Software, and Computer Software Documentation?Other Than Commercial Products and Commercial Services.

227.7103-17 [Reserved]

227.7103-18 Acquisition of other than commercial computer software and computer software documentation and associated rights.

See PGI 227.7103-18 for guidance on acquisition of other than commercial computer software and computer software documentation and associated rights.

227.7104 Contracts under the Small Business Innovation Research Program and Small Business Technology Transfer Program.

227.7104-1 Policy.

(a) Do not require an offeror, either as a condition of being responsive to a solicitation or as a condition for award, to sell or otherwise relinquish to the Government any rights in technical data related to items, components, or processes

developed under a SBIR/STTR contract or any rights in computer software generated under a SBIR/STTR contract except for the standard rights identified at 227.7104-2.

(b) Do not prohibit contractors and offerors from furnishing or offering to furnish items, components, or processes developed under a SBIR/STTR contract or computer software generated under a SBIR/STTR contract solely because the Government?s rights to use, modify, release, reproduce, perform, display, or disclose such computer software or technical data related to those items, components, or processes may be restricted.

(c) Consistent with the guidance in this section, 227.7103-3(a)(5), and other acquisition guidance applicable to SBIR/STTR solicitations, the Government may use information provided by offerors in response to a solicitation in the source selection process to evaluate the impact of proposed restrictions on the Government?s ability to

use or disclose technical data or computer software.

(d) SBIR/STTR data rights apply to SBIR/STTR data that are delivered, developed, or generated in the performance of a contract or agreement that is covered by SBIR/STTR policies, including contracts and subcontracts that include phase III work. Phase III work refers to work that derives from, extends, or completes an effort made under prior SBIR/STTR contracts or agreements, and is funded by sources other than SBIR/STTR programs (see PGI 227.7104-1).

(e) For SBIR/STTR data that is other than commercial technical data, and other than commercial computer software and computer software documentation, see?

(1) 227.7103-9 for guidance on copyright licenses;

(2) 227.7103-3 and 227.7103-10 for guidance on contractor identification and marking of technical data and computer software to be delivered with restrictive markings;

(3) 227.7103-11 for guidance on maintenance of contractor records; and

(4) 227.7103-12 for guidance on nonconforming and unjustified markings.

227.7104-2 Rights in SBIR or STTR data.

(a) The Government obtains the following standard license rights in SBIR/STTR data:

(1) Unlimited rights in the technical data and computer software listed in paragraph (c)(1) of the clause at 252.227-7993, Rights in Other Than Commercial Technical Data and Computer Software-Small Business Innovation Research Program and Small Business Technology Transfer Program.

(2) SBIR/STTR data rights in all other technical data and computer software developed or generated under the phase I, II, or III SBIR/STTR contract or subcontract and marked with the SBIR/STTR data rights marking.

(i) SBIR/STTR data rights provide the Government limited rights in such technical data and restricted rights in such computer software during the SBIR/STTR data protection period commencing on the date of contract award and ending 20 years after that date unless, after award, the agency and the contractor negotiate for some other protection period for the SBIR/STTR data.

(ii) Upon expiration of the SBIR/STTR data protection period, the Government has government purpose rights in the SBIR/STTR data. These government purpose rights do not expire. See PGI 227.7104-2 for additional guidance on the SBIR/STTR data protection period.

(b) During the SBIR/STTR data protection period, the Government may not release or disclose technical data or computer software subject to SBIR/STTR data rights to any person except as authorized for limited rights technical data or restricted rights computer software, respectively.

(c) The Government and contractor or subcontractor may negotiate special license rights only after contract award. The Government must not condition contract award

on the contractor or subcontractor negotiating or consenting to negotiate special license rights. Negotiation of special license rights is authorized only after contract award by mutual agreement of the parties.

(d) The Small Business Administration?s SBIR and STTR Program Policy Directive

(effective May 3, 2023) provides for special consideration regarding the handling (e.g., disclosure, reverse engineering) of prototypes generated under SBIR and STTR awards, to avoid effects that may appear to be inconsistent with the SBIR and STTR program objectives and to allow the SBIR/STTR awardee to retain rights in SBIR/STTR data during the SBIR/STTR data protection period.

(e) The clause at 252.227-7993 specifies the Government?s license rights in SBIR/STTR data. However, the following clauses or guidance specify the Government?s license rights in any data that are not SBIR/STTR data:

(1) For technical data related to other than commercial products or commercial services or to any portion of a commercial product or commercial service that was developed in any part at Government expense, the clause at 252.227-7989, Rights in Technical Data, Computer Software, and Computer Software Documentation?Other Than Commercial Products and Commercial Services, governs such technical data in accordance with 227.7102-4(b).

(2) For technical data related to any portion of a commercial product or commercial service developed exclusively at private expense, the clause at 252.227-7990, Technical Data?Commercial Products and Commercial Services, governs such technical data, in accordance with 227.7102-4(b).

(3) For other than commercial computer software or computer software documentation, the clause at 252.227-7989, Rights in Technical Data, Computer Software, and Computer Software Documentation?Other Than Commercial Products and Commercial Services, governs such software and computer software documentation, in accordance with 227.7103-6(c).

(4) For commercial computer software and computer software documentation, the license customarily provided to the public governs such software and documentation, in accordance with 227.7202-3.

227.7104-3 STTR program requirements.

(a) Before award of a contract under STTR program requirements offerors submit, as part of their proposal, a written agreement between the offeror and a research institution that allocates any rights in intellectual property and the offeror?s written representation that the offeror is satisfied with the agreement. Review the agreement to ensure it does not conflict with the requirements of the solicitation or any right to carry out follow-on research. If such conflicts exist and cannot be resolved, the submitted proposal is not eligible for award.

(b) At contract award for STTR program requirements, attach to the contract the accepted written agreement and representation provided by the contractor pursuant to

the provision at 252.227-7998.

(c) After contract award, for any modification to the written agreement between the contractor and research institution, review the agreement and representation to ensure the modified agreement adheres to the requirements of 252.227-7999. If acceptable, attach the modified agreement to the contract.

227.7104-4 Solicitation provisions and contract clauses.

(a)(1) Insert the clause at 252.227-7993, Rights in Other Than Commercial Technical Data and Computer Software-Small Business Innovation Research Program and Small Business Technology Transfer Program, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, when SBIR/STTR data are delivered, developed, or generated during contract performance, and when any portion of contract performance is governed by SBIR or STTR policies (e.g., performance of one or more subcontracts qualifies as a phase III SBIR or STTR award). See 227.7104-1(d) for guidance on contracts or subcontracts governed by SBIR or STTR policies.

(2) For the remainder of the technical data or computer software delivered, developed, or generated under the contract, see 227.7103-6 for guidance on applicable clauses.

(b) See 227.7103-6 for other applicable provisions in solicitations and clauses in solicitations and contracts that include the clause at 252.227-7993.

(c)(1) Insert the provision at 252.227-7040, Additional Preaward Requirements for Small Business Technology Transfer Program, in solicitations that contain the clause at **252.227-7999.**

(2) Insert the clause at 252.227-7999, Additional Postaward Requirements for Small Business Technology Transfer Program, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of

commercial products and commercial services, for acquisitions under the STTR program.

227.7105 Contracts for the acquisition of existing works.

227.7105-1 General.

(a) Existing works include motion pictures, television recordings, video recordings, and other audiovisual works in any medium; sound recordings in any medium; musical, dramatic, and literary works; pantomimes and choreographic works; pictorial, graphic, and sculptural works; and works of a similar nature. Usually, these or similar works were not first created, developed, generated, originated, prepared, or produced under a Government contract. Therefore, the Government must obtain a license in the work if it intends to reproduce the work, distribute copies of the work, prepare derivative works, or perform or display the work publicly. When the Government is not responsible for the content of an existing work, it should require the copyright owner to

indemnify the Government for liabilities that may arise out of the content, performance, use, or disclosure of such data.

(b)(1) Follow the procedures at 227.7106 for special works that will be first created, developed, generated, originated, prepared, or produced under a Government contract and the Government?

(i) Needs to control distribution of the work; or

(ii) Has a specific need to obtain indemnity for liabilities that may arise out of the creation, content, performance, use, or disclosure of the work or from libelous or other unlawful material contained in the work.

(2) Follow the procedures at 227.7103 when the Government does not need to control distribution of such works or obtain such indemnities.

227.7105-2 Acquisition of existing works without modification.

(a) No specific contract clause governs the Government?s rights in existing works. Negotiate contract terms related to use and distribution of existing works when?

(1) The existing works will be acquired without modification; and

(2) The Government requires the right to reproduce, prepare derivative works, or publicly perform or display the existing works; or

(3) The Government has a specific need to obtain indemnity for liabilities that may arise out of the content, performance, use, or disclosure of such data.

(b) Negotiated terms should provide the Government, and others acting on its behalf, a paid-up, non-exclusive, irrevocable, world-wide license to reproduce, prepare derivative works and publicly perform or display the works called for by a contract and to authorize others to do so for government purposes.

(c) A contract clause is not required to acquire existing works such as books, magazines and periodicals, in any storage or retrieval medium, when the Government will not reproduce the books, magazines or periodicals, or prepare derivative works.

227.7105-3 Acquisition of modified existing works.

Follow the procedures at 227.7106 for solicitations and contracts for modified existing works.

227.7106 Contracts for special works.

(a)(1) Contracts primarily for the production or compilation of works first produced, created, or generated in the performance of a contract (special works) for the Government?s own use, must specifically address the Government?s rights to use, disclose, modify, distribute, and reproduce the special works.

(2)(i) Contracts may include negotiated terms controlling contractor use and distribution of special works by obtaining an assignment of copyright or obtaining indemnity for liabilities that might arise out of the content, performance, or disclosure of special works.

(ii) Negotiated terms may specify the purposes and conditions (including

time limitations) under which the contractor may use, release, or reproduce the special works other than for contract performance.

(iii) Such contract terms should not permit a contractor to incorporate into a special work any works copyrighted by others unless the contractor obtains the contracting officer?s permission to do so and obtains for the Government a non-exclusive, paid up, world-wide license to make and distribute copies of that work, to prepare derivative works, to perform or display publicly any portion of the work, and to permit others to do so for government purposes.

(iv) Contracting officers should grant such permissions only when the Government?s requirements cannot be satisfied unless the third party work is included in the deliverable work.

(b) No specific contract clause governs the Government?s rights in special works. Negotiate contract terms regarding control of, use, and distribution of special works?

(1) When the Government must own or control copyright in all works first produced, created, or generated and which the contractor must deliver under a contract; or

(2) In addition to the clause at 252.227-7989 when the Government must own or control copyright in a portion of a work first produced, created, or generated and which the contractor must deliver under a contract. The specific portion in which the Government must own or control copyright must be identified in a special contract requirement.

(c) See PGI 227.7106(c) for a list of examples of special works.

227.7107 [Reserved]

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227.7108 [Reserved]

SUBPART 227.72?TECHNICAL DATA, COMPUTER SOFTWARE, COMPUTER SOFTWARE DOCUMENTATION, AND ASSOCIATED RIGHTS RELATED TO COMMERCIAL PRODUCTS, COMPONENTS, SERVICES, PROCESSES, AND COMPUTER SOFTWARE

227.7200 Scope of subpart.

This subpart?

(a) Prescribes policies and procedures for the acquisition of technical data, computer software and computer software documentation related to commercial products, components, services, processes, and computer software, and the rights to use, modify, reproduce, release, perform, display, or disclose such data or software. It implements the following laws and Executive order:

(1) 10 U.S.C. 3013.

(2) 10 U.S.C. 3208(d).

(3) 10 U.S.C. 3771-3775.

(4) 10 U.S.C. 3781-3786.

(5) 10 U.S.C. 4576.

(6) Executive Order 12591 (subsection 1(b)(7)).

(b) Does not apply to?

(1) Technical data, computer software, or computer software documentation acquired under General Services Administration (GSA) schedule contracts; or

(2) Releases of technical data, computer software, or computer software documentation to litigation support contractors (see subpart 204.74).

227.7201 Definitions.

As used in this subpart?

?Commercial computer software? means software developed or regularly used for nongovernmental purposes which?

(1) Has been sold, leased, or licensed to the public;

(2) Has been offered for sale, lease, or license to the public;

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(3) Has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this contract; or

(4) Satisfies a criterion expressed in paragraph (1), (2), or (3) of this definition and would require only minor modification to meet the requirements of this contract.

?Computer software? means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer data bases or computer software documentation.

?Computer software documentation? means owner?s manuals, user?s manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

?Contractor? means a contractor to include a contractor?s subcontractors, suppliers, or potential subcontractors or suppliers at any tier

?Covered Government support contractor? means a contractor (other than a litigation support contractor covered by 252.204-7014) under a contract, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government?s management and oversight of a program or effort, rather than to directly furnish an end item or service to accomplish a program or effort, provided that the contractor?

(1) Is not affiliated with the prime contractor or a first-tier subcontractor on the program or effort, or with any direct competitor of such prime contractor or any such first-tier subcontractor in furnishing end items or services of the type developed or produced on the program or effort; and

(2) Receives access to technical data or computer software for performance of a Government contract that contains the clause at 252.227-7994, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

?Offeror? means an offeror to include an offeror?s subcontractors, suppliers, or potential subcontractors or suppliers at any tier

?Technical data? means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or financial, administrative, cost or pricing, or management information, or information incidental to contract administration.

227.7202 Commercial computer software and commercial computer software documentation.

227.7202-1 Policy.

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(a) Acquire commercial computer software or commercial computer software documentation under the licenses customarily provided to the public unless such licenses are inconsistent with Federal procurement law or do not otherwise satisfy user needs.

(b) Obtain commercial computer software and commercial computer software documentation competitively, to the maximum extent practicable, using firm-fixed-price contracts or firm-fixed-priced orders under available pricing schedules.

(c) Do not require offerors and contractors to?

(1) Furnish technical information related to commercial computer software or commercial computer software documentation that is not customarily provided to the public except for information documenting the specific modifications made at Government expense to such software or documentation to meet the requirements of a Government solicitation; or

(2) Relinquish to, or otherwise provide, the Government rights to use, modify, reproduce, release, perform, display, or disclose commercial computer software or commercial computer software documentation except for a transfer of rights mutually agreed upon.

(d) When establishing contract requirements and negotiation objectives to meet agency needs, the Government should consider the factors identified in PGI 227.7103-18 for commercial computer software and computer software documentation, consistent with paragraph (c) of this section.

227.7202-2 [Reserved]

227.7202-3 Rights in commercial computer software or commercial computer software documentation.

(a) The Government has the rights specified in the license under which the Government obtained the commercial computer software or commercial computer

software documentation.

(b) No contract clause governs the Government?s rights in commercial computer software or commercial computer software documentation.

(c) If the Government has a need for rights not conveyed under the license customarily provided to the public, negotiate with the contractor to determine acceptable terms for transferring such rights. Any resulting license agreement, made **part of the contract, must list or describe all software and software documentation for** which the contractor has granted the Government additional rights, and specify the additional rights granted.

227.7202-4 [Reserved]

227.7203 [Reserved]

227.7203-1 - 227.7203-17 [Reserved]

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227.7204 227.7207 [Reserved]

227.7208 Technical data related to commercial products, commercial components, commercial services, or commercial processes.

227.7208-1 Policy.

(a) DoD policy is to acquire only the technical data customarily provided to the public with a commercial product, commercial service, or commercial process, except technical data that?

(1) Are form, fit, or function data;

(2) Are required for repair or maintenance of commercial products or commercial processes, or for the proper installation, operating, or handling of a commercial product, either as a stand alone unit or as a part of a military system, when such data are not customarily provided to commercial users or the data provided to commercial users is not sufficient for military purposes; or

(3) Describe the modifications made at Government expense to a commercial product, commercial service, or commercial process in order to meet the requirements of a Government solicitation.

(b) To encourage offerors and contractors to offer or use commercial products to satisfy military requirements, do not require (except for the technical data described in paragraph (a) of this section) offerors, and contractors to?

(1) Furnish technical information related to commercial products, commercial services, or commercial processes that is not customarily provided to the public; or

(2) Relinquish to, or otherwise provide, the Government rights to use, modify, reproduce, release, perform, display, or disclose technical data related to commercial products, commercial services, or commercial processes except for a mutually agreed transfer of rights.

(c) The Government?s rights in a vessel design, and in any useful article embodying a vessel design, must be consistent with the Government?s rights in technical data

related to the design (10 U.S.C. 8687; 17 U.S.C. 1301(a)(3)).

227.7208-2 Rights in technical data.

(a) The Government has specific license rights in technical data related to commercial products, commercial services, or commercial processes.

(1) DoD may use, modify, reproduce, release, perform, display, or disclose data only within the Government.

(2) The data may not be used to manufacture additional quantities of the commercial products and, except for emergency repair or overhaul and for covered Government support contractors, may not be released or disclosed to, or used by, third

parties without the contractor?s written permission. Those restrictions do not apply to the technical data described in 227.7208-1(a).

(b) If the Government requires additional rights, negotiate with the contractor to determine whether acceptable terms exist for transferring such rights. Any resulting license agreement, made part of the contract, must list or describe all technical data for which the contractor has granted the Government additional rights, and specify the additional rights granted

227.7208-3 Government right to review, verify, challenge, and validate

asserted restrictions.

Follow the procedures at 227.7103-13 regarding the validation of asserted restrictions on technical data related to commercial products or commercial services.

227.7208-4 Contract clauses.

(a)(1) Except as provided in paragraph (b) of this section, insert the clause at **252.227-7990, Technical Data?Commercial Products and Commercial Services, in** solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, when the contract will require delivery of technical data related to commercial products, commercial components, commercial services, or commercial processes.

(2) Insert the clause at 252.227-7990 with its Alternate I in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, for the development or delivery of a vessel design or any useful article embodying a vessel design.

(b)(1) Government development funding. When the Government has paid for any portion of the development of a commercial product or commercial service, insert the clause at 252.227-7989, Rights in Technical Data, Computer Software, and Computer Software Documentation?Other Than Commercial Products and Commercial Services, in addition to the clause at 252.227-7990.

(2) Applicability. For technical data, the clause at 252.227-7989 governs the technical data related to the Government-funded portions, and the clause at 252.227-7990 governs the technical data related to the portions developed exclusively at private

expense. These clauses do not apply to commercial computer software or commercial software documentation.

(c) Insert the clause at 252.227-7997, Validation of Asserted Restrictions on Technical Data, in solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services that include the clause at **252.227-7990 or the clause at 252.227-7989.**

PART 252?SOLICITATION PROVISIONS AND CONTRACT CLAUSES

SUBPART 252.2?TEXT OF PROVISIONS AND CLAUSES

252.227-7000 - 252.227-7012 [Reserved]

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252.227-7989 Rights in Technical Data, Computer Software, and Computer Software Documentation?Other Than Commercial Products and Commercial Services. (DEVIATION 2026-O0036)

As prescribed in 227.7103-6(a) and (c), use the following clause:

RIGHTS IN TECHNICAL DATA, COMPUTER SOFTWARE, AND COMPUTER SOFTWARE DOCUMENTATION?OTHER THAN COMMERCIAL PRODUCTS OR COMMERCIAL SERVICES (DEVIATION 2026-O0036) (FEB 2026)

(a) Definitions. As used in this clause?

?Commercial computer software? means software developed or regularly used for nongovernmental purposes which?

(1) Has been sold, leased, or licensed to the public;

(2) Has been offered for sale, lease, or license to the public;

(3) Has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this contract; or

(4) Satisfies a criterion expressed in paragraph (1), (2), or (3) of this definition and would require only minor modification to meet the requirements of this contract.

?Computer database? means a collection of data recorded in a form capable of being processed by a computer. The term does not include computer software.

?Computer program? means a set of instructions, rules, or routines recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.

?Computer software? means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer databases or computer software documentation.

?Computer software documentation? means owner?s manuals, user?s manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide

instructions for using the software.
?Covered Government support contractor? means a contractor (other than a litigation support contractor covered by 252.204-7014) under a contract, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government?s management and oversight of a program or effort, rather than to directly furnish an end item or service to accomplish a program or effort, provided that the contractor?
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(1) Is not affiliated with the prime contractor or a first-tier subcontractor on the program or effort, or with any direct competitor of such prime contractor or any such first-tier subcontractor in furnishing end items or services of the type developed or produced on the program or effort; and

(2) Receives access to technical data or computer software for performance of a Government contract that contains the clause at 252.227-7994, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.
?Detailed manufacturing or process data? means technical data that describe the steps, sequences, and conditions of manufacturing, processing or assembly used by the manufacturer to produce an item or component or to perform a process.
?Developed? means?

(1) (Applicable to technical data other than computer software documentation.) An item, component, or process exists and is workable. Thus, the item or component must have been constructed or the process practiced. Workability is generally established when the item, component, or process has been analyzed or tested sufficiently to demonstrate to reasonable people skilled in the applicable art that there is a high probability that it will operate as intended. Whether, how much, and what type of analysis or testing is required to establish workability depends on the nature of the item, component, or process, and the state of the art. To be considered ?developed,? the item, component, or process need not be at the stage where it could be offered for sale or sold on the commercial market, nor must the item, component, or process be actually reduced to practice within the meaning of Title 35 of the United States Code;

(2) A computer program has been successfully operated in a computer and tested to the extent sufficient to demonstrate to reasonable persons skilled in the art that the program can reasonably be expected to perform its intended purpose;

(3) Computer software, other than computer programs, has been tested or analyzed to the extent sufficient to demonstrate to reasonable persons skilled in the art that the software can reasonably be expected to perform its intended purpose; or

(4) Computer software documentation the contractor must deliver under a contract has been written, in any medium, in sufficient detail to comply with requirements under that contract.
?Developed exclusively at private expense? means development was accomplished entirely with costs charged to indirect cost pools, costs not allocated to a Government

contract, or any combination thereof.

(1) Private expense determinations should be made at the lowest practicable level.

(2) Under fixed-price contracts, when total costs are greater than the firm-fixed-price or ceiling price of the contract, the additional development costs necessary to complete development shall not be considered when determining whether development was at Government, private, or mixed expense.

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?Developed exclusively with Government funds? means development was not accomplished exclusively or partially at private expense.

?Developed with mixed funding? means development was accomplished partially with costs charged to indirect cost pools and/or costs not allocated to a government contract, and partially with costs charged directly to a government contract.

?Form, fit, and function data? means technical data that describe the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.

?Generated? means, with regard to technical data or computer software, first created in the performance of this contract.

?Government purpose? means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations, or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose technical data, computer software, or computer software documentation for commercial purposes or authorize others to do so.

?Government purpose rights? means the rights to?

(1) Use, modify, reproduce, release, perform, display, or disclose technical data, computer software, or computer software documentation within the Government without restriction; and

(2) Release or disclose technical data, computer software, or computer software documentation outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data or software for United States Government purposes.

?Limited rights? means the rights to use, modify, reproduce, release, perform, display, or disclose technical data, in whole or in part, within the Government. The Government may not, without the written permission of the party asserting limited rights, release or disclose the technical data outside the Government, use the technical data for manufacture, or authorize the technical data to be used by another party, except that the Government may reproduce, release, or disclose such data or authorize the use or reproduction of the data by persons outside the Government if?

(1) The reproduction, release, disclosure, or use is?

(i) Necessary for emergency repair and overhaul; or

(ii) A release or disclosure to?

(A) A covered Government support contractor in performance of its covered Government support contract for use, modification, reproduction, performance,

display, or release or disclosure to a person authorized to receive limited rights technical data; or

(B) A foreign government, of technical data other than detailed manufacturing or process data, when use of such data by the foreign government is in the interest of the Government and is required for evaluational or informational purposes;

(2) The recipient of the technical data is subject to a prohibition on the further reproduction, release, disclosure, or use of the technical data; and

(3) The contractor or subcontractor asserting the restriction is notified of such reproduction, release, disclosure, or use.

?Minor modification? means a modification that does not significantly alter the nongovernmental function or purpose of the software or is of the type customarily provided in the commercial marketplace.

?Other than commercial computer software? means software that does not qualify as commercial computer software under the definition of ?commercial computer software? of this clause.

?Restricted rights? apply only to other than commercial computer software and mean the Government?s rights to?

(1) Use a computer program with one computer at one time. The program may not be accessed by more than one terminal or central processing unit or time shared unless otherwise permitted by this contract;

(2) Transfer a computer program to another Government agency without the further permission of the Contractor if the transferor destroys all copies of the program and related computer software documentation in its possession and notifies the licensor of the transfer. Transferred programs remain subject to the provisions of this clause;

(3) Make a reasonable number of copies of the computer software required for the purposes of safekeeping (archive), backup, modification, or other activities authorized in paragraphs (1), (2), (4) and (5) of this definition;

(4) Modify computer software provided that the Government may?

(i) Use the modified software only as provided in paragraphs (1) and (3) of this definition; and

(ii) Not release or disclose the modified software except as provided in paragraphs (2) and (5) of this clause;

(5) Use, modify, reproduce, perform, display, or release or disclose the computer software, and permit contractors, subcontractors, or covered Government support

contractors to do so, for purposes set forth in subparagraph (i) of this paragraph, subject to the conditions set forth in subparagraphs (ii) of this paragraph:
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(i)(A) In performance of service contracts (see FAR 37.101), to diagnose and correct deficiencies, to modify the software to enable a computer program to be combined with, adapted to, or merged with other computer programs, or when necessary to respond to urgent tactical situations, provided that the Government notifies the party which has granted restricted rights that any such release or disclosure to particular contractors or subcontractors was made;

(B) To perform emergency repairs or overhaul of items or components procured under this or a related contract, when necessary to perform such repairs or overhaul; or

(C) For the management and oversight of a program or effort by a person authorized to receive restricted rights computer software, including in the performance of covered Government support contracts.

(ii)(A) Any contractor, subcontractor, or covered Government support contractor receiving access to the software for the purposes of subparagraphs (i), (ii), or (iii) of this paragraph shall be subject to the use and nondisclosure agreement at 227.7103-7 or be performing a Government contract that contains the clause at 252.227-7994, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends;

(B) The Government must not permit any recipient of the software under this paragraph to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (4) of this definition, for any other purpose; and

(C) Any use, modification, reproduction, performance, display, release, or disclosure of the computer software under this paragraph remains subject to the limitations in paragraphs (1) through (4) of this definition.

?Small Business Innovation Research/Small Business Technology Transfer (SBIR/STTR) data? means all technical data or computer software developed or generated in the performance of a phase I, II, or III SBIR/STTR contract or subcontract.

?Technical data? means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or financial, administrative, cost or pricing, or management information, or information incidental to contract administration.

?Unlimited rights? means rights to use, modify, reproduce, perform, display, release, or disclose technical data, computer software, or computer software documentation in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

(b) Applicability. (1) Except as provided in paragraph (b)(2) of this clause?

(i) This clause governs all technical data related to other than commercial products or commercial services or to any portion of a commercial product or commercial service that was developed in any part at Government expense;

(ii) This clause governs all other than commercial computer software or other than commercial computer software documentation; and

(iii) The clause at DFARS 252.227-7990, Technical Data?Commercial Products and Commercial Services, governs the technical data related to any portion of a commercial product or commercial service that was developed exclusively at private expense.

(2) The clause at DFARS 252.227-7993, Rights in Other Than Commercial Technical Data and Computer Software?Small Business Innovation Research Program and Small Business Technology Transfer Program, governs technical data that are SBIR/STTR data.

(c) Rights in technical data and computer software. The Contractor grants or shall obtain for the Government the following royalty free, worldwide, nonexclusive, irrevocable license rights:

(1) Unlimited rights. The Government shall have unlimited rights in technical data, computer software, or computer software documentation that are?

(i) Data related to an item, component, or process which has been or will be developed exclusively with Government funds;

(ii) Studies, analyses, test data, or similar data produced for this contract, when the study, analysis, test, or similar work was specified as an element of performance;

(iii) Technical data created exclusively with Government funds in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes;

(iv) Form, fit, and function data;

(v) Technical data necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data);

(vi) Government-furnished corrections or changes to?

(A) Technical data furnished to the Contractor by the Government; or

(B) Computer software or computer software documentation;

(vii) Data, computer software, or computer software documentation that is publicly available or previously released or disclosed by the Contractor or subcontractor without restrictions on further use, release or disclosure, other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data to another party or the sale or transfer of some or all of a business entity or its assets to another party;

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(viii) Data, computer software, or computer software documentation in which the Government has obtained unlimited rights under another Government contract or as a result of negotiations;

(ix) Data furnished to the Government, under this or any other Government contract or subcontract, with?

(A) Government purpose license rights or limited rights and the restrictive condition(s) has/have expired; or

(B) Government purpose rights and the Contractor?s exclusive right to use such data for commercial purposes has expired; or

(x) Computer software developed exclusively with Government funds;

(xi) Computer software documentation the contractor must deliver under this contract; or

(xvii) Computer software or computer software documentation furnished to the Government, under this or any other Government contract or subcontract with?

(A) Restricted rights in computer software, limited rights in technical data, or government purpose license rights and the restrictive conditions have expired; or

(B) Government purpose rights and the Contractor?s exclusive right to use such software or documentation for commercial purposes has expired.

(2) Government purpose rights. (i) The Government shall have government purpose rights for a 5-year period, or such other period as may be negotiated, in technical data or computer software?

(A) Related to items, components, or processes developed with mixed funding except when the Government is entitled to unlimited rights in such data or software as provided in paragraphs (c)(1)(ii), (c)(1)(iv) through (c)(1)(ix), and (c)(1)(xii) through (c)(1)(x)(v)(i) of this clause; or

(B) Created with mixed funding in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes.

(ii) The 5-year period, or such other period as may have been negotiated, shall begin upon execution of the contract, subcontract, letter contract (or similar contractual instrument), contract modification, or option exercise that required development of the items, components, or processes, development of the computer software, or creation of the data described in paragraph (c)(2)(i)(B) of this clause. Upon expiration of the 5-year or other negotiated period, the Government shall have unlimited rights in the technical data or computer software.

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(iii) The Government will not release or disclose technical data or computer

software in which it has government purpose rights unless?

(A) Prior to release or disclosure, the intended recipient completes the nondisclosure agreement at DFARS 227.7103-7; or

(B) The recipient is a Government contractor receiving access to the data or software for performance of a Government contract that contains the clause at DFARS 252.227-7994, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

(iv) The Contractor has the exclusive right, including the right to license others, to use technical data or computer software in which the Government has obtained government purpose rights under this contract for any commercial purpose during the time period specified in the government purpose rights legend prescribed in paragraph (g)(3) of this clause.

(3) Limited rights. (i) Except as provided in paragraphs (c)(1)(ii) and (c)(1)(iv) through (c)(1)(ix) of this clause, the Government shall have limited rights in technical data?

(A) Related to items, components, or processes developed exclusively at private expense and marked with the limited rights legend prescribed in paragraph (g) of this clause; or

(B) Created exclusively at private expense in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes.

(ii) The Government will require a recipient of limited rights data for emergency repair or overhaul to destroy the data and all copies in its possession promptly following completion of the emergency repair/overhaul and to notify the Contractor that the data have been destroyed.

(iii) The Contractor, its subcontractors, and suppliers are not required to provide the Government additional rights to use, modify, reproduce, release, perform, display, or disclose technical data furnished to the Government with limited rights. However, if the Government desires to obtain additional rights in technical data in which it has limited rights, the Contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. The Contractor shall ensure that any resulting license agreement, made part of the contract, lists or describes all technical data for which the Government has been granted additional rights and specifies those additional rights.

(iv) The Contractor acknowledges that?

(A) The Government is authorized to release or disclose limited rights data to covered Government support contractors;

(B) The Government will notify the contractor of such release or disclosure;

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(C) The Contractor or the party asserting restrictions in the limited

rights legend may?

(1) Require each covered Government support contractor to enter into a nondisclosure agreement directly with the Contractor or the party asserting restrictions regarding use of the data; or

(2) Waive in writing the requirement for a nondisclosure agreement; and

(D) Any such nondisclosure agreement shall address the restrictions on the covered Government support contractor?s use of the limited rights data as set forth in the clause at DFARS 252.227-7994, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. The nondisclosure agreement shall not include any additional terms and conditions unless mutually agreed to by the parties to the nondisclosure agreement.

(4) Restricted rights. (i) The Government shall have restricted rights in other than commercial computer software the contractor must deliver, or that is otherwise provided, to the Government under this contract that was developed exclusively at private expense.

(ii) The Contractor, its subcontractors, or suppliers are not required to provide the Government additional rights in other than commercial computer software delivered or otherwise provided to the Government with restricted rights. However, if the Government desires to obtain additional rights in such software, the Contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. The Contractor shall ensure that any resulting license agreement, made part of the contract, lists or describes all other than commercial computer software for which the Government has been granted additional rights and specifies those additional rights.

(iii) The Contractor acknowledges that?

(A) The Government is authorized to release or disclose restricted rights computer software to covered Government support contractors;

(B) The Government will notify the Contractor of such release or disclosure;

(C) The Contractor or the party asserting restrictions in the restricted rights legend may?

(1) Require each such covered Government support contractor to enter into a nondisclosure agreement directly with the Contractor or the party asserting restrictions regarding the use of the software; or

(2) Waive in writing the requirement for a nondisclosure agreement; and

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(D) Any such nondisclosure agreement shall address the restrictions on the covered Government support contractor?s use of the restricted rights software as set forth in the clause at DFARS 252.227-7994, Limitations on the Use or Disclosure of

Government-Furnished Information Marked with Restrictive Legends. The nondisclosure agreement shall not include any additional terms and conditions unless mutually agreed to by the parties to the nondisclosure agreement.

(5) Specifically negotiated license rights. The standard license rights granted to the Government under paragraphs (c)(1) through (c)(4) of this clause, including the period during which the Government shall have government purpose rights in technical data or computer software, may be modified by mutual agreement but shall not provide the Government lesser rights than provided in the definition of ?limited rights? or restricted rights? of this clause. Any negotiated rights shall be identified in a license agreement made part of this contract.

(6) Prior government rights. Technical data or computer software that will be delivered, furnished, or otherwise provided to the Government under this contract, in which the Government has previously obtained rights shall be delivered, furnished, or provided with the preexisting rights, unless?

(i) The parties have agreed otherwise; or

(ii) The restrictions on the Government?s rights to use, modify, reproduce, release, perform, display, or disclose the data or software have expired or no longer apply.

(7) Release from liability. The Contractor agrees to release the Government from liability for any authorized release or disclosure of technical data or computer software made in accordance with this clause or any negotiated license agreement. This release from liability for the Government also applies to releases or disclosures made by a third party who received the data or software from an authorized recipient. For any unauthorized use or disclosure by such third parties of technical data or computer software marked with restrictive legends, the Contractor agrees to seek relief solely from that party.

(d) Contractor rights in technical data and computer software. The Contractor retains all rights not granted to the Government.

(e) Third party copyrighted data and software. The Contractor shall not, without the written approval of the Contracting Officer, incorporate any copyrighted data or software in the technical data or computer software the contractor must deliver under this contract unless the Contractor is the copyright owner or has obtained license rights for the Government of the appropriate scope set forth in paragraph (c) of this clause, and has affixed a statement of the license or licenses obtained on behalf of the Government and other persons to the data transmittal document.

(f) Identification and delivery of data to be delivered with restrictions on use, release, or disclosure. (1) This paragraph does not apply to restrictions based solely on copyright.

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(2) Except as provided in paragraph (f)(3) of this clause, technical data or computer software that the Contractor asserts should be furnished to the Government

with restrictions on use, release, or disclosure are identified in an attachment to this contract (the Attachment). The Contractor shall not deliver any data or software with restrictive markings unless the data are listed on the Attachment.

(3) In addition to the assertions made in the Attachment, the Contractor may identify other assertions after award when based on new information or inadvertent omissions unless the inadvertent omissions would have materially affected the source selection decision. The Contractor shall submit such identification and assertions to the Contracting Officer as soon as practicable prior to the scheduled date for delivery of the data or software, in the following format, and signed by an official authorized to contractually obligate the Contractor:

Identification and Assertion of Restrictions on the Government?s Use,
Release, or Disclosure of Technical Data or Computer Software

The Contractor asserts for itself, or the persons identified below, that the Government?s rights to use, release, or disclose the following technical data or computer software should be restricted?

Technical data or
Asserted Name of person
computer software to be Basis for
rights asserting
delivered with restrictions assertion 2
category 3 restrictions 4
1

(LIST) (LIST) (LIST) (LIST)

1 If the assertion is applicable to items, components or processes developed at private expense, identify both the data and each such item, component, or process.

2 Generally, the development of an item, component, process, or computer software at private expense, either exclusively or partially, is the only basis for asserting restrictions on the Government?s rights to use, release, or disclose computer software or technical data related to such items, components, or processes. Indicate whether development was exclusively or partially at private expense. If development was not at private expense, enter the specific reason for asserting that the Government?s rights should be restricted.

3 Enter asserted rights category (e.g., rights in SBIR/STTR data generated under another contract, limited rights, restricted rights, or government purpose rights under this or a prior contract, or specifically negotiated licenses).

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Technical data or
Asserted Name of person
computer software to be Basis for
rights asserting
delivered with restrictions assertion 2

category 3 restrictions 4

1

4 Corporation, individual, or other person, as appropriate.

Date

Printed Name and Title

Signature

(End of identification and assertion)

(4) When requested by the Contracting Officer, the Contractor shall provide sufficient information to enable the Contracting Officer to evaluate the Contractor?s assertions. The Contracting Officer reserves the right to add the Contractor?s assertions to the Attachment and validate any listed assertion, at a later date, in accordance with the procedures in the DFARS 252.227-7997, Validation of Asserted Restrictions, clause of this contract.

(g) Marking requirements. The Contractor, and its subcontractors or suppliers, may only assert restrictions on the Government?s rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software the Contractor must deliver under this contract by marking the deliverable data or software subject to restriction. Except as provided in paragraph (g)(7) of this clause, only the following legends are authorized under this contract: the government purpose rights legend at paragraph (g)(3) of this clause; the limited rights legend at paragraph (g)(4) of this clause; the restricted rights legend at paragraph (g)(5) of this clause; the special license rights legend at paragraph (g)(6) of this clause; and a notice of copyright as prescribed under 17 U.S.C. 401 or 402.

(1) General marking instructions. The Contractor, or its subcontractors or suppliers, shall conspicuously and legibly mark the appropriate legend on all technical data or computer software that qualify for such markings. The authorized legends shall be placed on the transmittal document or storage container and, for printed material, each page of the printed material containing technical data or computer software for which restrictions are asserted. When only portions of a page of printed material are subject to the asserted restrictions, such portions shall be identified by circling, underscoring, with a note, or other appropriate identifier. Technical data or computer software transmitted directly from one computer or computer terminal to another shall contain a notice of asserted restrictions. For software that will or might be used in combat or situations that simulate combat conditions, the contractor shall not insert instructions that interfere with or delay the operation of computer software in order to display a restrictive rights legend or other license statement at any time prior to or during use of the computer software, or otherwise cause such interference or delay, unless the Contracting Officer?s written permission to deliver such software has been obtained prior to delivery. Reproductions of technical data or computer software or any

portions thereof subject to asserted restrictions shall also reproduce the asserted

restrictions.

(2) Omitted markings. (i) Technical data or computer software delivered or otherwise provided under this contract without restrictive markings will be presumed to have been delivered with unlimited rights. To the extent practicable, if the Contractor has requested permission (see paragraph (g)(2)(ii) of this clause) to correct an inadvertent omission of markings, the Contracting Officer will not release or disclose the technical data or computer software pending evaluation of the request.

(ii) The Contractor may request permission to have conforming and justified restrictive markings placed on unmarked technical data or computer software at its expense. The request must be received by the Contracting Officer within 6 months following the furnishing or delivery of such technical data or computer software, or any extension of that time approved by the Contracting Officer. The Contractor shall?

(A) Identify the technical data or computer software that should have been marked;

(B) Demonstrate that the omission of the marking was inadvertent, the proposed marking is justified and conforms with the requirements for the marking of technical data or computer software contained in this clause; and

(C) Acknowledge, in writing, that the Government has no liability with respect to any disclosure, reproduction, or use of the technical data or computer software made prior to the addition of the marking or resulting from the omission of the marking.

(3) Government purpose rights markings. Technical data or computer software delivered or otherwise furnished to the Government with government purpose rights shall be marked as follows:

GOVERNMENT PURPOSE RIGHTS

Contract Number
Contractor Name
Contractor Address
Expiration Date
The Government?s rights to use, modify, reproduce, release, perform, display, or disclose these technical data or computer software are restricted by the government purpose rights license in the DFARS 252.227-7989, Rights in Technical Data, Computer Software, and Computer Software Documentation?Other Than Commercial Products and Commercial Services, clause contained in the above identified contract. No restrictions apply after the expiration date shown above. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

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(4) Limited rights markings. Data delivered or otherwise furnished to the Government with limited rights shall be marked as follows:

LIMITED RIGHTS

Contract Number

Contractor Name

Contractor Address

The Government?s rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted by the limited rights license in the DFARS 252.227-7989, Rights in Technical Data, Computer Software, and Computer Software Documentation?Other Than Commercial Products and Commercial Services, clause contained in the above identified contract. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such data must promptly notify the above named Contractor.

(End of legend)

(5) Restricted rights markings. Software delivered or otherwise furnished to the Government with restricted rights shall be marked as follows:

RESTRICTED RIGHTS

Contract Number

Contractor Name

Contractor Address

The Government?s rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by the restricted rights license in the DFARS 252.227-7014, Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation, clause contained in the above identified contract. Any reproduction of computer software or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such software must promptly notify the above named Contractor.

(End of legend)

(6) Special license rights markings. (i) Technical data or computer software in which the Government?s rights stem from a specifically negotiated license shall be marked as follows:

SPECIAL LICENSE RIGHTS

The Government?s rights to use, modify, reproduce, release, perform, display, or disclose these data or software are restricted by Contract Number [Insert contract number],

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License Number [Insert license identifier]. Any reproduction of technical data, computer software, or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(ii) For purposes of this clause, special licenses do not include government

purpose license rights acquired under a prior contract (see paragraph (c)(5) of this clause).

(7) Preexisting data or software markings. If the terms of a prior contract or license permitted the Contractor to restrict the Government?s rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software deliverable under this contract, and those restrictions are still applicable, the Contractor may mark such data or software with the appropriate restrictive legend for which the data or software qualified under the prior contract or license. The Contractor shall follow the marking procedures in paragraph (g)(1) of this clause.

(h) Contractor procedures and records. Throughout performance of this contract, the Contractor and its subcontractors or suppliers that will deliver technical data or computer software with other than unlimited rights, shall?

(1) Have, maintain, and follow written procedures sufficient to assure that restrictive markings are used only when authorized by the terms of this clause; and

(2) Maintain records sufficient to justify the validity of any restrictive markings on technical data or computer software delivered under this contract.

(i) Removal of unjustified and nonconforming markings?(1) Unjustified technical data markings. The rights and obligations of the parties regarding the validation of restrictive markings on technical data or computer software delivered or to be delivered under this contract are contained in the DFARS 252.227-7997, Validation of Asserted Restrictions, clause of this contract. Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may ignore or, at the Contractor?s expense, correct or strike a marking if, in accordance with the procedures in the Validation of Asserted Restrictions clause of this contract, a restrictive marking is determined to be unjustified.

(2) Nonconforming technical data or computer software markings. A nonconforming marking is a marking placed on technical data or computer software delivered or otherwise furnished to the Government under this contract that is not in the format authorized by this contract. Correction of nonconforming markings is not subject to the DFARS 252.227-7997, Validation of Asserted Restrictions, clause of this contract. If the Contracting Officer notifies the Contractor of a nonconforming marking and the Contractor fails to remove or correct such marking within 60 days, the Government may ignore or, at the Contractor?s expense, remove or correct any nonconforming marking.

(j) Relation to patents. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

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(k) Limitation on charges for rights in technical data, computer software, or computer software documentation. (1) The Contractor shall not charge to this contract any cost, including, but not limited to, license fees, royalties, or similar charges, for

rights in technical data, computer software, or computer software documentation the Contractor must deliver under this contract when?

(i) The Government has acquired, by any means, the same or greater rights in the data or software; or

(ii) The data or software are available to the public without restrictions.

(2) The limitation in paragraph (k)(1) of this clause?

(i) Includes costs charged by a subcontractor or supplier, at any tier, or costs incurred by the Contractor to acquire rights in subcontractor or supplier technical data, computer software, or computer software documentation, if the subcontractor or supplier has been paid for such rights under any other Government contract or under a license conveying the rights to the Government; and

(ii) Does not include the reasonable costs of reproducing, handling, or mailing the documents or other media in which the technical data, computer software, or computer software documentation will be delivered.

(l) Applicability to subcontractors or suppliers. (1) The Contractor shall ensure that the rights afforded its subcontractors and suppliers under 10 U.S.C. 3771-3775, 10 U.S.C. 3781-3786, and the identification, assertion, and delivery processes of paragraph

(f) of this clause are recognized and protected.

(2)(i) Except as provided in paragraph (l)(2)(ii) of this clause, the Contractor shall include this clause in any subcontract or contractual instrument under which technical data or computer software will be obtained from a subcontractor or supplier for delivery to the Government. This requirement applies to technical data or software related to other than commercial products or commercial services, or related to commercial products or commercial services developed in any part with Government funds. The Contractor shall also require its subcontractors and suppliers to include this clause, without alteration except to identify the parties, in any contractual instrument under which technical data or computer software will be obtained from a subcontractor or supplier for delivery to the Government. This clause will govern the technical data related to an other than commercial product or service or to any portion of a commercial product or commercial service that was developed in any part at Government expense, and the clause at 252.227-7990 will govern the technical data related to any portion of a commercial item that was developed exclusively at private expense. No other clause shall be used to expand or reduce the Government?s, the Contractor?s, or a higher-tier subcontractor?s or supplier?s rights in a subcontractor?s or supplier?s technical data, computer software, or computer software documentation.

(ii) The Contractor shall use the clause at DFARS 252.227-7993, Rights in Other Than Commercial Technical Data and Computer Software?Small Business Innovation Research Program and Small Business Technology Transfer Program, to

govern technical data, computer software, or computer software documentation that is SBIR/STTR data.

(3) Technical data, computer software, or computer software documentation a subcontractor or supplier must deliver shall normally be delivered to the next higher-tier contractor, subcontractor, or supplier. However, when there is a requirement in the prime contract for data which may be submitted with other than unlimited rights by a subcontractor or supplier, then said subcontractor or supplier may fulfill its requirement by submitting such data or software directly to the Government, rather than through a higher-tier contractor, subcontractor, or supplier.

(4) The Contractor and higher-tier subcontractors or suppliers shall not use the award of a contract as economic leverage to obtain rights in technical data, computer software, or computer software documentation from their subcontractors or suppliers.

(5) In no event shall the Contractor use its obligation to recognize and protect subcontractor or supplier rights in technical data, computer software, or computer software documentation as an excuse for failing to satisfy its contractual obligations to the Government.

(End of clause)

Alternate I (DEVIATION 2026-O0036) (FEB 2026). As prescribed in 227.7103-6(b)(1) and (d), add the following paragraph (m) to the basic clause:

(m) Publication for sale. (1) This paragraph only applies to technical data or computer software in which the Government has obtained unlimited rights or a license to make an unrestricted release of technical data or computer software.

(2) The Government will not publish a deliverable technical data or computer software item or items identified in this contract as being subject to paragraph (m) of this clause or authorize others to publish such data or software on its behalf if, prior to publication for sale by the Government and within 24 months following the date specified in this contract for delivery of such data or software or the removal of any national security or export control restrictions, whichever is later, the Contractor publishes that item or items for sale and promptly notifies the Contracting Officer of such publication(s). Any such publication shall include a notice identifying the number of this contract and the Government?s rights in the published data or software.

(3) This limitation on the Government?s right to publish for sale shall continue as long as the data are reasonably available to the public for purchase.

Alternate II (DEVIATION 2026-O0036) (FEB 2026). As prescribed in 227.7103-6(b)(2), add the following definition of ?Vessel design? in alphabetical order to paragraph (a) and add paragraph (c)(7) to the basic clause:

(a) ?Vessel design? means the design of a vessel, boat, or craft, and its components, including the hull, decks, superstructure, and the exterior surface shape of all external shipboard equipment and systems. The term includes designs covered by 10 U.S.C. 8687, and designs protectable under 17 U.S.C. 1301, et seq.

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(c)(7) Vessel designs. For a vessel design (including a vessel design embodied in a useful article) that is developed or delivered under this contract, the Government shall

have the right to make and have made any useful article that embodies the vessel design, to import the article, to sell the article, and to distribute the article for sale or to use the article in trade, to the same extent that the Government is granted rights in the technical data related to the vessel design.

252.227-7014 [Reserved]

252.227-7990 Technical Data?Commercial Products and Commercial Services. (DEVIATION 2026-O0036)

As prescribed in 227.7203-6(a)(1), use the following clause:

TECHNICAL DATA?COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES (DEVIATION 2026-O0036) (FEB 2026)

(a) Definitions. As used in this clause?

?Commercial product and commercial service? includes commercial components and commercial processes but does not include commercial computer software.

?Covered Government support contractor? means a contractor (other than a litigation support contractor covered by 252.204-7014) under a contract, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government?s management and oversight of a program or effort (rather than to directly furnish an end item or service to accomplish a program or effort), provided that the contractor?

(1) Is not affiliated with the prime contractor or a first-tier subcontractor on the program or effort, or with any direct competitor of such prime contractor or any such first-tier subcontractor in furnishing end items or services of the type developed or produced on the program or effort; and

(2) Receives access to technical data or computer software for performance of a Government contract that contains the clause at 252.227-7994, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

?Form, fit, and function data? means technical data that describe the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.

?Technical data? means recorded information, regardless of the form or method of recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or financial, administrative, cost or pricing, or management information, or information incidental to contract administration.

(b) Applicability. This clause governs the technical data related to any portion of a commercial product or commercial service that was developed exclusively at private

expense. If the commercial product or commercial service was developed in any part at Government expense?

(1) The clause at Defense Federal Acquisition Regulation Supplement (DFARS) **252.227-7993, Rights in Other Than Commercial Technical Data and Computer** Software?Small Business Innovation Research Program and Small Business Technology Transfer Program, governs technical data that are generated during any portion of performance that is covered under the Small Business Innovation Research (SBIR) Program or Small Business Technology Transfer (STTR) Program; and

(2) The clause at DFARS 252.227-7989, Rights in Technical Data, Computer Software, and Computer Software Documentation?Other Than Commercial Products and Commercial Services, governs the technical data related to any portion of a commercial product or commercial service that was developed in any part at Government expense and is not covered under the SBIR or STTR program.

(c) License. (1) The Government shall have the unrestricted right to use, modify, reproduce, release, perform, display, or disclose technical data, and to permit others to do so, that?

(i) Have been provided to the Government or others without restrictions on use, modification, reproduction, release, or further disclosure other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data to another party or the sale or transfer of some or all of a business entity or its assets to another party;

(ii) Are form, fit, and function data;

(iii) Are a correction or change to technical data furnished to the Contractor by the Government;

(iv) Are necessary for operation, maintenance, installation, or training (other than detailed manufacturing or process data); or

(v) Have been provided to the Government under a prior contract or licensing agreement through which the Government has acquired the rights to use, modify, reproduce, release, perform, display, or disclose the data without restrictions.

(2) Except as provided in paragraph (c)(1) of this clause, the Government may use, modify, reproduce, release, perform, display, or disclose technical data within the Government only. The Government will not?

(i) Use the technical data to manufacture additional quantities of the commercial products; or

(ii) Release, perform, display, disclose, or authorize use of the technical data outside the Government without the Contractor?s written permission unless a release, disclosure, or permitted use is necessary for emergency repair or overhaul of the commercial products furnished under this contract, or for performance of work by covered Government support contractors.

(3) The Contractor acknowledges that?

(i) The Government is authorized to release or disclose technical data covered by paragraph (c)(2) of this clause to covered Government support contractors;

(ii) The Government will notify the Contractor of such release or disclosure;

(iii) The Contractor or the party asserting restrictions in a restrictive legend may?

(A) Require each such covered Government support contractor to enter into a nondisclosure agreement directly with the Contractor or the party asserting restrictions regarding the use of the data; or

(B) Waive in writing the requirement for a nondisclosure agreement; and

(iv) Any such nondisclosure agreement shall address the restrictions on the covered Government support contractor?s use of the data as set forth in the clause at DFARS 252.227-7994, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. The nondisclosure agreement shall not include any additional terms and conditions unless mutually agreed to by the parties to the nondisclosure agreement.

(d) Additional license rights. The Contractor, its subcontractors, and suppliers are not required to provide the Government additional rights to use, modify, reproduce, release, perform, display, or disclose technical data. However, if the Government desires to obtain additional rights in technical data, the Contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. The Contractor shall ensure that any resulting special license agreement, made part of the contract, lists or describes all technical data for which the Government has been granted additional rights and specifies those additional rights.

(e) Release from liability. The Contractor agrees that the Government, and other persons to whom the Government may have released or disclosed technical data delivered or otherwise furnished under this contract, shall have no liability for any release or disclosure of technical data that are not marked to indicate that such data are licensed data subject to use, modification, reproduction, release, performance, display, or disclosure restrictions.

(f) Subcontractors or suppliers. (1) The Contractor shall recognize and protect the rights afforded its subcontractors and suppliers under 10 U.S.C. 3771-3775, 10 U.S.C. 3781-3786, and 15 U.S.C. 638(j)(1)(B)(iii) and (v).

(2) Whenever any technical data related to commercial products or commercial services developed in any part at private expense will be obtained from a subcontractor or supplier for delivery to the Government under this contract, the Contractor shall use this clause in the subcontract or other contractual instrument, including subcontracts and other contractual instruments for commercial products or commercial services, and require its subcontractors or suppliers to do so, without alteration, except to identify the

parties. This clause will govern the technical data related to any portion of a commercial product or commercial service that was developed exclusively at private

expense, and the Contractor shall use the following clauses to govern the technical data related to any portion of a commercial product or commercial service that was developed in any part at Government expense:

(i) Use the clause at DFARS 252.227-7989, Rights in Technical Data, Computer Software, and Computer Software Documentation?Other Than Commercial Products and Commercial Services, to govern any technical data that are not generated during any portion of performance that is covered under the SBIR or STTR program.

(ii) Use the clause at 252.227-7993, Rights in Other Than Commercial Technical Data and Computer Software?Small Business Innovation Research Program and Small Business Technology Transfer Program, to govern technical data that are generated during any portion of performance that is covered under the SBIR or STTR program.

(End of clause)

Alternate I (DEVIATION 2026-O0036) (FEB 2026). As prescribed in 227.7102-4(a)(2), add the following definition of ?Vessel design? in alphabetical order to paragraph (a) and add (c)(4) to the basic clause:

(a) ?Vessel design? means the design of a vessel, boat, or craft, and its components, including the hull, decks, superstructure, and the exterior surface shape of all external shipboard equipment and systems. The term includes designs covered by 10 U.S.C. 8687, and designs protectable under 17 U.S.C. 1301, et seq.

(c)(4) Vessel designs. For a vessel design (including a vessel design embodied in a useful article) that is developed or delivered under this contract, the Government shall have the right to make and have made any useful article that embodies the vessel design, to import the article, to sell the article, and to distribute the article for sale or to use the article in trade, to the same extent that the Government is granted rights in the technical data related to the vessel design.

252.227-7991 Rights in Bid or Proposal Information. (DEVIATION 2026-O0036)

As prescribed in 227.7103-6(g)(1), or 227.7104-4(b)(1), use the following clause

RIGHTS IN BID OR PROPOSAL INFORMATION ((DEVIATION 2026-O0036) (FEB 2026)

(a) Definitions. As used in this clause?

?Computer software? is defined in?

(1) The 252.227-7989, Rights in Technical Data, Computer Software, and Computer Software Documentation?Other Than Commercial Products and Commercial Services, clause of this contract; or

(2) If this is a contract awarded under the Small Business Innovation Research Program or Small Business Technology Transfer Program, the 252.227-7993, Rights in Other Than Commercial Technical Data and Computer Software?Small Business

Innovation Research Program and Small Business Technology Transfer Program, clause of this contract.

?Technical data? is defined in?

(1) The 252.227-7989, Rights in Technical Data, Computer Software, and Computer Software Documentation?Other Than Commercial Products and Commercial Services, clause of this contract; or

(2) If this is a contract awarded under the Small Business Innovation Research Program or Small Business Technology Transfer Program, the 252.227-7993, Rights in Other Than Commercial Technical Data and Computer Software?Small Business Innovation Research Program and Small Business Technology Transfer Program, clause of this contract.

(b) Government rights before contract award. By submission of its offer, the Offeror agrees that the Government?

(1) May reproduce the bid or proposal, or any portions thereof, to the extent necessary to evaluate the offer.

(2) Except as provided in paragraph (d) of this clause, will use information contained in the bid or proposal only for evaluation purposes and will not disclose, directly or indirectly, such information to any person including potential evaluators, unless that person has been authorized by the head of the agency, his or her designee, or the Contracting Officer to receive such information.

(c) Government rights after contract award. The Contractor agrees?

(1) Except as provided in paragraphs (c)(2), (d), and (e) of this clause, the Government has the rights to use, modify, reproduce, release, perform, display, or disclose information contained in the Contractor?s bid or proposal within the Government. The Government will not release, perform, display, or disclose such information outside the Government without the Contractor?s written permission.

(2) The Government?s right to use, modify, reproduce, release, perform, display, or disclose information that is technical data or computer software the Contractor must deliver under this contract are determined by the Defense Federal Acquisition Regulation Supplement (DFARS) 252.227-7989, Rights in Technical Data, Computer Software, and Computer Software Documentation?Other Than Commercial Products and Commercial Services; ; or DFARS 252.227-7993, Rights in Other Than Commercial Technical Data and Computer Software?Small Business Innovation Research Program and Small Business Technology Transfer Program, clause of this contract.

(d) Government-furnished information. The Government?s rights with respect to Government-furnished technical data or computer software contained in the Contractor?s bid or proposal are subject only to restrictions on use, modification,

reproduction, release, performance, display, or disclosure, if any, imposed by the developer or licensor of such data or software.

(e) Information available without restrictions. The Government?s rights to use,

modify, reproduce, release, perform, display, or, disclose information contained in a bid or proposal, including technical data or computer software, and to permit others to do so, shall not be restricted in any manner if such information has been released or disclosed to the Government or to other persons without restrictions other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the information to another party or the sale or transfer of some or all of a business entity or its assets to another party.

(f) Flowdown. Contractor shall include this clause in all subcontracts or similar contractual instruments and require its subcontractors or suppliers to do so without alteration, except to identify the parties.

(End of clause)

252.227-7992 Identification and Assertion of Use, Release, or Disclosure Restrictions. (DEVIATION 2026-O0036)

As prescribed in 227.7103-3(b) or 227.7104-4(b)(2), use the following provision:

IDENTIFICATION AND ASSERTION OF USE, RELEASE, OR DISCLOSURE RESTRICTIONS (DEVIATION 2026-O0036) (FEB 2026)

(a) Definitions. As used in this provision?

?Computer software? is defined in?

(1) The 252.227-7989, Rights in Technical Data, Computer Software, and Computer Software Documentation?Other Than Commercial Products and Commercial Services; or

(2) If this solicitation contemplates a contract under the Small Business Innovation Research Program or Small Business Technology Transfer Program, the **252.227-7993, Rights in Other Than Commercial Technical Data and Computer** Software?Small Business Innovation Research Program and Small Business Technology Transfer Program, clause of this solicitation.

?SBIR/STTR data? is defined in the 252.227-7993, Rights in Other Than Commercial Technical Data and Computer Software?Small Business Innovation Research Program and Small Business Technology Transfer Program, clause of this solicitation.

?Technical data? is defined in?

(1) The 252.227-7989, Rights in Technical Data, Computer Software, and Computer Software Documentation?Other Than Commercial Products and Commercial Services, clause of this solicitation; or

(2) If this solicitation contemplates a contract under the Small Business Innovation Research Program or Small Business Technology Transfer Program, the

252.227-7993, Rights in Other Than Commercial Technical Data and Computer Software?Small Business Innovation Research Program and Small Business Technology Transfer Program, clause of this solicitation.

(b) The identification and assertion requirements in this provision apply only to

technical data, including computer software documentation, or computer software the Contractor must deliver with other than unlimited rights. For contracts to be awarded under the Small Business Innovation Research (SBIR) Program or Small Business Technology Transfer Program (STTR) Program, these requirements apply to SBIR/STTR data that will be generated under the resulting contract and will be delivered with SBIR/STTR data rights and to any other data that will be delivered with other than unlimited rights. Notification and identification are not required for restrictions based solely on copyright.

(c) Offers submitted in response to this solicitation shall identify, to the extent known at the time an offer is submitted to the Government, the technical data or computer software that the Offeror, its subcontractors or suppliers, or potential subcontractors or suppliers, assert should be furnished to the Government with restrictions on use, release, or disclosure.

(d) The Offeror?s assertions, including the assertions of its subcontractors or suppliers or potential subcontractors or suppliers, shall be submitted as an attachment to its offer in the following format, dated and signed by an official authorized to contractually obligate the Offeror:

Identification and Assertion of Restrictions on the Government?s Use,
Release, or Disclosure of Technical Data or Computer Software

The Offeror asserts for itself, or the persons identified below, that the Government?s rights to use, release, or disclose the following technical data or computer software should be restricted:

Technical data or
computer Name of person
Basis for Asserted rights
software to be asserting
assertion 2 category 3
delivered with restrictions 4
restrictions 1
(LIST) 5 (LIST) (LIST) (LIST)

1 For technical data (other than computer software documentation) related to items, components, or processes developed at private expense, identify both the deliverable technical data and each such items, component, or process. For computer software or computer software documentation identify the software or documentation.

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Technical data or
computer Name of person
Basis for Asserted rights
software to be asserting
assertion 2 category 3

delivered with restrictions 4
restrictions 1
2 Generally, development at private expense, either exclusively or partially, is the only basis for asserting restrictions. For technical data, other than computer software documentation, development refers to development of the item, component, or process to which the data relate. The Government?s rights in computer software documentation generally may not be restricted. For computer software, development refers to the software. Indicate whether development was accomplished exclusively or partially at private expense. If development was not accomplished at private expense, or for computer software documentation, enter the specific basis for asserting restrictions.
3 Enter asserted rights category (e.g., government purpose license rights from a prior contract, rights in SBIR/STTR data generated under a contract resulting from this solicitation or under another contract, limited, restricted, or government purpose rights under a contract resulting from this solicitation or under a prior contract, or specially negotiated licenses).
4 Corporation, individual, or other person, as appropriate.
5 Enter ?none? when all data or software will be submitted without restrictions.
Date
Printed Name and Title
Signature

(End of identification and assertion)

(e) An offeror?s failure to submit, complete, or sign the notification and identification required by paragraph (d) of this provision with its offer may render the offer ineligible for award.

(f) If the Offeror is awarded a contract, the assertions identified in paragraph (d) of this provision shall be listed in an attachment to that contract. Upon request by the Contracting Officer, the Offeror shall provide sufficient information to enable the Contracting Officer to evaluate any listed assertion.
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(End of provision)

252.227-7993 Rights in Other Than Commercial Technical Data and Computer Software?Small Business Innovation Research Program and Small Business Technology Transfer Program. (DEVIATION 2026-O0036)

As prescribed in 227.7104-4(a)(1), use the following clause:

RIGHTS IN OTHER THAN COMMERCIAL TECHNICAL DATA AND COMPUTER SOFTWARE?SMALL BUSINESS INNOVATION RESEARCH PROGRAM AND SMALL BUSINESS TECHNOLOGY TRANSFER PROGRAM
(DEVIATION 2026-O0036) (FEB 2026)

(a) Definitions. As used in this clause?

?Commercial computer software? means software developed or regularly used for nongovernmental purposes which?

(1) Has been sold, leased, or licensed to the public;

(2) Has been offered for sale, lease, or license to the public;

(3) Has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this contract; or

(4) Satisfies a criterion expressed in paragraph (1), (2), or (3) of this definition and would require only minor modification to meet the requirements of this contract.

?Computer database? means a collection of recorded data in a form capable of being processed by a computer. The term does not include computer software.

?Computer program? means a set of instructions, rules, or routines, recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.

?Computer software? means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, re-created, or recompiled. Computer software does not include computer databases or computer software documentation.

?Computer software documentation? means owner?s manuals, user?s manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

?Covered Government support contractor? means a contractor (other than a litigation support contractor covered by 252.204-7014) under a contract, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government?s management and oversight of a

program or effort (rather than to directly furnish an end item or service to accomplish a program or effort), provided that the contractor?

(1) Is not affiliated with the prime contractor or a first-tier subcontractor on the program or effort, or with any direct competitor of such prime contractor or any such first-tier subcontractor in furnishing end items or services of the type developed or produced on the program or effort; and

(2) Receives access to the technical data or computer software for performance of a Government contract that contains the clause at 252.227-7994, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

?Detailed manufacturing or process data? means technical data that describe the steps, sequences, and conditions of manufacturing, processing or assembly used by the manufacturer to produce an item or component or to perform a process.

?Developed? means?

(1) (Applicable to technical data other than computer software documentation.) An item, component, or process, exists and is workable. Thus, the item or component must have been constructed or the process practiced. Workability is generally established when the item, component, or process has been analyzed or tested sufficiently to demonstrate to reasonable people skilled in the applicable art that there is a high probability that it will operate as intended. Whether, how much, and what type of analysis or testing is required to establish workability depends on the nature of the item, component, or process, and the state of the art. To be considered ?developed,? the item, component, or process need not be at the stage where it could be offered for sale or sold on the commercial market, nor must the item, component or process be actually reduced to practice within the meaning of Title 35 of the United States Code;

(2) A computer program has been successfully operated in a computer and tested to the extent sufficient to demonstrate to reasonable persons skilled in the art that the program can reasonably be expected to perform its intended purpose;

(3) Computer software, other than computer programs, has been tested or analyzed to the extent sufficient to demonstrate to reasonable persons skilled in the art that the software can reasonably be expected to perform its intended purpose; or

(4) Computer software documentation the Contractor must deliver under a contract has been written, in any medium, in sufficient detail to comply with requirements under that contract.

?Developed exclusively at private expense? means development was accomplished entirely with costs charged to indirect cost pools, costs not allocated to a government contract, or any combination thereof.

(1) Private expense determinations should be made at the lowest practicable level.

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(2) Under fixed-price contracts, when total costs are greater than the firm-fixed-price or ceiling price of the contract, the additional development costs necessary to complete development shall not be considered when determining whether development was at government, private, or mixed expense.

?Developed exclusively with government funds? means development was not accomplished exclusively or partially at private expense.

?Developed with mixed funding? means development was accomplished partially with costs charged to indirect cost pools and/or costs not allocated to a government contract, and partially with costs charged directly to a government contract.

?Form, fit, and function data? means technical data that describe the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.

?Generated? means, with respect to technical data or computer software, first created in

the performance of this contract.

?Government purpose? means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software for commercial purposes or authorize others to do so.

?Government purpose rights? means the rights to?

(1) Use, modify, reproduce, release, perform, display, or disclose technical data or computer software within the Government without restriction; and

(2) Release or disclose technical data or computer software outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for United States Government purposes.

?Limited rights? means the rights to use, modify, reproduce, release, perform, display, or disclose technical data, in whole or in part, within the Government. The Government may not, without the written permission of the party asserting limited rights, release or disclose the technical data outside the Government, use the technical data for manufacture, or authorize the technical data to be used by another party, except that the Government may reproduce, release, or disclose such data or authorize the use or reproduction of the data by persons outside the Government if?

(1) The reproduction, release, disclosure, or use is?

(i) Necessary for emergency repair and overhaul; or

(ii) A release or disclosure to?

(A) A covered Government support contractor in performance of its covered Government support contracts for use, modification, reproduction, performance, display, or release or disclosure to a person authorized to receive limited rights technical data; or

(B) A foreign government, of technical data other than detailed manufacturing or process data, when use of such data by the foreign government is in the interest of the Government and is required for evaluational or informational purposes;

(2) The recipient of the technical data is subject to a prohibition on the further reproduction, release, disclosure, or use of the technical data; and

(3) The contractor or subcontractor asserting the restriction is notified of such reproduction, release, disclosure, or use.

?Minor modification? means a modification that does not significantly alter the nongovernmental function or purpose of computer software or is of the type customarily provided in the commercial marketplace.

?Other than commercial computer software? means software that does not qualify as commercial computer software under the definition of ?commercial computer software? of this clause.

?Restricted rights? apply only to other than commercial computer software and mean the Government?s rights to?

(1) Use a computer program with one computer at one time. The program may not be accessed by more than one terminal or central processing unit or time shared unless otherwise permitted by this contract;

(2) Transfer a computer program to another Government agency without the further permission of the Contractor if the transferor destroys all copies of the program and related computer software documentation in its possession and notifies the licensor of the transfer. Transferred programs remain subject to the provisions of this clause;

(3) Make a reasonable number of copies of the computer software required for the purposes of safekeeping (archive), backup, modification, or other activities authorized in paragraphs (1), (2), (4) and (5) of this definition;

(4) Modify computer software provided that the Government may?

(i) Use the modified software only as provided in paragraphs (1) and (3) of this definition; and

(ii) Not release or disclose the modified software except as provided in paragraphs (2) and (5) of this clause;

(5) Use, modify, reproduce, perform, display, or release or disclose the computer software, and permit contractors, subcontractors, or covered Government support

contractors to do so, for purposes set forth in subparagraph (i) of this paragraph, subject to the conditions set forth in subparagraphs (ii) of this paragraph:

(i)(A) In performance of service contracts (see FAR 37.101), to diagnose and correct deficiencies, to modify the software to enable a computer program to be combined with, adapted to, or merged with other computer programs, or when necessary to respond to urgent tactical situations, provided that the Government notifies the party which has granted restricted rights that any such release or disclosure to particular contractors or subcontractors was made;

(B) To perform emergency repairs or overhaul of items or components procured under this or a related contract, when necessary to perform such repairs or overhaul; or

(C) For the management and oversight of a program or effort by a person authorized to receive restricted rights computer software, including in the performance of covered Government support contracts.

(ii)(A) Any contractor, subcontractor, or covered Government support contractor receiving access to the software for the purposes of subparagraphs (i), (ii), or (iii) of this paragraph shall be subject to the use and nondisclosure agreement at 227.7103-7 or be performing a Government contract that contains the clause at 252.227-7994,

Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends;

(B) The Government must not permit any recipient of the software under this paragraph to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (4) of this definition, for any other purpose; and

(C) Any use, modification, reproduction, performance, display, release, or disclosure of the computer software under this paragraph remains subject to the limitations in paragraphs (1) through (4) of this definition.

?Small Business Innovation Research/Small Business Technology Transfer (SBIR/STTR) data? means all technical data or computer software developed or generated in the performance of a phase I, II, or III SBIR/STTR contract or subcontract.

?SBIR/STTR data protection period? means the time period during which the Government is obligated to protect SBIR/STTR data against unauthorized use and disclosure in accordance with SBIR/STTR data rights. The SBIR/STTR data protection period begins on the date of award of the contract under which the SBIR/STTR data are developed or generated and ends 20 years after that date unless, after the award, the agency and the Contractor negotiate for some other protection period for the SBIR/STTR data developed or generated under that contract.

?SBIR/STTR data rights? means the Government?s rights, during the SBIR/STTR data protection period, in SBIR/STTR data covered by paragraph (c)(5) of this clause, as follows:

(1) Limited rights in such SBIR/STTR technical data; and

(2) Restricted rights in such SBIR/STTR computer software.

?Technical data? means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or financial, administrative, cost or pricing, or management information, or information incidental to contract administration.

?Unlimited rights? means rights to use, modify, reproduce, release, perform, display, or disclose, technical data or computer software in whole or in part, in any manner and for any purpose whatsoever, and to have or authorize others to do so.

(b) Applicability. This clause governs all SBIR/STTR data. For any data that are not SBIR/STTR data?

(1) The clause at Defense Federal Acquisition Regulation Supplement (DFARS) **252.227-7989, Rights in Technical Data, Computer Software, and Computer Software** Documentation?Other Than Commercial Products and Commercial Services, governs the technical data related to other than commercial products and commercial services or to any portion of a commercial product or commercial service that was developed in any part at Government expense, and the clause at DFARS 252.227-7990, Technical

Data?Commercial Products and Commercial Services, governs the technical data related to any portion of a commercial product or commercial service that was developed exclusively at private expense;

(2) The clause at DFARS 252.227-7989, Rights in Technical Data, Computer Software, and Computer Software Documentation?Other Than Commercial Products and Commercial Services, governs other than commercial computer software and other than commercial computer software documentation; and

(3) A license consistent with DFARS 227.7202 governs commercial computer software and commercial computer software documentation.

(c) Rights in technical data and computer software. The Contractor grants or shall obtain for the Government the following royalty-free, worldwide, nonexclusive, irrevocable license rights in technical data or other than commercial computer software. The Contractor retains all rights not granted to the Government.

(1) Unlimited rights. The Government shall have unlimited rights in technical data or computer software, including such data generated under this contract, that are?

(i) Form, fit, and function data;

(ii) Necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data);

(iii) Corrections or changes to Government-furnished technical data or computer software;

(iv) Otherwise publicly available or have been released or disclosed by the Contractor or a subcontractor without restrictions on further use, release, or disclosure other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data or computer software to another party or the sale or transfer of some or all of a business entity or its assets to another party;

(v) Technical data or computer software in which the Government has acquired previously unlimited rights under another Government contract or as a result of negotiations;

(vi) Technical data or computer software furnished to the Government, under this or any other Government contract or subcontract thereunder, with license rights for which all restrictive conditions on the Government have expired; and

(vii) Computer software documentation generated or the Contractor must deliver under this contract.

(2) Government purpose rights.

(i) The Government shall have government purpose rights for the period specified in paragraph (c)(2)(ii) of this clause in data that are?

(A) Not SBIR/STTR data, and are?

(1) Technical data related to items, components, or processes developed with mixed funding, or are computer software developed with mixed funding,

except when the Government is entitled to unlimited rights in such data as provided in paragraph (c)(1) of this clause;

(2) Created with mixed funding in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes; or

(B) SBIR/STTR data, upon expiration of the SBIR/STTR data protection period.

(ii)(A) For the non-SBIR/STTR data described in paragraph (c)(2)(i)(A) of this clause, the Government shall have government purpose rights for a period of 5 years, or such other period as may be negotiated. This period shall commence upon award of the contract, subcontract, letter contract (or similar contractual instrument), or contract modification (including a modification to exercise an option) that required development of the items, components, or processes, or creation of the data described in paragraph (c)(2)(i)(A)(2) of this clause. Upon expiration of the 5-year or other negotiated period, the Government shall have unlimited rights in the data.

(B) For the SBIR/STTR data described in paragraph (c)(2)(i)(B) of this clause, the Government shall have government purpose rights perpetually. This Government purpose rights period commences upon the expiration of the SBIR/STTR data protection period.

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(iii) The Government shall not release or disclose data in which it has government purpose rights unless?

(A) Prior to release or disclosure, the intended recipient is subject to the nondisclosure agreement at DFARS 227.7103-7; or

(B) The recipient is a Government contractor receiving access to the data for performance of a Government contract that contains the clause at DFARS **252.227-7994, Limitations on the Use or Disclosure of Government-Furnished** Information Marked with Restrictive Legends.

(iv) The Contractor has the exclusive right, including the right to license others, to use technical data in which the Government has obtained government purpose rights under this contract for any commercial purpose during the time period specified in the government purpose rights marking prescribed in paragraph (g)(3) of this clause.

(3) Limited rights. The Government shall have limited rights in technical data that were not generated under this contract, are related to items, components, or processes developed exclusively at private expense, and are marked, in accordance with the marking instructions in paragraph (g)(1) of this clause, with the legend prescribed in paragraph (g)(4) of this clause.

(4) Restricted rights in computer software. The Government shall have restricted rights in other than commercial computer software the Contractor must deliver or otherwise furnished to the Government under this contract that was

developed exclusively at private expense and was not generated under this contract.

(5) SBIR/STTR data rights. Except for technical data, including computer software documentation, or computer software in which the Government has unlimited rights under paragraph (c)(1) of this clause, the Government shall have SBIR/STTR data rights, during the SBIR/STTR data protection period of this contract, in all SBIR/STTR data developed or generated under this contract. This protection period is not extended by any subsequent SBIR/STTR contracts under which any portion of that SBIR/STTR data is used or delivered. The SBIR/STTR data protection period of any such subsequent SBIR/STTR contract applies only to the SBIR/STTR data that are developed or generated under that subsequent contract. The SBIR/STTR data protection period is governed by the version of this clause that is incorporated in the contract under which the SBIR/STTR data are developed or generated. If the SBIR/STTR data were developed or generated under a contract that included a previous version of this clause, then the SBIR/STTR data protection period is governed by that previous version of this clause.

(6) Specifically negotiated license rights. After contract award, the standard license rights granted to the Government under paragraphs (c)(1) through (5) of this clause may be modified by mutual agreement to provide such rights as the parties consider appropriate but shall not provide the Government lesser rights in technical data, including computer software documentation, than are enumerated in the definition of ?limited rights? of this clause or lesser rights in computer software than are enumerated in the definition of ?restricted rights? of this clause. Any rights so negotiated shall be identified in a license agreement made part of this contract.

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(7) Prior government rights. Technical data, including computer software documentation, or computer software that will be delivered, furnished, or otherwise provided to the Government under this contract, in which the Government has previously obtained rights shall be delivered, furnished, or provided with the preexisting rights, unless?

(i) The parties have agreed otherwise; or

(ii) Any restrictions on the Government?s rights to use, modify, release, perform, display, or disclose the technical data or computer software have expired or no longer apply.

(8) Release from liability. The Contractor agrees to release the Government from liability for any authorized release or disclosure of technical data or computer software made in accordance with this clause or any negotiated license agreement. This release from liability for the Government also applies to releases or disclosures made by a third party who received the data or software from an authorized recipient. For any unauthorized use or disclosure by such third parties of technical data or computer software marked with restrictive legends, the Contractor agrees to seek relief solely from that party.

(9) Covered Government support contractors. The Contractor acknowledges that?

(i) The Government is authorized to release or disclose limited rights technical data and restricted rights computer software to covered Government support contractors;

(ii) The Government will notify the Contractor of such release or disclosure;

(iii) The Contractor or the party asserting restrictions in a restrictive legend may?

(A) Require each such covered Government support contractor to enter into a nondisclosure agreement directly with the Contractor or the party asserting restrictions regarding the use of the data or software; or

(B) Waive in writing the requirement for a nondisclosure agreement; and

(iv) Any such nondisclosure agreement shall address the restrictions on the covered Government support contractor?s use of the data or software as set forth in the clause at DFARS 252.227-7994, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. The nondisclosure agreement shall not include any additional terms and conditions unless mutually agreed to by the parties to the nondisclosure agreement.

(d) Rights in derivative computer software or computer software documentation. The Government shall retain its rights in the unchanged portions of any computer software

or computer software documentation delivered under this contract that the Contractor uses to prepare, or includes in, derivative software or documentation.

(e) Third party copyrighted technical data and computer software. The Contractor shall not, without the written approval of the Contracting Officer, incorporate any copyrighted technical data, including computer software documentation, or computer software in the data or software the Contractor must deliver under this contract unless the Contractor is the copyright owner or has obtained license rights for the Government of the appropriate scope set forth in paragraph (c) of this clause and, prior to delivery of such?

(1) Technical data, has affixed to the transmittal document a statement of the license rights obtained; or

(2) Computer software, has provided a statement of the license rights obtained in a form acceptable to the Contracting Officer.

(f) Identification and delivery of technical data or computer software to be delivered with restrictions on use, release, or disclosure. (1) This paragraph does not apply to to restrictions based solely on copyright.

(2) Except as provided in paragraph (f)(3) of this clause, technical data or computer software that the Contractor asserts should be furnished to the Government with restrictions on use, release, or disclosure is identified in an attachment to this

contract (the Attachment). The Contractor shall not deliver any technical data or computer software with restrictive markings unless the technical data or computer software are listed on the Attachment.

(3) In addition to the assertions made in the Attachment, other assertions may be identified after award when based on new information or inadvertent omissions unless the inadvertent omissions would have materially affected the source selection decision. Such identification and assertion shall be submitted to the Contracting Officer as soon as practicable prior to the scheduled date for delivery of the technical data or computer software, in the following format, and signed by an official authorized to contractually obligate the Contractor:

Identification and Assertion of Restrictions on the Government?s Use,
Release, or Disclosure of Technical Data or Computer Software

The Contractor asserts for itself, or the persons identified below, that the Government?s rights to use, release, or disclose the following technical data or computer software should be restricted:

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Technical data or
computer Name of person
Basis for Asserted rights
software to be asserting
assertion 2 category 3
delivered restrictions 4
with restrictions 1

(LIST) (LIST) (LIST) (LIST)

1 If the assertion is applicable to items, components, or processes developed at private expense, identify both the technical data and each such item, component, or process.

2 Generally, development at private expense, either exclusively or partially, is the only basis for asserting restrictions on the Government?s rights to use, release, or disclose technical data or computer software. Indicate whether development was exclusively or partially at private expense. If development was not at private expense, enter the specific reason for asserting that the Government?s rights should be restricted.

3 Enter asserted rights category (e.g., limited rights, restricted rights, or government purpose rights from a prior contract, SBIR/STTR data rights under this or another contract, or specifically negotiated licenses).

4 Corporation, individual, or other person, as appropriate.

Date

Printed Name and Title

Signature

(End of identification and assertion)

(4) When requested by the Contracting Officer, the Contractor shall provide sufficient information to enable the Contracting Officer to evaluate the Contractor?s assertions. The Contracting Officer reserves the right to add the Contractor?s assertions to the Attachment and validate any listed assertions, at a later date, in accordance with the procedures in the DFARS 252.227-7997, Validation of Asserted Restrictions, clause of this contract.

(g) Marking requirements. The Contractor, and its subcontractors or suppliers, may only assert restrictions on the Government?s rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software the Contractor must

deliver under this contract by marking the deliverable data or software subject to restriction. Except as provided in paragraph (g)(8) of this clause, only the following markings are authorized under this contract: the government purpose rights marking at paragraph (g)(3) of this clause; the limited rights legend at paragraph (g)(4) of this clause; the restricted rights legend at paragraph (g)(5) of this clause; the SBIR/STTR data rights legend at paragraph (g)(6) of this clause; or the special license rights legend at paragraph (g)(7) of this clause; and a notice of copyright as prescribed under 17 U.S.C. 401 or 402.

(1) General marking instructions. The Contractor, or its subcontractors or suppliers, shall conspicuously and legibly mark the appropriate legend to all technical data and computer software that qualify for such markings. The authorized legends shall be placed on the transmittal document or storage container and, for printed material, each page of the printed material containing technical data or computer software for which restrictions are asserted. When only portions of a page of printed material are subject to the asserted restrictions, such portions shall be identified by circling, underscoring, with a note, or other appropriate identifier. Technical data or computer software transmitted directly from one computer or computer terminal to another shall contain a notice of asserted restrictions. However, instructions that interfere with or delay the operation of computer software in order to display a restrictive rights legend or other license statement at any time prior to or during use of the computer software, or otherwise cause such interference or delay, shall not be inserted in software that will or might be used in combat or situations that simulate combat conditions, unless the Contracting Officer?s written permission to deliver such software has been obtained prior to delivery. Reproductions of technical data, computer software, or any portions thereof subject to asserted restrictions shall also reproduce the asserted restrictions.

(2) Omitted markings. (i) Technical data, computer software, or computer software documentation delivered or otherwise provided under this contract without restrictive markings shall be presumed to have been delivered with unlimited rights. To the extent practicable, if the Contractor has requested permission (see paragraph

(g)(2)(ii) of this clause) to correct an inadvertent omission of markings, the Contracting

Officer will not release or disclose the technical data, software, or documentation pending evaluation of the request.

(ii) The Contractor may request permission to have conforming and justified restrictive markings placed on unmarked technical data, computer software, or computer software documentation at its expense. The request must be received by the Contracting Officer within 6 months following the furnishing or delivery of such technical data, software, or documentation, or any extension of that time approved by the Contracting Officer. The Contractor shall?

(A) Identify the technical data, software, or documentation that should have been marked;

(B) Demonstrate that the omission of the marking was inadvertent, the proposed marking is justified and conforms with the requirements for the marking of technical data, computer software, or computer software documentation contained in this clause; and

(C) Acknowledge, in writing, that the Government has no liability with respect to any disclosure, reproduction, or use of the technical data, software, or documentation made prior to the addition of the marking or resulting from the omission of the marking.

(3) Government purpose rights markings. Technical data or computer software delivered or otherwise furnished to the Government with government purpose rights shall be marked as follows:

GOVERNMENT PURPOSE RIGHTS

Contract Number
Contractor Name
Contractor Address
Expiration Date

The Government?s rights to use, modify, reproduce, release, perform, display, or disclose these technical data or computer software are restricted by the government purpose rights license in the DFARS 252.227-7993, Rights in Other Than Commercial Technical Data and Computer Software?Small Business Innovation Research Program and Small Business Technology Transfer Program, clause contained in the above identified contract. No restrictions apply after the expiration date shown above. Any reproduction of technical data or computer software or portions thereof marked with this restrictive marking must also reproduce the markings.

(End of legend)

(4) Limited rights markings. Technical data not generated under this contract that are related to items, components, or processes developed exclusively at private expense and delivered or otherwise furnished with limited rights shall be marked as follows:

LIMITED RIGHTS

Contract Number

Contractor Name

Contractor Address

The Government?s rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted by the limited rights license in the DFARS 252.227-7993, Rights in Other Than Commercial Technical Data and Computer Software? Small Business Innovation Research Program and Small Business Technology Transfer Program, clause contained in the above identified contract. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such data must promptly notify the above named Contractor.

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(END OF LEGEND)

(5) Restricted rights markings. Computer software delivered or otherwise furnished to the Government with restricted rights shall be marked as follows:

RESTRICTED RIGHTS

Contract Number

Contractor Name

Contractor Address

The Government?s rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by the restricted rights license in the DFARS 252.227-7993, Rights in Other Than Commercial Technical Data and Computer Software?Small Business Innovation Research Program and Small Business Technology Transfer Program, clause contained in the above identified contract. Any reproduction of computer software or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such software must promptly notify the above named Contractor.

(End of legend)

(6) SBIR/STTR data rights markings. Except for technical data or computer software in which the Government has acquired unlimited rights under paragraph (c)(1) of this clause or negotiated special license rights as provided in paragraph (c)(6) of this clause, technical data or computer software generated under this contract shall be marked as follows. The Contractor shall enter the expiration date for the SBIR/STTR data protection period on the legend:

SBIR/STTR DATA RIGHTS

Contract Number

Contractor Name

Contractor Address

Expiration of SBIR/STTR Data Protection Period

Expiration of the Government Purpose Rights Period
The Government?s rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software marked with this legend are restricted during the period shown as provided in the SBIR/STTR data rights license in the DFARS 252.227-7993, Rights in Other Than Commercial Technical Data and Computer Software? Small Business Innovation Research Program and Small Business Technology Transfer Program, clause contained in the above identified contract. After the SBIR/STTR data protection period expiration date shown above, the Government has perpetual
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government purpose rights as provided in the clause, unless otherwise indicated by the government purpose rights expiration date shown above. Any reproduction of technical data, computer software, or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(7) Special license rights markings. (i) Technical data or computer software in which the Government?s rights stem from a specifically negotiated license shall be marked as follows:

SPECIAL LICENSE RIGHTS

The Government?s rights to use, modify, reproduce, release, perform, display, or disclose this technical data or computer software are restricted by Contract Number [Insert contract number], License Number [Insert license identifier]. Any reproduction of technical data, computer software, or portions thereof marked with this marking must also reproduce the markings.

(End of legend)

(ii) For purposes of this clause, special licenses do not include government purpose license rights acquired under a prior contract (see paragraph (c)(7) of this clause).

(8) Preexisting data markings. If the terms of a prior contract or license permitted the Contractor to restrict the Government?s rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software, and those restrictions are still applicable, the Contractor may mark such data or software with the appropriate restrictive legend for which the data or software qualified under the prior contract or license. The Contractor shall follow the marking procedures in paragraph

(g)(1) of this clause.

(h) Contractor procedures and records. Throughout performance of this contract, the Contractor, and its subcontractors or suppliers that will deliver technical data or computer software with other than unlimited rights, shall?

(1) Have, maintain, and follow written procedures sufficient to assure that restrictive markings are used only when authorized by the terms of this clause; and

(2) Maintain records sufficient to justify the validity of any restrictive markings on technical data or computer software delivered under this contract.

(i) Removal of unjustified and nonconforming markings. (1) Unjustified markings. The rights and obligations of the parties regarding the validation of restrictive markings on technical data or computer software delivered or to be delivered under this contract are contained in the DFARS 252.227-7997, Validation of Asserted Restrictions, clause of this contract, respectively. Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may ignore or, at the Contractor?s expense, correct or strike a marking if, in accordance with the applicable procedures of those clauses, a restrictive marking is determined to be unjustified.
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(2) Nonconforming markings. A nonconforming marking is a marking placed on technical data or computer software delivered or otherwise furnished to the Government under this contract that is not in the format authorized by this contract. Correction of nonconforming markings is not subject to the DFARS 252.227-7997, Validation of Asserted Restrictions, clause of this contract. If the Contracting Officer notifies the Contractor of a nonconforming marking or markings and the Contractor fails to remove or correct such markings within 60 days, the Government may ignore or, at the Contractor?s expense, remove or correct any nonconforming markings.

(j) Relation to patents. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(k) Limitation on charges for rights in technical data or computer software. (1) The Contractor shall not charge to this contract any cost, including but not limited to, license fees, royalties, or similar charges, for rights in technical data or computer software the Contractor must deliver under this contract when?

(i) The Government has acquired, by any means, the same or greater rights in the data or software; or

(ii) The data are available to the public without restrictions.

(2) The limitation in paragraph (k)(1) of this clause?

(i) Includes costs charged by a subcontractor or supplier, at any tier, or costs incurred by the Contractor to acquire rights in subcontractor of supplier technical data or computer software, if the subcontractor or supplier has been paid for such rights under any other Government contract or under a license conveying the rights to the Government; and

(ii) Does not include the reasonable costs of reproducing, handling, or mailing the documents or other media in which the technical data or computer software will be delivered.

(l) Subcontractors or suppliers. (1) The Contractor shall assure that the rights afforded its subcontractors and suppliers under 10 U.S.C. 3771-3775, 10 U.S.C. 3781-3786, 15 U.S.C. 638(j)(1)(B)(iii) and (v), and the identification, assertion, and delivery processes required by paragraph (f) of this clause are recognized and protected.

(2) Whenever any other than commercial technical data or computer software is

to be obtained from a subcontractor or supplier for delivery to the Government under this contract, the Contractor shall use the following clause(s) in the subcontract or other contractual instrument, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties:

(i) Except as provided in paragraph (l)(2)(ii) of this clause, use this clause to govern SBIR/STTR data.

(ii) For data that are not SBIR/STTR data?

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(A) Use the clause at DFARS 252.227-7989, Rights in Technical Data, Computer Software, and Computer Software Documentation?Other Than Commercial Products and Commercial Services, to govern the technical data related to other than commercial products or commercial services or to any portion of a commercial product or commercial service that was developed in any part at Government expense, and use the clause at DFARS 252.227-7990, Technical Data?Commercial Products and Commercial Services, to govern the technical data related to any portion of a commercial product or commercial service that was developed exclusively at private expense;

(B) Use the DFARS clause at 252.227-7989, Rights in Technical Data, Computer Software, and Computer Software Documentation?Other Than Commercial Products and Commercial Services, to govern other than commercial computer software and computer software documentation; and

(C) Use the license under which the data are customarily provided to the public, in accordance with DFARS 227.7202, for commercial computer software and commercial computer software documentation.

(iii) No other clause shall be used to expand or reduce the Government?s, the Contractor?s, or a higher tier subcontractor?s or supplier?s rights in a subcontractor?s or supplier?s technical data or computer software.

(3) Technical data the Contractor must deliver by a subcontractor or supplier shall normally be delivered to the next higher tier contractor, subcontractor, or supplier. However, when there is a requirement in the prime contract for technical data which may be submitted with other than unlimited rights by a subcontractor or supplier, then said subcontractor or supplier may fulfill its requirement by submitting such technical data directly to the Government, rather than through a higher tier contractor, subcontractor, or supplier.

(4) The Contractor and higher tier subcontractors or suppliers shall not use their power to award contracts as economic leverage to obtain rights in technical data or computer software from their subcontractors or suppliers.

(5) In no event shall the Contractor use its obligation to recognize and protect subcontractor or supplier rights in technical data or computer software as an excuse for failing to satisfy its contractual obligation to the Government.

(End of clause)

252.227-7019 [Reserved]

252.227-7020 [Reserved]

252.227-7021 [Reserved]

252.227-7022 [Reserved]

252.227-7023 [Reserved]

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252.227-7024 [Reserved]

252.227-7994 Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. (DEVIATION 2026-O0036)

As prescribed in 227.7103-6(e) or 227.7104-4(b)(4), use the following clause:

LIMITATIONS ON THE USE OR DISCLOSURE OF GOVERNMENT-FURNISHED INFORMATION MARKED WITH RESTRICTIVE LEGENDS

(DEVIATION 2026-O0036) (FEB 2026)

(a) Definitions. As used in this clause?

(1) For contracts in which the Government will furnish the Contractor with technical data, the terms ?covered Government support contractor,? ?limited rights,? ?restricted rights?, and ?Government purpose rights? are defined in the clause at **252.227-7989, Rights in Technical Data, Computer Software, and Computer Software** Documentation?Other Than Commercial Products and Commercial Services.

(2) For Small Business Innovation Research (SBIR) Program and Small Business Technology Transfer (STTR) Program contracts, the terms ?covered Government support contractor,? ?government purpose rights,? ?limited rights,? ?restricted rights,? and ?SBIR/STTR data rights? are defined in the clause at 252.227-7993, Rights in Other Than Commercial Technical Data and Computer Software? Small Business Innovation Research Program and Small Business Technology Transfer Program.

(b) Technical data or computer software provided to the Contractor as Government-furnished information (GFI) under this contract may be subject to restrictions on use, modification, reproduction, release, performance, display, or further disclosure.

(1) GFI marked with limited rights, restricted rights, or SBIR/STTR data rights legends. (i) The Contractor shall use, modify, reproduce, perform, or display technical data received from the Government with limited rights legends, computer software received with restricted rights legends, or SBIR/STTR technical data or computer software received with SBIR/STTR data rights legends (during the SBIR/STTR data protection period) only in the performance of this contract. The Contractor shall not, without the express written permission of the party whose name appears in the legend, release or disclose such data or software to any unauthorized person.

(ii) If the Contractor is a covered Government support contractor, the Contractor is also subject to the additional terms and conditions at paragraph (b)(5) of

this clause.

(2) GFI marked with government purpose rights legends. The Contractor shall use technical data or computer software received from the Government with government purpose rights legends for government purposes only. The Contractor shall not, without the express written permission of the party whose name appears in the restrictive legend, use, modify, reproduce, release, perform, or display such data or software for any commercial purpose or disclose such data or software to a person other

than its subcontractors, suppliers, or prospective subcontractors or suppliers, who require the data or software to submit offers for, or perform, contracts under this contract. Prior to disclosing the data or software, the Contractor shall require the persons to whom disclosure will be made to complete and sign the nondisclosure agreement at 227.7103-7 of the Defense Federal Acquisition Regulation Supplement **(DFARS).**

(3) GFI marked with specially negotiated license rights legends. (i) The Contractor shall use, modify, reproduce, release, perform, or display technical data or computer software received from the Government with specially negotiated license legends only as permitted in the license. Such data or software may not be released or disclosed to other persons unless permitted by the license and, prior to release or disclosure, the intended recipient has completed the nondisclosure agreement at DFARS 227.7103-7. The Contractor shall modify paragraph (1)(c) of the nondisclosure agreement to reflect the recipient?s obligations regarding use, modification, reproduction, release, performance, display, and disclosure of the data or software.

(ii) If the Contractor is a covered Government support contractor, the Contractor may also be subject to some or all of the additional terms and conditions at paragraph (b)(5) of this clause, to the extent such terms and conditions are required by the specially negotiated license.

(4) GFI technical data marked with commercial restrictive legends. (i) The Contractor shall use, modify, reproduce, perform, or display technical data that are or are related to a commercial product or commercial service and are received from the Government with a commercial restrictive legend (i.e., marked to indicate that such data are subject to use, modification, reproduction, release, performance, display, or disclosure restrictions) only in the performance of this contract. The Contractor shall not, without the express written permission of the party whose name appears in the legend, use the technical data to manufacture additional quantities of the commercial products or commercial services, or release or disclose such data to any unauthorized person.

(ii) If the Contractor is a covered Government support contractor, the Contractor is also subject to the additional terms and conditions at paragraph (b)(5) of this clause.

(5) Covered Government support contractors. If the Contractor is a covered

Government support contractor receiving technical data or computer software marked with restrictive legends pursuant to paragraphs (b)(1)(ii), (b)(3)(ii), or (b)(4)(ii) of this clause, the Contractor further agrees and acknowledges that?

(i) The technical data or computer software will be accessed and used for the sole purpose of furnishing independent and impartial advice or technical assistance directly to the Government in support of the Government?s management and oversight of the program or effort to which such technical data or computer software relates, as stated in this contract, and shall not be used to compete for any Government or non-Government contract;

(ii) The Contractor shall take all reasonable steps to protect the technical data or computer software against any unauthorized release or disclosure;

(iii) The Contractor shall ensure that the party whose name appears in the legend is notified of the access or use within 30 days of the Contractor?s access or use of such data or software;

(iv) The Contractor shall enter into a nondisclosure agreement with the party whose name appears in the legend, if required to do so by that party, and that any such nondisclosure agreement will implement the restrictions on the Contractor?s use of such data or software as set forth in this clause. The nondisclosure agreement shall not include any additional terms and conditions unless mutually agreed to by the parties to the nondisclosure agreement; and

(v) That a breach of these obligations or restrictions may subject the Contractor to?

(A) Criminal, civil, administrative, and contractual actions in law and equity for penalties, damages, and other appropriate remedies by the United States; and

(B) Civil actions for damages and other appropriate remedies by the party whose name appears in the legend.

(c) Indemnification and creation of third party beneficiary rights. The Contractor agrees?

(1) To indemnify and hold harmless the Government, its agents, and employees from every claim or liability, including attorneys fees, court costs, and expenses, arising out of, or in any way related to, the misuse or unauthorized modification, reproduction, release, performance, display, or disclosure of technical data or computer software received from the Government with restrictive legends by the Contractor or any person to whom the Contractor has released or disclosed such data or software; and

(2) That the party whose name appears on the restrictive legend, in addition to any other rights it may have, is a third-party beneficiary who has the right of direct action against the Contractor, or any person to whom the Contractor has released or disclosed such data or software, for the unauthorized duplication, release, or disclosure of technical data or computer software subject to restrictive legends.

(d) The Contractor shall ensure that its employees are subject to use and nondisclosure obligations consistent with this clause prior to the employees being provided access to or use of any GFI covered by this clause.

(End of clause)

252.227-7026 [Reserved]

252.227-7995 Deferred ordering of technical data or computer software. (DEVIATION 2026-O0036)

As prescribed at 227.7103-6(h), use the following clause:

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DEFERRED ORDERING OF TECHNICAL DATA OR COMPUTER SOFTWARE (DEVIATION 2026-O0036) (FEB 2026)

In addition to technical data or computer software the Contractor must deliver elsewhere in this contract, the Government may, at any time during the performance of this contract or within a period of three years after acceptance of all items (other than technical data or computer software) the Contractor must deliver under this contract or the termination of this contract, order any technical data or computer software generated in the performance of this contract or any of its subcontracts. When the technical data or computer software is ordered, the Contractor shall be compensated for converting the data or computer software into the prescribed form, for reproduction and delivery. The Contractor?s obligation to deliver technical data related to an item from a subcontractor expires three years after the Contractor accepts the final delivery of that item from that subcontractor. The Government?s rights to use the data or computer software shall be pursuant to the clause at 252.227-7989, Rights in Technical Data, Computer Software, and Computer Software Documentation?Other Than Commercial Products or Commercial Services, of this contract.

(End of clause)

252.227-7028 Technical data or computer software previously delivered to the government.

As prescribed in 227.7103-6(f) or 227.7104-4(b)(4), use the following provision:

TECHNICAL DATA OR COMPUTER SOFTWARE PREVIOUSLY DELIVERED TO THE GOVERNMENT (JUN 1995)

The Offeror shall attach to its offer an identification of all documents or other media incorporating technical data or computer software it intends to deliver under this contract with other than unlimited rights that are identical or substantially similar to documents or other media that the Offeror has produced for, delivered to, or is obligated to deliver to the Government under any contract or subcontract. The attachment shall identify?

(a) The contract number under which the data or software were produced;

(b) The contract number under which, and the name and address of the organization to whom, the data or software were most recently delivered or will be

delivered; and

(c) Any limitations on the Government?s rights to use or disclose the data or software, including, when applicable, identification of the earliest date the limitations expire.

(End of provision)

252.227-7029 [Reserved]

252.227-7996 Technical data?withholding of payment (DEVIATION 2026-O0036).

As prescribed at 227.7103-6(g)(2) or 227.7104-4(b)(5), use the following clause

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TECHNICAL DATA?WITHHOLDING OF PAYMENT (DEVIATION 2026-O0036) (FEB 2026)

(a) If technical data the Contractor must deliver under this contract is not delivered within the time specified by this contract or is deficient upon delivery (including having restrictive markings not identified in the list described in the clause at 252.227-7989(f)(2) or 252.227-7993(f)(2) of this contract), the Contracting Officer may until such data is accepted by the Government, withhold payment to the Contractor of ten percent (10%) of the total contract price or amount unless a lesser withholding is specified in the contract. Payments shall not be withheld nor any other action taken pursuant to this paragraph when the Contractor?s failure to make timely delivery or to deliver such data without deficiencies arises out of causes beyond the control and without the fault or negligence of the Contractor.

(b) The withholding of any amount or subsequent payment to the Contractor shall not be construed as a waiver of any rights accruing to the Government under this contract.

(End of clause)

252.227-7031 [Reserved]

252.227-7032 [Reserved]

252.227-7033 [Reserved]

252.227-7034 - 252.227-7036 [Reserved]

252.227-7997 Validation of Asserted Restrictions. (DEVIATION 2026-O0036)

As prescribed in 227.7103-6(g), 227.7104-4(b)(6), or 227.7203-6(c), use the following clause:

VALIDATION OF ASSERTED RESTRICTIONS (DEVIATION 2026-O0036) (FEB 2026)

(a) Definitions. The terms used in this clause are defined in the 252.227-7989, Rights in Technical Data, Computer Software, and Computer Software Documentation?Other Than Commercial Products and Commercial Services, clause of this contract.

(b) Technical data related to commercial products or commercial services?

presumption regarding development exclusively at private expense. For technical data related to commercial products or commercial services, the Contracting Officer will presume that the Contractor?s or a subcontractor?s asserted use or release restrictions with respect to a commercial product or commercial service are justified on the basis that the item was developed exclusively at private expense. The Contracting Officer will not issue a challenge unless there are reasonable grounds to question the validity of the assertion that the commercial item was developed exclusively at private expense.
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(c) Justification. The Contractor or subcontractor at any tier is responsible for maintaining records sufficient to justify the validity of its asserted restrictions on the rights of the Government and others to use, duplicate, release, or disclose technical data or computer software delivered, required to be delivered, or otherwise provided to the Government under the contract or subcontract. Except as provided in paragraph (b) of this clause, the Contractor or subcontractor shall be prepared to furnish to the Contracting Officer a written justification for such asserted restrictions in response to a challenge under paragraph (e) of this clause.

(d) Prechallenge request for information related to asserted restrictions on technical data. (1) The Contracting Officer may request the Contractor or subcontractor to furnish a written explanation for any asserted restriction on the right of the United States or others to use, disclose, or release technical data. If, upon review of the explanation submitted, the Contracting Officer cannot determine the basis of the asserted restriction, the Contracting Officer may further request the Contractor or subcontractor to furnish additional information in the records of, or otherwise in the possession of or reasonably available to, the Contractor or subcontractor to justify the validity of any asserted restriction on technical data delivered, to be delivered, or otherwise provided to the Government under the contract or subcontract (e.g., a statement of facts accompanied with supporting documentation). The Contractor or subcontractor shall submit such written data as requested by the Contracting Officer within the time required or such longer period as may be mutually agreed.

(2) If the Contracting Officer, after reviewing the written data furnished pursuant to paragraph (d)(1) of this clause, or any other available information related to the validity of an asserted restriction, determines that reasonable grounds exist to question the current validity of the asserted restriction and that continued adherence to the asserted restriction would make impracticable the subsequent competitive acquisition of the item or process to which the technical data relates, the Contracting Officer will follow the procedures in paragraph (f) of this clause.

(3) If the Contractor or subcontractor fails to respond to the Contracting Officer?s request for information under paragraph (d)(1) of this clause, and the Contracting Officer determines that continued adherence to the asserted restriction would make impracticable the subsequent competitive acquisition of the item or process to which the technical data relates, the Contracting Officer may challenge the validity of

the asserted restriction as described in paragraph (f) of this clause.

(e) Prechallenge request for information related to assertion restrictions on computer software. (1) The Contracting Officer may request the Contractor to provide sufficient information to enable the Contracting Officer to evaluate the Contractor?s asserted restrictions. Such information shall be based upon the records required by this clause or other information reasonably available to the Contractor.

(2) Based upon the information provided, if the?

(i) Contractor agrees that an asserted restriction is not valid, the Contracting Officer may?

(A) Strike or correct the unjustified marking at the Contractor?s expense; or

(B) Return the computer software to the Contractor for correction at the Contractor?s expense. If the Contractor fails to correct or strike the unjustified marking and return the corrected software to the Contracting Officer within 60 days following receipt of the software, the Contracting Officer may correct or strike the marking at the Contractor?s expense;

(ii) Contracting Officer concludes that the asserted restriction is appropriate for this contract, the Contracting Officer shall so notify the Contractor in writing.

(3) The Contractor?s failure to provide a timely response to a Contracting Officer?s request for information or failure to provide sufficient information to enable the Contracting Officer to evaluate an asserted restriction shall constitute reasonable grounds for questioning the validity of an asserted restriction.

(f) Challenge. (1) Notwithstanding any provision of this contract concerning inspection and acceptance, if the Contracting Officer determines that a challenge to the asserted restriction is warranted, the Contracting Officer will send a written challenge notice to the Contractor or subcontractor making the asserted restriction. The challenge notice and all related correspondence shall be subject to handling procedures for classified information and controlled unclassified information. Such challenge will?

(i) State the specific grounds for challenging the asserted restriction including, for technical data related to commercial products or commercial services, sufficient information to reasonably demonstrate that the commercial product or commercial service was not developed exclusively at private expense;

(ii) Require a response within 60 days justifying the assertion based upon records kept in accordance with paragraph (c) of this clause and providing sufficient evidence as to the current validity of the asserted restriction;

(iii) State that a Contracting Officer?s final decision, issued pursuant to paragraph (h) of this clause, or action of a court of competent jurisdiction or Board of Contract Appeals that sustained the validity of an identical assertion made by the Contractor (or a licensee) sustaining the validity of a prior asserted restriction identical to the current asserted restriction, within the 3-year period preceding the current

challenge, shall serve as justification for the current asserted restriction if the prior validated restriction was asserted by the same Contractor or subcontractor (or any licensee of such Contractor or subcontractor) to which such notice is being provided; and

(iv) State that failure to respond to the challenge notice may result in issuance of a final decision pursuant to paragraph (g) of this clause.

(2) The Contracting Officer will extend the time for response as appropriate if the Contractor or subcontractor submits a written request showing the need for additional time to prepare a response.

(3) The Contractor?s or subcontractor?s written response shall be considered a claim within the meaning of the 41 U.S.C. 7101, Contract Disputes, and shall be certified in the form prescribed at 33.207 of the Federal Acquisition Regulation, regardless of dollar amount.

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(4) A Contractor or subcontractor receiving challenges to the same asserted restrictions from more than one Contracting Officer shall notify each Contracting Officer of the existence of more than one challenge. The notice shall also state which Contracting Officer initiated the first in time unanswered challenge. The Contracting Officer initiating the first in time unanswered challenge after consultation with the Contractor or subcontractor and the other Contracting Officers, will formulate and distribute a schedule for responding to each of the challenge notices to all interested parties. The schedule will afford the Contractor or subcontractor a reasonable opportunity to respond to each challenge notice. All parties will be bound by this schedule.

(5) The Contracting Officer may request additional supporting documentation if, in the Contracting Officer?s opinion, the Contractor?s explanation does not provide sufficient evidence to justify the validity of the asserted restrictions. The Contractor agrees to promptly respond to the Contracting Officer?s request for additional supporting documentation.

(6) Notwithstanding challenge by the Contracting Officer, the parties may agree on the disposition of an asserted restriction at any time prior to a Contracting Officer?s final decision or, if the Contractor has appealed that decision, filed suit, or provided notice of an intent to file suit, at any time prior to a decision by a court of competent jurisdiction or Board of Contract Appeals.

(g) Final decision when Contractor or subcontractor fails to respond. Upon a failure of a Contractor or subcontractor to submit any response to the challenge notice or a request for additional information (under paragraphs (f)(1) and (f)(5) of this clause), the Contracting Officer will issue a final decision to the Contractor or subcontractor in accordance with the Disputes clause of this contract. In order to sustain the challenge for commercial products or commercial services, the Contracting Officer will provide information demonstrating that the commercial product or commercial service was not developed exclusively at private expense. This final decision will be issued as soon as

possible after the expiration of the time period of paragraph (f)(1)(ii) or (f)(2) of this clause. Following issuance of the final decision, the Contracting Officer will comply with the procedures in paragraphs (h)(2)(ii) through (iv) of this clause.

(h) Final decision when Contractor or subcontractor responds. (1) If the Contracting Officer determines that the Contractor or subcontractor has justified the validity of the asserted restriction, the Contracting Officer will issue a final decision to the Contractor or subcontractor that sustains the validity of the asserted restriction and that states that the Government will continue to be bound by the asserted restriction. The Contracting Officer will issue this final decision within 60 days after receipt of the Contractor?s or subcontractor?s response to the challenge notice, or within such longer period that the Contracting Officer has notified the Contractor or subcontractor that the Government will require. The Contracting Officer will provide notification of any longer period for issuance of a final decision within 60 days after receipt of the response to the challenge notice.

(2)(i) If the Contracting Officer determines that the validity of the asserted restriction is not justified, the Contracting Officer will issue a final decision to the Contractor or subcontractor in accordance with the Disputes clause of this contract. To

sustain the challenge for technical data related to commercial products or commercial services, the Contracting Officer will provide information demonstrating that the commercial product or commercial service was not developed exclusively at private expense. Notwithstanding paragraph (e) of the Disputes clause, the final decision will be issued within 60 days after receipt of the Contractor?s or subcontractor?s response to the challenge notice, or within such longer period that the Contracting Officer has notified the Contractor or subcontractor that the Government will require. The notification of a longer period for issuance of a final decision will be made within 60 days after receipt of the response to the challenge notice.

(ii) The Government agrees that it will continue to be bound by the asserted restriction for a period of 90 days from the issuance of the Contracting Officer?s final decision under paragraph (h)(2)(i) of this clause. The Contractor or subcontractor agrees that, if it intends to file suit in the United States Court of Federal Claims, it will provide a notice of intent to file suit to the Contracting Officer within 90 days from the issuance of the Contracting Officer?s final decision under paragraph (h)(2)(i) of this clause. If the Contractor or subcontractor fails to appeal to an agency Board of Contract Appeals, file suit in an appropriate court, or provide a notice of intent to file suit in an appropriate court to the Contracting Officer within the 90-day period, the Government may cancel or ignore the restrictive markings that are based on the asserted restrictions, and the failure of the Contractor or subcontractor to take the required action constitutes agreement with such Government action.

(iii) The Government agrees that it will continue to be bound by the asserted restriction where a notice of intent to file suit in the United States Court of

Federal Claims is provided to the Contracting Officer within 90 days from the issuance of the final decision under paragraph (h)(2)(i) of this clause. The Government will no longer be bound, and the Contractor or subcontractor agrees that the Government may strike or ignore the restrictive marking that is based on the asserted restriction, if the Contractor or subcontractor fails to file its suit within 1 year after issuance of the final decision. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, that urgent or compelling circumstances will not permit waiting for the filing of a suit in the United States Court of Federal Claims, the Contractor or subcontractor agrees that the agency may, following notice to the Contractor or subcontractor, authorize release or disclosure of the technical data or computer software. The Government agrees not to release or disclose such technical data or computer software unless, prior to release or disclosure, the intended recipient is subject to the use and nondisclosure agreement at Defense Federal Acquisition Regulation Supplement (DFARS) 227.7103-7, or is a Government contractor receiving access to the technical data or computer software for performance of a Government contract that contains the clause at DFARS 252.227-7994, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. Such agency determination may be made at any time after issuance of the final decision and will not affect the Contractor?s or subcontractor?s right to damages against the United States where its asserted restrictions are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(iv) The Government agrees that it will be bound by the asserted restrictions where an appeal or suit is filed pursuant to the Contract Disputes statute until final disposition by an agency Board of Contract Appeals or the United States Court of Federal Claims. Notwithstanding the foregoing, where the head of an agency

determines, on a nondelegable basis, following notice to the Contractor that urgent or compelling circumstances will not permit awaiting the decision by such Board of Contract Appeals or the United States Court of Federal Claims, the Contractor or subcontractor agrees that the agency may authorize release or disclosure of the technical data or computer software. The Government agrees not to release or disclose such technical data or computer software unless, prior to release or disclosure, the intended recipient is subject to the use and nondisclosure agreement at Defense Federal Acquisition Regulation Supplement (DFARS) 227.7103-7, or is a Government contractor receiving access to the technical data or computer software for performance of a Government contract that contains the clause at DFARS 252.227-7994, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. Such agency determination may be made at any time after issuance of the final decision and will not affect the Contractor?s or subcontractor?s right to damages against the United States where its asserted restrictions are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(i) Final disposition of appeal or suit. (1) If the Contractor or subcontractor appeals or files suit and if, upon final disposition of the appeal or suit, the Contracting Officer?s decision is sustained?

(i) The restrictive marking that is based on the asserted restriction on the technical data or computer software shall be cancelled, corrected or ignored; and

(ii) If the asserted restriction is found not to be substantially justified, the Contractor or subcontractor, as appropriate, shall be liable to the Government for payment of the cost to the Government of reviewing the asserted restriction and the fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Government in challenging the asserted restriction, unless special circumstances would make such payment unjust.

(2) If the Contractor or subcontractor appeals or files suit and if, upon final disposition of the appeal or suit, the Contracting Officer?s decision is not sustained?

(i) The Government will continue to be bound by the restrictive marking; and

(ii) The Government will be liable to the Contractor or subcontractor for payment of fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Contractor or subcontractor in defending the marking, if the challenge by the Government is found not to have been made in good faith.

(j) Duration of right to challenge. (1) The Government may review the validity of any restriction on technical data or computer software, delivered or that the Contractor must deliver under a contract, asserted by the Contractor or subcontractor. During the period within 6 years of final payment on a contract or within 6 years of delivery of the technical data or computer software to the Government, whichever is later, the Contracting Officer may review and make a written determination to challenge the restriction. The Government may, however, challenge a restriction on the release, disclosure, or use of technical data or computer software at any time if such technical data or computer software?

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(i) Are publicly available;

(ii) Have been furnished to the United States without restriction;

(iii) Have been otherwise made available without restriction; or

(iv) Are the subject of a fraudulently asserted use or release restriction.

(2) Only the Contracting Officer?s final decision resolving a formal challenge by sustaining the validity of a restrictive marking or actions of an agency Board of Contract Appeals or a court of competent jurisdiction that sustain the validity of an asserted restriction constitute ?validation? as addressed in 10 U.S.C. 3785(c).

(k) Decision not to challenge. A decision by the Government, or a determination by the Contracting Officer, to not challenge the restrictive marking or asserted restriction shall not constitute ?validation.?

(l) Privity of contract. The Contractor or subcontractor agrees that the Contracting

Officer may transact matters under this clause directly with subcontractors at any tier that assert restrictions. However, this clause neither creates nor implies privity of contract between the Government and subcontractor.

(m) Flowdown. The Contractor or subcontractor agrees to insert this clause in contractual instruments, including subcontracts and other contractual instruments for commercial products or commercial services, with its subcontractors or suppliers at any tier requiring the delivery of technical data or computer software. The clause may not be altered other than to identify the appropriate parties.

(End of clause)

252.227-7038 Patent Rights?Ownership by the Contractor (Large Business).

As prescribed in 227.303(2), use the following clause:

PATENT RIGHTS?OWNERSHIP BY THE CONTRACTOR (LARGE BUSINESS) (JUN 2012)

(a) Definitions. As used in this clause?

?Invention? means?

(1) Any invention or discovery that is or may be patentable or otherwise protectable under Title 35 of the United States Code; or

(2) Any variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).

?Made??

(1) When used in relation to any invention other than a plant variety, means the conception or first actual reduction to practice of the invention; or

(2) When used in relation to a plant variety, means that the Contractor has at least tentatively determined that the variety has been reproduced with recognized characteristics.

?Nonprofit organization? means?

(1) A university or other institution of higher education;

(2) An organization of the type described in the Internal Revenue Code at 26 U.S.C. 501(c)(3) and exempt from taxation under 26 U.S.C. 501(a); or

(3) Any nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

?Practical application? means?

(1)(i) To manufacture, in the case of a composition or product;

(ii) To practice, in the case of a process or method; or

(iii) To operate, in the case of a machine or system; and

(2) In each case, under such conditions as to establish that?

(i) The invention is being utilized; and

(ii) The benefits of the invention are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

?Subject invention? means any invention of the Contractor made in the performance of work under this contract.

(b) Contractor?s rights?(1) Ownership. The Contractor may elect to retain ownership of each subject invention throughout the world in accordance with the provisions of this clause.

(2) License. (i) The Contractor shall retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, unless the Contractor fails to disclose the invention within the times specified in paragraph (c) of this clause. The Contractor?s license-

(A) Extends to any domestic subsidiaries and affiliates within the corporate structure of which the Contractor is a part;

(B) Includes the right to grant sublicenses to the extent the Contractor was legally obligated to do so at the time of contract award; and

(C) Is transferable only with the approval of the agency, except when transferred to the successor of that part of the Contractor?s business to which the invention pertains.

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(ii) The agency?

(A) May revoke or modify the Contractor?s domestic license to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with 37 CFR Part 404 and agency licensing regulations;

(B) Will not revoke the license in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public; and

(C) May revoke or modify the license in any foreign country to the extent the Contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(iii) Before revoking or modifying the license, the agency?

(A) Will furnish the Contractor a written notice of its intention to revoke or modify the license; and

(B) Will allow the Contractor 30 days (or such other time as the funding agency may authorize for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified.

(iv) The Contractor has the right to appeal, in accordance with 37 CFR part 404 and agency regulations, concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

(c) Contractor?s obligations. (1) The Contractor shall?

(i) Disclose, in writing, each subject invention to the Contracting Officer within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters, or within 6 months after the Contractor first becomes

aware that a subject invention has been made, whichever is earlier;

(ii) Include in the disclosure?

(A) The inventor(s) and the contract under which the invention was made;

(B) Sufficient technical detail to convey a clear understanding of the invention; and

(C) Any publication, on sale (i.e., sale or offer for sale), or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication; and

(iii) After submission of the disclosure, promptly notify the Contracting Officer of the acceptance of any manuscript describing the invention for publication and of any on sale or public use.

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(2) The Contractor shall elect in writing whether or not to retain ownership of any subject invention by notifying the Contracting Officer at the time of disclosure or within 8 months of disclosure, as to those countries (including the United States) in which the Contractor will retain ownership. However, in any case where publication, on sale, or public use has initiated the 1-year statutory period during which valid patent protection can be obtained in the United States, the agency may shorten the period of election of title to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Contractor shall?

(i) File either a provisional or a nonprovisional patent application on an elected subject invention within 1 year after election, provided that in all cases the application is filed prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use;

(ii) File a nonprovisional application within 10 months of the filing of any provisional application; and

(iii) File patent applications in additional countries or international patent offices within either 10 months of the first filed patent application (whether provisional or nonprovisional) or 6 months from the date the Commissioner of Patents grants permission to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) The Contractor may request extensions of time for disclosure, election, or filing under paragraphs (c)(1), (2), and (3) of this clause. The Contracting Officer will normally grant the extension unless there is reason to believe the extension would prejudice the Government?s interests.

(d) Government?s rights?(1) Ownership. The Contractor shall assign to the agency, upon written request, title to any subject invention?

(i) If the Contractor elects not to retain title to a subject invention;

(ii) If the Contractor fails to disclose or elect the subject invention within the times specified in paragraph (c) of this clause and the agency requests title within 60 days after learning of the Contractor?s failure to report or elect within the specified times;

(iii) In those countries in which the Contractor fails to file patent applications within the times specified in paragraph (c) of this clause, provided that, if the Contractor has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the agency, the Contractor shall continue to retain ownership in that country; and

(iv) In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

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(2) License. If the Contractor retains ownership of any subject invention, the Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice, or have practiced for or on behalf of the United States, the subject invention throughout the world.

(e) Contractor action to protect the Government?s interest. (1) The Contractor shall execute or have executed and promptly deliver to the agency all instruments necessary to?

(i) Establish or confirm the rights the Government has throughout the world in those subject inventions in which the Contractor elects to retain ownership; and

(ii) Assign title to the agency when requested under paragraph (d)(1) of this clause and enable the Government to obtain patent protection for that subject invention in any country.

(2) The Contractor shall?

(i) Require, by written agreement, its employees, other than clerical and nontechnical employees, to?

(A) Disclose each subject invention promptly in writing to personnel identified as responsible for the administration of patent matters, so that the Contractor can comply with the disclosure provisions in paragraph (c) of this clause; and

(B) Provide the disclosure in the Contractor?s format, which should require, as a minimum, the information required by paragraph (c)(1) of this clause;

(ii) Instruct its employees, through employee agreements or other suitable educational programs, as to the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or statutory foreign bars; and

(iii) Execute all papers necessary to file patent applications on subject inventions and to establish the Government?s rights in the subject inventions.

(3) The Contractor shall notify the Contracting Officer of any decisions not to file a nonprovisional patent application, continue the prosecution of a patent

application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response or filing period required by the relevant patent office.

(4) The Contractor shall include, within the specification of any United States nonprovisional patent application and any patent issuing thereon covering a subject invention, the following statement: ?This invention was made with Government support under (identify the contract) awarded by (identify the agency). The Government has certain rights in this invention.?

(5) The Contractor shall?

(i) Establish and maintain active and effective procedures to ensure that subject inventions are promptly identified and disclosed to Contractor personnel responsible for patent matters;

(ii) Include in these procedures the maintenance of?

(A) Laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions; and

(B) Records that show that the procedures for identifying and disclosing the inventions are followed; and

(iii) Upon request, furnish the Contracting Officer a description of these procedures for evaluation and for determination as to their effectiveness.

(6) The Contractor shall, when licensing a subject invention, arrange to?

(i) Avoid royalty charges on acquisitions involving Government funds, including funds derived through the Government?s Military Assistance Program or otherwise derived through the Government;

(ii) Refund any amounts received as royalty charges on the subject inventions in acquisitions for, or on behalf of, the Government; and

(iii) Provide for the refund in any instrument transferring rights in the invention to any party.

(7) The Contractor shall furnish to the Contracting Officer the following:

(i) Interim reports every 12 months (or any longer period as may be specified by the Contracting Officer) from the date of the contract, listing subject inventions during that period and stating that all subject inventions have been disclosed or that there are no subject inventions.

(ii) A final report, within 3 months after completion of the contracted work, listing all subject inventions or stating that there were no subject inventions, and listing all subcontracts at any tier containing a patent rights clause or stating that there were no subcontracts.

(8)(i) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying?

(A) The subcontractor;

(B) The applicable patent rights clause;

(C) The work to be performed under the subcontract; and

(D) The dates of award and estimated completion.

(ii) The Contractor shall furnish, upon request, a copy of the subcontract, and no more frequently than annually, a listing of the subcontracts that have been awarded.

(9) In the event of a refusal by a prospective subcontractor to accept one of the clauses specified in paragraph (l)(1) of this clause, the Contractor?

(i) Shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor?s reasons for the refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with that subcontract without the written authorization of the Contracting Officer.

(10) The Contractor shall provide to the Contracting Officer, upon request, the following information for any subject invention for which the Contractor has retained ownership:

(i) Filing date.

(ii) Serial number and title.

(iii) A copy of any patent application (including an English-language version if filed in a language other than English).

(iv) Patent number and issue date.

(11) The Contractor shall furnish to the Government, upon request, an irrevocable power to inspect and make copies of any patent application file.

(f) Reporting on utilization of subject inventions. (1) The Contractor shall?

(i) Submit upon request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts in obtaining utilization of the subject invention that are being made by the Contractor or its licensees or assignees;

(ii) Include in the reports information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and other information as the agency may reasonably specify; and

(iii) Provide additional reports that the agency may request in connection with any march-in proceedings undertaken by the agency in accordance with paragraph (h) of this clause.

(2) To the extent permitted by law, the agency shall not disclose the information provided under paragraph (f)(1) of this clause to persons outside the Government without the Contractor?s permission, if the data or information is considered by the Contractor or its licensee or assignee to be ?privileged and confidential? (see 5 U.S.C. 552(b)(4)) and is so marked.

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(g) Preference for United States industry. Notwithstanding any other provision of this clause, the Contractor agrees that neither the Contractor nor any assignee shall grant to any person the exclusive right to use or sell any subject invention in the United States unless the person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the agency may waive the requirement for an exclusive license agreement upon a showing by the Contractor or its assignee that?

(1) Reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States; or

(2) Under the circumstances, domestic manufacture is not commercially feasible.

(h) March-in rights. The Contractor acknowledges that, with respect to any subject invention in which it has retained ownership, the agency has the right to require licensing pursuant to 35 U.S.C. 203 and 210(c), 37 CFR 401.6, and any supplemental regulations of the agency in effect on the date of contract award.

(i) Other inventions. Nothing contained in this clause shall be deemed to grant to the Government any rights with respect to any invention other than a subject invention.

(j) Examination of records relating to inventions. (1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first reduction to practice of inventions in the same field of technology as the work under this contract to determine whether?

(i) Any inventions are subject inventions;

(ii) The Contractor has established procedures required by paragraph (e)(5) of this clause; and

(iii) The Contractor and its inventors have complied with the procedures.

(2) If the Contracting Officer learns of an unreported Contractor invention that the Contracting Officer believes may be a subject invention, the Contractor shall be required to disclose the invention to the agency for a determination of ownership rights.

(3) Any examination of records under this paragraph (j) shall be subject to appropriate conditions to protect the confidentiality of the information involved.

(k) Withholding of payment (this paragraph does not apply to subcontracts). (1) Any time before final payment under this contract, the Contracting Officer may, in the Government?s interest, withhold payment until a reserve not exceeding $50,000 or 5 percent of the amount of the contract, whichever is less, is set aside if, in the Contracting Officer?s opinion, the Contractor fails to?

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(i) Establish, maintain, and follow effective procedures for identifying and disclosing subject inventions pursuant to paragraph (e)(5) of this clause;

(ii) Disclose any subject invention pursuant to paragraph (c)(1) of this clause;

(iii) Deliver acceptable interim reports pursuant to paragraph (e)(7)(i) of this clause; or

(iv) Provide the information regarding subcontracts pursuant to paragraph (e)(8) of this clause.

(2) The reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(3) The Government will not make final payment under this contract before the Contractor delivers to the Contracting Officer?

(i) All disclosures of subject inventions required by paragraph (c)(1) of this clause;

(ii) An acceptable final report pursuant to paragraph (e)(7)(ii) of this clause; and

(iii) All past due confirmatory instruments.

(4) The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized in paragraph (k)(1) of this clause. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government right.

(l) Subcontracts. (1) The Contractor?

(i) Shall include the substance of the Patent Rights-Ownership by the Contractor clause set forth at 52.227-11 of the Federal Acquisition Regulation (FAR), in all subcontracts for experimental, developmental, or research work to be performed by a small business concern or nonprofit organization; and

(ii) Shall include the substance of this clause, including this paragraph (l), in all other subcontracts for experimental, developmental, or research work, unless a different patent rights clause is required by FAR 27.303.

(2) For subcontracts at any tier?

(i) The patents rights clause included in the subcontract shall retain all references to the Government and shall provide to the subcontractor all the rights and obligations provided to the Contractor in the clause. The Contractor shall not, as

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consideration for awarding the subcontract, obtain rights in the subcontractor?s subject inventions; and

(ii) The Government, the Contractor, and the subcontractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Government with respect to those matters covered by this clause. However, nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes statute in connection with proceedings under paragraph (h) of this clause.

(End of clause)

Alternate I (DEC 2007). As prescribed in 227.303(2)(ii), add the following paragraph (b)(2)(v) to the basic clause:

(v) The license shall include the right of the Government to sublicense foreign governments, their nationals, and international organizations pursuant to the following treaties or international agreements: _____*.

[* Contracting Officer to complete with the names of applicable existing treaties or international agreements. This paragraph is not intended to apply to treaties or agreements that are in effect on the date of the award but are not listed.]

Alternate II (DEC 2007). As prescribed in 227.303(2)(iii), add the following paragraph (b)(2)(v) to the basic clause:

(v) The agency reserves the right to?

(A) Unilaterally amend this contract to identify specific treaties or international agreements entered into or to be entered into by the Government after the effective date of this contract; and

(B) Exercise those license or other rights that are necessary for the Government to meet its obligations to foreign governments, their nationals, and international organizations under any treaties or international agreement with respect to subject inventions made after the date of the amendment.

252.227-7039 Patents?reporting of subject inventions.

As prescribed in 227.303(1), use the following clause:

PATENTS?REPORTING OF SUBJECT INVENTIONS (APR 1990)

The Contractor shall furnish the Contracting Officer the following:

(a) Interim reports every twelve (12) months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing subject inventions during that period and stating that all subject inventions have been disclosed or that there are no such inventions.

(b) A final report, within three (3) months after completion of the contracted work, listing all subject inventions or stating that there were no such inventions.

(c) Upon request, the filing date, serial number and title, a copy of the patent application and patent number, and issue data for any subject invention for which the

Contractor has retained title.

(d) Upon request, the Contractor shall furnish the Government an irrevocable power to inspect and make copies of the patent application file.

(End of clause)

252.227-7998 Additional preaward requirements for Small Business

Technology Transfer Program. (DEVIATION 2026-O0036)

As prescribed in 227.7104-4(c)(1), use the following provision:

ADDITIONAL PREAWARD REQUIREMENTS FOR SMALL BUSINESS TECHNOLOGY TRANSFER PROGRAM (DEVIATION 2026-O0036) (FEB 2026)

(a) Definitions. As used in this provision, the terms ?research institution? and ?United States? have the meaning given in the 252.227-7999, Additional Postaward Requirements for Small Business Technology Transfer Program, clause of this solicitation.

(b) Offers submitted in response to this solicitation shall include the following:

(1) The written agreement between the Offeror and a research institution, which shall contain?

(i) A specific allocation of ownership, rights, and responsibilities for intellectual property (including inventions, patents, technical data, and computer software) resulting from the Small Business Technology Transfer (STTR) Program award;

(ii) Identification of which party to the written agreement may obtain United States or foreign patents or otherwise protect any inventions that result from a STTR award; and

(iii) No terms or conditions that conflict with the requirements of the clause at 252.227-7993, Rights in Other Than Commercial Technical Data and Computer Software-Small Business Innovation Research Program and Small Business Technology Transfer Program, or this provision, including the rights of the United States, the Offeror, and the research institution regarding intellectual property, and regarding any right to carry out follow-on research.

(2) The Offeror?s written representation that?

(i) The Offeror is satisfied with its written agreement with the research institution; and

(ii) The written agreement does not conflict with the requirements of this solicitation.

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(c) The Offeror shall submit the written representation required by paragraph (b)(2) of this provision as an attachment to its offer, dated and signed by an official authorized to contractually obligate the Offeror.

(d) The Offeror?s failure to submit the written agreement or written representation required by paragraph (b) of this provision with its offer may render the offer ineligible

for award.

(e) If the Offeror is awarded a contract, the Contracting Officer will include the written agreement and written representation required by paragraph (b) of this provision in an attachment to that contract.

(End of provision)

252.227-7999 Additional postaward requirements for Small Business

Technology Transfer Program. (DEVIATION 2026-O0036)

As prescribed in 227.7104-4(c)(2), use the following clause:

ADDITIONAL POSTAWARD REQUIREMENTS FOR SMALL BUSINESS TECHNOLOGY TRANSFER PROGRAM (DEVIATION 2026-O0036) (FEB 2026)

(a) Definitions. As used in this clause?

?Research institution? means an institution or entity that?

(1) Has a place of business located in the United States;

(2) Operates primarily within the United States or makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials, or labor; and

(3) Is either?

(i) A nonprofit institution that is owned and operated exclusively for scientific or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual (section 4(3) of the Stevenson-Wydler Technology Innovation Act of 1980); or

(ii) A federally-funded research or research and development center as identified by the National Science Foundation

(https://www.nsf.gov/statistics/ffrdclist/) in accordance with the guidance at Federal Acquisition Regulation 35.017.

?United States? means the 50 States and the District of Columbia, the territories and possessions of the Government, the Commonwealth of Puerto Rico, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

(b) Preaward submissions. Attached to this contract are the following documents, submitted by the Contractor pursuant to Defense Federal Acquisition Regulation Supplement (DFARS) 252.227-7998, Additional Preaward Requirements for Small Business Technology Transfer Program:

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(1) The written agreement between the Contractor and a research institution.

(2) The Contractor?s written representation that the Contractor is satisfied with that written agreement, which does not conflict with the clause at DFARS 252.227-7993, Rights in Other Than Commercial Technical Data and Computer Software-Small Business Innovation Research Program and Small Business Technology Transfer Program, or this clause.

(c) Postaward updates. The Contractor shall not allow any modification to its

written agreement with the research institution, unless the written agreement, as modified, contains?

(1) A specific allocation of ownership, rights, and responsibilities for intellectual property (including inventions, patents, technical data, and computer software) resulting from performance of this contract;

(2) Identification of which party to the written agreement may obtain United States or foreign patents or otherwise protect any inventions that result from a Small Business Technology Transfer Program award;

(3) The Contractor?s written, dated, and signed representation that?

(i) The Contractor is satisfied with its written agreement with the research institution, as modified; and

(ii) The written agreement, as modified, does not conflict with the clause at DFARS 252.227-7993, Rights in Other Than Commercial Technical Data and Computer Software-Small Business Innovation Research Program and Small Business Technology Transfer Program, or this clause; and

(4) No terms and conditions that conflict with the clause at DFARS 252.227-7993, Rights in Other Than Commercial Technical Data and Computer Software-Small Business Innovation Research Program and Small Business Technology Transfer Program, or this clause, including the rights of the United States, the Contractor, and the research institution regarding intellectual property, and regarding any right to carry out follow-on research.

(d) Submission of updated agreement. Within 30 days of execution of the modified written agreement described in paragraph (b)(1) of this clause, the Contractor shall submit a copy of that updated written agreement and the updated written representation described in paragraph (b)(2) of this clause to the Contracting Officer for review and attachment to this contract.

(End of clause)

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PGI PART 227?PATENTS, DATA, AND COPYRIGHTS

PGI 227.6?FOREIGN LICENSE AND TECHNICAL ASSISTANCE AGREEMENTS

PGI 227.673 Foreign license and technical assistance agreements between the Government and domestic concerns.

(a) Contracts between the Government and a primary source to provide technical assistance or patent rights to a second source for the manufacture of supplies or performance of services must, to the extent practicable, specify the rights in patents and data and any other rights to be supplied to the second source. Each contract should provide, in connection with any separate agreement between the primary source and the second source for patent rights or technical assistance relating to the articles or services involved in the contract, that?

(1) The primary source and its subcontractors shall not make, on account of any

purchases by the Government or by others with funds derived through the Foreign Military Financing Program or otherwise through the Government, any charge to the second source for royalties or amortization for patents or inventions in which the Government holds a royalty-free license; or data which the Government has the right to possess, use, and disclose to others; or any technical assistance provided to the second source for which the Government has paid under a contract between the Government and the primary source; and

(2) The separate agreement between the primary and second source shall include a statement referring to the contract between the Government and the primary source, and it must conform to the requirements of the International Traffic in Arms Regulations (see PGI **227.675-1).**

(b) Consider the following factors, among others, in negotiating the price to be paid the primary source under contracts within (a) of this section?

(1) The actual cost of providing data, personnel, manufacturing aids, samples, spare parts, etc.;

(2) The extent to which the Government has contributed to the development of the supplies or services, and to the methods of manufacture or performance, through past contracts for research and development or for manufacture of the supplies or performance of the services; and

(3) The Government?s patent rights and rights in data relating to the supplies or services and to the methods of manufacture or of performance.

PGI 227.674 Supply contracts between the Government and a foreign government or concern.

In negotiating contract prices with a second source, including the redetermination of contract prices, or in determining the allowability of costs under a cost-reimbursement contract with a second source?

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(a) Obtain from the second source a detailed statement for patent rights, rights in data, and other technical assistance provided to the second source, including identification and description of such patents, data, and technical assistance; and

(b) Do not accept or allow charges which in effect are?

(1) For royalties or amortization for patents or inventions in which the Government holds a royalty-free license; or

(2) For data which the Government has a right to possess, use, and disclose to others; or

(3) For any technical assistance provided to the second source for which the Government has paid under a contract between the Government and a primary source.

PGI 227.675 Foreign license and technical assistance agreements between a domestic concern and a foreign government or concern.

PGI 227.675-1 Statutes, regulation and guidance.

See applicable export control regulations, policies, and guidance in the?

(a) Arms Export Control Act (AECA) (22 U.S.C. Chapter 39);

(b) Export Control Reform Act of 2018 (ECRA), 50 U.S.C. 4801?4852;

(c) International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120-130;

(d) Export Administration Regulations (EAR), 15 CFR Parts 730-774;

(e) DoDI 2040.02, International Transfers of Technology, Articles, and Services;

(f) DoDI 5230.24, Distribution Statements on DoD Technical Information; and

(g) DoDM 5105.38-M, Security Assistance Management Manual (SAMM).

PGI 227.675-2 Review of agreements.

(a) In reviewing foreign license and technical assistance agreements between primary and second sources, the Department concerned must, insofar as its interests are involved, indicate whether the agreement meets the requirements of sections 124.07-124.10 of the ITAR (see PGI 227.675-1) or in what respects the agreement is deficient. Paragraphs (b) through (g) of this subsection provide general guidance.

(b) When the Government will likely purchase from the second source the supplies or services involved in the agreement, or that Foreign Military Financing Program funds will be provided for the procurement of the supplies or services, the following guidance applies:

(1) If the agreement specifies a reduction in charges thereunder, with respect to purchases by or for the Government or by others with funds derived through the Foreign Military Financing Program or otherwise through the Government, in recognition of the

Government?s rights in patents and data, the Department, before indicating its approval, concerned should evaluate the amount of the reduction to determine whether the amount is fair and reasonable in the circumstances.

(2) If the agreement does not specify any reduction in charges or otherwise fails to give recognition to the Government?s rights in the patents or data involved, approval should be conditioned upon amendment of the agreement to reflect a reduction, evaluated by the Department concerned as acceptable to the Government, in any charge thereunder with respect to purchases made by or for the Government or by others with funds derived through the Foreign Military Financing Program or otherwise through the Government, in accordance with section 124.10 of the International Traffic in Arms Regulations.

(3) If the agreement provides that no charge is to be made to the second source for data or patent rights to the extent of the Government?s rights, the Department concerned should evaluate the acceptability of the provision before indicating its approval.

(4) If circumstances do not permit the evaluation called for in (b) (1), (2), or (3) of this subsection, follow the guidance in (c) of this subsection.

(c) When the Government will unlikely purchase from the second source the supplies or services involved in the agreement nor that Foreign Military Financing Program funds will be provided for the purchase of the supplies or services, then the following guidance applies:

(1) If the agreement provides for charges to the second source for data or patent rights, fulfill the requirements of section 124.10 insofar as the Department of Defense is concerned if:

(i) The agreement requires the second source to advise the primary source when the second source has knowledge of any purchase made or to be made from the second source by or for the Government or by others with funds derived through the Foreign Military Financing Program or otherwise through the Government;

(ii) The primary source separately agrees with the Government that upon such advice to the primary source from the second source or from the Government or otherwise as to any such a purchase or prospective purchase, the primary source will negotiate with the Department concerned an appropriate reduction in its charges to the second source in recognition of any Government rights in patents or data; and

(iii) The agreement between the primary and second sources further provides that in the event of any such purchase and resulting reduction in charges, the second source should pass on this reduction to the Government by giving the Government a corresponding reduction in the purchase price of the article or service.

(2) If the agreement provides that no charge is to be made to the second source for data or patent rights to the extent to which the Government has rights, the Department concerned should?

(i) Evaluate the acceptability of the provision before indicating its approval; or

(ii) Explicitly condition its approval on the right to evaluate the acceptability of the provision at a later time.

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(d) When there is a technical assistance agreement between the primary source and the Government related to the agreement between the primary and second sources that is under review, the latter agreement must reflect the arrangements contemplated with respect thereto by the Government?s technical assistance agreement with the primary source.

(e) Every agreement must provide that any license rights transferred under the agreement are subject to existing rights of the Government.

(f)(1) In connection with every agreement referred to in (b) of this section, a request should be made to the primary source?

(i) To identify the patents, data, and other technical assistance to be provided to the second source by the primary source or any of its subcontractors,

(ii) To identify any such patents and data in which, to the knowledge of the primary source, the Government may have rights, and

(iii) To segregate the charges made to the second source for each such category or item of patents, data, and other technical assistance.

(2) Reviewing personnel should verify this information or, where the primary source does not furnish it, obtain such information from Governmental sources so far as practicable.

(g) The Department concerned should make clear that its approval of any agreement does not necessarily recognize the propriety of the charges or the amounts thereof, nor constitute approval of any of the business arrangements in the agreement, unless the Department expressly intends by its approval to commit itself to the fairness and reasonableness of a particular charge or charges. In any event, a disclaimer should be

made to charges or business terms not affecting any purchase made by or for the Government or by others with funds derived through the Foreign Military Financing Program or otherwise through the Government.

PGI 227.71?TECHNICAL DATA, COMPUTER SOFTWARE, COMPUTER SOFTWARE DOCUMENTATION, AND ASSOCIATED RIGHTS RELATED TO OTHER THAN COMMERCIAL PRODUCTS, COMPONENTS, SERVICES, PROCESSES, AND COMPUTER SOFTWARE

PGI 227.7103-13 Government right to review, verify, challenge, and validate asserted restrictions.

(d) Challenge and validation.

(4) Challenge notice.

(iii) The challenge notice must include the information in paragraph (f) of the clause at 252.227-YYYY.

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PGI 227.7103-18 Acquisition of other than commercial technical data, computer software, and computer software documentation and associated rights.

(a) Applicable Guidance. See DoDI 5010.44, Intellectual Property (IP) Acquisition and Licensing, sections 4.1 and 4.2, when formulating business advice and contract implementation strategies regarding the program manager?s tailoring of technical data requirements to the needs of the Government.

(b) Compliance with applicable policies. Work closely with data managers and requirements personnel to ensure that technical data, computer software, and computer software documentation requirements included in solicitations are consistent with the policy expressed in 227.7103-1.

(c) Acquisition of technical data. (1)(i) Data managers or other requirements personnel are responsible for identifying the Government?s life-cycle needs for technical data.

(ii) When establishing technical-data needs, requirements personnel must give consideration to?

(A) The offeror?s economic interests in technical data pertaining to items, components, or processes that have been developed at private expense (including the economic interests of small businesses and nontraditional contractors);

(B) The Government?s costs to acquire, maintain, store, retrieve, and protect the technical data;

(C) Reprocurement needs;

(D) Repair, maintenance, and overhaul philosophies;

(E) Spare and repair part considerations; and

(F) Whether procurement of the items, components, or processes can be accomplished on a form, fit, or function basis.

(iii) When the Government will likely obtain unlimited or government purpose rights in technical data necessary for competitive spare or repair parts procurements, such

data should be identified as deliverable technical data items; and

(iv) The fact that reprocurement needs might not justify acquiring detailed manufacturing or process data when?

(A) Items or components can be acquired using performance specifications, form, fit, and function data; or

(B) When a sufficient number of alternate sources exist that will likely provide such items on a performance specification or form, fit, or function basis.

(2) When reviewing offers received in response to a solicitation or other request for data, data managers should, as appropriate, balance the original assessment of the Government?s data needs with data prices contained in the offer.

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(d) Acquisition of computer software and computer software documentation. (1) (i) Data managers or other requirements personnel are responsible for identifying the Government?s life-cycle needs for computer software and computer software documentation.

(ii) To the maximum extent practicable, assessment of life-cycle needs should include consideration of periodic delivery of computer software and computer software documentation including all executable code, source code, associated scripts, build procedures, automation scripts, tools, databases, libraries, test results, data sets, firmware, training materials, and any other elements necessary to integrate, test and evaluate, debug, deploy, and operate the software application in all relevant environments (e.g., development, staging, production).

(iii) See DoDI 5010.44, Intellectual Property (IP) Acquisition and Licensing, sections 4.1 and 4.2, when formulating business advice and contract implementation strategies regarding the program manager?s tailoring of software requirements to the needs of the Government.

(iv) In addition to desired software performance, compatibility, or other technical considerations, identification of life-cycle needs should include consideration of such factors as?

(A) The offeror?s economic interests in software that has been developed at private expense (including the economic interests of small businesses and nontraditional contractors);

(B) The Government?s costs to develop, acquire, maintain, store, retrieve, and protect the computer software and computer software documentation;

(C) Multiple site or shared use requirements;

(D) Whether the Government?s software maintenance philosophy will require the right to modify or have third parties modify the software; and

(E) Any special computer software documentation requirements.

(2) (i) Procurement planning. The assessment of life-cycle needs should consider delivery timelines to facilitate transition to a different contractor or to the Government. This approach facilitates management of program risk and supports options for flexibility in the

transition of software sustainment to another organization. Ensure that, wherever practicable, solicitations and contracts include the requirements for periodic delivery and any delivery timelines for computer software and computer software documentation, based upon the assessment of life-cycle needs. To the maximum extent practicable, when assessing the life-cycle needs, data managers or other requirements personnel will address in the procurement planning and requirements documents (e.g., acquisition plans, purchase requests) the acquisition at appropriate times in the life cycle of all computer software, related recorded information, and associated license rights necessary to?

(A) Reproduce, build, or recompile the software from its source code and required software libraries (e.g., software libraries called, invoked, or linked by the computer

software source code that are necessary for the operation of the software). (Based on the results of the assessment of life-cycle needs, and to the maximum extent practicable, all software capability descriptions should accompany source code (e.g., features, story points, use cases) and all as-built architecture and design products, traceability products, interface definitions including interfaces to proprietary software elements, and any other requisite documentation.);

(B) Conduct required computer software testing and evaluation;

(C) Integrate and deploy computer programs on relevant hardware including developmental, operational, diagnostic, training, or simulation environments; and

(D) Sustain and support the software over its life cycle.

(ii) Alternatives to delivery of source code and related software design details. The assessment of life-cycle needs should consider alternatives to the delivery of source code and related software design details for privately developed computer software as necessary to meet the Government?s needs, such as?

(A) Technical data and computer software sufficient to implement a modular open system approach or a similar approach.

(1) In determining whether the Government should require delivery of computer software source code and related software design details developed exclusively or partially at private expense, data managers and other requirements personnel are responsible for considering whether these alternatives permit the Government to?

(i) Acquire the amount of data needed to procure and support systems, material, and services in an economical manner based on a cost or price analysis;

(ii) Meet its management, engineering, and logistics needs; and

(iii) Maintain the currency of acquired technical data or software consistent with the assessment of life-cycle needs.

(2) To the extent practicable, the Government should also require open interface documentation for any privately developed computer software used in or interoperable with software developed for the Government, to allow for technology insertion on all sides of the interface, as applicable, and to support the use of modular open system approaches;

(B) Access to technical data or computer software, including access agreements for cloud-based or subscription-based software products or services.

(1) Access agreements permit the Government to view, print, download, annotate, modify, or make derivatives of technical data or computer software stored within a contractor-controlled repository or facility (e.g., in an online environment or in person). Examples of access arrangements include remote online authorization to access an integrated data environment, product data management system operated by the contractor, or mechanisms authorizing physical entry to a contractor-controlled data repository, or cloud-based or subscription-based software products or services. The

negotiated access agreement must stipulate permissions based on the assessment of life-cycle needs; make the access agreement part of the contract.

(2) For each technical data or computer software requirement, the requiring activity should determine whether the Government?s needs can be better satisfied through access or formal delivery of the technical data or software (e.g., physical or electronic transfer of the data into Government custody). The Government should consider access to technical data or software when?

(i) The delivery of technical data or software is not cost-effective or feasible for technical, legal, or contractual reasons; and

(ii) Access meets the Government?s needs for such technical data or software throughout the life-cycle of the program;

(C) Software support and maintenance provided directly from the contractor; or

(D) Other contracting or licensing mechanisms including priced options, specially negotiated licenses, direct licensing between contractors for qualifying second sources, data escrow agreements, deferred delivery solutions, and subscription agreements.

(1)(i) Under a data escrow agreement, the Government and the contractor identify a third-party escrow agent that will keep designated technical data or computer software for safekeeping until a contractually specified condition occurs.

(ii) If a contractually specified condition occurs, then the Government may obtain delivery of the escrowed technical data or computer software.

(iii) Include the data escrow agreement in the contract. Include in the contract the Government?s license rights in the escrowed technical data or computer software.

(2) Use of data escrow agreements is not preferable in all cases but may be useful when formal delivery or access is not feasible or cost-effective during the contract?s period of performance or delivery schedule.

(3) When reviewing offers received in response to a solicitation or other request for computer software or computer software documentation, data managers should, if appropriate, balance the original assessment of the Government?s needs with prices offered.

(e) Contract implementation of technical data and software requirements. Ensure that, wherever practicable, solicitations and contracts?

(1) Identify the type and quantity of the technical data to be delivered under the contract and the format and media in which the data will be delivered;

(2) Identify the types of computer software and the quantity of computer programs and computer software documentation to be delivered, any requirements for multiple users

at one site or multiple site licenses, and the format and media in which the software or documentation will be delivered;

(3) Establish each type of data item, computer software, or computer software documentation to be delivered as a separate contract line item (this requirement may be satisfied by an exhibit to the contract);

(4) Identify the prices established for each separately priced deliverable item of technical data, computer software, or computer software documentation under a fixed-price type contract;

(5) Include delivery schedules and acceptance criteria for each deliverable item of technical data or computer software;

(6) Specifically identify the place of delivery for each deliverable item of technical data or computer software; and

(7) Specify in the negotiated terms that any required other than commercial computer software, related recorded information, and associated license rights identified in the assessment of life-cycle needs in paragraph (b) of this section must, to the extent appropriate?

(i) Include computer software delivered in a digital format compatible with applicable computer programs on relevant system hardware;

(ii) Not rely on additional internal or external other than commercial or commercial technical data and software, unless such technical data or software is?

(A) Included in the items to be delivered with license rights sufficient to meet the Government?s needs; or

(B) Commercially available with license rights sufficient to meet the Government?s needs; and

(iii) Include sufficient information, with license rights sufficient to meet the Government?s needs, to support maintenance and understanding of interfaces and software version history when the negotiated terms do not allow for the inclusion of the external or additional other than commercial or commercial technical data and software.

PGI 227.7104 Contracts under the Small Business Innovation Research Program and Small Business Technology Transfer Program.

PGI 227.7104-1 Policy.

See section 4(c) of the Small Business Administration?s Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Program Policy Directive

(effective May 3, 2023) for guidance on examples of SBIR/STTR phase III, which is

available at
https://www.sbir.gov/sites/default/files/SBA%20SBIR_STTR_POLICY_DIRECTIVE_May2023.pdf.

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Defense FAR Supplement (DFARS) Part 227
PGI 227.7104-2 Rights in SBIR or STTR data.
The clause under which the SBIR/STTR data were generated or developed will govern the Government?s license rights in such SBIR/STTR data. The following examples illustrate the definition of the SBIR/STTR data protection period and the applicability of the DFARS **252.227-7993 clause:**

(1) Redelivery of SBIR data.

(i) SBIR data first generated under a prior SBIR clause and redelivered under the current SBIR clause. In this example, a contractor generates and delivers SBIR data under a 2016 phase II SBIR contract that includes a prior version of the clause at DFARS 252.227-7993. **The contractor delivers identical data in a contiguous series of follow-on contracts,** including a later phase III contract that is an extension of the research effort in the 2016 contract. That phase III contract includes the current version of the clause at DFARS **252.227-7993. The contractor asserts SBIR data rights in these data. The 2016 contract** included the clause at DFARS 252.227-7993, which defined the SBIR data protection period as the period commencing with contract award and ending upon the date 5 years after completion of the project from which such data were generated. This previous definition of the SBIR data protection period applies to the redelivered SBIR data in the contiguous series of follow-on contracts, including the later phase III contract. The SBIR data protection period is extended because the later contract derives from, extends, or completes an effort made under a prior SBIR contract that included the prior version of the clause at DFARS **252.227-7993. This is the case even under later contracts that include the current version of** the clause at DFARS 252.227-7993 with a non-extendable 20-year SBIR/STTR data protection period. In addition, the SBIR data protection period from the prior version of the clause at DFARS 252.227-7993 may be extended indefinitely for subsequent redeliveries of identical SBIR data as long as the SBIR project has not been completed.

(ii) SBIR data first delivered with the 20-year SBIR data protection period and later redelivered under the current SBIR clause. In another example, a contractor generates and delivers SBIR data under a 2021 phase II SBIR contract. The contractor delivers identical data under a later phase III contract that is an extension of the research effort in the 2021 contract. The contractor asserts SBIR data rights in these data. That 2021 contract included a version of the DFARS 252.227-7993 clause that defines the SBIR data protection period as the period commencing on the date of contract award and ending 20 years after that date. The same definition of the SBIR/STTR data protection period applies to the redelivered SBIR data in the later phase III contract. Redelivery of identical SBIR data under any later contract will not extend the 20-year SBIR data protection period.

(2) Modifications to previously delivered SBIR or STTR data. A contractor generates

and delivers SBIR/STTR data under a phase II STTR contract with the current version of the clause at DFARS 252.227-7993. The contractor develops and delivers modified STTR data under a later phase III contract. The contractor asserts SBIR/STTR data rights in these data. The previously delivered portions of the STTR data will be governed by the previous SBIR/STTR data protection period, while the newly developed portions of the STTR data will be governed by a new 20-year SBIR/STTR data protection period.

(3) SBIR or STTR data delivered under a contract and the contractor was not awarded a SBIR or STTR contract. A subcontractor was awarded a SBIR phase I contract. Later, the subcontractor performed SBIR phase III work under a contract awarded to a contractor who

was not awarded a SBIR or STTR contract. The subcontractor furnished technical data and computer software deliverables related to SBIR phase III work performed under this contract. This technical data and computer software was furnished to the Government with SBIR data rights. The clause at DFARS 252.227-7993 should have been included either in the initial contract or via a contract modification, and the Government?s rights in this SBIR data are subject to the terms of the clause at DFARS 252.227-7993.

PGI 227.7106 Contracts for special works.

(c) Examples of special works include, but are not limited, to audiovisual works, scripts, soundtracks, musical compositions, and adaptations; histories of departments, agencies, services or units thereof; surveys of Government establishments; instructional works or guidance to Government officers and employees on the discharge of their official duties; reports, books, studies, surveys or similar documents; collections of data containing information pertaining to individuals that, if disclosed, would violate the right of privacy or publicity of the individuals to whom the information relates; or investigative reports.

PART 28

OFFICE OF THE ASSISTANT SECRETARY OF WAR

Status: Class D

OFFICE OF THE ASSISTANT SECRETARY OF WAR

3000 DEFENSE PENTAGON

WASHINGTON, DC 20301-3000

ACQUISITION

AND SUSTAINMENT

In reply refer to

DARS Tracking Number: 2026-O0005

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES SPECIAL OPERATIONS

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES TRANSPORTATION

COMMAND (ATTN: ACQUISITION EXECUTIVE)

DEPUTY ASSISTANT SECRETARY OF THE ARMY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE NAVY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE

(CONTRACTING)

DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Class Deviation?Revolutionary Federal Acquisition Regulation (FAR) Overhaul

Part 28, Defense FAR Supplement (DFARS) Part 228

Effective February 1, 2026, contracting officers shall use?

? The revised FAR Part 28, Bonds and Insurance published on the Revolutionary FAR Overhaul web page at https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-28 in lieu of the text codified at 48 CFR chapter 1 (https://www.ecfr.gov).

? The attached DFARS Part 228, Bonds and Insurance in lieu of the text codified at 48 CFR chapter 2; and

? The attached DFARS Procedures, Guidance, and Information (PGI) 228, Bonds and Insurance in lieu of the PGI text published on the Defense Pricing, Contracting, and Acquisition Policy web page at https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.

This class deviation implements the following:

? Section 2 of E.O. 14275, Restoring Common Sense to Federal Procurement, which establishes the policy that the FAR ?should only contain provisions required by statute or essential to sound procurement, and any FAR provisions that do not

advance these objectives should be removed.
DARS Tracking Number: 2026-O0005
Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 28,
Defense FAR Supplement (DFARS) Part 228
? Section 4(a) of E.O. 14265, Modernizing Defense Acquisitions and Spurring Innovation in the Defense Industrial Base which requires the Secretary of War to eliminate or revise any unnecessary supplemental regulations or any other internal guidance, such as relevant parts of the Financial Management Regulation and Defense Federal Acquisition Regulation Supplement.
? The Office of Management and Budget memorandum, M-25-26 issued on May 2, 2025, titled, Overhauling the Federal Acquisition Regulation, which provided additional guidance to federal agencies regarding the FAR overhaul.
This class deviation remains in effect until rescinded or incorporated into the FAR, DFARS, and DFARS PGI. Inquiries regarding this class deviation can be addressed to osd.pentagon.ousd-a-s.mbx.dfars@mail.mil.
John M. Tenaglia
Principal Director,
Defense Pricing, Contracting, and
Acquisition Policy
Attachments:
As stated
2
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Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 28
Defense FAR Supplement (DFARS) Part 228

PART 228?BONDS AND INSURANCE

SUBPART 228.1?BONDS AND OTHER FINANCIAL PROTECTIONS

228.102 Performance and payment bonds and alternative payment protections for construction contracts.

228.102-1 General.

The requirement for performance and payment bonds is waived for cost-reimbursement contracts. However, for cost-type contracts with fixed-price construction subcontracts over $40,000, require the prime contractor to obtain from each of its construction subcontractors performance and payment protections in favor of the prime contractor as follows:

(1) For fixed-price construction subcontracts over $40,000, but not exceeding $150,000, payment protection sufficient to pay labor and material costs, using any of the alternatives listed at FAR 28.102-1(b)(1).

(2) For fixed-price construction subcontracts over $150,000?

(i) A payment bond sufficient to pay labor and material costs; and

(ii) A performance bond in an equal amount if available at no additional cost.

228.102-70 Defense Environmental Restoration Program construction contracts.

For Defense Environmental Restoration Program construction contracts entered into pursuant to 10 U.S.C. 2701?

(a) Any rights of action under the performance bond must only accrue to, and be for the exclusive use of, the obligee named in the bond;

(b) In the event of default, the surety?s liability on the performance bond is limited to the cost of completion of the contract work, less the balance of unexpended funds. The liability must not exceed the penal sum of the bond;

(c) The surety is not liable for indemnification or compensation of the obligee for loss or liability arising from personal injury or property damage, even if the injury or damage was caused by a breach of the bonded contract; and

(d) Once it has taken action to meet its obligations under the bond, the surety is entitled to any indemnification and identical standard of liability to which the contractor was entitled under the contract or applicable laws and regulations.

228.105 Other types of bonds.

Fidelity and forgery bonds generally are not required but are authorized for use when?

(1) Necessary for the protection of the Government or the contractor; or

(2) The investigative and claims services of a surety company are desired.

228.106 Administration.

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228.106-7 Withholding contract payments.

(a) Withholding may be appropriate in construction and other than construction contracts (see FAR 32.112-1(b)).

SUBPART 228.3?INSURANCE

228.304 Risk-pooling arrangements.

DoD has established the National Defense Projects Rating Plan, also known as the Special Casualty Insurance Rating Plan, as a risk-pooling arrangement to minimize the cost to the Government of purchasing the liability insurance listed in FAR 28.307-2. Use the plan in accordance with the procedures at PGI 228.304 when it provides the necessary coverage and is more advantageous than commercially available coverage.

228.305 Overseas workers' compensation and war-hazard insurance.

(d) When submitting requests for waiver, follow the procedures at PGI 228.305(d).

228.307 Insurance under cost-reimbursement contracts.

228.307-1 Group insurance plans.

The Defense Department Group Term Insurance Plan is available for contractor use under cost-reimbursement type contracts when approved as provided in department or agency regulations. A contractor is eligible if?

(a) The number of covered employees is 500 or more; and

(b) The contractor has all cost-reimbursement contracts; or

(c) At least 90 percent of the payroll for contractor operations to be covered by the Plan is under cost-reimbursement contracts.

228.311 Solicitation provision and contract clause on liability insurance

under cost-reimbursement contracts.

228.311-1 Contract clause.

Insert the clause at FAR 52.228-7, Insurance?Liability to Third Persons, in solicitations and contracts, other than those for construction and those for architect-engineer services, when a cost-reimbursement contract is contemplated, unless the head of the contracting activity waives the requirement for use of the clause.

228.370 Ground and flight risk.

228.370-1 Definitions.

As used in this section?

?Aircraft? means, unless otherwise provided in the contract Schedule, any item, other than a rocket or missile, intended for flight (e.g., fixed-winged aircraft, blended wing/lifting bodies, helicopters, vertical take-off or landing aircraft, lighter-than-air airships, and unmanned aerial vehicles), including emerging technologies that would commonly be considered aircraft. New production articles become aircraft at a stage of manufacture or production when a wing, portion of a wing, or engine is attached to a

fuselage. Blended wing/lifting bodies become aircraft at a stage of manufacture or production when the center portion and a lifting surface become attached.

?Civil aircraft? means an aircraft other than a public aircraft or state aircraft.

?Contractor managerial personnel? means the contractor?s directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of?

(1) All, or substantially all, of the contractor?s business;

(2) All, or substantially all, of the contractor?s operation at any one plant or separate location; or

(3) A separate and complete major industrial operation.

?Covered aircraft? means an aircraft owned by or to be delivered to the Government and, when determined by the contracting officer and specifically identified as such in the contract Schedule, may include contractor-furnished aircraft that are not intended for induction into the DoD inventory, including?

(1) Aircraft furnished by the Government to the contractor under a contract while in the contractor?s possession, care, custody, or control regardless of their location or state of disassembly or reassembly;

(2) Items removed from a Government-furnished aircraft that are?

(i) Intended for reinstallation on that particular aircraft, which retain their status as covered aircraft while awaiting installation; and

(ii) Not intended for reinstallation on that particular aircraft, which lose their status as covered aircraft once removal is complete;

(3) New production aircraft when wholly outside of buildings on the contractor?s

premises or other places described in the contract Schedule (e.g., hush houses, run stations, and paint facilities); and

(4) Commercial aircraft, to include commercially available off-the-shelf aircraft, become covered aircraft when the commercial aircraft arrives at the contractor?s place of performance for modification under the terms of the contract.

?Crewmember? means, unless otherwise provided in the contract Schedule, personnel required in the flight manual, assigned for the purpose of conducting any flight on behalf of the contractor. It also includes any operator of an unmanned aerial vehicle.

?Flight? means any flight approved in writing by the Government flight representative, to include taxi test made in the performance of the contract, or flight for the purpose of safeguarding the aircraft. All aircraft off the contractor's premises shall be considered to be in flight when on the ground or water for reasonable periods of time following emergency landings, landings made in performance of the contract, or landings approved in writing by the contracting officer.

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?Public aircraft? means an aircraft that meets the definition in 49 U.S.C. 40102(a)(41) and the qualifications in 49 U.S.C. 40125. Specifically, a public aircraft means any of the following:

(1) An aircraft used only for the Government, except as provided in paragraphs

(5) and (7) of this definition.

(2) An aircraft owned by the Government and operated by any person for purposes related to crew training, equipment development, or demonstration, except as provided in paragraph (7) of this definition.

(3) An aircraft owned and operated by the government of a State, the District of Columbia, or a territory or possession of the United States or a political subdivision of one of these governments, except as provided in paragraph (7) of this definition.

(4) An aircraft exclusively leased for at least 90 continuous days by the government of a State, the District of Columbia, or a territory or possession of the United States or a political subdivision of one of these governments, except as provided in paragraph (7) of this definition.

(5) An aircraft owned or operated by the armed forces or chartered to provide transportation or other commercial air service to the armed forces under the conditions specified by 49 U.S.C. 40125(c). In the preceding sentence, the term ?other commercial air service? means an aircraft operation that?

(i) Is within the United States territorial airspace;

(ii) The Administrator of the Federal Aviation Administration determines is available for compensation or hire to the public; and

(iii) Must comply with all applicable civil aircraft rules under title 14, Code of Federal Regulations.

(6) An unmanned aircraft that is owned and operated by, or exclusively leased

for at least 90 continuous days by, an Indian Tribal government, as defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122), except as provided in paragraph (7) of this definition.

(7) As described in 49 U.S.C. 40125(b), an aircraft described in paragraph (1), (2), (3), or (4) of this definition does not qualify as a public aircraft in situations where the aircraft is used for commercial purposes or to carry an individual other than a crewmember or a qualified non-crewmember.

?Public aircraft operation? means operation of an aircraft that meets the legal definition of public aircraft established in 49 U.S.C. 40102(a)(41) and the legal qualifications for public aircraft status outlined in 49 U.S.C. 40125.

?State aircraft? means an aircraft operated by the Government for sovereign, noncommercial purposes such as military, customs, and police services. Military aircraft are afforded status as state aircraft. In very rare circumstances, DoD-contracted aircraft may be designated, in writing, by a responsible Government official pursuant to DoD Directive 4500.54E, DoD Foreign Clearance Program, to be operated

in state aircraft status, and States may choose to treat them as deemed state aircraft when they are operating under a Government contract.

?Workmanship error? means damage to the aircraft that is the result of an incorrectly performed skill-based task, operation, or action that was originally planned or intended.

228.370-2 General.

(a) Assignment of a Government flight representative. See PGI 228.370-2(a) for procedures on assigning a Government flight representative (GFR) when using the clauses at 252.228-7001 and 252.228-7007.

(b) Preaward survey. Before awarding any contract that includes the clause at **252.228-7001, Ground and Flight Risk, the contracting officer should obtain a preaward** survey of the offeror?s proposed aircraft flight and ground operations facility. If the offeror proposed subcontracting any aircraft work, the preaward survey should include a review of the subcontractor?s facility. For acquisitions falling under the exceptions at **228.371(b)(1)(iii), (iv), and (vi), the contracting officer must review the documentation** the offeror submitted with the proposal in response to the DD Form 1423, Contract Data Requirements List, to ensure the offeror?s commercial insurance provides the appropriate coverage required by the clause at 252.228-7001.

(c) Foreign military sales. The exception for foreign military sales (FMS) contracts at 228.371(b)(1)(iii) only applies to FMS cases where the FMS customer has explicitly refused assumption of risk of loss. If the FMS customer has accepted the standard Letter of Offer and Acceptance Standard Terms and Conditions, as described in DoD **5105.38-M, Security Assistance Management Manual, they have assumed risk of loss.**

(d) Commercial derivative aircraft. The exception at 228.371(b)(1)(iv) for

commercial derivative aircraft only applies if the contractor is a licensed and certified Federal Aviation Administration (FAA) repair station for the specific model of aircraft under contract, when work is being performed pursuant to the FAA license under 14 CFR part 145. The FAA?s repair station search tool is available at https://av-info.faa.gov/repairstation.asp. All aircraft flying public aircraft operations operate under airworthiness certificates maintained by the military services. The FAA airworthiness certificate in the exception in this paragraph (d) underlies the military service certificate.

(e) Insurance. The clause at 252.228-7001, Ground and Flight Risk, is intended to reduce acquisition costs by eliminating the costs of commercial insurance premiums. This clause also is intended to encourage the contractor to perform safe and effective operations through inclusion of a contractor?s share of loss (i.e., a deductible). Additionally, the clause requires compliance with the combined regulation/instruction entitled ?Contractor?s Flight and Ground Operations? (Air Force Instruction 10-220, Army Regulation 95-20, Naval Air Systems Command (NAVAIR) Instruction 3710.1 (Series), Coast Guard Instruction M13020.3 (Series), and Defense Contract Management Agency Instruction 8210-1 (Series)), which provides procedures to mitigate the risk of loss to the Government. For this reason, paragraph (e)(4)(ii) of the clause at 252.228-7001 specifies that insurance premium costs are unallowable. In addition, paragraph (d)(4) of the clause provides that the Government?s assumption of risk does not apply where the loss or damage is covered by available insurance.

(f) Damage to Government aircraft.

(1) Whenever damage to Government aircraft is reported, each incident should be evaluated on its own merits. When the cost of repair exceeds the contractor?s share of loss provisions, the contracting officer must make a liability determination in accordance with paragraph (g) of this section.

(2) Contracting officers should consult with the requiring activity and the assigned contract administration office on replacement, repair, or beyond economic repair decisions.

(3) See PGI 228.370-2(f) for an example of accident or mishap damage versus workmanship-error damage.

(g) Contracting officer determination of liability.

(1) When making a liability determination, the contracting officer should seek input from the GFR and legal counsel, as needed.

(2) The Government?s assumption of risk must not extend to damage, loss, or destruction of covered aircraft that?

(i) Is the result of willful misconduct or lack of good faith on the part of the contractor?s managerial personnel, including the contractor?s oversight of subcontractors;

(ii) Is sustained during flight if either the flight or the crewmembers have

not been approved in advance and in writing by the GFR, who has been authorized in accordance with the combined regulation/instruction entitled ?Contractor?s Flight and Ground Operations?;

(iii) Occurs in the course of transportation by rail, or by conveyance on public streets, highways, or waterways, unless the transportation is limited to the vicinity of the contractor?s premises, and incidental to work performed under the contract as described in the Schedule;

(iv) Is covered by insurance;

(v) Occurs after the contracting officer has, in writing, revoked the Government?s assumption of risk; or

(vi) Is sustained due to workmanship errors.

(h) Notice of revocation of the Government?s assumption of risk. The liability provisions of the clause at FAR 52.245-1, Government Property, do not apply to the aircraft impacted by a notice of revocation.

(1) Preliminary notice of revocation.

(i) When finding that contractor managerial personnel have failed to comply with the combined regulation/instruction, as required by paragraph (b) of the clause at **252.228-7001, including finding the covered aircraft are exposed to unreasonable** conditions, the contracting officer must issue a preliminary notice of revocation of the

Government?s assumption of risk to the contractor and must require the contractor to comply with contract requirements. Factors for the contracting officer to consider in determining exposure to unreasonable conditions include, but are not limited to, the following:

(A) Lack of adequate hangar fire suppression or firefighting vehicles;

(B) Failure to provide adequate procedures to the GFR; or

(C) Systemic failure to comply with approved procedures.

(ii) The preliminary notice of revocation will state the timeframe for the contractor to correct the noncompliance or conditions.

(2) Notice of revocation. If the contractor fails to correct the cited noncompliance or conditions within the specified timeframe, the contracting officer must issue to the contractor a notice of revocation of the Government?s assumption of risk for any covered aircraft.

(i) Thereafter the contractor assumes the entire risk for damage, loss, or destruction of the previously covered aircraft.

(ii) Any costs incurred by the contractor, including the costs of the contractor?s self-insurance, insurance premiums paid to insure the contractor?s assumption of risk, deductibles associated with such purchased insurance, etc., to mitigate its risk are unallowable costs.

(iii) The notice of revocation does not relieve the contractor of its obligation to comply with all other provisions of the clause at 252.228-7001, including the

combined regulation/instruction entitled ?Contractor?s Flight and Ground Operations?.

(iv) Within 3 days of receipt of the contractor?s notice of correction, the contracting officer must notify the contractor whether the Government will resume risk of loss. The contracting officer must determine that the noncompliance or cited conditions have been corrected prior to resuming assumption of risk.

(v) Any disputes regarding the contracting officer?s notice of revocation must be subject to FAR clause 52.233-1, Disputes.

(i) Procedures in the event of damage, loss, or destruction of covered aircraft.

(1) In the event of damage, loss, or destruction of covered aircraft, except in cases covered by paragraph (j)(2) of this section, the contracting officer must evaluate the contractor?s statement of?

(i) The damaged, lost, or destroyed aircraft;

(ii) The time and origin of the damage, loss, or destruction;

(iii) All known interests in commingled property of which aircraft are a part; and

(iv) The insurance, if any, covering the interest in commingled property.

(2) If a new production aircraft is damaged, lost, or destroyed before it has become a covered aircraft, the Government bears no responsibility for risk of loss.

(3) If a new production aircraft is damaged, lost, or destroyed after it has become a covered aircraft, the contracting officer must provide written direction to the contractor to take action in accordance with the contracting officer?s written direction that the aircraft shall be?

(i) Replaced;

(ii) Repaired to the condition immediately prior to the damage; or

(iii) Considered beyond economic repair. The contracting officer must decide whether further actions are required under the contract.

(4) If a covered aircraft that has been furnished by the Government to the contractor is damaged, lost, or destroyed while covered, the contracting officer must provide written direction to the contractor that the aircraft shall be?

(i) Repaired; or

(ii) Considered beyond economic repair. The contracting officer must decide further actions required under the contract.

(5) The contracting officer must make an equitable adjustment for expenditures made in performing the obligations under paragraph (h) of the clause at 252.228-7001.

(j) Contracting officer determination of the contractor?s share of loss.

(1) The contractor?s share of loss or damage to covered aircraft, except for loss or damage caused by negligence of Government personnel, is the least of?

(i) $200,000;

(ii) 20 percent of the price or estimated acquisition cost of affected aircraft; or

(iii) 20 percent of the price or estimated cost of the contract, task order, or delivery order.

(2) If the Government requires covered aircraft to be replaced or repaired by the contractor, any resulting equitable adjustment must not include reimbursement of the contractor?s share of loss.

(3) In the event the Government does not decide to replace or repair the covered aircraft, the clause at 252.228-7001 requires the contractor to credit the contract price or pay the Government, as directed by the contracting officer, the least of?

(i) $200,000;

(ii) 20 percent of the price or estimated acquisition cost of affected aircraft; or

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(iii) 20 percent of the price or estimated cost of the contract, task order, or delivery order.

(4) The costs incurred by the contractor for its share of the loss and for insuring against that loss are unallowable costs, including but not limited to?

(i) The contractor?s share of loss under the Government?s self-insurance;

(ii) The costs of the contractor?s self-insurance;

(iii) The deductible for any contractor-purchased insurance;

(iv) Insurance premiums paid for contractor-purchased insurance; and

(v) Costs associated with determining, litigating, and defending against the contractor?s liability.

(k) Reimbursement from a third party. If the contracting officer finds or has reason to believe that the contractor has been reimbursed or otherwise compensated by a third party for damage, loss, or destruction of covered aircraft and has also been compensated by the Government, then the contracting officer must demand an equitable reimbursement. If the contracting officer requests that the contractor provide reasonable assistance in obtaining recovery, such effort must be an allowable expense of the contractor.

228.370-3 Aircraft not owned by or to be delivered to the Government.

(a) When a contract involves aircraft not owned by or to be delivered to the Government, the contracting officer may use the clause at 252.228-7001 only if the contracting officer determines that it is in the best interest of the Government.

(b) Potential factors for the contracting officer to consider when deciding which course of action is in the best interest of the Government include, but are not limited to, whether?

(1) The cost of hull insurance exceeds the replacement cost of the aircraft;

(2) Insurance is not available (e.g., high-risk experimental flights and operations of aircraft in a war zone); or

(3) Ground or flight activities that involve contractor-owned and contractor-operated aircraft may pose risk to Government aircraft (e.g., due to close proximity in

flight).

228.371 Additional clauses.

(a) Insert the clause at 252.228-7000, Reimbursement for War-Hazard Losses, when?

(1) The clause at FAR 52.228-4, Worker's Compensation and War-Hazard Insurance Overseas, is used; and

(2) The head of the contracting activity decides not to allow the contractor to buy insurance for war-hazard losses.

(b) Insert the clause at 252.228-7001, Ground and Flight Risk, in solicitations and contracts?

(1) For the acquisition, development, production, modification, maintenance, repair, flight, or overhaul of aircraft owned by or to be delivered to the Government, except those solicitations and contracts?

(i) That are strictly for activities incidental to the normal operations of the aircraft (e.g., refueling operations, minor non-structural actions not requiring towing such as replacing aircraft tires due to wear and tear);

(ii) That are awarded for purchase under FAR part 12 procedures;

(iii) For which a non-DoD customer (including an FMS customer per **225.7305) has decided to allow the use of commercial insurance or other self-insurance;**

(iv) For commercial derivative aircraft with an FAA certificate of airworthiness maintained to FAA standards. Performance under the exception in this paragraph (b)(1)(iv) must be at a licensed and certified FAA repair station rated for the type of aircraft and work to be maintained. This exception does not apply to contracts requiring flights with contractor crewmembers;

(v) Under which the aircraft are to be dismantled and removed from the inventory; or

(vi) Under which the aircraft are classified as Group 1 or 2 unmanned aircraft systems per DoD Instruction (DoDI) 6055.07, Mishap Notification, Investigation, Reporting, and Record Keeping, and the purchase price of the air vehicle, including installed Government-furnished equipment, is below the cost threshold for a Class C mishap per DoDI 6055.07; or

(2) Involving aircraft not owned by or to be delivered to the Government, only if the contracting officer determines that it is in the best interest of the Government. See **228.370-3.**

(c) The clause at 252.228-7003, Capture and Detention, may be used when contractor employees are subject to capture and detention and may not be covered by the War Hazards Compensation Act (42 U.S.C. 1701 et seq.).

(d) Insert the clause at 252.228-7005, Mishap Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles, in solicitations and contracts that involve

the manufacture, modification, overhaul, or repair of aircraft, missiles, and space launch vehicles.

(e) Insert the clause at 252.228-7006, Compliance with Spanish Laws and Insurance, in solicitations and contracts for services or construction to be performed in Spain, unless the Contractor is a Spanish concern.

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(f) Insert the clause at 252.228-7007, Public Aircraft and State Aircraft Operations?Liability, in solicitations and contracts that do not include the clause at **252.228-7001 but involve public aircraft operations or state aircraft operations.**

PART 252?SOLICITATION PROVISIONS AND CONTRACT CLAUSES

SUBPART 252.2?TEXT OF PROVISIONS AND CLAUSES

252.228-7000 Reimbursement for War-Hazard Losses.

As prescribed in 228.371(a), use the following clause:

REIMBURSEMENT FOR WAR-HAZARD LOSSES (DEC 1991)

(a) Costs for providing employee war-hazard benefits in accordance with paragraph

(b) of the Workers' Compensation and War-Hazard Insurance clause of this contract are allowable if the Contractor?

(1) Submits proof of loss files to support payment or denial of each claim;

(2) Subject to Contracting Officer approval, makes lump sum final settlement of any open claims and obtains necessary release documents within one year of the expiration or termination of this contract, unless otherwise extended by the Contracting Officer; and

(3) Provides the Contracting Officer at the time of final settlement of this contract?

(i) An investigation report and evaluation of any potential claim; and

(ii) An estimate of the dollar amount involved should the potential claim mature.

(b) The cost of insurance for liabilities reimbursable under this clause is not allowable.

(c) The Contracting Officer may require the Contractor to assign to the Government all right, title, and interest to any refund, rebate, or recapture arising out of any claim settlements.

(d) The Contractor agrees to?

(1) Investigate and promptly notify the Contracting Officer in writing of any occurrence which may give rise to a claim or potential claim, including the estimated amount of the claim;

(2) Give the Contracting Officer immediate written notice of any suit or action filed which may result in a payment under this clause; and

(3) Provide assistance to the Government in connection with any third party suit or claim relating to this clause which the Government elects to prosecute or defend

in its own behalf.

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(End of clause)

252.228-7001 Ground and Flight Risk.

As prescribed in 228.371(b), use the following clause:

GROUND AND FLIGHT RISK (MAR 2023)

(a) Definitions. As used in this clause?

?Aircraft? means, unless otherwise provided in the contract Schedule, any item, other than a rocket or missile, intended for flight (e.g., fixed-winged aircraft, blended wing/lifting bodies, helicopters, vertical take-off or landing aircraft, lighter-than-air airships, and unmanned aerial vehicles), including emerging technologies that would commonly be considered aircraft. New production articles become aircraft at a stage of manufacture or production when a wing, portion of a wing, or engine is attached to a fuselage. Blended wing/lifting bodies become aircraft at a stage of manufacture or production when the center portion and a lifting surface become attached.

?Contractor?s managerial personnel? means the Contractor?s directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of?

(1) All, or substantially all, of the Contractor?s business;

(2) All, or substantially all, of the Contractor?s operation at any one plant or separate location; or

(3) A separate and complete major industrial operation.

?Contractor's premises? means those premises, including subcontractors? premises, designated in the Schedule or in writing by the Contracting Officer, and any other place the aircraft is moved for safeguarding.

?Covered aircraft? means an aircraft owned by or to be delivered to the Government and, when determined by the contracting officer and specifically identified as such in the contract Schedule, may include contractor-furnished aircraft that are not intended for induction into the DoD inventory, including?

(1) Aircraft furnished by the Government to the Contractor under this contract while in the Contractor?s possession, care, custody, or control regardless of their location or state of disassembly or reassembly;

(2) Items removed from a Government-furnished aircraft that are?

(i) Intended for reinstallation on that particular aircraft, which retain their status as covered aircraft while awaiting installation; and

(ii) Not intended for reinstallation on that particular aircraft, which lose their status as covered aircraft once removal is complete;

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(3) New production aircraft when wholly outside of buildings on the Contractor?s premises or other places described in the Schedule (e.g., hush houses, run stations, and paint facilities); and

(4) Commercial aircraft, to include commercially available off-the-shelf aircraft, become covered aircraft when the commercial aircraft arrives at the Contractor?s place of performance for modification under the terms of the contract.

?Crewmember? means, unless otherwise provided in the Schedule, personnel required in the flight manual, assigned for the purpose of conducting any flight on behalf of the Contractor. It also includes any operator of an unmanned aerial vehicle.

?Flight? means any flight approved in writing by the Government flight representative, to include taxi test made in the performance of this contract, or flight for the purpose of safeguarding the aircraft. All aircraft off the Contractor's premises shall be considered to be in flight when on the ground or water for reasonable periods of time following emergency landings, landings made in performance of the contract, or landings approved in writing by the contracting officer.

?Workmanship error? means damage to the aircraft that is the result of an incorrectly performed skill-based task, operation, or action that was originally planned or intended.

(b) Combined regulation/instruction. The Contractor shall be bound by the operating procedures contained in the combined regulation/instruction entitled ?Contractor?s Flight and Ground Operations? (Air Force Instruction 10-220, Army Regulation 95-20, NAVAIR Instruction 3710.1 (Series), Coast Guard Instruction M13020.3 (Series), and Defense Contract Management Agency Instruction 8210-1 (Series)) in effect on the date of contract award. Compliance with the combined regulation/instruction is required from the time of contract award throughout the period of performance of the contract, regardless of the Government?s assumption of risk under the contract.

(c) Government as self-insurer. The Government self-insures and assumes the risk of damage to, or loss or destruction of, covered aircraft subject to the following conditions:

(1) The Contractor?s liability to the Government for damage, loss, or destruction of covered aircraft is limited to the Contractor?s share of loss as defined at paragraph (h) of this clause, except when one of the exclusions at paragraph (d) applies.

(2) The liability provisions of this clause take precedence over the liability provisions of Federal Acquisition Regulation (FAR) clause 52.245-1, Government Property, with respect to covered aircraft.

(3) The Contractor is not liable for loss, damage, or destruction of covered aircraft as the result of normal wear and tear, or intentional damage or destruction as required in the Schedule.

(4) Conditions for Government assumption of risk in flight are as follows:

(i) The Contractor?s crewmembers are approved in writing by the Government flight representative (GFR).

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(ii) The flight is approved in writing by the GFR.

(d) Exclusions from the Government?s assumption of risk. The Government?s assumption of risk under this clause shall not extend to damage, loss, or destruction of covered aircraft which?

(1) Is the result of willful misconduct or lack of good faith on the part of the Contractor?s managerial personnel, including the Contractor?s oversight of subcontractors;

(2) Is sustained during flight if either the flight or the crewmembers have not been approved in advance and in writing by the GFR, who has been authorized in accordance with the combined regulation/instruction entitled ?Contractor?s Flight and Ground Operations?;

(3) Occurs in the course of transportation by rail, or by conveyance on public streets, highways, or waterways, unless the transportation is limited to the vicinity of the Contractor?s premises, and incidental to work performed under the contract as described in the Schedule;

(4) Is covered by insurance;

(5) Occurs after the Contracting Officer has, in writing, revoked the Government?s assumption of risk in accordance with paragraph (e)(3) of this clause; or

(6) Is sustained due to workmanship errors.

(e) Revoking the Government?s assumption of risk.

(1) The Contracting Officer, when finding that the Contractor?s managerial personnel have failed to comply with paragraph (b) of this clause, will issue a preliminary notice of revocation requiring the Contractor to comply with contract requirements within a timeframe specified by the Contracting Officer. In determining exposure to unreasonable conditions, the Contracting Officer will consider factors including, but not limited to, the following: lack of adequate hangar fire suppression or firefighting vehicles, failure to provide adequate procedures to the GFR, or systemic failure to comply with approved procedures.

(2) Upon receipt of the preliminary notice of revocation, the Contractor shall promptly correct the noncompliance or cited conditions, regardless of whether there is agreement that the conditions are unreasonable.

(3) If the Contracting Officer finds that the Contractor failed to correct the cited noncompliance or conditions within the specified timeframe, the Contracting Officer will issue a notice of revocation of the Government?s assumption of risk for any covered aircraft.

(4) If the Contracting Officer issues a notice of revocation pursuant to the terms of this clause?

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(i) The Contractor shall thereafter assume the entire risk for damage, loss, or destruction of the previously covered aircraft;

(ii) Any costs incurred by the Contractor (including the costs of the Contractor?s self-insurance, insurance premiums paid to insure the Contractor?s assumption of risk, deductibles associated with such purchased insurance, etc.) to mitigate its risk are unallowable costs; and

(iii) The liability provisions of the clause at FAR 52.245-1, Government Property, are not applicable to the aircraft impacted by the notice of revocation.

(5) The Contractor shall promptly notify the Contracting Officer when the noncompliance or cited conditions have been corrected. Within 3 days of receipt of the Contractor?s notice of correction, the Contracting Officer will notify the Contractor whether the Government will resume risk of loss. The Contracting Officer will determine that the noncompliance or cited conditions have been corrected prior to resuming assumption of risk.

(6) The notice of revocation does not relieve the Contractor of its obligation to comply with all other provisions of this clause, including the combined regulation/instruction entitled ?Contractor?s Flight and Ground Operations.?

(7) Any disputes regarding the Contracting Officer?s notice of revocation shall be subject to FAR clause 52.233-1, Disputes.

(f) Contractor?s exclusion of insurance costs. The Contractor warrants that the contract price does not and will not include, except as may be authorized in this clause, any charge or contingency reserve for insurance (including the Contractor?s share of loss) covering damage, loss, or destruction of covered aircraft when the risk has been assumed by the Government even if the assumption may be terminated for covered aircraft.

(g) Procedures in the event of damage, loss, or destruction.

(1) In the event of damage, loss, or destruction of covered aircraft, the Contractor shall take all reasonable steps to protect the aircraft from further damage, to separate damaged and undamaged aircraft, and to put all aircraft in the best possible order. Except in cases covered by paragraph (h)(2) of this clause, the Contractor shall furnish to the Contracting Officer a statement of?

(i) The damaged, lost, or destroyed aircraft;

(ii) The time and origin of the damage, loss, or destruction;

(iii) All known interests in commingled property of which aircraft are a part; and

(iv) The insurance, if any, covering the interest in commingled property.

(2) If a new production aircraft is damaged, lost, or destroyed before it has become a covered aircraft, the Government bears no responsibility for risk of loss.

(3) If a new production aircraft is damaged, lost, or destroyed after it has become a covered aircraft, the Contractor shall take action in accordance with the Contracting Officer?s written direction that the aircraft shall be?

(i) Replaced;

(ii) Repaired to the condition immediately prior to the damage; or

(iii) Considered beyond economic repair. The Contracting Officer will decide whether further actions are required under the contract.

(4) If a covered aircraft that has been furnished by the Government to the Contractor is damaged, lost, or destroyed while covered, the Contractor shall take action in accordance with the Contracting Officer?s written direction that the aircraft shall be?

(i) Repaired; or

(ii) Considered beyond economic repair. The Contracting Officer will decide further actions required under the contract.

(5) The Contracting Officer will make an equitable adjustment for expenditures made in performing the obligations under this paragraph (g).

(h) Contractor?s share of loss.

(1) The Contractor?s share of loss or damage to covered aircraft, except for loss or damage caused by negligence of Government personnel, is the least of?

(i) $200,000;

(ii) 20 percent of the price or estimated acquisition cost of affected aircraft; or

(iii) 20 percent of the price or estimated cost of the contract, task order, or delivery order.

(2) If the Government requires covered aircraft be replaced or repaired by the Contractor, any resulting equitable adjustment shall not include reimbursement of the Contractor?s share of loss.

(3) In the event the Government does not decide to replace or repair, the Contractor agrees to credit the contract price or pay the Government, as directed by the Contracting Officer, the least of?

(i) $200,000;

(ii) 20 percent of the price or estimated acquisition cost of affected aircraft; or

(iii) 20 percent of the price or estimated cost of the contract, task order, or delivery order.

(4) The costs incurred by the Contractor for its share of the loss and for insuring against that loss are unallowable costs, including but not limited to?

(i) The Contractor?s share of loss under the Government?s self-insurance;

(ii) The costs of the Contractor?s self-insurance;

(iii) The deductible for any Contractor-purchased insurance;

(iv) Insurance premiums paid for Contractor-purchased insurance; and

(v) Costs associated with determining, litigating, and defending against the Contractor?s liability.

(i) Reimbursement from a third party. In the event the Contractor is reimbursed or compensated by a third party for damage, loss, or destruction of covered aircraft and has also been compensated by the Government, the Contractor shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government?s right to recover against third parties for damage, loss, or destruction. Upon the request of the Contracting Officer or authorized representative, the Contractor shall at Government expense furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment or subrogation) in obtaining recovery.

(j) Liability to third parties. Unless the flight and crewmembers have been approved in writing by the GFR, the Contractor shall not be reimbursed for liability to third parties for loss or damage to property or for death or bodily injury caused by covered aircraft during flight, even if the Government has accepted such liability under any other provisions of the contract.

(k) Subcontracts. The Contractor shall incorporate the requirements of this clause, including this paragraph (k), in subcontracts to include subcontracts for commercial products and commercial services, except?

(1) The Contractor shall not include paragraph (f) of this clause in subcontracts for commercial products or commercial services; and

(2) The Contractor shall not incorporate the requirements of this clause in subcontracts with Federal Aviation Administration (FAA) part 145 repair stations performing work pursuant to their FAA license.

(End of clause)

252.228-7002 Reserved.

252.228-7003 Capture and Detention.

As prescribed in 228.371(c), use the following clause:

CAPTURE AND DETENTION (DEC 1991)

(a) As used in this clause?

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(1) ?Captured person? means any employee of the Contractor who is?

(i) Assigned to duty outside the United States for the performance of this contract; and

(ii) Found to be missing from his or her place of employment under circumstances that make it appear probable that the absence is due to the action of the force of any power not allied with the United States in a common military effort; or

(iii) Known to have been taken prisoner, hostage, or otherwise detained by the force of such power, whether or not actually engaged in employment at the time of

capture; provided, that at the time of capture or detention, the person was either?

(A) Engaged in activity directly arising out of and in the course of employment under this contract; or

(B) Captured in an area where required to be only in order to perform this contract.

(2) A ?period of detention? begins with the day of capture and continues until the captured person is returned to the place of employment, the United States, or is able to be returned to the jurisdiction of the United States, or until the person's death is established or legally presumed to have occurred by evidence satisfactory to the Contracting Officer, whichever occurs first.

(3) ?United States? comprises geographically the 50 states and the District of Columbia.

(4) ?War Hazards Compensation Act? refers to the statute compiled in Chapter 12 of Title 42, U.S. Code (sections 1701-1717), as amended.

(b) If pursuant to an agreement entered into prior to capture, the Contractor is obligated to pay and has paid detention benefits to a captured person, or the person's dependents, the Government will reimburse the Contractor up to an amount equal to the lesser of?

(1) Total wage or salary being paid at the time of capture due from the Contractor to the captured person for the period of detention; or

(2) That amount which would have been payable if the detention had occurred under circumstances covered by the War Hazards Compensation Act.

(c) The period of detention shall not be considered as time spent in contract performance, and the Government shall not be obligated to make payment for that time except as provided in this clause.

(d) The obligation of the Government shall apply to the entire period of detention, except that it is subject to the availability of funds from which payment can be made. The rights and obligations of the parties under this clause shall survive prior expiration, completion, or termination of this contract.

(e) The Contractor shall not be reimbursed under this clause for payments made if the employees were entitled to compensation for capture and detention under the War Hazards Compensation Act, as amended.

(End of clause)

252.228-7004 Reserved.

252.228-7005 Mishap Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles.

As prescribed in 228.371(d), use the following clause:

MISHAP REPORTING AND INVESTIGATION INVOLVING AIRCRAFT, MISSILES, AND SPACE LAUNCH VEHICLES (NOV 2019)

(a) The Contractor shall report promptly to the Administrative Contracting Officer all pertinent facts relating to each mishap involving an aircraft, missile, or space launch vehicle being manufactured, modified, repaired, or overhauled in connection with this contract.

(b) If the Government conducts an investigation of the mishap, the Contractor shall cooperate and assist the Government's personnel until the investigation is complete.

(c) The Contractor shall include a clause in subcontracts under this contract to require subcontractor cooperation and assistance in mishap investigations.

(End of clause)

252.228-7006 Compliance with Spanish Laws and Insurance.

As prescribed in 228.371(e), use the following clause:

COMPLIANCE WITH SPANISH LAWS AND INSURANCE (DEC 1998)

(a) The requirements of this clause apply only if the Contractor is not a Spanish concern.

(b) The Contractor shall, without additional expense to the United States Government, comply with all applicable Spanish Government laws pertaining to sanitation, traffic, security, employment of labor, and all other laws relevant to the performance of this contract. The Contractor shall hold the United States Government harmless and free from any liability resulting from the Contractor?s failure to comply with such laws.

(c) The Contractor shall, at its own expense, provide and maintain during the entire performance of this contract, all workmen?s compensation, employees? liability, bodily injury insurance, and other required insurance adequate to cover the risk assumed by the Contractor. The Contractor shall indemnify and hold harmless the United States Government from liability resulting from all claims for damages as a result of death or injury to personnel or damage to real or personal property related to the performance of this contract.

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(d) The Contractor agrees to represent in writing to the Contracting Officer, prior to commencement of work and not later than 15 days after the date of the Notice to Proceed, that the Contractor has obtained the required types of insurance in the following minimum amounts. The representation also shall state that the Contractor will promptly notify the Contracting Officer of any notice of cancellation of insurance or material change in insurance coverage that could affect the United States Government?s interests.

Type of Insurance Coverage Coverage per Property

per Person Accident Damage

Comprehensive $300,000 $1,000,000 $100,000

General Liability

(e) The Contractor shall provide the Contracting Officer with a similar

representation for all subcontracts with non-Spanish concerns that will perform work in Spain under this contract.

(f) Insurance policies required herein shall be purchased from Spanish insurance companies or other insurance companies legally authorized to conduct business in Spain. Such policies shall conform to Spanish laws and regulations and shall?

(1) Contain provisions requiring submission to Spanish law and jurisdiction of any problem that may arise with regard to the interpretation or application of the clauses and conditions of the insurance policy;

(2) Contain a provision authorizing the insurance company, as subrogee of the insured entity, to assume and attend to directly, with respect to any person damaged, the legal consequences arising from the occurrence of such damages;

(3) Contain a provision worded as follows: ?The insurance company waives any right of subrogation against the United States of America that may arise by reason of any payment under this policy.?;

(4) Not contain any deductible amount or similar limitation; and

(5) Not contain any provisions requiring submission to any type of arbitration.

(End of clause)

252.228-7007 Public Aircraft and State Aircraft Operations?Liability.

As prescribed in 228.371(f), use the following clause:

PUBLIC AIRCRAFT AND STATE AIRCRAFT OPERATIONS?LIABILITY

(MAR 2023)

(a) Definitions. As used in this clause?

?Civil aircraft? means an aircraft other than a public aircraft or state aircraft.

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?Public aircraft? means an aircraft that meets the definition in 49 U.S.C. 40102(a)(41) and the qualifications in 49 U.S.C. 40125. Specifically, a public aircraft means any of the following:

(1) An aircraft used only for the Government, except as provided in paragraphs (5) and (7) of this definition.

(2) An aircraft owned by the Government and operated by any person for purposes related to crew training, equipment development, or demonstration, except as provided in paragraph (7) of this definition.

(3) An aircraft owned and operated by the government of a State, the District of Columbia, or a territory or possession of the United States or a political subdivision of one of these governments, except as provided in paragraph (7) of this definition.

(4) An aircraft exclusively leased for at least 90 continuous days by the government of a State, the District of Columbia, or a territory or possession of the United States or a political subdivision of one of these governments, except as provided in paragraph (7) of this definition.

(5) An aircraft owned or operated by the armed forces or chartered to provide

transportation or other commercial air service to the armed forces under the conditions specified by 49 U.S.C. 40125(c). In the preceding sentence, the term ?other commercial air service? means an aircraft operation that?

(i) Is within the United States territorial airspace;

(ii) The Administrator of the Federal Aviation Administration determines is available for compensation or hire to the public; and

(iii) Must comply with all applicable civil aircraft rules under title 14, Code of Federal Regulations.

(6) An unmanned aircraft that is owned and operated, or exclusively leased for at least 90 continuous days, by an Indian Tribal government, as defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122), except as provided in paragraph (7) of this definition.

(7) As described in 49 U.S.C. 40125(b), an aircraft described in paragraph (1),

(2), (3), or (4) of this definition does not qualify as a public aircraft when the aircraft is used for commercial purposes or to carry an individual other than a crewmember or a qualified non-crewmember.

?Public aircraft operation? means operation of an aircraft that meets the legal definition of public aircraft established in 49 U.S.C. 40102(a)(41) and the legal qualifications for public aircraft status outlined in 49 U.S.C. 40125.

?State aircraft? means an aircraft operated by the Government for sovereign, noncommercial purposes such as military, customs, and police services. Military aircraft are afforded status as state aircraft. In very rare circumstances, DoD-contracted aircraft may be designated, in writing, by a responsible Government official pursuant to DoD Directive 4500.54E, DoD Foreign Clearance Program, to be operated

in state aircraft status, and such status cannot be deemed without a written designation by an authorized Government official.

(b) Combined regulation/instruction. Upon award, for contract performance to be conducted as a public aircraft operation, the Contractor shall be bound by the operating procedures contained in the combined regulation/instruction entitled ?Contractor?s Flight and Ground Operations? (Air Force Instruction 10-220, Army Regulation 95-20, NAVAIR Instruction 3710.1 (Series), Coast Guard Instruction M13020.3 (Series), and Defense Contract Management Agency Instruction 8210-1 (Series)) in effect on the date of contract award.

(c) Contractor liability for operations for contract performance conducted as public aircraft operations or state aircraft operations.

(1) The Contractor assumes responsibility for all damage or injury to persons or property, including the Contractor?s employees and property, and Government personnel and property, occasioned through the use, maintenance, and operation of the Contractor?s aircraft or other equipment by, or the action of, the Contractor or the Contractor?s employees and agents.

(2) The Contractor, at the Contractor?s expense, shall maintain adequate public liability and property damage insurance, including hull insurance for the Contractor?s aircraft, during the duration of this contract, insuring the Contractor against all claims for injury or damage.

(3) The Contractor shall maintain workers? compensation and other legally required insurance with respect to the Contractor?s own employees and agents.

(4) The Government will in no event be liable or responsible for damage or injury to any person or property occasioned through the use, maintenance, or operation of any aircraft or other equipment by, or the action of, the Contractor or the Contractor?s employees and agents in performing under this contract, and the Government shall be indemnified and saved harmless against claims for damage or injury in such cases.

(End of clause)

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PGI 228?BONDS AND INSURANCE

PGI 228.3--INSURANCE

PGI 228.304 Risk-pooling arrangements.

(1) The plan?

(i) Is implemented by attaching an endorsement to standard insurance policy forms for workers' compensation, employer's liability, comprehensive general, and automobile liability. The endorsement states that the instant policy is subject to the National Defense Projects Rating Plan.

(ii) Applies to eligible defense projects of one or more departments/agencies. For purposes of this section, a defense project is any eligible contract or group of contracts with the same contractor.

(A) A defense project is eligible when?

(1) Eligible contracts represent, at the inception of the plan, at least 90 percent of the payroll for the total operations at project locations; and

(2) The annual insurance premium is estimated to be at least $10,000.

(B) A contract is eligible when it is?

(1) Either domestic or foreign;

(2) Cost-reimbursement type; or

(3) Fixed price with redetermination provisions.

(2) Under construction contracts, include construction subcontractors in the prime contractor's plan only when subcontractor operations are at the project site, and the subcontract provides that the prime contractor will furnish insurance.

(3) Use the agreement in Table 28-1, Insurance Rating Plan Agreement, when the Government assumes contractor premium payments upon contract termination or completion.

(4) The Federal Tort Claims Act provides protection for Government employees while driving Government-owned vehicles in the performance of their assigned duties. Include the

endorsement in Table 28-2, Automobile Insurance Policy Endorsement, in automobile liability insurance policies provided under the National Defense Projects Rating Plan.

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TABLE 28-1, INSURANCE RATING PLAN RATING AGREEMENT

Special Casualty Insurance Rating Plan

Assignment-Assumption of Premium Obligations

It is agreed that 100 percent* of the return premiums and premium refunds (and dividends) due or to become due the prime contractor under the policies to which the National Defense Projects Rating Plan Endorsement made a part of policy _____ applies are hereby assigned to and shall be paid to the United States of America, and the prime contractor directs the Company to make such payments to the office designated for contract administration acting for and on account of the United States of America.

The United States of America hereby assumes and agrees to fulfill all present and future obligations of the prime contractor with respect to the payment of 100 percent* of the premiums under said policies.

This agreement, upon acceptance by the prime contractor, the United States of America, and the Company shall be effective from _____

Accepted_____ (Date)

_____ (Name of Insurance Company)

By _____(Title of Official Signing)

Accepted_____ (Date)

United States of America

By _____ (Authorized Representative)

Accepted_____ (Date)

_____ (Prime Contractor)

By _____ (Authorized Representative)

*In the event the Government has less than a 100 percent interest in premium funds or dividends, modify the assignment to reflect the percentage of interest and extent of the Government's assumption of additional premium obligation.

TABLE 28-2, AUTOMOBILE INSURANCE POLICY ENDORSEMENT

It is agreed that insurance provided by the policy with respect to the ownership, maintenance, or use of automobiles, including loading and unloading thereof, does not apply to the following as insureds: The United States of America, any of its agencies, or any of its officers or employees.

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PGI 228.305 Overseas workers' compensation and war-hazard insurance.

(d) Submit requests for waiver through department/agency channels. Include the following in the request:

(i) Name and address of contractor.

(ii) Contract number.

(iii) Date of award.

(iv) Place of performance.

(v) Name of insurance company providing Defense Base Act coverage.

(vi) Nationality of employees to whom waiver is to apply.

(vii) Reason for waiver.

PGI 228.370 Ground and flight risk.

PGI 228.370-2 General.

(a) Assignment of a Government flight representative. DFARS 252.228-7001, Ground and Flight Risk, requires the assignment of a Government flight representative (GFR) to administer the requirements of the combined instruction Contractor?s Flight and Ground Operations, (DCMA INST 8210-1 AFI 10-220, AR 95-20, NAVAIRINST **3710.1 (Series), and COMDTINST M13020.3). At the time the solicitation is issued,** contracting officers must contact DCMA Aircraft Operations (AO) and the appropriate military service to obtain technical advice and allow adequate lead time for assigning a GFR. Make requests for assignment of a GFR to?

HQ DCMA: DCMA-AO

6090 Strathmore Rd

Building 54

Richmond, VA 23237

804-608-6800

Email: dcma.lee.hq.mbx.ao-inbox@mail.mil (include "Ground and Flight Risk Clause" on the subject line)

Army: HQ, Army Materiel Command

ATTN: AMPE-SF

4400 Martin Road

Redstone Arsenal, AL 35898

520-691-0040

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Navy: Commander, Naval Air Systems Command (AIR-09F)

22541 Millstone Road, Unit 10

Patuxent River, MD 20670-1601

301? 342?7233

Air Force: HQ AFMC/A3V

508 W. Choctawhatchee

Eglin AFB, FL 32542-5713

850? 882?7890
Workflow: afmc.a3v@us.af.mil
Coast Guard: Commanding Officer
Aviation Logistics Center
U.S. Coast Guard
1664 Weeksville Road, Building 63
Elizabeth City, NC 27909-6725

(c) Foreign military sales. The Government self-insures through the use of the clause at **252.228-7001, which requires risk-mitigation procedures in lieu of private-sector,** commercially-available hull insurance to cover the physical aircraft from damage or destruction, similar to the comprehensive portion of automobile insurance. It does not address personnel liability. For contracts falling under the exceptions at DFARS **228.371(b)(1)(iii), (iv), and (vi), review the commercial insurance policy to determine what** coverage exists on the contract aircraft. Commercial hull insurance policies may contain various coverage exclusions, particularly for Government-furnished aircraft, which may mean the Government is at risk without the risk management safeguards provided through the Combined Instruction.

(f) Damage to Government aircraft. Whenever damage to Government aircraft is reported, particularly when the cost of repair exceeds the contractor?s share of loss provisions, the contracting officer must make a proper liability determination. For most situations, determining whether an incident is an accident or mishap, or a workmanship error can be made based on intent of the employee(s) involved. Although each incident involving damage should be evaluated on its own merits, use the following general rules and examples when determining if an incident constitutes an accident or mishap (damage normally covered under the clause at 252.228-7001) or a workmanship error (damage not normally covered under the clause at 252.228-7001).

(1) An accident or mishap is the result of a task, operation, or action that was not originally planned or intended. For example, a mechanic was pushing a stand next to the aircraft and scratches the inlet coating. The intent of the task was to move the stand, not to scratch the coating. This would be considered accident or mishap damage to the aircraft, and a contractor should expect to be reimbursed under the clause at 252.228-7001 (minus the appropriate contractor share of loss).

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(2)(i) A workmanship error consists of damage that is the result of an incorrectly performed skill-based task, operation, or action that was originally planned or intended, but the end result was not within allowable limits. For example, a mechanic was scraping coating off an inlet and removed too much material. The intent of the task was to scrape the inlet coating, but too much was removed. This would not be considered aircraft damage reimbursed under the clause at 252.228-7001.

(ii) Missing a step in a procedure or checklist item is not considered a skill-

based error and therefore is not considered workmanship error damage.

PART 29

OFFICE OF THE ASSISTANT SECRETARY OF WAR

Status: Class D

OFFICE OF THE ASSISTANT SECRETARY OF WAR

3000 DEFENSE PENTAGON

WASHINGTON, DC 20301-3000

ACQUISITION

AND SUSTAINMENT

In reply refer to

DARS Tracking Number: 2026-O0007

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES SPECIAL OPERATIONS

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES TRANSPORTATION

COMMAND (ATTN: ACQUISITION EXECUTIVE)

DEPUTY ASSISTANT SECRETARY OF THE ARMY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE NAVY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE

(CONTRACTING)

DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Class Deviation?Revolutionary Federal Acquisition Regulation (FAR) Overhaul

Part 29, Defense FAR Supplement (DFARS) Part 229

Effective February 1, 2026, contracting officers shall use?

? The revised FAR Part 29, Taxes published on the Revolutionary FAR Overhaul web page at https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-29 in lieu of the text codified at 48 CFR chapter 1 (https://www.ecfr.gov).

? The attached DFARS Part 229, Taxes in lieu of the text codified at 48 CFR chapter 2; and

? The attached DFARS Procedures, Guidance, and Information (PGI) 229, Taxes in lieu of the PGI text published on the Defense Pricing, Contracting, and Acquisition Policy web page at https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.

This class deviation implements the following:

? Section 2 of E.O. 14275, Restoring Common Sense to Federal Procurement, which establishes the policy that the FAR ?should only contain provisions required by statute or essential to sound procurement, and any FAR provisions that do not advance these objectives should be removed.

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? Section 4(a) of E.O. 14265, Modernizing Defense Acquisitions and Spurring Innovation in the Defense Industrial Base which requires the Secretary of War to eliminate or revise any unnecessary supplemental regulations or any other internal guidance, such as relevant parts of the Financial Management Regulation and Defense Federal Acquisition Regulation Supplement.
? The Office of Management and Budget memorandum, M-25-26 issued on May 2, 2025, titled, Overhauling the Federal Acquisition Regulation, which provided additional guidance to federal agencies regarding the FAR overhaul.
This class deviation remains in effect until rescinded or incorporated into the FAR, DFARS, and DFARS PGI. Inquiries regarding this class deviation can be addressed to osd.pentagon.ousd-a-s.mbx.dfars@mail.mil.
John M. Tenaglia
Principal Director,
Defense Pricing, Contracting, and
Acquisition Policy
Attachments:
As stated
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PART 229?TAXES

SUBPART 229.1?GENERAL

229.101-70 Resolving tax problems.

(a)(1) Within DoD, the agency-designated legal counsels are the defense agency General Counsels, the General Counsels of the Navy and Air Force, and for the Army, the Chief, Contract Law Division, Office of the Judge Advocate General. For additional information on the designated legal counsels, see PGI 229.101-70(a).

(2) Before purchasing goods or services from a foreign source, consult the agency-designated counsel.

(b) For information on fuel excise taxes, see PGI 229.101-70 (b).

(c) For guidance on directing a contractor to litigate the applicability of a particular tax, see PGI 229.101-70 (c).

(d) For information on tax relief agreements between the United States and European foreign governments, see PGI 229.101-70 (d).

229.170 Reporting of foreign taxation on U.S. assistance programs.

229.170-1 Definition.

?Commodities,? as used in this section, means any materials, articles, supplies, goods, or equipment.

229.170-2 Policy.

(a) By law, bilateral agreements with foreign governments must include a provision that commodities acquired under contracts funded by U.S. assistance programs must be exempt from taxation by the foreign government. If taxes or customs duties nevertheless are imposed, the foreign government must reimburse the amount of such taxes to the U.S. Government (Section 579 of Division E of the Consolidated Appropriations Act, 2003 (Pub. L. 108-7).

(b) This foreign tax exemption?

(1) Applies to a contract or subcontract for commodities when?

(i) The funds are appropriated by the annual foreign operations appropriations act; and

(ii) The value of the contract or subcontract is $500 or more;

(2) Does not apply to the acquisition of services;

(3) Generally, is implemented through letters of offer and acceptance, other country-to-country agreements, or Federal interagency agreements; and

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(4) Requires reporting of noncompliance for effective implementation.

229.170-3 Reports.

The contracting officer must submit a report to the designated Security Assistance Office when a foreign government or entity imposes tax or customs duties on commodities acquired under contracts or subcontracts meeting the criteria of 229.170-**2(b)(1). Follow the procedures at PGI 229.170-3 for submission of reports.**

229.170-4 Contract clause.

Insert the clause at 252.229-7011, Reporting of Foreign Taxes?U.S. Assistance Programs, in solicitations and contracts funded with U.S. assistance appropriations provided in the annual foreign operations appropriations act.

SUBPART 229.2?FEDERAL EXCISE TAXES

229.204 Federal excise tax on specific foreign contract payments.

The contracting officer must not authorize the Governmentwide commercial purchase card as a method of payment during any contract period of performance if the contract includes the clause at FAR 52.229-12, Tax on Certain Foreign Procurements, unless the contract also includes the clause at 252.229-7014, Full Exemption from Two-Percent Excise Tax on Certain Foreign Procurements, indicating that the contractor is fully exempt from the tax.

SUBPART 229.4?CONTRACT CLAUSES

229.402 Foreign contracts.

229.402-70 Additional provisions and clauses.

(a) Insert the basic or the alternate of the clause at 252.229-7001, Tax Relief, in solicitations and contracts when a contract will be awarded to a foreign concern for performance in a foreign country.

(1) Insert the basic clause in solicitations and contracts when the contract will

be performed in a foreign country other than Germany.

(2) Insert the alternate I clause in solicitations and contracts when the contract will be performed in Germany.

(b) Insert the clause at 252.229-7002, Customs Exemptions (Germany), in solicitations and contracts requiring the import of U.S. manufactured products into Germany.

(c)(1) Insert the clause at 252.229-7003, Tax Exemptions (Italy), in solicitations and contracts when contract performance will be in Italy.

(2) Insert the provision at 252.229-7012, Tax Exemptions (Italy)? Representation, in solicitations that contain the clause at 252.229-7003, Tax Exemptions (Italy). If the solicitation includes the provision at FAR 52.204-7, do not separately list 252.229-7012 in the solicitation.

(d) Insert the clause at 252.229-7004, Status of Contractor as a Direct Contractor (Spain), in solicitations and contracts requiring the import into Spain of supplies for construction, development, maintenance, or operation of Spanish-American installations and facilities.

(e)(1) Insert the clause at 252.229-7005, Tax Exemptions (Spain), in solicitations and contracts when contract performance will be in Spain.

(2) Insert the provision at 252.229-7013, Tax Exemptions (Spain)? Representation, in solicitations that contain the clause at 252.229-7005, Tax Exemptions (Spain). If the solicitation includes the provision at FAR 52.204-7, do not separately list 252.229-7013 in the solicitation.

(f) Insert the clause at 252.229-7006, Value Added Tax Exclusion (United Kingdom), in solicitations and contracts when contract performance will be in the United Kingdom.

(g) Insert the clause at 252.229-7007, Verification of United States Receipt of Goods, in solicitations and contracts when contract performance will be in the United Kingdom.

(h) Insert the clause at 252.229-7008, Relief from Import Duty (United Kingdom), in solicitations issued and contracts awarded in the United Kingdom.

(i) Insert the clause at 252.229-7009, Relief from Customs Duty and Value Added Tax on Fuel (Passenger Vehicles) (United Kingdom), in solicitations issued and contracts awarded in the United Kingdom for fuels (gasoline or diesel) and lubricants used in passenger vehicles (excluding taxis).

(j) Insert the clause at 252.229-7010, Relief from Customs Duty on Fuel (United Kingdom), in solicitations issued and contracts awarded in the United Kingdom that require the use of fuels (gasoline or diesel) and lubricants in taxis or vehicles other than passenger vehicles.

(k) Insert the clause at 252.229-7014, Full Exemption from Two-Percent Excise Tax on Certain Foreign Procurements, in contracts that include the clause at FAR 52.229-12, Tax on Certain Foreign Procurements, when the contractor has?

(1) Represented that it is a foreign person in response to the provision at FAR

52.229-11, Tax on Certain Foreign Procurements?Notice and Representation; and

(2) Indicated that it is fully exempt from the tax for reasons cited on their IRS Form W-14, Certificate of Foreign Contracting Party Receiving Federal Procurement Payments.

SUBPART 229.70?SPECIAL PROCEDURES FOR OVERSEAS CONTRACTS

To obtain tax relief for overseas contracts, follow the procedures at PGI 229.70.

SUBPART 252.2--TEXT OF PROVISIONS AND CLAUSES

252.229-7000 Reserved.

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252.229-7001 Tax Relief.

Basic. As prescribed in 229.402-70(a) and (a)(1), use the following clause:

TAX RELIEF?BASIC (APR 2020)

(a) Prices set forth in this contract are exclusive of all taxes and duties from which the United States Government is exempt by virtue of tax agreements between the United States Government and the Contractor?s government. The following taxes or duties have been excluded from the contract price:

NAME OF TAX: (Offeror insert) RATE (PERCENTAGE): (Offeror insert)

(b) Invoices submitted in accordance with the terms and conditions of this contract shall be exclusive of all taxes or duties for which relief is available. The Contractor?s invoice shall list separately the gross price, amount of tax deducted, and net price charged.

(c) When items manufactured to United States Government specifications are being acquired, the Contractor shall identify the materials or components intended to be imported in order to ensure that relief from import duties is obtained. If the Contractor intends to use imported products from inventories on hand, the price of which includes a factor for import duties, the Contractor shall ensure the United States Government?s exemption from these taxes. The Contractor may obtain a refund of the import duties from its government or request the duty-free import of an amount of supplies or components corresponding to that used from inventory for this contract.

(End of clause)

Alternate I. As prescribed in 229.402-70(a) and (a)(2), use the following clause, which adds a paragraph (d) not included in the basic clause:

TAX RELIEF?ALTERNATE I (APR 2020)

(a) Prices set forth in this contract are exclusive of all taxes and duties from which the United States Government is exempt by virtue of tax agreements between the United States Government and the Contractor?s government. The following taxes or duties have been excluded from the contract price:

NAME OF TAX: [Offeror insert] RATE (PERCENTAGE): [Offeror insert]

(b) Invoices submitted in accordance with the terms and conditions of this contract shall be exclusive of all taxes or duties for which relief is available. The Contractor?s

invoice shall list separately the gross price, amount of tax deducted, and net price charged.

(c) When items manufactured to United States Government specifications are being acquired, the Contractor shall identify the materials or components intended to be imported in order to ensure that relief from import duties is obtained. If the Contractor intends to use imported products from inventories on hand, the price of which includes a factor for import duties, the Contractor shall ensure the United States Government?s exemption from these taxes. The Contractor may obtain a refund of the import duties

from its government or request the duty-free import of an amount of supplies or components corresponding to that used from inventory for this contract.

(d) Tax relief will be claimed in Germany pursuant to the provisions of the Agreement Between the United States of America and Germany Concerning Tax Relief to be Accorded by Germany to United States Expenditures in the Interest of Common Defense. The Contractor shall use Abwicklungsschein fuer abgabenbeguenstigte Lieferungen/Leistungen nach dem Offshore Steuerabkommen (Performance Certificate for Tax-Free Deliveries/Performance according to the Offshore Tax Relief Agreement) or other documentary evidence acceptable to the German tax authorities. All purchases made and paid for on a tax-free basis during a 30-day period may be accumulated, totaled, and reported as tax-free.

(End of clause)

252.229-7002 Customs Exemptions (Germany).

As prescribed in 229.402-70(b), use the following clause:

CUSTOMS EXEMPTIONS (GERMANY) (JUN 1997)

Imported products required for the direct benefit of the United States Forces are authorized to be acquired duty-free by the Contractor in accordance with the provisions of the Agreement Between the United States of America and Germany Concerning Tax Relief to be Accorded by Germany to United States Expenditures in the Interest of Common Defense.

(End of clause)

252.229-7003 Tax Exemptions (Italy).

As prescribed in 229.402-70(c)(1), use the following clause:

TAX EXEMPTIONS (ITALY) (MAR 2012)

(a) As the Contractor represented in its offer, the contract price, including the prices in subcontracts awarded under this contract, does not include taxes from which the United States Government is exempt.

(b) The United States Government is exempt from payment of Imposta Valore Aggiunto (IVA) tax in accordance with Article 72 of the IVA implementing decree on all supplies and services sold to United States Military Commands in Italy.

(1) The Contractor shall include the following information on invoices

submitted to the United States Government:

(i) The contract number.

(ii) The IVA tax exemption claimed pursuant to Article 72 of Decree Law 633, dated October 26, 1972.

(iii) The following fiscal code(s): [Contracting Officer must insert the applicable fiscal code(s) for military activities within Italy: 80028250241 for Army, 80156020630 for Navy, or 91000190933 for Air Force].

(2)(i) Upon receipt of the invoice, the paying office will include the following certification on one copy of the invoice:

?I certify that this invoice is true and correct and reflects expenditures made in Italy for the Common Defense by the United States Government pursuant to international agreements. The amount to be paid does not include the IVA tax, because this transaction is not subject to the tax in accordance with Article 72 of Decree Law 633, dated October 26, 1972.?

An authorized United States Government official will sign the copy of the invoice containing this certification.

(ii) The paying office will return the certified copy together with payment to the Contractor. The payment will not include the amount of the IVA tax.

(iii) The Contractor shall retain the certified copy to substantiate non-payment of the IVA tax.

(3) The Contractor may address questions regarding the IVA tax to the Ministry of Finance, IVA Office, Rome (06) 520741.

(c) In addition to the IVA tax, purchases by the United States Forces in Italy are exempt from the following taxes:

(1) Imposta di Fabbricazione (Production Tax for Petroleum Products).

(2) Imposta di Consumo (Consumption Tax for Electrical Power).

(3) Dazi Doganali (Customs Duties).

(4) Tassa di Sbarco e d?Imbarco sulle Merci Transportate per Via Aerea e per Via Maritima (Port Fees).

(5) Tassa de Circolazione sui Veicoli (Vehicle Circulation Tax).

(6) Imposta di Registro (Registration Tax).

(7) Imposta di Bollo (Stamp Tax).

(End of clause)

252.229-7004 Status of Contractor as a Direct Contractor (Spain).

As prescribed in 229.402-70(d), use the following clause:

STATUS OF CONTRACTOR AS A DIRECT CONTRACTOR (SPAIN) (JUN 1997)

(a) ?Direct Contractor,? as used in this clause, means an individual, company, or entity with whom an agency of the United States Department of Defense has executed a

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written agreement that allows duty-free import of equipment, materials, and supplies into Spain for the construction, development, maintenance, and operation of Spanish-American installations and facilities.

(b) The Contractor is hereby designated as a Direct Contractor under the provisions of Complementary Agreement 5, articles 11, 14, 15, 17, and 18 of the Agreement on Friendship, Defense and Cooperation between the United States Government and the Kingdom of Spain, dated July 2, 1982. The Agreement relates to contracts to be performed in whole or part in Spain, the provisions of which are hereby incorporated into and made a part of this contract by reference.

(c) The Contractor shall apply to the appropriate Spanish authorities for approval of status as a Direct Contractor in order to complete duty-free import of non-Spanish equipment, materials, and supplies represented as necessary for contract performance by the Contracting Officer. Orders for equipment, materials, and supplies placed prior to official notification of such approval shall be at the Contractor?s own risk. The Contractor must submit its documentation in sufficient time to permit processing by the appropriate United States and Spanish Government agencies prior to the arrival of the equipment, materials, or supplies in Spain. Seasonal variations in processing times are common, and the Contractor should program its projects accordingly. Any delay or expense arising directly or indirectly from this process shall not excuse untimely performance (except as expressly allowed in other provisions of this contract), constitute a direct or constructive change, or otherwise provide a basis for additional compensation or adjustment of any kind.

(d) To ensure that all duty-free imports are properly accounted for, exported, or disposed of, in accordance with Spanish law, the Contractor shall obtain a written bank letter of guaranty payable to the Treasurer of the United States, or such other authority as may be designated by the Contracting Officer, in the amount set forth in paragraph

(g) of this clause, prior to effecting any duty-free imports for the performance of this contract.

(e) If the Contractor fails to obtain the required guaranty, the Contractor agrees that the Contracting Officer may withhold a portion of the contract payments in order to establish a fund in the amount set forth in paragraph (g) of this clause. The fund shall be used for the payment of import taxes in the event that the Contractor fails to properly account for, export, or dispose of equipment, materials, or supplies imported on a duty-free basis.

(f) The amount of the bank letter of guaranty or size of the fund required under paragraph (d) or (e) of this clause normally shall be 5 percent of the contract value. However, if the Contractor demonstrates to the Contracting Officer?s satisfaction that the amount retained by the United States Government or guaranteed by the bank is excessive, the amount shall be reduced to an amount commensurate with contingent import tax and duty-free liability. This bank guaranty or fund shall not be released to the Contractor until the Spanish General Directorate of Customs verifies the

accounting, export, or disposition of the equipment, material, or supplies imported on a duty-free basis.

(g) The amount required under paragraph (d), (e), or (f) of this clause is (Contracting Officer insert amount at time of contract award) .

(h) The Contractor agrees to insert the provisions of this clause, including this paragraph (h), in all subcontracts.

(End of clause)

252.229-7005 Tax Exemptions (Spain).

As prescribed in 229.402-70(e)(1), use the following clause:

TAX EXEMPTIONS (SPAIN) (MAR 2012)

(a) As the Contractor represented in its offer, the contract price, including the prices in subcontracts awarded under this contract, does not include taxes from which the United States Government is exempt.

(b) In accordance with tax relief agreements between the United States Government and the Spanish Government, and because the incumbent contract arises from the activities of the United States Forces in Spain, the contract will be exempt from the following excise, luxury, and transaction taxes:

(1) Derechos de Aduana (Customs Duties).

(2) Impuesto de Compensacion a la Importacion (Compensation Tax on Imports).

(3) Transmissiones Patrionomiales (Property Transfer Tax).

(4) Impuesto Sobre el Lujo (Luxury Tax).

(5) Actos Juridocos Documentados (Legal Official Transactions).

(6) Impuesto Sobre el Trafico de Empresas (Business Trade Tax).

(7) Impuestos Especiales de Fabricacion (Special Products Tax).

(8) Impuesto Sobre el Petroleo y Derivados (Tax on Petroleum and its By-Products).

(9) Impuesto Sobre el Uso de Telefona (Telephone Tax).

(10) Impuesto General Sobre la Renta de Sociedades y demas Entidades Juridicas (General Corporation Income Tax).

(11) Impuesto Industrial (Industrial Tax).

(12) Impuesto de Rentas Sobre el Capital (Capital Gains Tax).

(13) Plus Vailia (Increase on Real Property).

(14) Contribucion Territorial Urbana (Metropolitan Real Estate Tax).

(15) Contribucion Territorial Rustica y Pecuaria (Farmland Real Estate Tax).

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(16) Impuestos de la Diputacion (County Service Charges).

(17) Impuestos Municipal y Tasas Parafiscales (Municipal Tax and Charges).

(End of clause)

252.229-7006 Value Added Tax Exclusion (United Kingdom)

As prescribed in 229.402-70(f), use the follow clause:

VALUE ADDED TAX EXCLUSION (UNITED KINGDOM) (DEC 2011)

The supplies or services identified in this contract are to be delivered at a price exclusive of value added tax under arrangements between the appropriate United States authorities and Her Majesty?s Revenue and Customs (HMRC Reference Notice 431, entitled Relief from Customs Duty and/or Value Added Tax on United States Government Expenditures in the United Kingdom). By executing this contract, the Contracting Officer certifies that these supplies or services are being purchased for United States Government official purposes only.

(End of clause)

252.229-7007 Verification of United States Receipt of Goods.

As prescribed in 229.402-70(g), use the following clause:

VERIFICATION OF UNITED STATES RECEIPT OF GOODS (JUN 1997)

The Contractor shall insert the following statement on all Material Inspection and Receiving Reports (DD Form 250 series) for Contracting Officer approval:

?I certify that the items listed on this invoice have been received by the United States.?

(End of clause)

252.229-7008 Relief from Import Duty (United Kingdom).

As prescribed in 229.402-70(h), use the following clause:

RELIEF FROM IMPORT DUTY (UNITED KINGDOM) (DEC 2011)

Any import dutiable articles, components, or raw materials supplied to the United States Government under this contract shall be exclusive of any United Kingdom import duties. Any imported items supplied for which import duty already has been paid will be supplied at a price exclusive of the amount of import duty paid. The Contractor is advised to contact Her Majesty?s Revenue and Customs to obtain a refund upon completion of the contract (Reference HMRC Notice No. 431, entitled ?Relief from Customs Duty and/or Value Added Tax on United States Government Expenditures in the United Kingdom?).

(End of clause)

252.229-7009 Relief from Customs Duty and Value Added Tax on Fuel

(Passenger Vehicles) (United Kingdom).

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As prescribed in 229.402-70(i), use the following clause:

RELIEF FROM CUSTOMS DUTY AND VALUE ADDED TAX ON FUEL

(PASSENGER VEHICLES) (UNITED KINGDOM) (JUN 1997)

(a) Pursuant to an agreement between the United States Government and Her Majesty?s (HM) Customs and Excise, fuels and lubricants used by passenger vehicles

(except taxis) in the performance of this contract will be exempt from customs duty and value added tax. Therefore, the procedures outlined in HM Customs and Excise Notice No. 431B, August 1982, and any amendment thereto, shall be used to obtain relief from both customs duty and value added tax for fuel used under the contract. These procedures shall apply to both loaded and unloaded miles. The unit prices shall be based on the recoupment by the Contractor of customs duty in accordance with the following allowances:

(1) Vehicles (except taxis) with a seating capacity of less than 29, one gallon for every 27 miles.

(2) Vehicles with a seating capacity of 29-53, one gallon for every 13 miles.

(3) Vehicles with a seating capacity of 54 or more, one gallon for every 10 miles.

(b) In the event the mileage of any route is increased or decreased within 10 percent, resulting in no change in route price, the customs duty shall be reclaimed from HM Customs and Excise on actual mileage performed.

(End of clause)

252.229-7010 Relief from Customs Duty on Fuel (United Kingdom).

As prescribed in 229.402-70(j), use the following clause:

RELIEF FROM CUSTOMS DUTY ON FUEL (UNITED KINGDOM) (JUN 1997)

(a) Pursuant to an agreement between the United States Government and Her Majesty?s (HM) Customs and Excise, it is possible to obtain relief from customs duty on fuels and lubricants used in support of certain contracts. If vehicle fuels and lubricants are used in support of this contract, the Contractor shall seek relief from customs duty in accordance with HM Customs Notice No. 431, February 1973, entitled ?Relief from Customs Duty and/or Value Added Tax on United States Government Expenditures in the United Kingdom.? Application should be sent to the Contractor?s local Customs and Excise Office.

(b) Specific information should be included in the request for tax relief, such as the number of vehicles involved, types of vehicles, rating of vehicles, fuel consumption, estimated mileage per contract period, and any other information that will assist HM Customs and Excise in determining the amount of relief to be granted.

(c) Within 30 days after the award of this contract, the Contractor shall provide the Contracting Officer with evidence that an attempt to obtain such relief has been initiated. In the event the Contractor does not attempt to obtain relief within the time specified, the Contracting Officer may deduct from the contract price the amount of

relief that would have been allowed if HM Customs and Excise had favorably considered the request for relief.

(d) The amount of any rebate granted by HM Customs and Excise shall be paid in full to the United States Government. Checks shall be made payable to the Treasurer of the United States and forwarded to the Administrative Contracting Officer.

(End of clause)

252.229-7011 Reporting of Foreign Taxes ? U.S. Assistance Programs.

As prescribed in 229.170-4, use the following clause:

REPORTING OF FOREIGN TAXES ? U.S. ASSISTANCE PROGRAMS (SEP 2005)

(a) Definition. ?Commodities,? as used in this clause, means any materials, articles, supplies, goods, or equipment.

(b) Commodities acquired under this contract shall be exempt from all value added taxes and customs duties imposed by the recipient country. This exemption is in addition to any other tax exemption provided through separate agreements or other means.

(c) The Contractor shall inform the foreign government of the tax exemption, as documented in the Letter of Offer and Acceptance, country-to-country agreement, or interagency agreement.

(d) If the foreign government or entity nevertheless imposes taxes, the Contractor shall promptly notify the Contracting Officer and shall provide documentation showing that the foreign government was apprised of the tax exemption in accordance with paragraph (c) of this clause.

(e) The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts for commodities that exceed $500.

(End of clause)

252.229-7012 Tax Exemptions (Italy)?Representation.

As prescribed in 229.402-70(c)(2), use the following provision:

TAX EXEMPTIONS (ITALY)?REPRESENTATION (MAR 2012)

(a) Exemptions. The United States Government is exempt from payment of?

(1) Imposta Valore Aggiunto (IVA) tax in accordance with Article 72 of the IVA implementing decree on all supplies and services sold to United States Military Commands in Italy; and

(2) The other taxes specified in paragraph (c) of the clause DFARS 252.229-7003, Tax Exemptions (Italy).

(b) Representation. By submission of its offer, the offeror represents that the offered price, including the prices of subcontracts to be awarded under the contract, does not

include the taxes identified herein, or any other taxes from which the United States Government is exempt.

(End of provision)

252.229-7013 Tax Exemptions (Spain)?Representation.

As prescribed in 229.402-70(e)(2), use the following provision:

TAX EXEMPTIONS (SPAIN)?REPRESENTATION (APR 2012)

(a) Exemptions. In accordance with tax relief agreements between the United States Government and the Spanish Government, and because the resultant contract arises from the activities of the United States Forces in Spain, the contract will be exempt from the excise, luxury, and transaction taxes listed in paragraph (b) of the clause DFARS 252.229-7005, Tax Exemptions (Spain).

(b) Representation. By submission of its offer, the offeror represents that the offered price, including the prices of subcontracts to be awarded under the contract, does not include the taxes identified herein, or any other taxes from which the United States Government is exempt.

(End of provision)

252.229-7014 Full Exemption from Two-Percent Excise Tax on Certain

Foreign Procurements.

As prescribed in 229.402-70(k), use the following clause:

FULL EXEMPTION FROM TWO-PERCENT EXCISE TAX ON CERTAIN FOREIGN PROCUREMENTS (OCT 2022)

(a) As the Contractor represented in its offer, any item, including any item delivered under subcontract; any service; or any combination thereof delivered under this contract is fully exempt from the 2-percent excise tax withholding imposed by 26 U.S.C. 5000C and implemented by Federal Acquisition Regulation (FAR) 52.229-12, Tax on Certain Foreign Procurements.

(b) If the full exemption no longer applies due to a change in circumstances during the performance of the contract, causing the Contractor to become subject to the withholding for the 2-percent excise tax as imposed by 26 U.S.C. 5000C, then the Contractor shall immediately comply with the notification and billing requirements of FAR clause 52.229-12.

(End of clause)

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Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 29

Defense FAR Supplement (DFARS) Part 229

PGI 229?TAXES

PGI 229.1?GENERAL

PGI 229.101-70 Resolving tax problems.

(a) For the military departments, the Defense Logistics Agency, and the Defense Contract Management Agency, the members of the DFARS Tax Committee are the designated legal counsel for tax matters within their respective departments/agencies.

(b) Information on fuel excise taxes, including applicability, exemptions, and refunds, is available as follows:

(i) The DLA Energy website at https://www.dla.mil/Energy/ provides information on Federal, State, and local excise taxes.

(ii) Internal Revenue Service Publications 510 and 378, available on the Internal Revenue Service website at www.irs.gov/publications, provides information on Federal

excise taxes.

(c) The contracting officer may direct the contractor to litigate the applicability of a particular tax if?

(i) The contract is either a cost-reimbursement type or a fixed-price type with a tax escalation clause such as FAR 52.229-4; and

(ii) The direction is coordinated with the DoD Tax Policy and Advisory Group through the agency-designated legal counsel.

(d)(i) Tax relief agreements between the United States and foreign governments in Europe that exempt the United States from payment of specific taxes on purchases made for common defense purposes are maintained by the United States European Command (USEUCOM). For further information, contact HQ USEUCOM, ATTN: ECLA, Unit 30400, Box 1000, APO AE 09128; Telephone: DSN 430-8001/7263, Commercial 49-0711-680-8001/7263; facsimile: 49-0711-680-5732.

(ii) Other international treaties may exempt the United States from the payment of specific taxes. The Department of State publishes a list of treaties on its website at www.state.gov.

(iii) Tax relief also may be available in countries that have not signed tax relief agreements. The potential for such relief should be explored in accordance with paragraph (d)(iv) of this section.

(iv) DoD Instruction (DoDI) 5100.64, DoD Foreign Tax Relief Program, defines DoD tax relief policy and requires designation of a military commander as the single point of contact for investigation and resolution of specific matters related to the foreign tax relief

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Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 29

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program within the country for which the commander is designated. Those military commanders are the same as the ones designated under DoDI 5525.01 Foreign Criminal and Civil Jurisdiction, and specified in Appendix C of Army Regulation 27-50/SECNAVINST **5820.4G, Status of Forces Policies, Procedures, and Information. Appendix C of Army** Regulation 27-50/SECNAVINST 5820.4G is available at https://armypubs.army.mil/epubs/DR_pubs/DR_a/pdf/web/r27_50.pdf.

(v) Also see PGI 229.70 for special procedures for obtaining tax relief and duty-free import privileges when conducting U.S. Government acquisitions in certain foreign countries.

PGI 229.170 Reporting of foreign taxation on U.S. assistance programs.

PGI 229.170-3 Reports.

(1) Upon receipt of a notification under the clause at DFARS 252.229-7011, that a foreign tax has been imposed, submit the following information to the applicable office identified in paragraph (2) of this subsection.

(i) Contractor name.

(ii) Contract number.

(iii) Contractor point of contact (Name, phone number, FAX number, and e-mail address).

(iv) Amount of foreign taxes assessed by each foreign government.

(v) Amount of any foreign taxes reimbursed by each foreign government.

(2) Submit the information required by paragraph (1) of this subsection to?

(i) For Army contracts:

Commander, U.S. Army Security Assistance Command (USASAC)
4402 Martin Road
Redstone Arsenal, AL 35898.

(ii) For Navy contracts:

Navy International Programs Office (NIPO)
1250 10th Street South East
Building 200, Suite 2000
Washington Navy Yard, D.C. 20374.

(iii) For Air Force contracts:

Secretary of the Air Force/International Affairs
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Attachment A2
DARS Tracking Number: 2026-O0007
Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 29
Defense FAR Supplement (DFARS) Part 229
ATTN: SAF/IAPC
1080 Air Force, Pentagon
Washington, DC 20330-1080.

(iv) For Marine Corps contracts:

Navy International Programs Office (NIPO)
1250 10th Street South East
Building 200, Suite 2000
Washington Navy Yard, D.C. 20374.

(v) For all other DoD contracts:

Defense Security Cooperation Agency
ATTN: DBO-CFD
201 12th Street South, Suite 203
Arlington, VA 22202-5408.

PGI 229.70--SPECIAL PROCEDURES FOR OVERSEAS CONTRACTS

PGI 229.7000 Scope of subpart.

This subpart prescribes procedures that contracting officers must use to obtain tax relief and duty-free import privileges when conducting U.S. Government acquisitions in certain foreign countries.

PGI 229.7001 Tax exemption in Spain.

(a) The Office of Defense Cooperation (ODC), Spain Policy Directive 400.4, or subsequent directive, applies to U.S. contracting offices acquiring supplies or services in Spain when the introduction of material or equipment into Spain is required for contract performance.

(b) Upon award of a contract with a Direct Contractor, as defined in the clause at DFARS 252.229-7004, the contracting officer will notify U.S. Section of the U.S.?Spanish Permanent Committee (PC), Madrid, Spain, and the Customs Clearance Officer, NAVSUP-

FLC Rota, Spain, and will forward a copy of the contract to the U.S. PC Section, Madrid.

(c) If a copy of the contract is not available and duty-free import of equipment or materials is urgent, the contracting officer will forward to the U.S. PC Section, Madrid, a Letter of Intent or a similar document indicating the pending award. In these cases, the Government of Spain may issue authorization for duty-free import. Upon formal award, the contracting officer will the completed contract to the U.S. PC Section, Madrid.

(d) The contracting officer will notify the U.S. PC Section, Madrid and the Customs Clearance Officer, NAVSUP-FLC Rota, Spain of designated ports-of-entry and identify the customs agents who will clear property on their behalf. Additional documentation required

for port-of-entry and customs clearance can be obtained by Customs Clearance Officer, NAVSUP-FLC Rota, Spain. This information will be passed provided to the Secretaria General Tecnica del Ministerio de Hacienda (Technical General Secretariat of the Ministry of Finance). A list of authorized customs agents may be obtained from the contracting office.

PGI 229.7002 Tax exemption in the United Kingdom.

This section contains procedures for securing relief from the British value added tax and import duties.

PGI 229.7002-1 Value added tax.

(a) U.S. Government purchases qualifying for tax relief are equipment, materials, facilities, and services for the common defense effort and for foreign aid programs.

(b) To facilitate the resolution of issues concerning specific waivers of import duty or tax exemption for U.S. Government purchases (see PGI 229.7002-3), contracting offices must provide the name and activity address of personnel who have been granted warranted contracting authority to His Majesty?s (HM) Revenue and Customs (HMRC) at the following address: HM Revenue and Customs Parliament Street 100, London SW1A 2BQ].

PGI 229.7002-2 Import duty.

The United States shall not pay a contract import duty and contract prices must be exclusive of duty, except when the administrative cost compared to the low dollar value of a contract makes it impracticable to obtain relief from contract import duty. In this instance, the contracting officer must document the contract file with a statement that?

(a) The administrative burden of securing tax relief under the contract was out of proportion to the tax relief involved;

(b) It is impracticable to secure tax relief;

(c) Tax relief is therefore not being secured; and

(d) The acquisition does not involve the expenditure of any funds to establish a permanent military installation.

PGI 229.7002-3 Value added tax or import duty problem resolution.

If the contracting officer cannot resolve a value added tax or import duty problem, refer the issue to HQ Third Air Force, Staff Judge Advocate, 3af.ja@us.af.mil, DSN: 314-480-8992. Direct contact with HMRC in London is prohibited.

PGI 229.7002-4 Information required by His Majesty?s Revenue and Customs.

(a) School bus contracts. Provide one copy of the contract and all modifications HMRC.

(b) Road fuel contracts. For contracts that involve an application for relief from duty on

the road fuel used in performance of the contract, provide?

(1) To HMRC?

(i) Contract number;

(ii) Name and address of contractor;

(iii) Type of work (e.g., laundry, transportation);

(iv) Area of work; and

(v) Period of performance.

(2) To the regional office of HMRC to which the contractor applied for relief from the duty on road fuel?one copy of the contract.

(c) Other contracts awarded to United Kingdom firms. Provide information when requested by HMRC.

PART 30

OFFICE OF THE ASSISTANT SECRETARY OF WAR

Status: Class D

OFFICE OF THE ASSISTANT SECRETARY OF WAR

3000 DEFENSE PENTAGON

WASHINGTON, DC 20301-3000

ACQUISITION

AND SUSTAINMENT

In reply refer to

DARS Tracking Number: 2026-O0006

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES SPECIAL OPERATIONS

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES TRANSPORTATION

COMMAND (ATTN: ACQUISITION EXECUTIVE)

DEPUTY ASSISTANT SECRETARY OF THE ARMY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE NAVY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE

(CONTRACTING)

DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Class Deviation?Revolutionary Federal Acquisition Regulation (FAR) Overhaul

Part 30, Defense FAR Supplement (DFARS) Part 230

Effective February 1, 2026, contracting officers shall use?

? The revised FAR Part 30, Cost Accounting Standards Administration published on the Revolutionary FAR Overhaul web page at https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-30 in lieu of the text codified at 48 CFR chapter 1 (https://www.ecfr.gov).

? The attached DFARS Part 230, Cost Accounting Standards Administration in lieu of the text codified at 48 CFR chapter 2; and

? The attached DFARS Procedures, Guidance, and Information (PGI) 230, Cost Accounting Standards Administration in lieu of the PGI text published on the Defense Pricing, Contracting, and Acquisition Policy web page at https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.

This class deviation implements the following:

? Section 2 of E.O. 14275, Restoring Common Sense to Federal Procurement, which establishes the policy that the FAR ?should only contain provisions required by statute or essential to sound procurement, and any FAR provisions that do not

advance these objectives should be removed.
DARS Tracking Number: 2026-O0006
Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 30,
Defense FAR Supplement (DFARS) Part 230
? Section 4(a) of E.O. 14265, Modernizing Defense Acquisitions and Spurring Innovation in the Defense Industrial Base which requires the Secretary of War to eliminate or revise any unnecessary supplemental regulations or any other internal guidance, such as relevant parts of the Financial Management Regulation and Defense Federal Acquisition Regulation Supplement.
? The Office of Management and Budget memorandum, M-25-26 issued on May 2, 2025, titled, Overhauling the Federal Acquisition Regulation, which provided additional guidance to federal agencies regarding the FAR overhaul.
This class deviation remains in effect until rescinded or incorporated into the FAR, DFARS, and DFARS PGI. Inquiries regarding this class deviation can be addressed to osd.pentagon.ousd-a-s.mbx.dfars@mail.mil.
John M. Tenaglia
Principal Director,
Defense Pricing, Contracting, and
Acquisition Policy
Attachments:
As stated
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Attachment A1
DARS Tracking Number: 2026-O0006
Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 30
Defense FAR Supplement (DFARS) Part 230

PART 230?COST ACCOUNTING STANDARDS ADMINISTRATION

SUBPART 230.2?PRESOLICITATION

230.202 Waiver.

(a)(1)(A) The military departments and the Principal Director, Defense Pricing, Contracting, and Acquisition Policy (DPCAP), Office of the Under Secretary of Defense (Acquisition and Sustainment)?

(1) May grant CAS waivers that meet the conditions in FAR **30.202(b)(1); and**

(2) May grant CAS waivers that meet the conditions in FAR **30.202(b)(2), provided the cognizant Federal agency official granting the waiver** determines that?

(i) The property or services cannot reasonably be obtained under the contract, subcontract, or modification, as applicable, without granting the waiver;

(ii) The price can be determined to be fair and reasonable without the application of the Cost Accounting Standards; and

(iii) There are demonstrated benefits to granting the waiver.

(B) Follow the procedures at PGI 230.202(a)(1) for submitting waiver

requests to the Principal Director, DPCAP.

(2) The military departments shall not delegate CAS waiver authority below the individual responsible for issuing contracting policy for the department.

(e) By November 30th of each year, the military departments must provide a report to the Office of the Principal Director, DPCAP (Contract Policy) of all waivers granted under FAR 30.202(a), during the previous fiscal year, for any contract, subcontract, or modification expected to have a value of $100 million or more. See PGI 230.202(e) for format and required content. The Principal Director, DPCAP, will submit a consolidated report to the CAS Board and the congressional defense committees.

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Attachment A2

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Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 30

Defense FAR Supplement (DFARS) Part 230

PART 230?COST ACCOUNTING STANDARDS ADMINISTRATION

PGI 230.2?Presolicitation

PGI 230.202 Waiver.

(a)(1)(i) Unless otherwise authorized by the Principal Director, Defense Pricing, Contracting, and Acquisition Policy (DPCAP), the military departments must submit each CAS waiver request to DPCAP (Price, Cost and Finance) for review at least 14 days before granting the waiver. Submit waiver requests via email at osd.pentagon.ousd-a-s.mbx.dpc-pcf@mail.mil.

(ii) DoD contracting activities that are not within a military department must submit CAS waiver requests that meet the conditions in FAR 30.202(b) to the Principal Director, DPCAP for approval at least 30 days before the anticipated contract award date.

(e) The annual report of exceptional case CAS waivers must include the following:

Title: Waiver of CAS Requirements

(1) Contract number, including modification number, if applicable, and program name.

(2) Contractor name.

(3) Contracting activity.

(4) Total dollar amount waived.

(5) Brief description of why the item(s) could not be obtained without a waiver.

(6) Brief description of the specific steps taken to ensure price reasonableness.

(7) Brief description of the demonstrated benefits of granting the waiver.

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PART 31

OFFICE OF THE ASSISTANT SECRETARY OF WAR

Status: Class D

OFFICE OF THE ASSISTANT SECRETARY OF WAR

3000 DEFENSE PENTAGON

WASHINGTON, DC 20301-3000

ACQUISITION

AND SUSTAINMENT

In reply refer to

DARS Tracking Number: 2026-O0032

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES SPECIAL OPERATIONS

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES TRANSPORTATION

COMMAND (ATTN: ACQUISITION EXECUTIVE)

DEPUTY ASSISTANT SECRETARY OF THE ARMY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE NAVY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE

(CONTRACTING)

DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Class Deviation?Revolutionary Federal Acquisition Regulation (FAR) Overhaul

Part 31, Defense FAR Supplement (DFARS) Part 231

Effective February 1, 2026, contracting officers shall use?

? The revised FAR Part 31, Contract Cost Principles and Procedures published on the Revolutionary FAR Overhaul web page at https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-31 in lieu of the text codified at 48 CFR chapter 1 (https://www.ecfr.gov).

? The attached DFARS Part 231, Contract Cost Principles and Procedures in lieu of the text codified at 48 CFR chapter 2; and

? The attached DFARS Procedures, Guidance, and Information (PGI) 231, Contract Cost Principles and Procedures, in lieu of the PGI text published on the Defense Pricing, Contracting, and Acquisition Policy web page at https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html..

This class deviation implements the following:

? Section 2 of E.O. 14275, Restoring Common Sense to Federal Procurement, which establishes the policy that the FAR ?should only contain provisions required by statute or essential to sound procurement, and any FAR provisions that do not

advance these objectives should be removed.
DARS Tracking Number: 2026-O0032
Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 31
Defense FAR Supplement (DFARS) Part 231
? Section 4(a) of E.O. 14265, Modernizing Defense Acquisitions and Spurring Innovation in the Defense Industrial Base which requires the Secretary of War to eliminate or revise any unnecessary supplemental regulations or any other internal guidance, such as relevant parts of the Financial Management Regulation and Defense Federal Acquisition Regulation Supplement.
? The Office of Management and Budget memorandum, M-25-26 issued on May 2, 2025, titled, Overhauling the Federal Acquisition Regulation, which provided additional guidance to federal agencies regarding the FAR overhaul.
This class deviation remains in effect until rescinded or incorporated into the FAR, DFARS, and DFARS PGI. Inquiries regarding this class deviation can be addressed to osd.pentagon.ousd-a-s.mbx.dfars@mail.mil.
John M. Tenaglia
Principal Director,
Defense Pricing, Contracting, and
Acquisition Policy
Attachments:
As stated
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Attachment A1
DARS Tracking Number: 2026-O0032
Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 31
Defense FAR Supplement (DFARS) Part 231

PART 231?CONTRACT COST PRINCIPLES AND PROCEDURES

SUBPART 231.1?APPLICABILITY

231.100 Scope of subpart.

231.100-70 Contract clause.

Use the clause at 252.231-7000, Supplemental Cost Principles, in all solicitations and contracts, which are subject to the principles and procedures described in FAR Subparts **31.1, 31.2, 31.6, and 31.7.**

SUBPART 231.2?CONTRACTS WITH COMMERCIAL ORGANIZATIONS

231.205 Selected costs.

231.205-1 Public relations and advertising costs.

(e) For foreign military sales contracts, see 225.7303-2(e) for allowable costs.

(f) Unallowable public relations and advertising costs include the following:

(1) Payment to the Government associated with the leasing of Government equipment, including lease payments and reimbursements for support services, except for foreign military sales contracts (see 225.7303-2).

231.205-6 Compensation for personal services.

(f)(1) Bonuses and extra payments paid by the contractor to an employee related to restructuring after a business combination are not allowed costs on DoD contracts if

paid with funds from fiscal year 1996 appropriations or later (Section 8122 of Pub. L. 104-61, and similar sections in subsequent Defense appropriations acts). This limitation does not apply to severance payments or early retirement incentive payments. (?Business combination? and ?restructuring costs? are defined at 231.205-**70(b).)**

(m)(1) Fringe benefit costs that violate laws, employer-employee agreements, or contractor established policy are unallowable.

231.205-18 Independent research and development and bid and proposal costs.

(a) Definitions. As used in this section?

?Covered contract? means a DoD prime contract or subcontract above the simplified acquisition threshold, except for a fixed-price contract without cost incentives or a fixed-price subcontract without cost incentives under such a prime contract.

?Covered segment? means?

(1) A product division of the contractor that allocated more than $1,100,000 in independent research and development (IR&D) costs and bid and proposal (B&P) costs to covered contracts during the preceding fiscal year;

(2) The contractor as a whole if the contractor has no product divisions; or

(3) A product division of the contractor that allocated less than $1,100,000 in IR&D costs and B&P costs to covered contracts during the preceding fiscal year and is not subject to the limitations in paragraph (c) of this section.

?Major contractor? means any contractor whose covered segments allocated a total of more than $11 million in IR&D costs and B&P costs to covered contracts during the preceding fiscal year. For purposes of calculating the dollar threshold amounts to determine whether a contractor meets the definition of ?major contractor,? do not include contractor segments allocating less than $1,100,000 of IR&D and B&P costs to covered contracts during the preceding fiscal year.

(c) Allowability.

(i) This regulation shall not be supplemented in any way that limits IR&D cost allowability and B&P cost allowability.

(ii) For foreign military sales contracts, see 225.7303-2(c) for allowable costs.

(iii)(A) For IR&D costs incurred on covered contracts to be allowable, a major contractor is required to?

(1) Report IR&D projects generating the IR&D costs to the Defense Technical Information Center (DTIC) using the online input form and instructions at https://defenseinnovationmarketplace.dtic.mil/industry-portal/; and

(2) Update its DTIC inputs at least annually, within 3 months after the end of the contractor?s fiscal year, and when the project is completed.

(B) The amount of IR&D costs allowable under DoD contracts is limited to

the lesser of?

(1) The allocable share of total incurred IR&D costs on such contracts; or

(2) The amount of incurred IR&D costs the contractor?s chief executive officer determines will advance DoD?s future technology and advanced capability as communicated in accordance with 242.771-3(c)(1)(i).

(C) For DTIC input by contractors that are not major contractors, see procedures at PGI 231.205-18(c)(iii)(C).

(iv) Contractors are required to report incurred IR&D costs separately from indirect costs.

(v) Contractors are required to report incurred B&P costs separately from other indirect costs.

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DARS Tracking Number: 2026-O0032

Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 31

Defense FAR Supplement (DFARS) Part 231

231.205-19 Insurance and indemnification.

(e) In addition to the cost limitations in FAR 31.205-19(e), self-insurance and purchased insurance costs are subject to the requirements of the clauses at 252.217-7012, Liability and Insurance, and 252.228-7001, Ground and Flight Risk.

231.205-22 Lobbying and political activity costs.

(a) Costs associated with preparing any material, report, list, or analysis on the actual or projected economic or employment impact in a particular State or congressional district of an acquisition program are allowable if all research, development, testing, and evaluation has not been completed (10 U.S.C. 4652).

231.205-70 External restructuring costs.

(a) Scope. This subsection contains policies and procedures for allowing contractor external restructuring costs when savings would result for DoD and implements 10 **U.S.C. 3761.**

(b) Definitions. As used in this section--

?Business combination? means a transaction whereby assets or operations of two or more companies not previously under common ownership or control are combined, whether by merger, acquisition, or sale/purchase of assets.

?External restructuring activities? means restructuring activities occurring after a business combination, affecting the operations of companies not previously under common ownership or control. They exclude restructuring within a single company or only affecting one company from the combination. External restructuring activities are a direct outgrowth of a business combination and normally occur within 3 years of the business combination.

?Restructuring activities? means nonroutine, nonrecurring, or extraordinary activities to combine facilities, operations, or workforce, to eliminate redundant capabilities, improve future operations, and reduce overall costs. Restructuring activities exclude routine or ongoing repositionings and redeployments of a contractor?s

productive facilities or workforce (e.g., normal plant rearrangement or employee relocation), and exclude other routine or ordinary activities charged as indirect costs that would otherwise have been incurred (e.g., planning and analysis, contract administration and oversight, or recurring financial and administrative support).
?Restructuring costs? means both direct and indirect costs of restructuring activities. Allowable restructuring costs include, but are not limited to, severance pay for employees, early retirement incentive payments for employees, employee retraining costs, relocation expense for retained employees, and relocation and rearrangement of plant and equipment. For purposes of this definition, restructuring costs under $2.5 million related to external restructuring activities allocated to DoD contracts are not subject to the audit, review, and determination requirements of paragraph (c)(4) of this subsection; instead, standard cost allowability rules in FAR Part 31 apply.
?Restructuring savings? means both direct and indirect cost reductions resulting from restructuring activities. Cost reassignments to future periods are not restructuring savings.
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DARS Tracking Number: 2026-O0032
Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 31
Defense FAR Supplement (DFARS) Part 231

(c) Limitations on cost allowability. Restructuring costs associated with external restructuring activities are not allowed unless?

(1) The costs are allowable in accordance with FAR Part 31 and DFARS Part 231;

(2) An audit of projected restructuring costs and restructuring savings is performed;

(3) The administrative contracting officer (ACO) reviews the audit report, projected costs, and projected savings, then negotiates an advance agreement per paragraph (d) of this subsection; and

(4)(i) The official designated in paragraph (c)(4)(ii) of this subsection makes a written determination that the audited projected savings, on a present value basis, for DoD resulting from the restructuring will exceed either?

(A) The costs allowed by a factor of at least two to one; or

(B) The costs allowed, and the business combination will result in the preservation of a critical capability that DoD might otherwise lose.

(ii)(A) If the amount of restructuring costs is expected to exceed $25 million over a 5-year period, the designated official is the Under Secretary of Defense

(Acquisition and Sustainment) or the Principal Deputy. This authority cannot be delegated below the Assistant Secretary of Defense level.

(B) For all other cases, on a nondelegable basis, the designated official is the Director of the Defense Contract Management Agency.

(d) Procedures and ACO responsibilities. As soon as it is known that the contractor will incur restructuring costs for external restructuring activities, the ACO shall follow the procedures at PGI 231.205-70(d).

(e) Information needed to obtain a determination.

(1) The novation agreement (if one is required).

(2) The contractor?s restructuring proposal.

(3) The proposed advance agreement.

(4) The audit report.

(5) Any other pertinent information.

(6) The ACO?s recommendation for a determination. This recommendation must clearly indicate one of the following, consistent with paragraph (c)(4)(i) of this subsection:

(i) The audited projected savings for DoD will exceed the costs allowed by a factor of at least two to one on a present value basis.

(ii) The business combination will result in the preservation of a critical capability that might otherwise be lost to DoD, and the audited projected savings for DoD will exceed the costs allowed on a present value basis.

(f) Contracting officer responsibilities.

(1) The contracting officer, with the ACO?s input, should consider a repricing clause in noncompetitive fixed-price contracts negotiated during the period between?

(i) The time a business combination is announced; and

(ii) The time the contractor?s forward pricing rates are adjusted to reflect the impact of restructuring.

(2) Use of a repricing clause depends on the specific situation, including?

(i) When the restructuring will take place;

(ii) When restructuring savings will begin to be realized;

(iii) The contract performance period;

(iv) Whether the contracting parties can reasonably estimate the restructuring impact on the contract; and

(v) The size of the potential dollar impact of restructuring on the contract.

(3) If the contracting officer decides to use a repricing clause, the clause must provide for a downward-only price adjustment to ensure that DoD receives its appropriate share of restructuring net savings.

231.205-71 Costs related to counterfeit electronic parts and suspect counterfeit electronic parts.

(a) This section implements the requirements of section 818(c)(2) of Pub. L. 112-81, as modified by section 833 of Pub. L. 112-239, and section 885 of Pub. L. 114-92.

(b) The costs of counterfeit electronic parts, suspect counterfeit electronic parts, and the costs of rework or corrective action that may be required to remedy the use or inclusion of such parts are unallowable, unless?

(1) The contractor has an operational system to detect and avoid counterfeit electronic parts and suspect counterfeit electronic parts that has been reviewed and approved by DoD pursuant to 244.303;

(2) The counterfeit electronic parts or suspect counterfeit electronic parts are

Government-furnished property as defined in FAR 45.101 or were obtained by the contractor in accordance with the clause at 252.246-7008, Sources of Electronic Parts; and

(3) The contractor?

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(i) Becomes aware of the counterfeit electronic parts or suspect counterfeit electronic parts through its own or its subcontractor?s inspection, testing, and authentication efforts; through a Government Industry Data Exchange Program

(GIDEP) alert; or by other means; and

(ii) Provides timely (i.e., within 60 days after the contractor becomes aware) written notice to?

(A) The contracting officer(s); and

(B) GIDEP (unless the contractor is a foreign corporation or partnership that does not have an office, place of business, or fiscal paying agent in the United States; or the counterfeit electronic part or suspect counterfeit electronic part is the subject of an on-going criminal investigation).

SUBPART 231.3?CONTRACTS WITH EDUCATIONAL INSTITUTIONS

231.303 Requirements.

(1) Do not place limitations on the reimbursement of otherwise allowable indirect costs incurred on DoD contracts awarded to institutions of higher education on or after November 30, 1993, unless that same limitation is applied uniformly to all other organizations performing similar work under DoD contracts (section 841 of Pub. L. 103-**160). DoD contracts awarded on or after November 30, 1993, to institutions of higher** education are exempt from the 26 percent indirect cost limitation imposed by OMB Circular No. A-21 because the same limitation is not uniformly applied to other organizations performing similar work.

(2) The administrative contracting officer can waive the 231.303(1) prohibition if the governing body of the institution of higher education requests the waiver to simplify its overall management of DoD cost reimbursements under DoD contracts. The administrative contracting officer can waive the 231.303(1) prohibition if the university requests it to simplify managing DoD cost reimbursements.

(3) Under 10 U.S.C. 4652, the costs cited in 231.205-22(a) are unallowable.

SUBPART 231.6?CONTRACTS WITH STATE, LOCAL, AND FEDERALLY RECOGNIZED INDIAN TRIBAL GOVERNMENTS

231.603 Requirements.

Under 10 U.S.C. 4652, the costs cited in 231.205-22(a) are unallowable.

SUBPART 231.7?CONTRACTS WITH NONPROFIT ORGANIZATIONS

231.703 Requirements.

Under 10 U.S.C. 4652, the costs cited in 231.205-22(a) are unallowable.

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PART 252?SOLICITATION PROVISIONS AND CONTRACT CLAUSES

SUBPART 252.2?TEXT OF PROVISIONS AND CLAUSES

252.231-7000 Supplemental Cost Principles.

As prescribed in 231.100-70, use the following clause:

SUPPLEMENTAL COST PRINCIPLES (DEC 1991)

When the allowability of costs under this contract is determined in accordance with **Part 31 of the Federal Acquisition Regulation (FAR), allowability shall also be** determined in accordance with Part 231 of the Defense FAR Supplement, in effect on the date of this contract.

(End of clause)

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PGI 231?CONTRACT COST PRINCIPLES AND PROCEDURES

PGI 231.2?CONTRACTS WITH COMMERCIAL ORGANIZATIONS

PGI 231.205 Selected costs.

PGI 231.205-18 Independent research and development and bid and proposal costs.

(c)(iii)(C) To improve DoD visibility into technical content of contractor-funded IR&D projects, encourage contractors that are not major contractors to use the DTIC online input form and instructions at https://defenseinnovationmarketplace.dtic.mil/industry-portal/.

PGI 231.205-70 External restructuring costs.

(d) Procedures and ACO responsibilities. The cognizant ACO will?

(i) Promptly execute a novation agreement, if one is required, in accordance with FAR Subpart 42.12 and DFARS Subpart 242.12 and include the provision at DFARS **242.1204(i).**

(ii) Direct the contractor to segregate restructuring costs and to suspend these amounts from any billings, final contract price settlements, and overhead settlements until the determination in DFARS 231.205-70(c)(4)(i) is obtained.

(iii) Require the contractor to submit an overall plan of restructuring activities and an adequately supported proposal for planned restructuring projects. The proposal must include a breakout by year by cost element, showing the present value of projected restructuring costs and projected restructuring savings.

(iv) Notify major buying activities of contractor restructuring actions and inform them about any potential monetary impacts on major weapons programs, when known.

(v) Upon receipt of the contractor?s proposal, as soon as practicable, adjust forward pricing rates to reflect the impact of projected restructuring savings. If restructuring costs are included in forward pricing rates prior to execution of an advance agreement in accordance with paragraph (d)(viii) of this subsection, the contracting officer shall include a repricing

clause in each fixed-price action that is priced based on the rates. The repricing clause must provide for a downward price adjustment to remove restructuring costs if the determination required by DFARS 231.205-70(c)(4)(i) is not obtained.

(vi) Upon receipt of the contractor?s proposal, immediately request an audit review of the contractor?s proposal.

(vii) Upon receipt of the audit report, determine on a present value basis if?

(A) The audited projected restructuring savings for DoD will exceed the restructuring costs allowed by a factor of at least two to one, as required by DFARS **231.205-70(c)(4)(i)(A); or**

(B) If the audited projected restructuring savings will exceed the restructuring costs allowed in a case where the business combination will result in the preservation of a

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critical capability that otherwise might be lost to DoD, as required by DFARS 231.205-70(c)(4)(i)(B).

(viii) Negotiate an advance agreement with the contractor setting forth, at a minimum, a cumulative cost ceiling for restructuring projects and, when necessary, a cost amortization schedule. The costs may not exceed the amount of projected restructuring savings on a present value basis. The advance agreement shall not be executed until the determination required by DFARS 231.205-70(c)(4)(i) is obtained.

(ix)(A) Submit a recommendation for determination to?

(1) If DFARS 231.205-70(c)(4)(ii)(A) applies, submit the recommendation to the Office of the Principal Director, Defense Pricing, Contracting, and Acquisition Policy

(Price, Cost and Finance) via email at osd.pentagon.ousd-a-s.mbx.dpc-pcf@mail.mil.

(2) If DFARS 231.205-70(c)(4)(ii)(B) applies, submit the recommendation the Director of the Defense Contract Management Agency, ATTN: HQ DCMA-OCB.

(B) Include the information described in DFARS 231.205-70(e).

(x) Consult with the Principal Director, Defense Pricing, Contracting, and Acquisition Policy or with the Director of the Defense Contract Management Agency, as appropriate, when DFARS 231.205-70(c)(4)(i)(B) applies.

PART 32

OFFICE OF THE ASSISTANT SECRETARY OF WAR

Status: Class D

OFFICE OF THE ASSISTANT SECRETARY OF WAR

3000 DEFENSE PENTAGON

WASHINGTON, DC 20301-3000

ACQUISITION

AND SUSTAINMENT

In reply refer to

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MEMORANDUM FOR COMMANDER, UNITED STATES CYBER

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES SPECIAL OPERATIONS

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES TRANSPORTATION

COMMAND (ATTN: ACQUISITION EXECUTIVE)

DEPUTY ASSISTANT SECRETARY OF THE ARMY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE NAVY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE

(CONTRACTING)

DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Class Deviation?Revolutionary Federal Acquisition Regulation (FAR) Overhaul

Part 32, Defense FAR Supplement (DFARS) Part 232

Effective February 1, 2026, contracting officers shall use?

? The revised FAR Part 32, Contract Financing published on the Revolutionary FAR Overhaul web page at https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-32 in lieu of the text codified at 48 CFR chapter 1 (https://www.ecfr.gov).

? The attached DFARS Part 232, Contract Financing in lieu of the text codified at 48 CFR chapter 2; and

? The attached DFARS Procedures, Guidance, and Information (PGI) 232, Contract Financing in lieu of the PGI text published on the Defense Pricing, Contracting, and Acquisition Policy web page at https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.

This class deviation implements the following:

? Section 2 of E.O. 14275, Restoring Common Sense to Federal Procurement, which establishes the policy that the FAR ?should only contain provisions required by statute or essential to sound procurement, and any FAR provisions that do not

advance these objectives should be removed.
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? Section 4(a) of E.O. 14265, Modernizing Defense Acquisitions and Spurring Innovation in the Defense Industrial Base which requires the Secretary of War to eliminate or revise any unnecessary supplemental regulations or any other internal guidance, such as relevant parts of the Financial Management Regulation and Defense Federal Acquisition Regulation Supplement.
? The Office of Management and Budget memorandum, M-25-26 issued on May 2, 2025, titled, Overhauling the Federal Acquisition Regulation, which provided additional guidance to federal agencies regarding the FAR overhaul.
This class deviation remains in effect until rescinded or incorporated into the FAR, DFARS, and DFARS PGI. Inquiries regarding this class deviation can be addressed to osd.pentagon.ousd-a-s.mbx.dfars@mail.mil.
John M. Tenaglia
Principal Director,
Defense Pricing, Contracting, and
Acquisition Policy
Attachments:
As stated
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PART 232?CONTRACT FINANCING

232.001 Definitions.

?Incremental funding? means the partial funding of a contract or an exercised option, with additional funds anticipated to be provided at a later time.

232.006 Reduction or suspension of contract payments upon finding of fraud.

232.006-5 Reporting.

Follow the procedures at PGI 232.006-5 for suspected fraud related to advance, partial, or progress payments reporting.

232.007 Contract financing payments.

(a) DoD policy is to make contract financing payments as quickly as possible. Generally, the contracting officer must insert the standard due dates of 7 days for progress payments, and 14 days for performance-based payments and interim payments on cost-type contracts, in the appropriate paragraphs of the respective payment clauses. For interim payments on cost-reimbursement contracts for services, see 232.906(a)(i).

(b) The contracting officer should coordinate contract financing payment terms with offices that will be involved in the payment process to ensure that specified terms can be met. Where justified, the contracting officer may insert a due date

greater than, but not less than, the standard. In determining payment terms, consider?

(i) Geographical separation;

(ii) Workload;

(iii) Contractor ability to submit a proper request; and

(iv) Other factors that could affect timing of payment.

232.009 Providing accelerated payments to small business contractors and to prime contractors that subcontract with a small business concern.

232.009-1 General.

10 U.S.C. 3801(b) requires DoD to provide accelerated payments to small business contractors and subcontractors, to the fullest extent permitted by law, with a goal of **15 days.**

232.070 Responsibilities.

(a) The Principal Director, Defense Pricing, Contracting, and Acquisition Policy (DPCAP), Office of the Under Secretary of Defense (Acquisition and Sustainment) (OUSD(A&S)DPCAP) is responsible for ensuring uniform administration of DoD contract financing, including DoD contract financing policies and important related procedures. Agency discretion under FAR part 32 is at the DoD level and is not delegated to the departments and agencies. Proposals by the departments and agencies, to exercise agency discretion, must be submitted to OUSD(A&S)DPCAP.

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(b) Departments and agencies are responsible for their day-to-day contract financing operations. Refer specific cases involving financing policy or important procedural issues to OUSD(A&S)DPCAP for consideration through the department/agency Contract Finance Committee members (also see subpart 201.3 for deviation request and approval procedures).

(c) See PGI 232.070(c) for information on department/agency contract financing offices.

232.071 Reserved.

232.072 Financial responsibility of contractors.

Use the policies and procedures in this section in determining the financial capability of current or prospective contractors.

232.072-1 Required financial reviews.

Perform a financial review when there is insufficient information to make a positive determination of financial responsibility. In addition, the contracting officer must consider performing a financial review?

(a) Prior to award of a contract, when the contractor?

(1) Is on a list requiring preaward clearance or other special clearance before award;

(2) Is listed on the Consolidated List of Contractors Indebted to the Government

(Hold-Up List), or is otherwise known to be indebted to the Government;

(3) May receive Government assets such as contract financing payments or Government property;

(4) Is experiencing performance difficulties on other work; or

(5) Is a new company or a new supplier of the item.

(b) At periodic intervals after award of a contract, when?

(1) Any of the conditions in paragraphs (a)(2) through (a)(5) of this subsection are applicable; or

(2) There is any other reason to question the contractor?s ability to finance performance and completion of the contract.

232.072-2 Appropriate information.

(a) Obtain the type and depth of financial and other information that is required to establish a contractor?s financial capability or disclose a contractor?s financial condition. The contracting officer should not request information that is not necessary for protection of the Government?s interests. The unwillingness or inability of a contractor to present reasonably requested information in a timely manner, especially information that a prudent businessperson is expected to have and to use in the professional management of a business, may be a material fact in the determination of the contractor?s responsibility and prospects for contract completion.

(b) Obtain the following information to the extent required to protect the Government?s interest. In addition, if the contracting officer concludes that information not listed in paragraphs (b)(1) through (b)(10) of this subsection is required to comply with 232.072-1, that information should be requested. The information must be for the person(s) who are legally liable for contract performance. If the contractor is not a corporation, the contracting officer must obtain the required information for each individual/joint venturer/partner:

(1) Balance sheet and income statement?

(i) For the current fiscal year (interim);

(ii) For the most recent fiscal year and, preferably, for the 2 preceding fiscal years. These should be certified by an independent public accountant or by an appropriate officer of the firm; and

(iii) Forecasted for each fiscal year for the remainder of the period of contract performance.

(2) Summary history of the contractor and its principal managers, disclosing any previous insolvencies whether corporate or personal, and describing its products or services.

(3) Statement of all affiliations disclosing?

(i) Material financial interests of the contractor;

(ii) Material financial interests in the contractor;

(iii) Material affiliations of owners, officers, directors, major stockholders;

and

(iv) The major stockholders if the contractor is not a widely-traded, publicly-held corporation.

(4) Statement of all forms of compensation to each officer, manager, partner, joint venturer, or proprietor, as appropriate?

(i) Planned for the current year;

(ii) Paid during the past 2 years; and

(iii) Deferred to future periods.

(5) Business base and forecast that?

(i) Shows, by significant markets, existing contracts and outstanding offers, including those under negotiation; and

(ii) Is reconcilable to indirect cost rate projections.

(6) Cash forecast for the duration of the contract (see 232.072-3).

(7) Financing arrangement information that discloses?

(i) Availability of cash to finance contract performance;

(ii) Contractor?s exposure to financial crisis from creditor?s demands;

(iii) Degree to which credit security provisions could conflict with Government title terms under contract financing;

(iv) Clearly stated confirmations of credit with no unacceptable qualifications; and

(v) Unambiguous written agreement by a creditor if credit arrangements include deferred trade payments or creditor subordinations/repayment suspensions.

(8) Statement of all state, local, and Federal tax accounts, including special mandatory contributions, e.g., environmental superfund.

(9) Description and explanation of the financial effect of issues such as?

(i) Leases, deferred purchase arrangements, or patent or royalty arrangements;

(ii) Insurance, when relevant to the contract;

(iii) Contemplated capital expenditures, changes in equity, or contractor debt load;

(iv) Pending claims either by or against the contractor;

(v) Contingent liabilities such as guarantees, litigation, environmental, or product liabilities;

(vi) Validity of accounts receivable and actual value of inventory, as assets; and

(vii) Status and aging of accounts payable.

(10) Significant ratios such as?

(i) Inventory to annual sales;

(ii) Inventory to current assets;

(iii) Liquid assets to current assets;

(iv) Liquid assets to current liabilities;

(v) Current assets to current liabilities; and

(vi) Net worth to net debt.

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232.072-3 Cash flow forecasts.

(a) Contractors are required to sustain a sufficient cash flow to perform the contract. If the contractor?s cashflow is questionable, the contracting officer should require the contractor to submit a cash flow forecast covering the duration of the contract.

(b) A contractor?s inability or refusal to prepare and provide cash flow forecasts or to reconcile actual cash flow with previous forecasts is a strong indicator of serious managerial deficiencies or potential contract cost or performance problems.

(c) Single or one-time cash flow forecasts are of limited forecasting power and should be limited to preaward survey situations. Establish reliable cash flow forecasts by comparing a series of previous actual cash flows with the corresponding forecasts and examining the causes of any differences.

(d) See PGI 232.072-3(d) for cash flow forecast requirements

(e) See PGI 232.072-3(e) for guidance on cash flow forecast assumptions.

(f) The contracting officer should review the assumptions underlying the cash flow forecasts. In determining whether the assumptions are reasonable and realistic, the contracting officer should consult with?

(1) The contractor;

(2) Government personnel in the areas of finance, engineering, production, cost, and price analysis; or

(3) Prospective supply, subcontract, and loan or credit sources.

SUBPART 232.1?FINANCING FOR OTHER THAN A COMMERCIAL PURCHASE

232.102 Description of contract financing methods.

(e)(2) Progress payments based on percentage or stage of completion are authorized only for contracts for construction (as defined in FAR 36.102), shipbuilding, and ship conversion, alteration, or repair. However, percentage or stage of completion methods of measuring contractor performance may be used for performance-based payments in accordance with FAR Subpart 32.10.

232.102-70 Provisional delivery payments.

See PGI 232.102-70 if provisional delivery payments are contemplated.

232.104 Providing contract financing.

For fixed-price contracts with a period of performance in excess of a year that meet the dollar thresholds established in FAR 32.104(d), and for solicitations expected to result in such contracts, in lieu of the requirement at FAR 32.104(d)(1)(ii) for the contractor to demonstrate actual financial need or the unavailability of private financing, DoD has determined that?

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(1) The use of customary contract financing (see FAR 32.113), other than loan guarantees and advance payments, is in DoD?s best interest; and

(2) Further justification of its use in individual acquisition is unnecessary.

SUBPART 232.2?COMMERCIAL PRODUCT AND COMMERCIAL SERVICE PURCHASE FINANCING

232.202-4 Security for Government financing.

(a)(2) When determining whether an offeror?s financial condition is adequate security, see 232.072-2 and 232.072-3 for guidance. An offeror?s financial condition may be sufficient to make the contractor responsible for award purposes, but may not be adequate security for commercial contract financing.

232.206 Solicitation provisions and contract clauses.

(f) Prompt payment for commercial purchase payments. The contracting officer must incorporate the following standard prompt payment terms for commercial product and commercial service contract financing:

(i) Commercial advance payments: The contractor entitlement date specified in the contract, or 30 days after receipt by the designated billing office of a proper request for payment, whichever is later.

(ii) Commercial interim payments: The contractor entitlement date specified in the contract, or 14 days after receipt by the designated billing office of a proper request for payment, whichever is later. The prompt payment standards for commercial delivery payments must be the same as specified in FAR Subpart 32.9 for invoice payments for the item delivered.

(g) Installment payment financing for commercial products and commercial services. Installment payment financing is prohibited unless market research has established that this form of contract financing is both appropriate and customary in the commercial marketplace. When installment payment financing is used, the contracting officer must use the ceiling percentage of contract price that is customary in the particular marketplace (not to exceed the maximum rate established in FAR 52.232-30).

SUBPART 232.4?ADVANCE PAYMENTS FOR OTHER THAN COMMERCIAL ACQUISITIONS

232.404 Exclusions.

(a)(9) The requirements of FAR Subpart 32.4 do not apply to advertisements in high school and college publications for military recruitment efforts under 10 U.S.C. 503 when the contract cost does not exceed the micro-purchase threshold.

232.409 Contracting officer action.

232.409-1 Recommendation for approval.

Follow the procedures at PGI 232.409-1 for preparation of the documents required by FAR 32.409-1(e) and (f).

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232.410 Findings, determination, and authorization.

If an advance payment procedure is used without a special bank account, follow the procedures at PGI 232.410.

232.412 Contract clause.

232.412-70 Additional clauses.

(a) Insert the clause at 252.232-7000, Advance Payment Pool, in any contract that will be subject to the terms of an advance payment pool agreement with a nonprofit organization or educational institution. Normally, use the clause in all cost reimbursement type contracts with the organization or institution.

(b) Insert the clause at 252.232-7005, Reimbursement of Subcontractor Advance Payments?DoD Mentor-Protege Program, when advance payments will be provided by the contractor to a subcontractor pursuant to an approved mentor-protege agreement

(see subpart 219.71).

232.470 Advance payment pool.

(a) An advance payment pool agreement?

(1) Is a means of financing the performance of more than one contract held by a single contractor;

(2) Is especially convenient for the financing of cost-type contracts with nonprofit educational or research institutions for experimental or research and development work when several contracts require financing by advance payments. When appropriate, pooled advance payments may also be used to finance other types of contracts held by a single contractor; and

(3) May be established?

(i) Without regard to the number of appropriations involved;

(ii) To finance contracts for one or more department(s) or contracting activity(ies); or

(iii) In addition to any other advance payment pool agreement at a single contractor location when it is more convenient or otherwise preferable to have more than one agreement.

SUBPART 232.5?PROGRESS PAYMENTS BASED ON COSTS

232.501 General.

232.501-1 Customary progress payment rates.

(a) The customary progress payment rates for DoD contracts, including contracts that contain foreign military sales (FMS) requirements, are 80 percent for large business concerns and 90 percent for small business concerns.

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232.501-2 Unusual progress payments.

Follow the procedures at PGI 232.501-2 for approval of unusual progress payments.

232.501-3 Contract price.

(b) The contracting officer may approve progress payments when the contract price exceeds the funds obligated under the contract, provided the contract limits the Government?s liability to the lesser of?

(i) The applicable rate (i.e., the lower of the progress payment rate, the liquidation rate, or the loss-ratio adjusted rate); or

(ii) 100 percent of the funds obligated.

232.502 Preaward matters.

232.502-4 Contract clauses.

232.502-4-70 Additional clauses.

(a) Insert the clause at 252.232-7002, Progress Payments for Foreign Military Sales Acquisitions, in solicitations and contracts that?

(i) Contain FMS requirements; and

(ii) Provide for progress payments.

(b) Insert the clause at 252.232-7004, DoD Progress Payment Rates, instead of Alternate I of the clause at FAR 52.232-16, if the contractor is a small business concern.

(c) Insert the clause at 252.232-7018, Progress Payments?Multiple Lots, to authorize separate progress payment requests for multiple lots.

232.503 Postaward matters.

232.503-6 Suspension or reduction of payments.

(b) Contractor noncompliance. See also 242.7503.

(g) Loss contracts. Use the following loss ratio adjustment procedures for making adjustments required by FAR 32.503-6(f) and (g)?

(i) Except as provided in paragraph (g)(ii) of this subsection, the contracting officer must prepare a supplementary analysis of the contractor's request for progress payments and calculate the loss ratio adjustment using the procedures in FAR 32.503-**6(g).**

(ii) The contracting officer may request the contractor to prepare the supplementary analysis as an attachment to the progress payment request when the contracting officer determines that the contractor's methods of estimating the ?Costs to Complete? are reliable, accurate, and not susceptible to improper influences.

(iii) To maintain an audit trail and permit verification of calculations, do not make the loss ratio adjustments by altering or replacing data on the contractor's original request for progress payment (SF 1443, Contractor's Request for Progress Payment, or computer generated equivalent).

232.503-15 Application of Government title terms.

(d) An administrative contracting officer (ACO) determination that the contractor's

material management and accounting system conforms to the system criteria at

252.242-7004(d)(7) constitutes the contracting officer approval requirement of FAR 32.503-15(d). Prior to granting blanket approval of cost transfers between contracts, the ACO should determine that?

(i) The contractor retains records of the transfer activity that took place in the prior month;

(ii) The contractor prepares, at least monthly, a summary of the transfer activity that took place in the prior month; and

(iii) The summary report includes as a minimum, the total number and dollar value of transfers.

SUBPART 232.6?CONTRACT DEBTS

232.602 Responsibilities.

(b) Disbursing officers are those officials designated to make payments under a contract or to receive payments of amounts due under a contract. The disbursing officer is responsible for determining the amount and collecting contract debts whenever overpayments or erroneous payments have been made. The disbursing officer also has primary responsibility when the amounts due and dates for payment are contained in the contract, and a copy of the contract has been furnished to the disbursing officer with notice to collect as amounts become due.

232.603 Debt determination.

When transferring a case to the contract financing office, follow the procedures at PGI **232.603.**

232.604 Demand for payment.

When issuing a demand for payment of a contract debt, follow the procedures at PGI **232.604.**

232.610 Compromising debts.

Only the department/agency contract financing offices (see PGI 232.070(c)) are authorized to compromise debts covered by this subpart.

232.611 Contract clause.

(a) The Principal Director, Defense Pricing, Contracting, and Acquisition Policy, Office of the Under Secretary of Defense (Acquisition and Sustainment), may exempt the contracts in FAR 32.611(a)(2) through (5) and other contracts, in exceptional circumstances, from the administrative interest charges required by this subpart.

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232.611-70 Additional exceptions.

Additional exceptions are?

(1) Contracts for instructions of military or ROTC personnel at civilian schools, colleges, and universities;

(2) Basic agreements with telephone companies for communications services and facilities, and purchases under such agreements; and

(3) Transportation contracts with common carriers for common carrier services.

232.670 Transfer of responsibility for debt collection.

Follow the procedures at PGI 232.670 for transferring responsibility for debt collection.

232.671 Bankruptcy reporting.

Follow the procedures at PGI 232.671 for bankruptcy reporting.

SUBPART 232.7?CONTRACT FUNDING

232.702 Policy.

Fixed-price contracts must be fully funded except as permitted by 232.703-1.

232.703 Contract funding requirements.

232.703-1 General.

(1) A fixed-price contract may be incrementally funded only if?

(i) The contract (excluding any options) or any exercised option?

(A) Is for severable services;

(B) Does not exceed one year in length; and

(C) Is incrementally funded using funds available (unexpired) as of the date the funds are obligated; or

(ii) The contract uses funds available from multiple (two or more) fiscal years and?

(A) The contract is funded with research and development appropriations; or

(B) Congress has otherwise authorized incremental funding.

(2) An incrementally funded fixed-price contract must be fully funded as soon as funds are available.

232.703-3 Contracts crossing fiscal years.

(b) The contracting officer may enter into a contract, exercise an option, or place an order under a contract for severable services for a period that begins in one fiscal year and ends in the next fiscal year if the period of the contract awarded, option exercised, or order placed does not exceed 1 year (10 U.S.C. 3133).

232.703-70 Military construction appropriations act restriction.

Annual military construction appropriations acts restrict the use of funds appropriated by the acts for payments under cost-plus-fixed-fee contracts (see 216.304-2).

232.704 Limitation of cost or funds.

232.704-70 Incrementally funded fixed-price contracts.

(a) Upon receipt of the contractor?s notice under paragraph (c) of the clause at **252.232-7007, Limitation of Government?s Obligation, the contracting officer must** promptly provide written notice to the contractor that the Government is?

(1) Allotting additional funds for continued performance and increasing the Government?s limitation of obligation in a specified amount;

(2) Terminating the contract; or

(3) Considering whether to allot additional funds; and

(i) The contractor is entitled by the contract terms to stop work when the Government?s limitation of obligation is reached; and

(ii) Any costs expended beyond the Government?s limitation of obligation are at the contractor?s risk.

(b) Upon learning that the contract will receive no further funds, the contracting officer must promptly give the contractor written notice of the Government?s decision and terminate for the convenience of the Government.

(c) The contracting officer must ensure that, in accordance with paragraph (b) of the clause at 252.232-7007, Limitation of Government?s Obligation, sufficient funds are allotted to the contract to cover the total amount payable to the contractor in the event of termination for the convenience of the Government.

232.706 Contract clauses.

232.706-70 Clause for limitation of Government?s obligation.

Insert the clause at 252.232-7007, Limitation of Government's Obligation, in solicitations and resultant incrementally funded fixed-price contracts. The contracting officer may revise the contractor?s notification period, in paragraph (c) of the clause, from ?ninety? to ?thirty? or ?sixty? days, as appropriate.

SUBPART 232.8?ASSIGNMENT OF CLAIMS

232.803 Policies.

(b) Only contracts for personal services may prohibit the assignment of claims.

(d) DoD will not reduce or set off any money due or to become due under the contract when the proceeds under the contract have been assigned in accordance with the Assignment of Claims provision of the contract (reference 41 U.S.C. 6305, Presidential delegation dated October 3, 1995, Secretary of Defense delegation dated February 5, 1996, and Under Secretary of Defense (Acquisition, Technology, and Logistics) delegation dated February 23, 1996, and the Director of Defense Procurement determined on May 10, 1996 as published in the Federal Register on June 11, 1996). Nevertheless, if departments/agencies decide it is in the Government's interest, or if the contracting officer makes a determination in accordance with FAR 32.803(d) concerning a significantly indebted offeror, they may exclude the no-setoff commitment.

232.805 Procedure.

(b) Upon receiving a notice of assignment, the contracting officer must direct the assignee to forward?

(i) To the administrative contracting officer (ACO), a true copy of the instrument of assignment and an original and three copies of the notice of assignment. The ACO must acknowledge receipt by signing and dating all copies of the notice of assignment and must ?

(A) File the true copy of the instrument of assignment and the original of

the notice in the contract file;

(B) Forward two copies of the notice to the disbursing officer of the payment office cited in the contract;

(C) Return a copy of the notice to the assignee; and

(D) Advise the contracting officer of the assignment.

(ii) To the surety or sureties, if any, a true copy of the instrument of assignment and an original and three copies of the notice of assignment. The surety shall return three acknowledged copies of the notice to the assignee, who shall forward two copies to the disbursing officer designated in the contract.

(iii) To the disbursing officer of the payment office cited in the contract, a true copy of the instrument of assignment and an original and one copy of the notice of assignment. The disbursing officer must acknowledge and return to the assignee the copy of the notice and must file the true copy of the instrument and original notice.

232.806 Contract clauses.

(a)(1) Insert the clause at 252.232-7008, Assignment of Claims (Overseas), instead of the clause at FAR 52.232-23, Assignment of Claims, in solicitations and contracts when contract performance will be in a foreign country.

(2) Insert Alternate I with the clause at FAR 52.232-23, Assignment of Claims, unless otherwise authorized under 232.803(d).

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SUBPART 232.9?PROMPT PAYMENT

232.901 Applicability.

(1) Except for FAR 32.908, FAR subpart 32.9, Prompt Payment, does not apply when?

(i) There is?

(A) An emergency, as defined in the Disaster Relief Act of 1974;

(B) A contingency operation (see FAR 2.101(b)); or

(C) The release or threatened release of hazardous substances (as defined in **4 U.S.C. 9606, section 106);**

(ii) The head of the contracting activity has made a determination, after consultation with the cognizant comptroller, that conditions exist that limit normal business operations; and

(iii) Payments will be made in the operational area or made contingent upon receiving supporting documentation (i.e., contract, invoice, and receiving report) from the operational area.

(2) Criteria limiting normal business operations during emergencies and contingency operations that restrict the use of FAR 32.9 may include such conditions as?

(i) Support infrastructure, hardware, communications capabilities, and bandwidth are not consistently available such that normal business operations can be

carried out;

(ii) Support resources, facilities, and banking needs are not consistently available for use as necessary in carrying out normal business operations;

(iii) Military mission priorities override the availability of appropriately skilled personnel in support of back-office operations;

(iv) Mobility impairments and security concerns restrict free movement of personnel and documents necessary for timely processing;

(v) Foreign vendors are not familiar with or do not understand DoD contract requirements (i.e., proper invoice, receiving documentation, and contracting terms); or

(vi) Documents received in support of payment requests and shipments require language translations that cannot be performed and documented within normal business processing times.

(3) Subsequent Determinations. The head of the contracting activity must make subsequent determinations, after consultation with the cognizant comptroller, as the operational area evolves into either a more stable or less stable environment.

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(i) If the head of the contracting activity determines that the operational area has evolved into a more stable environment, the contracting officer must notify, by issuance of a contract modification, each contractor performing in the operational area under review. The modification deactivates this clause 252.232-7011 and activates the applicable FAR Prompt Payment clause in the contract.

(ii) If after deactivation of this clause, the head of the contracting activity subsequently determines that the operational area has evolved into a less stable environment, the head of the contracting activity will make a determination that conditions exist that limit normal business operations. The contracting officer will then reactivate this clause 252.232-7011 by issuance of a contract modification.

232.903 Responsibilities.

In accordance with 10 U.S.C. 3801(b), DoD must assist small business concerns by providing payment as quickly as possible, to the fullest extent permitted by law, with a goal of 15 days after receipt of proper invoices and all required documentation, including acceptance, and before normal payment due dates established in the contract

(see 232.906(a)).

232.904 Determining payment due dates.

(d) In most cases, Government acceptance or approval can occur within the 7-day constructive acceptance period specified in the FAR Prompt Payment clauses. Government payment of construction progress payments can, in most cases, be made within the 14-day period allowed by the Prompt Payment for Construction Contracts clause. While the contracting officer may specify a longer period because the period specified in the contract is not reasonable or practical, such change should be coordinated with the Government offices responsible for acceptance or approval and for

payment. Reasons for specifying a longer period include but are not limited to: the nature of the work or supplies or services, inspection or testing requirements, shipping and acceptance terms, and resources available at the acceptance activity. A constructive acceptance period of less than the cited 7 or 14 days is not authorized.

232.905 Payment documentation and process.

(b)(1)(iii) For task and delivery orders numbered in accordance with FAR 4.201 and **204.201, the 13-character order number may serve as the contract number on invoices** and receiving reports. The contract or agreement number under which the order was placed may be omitted from invoices and receiving reports. The contractor may choose to identify both the contract number and the 13-character order number on invoices and receiving reports. Task and delivery orders numbered with a four-position alpha-numeric call or order serial number must include both the 13-position basic contract Procurement Instrument Identifier and the four-position order number.

232.906 Making payments.

(a)(i) Generally, the contracting officer must insert the standard due date of 14 days for interim payments on cost-reimbursement contracts for services in the clause at FAR **52.232-25, Prompt Payment, when using the clause with its Alternate I.**

(ii) The restrictions of FAR 32.906 prohibiting early payment do not apply to invoice payments made to small business concerns. However, contractors are not entitled to interest penalties if the Government fails to make early payment.

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232.908 Contract clauses.

Insert the clause at 252.232-7011, Payments in Support of Emergencies and Contingency Operations, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, in acquisitions that meet the applicability criteria at 232.901(1). Use of this clause is in addition to use of either the approved Payment clause prescribed in FAR 32.908 or the clause at FAR 52.212-4, Contract Terms and Conditions? Commercial Products and Commercial Services.

SUBPART 232.10?PERFORMANCE-BASED PAYMENTS

232.1001 Policy.

(a) As with all contract financing, the purpose of performance-based payments is to assist the contractor in the payment of costs incurred during the performance of the contract. See PGI 232.1001(a) for additional information on use of performance-based payments. However, in accordance with 10 U.S.C. 3802(a)(2), performance-based payments must not be conditioned upon costs incurred in contract performance, but on the achievement of performance outcomes. Subject to the criteria in 232.1003-70, all companies, including nontraditional defense contractors, are eligible for performance-based payments, consistent with best commercial practices.

(d) The contracting officer must use the following standard payment terms for

performance-based payments: The contractor entitlement date, if any, specified in the contract, or 14 days after receipt by the designated billing office of a proper request for payment, whichever is later.

232.1003-70 Criteria for use.

In accordance with 10 U.S.C. 3802(c)(1), a contractor?s financial statements must comply with Generally Accepted Accounting Principles, in order to receive performance-based payments. 10 U.S.C. 3802(c)(2) does not grant the Defense Contract Audit Agency the authority to audit compliance with Generally Accepted Accounting Principles.

232.1004 Procedures.

(b) Establishing performance-based finance payment amounts.

(i) The contracting officer should include in a solicitation both the progress payments and performance-based payments provisions and clauses prescribed in this part, when considering both types of payment methods. Only one type of financing will be included in the resultant contract, except as may be authorized on separate orders subject to FAR 32.1003(c)).

(ii) The contracting officer must analyze the performance-based payment schedule using the performance-based payments (PBP) analysis tool. The PBP analysis tool is on the Defense Pricing, Contracting, and Acquisition Policy website in the Price, Cost and Finance section. The PBP analysis tool and Performance Based Payment Guidebook are available at https://www.acq.osd.mil/asda/dpc/pcf/pricing-topics.html#pdp.

(A) When considering performance-based payments, obtain from the offeror/contractor a proposed performance-based payments schedule that includes all performance-based payments events, completion criteria and event values along with the projected monthly expenditure profile in order to negotiate the value of the performance events such that the performance-based payments are not expected to result in an unreasonably low or negative level of contractor investment in the contract. If performance-based payments are deemed practical, the Government will evaluate and negotiate the details of the performance-based payments schedule.

(B) For modifications to contracts that already use performance-based payments financing, the basis for negotiation must include performance-based payments. The PBP analysis tool will be used in the same manner to help determine the price for the modification;

(iii) The contracting officer must document in the contract file that the performance-based payment schedule provides a mutually beneficial settlement position that reflects adequate consideration to the Government for the improved contractor cash flow.

(c) Instructions for multiple appropriations. If the contract contains foreign military

sales requirements, the contracting officer must provide instructions for distribution of the contract financing payments to each country?s account.

232.1005-70 Solicitation provisions and contract clauses.

(a) The contracting officer must insert the following clauses with appropriate fill-ins in solicitations and contracts that include performance-based payments:

(1) For performance-based payments made on a whole-contract basis, insert the clause at 252.232-7012, Performance-Based Payments?Whole-Contract Basis.

(2) For performance-based payments made on a deliverable-item basis, insert the clause at 252.232-7013, Performance-Based Payments?Deliverable-Item Basis.

(b) Insert the provision at 252.232-7015, Performance-Based Payments? Representation, in solicitations where the resulting contract may include performance-based payments.

(c) Insert the provision at 252.232-7016, Notice of Progress Payments or Performance-Based Payments, in lieu of FAR 52.232-13, Notice of Progress Payments, when the solicitation contains clauses for progress payments and performance-based payments (only one type of financing will be included in the resultant contract, except as may be authorized on separate orders subject to FAR 32.1003(c)).

SUBPART 232.11?ELECTRONIC FUNDS TRANSFER

232.1108 Payment by Governmentwide commercial purchase card.

232.1108-70 Prohibition of Governmentwide commercial purchase card as a method of payment when the tax on certain foreign procurements applies.

Do not authorize the Governmentwide commercial purchase card as a method of payment during any contract period of performance if the contract includes the clause at FAR 52.229-12, Tax on Certain Foreign Procurements, unless the contract also

includes the clause at 252.229-7014, Full Exemption from Two-Percent Excise Tax on Certain Foreign Procurements, indicating that the contractor is fully exempt from the tax.

232.1110-70 Solicitation provision and contract clauses.

Insert the clause at 252.232-7009, Mandatory Payment by Governmentwide Commercial Purchase Card, in solicitations, contracts, and agreements, including solicitations, contracts, and agreements using FAR part 12 procedures for the acquisition of commercial products and commercial services, when?

(1) Placement of orders or calls valued at or below the micro-purchase threshold is anticipated; and

(2) Payment by Governmentwide commercial purchase card is required for orders or calls valued at or below the micro-purchase threshold under the contract or agreement.

232.12 Fast Payment Procedure.

232.1202 Conditions for use.

(a) Individual orders may exceed the simplified acquisition threshold for?

(i) Brand-name commercial product commissary resale subsistence; and

(ii) Medical supplies for direct shipment overseas.

SUBPART 232.70?ELECTRONIC SUBMISSION AND PROCESSING OF PAYMENT REQUESTS AND RECEIVING REPORTS

232.7000 Scope of subpart.

This subpart prescribes policies and procedures for submitting and processing payment requests in electronic form to comply with 10 U.S.C. 4601.

232.7001 Definitions.

As used in this subpart?

?Electronic form? means any automated system that transmits information electronically from the initiating system to affected systems.

?Payment request? means any request for contract financing payment or invoice payment submitted by the contractor under a contract or task or delivery order.

?Receiving report? means the data prepared in the manner and to the extent required by Appendix F, Material Inspection and Receiving Report, of the DFARS.

232.7002 Policy.

(a) Contractors are required to submit payment requests and receiving reports in electronic form, except for?

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(1) Classified contracts or purchases when electronic submission and processing of payment requests and receiving reports could compromise the safeguarding of classified information or national security;

(2) Cases in which contractor submission of electronic payment requests and receiving reports is not feasible (e.g., when contract performance is in an environment where internet connectivity is not available);

(3) Cases in which DoD is unable to receive payment requests or provide acceptance in electronic form;

(4) Cases in which the contractor has requested permission in writing to submit payment requests and receiving reports by nonelectronic means, and the contracting officer has provided instructions for a temporary alternative method of submission of payment requests and receiving reports in the contract administration data section of the contract or task or delivery order (e.g., section G, an addendum to FAR 52.212-4, or applicable clause); and

(5) When the Governmentwide commercial purchase card is used as the method of payment, in which case only submission of the receiving report in electronic form is required.

(b)(1) The only acceptable electronic form for submission of payment requests and receiving reports is Wide Area WorkFlow (WAWF) (https://wawf.eb.mil/), except as follows:

(i) For payment of commercial transportation services provided under a

Government rate tender, contract, or task or delivery order for transportation services, the use of a DoD-approved electronic third party payment system or other exempted vendor payment/invoicing system (e.g., PowerTrack, Transportation Financial Management System, and Cargo and Billing System) is permitted.

(ii) For submitting and processing payment requests and receiving reports for contracts or task or delivery orders for rendered health care services, the use of TRICARE Encounter Data System as the electronic form is permitted.

(2) Facsimile, email, and scanned documents are not acceptable electronic forms of payment requests or receiving reports.

232.7003 Procedures.

Follow the procedures at PGI 232.7003 for processing electronic payments.

232.7004 Contract clauses.

(a) Unless an exception to submission in electronic form at 232.7002(a) applies and instructions for invoices are contained in the contract administration data section of the contract, task order, or delivery order, insert the clause at 252.232-7003, Electronic Submission of Payment Requests and Receiving Reports, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services.

(b) Insert the clause at 252.232-7006, Wide Area WorkFlow Payment Instructions, in solicitations and contracts, task orders, or delivery orders, including solicitations and

contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, when 252.232-7003 is used and none of the exceptions at **232.7002(b)(1) apply. See PGI 232.7004 for instructions on completing the clause.**

SUBPART 232.71?LEVIES ON CONTRACT PAYMENTS

232.7100 Scope of subpart.

This subpart prescribes policies and procedures concerning the effect of levies pursuant to 26 U.S.C. 6331(h) on contract payments. The Internal Revenue Service (IRS) is authorized to levy up to 100 percent of all payments made under a DoD contract, up to the amount of the tax debt.

232.7101 Policy and procedures.

(a) Contractors are required to?

(1) Promptly notify the contracting officer when a levy may result in an inability to perform the contract; and

(2) Advise the contracting officer whether the inability to perform may adversely affect national security.

(b) The contracting officer must promptly notify the Principal Director, Defense Pricing, Contracting, and Acquisition Policy (DPCAP) when the contractor?s inability to perform will adversely affect national security or will result in significant additional costs to the Government. Follow the procedures at PGI

232.7101(b) for reviewing the contractor?s rationale and submitting the required notification.

(c) The Principal Director, DPCAP, will promptly evaluate the contractor?s rationale and will notify the IRS, the contracting officer, and the payment office, as appropriate, in accordance with the procedures at PGI 232.7101(c).

(d) The contracting officer must then notify the contractor in accordance with paragraph (c) of the clause at 252.232-7010 and in accordance with the procedures at PGI 232.7101(d).

232.7102 Contract clause.

Insert the clause at 252.232-7010, Levies on Contract Payments, in all solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services.

SUBPART 252.2--TEXT OF PROVISIONS AND CLAUSES

252.232-7000 Advance Payment Pool.

As prescribed in 232.412-70(a), use the following clause:

ADVANCE PAYMENT POOL (APR 2020)

(a) Notwithstanding any other provision of this contract, advance payments will be made for contract performance in accordance with the Determinations, Findings, and Authorization for Advance payment dated _____.

(b) Payments made in accordance with this clause shall be governed by the terms and conditions of the Advance Payment Pool Agreement between the United States of America and [insert the name of the Contractor]. The Agreement is incorporated in the contract by reference.

(c) When a letter of credit has not been issued to the Contractor in conjunction with the contract, payment will be by a dual payee Treasury check made payable to the Contractor or the disbursing office in the Advance Payment Pool Agreement and will be forwarded to that disbursing office for appropriate disposition.

(End of clause)

252.232-7001 Reserved.

252.232-7002 Progress Payments for Foreign Military Sales Acquisitions.

As prescribed in 232.502-4-70(a), use the following clause:

PROGRESS PAYMENTS FOR FOREIGN MILITARY SALES ACQUISITIONS (MAY 2023)

If this contract includes foreign military sales (FMS) requirements, the Contractor shall?

(a) Submit separate progress payment requests for the FMS and U.S. line items in the contract;

(b) Submit a supporting schedule showing the amount of each request distributed to each country's requirements;

(c) Identify in each progress payment request the contract requirements to which it applies (i.e., FMS or U.S.);

(d) Calculate each request on the basis of the prices, costs (including costs to complete), subcontract financing, and progress payment liquidations of the contract requirements to which it applies; and

(e) Distribute costs among the countries in a manner acceptable to the Administrative Contracting Officer.

(End of clause)

252.232-7003 Electronic Submission of Payment Requests and Receiving Reports.

As prescribed in 232.7004(a), use the following clause:

ELECTRONIC SUBMISSION OF PAYMENT REQUESTS AND RECEIVING REPORTS (DEC 2018)

(a) Definitions. As used in this clause?

?Contract financing payment? means an authorized Government disbursement of monies to a contractor prior to acceptance of supplies or services by the Government.

(1) Contract financing payments include?

(i) Advance payments;

(ii) Performance-based payments;

(iii) Commercial advance and interim payments;

(iv) Progress payments based on cost under the clause at Federal Acquisition Regulation (FAR) 52.232-16, Progress Payments;

(v) Progress payments based on a percentage or stage of completion (see FAR 32.102(e)), except those made under the clause at FAR 52.232-5, Payments Under Fixed-Price Construction Contracts, or the clause at FAR 52.232-10, Payments Under Fixed-Price Architect-Engineer Contracts; and

(vi) Interim payments under a cost reimbursement contract, except for a cost reimbursement contract for services when Alternate I of the clause at FAR 52.232-25, Prompt Payment, is used.

(2) Contract financing payments do not include?

(i) Invoice payments;

(ii) Payments for partial deliveries; or

(iii) Lease and rental payments.

?Electronic form? means any automated system that transmits information electronically from the initiating system to affected systems.

?Invoice payment? means a Government disbursement of monies to a contractor under a contract or other authorization for supplies or services accepted by the Government.

(1) Invoice payments include?

(i) Payments for partial deliveries that have been accepted by the Government;

(ii) Final cost or fee payments where amounts owed have been settled between the Government and the contractor;

(iii) For purposes of subpart 32.9 only, all payments made under the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts, and the clause at **52.232-10, Payments Under Fixed-Price Architect-Engineer Contracts; and**

(iv) Interim payments under a cost-reimbursement contract for services when Alternate I of the clause at 52.232-25, Prompt Payment, is used.

(2) Invoice payments do not include contract financing payments.

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?Payment request? means any request for contract financing payment or invoice payment submitted by the Contractor under this contract or task or delivery order.

?Receiving report? means the data prepared in the manner and to the extent required by Appendix F, Material Inspection and Receiving Report, of the Defense Federal Acquisition Regulation Supplement.

(b) Except as provided in paragraph (d) of this clause, the Contractor shall submit payment requests and receiving reports in electronic form using Wide Area WorkFlow (WAWF). The Contractor shall prepare and furnish to the Government a receiving report at the time of each delivery of supplies or services under this contract or task or delivery order. .

(c) Submit payment requests and receiving reports to WAWF in one of the following electronic formats:

(1) Electronic Data Interchange.

(2) Secure File Transfer Protocol.

(3) Direct input through the WAWF website.

(d) The Contractor may submit a payment request and receiving report using methods other than WAWF only when?

(1) The Contractor has requested permission in writing to do so, and the Contracting Officer has provided instructions for a temporary alternative method of submission of payment requests and receiving reports in the contract administration data section of this contract or task or delivery order;

(2) DoD makes payment for commercial transportation services provided under a Government rate tender or a contract for transportation services using a DoD-approved electronic third party payment system or other exempted vendor payment/invoicing system (e.g., PowerTrack, Transportation Financial Management System, and Cargo and Billing System);

(3) DoD makes payment on a contract or task or delivery order for rendered health care services using the TRICARE Encounter Data System; or

(4) The Governmentwide commercial purchase card is used as the method of payment, in which case submission of only the receiving report in WAWF is required.

(e) Information regarding WAWF is available at https://wawf.eb.mil/.

(f) In addition to the requirements of this clause, the Contractor shall meet the requirements of the appropriate payment clauses in this contract when submitting payment requests.

(End of clause)

252.232-7004 DoD Progress Payment Rates.

As prescribed in 232.502-4-70(b), use the following clause:

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DOD PROGRESS PAYMENT RATES (OCT 2014)

If the Contractor is a small business concern, the Progress Payments clause of this contract is modified to change each mention of the progress payment rate and liquidation rate (excepting paragraph (k), Limitations on Undefinitized Contract Actions) to 90 percent.

(End of clause)

252.232-7005 Reimbursement of Subcontractor Advance Payments?DoD

Mentor-Protégé Program.

As prescribed in 232.412-70(b), use the following clause:

REIMBURSEMENT OF SUBCONTRACTOR ADVANCE PAYMENTS?DOD MENTOR-PROTEGE PROGRAM (MAR 2024)

(a) The Government will reimburse the Contractor for any advance payments made by the Contractor, as a mentor firm, to a protege firm, pursuant to an approved mentor-protege agreement, provided?

(1) The Contractor?s subcontract with the protege firm includes a provision substantially the same as FAR 52.232-12, Advance Payments;

(2) The Contractor has administered the advance payments in accordance with the policies of FAR Subpart 32.4; and

(3) The Contractor agrees that any financial loss resulting from the failure or inability of the protege firm to repay any unliquidated advance payments is the sole financial responsibility of the Contractor.

(b) For a fixed price type contract, advance payments made to a protege firm shall be paid and administered as if they were 100 percent progress payments. The Contractor shall include as a separate attachment with each Standard Form (SF) 1443, Contractor?s Request for Progress Payment, a request for reimbursement of advance payments made to a protege firm. The attachment shall provide a separate calculation of lines 14a through 14e of SF 1443 for each protege, reflecting the status of advance payments made to that protege.

(c) For cost reimbursable contracts, reimbursement of advance payments shall be made via public voucher. The Contractor shall show the amounts of advance payments made to each protege on the public voucher, in the form and detail directed by the cognizant contracting officer or contract auditor.

(End of clause)

252.232-7006 Wide Area WorkFlow Payment Instructions.

As prescribed in 232.7004(b), use the following clause:

WIDE AREA WORKFLOW PAYMENT INSTRUCTIONS (JAN 2023)

(a) Definitions. As used in this clause?

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?Department of Defense Activity Address Code (DoDAAC)? is a six position code that uniquely identifies a unit, activity, or organization.

?Document type? means the type of payment request or receiving report available for creation in Wide Area WorkFlow (WAWF).

?Local processing office (LPO)? is the office responsible for payment certification when payment certification is done external to the entitlement system.

?Payment request? and ?receiving report? are defined in the clause at 252.232-7003, Electronic Submission of Payment Requests and Receiving Reports.

(b) Electronic invoicing. The WAWF system provides the method to electronically process vendor payment requests and receiving reports, as authorized by Defense Federal Acquisition Regulation Supplement (DFARS) 252.232-7003, Electronic Submission of Payment Requests and Receiving Reports.

(c) WAWF access. To access WAWF, the Contractor shall?

(1) Have a designated electronic business point of contact in the System for Award Management at https://www.sam.gov; and

(2) Be registered to use WAWF at https://wawf.eb.mil/ following the step-by-step procedures for self-registration available at this web site.

(d) WAWF training. The Contractor should follow the training instructions of the WAWF Web-Based Training Course and use the Practice Training Site before submitting payment requests through WAWF. Both can be accessed by selecting the ?Web Based Training? link on the WAWF home page at https://wawf.eb.mil/

(e) WAWF methods of document submission. Document submissions may be via web entry, Electronic Data Interchange, or File Transfer Protocol.

(f) WAWF payment instructions. The Contractor shall use the following information when submitting payment requests and receiving reports in WAWF for this contract or task or delivery order:

(1) Document type. The Contractor shall submit payment requests using the following document type(s):

(i) For cost-type line items, including labor-hour or time-and-materials, submit a cost voucher.

(ii) For fixed price line items?

(A) That require shipment of a deliverable, submit the invoice and receiving report specified by the Contracting Officer.

(Contracting Officer: Insert applicable invoice and receiving report document type(s) for fixed price line items that require shipment of a deliverable.)

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(B) For services that do not require shipment of a deliverable, submit either the Invoice 2in1, which meets the requirements for the invoice and receiving report, or the applicable invoice and receiving report, as specified by the Contracting Officer.

_____

(Contracting Officer: Insert either ?Invoice 2in1? or the applicable invoice and receiving report document type(s) for fixed price line items for services.)

(iii) For customary progress payments based on costs incurred, submit a progress payment request.

(iv) For performance based payments, submit a performance based payment request.

(v) For commercial financing, submit a commercial financing request.

(2)) Fast Pay requests are only permitted when Federal Acquisition Regulation (FAR) 52.213-1 is included in the contract.

[Note: The Contractor may use a WAWF ?combo? document type to create some combinations of invoice and receiving report in one step.]

(3) Document routing. The Contractor shall use the information in the Routing Data Table below only to fill in applicable fields in WAWF when creating payment requests and receiving reports in the system.

Routing Data Table*

Field Name in WAWF Data to be entered in WAWF

Pay Official DoDAAC

Issue By DoDAAC

Admin DoDAAC

Inspect By DoDAAC

Ship To Code

Ship From Code

Mark For Code

Service Approver (DoDAAC)

Service Acceptor (DoDAAC)

Accept at Other DoDAAC

LPO DoDAAC

DCAA Auditor DoDAAC

Other DoDAAC(s)

(*Contracting Officer: Insert applicable DoDAAC information. If multiple ship to/acceptance locations apply, insert ?See Schedule? or ?Not applicable.?)

(**Contracting Officer: If the contract provides for progress payments or performance-based payments, insert the DoDAAC for the contract administration office assigned the

functions under FAR 42.302(a)(13).)

(4) Payment request. The Contractor shall ensure a payment request includes documentation appropriate to the type of payment request in accordance with the
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payment clause, contract financing clause, or Federal Acquisition Regulation 52.216-7, Allowable Cost and Payment, as applicable.

(5) Receiving report. The Contractor shall ensure a receiving report meets the requirements of DFARS Appendix F.

(g) WAWF point of contact.

(1) The Contractor may obtain clarification regarding invoicing in WAWF from the following contracting activity?s WAWF point of contact.

_____

(Contracting Officer: Insert applicable information or ?Not applicable.?)

(2) Contact the WAWF helpdesk at 866-618-5988, if assistance is needed.

(End of clause)

252.232-7007 Limitation of Government?s Obligation.

As prescribed in 232.706-70, use the following clause:

LIMITATION OF GOVERNMENT?S OBLIGATION (APR 2014)

(a) Contract line item(s) [Contracting Officer insert after negotiations] is/are incrementally funded. For this/these item(s), the sum of $ [Contracting Officer insert after negotiations] of the total price is presently available for payment and allotted to this contract. An allotment schedule is set forth in paragraph (j) of this clause.

(b) For item(s) identified in paragraph (a) of this clause, the Contractor agrees to perform up to the point at which the total amount payable by the Government, including reimbursement in the event of termination of those item(s) for the Government?s convenience, approximates the total amount currently allotted to the contract. The Contractor is not authorized to continue work on those item(s) beyond that point. The Government will not be obligated in any event to reimburse the Contractor in excess of the amount allotted to the contract for those item(s) regardless of anything to the contrary in the clause entitled ?Termination for Convenience of the Government.? As used in this clause, the total amount payable by the Government in the event of termination of applicable contract line item(s) for convenience includes costs, profit, and estimated termination settlement costs for those item(s).

(c) Notwithstanding the dates specified in the allotment schedule in paragraph (j) of this clause, the Contractor will notify the Contracting Officer in writing at least ninety days prior to the date when, in the Contractor?s best judgment, the work will reach the point at which the total amount payable by the Government, including any cost for termination for convenience, will approximate 85 percent of the total amount then allotted to the contract for performance of the applicable item(s). The notification will state (1) the estimated date when that point will be reached and (2) an estimate of

additional funding, if any, needed to continue performance of applicable line items up to the next scheduled date for allotment of funds identified in paragraph (j) of this clause, or to a mutually agreed upon substitute date. The notification will also advise the Contracting Officer of the estimated amount of additional funds that will be required for the timely performance of the item(s) funded pursuant to this clause, for a subsequent period as may be specified in the allotment schedule in paragraph (j) of this clause or
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otherwise agreed to by the parties. If after such notification additional funds are not allotted by the date identified in the Contractor?s notification, or by an agreed substitute date, the Contracting Officer will terminate any item(s) for which additional funds have not been allotted, pursuant to the clause of this contract entitled ?Termination for Convenience of the Government.?

(d) When additional funds are allotted for continued performance of the contract line item(s) identified in paragraph (a) of this clause, the parties will agree as to the period of contract performance which will be covered by the funds. The provisions of paragraphs (b) through (d) of this clause will apply in like manner to the additional allotted funds and agreed substitute date, and the contract will be modified accordingly.

(e) If, solely by reason of failure of the Government to allot additional funds, by the dates indicated below, in amounts sufficient for timely performance of the contract line item(s) identified in paragraph (a) of this clause, the Contractor incurs additional costs or is delayed in the performance of the work under this contract and if additional funds are allotted, an equitable adjustment will be made in the price or prices (including appropriate target, billing, and ceiling prices where applicable) of the item(s), or in the time of delivery, or both. Failure to agree to any such equitable adjustment hereunder will be a dispute concerning a question of fact within the meaning of the clause entitled ?Disputes.?

(f) The Government may at any time prior to termination allot additional funds for the performance of the contract line item(s) identified in paragraph (a) of this clause.

(g) The termination provisions of this clause do not limit the rights of the Government under the clause entitled ?Default.? The provisions of this clause are limited to the work and allotment of funds for the contract line item(s) set forth in paragraph (a) of this clause. This clause no longer applies once the contract is fully funded except with regard to the rights or obligations of the parties concerning equitable adjustments negotiated under paragraphs (d) and (e) of this clause.

(h) Nothing in this clause affects the right of the Government to terminate this contract pursuant to the clause of this contract entitled ?Termination for Convenience of the Government.?

(i) Nothing in this clause shall be construed as authorization of voluntary services whose acceptance is otherwise prohibited under 31 U.S.C. 1342.

(j) The parties contemplate that the Government will allot funds to this contract in accordance with the following schedule:

On execution of contract $ _____

(month) (day), (year) $ _____

(month) (day), (year) $ _____

(month) (day), (year) $ _____

(End of clause)

252.232-7008 Assignment of Claims (Overseas).

As prescribed in 232.806(a)(1), use the following clause:

ASSIGNMENT OF CLAIMS (OVERSEAS) (JUN 1997)

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(a) No claims for monies due, or to become due, shall be assigned by the Contractor unless¾

(1) Approved in writing by the Contracting Officer;

(2) Made in accordance with the laws and regulations of the United States of America; and

(3) Permitted by the laws and regulations of the Contractor?s country.

(b) In no event shall copies of this contract or of any plans, specifications, or other similar documents relating to work under this contract, if marked ?Top Secret,? ?Secret,? or ?Confidential? be furnished to any assignee of any claim arising under this contract or to any other person not entitled to receive such documents. However, a copy of any part or all of this contract so marked may be furnished, or any information contained herein may be disclosed, to such assignee upon the Contracting Officer?s prior written authorization.

(c) Any assignment under this contract shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment may be made to one party as agent or trustee for two or more parties participating in such financing. On each invoice or voucher submitted for payment under this contract to which any assignment applies, and for which direct payment thereof is to be made to an assignee, the Contractor shall¾

(1) Identify the assignee by name and complete address; and

(2) Acknowledge the validity of the assignment and the right of the named assignee to receive payment in the amount invoiced or vouchered.

(End of clause)

252.232-7009 Mandatory Payment by Governmentwide Commercial Purchase Card.

As prescribed in 232.1110, use the following clause:

MANDATORY PAYMENT BY GOVERNMENTWIDE COMMERCIAL PURCHASE CARD (MAY 2018)

The Contractor agrees to accept the Governmentwide commercial purchase card as the method of payment for orders or calls valued at or below the micro-purchase threshold in part 202 of the Defense Federal Acquisition Regulation Supplement, under this

contract or agreement.

(End of clause)

252.232-7010 Levies on Contract Payments.

As prescribed in 232.7102, use the following clause:

LEVIES ON CONTRACT PAYMENTS (DEC 2006)

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(a) 26 U.S.C. 6331(h) authorizes the Internal Revenue Service (IRS) to continuously levy up to 100 percent of contract payments, up to the amount of tax debt.

(b) When a levy is imposed on a payment under this contract and the Contractor believes that the levy may result in an inability to perform the contract, the Contractor shall promptly notify the Procuring Contracting Officer in writing, with a copy to the Administrative Contracting Officer, and shall provide?

(1) The total dollar amount of the levy;

(2) A statement that the Contractor believes that the levy may result in an inability to perform the contract, including rationale and adequate supporting documentation; and

(3) Advice as to whether the inability to perform may adversely affect national security, including rationale and adequate supporting documentation.

(c) DoD shall promptly review the Contractor?s assessment, and the Procuring Contracting Officer shall provide a written notification to the Contractor including?

(1) A statement as to whether DoD agrees that the levy may result in an inability to perform the contract; and

(2)(i) If the levy may result in an inability to perform the contract and the lack of performance will adversely affect national security, the total amount of the monies collected that should be returned to the Contractor; or

(ii) If the levy may result in an inability to perform the contract but will not impact national security, a recommendation that the Contractor promptly notify the IRS to attempt to resolve the tax situation.

(d) Any DoD determination under this clause is not subject to appeal under the Contract Disputes Act.

(End of clause)

252.232-7011 Payments in Support of Emergencies and Contingency

Operations.

As prescribed in 232.908, use the following clause:

PAYMENTS IN SUPPORT OF EMERGENCIES AND CONTINGENCY

OPERATIONS (MAY 2013)

(a) Definitions of pertinent terms are set forth in sections 2.101, 32.001, and

32.902 of the Federal Acquisition Regulation.

(b) Notwithstanding any other payment clause in this contract, the Government will make invoice payments under the terms and conditions specified in this

clause. The Government considers payment as being made on the day a check is dated or the date of an electronic funds transfer.

(c) Invoice payments.

(1) Due date.

(i) Payment will be made as soon as possible once a proper invoice is received and matched with the contract and the receiving/acceptance report.

(ii) If the contract does not require submission of an invoice for payment (e.g., periodic lease payments), the due date will be as specified in the contract.

(2) Contractor's invoice. The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice should include the items listed in paragraphs (c)(2)(i) through (c)(2)(x) of this clause.

(i) Name and address of the Contractor.

(ii) Invoice date and invoice number. (The Contractor should date invoices as close as possible to the date of the mailing or transmission.)

(iii) Contract number or other authorization for supplies delivered or services performed (including order number and contract line item number).

(iv) Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed.

(v) Shipping and payment terms (e.g., shipment number and date of shipment, discount for prompt payment terms). Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading.

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to notify in the event of a defective invoice.

(viii) Taxpayer Identification Number (when required). The taxpayer identification number is required for all payees subject to the U.S. Internal Revenue Code.

(ix) Electronic funds transfer banking information.

(A) The Contractor shall include electronic funds transfer banking information on the invoice only if required elsewhere in this contract.

(B) If electronic funds transfer banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct electronic funds transfer banking information in accordance with the applicable solicitation provision (e.g., FAR 52.232-38, Submission of Electronic Funds Transfer Information with Offer), contract clause (e.g., FAR 52.232-33, Payment by Electronic Funds Transfer?System for Award Management, or FAR 52.232-34, Payment by Electronic Funds Transfer-Other Than System for Award Management), or applicable agency procedures.

(C) Electronic funds transfer banking information is not required if the Government waived the requirement to pay by electronic funds transfer.

(x) Any other information or documentation required by the contract (e.g., evidence of shipment).

(3) Discounts for prompt payment. The designated payment office will take cost-effective discounts if the payment is made within the discount terms of the contract.

(4) Contract financing payment. If this contract provides for contract financing, the Government will make contract financing payments in accordance with the applicable contract financing clause.

(5) Overpayments. If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall?

(i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment, including the?

(A) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(B) Affected contract number and delivery order number, if applicable;

(C) Affected contract line item or subline item, if applicable; and

(D) Contractor point of contact; and

(ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(d) This clause is applicable until otherwise notified by the Contracting Officer. Upon notification by issuance of a contract modification, the appropriate FAR Prompt Payment clause in the contract becomes applicable.

(End of clause)

252.232-7012 Performance-Based Payments?Whole-Contract Basis.

As prescribed in 232.1005-70(a)(1), use the following clause:

PERFORMANCE-BASED PAYMENTS-WHOLE-CONTRACT BASIS (DEC 2022)

(a) Performance-based payments shall form the basis for the contract financing payments provided under this contract, and shall apply to the whole contract. The performance-based payments schedule (Contract Attachment ____) describes the basis for payment, to include identification of the individual payment events, evidence of completion, and amount of payment due upon completion of each event.

(b) In accordance with 10 U.S.C. 3802(c), the Contractor?s financial statements shall be in compliance with Generally Accepted Accounting Principles in order to receive performance-based payments.

(c)(1) The Contractor shall, in addition to providing the information required by FAR 52.232-32, submit information for all payment requests using the following format:

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Current performance-based payment(s) event(s) addressed by this request:
Contractor shall identify? Amount Totals

(1a) Negotiated value of all previously completed performance-based payment(s) event(s);

(1b) Negotiated value of the current performance-based payment(s) event(s);

(1c) Cumulative negotiated value of performance-based payment(s) events completed to date (1a) + (1b); and

(2) Total costs incurred to date.

(2) Incurred cost is determined by the Contractor?s accounting books and records, to which the Contractor shall provide access upon request of the Contracting Officer. An acceptable accounting system in accordance with DFARS 252.242-7006 is not required for reporting of incurred costs under this clause. If the Contractor?s accounting system is not capable of tracking costs on a job order basis, the Contractor shall provide a realistic approximation of the allocation of incurred costs attributable to this contract in accordance with the Contractor?s accounting system. FAR 52.232-32(m) does not require certification of incurred costs.

(d) Security for financing.

(1) Title to the property described in paragraph (f) of the clause at FAR 52.232-32, Performance-Based Payments, is the preferred security for receipt of performance-based payments.

(2)(i) If the Contractor?s accounting system is not capable of identifying and tracking through the build cycle the property that is allocable and properly chargeable to this contract, the Contracting Officer may consider acceptance of one or a combination of the following alternative forms of security sufficient to constitute adequate security for the performance-based payments and so specify in the contract, consistent with FAR 32.202-4:

(A) A paramount lien on assets.

(B) An irrevocable letter of credit from a federally insured financial institution.

(C) A bond from a surety, acceptable in accordance with FAR part 28.

(D) A guarantee of repayment from a person or corporation of demonstrated liquid net worth, connected by significant ownership interest to the Contractor.

(E) Title to identified Contractor assets of adequate worth.

(ii) Paragraph (f) of the clause at FAR 52.232-32 does not apply to the extent that the Contractor and the Contracting Officer agree on alternative forms of security. In the event the Contractor fails to provide adequate security, as required in this contract, no financing payment will be made under this contract. Upon receipt of adequate security, financing payments will be made, including all previous payments to which the Contractor is entitled, in accordance with the terms of the provisions for

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contract financing. If at any time the Contracting Officer determines that the security provided by the Contractor is insufficient, the Contractor shall promptly provide such additional security as the Contracting Officer determines necessary. In the event the Contractor fails to provide such additional security, the Contracting Officer may collect or liquidate such security that has been provided and suspend further payments to the Contractor; and the Contractor shall repay to the Government the amount of unliquidated financing payments as the Contracting Officer at his sole discretion deems repayable.

(End of clause)

252.232-7013 Performance-Based Payments?Deliverable-Item Basis.

As prescribed in 232.1005-70(a)(2), use the following clause:

PERFORMANCE-BASED PAYMENTS-DELIVERABLE-ITEM BASIS (DEC 2022)

(a) Performance-based payments shall form the basis for the contract financing payments provided under this contract and shall apply to Contract Line Item Numbers (CLIN(s)) [Contracting Officer insert applicable CLIN(s)] . The performance-based payments schedule (Contract Attachment ____) describes the basis for payment, to include identification of the individual payment events, CLINs to which each event applies, evidence of completion, and amount of payment due upon completion of each event.

(b) In accordance with 10 U.S.C. 3802(c), the Contractor?s financial statements shall be in compliance with Generally Accepted Accounting Principles in order to receive performance-based payments.

(c)(1) The Contractor shall, in addition to providing the information required by FAR 52.232-32, submit information for all payment requests using the following format:
Current performance-based payment(s) event(s) addressed by this request:
Contractor shall identify? Amount Totals

(1a) Negotiated value of all previously completed performance-based payment(s) event(s);

(1b) Negotiated value of the current performance-based payment(s) event(s);

(1c) Cumulative negotiated value of performance-based payment(s) event(s) completed to date (1a) + (1b); and

(2) Total costs incurred to date.

(2) Incurred cost is determined by the Contractor?s accounting books and records, to which the Contractor shall provide access upon request of the Contracting Officer. An acceptable accounting system in accordance with DFARS 252.242-7006 is not required for reporting of incurred costs under this clause. If the Contractor?s accounting system is not capable of tracking costs on a job order basis, the Contractor shall provide a realistic approximation of the allocation of incurred costs attributable to this contract in accordance with the Contractor?s accounting system. FAR 52.232-32(m)

does not require certification of incurred costs.

(d) Security for financing.

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(1) Title to the property described in paragraph (f) of the clause at FAR 52.232-32, Performance-Based Payments, is the preferred security for receipt of performance-based payments.

(2)(i) If the Contractor?s accounting system is not capable of identifying and tracking through the build cycle the property that is allocable and properly chargeable to this contract, the Contracting Officer may consider acceptance of one or a combination of the following alternative forms of security sufficient to constitute adequate security for the performance-based payments and so specify in the contract, consistent with FAR 32.202-4:

(A) A paramount lien on assets.

(B) An irrevocable letter of credit from a federally insured financial institution.

(C) A bond from a surety, acceptable in accordance with FAR part 28.

(D) A guarantee of repayment from a person or corporation of demonstrated liquid net worth, connected by significant ownership interest to the Contractor.

(E) Title to identified Contractor assets of adequate worth.

(ii) Paragraph (f) of the clause at FAR 52.232-32 does not apply to the extent that the Contractor and the Contracting Officer agree on alternative forms of security. In the event the Contractor fails to provide adequate security, as required in this contract, no financing payment will be made under this contract. Upon receipt of adequate security, financing payments will be made, including all previous payments to which the Contractor is entitled, in accordance with the terms of the provisions for contract financing. If at any time the Contracting Officer determines that the security provided by the Contractor is insufficient, the Contractor shall promptly provide such additional security as the Contracting Officer determines necessary. In the event the Contractor fails to provide such additional security, the Contracting Officer may collect or liquidate such security that has been provided and suspend further payments to the Contractor; and the Contractor shall repay to the Government the amount of unliquidated financing payments as the Contracting Officer at his sole discretion deems repayable.

(End of clause)

252.232-7014 Reserved.

252.232-7015 Performance-Based Payments?Representation.

As prescribed in 232.1005-70(b), use the following provision:

PERFORMANCE-BASED PAYMENTS?REPRESENTATION (DEC 2022)

(a) In accordance with 10 U.S.C. 3802(c), the Contractor?s financial statements shall

be in compliance with Generally Accepted Accounting Principles in order to receive performance-based payments.

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(b) The Offeror represents that its financial statements are [ ] are not [ ] in compliance with Generally Accepted Accounting Principles.

(End of provision)

252.232-7016 Notice of Progress Payments or Performance-Based Payments.

As prescribed in 232.1005-70(c), insert the following provision:

NOTICE OF PROGRESS PAYMENTS OR PERFORMANCE-BASED PAYMENTS (APR 2020)

(a) The need for customary progress payments in accordance with subpart 32.5 of the Federal Acquisition Regulation (FAR) or performance-based payments in accordance with FAR subpart 32.10 will not be considered as a handicap or adverse factor in the award of the contract.

(b) This solicitation includes a FAR and Defense Federal Acquisition Regulation Supplement (DFARS) clause for performance-based payments and a FAR clause for progress payments. The resultant contract will include either performance-based payments or progress payments, not both, except as may be authorized on separate orders subject to FAR 32.1003(c).

(1) The performance-based payments clauses will be included in the contract if?

(i) The Offeror has provided positive representation in response to DFARS 252.232-7015, Performance-Based Payments?Representation;

(ii) The Offeror proposes a performance-based payment arrangement in accordance with FAR 52.232-28, Invitation to Propose Performance-Based Payments, including proposed events and timing, event completion criteria, event values, and expected expenditure profile; and

(iii) The Offeror and the Government reach agreement on all aspects of the arrangement.

(2) If performance-based payments clauses are not included in the resultant contract, the progress payments clause included in this solicitation will be included in any resultant contract, modified or altered if necessary in accordance with FAR 52.232-16 and its Alternate I. Even though the progress payments clause is included in the contract, the clause shall be inoperative during any time the contractor?s accounting system and controls are determined by the Government to be inadequate for segregation and accumulation of contract costs.

(End of provision)

252.232-7017 Reserved.

252.232-7018 Progress Payments?Multiple Lots.

As prescribed in 232.502-4-70(c), use the following clause:

PROGRESS PAYMENTS?MULTIPLE LOTS (MAY 2023)

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(a) Definitions. As used in this clause?

?Lot? means one or more fixed-price deliverable line items or deliverable subline items representing a single, severable group where the sum of the costs for each group is segregated and a single progress payment rate is used.

?Multiple lots? means more than one lot on a single contract where progress payment proration is performed on a lot-wide, versus contract-wide, basis.

(b) When submitting progress payment requests under the billing instructions in Federal Acquisition Regulation (FAR) clause 52.232-16, Progress Payments, or Defense Federal Acquisition Regulation Supplement (DFARS) clause 252.232-7002, Progress Payments for Foreign Military Sales Acquisitions, of this contract, the Contractor shall?

(1) Submit separate progress payment requests for each lot identified in the contract;

(2) Identify the contract price for the lot as the sum of all fixed-priced line items identified to the lot, in accordance with FAR 32.501-3;

(3) Identify the lot on each progress payment request to which the request applies;

(4) Calculate each request on the basis of the price, costs (including the cost to complete), subcontractor financing, and progress payment liquidations of the lot to which it applies; and

(5) Distribute costs among lots in a manner acceptable to the Administrative Contracting Officer.

(c) Submit a separate progress payment request for U.S. and FMS requirements in accordance with the DFARS clause 252.232-7002, Progress Payments for Foreign Military Sales Acquisitions, of this contract.

(End of clause)

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PGI 232?CONTRACT FINANCING

PGI 232.006-5 Reporting.

Departments and agencies, in accordance with department/agency procedures, shall prepare and submit to the Under Secretary of Defense (Acquisition and Sustainment), through the Principal Director, Defense Pricing, Contracting, and Acquisition Policy, annual reports (Report Control Symbol DD-AT&L(A)1891) containing the information required by FAR 32.006-5.

PGI 232.070 Responsibilities.

(c) The Under or Assistant Secretary, or other designated official, responsible for the comptroller function within the department or agency is the focal point for financing matters at the department/agency headquarters. Departments and agencies may establish contract financing offices at operational levels.

(i) Department/agency contract financing offices are:

(A) Army: Office of the Assistant Secretary of the Army (Financial Management).

(B) Navy: Office of the Assistant Secretary of the Navy (Financial Management and Comptroller), Office of Financial Operations.

(C) Air Force: Air Force Contract Financing Office (SAF/FMPB).

(D) Defense agencies: Office of the agency comptroller.

(ii) Contract financing offices should participate in?

(A) Developing regulations for contract financing;

(B) Developing contract provisions for contract financing; and

(C) Resolving specific cases that involve unusual contract financing requirements.

PGI 232.072 Financial responsibility of contractors.

PGI 232.072-3 Cash flow forecasts.

(d) Cash flow forecasts must?

(1) Show the origin and use of all material amounts of cash within the entire business unit responsible for contract performance, period by period, for the length of the contract (or until the risk of a cash crisis ends); and

(2) Provide an audit trail to the data and assumptions used to prepare it.

(e) Cash flow forecasts can be no more reliable than the assumptions on which they are based. Most important of these assumptions are?

(1) Estimated amounts and timing of purchases and payments for materials, parts, components, subassemblies, and services;

(2) Estimated amounts and timing of payments for purchase or production of capital assets, test facilities, and tooling;

(3) Amounts and timing of fixed cash charges such as debt installments, interest, rentals, taxes, and indirect costs;

(4) Estimated amounts and timing of payments for projected labor, both direct and indirect;

(5) Reasonableness of projected manufacturing and production schedules;

(6) Estimated amounts and timing of billings to customers (including progress payments), and customer payments;

(7) Estimated amounts and timing of cash receipts from lenders or other credit sources, and liquidation of loans; and

(8) Estimated amounts and timing of cash receipts from other sources.

PGI 232.1?FINANCING FOR OTHER THAN A COMMERCIAL PURCHASE

PGI 232.102 Description of contract financing methods.

PGI 232.102-70 Provisional delivery payments.

(a) The contracting officer may establish provisional delivery payments to pay contractors for the costs of supplies and services delivered to and accepted by the Government under the following contract actions, if undefinitized:

(1) Letter contracts contemplating a fixed-price contract.

(2) Orders under basic ordering agreements.

(3) Spares provisioning documents annexed to contracts.

(4) Unpriced equitable adjustments on fixed-price contracts.

(5) Orders under indefinite-delivery contracts.

(b) Provisional delivery payments must be?

(1) Used sparingly;

(2) Priced conservatively; and

(3) Reduced by liquidating previous progress payments in accordance with the Progress Payments clause.

(c) Provisional delivery payments must not?

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(1) Include profit;

(2) Exceed funds obligated for the undefinitized contract action; or

(3) Influence the definitized contract price.

PGI 232.4?ADVANCE PAYMENTS FOR OTHER THAN COMMERCIAL ACQUISITIONS

PGI 232.409-1 Recommendation for approval.

To ensure uniform application of this subpart (see FAR 32.402(e)(1)), the departmental/agency contract financing office shall prepare the documents required by FAR 32.409-1(e) and (f).

PGI 232.410 Findings, determination, and authorization.

If an advance payment procedure is used without a special bank account, replace paragraph (a)(4) of the Findings, Determination, and Authorization for Advance Payments at FAR 32.410 with:

?(4) The proposed advance payment clause contains appropriate provisions as security for advance payments. These provisions include a requirement that the outstanding advance payments will be liquidated from cost reimbursements as they become due the contractor. This security is considered adequate to protect the interest of the Government?.

PGI 232.5?PROGRESS PAYMENTS BASED ON COSTS

PGI 232.501 General.

PGI 232.501-2 Unusual progress payments.

Unusual progress payment arrangements require the advance approval of the Principal Director, Defense Pricing, Contracting, and Acquisition Policy (DPCAP). Contracting

officers must submit all unusual progress payment requests to the department or agency contract financing office for approval and submission to DPCAP.

PGI 232.6--CONTRACT DEBTS

PGI 232.603 Debt determination.

Upon transfer of a case to the contract financing office, the contracting officer must close the debt record by reference to the date of transfer.

PGI 232.604 Demand for payment.

(1) For contract debts resulting from other than a termination for default, the office that first determines an amount due, whether it be the contract administration office, the contracting office, the disbursing office, or the selling office/agency, must?

(i) Make a demand for payment; and

(ii) Provide a copy of the demand to the payment office cited in the contract.

(2) For contract debts resulting from a termination for default, the contracting officer must make the demand and direct the debtor to make such payment to the designated office.

PGI 232.670 Transfer of responsibility for debt collection.

Disbursing officers will transfer responsibility for debt collection to department/agency contract financing offices in accordance with comptroller regulations. Notwithstanding the transfer of the debt collection responsibility, contracting officers must continue to provide assistance as requested by the debt collection office.

PGI 232.671 Bankruptcy reporting.

(1) For those debts covered by this subpart, the department or agency that awarded the contract must furnish the Department of Justice any claims in bankruptcy, insolvency, or in proceedings for reorganization or arrangement. Furnish claims that?

(i) Have been transferred to a contract financing office;

(ii) Are on the way to a contract financing office at the inception of bankruptcy or insolvency proceedings;

(iii) Are pending and not forwarded to a contract financing office at the inception of bankruptcy or insolvency proceedings; and

(iv) Are the result of bankruptcy or insolvency proceedings.

(2) The contract financing office or other office designated within a department or agency will furnish proof of claims to the Department of Justice.

(3) The office of origin of a debt will provide, as soon as possible, information on a bankruptcy, insolvency, reorganization, or rearrangement to the office designated within a department/agency to receive this information.

(4) The information and proof of claim requirements in paragraphs (2) and (3) of this section do not apply to debts of less than $600.

PGI 232.10?PERFORMANCE-BASED PAYMENTS

PGI 232.1001 Policy.

(a) Contracting officer action. Performance-based payments are not practical for use on all fixed-price contracts because they require considerable effort between the contractor and Government to identify the appropriate performance-based payment events and establish the proper completion criteria for those events. Additionally, FAR 32.1003 prohibits contracts from having both progress payments and performance-based payment financing on a contract at the same time. Additional information and instruction on performance-based payments are provided in the DoD Performance-based Payments Guide on the Defense Pricing, Contracting, and Acquisition Policy (Price, Cost and Finance) website under Pricing Topics, Performance Based Payment. See https://www.acq.osd.mil/asda/dpc/pcf/docs/resources-training/Performance_Based_Payment_(PBP)_Guide.pdf.

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Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 32

Defense FAR Supplement (DFARS) Part 232

PGI 232.70?ELECTRONIC SUBMISSION AND PROCESSING OF PAYMENT REQUESTS AND RECEIVING REPORTS

PGI 232.7003 Procedures.

(a) DoD officials receiving payment requests in electronic form must process the payment requests in electronic form. The WAWF system provides the method to electronically process payment requests and receiving reports.

(1) Documents necessary for payment, such as receiving reports, invoice approvals, contracts, contract modifications, and required certifications, must be processed in electronic form.

(2) Scanned documents and other commonly used file formats are only acceptable for processing supporting documentation.

(b) If one of the exceptions to submission in electronic form at 232.7002(a) applies, the contracting officer must?

(1) Consult the payment office and the contract administration office regarding the alternative method to be used for submission of payment requests or receiving reports (e.g., facsimile or conventional mail); and

(2) Provide procedures for invoicing in the contract administration data section of the contract or task or delivery order (e.g., section G, an addendum to FAR 52.212-4, or applicable clause) for submission of invoices by nonelectronic means. If submission of invoices by nonelectronic means is temporary, the procedures should specify the time period for which they apply.

PGI 232.7004 Contract clause instructions.

(b)(1) The clause 252.232-7006, Wide Area WorkFlow Payment Instructions must be located in the contract administration section of the contract (e.g. Section G).

(2) Complete paragraph (f)(1)(ii)(A) of the clause, if applicable, by inserting one of the following document types appropriate to the work being performed:

(i) Invoice and Receiving Report.

(ii) Navy Shipbuilding Invoice?Fixed Price.

(iii) Reparables Receiving Report (for repair services).

(iv) Energy Invoice and Energy Receiving Report.

(3) Complete paragraph (f)(1)(ii)(B) of the clause, if applicable, by inserting one of the following document types appropriate to the work being performed:

(i) Invoice and Receiving Report.

(ii) Invoice 2-in-1 (Services only).

(iii) Construction and Facilities Management Invoice.

(iv) Navy Construction/Facilities Management Invoice.

(v) Telecom Invoice (Contractual).

(4) Do not use the Combo selection for a receiving report.

(5) Complete paragraph (f)(3) of the clause before contract award. Selection of applicable DoDAACs is dependent on the document type and the entitlement system used by the DoD Component.

(i) To determine applicable DoDAACs, use the guidance for WAWF payment instructions at https://piee.eb.mil/.

(ii) If a DoDAAC field is not listed in paragraph (f)(3) Routing Data Table, select ?Other DoDAAC(s)? and list the DoDAAC field name(s) as they appear in the WAWF system and applicable DoDAAC(s).

(iii) When multiple ?Ship to? and inspection/acceptance locations? (i.e. DoDAACs) exist, enter ?See schedule.? The corresponding schedule in the contract/order must cite all applicable DoDAACs.

(iv) Validate DoDAACs using the following resources:

(A) For inspector, acceptor and local processing office roles, use https://piee.eb.mil/ and click on the ?Active DoDAACs & Roles link? in the ?Help? section on the home page to validate active DoDAACs and user roles in WAWF.

(B) For all other DoDAACs, use https://www.daas.dla.mil/daasinq/.

(6) Complete paragraph (g) by entering the WAWF point of contact information for the contracting activity, if applicable. List parties to be notified of document submission.

PGI 232.71?LEVIES ON CONTRACT PAYMENTS

PGI 232.7101 Policy and procedures.

Background. The Internal Revenue Service (IRS) is authorized to collect overdue taxes through a continuous levy up to 100 percent of the debt on certain vendor contract payments disbursed by the Defense Finance and Accounting Service. The levy is continuous until the overdue taxes are paid in full, or other arrangements are made to satisfy the debt. Contractors are required to promptly notify the procuring contracting officer when a tax levy that may result in an inability to perform the contract is imposed, so that the contracting officer and the Principal Director, Defense Pricing, Contracting, and Acquisition Policy (DPCAP), can take appropriate action to mitigate any possible adverse effect on national security.

(b) Procuring contracting officer procedures for reviewing the contractor?s rationale

and submitting the required documentation.

(i) When the procuring contracting officer receives notification from the contractor that the tax levy may result in an inability to perform the contract, the procuring contracting officer must promptly review the contractor?s assessment and

either agree or disagree that the levy may result in an inability to perform. The procuring contracting officer must alert the administrative contracting officer and the cognizant contract auditor when a notice of levy has been received and must obtain any necessary assistance from the administrative contracting officer or contract auditor when performing this review.

(ii) If the procuring contracting officer does not agree with the contractor?s assessment, the procuring contracting officer must notify the contractor of this determination, and no further action will be taken.

(iii) If the procuring contracting officer agrees with the contractor?s assessment that the levy may result in an inability to perform the contract, the procuring contracting officer must document, in writing, whether the inability to perform?

(A) Adversely affects national security; and/or

(B) Will result in significant additional costs to the Government (e.g., cost of re-procurement, loss of contract financing payments when the product produced to date is not salvageable).

(iv) If the procuring contracting officer believes that the levy will impact national security and/or result in significant additional costs to DoD, the procuring contracting officer must, in accordance with agency procedures, promptly notify the Principal Director, DPCAP, via email at osd.pentagon.ousd-a-s.mbx.asda-dp-c-contractpolicy@mail.mil. The notification to the Principal Director, DPCAP, must include?

(A) The rationale supporting the recommendation that the levy may result in an inability to perform the contract;

(B) A description of the adverse effect on national security, if applicable; and

(C) A description and estimate of the additional costs to the Government, if applicable. Since prompt notification to the Principal Director, DPCAP, is essential, the procuring contracting officer should not delay the notification while trying to achieve more precise data.

(c) Principal Director, DPCAP, procedures. The Principal Director, DPCAP, will promptly evaluate the procuring contracting officer?s notification package.

(i) If the Principal Director, DPCAP, disagrees with the recommendation of the procuring contracting officer, the Principal Director, DPCAP, will notify the procuring contracting officer through the same agency channels that were used for submission of the notification.

(ii) If the Principal Director, DPCAP, agrees with the recommendation of the

procuring contracting officer?

(A) When there is an adverse effect on national security, the Principal Director, DPCAP, will notify the payment office, the IRS, and the procuring contracting officer that the total amount of the levy should be promptly returned to the contractor; or

(B) When there is not an adverse effect on national security, but the levy will

result in significant additional costs to DoD, the Principal Director, DPCAP, will promptly notify the procuring contracting officer and the IRS. The Principal Director, DPCAP, notification to the IRS will?

(1) State that the procuring contracting officer has notified the contractor and has recommended that the contractor contact the IRS to resolve the situation;

(2) Request that the IRS expedite resolution of the situation with the contractor; and

(3) Include an estimate of additional costs to DoD that will result if the contractor is unable to perform on the contract.

(d) Procuring contracting officer procedures for notifying the contractor of the decision of the Principal Director, DPCAP. The procuring contracting officer shall promptly notify the contractor, in writing, of the decision made by the Principal Director, DPCAP, including the actions to be taken (if any).

PART 33

OFFICE OF THE ASSISTANT SECRETARY OF WAR

Status: Class D

OFFICE OF THE ASSISTANT SECRETARY OF WAR

3000 DEFENSE PENTAGON

WASHINGTON, DC 20301-3000

ACQUISITION

AND SUSTAINMENT

In reply refer to

DARS Tracking Number: 2026-O0026

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES SPECIAL OPERATIONS

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES TRANSPORTATION

COMMAND (ATTN: ACQUISITION EXECUTIVE)

DEPUTY ASSISTANT SECRETARY OF THE ARMY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE NAVY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE

(CONTRACTING)

DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Class Deviation?Revolutionary Federal Acquisition Regulation (FAR) Overhaul

Part 33, Defense FAR Supplement (DFARS) Part 233

Effective February 1, 2026, contracting officers shall use?

? The revised FAR Part 33, Protests, Disputes, and Appeals published on the Revolutionary FAR Overhaul web page at https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-33 in lieu of the text codified at 48 CFR chapter 1 (https://www.ecfr.gov).

? The attached DFARS Part 233, Protests, Disputes, and Appeals in lieu of the text codified at 48 CFR chapter 2; and

? The attached DFARS Procedures, Guidance, and Information (PGI) 233, Protests, Disputes, and Appeals in lieu of the PGI text published on the Defense Pricing, Contracting, and Acquisition Policy web page at https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.

This class deviation implements the following:

? Section 2 of E.O. 14275, Restoring Common Sense to Federal Procurement, which establishes the policy that the FAR ?should only contain provisions required by statute or essential to sound procurement, and any FAR provisions that do not

advance these objectives should be removed.
DARS Tracking Number: 2026-O0026
Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 33
Defense FAR Supplement (DFARS) Part 233
? Section 4(a) of E.O. 14265, Modernizing Defense Acquisitions and Spurring Innovation in the Defense Industrial Base which requires the Secretary of War to eliminate or revise any unnecessary supplemental regulations or any other internal guidance, such as relevant parts of the Financial Management Regulation and Defense Federal Acquisition Regulation Supplement.
? The Office of Management and Budget memorandum, M-25-26 issued on May 2, 2025, titled, Overhauling the Federal Acquisition Regulation, which provided additional guidance to federal agencies regarding the FAR overhaul.
This class deviation remains in effect until rescinded or incorporated into the FAR, DFARS, and DFARS PGI. Inquiries regarding this class deviation can be addressed to osd.pentagon.ousd-a-s.mbx.dfars@mail.mil.
John M. Tenaglia
Principal Director,
Defense Pricing, Contracting, and
Acquisition Policy
Attachments:
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Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 33
Defense FAR Supplement (DFARS) Part 233

PART 233?PROTESTS, DISPUTES, AND APPEALS

SUBPART 233.1--PROTESTS

233.170 Limited information disclosure.

If the Government limits information disclosure under the authority provided at **240.271-6(d), actions taken by the Government under such authority are prohibited** from challenge in a bid protest before the Government Accountability Office (GAO) or in any Federal court.

233.105 Protests to GAO.

233.105-370 Postaward.

Except as provided in FAR 33.105-3(b)(2) and (c), contracting officers must immediately suspend performance or terminate the award using the time periods in paragraphs (a) through (d) of this section, whichever is later, in lieu of the time periods in FAR 33.105-3(b)(1) if the agency receives notice of a protest from the GAO.

(a) Ten days after the date of contract award.

(b) Ten days after the date a task order or delivery order is issued, where the value exceeds $25 million (10 U.S.C. 3406(f)).

(c) Five days after a debriefing date offered to the protestor under a timely debriefing request in accordance with FAR 15.301 regardless of whether the protestor

rejected the offered debriefing date, unless an earlier debriefing date is negotiated as a result.

(d) Five days after a postaward debriefing under FAR 15.301 is concluded in accordance with 215.301-2.

233.170 Protested acquisitions valued at $1 billion or more.

Follow the procedures at PGI 233.170 for protested acquisitions valued at $1 billion or more.

233.171 Reporting requirement for protests of solicitations or awards.

Follow the procedures at PGI 233.171 for reporting information on protests involving the same contract award or proposed award that have been filed at both the GAO and the U.S. Court of Federal Claims.

SUBPART 233.2--DISPUTES AND APPEALS

233.205 Postaward

233.205-70 Limitations on payment.

See 10 U.S.C. 3862 for limitations on Congressionally directed payment of a claim under 41 U.S.C. chapter 71 (Contract Disputes), a request for equitable adjustment to contract terms, or a request for relief under Public Law 85-804.

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Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 33

Defense FAR Supplement (DFARS) Part 233

233.205-5 Contracting officer's authority.

See PGI 233.205-5 for guidance on reviewing a contractor?s claim.

233.205-70 Disputes clause.

Use Alternate I of the clause at FAR 52.233-1, Disputes, when?

(a) The acquisition is for?

(1) Aircraft;

(2) Spacecraft and launch vehicles;

(3) Naval vessels;

(4) Missile systems;

(5) Tracked combat vehicles; or

(6) Related electronic systems; or

(b) The contracting officer determines that continued performance is?

(1) Vital to the national security, or

(2) Vital to the public health and welfare; or

(c) The head of the contracting activity determines that continued performance is necessary pending resolution of any claim that might arise under or be related to the contract.

233.205-71 Additional contract clause.

Insert the clause at 252.233-7001, Choice of Law (Overseas), in solicitations and contracts when contract performance will be outside the United States and its outlying areas, unless otherwise provided for in a government-to-government agreement.

PART 252? SOLICITATION PROVISIONS AND CONTRACT CLAUSES

SUBPART 252.2?TEXT OF PROVISIONS AND CLAUSES

252.233-7001 Choice of Law (Overseas).

As prescribed in 233.205-71, use the following clause:

CHOICE OF LAW (OVERSEAS) (JUN 1997)

This contract shall be construed and interpreted in accordance with the substantive laws of the United States of America. By the execution of this contract, the Contractor expressly agrees to waive any rights to invoke the jurisdiction of local national courts where this contract is performed and agrees to accept the exclusive jurisdiction of the United States Armed Services Board of Contract Appeals and the United States Court

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Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 33

Defense FAR Supplement (DFARS) Part 233

of Federal Claims for the hearing and determination of any and all disputes that may arise under the Disputes clause of this contract.

(End of clause)

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Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 33

Defense FAR Supplement (DFARS) Part 233

PGI 233.1?PROTESTS

PGI 233.170 Protested acquisitions valued at $1 billion or more.

If a protest is filed against a competitively awarded Major Defense Acquisition Program or an acquisition of services valued at $1 billion or more, the agency involved will brief the Principal Director, Defense Pricing, Contracting, and Acquisition Policy, within 10 days of the filing. The briefing must outline?

(a) The basis of the protest;

(b) The agency?s position; and

(c) Any other information the agency deems relevant to the protest.

PGI 233.171 Reporting requirement for protests of solicitations or awards.

(a) The Protest Tracker on the Procurement Integrated Enterprise Environment (PIEE) (accessible at https://piee.eb.mil/) is the bid protest data repository required by Section 822(c) of the National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232).

(b) When protests involving the same contract or proposed award, valued at any amount, have been filed at both the Government Accountability Office and the U.S. Court of Federal Claims (COFC), the contracting officer will report the protest information required in the Protest Tracker no later than 10 days after the outcome of the protest at the COFC.

(c) Instructions for reporting protest information in the Protest Tracker are available on the PIEE webpage.

PGI 233.2?DISPUTES AND APPEALS

PGI 233.205-5 Contracting officer's authority.

When reviewing a claim, the contracting officer should obtain information on the contractor's previous claims. This history can reveal claim patterns and accuracy, and settlement outcomes. Potential sources of information include legal counsel, other contracting activities, and the Defense Contract Audit Agency.

PART 34

OFFICE OF THE ASSISTANT SECRETARY OF WAR

Status: Class D

OFFICE OF THE ASSISTANT SECRETARY OF WAR

3000 DEFENSE PENTAGON

WASHINGTON, DC 20301-3000

ACQUISITION

AND SUSTAINMENT

In reply refer to

DARS Tracking Number: 2026-O0011

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES SPECIAL OPERATIONS

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES TRANSPORTATION

COMMAND (ATTN: ACQUISITION EXECUTIVE)

DEPUTY ASSISTANT SECRETARY OF THE ARMY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE NAVY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE

(CONTRACTING)

DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Class Deviation?Revolutionary Federal Acquisition Regulation (FAR) Overhaul

Part 34, Defense FAR Supplement (DFARS) Part 234

Effective February 1, 2026, contracting officers shall use?

? The revised FAR Part 34, Major System Acquisition published on the Revolutionary FAR Overhaul web page at https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-34 in lieu of the text codified at 48 CFR chapter 1 (https://www.ecfr.gov);

? The attached DFARS Part 234, Major System Acquisition in lieu of the text codified at 48 CFR chapter 2; and

? The attached DFARS Procedures, Guidance, and Information (PGI) 234, Major System Acquisition in lieu of the PGI text published on the Defense Pricing, Contracting, and Acquisition Policy web page at https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.

This class deviation implements the following:

? Section 2 of E.O. 14275, Restoring Common Sense to Federal Procurement, which establishes the policy that the FAR ?should only contain provisions required by statute or essential to sound procurement, and any FAR provisions that do not

advance these objectives should be removed.
DARS Tracking Number: 2026-O0011
Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 34,
Defense FAR Supplement (DFARS) Part 234
? Section 4(a) of E.O. 14265, Modernizing Defense Acquisitions and Spurring Innovation in the Defense Industrial Base which requires the Secretary of War to eliminate or revise any unnecessary supplemental regulations or any other internal guidance, such as relevant parts of the Financial Management Regulation and Defense Federal Acquisition Regulation Supplement.
? The Office of Management and Budget memorandum, M-25-26 issued on May 2, 2025, titled, Overhauling the Federal Acquisition Regulation, which provided additional guidance to federal agencies regarding the FAR overhaul.
This class deviation remains in effect until rescinded or incorporated into the FAR, DFARS, and DFARS PGI. Inquiries regarding this class deviation can be addressed to osd.pentagon.ousd-a-s.mbx.dfars@mail.mil.
John M. Tenaglia
Principal Director,
Defense Pricing, Contracting, and
Acquisition Policy
Attachments:
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DARS Tracking Number: 2026-O0011
Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 34
Defense FAR Supplement (DFARS) Part 234

PART 234?MAJOR SYSTEM ACQUISITION

SUBPART 234.2?EARNED VALUE MANAGEMENT SYSTEM

234.200-70 Definitions.

As used in this subpart?
Acceptable earned value management system means an earned value management system that generally complies with the system criteria in paragraph (b) of the clause at **252.234-7999, Earned Value Management System.**
Earned value management system means a system that complies with the earned value management system guidelines in Electronic Industries Alliance Standard 748, Earned Value Management Systems (EIA-748).

234.201 Policy.

(1) Applicability. Except for the exemption at paragraph (10) of this section, DoD applies the earned value management system requirement as follows:

(i) For cost or incentive contracts and subcontracts valued at $50 million or more, the clause at 252.234-7999, Earned Value Management System, requires the contractor?s earned value management system to comply with the guidelines in Electronic Industries Alliance Standard 748, Earned Value Management Systems (EIA-**748).**

(ii) For cost or incentive contracts and subcontracts valued at $100 million or more, the clause at 252.234-7999, Earned Value Management System, requires the contractor to have an earned value management system that the cognizant Federal agency has determined to comply with the guidelines in EIA-748.

(iii) For cost or incentive contracts and subcontracts valued at less than $50 million ?

(A) The application of earned value management is optional and is a risk-based decision;

(B) Document the decision to apply earned value management in the contract file; and

(C) Follow the procedures at PGI 234.201(1)(iii) for conducting a cost-benefit analysis.

(iv) For firm-fixed-price contracts and subcontracts of any dollar value?

(A) The application of earned value management is discouraged; and

(B) Follow the procedures at PGI 234.201(1)(iv) for obtaining a waiver before applying earned value management.

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Defense FAR Supplement (DFARS) Part 234

(2) Review Procedures. When an offeror proposes a plan for compliance with the earned value management system guidelines in EIA-748, follow the review procedures at PGI 234.201(2).

(3) Defense Contract Management Agency Responsibility. The Defense Contract Management Agency is responsible for determining earned value management system compliance when DoD is the cognizant Federal agency.

(4) Additional Guidance. See PGI 234.201(3) for additional guidance on earned value management.

(5) Acceptability. The cognizant contracting officer, in consultation with the functional specialist and auditor, shall?

(i) Determine the acceptability of the contractor's earned value management system and approve or disapprove the system; and

(ii) Pursue correction of any weaknesses or deficiencies.

(6) Compliance with System Criteria. In evaluating the acceptability of a contractor's earned value management system, the contracting officer, in consultation with the functional specialist and auditor, must determine whether the contractor's earned value management system complies with the system criteria for an acceptable earned value management system as prescribed in the clause at 252.234-7999, Earned Value Management System.

(7) Disposition of findings. (i) Reporting of findings. The functional specialist or auditor must document and report all findings and recommendations to the contracting officer. If the functional specialist or auditor identifies any material weakness in the contractor's earned value management system, the report must include detailed descriptions of the weaknesses or deficiencies.

(ii) Initial determination. (A) The contracting officer must review all findings and recommendations and, if no material weaknesses exist, must promptly notify the contractor, in writing, that the contractor's earned value management system is acceptable and approved; or

(B) If the contracting officer finds that one or more material weaknesses exist due to the contractor's failure to meet one or more of the earned value management system criteria in the clause at 252.234-7999, the contracting officer must?

(1) Promptly make an initial written determination of any material weaknesses and notify the contractor, in writing, providing a description of each material weakness in sufficient detail to allow the contractor to understand the weaknesses (see PGI 234.201(7)(ii));

(2) Request the contractor to respond, in writing, to the initial determination within 30 days; and

(3) Evaluate the contractor's response to the initial determination, in consultation with the auditor or functional specialist, and make a final determination.

(iii) Final determination. (A) The contracting officer must make a final determination and notify the contractor, in writing, that?

(1) The contractor's earned value management system is acceptable and approved, and no material weaknesses remain; or

(2) Material weaknesses remain. The contracting officer must identify any remaining material weaknesses and indicate the adequacy of any proposed or completed corrective action, and?

(i) Request that the contractor, within 45 days of receipt of the final determination, either correct the deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the weaknesses;

(ii) Disapprove the system in accordance with the clause at 252.234-7999 when initial validation is not successfully completed within the timeframe approved by the contracting officer, or the contracting officer determines that the existing earned value management system contains one or more material weaknesses in high-risk guidelines in EIA-748 standards (guidelines 1, 3, 6, 7, 8, 9, 10, 12, 16, 21, 23, 26, 27, 28, 30, or 32).

(iii) When the contracting officer determines that the existing earned value management system contains one or more material weaknesses in one or more of the remaining 16 guidelines in EIA-748 standards, the contracting officer must use discretion to disapprove the system based on input received from functional specialists and the auditor; and

(iv) Withhold payments in accordance with the clause at 252.242-7005, Contractor Business Systems, if the clause is included in the contract.

(B) Follow the procedures relating to monitoring a contractor's corrective

action and the correction of material weaknesses at PGI 234.201(7)(iii).

(8) System approval. The contracting officer must promptly approve a previously disapproved earned value management system and notify the contractor when no remaining material weaknesses exist.

(9) Contracting officer notifications. The cognizant contracting officer must promptly distribute copies of a determination to approve a system, disapprove a system and withhold payments, or approve a previously disapproved system and release withheld payments to the auditor; payment office; affected contracting officers at the buying activities; and cognizant contracting officers in contract administration activities.

(10) Exemption. Do not apply this subpart to contracts primarily for software, including those using a software acquisition pathway in accordance with DoD Instruction 5000.87, Operation of the Software Acquisition Pathway.

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234.203 Solicitation provisions and contract clause.

Except for contracts subject to the exemption at 234.201 paragraph (10), for cost or incentive contracts valued at $50 million or more, and for other contracts for which EVMS will be applied in accordance with 234.201(1)(iii) and (iv)?

(1) Insert the provision at 252.234-7998, Notice of Earned Value Management System, in the solicitation; and

(2) Insert the clause at 252.234-7999, Earned Value Management System, instead of the clause at FAR 52.234-4, Earned Value Management System, in the solicitation and contract.

SUBPART 234.70?ACQUISITION OF MAJOR WEAPON SYSTEMS AS COMMERCIAL PRODUCTS

234.7000 Scope of subpart.

This subpart implements 10 U.S.C. 3455.

234.7001 Definition.

As used in this subpart?

Major weapon system means a weapon system acquired pursuant to a major defense acquisition program.

234.7002 Policy.

(a) Major weapon systems. (1) DoD may treat a major weapon system as a commercial product, or acquire it under procedures established for the acquisition of commercial products, only if?

(i) The Secretary of Defense determines that?

(A) The major weapon system is a commercial product; and

(B) Such treatment is necessary to meet national security objectives; and

(ii) The agency notifies the congressional defense committees at least 30 days before such treatment or acquisition occurs.

(2) The authority of the Secretary of Defense to make a determination under paragraph (a)(1) of this section is not delegable below the level of the Deputy Secretary of Defense.

(b) Subsystems. Treat a subsystem of a major weapon system (other than a commercially available off-the-shelf item) as a commercial product and acquired under procedures established for the acquisition of commercial products if?

(1) The subsystem is intended for a major weapon system being acquired, or has been acquired, under procedures established for the acquisition of commercial products in accordance with paragraph (a) of this section; or

(2) The contracting officer determines in writing that the subsystem is a commercial product in accordance with part 212. 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 part 212), follow the procedures in paragraph (d) of this section.

(3) This paragraph (b) applies to subsystems of major weapon systems DoD acquires 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 part 212).

(c) Components and spare parts. (1) DoD may treat a component or spare part for a major weapon system (other than a commercially available off-the-shelf item) as a commercial product if?

(i) The component or spare part is intended for?

(A) A major weapon system being acquired, or has been acquired, under procedures established for the acquisition of commercial products in accordance with paragraph (a) of this section; or

(B) A subsystem of a major weapon system being acquired, or has been acquired, under procedures established for the acquisition of commercial products in accordance with paragraph (b) of this section; or

(ii) The contracting officer determines in writing that the component or spare part is a commercial product in accordance with part 212. For a component or spare part proposed as a commercial product that has not previously been determined to be a commercial product (see part 212), follow the procedures in paragraph (d) of this section.

(2) This paragraph (c) shall apply only to components and spare parts DoD acquires 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 part 212).

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(d) Commerciality determination. To the extent necessary to make a commercial product determination in accordance with part 212 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 require the offeror 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. (1) Unless an exception at FAR part 15 applies?

(i) To the extent necessary to make a determination of price reasonableness, require the offeror to submit or provide 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, require the offeror to submit or provide 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) 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 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) Do not require an offeror to submit information described in paragraph (e)(1) of this section with regard to a commercially available off-the-shelf item. If necessary, require an offeror 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) If an offeror submits information or analysis relating to the value of a commercial product to support the determination of price reasonableness for the commercial product, 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).

SUBPART 234.71?COST AND SOFTWARE DATA REPORTING

234.7100 Policy.

(a) The cost and software data reporting (CSDR) requirement is mandatory for major defense acquisition programs (as defined in 10 U.S.C. 4201) as specified in DoDI **5000.02, Operation of the Adaptive Acquisition Framework and the DoD 5000.04-M-1,** CSDR Manual. The CSDR system is applied in accordance with the reporting requirements established in DoDI 5000.02. The two principal components of the CSDR

system are contractor cost data reporting and software resources data reporting.

(b) Prior to contract award, consult with the Defense Cost and Resource Center to determine whether the offeror selected for award has proposed a standard CSDR

system, in response to the provision at 252.234-7003, that complies with DoDI 5000.02 and the DoD 5000.04-M-1.

(c) See PGI 234.7100 for contact information for the Defense Cost and Resource Center and the Deputy Director, Cost Assessment.

234.7101 Solicitation provision and contract clause.

(a) Insert the basic or the alternate of the provision at 252.234-7003, Notice of Cost and Software Data Reporting System, in any solicitation that includes the basic or the alternate of the clause at 252.234-7004, Cost and Software Data Reporting.

(1) Insert the basic provision when the solicitation includes the clause at **252.234-7004, Cost and Software Data Reporting?Basic.**

(2) Insert the alternate I provision when the solicitation includes the clause at **252.234-7004, Cost and Software Data Reporting?Alternate I.**

(b) Insert the basic or the alternate of the clause at 252.234-7004, Cost and Software Data Reporting System, in solicitations that include major defense acquisition programs as follows:

(1) Insert the basic clause in solicitations and contracts for major defense acquisition programs that exceed $50 million.

(2) Insert the alternate I clause in solicitations and contracts for major defense acquisition programs with a value equal to or greater than $20 million, but less than or equal to $50 million, when directed by the program manager with the approval of the OSD Deputy Director, Cost Assessment.

SUBPART 234.72?ACQUISITION STRATEGY FOR MAJOR SYSTEMS

234.7200 Scope.

This subpart implements?

(a) Section 818 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. **L. 109-364).**

(b) Section 811 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. **L. 112-239).**

(c) Section 808 of the National Defense Authorization Act for Fiscal Year 2023 (Pub. **L. 117-263).**

(d) 10 U.S.C. 4328(c)(1) and (2).

(e) 10 U.S.C. 4004

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234.7201 Definition.

As used in this subpart?

Production of major defense acquisition program means the production and deployment of a major system that is intended to achieve an operational capability that satisfies mission needs, or an activity otherwise defined as Milestone C under Department of Defense Instruction 5000.02 or related authorities.

234.7202 Procedures.

(a) Selection of contract type for major acquisition programs at Milestone B. For major defense acquisition programs at Milestone B?

(1) The milestone decision authority (MDA) must select, with the advice of the contracting officer, the contract type for a development program at the time of Milestone B approval or, in the case of a space program, Key Decision Point B approval;

(2) The acquisition strategy must document the basis for the contract-type selection. The documentation?

(i) Must include an explanation of the level of program risk; and

(ii) If program risk is determined to be high, must outline the steps taken to reduce program risk and the reasons for proceeding with Milestone B approval despite the risk; and

(3) If the MDA selects a cost-reimbursement type contract, include in the contract file the MDA's written determination that?

(i) The program is so complex and technically challenging that reducing program risk to a level that would permit the use of a fixed-price type contract is impracticable; and

(ii) The complexity and technical challenge of the program does not result from failure to meet the requirements of 10 U.S.C. 4251.

(b) Use of cost-reimbursement line items for production of major defense acquisition programs. (1) Do not use cost-reimbursement line items for the acquisition of production of major defense acquisition programs.

(2) The prohibition at paragraph (1) does not apply where the Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)), or the MDA when the MDA is the service acquisition executive of the military department that is managing the program, submits to the congressional defense committees?

(i) A written certification that the cost-reimbursement line items are needed to provide a required capability in a timely and cost-effective manner; and

(ii) An explanation of the steps taken to ensure that cost-reimbursement line items are used only to achieve the purposes of the exception.

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(3) Include, as applicable, in the contract file a copy of the congressional certification described in paragraph (2).

(c) Low-rate initial production associated with major defense acquisition programs.

(1) Do not procure more than one lot for low-rate initial production, as defined at 10 U.S.C. 4231, associated with a major defense acquisition program if?

(i) The MDA authorizes the use of a fixed-price type contract at the time of Milestone B approval; and

(ii) The scope of work of the fixed-price type contract includes both the development and low-rate initial production of items for such major defense acquisition program.

(2) The service acquisition executive may waive this limitation, delegable to no lower than one level above the contracting officer, if?

(i) The service acquisition executive provides a written notification of the waiver, including associated rationale, to the congressional defense committees no later than 30 days after issuance of the waiver; and

(ii) Include a copy of the waiver and such congressional notification in the contract file.

(d) Sustainment criteria for weapons systems. (1) As provided by the program manager, include clearly defined measurable criteria for engineering activities and design specifications for reliability and maintainability in solicitations and resulting contracts for the technical maturation and risk reduction phase, the engineering and manufacturing development phase or the production phase of a weapon system, including embedded software.

(2) Notwithstanding paragraph (1), if the program manager has determined that such criteria should not be included as described in paragraph (1), include a copy of the justification, executed by the program manager, in the contract file.

(e) Development and demonstration of initial or additional prototype units. (1) Subject to the limitations in paragraph (2), a contract initially awarded from the competitive selection of a proposal resulting from a broad agency announcement (see **235.016) may include?**

(i) A line item or contract option using funds not limited to those identified in 235.016 for the development and demonstration or initial production of technology developed under the contract; or

(ii) The delivery of initial or additional items if the item or a prototype thereof is created as the result of work performed under the contract.

(2)(i) The line item or contract option must require only the minimal quantity of initial or additional items or prototypes that will allow for timely competitive solicitation and award of a follow-on development or production contract for those items.

(ii) The term of the line item or contract option must not exceed 2 years.

(iii) The dollar value of the work to be performed pursuant to the line item or contract option must not exceed $100 million in fiscal year 2017 constant dollars.

(3) See PGI 234.7202(e) regarding the benefits derived from use of this

competitive selection method.

PART 252?SOLICITATION PROVISIONS AND CONTRACT CLAUSES

SUBPART 252.2?TEXT OF PROVISIONS AND CLAUSES

252.234-7998 Notice of Earned Value Management System. (DEVIATION 2026-O0011)

As prescribed in 234.203(1), use the following provision:

NOTICE OF EARNED VALUE MANAGEMENT SYSTEM (FEB 2026) (DEVIATION 2026-O0011)

(a) If the offeror submits a proposal in the amount of $100 million or more?

(1) The offeror shall provide documentation that the Cognizant Federal Agency (CFA) has determined that the proposed Earned Value Management System (EVMS) complies with the EVMS guidelines in the Electronic Industries Alliance Standard 748, Earned Value Management Systems (EIA-748). (current version at time of solicitation). The Government reserves the right to perform reviews of the EVMS when deemed necessary to verify compliance.

(2) If the offeror proposes to use a system that has not been determined to be in compliance with the requirements of paragraph (a)(1) of this provision, the offeror shall submit a comprehensive plan for compliance with the guidelines in EIA-748.

(i) The plan shall?

(A) Describe the EVMS the offeror intends to use in performance of the contract, and how the proposed EVMS complies with the EVMS guidelines in EIA-748;

(B) Distinguish between the offeror's existing management system and modifications proposed to meet the EVMS guidelines;

(C) Describe the management system and its application in terms of the EVMS guidelines;

(D) Describe the proposed procedure for administration of the EVMS guidelines as applied to subcontractors; and

(E) Describe the process the offeror will use to determine subcontractor compliance with EIA-748.

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(ii) The offeror shall provide information and assistance as required by the Contracting Officer to support review of the plan.

(iii) The offeror's EVMS plan must provide milestones that indicate when the offeror anticipates that the EVMS will be compliant with the guidelines in EIA-748.

(b) If the offeror submits a proposal in an amount less than $100 million?

(1) The offeror shall submit a written description of the management procedures it will use and maintain in the performance of any resultant contract to comply with the requirements of the Earned Value Management System clause of the contract. The description shall include?

(i) A matrix that correlates each guideline in EIA-748 (current version at

time of solicitation) to the corresponding process in the offeror's written management procedures; and

(ii) The process the offeror will use to determine subcontractor compliance with EIA-748.

(2) If the offeror proposes to use an EVMS that has been determined by the CFA to be in compliance with the EVMS guidelines in EIA-748, the offeror may submit a copy of the documentation of such determination instead of the written description required by paragraph (b)(1) of this provision.

(c) The offeror shall identify the subcontractors (or the subcontracted effort if subcontractors have not been selected) to whom the EVMS requirements will apply. The offeror and the Government shall agree to the subcontractors or the subcontracted effort selected for application of the EVMS requirements. The offeror shall be responsible for ensuring that the selected subcontractors comply with the requirements of the Earned Value Management System clause of the contract.

(End of provision)

252.234-7999 Earned Value Management System. (DEVIATION 2026-O0011)

As prescribed in 234.203(2), use the following clause:

EARNED VALUE MANAGEMENT SYSTEM (FEB 2026) (DEVIATION 2026-O0011)

(a) Definitions. As used in this clause?

Acceptable earned value management system means an earned value management system that generally complies with the system criteria in paragraph (b) of this clause.

Earned value management system means a system that complies with the earned value management system guidelines in Electronic Industries Alliance Standard 748, Earned Value Management Systems (EIA-748).

Material weakness means a deficiency or combination of deficiencies in the internal control over information in contractor business systems, such that there is a reasonable possibility that a material misstatement of such information will not be prevented, or

detected and corrected, on a timely basis. A reasonable possibility exists when the likelihood of an event occurring is?

(1) Probable; or

(2) More than remote but less than likely (section 806 of Pub. L. 116-283).

(b) System criteria. In the performance of this contract, the Contractor shall use?

(1) An Earned Value Management System (EVMS) that complies with the EVMS guidelines in the American National Standards Institute/Electronic Industries Alliance Standard 748, Earned Value Management Systems (EIA-748); and

(2) Management procedures that provide for generation of timely, reliable, and verifiable information for the Contract Performance Report (CPR) and the Integrated Master Schedule (IMS) required by the CPR and IMS data items of this contract.

(c) If this contract has a value of $100 million or more, the Contractor shall use an

EVMS that has been determined to be acceptable by the Cognizant Federal Agency (CFA). If, at the time of award, the Contractor's EVMS has not been determined by the CFA to be in compliance with the EVMS guidelines as stated in paragraph (b)(1) of this clause, the Contractor shall apply its current system to the contract and shall take necessary actions to meet the milestones in the Contractor's EVMS plan.

(d) If this contract has a value of less than $100 million, the Government will not make a formal determination that the Contractor's EVMS complies with the EVMS guidelines in EIA-748 with respect to the contract. The use of the Contractor's EVMS for this contract does not imply a Government determination of the Contractor's compliance with the EVMS guidelines in EIA-748 for application to future contracts. The Government will allow the use of a Contractor's EVMS that has been formally reviewed and determined by the CFA to be in compliance with the EVMS guidelines in **EIA-748.**

(e) The Contractor shall submit notification of any proposed substantive changes to the EVMS procedures and the impact of those changes to the CFA. If this contract has a value of $100 million or more, unless a waiver is granted by the CFA, any EVMS changes proposed by the Contractor require approval of the CFA prior to implementation. The CFA will advise the Contractor of the acceptability of such changes as soon as practicable (generally within 30 calendar days) after receipt of the Contractor's notice of proposed changes. If the CFA waives the advance approval requirements, the Contractor shall disclose EVMS changes to the CFA at least 14 calendar days prior to the effective date of implementation.

(f) The Government will schedule integrated baseline reviews as early as practicable, and the review process will be conducted not later than 180 calendar days after?

(1) Contract award;

(2) The exercise of significant contract options; and

(3) The incorporation of major modifications.

During such reviews, the Government and the Contractor will jointly assess the Contractor's baseline to be used for performance measurement to ensure complete coverage of the statement of work, logical scheduling of the work activities, adequate resourcing, and identification of inherent risks.

(g) The Contractor shall provide access to all pertinent records and data requested by the Contracting Officer or duly authorized representative as necessary to permit Government surveillance to ensure that the EVMS complies, and continues to comply, with the performance criteria referenced in paragraph (b) of this clause.

(h) When indicated by contract performance, the Contractor shall submit a request for approval to initiate an over-target baseline or over-target schedule to the Contracting Officer. The request shall include a top-level projection of cost and/or schedule growth, a determination of whether or not performance variances will be retained, and a schedule of implementation for the rebaselining. The Government will

acknowledge receipt of the request in a timely manner (generally within 30 calendar days).

(i) Material weaknesses. (1) The Contracting Officer will provide an initial determination to the Contractor, in writing, of any material weaknesses. The initial determination will describe the underlying deficiency in sufficient detail to allow the Contractor to understand the weakness or deficiency.

(2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies material weaknesses in the Contractor's EVMS. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing.

(3) The Contracting Officer will evaluate the Contractor's response and notify the Contractor, in writing, of the Contracting Officer's final determination concerning?

(i) Remaining material weaknesses;

(ii) The adequacy of any proposed or completed corrective action;

(iii) System noncompliance, when the Contractor's existing EVMS fails to comply with the earned value management system guidelines in the EIA-748; and

(iv) System disapproval, if initial EVMS validation is not successfully completed within the timeframe approved by the Contracting Officer, or if the Contracting Officer determines that the Contractor's earned value management system contains one or more material weaknesses in high-risk guidelines in EIA-748 standards

(guidelines 1, 3, 6, 7, 8, 9, 10, 12, 16, 21, 23, 26, 27, 28, 30, or 32). When the Contracting Officer determines that the existing earned value management system contains one or more material weaknesses in one or more of the remaining 16 guidelines in EIA-748 standards, the Contracting Officer will use discretion to disapprove the system based on input received from functional specialists and the auditor.

(4) If the Contractor receives the Contracting Officer's final determination of material weaknesses, the Contractor shall, within 45 days of receipt of the final

determination, either correct the material weaknesses or submit an acceptable corrective action plan showing milestones and actions to eliminate the material weaknesses.

(j) Withholding payments. If the Contracting Officer makes a final determination to disapprove the Contractor's EVMS, and the contract includes the clause at 252.242-7005, Contractor Business Systems, the Contracting Officer will withhold payments in accordance with that clause.

(k) Subcontracts. With the exception of paragraphs (i) and (j) of this clause, the Contractor shall require its subcontractors to comply with EVMS requirements as follows:

(1) For subcontracts valued at $100 million or more that are not primarily for software, the following subcontractors shall comply with the requirements of this clause:

Contracting Officer to insert names of subcontractors (or subcontracted effort if subcontractors have not been selected) designated for application of the EVMS requirements of this clause.

(2) For subcontracts valued at less than $100 million or more that are not primarily for software, the following subcontractors shall comply with the requirements of this clause, excluding the requirements of paragraph (c) of this clause:
Contracting Officer to insert names of subcontractors (or subcontracted effort if subcontractors have not been selected) designated for application of the EVMS requirements of this clause.

(End of clause)

252.234-7003 Notice of Cost and Software Data Reporting System.

Basic. As prescribed in 234.7101(a) and (a)(1), use the following provision:

NOTICE OF COST AND SOFTWARE DATA REPORTING SYSTEM?BASIC

(NOV 2014)

(a) This solicitation includes?

(1) The Government-approved cost and software data reporting (CSDR) plan for the contract, DD Form 2794; and

(2) The related Resource Distribution Table.

(b) As part of its proposal, the Offeror shall?

(1) Describe the process to be used to satisfy the requirements of the DoD **5000.04-M-1, CSDR Manual, and the Government-approved CSDR plan for the** proposed contract;

(2) Demonstrate how contractor cost and data reporting (CCDR) will be based,

to the maximum extent possible, upon actual cost transactions and not cost allocations;

(3) Demonstrate how the data from its accounting system will be mapped into the standard reporting categories required in the CCDR data item descriptions;

(4) Describe how recurring and nonrecurring costs will be segregated;

(5) Provide comments on the adequacy of the CSDR contract plan and related Resource Distribution Table; and

(6) Submit the DD Form 1921, Cost Data Summary Report, and DD Form 1921?1, Functional Cost-Hour Report, with its pricing proposal.

(c) CSDR reporting will be required for subcontractors at any tier with a subcontract that exceeds $50 million. The offeror shall identify, by providing comments on the Resource Distribution Table, the subcontractors, or, if the subcontractors have not been selected, the subcontracted effort in this category.

(End of provision)

Alternate I. As prescribed in 234.7101(a) and (a)(2), use the following provision, which uses a different paragraph (c) than the basic provision:

NOTICE OF COST AND SOFTWARE DATA REPORTING SYSTEM?ALTERNATE I

(NOV 2014)

(a) This solicitation includes?

(1) The Government-approved cost and software data reporting (CSDR) plan for the contract, DD Form 2794; and

(2) The related Resource Distribution Table.

(b) As part of its proposal, the Offeror shall?

(1) Describe the process to be used to satisfy the requirements of the DoD **5000.04-M-1, CSDR Manual, and the Government-approved CSDR plan for the** proposed contract;

(2) Demonstrate how contractor cost and data reporting (CCDR) will be based, to the maximum extent possible, upon actual cost transactions and not cost allocations;

(3) Demonstrate how the data from its accounting system will be mapped into the standard reporting categories required in the CCDR data item descriptions;

(4) Describe how recurring and nonrecurring costs will be segregated;

(5) Provide comments on the adequacy of the CSDR contract plan and related Resource Distribution Table; and

(6) Submit the DD Form 1921, Cost Data Summary Report, and DD Form

1921?1, Functional Cost-Hour Report, with its pricing proposal.

(c) CSDR reporting will be required for subcontractors for selected subcontracts identified in the CSDR contract plan as requiring such reporting. The offeror shall identify, by providing comments on the Resource Distribution Table, the subcontractors, or, if the subcontractors have not been selected, the subcontracted effort.

(End of provision)

252.234-7004 Cost and Software Data Reporting System

Basic. As prescribed in 234.7101(b) and (b)(1), use the following clause:

COST AND SOFTWARE DATA REPORTING SYSTEM?BASIC (NOV 2014)

(a) In the performance of this contract, the Contractor shall use?

(1) A documented standard cost and software data reporting (CSDR) process that satisfies the guidelines contained in the DoD 5000.04?M?1, CSDR Manual;

(2) Management procedures that provide for generation of timely and reliable information for the contractor cost data reports (CCDRs) and software resources data reports (SRDRs) required by the CCDR and SRDR data items of this contract; and

(3) The Government-approved CSDR plan for this contract, DD Form 2794, and the related Resource Distribution Table as the basis for reporting in accordance with the required CSDR data item descriptions (DIDs).

(b) The Contractor shall require CSDR reporting from subcontractors at any tier with a subcontract that exceeds $50 million. If, for subcontracts that exceed $50 million, the Contractor changes subcontractors or makes new subcontract awards, the Contractor shall notify the Government.

(End of clause)

Alternate I. As prescribed in 234.7101(b) and (b)(2), use the following clause, which uses a different paragraph (b) than the basic clause:

COST AND SOFTWARE DATA REPORTING SYSTEM?ALTERNATE I

(NOV 2014)

(a) In the performance of this contract, the Contractor shall use?

(1) A documented standard cost and software data reporting (CSDR) process that satisfies the guidelines contained in the DoD 5000.04?M?1, CSDR Manual;

(2) Management procedures that provide for generation of timely and reliable information for the contractor cost data reports (CCDRs) and software resources data reports (SRDRs) required by the CCDR and SRDR data items of this contract; and

(3) The Government-approved CSDR plan for this contract, DD Form 2794, and

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the related Resource Distribution Table as the basis for reporting in accordance with the required CSDR data item descriptions (DIDs).

(b) The Contractor shall require CSDR reporting from selected subcontractors identified in the CSDR contract plan as requiring such reporting. If the Contractor changes subcontractors or makes new awards for selected subcontract effort, the Contractor shall notify the Government.

(End of clause)

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PGI 234?MAJOR SYSTEM ACQUISITION

PGI 234.2?EARNED VALUE MANAGEMENT SYSTEM

PGI 234.201 Policy.

(1)(iii) When the program manager decides to implement earned value management on contracts and subcontracts valued at less than $20,000,000, a cost-benefit analysis must be conducted and the results documented in the contract file. Considerations for determining the effectiveness of applying earned value management in these situations and guidance for tailoring reporting are available in?

(1) The Integrated Program Management Data Analysis Report (IPMDAR) Implementation & Tailoring Guide; and

(2) The DoD Earned Value Management Implementation Guide.

(iv) In extraordinary cases where cost/schedule visibility is required and cannot be obtained using other means, the program manager must request a waiver for individual contracts from the Milestone Decision Authority. In these cases, the program manager will conduct a business case analysis that includes rationale as to why a cost

or fixed-price incentive contract was not an appropriate contracting vehicle. Considerations for determining the effectiveness of applying earned value management in these situations and guidance for tailoring reporting can be found in?

(1) DoD Instruction 5000.85, paragraph 3C.3.c.(3); and

(2) The DoD Earned Value Management Implementation Guide.

(2) The procuring contracting officer must obtain the assistance of the administrative contracting officer in determining the adequacy of an earned value management system

(EVMS) plan that an offeror proposes for compliance with ANSI/EIA-748, under the provision at DFARS 252.234-7001, Notice of Earned Value Management System. The Government will review and approve the offeror?s EVMS plan before contract award. Instructions for performing EVMS plan reviews can be found at https://www.dcma.mil/HQ/EVMS.

(4) Additional guidance on earned value management can be found in?

(A) The Guidebook for Earned Value Management System (EVMS) System-Level Surveillance at https://www.dcma.mil/HQ/EVMS/;

(B) The Guidebook for Earned Value Management System - Program Analysis; and

(C) The Program Managers? Guide to the Integrated Baseline Review Process (the IBR Guide).

(7) Disposition of findings.

(ii) Initial determination.

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(B)(1) Within 30 days of receiving the report, if the contracting officer makes a determination that there is a material weakness, the contracting officer should provide an initial determination of material weaknesses and a copy of the report to the contractor and require the contractor to submit a written response.

(3) Evaluation of contractor's response. Within 30 days of receiving the contractor?s response, the contracting officer, in consultation with the auditor or cognizant functional specialist, should evaluate the contractor?s response and make a final determination.

(iii) Final determination.

(B)(1) Monitoring contractor's corrective action. The contracting officer and cognizant functional specialist or auditor must monitor the contractor's progress in correcting material weaknesses and deficiencies. If the contractor fails to make adequate progress, the contracting officer must take whatever action is necessary to ensure that the contractor corrects the weaknesses and deficiencies. Actions the contracting officer may take include: withdraw or withhold approval of the system; bringing the issue to the attention of higher level management, as applicable; recommending non-award of potential contracts; and for material weaknesses, implementing or increasing the withholding in accordance with **252.242-7005, Contractor Business Systems.**

(2) Correction of material weaknesses.

(i) When the contractor notifies the contracting officer that the

contractor has corrected the material weaknesses, the contracting officer must request the cognizant functional specialist or auditor to review the correction to determine whether the weaknesses and deficiencies have been resolved.

(ii) The contracting officer must determine whether the contractor has corrected the weaknesses and deficiencies.

(iii) If the contracting officer determines the contractor has corrected the weaknesses and deficiencies, send the contracting officer?s notification to the cognizant functional specialist; auditor; payment office; appropriate action officers responsible for reporting past performance at the requiring activities; and each contracting and contract administration office having substantial business with the contractor as applicable.

PGI 234.70?ACQUISITION OF MAJOR WEAPON SYSTEMS AS COMMERCIAL PRODUCTS

PGI 234.7002 Policy.

(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 234.7002, the provision at 252.215-7010, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data, requires submissions from the offeror.

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(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 15.403-2(c)(3)(iii)(C). See 212.209(a) for requirements of 10 U.S.C. 3453 with regard to market research.

(5) The Department of Defense Guidebook for Acquiring Commercial Items,

Part B, provides additional guidance on the use of value analysis. See ?Value Analysis? within the section on ?Price Analysis Techniques? at https://www.acq.osd.mil/asda/dpc/cp/policy/docs/guidebook/Guidebook_Part_B_Commercial_Item_Pricing_20180126.pdf.

PGI 234.71?COST AND SOFTWARE DATA REPORTING

PGI 234.7100 Policy.

The Cost Assessment and Program Evaluation (CAPE) office, may be contacted at?

Cost Assessment and Program Evaluation

Attn: Deputy Director, Cost Assessment

1800 Defense Pentagon

Washington, DC 20301-1800

osd.mc-alex.cape.mbx.cade-helpdesk@mail.mil

https://cade.osd.mil/

PGI 234.72?ACQUISITION STRATEGY FOR MAJOR SYSTEMS

PGI 234.7202 Procedures.

(b) Use of cost-reimbursement line items for production of major defense acquisition programs. (1) For additional contract type approval requirements for cost-reimbursement contracts, see 216.301-3. For fixed-price incentive (firm target) contracts, see PGI 216.403-1(1)(ii)(B) and (C).

(e) Development and demonstration of initial or additional prototype units.

(3) Upon request by Defense Pricing, Contracting, and Acquisition Policy (Contract Policy), contracting activities must provide the benefits derived from the use of contract line items or contract options for the development and demonstration or initial production of technology developed under the contract, or the delivery of initial or additional items in accordance with DFARS 235.016 and 234.005-1.

PART 35

OFFICE OF THE ASSISTANT SECRETARY OF WAR

Status: Class D

OFFICE OF THE ASSISTANT SECRETARY OF WAR

3000 DEFENSE PENTAGON

WASHINGTON, DC 20301-3000

ACQUISITION

AND SUSTAINMENT

In reply refer to

DARS Tracking Number: 2026-O0014

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES SPECIAL OPERATIONS

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES TRANSPORTATION

COMMAND (ATTN: ACQUISITION EXECUTIVE)

DEPUTY ASSISTANT SECRETARY OF THE ARMY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE NAVY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE

(CONTRACTING)

DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Class Deviation?Revolutionary Federal Acquisition Regulation (FAR) Overhaul

Part 35, Defense FAR Supplement (DFARS) Part 235

Effective February 1, 2026, contracting officers shall use?

? The revised FAR Part 35, Research and Development Contracting published on the Revolutionary FAR Overhaul web page at https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-35 in lieu of the text codified at 48 CFR chapter 1 (https://www.ecfr.gov).

? The attached DFARS Part 235, Research and Development Contracting in lieu of the text codified at 48 CFR chapter 2; and

? The attached DFARS Procedures, Guidance, and Information (PGI) 235, Research and Development Contracting in lieu of the PGI text published on the Defense Pricing, Contracting, and Acquisition Policy web page at https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.

This class deviation implements the following:

? Section 2 of E.O. 14275, Restoring Common Sense to Federal Procurement, which establishes the policy that the FAR ?should only contain provisions required by statute or essential to sound procurement, and any FAR provisions that do not

advance these objectives should be removed.
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? Section 4(a) of E.O. 14265, Modernizing Defense Acquisitions and Spurring Innovation in the Defense Industrial Base which requires the Secretary of War to eliminate or revise any unnecessary supplemental regulations or any other internal guidance, such as relevant parts of the Financial Management Regulation and Defense Federal Acquisition Regulation Supplement.
? The Office of Management and Budget memorandum, M-25-26 issued on May 2, 2025, titled, Overhauling the Federal Acquisition Regulation, which provided additional guidance to federal agencies regarding the FAR overhaul.
This class deviation remains in effect until rescinded or incorporated into the FAR, DFARS, and DFARS PGI. Inquiries regarding this class deviation can be addressed to osd.pentagon.ousd-a-s.mbx.dfars@mail.mil.
John M. Tenaglia
Principal Director,
Defense Pricing, Contracting, and
Acquisition Policy
Attachments:
As stated
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PART 235?RESEARCH AND DEVELOPMENT CONTRACTING

235.001 Definitions.

?Research and development? means those efforts described by the Research, Development, Test, and Evaluation (RDT&E) budget activity definitions found in the DoD Financial Management Regulation (DoD 7000.14-R), Volume 2B, Chapter 5.

SUBPART 235.1?PRESOLICITATION

235.170 Contracting methods and contract type.

(a) For major defense acquisition programs as defined in 10 U.S.C. 4201?

(1) Follow the procedures at 234.7202; and

(2) Notify the milestone decision authority of an intent not to exercise a fixed-price production option on a development contract for a major weapon system reasonably in advance of the expiration of the option exercise period.

(b) For other than major defense acquisition programs?

(1) Do not award a fixed-price type contract for a development program effort unless?

(i) The level of program risk permits realistic pricing;

(ii) The use of a fixed-price type contract permits an equitable and sensible allocation of program risk between the Government and the contractor; and

(iii) A written determination that the criteria of paragraphs (b)(1)(i) and (ii) of this section have been met is executed?

(A) By the USD(A&S) if the contract is over $25 million and is for: research and development for a non-major system; the development of a major system (as defined in FAR 2.101); or the development of a subsystem of a major system; or

(B) By the contracting officer for any development not covered by paragraph (b)(1)(iii)(A) of this section.

(2) Obtain USD(A&S) approval of the Government?s prenegotiation position before negotiations begin, and obtain USD(A&S) approval of the negotiated agreement with the contractor before the agreement is executed, for any action that is?

(i) An increase of more than $250 million in the price or ceiling price of a fixed-price type development contract, or a fixed-price type contract for the lead ship of a class;

(ii) A reduction in the amount of work under a fixed-price type development contract or a fixed-price type contract for the lead ship of a class, when the value of the work deleted is $100 million or more; or

(iii) A repricing of fixed-price type production options to a development contract, or a contract for the lead ship of a class, that increases the price or ceiling price by more than $250 million for equivalent quantities.

235.171 Manufacturing Technology Program.

In accordance with 10 U.S.C. 4841(d) and 4872, for acquisitions under the Manufacturing Technology Program?

(a) Award all contracts using competitive procedures; and

(b) Include in all solicitations an evaluation factor that addresses the extent to which offerors propose to share in the cost of the project (see FAR 15.104).

235.172 Competition.

(a)(1) The use of a broad agency announcement with peer or scientific review for the award of science and technology proposals in accordance with 235.102(a) fulfills the requirement for full and open competition (see 206.101(b)(3)).

(2) Use of a commercial solutions opening with scientific, technological, or other subject-matter expert peer review for the award of innovative solutions or potential capabilities in accordance with subpart 212.70 fulfills the requirement for full and open competition (see 206.101-70).

(b) For a contract that is initially awarded through the competitive selection of a proposal resulting from a broad agency announcement, see subpart 234.72 for the use of contract line items or contract options for the development and demonstration or initial production of technology developed under the contract or the delivery of initial or additional items.

235.173 Special use allowances for research facilities acquired by educational

institutions.

For information on special use allowances for research facilities acquired by educational institutions, see PGI 235.173.

235.174 Indemnification against unusually hazardous risks.

235.174-1 Indemnification under research and development contracts.

(a) Under 10 U.S.C. 3861, and with authorization from the Secretary concerned, contracts for research and/or development may include provisions for indemnification of the contractor or subcontractors for?

(1) Claims by third persons (including employees) for death, bodily injury, or loss of or damage to property;

(2) Loss of or damage to the contractor's property; and

(3) Liability, loss or damage that?

(i) Results from a risk that the contract defines as ?unusually hazardous?;

(ii) Arises from the direct performance of the contract; and

(iii) Is not compensated by insurance or other means.

(b) Clearly define the specific unusually hazardous risks to be indemnified. Submit this definition for approval with the request for authorization to grant indemnification. Include the approved definition in the contract.

235.174-2 Indemnification under contracts involving both research and development and other work.

These contracts may provide for indemnification under the authority of both 10 U.S.C. 3861 and Public Law 85-804. Public Law 85-804 will apply only to work to which 10 U.S.C. 3861 does not apply. Actions under Public Law 85-804 must also comply with **FAR 50.104-3.**

235.175 Export-controlled items.

For requirements regarding access to export-controlled items, see subpart 225.79.

235.176 Contract clauses.

When the contractor is to be indemnified in accordance with 235.174-1, use either?

(a) Insert the clause at 252.235-7000, Indemnification Under 10 U.S.C. 3861?Fixed Price; or 252.235-7001, Indemnification Under 10 U.S.C. 3861?Cost-Reimbursement, as appropriate, when the contractor is to be indemnified in accordance with 235.174-1.

(b) Use a clause substantially the same as the clause at 252.235-7002, Animal Welfare, in solicitations and contracts involving research, development, test, and evaluation or training that use live vertebrate animals.

(c) Insert the basic or the alternate of the clause at 252.235-7003, Frequency Authorization, in solicitations and contracts for developing, producing, constructing, testing, or operating a device requiring a frequency authorization.

(1) Insert the basic clause if agency procedures do not authorize the use of DD Form 1494, Application for Equipment Frequency Allocation, to obtain radio frequency

authorization.

(2) Insert the alternate I clause if agency procedures authorize the use of DD Form 1494, Application for Equipment Frequency Allocation, to obtain frequency authorization.

(d) Insert the clause at 252.235-7010, Acknowledgment of Support and Disclaimer, in solicitations and contracts for research and development.

(e) Insert the at 252.235-7011, Final Scientific or Technical Report, in solicitations and contracts for research and development.

(f) Insert the clause at 252.235-7004, Protection of Human Subjects, in solicitations and contracts that include or may include research involving human subjects in

accordance with 32 CFR Part 219, DoD Issuance 3216.02, and 10 U.S.C. 980, including research that meets exemption criteria under 32 CFR 219.101(b). The clause?

(1) Applies to solicitations and contracts awarded by any DoD component, regardless of mission or funding Program Element Code; and

(2) Does not apply to use of cadaver materials alone, which are not directly regulated by 32 CFR Part 219 or DoD Issuance 3216.02, and which are governed by other DoD policies and applicable State and local laws.

235.102 Broad agency announcement.

(a) General. A broad agency announcement with peer or scientific review may be used for the award of science and technology proposals. Science and technology proposals include proposals for the following:

(i) Basic research (budget activity 6.1).

(ii) Applied research (budget activity 6.2).

(iii) Advanced technology development (budget activity 6.3).

(iv) Advanced component development and prototypes (budget activity 6.4).

SUBPART 235.2?EVALUATION AND AWARD

235.201 Evaluation for award.

See 209.570 for limitations on the award of contracts to contractors acting as lead system integrators.

SUBPART 235.3?POSTAWARD

235.301 Scientific and technical reports.

(b) For DoD, the Defense Technical Information Center is responsible for collecting all scientific and technical reports. For access to these reports, follow the procedures at PGI 235.301(b).

SUBPART 235.4?FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTERS

235.402 Policy.

(b) No DoD fiscal year 1992 or later funds may be obligated or expended to finance activities of a DoD Federally Funded Research and Development Center (FFRDC) if a

member of its board of directors or trustees simultaneously serves on the board of directors or trustees of a profit-making company under contract to DoD, unless the FFRDC has a DoD-approved conflict of interest policy for its members (Section 8107 of Pub. L. 102-172 and similar sections in subsequent Defense appropriations acts).

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235.403 Sponsoring agreements.

(b)(4) DoD-sponsored FFRDCs that function primarily as research laboratories

(The Center for Communications and Computing operated by The Institute for Defense Analysis, Lincoln Laboratory operated by Massachusetts Institute of Technology, and Software Engineering Institute operated by Carnegie Mellon) may respond to solicitations and announcements for programs which promote research, development, demonstration, or transfer of technology (Section 217, Pub. L. 103-337).

SUBPART 252.2--TEXT OF PROVISIONS AND CLAUSES

252.235-7000 Indemnification Under 10 U.S.C. 3861--Fixed Price.

As prescribed in 235.176(a), use the following clause:

INDEMNIFICATION UNDER 10 U.S.C. 3861?FIXED PRICE (DEC 2022)

(a) This clause provides for indemnification under 10 U.S.C. 3861 if the Contractor meets all the terms and conditions of this clause.

(b) Claims, losses, and damages covered?

(1) Claims by third persons for death, bodily injury, sickness, or disease, or the loss, damage, or lost use of property. Claims include those for reasonable expenses of litigation or settlement. The term ?third persons? includes employees of the contractor;

(2) The loss, damage, and lost use of the Contractor's property, but excluding lost profit; and

(3) Loss, damage, or lost use of the Government's property.

(c) The claim, loss, or damage?

(1) Must arise from the direct performance of this contract;

(2) Must not be compensated by insurance or other means, or be within deductible amounts of the Contractor's insurance;

(3) Must result from an unusually hazardous risk as specifically defined in the contract;

(4) Must not result from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, managers, superintendents, or other equivalent representatives who have supervision or direction of?

(i) All or substantially all of the Contractor's business;

(ii) All or substantially all of the Contractor's operations at any one plant or separate location where this contract is being performed; or

(iii) A separate and complete major industrial operation connected with the performance of this contract;

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(5) Must not be a liability assumed under any contract or agreement (except for subcontracts covered by paragraph (h) of this clause), unless the Contracting Officer (or in contracts with the Department of the Navy, the Department) specifically approved the assumption of liability; and

(6) Must be certified as just and reasonable by the Secretary of the department or designated representative.

(d) The Contractor shall buy and maintain, to the extent available, insurance against unusually hazardous risks in the form, amount, period(s) of time, at the rate(s), and with such insurers, as the Contracting Officer (or, for Navy contracts, the Department) may from time to time require and approve. If the cost of this insurance is higher than the cost of the insurance the Contractor had as of the date of the contract, the Government shall reimburse the Contractor for the difference in cost, as long as it is properly allocable to this contract and is not included in the contract price. The Government shall not be liable for claims, loss, or damage if insurance was available and is either required or approved under this paragraph.

(e) A reduction of the insurance coverage maintained by the Contractor on the date of the execution of this contract shall not increase the Government's liability under this clause unless the Contracting Officer consents, and the contract price is equitably adjusted, if appropriate, to reflect the Contractor's consideration for the Government's assumption of increased liability.

(f) Notice. The Contractor shall?

(1) Promptly notify the Contracting Officer of any occurrence, action, or claim that might trigger the Government's liability under this clause;

(2) Furnish the proof or evidence of any claim, loss, or damage in the form and manner that the Government requires; and

(3) Immediately provide copies of all pertinent papers that the Contractor receives or has received.

(g) The Government may direct, participate in, and supervise the settlement or defense of the claim or action. The Contractor shall comply with the Government's directions and execute any authorizations required.

(h) Flowdown. The Government shall indemnify the Contractor if the Contractor has an obligation to indemnify a subcontractor under any subcontract at any tier under this contract for the unusually hazardous risk identified in this contract only if?

(1) The Contracting Officer gave prior written approval for the Contractor to provide in a subcontract for the Contractor to indemnify the subcontractor for unusually hazardous risks defined in this contract;

(2) The Contracting Officer approved those indemnification provisions;

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(3) The subcontract indemnification provisions entitle the Contractor, or the Government, or both, to direct, participate in, and supervise the settlement or defense of relevant actions and claims; and

(4) The subcontract provides the same rights and duties, the same provisions for notice, furnishing of papers and the like, between the Contractor and the subcontractor, as exist between the Government and the Contractor under this clause.

(i) The Government may discharge its obligations under paragraph (h) of this clause by making payments directly to subcontractors or to persons to whom the subcontractors may be liable.

(j) The rights and obligations of the parties under this clause shall survive the termination, expiration, or completion of this contract.

(End of clause)

252.235-7001 Indemnification Under 10 U.S.C. 3861--Cost Reimbursement.

As prescribed in 235.176(a), use the following clause:

INDEMNIFICATION UNDER 10 U.S.C. 3861?COST REIMBURSEMENT

(DEC 2022)

(a) This clause provides for indemnification under 10 U.S.C. 3861 if the Contractor meets all the terms and conditions of this clause.

(b) Claims, losses, and damages covered?

(1) Claims by third persons for death, bodily injury, sickness, or disease, or the loss, damage, or lost use of property. Claims include those for reasonable expenses of litigation or settlement. The term ?third persons? includes employees of the Contractor;

(2) The loss, damage, and lost use of the Contractor's property, but excluding lost profit; and

(3) Loss, damage, or lost use of the Government's property.

(c) The claim, loss, or damage?

(1) Must arise from the direct performance of this contract;

(2) Must not be compensated by insurance or other means, or be within deductible amounts of the Contractor's insurance;

(3) Must result from an unusually hazardous risk as specifically defined in the contract;

(4) Must not result from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, managers, superintendents, or other equivalent representatives who have supervision or direction of?

(i) All or substantially all of the Contractor's business;

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(ii) All or substantially all of the Contractor's operations at any one plant or separate location where this contract is being performed; or

(iii) A separate and complete major industrial operation connected with the

performance of this contract;

(5) Must not be a liability assumed under any contract or agreement (except for subcontracts covered by paragraph (i) of this clause), unless the Contracting Officer (or in contracts with the Department of the Navy, the Department) specifically approved the assumption of liability; and

(6) Must be certified as just and reasonable by the Secretary of the department or designated representative.

(d) A reduction of the insurance coverage maintained by the Contractor on the date of the execution of this contract shall not increase the Government's liability under this clause unless the Contracting Officer consents, and the contract price is equitably adjusted, if appropriate, to reflect the Contractor's consideration for the Government's assumption of increased liability.

(e) Notice. The Insurance--Liability to Third Persons clause of this contract applies also to claims under this clause. In addition, the Contractor shall?

(1) Promptly notify the Contracting Officer of any occurrence, action, or claim that might trigger the Government's liability under this clause;

(2) Furnish the proof or evidence of any claim, loss, or damage in the form and manner that the Government requires; and

(3) Immediately provide copies of all pertinent papers that the contractor receives or has received.

(f) The Government may direct, participate in, and supervise the settlement or defense of the claim or action. The Contractor shall comply with the Government's directions, and execute any authorizations required.

(g) The Limitation of Cost clause of this contract does not apply to the Government's obligations under this clause. The obligations under this clause are excepted from the release required by the Allowable Cost, Fee, and Payment clause of this contract.

(h) Under this clause, a claim, loss, or damage arises from the direct performance of this contract if the cause of the claim, loss, or damage occurred during the period of performance of this contract or as a result of the performance of this contract.

(i) Flowdown. The Government shall indemnify the Contractor if the Contractor has an obligation to indemnify a subcontractor under any subcontract at any tier under this contract for the unusually hazardous risk identified in this contract only if?

(1) The Contracting Officer gave prior written approval for the Contractor to provide in a subcontract for the Contractor to indemnify the subcontractor for unusually hazardous risks defined in this contract;

(2) The Contracting Officer approved those indemnification provisions;

(3) The subcontract indemnification provisions entitle the Contractor, or the Government, or both, to direct, participate in, and supervise the settlement or defense of relevant actions and claims; and

(4) The subcontract provides the same rights and duties, the same provisions

for notice, furnishing of paper and the like, between the Contractor and the subcontractor, as exist between the Government and the Contractor under this clause.

(j) The Government may discharge its obligations under paragraph (i) of this clause by making payments directly to subcontractors or to persons to whom the subcontractors may be liable.

(k) The rights and obligations of the parties under this clause shall survive the termination, expiration, or completion of this contract.

(End of clause)

252.235-7002 Animal Welfare.

As prescribed in 235.176(b), use the following clause:

ANIMAL WELFARE (DEC 2014)

(a)(1) The Contractor shall register its research, development, test, and evaluation or training facility with the Secretary of Agriculture in accordance with 7 U.S.C. 2136 and 9 CFR subpart C, and section 2.30, unless otherwise exempt from this requirement by meeting the conditions in 7 U.S.C. 2136 and 9 CFR parts 1 through 4 for the duration of the activity. The Contractor shall have its proposed animal use approved in accordance with Department of Defense Instruction (DoDI) 3216.01, Use of Animals in DoD Programs, by a DoD Component Headquarters Oversight Office. The Contractor shall furnish evidence of such registration and approval to the Contracting Officer before beginning work under this contract.

(2) The Contractor shall make its animals, and all premises, facilities, vehicles, equipment, and records that support animal care available during business hours and at other times mutually agreeable to the Contractor and the United States Department of Agriculture Office of Animal and Plant Health Inspection Service (USDA/APHIS) representative, personnel representing the DoD component oversight offices, as well as the Contracting Officer, to ascertain that the Contractor is compliant with 7 U.S.C. 2131-2159 and 9 CFR parts 1 through 4.

(b) The Contractor shall acquire animals in accordance with DoDI 3216.01, current at time of award (http://www.dtic.mil/whs/directives/corres/pdf/321601p.pdf).

(c) The Contractor agrees that the care and use of animals will conform with the pertinent laws of the United States, regulations of the Department of Agriculture, and policies and procedures of the Department of Defense (see 7 U.S.C. 2131 et seq., and 9 CFR subchapter A, parts 1 through 4, DoDI 3216.01, Army Regulation 40-33/ SECNAVINST 3900.38C/AFMAN 40-401(I)/DARPAINST 18/USUHSINST 3203). The

Contractor shall also comply with DoDI 1322.24, Medical Readiness Training, if this contract includes acquisition of training.

(d) The Contracting Officer may immediately suspend, in whole or in part, work and further payments under this contract for failure to comply with the requirements of paragraphs (a) through (c) of this clause.

(1) The suspension will stay in effect until the Contractor complies with the requirements.

(2) Failure to complete corrective action within the time specified by the Contracting Officer may result in termination of this contract and, if applicable, removal of the Contractor's name from the approved vendor list for live animals used in medical training.

(e) The Contractor may request registration of its facility by contacting USDA/APHIS/AC, 4700 River Road, Unit 84, Riverdale, MD 20737-1234, or via the APHIS Animal Care website at: http://www.aphis.usda.gov/wps/portal/aphis/ourfocus/animalwelfare.

(f) The Contractor shall include the substance of this clause, including this paragraph (f), in all subcontracts involving research, development, test, and evaluation or training that use live vertebrate animals.

(End of clause)

252.235-7003 Frequency Authorization.

Basic. As prescribed in 235.176(c) and (c)(1), use the following clause:

FREQUENCY AUTHORIZATION?BASIC (MAR 2014)

(a) The Contractor shall obtain authorization for radio frequencies required in support of this contract.

(b) For any experimental, developmental, or operational equipment for which the appropriate frequency allocation has not been made, the Contractor shall provide the technical operating characteristics of the proposed electromagnetic radiating device to the Contracting Officer during the initial planning, experimental, or developmental phase of contract performance.

(c) The Contracting Officer shall furnish the procedures for obtaining radio frequency authorization.

(d) The Contractor shall include this clause, including this paragraph (d), in all subcontracts requiring the development, production, construction, testing, or operation of a device for which a radio frequency authorization is required.

(End of clause)

Alternate I. As prescribed at 235.176(c) and (c)(2), use the following clause, which uses a different paragraph (c) than the basic clause:

FREQUENCY AUTHORIZATION?ALTERNATE I (MAR 2014)

(a) The Contractor shall obtain authorization for radio frequencies required in support of this contract.

(b) For any experimental, developmental, or operational equipment for which the appropriate frequency allocation has not been made, the Contractor shall provide the technical operating characteristics of the proposed electromagnetic radiating device to the Contracting Officer during the initial planning, experimental, or developmental

phase of contract performance.

(c) The contractor shall use DD Form 1494, Application for Equipment Frequency Allocation, to obtain radio frequency authorization.

(d) The Contractor shall include this clause, including this paragraph (d), in all subcontracts requiring the development, production, construction, testing, or operation of a device for which a radio frequency authorization is required.

(End of clause)

252.235-7004 Protection of Human Subjects.

As prescribed in 235.176(f), use the following clause:

PROTECTION OF HUMAN SUBJECTS (JUL 2009)

(a) Definitions. As used in this clause?

(1) ?Assurance of compliance? means a written assurance that an institution will comply with requirements of 32 CFR Part 219, as well as the terms of the assurance, which the Human Research Protection Official determines to be appropriate for the research supported by the Department of Defense (DoD) component (32 CFR 219.103).

(2) ?Human Research Protection Official (HRPO)? means the individual designated by the head of the applicable DoD component and identified in the component?s Human Research Protection Management Plan as the official who is responsible for the oversight and execution of the requirements of this clause, although some DoD components may use a different title for this position.

(3) ?Human subject? means a living individual about whom an investigator

(whether professional or student) conducting research obtains data through intervention or interaction with the individual, or identifiable private information (32 CFR 219.102(f)). For example, this could include the use of human organs, tissue, and body fluids from individually identifiable living human subjects as well as graphic, written, or recorded information derived from individually identifiable living human subjects.

(4) ?Institution? means any public or private entity or agency (32 CFR

219.102(b)).

(5) ?Institutional Review Board (IRB)? means a board established for the purposes expressed in 32 CFR Part 219 (32 CFR 219.102(g)).

(6) ?IRB approval? means the determination of the IRB that the research has been reviewed and may be conducted at an institution within the constraints set forth by the IRB and by other institutional and Federal requirements (32 CFR 219.102(h)).

(7) ?Research? means a systematic investigation, including research, development, testing, and evaluation, designed to develop or contribute to generalizable knowledge. Activities that meet this definition constitute research for purposes of 32 CFR Part 219, whether or not they are conducted or supported under a program that is considered research for other purposes. For example, some demonstration and service

programs may include research activities (32 CFR 219.102(d)).

(b) The Contractor shall oversee the execution of the research to ensure compliance with this clause. The Contractor shall comply fully with 32 CFR Part 219 and DoD Directive 3216.02, applicable DoD component policies, 10 U.S.C. 980, and, when applicable, Food and Drug Administration policies and regulations.

(c) The Contractor shall not commence performance of research involving human subjects that is covered under 32 CFR Part 219 or that meets exemption criteria under 32 CFR 219.101(b), or expend funding on such effort, until and unless the conditions of either the following paragraph (c)(1) or (c)(2) have been met:

(1) The Contractor furnishes to the HRPO, with a copy to the Contracting Officer, an assurance of compliance and IRB approval and receives notification from the Contracting Officer that the HRPO has approved the assurance as appropriate for the research under the Statement of Work and also that the HRPO has reviewed the protocol and accepted the IRB approval for compliance with the DoD component policies. The Contractor may furnish evidence of an existing assurance of compliance for acceptance by the HRPO, if an appropriate assurance has been approved in connection with previous research. The Contractor shall notify the Contracting Officer immediately of any suspensions or terminations of the assurance.

(2) The Contractor furnishes to the HRPO, with a copy to the Contracting Officer, a determination that the human research proposed meets exemption criteria in 32 CFR 219.101(b) and receives written notification from the Contracting Officer that the exemption is determined acceptable. The determination shall include citation of the exemption category under 32 CFR 219.101(b) and a rationale statement. In the event of a disagreement regarding the Contractor?s furnished exemption determination, the HRPO retains final judgment on what research activities or classes of research are covered or are exempt under the contract.

(d) DoD staff, consultants, and advisory groups may independently review and inspect the Contractor?s research and research procedures involving human subjects and, based on such findings, DoD may prohibit research that presents unacceptable hazards or otherwise fails to comply with DoD procedures.

(e) Failure of the Contractor to comply with the requirements of this clause will result in the issuance of a stop-work order under Federal Acquisition Regulation clause

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52.242-15 to immediately suspend, in whole or in part, work and further payment under this contract, or will result in other issuance of suspension of work and further payment for as long as determined necessary at the discretion of the Contracting Officer.

(f) The Contractor shall include the substance of this clause, including this paragraph (f), in all subcontracts that may include research involving human subjects in accordance with 32 CFR Part 219, DoD Directive 3216.02, and 10 U.S.C. 980, including research that meets exemption criteria under 32 CFR 219.101(b). This clause

does not apply to subcontracts that involve only the use of cadaver materials.

(End of clause)

252.235-7005 Reserved.

252.235-7006 Reserved.

252.235-7007 Reserved.

252.235-7008 Reserved.

252.235-7009 Reserved.

252.235-7010 Acknowledgment of Support and Disclaimer.

As prescribed in 235.176(d), use the following clause:

ACKNOWLEDGMENT OF SUPPORT AND DISCLAIMER (MAY 1995)

(a) The Contractor shall include an acknowledgment of the Government?s support in the publication of any material based on or developed under this contract, stated in the following terms: This material is based upon work supported by the (name of contracting agency(ies)) under Contract No. (Contracting agency(ies) contract number(s)).

(b) All material, except scientific articles or papers published in scientific journals, must, in addition to any notices or disclaimers by the Contractor, also contain the following disclaimer: Any opinions, findings and conclusions or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of the (name of contracting agency(ies)).

(End of clause)

252.235-7011 Final Scientific or Technical Report.

As prescribed in 235.176(e), use the following clause:

FINAL SCIENTIFIC OR TECHNICAL REPORT (DEC 2019)

The Contractor shall?

(a) Submit an electronic copy of the approved final scientific or technical report, not a summary, delivered under this contract to the Defense Technical Information Center

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(DTIC)] through the web-based input system at https://discover.dtic.mil/submit-documents/ as required by DoD Instruction 3200.12, DoD Scientific and Technical Information Program (STIP). Include a completed Standard Form (SF) 298, Report Documentation Page, in the document, or complete the web-based SF 298.

(b) For instructions on submitting multi-media reports, follow the instructions at https://discover.dtic.mil/submit-documents/.

(c) Email classified reports (up to Secret) to dtic.belvoir.da.mbx.tr@mail.smil.mil. If a SIPRNET email capability is not available, follow the classified submission instructions at https://discover.dtic.mil/submit-documents/.

(End of clause)

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PGI 235?RESEARCH AND DEVELOPMENT CONTRACTING

PGI 235.1?PRESOLICITATION

PGI 235.173 Special use allowances for research facilities acquired by educational institutions.

(a) Definitions. As used in this subsection?

(1) ?Research facility? means?

(i) Real property, other than land; and

(ii) Includes structures, alterations, and improvements, acquired for the purpose of conducting scientific research under contracts with departments and agencies of the DoD.

(2) ?Special use allowance? means a negotiated direct or indirect allowance?

(i) For construction or acquisition of buildings, structures, and real property, other than land; and

(ii) Where the allowance is computed at an annual rate exceeding the rate which normally would be allowed under FAR Subpart 31.3.

(b) Policy.

(1) Educational institutions are to furnish the facilities necessary to perform defense contracts. FAR 31.3 governs how much the Government will reimburse the institution for the research programs. However, in extraordinary situations, the Government may give special use allowances to an educational institution when the institution is unable to provide the capital for new laboratories or expanded facilities needed for defense contracts.

(2) Decisions to provide a special use allowance must be made on a case-by-case basis, using the criteria in paragraph (c) of this subsection.

(c) Authorization for special use allowance. The head of a contracting activity may approve special use allowances only when all of the following conditions are met?

(1) The research facility is essential to the performance of DoD contracts;

(2) Existing facilities, either Government or nongovernment, cannot meet program requirements practically or effectively;

(3) The proposed agreement for special use allowances is a sound business arrangement;

(4) The Government's furnishing of Government-owned facilities is undesirable or impractical; and

(5) The proposed use of the research facility is to conduct essential Government research which requires the new or expanded facilities.

(d) Application of the special use allowance.

(1) In negotiating a special use allowance?

(i) Compare the needs of DoD and of the institution for the research facility to

determine the amount of the special use allowance;

(ii) Consider rental costs for similar space in the area where the research facility is or will be located to establish the annual special use allowance;

(iii) Do not include or allow?

(A) The costs of land; or

(B) Interest charges on capital;

(iv) Do not include maintenance, utilities, or other operational costs;

(v) The period of allowance generally will be?

(A) At least ten years; or

(B) A shorter period if the total amount to be allowed is less than the construction or acquisition cost for the research facility;

(vi) Generally, provide for allocation of the special use allowance equitably among the Government contracts using the research facility;

(vii) Special use allowances apply only in the years in which the Government has contracts in effect with the institution. However, if in any given year there is a reduced level of Government research effort which results in the special use allowance being excessive compared to the Government research funding, a separate special use allowance may be negotiated for that year;

(viii) Special use allowances may be adjusted for the period before construction is complete if the facility is partially occupied and used for Government research during that period.

(2) A special use allowance may be based on either total or partial cost of construction or acquisition of the research facility.

(i) When based on total cost neither the normal use allowance nor depreciation will apply?

(A) During the special use allowance period; and

(B) After the educational institution has recovered the total construction or acquisition cost from the Government or other users.

(ii) When based on partial cost, normal use allowance and depreciation?

(A) Apply to the balance of costs during the special use allowance period to the extent negotiated in the special use allowance agreement; and

(B) Do not apply after the special use allowance period, except for normal use allowance applied to the balance.

(3) During the special use allowance period, the research facility?

(i) Must be available for Government research use on a priority basis over nongovernment use; and

(ii) Cannot be put to any significant use other than that which justified the special use allowance, unless the head of the contracting activity, who approved the special use allowance, consents.

(4) The Government will pay only an allocable share of the special use allowance

when the institution makes any substantial use of the research facility for parties other than the Government during the period when the special use allowance is in effect.

(5) In no event must the institution be paid more than the acquisition costs.

PGI 235.301 Scientific and technical reports.

(b) The Defense Technical Information Center (DTIC) is responsible for collecting all scientific or technological observations, findings, recommendations, and results derived from DoD endeavors, including both in-house and contracted efforts. The DTIC has eligibility and registration requirements for use of its services. Requests for eligibility and registration information should be addressed to DTIC-BC Registration, 8725 John J. Kingman Road, Fort Belvoir, VA 22060-6218, or may be obtained at http://www.dtic.mil.

PART 36

OFFICE OF THE ASSISTANT SECRETARY OF WAR

Status: Class D

OFFICE OF THE ASSISTANT SECRETARY OF WAR

3000 DEFENSE PENTAGON

WASHINGTON, DC 20301-3000

ACQUISITION

AND SUSTAINMENT

In reply refer to

DARS Tracking Number: 2026-O0019

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES SPECIAL OPERATIONS

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES TRANSPORTATION

COMMAND (ATTN: ACQUISITION EXECUTIVE)

DEPUTY ASSISTANT SECRETARY OF THE ARMY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE NAVY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE

(CONTRACTING)

DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Class Deviation?Revolutionary Federal Acquisition Regulation (FAR) Overhaul

Part 36, Defense FAR Supplement (DFARS) Part 236

Effective February 1, 2026, contracting officers shall use?

? The revised FAR Part 36, Construction and Architect-Engineer Contracts published on the Revolutionary FAR Overhaul web page at https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-36 in lieu of the text codified at 48 CFR chapter 1 (https://www.ecfr.gov).

? The attached DFARS Part 236, Construction and Architect-Engineer Contracts in lieu of the text codified at 48 CFR chapter 2; and

? The attached DFARS Procedures, Guidance, and Information (PGI) 236, Construction and Architect-Engineer Contracts in lieu of the PGI text published on the Defense Pricing, Contracting, and Acquisition Policy web page at https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.

This class deviation implements the following:

? Section 2 of E.O. 14275, Restoring Common Sense to Federal Procurement, which establishes the policy that the FAR ?should only contain provisions required by statute or essential to sound procurement, and any FAR provisions that do not

advance these objectives should be removed.
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? Section 4(a) of E.O. 14265, Modernizing Defense Acquisitions and Spurring Innovation in the Defense Industrial Base which requires the Secretary of War to eliminate or revise any unnecessary supplemental regulations or any other internal guidance, such as relevant parts of the Financial Management Regulation and Defense Federal Acquisition Regulation Supplement.
? The Office of Management and Budget memorandum, M-25-26 issued on May 2, 2025, titled, Overhauling the Federal Acquisition Regulation, which provided additional guidance to federal agencies regarding the FAR overhaul.
This class deviation remains in effect until rescinded or incorporated into the FAR, DFARS, and DFARS PGI. Inquiries regarding this class deviation can be addressed to osd.pentagon.ousd-a-s.mbx.dfars@mail.mil.
John M. Tenaglia
Principal Director,
Defense Pricing, Contracting, and
Acquisition Policy
Attachments:
As stated
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PART 236?CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

SUBPART 236.0--GENERAL

236.001 Definitions.

As used in this part?
Marshallese firm means a local firm incorporated in the Marshall Islands, or otherwise legally organized under the laws of the Marshall Islands, that?

(i) Is more than 50 percent owned by citizens of the Marshall Islands; or

(ii) Complies with the following:

(A) The firm has continuously operated in the Marshall Islands at least 3 years before the solicitation date;

(B) Most of the firm's directors of local operations, senior staff, and operating personnel are resident in the Marshall Islands or are U.S. citizens; and

(C) Most of the operating equipment and physical plant are in the Marshall Islands.

United States firm is defined in the provisions at 252.236-7010, Overseas Military Construction--Preference for United States Firms, and 252.236-7011, Overseas Architect-Engineer Services--Restriction to United States Firms.

236.002 Policy.

See Part 237 for policy relating to facilities projects.

SUBPART 236.1?PRE-SOLICITATION

236.101 Construction

236.101-1 Acquisition Strategy

(1) For contracts in connection with a military construction project or military family housing project, see the prohibition at 216.301-3.

(2) If funding may not be available for all of the desired construction features, consider using a bid schedule with additive or deductive items in accordance with PGI **236.101-1.**

(3) Annual military construction appropriations acts restrict the use of cost-plus-fixed-fee contracts (see 216.304-2). See also 216.301-3 regarding the prohibition against the use of certain cost-reimbursement contracts in connection with a military construction project or military family housing project.

(4) In accordance with section 108 of the Military Construction and Veterans Affairs

Appropriations Act, 2009 (Pub. L. 110-329, Division E) and the same provision in subsequent military construction appropriations acts, do not acquire, or allow a contractor to acquire, steel for any construction project or activity for which American steel producers, fabricators, or manufacturers have been denied the opportunity to compete for such acquisition of steel.

236.101-2 Use of two-phase design-build selection procedures.

(a)(4) In lieu of the limitations on the maximum number of offerors that may be selected to submit phase-two proposals at FAR 36.101-2(b)(4), for DoD?

(i) If the contract value exceeds $5.5 million, the solicitation must limit phase-two proposals to no more than five offerors, unless?

(A) The solicitation is issued for an indefinite-delivery indefinite-quantity contract for design-build construction; or

(B) The head of the contracting activity, delegable to a level no lower than the senior contracting official within the contracting activity, approves the contracting officer?s decision with respect to an individual solicitation, that a maximum number greater than five is in the best interest of the Government and is consistent with the purposes and objectives of the two-phase selection procedures. The decision must be documented in the contract file (10 U.S.C. 3241(d)).

(ii) If the contract value is at or below $5.5 million, the solicitation must specify the maximum number of offerors allowed to submit phase-two proposals, based upon the contracting officer?s discretion.

236.101-4 Advance notices and solicitations.

See PGI 236.101-4 for instructions on reporting data for definitization of requests for equitable adjustment.

236.101-5 Liquidated damages.

See 211.4 for instructions on use of liquidated damages.

236.101-6 Government cost estimate.

Follow the procedures at PGI 236.101-6 for handling the Government estimate of construction costs.

236.101-70 Prequalification of sources.

(a) Prequalification procedures may be used when necessary to ensure timely and efficient performance of critical construction projects. Prequalification?

(1) Results in a list of sources determined to be qualified to perform a specific construction contract; and

(2) Limits offerors to those with proven competence to perform in the required manner.

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(b) The head of the contracting activity must?

(1) Authorize the use of prequalification by determining, in writing, that a construction project is of an urgency or complexity that requires prequalification; and

(2) Approve the prequalification procedures.

(c) For small businesses, the prequalification procedures must require the qualifying authority to?

(1) Request a preliminary recommendation from the appropriate Small Business Administration regional office if the qualifying authority believes a small business is not responsible;

(2) Permit the small business to submit a bid or proposal if the preliminary recommendation is that the small business is responsible; and

(3) Follow the procedures in FAR 19.6 if the small business is in line for award and is found nonresponsible.

236.101-71 Clauses.

(a) Insert the following clauses in all fixed-price construction solicitations and contracts?

(1) 252.236-7000, Modification Proposals?Price Breakdown; and

(2) 252.236-7001, Contract Drawings and Specifications.

(b) Insert the following provisions and clauses in fixed-price construction contracts and solicitations as applicable?

(1) 252.236-7002, Obstruction of Navigable Waterways, when the contract will involve work near or on navigable waterways.

(2) When the head of the contracting activity has approved use of a separate bid item for mobilization and preparatory work, insert either?

(i) 252.236-7003, Payment for Mobilization and Preparatory Work. Use this clause for major construction contracts that require?

(A) Major or special items of plant and equipment; or

(B) Large stockpiles of material which are in excess of the type, kind,

and quantity which would be normal for a contractor qualified to undertake the work; or

(ii) 252.236-7004, Payment for Mobilization and Demobilization. Use this clause for contracts involving major mobilization expense, or plant equipment and material (other than the situations covered in paragraph (b)(2)(i) of this section) made necessary by the location or nature of the work.

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(A) Generally, allocate 60 percent of the lump sum price in paragraph (a) of the clause to the cost of mobilization.

(B) Vary this percentage to reflect the circumstances of the particular contract, but in no event should mobilization exceed 80 percent of the payment item.

(3) 252.236-7005, Airfield Safety Precautions, when construction will be performed on or near airfields.

(4) 252.236-7006, Cost Limitation, if the solicitation's bid schedule contains one or more items subject to statutory cost limitations, and if a waiver has not been granted **(FAR 36.205).**

(5) 252.236-7007, Additive or Deductive Items, if the procedures in 236.101-1(2) are being used.

(6) 252.236-7008, Contract Prices?Bidding Schedule, if the contract will contain only unit prices for some items.

(c) Insert the following provisions in solicitations for military construction contracts that are funded with military construction appropriations and are estimated to exceed $1,000,000:

(1) 252.236-7010, Overseas Military Construction?Preference for United States Firms, when contract performance will be in a United States outlying area in the Pacific or in a country bordering the Arabian Gulf.

(2) 252.236-7012, Military Construction on Kwajalein Atoll?Evaluation Preference, when contract performance will be on Kwajalein Atoll.

(d) Insert the clause at 252.236-7013, Requirement for Competition Opportunity for American Steel Producers, Fabricators, and Manufacturers, in solicitations and contracts that?

(1) Use funds appropriated for military construction; and

(2) May require the acquisition of steel as a construction material.

(e) When performing construction contracts in Germany, also insert the clause prescribed at 246.710(4).

236.102 Architect-Engineer Services

236.102-3 Government cost estimate.

See 236.101-6.

236.102-470 Clauses.

Insert the provision at 252.236-7011, Overseas Architect-Engineer Services--Restriction

to United States Firms, in solicitations for architect-engineer contracts that are?

(a) Funded with military construction appropriations;

(b) Estimated to exceed $500,000; and

(c) To be performed in Japan, in any North Atlantic Treaty Organization member country, or in countries bordering the Arabian Gulf.

236.102-570 Notice.

Written notification to the congressional defense committees is required if the total estimated contract price for architect-engineer services or construction design, in connection with military construction, military family housing, or restoration or replacement of damaged or destroyed facilities, exceeds $1.5 million. In accordance with 10 U.S.C. 480, unclassified notifications must be provided by electronic medium. See PGI 236.102-70.

(a) For military construction or military family housing (10 U.S.C. 2807(b)), the notification?

(1) Must include the scope of the project and the estimated contract price; and

(2)(i) If provided by electronic medium, must be provided at least 14 days before the initial obligation of funds; or

(ii) If provided by other than electronic medium, must be received by the congressional defense committees at least 21 days before the initial obligation of funds.

(b) For restoration or replacement of damaged or destroyed facilities (10 U.S.C. 2854(b)), the notification?

(1) Must include the justification for the project, the estimated contract price, and the source of the funds for the project; and

(2)(i) If provided by electronic medium, must be provided at least 7 days before the initial obligation of funds; or

(ii) If provided by other than electronic medium, must be received by the congressional defense committees at least 21 days before the initial obligation of funds.

SUBPART 236.2?EVALUATION AND AWARD

236.201 Construction.

236.201-170 Construction in foreign countries.

(a) In accordance with section 112 of the Military Construction and Veterans Affairs and Related Agencies Appropriations Act, 2015 (Division I of Pub. L. 113-235) and the same provision in subsequent military construction appropriations acts, military construction contracts funded with military construction appropriations, that are estimated to exceed $1,000,000 and are to be performed in the United States outlying areas in the Pacific and on Kwajalein Atoll, or in countries bordering the Arabian Gulf (i.e., Iran, Oman, United Arab Emirates,

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Saudi Arabia, Qatar, Bahrain, Kuwait, and Iraq), must be awarded only to United States firms, unless?

(1) The lowest responsive and responsible offer of a United States firm exceeds the lowest responsive and responsible offer of a foreign firm by more than 20 percent; or

(2) The contract is for military construction on Kwajalein Atoll and the lowest responsive and responsible offer is submitted by a Marshallese firm.

(b) See PGI 236.201-170(b) for guidance on technical working agreements with foreign governments.

236.202 Architect and engineering services.

236.202-1 Evaluation

See PGI 236.202-1 for additional guidance on the development of architect-engineer services evaluation criteria.

236.202-370 Award

In accordance with section 111 of the Military Construction and Veterans Affairs and Related Agencies Appropriations Act, 2015 (Division I of Pub. L. 113-235) and the same provision in subsequent military construction appropriations acts, architect-engineer contracts funded by military construction appropriations that are estimated to exceed $500,000 and are to be performed in Japan, in any North Atlantic Treaty Organization member country, or in countries bordering the Arabian Gulf (i.e., Iran, Oman, United Arab Emirates, Saudi Arabia, Qatar, Bahrain, Kuwait, and Iraq), must be awarded only to United States firms or to joint ventures of United States and host nation firms.

236.202-371 Statutory Fee Limitation

(a) The statutes at 10 U.S.C. 7540, 8612, and 9540, for the Departments of the Army, Navy, and Air Force, respectively, limit the contract price (or fee) for architect-engineer services for the preparation of designs, plans, drawings, and specifications to 10 percent of the project's estimated construction cost. (See PGI **236.202-371).**

(b) The 10 percent limit also applies to contract modifications, including modifications involving?

(1) Work not initially included in the contract; apply the 10 percent limit to the revised total estimated construction cost; and

(2) Redesign work; apply the 10 percent limit by?

(i) Adding the estimated construction cost of the redesign features to he original estimated construction cost;

(ii) Adding the contract cost for the original design to the contract cost for redesign; and

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(iii) Dividing the total contract design cost by the total estimated construction cost. The resulting percentage may not exceed the 10 percent statutory limitation.

(c) The 10 percent limit applies only to that portion of the contract (or modification) price attributable to the preparation of designs, plans, drawings, and specifications. If a contract or modification also includes other services, the part of the price attributable to the other services is not subject to the 10 percent limit.

SUBPART 236.3?POSTAWARD

236.370 Expediting construction contracts.

10 U.S.C. 2858 requires agency head approval to expedite the completion date of a contract funded by a Military Construction Appropriations Act, if additional costs are involved. This approval authority may not be redelegated. The approval authority must?

(a) Certify that the additional expenditures are necessary to protect the National interest; and

(b) Establish a reasonable completion date for the project.

236.371 Architect-Engineer post construction evaluation.

See PGI 236.371 for guidance on additional Architect-Engineer performance evaluations.

SUBPART 252?SOLICITATION PROVISIONS AND CONTRACT CLAUSES

SUBPART 252.2?TEXT OF PROVISIONS AND CLAUSES

252.236-7000 Modification Proposals--Price Breakdown.

As prescribed in 236.101-71(a)(1), use the following clause:

MODIFICATION PROPOSALS--PRICE BREAKDOWN (DEC 1991)

(a) The Contractor shall furnish a price breakdown, itemized as required and within the time specified by the Contracting Officer, with any proposal for a contract modification.

(b) The price breakdown?

(1) Must include sufficient detail to permit an analysis of profit, and of all costs for?

(i) Material;

(ii) Labor;

(iii) Equipment;

(iv) Subcontracts; and

(v) Overhead; and

(2) Must cover all work involved in the modification, whether the work was deleted, added, or changed.

(c) The Contractor shall provide similar price breakdowns to support any amounts claimed for subcontracts.

(d) The Contractor's proposal shall include a justification for any time extension proposed.

(End of clause)

252.236-7001 Contract Drawings and Specifications.

As prescribed in 236.101-71(a)(2), use the following clause:

CONTRACT DRAWINGS AND SPECIFICATIONS (AUG 2000)

(a) The Government will provide to the Contractor, without charge, one set of contract drawings and specifications, except publications incorporated into the technical provisions by reference, in electronic or paper media as chosen by the Contracting Officer.

(b) The Contractor shall?

(1) Check all drawings furnished immediately upon receipt;

(2) Compare all drawings and verify the figures before laying out the work;

(3) Promptly notify the Contracting Officer of any discrepancies;

(4) Be responsible for any errors that might have been avoided by complying with this paragraph (b); and

(5) Reproduce and print contract drawings and specifications as needed.

(c) In general--

(1) Large-scale drawings shall govern small-scale drawings; and

(2) The Contractor shall follow figures marked on drawings in preference to scale measurements.

(d) Omissions from the drawings or specifications or the misdescription of details of work that are manifestly necessary to carry out the intent of the drawings and specifications, or that are customarily performed, shall not relieve the Contractor from performing such omitted or misdescribed details of the work. The Contractor shall perform such details as if fully and correctly set forth and described in the drawings and specifications.

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(e) The work shall conform to the specifications and the contract drawings identified on the following index of drawings:

Title File Drawing No.

(End of clause)

252.236-7002 Obstruction of Navigable Waterways.

As prescribed in 236.101-71(b)(1), use the following clause:

OBSTRUCTION OF NAVIGABLE WATERWAYS (DEC 1991)

(a) The Contractor shall?

(1) Promptly recover and remove any material, plant, machinery, or appliance which the contractor loses, dumps, throws overboard, sinks, or misplaces, and which, in the opinion of the Contracting Officer, may be dangerous to or obstruct navigation;

(2) Give immediate notice, with description and locations of any such

obstructions, to the Contracting Officer; and

(3) When required by the Contracting Officer, mark or buoy such obstructions until the same are removed.

(b) The Contracting Officer may?

(1) Remove the obstructions by contract or otherwise should the Contractor refuse, neglect, or delay compliance with paragraph (a) of this clause; and

(2) Deduct the cost of removal from any monies due or to become due to the Contractor; or

(3) Recover the cost of removal under the Contractor's bond.

(c) The Contractor's liability for the removal of a vessel wrecked or sunk without fault or negligence is limited to that provided in Sections 15, 19, and 20 of the River and Harbor Act of March 3, 1899 (33 U.S.C. 410 et.seq.).

(End of clause)

252.236-7003 Payment for Mobilization and Preparatory Work.

As prescribed in 236.101-71(b)(2), use the following clause:

PAYMENT FOR MOBILIZATION AND PREPARATORY WORK (JAN 1997)

(a) The Government will make payment to the Contractor under the procedures in this clause for mobilization and preparatory work under item no. _____.

(b) Payments will be made for actual payments by the Contractor on work preparatory to commencing actual work on the construction items for which payment is provided under the terms of this contract, as follows?

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(1) For construction plant and equipment exceeding $25,000 in value per unit (as appraised by the Contracting Officer at the work site) acquired for the execution of the work;

(2) Transportation of all plant and equipment to the site;

(3) Material purchased for the prosecution of the contract, but not to be incorporated in the work;

(4) Construction of access roads or railroads, camps, trailer courts, mess halls, dormitories or living quarters, field headquarters facilities, and construction yards;

(5) Personal services; and

(6) Hire of plant.

(c) Requests for payment must include?

(1) An account of the Contractor's actual expenditures;

(2) Supporting documentation, including receipted bills or copies of payrolls and freight bills; and

(3) The Contractor's documentation?

(i) Showing that it has acquired the construction plant, equipment, and material free from all encumbrances;

(ii) Agreeing that the construction plant, equipment, and material will not

be removed from the site without the written permission of the Contracting Officer; and

(iii) Agreeing that structures and facilities prepared or erected for the prosecution of the contract work will be maintained and not dismantled prior to the completion and acceptance of the entire work, without the written permission of the Contracting Officer.

(d) Upon receiving a request for payment, the Government will make payment, less any prescribed retained percentage, if?

(1) The Contracting Officer finds the?

(i) Construction plant, material, equipment, and the mobilization and preparatory work performed are suitable and necessary to the efficient prosecution of the contract; and

(ii) Preparatory work has been done with proper economy and efficiency.

(2) Payments for construction plant, equipment, material, and structures and facilities prepared or erected for prosecution of the contract work do not exceed?

(i) The Contractor's cost for the work performed less the estimated value upon completion of the contract; and

(ii) 100 percent of the cost to the contractor of any items having no appreciable salvage value; and

(iii) 75 percent of the cost to the contractor of items which do have an appreciable salvage value.

(e)(1) Payments will continue to be made for item no. _____, and all payments will be deducted from the contract price for this item, until the total deductions reduce this item to zero, after which no further payments will be made under this item.

(2) If the total of payments so made does not reduce this item to zero, the balance will be paid to the Contractor in the final payment under the contract.

(3) The retained percentage will be paid in accordance with the Payments to Contractor clause of this contract.

(f) The Contracting Officer shall determine the value and suitability of the construction plant, equipment, materials, structures and facilities. The Contracting Officer's determinations are not subject to appeal.

(End of clause)

252.236-7004 Payment for Mobilization and Demobilization.

As prescribed in 236.101-71(b)(2), use the following clause:

PAYMENT FOR MOBILIZATION AND DEMOBILIZATION (DEC 1991)

(a) The Government will pay all costs for the mobilization and demobilization of all of the Contractor's plant and equipment at the contract lump sum price for this item.

(1) _____ percent of the lump sum price upon completion of the contractor's mobilization at the work site.

(2) The remaining _____ percent upon completion of demobilization.

(b) The Contracting Officer may require the Contractor to furnish cost data to justify this portion of the bid if the Contracting Officer believes that the percentages in paragraphs (a)(1) and (2) of this clause do not bear a reasonable relation to the cost of the work in this contract.

(1) Failure to justify such price to the satisfaction of the Contracting Officer will result in payment, as determined by the Contracting Officer, of?

(i) Actual mobilization costs at completion of mobilization;

(ii) Actual demobilization costs at completion of demobilization; and

(iii) The remainder of this item in the final payment under this contract.

(2) The Contracting Officer's determination of the actual costs in paragraph (b)(1)of this clause is not subject to appeal.

(End of clause)

252.236-7005 Airfield Safety Precautions.

As prescribed in 236.101-71(b)(3), use the following clause. At some airfields, the width of the primary surface is 1,500 feet (750 feet on each side of the runway centerline). In such instances, substitute the proper width in the clause.

AIRFIELD SAFETY PRECAUTIONS (DEC 1991)

(a) Definitions. As used in this clause?

(1) ?Landing areas? means?

(i) The primary surfaces, comprising the surface of the runway, runway shoulders, and lateral safety zones. The length of each primary surface is the same as the runway length. The width of each primary surface is 2,000 feet (1,000 feet on each side of the runway centerline);

(ii) The ?clear zone? beyond the ends of each runway, i.e., the extension of the primary surface for a distance of 1,000 feet beyond each end of each runway;

(iii) All taxiways, plus the lateral clearance zones along each side for the length of the taxiways (the outer edge of each lateral clearance zone is laterally 250 feet from the far or opposite edge of the taxiway, e.g., a 75-foot-wide taxiway would have a combined width of taxiway and lateral clearance zones of 425 feet); and

(iv) All aircraft parking aprons, plus the area 125 feet in width extending beyond each edge all around the aprons.

(2) ?Safety precaution areas? means those portions of approach-departure clearance zones and transitional zones where placement of objects incident to contract performance might result in vertical projections at or above the approach-departure clearance, or the transitional surface.

(i) The ?approach-departure clearance surface? is an extension of the primary surface and the clear zone at each end of each runway, for a distance of 50,000 feet, first along an inclined (glide angle) and then along a horizontal plane, both flaring

symmetrically about the runway centerline extended.

(A) The inclined plane (glide angle) begins in the clear zone 200 feet past the end of the runway (and primary surface) at the same elevation as the end of the runway. It continues upward at a slope of 50:1 (1 foot vertically for each 50 feet horizontally) to an elevation of 500 feet above the established airfield elevation. At that point the plane becomes horizontal, continuing at that same uniform elevation to a point 50,000 feet longitudinally from the beginning of the inclined plane (glide angle) and ending there.

(B) The width of the surface at the beginning of the inclined plane (glide angle) is the same as the width of the clear zone. It then flares uniformly, reaching the maximum width of 16,000 feet at the end.

(ii) The ?approach-departure clearance zone? is the ground area under the approach-departure clearance surface.

(iii) The ?transitional surface? is a sideways extension of all primary surfaces, clear zones, and approach-departure clearance surfaces along inclined planes.

(A) The inclined plane in each case begins at the edge of the surface.

(B) The slope of the incline plane is 7:1 (1 foot vertically for each 7 feet horizontally). It continues to the point of intersection with the?

(1) Inner horizontal surface (which is the horizontal plane 150 feet above the established airfield elevation); or

(2) Outer horizontal surface (which is the horizontal plane 500 feet above the established airfield elevation), whichever is applicable.

(iv) The ?transitional zone? is the ground area under the transitional surface. (It adjoins the primary surface, clear zone, and approach-departure clearance zone.)

(b) General.

(1) The Contractor shall comply with the requirements of this clause while?

(i) Operating all ground equipment (mobile or stationary);

(ii) Placing all materials; and

(iii) Performing all work, upon and around all airfields.

(2) The requirements of this clause are in addition to any other safety requirements of this contract.

(c) The Contractor shall?

(1) Report to the Contracting Officer before initiating any work;

(2) Notify the Contracting Officer of proposed changes to locations and operations;

(3) Not permit either its equipment or personnel to use any runway for purposes other than aircraft operation without permission of the Contracting Officer, unless the runway is?

(i) Closed by order of the Contracting Officer; and

(ii) Marked as provided in paragraph (d)(2) of this clause;

(4) Keep all paved surfaces, such as runways, taxiways, and hardstands, clean at all times and, specifically, free from small stones which might damage aircraft propellers or jet aircraft;

(5) Operate mobile equipment according to the safety provisions of this clause, while actually performing work on the airfield. At all other times, the Contractor shall remove all mobile equipment to locations?

(i) Approved by the Contracting Officer;

(ii) At a distance of at least 750 feet from the runway centerline, plus any additional distance; and

(iii) Necessary to ensure compliance with the other provisions of this clause; and

(6) Not open a trench unless material is on hand and ready for placing in the trench. As soon as practicable after material has been placed and work approved, the Contractor shall backfill and compact trenches as required by the contract. Meanwhile, all hazardous conditions shall be marked and lighted in accordance with the other provisions of this clause.

(d) Landing areas. The Contractor shall?

(1) Place nothing upon the landing areas without the authorization of the Contracting Officer;

(2) Outline those landing areas hazardous to aircraft, using (unless otherwise authorized by the Contracting Officer) red flags by day, and electric, battery-operated low-intensity red flasher lights by night;

(3) Obtain, at an airfield where flying is controlled, additional permission from the control tower operator every time before entering any landing area, unless the landing area is marked as hazardous in accordance with paragraph (d)(2) of this clause;

(4) Identify all vehicles it operates in landing areas by means of a flag on a staff attached to, and flying above, the vehicle. The flag shall be three feet square, and consist of a checkered pattern of international orange and white squares of 1 foot on each side (except that the flag may vary up to ten percent from each of these dimensions);

(5) Mark all other equipment and materials in the landing areas, using the same marking devices as in paragraph (d)(2) of this clause; and

(6) Perform work so as to leave that portion of the landing area which is available to aircraft free from hazards, holes, piles of material, and projecting shoulders that might damage an airplane tire.

(e) Safety precaution areas. The Contractor shall?

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(1) Place nothing upon the safety precaution areas without authorization of the Contracting Officer;

(2) Mark all equipment and materials in safety precaution areas, using (unless otherwise authorized by the Contracting Officer) red flags by day, and electric, battery-operated, low-intensity red flasher lights by night; and

(3) Provide all objects placed in safety precaution areas with a red light or red lantern at night, if the objects project above the approach-departure clearance surface or above the transitional surface.

(End of clause)

252.236-7006 Cost Limitation.

As prescribed in 236.101-71(b)(4), use the following provision:

COST LIMITATION (JAN 1997)

(a) Certain items in this solicitation are subject to statutory cost limitations. The limitations are stated in the Schedule.

(b) An offer which does not state separate prices for the items identified in the Schedule as subject to a cost limitation may be considered nonresponsive.

(c) Prices stated in offers for items subject to cost limitations shall include an appropriate apportionment of all costs, direct and indirect, overhead, and profit.

(d) Offers may be rejected which?

(1) Are materially unbalanced for the purpose of bringing items within cost limitations; or

(2) Exceed the cost limitations, unless the limitations have been waived by the Government prior to award.

(End of provision)

252.236-7007 Additive or Deductive Items.

As prescribed in 236.101-71(b)(5), use the following provision:

ADDITIVE OR DEDUCTIVE ITEMS (DEC 1991)

(a) The low offeror and the items to be awarded shall be determined as follows?

(1) Prior to the opening of bids, the Government will determine the amount of funds available for the project.

(2) The low offeror shall be the Offeror that?

(i) Is otherwise eligible for award; and

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(ii) Offers the lowest aggregate amount for the first or base bid item, plus or minus (in the order stated in the list of priorities in the bid schedule) those additive or deductive items that provide the most features within the funds determined available.

(3) The Contracting Officer shall evaluate all bids on the basis of the same additive or deductive items.

(i) If adding another item from the bid schedule list of priorities would make the award exceed the available funds for all offerors, the Contracting Officer will skip that item and go to the next item from the bid schedule of priorities; and

(ii) Add that next item if an award may be made that includes that item and is within the available funds.

(b) The Contracting Officer will use the list of priorities in the bid schedule only to determine the low offeror. After determining the low offeror, an award may be made on any combination of items if?

(1) It is in the best interest of the Government;

(2) Funds are available at the time of award; and

(3) The low offeror's price for the combination to be awarded is less than the price offered by any other responsive, responsible offeror.

(c) Example. The amount available is $100,000. Offeror A's base bid and four additives (in the order stated in the list of priorities in the bid Schedule) are $85,000, $10,000, $8,000, $6,000, and $4,000. Offeror B's base bid and four additives are $80,000, $16,000, $9,000, $7,000, and $4,000. Offeror A is the low offeror. The aggregate amount of offeror A's bid for purposes of award would be $99,000, which includes a base bid plus the first and fourth additives. The second and third additives were skipped because each of them would cause the aggregate bid to exceed $100,000.

(End of provision)

252.236-7008 Contract Prices--Bidding Schedules.

As prescribed in 236.101-71(b)(6), use the following provision:

CONTRACT PRICES--BIDDING SCHEDULES (DEC 1991)

(a) The Government's payment for the items listed in the Bidding Schedule shall constitute full compensation to the Contractor for?

(1) Furnishing all plant, labor, equipment, appliances, and materials; and

(2) Performing all operations required to complete the work in conformity with the drawings and specifications.

(b) The Contractor shall include in the prices for the items listed in the Bidding Schedule all costs for work in the specifications, whether or not specifically listed in the Bidding Schedule.

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(End of provision)

252.236-7009 Reserved.

252.236-7010 Overseas Military Construction--Preference for United States Firms.

As prescribed in 236.101-71(c)(1), use the following provision:

OVERSEAS MILITARY CONSTRUCTION--PREFERENCE FOR

UNITED STATES FIRMS (JAN 1997)

(a) Definition. ?United States firm,? as used in this provision, means a firm

incorporated in the United States that complies with the following:

(1) The corporate headquarters are in the United States;

(2) The firm has filed corporate and employment tax returns in the United States for a minimum of 2 years (if required), has filed State and Federal income tax returns (if required) for 2 years, and has paid any taxes due as a result of these filings; and

(3) The firm employs United States citizens in key management positions.

(b) Evaluation. Offers from firms that do not qualify as United States firms will be evaluated by adding 20 percent to the offer.

(c) Status. The offeror _____ is, _____ is not a United States firm.

(End of provision)

252.236-7011 Overseas Architect-Engineer Services--Restriction to United States Firms.

As prescribed in 236.102-470, use the following provision:

OVERSEAS ARCHITECT-ENGINEER SERVICES--RESTRICTION TO UNITED STATES FIRMS (JAN 1997)

(a) Definition. ?United States firm,? as used in this provision, means a firm incorporated in the United States that complies with the following:

(1) The corporate headquarters are in the United States;

(2) The firm has filed corporate and employment tax returns in the United States for a minimum of 2 years (if required), has filed State and Federal income tax returns (if required) for 2 years, and has paid any taxes due as a result of these filings; and

(3) The firm employs United States citizens in key management positions.

(b) Restriction. Military construction appropriations acts restrict award of a contract, resulting from this solicitation, to a United States firm or a joint venture of United States and host nation firms.

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(c) Status. The offeror confirms, by submission of its offer, that it is a United States firm or a joint venture of United States and host nation firms.

(End of provision)

252.236-7012 Military Construction on Kwajalein Atoll--Evaluation Preference.

As prescribed in 236.101-71(c)(2), use the following provision:

MILITARY CONSTRUCTION ON KWAJALEIN ATOLL--EVALUATION PREFERENCE (MAR 1998)

(a) Definitions. As used in this provision?

(1) ?Marshallese firm? means a local firm incorporated in the Marshall Islands, or otherwise legally organized under the laws of the Marshall Islands, that?

(i) Is more than 50 percent owned by citizens of the Marshall Islands; or

(ii) Complies with the following:

(A) The firm has done business in the Marshall Islands on a continuing basis for not less than 3 years prior to the date of issuance of this solicitation;

(B) Substantially all of the firm?s directors of local operations, senior staff, and operating personnel are resident in the Marshall Islands or are U.S. citizens; and

(C) Most of the operating equipment and physical plant are in the Marshall Islands.

(2) ?United States firm? means a firm incorporated in the United States that complies with the following:

(i) The corporate headquarters are in the United States;

(ii) The firm has filed corporate and employment tax returns in the United States for a minimum of 2 years (if required), has filed State and Federal income tax returns (if required) for 2 years, and has paid any taxes due as a result of these filings; and

(iii) The firm employs United States citizens in key management positions.

(b) Evaluation. Offers from firms that do not qualify as United States firms or Marshallese firms will be evaluated by adding 20 percent to the offer, unless application of the factor would not result in award to a United States firm.

(c) Status. The offeror is _____ a United States firm; _____ a Marshallese firm; _____ Other.

(End of provision)

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252.236-7013 Requirement for Competition Opportunity for American Steel Producers, Fabricators, and Manufacturers.

As prescribed in 236.101-71(d), use the following clause:

REQUIREMENT FOR COMPETITION OPPORTUNITY FOR AMERICAN STEEL PRODUCERS, FABRICATORS, AND MANUFACTURERS (JAN 2023)

(a) Definition. ?Construction material,? as used in this clause, means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work.

(b) The Contractor shall provide American steel producers, fabricators, and manufacturers the opportunity to compete when acquiring steel as a construction material (e.g., steel beams, rods, cables, plates).

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in any subcontract that involves the acquisition of steel as a construction material, including subcontracts for the acquisition of commercial products.

(End of clause)

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PGI 236?CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

PGI 236.1?PRE-SOLICITATION

PGI 236.101 Construction.

PGI 236.101-1 Acquisition Strategy.

(b)(1)(70) Definition: ?lump sum? means a single payment of money, as opposed to a series of payments made over time.

(i) An example of a line item with lump sum pricing in accordance with DFARS part 204 is as follows:

ITEM SUPPLIES/SERVICE QUANTITY UNIT UNIT PRICE AMOUNT

NO.

0001 Repave runway 4 at Joint 1 Job $1,501,866.08 $1,501,866.08

Base Andrews

Firm Fixed Price

PSC: Z1BD

A CRN: AA

Note that payment would occur upon completion and acceptance of the entire effort. Progress payments based on estimates of the percentage of completion (see FAR 52.232-5?Payments Under Fixed-Price Construction Contracts) could occur prior to that point.

(ii) An example of a line item with unit pricing in accordance with DFARS part 204 is as follows:

ITEM NO. SUPPLIES/SERVICE QUANTITY UNIT UNIT AMOUNT

PRICE

0001 Repave runway 4 at Joint 525,128 Square $2.86 $1,501,866.08

Base Andrews Foot

Firm Fixed Price

PSC: Z1BD

A CRN: AA

Note that this allows the contractor to invoice for completed quantities of work, in accordance with FAR 32.102 (d), as those are accepted. Progress payments based on estimates of the percentage of completion (see FAR 52.232-5?Payments Under Fixed-Price Construction Contracts) could also occur prior to that point.

(2) For additive or deductive items?

(A) Use a bid schedule with?

(1) A first or base bid item covering the work generally as specified; and

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(2) A list of priorities that contains one or more additive or deductive bid items that progressively add or omit specified features of the work in a stated order of priority.

(Normally, do not mix additive and deductive bid items in the same solicitation.)

(B) Before opening the bids, record in the contract file the amount of funds available for the project.

(C) Determine the low bidder and the items to be awarded in accordance with the procedures in the clause at 252.236-7007, Additive or Deductive Items.

PGI 236.101-4?Advance notices and solicitations.

(b)(1) The contracting officer shall report data on the timelines for definitization of all requests for equitable adjustment (REAs) for change orders received from contractors under construction contracts. The contracting officer shall report this data using the PALT/Protest/REA Tracker module in the Procurement Integrated Enterprise Environment at https://piee.eb.mil within 10 business days of definitization. Data to be reported includes?

(A) The contract number against which the REA was submitted;

(B) The contractor that submitted the REA;

(C) Date of receipt of the REA; and

(D) Date of definitization of the REA and contract modification number.

(2) Individually reported records will be aggregated by the PALT/Protest/REA Tracker module. The PALT/Protest/REA Tracker module will aggregate the timelines for the definitization of REAs for change orders under construction contracts. Contracting officers shall attach the aggregate results for the military department or defense agency to solicitations in accordance with FAR 36.101-4. See PGI 205.103-70) for further instructions regarding the solicitation notice.

PGI 236.101-6 Government cost estimate.

(1) Designate the Government estimate as ?CUI? (see https://www.dodcui.mil/) unless the information is classified. If it is, handle the estimate in accordance with security regulations.

(2) For sealed bid acquisitions?

(i) File a sealed copy of the Government estimate with the bids. (In the case of two-step acquisitions, this is done in the second step.)

(ii) After the bids are read and recorded, remove the ?CUI? marking (see https://www.dodcui.mil/) and read and record the estimate as if it were a bid, in the same detail as the bids.

PGI 236.102-70 Notice.

During the applicable notice periods, synopsis of the proposed contract action and administrative actions leading to the award may be started.

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PGI 236.2?EVALUATION AND AWARD

PGI 236.201 Construction.

PGI 236.201-170 Construction in foreign countries.

(b) When a technical working agreement with a foreign government is required for a construction contract?

(i) Consider inviting the Army Office of the Chief of Engineers, or the Naval Facilities Engineering Command, to participate in the negotiations.

(ii) The agreement should, as feasible and where not otherwise provided for in other agreements, cover all elements necessary for the construction that are required by laws, regulations, and customs of the United States and the foreign government, including?

(A) Acquisition of all necessary rights;

(B) Expeditious, duty-free importation of labor, material, and equipment;

(C) Payment of taxes applicable to contractors, personnel, materials, and equipment;

(D) Applicability of workers' compensation and other labor laws to citizens of the United States, the host country, and other countries;

(E) Provision of utility services;

(F) Disposition of surplus materials and equipment;

(G) Handling of claims and litigation; and

(H) Resolution of any other foreseeable problems that can be appropriately included in the agreement.

PGI 236.202 Architect and engineering services.

PGI 236.202-1 Evaluation.

The evaluation criteria should be project specific. Use the information in the DD Form 1391, FY__ Military Construction Project Data, when available, and other pertinent project data in preparing the evaluation criteria.

(a) Use performance evaluation data from the Contractor Performance Assessment Report System (CPARS).

(b) The primary factor in architect-engineer contractor selection is the determination of the most highly qualified firm. Also consider secondary factors such as geographic proximity and equitable distribution of work, but do not attribute greater significance to the secondary factors than to qualifications and past performance. Do not reject the overall most highly qualified firm solely in the interest of equitable distribution of contracts.

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(1) Consider the volume of work awarded by DoD during the previous 12 months. In considering equitable distribution of work among architect-engineer firms, include small business concerns; historically black colleges and universities and minority institutions; firms that have not had prior DoD contracts; and small disadvantaged business concerns and joint ventures with small disadvantaged business participants if the North American Industry Classification System (NAICS) Industry Subsector of the acquisition is one in which use of a price evaluation adjustment is currently authorized (see FAR 19.201(b)).

(i) Use data extracted from the Federal Procurement Data System (FPDS).

(ii) Do not consider awards to overseas offices for projects outside the United States, its territories and possessions. Do not consider awards to a subsidiary if the subsidiary is not normally subject to management decisions, bookkeeping, and policies of a holding or parent company or an incorporated subsidiary that operates under a firm name

different from the parent company. This allows greater competition.

(2) Consider as appropriate superior performance evaluations on recently completed DoD contracts.

(3) Consider the extent to which potential contractors identify and commit to small business, to small disadvantaged business (SDB) if the NAICS Industry Subsector of the subcontracted effort is one in which use of an evaluation factor or subfactor for participation of SDB concerns is currently authorized (see FAR 19.201(b)), and to historically black college or university and minority institution performance as subcontractors.

PGI 236.202-371 Statutory Fee Limitation.

This fee limitation applies only to Departments of the Army, Navy, and Air Force requirements (e.g., if the Department of the Army awards a contract for the Defense Logistics Agency or the Department of the Interior, this fee limitation does not apply). See FAR 15.404-9(c)(4)(ii) for the fee limitation that applies to other DoD components and civilian agencies.

PGI 236.3 POSTAWARD

PGI 236.371 Architect-Engineer post construction evaluation.

In addition to the requirements at FAR 42.1102(f), prepare a separate performance evaluation after actual construction of the project. The evaluating official should be the person most familiar with the architect-engineer contractor's performance.

PART 37

OFFICE OF THE ASSISTANT SECRETARY OF WAR

Status: Class D

OFFICE OF THE ASSISTANT SECRETARY OF WAR

3000 DEFENSE PENTAGON

WASHINGTON, DC 20301-3000

ACQUISITION

AND SUSTAINMENT

In reply refer to

DARS Tracking Number: 2026-O0023

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES SPECIAL OPERATIONS

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES TRANSPORTATION

COMMAND (ATTN: ACQUISITION EXECUTIVE)

DEPUTY ASSISTANT SECRETARY OF THE ARMY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE NAVY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE

(CONTRACTING)

DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Class Deviation?Revolutionary Federal Acquisition Regulation (FAR) Overhaul

Part 37, Defense FAR Supplement (DFARS) Part 237

Effective February 1, 2026, contracting officers shall use?

? The revised FAR Part 37, Service Contracting published on the Revolutionary FAR Overhaul web page at https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-37 in lieu of the text codified at 48 CFR chapter 1 (https://www.ecfr.gov).

? The attached DFARS Part 237, Service Contracting in lieu of the text codified at 48 CFR chapter 2; and

? The attached DFARS Procedures, Guidance, and Information (PGI) 237, Service Contracting in lieu of the PGI text published on the Defense Pricing, Contracting, and Acquisition Policy web page at https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.

This class deviation implements the following:

? Section 2 of E.O. 14275, Restoring Common Sense to Federal Procurement, which establishes the policy that the FAR ?should only contain provisions required by statute or essential to sound procurement, and any FAR provisions that do not

advance these objectives should be removed.
DARS Tracking Number: 2026-O0023
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? Section 4(a) of E.O. 14265, Modernizing Defense Acquisitions and Spurring Innovation in the Defense Industrial Base which requires the Secretary of War to eliminate or revise any unnecessary supplemental regulations or any other internal guidance, such as relevant parts of the Financial Management Regulation and Defense Federal Acquisition Regulation Supplement.
? The Office of Management and Budget memorandum, M-25-26 issued on May 2, 2025, titled, Overhauling the Federal Acquisition Regulation, which provided additional guidance to federal agencies regarding the FAR overhaul.
This class deviation remains in effect until rescinded or incorporated into the FAR, DFARS, and DFARS PGI. Inquiries regarding this class deviation can be addressed to osd.pentagon.ousd-a-s.mbx.dfars@mail.mil.
John M. Tenaglia
Principal Director,
Defense Pricing, Contracting, and
Acquisition Policy
Attachments:
As stated
2
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PART 237?SERVICE CONTRACTING

237.001 Definition.

As used in this subpart?
?Nonprofit organization? means any organization that is?
(1) Described in Section 501(c) of the Internal Revenue Code of 1986; and
(2) Exempt from tax under Section 501(a) of that Code.

SUBPART 237.2?PERSONAL SERVICES

237.201 Presolicitation.

237.201-170 Policy.

(a) Personal services contracts for expert and consultant services are authorized by **10 U.S.C. 129b and must also be authorized by a determination and findings (D&F) in** accordance with department and agency regulations. See PGI 237.201-170(a) for further D&F guidance.
(b) Personal services contracts for health care are authorized by 10 U.S.C. 1091.
(1) This authority may be used to acquire?
(i) Direct health care services provided in medical treatment facilities;
(ii) Health care services at locations outside of medical treatment facilities
(such as the provision of medical screening examinations at military entrance

processing stations); and

(iii) Services of clinical counselors, family advocacy program staff, and victim?s services representatives to members of the Armed Forces and covered beneficiaries who require such services, provided in medical treatment facilities or elsewhere. Persons with whom a personal services contract may be entered into under this authority include clinical social workers, psychologists, psychiatrists, and other comparable professionals who have advanced degrees in counseling or related academic disciplines and who meet all requirements for State licensure and board certification requirements, if any, within their fields of specialization.

(2) Select sources for personal services contracts with individuals under the authority of 10 U.S.C. 1091 using the procedures in this section. These procedures do not apply to contracts awarded to business entities other than individuals. Selections made using the procedures in this section are exempt by statute from FAR Part 6 competition requirements.

(3) Approval requirements for?

(i) Direct health care personal services contracts (see paragraphs (b)(1)(i) and (ii) of this section) and a pay cap are in DoDI 6025.5, Personal Services Contracts for Health Care Providers.

(A) A request for a personal services contract for direct health care services must be approved by the commander of the medical/dental treatment facility where the services will be performed.

(B) A request for a personal services contract for a location outside of a medical treatment facility must be approved by the chief of the medical facility who is responsible for the area in which the services will be performed.

(ii) Services of clinical counselors, family advocacy program staff, and victim?s services representatives (see paragraph (b)(1)(iii) of this section), shall be in accordance with agency procedures.

(4) The contracting officer must ensure that the requiring activity provides a copy of the approval with the purchase request.

(5) The contracting officer must provide adequate advance notice of contracting opportunities to individuals residing in the area of the facility. The notice will include the qualification criteria against which individuals responding will be evaluated. The contracting officer will solicit applicants through at least one local publication which serves the area of the facility. Acquisitions under this section for personal service contracts are exempt from the posting and synopsis requirements of FAR Part 5.

(6) The contracting officer shall provide the qualifications of individuals responding to the notice to the commander of the facility for evaluation and ranking in accordance with agency procedures. Individuals must be considered solely based on the professional qualifications established for the particular personal services being acquired and the Government?s estimate of reasonable rates, fees, or other costs. The

commander of the facility shall provide the contracting officer with rationale for the ranking of individuals, consistent with the required qualifications.

(7) Upon receipt from the facility of the ranked listing of applicants, the contracting officer will either?

(i) Enter into negotiations with the highest ranked applicant. If a mutually satisfactory contract cannot be negotiated, the contracting officer will terminate negotiations with the highest ranked applicant and enter into negotiations with the next highest.

(ii) Enter into negotiations with all qualified applicants and select based on qualifications and rates, fees, or other costs.

(8) In the event only one individual responds to an advertised requirement, the contracting officer is authorized to negotiate the contract award. In this case, the individual must still meet the minimum qualifications of the requirement, and the contracting officer must be able to make a determination that the price is fair and reasonable.

(9) If a fair and reasonable price cannot be obtained from a qualified individual, the requirement should be canceled and acquired using procedures other than those set forth in this section.

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(c)(1) In accordance with 10 U.S.C. 129b(d), an agency may enter into a personal services contract if?

(i) The personal services?

(A) Are to be provided by individuals outside the United States, regardless of their nationality;

(B) Directly support the mission of a defense intelligence component or counter-intelligence organization of DoD; or

(C) Directly support the mission of the special operations command of DoD; and

(ii) The head of the contracting activity provides written approval for the proposed contract. The approval must include a determination that addresses the following:

(A) The services to be procured are urgent or unique;

(B) It would not be practical to obtain such services by other means; and

(C) For acquisition of services in accordance with paragraph (c)(1)(A) of this section, the services to be acquired are necessary and appropriate for supporting DoD activities and programs outside the United States.

(2) The contracting officer will ensure that the applicable requirements of paragraph (c)(2) of this section have been satisfied and will include the approval documentation in the contract file.

(d) The requirements of 5 U.S.C. 3109, Employment of Experts and Consultants; Temporary or Intermittent, do not apply to contracts entered into in accordance with

paragraph (c)(1) of this section.

(e) See PGI 237.876 for requirements for certification and approval of requirements for services to prevent contracts from being awarded or administered in a manner that constitutes an unauthorized personal services contract.

(f)(1) Payment to each expert or consultant for personal services under 5 U.S.C. 3109 shall not exceed the highest rate fixed by the Classification Act Schedules for grade GS-15 (see 5 CFR 304.105(a)).

(2) The contract may provide for the same per diem and travel expenses authorized for a Government employee, including actual transportation and per diem in lieu of subsistence for travel between home or place of business and official duty station.

(3) Coordinate with the civilian personnel office on benefits, taxes, personnel ceilings, and maintenance of records.

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SUBPART 237.3--INHERENTLY GOVERNMENTAL FUNCTIONS

237.301 Presolicitation.

237.301-1 Policy.

(a)(i) In addition to the prohibition on award of contracts for the performance of inherently governmental functions, contracting officers must not award contracts for functions that are exempt from private sector performance (see 207.503-70(a)(2)). See **part 207 for the associated documentation requirement.**

SUBPART 237.4?ADVISORY AND ASSISTANCE SERVICES

237.470 Acquisition of audit services.

(a) General policy.

(1) Do not contract for audit services unless?

(i) The cognizant DoD audit organization determines that expertise required to perform the audit is not available within the DoD audit organization; or

(ii) Temporary audit assistance is required to meet audit reporting requirements mandated by law or DoD regulation.

(2) See PGI 237.470 for a list of DoD publications that govern the conduct of audits.

(b) Contract period. Except in unusual circumstances, award contracts for recurring audit services for a 1-year period with at least 2 option years.

(c) Approvals. Do not issue a solicitation for audit services unless the requiring activity provides evidence that the cognizant DoD audit organization has approved the statement of work. The requiring agency must obtain the same evidence of approval for subsequent material changes to the statement of work.

(d) Transparency requirement for firms used to support DoD audits.

(1) This paragraph (d) implements the requirements of Section 1006 of Pub. L. 115-232 and Section 1011 of Pub. L. 116-92 for transparency of accounting firms used to support DoD audits; and extends the statutory requirement, as a matter of DoD policy,

to firms other than accounting firms in order to ensure consistent availability of data for contracting officer evaluation and appropriate use.

(2) This requirement applies to solicitations and contracts for?

(i) Financial statement auditing required under 31 U.S.C. 3521(e); or

(ii) Audit remediation services in support of the Financial Improvement and Audit Remediation Plan described in 10 U.S.C. 240b.

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(3) Any firm responding to a solicitation or awarded a contract for the acquisition of the services described in paragraph (d)(2) of this section is required to represent with regard to whether it has been subject to disciplinary proceedings within the last 3 years and, if the offeror represents that it has, to disclose to DoD before any contract action (including award, renewals, and modifications)?

(i) The details of any disciplinary proceedings, with respect to the firm or its associated persons (including principals and employees), before an entity with the authority to enforce compliance with rules or laws applying to audit services or audit remediation services offered by accounting firms or firms other than accounting firms; and

(ii) For subsequent contract actions after contract award, whether there has been any change regarding previously reported disciplinary proceedings since the last contract action.

(e) Solicitation provisions and contract clauses.

(1) Insert the provision at 252.237-7997, Notice of Special Standards of Responsibility, in solicitations for audit services.

(2) Insert the clause at 252.237-7001, Compliance with Audit Standards, in solicitations and contracts for audit services.

(3) Insert the provision at 252.237-7025, Preaward Transparency Requirements for Firms Offering to Support Department of Defense Audits?Representation and Disclosure, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services, that include the clause at **252.237-7026, Postaward Transparency Requirements for Firms that Support** Department of Defense Audits.

(4) Insert the clause at 252.237-7026, Postaward Transparency Requirements for Firms that Support Department of Defense Audits, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that?

(i) Exceed the simplified acquisition threshold; and

(ii) Are for the acquisition of financial statement auditing or audit remediation services as described in paragraph (d)(2) of this section.

237.471 Consulting services.

See 209.572 for requirements related to conflicts of interest in consulting services

SUBPART 237.8?OTHER SERVICE CONSIDERATIONS

237.802 Presolicitation.

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237.802-70 Prohibition on contracting for firefighting or security-guard functions.

(a) The DoD is prohibited from contracting for the performance of firefighting or security-guard functions at any military installation or facility (10 U.S.C. 2465), unless?

(1) The contract will be performed outside the U.S. and its outlying areas to avoid using members of the armed forces for firefighting or security-guard functions at the expense of unit readiness;

(2) The contract will be performed on a Government-owned but privately operated installation;

(3) The contract (or renewal of a contract) is for the performance of a function under contract on September 24, 1983; or

(4) The contract?

(i) Is for the performance of firefighting functions;

(ii) Is for a period of 1 year or less; and

(iii) Covers only the performance of firefighting functions normally performed by members of the armed forces who are or will be deployed and unavailable.

(b) This prohibition does not apply to services at installations being closed (Section 2907 of Pub. L. 103-160) (see Subpart 237.74).

237.802-71 Limitation on service contracts for military flight simulators.

(a) As used in this section?

(1) ?Military flight simulator? means any system to simulate the form, fit, and function of a military aircraft that has no commonly available commercial variant.

(2) ?Service contract? means any contract entered into by DoD, the principal purpose of which is to furnish services in the United States through the use of service employees as defined in 41 U.S.C. 6701.

(b) The DoD is prohibited from using a service contract to acquire a military flight simulator (Section 832 of Pub. L. 109-364, and section 883(b) of Pub. L. 110-181). However, the Secretary of Defense may waive this prohibition if?

(1) A waiver is in the national interest; and

(2) An economic analysis is provided to the congressional defense committees at least 30 days before the waiver takes effect. This economic analysis must include, at a minimum?

(i) A clear explanation of the need for the contract; and

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(ii) At least two alternatives for fulfilling the requirements that the contract is meant to fulfill, including the following for each alternative:

(A) A rationale for including the alternative.

(B) A cost estimate of the alternative and an analysis of the quality of each cost estimate.

(C) A discussion of the benefits to be realized from the alternative.

(D) A best value determination of each alternative and a detailed explanation of the life-cycle cost calculations used in the determination.

(c) Follow the procedures at PGI 237.802-71 when submitting a waiver request.

237.802-72 Contracts for management services.

DoD may award a services contract for acquisition support functions that support the development or production of a major system (Section 802 of Pub. L. 110-181), only if?

(a) The contract prohibits the contractor from performing inherently governmental functions;

(b) The DoD organization responsible for the development or production of the major system ensures that Federal employees are responsible for determining?

(1) Courses of action to be taken in the best interest of the Government; and

(2) Best technical performance for the warfighter; and

(c) The contract prohibits the prime contractor from advising or recommending the award of a contract or subcontract for the development or production of the major system to an entity it owns in whole or in part.

237.802-73 Prohibition on contracts for services of senior mentors.

(a) ?Senior mentors,? as used in this section, means retired flag, general, or other military officers or retired senior civilian officials who provide expert experience-based mentoring, teaching, training, advice, and recommendations to senior military officers, staff, and students as they participate in war games, warfighting courses, operational planning, operational exercises, and decision-making exercises.

(b) DoD is prohibited from contracting for the services of senior mentors. See PGI **237.802-73 for references to DoD policy and implementation guidance.**

237.802-74 Taxonomy for the acquisition of services, and supplies and equipment.

See PGI 237.802-74 for guidance on the taxonomy for the acquisition of services and the acquisition of supplies and equipment.

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237.802-75 Acquisition of Services pathway.

See PGI 237.802-75 for information on the Adaptive Acquisition Framework, Acquisition of Services pathway.

237.802-76 Acquisition of computer software and computer software

documentation under services contracts.

(a) See 227.7202 for policy on the acquisition of commercial computer software and commercial computer software documentation for services contracts that require the development or modification of commercial computer software.

(b) See 227.7103 for policy on the acquisition of other than commercial computer software and other than commercial computer software documentation for services contracts that require the development or modification of other than commercial computer software.

237.802-77 Preference for certain commercial services.

See part 212 for procedures for implementation of the preference for commercial facilities-related services, knowledge-based services (except engineering services), medical services, or transportation services, as required by Section 876 of Pub. L. 114-328.

237.802-78 Public-private competition.

See PGI 207.170 for information on the Governmentwide moratorium and restrictions on public-private competitions conducted pursuant to Office of Management and Budget (OMB) Circular A-76.

237.802-79 Private sector notification requirements in support of in-sourcing actions.

(a) Contracting officers will provide written notification to affected incumbent contractors of Government in-sourcing determinations (10 U.S.C. 2463).

(b) See PGI 237.802-79 for notification procedures and for further information in memorandum, ?Private Sector Notification Requirements in Support of In-sourcing Actions,? dated January 29, 2013.

237.803 Evaluation and award.

237.803-2 Funding and term of service contracts.

(a)(i) Personal service contracts for expert or consultant services shall not exceed 1 year. The nature of the duties must be?

(A) Temporary (not more than 1 year); or

(B) Intermittent (not cumulatively more than 130 days in 1 year).

(ii) The contracting officer may enter into a contract, exercise an option, or place an order under a contract for severable services for a period that begins in one fiscal year and ends in the next fiscal year if the period of the contract awarded, option exercised, or order placed does not exceed 1 year (10 U.S.C. 3133).

237.870 Approval of contracts and task orders for services.

237.870-1 Scope.

This section?

(a) Implements 10 U.S.C. 4501; and

(b) Applies to services acquired for DoD, regardless of whether the services are

acquired through?

(1) A DoD contract or task order; or

(2) A contract or task order awarded by an agency other than DoD.

237.870-2 Approval requirements.

(a) Acquisition of services through a contract or task order that is not performance based.

(1) For acquisitions at or below $100 million, obtain the approval of the official designated by the department or agency.

(2) For acquisitions exceeding $100 million, obtain the approval of the senior procurement executive.

(b) Acquisition of services through use of a contract or task order issued by a non-DoD agency. Comply with the review, approval, and reporting requirements established in accordance with part 217 when acquiring services through use of a contract or task order issued by a non-DoD agency.

237.871 Training for contractor personnel interacting with detainees.

237.871-1 Scope.

This section implements policies to prevent the abuse of detainees, as required by Section 1092 of Pub. L. 108-375.

237.871-2 Definition.

As used in this section?

?Combatant commander,? ?detainee,? and ?personnel interacting with detainees,? as used in this section, are defined in the clause at 252.237-7998, Training for Contractor Personnel Interacting with Detainees.

237.871-3 Policy.

(a) DoD contracts involving contractor personnel who interact with detainees will include a requirement that such contractor personnel?

(1) Receive Government-provided training regarding the international obligations and laws of the United States applicable to the detention of personnel, including the Geneva Conventions; and

(2) Provide a copy of the training receipt document to the contractor.

(b) The combatant commander responsible for the area where the detention or interrogation facility is located will arrange for the training and a training receipt document to be provided to contractor personnel. For combatant commander geographic areas of responsibility and contact information, see PGI 237.871-3(b).

237.871-4 Contract clause.

Insert the clause at 252.237-7998, Training for Contractor Personnel Interacting with Detainees, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that are for the acquisition of services if?

(a) The clause at 252.225-7040, Contractor Personnel Supporting U.S. Armed Force(s) Deployed Outside the United States, is included in the solicitation or contract; or

(b) The services will be performed at a facility holding detainees, and contractor personnel in the course of their duties may be expected to interact with the detainees.

237.872 Service contracts surveillance.

(a) See PGI 237.872 for guidance concerning quality assurance surveillance plans.

(b) See PGI 216.505-70 for guidance regarding minimum labor category qualifications for orders issued under multiple award services contracts.

237.873 Prohibition on interrogation of detainees by contractor personnel.

237.873-1 Scope.

This section implements policies prohibiting interrogation of detainees by contractor personnel, as required by Section 1038 of Pub. L. 111-84.

237.873-2 Definitions.

As used in this section?

?Detainee? means any person captured, detained, held, or otherwise under the effective control of DoD personnel (military or civilian) in connection with hostilities. This includes, but is not limited to, enemy prisoners of war, civilian internees, and retained personnel. This does not include DoD personnel or DoD contractor personnel being held for law enforcement purposes.

?Interrogation of detainees? means a systematic process of formally and officially questioning a detainee for the purpose of obtaining reliable information to satisfy foreign intelligence collection requirements.

237.873-3 Policy.

(a) No detainee may be interrogated by contractor personnel.

(b) Contractor personnel with proper training and security clearances may be used as linguists, interpreters, report writers, information technology technicians, and other employees filling ancillary positions, including as trainers of and advisors to interrogators, in interrogations of detainees if?

(1) Such personnel are subject to the same laws, rules, procedures, and policies pertaining to detainee operations and interrogations as those that apply to Government personnel in such positions in such interrogations; and

(2) Appropriately qualified and trained DoD personnel (military or civilian) are available to oversee the contractor?s performance and to ensure that contractor personnel do not perform activities that are prohibited under this section.

(3) See PGI 237.873-3 for a listing of applicable DoD policies pertaining to detainee operations and interrogations.

237.873-4 Waiver.

The Secretary of Defense may waive the prohibition in 237.873-3(a) for a period of

60 days, if the Secretary determines such a waiver is vital to the national security interests of the United States. The Secretary may renew a waiver issued pursuant to this paragraph for an additional 30-day period, if the Secretary determines that such a renewal is vital to the national security interests of the United States. Not later than five days after issuance of the waiver, the Secretary shall submit written notification to Congress. See specific waiver procedures at DoDI 1100.22.

237.873-5 Contract clause.

Insert the clause at 252.237-7010, Prohibition on Interrogation of Detainees by Contractor Personnel, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that are for the provision of services.

237.874 Disclosure of information to litigation support contractors.

See part 204 for disclosure of information to litigation support contractors.

237.875 Training that uses live vertebrate animals.

Insert the clause at 252.235-7002, Animal Welfare, as prescribed in 235.072(a), when contracting for training that will use live vertebrate animals.

237.876 Certification of nonpersonal services.

(a) The agency head must employ procedures to ensure that requirements for service contracts are vetted and approved as a safeguard to prevent contracts from being awarded or administered in a manner that constitutes an unauthorized personal services contract.

(b) Follow the procedures at PGI 237.876, to include substantially similar certifications in conjunction with service contract requirements and place the certification in the contract file. The program manager or other official responsible for the requirement, at a level specified by the agency, should execute the certification.

(c) Contracting officers and program managers should remain aware of the descriptive elements at FAR 37.201-2 to ensure that a service contract does not inadvertently become administered as a personal-services contract.

SUBPART 237.70--MORTUARY SERVICES

237.7000 Scope.

This subpart?

(a) Applies to contracts for mortuary services (the care of remains) for military personnel within the United States; and

(b) May be used as guidance in areas outside the United States for mortuary services for deceased military and civilian personnel.

237.7001 Method of acquisition.

(a) Requirements type contract. By agreement among the military activities, one activity in each geographical area will contract for the estimated requirements for the care of remains for all military activities in the area. Use a requirements type contract

(see FAR 16.503) when the estimated annual requirements for the activities in the area are ten or more.

(b) Purchase order. Where no contract exists, use DD Form 1155, Order for Supplies or Services, to obtain mortuary services.

237.7002 Area of performance and distribution of contracts.

Follow the procedures at PGI 237.7002 for?

(a) Defining the geographical area to be covered by the contract; and

(b) Distributing copies of the contract.

237.7003 Solicitation provisions and contract clauses.

(a) Insert the following clauses in all mortuary service solicitations and contracts, except do not use the clauses at 252.237-7004, Area of Performance, in solicitations or contracts that include port of entry requirements:

(1) 252.237-7003, Requirements, (insert activities authorized to place orders in paragraph (e) of the clause).

(2) 252.237-7004, Area of Performance.

(3) 252.237-7005, Performance and Delivery.

(4) 252.237-7006, Subcontracting.

(5) 252.237-7007, Termination for Default.

(6) 252.237-7008, Group Interment.

(7) 252.237-7009, Permits.

(8) 252.237-7011, Preparation History.

(b) Insert the clause at FAR 52.245-1, Government Property, with its Alternate I, in solicitations and contracts that include port of entry requirements.

SUBPART 237.71?LAUNDRY AND DRY CLEANING SERVICES

237.7100 Scope.

This subpart?

(a) Applies to contracts for laundry and dry cleaning services within the United States; and

(b) May be used as guidance in areas outside the United States.

237.7101 Solicitation provisions and contract clauses.

(a) Insert the provision at 252.237-7012, Instruction to Offerors (Count-of-Articles), in solicitations for laundry and dry cleaning services to be provided on a count-of-articles basis.

(b) Insert the provision at 252.237-7013, Instruction to Offerors (Bulk Weight), in solicitations for laundry services to be provided on a bulk weight basis.

(c) Insert the clause at 252.237-7014, Loss or Damage (Count-of-Articles), in solicitations and contracts for laundry and dry cleaning services to be provided on a count-of-articles basis.

(d) Insert the clause at 252.237-7015, Loss or Damage (Weight of Articles), in

solicitations and contracts for laundry and dry cleaning services to be provided on a bulk weight basis.

(1) Insert a reasonable per pound price in paragraph (b) of the clause, based on the average per pound value. When the contract requires laundry services on a bag type basis, insert reasonable per pound prices by bag type.

(2) Insert an appropriate percentage in paragraph (e) of the clause, not to exceed eight percent.

(e) Insert the basic or an alternate of the clause at 252.237-7016, Delivery Tickets, in all solicitations and contracts for laundry and dry cleaning services.

(1) Insert the basic clause when services are not to be provided on a bulk weight basis.

(2) Insert the alternate I clause when services are for bag type laundry to be provided on a bulk weight basis.

(3) Insert the alternate II clause when services are unsorted laundry to be provided on a bulk weight basis.

(f) Insert the clause at 252.237-7017, Individual Laundry, in solicitations and contracts for laundry and dry cleaning services to be provided to individual personnel.

(1) Insert the number of pieces of outer garments in paragraphs (d)(1) and (2) of the clause.

(2) The number of pieces and composition of a bundle in paragraphs (d)(1) and

(2)of the clause may be modified to meet local conditions.

(g) Insert the clause at 252.237-7018, Special Definitions of Government Property, in all solicitations and contracts for laundry and dry cleaning services.

SUBPART 237.72--EDUCATIONAL SERVICE AGREEMENTS

237.7200 Scope.

(a) This subpart prescribes acquisition procedures for educational services from schools, colleges, universities, or other educational institutions. This subpart does not include tuition assistance agreements, i.e., payment by the Government of partial tuition under the off-duty educational program.

(b) As used in the subpart?

(1) ?Facilities? does not include the institution's dining rooms or dormitories; and

(2) ?Fees? does not include charges for meals or lodging.

237.7201 Educational service agreement.

(a) An educational service agreement is not a contract but is an ordering agreement under which the Government may order educational services.

(b) Educational service agreements provide for ordering educational services when?

(1) The Government pays normal tuition and fees for educational services

provided to a student by the institution under its normal schedule of tuition and fees applicable to all students generally; and

(2) Enrollment is at the institution under the institution's normal rules and in courses and curricula which the institution offers to all students meeting admission requirements.

237.7202 Limitations.

Educational service agreements are not used to provide special courses or special fees for Government students.

237.7203 Duration.

(a) Educational service agreements are for an indefinite duration and remain in effect until terminated.

(b) The issuing activity must establish procedures to review each educational service agreement at least once each year. Review dates should consider the institution's academic calendar and occur at least 30 days before the beginning of a term. The purpose of the review is to incorporate changes to reflect requirements of any statute, Executive Order, FAR, or DFARS.

(c) If the contracting officer and the institution do not agree on required changes, terminate the agreement.

237.7204 Format and clauses for educational service agreements.

See PGI 237.7204 for format and clauses for educational service agreements.

SUBPART 237.73--SERVICES OF STUDENTS AT RESEARCH AND DEVELOPMENT LABORATORIES

237.7300 Scope.

This subpart implements acquisition of temporary or intermittent services of students at institutions of higher learning to provide technical support at defense research and development laboratories (10 U.S.C. 4143).

237.7301 Definitions.

As used in this subpart?

(a) ?Institution of higher learning? means any public or private post-secondary school, junior college, college, university, or other degree granting educational institution that?

(1) Is located in the United States or its outlying areas;

(2) Has an accredited education program approved by an appropriate accrediting body; and

(3) Offers a program of study at any level beyond high school.

(b) ?Student? means an individual enrolled (or accepted for enrollment) at an institution of higher learning before the term of the student technical support contract. The individual must remain in good standing in a curriculum designed to lead to the granting of a recognized degree, during the term of the contract.

(c) ?Technical support? means any scientific or engineering work in support of the mission of the DoD laboratory involved. It does not include administrative or clerical services.

237.7302 Policy.

Acquisition of services of students at institutions of higher learning is generally by contract between a nonprofit organization employing the student and the Government. When it is in the best interest of the Government, contracts may be made directly with students. These services are not subject to the requirements of FAR Part 19, FAR

13.102, or DFARS part 219. Award authority for these contracts is 10 U.S.C. 3204(a) and 10 U.S.C. 4143.

237.7303 Contract clauses.

Contracts made directly with students are nonpersonal service contracts but must include the clauses at FAR 52.232-3, Payments Under Personal Services Contracts, and FAR 52.249-12, Termination (Personal Services).

SUBPART 237.74--SERVICES AT INSTALLATIONS BEING CLOSED

237.7400 Scope.

This subpart implements procedures for contracting, through use of other than full and open competition, with local governments for police, fire protection, airfield operation, or other community services at military installations to be closed under the Defense Authorization Amendments and Base Closure and Realignment Act (Pub. L. 100-526), as amended, and the Defense Base Closure and Realignment Act of 1990 (Pub. L. 101-510), as amended.

237.7401 Policy.

The authority in 206.103-5(c)(ii) to contract with local governments?

(a) May be exercised without regard to the provisions of 10 U.S.C. Chapter 146, Contracting for Performance of Civilian Commercial or Industrial Type Functions;

(b) May not be exercised earlier than 180 days before the date the installation is scheduled to be closed;

(c) Requires a determination by the head of the contracting activity that the services being acquired under contract with the local government are in the best interests of the DoD.

237.7402 Contract clause.

Insert the clause at 252.237-7022, Services at Installations Being Closed, in solicitations and contracts based upon the authority of this subpart.

SUBPART 237.75?ACQUISITION AND MANAGEMENT OF INDUSTRIAL RESOURCES

237.7501 Definition.

As used in this subpart?

?Facilities project,? means a Government project to provide, modernize, or replace real

property for use by a contractor in performing a Government contract or subcontract.

237.7502 Policy.

(a) Comply with DoD Directive 4275.5, Acquisition and Management of Industrial Resources, in processing requests for facilities projects.

(b) Departments and agencies shall submit reports of facilities projects to the House and Senate Armed Services Committees?

(1) At least 30 days before starting facilities projects involving real property (10 U.S.C. 2662); and

(2) In advance of starting construction for a facilities project regardless of cost.

(c) See PGI 237.7502 for notification guidance for projects that are not included in the annual budget.

SUBPART 237.76?CONTINUATION OF ESSENTIAL CONTRACTOR SERVICES

237.7600 Scope.

This subpart prescribes procedures for the acquisition of essential contractor services which support mission-essential functions.

237.7601 Definitions.

As used in this subpart?

?Essential contractor service? and ?mission-essential functions? are defined in the clause at 252.237-7023, Continuation of Essential Contractor Services.

237.7602 Policy.

(a) Contractors providing services designated as essential contractor services must permit continuation of such services during periods of crisis in accordance with the terms and conditions of their contracts. Generally, only specifically designated service functions, identified by the functional commander or civilian equivalent, are considered mission-essential functions, not the entire contract.

(b) For Government-determined essential contractor services, the contractor shall provide a mission-essential contractor services plan to be incorporated in the contract. The contracting officer, with input from the functional manager, will assess the sufficiency of the contractor-provided plan. During a crisis, plan activation requires contracting officer authorization at the direction of the appropriate functional commander or civilian equivalent.

(c) Follow the procedures at PGI 207for preparing acquisition plans.

237.7603 Solicitation provision and contract clause.

(a) Insert the clause at 252.237-7023, Continuation of Essential Contractor Services in all solicitations and contracts for services that are in support of mission-essential functions.

(b) Insert the provision at 252.237-7024, Notice of Continuation of Essential Contractor Services in all solicitations for services that include the clause 252.237-7023.

SUBPART 237.77? COMPETITION FOR RELIGIOUS-RELATED SERVICES

237.7700 Scope of subpart.

This subpart implements Section 898 of Pub. L. 114-92 for the acquisition of religious-related services to be performed on a U.S. military installation.

237.7701 Policy.

(a) Do not exclude nonprofit organizations from competitions for religious-related services performed on a United States military installation.

(b) See 219.104-70 when an acquisition for religious-related services to be performed on a U.S. military installation is set aside for any of the small business concerns identified in FAR 19.000(a)(3).

SUBPART 237.78?TRANSFER AND ADOPTION OF MILITARY ANIMALS

237.7800 Scope of subpart.

This subpart implements 10 U.S.C. 2387, which requires, under certain circumstances, the transfer of a contract working dog to the Department of the Air Force, 341st Training Squadron, for veterinary screening and care (10 U.S.C. 2583).

237.7801 Definition.

As used in this subpart?

?Contract working dog,? means a dog that?

(1) Performs a service for DoD pursuant to a contract; and

(2) Is trained and kenneled by an entity that provides such a dog pursuant to such a contract.

237.7802 Policy.

(a) In accordance with 10 U.S.C. 2387, DoD will transfer a contract working dog to the Department of the Air Force, 341st Training Squadron, for veterinary screening and care after the service life of the dog has terminated.

(b) The service life of a contract working dog may be terminated if?

(1) The final contractual obligation of the dog preceding transfer is with DoD; and

(2) The dog cannot be used by another department or agency of the Federal Government due to age, injury, or performance.

(c) A contract working dog that has reached the end of its service life will be transferred for care, reclassification as a military animal, and placement for adoption (10 U.S.C. 2583).

237.7803 Procedures.

Contracting officers, at the request of the requiring activity, may issue a determination that the service life of a contract working dog has terminated if the conditions in 237.7802(b) have been documented by the requiring activity.

237.7804 Contract clause.

Insert the clause at 252.237-7027, Transfer and Adoption of Military Animals, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that require the services of a contract working dog.

PART 252? SOLICITATION PROVISIONS AND CONTRACT CLAUSES

SUBPART 252.2?TEXT OF PROVISIONS AND CLAUSES

252.237-7997 Notice of Special Standards of Responsibility.

As prescribed in 237.470(e)(1), insert the following provision:

NOTICE OF SPECIAL STANDARDS OF RESPONSIBILITY

(DEVIATION 2026-O0026)(FEB 2026)

(a) To be determined responsible, the Offeror must meet the general standards of responsibility set forth at FAR 9.104-1 and the following criteria, as described in Chapter 3, General Standards, of ?Government Auditing Standards.?

(1) Qualifications;

(2) Independence; and

(3) Quality Control.

(b) ?Government Auditing Standards? is issued by the Comptroller General of the United States. To obtain a digital copy or for more information on obtaining a hardcopy of the ?Government Auditing Standards,? see website: https://www.gao.gov/yellowbook.

(c) The apparently successful Offeror, before award, shall give the Contracting Officer evidence that it is licensed by the cognizant licensing authority in the state or other political jurisdiction where the Offeror operates its professional practice.

(End of provision)

252.237-7998 Training for Contractor Personnel Interacting with Detainees.

As prescribed in 237.871-4, insert the following clause:

TRAINING FOR CONTRACTOR PERSONNEL INTERACTING WITH DETAINEES

(DEVIATION 2026-O0023) (FEB 2026)

(a) Definitions. As used in this clause?

?Combatant Commander? means the commander of a unified or specified combatant command established in accordance with 10 U.S.C. 161.

?Detainee? means a person in the custody or under the physical control of the Department of Defense on behalf of the United States Government as a result of armed conflict or other military operation by United States armed forces.

?Personnel interacting with detainees? means personnel who, in the course of their duties, are expected to interact with detainees.

(b) Training requirement. This clause implements Section 1092 of the National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108-375).

(1) The Combatant Commander responsible for the area where a detention or interrogation facility is located will arrange for training to be provided to contractor personnel interacting with detainees. The training will address the international obligations and laws of the United States applicable to the detention of personnel, including the Geneva Conventions. The Combatant Commander will arrange for a training receipt document to be provided to personnel who have completed the training.

(2)(i) The Contractor shall arrange for its personnel interacting with detainees to?

(A) Receive the training specified in paragraph (b)(1) of this clause?

(1) Prior to interacting with detainees, or as soon as possible if, for compelling reasons, the Contracting Officer authorizes interaction with detainees prior to receipt of such training; and

(2) Annually thereafter; and

(B) Provide a copy of the training receipt document specified in paragraph (b)(1) of this clause to the Contractor for retention.

(ii) To make these arrangements, the following points of contact apply: [Contracting Officer to insert applicable contact information cited in PGI 237.871-3(b).]

(3) The Contractor shall retain a copy of the training receipt document(s) provided in accordance with paragraphs (b)(1) and (2) of this clause until the contract is closed, or 3 years after all work required by the contract has been completed and accepted by the Government, whichever is sooner.

(c) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (c), in all subcontracts, including subcontracts for commercial services, that may require subcontractor personnel to interact with detainees in the course of their duties.

(End of clause)

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252.237-7001 Compliance with Audit Standards.

As prescribed in 237.470(e)(2), insert the following clause:

COMPLIANCE WITH AUDIT STANDARDS (MAY 2000)

The Contractor, in performance of all audit services under this contract, shall comply with ?Government Auditing Standards? issued by the Comptroller General of the United States.

(End of clause)

252.237-7003 Requirements.

As prescribed in 237.7003(a) and (a)(1), insert the following clause:

REQUIREMENTS (DEC 1991)

(a) Except as provided in paragraphs (c) and (d) of this clause, the Government will

order from the Contractor all of its requirements in the area of performance for the supplies and services listed in the schedule of this contract.

(b) Each order will be issued as a delivery order and will list?

(1) The supplies or services being ordered;

(2) The quantities to be furnished;

(3) Delivery or performance dates;

(4) Place of delivery or performance;

(5) Packing and shipping instructions;

(6) The address to send invoices; and

(7) The funds from which payment will be made.

(c) The Government may elect not to order supplies and services under this contract in instances where the body is removed from the area for medical, scientific, or other reason.

(d) In an epidemic or other emergency, the contracting activity may obtain services beyond the capacity of the Contractor's facilities from other sources.

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(e) Contracting Officers of the following activities may order services and supplies under this contract?

(End of clause)

252.237-7004 Area of Performance.

As prescribed in 237.7003(a) and (a)(2), insert the following clause:

AREA OF PERFORMANCE (DEC 1991)

(a) The area of performance is as specified in the contract.

(b) The Contractor shall take possession of the remains at the place where they are located, transport them to the Contractor's place of preparation, and later transport them to a place designated by the Contracting Officer.

(c) The Contractor will not be reimbursed for transportation when both the place where the remains were located, and the delivery point are within the area of performance.

(d) If remains are located outside the area of performance, the Contracting Officer may place an order with the Contractor under this contract or may obtain the services elsewhere. If the Contracting Officer requires the Contractor to transport the remains into the area of performance, the Contractor shall be paid the amount per mile in the schedule for the number of miles required to transport the remains by a reasonable route from the point where located to the boundary of the area of performance.

(e) The Contracting Officer may require the Contractor to deliver remains to any point within 100 miles of the area of performance. In this case, the Contractor shall be paid the amount per mile in the schedule for the number of miles required to transport the remains by a reasonable route from the boundary of the area of performance to the delivery point.

(End of clause)

252.237-7005 Performance and Delivery.

As prescribed in 237.7003(a) and (a)(3), insert the following clause:

PERFORMANCE AND DELIVERY (DEC 1991)

(a) The Contractor shall furnish the material ordered and perform the services specified as promptly as possible but not later than 36 hours after receiving notification to remove the remains, excluding the time necessary for the Government to inspect and check results of preparation.

(b) The Government may, at no additional charge, require the Contractor to hold the remains for an additional period not to exceed 72 hours from the time the remains are casketed and final inspection completed.

(End of clause)

252.237-7006 Subcontracting.

As prescribed in 237.7003(a) and (a)(4), insert the following clause:

SUBCONTRACTING (DEC 1991)

The Contractor shall not subcontract any work under this contract without the Contracting Officer's written approval. This clause does not apply to contracts of employment between the Contractor and its personnel.

(End of clause)

252.237-7007 Termination for Default.

As prescribed in 237.7003(a) and (a)(5), insert the following clause:

TERMINATION FOR DEFAULT (DEC 1991)

(a) This clause supplements and is in addition to the Default clause of this contract.

(b) The Contracting Officer may terminate this contract for default by written notice without the ten-day notice required by paragraph (a)(2) of the Default clause if?

(1) The Contractor, through circumstances reasonably within its control or that of its employees, performs any act under or in connection with this contract, or fails in the performance of any service under this contract and the act or failures may reasonably be considered to reflect discredit upon the Department of Defense in fulfilling its responsibility for proper care of remains;

(2) The Contractor, or its employees, solicits relatives or friends of the deceased to purchase supplies or services not under this contract. (The Contractor may furnish supplies or arrange for services not under this contract, only if representatives of the deceased voluntarily request, select, and pay for them.);

(3) The services or any part of the services are performed by anyone other than the Contractor or the Contractor's employees without the written authorization of the Contracting Officer;

(4) The Contractor refuses to perform the services required for any particular remains; or

(5) The Contractor mentions or otherwise uses this contract in its advertising in any way.

(End of clause)

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252.237-7008 Group Interment.

As prescribed in 237.7003(a) and (a)(6), insert the following clause:

GROUP INTERMENT (DEC 1991)

The Government will pay the Contractor for supplies and services provided for remains interred as a group on the basis of the number of caskets furnished, rather than on the basis of the number of persons in the group.

(End of clause)

252.237-7009 Permits.

As prescribed in 237.7003(a) and (a)(7), insert the following clause:

PERMITS (DEC 1991)

The Contractor shall meet all State and local licensing requirements and obtain and furnish all necessary health department and shipping permits at no additional cost to the Government. The Contractor shall ensure that all necessary health department permits are in order for disposition of the remains.

(End of clause)

252.237-7010 Prohibition on Interrogation of Detainees by Contractor

Personnel.

As prescribed in 237.873-5, insert the following clause:

PROHIBITION ON INTERROGATION OF DETAINEES BY CONTRACTOR PERSONNEL (JAN 2023)

(a) Definitions. As used in this clause?

?Detainee? means any person captured, detained, held, or otherwise under the effective control of DoD personnel (military or civilian) in connection with hostilities. This includes, but is not limited to, enemy prisoners of war, civilian internees, and retained personnel. This does not include DoD personnel or DoD contractor personnel being held for law enforcement purposes.

?Interrogation of detainees? means a systematic process of formally and officially questioning a detainee for the purpose of obtaining reliable information to satisfy foreign intelligence collection requirements.

(b) Contractor personnel shall not interrogate detainees.

(c) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (c), in all subcontracts, including subcontracts for commercial services, that may require subcontractor personnel to interact with detainees in the course of their duties.

(End of clause)

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252.237-7011 Preparation History.

As prescribed in 237.7003(a) and (a)(8), insert the following clause:

PREPARATION HISTORY (DEC 1991)

For each body prepared, or for each casket handled in a group interment, the Contractor shall state briefly the results of the embalming process on a certificate furnished by the Contracting Officer.

(End of clause)

252.237-7012 Instruction to Offerors (Count-of-Articles).

As prescribed in 237.7101(a), use the following provision:

INSTRUCTION TO OFFERORS (COUNT-OF-ARTICLES) (DEC 1991)

(a) The Offeror shall include unit prices for each item in a lot. Unit prices shall include all costs to the Government of providing the services, including pickup and delivery charges.

(b) Failure to offer on any item in a lot shall be cause for rejection of the offer on that lot. The Contracting Officer will evaluate offers based on the estimated quantities in the solicitation.

(c) Award generally will be made to a single offeror for all lots. However, the Contracting Officer may award by individual lot when it is more advantageous to the Government.

(d) Prospective offerors may inspect the types of articles to be serviced. Contact the Contracting Officer to make inspection arrangements.

(End of provision)

252.237-7013 Instruction to Offerors (Bulk Weight).

As prescribed in 237.7101(b), insert the following provision:

INSTRUCTION TO OFFERORS (BULK WEIGHT) (DEC 1991)

(a) Offers shall be submitted on a unit price per pound of serviced laundry. Unit prices shall include all costs to the Government of providing the service, including pickup and delivery charges.

(b) The Contracting Officer will evaluate bids based on the estimated pounds of serviced laundry stated in the solicitation.

(c) Award generally will be made to a single offeror for all lots. However, the Contracting Officer may award by individual lot when it is more advantageous to the Government.

(d) Prospective offerors may inspect the types of articles to be serviced. Contact the Contracting Officer to make inspection arrangements.

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(End of provision)

252.237-7014 Loss or Damage (Count-of-Articles).

As prescribed in 237.7101(c), insert the following clause:

LOSS OR DAMAGE (COUNT-OF-ARTICLES) (DEC 1991)

(a) The count-of-articles will be?

(1) The count of the Contracting Officer; or

(2) The count agreed upon as a result of a joint count by the Contractor and the Contracting Officer at the time of delivery to the Contractor.

(b) The Contractor shall?

(1) Be liable for return of the number and kind of articles furnished for service under this contract; and

(2) Shall indemnify the Government for any loss or damage to such articles.

(c) The Contractor shall pay to the Government the value of any lost or damaged property using Federal supply schedule price lists. If the property is not on these price lists, the Contracting Officer shall determine a fair and reasonable price.

(d) The Contracting Officer will allow credit for any depreciation in the value of the property at the time of loss or damage. The Contracting Officer and the Contractor shall mutually determine the amount of the allowable credit.

(e) Failure to agree upon the value of the property or on the amount of credit due will be treated as a dispute under the Disputes clause of this contract.

(f) In case of damage to any property that the Contracting Officer and the Contractor agree can be satisfactorily repaired, the Contractor may repair the property at its expense in a manner satisfactory to the Contracting Officer, rather than make payment under paragraph (c) of this clause.

(End of clause)

252.237-7015 Loss or Damage (Weight of Articles).

As prescribed in 237.7101(d), insert the following clause:

LOSS OR DAMAGE (WEIGHT OF ARTICLES) (DEC 1991)

(a) The Contractor shall?

(1) Be liable for return of the articles furnished for service under this contract; and

(2) Indemnify the Government for any articles delivered to the Contractor for servicing under this contract that are lost or damaged, and in the opinion of the Contracting Officer, cannot be repaired satisfactorily.

(b) The Contractor shall pay to the Government _____ per pound for lost or damaged articles. The Contractor shall pay the Government only for losses which exceed the maximum weight loss in paragraph (e) of this clause.

(c) Failure to agree on the amount of credit due will be treated as a dispute under the Disputes clause of this contract.

(d) In the case of damage to any articles that the Contracting Officer and the Contractor agree can be satisfactorily repaired, the Contractor shall repair the articles at its expense in a manner satisfactory to the Contracting Officer.

(e) The maximum weight loss allowable in servicing the laundry is _____ percent of the weight recorded on delivery tickets when the laundry is picked up. Any weight loss in excess of this amount shall be subject to the loss provisions of this clause.

(End of clause)

252.237-7016 Delivery Tickets.

Basic. As prescribed in 237.7101(e) and (e)(1), insert the following clause:

DELIVERY TICKETS?BASIC (NOV 2014)

(a) The Contractor shall complete delivery tickets in the number of copies required and in the form approved by the Contracting Officer, when it receives the articles to be serviced.

(b) The Contractor shall include one copy of each delivery ticket with its invoice for payment.

(End of clause)

Alternate I. As prescribed in 237.7101(e) and (e)(2), insert the following clause, which includes paragraphs (c), (d), and (e) not included in the basic clause:

DELIVERY TICKETS?ALTERNATE I (NOV 2014)

(a) The Contractor shall complete delivery tickets in the number of copies required and in the form approved by the Contracting Officer, when it receives the articles to be serviced.

(b) The Contractor shall include one copy of each delivery ticket with its invoice for payment.

(c) Before the Contractor picks up articles for service under this contract, the Contracting Officer will ensure that?

(1) Each bag contains only articles within a single bag type as specified in the schedule; and

(2) Each bag is weighed, and the weight and bag type are identified on the bag.

(d) The Contractor shall, at time of pickup?

(1) Verify the weight and bag type and record them on the delivery ticket; and

(2) Provide the Contracting Officer, or representative, a copy of the delivery ticket.

(e) At the time of delivery, the Contractor shall record the weight and bag type of serviced laundry on the delivery ticket. The Contracting Officer will ensure that this weight and bag type are verified at time of delivery.

(End of clause)

Alternate II. As prescribed in 237.7101(e) and (e)(3), insert the following clause, which includes paragraphs (c), (d), and (e) not included in the basic clause:

DELIVERY TICKETS?ALTERNATE II (NOV 2014)

(a) The Contractor shall complete delivery tickets in the number of copies required and in the form approved by the Contracting Officer, when it receives the articles to be serviced.

(b) The Contractor shall include one copy of each delivery ticket with its invoice for payment.

(c) Before the Contractor picks up articles for service under this contract, the Contracting Officer will ensure that each bag is weighed and that the weight is identified on the bag.

(d) The Contractor, at time of pickup, shall verify and record the weight on the delivery ticket and shall provide the Contracting Officer, or representative, a copy of the delivery ticket.

(e) At the time of delivery, the Contractor shall record the weight of serviced laundry on the delivery ticket. The Contracting Officer will ensure that this weight is verified at time of delivery.

(End of clause)

252.237-7017 Individual Laundry.

As prescribed in 237.7101(f), insert the following clause:

INDIVIDUAL LAUNDRY (DEC 1991)

(a) The Contractor shall provide laundry service under this contract on both a unit bundle and on a piece-rate bundle basis for individual personnel.

(b) The total number of pieces listed in the ?Estimated Quantity? column in the schedule is the estimated amount of individual laundry for this contract. The estimate is for information only and is not a representation of the amount of individual laundry to be ordered. Individuals may elect whether or not to use the laundry services.

(c) Charges for individual laundry will be on a per unit bundle or a piece-rate basis. The Contractor shall provide individual laundry bundle delivery tickets for use by the individuals in designating whether the laundry is a unit bundle or a piece-rate bundle. An individual laundry bundle will be accompanied by a delivery ticket listing the contents of the bundle.

(d) The maximum number of pieces to be allowed per bundle is as specified in the schedule and as follows?

(1) Bundle consisting of 26 pieces, including laundry bag. This bundle will contain approximately _____ pieces of outer garments which shall be starched and pressed. Outer garments include, but are not limited to, shirts, trousers, jackets, dresses, and coats.

(2) Bundle consisting of 13 pieces, including laundry bag. This bundle will contain approximately _____ pieces of outer garments which shall be starched and pressed. Outer garments include, but are not limited to, shirts, trousers, jackets,

dresses, and coats.

(End of clause)

252.237-7018 Special Definitions of Government Property.

As prescribed in 237.7101(g), use the following clause:

SPECIAL DEFINITIONS OF GOVERNMENT PROPERTY (DEC 1991)

Articles delivered to the Contractor to be laundered or dry-cleaned, including any articles which are actually owned by individual Government personnel, are Government-owned property, not Government-furnished property. Government-owned property does not fall under the requirements of any Government-furnished property clause of this contract.

(End of clause)

252.237-7022 Services at Installations Being Closed.

As prescribed in 237.7402, use the following clause:

SERVICES AT INSTALLATIONS BEING CLOSED (MAY 1995)

Professional employees shall be used by the local government to provide services under this contract to the extent that professionals are available in the area under the jurisdiction of such government.

(End of clause)

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252.237-7023 Continuation of Essential Contractor Services.

As prescribed in 237.7603(a), use the following clause:

CONTINUATION OF ESSENTIAL CONTRACTOR SERVICES (OCT 2010)

(a) Definitions. As used in this clause?

(1) ?Essential contractor service? means a service provided by a firm or individual under contract to DoD to support mission-essential functions, such as support of vital systems, including ships owned, leased, or operated in support of military missions or roles at sea; associated support activities, including installation, garrison, and base support services; and similar services provided to foreign military sales customers under the Security Assistance Program. Services are essential if the effectiveness of defense systems or operations has the potential to be seriously impaired by the interruption of these services, as determined by the appropriate functional commander or civilian equivalent.

(2) ?Mission-essential functions? means those organizational activities that must be performed under all circumstances to achieve DoD component missions or responsibilities, as determined by the appropriate functional commander or civilian equivalent. Failure to perform or sustain these functions would significantly affect DoD?s ability to provide vital services or exercise authority, direction, and control.

(b) The Government has identified all or a portion of the contractor services performed under this contract as essential contractor services in support of mission essential functions. These services are listed in attachment __, Mission-Essential

Contractor Services, dated _____.

(c)(1) The Mission-Essential Contractor Services Plan submitted by the Contractor, is incorporated in this contract.

(2) The Contractor shall maintain and update its plan as necessary. The Contractor shall provide all plan updates to the Contracting Officer for approval.

(3) As directed by the Contracting Officer, the Contractor shall participate in training events, exercises, and drills associated with Government efforts to test the effectiveness of continuity of operations procedures and practices.

(d)(1) Notwithstanding any other clause of this contract, the contractor shall be responsible to perform those services identified as essential contractor services during crisis situations (as directed by the Contracting Officer), in accordance with its Mission-Essential Contractor Services Plan.

(2) In the event the Contractor anticipates not being able to perform any of the essential contractor services identified in accordance with paragraph (b) of this section during a crisis situation, the Contractor shall notify the Contracting Officer or other designated representative as expeditiously as possible and use its best efforts to cooperate with the Government in the Government?s efforts to maintain the continuity of operations.

(e) The Government reserves the right in such crisis situations to use Federal employees, military personnel or contract support from other contractors, or to enter into new contracts for essential contractor services.

(f) Changes. The Contractor shall segregate and separately identify all costs incurred in continuing performance of essential services in a crisis situation. The Contractor shall notify the Contracting Officer of an increase or decrease in costs within ninety days after continued performance has been directed by the Contracting Officer, or within any additional period that the Contracting Officer approves in writing, but not later than the date of final payment under the contract. The Contractor?s notice shall include the Contractor?s proposal for an equitable adjustment and any data supporting the increase or decrease in the form prescribed by the Contracting Officer. The parties shall negotiate an equitable price adjustment to the contract price, delivery schedule, or both as soon as is practicable after receipt of the Contractor?s proposal.

(g) The Contractor shall include the substance of this clause, including this paragraph (g), in subcontracts for the essential services.

(End of Clause)

252.237-7024 Notice of Continuation of Essential Contractor Services.

As prescribed in 237.7603(b), use the following provision:

NOTICE OF CONTINUATION OF ESSENTIAL CONTRACTOR SERVICES (OCT 2010)

(a) Definitions. ?Essential contractor service? and ?mission-essential functions? have the meanings given in the clause at 252.237-7023, Continuation of Essential Contractor Services, in this solicitation.

(b) The offeror shall provide with its offer a written plan describing how it will continue to perform the essential contractor services listed in attachment ___, Mission Essential Contractor Services, dated _____, during periods of crisis. The offeror shall?

(1) Identify provisions made for the acquisition of essential personnel and resources, if necessary, for continuity of operations for up to 30 days or until normal operations can be resumed;

(2) Address in the plan, at a minimum?

(i) Challenges associated with maintaining essential contractor services during an extended event, such as a pandemic that occurs in repeated waves;

(ii) The time lapse associated with the initiation of the acquisition of essential personnel and resources and their actual availability on site;

(iii) The components, processes, and requirements for the identification, training, and preparedness of personnel who are capable of relocating to alternate facilities or performing work from home;

(iv) Any established alert and notification procedures for mobilizing identified ?essential contractor service? personnel; and

(v) The approach for communicating expectations to contractor employees regarding their roles and responsibilities during a crisis.

(End of provision)

252.237-7025 Preaward Transparency Requirements for Firms Offering to Support Department of Defense Audits?Representation and Disclosure.

As prescribed in 237.470(e)(3), use the following provision:

PREAWARD TRANSPARENCY REQUIREMENTS FOR FIRMS OFFERING TO SUPPORT DEPARTMENT OF DEFENSE AUDITS?REPRESENTATION AND DISCLOSURE (OCT 2022)

(a) Representation. The Offeror represents that within the 3-year period preceding this offer, the Offeror and/or any of its principals or employees have [ ] have not [ ] been the subject of disciplinary proceedings before an entity with the authority to enforce compliance with rules or laws applying to audit services or audit remediation services offered by the Offeror, that?

(1) Are not yet fully adjudicated or settled; or

(2) Were fully adjudicated or settled against the Offeror and/or its principals or employees.

(b) Disclosure. If the Offeror checked ?have? in the representation in paragraph (a) of this provision, the Offeror shall, at a minimum, disclose for each such

proceeding?

(1) The entity hearing the case;

(2) The case or file number; and

(3) The allegation or conduct at issue and, if fully adjudicated or settled, a brief description of the outcome.

(c) Treatment of statements. The Government will safeguard and treat as confidential all statements provided pursuant to this provision where the statement has been marked ?confidential? or ?proprietary? by the Offeror. Statements so marked will not be released by the Government to the public pursuant to a request under the Freedom of Information Act, 5 U.S.C. 552, without prior notification to the Offeror and opportunity for the Offeror to claim an exemption from release. The Government will treat any statement provided pursuant to this provision as confidential to the extent required by any other applicable law.

(End of provision)

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252.237-7026 Postaward Transparency Requirements for Firms that

Support Department of Defense Audits.

As prescribed in 237.470(e)(4), use the following clause:

POSTAWARD TRANSPARENCY REQUIREMENTS FOR FIRMS THAT SUPPORT DEPARTMENT OF DEFENSE AUDITS (OCT 2022)

(a) Prior to each contract action under this contract (including renewal or modification), the Contractor shall disclose the details of any disciplinary proceedings, with respect to the firm and/or its principals or employees, before an entity with the authority to enforce compliance with rules or laws applying to audit services or audit remediation services offered by the Contractor, and whether there has been any change with regard to previously reported proceedings since the last contract action.

(b) The disclosure shall, at a minimum, include?

(1) The entity hearing the case;

(2) The case or file number; and

(3) A brief description of the allegation or conduct at issue and, if fully adjudicated or settled, a brief description of the outcome.

(c) The Government will safeguard and treat as confidential all statements provided pursuant to this clause where the statement has been marked ?confidential? or ?proprietary? by the Contractor. Statements so marked will not be released by the Government to the public pursuant to a request under the Freedom of Information Act, 5 U.S.C. 552, without prior notification to the Contractor and opportunity for the Contractor to claim an exemption from release. The Government will treat any statement provided pursuant to this clause as confidential to the extent required by any other applicable law.

(End of clause)

252.237-7027 Transfer and Adoption of Military Animals.

As prescribed in 237.7804, use the following clause:

TRANSFER AND ADOPTION OF MILITARY ANIMALS (FEB 2024)

(a) Definition. As used in this clause?

?Contract working dog? means a dog that?

(1) Performs a service for DoD pursuant to a contract; and

(2) Is trained and kenneled by an entity that provides such a dog pursuant to such a contract.

(b) In accordance with 10 U.S.C. 2387, if the Contracting Officer determines that the service life of a contract working dog has terminated, the dog will be transferred to the Department of the Air Force, 341st Training Squadron, for

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veterinary screening and care, reclassification as a military animal, and placement for adoption in accordance with 10 U.S.C. 2583.

(c) The service life of a contract working dog may be terminated if the Contracting Officer determines that?

(1) The final contractual obligation of the dog preceding transfer is with DoD; and

(2) The dog cannot be used by another department or agency of the Federal Government due to age, injury, or performance.

(End of clause)

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PGI 237?SERVICE CONTRACTING

PGI 237.2?PERSONAL SERVICES

PGI 237.201-170 Policy.

(a)(1) Generally, the determination and finding (D&F) should authorize one contract at a time; however, an authorizing official may issue a blanket D&F for classes of contracts.

(2) Prepare each D&F in accordance with FAR 1.5 and include a determination that?

(i) The duties are of a temporary or intermittent nature;

(ii) Acquisition of the services is advantageous to the national defense;

(iii) DoD personnel with necessary skills are not available;

(iv) Excepted appointment cannot be obtained;

(v) A nonpersonal services contract is not practicable;

(vi) Statutory authority, 5 U.S.C. 3109 and other legislation, apply; and

(vii) Any other determination required by statutes has been made.

PGI 237.4?ADVISORY AND ASSISTANCE SERVICES

PGI 237.470 Acquisition of audit services.

The following DoD publications govern the conduct of audits:

(1) DoDI 7600.2, Audit Policies, provides DoD audit policies.

(2) DoDI 7600.6, Audit of Nonappropriated Fund Instrumentalities and Related Activities, provides guidance to audit organizations for audits of nonappropriated fund organizations.

(3) DoD 7600.7-M, DoD Audit Manual, provides policy and guidance to DoD audit organizations for the monitoring of audit services provided by non-Federal auditors.

PGI 237.8?OTHER SERVICE CONSIDERATIONS.

PGI 237.802 Presolicitation.

PGI 237.802-71 Limitation on service contracts for military flight simulators.

When reviewing requirements or participating in acquisition planning that would result in a military department or defense agency acquiring a military flight simulator, the contracting officer will notify the program officials of the prohibition from using a service contract to acquire a military flight simulator at 237.802-71(b).

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(1) If the program officials decide to request a waiver from the Secretary of Defense to use a service contract, the contracting officer will process a request for waiver by submitting the request and appropriate documentation relating to the requirements of DFARS 237.802-71(b) to the Office of the Principal Director, Defense Pricing, Contracting, and Acquisition Policy (Contract Policy) (DPCAP/CP) via email at osd.pentagon.ousd-a-s.mbx.asda-dp-c-contractpolicy@mail.mil.

(2) The DPCAP/CP action officer will process the request through the Office of the Secretary of Defense and will forward the appropriate documentation to the congressional defense committees. The contracting officer must not award a contract until notified by the DPCAP/CP action officer that the waiver has been approved, the appropriate documentation has been transmitted to the congressional defense committees, and the required 30 days have passed.

PGI 237.802-73 Prohibition on contracts for services of senior mentors.

DoD policies on senior mentors are set forth in (1) Secretary of Defense memorandum, subject: Policy on Senior Mentors (April 1, 2010) (see here) and (2) Deputy Secretary of Defense memorandum, subject: Implementation Guidance on Senior Mentors Policy (July 8, 2010) (see here).

PGI 237.802-74 Taxonomy for the acquisition of services and supplies & equipment.

Click here for OUSD(AT&L) DPAP memorandum, ?Taxonomy for the Acquisition of Services and Supplies & Equipment,? dated August 27, 2012. An Excel version of ?Acquisition of Services and Supplies & Equipment Taxonomy? is available here.

PGI 237.802-75 Acquisition of Services pathway.

The Adaptive Acquisition Framework, Acquisition of Services, is available via the internet at

https://aaf.dau.edu/aaf/services/.
PGI 237.802-79 Private sector notification requirements in support of in-sourcing actions.
(b)(i) The notification will?
(A) Be provided within 20 business days of the contracting officer's receipt of a decision from the cognizant component in-sourcing program official;
(B) Summarize the requiring official's final determination as to why the service is being in-sourced; and
(C) Be coordinated with the component's in-sourcing program official.
(ii) No formal hiring or contract-related actions may be initiated prior to such notification, except for preliminary internal actions associated with hiring or contract modification.
(iii) Click here for memorandum, ?Private Sector Notification Requirements in Support of In-sourcing Actions,? dated January 29, 2013.
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PGI 237.871 Training for contractor personnel interacting with detainees.
PGI 237.871-3 Policy.
(b)(i) Geographic areas of responsibility. With regard to training for contractor personnel interacting with detainees?
(A) The Commander, U.S. Southern Command, is responsible for the U.S. military detention center at Guantanamo Bay, Cuba.
(B) The Commander, U.S. Joint Forces Command, is responsible for the Navy Consolidated Brig, Charleston, SC.
(C) The combatant commander geographic areas of responsibility can be found at: https://www.war.gov/Resources/Military-Departments/DOD-Websites/.
(ii) Contact information for each command:
US Central Command (USCENTCOM)
Commander, Combined Forces Land Component Commander (CFLCC)
a.k.a. Third Army, Ft. McPherson, Atlanta, GA
Staff Judge Advocate (SJA) Forward, Kuwait
US European Command (USEUCOM)
Logistics and Security Assistance Directorate
Chief, Contingency Contracting and Contract Policy Division (USEUCOM J4-LS)
US Joint Forces Command (USJFCOM)
**Applicable to potential detainees in the United States at Navy Consolidated Brig, Charleston, SC
Headquarters, USJFCOM (J355)
Personnel Recovery & Special Operations Division (J355)
US Northern Command (USNORTHCOM)
Not applicable to USNORTHCOM; see US Joint Forces Command
US Pacific Command (USPACOM)

Headquarters, Office of the Staff Judge Advocate (SJA)
Deputy Staff Judge Advocate
US Southern Command (USSOUTHCOM)
Headquarters, Office of the Staff Judge Advocate (SJA)
Joint Task Force Guanatanamo Bay
US Special Operations Command (USSOCOM)
Headquarters, Office of the Staff Judge Advocate (SJA)
Attn: Staff Judge Advocate
PGI 237.872 Service contracts surveillance.
Quality assurance surveillance plans are prepared in conjunction with the preparation of the performance work statement, statement of work, or statement of objectives for solicitations and contracts for services. These plans should be tailored to address the

performance risks inherent in the specific contract type and the work effort addressed by the contract. (See FAR subpart 46.4.) The plan will include a requirement for surveillance of the contractor?s implementation of the clause at FAR 52.222-50, Combating Trafficking in Persons (see PGI 222.1703). Retain quality assurance surveillance plans in the contract file.
PGI 237.873 Prohibition on interrogation of detainees by contractor personnel.
PGI 237.873-3 Policy.
(3)(i) DoD Instruction 1100.22, Policy and Procedures for Determining Workforce Mix,
(https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/110022p.pdf?ver=2019-03-11-081731-063).
(ii) DoD Directive 2310.01E, The Department of Defense Detainee Program
(https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/231001e.pdf?ver=6y1Oz3QqY1slOmu_p9g9Fw%3d%3d).
(iii) DoD Directive 3115.09, DoD Intelligence Interrogations, Detainee Debriefings, and Tactical Questioning,
(https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/311509p.PDF?ver=jGpnKtR0wAagzqTY8cwdmg%3d%3d).
PGI 237.876 Certification of nonpersonal services.
To comply with the certification requirement at DFARS 237.876, complete a certification substantially the same as the following and include a copy in the contract file:
Certification of Nonpersonal Services
This certification and enclosed worksheet are designed to ensure that the agency does not award a personal-services contract unless specifically authorized by statute
(e.g., 10 U.S.C. 129b, 5 U.S.C. 3109, or 10 U.S.C. 1091). Therefore, this documentation should be completed in conjunction with the submission of a service-contract requirement to the contracting officer.

A personal services contract is characterized by the employer-employee relationship it creates between the Government and the contractor?s personnel. The Government is normally required to obtain its employees by direct hire under competitive appointment procedures required by civil service laws. Obtaining personal services by contract, rather than by direct hire, circumvents those laws unless Congress has specifically authorized acquisition of the services by contract. An employer-employee relationship under a service contract occurs when the Government exercises relatively continuous supervision and control over contractor personnel performing the contract.

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Upon considering the information above and the worksheet below, I certify that this requirement does not include an unauthorized personal services arrangement, either in the way the work statement is written or in the manner in which the resulting contract will be managed and overseen.

_____

Printed Name, Grade, Title, and Date

Signature:_____

Personal Services YES NO

The following descriptive elements should be used as a guide to assess whether a proposed contract is personal in nature (see FAR 37.201-2). If the answer to any of the items below is ?YES,? then additional measures should be taken to ensure the contract is not administered so as to create an employer-employee relationship between the Government and the contractor?s personnel and result in an unauthorized personal services contract.

1. Contractor personnel are performing on a Government site.

2. Principal tools and equipment are furnished by the Government.

3. Services are applied directly to the integral effort of the agency or an organizational subpart in furtherance of assigned function or mission.

4. Comparable services meeting comparable needs are performed in this agency or similar agencies using civil-service personnel.

5. The need for the service provided can reasonably be expected to last beyond one year.

6. The inherent nature of the service, or the manner in which

it is to be provided, reasonably requires (directly or indirectly) Government direction or supervision of contractor employees in order to:

(a) adequately protect the Government?s interest;

(b) retain control of the function involved; or

(c) retain full personal responsibility for the function supported in a duly authorized Federal officer or employee.

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PGI 237.70?MORTUARY SERVICES

PGI 237.7002 Area of performance and distribution of contracts.

(1) Determine and define the geographical area to be covered by the contract using the following general guidelines:

(i) Use political boundaries, streets, or other features as demarcation lines.

(ii) The size should be roughly equivalent to the contiguous metropolitan or municipal area enlarged to include the activities served.

(iii) If the area of performance best suited to the needs of a particular contract is not large enough to include a carrier terminal commonly used by people within the area, the contract area of performance must specifically state that it includes the terminal as a pickup or delivery point.

(2) In addition to normal contract distribution, send three copies of each contract to each activity authorized to use the contract, and two copies to each of the following:

(i) HQDA (TAPC-PEC-D), Alexandria, VA 22331.

(ii) Commander, Naval Medical Command, Department of the Navy (MED 3141), 23rd and E Streets NW, Washington, DC 20372.

(iii) Headquarters, AFMPC-MPCCM.

PGI 237.72?EDUCATIONAL SERVICE AGREEMENTS

PGI 237.7204 Format and clauses for educational service agreements.

Educational service agreements under this subpart must be in the following format. Add to the schedule any other provisions necessary to describe the requirements, if they are consistent with the following provisions and the policy of acquiring educational services in the form of standard course offerings at the prevailing rates of the institution:

EDUCATIONAL SERVICE AGREEMENT

Agreement No. _____

1. This agreement entered into on the _____ day of _____ _____, is between the Government, represented by the Contracting Officer, and the Contractor, _____(name of institution)_____, an educational institution located in _____(city)_____, ____(state)_____.

2. This agreement is for educational services to be provided by the Contractor to Government personnel at the Contractor's institution. The Contractor shall provide

instruction with standard offerings of courses available to the public.

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3. The Government will pay for services under the Contractor's normal schedule of tuition and fees applicable to the public and in effect at the time the services are performed.

4. The Government will review this agreement annually before the anniversary of its effective date for the purpose of incorporating changes required by statutes, executive orders, the Federal Acquisition Regulation, or the Defense Federal Acquisition Regulation Supplement. Changes required to be made by modification to this agreement or by issuance of a superseding agreement. If mutual agreement on the changes cannot be reached, the Government will terminate this agreement.

5. The parties may amend this agreement only by mutual consent.

6. This agreement shall start on the date in paragraph 1 and shall continue until terminated.

7. The estimated annual cost of this agreement is $_____. This estimate is for administrative purposes only and does not impose any obligation on the Government to request any services or make any payment.

8. Advance payments are authorized by 10 U.S.C. 2396(a)(3).

9. Submit invoices to: _____(name and address of activity)_____.

SCHEDULE PROVISIONS

1. Ordering procedures and services to be provided.

(a) The Contractor shall promptly deliver to the Contracting Officer one copy of each catalog applicable to this agreement, and one copy of any subsequent revision.

(b) The Government will request educational services under this agreement by a

(insert type of request, such as, delivery order, official Government order, or other written communication). The (insert type of request, such as, delivery order, official Government order, or other written communication) will contain the number of this agreement and will designate as students at the Contractor's institution one or more Government-selected persons who have already been accepted for admission under the Contractor's usual admission standards.

(c) All students under this agreement shall register in the same manner, be subject to the same academic regulations, and have the same privileges, including the use of all facilities and equipment as any other students enrolled in the institution.

(d) Upon enrolling each student under this agreement, the Contractor shall, where the resident or nonresident status involves a difference in tuition or fees?

(i) Determine the resident or nonresident status of the student;

(ii) Notify the student and the Contracting Officer of the determination. If there is an appeal of the determination;

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(iii) If there is an appeal of the determination, process the appeal under the Contractor's standard procedures;

(iv) Notify the student and Contracting Officer of the result; and

(v) Make the determination a part of the student's permanent record.

(e) The Contractor shall not furnish any instruction or other services to any student under this agreement before the effective date of a request for services in the form specified in paragraph (b) of this schedule.

2. Change in curriculum. The Contracting Officer may vary the curriculum for any student enrolled under this agreement but shall not require or make any change in any course without the Contractor's consent.

3. Payment.

(a) The Government will pay the Contractor the normal tuition and fees which the Contractor charges any students pursuing the same or similar curricula, except for any tuition and fees which this agreement excludes. The Contractor may change any tuition and fees, provided?

(1) The Contractor publishes the revisions in a catalog or otherwise publicly announces the revisions;

(2) Applies the revisions uniformly to all students studying the same or similar curricula;

(3) Provides the Contracting Officer notice of changes before their effective date.

(b) The Contractor shall not establish any tuition or fees which apply solely to students under this agreement.

(c) If the Contractor regularly charges higher tuition and fees for nonresident students, the Contractor may charge the Government the normal nonresident tuition and fees for students under this agreement who are nonresidents. The Government shall not claim resident tuition and fees for any student solely on the basis of the student residing in the State as a consequence of enrollment under this agreement.

(d) The Contractor shall charge the Government only the tuition and fees which relate directly to enrollment as a student. Tuition and fees may include?

(i) Penalty fees for late registration or change of course caused by the Government;

(ii) Mandatory health fees and health insurance charges; and

(iii) Any flat rate charge applicable to all students registered for research that appears in the Contractor's publicly announced fee schedule.

(e) The Contractor shall not charge the Government for?

(i) Permit charges, such as vehicle registration or parking fees, unless

specifically authorized in the request for service; and

(ii) Any equipment, refundable deposits, or any items or services (such as computer time) related to student research.

(f) Normally, the Contractor shall not directly charge individual students for application fees or any other fee chargeable to this agreement. However, if the Contractor's standard procedures require payment of any fee before the student is enrolled under this agreement, the Contractor may charge the student. When the Contractor receives payment from the Government, the Contractor shall fully reimburse the student.

(g) For each term the Contractor enrolls students under this agreement, the Contractor shall submit _____ copies of an invoice listing charges for each student separately. The Contractor shall submit invoices within _____ days after the start of the term and shall include?

(i) Agreement number and inclusive dates of the term;

(ii) Name of each student;

(iii) A list showing each course for each student if the school charges by credit hour;

(iv) The resident or nonresident status of each student (if applicable to the Contractor's school); and

(v) A breakdown of charges for each student, including credit hours, tuition, application fee, and other fees. Provide a total for each student and a grand total for all students listed on the invoice.

(h) If unforeseen events require additional charges that are otherwise payable under the Contractor's normal tuition and fee schedule, the Contractor may submit a supplemental invoice or make the adjustment on the next regular invoice under this agreement. The Contractor shall clearly identify and explain the supplemental invoice or the adjustment.

(i) The Contractor shall apply any credits resulting from withdrawal of students, or from any other cause under its standard procedures, to subsequent invoices submitted under this agreement. Credits should appear on the first invoice submitted after the action resulting in the credits. If no subsequent invoice is submitted, the Contractor shall deliver to the Contracting Officer a check drawn to the order of the office designated for contract administration. The Contractor shall identify the reason for the credit and the applicable term dates in all cases.

4. Withdrawal of students.

(a) The Government may, at its option and at any time, withdraw financial support for any student by issuing official orders. The Government will furnish _____ copies of the orders to the Contractor within a reasonable time after publication.

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(b) The Contractor may request withdrawal by the Government of any student for academic or disciplinary reasons.

(c) If withdrawal occurs before the end of a term, the Government will pay any

tuition and fees due for the current term. The Contractor shall credit the Government with any charges eligible for refund under the Contractor's standard procedures for any students in effect on the date of withdrawal.

(d) Withdrawal of students by the Government will not be the basis for any special charge or claim by the Contractor other than charges under the Contractor's standard procedures.

5. Transcripts. Within a reasonable time after withdrawal of a student for any reason, or after graduation, the Contractor shall send to the Contracting Officer (or to an address supplied by the Contracting Officer) one copy of an official transcript showing all work by the student at the institution until such withdrawal or graduation.

6. Student teaching. The Government does not anticipate the Contractor awarding fellowships and assistantships to students attending school under this agreement. However, for graduate students, should both the student and the Contractor decide it to be in the student's best interests to assist in the institution's teaching program, the Contractor may provide nominal compensation for part-time service. Base the compensation on the Contractor's practices and procedures for other students of similar accomplishment in that department or field. The Contractor shall apply the compensation as a credit against any invoices presented for payment for any period in which the student performed the part-time teaching service.

7. Termination of agreement.

(a) Either party may terminate this agreement by giving 30 days advance written notice of the effective date of termination. In the event of termination, the Government shall have the right, at its option, to continue to receive educational services for those students already enrolled in the contractor's institution under this agreement until such time that the students complete their courses or curricula or the Government withdraws them from the Contractor's institution. The terms and conditions of this agreement in effect on the effective date of the termination shall continue to apply to such students remaining in the Contractor's institution.

(b) Withdrawal of students under Schedule provision 4 shall not be considered a termination within the meaning of this provision 7.

(c) Termination by either party shall not be the basis for any special charge or claim by the Contractor, other than as provided by the Contractor's standard procedures.

GENERAL PROVISIONS

Use the following clauses in educational service agreements:

1. FAR 52.202-1, Definitions, and add the following paragraphs (h) through (m).

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(h) ?Term? means the period of time into which the Contractor divides the academic year for purposes of instruction. This includes ?semester,? ?trimester,? ?quarter,? or any similar word the Contractor may use.

(i) ?Course? means a series of lectures or instructions, and laboratory periods,

relating to one specific representation of subject matter, such as Elementary College Algebra, German 401, or Surveying. Normally, a student completes a course in one term and receives a certain number of semester hours credit (or equivalent) upon successful completion.

(j) ?Curriculum? means a series of courses having a unified purpose and belonging primarily to one major academic field. It will usually include certain required courses and elective courses within established criteria. Examples include Business Administration, Civil Engineering, Fine and Applied Arts, and Physics. A curriculum normally covers more than one term and leads to a degree or diploma upon successful completion.

(k) ?Catalog? means any medium by which the Contractor publicly announces terms and conditions for enrollment in the Contractor's institution, including tuition and fees to be charged. This includes ?bulletin,? ?announcement,? or any other similar word the Contractor may use.

(l) ?Tuition? means the amount of money charged by an educational institution for instruction, not including fees.

(m) ?Fees? means those applicable charges directly related to enrollment in the Contractor's institution. Unless specifically allowed in the request for services, fees shall not include?

(1) Any permit charge, such as parking and vehicle registration; or

(2) Charges for services of a personal nature, such as food, housing, and laundry.

2. FAR 52.203-3, Gratuities.

3. FAR 52.203-5, Covenant Against Contingent Fees.

4. FAR 52.204-1, Approval of Contract, if required by department/agency procedures.

5. FAR 52.215-2, Audit and Records--Negotiation.

6. FAR 52.215-8, Order of Precedence--Uniform Contract Format.

7. Conflicts Between Agreement and Catalog. Insert the following clause:

CONFLICTS BETWEEN AGREEMENT AND CATALOG

If there is any inconsistency between this agreement and any catalog or other document incorporated in this agreement by reference or any of the Contractor's rules and regulations, the provisions of this agreement shall govern.

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8. FAR 52.222-3, Convict Labor.

9. Under FAR 22.802, FAR 22.807, and FAR 22.810, use the appropriate clause from FAR 52.222-26, Equal Opportunity.

10. FAR 52.233-1, Disputes.

11. Assignment of Claims. Insert the following clause:

ASSIGNMENT OF CLAIMS

No claim under this agreement shall be assigned.

12. FAR 52.252-4, Alterations in Contract, if required by department/agency procedures.

SIGNATURE PAGE

Agreement No. Date

_____ _____

THE UNITED STATES OF AMERICA

BY: _____

(Contracting Officer)

Activity _____

Location _____

(NAME OF CONTRACTOR)

BY: _____

(Title) _____

PGI 237.75?ACQUISITION AND MANAGEMENT OF INDUSTRIAL RESOURCES

PGI 237.7502 Policy.

Use DD Form 1391, FY__ Military Construction Project Data, to notify congressional committees of projects that are not included in the annual budget.

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PART 39

OFFICE OF THE ASSISTANT SECRETARY OF WAR

Status: Class D

OFFICE OF THE ASSISTANT SECRETARY OF WAR

3000 DEFENSE PENTAGON

WASHINGTON, DC 20301-3000

ACQUISITION

AND SUSTAINMENT

In reply refer to

DARS Tracking Number: 2026-O0024

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES SPECIAL OPERATIONS

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES TRANSPORTATION

COMMAND (ATTN: ACQUISITION EXECUTIVE)

DEPUTY ASSISTANT SECRETARY OF THE ARMY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE NAVY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE

(CONTRACTING)

DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Class Deviation?Revolutionary Federal Acquisition Regulation (FAR) Overhaul

Part 39, Defense FAR Supplement (DFARS) Part 239

Effective February 1, 2026, contracting officers shall use?

? The revised FAR Part 39, Acquisition of Information and Communication Technology published on the Revolutionary FAR Overhaul web page at https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-39 in lieu of the text codified at 48 CFR chapter 1 (https://www.ecfr.gov).

? The attached DFARS Part 239, Acquisition of Information and Communication Technology in lieu of the text codified at 48 CFR chapter 2; and

? The attached DFARS Procedures, Guidance, and Information (PGI) 239, Acquisition of Information and Communication Technology in lieu of the PGI text published on the Defense Pricing, Contracting, and Acquisition Policy web page at https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.

This class deviation implements the following:

? Section 2 of E.O. 14275, Restoring Common Sense to Federal Procurement, which establishes the policy that the FAR ?should only contain provisions required by statute or essential to sound procurement, and any FAR provisions that do not

advance these objectives should be removed.
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? Section 4(a) of E.O. 14265, Modernizing Defense Acquisitions and Spurring Innovation in the Defense Industrial Base which requires the Secretary of War to eliminate or revise any unnecessary supplemental regulations or any other internal guidance, such as relevant parts of the Financial Management Regulation and Defense Federal Acquisition Regulation Supplement.
? The Office of Management and Budget memorandum, M-25-26 issued on May 2, 2025, titled, Overhauling the Federal Acquisition Regulation, which provided additional guidance to federal agencies regarding the FAR overhaul.
This class deviation remains in effect until rescinded or incorporated into the FAR, DFARS, and DFARS PGI. Inquiries regarding this class deviation can be addressed to osd.pentagon.ousd-a-s.mbx.dfars@mail.mil.
John M. Tenaglia
Principal Director,
Defense Pricing, Contracting, and
Acquisition Policy
Attachments:
As stated
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PART 239?ACQUISITION OF INFORMATION AND COMMUNICATION TECHNOLOGY

239.001 Applicability.

Notwithstanding FAR 39.001, this part applies to acquisitions of information and communication technology, including information technology for national security systems.

SUBPART 239.1?PRESOLICITATION

239.170 Requirements for commercial products and commercial services.

(a) A contracting officer must not enter into a contract in excess of the simplified acquisition threshold for information technology products or services that are not commercial products or commercial services unless the head of the contracting activity determines in writing that no commercial items are suitable to meet the agency's needs, as determined through the use of market research appropriate to the circumstances (see FAR 10.001(a)(3)) (section 855 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114-92)).

(b) See part 208 when acquiring commercial software or software maintenance.

(c) See part 227 for policy on the acquisition of commercial computer software and commercial computer software documentation.

(d) See part 227 for policy on the acquisition of other than commercial computer software and other than commercial computer software documentation.

SUBPART 239.70?EXCHANGE OR SALE OF INFORMATION TECHNOLOGY

239.7001 Policy.

Agencies must follow the procedures in DoD Manual 4140.01, Volume 9, DoD Supply Chain Materiel Management Procedures: Materiel Programs, when considering the exchange or sale of Government-owned information technology.

Subpart 239.71-239.73 [Reserved]

SUBPART 239.74?TELECOMMUNICATIONS SERVICES

239.7400 Scope.

This subpart prescribes policy and procedures for acquisition of telecommunications services and maintenance of telecommunications security. Telecommunications services meet the definition of information technology.

239.7401 Definitions.

As used in this subpart?

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Common carrier means any entity engaged in the business of providing telecommunications services which are regulated by the Federal Communications Commission or other governmental body.

Foreign carrier means any person, partnership, association, joint-stock company, trust, governmental body, or corporation not subject to regulation by a U.S. governmental regulatory body and not doing business as a citizen of the United States, providing telecommunications services outside the territorial limits of the United States.

Governmental regulatory body means the Federal Communications Commission, any statewide regulatory body, or any body with less than statewide jurisdiction when operating under the State authority. The following are not ?governmental regulatory bodies??

(1) Regulatory bodies whose decisions are not subject to judicial appeal; and

(2) Regulatory bodies which regulate a company owned by the same entity which creates the regulatory body.

Long-haul telecommunications means all general and special purpose long-distance telecommunications facilities and services (including commercial satellite services, terminal equipment and local circuitry supporting the long-haul service) to or from the post, camp, base, or station switch and/or main distribution frame

(except for trunk lines to the first-serving commercial central office for local communications services).

Noncommon carrier means any entity other than a common carrier offering telecommunications facilities, services, or equipment for lease.

Securing, sensitive information, and telecommunications systems have the meaning given in the clause at 252.239-7016, Telecommunications Security Equipment, Devices, Techniques, and Services.

Telecommunications means the transmission, emission, or reception of signals, signs, writing, images, sounds, or intelligence of any nature, by wire, cable, satellite, fiber optics, laser, radio, or any other electronic, electric, electromagnetic, or acoustically coupled means.

Telecommunications services means the services acquired, whether by lease or contract, to meet the Government's telecommunications needs. The term includes the telecommunications facilities and equipment necessary to provide such services.

239.7402 Policy.

(a) Acquisition. DoD policy is to acquire telecommunications services from common and noncommon telecommunications carriers?

(1) On a competitive basis, except when acquisition using other than full and open competition is justified;

(2) Recognizing the regulations, practices, and decisions of the Federal Communications Commission (FCC) and other governmental regulatory bodies on rates, cost principles, and accounting practices; and

(3) Making provision in telecommunications services contracts for adoption of?

(i) FCC approved practices; or

(ii) The generally accepted practices of the industry on those issues concerning common carrier services where?

(A) The governmental regulatory body has not expressed itself;

(B) The governmental regulatory body has declined jurisdiction; or

(C) There is no governmental regulatory body to decide.

(b) Security. (1) The contracting officer must ensure, in accordance with agency procedures, that purchase requests identify?

(i) The nature and extent of information requiring security during telecommunications;

(ii) The requirement for the contractor to secure telecommunications systems;

(iii) The telecommunications security equipment, devices, techniques, or services with which the contractor's telecommunications security equipment, devices, techniques, or services must be interoperable; and

(iv) The approved telecommunications security equipment, devices, techniques, or services, such as found in the National Security Agency's Information Systems Security Products and Services Catalogue.

(2) Contractors and subcontractors must provide all telecommunications security techniques or services required for performance of Government contracts.

(3) Except as provided in paragraph (b)(4) of this section, contractors and subcontractors must normally provide all required property, to include telecommunications security equipment or related devices, in accordance with FAR **45.102. In some cases, such as for communications security (COMSEC) equipment** designated as controlled cryptographic item (CCI), contractors or subcontractors must also meet ownership eligibility conditions.

(4) The head of the agency may authorize provision of the necessary property as Government-furnished property or acquisition as contractor-acquired property, as long as conditions of FAR 45.102(b) are met.

(c) Foreign carriers. For information on contracting with foreign carriers, see PGI 239.7402(c).

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239.7403-239.7404 [Reserved]

239.7405 Delegated authority for telecommunications resources.

The contracting officer may enter into a telecommunications service contract on a month-to-month basis or for any longer period or series of periods, not to exceed a total of 10 years. See PGI 239.7405 for documents relating to this contracting authority, which the General Services Administration has delegated to DoD.

239.7406 Certified cost or pricing data and data other than certified cost or pricing data.

(a) Common carriers are not required to submit certified cost or pricing data before award of contracts for tariffed services. Rates or preliminary estimates quoted by a common carrier for tariffed telecommunications services are considered to be prices set by regulation within the provisions of 10 U.S.C. 3703. This is true even if the tariff is set after execution of the contract.

(b) Rates or preliminary estimates quoted by a common carrier for nontariffed telecommunications services or by a noncommon carrier for any telecommunications service are not considered prices set by law or regulation.

(c) Contracting officers must obtain sufficient data to determine that the prices are reasonable in accordance with FAR 15.403-3 or 15.403-4. See PGI 239.7406 for examples of instances where additional data may be necessary to determine price reasonableness.

239.7407 Type of contract.

When acquiring telecommunications services, the contracting officer may use a basic agreement (see FAR 16.702) in conjunction with communication service authorizations. When using this method, follow the procedures at PGI 239.7407.

239.7408 Special construction.

239.7408-1 General.

(a) Special construction normally involves a common carrier giving a special service or facility related to the performance of the basic telecommunications service

requirements. This may include?

(1) Moving or relocating equipment;

(2) Providing temporary facilities;

(3) Expediting provision of facilities; or

(4) Providing specially constructed channel facilities to meet Government requirements.

(b) Use this subpart instead of FAR part 36 for acquisition of ?special construction.?

(c) Special construction costs may be?

(1) A contingent liability for using telecommunications services for a shorter time than the minimum to reimburse the contractor for unamortized nonrecoverable costs. These costs are usually expressed in terms of a termination liability, as provided in the contract or by tariff;

(2) A onetime special construction charge;

(3) Recurring charges for constructed facilities;

(4) A minimum service charge;

(5) An expediting charge; or

(6) A move or relocation charge.

(d) When a common carrier submits a proposal or quotation which has special construction requirements, the contracting officer must require a detailed special construction proposal. Analyze all special construction proposals to?

(1) Determine the adequacy of the proposed construction;

(2) Disclose excessive or duplicative construction; and

(3) When different forms of charge are possible, provide for the form of charge most advantageous to the Government.

(e) When possible, analyze and approve special construction charges before receiving the service. Impose a ceiling on the special construction costs before authorizing the contractor to proceed, if prior approval is not possible. The contracting officer must approve special construction charges before final payment.

239.7408-2 Applicability of construction labor standards for special construction.

(a) The construction labor standards in FAR Subpart 22.4 ordinarily do not apply to special construction. However, if the special construction includes construction, alteration, or repair (as defined in FAR 22.401) of a public building or public work, the construction labor standards may apply. Determine applicability under FAR 22.402.

(b) Each CSA or other type contract which is subject to construction labor standards under FAR 22.402 must cite that fact.

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239.7409 Special assembly.

(a) Special assembly is the designing, manufacturing, arranging, assembling, or wiring of equipment to provide telecommunications services that cannot be provided with general use equipment.

(b) Special assembly rates and charges must be based on estimated costs. The contracting officer should negotiate special assembly rates and charges before starting service. When it is not possible to negotiate in advance, use provisional rates and charges subject to adjustment, until final rates and charges are negotiated. The CSAs authorizing the special assembly must be modified to reflect negotiated final rates and charges.

239.7410 Cancellation and termination.

(a)(1) Cancellation is stopping a requirement after placing of an order but before service starts.

(2) Termination is stopping a requirement after placing an order and after service starts.

(b) Determine cancellation or termination charges under the provisions of the applicable tariff or agreement/contract.

239.7411 Contract clauses.

(a) In addition to other appropriate FAR and DFARS clauses, insert the following clauses in solicitations, contracts, and basic agreements for telecommunications services. Modify the clauses only if necessary to meet the requirements of a governmental regulatory agency.

(1) 252.239-7002, Access.

(2) 252.239-7004, Orders for Facilities and Services.

(3) 252.239-7007, Cancellation or Termination of Orders.

(b) Insert the following clauses in solicitations, contracts, and basic agreements for telecommunications services when the acquisition includes or may include special construction. Modify the clauses only if necessary to meet the requirements of a governmental regulatory agency?

(1) 252.239-7011, Special Construction and Equipment Charges; and

(2) 252.239-7012, Title to Telecommunication Facilities and Equipment.

(c) Insert the basic or alternate of the clause at 252.239-7013, Term of Agreement and Continuation of Services, in basic agreements for telecommunications services.

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(1) Insert the basic clause in basic agreements that do not supersede an existing basic agreement with the contractor.

(2) Insert the alternate I clause in basic agreements that supersede an existing basic agreement with the contractor. Complete paragraph (c)(1) of the clause with the basic agreement number, date, and contacting office that issued the basic agreement being superseded.

(d) Insert the clause at 252.239-7016, Telecommunications Security Equipment, Devices, Techniques, and Services, in solicitations and contracts when performance of a contract requires secure telecommunications.

SUBPART 239.76?CLOUD COMPUTING

239.7600 Scope of subpart.

This subpart prescribes policies and procedures for the acquisition of cloud computing services.

239.7601 Definitions.

As used in this subpart?

Authorizing official, as described in DoD Instruction 8510.01, Risk Management Framework (RMF) for DoD Information Technology (IT), means the senior Federal official or executive with the authority to formally assume responsibility for operating an information system at an acceptable level of risk to organizational operations (including mission, functions, image, or reputation), organizational assets, individuals, other organizations, and the Nation.

Cloud computing means a model for enabling ubiquitous, convenient, on-demand network access to a shared pool of configurable computing resources (e.g., networks, servers, storage, applications, and services) that can be rapidly provisioned and released with minimal management effort or service provider interaction. This includes other commercial terms, such as on-demand self-service, broad network access, resource pooling, rapid elasticity, and measured service. It also includes commercial offerings for software-as-a-service, infrastructure-as-a-service, and platform-as-a-service.

Government data means any information, document, media, or machine readable material regardless of physical form or characteristics, that is created or obtained by the Government in the course of official Government business.

Government-related data means any information, document, media, or machine readable material regardless of physical form or characteristics that is created or obtained by a contractor through the storage, processing, or communication of Government data. This does not include a contractor's business records (e.g., financial records, legal records, etc.) or data such as operating procedures, software coding, or algorithms that are not uniquely applied to the Government data.

Information system means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.

Media means physical devices or writing surfaces including, but not limited to, magnetic tapes, optical disks, magnetic disks, large-scale integration memory chips, and printouts onto which information is recorded, stored, or printed within an information system.

239.7602 Policy and responsibilities.

239.7602-1 General.

(a) Generally, DoD must acquire cloud computing services using commercial terms and conditions that are consistent with Federal law, and an agency's needs, including those requirements specified in this subpart. Some examples of commercial terms and conditions are license agreements, End User License Agreements (EULAs), Terms of Service (TOS), or other similar legal instruments or agreements. Contracting officers must incorporate any applicable service provider terms and conditions into the contract by attachment or other appropriate mechanism. Contracting officers must carefully review commercial terms and conditions and consult counsel to ensure these are consistent with Federal law, regulation, and the agency's needs.

(b)(1) Except as provided in paragraph (b)(2) of this section, the contracting officer must only award a contract to acquire cloud computing services from a cloud service provider (e.g., contractor or subcontractor, regardless of tier) that has been granted provisional authorization by Defense Information Systems Agency, at the level appropriate to the requirement, to provide the relevant cloud computing services in accordance with the Cloud Computing Security Requirements Guide (SRG) (version in effect at the time the solicitation is issued or as authorized by the contracting officer) found at https://public.cyber.mil/dccs/.

(2) The contracting officer may award a contract to acquire cloud computing services from a cloud service provider that has not been granted provisional authorization when?

(i) The requirement for a provisional authorization is waived by the DoD Chief Information Officer; or

(ii) The cloud computing service requirement is for a private, on-premises version that will be provided from U.S. Government facilities. Under this circumstance, the cloud service provider must obtain a provisional authorization prior to operational use.

(c) When contracting for cloud computing services, the contracting officer must ensure the following information is provided by the requiring activity:

(1) Government data and Government-related data descriptions.

(2) Data ownership, licensing, delivery and disposition instructions specific to the relevant types of Government data and Government-related data (e.g., DD Form 1423, Contract Data Requirements List; work statement task; line item).

Disposition instructions must provide for the transition of data in commercially available, or open and non-proprietary format (and for permanent records, in accordance with disposition guidance issued by National Archives and Record Administration).

(3) Appropriate requirements to support applicable inspection, audit, investigation, or other similar authorized activities specific to the relevant types of Government data and Government-related data, or specific to the type of cloud computing services being acquired.

(4) Appropriate requirements to support and cooperate with applicable system-wide search and access capabilities for inspections, audits, investigations, and similar authorized activities.

239.7602-2 Required storage of data within the United States or outlying areas.

(a) Cloud computing service providers are required to maintain within the 50 states, the District of Columbia, or outlying areas of the United States, all Government data that is not physically located on DoD premises, unless otherwise authorized by the authorizing official, as described in DoD Instruction 8510.01, in accordance with the SRG.

(b) The contracting officer must provide written notification to the contractor when the contractor is permitted to maintain Government data at a location outside the 50 States, the District of Columbia, and outlying areas of the United States. See PGI 239.7602-2 for additional guidance.

239.7603 Procedures.

Follow the procedures relating to cloud computing at PGI 239.7603.

239.7604 Solicitation provision and contract clause.

(a) Insert the provision at 252.239-7009, Representation of Use of Cloud Computing, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services, for information technology services.

(b) Insert the clause at 252.239-7010, Cloud Computing Services, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, for information technology services.

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PART 252?SOLICITATION PROVISIONS AND CONTRACT CLAUSES

SUBPART 252.2?TEXT OF PROVISIONS AND CLAUSES

252.239-7002 Access.

As prescribed in 239.7411(a), use the following clause:

ACCESS (DEC 1991)

(a) Subject to military security regulations, the Government shall permit the

Contractor access at all reasonable times to Contractor furnished facilities. However, if the Government is unable to permit access, the Government at its own risk and expense shall maintain these facilities and the Contractor shall not be responsible for the service involving any of these facilities during the period of nonaccess, unless the service failure results from the Contractor's fault or negligence.

(b) During periods when the Government does not permit Contractor access, the Government will reimburse the Contractor at mutually acceptable rates for the loss of or damage to the equipment due to the fault or negligence of the Government. Failure to agree shall be a dispute concerning a question of fact within the meaning of the Disputes clause of this contract.

(End of clause)

252.239-7004 Orders for Facilities and Services.

As prescribed in 239.7411(a), use the following clause:

ORDERS FOR FACILITIES AND SERVICES (SEP 2019)

(a) Definitions. As used in this clause?

Governmental regulatory body means the Federal Communications Commission, any statewide regulatory body, or any body with less than statewide jurisdiction when operating under the state authority. Regulatory bodies whose decisions are not subject to judicial appeal and regulatory bodies which regulate a company owned by the same entity that creates the regulatory body are not governmental regulatory bodies.

(b) The Contractor shall acknowledge a communication service authorization or other type order for supplies and facilities by?

(1) Commencing performance after receipt of an order; or

(2) Written acceptance by a duly authorized representative.

(c) The Contractor shall furnish the services and facilities under this agreement/contract in accordance with all applicable tariffs, rates, charges, regulations, requirements, terms, and conditions of?

(1) Service and facilities furnished or offered by the Contractor to the general public or the Contractor's subscribers; or

(2) Service as lawfully established by a governmental regulatory body.

(d) The Government will not prepay for services.

(e) For nontariffed services, the Contractor shall charge the Government at the lowest rate and under the most favorable terms and conditions for similar service and facilities offered to any other customer.

(f) Recurring charges for services and facilities shall, in each case, start with the satisfactory beginning of service or provision of facilities or equipment and are payable monthly in arrears.

(g) Expediting charges are costs necessary to get services earlier than normal. Examples are overtime pay or special shipment. When authorized, expediting charges shall be the additional costs incurred by the Contractor and the subcontractor. The Government shall pay expediting charges only when?

(1) They are provided for in the tariff established by a governmental regulatory body; or

(2) They are authorized in a communication service authorization or other contractual document.

(h) When services normally provided are technically unacceptable and the development, fabrication, or manufacture of special equipment is required, the Government may?

(1) Provide the equipment; or

(2) Direct the Contractor to acquire the equipment or facilities. If the Contractor acquires the equipment or facilities, the acquisition shall be competitive, if practicable.

(i) If at any time the Government defers or changes its orders for any of the services but does not cancel or terminate them, the amount paid or payable to the Contractor for the services deferred or modified shall be equitably adjusted under applicable tariffs filed by the Contractor with the regulatory commission in effect at the time of deferral or change. If no tariffs are in effect, the Government and the Contractor shall equitably adjust the rates by mutual agreement. Failure to agree on any adjustment shall be a dispute concerning a question of fact within the meaning of the Disputes clause of this contract.

(End of clause)

252.239-7007 Cancellation or Termination of Orders.

As prescribed in 239.7411(a), use the following clause:

CANCELLATION OR TERMINATION OF ORDERS (SEP 2019)

(a) Definitions. As used in this clause?

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Actual nonrecoverable costs means the installed costs of the facilities and equipment, less cost of reusable materials, and less net salvage value.

Basic cancellation liability means the actual nonrecoverable cost, which the Government shall reimburse the Contractor at the time services are cancelled.

Basic termination liability means the nonrecoverable cost amortized in equal monthly increments throughout the liability period.

Installed costs means the actual cost of equipment and materials specifically provided or used, plus the actual cost of installing (including engineering, labor, supervision, transportation, rights-of-way, and any other items which are chargeable to the capital accounts of the Contractor), less any costs the government may have directly reimbursed the Contractor under the Special Construction and

Equipment Charges clause of this agreement/contract.
Net salvage value means the salvage value less the cost of removal.

(b) If the Government cancels any of the services ordered under this agreement/contract, before the services are made available to the Government, or terminates any of these services after they are made available to the Government, the Government will reimburse the Contractor for the actual nonrecoverable costs the Contractor has reasonably incurred in providing facilities and equipment for which the Contractor has no foreseeable reuse. The Government will not reimburse the Contractor for any actual nonrecoverable costs incurred after notice of award, but prior to execution of the order.

(c) When feasible, the Contractor shall reuse cancelled or terminated facilities or equipment to minimize the charges to the Government.

(d) If at any time the Government requires that telecommunications facilities or equipment be relocated within the Contractor's service area, the Government will have the option of paying the costs of relocating the facilities or equipment in lieu of paying any termination or cancellation charge under this clause. The basic cancellation liability or basic termination liability applicable to the facilities or equipment in their former location shall continue to apply to the facilities and equipment in their new location. Monthly recurring charges shall continue to be paid during the period.

(e) When there is another requirement or foreseeable reuse in place of cancelled or terminated facilities or equipment, no charge shall apply and the basic cancellation liability or basic termination liability shall be appropriately reduced. When feasible, the Contractor shall promptly reuse discontinued channels or facilities, including equipment for which the Government is obligated to pay a minimum service charge.

(f) The amount of the Government's liability upon cancellation or termination of any of the services ordered under this agreement/contract will be determined under applicable tariffs governing cancellation and termination charges which?
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(1) Are filed by the Contractor with a governmental regulatory body, as defined in the Orders For Facilities and Services clause of this agreement/contract;

(2) Are in effect on the date of termination; and

(3) Provide specific cancellation or termination charges for the facilities and equipment involved or show how to determine the charges.

(g) The amount of the Government's liability upon cancellation or termination of any of the services ordered under this agreement/contract, which are not subject to a governmental regulatory body, will be determined under a mutually agreed schedule in the communication services authorization (CSA) or other contractual document.

(h) If no applicable tariffs are in effect on the date of cancellation or termination

or set forth in the applicable CSA or other contractual document, the Government's liability will be determined under the following settlement procedures?

(1) The Contractor agrees to provide the Contracting Officer, in such reasonable detail as the Contracting Officer may require, inventory schedules covering all items of property or facilities in the Contractor's possession, the cost of which is included in the Basic Cancellation or Termination Liability for which the Contractor has no foreseeable reuse.

(2) The Contractor shall use its best efforts to sell property or facilities when the Contractor has no foreseeable reuse or when the Government has not exercised its option to take title under the Title to Telecommunications Facilities and Equipment clause of this agreement/contract. The Contractor shall apply any proceeds of the sale to reduce any payments by the Government to the Contractor under a cancellation or termination settlement.

(3) The Contractor shall record actual nonrecoverable costs under established accounting procedures prescribed by the cognizant governmental regulatory authority or, if no such procedures have been prescribed, under generally accepted accounting procedures applicable to the provision of telecommunication services for public use.

(4) The net salvage value shall be deducted from the Contractor's installed cost. In determining net salvage value, the Contractor shall consider the foreseeable reuse of the facilities and equipment by the Contractor. The Contractor shall make allowance for the cost of dismantling, removal, reconditioning, and disposal of the facilities and equipment when necessary either for the sale of facilities or their reuse by the Contractor in another location.

(5) Upon termination of services, the Government will reimburse the Contractor for the nonrecoverable cost less such costs amortized to the date services are terminated and establish the liability period as mutually agreed to but not to exceed ten years. In the case of either a cancellation or a termination, the Government's presumed maximum liability will be capped by the unpaid non-recurring charges

and the monthly recurring charges set out in the contract/agreement. The presumed maximum liability for monthly recurring charges shall be capped at monthly recurring charges for the minimum service period and any required notice period.

(6) When the basic cancellation liability or basic termination liability established by the CSA or other contractual document is based on estimated costs, the Contractor agrees to settle on the basis of actual cost at the time of cancellation or termination.

(7) The Contractor agrees that, if after settlement but within the termination liability period of the services, should the Contractor make reuse of equipment or facilities which were treated as nonreusable or nonsalvable in the settlement, the

Contractor shall reimburse the Government for the value of the equipment or facilities.

(8) The Contractor agrees to exclude?

(i) Any costs which are not included in determining cancellation and termination charges under the Contractor's standard practices or procedures; and

(ii) Charges not ordinarily made by the Contractor for similar facilities or equipment, furnished under similar circumstances.

(i) The Government may, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the cancelled or terminated portion of this agreement/contract. The Government may make these payments if the Contracting Officer determines that the total of the payments is within the amount the Contractor is entitled. If the total of the payments is in excess of the amount finally agreed or determined to be due under this clause, the Contractor shall pay the excess to the Government upon demand.

(j) Failure to agree shall be a dispute concerning a question of fact within the meaning of the Disputes clause.

(End of clause)

252.239-7009 Representation of use of cloud computing.

As prescribed in 239.7604(a), use the following provision:

REPRESENTATION OF USE OF CLOUD COMPUTING (SEP 2015)

(a) Definition. Cloud computing, as used in this provision, means a model for enabling ubiquitous, convenient, on-demand network access to a shared pool of configurable computing resources (e.g., networks, servers, storage, applications, and services) that can be rapidly provisioned and released with minimal management effort or service provider interaction. This includes other commercial terms, such as on-demand self-service, broad network access, resource pooling, rapid elasticity, and measured service. It also includes commercial offerings for software-as-a-service, infrastructure-as-a-service, and platform-as-a-service.

(b) The Offeror shall indicate by checking the appropriate blank in paragraph

(c) of this provision whether the use of cloud computing is anticipated under the resultant contract.

(c) Representation. The Offeror represents that it?

____Does anticipate that cloud computing services will be used in the performance of any contract or subcontract resulting from this solicitation.

____Does not anticipate that cloud computing services will be used in the performance of any contract or subcontract resulting from this solicitation.

(End of provision)

252.239-7010 Cloud Computing Services.

As prescribed in 239.7604(b), use the following clause:

CLOUD COMPUTING SERVICES (JAN 2023)

(a) Definitions. As used in this clause?

Authorizing official, as described in DoD Instruction 8510.01, Risk Management Framework (RMF) for DoD Information Technology (IT), means the senior Federal official or executive with the authority to formally assume responsibility for operating an information system at an acceptable level of risk to organizational operations (including mission, functions, image, or reputation), organizational assets, individuals, other organizations, and the Nation.

Cloud computing means a model for enabling ubiquitous, convenient, on-demand network access to a shared pool of configurable computing resources (e.g., networks, servers, storage, applications, and services) that can be rapidly provisioned and released with minimal management effort or service provider interaction. This includes other commercial terms, such as on-demand self-service, broad network access, resource pooling, rapid elasticity, and measured service. It also includes commercial offerings for software-as-a-service, infrastructure-as-a-service, and platform-as-a-service.

Compromise means disclosure of information to unauthorized persons, or a violation of the security policy of a system, in which unauthorized intentional or unintentional disclosure, modification, destruction, or loss of an object, or the copying of information to unauthorized media may have occurred.

Cyber incident means actions taken through the use of computer networks that result in a compromise or an actual or potentially adverse effect on an information system and/or the information residing therein.

Government data means any information, document, media, or machine readable material regardless of physical form or characteristics, that is created or obtained by the Government in the course of official Government business.

Government-related data means any information, document, media, or machine readable material regardless of physical form or characteristics that is created or obtained by a contractor through the storage, processing, or communication of Government data. This does not include contractor's business records e.g. financial records, legal records etc. or data such as operating procedures, software coding or algorithms that are not uniquely applied to the Government data.

Information system means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.

Media means physical devices or writing surfaces including, but not limited to, magnetic tapes, optical disks, magnetic disks, large-scale integration memory chips, and printouts onto which information is recorded, stored, or printed within an information system.

Spillage security incident that results in the transfer of classified or controlled unclassified information onto an information system not accredited (i.e., authorized) for the appropriate security level.

(b) Cloud computing security requirements. The requirements of this clause are applicable when using cloud computing to provide information technology services in the performance of the contract.

(1) If the Contractor indicated in its offer that it ?does not anticipate the use of cloud computing services in the performance of a resultant contract,? in response to provision 252.239-7009, Representation of Use of Cloud Computing, and after the award of this contract, the Contractor proposes to use cloud computing services in the performance of the contract, the Contractor shall obtain approval from the Contracting Officer prior to utilizing cloud computing services in performance of the contract.

(2) The Contractor shall implement and maintain administrative, technical, and physical safeguards and controls with the security level and services required in accordance with the Cloud Computing Security Requirements Guide (SRG)

(version in effect at the time the solicitation is issued or as authorized by the Contracting Officer) found at https://public.cyber.mil/dccs/dccs-documents/ unless notified by the Contracting Officer that this requirement has been waived by the DoD Chief Information Officer.

(3) The Contractor shall maintain within the United States or outlying areas all Government data that is not physically located on DoD premises, unless the Contractor receives written notification from the Contracting Officer to use another location, in accordance with DFARS 239.7602-2(a).

(c) Limitations on access to, and use and disclosure of Government data and Government-related data.

(1) The Contractor shall not access, use, or disclose Government data unless specifically authorized by the terms of this contract or a task order or delivery order issued hereunder.

(i) If authorized by the terms of this contract or a task order or delivery order issued hereunder, any access to, or use or disclosure of, Government data shall only be for purposes specified in this contract or task order or delivery order.

(ii) The Contractor shall ensure that its employees are subject to all such access, use, and disclosure prohibitions and obligations.

(iii) These access, use, and disclosure prohibitions and obligations shall survive the expiration or termination of this contract.

(2) The Contractor shall use Government-related data only to manage the operational environment that supports the Government data and for no other purpose unless otherwise permitted with the prior written approval of the Contracting Officer.

(d) Cloud computing services cyber incident reporting. The Contractor shall report all cyber incidents that are related to the cloud computing service provided under this contract. Reports shall be submitted to DoD via http://dibnet.dod.mil/.

(e) Malicious software. The Contractor or subcontractors that discover and isolate malicious software in connection with a reported cyber incident shall submit the malicious software in accordance with instructions provided by the Contracting Officer.

(f) Media preservation and protection. When a Contractor discovers a cyber incident has occurred, the Contractor shall preserve and protect images of all known affected information systems identified in the cyber incident report (see paragraph (d) of this clause) and all relevant monitoring/packet capture data for at least 90 days from the submission of the cyber incident report to allow DoD to request the media or decline interest.

(g) Access to additional information or equipment necessary for forensic analysis. Upon request by DoD, the Contractor shall provide DoD with access to additional information or equipment that is necessary to conduct a forensic analysis.

(h) Cyber incident damage assessment activities. If DoD elects to conduct a damage assessment, the Contracting Officer will request that the Contractor provide all of the damage assessment information gathered in accordance with paragraph (f) of this clause.

(i) Records management and facility access.

(1) The Contractor shall provide the Contracting Officer all Government data and Government-related data in the format specified in the contract.

(2) The Contractor shall dispose of Government data and Government-related data in accordance with the terms of the contract and provide the confirmation of disposition to the Contracting Officer in accordance with contract closeout procedures.

(3) The Contractor shall provide the Government, or its authorized representatives, access to all Government data and Government-related data, access to contractor personnel involved in performance of the contract, and physical access to any Contractor facility with Government data, for the purpose of audits, investigations, inspections, or other similar activities, as authorized by law or regulation.

(j) Notification of third party access requests. The Contractor shall notify the Contracting Officer promptly of any requests from a third party for access to Government data or Government-related data, including any warrants, seizures, or subpoenas it receives, including those from another Federal, State, or local agency. The Contractor shall cooperate with the Contracting Officer to take all measures to protect Government data and Government-related data from any unauthorized disclosure.

(k) Spillage. Upon notification by the Government of a spillage, or upon the Contractor's discovery of a spillage, the Contractor shall cooperate with the Contracting Officer to address the spillage in compliance with agency procedures.

(l) Subcontracts. The Contractor shall include this clause, including this paragraph (l), in all subcontracts that involve or may involve cloud services, including subcontracts for commercial services.

(End of clause)

252.239-7011 Special construction and equipment charges.

As prescribed in 239.7411(b), use the following clause:

SPECIAL CONSTRUCTION AND EQUIPMENT CHARGES (DEC 1991)

(a) The Government will not directly reimburse the Contractor for the cost of constructing any facilities or providing any equipment, unless the Contracting Officer authorizes direct reimbursement.

(b) If the Contractor stops using facilities or equipment which the Government has, in whole or part, directly reimbursed, the Contractor shall allow the Government credit for the value of the facilities or equipment attributable to the Government's contribution. Determine the value of the facilities and equipment on the basis of their foreseeable reuse by the Contractor at the time their use is discontinued or on the basis of the net salvage value, whichever is greater. The Contractor shall promptly pay the Government the amount of any credit.

(c) The amount of the direct special construction charge shall not exceed?

(1) The actual costs to the Contractor; and

(2) An amount properly allocable to the services to be provided to the Government.

(d) The amount of the direct special construction charge shall not include costs incurred by the Contractor which are covered by?

(1) A cancellation or termination liability; or

(2) The Contractor's recurring or other nonrecurring charges.

(e) The Contractor represents that?

(1) Recurring charges for the services, facilities, and equipment do not include in the rate base any costs that have been reimbursed by the Government to the Contractor; and

(2) Depreciation charges are based only on the cost of facilities and equipment paid by the Contractor and not reimbursed by the Government.

(f) If it becomes necessary for the Contractor to incur costs to replace any facilities or equipment, the Government shall assume those costs or reimburse the Contractor for replacement costs at mutually acceptable rates under the following circumstances?

(1) The Government paid direct special construction charges; or

(2) The Government reimbursed the Contractor for those facilities or equipment as a part of the recurring charges; and

(3) The need for replacement was due to circumstances beyond the control and without the fault of the Contractor.

(g) Before incurring any costs under paragraph (f) of this clause, the Government shall have the right to terminate the service under the Cancellation or Termination of Orders clause of this contract.

(End of clause)

252.239-7012 Title to telecommunication facilities and equipment.

As prescribed in 239.7411(b), use the following clause:

TITLE TO TELECOMMUNICATION FACILITIES AND EQUIPMENT (DEC 1991)

(a) Title to all Contractor furnished facilities and equipment used under this agreement/contract shall remain with the Contractor even if the Government paid the costs of constructing the facilities or equipment. A mutually accepted communications service authorization may provide for exceptions.

(b) The Contractor shall operate and maintain all telecommunication facilities and equipment used under this agreement/contract whether the Government or the Contractor has title.

(End of clause)

252.239-7013 Term of Agreement and Continuation of Services.

Basic. As prescribed in 239.7411(c)(1), use the following clause:

TERM OF AGREEMENT AND CONTINUATION OF SERVICES?BASIC (OCT 2019)

(a) This basic agreement is not a contract. The Government incurs liability only upon issuance of a communication service authorization, which is a contract that incorporates the terms and conditions of this basic agreement.

(b) This agreement shall continue in force from year to year, unless terminated by either party by 30 days' written notice. Termination of this basic agreement does not terminate or cancel any communication service authorizations issued under this basic agreement prior to the termination.

(c) Communication service authorizations issued under this basic agreement may be modified to incorporate the terms and conditions of a new basic agreement negotiated with the Contractor.

(End of clause)

Alternate I. As prescribed in 239.7411(c)(2), use the following clause, which uses a different paragraph (c) than the basic clause and adds a new paragraph (d).

TERM OF AGREEMENT AND CONTINUATION OF SERVICES?ALTERNATE I (OCT 2019)

(a) This basic agreement is not a contract. The Government incurs liability only

upon issuance of a communication service authorization, which is a contract that incorporates the terms and conditions of this basic agreement.

(b) This agreement shall continue in force from year to year, unless terminated by either party by 30 days' written notice. Termination of this basic agreement does not terminate or cancel any communication service authorizations issued under this basic agreement prior to the termination.

(c) The Contractor's current communication services authorizations have been modified to incorporate the terms and conditions of this basic agreement.

(1) All current communication service authorizations issued by _____ that incorporate Basic Agreement Number _____, dated _____, are modified to incorporate this basic agreement.

(2) Current communication service authorizations, issued by the activity in paragraph (c)(1) of this clause, that incorporate other agreements with the Contractor may also be modified to incorporate this basic agreement.

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(d) Communication service authorizations issued under this basic agreement may be modified to incorporate a new basic agreement with the Contractor.

(End of clause)

252.239-7016 Telecommunications security equipment, devices, techniques, and services.

As prescribed in 239.7411(d), use the following clause:

TELECOMMUNICATIONS SECURITY EQUIPMENT, DEVICES, TECHNIQUES, AND SERVICES (DEC 1991)

(a) Definitions. As used in this clause?

(1) Securing means the application of Government-approved telecommunications security equipment, devices, techniques, or services to contractor telecommunications systems.

(2) Sensitive information means any information the loss, misuse, or modification of which, or unauthorized access to, could adversely affect the national interest or the conduct of Federal programs, or the privacy to which individuals are entitled under 5 U.S.C. 552a (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive Order or Act of Congress to be kept secret in the interest of national defense or foreign policy.

(3) Telecommunications systems means voice, record, and data communications, including management information systems and local data networks that connect to external transmission media, when employed by Government agencies, contractors, and subcontractors to transmit?

(i) Classified or sensitive information;

(ii) Matters involving intelligence activities, cryptologic activities related to national security, the command and control of military forces, or equipment that

is an integral part of a weapon or weapons system; or

(iii) Matters critical to the direct fulfillment of military or intelligence missions.

(b) This solicitation/contract identifies classified or sensitive information that requires securing during telecommunications and requires the Contractor to secure telecommunications systems. The Contractor agrees to secure information and systems at the following location: (Identify the location.)

(c) To provide the security, the Contractor shall use Government-approved telecommunications equipment, devices, techniques, or services. A list of the approved equipment, etc. may be obtained from (identify where list can be obtained). Equipment, devices, techniques, or services used by the Contractor must be compatible or interoperable with (list and identify the location of any

telecommunications security equipment, device, technique, or service currently being used by the technical or requirements organization or other offices with which the Contractor must communicate).

(d) Except as may be provided elsewhere in this contract, the Contractor shall furnish all telecommunications security equipment, devices, techniques, or services necessary to perform this contract. The Contractor must meet ownership eligibility conditions for communications security equipment designated as controlled cryptographic items.

(e) The Contractor agrees to include this clause, including this paragraph (e), in all subcontracts which require securing telecommunications.

(End of clause)

PGI 239?ACQUISITION OF INFORMATION AND COMMUNICATION TECHNOLOGY

PGI 239.74 -TELECOMMUNICATIONS SERVICES

PGI 239.7402 Policy.

(c) Foreign carriers.

(i) Frequently, foreign carriers are owned by the government of the country in which they operate. The foreign governments often prescribe the methods of doing business.

(ii) In contracts for telecommunications services in foreign countries, describe the rates and practices in as much detail as possible. It is DoD policy not to pay discriminatory rates. DoD will pay a reasonable rate for telecommunications services or the rate charged the military of that country, whichever is less.

(iii) Refer special problems with telecommunications acquisition in foreign countries to higher headquarters for resolution with appropriate State Department representatives.

(d) Long-haul telecommunications services. DISA will acquire all long-haul telecommunications services for DoD. See DoD Directive 5105.19, Defense Information Systems Agency (DISA).

PGI 239.7405 Delegated authority for telecommunications resources.

Related Documents:

Documents related to DoD?s delegated authority to enter into telecommunications service contracts are available here.

PGI 239.7406 Certified cost or pricing data and data other than certified cost or pricing data.

Examples of instances where certified cost or pricing data, if required in accordance with FAR 15.403-4, or data other than certified cost or pricing data, if required in accordance with FAR 15.403-3, may be necessary to support price reasonableness include?

(1) Nontariffed services;

(2) Special rates and charges not included in a tariff, whether filed or to be filed;

(3) Special assembly rates and charges;

(4) Special construction and equipment charges;

(5) Contingent liabilities that are fixed at the outset of the service;

(6) Proposed cancellation and termination charges under the clause at 252.239-7007, Cancellation or Termination of Orders, and reuse arrangements under the clause at 252.239-7008, Reuse Arrangements;

(7) Rates contained in voluntary tariffs filed by nondominant common carriers; or

(8) A tariff, whether filed or to be filed, for new services installed or developed primarily for Government use.

PGI 239.7407 Type of contract.

When using a basic agreement in conjunction with a communication service authorization?

(1) Use DD Form 428, Communication Service Authorization (CSA), or an electronic data processing substitute to award, modify, cancel, or terminate telecommunications services. The CSA must?

(i) Refer to the basic agreement;

(ii) Specify the types and quantities and equipment to be provided as well as the tariff (or other price if a tariff is not available) of those services and equipment;

(iii) Specify the premises involved;

(iv) Cite the address for billing;

(v) Identify the disbursing office;

(vi) Provide funding information; and

(vii) Include an expiration date.

(2) Before awarding a CSA, comply with the requirements in FAR and DFARS, e.g., for competition, reviews, approvals, and determinations and findings.

PGI 239.76?CLOUD COMPUTING

PGI 239.7602 Policy and responsibilities.

PGI 239.7602-1 General.

(c)(6) When the clause at DFARS 252.239-7010 applies, the contracting officer must provide the contractor with the name of the responsible Government official to contact in response to any spillage occurring in connection with the cloud computing services being provided. The requiring activity will provide the contracting officer with the name of the responsible official in accordance with agency procedures, as required by Enclosure 7 of DoDM 5200.01-V3, DoD Information Security Program: Protection of Classified Information.

PGI 239.7602-2 Required storage of data within the United States or outlying areas.

(b) Prior to authorizing storage of data outside the United States and outlying areas, the contracting officer must receive written authorization from the authorizing official.

PGI 239.7603 Procedures.

PGI 239.7603-1 General.

(a) When the apparently successful offeror indicates in the provision at DFARS 252.239-7009 that cloud computing services will be used in the performance of the contract, the contracting officer must review the DoD Cloud Service Catalog at http://www.disa.mil/Computing/Cloud-Services/Cloud-Support (look under the ?Additional Information? tab for ?Service Catalog?) to verify that the cloud service provider?s offering to be used in the performance of the contract has a provisional authorization prior to award (see DFARS 239.7602-1(b)).

(b) When the contractor indicated in the provision at DFARS 252.239-7009 that it did not anticipate the use of cloud computing services in the performance of the contract and requests, after award, in accordance with the clause at DFARS 252.239-7010(b)(1), that the contracting officer approve the use of cloud computing services in the performance of the contract, the contracting officer must?

(1) Request approval from the requiring activity for the contractor to use cloud computing services; and

(2) If the requiring activity provides approval, review the DoD Cloud Service Catalog at http://www.disa.mil/Computing/Cloud-Services/Cloud-Support (look under the ?Additional Information? tab for ?Service Catalog?) to verify that the cloud service provider?s offering to be used in the performance of the contract has a provisional authorization (see DFARS 239.7602-1(b)).

PGI 239.7603-2 Notification of third party access requests.

When a contractor provides notification of a request from a third party for access to

Government data or Government-related data, in accordance with DFARS 252.239-7010(j), the contracting officer must convey the request to the requiring activity. The requiring activity will coordinate a response with the mission or data owner.

PGI 239.7603-3 Cyber incident and compromise reporting.

(a) When a cyber incident is reported by a contractor, the DoD Cyber Crime Center (DC3) will send an unclassified encrypted email containing the cyber incident report to the contracting officer(s) identified on the Incident Collection Format (ICF). The DC3 may request the contracting officer to send a digitally signed email to DC3.

(1) The procuring contracting officer (PCO) must notify the requiring activities that have contracts identified in the ICF. In cases where an administrative contracting officer (ACO) receives the cyber incident report, in lieu of the PCO, the ACO must notify the PCO for each affected contract, who will then notify the requiring activity.

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(2) In cases of cyber incidents involving multiple contracts, the DoD components will work together to designate a single contracting officer to coordinate the effort. The requiring activity will notify the contracting officer once a lead is designated.

(b) When requested by the contractor, the contracting officer must provide the contractor with the ?Instructions for Malware Submission? document available at http://www.acq.osd.mil/dpap/dars/pgi/docs/Instructions_for_Submitting_Malware.docx. The contracting officer should never receive malicious software directly from the contractor.

(c) If the requiring activity requests access to contractor information or equipment, in accordance with DFARS 252.239-7010(g), the contracting officer must provide a written request to the contractor.

(d) For additional information on cyber incident reporting, see the frequently asked question document at http://www.acq.osd.mil/dpap/pdi/network_penetration_reporting_and_contracting.html.

PGI 239.7603-4 DoD damage assessment activities.

(a) Prior to initiating damage assessment activities, the contracting officer must verify that a contract(s) identified in the cyber incident report include(s) the clause at DFARS 252.239-7010. If the contracting officer determines that a contract identified in the report does not contain the clause, the contracting officer must notify the requiring activity that damage assessment activities, if required, may be determined to constitute a change to the contract.

(b) In cases of cyber incidents involving multiple contracts, a single contracting officer will be designated to coordinate with the contractor regarding media submission.

(c) If the requiring activity requests the contracting officer obtain media, as defined at DFARS 252.239-7010, from the contractor, the contracting officer must?

(1) Provide a written request for the media;

(2) Provide the contractor with the ?Instructions for Media Submission? document available at

http://www.acq.osd.mil/dpap/dars/pgi/docs/Instructions_for_Submitting_Media.docx; and

(3) Provide a copy of the request to DC3, electronically via email at dcise@dc3.mil, and the requiring activity.

(d) If the contracting officer is notified by the requiring activity that media are not required, the contracting officer must notify the contractor and simultaneously provide a copy of the notice to DC3 and the requiring activity.

(e) The contracting officer must document the action taken as required by paragraph (c) or (d) of this section, in the contract file.

(f) Upon receipt of the contractor media, DC3 will confirm receipt in writing to the contractor and the requesting contracting officer.

(g) When the requiring activity determines that the damage assessment activities are complete, the requiring activity will provide the contracting officer with a report documenting the findings from the damage assessment activities affecting covered defense information.

(h) The contracting officer must include the report documenting the findings in the contract file(s) and provide a copy to the contractor.

PART 40

OFFICE OF THE ASSISTANT SECRETARY OF WAR

Status: Class D

OFFICE OF THE ASSISTANT SECRETARY OF WAR

3000 DEFENSE PENTAGON

WASHINGTON, DC 20301-3000

ACQUISITION

AND SUSTAINMENT

In reply refer to

DARS Tracking Number: 2026-O0025

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES SPECIAL OPERATIONS

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES TRANSPORTATION

COMMAND (ATTN: ACQUISITION EXECUTIVE)

DEPUTY ASSISTANT SECRETARY OF THE ARMY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE NAVY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE

(CONTRACTING)

DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Class Deviation?Revolutionary Federal Acquisition Regulation (FAR) Overhaul

Part 40, Defense FAR Supplement (DFARS) Part 240

Effective February 1, 2026, contracting officers shall use?

? The revised FAR Part 40, Information Security and Supply Chain Security published on the Revolutionary FAR Overhaul web page at https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-40 in lieu of the text codified at 48 CFR chapter 1 (https://www.ecfr.gov).

? The attached new DFARS Part 240, Information Security and Supply Chain Security; and

? The attached new DFARS Procedures, Guidance, and Information (PGI) 240, Information Security and Supply Chain Security.

This class deviation implements the following:

? Section 2 of E.O. 14275, Restoring Common Sense to Federal Procurement, which establishes the policy that the FAR ?should only contain provisions required by statute or essential to sound procurement, and any FAR provisions that do not advance these objectives should be removed.

? Section 4(a) of E.O. 14265, Modernizing Defense Acquisitions and Spurring

Innovation in the Defense Industrial Base which requires the Secretary of War to
DARS Tracking Number: 2026-O0025
Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 40
Defense FAR Supplement (DFARS) Part 240
eliminate or revise any unnecessary supplemental regulations or any other internal guidance, such as relevant parts of the Financial Management Regulation and Defense Federal Acquisition Regulation Supplement.
? The Office of Management and Budget memorandum, M-25-26 issued on May 2, 2025, titled, Overhauling the Federal Acquisition Regulation, which provided additional guidance to federal agencies regarding the FAR overhaul.
This class deviation remains in effect until rescinded or incorporated into the FAR, DFARS, and DFARS PGI. Inquiries regarding this class deviation can be addressed to osd.pentagon.ousd-a-s.mbx.dfars@mail.mil.
John M. Tenaglia
Principal Director,
Defense Pricing, Contracting, and
Acquisition Policy
Attachments:
As stated
2
Attachment A1
DARS Tracking Number: 2026-O0025
Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 40
Defense FAR Supplement (DFARS) Part 240

PART 240?INFORMATION SECURITY AND SUPPLY CHAIN SECURITY

SUBPART 240.2?SECURITY PROHIBITIONS AND EXCLUSIONS

240.270 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

240.270-1 Scope.

This section implements section 1656 of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91) and section 889(a)(1)(A) of the National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232).

240.270-2 Definitions.

As used in this section?
?Covered defense telecommunications equipment or services? means?

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation, or any subsidiary or affiliate of such entities;

(2) Telecommunications services provided by such entities or using such equipment; or

(3) Telecommunications equipment or services produced or provided by an entity that the Secretary of Defense reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

?Covered foreign country? means?

(1) The People's Republic of China; or

(2) The Russian Federation.

?Covered missions? means?

(1) The nuclear deterrence mission of DoD, including with respect to nuclear command, control, and communications, integrated tactical warning and attack assessment, and continuity of Government; or

(2) The homeland defense mission of DoD, including with respect to ballistic missile defense.

240.270-3 Prohibition.

In addition to the prohibition at FAR 40.202(d), unless the covered defense telecommunications equipment or services are subject to a waiver described in **240.270-5 the contracting officer must not procure or obtain, or extend or renew a** contract (e.g., exercise an option) to procure or obtain, any equipment, system, or service to carry out covered missions that uses covered defense telecommunications

equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

240.270-4 Procedures.

(a) Representations.

(1) (i) If the offeror selects ?does not? in response to the provision at DFARS **252.204-7016, the contracting officer may rely on the representation, unless the** contracting officer has an independent reason to question the representation. If the contracting officer has a reason to question the ?does not? representation in **252.204-7016, then the contracting officer must consult with the requiring activity** and legal counsel.

(ii) If the offeror selects ?does? in paragraph (c) of the provision at DFARS 252.204-7016, the offeror must complete the representation at DFARS **252.204-7017.**

(2)(i) If the offeror selects ?will not? in paragraph (d) of the provision at DFARS 252.204-7017, the contracting officer may rely on the representation, unless the contracting officer has an independent reason to question the representation. If the contracting officer has a reason to question the ?will not? representation in FAR **52.240-90 or DFARS 252.204-7017, then the contracting officer must consult with** the requiring activity and legal counsel.

(ii) If an offeror selects ?will? in paragraph (d) of the provision at DFARS **252.204-7017, the offeror must provide the information required by paragraph (e) of** the provision. When an offeror completes paragraph (e) of either of the provisions at FAR 52.240-90 or DFARS 252.204-7017, the contracting officer must?

(A) Forward the offeror's representation and disclosure information to the requiring activity; and

(B) Not award to the offeror unless the requiring activity advises?

(1) For equipment, systems, or services that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, that a waiver as described at FAR 40.203-3 has been granted; or

(2) For equipment, systems, or services to be used to carry out covered missions that use covered defense telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, that a waiver as described at DFARS 240.270-5 has been granted.

(b) Reporting. If a contractor reports information to https://dibnet.dod.mil in accordance with the clause at FAR 52.240-91 or DFARS 252.204-7018, the Defense Cyber Crime Center will notify the contracting officer, who will consult with the requiring activity on how to proceed with the contract.

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240.270-5 Waivers.

The Secretary of Defense may waive the prohibition in 240.270-3 on a case-by-case basis for a single, one-year period, if the Secretary?

(a) Determines such waiver to be in the national security interests of the United States; and

(b) Certifies to the Congressional defense committees that?

(1) There are sufficient mitigations in place to guarantee the ability of the Secretary to carry out the covered missions; and

(2) The Secretary is removing the use of covered defense telecommunications equipment or services in carrying out such missions.

240.270-6 Solicitation provisions and contract clause.

(a) Insert the provision at 252.204-7016, Covered Defense Telecommunications Equipment or Services?Representation, in all solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services, and solicitations for task orders and delivery orders, basic ordering agreements (BOAs), orders against BOAs, blanket purchase agreements

(BPAs), and calls against BPAs.

(b) Insert the provision at 252.204-7017, Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services?Representation, in all solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services, and solicitations for task orders and delivery orders, BOAs, orders against BOAs, BPAs, and calls against BPAs.

(c) Insert the clause at 252.204-7018, Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services, in all solicitations and

resultant awards, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, and solicitations and awards for task orders and delivery orders, BOAs, orders against BOAs, BPAs, and calls against BPAs.

240.271 Requirements for Information Relating to Supply Chain Risk.

240.271-1 Scope.

This subpart implements 10 U.S.C. 3252 and elements of DoD Instruction 5200.44, Protection of Mission Critical Functions to Achieve Trusted Systems and Networks (TSN), at https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/520044p.pdf?ver=2018-11-08-075800-903.

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240.271-2 Definitions.

As used in this section?

?Covered item of supply? means an item of information technology that is purchased for inclusion in a covered system, and the loss of integrity of which could result in a supply chain risk for a covered system (see 10 U.S.C. 3252).

?Covered system? means a national security system, as that term is defined at 44 U.S.C. 3552(b) (see 10 U.S.C. 3252). It is any information system, including any telecommunications system, used or operated by an agency or by a contractor of an agency, or other organization on behalf of an agency?

(1) The function, operation, or use of which?

(i) Involves intelligence activities;

(ii) Involves cryptologic activities related to national security;

(iii) Involves command and control of military forces;

(iv) Involves equipment that is an integral part of a weapon or weapons system; or

(v) Is critical to the direct fulfillment of military or intelligence missions but this does not include a system that is to be used for routine administrative and business applications, including payroll, finance, logistics, and personnel management applications; or

(2) Is protected at all times by procedures established for information that have been specifically authorized under criteria established by an Executive order or an Act of Congress to be kept classified in the interest of national defense or foreign policy.

?Information technology? (see 40 U.S.C 11101(6)) means, in lieu of the definition at FAR 2.1, any equipment, or interconnected system(s) or subsystem(s) of equipment, that is used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the agency.

(1) For purposes of this definition, equipment is used by an agency if the equipment is used by the agency directly or is used by a contractor under a contract with the agency that requires?

(i) Its use; or

(ii) To a significant extent, its use in the performance of a service or the furnishing of a product.

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(2) The term ?information technology? includes computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including support services), and related resources.

(3) The term ?information technology? does not include any equipment acquired by a contractor incidental to a contract.

?Supply chain risk? means the risk that an adversary may sabotage, maliciously introduce unwanted function, or otherwise subvert the design, integrity, manufacturing, production, distribution, installation, operation, or maintenance of a covered system so as to surveil, deny, disrupt, or otherwise degrade the function, use, or operation of such system (see 10 U.S.C. 3252).

240.271-3 Applicability.

Notwithstanding FAR part 39.001, apply this section to acquisition of information technology for covered systems (see 10 U.S.C. 3252), for procurements involving?

(a) A source selection for a covered system or a covered item of supply involving either a performance specification (see 10 U.S.C. 3206(a)(3)(B)), or an evaluation factor (see 10 U.S.C. 3206(b)(1)), relating to supply chain risk;

(b) The consideration of proposals for and issuance of a task or delivery order for a covered system or a covered item of supply where the task or delivery order contract concerned includes a requirement relating to supply chain risk (see 10 U.S.C. 3406(d)(3) and FAR 16.507-5(b)(2); or

(c) Any contract action involving a contract for a covered system or a covered item of supply where such contract includes a requirement relating to supply chain risk.

240.271-4 Authorized individuals.

(a) Subject to 240.271-5, the following individuals are authorized to take the actions authorized by 240.271-6:

(1) The Secretary of Defense.

(2) The Secretary of the Army.

(3) The Secretary of the Navy.

(4) The Secretary of the Air Force.

(b) The individuals authorized at paragraph (a) may not delegate the authority

to take the actions at 240.271-6 or the responsibility for making the determination required by 240.271-5 to an official below the level of?

(1) For the Department of Defense, the Under Secretary of Defense for Acquisition and Sustainment; and,

(2) For the military departments, the service acquisition executive for the department concerned.

240.271-5 Determination and notification.

The individuals authorized in 240.271-4 may exercise the authority provided in **240.271-6 only after?**

(a) Obtaining a joint recommendation by the Under Secretary of Defense for Acquisition and Sustainment and the Chief Information Officer of the Department of Defense, on the basis of a risk assessment by the Under Secretary of Defense for Intelligence, that there is a significant supply chain risk to a covered system;

(b) Making a determination in writing, in unclassified or classified form, with the concurrence of the Under Secretary of Defense for Acquisition and Sustainment, that?

(1) Use of the authority in 240.271-6(a), (b), or (c) is necessary to protect national security by reducing supply chain risk;

(2) Less intrusive measures are not reasonably available to reduce such supply chain risk; and

(3) In a case where the individual authorized in 240.271-4 plans to limit disclosure of information under 240.271-6(d), the risk to national security due to the disclosure of such information outweighs the risk due to not disclosing such information; and

(c)(1) Providing a classified or unclassified notice of the determination made under paragraph (b) of this section?

(i) In the case of a covered system included in the National Intelligence Program or the Military Intelligence Program, to the Select Committee on Intelligence of the Senate, the Permanent Select Committee on Intelligence of the House of Representatives, and the congressional defense committees; and

(ii) In the case of a covered system not otherwise included in paragraph

(a) of this section, to the congressional defense committees; and

(2) The notice must include?

(i) The following information (see 10 U.S.C. 3204(e)(2)):

(A) A description of the agency's needs.

(B) An identification of the statutory exception from the requirement to use competitive procedures and a demonstration, based on the proposed

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contractor's qualifications or the nature of the procurement, of the reasons for using that exception.

(C) A determination that the anticipated cost will be fair and reasonable.

(D) A description of the market survey conducted or a statement of the reasons a market survey was not conducted.

(E) A listing of the sources, if any, that expressed in writing an interest in the procurement.

(F) A statement of the actions, if any, the agency may take to remove or overcome any barrier to competition before a subsequent procurement for such needs;

(ii) The joint recommendation by the Under Secretary of Defense for Acquisition and Sustainment and the Chief Information Officer of the Department of Defense as specified in paragraph (a) of this section;

(iii) A summary of the risk assessment by the Under Secretary of Defense for Intelligence that serves as the basis for the joint recommendation specified in paragraph (a) of this section; and

(iv) A summary of the basis for the determination, including a discussion of less intrusive measures that were considered and why they were not reasonably available to reduce supply chain risk.

240.271-6 Exclusion and limitation on disclosure.

Subject to 240.271-5, the individuals authorized in 240.271-4 may, in the course of procuring information technology, whether as a service or as a supply, that is a covered system, is a part of a covered system, or is in support of a covered system?

(a) Exclude a source that fails to meet qualification standards established in accordance with the requirements of 10 U.S.C. 3243, for the purpose of reducing supply chain risk in the acquisition of covered systems;

(b) Exclude a source that fails to achieve an acceptable rating with regard to an evaluation factor providing for the consideration of supply chain risk in the evaluation of proposals for the award of a contract or the issuance of a task or delivery order;

(c) Withhold consent for a contractor to subcontract with a particular source or direct a contractor for a covered system to exclude a particular source from consideration for a subcontract under the contract; and

(d) Limit, notwithstanding any other provision of law, in whole or in part, the disclosure of information relating to the basis for carrying out any of the actions

authorized by paragraphs (a) through (c) of this section, and if such disclosures are

so limited?

(1) No action undertaken by the individual authorized under such authority must be subject to review in a bid protest before the Government Accountability Office or in any Federal court; and

(2) The authorized individual must?

(i) Notify appropriate parties of action taken under paragraphs (a) through

(d) of this section and the basis for such action only to the extent necessary to effectuate the action;

(ii) Notify other Department of Defense components or other Federal agencies responsible for procurements that may be subject to the same or similar supply chain risk, in a manner and to the extent consistent with the requirements of national security; and

(iii) Ensure the confidentiality of any such notifications.

240.271-7 Solicitation provision and contract clause.

(a) Insert the provision at 252.239-7017, Notice of Supply Chain Risk, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services, for information technology, whether acquired as a service or as a supply, that is a covered system, is a part of a covered system, or is in support of a covered system, as defined at **240.271-2.**

(b) Insert the clause at 252.239-7018, Supply Chain Risk, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, for information technology, whether acquired as a service or as a supply, that is a covered system, is a part of a covered system, or is in support of a covered system, as defined at **240.271-2.**

240.272 Prohibited Sources.

240.272-1 Restrictions administered by the Department of the Treasury on acquisitions of supplies or services from prohibited sources.

DoD personnel are authorized to make emergency acquisitions in direct support of U.S. or allied forces deployed in military contingency, humanitarian, or peacekeeping operations in a country or region subject to economic sanctions administered by the Department of the Treasury, Office of Foreign Assets Control.

240.272-2 Prohibition on acquisition of certain items from Communist Chinese military companies.

This section implements section 1211 of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109-163), section 1243 of the National Defense

Authorization Act for Fiscal Year 2012 (Pub. L. 112-81), and section 1296 of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114-328). See PGI

240.272-2 for additional information relating to this statute, the terms used in this section, the United States Munitions List (USML), and the 600 series of the Commerce Control List (CCL).

(a) Definitions. As used in this section?

?Component? means an item that is useful only when used in conjunction with an end item (15 CFR 772.1 and 22 CFR 120.45(b)).

?Item? means?

(1) A USML defense article, as defined at 22 CFR 120.6;

(2) A USML defense service, as defined at 22 CFR 120.9; or

(3) A 600 series item, as defined at 15 CFR 772.1.

?Part? means any single unassembled element of a major or minor component, accessory, or attachment, that is not normally subject to disassembly without the destruction or impairment of designed use (15 CFR 772.1 and 22 CFR 120.45(d)).

(b) Prohibition. Do not acquire items covered by the USML or the 600 series of the CCL, through a contract or subcontract at any tier, from any Communist Chinese military company. This prohibition does not apply to components and parts of covered items unless the components and parts are themselves covered by the USML or the 600 series of the CCL.

(c) Exceptions. The prohibition in paragraph (b) of this section does not apply to items acquired?

(1) In connection with a visit to the People?s Republic of China by a vessel or an aircraft of the U.S. armed forces;

(2) For testing purposes; or

(3) For the purpose of gathering intelligence.

(d) Identifying items covered by the USML or the 600 series of the CCL.

(1) Before issuance of a solicitation, the requiring activity will notify the contracting officer in writing whether the items to be acquired are covered by the USML or the 600 series of the CCL. The notification will identify any covered item(s) and will provide the pertinent USML reference(s) from 22 CFR part 121 or the 600 series of the CCL references from 15 CFR part 774, Supplement No. 1.

(2) The USML includes defense articles and defense services that fall into 21 categories. The CCL includes ten categories and five product groups in each category, many of which contain 600 series items. Since not all items covered by the

USML or 600 series of the CCL are themselves munitions (e.g., protective personnel equipment, military training equipment), the requiring activity should consult the USML and the 600 series of the CCL before concluding that an item is or is not covered. See PGI 240.272-2(d).

(e) Waiver of prohibition.

(1) The prohibition in paragraph (b) of this section may be waived, on a case-by-case basis, if an official identified in paragraph (b) of this section

determines that a waiver is necessary for national security purposes.

(2) The following officials are authorized, without power of delegation, to make the determination specified in paragraph (a) of this section:

(i) The Under Secretary of Defense (Acquisition and Sustainment).

(ii) The Secretaries of the military departments.

(iii) The Component Acquisition Executive of the Defense Logistics Agency.

(3)(i) The official granting a waiver must submit a report to the congressional defense committees, with a copy to the Principal Director, Defense Pricing, Contracting, and Acquisition Policy (see PGI 240.272-2), not less than 15 days before issuing the waiver.

(ii) In the report, the official must?

(A) Identify the specific reasons for the waiver; and

(B) Include recommendations as to what actions may be taken to develop alternative sourcing capabilities in the future.

(f) Contract clause. Unless an exception in paragraph (c) of this section applies, insert the clause at 252.225-7007 , Prohibition on Acquisition of Certain Items from Communist Chinese Military Companies, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, involving the delivery of items covered by the United States Munitions List or the 600 series of the Commerce Control List.

240.272-3 Prohibition on contracting or subcontracting with a firm that is owned or controlled by the government of a country that is a state sponsor of terrorism.

(a) Scope. This section implements 10 U.S.C. 4871(b).

(b) Definition. As used in this section?

?State sponsor of terrorism,? is defined in the provision at 252.225-7050, Disclosure of Ownership or Control by the Government of a Country that is a State Sponsor of Terrorism.

(c) Prohibition.

(1) Do not award a contract of $200,000 or more to a firm when a foreign government that is a state sponsor of terrorism owns or controls, either directly or indirectly, a significant interest in?

(i) The firm;

(ii) A subsidiary of the firm; or

(iii) Any other firm that owns or controls the firm.

(2) For restrictions on subcontracting with a firm, or a subsidiary of a firm, that is identified by the Secretary of Defense as being owned or controlled by the government of a country that is a state sponsor of terrorism, see part 209.

(d) Notification. Forward any disclosure that the government of a country that is a state sponsor of terrorism has a significant interest in an offeror, a subsidiary of an offeror, or any other firm that owns or controls an offeror through agency channels to the address at PGI 240.272-3(d).

(e) Waiver of prohibition. The prohibition in paragraph (c) of this section may be waived if the Secretary of Defense determines that a waiver is not inconsistent with the national security objectives of the United States in accordance with 10 U.S.C. 4871(c).

(e) Solicitation provision. Insert the provision at 252.225-7050, Disclosure of Ownership or Control by the Government of a Country that is a State Sponsor of Terrorism, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services (other than commercial satellite services), that are expected to result in contracts of $200,000 or more. If the solicitation includes the provision at FAR 52.204-7, do not separately list the provision 252.225-7050 in the solicitation.

240.272-4 Prohibition on acquisition of certain foreign commercial satellite services.

(a) Scope. This section implements 10 U.S.C. 2279.

(b) Definitions. As used in this section?

?Covered foreign country? means?

(1) The People?s Republic of China;

(2) North Korea;

(3) The Russian Federation; or

(4) Any country that is a state sponsor of terrorism. (10 U.S.C. 2279)

?Cybersecurity risk? means threats to and vulnerabilities of information or information systems and any related consequences caused by or resulting from unauthorized access, use, disclosure, degradation, disruption, modification, or destruction of such information or information systems, including such related consequences caused by an act of terrorism. (10 U.S.C. 2279)

?Foreign entity? means?

(1) Any branch, partnership, group or sub-group, association, estate, trust, corporation or division of a corporation, or organization organized under the laws of a foreign state if either its principal place of business is outside the United States or its equity securities are primarily traded on one or more foreign exchanges.

(2) Notwithstanding paragraph (1) of this definition, any branch, partnership, group or sub-group, association, estate, trust, corporation or division of a corporation, or organization that demonstrates that a majority of the equity interest in such entity is ultimately owned by U.S. nationals is not a foreign entity.

(31 CFR 800.212)

?Government of a covered foreign country? includes the state and the government of a covered foreign country, as well as any political subdivision, agency, or instrumentality thereof.

?Launch vehicle? means a fully integrated space launch vehicle. (10 U.S.C. 2279)

?Satellite services? means communications capabilities that utilize an on-orbit satellite for transmitting the signal from one location to another.

?State sponsor of terrorism? means a country determined by the Secretary of State, under section 1754(c)(1)(A)(i) of the Export Control Reform Act of 2018 (Title XVII, Subtitle B, of the National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232), to be a country the government of which has repeatedly provided support for acts of international terrorism. As of December 14, 2020, state sponsors of terrorism include Iran, North Korea, and Syria. (10 U.S.C. 4871).

(c) Prohibitions.

Except as provided in paragraph (e) of this section, do not award a contract for commercial satellite services to?

(1)(i) A foreign entity if the Under Secretary of Defense for Acquisition and Sustainment or the Under Secretary of Defense for Policy reasonably believes that?

(A) The foreign entity is an entity in which the government of a covered foreign country has an ownership interest that enables the government to affect satellite operations;

(B) The foreign entity plans to or is expected to provide satellite services under the contract from a covered foreign country; or

(C) Entering into such contract would create an unacceptable cybersecurity risk for DoD, as determined by the Under Secretary of Defense for Acquisition and Sustainment or the Under Secretary of Defense for Policy; or

(ii) An offeror that is offering commercial satellite services provided by a foreign entity as described in paragraph (1) of this section; or

(2)(i) Any entity, except as provided in paragraph (c)(2)(ii) of this section, for a launch that occurs on or after December 31, 2022, if the Under Secretary of Defense for Acquisition and Sustainment or the Under Secretary of Defense for Policy reasonably believes that such satellite services will be provided using satellites that will be?

(A) Designed or manufactured?

(1) In a covered foreign country; or

(2) By an entity controlled in whole or in part by, or acting on behalf of, the government of a covered foreign country; or

(B) Launched outside the United States using a launch vehicle that is?

(1) Designed or manufactured in a covered foreign country; or

(2) Provided by?

(i) The government of a covered foreign country; or

(ii) An entity controlled in whole or in part by, or acting on behalf of, the government of a covered foreign country.

(ii) The prohibition in paragraph (c)(2)(i) of this section does not apply with respect to launch services for which a satellite service provider has a contract or other agreement that, prior to June 10, 2018, was either fully paid for by the satellite service provider or covered by a legally binding commitment of the satellite service provider to pay for such services.

(d) Procedures.

(1)(ii) Do not award to any source that is a foreign satellite service provider or is offering satellite services provided by a foreign entity if such award presents an unacceptable cybersecurity risk, as determined by the Under Secretary of Defense for Acquisition and Sustainment or the Under Secretary of Defense for Policy.

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(ii) When procuring commercial satellite services from a foreign entity, the contracting officer must review the exclusion records in the System for Award Management (SAM) database as required at FAR 9.405, to ensure that an entity identified in, or otherwise known to be involved in, the otherwise successful offer is not listed as ineligible in the SAM database (see FAR 9.405).

(2) If an offeror discloses information in accordance with paragraph (c) of the provision 252.225-7049, Prohibition on Acquisition of Certain Foreign Commercial Satellite Services?Representations, the contracting officer?

(i) Must forward the information regarding the offeror through agency channels to the address at PGI 240.272-4(d); and

(ii) Must not award to that offeror, unless an exception is determined to apply in accordance with paragraph (e) of this section.

(3)(i) If the otherwise successful offeror provides negative responses to all representations in the provision at 252.225-7049, the contracting officer may rely on the representations, unless the contracting officer has an independent reason to question the representations.

(1ii) If the contracting officer has an independent reason to question a negative representation of the otherwise successful offeror, the contracting officer must consult with the office specified in PGI 240.272-4(d), prior to deciding whether to award to that offeror.

(e) Exception.

(1) The prohibitions in 240.272-4(c)(1) and (c)(2) do not apply if?

(i) The Under Secretary of Defense for Acquisition and Sustainment, or the Under Secretary of Defense for Policy, without power of redelegation, determines that it is in the national security interest of the United States to enter

into such contract; and

(ii) Not later than seven days before entering into such contract, the Under Secretary of Defense making the determination in paragraph (e)(1)(i) of this section, in consultation with the Director of National Intelligence, submits to the congressional defense committees a national security assessment, in accordance with 10 U.S.C. 2279.

(2) If requesting an exception pursuant to paragraph (e)(1) of this section, the contracting officer must forward the request through agency channels to the address at PGI 240.272-4, providing any available information necessary for the Under Secretary of Defense making the determination in paragraph (e)(1)(i) of this section to evaluate the request and perform a national security assessment, in accordance with 10 U.S.C. 2279.

(f) Solicitation provision and contract clauses.

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(1) Insert the provision at 252.225-7049, Prohibition on Acquisition of Certain Foreign Commercial Satellite Services?Representations, in solicitations that include the clause at 252.225-7051, Prohibition on Acquisition of Certain Foreign Commercial Satellite Services. If the solicitation includes the provision at FAR 52.204-7, do not separately list the provision 252.225-7049 in the solicitation.

(2) Insert the clause at 252.225-7051, Prohibition on Acquisition of Certain Foreign Commercial Satellite Services, in solicitations and contracts for the acquisition of commercial satellite services, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services.

(3) Insert the clause at 252.239-7018, Supply Chain Risk, as prescribed at **240.271-7(b), when applicable.**

SUBPART 240.3?SAFEGUARDING INFORMATION

240.370 Safeguarding Covered Defense Information and Cyber Incident Reporting.

240.370-1 Scope.

(a) This section applies to contracts and subcontracts requiring contractors and subcontractors to safeguard covered defense information that resides in or transits through covered contractor information systems by applying specified network security requirements. It also requires reporting of cyber incidents.

(b) This section does not abrogate any other requirements regarding contractor physical, personnel, information, technical, or general administrative security operations governing the protection of unclassified information, nor does it affect requirements of the National Industrial Security Program.

240.370-2 Definitions.

As used in this section?

?Adequate security? means protective measures that are commensurate with the consequences and probability of loss, misuse, or unauthorized access to, or modification of information.
?Contractor attributional/proprietary information? means information that identifies the contractor(s), whether directly or indirectly, by the grouping of information that can be traced back to the contractor(s) (e.g., program description, facility locations), personally identifiable information, as well as trade secrets, commercial or financial information, or other commercially sensitive information that is not customarily shared outside of the company.
?Controlled technical information? means technical information with military or space application that is subject to controls on the access, use, reproduction, modification, performance, display, release, disclosure, or dissemination. Controlled

technical information would meet the criteria, if disseminated, for distribution statements B through F using the criteria set forth in DoD Instruction 5230.24, Distribution Statements on Technical Documents. The term does not include information that is lawfully publicly available without restrictions.
?Covered contractor information system? means an unclassified information system that is owned, or operated by or for, a contractor and that processes, stores, or transmits covered defense information.
?Covered defense information? means unclassified controlled technical information or other information (as described in the Controlled Unclassified Information (CUI) Registry at http://www.archives.gov/cui/registry/category-list.html) that requires safeguarding or dissemination controls pursuant to and consistent with law, regulations, and Governmentwide policies, and is?

(1) Marked or otherwise identified in the contract, task order, or delivery order and provided to the contractor by or on behalf of DoD in support of the performance of the contract; or

(2) Collected, developed, received, transmitted, used, or stored by or on behalf of the contractor in support of the performance of the contract.

?Information system? means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.
?Media? means physical devices or writing surfaces including, but not limited to, magnetic tapes, optical disks, magnetic disks, large-scale integration memory chips, and printouts onto which covered defense information is recorded, stored, or printed within a covered contractor information system.
?Rapidly report? means within 72 hours of discovery of any cyber incident.
?Technical information? means technical data or computer software, as those terms are defined in the clause at DFARS 252.227-7013, Rights in Technical Data?Other Than Commercial Products and Commercial Services, regardless of whether or not

the clause is incorporated in the solicitation or contract. Examples of technical information include research and engineering data, engineering drawings, and associated lists, specifications, standards, process sheets, manuals, technical reports, technical orders, catalog-item identifications, data sets, studies and analyses and related information, and computer software executable code and source code.

240.370-3 Policy.

(a)(1) Contractors and subcontractors are required to provide adequate security on all covered contractor information systems in accordance with 32 CFR 2002 and the clause at 252.204-7012.

(2) High NIST SP 800-171 DoD Assessments will be conducted by Government personnel using NIST SP 800-171A, ?Assessing Security Requirements for Controlled Unclassified Information.?

(3) The Medium or High NIST SP 800-171 DoD Assessments will use the scoring methodology described in 32 CFR 170.24.

(4) The Medium or High NIST SP 800-171 DoD Assessments will not duplicate efforts from any other DoD assessment or the Cybersecurity Maturity Model Certification (CMMC) (see 240.371), except for rare circumstances when a new assessment may be necessary, such as, but not limited to, when cybersecurity risks, threats, or awareness have changed, requiring a new assessment to ensure current compliance.

(b) Contractors and subcontractors are required to rapidly report cyber incidents directly to DoD at http://dibnet.dod.mil. Subcontractors provide the incident report number automatically assigned by DoD to the prime contractor. Lower-tier subcontractors likewise report the incident report number automatically assigned by DoD to their higher-tier subcontractor, until the prime contractor is reached.

(1) If a cyber incident occurs, contractors and subcontractors submit to DoD?

(i) A cyber incident report;

(ii) Malicious software, if detected and isolated; and

(iii) Media (or access to covered contractor information systems and equipment) upon request.

(2) Contracting officers must refer to PGI 240.370-9(c) for instructions on contractor submissions of media and malicious software.

(c) Information shared by the contractor may include contractor attributional/proprietary information that is not customarily shared outside of the company, and that the unauthorized use or disclosure of such information could cause substantial competitive harm to the contractor that reported the information. The Government must protect against the unauthorized use or release of information that includes contractor attributional/proprietary information.

(d) A cyber incident that is reported by a contractor or subcontractor must not, by itself, be interpreted as evidence that the contractor or subcontractor has failed to provide adequate security on their covered contractor information systems or has otherwise failed to meet the requirements of the clause at 252.204-7012, Safeguarding Covered Defense Information and Cyber Incident Reporting. When a cyber incident is reported, the contracting officer must consult with the DoD component Chief Information Officer/cyber security office prior to assessing contractor compliance (see PGI 240.370-8(a)(3)). The contracting officer must consider such cyber incidents in the context of an overall assessment of a contractor's compliance with the requirements of the clause at 252.204-7012.

(e) Support services contractors directly supporting Government activities related to safeguarding covered defense information and cyber incident reporting

(e.g., forensic analysis, damage assessment, or other services that require access to data from another contractor) are subject to restrictions on use and disclosure of reported information.

240.370-4 Procedures.

Follow the procedures relating to safeguarding covered defense information at PGI **240.370.**

240.370-5 Solicitation provisions and contract clauses.

(a) Insert the provision at 252.204-7008, Compliance with Safeguarding Covered Defense Information Controls, in all solicitations, including solicitations using FAR **part 12 procedures for the acquisition of commercial products and commercial** services, except for solicitations solely for the acquisition of commercially available off-the-shelf (COTS) items.

(b) Insert the clause at 252.204-7009, Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information, in all solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, for services that include support for the Government's activities related to safeguarding covered defense information and cyber incident reporting.

(c) Insert the clause at 252.204-7012, Safeguarding Covered Defense Information and Cyber Incident Reporting, in all solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, except for solicitations and contracts solely for the acquisition of COTS items.

(d) Insert the clause at 252.240-7997, NIST SP 800-171 DoD Assessment Requirements, in all solicitations and contracts, task orders, or delivery orders, including those using FAR part 12 procedures for the acquisition of commercial products and commercial services, except for those that are solely for the acquisition

of COTS items.

240.371 Cybersecurity Maturity Model Certification

240.371-1 Scope.

(a) This section prescribes policies and procedures for including the Cybersecurity Maturity Model Certification (CMMC) level requirements in DoD contracts. CMMC is a framework (see 32 CFR part 170) for assessing a contractor's information security protections.

(b) This section does not abrogate any other requirements regarding contractor physical, personnel, information, technical, or general administrative security

operations governing the protection of unclassified information, nor does it affect requirements of the National Industrial Security Program.

(c) This section applies to unclassified contractor information systems.

240.371-2 Definitions.

As used in this section?

?Controlled unclassified information? means information the Government creates or possesses, or information an entity creates or possesses for or on behalf of the Government, that a law, regulation, or Governmentwide policy requires or permits an agency to handle using safeguarding or dissemination controls (32 CFR **2002.4(h)).**

?Current? means?

(1) With regard to Conditional Cybersecurity Maturity Model Certification (CMMC) Status?

(i) Not older than 180 days for Conditional Level 2 (Self) assessments and Conditional Level 2 (certified third-party assessment organization (C3PAO)) assessments, with?

(A) No changes in compliance with the requirements at 32 CFR part 170 since the Conditional CMMC Status date (see 32 CFR 170.16 and 170.17); and

(B) A corresponding affirmation of continuous compliance by an affirming official (see 32 CFR 170.4); and

(ii) Not older than 180 days for Conditional Level 3 (Defense Industrial Base Cybersecurity Assessment Center (DIBCAC)) assessments, with?

(A) No changes in compliance with the requirements at 32 CFR part 170 since the Conditional CMMC Status date (see 32 CFR 170.18); and

(B) A corresponding affirmation of continuous compliance by an affirming official;

(2) With regard to Final CMMC Status?

(i) Not older than 1 year for Final Level 1 (Self), with?

(A) No changes in compliance with the requirements at 32 CFR part

170 since the Final CMMC Status date (see 32 CFR 170.15); and

(B) A corresponding affirmation of continuous compliance, not older than 1 year, by an affirming official;

(ii) Not older than 3 years for Final Level 2 (Self) assessments and Final Level 2 (C3PAO) assessments, with?

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(A) No changes in compliance with the requirements at 32 CFR part 170 since the Final CMMC Status date (see 32 CFR 170.16 and 170.17); and

(B) A corresponding affirmation of continuous compliance, not older than 1 year, by an affirming official; and

(iii) Not older than 3 years for Final Level 3 (DIBCAC) assessments, with?

(A) No changes in compliance with the requirements at 32 CFR part 170 since the Final CMMC Status date (see 32 CFR 170.18); and

(B) A corresponding affirmation of continuous compliance, not older than 1 year, by an affirming official; and

(3) With regard to affirmation of continuous compliance (32 CFR 170.22), not older than 1 year with no changes in compliance with the requirements at 32 CFR **part 170.**

?Cybersecurity Maturity Model Certification (CMMC) status? means the result of meeting or exceeding the minimum required score for the corresponding assessment. The potential statuses are as follows:

(1) Final Level 1 (Self).

(2) Conditional Level 2 (Self).

(3) Final Level 2 (Self).

(4) Conditional Level 2 (C3PAO).

(5) Final Level 2 (C3PAO).

(6) Conditional Level 3 (DIBCAC).

(7) Final Level 3 (DIBCAC).

?Cybersecurity Maturity Model Certification unique identifier (CMMC UID)? means 10 alpha-numeric characters assigned to each CMMC assessment and reflected in the Supplier Performance Risk System (SPRS) for each contractor information system.

?Federal contract information (FCI)? means information, not intended for public release, that is provided by or generated for the Government under a contract to develop or deliver a product or service to the Government. It does not include information provided by the Government to the public, such as on public websites, or simple transactional information, such as information necessary to process payments.

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240.371-3 Policy.

(a) Award eligibility.

(1) The contracting officer must include in the solicitation the required CMMC level, if provided by the program office or the requiring activity.

(2) Contracting officers must not award a contract, task order, or delivery order to an offeror that does not have a current CMMC status at the CMMC level required by the solicitation.

(3) Contractors are required to achieve, at time of award, a CMMC status at the CMMC level specified in the solicitation, or higher, for all information systems used in the performance of the contract, task order, or delivery order that will process, store, or transmit FCI or CUI. Contractors are required to maintain a current CMMC status at the specified CMMC level or higher, if required by the contract, task order, or delivery order, throughout the life of the contract, task order, or delivery order.

(b) CMMC status.

(1) Contracting officers may award a contract, task order, delivery order, or modification to exercise an option or extend a period of performance, if the offeror's or contractor's CMMC status is?

(i) Listed in the definition of ?CMMC status?; and

(ii) Equal to or higher than the CMMC level required by the solicitation or contract, task order, or delivery order.

(2) CMMC levels 2 and 3 can be in a conditional level for a period not to exceed 180 days from the CMMC status date (32 CFR 170.21), and award can occur with a conditional CMMC level. CMMC level 1 requires a final CMMC level for award.

240.371-4 Procedures.

(a) CMMC level. The contracting officer must include the CMMC level (see 32 CFR 170.19) required by the program office or requiring activity in the solicitation provision and contract clause prescribed at 240.371-5.

(b) Award. Contracting officers must check SPRS and not award a contract, task order, or delivery order to an offeror that does not have a current CMMC status posted in SPRS at the CMMC level (see 32 CFR 170.15 through 170.18) required by the solicitation, or higher, for each CMMC UID provided by the offeror. The CMMC UIDs are applicable to each of the contractor information systems that will process, store, or transmit FCI or CUI and that will be used in performance of the contract.

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(c) Option exercise or period of performance extension. Contracting officers must check SPRS and not exercise an option or extend the period of performance on a contract, task order, or delivery order, unless the contractor has a current CMMC status posted in SPRS at the CMMC level (see 32 CFR 170.15 through 170.18) required by the contract, task order, or delivery order, or higher, for each CMMC UID provided by the contractor. The contractor's CMMC UIDs are applicable to each of the contractor information systems that process, store, or transmit FCI or CUI and that are or will be used in performance of the contract.

(d) CMMC UIDs. If the contractor provides new CMMC UIDs during performance of the contract, task order, or delivery order, the contracting officer must check in SPRS, using the CMMC UIDs assigned by SPRS, that the contractor has a current CMMC status at the required CMMC level, or higher, for each of the contractor information systems identified that will process, store, or transmit FCI or CUI during contract performance.

240.371-5 Solicitation provision and contract clause.

(a) Unless the requirements at 32 CFR 170.5(d) are met, insert the clause at **252.204-7021, Contractor Compliance with the Cybersecurity Maturity Model** Certification Level Requirements, as follows:

(1) Until November 9, 2028, in solicitations and contracts, task orders, or delivery orders, including those using FAR part 12 procedures for the acquisition of commercial products and commercial services, except for those solely for the acquisition of commercially available off-the-shelf (COTS) items, if the program office or requiring activity determines that the contractor is required to have a specific CMMC level.

(2) On or after November 10, 2028, in solicitations and contracts, task orders, or delivery orders, including those using FAR part 12 procedures for the acquisition of commercial products and commercial services, except for those solely for the acquisition of COTS items, if the program office or requiring activity determines that the contractor is required to use contractor information systems in the performance of the contract, task order, or delivery order to process, store, or transmit FCI or CUI.

(b) Insert the provision at 252.204-7025, Notice of Cybersecurity Maturity Model Certification Level Requirements, in solicitations that include the clause at **252.204-7021.**

240.372 Safeguarding classified information within industry.

240.372-1 General.

DoD employees or members of the Armed Forces who are assigned to or visiting a contractor facility and are engaged in oversight of an acquisition program will retain control of their work products, both classified and unclassified (see PGI **240.372-1).**

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240.372-2 Responsibilities of contracting officers.

(a) Contracting officers must ensure that solicitations comply with PGI 240.372-2(1).

(b) For additional guidance on determining a project to be fundamental research in accordance with 252.204-7000(a)(3), see PGI 240.372-2(2).

240.372-3 Contract clauses.

(a) Insert the clause at 252.204-7000, Disclosure of Information, in solicitations and contracts when the contractor will have access to or generate unclassified information that may be sensitive and inappropriate for release to the public.

(b) Insert the clause at 252.204-7003, Control of Government Personnel Work Product, in all solicitations and contracts.

240.373 Security and Privacy for Computer Systems

240.373-1 Scope.

This section includes information assurance and Privacy Act considerations. Information assurance requirements are in addition to provisions concerning protection of privacy of individuals (see FAR Subpart 24.1).

240.373-2 Definition.

As used in this section?

?Information assurance? means measures that protect and defend information, that is entered, processed, transmitted, stored, retrieved, displayed, or destroyed, and information systems, by ensuring their availability, integrity, authentication, confidentiality, and non-repudiation. This includes providing for the restoration of information systems by incorporating protection, detection, and reaction capabilities.

240.373-3 Policy and responsibilities.

(a) General.

(1) Agencies must ensure that information assurance is provided for information technology.

(2) For all acquisitions, the contracting officer must receive from the requiring activity?

(i) Statements of work, specifications, or statements of objectives that meet information assurance requirements as specified in paragraph (a) of this section;

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(ii) Inspection and acceptance contract requirements; and

(iii) A determination as to whether the information technology requires protection against compromising emanations.

(b) Compromising emanations?TEMPEST or other standard.

For acquisitions requiring information assurance against compromising

emanations, the requiring activity is responsible for providing to the contracting officer?

(1) The required protections, i.e., an established National TEMPEST standard (e.g., NSTISSAM TEMPEST 1-92) or a standard used by other authority;

(2) The required identification markings to include markings for TEMPEST or other standard, certified equipment (especially if to be reused);

(3) Inspection and acceptance requirements addressing the validation of compliance with TEMPEST or other standards; and

(4) A date through which the accreditation is considered current for purposes of the proposed contract.

(c) Information assurance contractor training and certification.

(1) For acquisitions that include information assurance functional services for DoD information systems, or that require any appropriately cleared contractor personnel to access a DoD information system to perform contract duties, the contracting officer must receive from the requiring activity?

(i) A list of information assurance functional responsibilities for DoD information systems by category (e.g., technical or management) and level (e.g., computing environment, network environment, or enclave); and

(ii) The information assurance training, certification, certification maintenance, and continuing education or sustainment training required for the information assurance functional responsibilities.

(2) The responsibilities specified in paragraph (c)(1) of this section apply to all DoD information assurance duties supported by a contractor, whether performed full-time or part-time as additional or embedded duties, and when using a DoD contract, or a contract or agreement administered by another agency (e.g., under an interagency agreement).

(d) Contract clause. Insert the clause at 252.239-7000, Protection Against Compromising Emanations, in solicitations and contracts involving information technology that requires protection against compromising emanations.

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Part 252?SOLICITATION PROVISIONS AND CONTRACT CLAUSES

SUBPART 252.2?TEXT OF PROVISIONS AND CLAUSES

252.204-7000 Disclosure of information.

As prescribed in 240.372-3(a), use the following clause:

DISCLOSURE OF INFORMATION (OCT 2016)

(a) The Contractor shall not release to anyone outside the Contractor's organization any unclassified information, regardless of medium (e.g., film, tape, document), pertaining to any part of this contract or any program related to this contract, unless?

(1) The Contracting Officer has given prior written approval;

(2) The information is otherwise in the public domain before the date of release; or

(3) The information results from or arises during the performance of a project that involves no covered defense information (as defined in the clause at DFARS 252.204-7012, Safeguarding Covered Defense Information and Cyber Incident Reporting) and has been scoped and negotiated by the contracting activity with the contractor and research performer and determined in writing by the contracting officer to be fundamental research (which by definition cannot involve any covered defense information), in accordance with National Security Decision Directive 189, National Policy on the Transfer of Scientific, Technical and Engineering Information, in effect on the date of contract award and the Under Secretary of Defense (Acquisition, Technology, and Logistics) memoranda on Fundamental Research, dated May 24, 2010, and on Contracted Fundamental Research, dated June 26, 2008 (available at DFARS PGI 240.372).

(b) Requests for approval under paragraph (a)(1) shall identify the specific information to be released, the medium to be used, and the purpose for the release. The Contractor shall submit its request to the Contracting Officer at least 10 business days before the proposed date for release.

(c) The Contractor agrees to include a similar requirement, including this paragraph (c), in each subcontract under this contract. Subcontractors shall submit requests for authorization to release through the prime contractor to the Contracting Officer.

(End of clause)

252.204-7003 Control of government personnel work product.

As prescribed in 240.372-3(b), use the following clause:

CONTROL OF GOVERNMENT PERSONNEL WORK PRODUCT (APR 1992)

The Contractor's procedures for protecting against unauthorized disclosure of information shall not require Department of Defense employees or members of the

Armed Forces to relinquish control of their work products, whether classified or not, to the contractor.

(End of clause)

252.204-7008 Compliance with safeguarding covered defense information controls.

As prescribed in 240.370-5(a), use the following provision:

COMPLIANCE WITH SAFEGUARDING COVERED DEFENSE INFORMATION CONTROLS (OCT 2016)

(a) Definitions. As used in this provision?

Controlled technical information, covered contractor information system, covered defense information, cyber incident, information system, and technical information

are defined in clause 252.204-7012, Safeguarding Covered Defense Information and Cyber Incident Reporting.

(b) The security requirements required by contract clause 252.204-7012, shall be implemented for all covered defense information on all covered contractor information systems that support the performance of this contract.

(c) For covered contractor information systems that are not part of an information technology service or system operated on behalf of the Government (see **252.204-7012(b)(2))?**

(1) By submission of this offer, the Offeror represents that it will implement the security requirements specified by National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171, ?Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations?

(see http://dx.doi.org/10.6028/NIST.SP.800-171)that are in effect at the time the solicitation is issued or as authorized by the contracting officer, not later than December 31, 2017.

(2)(i) If the Offeror proposes to vary from any of the security requirements specified by NIST SP 800-171 that are in effect at the time the solicitation is issued or as authorized by the Contracting Officer, the Offeror shall submit to the Contracting Officer, for consideration by the DoD Chief Information Officer (CIO), a written explanation of?

(A) Why a particular security requirement is not applicable; or

(B) How an alternative but equally effective, security measure is used to compensate for the inability to satisfy a particular requirement and achieve equivalent protection.

(ii) An authorized representative of the DoD CIO will adjudicate offeror requests to vary from NIST SP 800-171 requirements in writing prior to contract award. Any accepted variance from NIST SP 800-171 shall be incorporated into the resulting contract.

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(End of provision)

252.204-7009 Limitations on the Use or Disclosure of Third-Party

Contractor Reported Cyber Incident Information.

As prescribed in 240.370.5(b), use the following clause:

LIMITATIONS ON THE USE OR DISCLOSURE OF THIRD-PARTY

CONTRACTOR REPORTED CYBER INCIDENT INFORMATION (JAN 2023)

(a) Definitions. As used in this clause?

Compromise means disclosure of information to unauthorized persons, or a violation of the security policy of a system, in which unauthorized intentional or unintentional disclosure, modification, destruction, or loss of an object, or the copying of information to unauthorized media may have occurred.

Controlled technical information means technical information with military or space application that is subject to controls on the access, use, reproduction, modification, performance, display, release, disclosure, or dissemination. Controlled technical information would meet the criteria, if disseminated, for distribution statements B through F using the criteria set forth in DoD Instruction 5230.24, Distribution Statements on Technical Documents. The term does not include information that is lawfully publicly available without restrictions.
Covered defense information means unclassified controlled technical information or other information (as described in the Controlled Unclassified Information (CUI) Registry at http://www.archives.gov/cui/registry/category-list.html) that requires safeguarding or dissemination controls pursuant to and consistent with law, regulations, and Governmentwide policies, and is?

(1) Marked or otherwise identified in the contract, task order, or delivery order and provided to the contractor by or on behalf of DoD in support of the performance of the contract; or

(2) Collected, developed, received, transmitted, used, or stored by or on behalf of the contractor in support of the performance of the contract.
Cyber incident means actions taken through the use of computer networks that result in a compromise or an actual or potentially adverse effect on an information system and/or the information residing therein.
Information system means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.
Media means physical devices or writing surfaces including, but is not limited to, magnetic tapes, optical disks, magnetic disks, large-scale integration memory chips, and printouts onto which covered defense information is recorded, stored, or printed within a covered contractor information system.
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Technical information means technical data or computer software, as those terms are defined in the clause at DFARS 252.227-7013, Rights in Technical Data? Other Than Commercial Products and Commercial Services, regardless of whether or not the clause is incorporated in this solicitation or contract. Examples of technical information include research and engineering data, engineering drawings, and associated lists, specifications, standards, process sheets, manuals, technical reports, technical orders, catalog-item identifications, data sets, studies and analyses and related information, and computer software executable code and source code.

(b) Restrictions. The Contractor agrees that the following conditions apply to any information it receives or creates in the performance of this contract that is information obtained from a third-party's reporting of a cyber incident pursuant to DFARS clause 252.204-7012, Safeguarding Covered Defense Information and Cyber

Incident Reporting (or derived from such information obtained under that clause):

(1) The Contractor shall access and use the information only for the purpose of furnishing advice or technical assistance directly to the Government in support of the Government's activities related to clause 252.204-7012 and shall not be used for any other purpose.

(2) The Contractor shall protect the information against unauthorized release or disclosure.

(3) The Contractor shall ensure that its employees are subject to use and non-disclosure obligations consistent with this clause prior to the employees being provided access to or use of the information.

(4) The third-party contractor that reported the cyber incident is a third-party beneficiary of the non-disclosure agreement between the Government and Contractor, as required by paragraph (b)(3) of this clause.

(5) A breach of these obligations or restrictions may subject the Contractor to?

(i) Criminal, civil, administrative, and contractual actions in law and equity for penalties, damages, and other appropriate remedies by the United States; and

(ii) Civil actions for damages and other appropriate remedies by the third party that reported the cyber incident, as a third party beneficiary of this clause.

(c) Subcontracts. The Contractor shall include this clause, including this paragraph (c), in subcontracts, or similar contractual instruments, for services that include support for the Government's activities related to safeguarding covered defense information and cyber incident reporting, including subcontracts for commercial products and commercial services, without alteration, except to identify the parties.

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(End of clause)

252.204-7012 Safeguarding Covered Defense Information and Cyber Incident Reporting.

As prescribed in 240.370-5(c), use the following clause:

SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING (MAY 2024)

(a) Definitions. As used in this clause?

Adequate security means protective measures that are commensurate with the consequences and probability of loss, misuse, or unauthorized access to, or modification of information.

Compromise means disclosure of information to unauthorized persons, or a violation of the security policy of a system, in which unauthorized intentional or

unintentional disclosure, modification, destruction, or loss of an object, or the copying of information to unauthorized media may have occurred.
Contractor attributional/proprietary information means information that identifies the contractor(s), whether directly or indirectly, by the grouping of information that can be traced back to the contractor(s) (e.g., program description, facility locations), personally identifiable information, as well as trade secrets, commercial or financial information, or other commercially sensitive information that is not customarily shared outside of the company.
Controlled technical information means technical information with military or space application that is subject to controls on the access, use, reproduction, modification, performance, display, release, disclosure, or dissemination. Controlled technical information would meet the criteria, if disseminated, for distribution statements B through F using the criteria set forth in DoD Instruction 5230.24, Distribution Statements on Technical Documents. The term does not include information that is lawfully publicly available without restrictions.
Covered contractor information system means an unclassified information system that is owned, or operated by or for, a contractor and that processes, stores, or transmits covered defense information.
Covered defense information means unclassified controlled technical information or other information, as described in the Controlled Unclassified Information (CUI) Registry at http://www.archives.gov/cui/registry/category-list.html, that requires safeguarding or dissemination controls pursuant to and consistent with law, regulations, and Governmentwide policies, and is?

(1) Marked or otherwise identified in the contract, task order, or delivery order and provided to the contractor by or on behalf of DoD in support of the performance of the contract; or

(2) Collected, developed, received, transmitted, used, or stored by or on behalf of the contractor in support of the performance of the contract.
Cyber incident means actions taken through the use of computer networks that result in a compromise or an actual or potentially adverse effect on an information system and/or the information residing therein.
Forensic analysis means the practice of gathering, retaining, and analyzing computer-related data for investigative purposes in a manner that maintains the integrity of the data.
Information system means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.
Malicious software means computer software or firmware intended to perform an unauthorized process that will have adverse impact on the confidentiality, integrity, or availability of an information system. This definition includes a virus,

worm, Trojan horse, or other code-based entity that infects a host, as well as spyware and some forms of adware.
Media means physical devices or writing surfaces including, but is not limited to, magnetic tapes, optical disks, magnetic disks, large-scale integration memory chips, and printouts onto which covered defense information is recorded, stored, or printed within a covered contractor information system.
Operationally critical support means supplies or services designated by the Government as critical for airlift, sealift, intermodal transportation services, or logistical support that is essential to the mobilization, deployment, or sustainment of the Armed Forces in a contingency operation.
Rapidly report means within 72 hours of discovery of any cyber incident.
Technical information means technical data or computer software, as those terms are defined in the clause at DFARS 252.227-7013, Rights in Technical Data? Other Than Commercial Products and Commercial Services, regardless of whether or not the clause is incorporated in this solicitation or contract. Examples of technical information include research and engineering data, engineering drawings, and associated lists, specifications, standards, process sheets, manuals, technical reports, technical orders, catalog-item identifications, data sets, studies and analyses and related information, and computer software executable code and source code.

(b) Adequate security. The Contractor shall provide adequate security on all covered contractor information systems. To provide adequate security, the Contractor shall implement, at a minimum, the following information security protections:
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(1) For covered contractor information systems that are part of an information technology (IT) service or system operated on behalf of the Government, the following security requirements apply:

(i) Cloud computing services shall be subject to the security requirements specified in the clause 252.239-7010, Cloud Computing Services, of this contract.

(ii) Any other such IT service or system (i.e., other than cloud computing) shall be subject to the security requirements specified elsewhere in this contract.

(2) For covered contractor information systems that are not part of an IT service or system operated on behalf of the Government and therefore are not subject to the security requirement specified at paragraph (b)(1) of this clause, the following security requirements apply:

(i) Except as provided in paragraph (b)(2)(ii) of this clause, the covered contractor information system shall be subject to the security requirements in National Institute of Standards and Technology (NIST) Special Publication (SP)

800-171, ?Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations? (available via the internet at https://csrc.nist.gov/publications/sp800) in effect at the time the solicitation is issued or as authorized by the Contracting Officer.

(ii)(A) The Contractor shall implement NIST SP 800-171, as soon as practical, but not later than December 31, 2017. For all contracts awarded prior to October 1, 2017, the Contractor shall notify the DoD Chief Information Officer (CIO), via email at osd.dibcsia@mail.mil, within 30 days of contract award, of any security requirements specified by NIST SP 800-171 not implemented at the time of contract award.

(B) The Contractor shall submit requests to vary from NIST SP 800-171 in writing to the Contracting Officer, for consideration by the DoD CIO. The Contractor need not implement any security requirement adjudicated by an authorized representative of the DoD CIO to be nonapplicable or to have an alternative, but equally effective, security measure that may be implemented in its place.

(C) If the DoD CIO has previously adjudicated the contractor's requests indicating that a requirement is not applicable or that an alternative security measure is equally effective, a copy of that approval shall be provided to the Contracting Officer when requesting its recognition under this contract.

(D) If the Contractor intends to use an external cloud service provider to store, process, or transmit any covered defense information in performance of this contract, the Contractor shall require and ensure that the cloud service provider meets security requirements equivalent to those established by the Government for the Federal Risk and Authorization Management Program (FedRAMP) Moderate baseline (https://www.fedramp.gov/documents-templates/)

and that the cloud service provider complies with requirements in paragraphs (c) through (g) of this clause for cyber incident reporting, malicious software, media preservation and protection, access to additional information and equipment necessary for forensic analysis, and cyber incident damage assessment.

(3) Apply other information systems security measures when the Contractor reasonably determines that information systems security measures, in addition to those identified in paragraphs (b)(1) and (2) of this clause, may be required to provide adequate security in a dynamic environment or to accommodate special circumstances (e.g., medical devices) and any individual, isolated, or temporary deficiencies based on an assessed risk or vulnerability. These measures may be addressed in a system security plan.

(c) Cyber incident reporting requirement.

(1) When the Contractor discovers a cyber incident that affects a covered contractor information system or the covered defense information residing therein,

or that affects the contractor's ability to perform the requirements of the contract that are designated as operationally critical support and identified in the contract, the Contractor shall?

(i) Conduct a review for evidence of compromise of covered defense information, including, but not limited to, identifying compromised computers, servers, specific data, and user accounts. This review shall also include analyzing covered contractor information system(s) that were part of the cyber incident, as well as other information systems on the Contractor's network(s), that may have been accessed as a result of the incident in order to identify compromised covered defense information, or that affect the Contractor's ability to provide operationally critical support; and

(ii) Rapidly report cyber incidents to DoD at https://dibnet.dod.mil.

(2) Cyber incident report. The cyber incident report shall be treated as information created by or for DoD and shall include, at a minimum, the required elements at https://dibnet.dod.mil.

(3) Medium assurance certificate requirement. In order to report cyber incidents in accordance with this clause, the Contractor or subcontractor shall have or acquire a DoD-approved medium assurance certificate to report cyber incidents. For information on obtaining a DoD-approved medium assurance certificate, see https://public.cyber.mil/eca/.

(d) Malicious software. When the Contractor or subcontractors discover and isolate malicious software in connection with a reported cyber incident, submit the malicious software to DoD Cyber Crime Center (DC3) in accordance with instructions provided by DC3 or the Contracting Officer. Do not send the malicious software to the Contracting Officer.

(e) Media preservation and protection. When a Contractor discovers a cyber incident has occurred, the Contractor shall preserve and protect images of all

known affected information systems identified in paragraph (c)(1)(i) of this clause and all relevant monitoring/packet capture data for at least 90 days from the submission of the cyber incident report to allow DoD to request the media or decline interest.

(f) Access to additional information or equipment necessary for forensic analysis. Upon request by DoD, the Contractor shall provide DoD with access to additional information or equipment that is necessary to conduct a forensic analysis.

(g) Cyber incident damage assessment activities. If DoD elects to conduct a damage assessment, the Contracting Officer will request that the Contractor provide all of the damage assessment information gathered in accordance with paragraph (e) of this clause.

(h) DoD safeguarding and use of contractor attributional/proprietary information. The Government shall protect against the unauthorized use or release

of information obtained from the contractor (or derived from information obtained from the contractor) under this clause that includes contractor attributional/proprietary information, including such information submitted in accordance with paragraph (c). To the maximum extent practicable, the Contractor shall identify and mark attributional/proprietary information. In making an authorized release of such information, the Government will implement appropriate procedures to minimize the contractor attributional/proprietary information that is included in such authorized release, seeking to include only that information that is necessary for the authorized purpose(s) for which the information is being released.

(i) Use and release of contractor attributional/proprietary information not created by or for DoD. Information that is obtained from the contractor (or derived from information obtained from the contractor) under this clause that is not created by or for DoD is authorized to be released outside of DoD?

(1) To entities with missions that may be affected by such information;

(2) To entities that may be called upon to assist in the diagnosis, detection, or mitigation of cyber incidents;

(3) To Government entities that conduct counterintelligence or law enforcement investigations;

(4) For national security purposes, including cyber situational awareness and defense purposes (including with Defense Industrial Base (DIB) participants in the program at 32 CFR part 236); or

(5) To a support services contractor (?recipient?) that is directly supporting Government activities under a contract that includes the clause at 252.204-7009, Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information.

(j) Use and release of contractor attributional/proprietary information created by or for DoD. Information that is obtained from the contractor (or derived from

information obtained from the contractor) under this clause that is created by or for DoD (including the information submitted pursuant to paragraph (c) of this clause) is authorized to be used and released outside of DoD for purposes and activities authorized by paragraph (i) of this clause, and for any other lawful Government purpose or activity, subject to all applicable statutory, regulatory, and policy based restrictions on the Government's use and release of such information.

(k) The Contractor shall conduct activities under this clause in accordance with applicable laws and regulations on the interception, monitoring, access, use, and disclosure of electronic communications and data.

(l) Other safeguarding or reporting requirements. The safeguarding and cyber incident reporting required by this clause in no way abrogates the Contractor's responsibility for other safeguarding or cyber incident reporting pertaining to its unclassified information systems as required by other applicable clauses of this

contract, or as a result of other applicable U.S. Government statutory or regulatory requirements.

(m) Subcontracts. The Contractor shall?

(1) Include this clause, including this paragraph (m), in subcontracts, or similar contractual instruments, for operationally critical support, or for which subcontract performance will involve covered defense information, including subcontracts for commercial products or commercial services, without alteration, except to identify the parties. The Contractor shall determine if the information required for subcontractor performance retains its identity as covered defense information and will require protection under this clause, and, if necessary, consult with the Contracting Officer; and

(2) Require subcontractors to?

(i) Notify the prime Contractor (or next higher-tier subcontractor) when submitting a request to vary from a NIST SP 800-171 security requirement to the Contracting Officer, in accordance with paragraph (b)(2)(ii)(B) of this clause; and

(ii) Provide the incident report number, automatically assigned by DoD, to the prime Contractor (or next higher-tier subcontractor) as soon as practicable, when reporting a cyber incident to DoD as required in paragraph (c) of this clause.

(End of clause)

252.204-7016 Covered Defense Telecommunications Equipment or Services?Representation.

As prescribed in 240.270-6(a), use the following provision:

COVERED DEFENSE TELECOMMUNICATIONS EQUIPMENT OR SERVICES? REPRESENTATION (DEC 2019)

(a) Definitions. As used in this provision, covered defense telecommunications equipment or services has the meaning provided in the clause 252.204-7018,

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Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services.

(b) Procedures. The Offeror shall review the list of excluded parties in the System for Award Management (SAM) (https://www.sam.gov) for entities excluded from receiving federal awards for ?covered defense telecommunications equipment or services?.

(c) Representation. The Offeror represents that it [ ] does, [ ] does not provide covered defense telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument.

(End of provision)

252.204-7017 Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services?Representation.

As prescribed in 240.270-6(b), use the following provision:

PROHIBITION ON THE ACQUISITION OF COVERED DEFENSE TELECOMMUNICATIONS EQUIPMENT OR SERVICES?REPRESENTATION (MAY 2021)

The Offeror is not required to complete the representation in this provision if the Offeror has represented in the provision at 252.204-7016, Covered Defense Telecommunications Equipment or Services?Representation, that it ?does not provide covered defense telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument.?

(a) Definitions. Covered defense telecommunications equipment or services, covered mission, critical technology, and substantial or essential component, as used in this provision, have the meanings given in the 252.204-7018 clause, Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services, of this solicitation.

(b) Prohibition. Section 1656 of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91) prohibits agencies from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service to carry out covered missions that uses covered defense telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) Procedures. The Offeror shall review the list of excluded parties in the System for Award Management (SAM) at https://www.sam.gov for entities that are excluded when providing any equipment, system, or service to carry out covered missions that uses covered defense telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless a waiver is granted.

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(d) Representation. If in its annual representations and certifications in SAM the Offeror has represented in paragraph (c) of the provision at 252.204-7016, Covered Defense Telecommunications Equipment or Services?Representation, that it ?does? provide covered defense telecommunications equipment or services as a **part of its offered products or services to the Government in the performance of any** contract, subcontract, or other contractual instrument, then the Offeror shall complete the following additional representation:

The Offeror represents that it [ ] will [ ] will not provide covered defense telecommunications equipment or services as a part of its offered products or services to DoD in the performance of any award resulting from this solicitation.

(e) Disclosures. If the Offeror has represented in paragraph (d) of this provision that it ?will provide covered defense telecommunications equipment or services,? the

Offeror shall provide the following information as part of the offer:

(1) A description of all covered defense telecommunications equipment and services offered (include brand or manufacturer; product, such as model number, original equipment manufacturer (OEM) number, manufacturer part number, or wholesaler number; and item description, as applicable).

(2) An explanation of the proposed use of covered defense telecommunications equipment and services and any factors relevant to determining if such use would be permissible under the prohibition referenced in paragraph (b) of this provision.

(3) For services, the entity providing the covered defense telecommunications services (include entity name, unique entity identifier, and Commercial and Government Entity (CAGE) code, if known).

(4) For equipment, the entity that produced or provided the covered defense telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if known).

(End of provision)

252.204-7018 Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services.

As prescribed in 240.270-6(c), use the following clause:

PROHIBITION ON THE ACQUISITION OF COVERED DEFENSE TELECOMMUNICATIONS EQUIPMENT OR SERVICES (JAN 2023)

(a) Definitions. As used in this clause?

Covered defense telecommunications equipment or services means?

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation, or any subsidiary or affiliate of such entities;

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(2) Telecommunications services provided by such entities or using such equipment; or

(3) Telecommunications equipment or services produced or provided by an entity that the Secretary of Defense reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Covered foreign country means?

(1) The People's Republic of China; or

(2) The Russian Federation.

Covered missions means?

(1) The nuclear deterrence mission of DoD, including with respect to nuclear command, control, and communications, integrated tactical warning and attack assessment, and continuity of Government; or

(2) The homeland defense mission of DoD, including with respect to ballistic

missile defense.

?Critical technology? means?

(1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;

(2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled?

(i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or

(ii) For reasons relating to regional stability or surreptitious listening;

(3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);

(4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);

(5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or

(6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

Substantial or essential component means any component necessary for the proper function or performance of a piece of equipment, system, or service.

(b) Prohibition. In accordance with section 1656 of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91), the contractor shall not provide to the Government any equipment, system, or service to carry out covered missions that uses covered defense telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless the covered defense telecommunication equipment or services are covered by a waiver described in Defense Federal Acquisition Regulation Supplement 204.2104.

(c) Procedures. The Contractor shall review the list of excluded parties in the System for Award Management (SAM) at https://www.sam.gov for entities that are excluded when providing any equipment, system, or service, to carry out covered missions, that uses covered defense telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless a waiver is granted.

(d) Reporting. (1) In the event the Contractor identifies covered defense telecommunications equipment or services used as a substantial or essential

component of any system, or as critical technology as part of any system, during contract performance, the Contractor shall report at https://dibnet.dod.mil the information in paragraph (d)(2) of this clause.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:

(i) Within 3 business days from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 30 business days of submitting the information in paragraph

(d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of a covered defense telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial products or commercial services.

(End of clause)

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252.240-7997 NIST SP 800-171 DoD Assessment Requirements.

As prescribed in 240.370-5(e), use the following clause:

NIST SP 800-171 DOD ASSESSMENT REQUIREMENTS

(DEVIATION 2026-O0025)(FEB 2026)

(a) Definitions.

Covered contractor information system has the meaning given in the clause **252.204-7012, Safeguarding Covered Defense Information and Cyber Incident** Reporting, of this contract.

High Assessment means an assessment that is conducted by Government personnel, trained in accordance with DoD policy and procedures, using NIST SP 800-171A, Assessing Security Requirements for Controlled Unclassified Information that?

(1) Consists of?

(i) A review of a contractor's previous assessment(s), as applicable;

(ii) A thorough document review;

(iii) Verification, examination, and demonstration of a Contractor's system security plan to validate that NIST SP 800-171 security requirements have

been implemented as described in the contractor's system security plan; and

(iv) Discussions with the contractor to obtain additional information or clarification, as needed; and

(2) Results in a confidence level of ?High? in the resulting score.

Medium Assessment means an assessment conducted by Government personnel, trained in accordance with DoD policy and procedures, using NIST SP 800-171A, Assessing Security Requirements for Controlled Unclassified Information that?

(1) Consists of?

(i) A review of a contractor's previous assessment(s), as applicable;

(ii) A thorough document review; and

(iii) Discussions with the contractor to obtain additional information or clarification, as needed; and

(2) Results in a confidence level of ?Medium? in the resulting score.

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(b) Applicability. This clause applies to covered contractor information systems that are required to comply with the National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171, in accordance with Defense Federal Acquisition Regulation System (DFARS) clause at 252.204-7012, Safeguarding Covered Defense Information and Cyber Incident Reporting, of this contract.

(c) Requirements. The Contractor shall provide access to its facilities, systems, and personnel necessary for the Government to conduct a Medium or High NIST SP 800-171 DoD Assessment, using the methodology described at 32 CFR 170.24, if necessary. The results of Medium or High NIST SP 800-171 DoD Assessments, when conducted by DCMA, will take precedence over any other assessment, in accordance with 32 CFR 170.16(a)(1)(iv), 32 CFR 170.17(a)(1)(iv), and 32 CFR **170.18(a)(1)(iv).**

(d) Procedures. Summary level scores for all assessments will be posted in the Supplier Performance Risk System (SPRS) (https://www.sprs.csd.disa.mil/) to provide DoD Components visibility into the summary level scores of strategic assessments.

Medium and High Assessments. DoD will post the following Medium and/or High Assessment summary level scores to SPRS for each system security plan assessed:

(i) The standard assessed (e.g., NIST SP 800-171 Rev 1).

(ii) Organization conducting the assessment, i.e., DCMA.

(iii) All industry CAGE code(s) associated with the information system(s) addressed by the system security plan.

(iv) Date and level of the assessment, i.e., medium or high.

(v) Summary level score (overall numerical score, not the individual value assigned for each requirement).

(vi) Date that all requirements are expected to be implemented based on information gathered from associated plan(s) of action developed in accordance with **NIST SP 800-171.**

(e) Rebuttals. (1) DoD will provide Medium and High Assessment summary level scores to the Contractor and offer the opportunity for rebuttal and adjudication of assessment summary level scores prior to posting the summary level scores to SPRS (see SPRS User's Guide https://www.sprs.csd.disa.mil/pdf/SPRS_Awardee.pdf).

(2) Upon completion of each assessment, the contractor has 14 business days to provide additional information to demonstrate that they meet any security requirements not observed by the assessment team or to rebut the findings that may be of question.

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(f) Accessibility. (1) Assessment summary level scores posted in SPRS are available to DoD personnel, and are protected, in accordance with the standards set forth in DoD Instruction 5000.79, Defense-wide Sharing and Use of Supplier and Product Performance Information (PI).

(2) Authorized representatives of the Contractor for which the assessment was conducted may access SPRS to view their own summary level scores, in accordance with the SPRS Software User's Guide for Awardees/Contractors available at https://www.sprs.csd.disa.mil/pdf/SPRS_Awardee.pdf.

(3) A High NIST SP 800-171 DoD Assessment may result in documentation in addition to that listed in this clause. DoD will retain and protect any such documentation as ?Controlled Unclassified Information (CUI)? and intended for internal DoD use only. The information will be protected against unauthorized use and release, including through the exercise of applicable exemptions under the Freedom of Information Act (e.g., Exemption 4 covers trade secrets and commercial or financial information obtained from a contractor that is privileged or confidential).

(g) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (g), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial products or commercial services (excluding commercially available off-the-shelf items).

(End of clause)

252.204-7021 Compliance with the Cybersecurity Maturity Model

Certification Level Requirements.

As prescribed in 240.371-5(a), use the following clause:

CONTRACTOR COMPLIANCE WITH THE CYBERSECURITY MATURITY MODEL CERTIFICATION LEVEL REQUIREMENTS (NOV 2025)

(a) Definitions. As used in this clause?

?Controlled unclassified information? means information the Government creates or possesses, or information an entity creates or possesses for or on behalf of the Government, that a law, regulation, or Governmentwide policy requires or permits an agency to handle using safeguarding or dissemination controls (32 CFR 2002.4(h)).
?Current? means?

(1) With regard to Conditional Cybersecurity Maturity Model Certification (CMMC) Status?

(i) Not older than 180 days for Conditional Level 2 (Self) assessments and Conditional Level 2 (certified third-party assessment organization (C3PAO)) assessments, with?

(A) No changes in compliance with the requirements at 32 CFR part 170 since the Conditional CMMC Status date (see 32 CFR 170.16 and 170.17); and

(B) A corresponding affirmation of continuous compliance by an affirming official (see 32 CFR 170.4); and

(ii) Not older than 180 days for Conditional Level 3 (Defense Industrial Base Cybersecurity Assessment Center (DIBCAC)) assessments, with?

(A) No changes in compliance with the requirements at 32 CFR part 170 since the Conditional CMMC Status date (see 32 CFR 170.18); and

(B) A corresponding affirmation of continuous compliance by an affirming official;

(2) With regard to Final CMMC Status?

(i) Not older than 1 year for Final Level 1 (Self), with?

(A) No changes in compliance with the requirements at 32 CFR part 170 since the Final CMMC Status date (see 32 CFR 170.15); and

(B) A corresponding affirmation of continuous compliance, not older than 1 year, by an affirming official;

(ii) Not older than 3 years for Final Level 2 (Self) assessments and Final Level 2 (C3PAO) assessments, with?

(A) No changes in compliance with the requirements at 32 CFR part 170 since the Final CMMC Status date (see 32 CFR 170.16 and 170.17); and

(B) A corresponding affirmation of continuous compliance, not older than 1 year, by an affirming official; and

(iii) Not older than 3 years for Final Level 3 (DIBCAC) assessments, with?

(A) No changes in compliance with the requirements at 32 CFR part 170 since the Final CMMC Status date (see 32 CFR 170.18); and

(B) A corresponding affirmation of continuous compliance, not older than 1 year, by an affirming official; and

(3) With regard to affirmation of continuous compliance (32 CFR 170.22), not older than 1 year with no changes in compliance with the requirements at 32 CFR part **170.**

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?Cybersecurity Maturity Model Certification (CMMC) status? means the result of meeting or exceeding the minimum required score for the corresponding assessment. The potential statuses are as follows:

(1) Final Level 1 (Self).
(2) Conditional Level 2 (Self).
(3) Final Level 2 (Self).
(4) Conditional Level 2 (C3PAO).
(5) Final Level 2 (C3PAO).
(6) Conditional Level 3 (DIBCAC).
(7) Final Level 3 (DIBCAC).

?Cybersecurity Maturity Model Certification unique identifier (CMMC UID)? means 10 alpha-numeric characters assigned to each CMMC assessment and reflected in the Supplier Performance Risk System (SPRS) for each contractor information system.
?Federal contract information (FCI)? means information, not intended for public release, that is provided by or generated for the Government under a contract to develop or deliver a product or service to the Government. It does not include information provided by the Government to the public, such as on public websites, or simple transactional information, such as information necessary to process payments.
?Plan of action and milestones? means a document that identifies tasks to be accomplished. It details resources required to accomplish the elements of the plan, any milestones in meeting the tasks, and scheduled completion dates for the milestones, as defined in National Institute of Standards and Technology Special Publication 800-115 **(32 CFR 170.21).**

(b) Framework. The Cybersecurity Maturity Model Certification (CMMC) is a framework for assessing a contractor?s compliance with applicable information security protections (see 32 CFR part 170).

(c) Duplication. The CMMC assessments will not duplicate efforts from any other comparable DoD assessment, except for rare circumstances when a reassessment may be necessary, for example, when there are indications of issues with cybersecurity and/or compliance with CMMC requirements.

(d) Requirements. The Contractor shall?

(1)(i) Have and maintain for the duration of the contract a current CMMC status at the following CMMC level, or higher: _____ Contracting Officer insert: CMMC Level 1 (Self); CMMC Level 2 (Self); CMMC Level 2 (C3PAO); or CMMC Level 3 (DIBCAC) for all information systems used in performance of the contract, task order, or delivery order that process, store, or transmit FCI or CUI; and

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(ii) Consult 32 CFR 170.23 related to the flowdown of the CMMC requirements, and flow down the correct CMMC level to subcontracts and other contractual instruments;

(2) Only process, store, or transmit FCI or CUI on contractor information systems that have a CMMC status at the CMMC level required in paragraph (d)(1) of this clause, or higher;

(3) Complete on an annual basis, and maintain as current, an affirmation, by the affirming official (see 32 CFR 170.4), of continuous compliance with the requirements associated with the CMMC level required in paragraph (d)(1) of this clause in the Supplier Performance Risk System (SPRS) (https://piee.eb.mil) for each CMMC UID applicable to each of the contractor information systems that process, store, or transmit FCI or CUI and that are used in performance of the contract;

(4) Ensure all subcontractors and suppliers complete prior to subcontract award, and maintain on an annual basis, an affirmation, by the affirming official (see 32 CFR 170.4), of continuous compliance with the requirements associated with the CMMC level required for the subcontract or other contractual instrument for each of the subcontractor information systems that process, store, or transmit FCI or CUI and that are used in performance of the subcontract; and

(5) If the Contractor has a CMMC Status of Conditional, successfully close out a valid plan of action and milestones (32 CFR 170.21) to achieve a CMMC Status of Final.

(e) Reporting. The Contractor shall?

(1) Submit to the Contracting Officer?

(i) The CMMC UID(s) issued by SPRS for contractor information systems that will process, store, or transmit FCI or CUI during performance of the contract; and

(ii) Any changes in the CMMC UIDs generated in SPRS throughout the life of the contract, task order, or delivery order, if applicable;

(2) Enter into SPRS the results of a current self-assessment for each CMMC UID, not covered by a C3PAO assessment or DIBCAC assessment, applicable to each of the contractor information systems that process, store, or transmit FCI or CUI and that are used in performance of the contract; and

(3) Complete in SPRS on an annual basis and maintain as current an affirmation of continuous compliance by the affirming official (see 32 CFR 170.4) for each self-assessment, C3PAO assessment, or DIBCAC assessment required under the contract in SPRS.

(f) Subcontracts. The Contractor shall?

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(1) Insert the substance of this clause, including this paragraph (f) and excluding paragraph (e)(1), in subcontracts and other contractual instruments, including those for the acquisition of commercial products or commercial services,

excluding commercially available off-the-shelf items, if the subcontract or other contractual instrument will contain a requirement to process, store, or transmit FCI or CUI; and

(2) Prior to awarding a subcontract or other contractual instrument, ensure that the subcontractor has a current CMMC certificate or current CMMC status at the CMMC level that is appropriate for the information that is being flowed down to the subcontractor based on the requirements at 32 CFR 170.23.

(End of clause)

252.204-7025 Notice of Cybersecurity Maturity Model Certification Level Requirements.

As prescribed in 240.371-5(b), use the following provision:

NOTICE OF CYBERSECURITY MATURITY MODEL CERTIFICATION LEVEL REQUIREMENTS (NOV 2025)

(a) Definitions. As used in this provision, ?controlled unclassified information (CUI),? ?current,? ?Cybersecurity Maturity Model Certification (CMMC) status,? ?Cybersecurity Maturity Model Certification unique identifier (CMMC UID),? ?Federal contract information (FCI)?, and ?plan of action and milestones? have the meaning given in the Defense Federal Acquisition Regulation Supplement 252.204-7021, Contractor Compliance With the Cybersecurity Maturity Model Certification Level Requirements, clause of this solicitation.

(b)(1) Cybersecurity Maturity Model Certification (CMMC) level. The CMMC level required by this solicitation is: _____ [Contracting Officer insert: CMMC Level 1 (Self); CMMC Level 2 (Self); CMMC Level 2 (C3PAO); or CMMC Level 3 (DIBCAC)]. This CMMC level, or higher (see 32 CFR part 170), is required prior to award for each contractor information system that will process, store, or transmit Federal contract information (FCI) or controlled unclassified information (CUI) during performance of the contract.

(2) The Offeror will not be eligible for award of a contract, task order, or delivery order resulting from this solicitation if the Offeror does not have, for each of the contractor information systems that will process, store, or transmit FCI or CUI and that will be used in performance of a contract resulting from this solicitation?

(i) The current CMMC status entered in the Supplier Performance Risk System (SPRS) (https://piee.eb.mil) at the CMMC level required by paragraph (b)(1) of this provision; and

(ii) A current affirmation of continuous compliance with the security requirements identified at 32 CFR part 170 in SPRS.

(c) Plan of action and milestones. If the Offeror has a CMMC Status of Conditional, the Offeror shall successfully close out a valid plan of action and

milestones (32 CFR 170.21) to achieve a CMMC Status of Final.

(d) CMMC unique identifiers. The Offeror shall provide, in the proposal, the CMMC unique identifier(s) (CMMC UIDs) issued by SPRS for each contractor information system that will process, store, or transmit FCI or CUI during performance of a contract, task order, or delivery order resulting from this solicitation. The Offeror also shall update the list when new CMMC UIDs are generated in SPRS. The CMMC UIDs are provided in SPRS after the Offeror enters the results of self-assessment(s) for each such information system.

(End of provision)

252.225-7007 Prohibition on Acquisition of Certain Items from Communist Chinese Military Companies.

As prescribed in 240.272-2(f), use the following clause:

PROHIBITION ON ACQUISITION OF CERTAIN ITEMS FROM COMMUNIST CHINESE MILITARY COMPANIES (DEC 2018)

(a) Definitions. As used in this clause?

?600 series of the Commerce Control List? means the series of 5-character export control classification numbers (ECCNs) of the Commerce Control List of the Export Administration Regulations in 15 CFR part 774, supplement No. 1. that have a ?6? as the third character. The 600 series constitutes the munitions and munitions related ECCNs within the larger Commerce Control List. (See definition of ?600 series? in 15 CFR 772.)

?Communist Chinese military company? means any entity, regardless of geographic location that is?

(1) A part of the commercial or defense industrial base of the People?s Republic of China including a subsidiary or affiliate of such entity; or

(2) Owned or controlled by, or affiliated with, an element of the Government or armed forces of the People?s Republic of China.

?Item? means?

(1) A USML defense article, as defined at 22 CFR 120.6;

(2) A USML defense service, as defined at 22 CFR 120.9; or

(3) A 600 series item, as defined at 15 CFR 772.1.

?United States Munitions List? means the munitions list of the International Traffic in Arms Regulation in 22 CFR part 121.

(b) Any items covered by the United States Munitions List or the 600 series of the Commerce Control List that are delivered under this contract may not be acquired, directly or indirectly, from a Communist Chinese military company.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts for items covered by the United States Munitions List or the 600 series of the Commerce Control List.

(End of clause)

252.225-7049 Prohibition on Acquisition of Certain Foreign Commercial

Satellite Services?Representations.

As prescribed in 240.272-4(f)(1),use the following provision:

PROHIBITION ON ACQUISITION OF CERTAIN FOREIGN COMMERCIAL

SATELLITE SERVICES?REPRESENTATIONS (DEC 2018)

(a) Definitions. As used in this provision?

?Covered foreign country,? ?foreign entity,? ?government of a covered foreign country,? ?launch vehicle,? ?satellite services,? and ?state sponsor of terrorism? are defined in the clause at Defense Federal Acquisition Regulation Supplement

(DFARS) 252.225-7051, Prohibition on Acquisition of Certain Commercial Satellite Services.

"Cybersecurity risk" means threats to and vulnerabilities of information or information systems and any related consequences caused by or resulting from unauthorized access, use, disclosure, degradation, disruption, modification, or destruction of such information or information systems, including such related consequences caused by an act of terrorism. (10 U.S.C. 2279)

(b) Prohibition on award. In accordance with 10 U.S.C. 2279, unless an exception is determined to apply in accordance with DFARS 240.272-21, no contract for commercial satellite services may be awarded to?

(1)(i) A foreign entity if the Under Secretary of Defense for Acquisition and Sustainment or the Under Secretary of Defense for Policy reasonably believes that?

(A) The foreign entity is an entity in which the government of a covered foreign country has an ownership interest that enables the government to affect satellite operations;

(B) The foreign entity plans to, or is expected to, provide or use launch or other satellite services under the contract from a covered foreign country; or

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(C) Entering into such contract would create an unacceptable cybersecurity risk for DoD; or

(ii) An offeror that is offering to provide the commercial satellite services of a foreign entity as described in paragraph (b)(1) of this section; or

(2)(i) Any entity, except as provided in paragraph (b)(2)(ii) of this provision, for a launch that occurs on or after December 31, 2022, if the Under Secretary of Defense for Acquisition and Sustainment or the Under Secretary of Defense for Policy reasonably believes that such satellite service will be provided using satellites that will be?

(A) Designed or manufactured?

(1) In a covered foreign country; or

(2) By an entity controlled in whole or in part by, or acting on behalf of, the government of a covered foreign country; or

(B) Launched outside the United States, using a launch vehicle that is?

(1) Designed or manufactured in a covered foreign country; or

(2) Provided by?

(i) The government of a covered foreign country; or

(ii) An entity controlled in whole or in part by, or acting on behalf of, the government of a covered foreign country.

(ii) The prohibition in paragraph (b)(2)(i)(B) of this provision does not apply with respect to launch vehicles for which the satellite service provider has a contract or other agreement relating to launch services that, prior to June 10, 2018, was either fully paid for by the satellite service provider or covered by a legally binding commitment of the satellite service provider to pay for such services.

(c) Representations. The Offeror represents that?

(1) It [ ] is, [ ] is not a foreign entity in which the government of a covered foreign country has an ownership interest that enables the government to affect satellite operations. If affirmative, identify the covered foreign country:_____;

(2) It [ ] is, [ ] is not a foreign entity that plans to provide satellite services under the contract from a covered foreign country. If affirmative, identify the covered foreign country:_____;

(3) It [ ] is, [ ] is not offering commercial satellite services provided by a foreign entity in which the government of a covered foreign country has an

ownership interest that enables the government to affect satellite operations. If affirmative, identify the foreign entity and the covered foreign country:_____;

(4) It [ ] is, [ ] is not offering commercial satellite services provided by a foreign entity that plans to or is expected to provide satellite services under the contract from a covered foreign country. If affirmative, identify the foreign entity and the covered foreign country:_____;

(5) It [ ] is, [ ] is not offering commercial satellite services that will use satellites, launched on or after December 31, 2022, that will be designed or manufactured in a covered foreign country. If affirmative, identify the covered foreign country:_____;

(6) It [ ] is, [ ] is not offering commercial satellite services that will use satellites, launched on or after December 31, 2022, that will be designed or manufactured by an entity controlled in whole or in part by, or acting on behalf of, the government of a covered foreign country. If affirmative, identify the entity, the covered foreign country, and the relationship of the entity to the government of the

covered foreign country:_____;

(7) It [ ] is, [ ] is not offering commercial satellite services that will use satellites, launched outside the United States on or after December 31, 2022, using a launch vehicle that is designed or manufactured in a covered foreign country. If affirmative, identify the covered foreign country:_____;

(8) It [ ] is, [ ] is not offering commercial satellite services that will use satellites, launched outside the United States on or after December 31, 2022, using a launch vehicle that is provided by the government of a covered foreign country. If affirmative, identify the covered foreign country:_____; and

(9) It [ ] is, [ ] is not offering commercial satellite services that will use satellites, launched outside the United States on or after December 31, 2022, using a launch vehicle that is provided by an entity controlled in whole or in part by, or acting on behalf of, the government of a covered foreign country. If affirmative, identify the entity, the covered foreign country, and the relationship of the entity to the government of the covered foreign country:_____.

(d) Disclosure. If the Offeror has responded affirmatively to any representation in paragraphs (c)(7) through (c)(9) of this provision, and if such launches are covered in whole or in part by a contract or other agreement relating to launch services that, prior to June 10, 2018, was either fully paid for by the satellite service provider or covered by a legally binding commitment of the satellite service provider to pay for such services, provide the following information:

(1) The entity awarded the contract or other agreement:_____.

(2) The date the contract or other agreement was awarded:_____.

(3) The period of performance for the contract or other agreement:_____.

(e) The representations in paragraph (c) of this provision are a material representation of fact upon which reliance will be placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous representation, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

(End of provision)

252.225-7050 Disclosure of Ownership or Control by the Government of a Country that is a State Sponsor of Terrorism.

As prescribed in 240.272-3(e), use the following provision:

DISCLOSURE OF OWNERSHIP OR CONTROL BY THE GOVERNMENT OF A COUNTRY THAT IS A STATE SPONSOR OF TERRORISM (DEC 2022)

(a) Definitions. As used in this provision?

?Government of a country that is a state sponsor of terrorism? includes the state

and the government of a country that is a state sponsor of terrorism, as well as any political subdivision, agency, or instrumentality thereof.

?Significant interest? means?

(1) Ownership of or beneficial interest in 5 percent or more of the firm?s or subsidiary?s securities. Beneficial interest includes holding 5 percent or more of any class of the firm?s securities in ?nominee shares,? ?street names,? or some other method of holding securities that does not disclose the beneficial owner;

(2) Holding a management position in the firm, such as a director or officer;

(3) Ability to control or influence the election, appointment, or tenure of directors or officers in the firm;

(4) Ownership of 10 percent or more of the assets of a firm such as equipment, buildings, real estate, or other tangible assets of the firm; or

(5) Holding 50 percent or more of the indebtedness of a firm.

?State sponsor of terrorism? means a country determined by the Secretary of State, under section 1754(c)(1)(A)(i) of the Export Control Reform Act of 2018 (Title XVII, Subtitle B, of the National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232), to be a country the government of which has repeatedly provided support for acts of international terrorism. As of the date of this provision, state sponsors of terrorism include Iran, North Korea, and Syria.

(b) Prohibition on award. In accordance with 10 U.S.C. 4871, unless a waiver is granted by the Secretary of Defense, no contract may be awarded to a firm if the

government of a country that is a state sponsor of terrorism owns or controls a significant interest in?

(1) The firm;

(2) A subsidiary of the firm; or

(3) Any other firm that owns or controls the firm.

(c) Representation. Unless the Offeror submits with its offer the disclosure required in paragraph (d) of this provision, the Offeror represents, by submission of its offer, that the government of a country that is a state sponsor of terrorism does not own or control a significant interest in?

(1) The Offeror;

(2) A subsidiary of the Offeror; or

(3) Any other firm that owns or controls the Offeror.

(d) Disclosure.

(1) The Offeror shall disclose in an attachment to its offer if the government of a country that is a state sponsor of terrorism owns or controls a significant interest in the Offeror; a subsidiary of the Offeror; or any other firm that owns or controls the Offeror.

(2) The disclosure shall include?

(i) Identification of each government holding a significant interest; and

(ii) A description of the significant interest held by each government.

(End of provision)

252.225-7051 Prohibition on Acquisition of Certain Foreign Commercial

Satellite Services.

As prescribed in 240.272-4(f)(2), use the following clause:

PROHIBITION ON ACQUISITION OF CERTAIN FOREIGN COMMERCIAL

SATELLITE SERVICES (DEC 2022)

(a) Definitions. As used in this clause?

?Covered foreign country? means?

(1) The People?s Republic of China;

(2) North Korea;

(3) The Russian Federation; or

(4) Any country that is a state sponsor of terrorism. (10 U.S.C. 2279)

?Foreign entity? means?

(1) Any branch, partnership, group or sub-group, association, estate, trust, corporation or division of a corporation, or organization organized under the laws of a foreign state if either its principal place of business is outside the United States or its equity securities are primarily traded on one or more foreign exchanges.

(2) Notwithstanding paragraph (1) of this definition, any branch, partnership, group or sub-group, association, estate, trust, corporation or division of a corporation, or organization that demonstrates that a majority of the equity interest in such entity is ultimately owned by U.S. nationals is not a foreign entity.

(31 CFR 800.212)

?Government of a covered foreign country? includes the state and the government of a covered foreign country, as well as any political subdivision, agency, or instrumentality thereof.

?Launch vehicle? means a fully integrated space launch vehicle. (10 U.S.C. 2279)

?Satellite services? means communications capabilities that utilize an on-orbit satellite for transmitting the signal from one location to another.

?State sponsor of terrorism? means a country determined by the Secretary of State, under section 1754(c)(1)(A)(i) of the Export Control Reform Act of 2018 (Title XVII, Subtitle B, of the National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232), to be a country the government of which has repeatedly provided support for acts of international terrorism. As of the date of this provision, state sponsors of terrorism include Iran, North Korea, and Syria. (10 U.S.C. 4871)

(b) Limitation. Unless specified in its offer, the Contractor shall not provide satellite services under this contract that?

(1) Are from a covered foreign country; or

(2) Except as provided in paragraph (c), use satellites that will be?

(i) Designed or manufactured?

(A) In a covered foreign country; or

(B) By an entity controlled in whole or in

part by, or acting on behalf of, the government of a covered foreign country; or

(ii) Launched outside the United States using a launch vehicle that is designed or manufactured?

(A) In a covered foreign country; or

(B) Provided by?

(1) The government of a covered foreign country; or

(2) An entity controlled in whole or in part by, or acting on behalf of, the government of a covered foreign country.

(c) Exception. The limitation in paragraph (b)(2) shall not apply with respect to?

(1) A launch that occurs prior to December 31, 2022; or

(2) A satellite service provider that has a contract or other agreement relating to launch services that, prior to June 10, 2018, was either fully paid for by the satellite service provider or covered by a legally binding commitment of the satellite service provider to pay for such services.

(End of clause)

252.239-7000 Protection against compromising emanations.

As prescribed in 240.373-3(d), use the following clause:

PROTECTION AGAINST COMPROMISING EMANATIONS (OCT 2019)

(a) The Contractor shall provide or use only information technology, as specified by the Government, that has been accredited to meet the appropriate information assurance requirements of?

(1) The National Security Agency National TEMPEST Standards

(NSTISSAM TEMPEST 1-92, Compromising Emanations Laboratory Test Requirements, Electromagnetics (U)); or

(2) Other standards specified by this contract, including the date through which the required accreditation is current or valid for the contract.

(b) Upon request of the Contracting Officer, the Contractor shall provide documentation supporting the accreditation.

(c) The Government may, as part of its inspection and acceptance, conduct additional tests to ensure that information technology delivered under this contract satisfies the information assurance standards specified. The Government may conduct additional tests?

(1) At the installation site or contractor's facility; and

(2) Notwithstanding the existence of valid accreditations of information

technology prior to the award of this contract.

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(d) Unless otherwise provided in this contract under the Warranty of Supplies or Warranty of Systems and Equipment clause, the Contractor shall correct or replace accepted information technology found to be deficient within 1 year after proper installations.

(1) The correction or replacement shall be at no cost to the Government.

(2) Should a modification to the delivered information technology be made by the Contractor, the 1-year period applies to the modification upon its proper installation.

(3) This paragraph (d) applies regardless of f.o.b. point or the point of acceptance of the deficient information technology.

(End of clause)

252.239-7017 Notice of Supply Chain Risk.

As prescribed in 240.271-7(a), use the following provision:

NOTICE OF SUPPLY CHAIN RISK (DEC 2022)

(a) Definition. Supply chain risk, as used in this provision, means the risk that an adversary may sabotage, maliciously introduce unwanted function, or otherwise subvert the design, integrity, manufacturing, production, distribution, installation, operation, or maintenance of a covered system so as to surveil, deny, disrupt, or otherwise degrade the function, use, or operation of such system (see 10 U.S.C. **3252).**

(b) In order to manage supply chain risk, the Government may use the authorities provided by 10 U.S.C. 3252. In exercising these authorities, the Government may consider information, public and non-public, including all-source intelligence, relating to an offeror and its supply chain.

(c) If the Government exercises the authority provided in 10 U.S.C. 3252 to limit disclosure of information, no action undertaken by the Government under such authority shall be subject to review in a bid protest before the Government Accountability Office or in any Federal court.

(End of provision)

252.239-7018 Supply Chain Risk.

As prescribed in 240.271-7(b), use the following clause:

SUPPLY CHAIN RISK (DEC 2022)

(a) Definitions. As used in this clause?

Information technology (see 40 U.S.C 11101(6)) means, in lieu of the definition at FAR 2.1, any equipment, or interconnected system(s) or subsystem(s) of equipment,

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that is used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the agency.

(1) For purposes of this definition, equipment is used by an agency if the equipment is used by the agency directly or is used by a contractor under a contract with the agency that requires?

(i) Its use; or

(ii) To a significant extent, its use in the performance of a service or the furnishing of a product.

(2) The term ?information technology? includes computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including support services), and related resources.

(3) The term ?information technology? does not include any equipment acquired by a contractor incidental to a contract.

Supply chain risk means the risk that an adversary may sabotage, maliciously introduce unwanted function, or otherwise subvert the design, integrity, manufacturing, production, distribution, installation, operation, or maintenance of a covered system so as to surveil, deny, disrupt, or otherwise degrade the function, use, or operation of such system (see 10 U.S.C. 3252).

(b) The Contractor shall mitigate supply chain risk in the provision of supplies and services to the Government.

(c) In order to manage supply chain risk, the Government may use the authorities provided by 10 U.S.C. 3252. In exercising these authorities, the Government may consider information, public and non-public, including all-source intelligence, relating to a Contractor's supply chain.

(d) If the Government exercises the authority provided in 10 U.S.C. 3252 to limit disclosure of information, no action undertaken by the Government under such authority shall be subject to review in a bid protest before the Government Accountability Office or in any Federal court.

(End of clause)

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PGI 240?INFORMATION SECURITY AND SUPPLY CHAIN SECURITY

PGI 240.2?SECURITY PROHIBITIONS AND EXCLUSIONS

PGI 240.272 Prohibited Sources.

PGI 240.272-2 Prohibition on acquisition of certain items from Communist Chinese military companies.

(1) The Department of State is the lead agency responsible for the regulations governing the export of defense articles, which are identified on the United States Munitions List. The Department of State has issued the International Traffic in Arms Regulations, which implement the Arms Export Control Act (22 U.S.C. 2751) and include the United States Munitions List.

(2) The official version of the International Traffic in Arms Regulations can be found in Title 22, Parts 120 through 130, of the Code of Federal Regulations (22 CFR 120-130), published by the U.S. Government Printing Office and available at https://catalog.gpo.gov/F/SGDS5TUGPX9MMUK3XX2JKHLK2XA9FQBKGK5H86HIG5R89LDY66-18351?func=full-set-set&set_number=002106&set_entry=000002&format=999. The Department of State also publishes an on-line version at https://www.pmddtc.state.gov/ddtc_public?id=ddtc_kb_article_page&sys_id=24d528fddbfc930044f9ff621f961987#:~:text=The%20ITAR%20is%20available%20from%20the%20Government%20Printing,Federal%20Regulations%20%28CFR%29%20and%20as%20an%20updated%20e-document.

(a) Definitions. In accordance with 22 CFR 121.8?

(1) A major component includes any assembled element that forms a portion of an end item without which the end item is inoperable. Examples of major components are airframes, tail sections, transmissions, tank treads, and hulls;

(2) A minor component includes any assembled element of a major component; and

(3) Examples of parts are rivets, wires, and bolts.

(d) Identifying USML items.

(1) The 21 categories of items on the United States Munitions List (USML) can be found at https://www.ecfr.gov/current/title-22/chapter-I/subchapter-M/part-121. Where applicable, the categories also contain a statement with regard to the coverage of components and parts of items included in a category. For example, a category may include all components and parts of covered items, or only those components and parts specifically designed or modified for military use.

(2) In addition to the list of covered items, the USML provides explanation of terms needed to determine whether a particular item is or is not covered by the USML.

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(3) Within DoD, the experts on export control and the USML are in the Defense Technology Security Administration (DTSA).

(i) Official authorities and responsibilities of DTSA are in DoD Directive **5105.72, available at** https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/510572p.pdf.

(ii) Additional information on DTSA and a correspondence link are available at https://www.dtsa.mil/SitePages/default.aspx.

(e) Waiver of prohibition.

(3(i)) Send a copy of the report to the Office of the Principal Director, Defense Pricing, Contracting, and Acquisition Policy (Contract Policy) (DPCAP/CP) via email at osd.pentagon.ousd-a-s.mbx.asda-dp-c-contractpolicy@mail.mil.

PGI 240.272-3 Prohibition on contracting or subcontracting with a firm that is owned or controlled by the government of a country that is a state sponsor of terrorism.

(d) Notification. Forward any information indicating that a firm, a subsidiary of a firm, or any other firm that owns or controls the firm, may be owned or controlled by the government of a country that is a state sponsor of terrorism, through agency channels, to DPCAP/CP via email at osd.pentagon.ousd-a-s.mbx.asda-dp-c-contractpolicy@mail.mil.

PGI 240.272-4 Prohibition on acquisition of certain foreign commercial satellite services.

(d) Procedures.

(1) Forward any information required in accordance with 225.772-3 or requests for an exception to DPCAP/CP via email at osd.pentagon.ousd-a-s.mbx.asda-dp-c-contractpolicy@mail.mil.

(2) Consult with DPCAP/CP, as required in accordance with 225.772-3(c)(2), via email at osd.pentagon.ousd-a-s.mbx.asda-dp-c-contractpolicy@mail.mil.

PGI 240.3?SAFEGUARDING INFORMATION

PGI 240.370 Safeguarding Covered Defense Information and Cyber Incident Reporting.

PGI 240.370-6 General.

(a) The contracting officer will be notified by the requiring activity when a solicitation is expected to result in a contract, task order, or delivery order that will involve?

(1) Covered defense information; or

(2) Operationally critical support.

(b) The contracting officer shall?

(1) Ensure that the requiring activity provides a work statement or specification that includes the identification of covered defense information or operationally critical support consistent with paragraph (a).

(2) Ensure that the solicitation and resultant contract, task order, or delivery order includes the requirement (such as a contract data requirements list), as provided by the requiring activity, for the contractor to apply markings, when appropriate, on covered defense information.

PGI 240.370-7 Safeguarding controls and requirements.

(a) When an offeror proposes to vary from any of the security requirements specified by National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171, ?Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations,? in accordance with paragraph (c)(2) of the solicitation

provision at DFARS 252.204-7008, or in accordance with paragraphs (b)(2)(ii)(B) of DFARS clause 252.204-7012, the contracting officer shall submit the offeror?s explanation of the proposed variance to the DoD Chief Information Officer via email at osd.dibcsia@mail.mil for adjudication.

(b) For additional information on safeguarding controls and requirements, see the Frequently Asked Questions document at http://www.acq.osd.mil/dpap/pdi/network_penetration_reporting_and_contracting.html.

PGI 240.370-8 Cyber incident and compromise reporting.

(a) When a cyber incident is reported by a contractor, the DoD Cyber Crime Center (DC3) will send an unclassified encrypted email containing the cyber incident report to the contracting officer(s) identified on the Incident Collection Format (ICF). The DC3 may request the contracting officer send a digitally signed e-mail to DC3.

(1) The procuring contracting officer (PCO) shall notify the requiring activities that have contracts identified in the ICF. In cases where an administrative contracting officer (ACO) receives the cyber incident report, in lieu of the PCO, the ACO shall notify the PCO for each affected contract, who will then notify the requiring activity.

(2) In cases of cyber incidents involving multiple contracts, the DoD components will collaboratively designate a single contracting officer to coordinate additional actions required of the contractor, on behalf of the affected DoD components. The requiring activity will notify the contracting officer once a lead is designated.

(3) If the requiring activity requests an assessment of compliance with the requirements of the clause at DFARS 252.204-7012 related to the cyber incident, the contracting officer shall?

(i) Consult with the DoD component Chief Information Officer (CIO)/cyber security office;

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(ii) Request a description of the contractor?s implementation of the security requirements in NIST SP 800-171, ?Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations? (see http://dx.doi.org/10.6028/NIST.SP.800-171) in order to support evaluation of whether any of the controls were inadequate, or if any of the controls were not implemented at the time of the incident; and

(iii) Provide a copy of the assessment of contractor compliance to the requiring activity, the DoD CIO at osd.dibcsia@mail.mil, and the other contracting officers listed in the cyber incident report.

(b) When requested by the contractor, the contracting officer shall provide the contractor with the ?Instructions for Malware Submission? document available at http://www.acq.osd.mil/dpap/pdi/docs/Instructions_for_Malware_Submission.docx. The contracting officer should never receive malicious software directly from the contractor.

(c) If the requiring activity requests access to contractor information or equipment, in accordance with DFARS 252.204-7012(f), the contracting officer shall provide a written

request to the contractor.

(d) For additional information on cyber incident reporting, see the Frequently Asked Questions document at http://www.acq.osd.mil/dpap/pdi/network_penetration_reporting_and_contracting.html.

PGI 204.7303-4 DoD damage assessment activities.

PGI 240.370-9 DoD damage assessment activities.

(a) Prior to initiating damage assessment activities, the contracting officer shall verify that any contract identified in the cyber incident report includes the clause at DFARS 252.204-7012. If the contracting officer determines that a contract identified in the report does not contain the clause, the contracting officer shall notify the requiring activity that damage assessment activities, if required, may be determined to constitute a change to the contract.

(b) In cases of cyber incidents involving multiple contracts, a single contracting officer will be designated to coordinate with the contractor regarding media submission

(see 204.7303-3(a)(2)).

(c) If the requiring activity requests the contracting officer to obtain media, as defined in DFARS 252.204-7012, from the contractor, the contracting officer shall?

(1) Provide a written request for the media;

(2) Provide the contractor with the ?Instructions for Media Submission? document available at http://www.acq.osd.mil/dpap/dars/pgi/docs/Instructions_for_Submitting_Media.docx; and

(3) Provide a copy of the request to DC3, electronically via email at dcise@dc3.mil, and the requiring activity.

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Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 40

Defense FAR Supplement (DFARS) Part 240

(d) If the contracting officer is notified by the requiring activity that media are not required, the contracting officer shall notify the contractor and simultaneously provide a copy of the notice to DC3 and the requiring activity.

(e) The contracting officer shall document the action taken as required by paragraph

(c) or (d) of this section, in the contract file.

(f) Upon receipt of the contractor media, DC3 will confirm receipt in writing to the contractor and the requesting contracting officer.

(g) Once the requiring activity determines that the damage assessment activities are complete, the requiring activity will provide the contracting officer with a report documenting the actions taken to close out the cyber incident.

PGI 240.372?Safeguarding Classified Information Within Industry.

PGI 240.372-1 General.

(1) The use of ?Not Releasable to Foreign Nationals? (NOFORN) caveat on Department of Defense (DoD) Information, to include contract documents, shall not be applied to non-intelligence information except for Naval Nuclear Propulsion Information and the National Disclosure Policy document (NDP-1).

(2) Agencies shall not restrict procurements on the basis of foreign origin but rather on the level of security clearance required by industry to submit an offer and perform on the contract.

PGI 240.372-2 Responsibilities of contracting officers.

(1) Consistent with the requirements at FAR 4.403, contracting officers shall ensure that solicitations, to include any broad agency announcement (BAA), commercial solutions opening (CSO), or notice to industry that requires industry access to classified information and/or controlled unclassified information (see policy memos), shall contain one or more of the following:

(i) Draft DoD Form DD 254, DoD Contract Security Classification Specification. For guidance on completing the DD 254, see ?Instructions for Completing DD Form 254, Department of Defense Contract Security Classification Specification? at https://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd0254-Inst.pdf. For information on the National Industrial Security Program Contract Classification System, see https://www.dcsa.mil/is/nccs/.

(ii) The clause at FAR 52.204-2, Security Requirements.

(iii) Detailed agency instructions for industry requirements to request access to classified information and/or controlled unclassified information. Agency instructions shall clearly reference and be in accordance with the National Industrial Security Program Operating Manual (NISPOM) (32 CFR part 117).

(iv) The following is a template of agency instructions to industry:

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?Offerors must have a valid U.S. security clearance of [to be filled in by the contracting officer] or higher in order to respond to this RFP (Announcement), because the RFP (Announcement) includes an annex (information) classified at the [to be filled in by the contracting officer] level which will be released only to offerors possessing the appropriate clearance. All classified material must be handled in accordance with the National Industrial Security Program Operating Manual (NISPOM) (32 CFR part 117).?

(2) Fundamental research project determination.

(i) Projects being scoped as fundamental research may include the entire contract effort or a specified portion of the statement of work, and must be documented in the written determination and in the contract.

(ii) The determination of fundamental research shall occur when the project is added to the statement of work, either prior to award or during a contract modification that modified the statement of work.

(iii) Fundamental research is defined in the USD(AT&L) memorandum on Fundamental Research, dated May 24, 2010.

(iv) See clause 252.204-7000(a)(3), concerning disclosure of information for fundamental research projects.

PART 41

OFFICE OF THE ASSISTANT SECRETARY OF WAR

Status: Class D

OFFICE OF THE ASSISTANT SECRETARY OF WAR

3000 DEFENSE PENTAGON

WASHINGTON, DC 20301-3000

ACQUISITION

AND SUSTAINMENT

In reply refer to

DARS Tracking Number: 2026-O0039

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES SPECIAL OPERATIONS

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES TRANSPORTATION

COMMAND (ATTN: ACQUISITION EXECUTIVE)

DEPUTY ASSISTANT SECRETARY OF THE ARMY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE NAVY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE

(CONTRACTING)

DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Class Deviation?Revolutionary Federal Acquisition Regulation (FAR) Overhaul

Part 41, Defense FAR Supplement (DFARS) Part 241

Effective February 1, 2026, contracting officers shall use?

? The revised FAR Part 41, Acquisition of Utility Services published on the Revolutionary FAR Overhaul web page at https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-41 in lieu of the text codified at 48 CFR chapter 1 (https://www.ecfr.gov).

? The attached DFARS Part 241, Acquisition of Utility Services, in lieu of the text codified at 48 CFR chapter 2; and

? The attached DFARS Procedures, Guidance, and Information (PGI) 241, Acquisition of Utility Services, in lieu of the PGI text published on the Defense Pricing, Contracting, and Acquisition Policy web page at https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.

This class deviation implements the following:

? Section 2 of E.O. 14275, Restoring Common Sense to Federal Procurement, which establishes the policy that the FAR ?should only contain provisions required by statute or essential to sound procurement, and any FAR provisions that do not

advance these objectives should be removed.
DARS Tracking Number: 2026-O0039
Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 41
Defense FAR Supplement (DFARS) Part 241
? Section 4(a) of E.O. 14265, Modernizing Defense Acquisitions and Spurring Innovation in the Defense Industrial Base which requires the Secretary of War to eliminate or revise any unnecessary supplemental regulations or any other internal guidance, such as relevant parts of the Financial Management Regulation and Defense Federal Acquisition Regulation Supplement.
? The Office of Management and Budget memorandum, M-25-26 issued on May 2, 2025, titled, Overhauling the Federal Acquisition Regulation, which provided additional guidance to federal agencies regarding the FAR overhaul.
This class deviation remains in effect until rescinded or incorporated into the FAR, DFARS, and DFARS PGI. Inquiries regarding this class deviation can be addressed to osd.pentagon.ousd-a-s.mbx.dfars@mail.mil.
John M. Tenaglia
Principal Director,
Defense Pricing, Contracting, and
Acquisition Policy
Attachments:
As stated
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Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 41
Defense FAR Supplement (DFARS) Part 241

PART 241?ACQUISITION OF UTILITY SERVICES

SUBPART 241.1?GENERAL

241.101 Definitions.

As used in this part?
?Independent regulatory body? means the Federal Energy Regulatory Commission, a state-wide agency, or an agency with less than state-wide jurisdiction when operating pursuant to state authority. The body has the power to fix, establish, or control the rates and services of utility suppliers.
?Nonindependent regulatory body? means a body that regulates a utility supplier which is owned or operated by the same entity that created the regulatory body, e.g., a municipal utility.
?Regulated utility supplier? means a utility supplier regulated by an independent regulatory body.
?Service power procurement officer? means for the?
Army, the Chief of Engineers;
Navy, the Commander, Naval Facilities Engineering Command;
Air Force, the head of a contracting activity; and
Defense Logistics Agency, the head of a contracting activity.

241.102 Applicability.

(a) This part applies to purchases of utility services from nonregulated and regulated utility suppliers. It includes the acquisition of liquefied petroleum gas as a utility service when purchased from regulated utility suppliers.

(b)(3) This part may be used for any purchased utility services directly resulting from third party financed projects, including those authorized by?

(A) 10 U.S.C. 2922 for energy, fuels, and energy production facilities for periods not to exceed 30 years;

(B) 10 U.S.C. 2992a for renewable energy for periods not to exceed 30 years;

(C) 10 U.S.C. 2917 for geothermal resources that result in energy production facilities;

(D) 10 U.S.C. 2809 for potable and waste-water treatment plants for periods not to exceed 32 years; and

(E) 10 U.S.C. 2812 for lease/purchase of energy production facilities for periods not to exceed 32 years.

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Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 41

Defense FAR Supplement (DFARS) Part 241

241.103 Statutory and delegated authority.

(1) Contracting officers may enter into?

(i) Utility service contracts related to the conveyance of a utility system for a period not to exceed 50 years (10 U.S.C. 2688(d)(2)) and;

(ii) Energy savings contracts under 10 U.S.C. 2913 for a period not to exceed 25 years.

(2) See 217.103-174 for authority to enter into multiyear contracts for electricity from renewable energy sources.

(3) See PGI 241.103 for more information on statutory authorities and maximum contract periods for utility and energy contracts.

SUBPART 241.2?ACQUIRING UTILITY SERVICES

241.201 Policy.

(1) DoD generally complies with current regulations, practices, and decisions of independent regulatory bodies. This policy does not extend to nonindependent regulatory bodies.

(2) Purchases of utility services outside the United States may use?

(i) Formats and technical provisions consistent with local practice; and

(ii) Dual language forms and contracts.

(3) Rates established by an independent regulatory body?

(i) Are considered ?prices set by law or regulation?;

(ii) Are sufficient to set prices without obtaining certified cost or pricing data (see FAR subpart 15.4); and

(iii) Are a valid basis on which prices can be determined fair and reasonable.

(4) Compliance with the regulations, practices, and decisions of independent

regulatory bodies is not a substitute for the procedures at FAR 41.202(a).

241.202 Procedures.

(1) Connection and service charges. Follow the procedures at PGI 241.202(1) for connection and service charges associated with acquiring utility services.

(2) Construction and labor requirements. Follow the procedures at PGI 241.202(2) for construction and labor requirements associated with connection and service charges.

241.205 Separate contracts.

Follow the procedures at PGI 241.205 when acquiring utility services by separate contract.

SUBPART 241.5?SOLICITATION PROVISION AND CONTRACT CLAUSES

241.501 Solicitation provision and contract clauses.

(d)(1) Insert a clause substantially the same as the clause at FAR 52.241-7, Change in Rates or Terms and Conditions of Service for Regulated Services, when the utility services to be provided are subject to an independent regulatory body.

(2) Insert a clause substantially the same as the clause at FAR 52.241-8, Change in Rates or Terms and Conditions of Service for Unregulated Services, when the utility services to be provided are not subject to a regulatory body or are subject to a nonindependent regulatory body.

241.501-70 Additional clauses.

(a) If the Government must execute a superseding contract and capital credits, connection charge credits, or termination liability exist, insert the clause at 252.241-7000, Superseding Contract.

(b) Insert the clause at 252.241-7001, Government Access, when the clause at FAR **52.241-5, Contractor's Facilities, is used.**

PART 252?SOLICITATION PROVISIONS AND CONTRACT CLAUSES

SUBPART 252.2--TEXT OF PROVISIONS AND CLAUSES

252.241-7000 Superseding Contract.

As prescribed in 241.501-70(a), use the following clause:

SUPERSEDING CONTRACT (DEC 1991)

This contract supersedes contract No. _____, dated _____ which provided similar services. Any capital credits accrued to the Government, any remaining credits due to the Government under the connection charge, or any termination liability are transferred to this contract, as follows:

CAPITAL CREDITS: (List years and accrued credits by year and separate delivery points.)

OUTSTANDING CONNECTION CHARGE CREDITS: (List by month and year the amount credited and show the remaining amount of outstanding credits due the Government.)

TERMINATION LIABILITY CHARGES: (List by month and year the amount of

monthly facility cost recovered and show the remaining amount of facility cost to be recovered.)

(End of clause)

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Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 41

Defense FAR Supplement (DFARS) Part 241

252.241-7001 Government Access.

As prescribed in 241.501-70(b), use the following clause:

GOVERNMENT ACCESS (DEC 1991)

Authorized representatives of the Government may have access to the Contractor's on-base facilities upon reasonable notice or in case of emergency.

(End of clause)

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Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 41

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PGI 241?ACQUISITION OF UTILITY SERVICES

PGI 241.1--GENERAL

PGI 241.103 Statutory and delegated authority.

Summary of Statutory Authority for Utility/Energy Purchases

Acquisition Type	Authority	Maximum Term (years)
Energy Commodities (purchased as supplies) (natural gas & electricity) *	10 U.S.C. 3501/ 5 U.S.C. 2829 (4) **	
Utility Service Contracts (in support of privatization)	10 U.S.C. 2688(d)(2)	50
Utility Service Contracts *** (when not in support of privatization)	10 U.S.C. 3201-3205 40 U.S.C. 113(e)(3)	10

* Section 8093 of Public Law 100-202 specifically precludes the Federal Government from expending appropriated funds to purchase electricity in a manner inconsistent with State law and regulation.

** 5 years in support of facilities and installations (10 U.S.C. 3501) and 4 years for military family housing (10 U.S.C. 2829).

*** GSA has delegated to DoD its authority, under 40 U.S.C. 501(b), to enter into utility service contracts for periods not exceeding 10 years. Absent this authority, the length of DoD utility service contracts in support of facilities and installations would be limited to 5 years (10 U.S.C. 3531) and, for military family housing, would be limited to 4 years (10 U.S.C. 2829).

PGI 241.2--ACQUIRING UTILITY SERVICES

PGI 241.202 Procedures.

(1) Connection and service charges. The Government may pay a connection charge when required to cover the cost of the necessary connecting facilities. A connection charge based on the estimated labor cost of installing and removing the facility must not include salvage cost. A lump-sum connection charge must be no more than the agreed cost of the connecting facilities less net salvage. The order of precedence for contractual treatment of connection and service charges is?

(i) No connection charge.

(ii) Termination liability. Use when an obligation is necessary to secure the required services. The obligation must be not more than the agreed connection charge, less

any net salvage material costs. Use of a termination liability instead of a connection charge requires the approval of the service power procurement officer or designee.

(iii) Connection charge, refundable. Use a refundable connection charge when the supplier refuses to provide the facilities based on lack of capital or published rules which prohibit providing up-front funding. The contract should provide for refund of the connection charge within five years unless a longer period or omission of the refund requirement is authorized by the service power procurement officer or designee.

(iv) Connection and service charges, nonrefundable. The Government may pay certain nonrefundable, nonrecurring charges including service initiation charges, a contribution in aid of construction, membership fees, and charges required by the supplier's rules and regulations to be paid by the customer. If possible, consider sharing with other than Government users the use of (and costs for) facilities when large nonrefundable charges are required.

(2)(A) Do not use the connection charge provisions for the installation of Government-owned distribution lines and facilities. The acquisition of such facilities must be authorized by legislation and accomplished in accordance with FAR Part 36. Also, do not use the connection charge provisions for the installation of new facilities related to the supplier's production and general ?backbone? system unless authorized by legislation.

(B) Construction labor standards ordinarily do not apply to construction accomplished under the connection charge provisions of this part. However, if installation includes construction of a public building or public work per FAR 36.102, construction labor standards may apply.

PGI 241.205 Separate contracts.

(1) Definitions. As used in this section?

?Definite term contract? means a contract for utility services for a definite period of not less than one nor more than ten years.

?Indefinite term contract? means a month-to-month contract for utility services that may be terminated by the Government upon proper notice.

(2) Requests for proposals must state the anticipated service period in terms of months or years. If the period extends beyond the current fiscal year, evaluate offers of

incentives for a definite term contract.

(3) The solicitation may permit offerors the choice of proposing on the basis of?

(i) A definite term not to exceed the anticipated service period; or

(ii) An indefinite term contract.

(4) If the expected service period is less than the current fiscal year, the solicitation must be on the basis of an indefinite term contract.

(5) Contracts for utility services for leased premises must identify the lease document on the face of the contract.

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Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 41

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(6) Use an indefinite term utility service contract when it is considered to be in the Government's best interest to?

(i) Have the right to terminate on a 30-day (or longer) notice. A notice of up to one year may be granted by an installation if needed to obtain a more favorable rate, more advantageous conditions, or for other valid reasons; or

(ii) Grant the supplier the right to terminate the contract when of benefit to the Government in the form of lower rates, larger discounts, or more favorable terms and conditions.

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PART 42

OFFICE OF THE ASSISTANT SECRETARY OF WAR

Status: Class D

OFFICE OF THE ASSISTANT SECRETARY OF WAR

3000 DEFENSE PENTAGON

WASHINGTON, DC 20301-3000

ACQUISITION

AND SUSTAINMENT

In reply refer to

DARS Tracking Number: 2026-O0050

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES SPECIAL OPERATIONS

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES TRANSPORTATION

COMMAND (ATTN: ACQUISITION EXECUTIVE)

DEPUTY ASSISTANT SECRETARY OF THE ARMY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE NAVY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE

(CONTRACTING)

DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Class Deviation?Revolutionary Federal Acquisition Regulation (FAR) Overhaul

Part 42, Defense FAR Supplement (DFARS) Part 242

Effective March 16, 2026, contracting officers shall use?

? The revised FAR Part 42, Contract Administration and Audit Services, published on the Revolutionary FAR Overhaul web page at https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-42 in lieu of the text codified at 48 CFR chapter 1 (https://www.ecfr.gov).

? The attached DFARS Part 242, Contract Administration and Audit Services, in lieu of the text codified at 48 CFR chapter 2; and

? The attached DFARS Procedures, Guidance, and Information (PGI) 242, Contract Administration and Audit Services, in lieu of the PGI text published on the Defense Pricing, Contracting, and Acquisition Policy web page at https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.

This class deviation implements the following:

? Section 2 of E.O. 14275, Restoring Common Sense to Federal Procurement, which establishes the policy that the FAR ?should only contain provisions required by statute or essential to sound procurement, and any FAR provisions that do not

advance these objectives should be removed.?
DARS Tracking Number: 2026-O0050
Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 42
Defense FAR Supplement (DFARS) Part 242
? Section 4(a) of E.O. 14265, Modernizing Defense Acquisitions and Spurring Innovation in the Defense Industrial Base which requires the Secretary of War to eliminate or revise any unnecessary supplemental regulations or any other internal guidance, such as relevant parts of the Financial Management Regulation and Defense Federal Acquisition Regulation Supplement.
? The Office of Management and Budget memorandum, M-25-26 issued on May 2, 2025, titled, Overhauling the Federal Acquisition Regulation, which provided additional guidance to federal agencies regarding the FAR overhaul.
This class deviation remains in effect until rescinded or incorporated into the FAR, DFARS, and DFARS PGI. Inquiries regarding this class deviation can be addressed to osd.pentagon.ousd-a-s.mbx.dfars@mail.mil.
John M. Tenaglia
Principal Director,
Defense Pricing, Contracting, and
Acquisition Policy
Attachments:
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Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 42
Defense FAR Supplement (DFARS) Part 242

PART 242?CONTRACT ADMINISTRATION AND AUDIT SERVICES

242.001-70 Interagency agreements.

(a) DoD requires reimbursement, at a rate set by the Under Secretary of Defense (Comptroller/Chief Financial Officer), from non-DoD organizations, except for?

(1) Quality assurance, contract administration, and audit services provided under a no-charge reciprocal agreement;

(2) Services performed under subcontracts awarded by the Small Business Administration under FAR 19.108; and

(3) Quality assurance performed for the Canadian Department of National Defence and pricing services performed for Public Works and Government Services Canada (PWGSC), operating as Public Services and Procurement Canada (PSPC).

(b) Departments and agencies may request an exception from the reimbursement policy in paragraph ((a) of this section from the Under Secretary of Defense (Comptroller/Chief Financial Officer). The request must show that an exception is in the best interest of the Government.

(c) Departments and agencies must pay for services performed by non-DoD activities, foreign governments, or international organizations, unless specified otherwise by reciprocal agreements.

(d) Foreign governments and international organizations may request contract administration services on their direct purchases from U.S. producers. Direct purchase is the purchase of defense supplies in the United States through commercial channels for use by the foreign government or international organization.

(1) PWGSC, operating as PSPC, is permitted to submit its requests for contract administration services directly to the cognizant contract administration office.

(2) Other foreign governments (including Canadian government organizations other than PSPC and international organizations send their requests for contract administration services to the DoD Central Control Point (CCP) at the Headquarters, Defense Contract Management Agency, International and Federal Business Team. Contract administration offices provide services only upon request from the CCP. The CCP must follow the procedures at PGI 242.001-70(d)(2).

SUBPART 242.2?CONTRACT ADMINISTRATION SERVICES

242.202-70 Assignment of contract administration.

(a) Unless an exception in paragraph (b) of this section applies, the Defense Contract Management Agency (DCMA) must administer any contract that requires performance of any contract administration function at or near a contractor facility.

(1) DCMA has contracting personnel assigned to perform contract administration at contractor facilities.

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Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 42

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(2) Contracting activities may not locate contracting office personnel at contractor facilities, except?

(i) In support of contracts retained for administration in accordance with paragraph (b) of this section; or

(ii) As permitted under subpart 242.74.

(3) DCMA must provide preaward survey assistance for work performed on a base, post, camp, station, or other military installation. The contracting office and the DCMA preaward survey monitor should jointly determine the scope of the survey and individual responsibilities.

(b) DoD activities must retain contract administration for any of the following contracts:

(1) The National Security Agency contracts;

(2) Contracts for research and development with universities;

(3) Flight training contracts;

(4) Management and professional support services contracts;

(5) Mapping, charting, and geodesy services contracts;

(6) Base, post, camp, and station purchases, including services performed onsite (see PGI 242.202-70(b)(6));

(7) Contracts for operation or maintenance of, or installation of equipment at, radar or communication network sites;

(8) Communications services contracts;

(9) Contracts for installation, operation, and maintenance of space-track sensors and relays;

(10) Dependents Medicare program contracts;

(11) Stevedoring contracts;

(12) Contracts for construction and maintenance of military and civil public works, including harbors, docks, port facilities, military housing, development of recreational facilities, water resources, flood control, and public utilities;

(13) Architect-engineer services contracts;

(14) Airlift and sealift services contracts (Air Mobility Command and Military Sealift Command may perform contract administration services at contractor locations involved solely in performance of airlift or sealift contracts);

(15) Subsistence supply contracts;

(16) Contracts at ballistic missile sites (contract administration offices may perform supporting administration of these contracts at missile activation sites during the installation, test, and checkout of the missiles and associated equipment);

(17) Contracts for operation and maintenance of, or installation of equipment at, military test ranges, facilities, and installations; and

(18) The Defense Energy Support Center, Defense Logistics Agency, contracts.

(19) Contracts awarded to commercial entities for shipbuilding, conversion, and repair at the facilities of such entities.

242.202-71 Secondary delegations of contract administration.

(a) A contract administration office may request support, in special circumstances, from a component not listed in the Federal Directory of Contract Administration Services Components (available via the internet at https://piee.eb.mil/pcm/xhtml/unauth/index.xhtml).

(b) Follow the procedures at PGI 242.202-71 when requesting support on a subcontract that includes foreign military sale contract requirements.

SUBPART 242.3?CONTRACT ADMINISTRATION OFFICE FUNCTIONS

242.301 General.

Contract administration services performed outside the United States should be performed in accordance with FAR 42.301 unless there are established policies and procedures addressing the specific situation. In this case, coordinate proposed actions with the appropriate U.S. country teams or commanders of unified and specified commands.

242.302-70 Contract administration functions.

(a)(1) See 242.7502 for ACO responsibilities upon receipt of an audit report identifying significant accounting system or related internal control weaknesses or deficiencies.

(2) For contract administration functions related to IR&D projects and B&P projects performed by major contractors, see 242.570-3(a).

(3) Perform all payment administration in accordance with the applicable payment clauses.

(4) Do not delegate the responsibility to make payments to the Defense Contract Management Agency (DCMA). Follow the procedures at PGI 242.302-70(a)(4) for designation of payment offices.

(5) See PGI 223.370-4 for contract administration responsibilities of contracts for ammunition and explosives.

(6) Incorporate requirements for surveillance of aircraft flight and ground operations into the contract, task order, or delivery order. Use the applicable version of the combined regulation/instruction entitled ?Contractor?s Flight and Ground
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Defense FAR Supplement (DFARS) Part 242
Operations? (Air Force Instruction 10-220, Army Regulation 95-20, Naval Air Systems Command (NAVAIR) Instruction 3710.1 (Series), Coast Guard Instruction M13020.3
(Series), and Defense Contract Management Agency Instruction 8210-1 (Series)). See PGI 242.302-70(a)(6).

(7) Support program offices and buying activities in preaward efforts leading to a solicitation or award.

(8) Serve as the single point of contact for all Single Process Initiative (SPI) Management Council activities. The ACO must negotiate and execute facility-wide class modifications and agreements for SPI processes, when authorized by the affected components.

(9) DCMA is responsible for reviewing earned value management system
(EVMS) plans and for verifying initial and continuing contractor compliance with DoD EVMS criteria. Do not retain this function.

(10) Require contractor implementation of the Synchronized Predeployment and Operational Tracker (SPOT) and maintain surveillance over contractor compliance with SPOT business rules available at the website: https://www.acq.osd.mil/asds/log/cso/ocs/spot.html for contracts incorporating the clause at 252.225-7040, Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States. See PGI 242.302-70(a)(10) for guidance on assessing contractor?s implementation of SPOT.

(11) Maintain surveillance over contractor compliance with trafficking in persons requirements for all DoD contracts for services incorporating the clause at FAR **52.222-50, Combating Trafficking in Persons, and, when necessary, its Alternate I, as** identified in the clause prescription at FAR 22.1703-2. (See PGI 222.1703.)

(12) Approve or disapprove contractor business systems, as identified in the clause at 252.242-7998, Contractor Business Systems.

(13) See PGI 242.302-70(a)(13) for guidelines on monitoring contractor costs.

(14) Review and audit contractor identification of contractor-approved suppliers

for the acquisition of electronic parts, as identified in the clause at 252.246-7008, Sources of Electronic Parts.

(b)(1) Issue, negotiate, and execute orders under basic ordering agreements for overhaul, maintenance, and repair of ships, only upon prior coordination and agreement with the ACO.

(2) Work with the contract administration office (CAO) to resolve questioned direct costs.

(i) Negotiate or settle questioned direct costs in an incurred cost audit, except for classified contracts. The procuring contracting officer may delegate this authority to the CAO only upon prior coordination and agreement with the CAO. Upon such delegation, the procuring contracting officer must provide the CAO access within 30 days to all supporting documentation in their possession related to the questioned direct costs in an incurred cost audit.

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DARS Tracking Number: 2026-O0050

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(ii) After settlement of the questioned direct costs, the CAO must provide the procuring contracting office the results of the settlement. The procuring contracting office must make any adjustments resulting from the settlement on affected contracts and report such adjustments to the CAO.

SUBPART 242.4--CORPORATE ADMINISTRATIVE CONTRACTING OFFICER

242.402 Assignment and location.

(c) If the agencies cannot agree, refer the matter to the Principal Director, Defense Pricing, Contracting, and Acquisition Policy.

SUBPART 242.5?INDIRECT COST RATES

242.505 Final indirect cost rates.

See DoD Class Deviation 2012-O0013, DCAA Policy and Procedure for Sampling Low-Risk Incurred Cost Proposals.

242.505-1 Contracting officer determination procedure.

(a) Applicability and responsibility.

(1) The corporate administrative contracting officer and individual administrative contracting officers must jointly decide how to conduct negotiations. Follow the procedures at PGI 242.505-1(a)(1) when negotiations are conducted on a coordinated basis.

242.505-2 Auditor determination procedure.

(b) Procedures.

(2)(iii) When agreement cannot be reached with the contractor, the auditor will issue a DCAA Form 1, Notice of Contract Costs Suspended and/or Disapproved, in addition to the advisory report to the administrative contracting officer.

242.507 Quick-closeout procedure.

(a) Defense Contract Management Agency (DCMA) administrative contracting officers are authorized to negotiate the settlement of direct and indirect costs for a

specific contract, task order, or delivery order to be closed in advance of the determination of final direct costs and indirect rates set forth in FAR 42.505, regardless of the dollar value or percentage of unsettled direct or indirect costs allocable to the contract, task order, or delivery order.

(2) In lieu of the thresholds at FAR 42.507(a)(2), the amount of unsettled direct costs and indirect costs to be allocated to the contract, task order, or delivery order will be considered relatively insignificant when the total unsettled direct costs and indirect costs to be allocated to any one contract, task order, or delivery order do not exceed $2 million, regardless of the total contract, task order, or delivery order amount.

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242.570 Independent research and development and bid and proposal costs.

242.570-1 Scope.

This section implements 10 U.S.C. 3762, Independent research and development costs: allowable costs; 10 U.S.C. 3763, Bid and proposal costs: allowable costs; and 10 U.S.C. 3847, Defense Contract Audit Agency: annual report.

242.570-2 Policy.

Defense contractors are encouraged to engage in independent research and development (IR&D) projects that will advance the needs of DoD for future technology and advanced capability (see part 231).

242.570-3 Responsibilities.

(a) The cognizant administrative contracting officer (ACO) or corporate ACO must determine cost allowability of IR&D costs and bid and proposal (B&P) costs as set forth in 231.205-18 and FAR 31.205-18.

(b) The Defense Contract Audit Agency (DCAA)?

(1) Submit an annual report on the DoD-wide B&P program, to the Principal Director, Defense Pricing, Contracting, and Acquisition Policy, Office of the Under Secretary of Defense for Acquisition and Sustainment, in connection with 10 U.S.C. 3763(c); DCMA or the military department responsible for performing contract administration functions is responsible for providing DCAA with statistical information, as necessary; and

(2) For IR&D costs and B&P costs incurred under any DoD contract in the previous Government fiscal year, submit an annual report to the congressional defense committees as required by 10 U.S.C. 3847.

(c) The Office of the Under Secretary of Defense for Research and Engineering (OUSD(R&E)), is responsible for establishing a regular method for communication?

(1)(i) From DoD to contractors, of timely and comprehensive information regarding planned or expected needs of DoD for future technology and advanced capability, by posting information on communities of interest and upcoming meetings on the Defense Technical Information Center (DTIC) website at https://defenseinnovationmarketplace.dtic.mil/communities-of-interest; and

(ii) From contractors to DoD, of brief technical descriptions of contractor IR&D projects; and

(2) By providing OUSD(R&E) contact information: osd.pentagon.ousd-re.mbx.communications@mail.mil.

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SUBPART 242.6?DISALLOWANCE OF COSTS

242.603-70 Disallowing costs after incurrence.

(a) Contracting officer receipt of vouchers. Contracting officer receipt of vouchers is applicable only for cost-reimbursement contracts with the Canadian Commercial Corporation. See PGI 225.870-5 for invoice procedures.

(b) Auditor receipt of voucher.

(1) The contract auditor is the authorized representative of the contracting officer for?

(i) Receiving vouchers from contractors electronically or by other delivery methods as directed by the terms of the contract;

(ii) Approving interim vouchers, that were selected using sampling methodologies for provisional payment and sending them to the disbursing office after a pre-payment review. Interim vouchers not selected for a pre-payment review are considered provisionally approved and will be sent directly to the disbursing office. All provisionally approved interim vouchers are subject to a later audit of actual costs incurred;

(iii) Reviewing completion/final vouchers and sending them to the administrative contracting officer; and

(iv) Issuing DCAA Forms 1, Notice of Contract Costs Suspended and/or Disapproved, to deduct costs where allowability is questionable.

(2) The administrative contracting officer?

(i) Approves all completion/final vouchers and sends them to the disbursing officer; and

(ii) May issue or direct the issuance of DCAA Form 1 on any cost when there is reason to believe it should be suspended or disallowed.

SUBPART 242.8?PRODUCTION SURVEILLANCE AND REPORTING

242.803-70 Surveillance requirements.

The cognizant contract administration office?

(a) Must perform production surveillance on all contractors that have Criticality Designator A or B contracts;

(b) Must not perform production surveillance on contractors that have only Criticality Designator C contracts, unless specifically requested by the contracting officer; and

(c) When production surveillance is required?

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(1) Conduct a periodic risk assessment of the contractor to determine the degree of production surveillance needed for all contracts awarded to that contractor. The risk assessment must consider information provided by the contractor and the contracting officer;

(2) Develop a production surveillance plan based on the risk level determined during a risk assessment;

(3) Modify the production surveillance plan to incorporate any special surveillance requirements for individual contracts, including any requirements identified by the contracting officer; and

(4) Monitor contract progress and identify potential contract delinquencies in accordance with the production surveillance plan. Contracts with Criticality Designator C are exempt from this requirement unless specifically requested by the contracting officer.

242.804-70 Assignment of criticality designator.

See PGI 242.804-70 for criticality designator assignment procedures.

242.804-71 Reporting requirements.

See PGI 242.804-71 for production and surveillance reporting requirements

242.805-70 Contract clause.

(a) When using the clause at FAR 52.242-2, include the following instructions in the contract schedule?

(1) Frequency and timing of reporting (normally five working days after each reporting period);

(2) Line items, exhibits, or exhibit line items requiring reports;

(3) Offices (with addressees/codes) where reports should be sent (always include the contracting office and contract administration office); and

(4) The following requirements for report content?

(i) The problem, actual or potential, and its cause;

(ii) Items and quantities affected;

(iii) When the delinquency started or will start;

(iv) Actions taken to overcome the delinquency;

(v) Estimated recovery date; and/or

(vi) Proposed schedule revision.

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SUBPART 242.9?NOVATION AND CHANGE-OF-NAME AGREEMENTS

242.902-70 Processing agreements.

Process and execute novation and change-of-name agreements in accordance with the

procedures at PGI 242.902-70.

242.903 Applicability of novation agreements.

(i) When a novation agreement is required and the transferee intends to incur restructuring costs as defined at 231.205-70, include the following provision as paragraph (b)(7) of the novation agreement instead of the paragraph (b)(7) provided in the sample format at FAR 42.903(i):

?(7)(i) Except as set forth in paragraph (7)(ii), the Transferor and the Transferee agree that the Government is not obligated to pay or reimburse either of them for, or otherwise give effect to, any costs, taxes, or other expenses, or any related increases, directly or indirectly arising out of or resulting from the transfer or this Agreement, other than those that the Government in the absence of this transfer or Agreement would have been obligated to pay or reimburse under the terms of the contracts.

(ii) The Government recognizes that restructuring by the Transferee incidental to the acquisition/merger may be in the best interests of the Government. Restructuring costs that are allowable under Part 31 of the Federal Acquisition Regulation (FAR) or Part 231 of the Defense Federal Acquisition Regulation Supplement (DFARS) may be reimbursed under flexibly-priced novated contracts, provided the Transferee demonstrates that the restructuring will reduce overall costs to the Department of Defense (DoD) (and to the National Aeronautics and Space Administration (NASA), where there is a mix of DoD and NASA contracts), and the requirements included in DFARS 231.205-70 are met. Restructuring costs are prohibited on novated contracts unless there is an audit of the restructuring proposal; a determination by the contracting officer of overall reduced costs to DoD/NASA; and an Advance Agreement setting forth a cumulative cost ceiling for restructuring projects and the period to which such costs shall be assigned?.

SUBPART 242.11?CONTRACTOR PERFORMANCE INFORMATION

242.1102-70 Policy.

(a) Include the following in the Contractor Performance Assessment Reporting System (CPARS)?

(1) Assessments of the contractor?s performance against, and efforts to achieve, the goals identified in its comprehensive small business subcontracting plan when the contract contains 252.219-7997 Small Business Subcontracting Plan (Test Program);

(2) Notations on contractors that have denied multiple requests for submission of data other than certified cost or pricing data over the preceding 3-year period, but nevertheless received an award, unless exempted by the head of the contracting activity

(10 U.S.C. 3705(b)(2)(B)); and

(3) Information on contractor compliance with requirements of the clause at **252.247-7023, Transportation of Supplies by Sea (see 10 U.S.C. 2631(d)).**

(b) Evaluate contractor performance for contracts, task orders, and delivery orders

using the thresholds at DFARS 215.104-70(g) in lieu of the thresholds at FAR **42.1102(b) through (d).**

(c) See DFARS subparts 208.2 and 208.3 for evaluating service contracts awarded to AbilityOne participating nonprofit agencies and Federal Prison Industries, Inc., respectively.

SUBPART 242.70?CONTRACTOR BUSINESS SYSTEMS

242.7000 Contractor business system deficiencies.

(a) Definitions. As used in this subpart?

?Acceptable contractor business systems? means contractor business systems that comply with the terms and conditions of the applicable business system clauses listed in the definition of ?contractor business systems? in this section.

?Contractor business systems? means?

(i) Accounting system, if the contract includes the clause at 252.242-7999, Accounting System Administration;

(ii) Earned value management system, if the contract includes the clause at **252.234-7999, Earned Value Management System;**

(iii) Estimating system, if the contract includes the clause at 252.215-7002, Cost Estimating System Requirements;

(iv) Material management and accounting system, if the contract includes the clause at 252.242-7997, Material Management and Accounting System;

(v) Property management system, if the contract includes the clause at 252.245-7003, Contractor Property Management System Administration; and

(vi) Purchasing system, if the contract includes the clause at 252.244-7998, Contractor Purchasing System Administration.

?Covered contract? means a contract that is subject to the Cost Accounting Standards under 41 U.S.C. chapter 15, as implemented in regulations found at 48 CFR 9903.201-1 (10 U.S.C. 3841 note prec).

(b) Determination to withhold payments. If the contracting officer makes a final determination to disapprove a contractor?s business system in accordance with the clause at 252.242-7998, Contractor Business Systems, the contracting officer must?

(1) In accordance with agency procedures, identify one or more covered contracts containing the clause at 252.242-7998 from which payments will be withheld. When identifying the covered contracts from which to withhold payments, the contracting officer must ensure that the total amount of payment withholding under **252.242-7998, when there are material weaknesses in multiple contractor business** systems, does not exceed 10 percent of progress payments, performance-based payments, and interim payments under cost-reimbursement, labor-hour, and time-and-

materials contracts billed under each of the identified covered contracts. Similarly, the contracting officer must ensure that the total amount of payment withholding under the

clause at 252.242-7998 for each business system does not exceed 5 percent of progress payments, performance-based payments, and interim payments under cost-reimbursement, labor-hour, and time-and-materials contracts billed under each of the identified covered contracts. The contracting officer has the sole discretion to identify the covered contracts from which to withhold payments.

(2) Promptly notify the contractor, in writing, of the contracting officer?s determination to implement payment withholding in accordance with the clause at **252.242-7998. Include the notice of payment withholding in the written final** determination for the contractor business system and inform the contractor that?

(i) Payments must be withheld from the contract or contracts identified in the written determination in accordance with the clause at 252.242-7998 until the contracting officer determines that there are no remaining material weaknesses; and

(ii) The contracting officer reserves the right to take other actions within the terms and conditions of the contract.

(3) Provide a copy of the determination to all contracting officers administering the selected contracts from which payments will be withheld. The contracting officer must also provide a copy of the determination to the auditor; payment office; affected contracting officers at the buying activities; and cognizant contracting officers in contract administration activities.

(c) Monitoring contractor?s corrective action. In consultation with the auditor or functional specialist, monitor the contractor's progress in correcting the weaknesses. Notify the contractor of any decision to decrease or increase the amount of payment withholding in accordance with the clause at 252.242-7998.

(d) Correction of material weaknesses.

(1) If the contractor notifies the contracting officer that the contractor has corrected the material weaknesses, the contracting officer must request the auditor or functional specialist to review the correction to verify that the weaknesses have been corrected. If, after receipt of verification, the contracting officer determines that the contractor has corrected all material weaknesses as directed by the contracting officer?s final determination, the contracting officer must discontinue the withholding of payments, release any payments previously withheld, and approve the system, unless other material weaknesses remain.

(2) Prior to the receipt of verification, the contracting officer may discontinue withholding payments pending receipt of verification, and release any payments previously withheld, if the contractor submits evidence that the material weaknesses have been corrected, and the contracting officer, in consultation with the auditor or functional specialist, determines that there is a reasonable expectation that the corrective actions have been implemented by the contractor and are expected to correct the material weaknesses.

(3) Within 90 days of receipt of the contractor notification that the contractor has corrected the material weaknesses, the contracting officer must?

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(i) Make a determination that?

(A) The contractor has corrected all material weaknesses as directed by the contracting officer?s final determination in accordance with paragraph (d)(1) of this section;

(B) There is a reasonable expectation that the corrective actions have been implemented in accordance with paragraph (d)(2) of this section; or

(C) The contractor has not corrected all material weaknesses as directed by the contracting officer?s final determination in accordance with paragraph

(d)(1) of this section, or there is not a reasonable expectation that the corrective actions have been implemented in accordance with paragraph (d)(2) of this section; or

(ii) Reduce withholding directly related to the material weaknesses covered under the corrective action plan by at least 50 percent of the amount being withheld from progress payments and performance-based payments, and direct the contractor, in writing, to reduce the percentage withheld on interim cost vouchers by at least 50 percent, until the contracting officer makes a determination in accordance with paragraph (d)(3)(i) of this section.

(4) If, at any time, the contracting officer determines that the contractor has failed to correct the material weaknesses identified in the contractor's notification, the contracting officer will continue, reinstate, or increase withholding from progress payments and performance-based payments, and direct the contractor, in writing, to continue, reinstate, or increase the percentage withheld on interim cost vouchers to the percentage initially withheld, until the contracting officer determines that the contractor has corrected all material weaknesses as directed by the contracting officer?s final determination.

(e) Sample formats. See PGI 242.7000 for sample formats of contracting officer determinations for use with the clause at 252.242-7998.

242.7001 Contract clause.

Insert the clause at 252.242-7998, Contractor Business Systems, in solicitations and contracts (other than in contracts with educational institutions, Federally Funded Research and Development Centers (FFRDCs), or University Associated Research Centers (UARCs) operated by educational institutions) when?

(a) The resulting contract will be a covered contract as defined in 242.7000(a); and

(b) The solicitation or contract includes any of the following clauses:

(1) 252.215-7002, Cost Estimating System Requirements.

(2) 252.234-7999, Earned Value Management System.

(3) 252.242-7997, Material Management and Accounting System.

(4) 252.242-7999, Accounting System Administration.

(5) 252.244-7998, Contractor Purchasing System Administration.

(6) 252.245-7003, Contractor Property Management System

Administration.

SUBPART 242.71?VOLUNTARY REFUNDS

242.7100 General.

A voluntary refund is a payment or credit (adjustment under one or more contracts or subcontracts) to the Government from a contractor or subcontractor that is not required by any contractual or other legal obligation. Follow the procedures at PGI 242.7100 for voluntary refunds.

SUBPART 242.72?CONTRACTOR MATERIAL MANAGEMENT AND ACCOUNTING SYSTEM

242.7200 Scope of subpart.

(a) This subpart provides policies, procedures, and standards for use in the evaluation of a contractor's material management and accounting system (MMAS).

(b) The policies, procedures, and standards in this subpart?

(1) Apply only when the contractor has contracts exceeding the simplified acquisition threshold that are not for the acquisition of commercial products or commercial services and are either?

(i) Cost-reimbursement contracts; or

(ii) Fixed-price contracts with progress payments made on the basis of costs incurred by the contractor as work progresses under the contract; and

(2) Do not apply to small businesses, educational institutions, or nonprofit organizations.

242.7201 Definitions.

As used in this subpart?

?Acceptable material management and accounting system? means a material management and accounting system that generally complies with the system criteria in paragraph (d) of the clause at 252.242-7997, Material Management and Accounting System.

?Material management and accounting system (MMAS)? means the contractor?s system or systems for planning, controlling, and accounting for the acquisition, use, issuing, and disposition of material. Material management and accounting systems may be manual or automated. They may be stand-alone systems, or they may be integrated with planning, engineering, estimating, purchasing, inventory, accounting, or other systems.

?Valid time-phased requirements? means material that is?

(1) Needed to fulfill the production plan, including reasonable quantities for scrap, shrinkage, yield, etc.; and

(2) Charged or billed to contracts or other cost objectives in a manner consistent with the need to fulfill the production plan.

242.7202 Policy.

(a) Contractors are required to have an MMAS that conforms to the standards in paragraph (d) of the clause at 252.242-7997, Material Management and Accounting System, so that the system?

(1) Reasonably forecasts material requirements;

(2) Ensures the costs of purchased and fabricated material charged or allocated to a contract are based on valid time-phased requirements; and

(3) Maintains a consistent, equitable, and unbiased logic for costing of material transactions.

(b) If appropriate, in consultation with the auditor and functional specialist?

(1) Determine the acceptability of the contractor?s MMAS and approve or disapprove the system; and

(2) Pursue correction of any weaknesses or deficiencies.

(c) In consultation with the auditor and functional specialist, if appropriate, determine whether the contractor?s MMAS complies with the system criteria for an acceptable MMAS as prescribed in the clause at 252.242-7997, Material Management and Accounting System.

242.7203 Review procedures.

(a) Criteria for conducting reviews. Conduct an MMAS review when?

(1) A contractor has $40 million of qualifying sales to the Government during the contractor's preceding fiscal year; and

(2) The administrative contracting officer (ACO), with advice from the auditor, determines an MMAS review is needed based on a risk assessment of the contractor?s past experience and current vulnerability.

(b) Qualifying sales. Qualifying sales are sales for which certified cost or pricing data were required under 10 U.S.C. 3702, as implemented in FAR 15.403, or that are contracts priced on other than a firm-fixed-price or fixed-price with economic price adjustment basis. Sales include prime contracts, subcontracts, and modifications to such contracts and subcontracts.

(c) Disposition of findings?

(1) Reporting of findings. The auditor or functional specialist must document findings and recommendations in a report provided to the contracting officer. If the auditor or functional specialist identifies any material weakness, the report must

describe the weaknesses or deficiencies in sufficient detail to allow the contracting officer to understand the weaknesses or deficiencies.

(2) Initial determination.

(i) Review findings and recommendations and, if there are no material weaknesses, promptly notify the contractor, in writing, that the contractor's MMAS is acceptable and approved; or

(ii) If there are one or more material weaknesses due to the contractor?s failure to meet one or more of the MMAS system criteria in the clause at 252.242-

7997?

(A) Promptly make an initial written determination on any material weaknesses and notify the contractor, in writing, providing a description of each material weakness in sufficient detail to allow the contractor to understand the weakness or deficiency;

(B) Request the contractor to respond, in writing, to the initial determination within 30 days; and

(C) Promptly evaluate the contractor's response to the initial determination in consultation with the auditor or functional specialist and make a final determination (see PGI 242.7203(c)(2)).

(3) Final determination.

(i) The ACO must make a final determination and notify the contractor that?

(A) The contractor's MMAS is acceptable and approved, and no deficiencies remain; or

(B) Material weaknesses remain. Identify any remaining material weaknesses and indicate the adequacy of any proposed or completed corrective action. The contracting officer must ?

(1) Request that the contractor, within 45 days of receipt of the final determination, either correct the weaknesses or submit an acceptable corrective action plan showing milestones and actions to eliminate the weaknesses;

(2) Disapprove the system in accordance with the clause at **252.242-7997; and**

(3) Withhold payments in accordance with the clause at 252.242-7998, Contractor Business Systems, if the clause is included in the contract.

(ii) Follow the procedures relating to monitoring a contractor's corrective action and the correction of material weaknesses in PGI 242.7203(c)(3).

(d) System approval. Promptly approve a previously disapproved MMAS and notify the contractor when the contracting officer determines that there are no remaining material weaknesses.

(e) Contracting officer notifications. Promptly distribute copies of a determination to approve a system, disapprove a system and withhold payments, or approve a previously disapproved system and release withheld payments to the auditor; payment office; affected contracting officers at the buying activities; and cognizant contracting officers in contract administration activities.

242.7204 Contract clause.

Insert the clause at 252.242-7997, Material Management and Accounting System, in all solicitations and contracts exceeding the simplified acquisition threshold that are not for the acquisition of commercial products or commercial services and?

(a) Are not awarded to small businesses, educational institutions, or nonprofit organizations; and

(b) Are either?

(1) Cost-reimbursement contracts; or

(2) Fixed-price contracts with progress payments made on the basis of costs incurred by the contractor as work progresses under the contract.

SUBPART 242.73--CONTRACTOR INSURANCE/PENSION REVIEW

242.7301 General.

(a) The administrative contracting officer (ACO) is responsible for determining the allowability of insurance/pension costs in Government contracts and for determining the need for a Contractor/Insurance Pension Review (CIPR). Defense Contract Management Agency (DCMA) insurance/pension specialists and Defense Contract Audit Agency (DCAA) auditors assist ACOs in making these determinations, conduct CIPRs when needed, and perform other routine audits as authorized under FAR 42.505 and 52.215-2. A CIPR is a DCMA/DCAA joint review that?

(1) Provides an in-depth evaluation of a contractor's?

(i) Insurance programs;

(ii) Pension plans;

(iii) Other deferred compensation plans; and

(iv) Related policies, procedures, practices, and costs; or

(2) Concentrates on specific areas of the contractor?s insurance programs, pension plans, or other deferred compensation plans.

(b) DCMA is the DoD Executive Agent for the performance of all CIPRs.

(c) DCAA is the DoD agency designated for the performance of contract audit responsibilities related to Cost Accounting Standards administration as described in

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FAR subparts 30.1, 30.2, and 30.4 as they relate to a contractor?s insurance programs, pension plans, and other deferred compensation plans.

242.7302 Requirements.

(a)(1) Conduct an in-depth CIPR as described at DFARS 242.7301(a)(1) when?

(i) A contractor has $50 million of qualifying sales to the Government during the contractor?s preceding fiscal year; and

(ii) The ACO, with advice from DCMA insurance/pension specialists and DCAA auditors, determines a CIPR is needed based on a risk assessment of the contractor?s past experience and current vulnerability.

(2) Qualifying sales are sales for which certified cost or pricing data were required under 10 U.S.C. 3702, as implemented in FAR 15.403, or that are contracts priced on other than a firm-fixed-price or fixed-price with economic price adjustment basis. Sales include prime contracts, subcontracts, and modifications to such contracts and subcontracts.

(b) A special CIPR that concentrates on specific areas of a contractor?s insurance programs, pension plans, or other deferred compensation plans must be performed for a contractor (including, but not limited to, a contractor meeting the requirements in paragraph (a) of this section) when any of the following circumstances exists, but only if the circumstance(s) may result in a material impact on Government contract costs:

(1) Information or data reveals a deficiency in the contractor's insurance/pension program.

(2) The contractor proposes or implements changes in its insurance, pension, or deferred compensation plans.

(3) The contractor is involved in a merger, acquisition, or divestiture.

(4) The Government needs to follow up on contractor implementation of prior CIPR recommendations.

(c) The DCAA auditor must use relevant findings and recommendations of previously performed CIPRs in determining the scope of any audits of insurance and pension costs.

(d) When a Government organization believes that a review of the contractor?s insurance/pension program should be performed, that organization should provide a recommendation for a review to the ACO. If the ACO concurs, the review should be performed as part of an ACO-initiated special CIPR or as part of a CIPR already scheduled for the near future.

242.7303 Responsibilities.

Follow the procedures at PGI 242.7303 when conducting a CIPR.

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SUBPART 242.74?TECHNICAL REPRESENTATION AT CONTRACTOR FACILITIES

242.7400 General.

(a) Program managers may determine that they need technical representation in contractor facilities to perform non-contract administration technical duties and to provide liaison, guidance, and assistance on systems and programs. In these cases, the program manager may assign technical representatives under the procedures in **242.7401.**

(b) A technical representative is a representative of a DoD program, project, or system office performing non-contract administration technical duties at or near a contractor facility. A technical representative is not?

(1) A representative of a contract administration or contract audit component; or

(2) A contracting officer's representative (see 201.404).

242.7401 Procedures.

When the program, project, or system manager determines that a technical representative is required, follow the procedures at PGI 242.7401.

SUBPART 242.75?CONTRACTOR ACCOUNTING SYSTEMS AND RELATED CONTROLS

242.7501 Definitions.

As used in this subpart?

?Acceptable accounting system? means a system that complies with the system criteria in paragraph (c) of the clause at 252.242-7999, Accounting System Administration, to provide reasonable assurance that?

(1) Applicable laws and regulations are complied with;

(2) The accounting system and cost data are reliable;

(3) Risk of misallocations and mischarges are minimized; and

(4) Contract allocations and charges are consistent with billing procedures.

?Accounting system? means the contractor?s system or systems for accounting methods, procedures, and controls established to gather, record, classify, analyze, summarize, interpret, and present accurate and timely financial data for reporting in compliance with applicable laws, regulations, and management decisions, and may include subsystems for specific areas such as indirect and other direct costs, compensation, billing, labor, and general information technology.

242.7502 Policy.

(a) Contractors receiving cost-reimbursement, incentive type, time-and-materials, or labor-hour contracts, or contracts which provide for progress payments based on costs

or on a percentage or stage of completion, are required to maintain an accounting system.

(b) In consultation with the auditor or functional specialist?

(1) Determine the acceptability of a contractor?s accounting system and approve or disapprove the system; and

(2) Pursue correction of any weaknesses or deficiencies.

(c) In evaluating the acceptability of a contractor?s accounting system, in consultation with the auditor or functional specialist, determine whether the contractor?s accounting system complies with the system criteria for an acceptable accounting system as prescribed in the clause at 252.242-7999, Accounting System Administration.

(d) Disposition of findings?

(1) Reporting of findings. The auditor must submit its findings and recommendations in a report to the contracting officer. If the auditor identifies any material weaknesses, the report must describe the weaknesses or deficiencies in sufficient detail to allow the contracting officer to understand the weaknesses or deficiencies. Follow the procedures at PGI 242.7502 for reporting of deficiencies.

(2) Initial determination.

(i) Review findings and recommendations and, if there are no material

weaknesses, promptly notify the contractor, in writing, that the contractor's accounting system is acceptable and approved; or

(ii) If there are one or more material weaknesses due to the contractor?s failure to meet one or more of the accounting system criteria in the clause at 252.242-7999?

(A) Promptly make an initial written determination on any material weaknesses and notify the contractor, in writing, providing a description of each material weakness in sufficient detail to allow the contractor to understand the weakness;

(B) Request the contractor to respond, in writing, to the initial determination within 30 days; and

(C) Promptly evaluate the contractor?s response to the initial determination, in consultation with the auditor or functional specialist, and make a final determination.

(3) Final determination.

(i) Make a final determination and notify the contractor, in writing, that?

(A) The contractor's accounting system is acceptable and approved, and no material weaknesses remain; or

(B) Material weaknesses remain. Identify any remaining material weaknesses and indicate the adequacy of any proposed or completed corrective action.

(1) Request that the contractor, within 45 days of receipt of the final determination, either correct the weaknesses or submit an acceptable corrective action plan showing milestones and actions to eliminate the weaknesses;

(2) Make a determination to disapprove the system in accordance with the clause at 252.242-7999; and

(3) Withhold payments in accordance with the clause at 252.242-7998, Contractor Business Systems, if the clause is included in the contract.

(ii) Follow the procedures relating to monitoring a contractor's corrective action and the correction of material weaknesses in PGI 242.7502(d)(3).

(e) System approval. Promptly approve a previously disapproved accounting system and notify the contractor when there are no remaining material weaknesses.

(f) Contracting officer notifications. Promptly distribute copies of a determination to approve a system, disapprove a system and withhold payments, or approve a previously disapproved system and release withheld payments to the auditor; payment office; affected contracting officers at the buying activities; and cognizant contracting officers in contract administration activities.

(g) Mitigating the risk of deficiencies on specific proposals.

(1) Field pricing teams must discuss identified deficiencies and their impact in all reports on contractor proposals until the deficiencies are resolved.

(2) When negotiating a proposal generated by an accounting system with an

identified deficiency, evaluate whether the deficiency impacts the negotiations. If it does not, proceed with negotiations. See PGI 242.7502(g) for alternatives actions.

242.7503 Contract clause.

Insert the clause at 252.242-7999, Accounting System Administration, in solicitations and contracts when contemplating?

(a) A cost-reimbursement, incentive type, time-and-materials, or labor-hour contract; or

(b) A contract with progress payments made on the basis of costs incurred by the contractor or on a percentage or stage of completion.

SUBPART 242.76?POSTAWARD ORIENTATION

242.7600 Scope of subpart

This subpart prescribes policies and procedures for the postaward orientation of contractors and subcontractors through (a) a conference or (b) a letter or other form of written communication.

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242.7601 General.

(a) A postaward orientation aids both Government and contractor personnel to (l) achieve a clear and mutual understanding of all contract requirements and (2) identify and resolve potential problems. However, it is not a substitute for the contractor's fully understanding the work requirements at the time offers are submitted, nor is it to be used to alter the final agreement arrived at in any negotiations leading to contract award.

(b) Postaward orientation is encouraged to assist?

(1) Small business concerns;

(2) Small disadvantaged business concerns;

(3) Veteran-owned small business concerns;

(4) Service-disabled veteran-owned small business concerns;

(5) HUBZone small business concerns; and

(6) Women-owned small business concerns (including economically disadvantaged women-owned small business concerns and women-owned small business concerns eligible under the Women-Owned Small Business Program).

(c) While cognizant Government or contractor personnel may request the contracting officer to arrange for orientation, it is up to the contracting officer to decide whether a postaward orientation in any form is necessary.

242.7602 Selecting contracts for postaward orientation.

See PGI 242.7602 when selecting contracts for postaward orientation.

242.7603 Postaward conferences.

242-7603-1 Postaward conference arrangements.

Follow the procedures at PGI 242-7603-1 when planning a postaward conference.

242.7603-2 Postaward conference procedure.

(a) DD Form 1484, Post-Award Conference Record, may be used in conducting a postaward conference and in preparing the conference report.

(b) For contracts that include the clause at 252.234-7004, Cost and Software Data Reporting, discuss the contractor?s standard cost and software data reporting (CSDR) process that satisfies the guidelines contained in the DoD 5000.04-M-1, CSDR Manual, and the requirements in the Government-approved CSDR plan for the contract, DD Form 2794, and related Resource Distribution Table.

(c) See PGI 242.7603-3 for additional postaward conference procedures.

242.7603-3 Postaward conference report.

See PGI 242.7603-3 for postaward conference report content and chairperson responsibilities.

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242.7604 Postaward letters.

A letter or other written form of communication to the contractor may serve as adequate postaward orientation. The letter should identify the Government representative responsible for administering the contract and cite any unusual or significant contract requirements. Do not make changes to the contract in a postaward letter (see PGI 242.7603-2(c)).

242.7605 Postaward subcontractor conferences.

(a) The prime contractor is generally responsible for conducting postaward conferences with subcontractors. However, the prime contractor may invite Government representatives, including those involved in contract administration, to a conference with subcontractors, or the Government may request that the prime contractor initiate a conference with subcontractors.

(b) Government representatives must?

(1) Recognize the lack of privity of contract between the Government and subcontractors,

(2) Not take action that is inconsistent with or alters subcontracts, and

(3) Ensure that any changes in direction or commitment affecting the prime contract or contractor resulting from a subcontractor conference are made by written direction of the contracting officer to the prime contractor (see PGI 242.7603-2).

SUBPART 252.2--TEXT OF PROVISIONS AND CLAUSES

252.242-7000 Reserved.

252.242-7001 Reserved.

252.242-7002 Reserved.

252.242-7003 Reserved.

252.242-7997 Material Management and Accounting System. (DEVIATION 2026-O0050)

As prescribed in 242.7204, use the following clause:

MATERIAL MANAGEMENT AND ACCOUNTING SYSTEM

(DEVIATION 2026-O0050) (MAR 2026)

(a) Definitions. As used in this clause?

?Acceptable material management and accounting system? means a material management and accounting system that generally complies with the system criteria in paragraph (d) of this clause.

?Contractor? means a business unit as defined in Federal Acquisition Regulation (FAR) **2.101.**

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?Material management and accounting system (MMAS)? means the Contractor?s system or systems for planning, controlling, and accounting for the acquisition, use, issuing, and disposition of material. Material management and accounting systems may be manual or automated. They may be stand-alone systems, or they may be integrated with planning, engineering, estimating, purchasing, inventory, accounting, or other systems.

?Material weakness? means a deficiency or combination of deficiencies in the internal control over information in contractor business systems, such that there is a reasonable possibility that a material misstatement of such information will not be prevented, or detected and corrected, on a timely basis. A reasonable possibility exists when the likelihood of an event occurring is?

(1) Probable; or

(2) More than remote but less than likely (section 806 of Pub. L. 116-283).

?Valid time-phased requirements? means material that is?

(1) Needed to fulfill the production plan, including reasonable quantities for scrap, shrinkage, yield, etc.; and

(2) Charged or billed to contracts or other cost objectives in a manner consistent with the need to fulfill the production plan.

(b) General. The Contractor shall?

(1) Maintain an MMAS that?

(i) Reasonably forecasts material requirements;

(ii) Ensures that costs of purchased and fabricated material charged or allocated to a contract are based on valid time-phased requirements; and

(iii) Maintains a consistent, equitable, and unbiased logic for costing of material transactions; and

(2) Assess its MMAS and take reasonable action to comply with the MMAS standards in paragraph (e) of this clause.

(c) Disclosure and maintenance requirements. The Contractor shall?

(1) Have policies, procedures, and operating instructions that adequately describe its MMAS;

(2) Provide to the Administrative Contracting Officer (ACO), upon request, the results of internal reviews that it has conducted to ensure compliance with established

MMAS policies, procedures, and operating instructions; and

(3) Disclose significant changes in its MMAS to the ACO at least 30 days prior to implementation.

(d) System criteria. The MMAS shall have adequate internal controls to ensure system and data integrity, and shall?

(1) Have an adequate system description including policies, procedures, and operating instructions that comply with the FAR and Defense FAR Supplement;

(2) Ensure that costs of purchased and fabricated material charged or allocated to a contract are based on valid time-phased requirements as impacted by minimum/economic order quantity restrictions.

(i) A 98 percent bill of material accuracy and a 95 percent master production schedule accuracy are desirable as a goal in order to ensure that requirements are both valid and appropriately time-phased.

(ii) If systems have accuracy levels below these, the Contractor shall provide adequate evidence that?

(A) There is no material harm to the Government due to lower accuracy levels; and

(B) The cost to meet the accuracy goals is excessive in relation to the impact on the Government;

(3) Provide a mechanism to identify, report, and resolve system control weaknesses and manual override. Systems should identify operational exceptions, such as excess/residual inventory, as soon as known;

(4) Provide audit trails and maintain records (manual and those in machine-readable form) necessary to evaluate system logic and to verify through transaction testing that the system is operating as desired;

(5) Establish and maintain adequate levels of record accuracy and include reconciliation of recorded inventory quantities to physical inventory by part number on a periodic basis. A 95 percent accuracy level is desirable. If systems have an accuracy level below 95 percent, the Contractor shall provide adequate evidence that?

(i) There is no material harm to the Government due to lower accuracy levels; and

(ii) The cost to meet the accuracy goal is excessive in relation to the impact on the Government;

(6) Provide detailed descriptions of circumstances that will result in manual or system generated transfers of parts;

(7) Maintain a consistent, equitable, and unbiased logic for costing of material transactions as follows:

(i) The Contractor shall maintain and disclose written policies describing the transfer methodology and the loan/pay-back technique.

(ii) The costing methodology may be standard or actual cost, or any of the

inventory costing methods in 48 CFR 9904.411-50(b). The Contractor shall maintain

consistency across all contract and customer types, and from accounting period to accounting period for initial charging and transfer charging.

(iii) The system should transfer parts and associated costs within the same billing period. In the few instances where this may not be appropriate, the Contractor may accomplish the material transaction using a loan/pay-back technique. The ?loan/pay-back technique? means that the physical part is moved temporarily from the contract, but the cost of the part remains on the contract. The procedures for the loan/pay-back technique must be approved by the ACO. When the technique is used, the Contractor shall have controls to ensure?

(A) Parts are paid back expeditiously;

(B) Procedures and controls are in place to correct any overbilling that might occur;

(C) Monthly, at a minimum, identification of the borrowing contract and the date the part was borrowed; and

(D) The cost of the replacement part is charged to the borrowing contract;

(8) Where allocations from common inventory accounts are used, have controls

(in addition to those in paragraphs (d)(2) and (7) of this clause) to ensure that?

(i) Reallocations and any credit due are processed no less frequently than the routine billing cycle;

(ii) Inventories retained for requirements that are not under contract are not allocated to contracts; and

(iii) Algorithms are maintained based on valid and current data;

(9) Have adequate controls to ensure that physically commingled inventories that may include material for which costs are charged or allocated to fixed-price, cost-reimbursement, and commercial contracts do not compromise requirements of any of the standards in paragraphs (d)(1) through (8) of this clause. Government-furnished material shall not be?

(i) Physically commingled with other material; or

(ii) Used on commercial work; and

(10) Be subjected to periodic internal reviews to ensure compliance with established policies and procedures.

(e) Material weaknesses.

(1) The Contracting Officer will provide an initial determination to the Contractor, in writing, of any material weaknesses. The initial determination will describe the underlying deficiency in sufficient detail to allow the Contractor to understand the weaknesses or deficiencies.

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(2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies material weaknesses in the Contractor's MMAS. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing.

(3) The Contracting Officer will evaluate the Contractor's response and notify the Contractor, in writing, of the Contracting Officer?s final determination concerning?

(i) Remaining material weaknesses;

(ii) The adequacy of any proposed or completed corrective action; and

(iii) System disapproval if the Contracting Officer determines that one or more material weaknesses remain.

(f) If the Contractor receives the Contracting Officer?s final determination of material weaknesses, the Contractor shall, within 45 days of receipt of the final determination, either correct the material weaknesses or submit an acceptable corrective action plan showing milestones and actions to eliminate the material weaknesses.

(g) Withholding payments. If the Contracting Officer makes a final determination to disapprove the Contractor?s MMAS, and the contract includes the clause at 252.242-7998, Contractor Business Systems, the Contracting Officer will withhold payments in accordance with that clause.

(End of clause)

252.242-7998 Contractor Business Systems. (DEVIATION 2026-O0050)

As prescribed in 242.7001, use the following clause:

CONTRACTOR BUSINESS SYSTEMS (DEVIATION 2026-O0050) (MAR 2026)

(a) This clause only applies to covered contracts that are subject to the Cost Accounting Standards under 41 U.S.C. chapter 15, as implemented in regulations found at 48 CFR 9903.201-1 (see the FAR Appendix).

(b) Definitions. As used in this clause?

?Acceptable contractor business systems? means contractor business systems that comply with the terms and conditions of the applicable business system clauses listed in the definition of "contractor business systems" in this clause.

?Contractor business systems? means?

(1) Accounting system, if this contract includes the clause at 252.242-7999, Accounting System Administration;

(2) Earned value management system, if this contract includes the clause at **252.234-7999, Earned Value Management System);**

(3) Estimating system, if this contract includes the clause at 252.215-7002, Cost Estimating System Requirements;

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(4) Material management and accounting system, if this contract includes the clause at 252.242-7997, Material Management and Accounting System;

(5) Property management system, if this contract includes the clause at **252.245-7003, Contractor Property Management System Administration; and**

(6) Purchasing system, if this contract includes the clause at 252.244-7998, Contractor Purchasing System Administration.

?Material weakness? means a deficiency or combination of deficiencies in the internal control over information in contractor business systems, such that there is a reasonable possibility that a material misstatement of such information will not be prevented, or detected and corrected, on a timely basis. A reasonable possibility exists when the likelihood of an event occurring is?

(1) Probable; or

(2) More than remote but less than likely (section 806 of Pub. L. 116-283).

(c) General. The Contractor shall establish and maintain acceptable business systems in accordance with the terms and conditions of this contract.

(d) Material weaknesses.

(1) The Contractor shall respond, in writing, within 30 days to an initial determination that there are one or more material weaknesses in one or more of the Contractor?s business systems.

(2) The Contracting Officer will evaluate the Contractor's response and notify the Contractor, in writing, of the final determination as to whether the Contractor?s business system contains material weaknesses. If the Contracting Officer determines that the Contractor?s business system contains material weaknesses, the final determination will include a notice to withhold payments.

(e) Withholding payments.

(1) If the Contracting Officer issues the final determination with a notice to withhold payments for material weaknesses in a contractor business system required under this contract, the Contracting Officer will withhold 5 percent of amounts due from progress payments and performance-based payments, and direct the Contractor, in writing, to withhold 5 percent from its billings on interim cost vouchers on cost-reimbursement, labor-hour, and time-and-materials contracts until the Contracting Officer has determined that the Contractor has corrected all material weaknesses as directed by the Contracting Officer?s final determination. The Contractor shall, within 45 days of receipt of the notice, either correct the weaknesses or submit an acceptable corrective action plan showing milestones and actions to eliminate the weaknesses.

(2) If the Contractor submits an acceptable corrective action plan within 45 days of receipt of a notice of the Contracting Officer?s intent to withhold payments, and the Contracting Officer, in consultation with the auditor or functional specialist, determines that the Contractor is effectively implementing such plan, the Contracting Officer will reduce withholding directly related to the material weaknesses covered

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under the corrective action plan, to 2 percent from progress payments and performance-based payments, and direct the Contractor, in writing, to reduce the percentage withheld on interim cost vouchers to 2 percent until the Contracting Officer determines the Contractor has corrected all material weaknesses as directed by the Contracting Officer?s final determination. However, if at any time, the Contracting Officer determines that the Contractor has failed to follow the accepted corrective action plan, the Contracting Officer will increase withholding from progress payments and performance-based payments, and direct the Contractor, in writing, to increase the percentage withheld on interim cost vouchers to the percentage initially withheld, until the Contracting Officer determines that the Contractor has corrected all material weaknesses as directed by the Contracting Officer?s final determination.

(3) Payment withhold percentage limits.

(i) The total percentage of payments withheld on amounts due under each progress payment, performance-based payment, or interim cost voucher on this contract shall not exceed?

(A) Five percent for one or more material weaknesses in any single contractor business system; and

(B) Ten percent for material weaknesses in multiple contractor business systems.

(ii) If this contract contains pre-existing withholds, and the application of any subsequent payment withholds will cause withholding under this clause to exceed the payment withhold percentage limits in paragraph (e)(3)(i) of this clause, the Contracting Officer will reduce the payment withhold percentage in the final determination to an amount that will not exceed the payment withhold percentage limits.

(4) For the purpose of this clause, payment means any of the following payments authorized under this contract:

(i) Interim payments under?

(A) Cost-reimbursement contracts;

(B) Incentive type contracts;

(C) Time-and-materials contracts;

(D) Labor-hour contracts.

(ii) Progress payments.

(iii) Performance-based payments.

(5) Payment withholding shall not apply to payments on fixed-price line items where performance is complete and the items were accepted by the Government.
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(6) The withholding of any amount or subsequent payment to the Contractor shall not be construed as a waiver of any rights or remedies the Government has under this contract.

(7) Notwithstanding the provisions of any clause in this contract providing for interim, partial, or other payment withholding on any basis, the Contracting Officer may withhold payment in accordance with the provisions of this clause.

(8) The payment withholding authorized in this clause is not subject to the interest-penalty provisions of the Prompt Payment Act.

(f) Correction of weaknesses.

(1) The Contractor shall notify the Contracting Officer, in writing, when the Contractor has corrected the business system?s weaknesses.

(2) Once the Contractor has notified the Contracting Officer that all weaknesses have been corrected, the Contracting Officer will take one of the following actions:

(i) If the Contracting Officer determines that the Contractor has corrected all material weaknesses as directed by the Contracting Officer?s final determination, the Contracting Officer will, as appropriate, discontinue the withholding of progress payments and performance-based payments, and direct the Contractor, in writing, to discontinue the payment withholding from billings on interim cost vouchers under this contract associated with the Contracting Officer?s final determination, and authorize the Contractor to bill for any monies previously withheld that are not also being withheld due to other material weaknesses. Any payment withholding under this contract due to other material weaknesses will remain in effect until the Contracting Officer determines that those material weaknesses are corrected.

(ii) If the Contracting Officer determines that the Contractor still has material weaknesses, the Contracting Officer will continue the withholding of progress payments and performance-based payments, and the Contractor shall continue withholding amounts from its billings on interim cost vouchers in accordance with paragraph (e) of this clause, and not bill for any monies previously withheld.

(iii) If the Contracting Officer determines, based on the evidence submitted by the Contractor, that there is a reasonable expectation that the corrective actions have been implemented and are expected to correct the material weaknesses, the Contracting Officer will discontinue withholding payments, release any payments previously withheld directly related to the material weaknesses identified in the Contractor notification, direct the Contractor, in writing, to discontinue the payment withholding from billings on interim cost vouchers associated with the Contracting Officer?s final determination, and authorize the Contractor to bill for any monies previously withheld.

(iv) If, within 90 days of receipt of the Contractor notification that the Contractor has corrected the material weaknesses, the Contracting Officer has not made a determination in accordance with paragraph (f)(2)(i), (ii), or (iii) of this clause, the Contracting Officer will reduce withholding directly related to the material weaknesses identified in the Contractor notification by at least 50 percent of the amount being withheld from progress payments and performance-based payments, and direct the Contractor, in writing, to reduce the payment withholding from billings on

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interim cost vouchers directly related to the material weaknesses identified in the Contractor notification by a specified percentage that is at least 50 percent, but not authorize the Contractor to bill for any monies previously withheld until the Contracting Officer makes a determination in accordance with paragraph (f)(2)(i), (ii), or (iii) of this clause.

(v) At any time after the Contracting Officer reduces or discontinues the withholding of progress payments and performance-based payments, or directs the Contractor to reduce or discontinue the payment withholding from billings on interim cost vouchers under this contract, if the Contracting Officer determines that the Contractor has failed to correct the material weaknesses identified in the Contractor's notification, the Contracting Officer will reinstate or increase withholding from progress payments and performance-based payments, and direct the Contractor, in writing, to reinstate or increase the percentage withheld on interim cost vouchers to the percentage initially withheld, until the Contracting Officer determines that the Contractor has corrected all material weaknesses as directed by the Contracting Officer?s final determination.

(End of clause)

252.242-7999 Accounting System Administration. (DEVIATION 2026-O0050)

As prescribed in 242.7503, use the following clause:

ACCOUNTING SYSTEM ADMINISTRATION

(DEVIATION 2026-O0050) (MAR 2026)

(a) Definitions. As used in this clause?

?Acceptable accounting system? means a system that complies with the system criteria in paragraph (c) of this clause to provide reasonable assurance that?

(1) Applicable laws and regulations are complied with;

(2) The accounting system and cost data are reliable;

(3) Risk of misallocations and mischarges are minimized; and

(4) Contract allocations and charges are consistent with billing procedures.

?Accounting system? means the Contractor?s system or systems for accounting methods, procedures, and controls established to gather, record, classify, analyze, summarize, interpret, and present accurate and timely financial data for reporting in compliance with applicable laws, regulations, and management decisions, and may include subsystems for specific areas such as indirect and other direct costs, compensation, billing, labor, and general information technology.

?Material weakness? means a deficiency or combination of deficiencies in the internal control over information in contractor business systems, such that there is a reasonable possibility that a material misstatement of such information will not be prevented, or detected and corrected, on a timely basis. A reasonable possibility exists when the likelihood of an event occurring is?

(1) Probable; or

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(2) More than remote but less than likely (section 806 of Pub. L. 116-283).

(b) General. The Contractor shall establish and maintain an acceptable accounting system. Failure to maintain an acceptable accounting system, as defined in this clause, shall result in the withholding of payments if the contract includes the clause at **252.242-7998, Contractor Business Systems, and also may result in disapproval of the** system.

(c) System criteria. The Contractor?s accounting system shall provide for?

(1) A sound internal control environment, accounting framework, and organizational structure;

(2) Proper segregation of direct costs from indirect costs;

(3) Identification and accumulation of direct costs by contract;

(4) A logical and consistent method for the accumulation and allocation of indirect costs to intermediate and final cost objectives;

(5) Accumulation of costs under general ledger control;

(6) Reconciliation of subsidiary cost ledgers and cost objectives to general ledger;

(7) Approval and documentation of adjusting entries;

(8) Management reviews or internal audits of the system to ensure compliance with the Contractor?s established policies, procedures, and accounting practices;

(9) A timekeeping system that identifies employees? labor by intermediate or final cost objectives;

(10) A labor distribution system that charges direct and indirect labor to the appropriate cost objectives;

(11) Interim (at least monthly) determination of costs charged to a contract through routine posting of books of account;

(12) Exclusion from costs charged to Government contracts of amounts which are not allowable in terms of Federal Acquisition Regulation (FAR) part 31, Contract Cost Principles and Procedures, and other contract provisions;

(13) Identification of costs by contract line item and by units (as if each unit or line item were a separate contract), if required by the contract;

(14) Segregation of preproduction costs from production costs, as applicable;

(15) Cost accounting information, as required?

(i) By contract clauses concerning limitation of cost (FAR 52.232-20), limitation of funds (FAR 52.232-22), or allowable cost and payment (FAR 52.216-7); and

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(ii) To readily calculate indirect cost rates from the books of accounts;

(16) Billings that can be reconciled to the cost accounts for both current and cumulative amounts claimed and comply with contract terms;

(17) Adequate, reliable data for use in pricing follow-on acquisitions; and

(18) Accounting practices in accordance with standards promulgated by the Cost Accounting Standards Board, if applicable, otherwise, Generally Accepted Accounting Principles.

(d) Material weaknesses.

(1) The Contracting Officer will provide an initial determination to the Contractor, in writing, of any material weaknesses. The initial determination will describe the underlying deficiency in sufficient detail to allow the Contractor to understand the weakness or deficiency.

(2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies material weaknesses in the Contractor's accounting system. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing.

(3) The Contracting Officer will evaluate the Contractor's response and notify the Contractor, in writing, of the Contracting Officer?s final determination concerning?

(i) Remaining material weaknesses;

(ii) The adequacy of any proposed or completed corrective action; and

(iii) System disapproval, if the Contracting Officer determines that one or more material weaknesses remain.

(e) If the Contractor receives the Contracting Officer?s final determination of material weaknesses, the Contractor shall, within 45 days of receipt of the final determination, either correct the material weaknesses or submit an acceptable corrective action plan showing milestones and actions to eliminate the material weaknesses.

(f) Withholding payments. If the Contracting Officer makes a final determination to disapprove the Contractor?s accounting system, and the contract includes the clause at **252.242-7998, Contractor Business Systems, the Contracting Officer will withhold** payments in accordance with that clause.

(End of clause)

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PGI 242?CONTRACT ADMINISTRATION AND AUDIT SERVICES

PGI 242.001-70 Interagency agreements.

(d)(2) Upon receipt of a request for contract administration services, the CCP must?

(i) Determine whether the request is from a friendly foreign government or an international agency in which the United States is a participant;

(ii) Determine whether the services are consistent with the DoD mutual security program policies. The Assistant Secretary of Defense (International Security Affairs) is the source of information for questions about the eligibility of foreign governments to receive services);

(iii) Ensure that the reimbursement arrangements are consistent with DFARS **242.001-70;**

(iv) Coordinate with appropriate contract administration offices to determine whether DoD can provide the services;

(v) Notify the requestor that the request is accepted, or provide reasons why it cannot be accepted;

(vi) Distribute the acquisition documents and related materials to contract administration offices; and

(vii) Receive statements of costs incurred by contract administration offices for reimbursable services and forward them for billing to the Security Assistance Accounting Center.

PGI 242.2 CONTRACT ADMINISTRATION SERVICES

PGI 242.202-70 Assignment of contract administration.

(b)((6) DoD activities must retain contract administration functions for contracts performed at a base, post, camp, station, or other military installation. These contracts are normally the responsibility of the installation or tenant commander. However, DCMA must perform contract administration services on a military installation at the request of the military department if there is a prior agreement.

PGI 242.202-71 Secondary delegations of contract administration.

When requesting support on a subcontract that includes foreign military sale (FMS) requirements, the contract administration office must?

(1) Mark ?FMS Requirement? on the face of the documents; and

(2) For each FMS case involved, provide the FMS case identifier, associated item quantities, DoD prime contract number, and prime contract line/subline item number.

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PGI 242.3?CONTRACT ADMINISTRATION OFFICE FUNCTIONS

PGI 242.302-70 Contract administration functions.

(a)(4) For contracts assigned to DCMA for contract administration, designate as the payment office?

(i) The cognizant Defense Finance and Accounting Service (DFAS) payment office as specified in the Federal Directory of Contract Administration Services Components, available at https://piee.eb.mil/pcm/xhtml/unauth/index.xhtml, for contracts funded with DoD funds;

(ii) The department or agency payment office, if authorized by defense financial management regulations or if the contract is funded with non-DoD funds; or

(iii) Multiple payment offices under paragraphs (a)(13)(B)(1)(i) and (ii) of this section, if the contract is funded with both DoD and non-DoD funds.

(2) For contracts not assigned to DCMA, select a payment office or offices under department/agency procedures.

(3) When the Governmentwide commercial purchase card is the method of payment for a contract or order, enter ?CRCARD? in the payment office code block.

(6) Assignment of a Government flight representative (GFR) may require execution

of a secondary contract administration delegation, which is used to transfer contract administration responsibilities (see FAR 42.302(a)) from one contract administration office to another office or command. Secondary contract administration delegations are appropriate when, for example, contract work is performed at locations geographically separated from the contract administration office. In lieu of transferring contract administration responsibility through a secondary contract administration delegation, a GFR from one unit may be delegated GFR responsibility from an outside contract administration organization that has retained contract administration responsibility. This is accomplished through the use of a formal letter of agreement functionally assigning the GFR to the outside contract administration organization for the limited purpose of performing contract administration under FAR 42.302(a)(56).

(10) Use the following when use of Synchronized Predeployment and Operational Tracker (SPOT) is a requirement of the contract;

(i) For suggested criteria to assess a contractor?s implementation of SPOT, see SPOT Compliance Checklist at https://www.acq.osd.mil/asds/log/cso/ocs/spot.html.

(ii) For visibility into certain discrepant records in SPOT, use the following audit compliance reports (ACRs) available via the Total Operational Picture Support System **(TOPSS):**

(A) Deployment Status Report (ACR?01). Lists all deployment requests that were submitted less than 10 days prior to the estimated deployment start date.

(B) In-Theater Arrival Date (ITAD) Report (ACR?02). Lists all records where the ITAD was entered more than one day after the actual ITAD.

(C) Primary Duty Station Report (ACR?03). Lists all deployments where the primary duty station arrival date was entered more than three days after the actual duty station arrival date.

(D) Closeout Deployment Report (ACR?05). Lists all deployments where the actual deployment end date was entered more than three days after the actual deployment end date.

(E) Open/Blank In-Theater Arrival Date (ITAD) Report (ACR? 06). Lists where the ITAD was not entered into SPOT within 15 days after the estimated deployment start date.

(iii) Obtain a TOPSS account by following the TOPPS PKI Certificate Registration instructions at https://www.acq.osd.mil/asds/log/cso/ocs/spot.html.

(iv) Take immediate action to notify contractors of non-compliance with SPOT (e.g., issue one of the delinquency notices identified at FAR 49.607).

(v) Document performance deficiencies related to SPOT non-compliance that will be relevant to past performance evaluations for future contract opportunities in accordance with FAR subpart 42.11.

(13)(i) Use these guidelines for?

(A) Monitoring the policies, procedures, and practices used by

contractors to control direct and indirect costs related to Government business; and

(B) Eliminating duplication in Government monitoring of contractors' costs.

(ii) Effective management of contract costs is essential to the efficient and economical performance of Government contracts. Contractors are responsible for managing and controlling their direct and indirect costs; however, DoD must systematically monitor the management of contractors' costs to ensure these responsibilities are met.

(iii) Departments and agencies should conduct a formal program of Government monitoring of contractor policies, procedures, and practices for controlling costs (cost monitoring) at contractor locations where?

(A) Sales to the Government, as determined by the contract administration offices, during the contractor's next fiscal year are expected to exceed $200 million in contracts?

(1) Based on costs incurred; or

(2) Negotiated based on projected costs.

(B) The contract administration office determines the cost benefits derived from monitoring the individual contractors with less than $200 million in other than firm fixed-price and fixed-price with economic price adjustment contracts is warranted; or

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(C) Significant Government business exists and is specifically directed by the head of the contracting activity.

(iv) Departments and agencies are responsible for designating the cost monitoring sites and discontinuing them when the criteria are no longer met.

(v) Contract administration offices (CAOs), which are designated as cost monitoring sites, are responsible for?

(A) Assigning a cost monitoring specialist (CMS) to conduct the program. The CMS may be the administrative contracting officer (ACO) or any other CAO employee whose normal function relates to evaluation of contractor performance.

(B) Reviewing and approving the cost monitoring plan for the next fiscal year and the cost monitoring report from the concluding fiscal year.

(vi) The ACO is responsible for?

(A) In the absence of a CMS, ensuring completion of the CMS duties referenced in paragraph (iii) of this section;

(B) Considering review results in direct and indirect rate negotiations and contract negotiations;

(C) Ensuring the contractor implements corrective action recommended in the cost monitoring review reports; and

(D) Resolving disputes with the contractor regarding cost monitoring review findings, conclusions, or recommendations.

(vii) The CMS is responsible for managing the cost monitoring effort within the CAO and coordinating planned effort with the contract auditor. This includes?

(A) Preparing and maintaining an annual written cost monitoring plan for reviewing contractor operations (see paragraph (d) of this section);

(B) Maintaining an inventory of planned and completed CAO, Defense Contract Audit Agency (DCAA), and other Government reviews and audits in order to mitigate duplication of efforts;

(C) Monitoring contractor direct and indirect rates and factors during the year, making comparisons to historical actual costs and to contractor proposed or negotiated forward pricing rates and factors, and providing rate recommendations based on their analysis;

(D) Performing approved functional reviews of contractor activities, to include assisting Government personnel in obtaining access to pertinent contractor policies, procedures, and related data;

(E) Advising the ACO and CAO management of corrective action recommended to improve inefficient or uneconomical contractor conditions, policies, or practices, to include preparing, for the ACO's consideration when appropriate, a Notice of Intent to Disallow or Not Recognize Costs;

(F) Continuously tracking the status of recommendations made to the contractor concerning cost performance stemming from all Government reports;

(G) Keeping the contracting officer, program manager, contract auditor, and other responsible officials informed of issues affecting economical contract performance;

(H) Maintaining current organizational charts of the operations identifiable to the contractor's functional centers of its cost control functions; and

(I) Preparing a final cost monitoring report summarizing all of the cost monitoring functions performed during the Government fiscal year.

(viii) The contract auditor is responsible for assisting the CMS by performing the portion of cost monitoring plan and related analyses that requires access to the contractor's financial and accounting records supporting the cost or pricing data. (This does not preclude the program manager, contracting officer, ACO, CMS, or other representatives from reviewing contractor records and data necessary to the performance of their duties.)

(ix) Audit organizations, program offices, contracting activities, and any other DoD organizations with responsibility for reviewing contractor operations for the purpose of monitoring contractor policies, procedures, and practices to control costs, must submit to the CMS?

(A) An annual schedule of planned and tentative visits, oversight reviews, and audits to be performed at cost monitoring locations; and

(B) Revisions to scheduled visits or audit plans, within 30 days of

issuance.

(x) Establish an annual cost monitoring plan for monitoring, reviewing, negotiating, and approving contractor?s direct and indirect rates, business systems, corrective actions to deficient processes, and cost controls by coordinating the capabilities of the CAO, DCAA, and other Government representatives in an effort to reduce unreasonable, erroneous, or improper costs to Government contracts.

(A) The plan should?

(1) Provide coverage for each significant activity of the contractor over a period of five to ten years;

(2) Provide coverage for contractor future years dependent on the period of forward pricing years the contractor proposes and the expected length of executed Government programs;

(3) Be updated to reflect changed conditions as the year progresses; and

(4) Be consistent with the approved schedule, and any deviations should be explained in the final cost monitoring report.

(B) The plan must identify the organizations having the primary responsibility for performing the reviews.

(C) The plan should include reviews required by the ACO and DFARS. Reviews will be performed by the assigned organization during the coordination phase of the cost monitoring plan, except when DFARS makes a specific organizational assignment. For example, 244.301 makes the ACO responsible for leading contractor purchasing system reviews and 215.305-70(c)(3) makes the DCAA auditor responsible for leading estimating system reviews on behalf of the ACO.

(xi) The CAO selects the activities for the cost monitoring plan. DCAA will complete its annual audit plan independently and communicate the approved audit plan to ensure the most effective monitoring approach. To ensure all Government interests are considered in the selection, the CMS should invite CAO, DCAA, and other interested Government representatives to a meeting before the beginning of each Government fiscal year to identify and prioritize the areas to be reviewed during the coming year, to ensure a fully communicated Government cost monitoring plan.

(A) The selection team should consider the following data and assign primary responsibility in the selection process?

(1) Contractor forecasts for the coming years supporting direct and indirect costs by functional centers of its cost control system and the results of the latest survey performed of such systems;

(2) Organizational charts for the contractor's entire operation;

(3) Outline of the contractor's accounting system showing the flow of costs by function;

(4) Determination of Government participation in the dollars

attributable to the operations and cost accounts under consideration;

(5) List of recent reviews and audits performed by CAO, DCAA, and other Government representatives; list should show outstanding weaknesses and deficiencies in the contractor's operations that will be considered for follow-up reviews or audits;

(6) Evidence of contractor under or over staffing;

(7) Significant departures from established contractor productivity standards;

(8) Major financial variances from forecasts in prior years;

(9) Evidences of idle or under-used capacity;

(10) Any visits or audit plans scheduled by other Government organizations and identified to the CMS; and

(11) Any other significant information or business changes which could have an adverse effect or cause a significant change to on the contractor?s management of contract costs.

(B) The CMS should prioritize the plan to review contractor activity by considering?

(1) The extent of competition in awarded contracts;

(2) The contractor's operating methods;

(3) The nature of the work;

(4) Acquisition cycle stage;

(5) Business and industry practices;

(6) Types of contracts involved;

(7) Degree of technical and financial risk;

(8) Previously reported findings and deficiencies;

(9) Ratio of Government/commercial work;

(10) Significant changes in the level (dollars) of the contractor?s work and backlog; and

(11) The extent performance efficiencies have been previously demonstrated.

(C) Submit and approve the cost monitoring plan as follows:

(1) The local DCAA office will provide an approved annual audit plan to the ACO within 30 days after the first day of each fiscal year.

(2) The CMS will submit an adequate cost monitoring plan to the head of the local CAO within 45 days after the first day of each fiscal year.

(3) The head of the local CAO, or designee, will approve the annual cost monitoring plan within 15 days of an adequate submission. The head of the local CAO will ensure that adequate coordination of the cost monitoring plan was performed with the DCAA and other responsible Government representatives.

(D) Perform functional reviews and audits as scheduled in accordance

with the cost monitoring plan.

(1) Hold interim meetings with the contractor as necessary to clarify information. Hold an exit conference at the conclusion of reviews.

(2) Prepare reports at the conclusion of reviews. The ACO will determine whether a Government review or audit report will be provided to a contractor based on specific regulatory requirements or the impact to pending negotiations or litigation.

(3) Prepare periodic reports on the results of the CMS analysis and monitoring of the contractors rates and factors, which should address the causes for significant deviations from historical and negotiated forward pricing rates and factors.

(E) Prepare an annual cost monitoring report which is a culmination of the Government activities performed during the fiscal year in an effort to conduct and maintain a formal monitoring program of contractor policies, procedures, and practices for controlling costs charged to Government contracts. The report should?

(1) Provide a brief introduction of the contractor and the products it provides to the Government;

(2) Summarize each review and audit completed during the reporting period along with any deviations from the cost monitoring plan;

(3) Highlight open deficiencies, corrected deficiencies, and any newly reported deficiencies; and

(4) Include the current status of all final, billing, and forward pricing rates.

(5) Incorporate the final DCAA audit reports by summary and reference.

(F) (1) The head of the local CAO, or designee, will approve the annual cost monitoring report within 60 days of the end of the Government fiscal year.

(2) Provide a copy of the approved report to the head of the local DCAA office within 15 days of approval.

PGI 242.5?INDIRECT COST RATES

PGI 242.505 Final indirect cost rates.

PGI 242.505-1 Contracting officer determination procedure.

(a) Applicability and responsibility.

(1) When negotiations are conducted on a coordinated basis, individual administrative contracting officers are responsible for coordinating with the corporate administrative contracting officer to ensure consistency of cost determinations.

PGI 242.8?PRODUCTION SURVEILLANCE AND REPORTING

PGI 242.804 Assignment of criticality designator.

PGI 242.804-70 Procedures

(a) Contracting officers must?

(1) Assign criticality designator A to items with a priority 01, 02, 03, or 06 (if emergency supply of clothing) under DoD Manual 4140.01, Volume 5, DoD Supply Chain Materiel Management Procedures: Delivery of Materiel; and

(2) Ordinarily assign criticality designator C to unilateral purchase orders.

(b) Only the contracting officer may change the assigned designator.

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PGI 242.804-71 Reporting requirements.

(a) See DoDI 5000. 85, Major Capability Acquisition, for reporting requirements for defense technology projects and acquisition programs.

(b)(i) Within four working days after receipt of the contractor's report, the CAO must provide the report and any required comments to the contracting officer and, unless otherwise specified in the contract, the inventory control manager.

(ii) If the contractor's report indicates that the contract is on schedule and the CAO agrees, the CAO does not need to add further comments. In all other cases, the CAO must add comments and recommend a course of action.

PGI 242.9?NOVATION AND CHANGE-OF-NAME AGREEMENTS

PGI 242.902-70 Processing agreements.

(a) For contracts awarded by the military departments, provide notices to the following addressees instead of individual contracting or contract administration offices:

Army usarmy.pentagon.hqda-asa-alt.list.saal-ps-staff@army.mil

Navy usn.pentagon.asstsecnavrdadc.mbx.pabt@us.navy.mil

Air Force AFMC.PK.Workflow-02@us.af.mil

National Aeronautics and Space Administration

Aeronautics and ATTN: Office of Procurement, Program Operations Division

Space 300 E Street, SW

Administration Washington, DC 20546-0001

(b) Lists of affected contracts accompanying a notice of successor in interest should include the information at FAR 42.903(e)(2).

(c) Lists of affected contracts accompanying a notice of a name change should include the information at FAR 42.904(a)(3).

(d) On notices sent to the addressees in paragraph (1) of this section, include a consolidated list for all subordinate contracting offices of the addressee.

(e) Before making any substantial alterations or additions to the novation agreement format at FAR 42.903(i), coordinate with the addressees in paragraph (1) of this section that have contracts with the contractor. Resolve any objections before executing the agreement.

(f) If the National Aeronautics and Space Administration (NASA) wants a separate agreement with the contractor, continue to process the agreement only for DoD.

(g) In addition to the requirements of FAR 42.902(g) and PGI 204.3, make distribution to?

(1) The physical address or a copy to the email addresses in paragraph (1) of this section; and

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(2) The appropriate Military Surface Deployment and Distribution Command area command for agreements affecting contracts and basic agreements for storage and related services for personal property of military and civilian personnel ? two copies:

Commander Commander
Eastern Area Western Area
Military Surface Deployment Military Surface Deployment
and Distribution Command and Distribution Command
ATTN: MTE-LO Oakland Army Base
Bayonne, NJ 07002 ATTN: MTW-LO
Oakland, CA 94626

(h) In addition to the distribution requirements of FAR 42.902(h)(4) and PGI 204.201?

(1) Send two copies to the physical address or a copy to the email addresses in paragraph (1) of this section. The list of contracts may be confined to those issued by that department.

(2) Do not send copies to NASA or the commands in paragraph (7)(ii) of this section. They will issue their own modifications.

(i) The contracting officer responsible for execution of a change-of-name agreement

(see FAR subpart 42.901) must submit the agreement to DLIS-SBB. If there are no current contracts, each contracting and contract administration office receiving notification of changes from the commercial entity must forward a copy of the change notice annotated with the CAGE code to DLIS-SBB unless the change notice indicates that DLIS-SBB already has been notified.

PGI 242.70? CONTRACTOR BUSINESS SYSTEMS

PGI 242.7000 Contractor business system deficiencies.

(b) Determination to withhold payments. The following are sample formats for written notifications of contracting officer determinations to initiate payment withholding, reduce payment withholding, and discontinue payment withholding in accordance with the clause at DFARS 252.242-7998, Contractor Business Systems:

(1) Use this sample format for written final determinations to implement payment withholding:

Payment Withholding

(i) The purpose of this final determination is to disapprove your [identify the contractor business system(s)] and implement payment withholding per the terms of the clause at DFARS 252.242-7998, Contractor Business Systems.

(ii) It is my final determination that XXX System(s) contains the following material weaknesses:

--[list all material weaknesses]

(iii) Effective immediately, five percent (or a lesser percentage if five percent will exceed the withhold limitations in the clause at DFARS 252.242-7998) of each request for payment under the contracts in Attachment A will be withheld as described below for

material weaknesses in XXX system. Upon receipt of an acceptable corrective action plan
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and my determination that this corrective action plan is being effectively implemented, I will issue a notification with respect to reducing the percentage being withheld to two percent until I determine that all material weaknesses, as identified in this final determination, have been corrected. Failure to follow the accepted corrective action plan will result in an increase in the percentage withheld against each payment under this contract to five percent

(or a lesser percentage if five percent will exceed the withhold limitations in DFARS 252.242-**7998). [Repeat this paragraph, as necessary, if multiple withholds are being applied to** multiple systems in accordance with 252.242-7998(d)]

(iv) For payments under cost, labor-hour, or time-and-material contracts: The Contractor must apply a five percent (or a lesser percentage if five percent will exceed the withhold limitations in DFARS 252.242-7998) withhold to the amount being billed and prepare a cost voucher in Wide Area WorkFlow (WAWF) for the net amount due. The Contractor must show the amount withheld on the current billing, as well as the cumulative amount withheld to date on this contract in accordance with DFARS clause 252.242-7998, in the Comments block of the Miscellaneous Info Tab in WAWF.

(v) For progress payments: The Contractor must prepare the request in WAWF without applying any withhold percentage. The Contracting Officer will reduce the approved amount by five percent (or a lesser percentage if five percent will exceed the withhold limitations in DFARS 252.242-7998) and record the amount being withheld on the progress payment request, as well the cumulative amount withheld on this contract in accordance with DFARS clause 252.242-7998, in the Comments block of the Miscellaneous Info Tab in **WAWF.**

(vi) For performance-based payments: The Contractor must prepare the request in WAWF without applying any withhold percentage to the performance based payment event schedule amounts. The Contracting Officer will reduce the amount approved by five percent (or a lesser percentage if five percent will exceed the withhold limitations in DFARS 252.242-7998) and record the amount being withheld on the performance based payment as well as the cumulative amount withheld on this contract in accordance with the DFARS clause 252.242-7998 in the Comments block of the of the Miscellaneous Info Tab in **WAWF.**

(2) Use this sample format for determinations to reduce payment withholding: Reduction of Temporary Payment Withholding

(i) The purpose of this determination is to reduce the payment withholding percentage per the terms of the clause at DFARS 252.242-7998, Contractor Business Systems, as a result of receiving an acceptable corrective action plan from the contractor, dated YYYY/MM/DD, for resolving deficiencies in its XXX system(s) as identified in the Contracting Officer?s determination, dated YYYY/MM/DD. This reduction is prospective and previous amounts withheld will not be reduced or released at this time.

(ii) Effective immediately, two percent of each request for payment under this contract will be withheld as described below. The two percent being withheld will remain in effect until the Contracting Officer determines that the Contractor has corrected all material weaknesses as directed by the Contracting Officer?s determination. Failure to follow the accepted corrective action plan will result in an increase in the percentage withheld against each payment under this contract to five percent (or a lesser percentage if five percent will exceed the withhold limitations in DFARS 252.242-7998).

(iii) For payments under cost, labor-hour, or time-and-material contracts: The

Contractor must apply a two percent withhold to the amount being billed and prepare a cost voucher in Wide Area WorkFlow (WAWF) for the net amount due. The Contractor must show the amount withheld on the current billing, as well as the cumulative amount withheld to date on this contract in accordance with DFARS clause 252.242-7998, in the Comments block of the Miscellaneous Info Tab in WAWF.

(iv) For progress payments: The Contractor must prepare the request in WAWF without applying any withhold percentage. The Contracting Officer will reduce the approved amount by two percent and record the amount being withheld on the progress payment request, as well the cumulative amount withheld on this contract in accordance with DFARS clause 252.242-7998, in the Comments block of the Miscellaneous Info Tab in **WAWF.**

(v) For performance-based payments: The Contractor must prepare the request in WAWF without applying any withhold percentage to the performance-based payment event schedule amounts. The Contracting Officer will reduce the amount approved by two percent and record the amount being withheld on the performance-based payment as well as the cumulative amount withheld on this contract in accordance with the DFARS clause 252.242-7998 in the Comments block of the of the Miscellaneous Info Tab in WAWF.

(3) Use the sample format below if payment withholding is discontinued pending receipt of auditor or functional specialist verification and based on evidence that the contractor has corrected all material weaknesses, in accordance with the clause at DFARS **252.242-7998, Contractor Business Systems:**

Discontinuation of Payment Withholding Pending Verification

(i) The purpose of this determination is to approve your [identify system(s)] pending verification, discontinue the payment withhold as identified in the Contracting Officer?s determination dated YYYY/MM/DD, and release previous amounts withheld on the contracts in Attachment A, in accordance with DFARS clause 252.242-7998, Contractor Business Systems.

(ii) The discontinuation of the payment withhold is made pending receipt of verification and based on my review of the evidence submitted by the Contractor that all the Contractor?s system(s) material weaknesses identified in the Contracting Officer?s determination dated YYYY/MM/DD have been corrected.

(iii) The Contractor is authorized to submit a bill in the amount of $XXXXXXXX. The billed amount should be submitted on the same type of invoice as the withhold was originally taken, as appropriate.

(4) Use the sample format below if payment withholding is discontinued after auditor or functional specialist verification that the contractor has corrected all material weaknesses, in accordance with the clause at DFARS 252.242-7998, Contractor Business Systems: Discontinuation of Payment Withholding

(i) The purpose of this determination is to approve your [identify system(s)], discontinue the payment withhold as identified in the Contracting Officer?s determination dated YYYY/MM/DD, and release previous amounts withheld on the contracts in Attachment A, in accordance with DFARS clause 252.242-7998, Contractor Business Systems.

(ii) The discontinuation of the payment withhold is made based on verification

that all the Contractor?s system(s) material weaknesses identified in the Contracting Officer?s final determination dated YYYY/MM/DD have been corrected.

(iii) The Contractor is authorized to submit a bill in the amount of $XXXXXXXX. The billed amount should be submitted on the same type of invoice as the withhold was originally taken, as appropriate.

PGI 242.71?Voluntary refunds

PGI 242.7100 General.

(1) A voluntary refund may be solicited (requested by the Government) or unsolicited.

(i) Generally, request voluntary refunds only after determining that no contractual remedy is readily available to recover the amount sought.

(ii) Acceptance of unsolicited refunds does not prejudice remedies otherwise available to the Government.

(2) Before soliciting a voluntary refund or accepting an unsolicited one, the contracting officer should have legal counsel review the contract and related data to?

(i) Confirm that there are no readily available contractual remedies; and

(ii) Advise whether the proposed action would jeopardize or impair the Government's rights.

(3) Request voluntary refunds only when?

(i) The contracting officer concludes that the contractor overcharged under a contract, or inadequately compensated the Government for the use of Government-owned property, or inadequately compensated the Government in the disposition of contractor inventory; and

(ii) Retention of the amount in question by the contractor or subcontractor would be contrary to good conscience and equity.

(4) Do not solicit voluntary refunds without approval of the head of the contracting activity, or as provided in department/agency regulations.

(5) Voluntary refunds may be requested during or after contract performance.

(6) A contract modification, rather than a check, is the preferred means of effecting a

solicited or unsolicited refund transacted before final payment.

(i) For modifications, adjust the price for the refund and credit the refund to the applicable appropriation cited in the contract.

(ii) For checks?

(A) Advise the contractor to?

(1) Make the check payable to the agency that awarded the contract;

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(2) Forward the check to the contracting officer or, when the contract is assigned to another office for administration, to that office; and

(3) Include a letter with the check?

(i) Identifying it as a voluntary refund;

(ii) Giving the contract number involved; and

(iii) Where possible, giving the appropriation and account number to be credited; and

(B) Forward the check to the office responsible for control of funds.

PGI 242.72?CONTRACTOR MATERIAL MANAGEMENT AND ACCOUNTING SYSTEM

PGI 242.7203 Review procedures.

(c) Disposition of findings.

(2) Initial determination.

(ii)(A) Within 30 days of receiving the report, if the contracting officer makes a determination that there is a material weakness, the contracting officer should provide an initial determination of material weaknesses and a copy of the report to the contractor and require the contractor to submit a written response.

(C) Evaluation of contractor's response. Within 30 days of receiving the contractor?s response, the contracting officer, in consultation with the auditor or cognizant functional specialist, should evaluate the contractor?s response and make a final determination.

(3) Final determination.

(ii)(A) Monitoring contractor's corrective action. The contracting officer, with the assistance of the auditor, must monitor the contractor's progress in correcting material weaknesses and deficiencies. If the contractor fails to make adequate progress, the contracting officer must take whatever action is necessary to ensure that the contractor corrects the weaknesses and deficiencies. Actions the contracting officer may take include: disapproving the contractor's MMAS; bringing the issue to the attention of higher level management; recommending non-award of potential contracts, as applicable; and for material weaknesses, implementing or increasing the withholding in accordance with **252.242-7998, Contractor Business Systems.**

(B) Correction of material weaknesses.

(1) When the contractor notifies the contracting officer that the contractor has corrected the material weaknesses, the contracting officer must request that

the auditor review the correction to determine if the weaknesses and deficiencies have been resolved.

(2) The contracting officer must determine if the contractor has corrected the weaknesses and deficiencies.

(3) If the contracting officer determines the contractor has corrected the weaknesses and deficiencies, send the contracting officer's notification to the auditor; payment office; appropriate action officers responsible for reporting past performance at the requiring activities; and each contracting and contract administration office having substantial business with the contractor as applicable.

PGI 242.73--CONTRACTOR INSURANCE/PENSION REVIEW

PGI 242.7303 Responsibilities.

(1) The ACO is responsible for?

(i) Determining the need for a CIPR in accordance with the procedures at DFARS **242.7302;**

(ii) Requesting and scheduling the reviews with the appropriate DCMA activity;

(iii) Notifying the contractor of the proposed date and purpose of the review, and obtaining any preliminary data needed by the DCMA insurance/pension specialist or the DCAA auditor;

(iv) Reviewing the CIPR report, advising the contractor of the recommendations contained within the report, considering contractor comments, and rendering a decision based on those recommendations;

(v) Providing other interested contracting officers copies of documents related to the **CIPR;**

(vi) Ensuring adequate follow-up on all CIPR recommendations; and

(vii) Performing contract administration responsibilities related to Cost Accounting Standards administration as described in FAR Subparts 30.2 and 30.6.

(2) The DCMA insurance/pension specialist is responsible for?

(i) Issuing a technical report on the contractor?s insurance/pension plans for incorporation into the final CIPR report based on an analysis of the contractor?s pension plans, insurance programs, and other related data;

(ii) Leading the team that conducts the review. Another individual may serve as the team leader when both the insurance/pension specialist and that individual agree. The team leader is responsible for?

(A) Maintaining complete documentation for CIPR reports;

(B) To the extent possible, resolving discrepancies between audit reports and CIPR draft reports prior to releasing the final CIPR report;

(C) Preparing and distributing the final CIPR report;

(D) Providing the final audit report and/or the insurance/pension specialist?s report as an attachment to the CIPR report; and

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(E) Preparing a draft letter for the administrative contracting officer's use in notifying the contractor of CIPR results; and

(iii) When requested, advising administrative contracting officers and other Government representatives concerning contractor insurance/pension matters.

(3) The DCAA auditor is responsible for?

(i) Participating as a member of the CIPR team or serving as the team leader (see paragraph (2)(ii) of this section);

(ii) Issuing an audit report for incorporation into the final CIPR report based on an analysis of the contractor?s books, accounting records, and other related data; and

(iii) Performing contract audit responsibilities related to Cost Accounting Standards administration as described in FAR Subparts 30.2 and 30.6.

PGI 242.74?TECHNICAL REPRESENTATION AT CONTRACTOR FACILITIES

PGI 242.7401 Procedures.

(1) When the program, project, or system manager determines that a technical representative is required, the manager must issue a letter of intent to the contract administration office commander listing the assignment location, starting and ending assignment dates, technical duties assigned, delegated authority, and support required from the contract administration office. Any issues regarding the assignment of a technical representative should be resolved promptly. However, final decision on the assignment remains with the program manager. Issues regarding the assignment of technical duties that cannot be resolved between the program office and the on-site DoD contract administration office will be elevated.

(2) The program, project, or system manager will furnish the designated technical representative a letter of assignment of delegated technical duties, with copies to the contract administration office, the contracting officer, and the contractor, at least 30 days before the assignment date (or termination date). Any changes to the requirements of the assignment letter will be made by a new letter of intent and processed in accordance with paragraph (1) of this section.

(3) The contract administration office normally provides the technical representative with office space, equipment, supplies, and part-time clerical support. The program, project, or system manager provides supervision, technical direction, administrative services (e.g., pay, travel, maintenance of personnel records), and, when required, full-time clerical support.

(4) The program manager or designee and the contract administration office, at the local level, must negotiate a memorandum of agreement (MOA) delineating their functional administrative interrelationships, with annual updates as necessary. The agreements may be included in an existing MOA, if one exists, or as a separate MOA.

(5) The technical representative must keep the contract administration office commander fully informed of matters discussed with the contractor. The contract administration office must also keep the technical representative fully informed of contractor discussions that relate to technical matters within the purview of the technical

representative's assigned duties.

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DARS Tracking Number: 2026-O0050

Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 42

Defense FAR Supplement (DFARS) Part 242

PGI 242.75?CONTRACTOR ACCOUNTING SYSTEMS AND RELATED CONTROLS

PGI 242.7502 Policy.

(d) Disposition of findings.

(3) Final determination.

(ii)(A) Monitoring contractor's corrective action. In collaboration with the auditor, monitor the contractor's progress in correcting material weaknesses and deficiencies. If the contractor fails to make adequate progress, take whatever action is necessary to ensure that the contractor corrects the material weaknesses and deficiencies. Potential actions include: disapproving the system; bringing the issue to the attention of higher level management, as applicable; and for material weaknesses, implementing or increasing the withholding in accordance with 252.242-7998, Contractor Business Systems.

(B) Correction of material weaknesses.

(1) When the contractor notifies the contracting officer that the contractor has corrected the material weaknesses; request that the auditor review the correction to determine if the weaknesses and deficiencies have been resolved.

(2) Determine if the contractor has corrected the material weaknesses.

(3) If the contracting officer determines the contractor has corrected the material weaknesses, send the contracting officer's notification to the auditor; payment office; appropriate action officers responsible for reporting past performance at the requiring activities; and each contracting and contract administration office having substantial business with the contractor as applicable.

(g) Mitigating the risk of material weaknesses and system deficiencies on specific proposals.

(2) When identified deficiencies impact negotiations of a proposal, consider the following taking alternative actions, including?

(i) Allowing the contractor additional time to correct the deficiency and submit a corrected proposal;

(ii) Considering another type of contract;

(iii) Using additional cost analysis techniques to determine the reasonableness of the cost elements affected by the deficiency;

(iv) Reducing the negotiation objective for profit or fee; or

(v) Adding a contract (reopener) clause that provides for adjustment of the contract amount after award.

(3) When incorporating a contract reopener clause, negotiate price adjustments required by the clause. A contract reopener clause based upon a deficiency should?

(i) Clearly identify the amounts and items that are in question at the time of negotiation;

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DARS Tracking Number: 2026-O0050
Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 42
Defense FAR Supplement (DFARS) Part 242

(ii) Indicate a specific time or subsequent event by which the contractor will submit a supplemental proposal, including certified cost or pricing data, identifying the cost impact adjustment necessitated by the deficient accounting system;

(iii) Provide for the contracting officer to adjust the contract price unilaterally if the contractor fails to submit the supplemental proposal; and

(iv) Provide that failure of the Government and the contractor to agree to the price adjustment must be a dispute under the Disputes clause.

PGI 242.76?POSTAWARD ORIENTATION

PGI 242.7602 Selecting contracts for postaward orientation.

When deciding whether postaward orientation is necessary and, if so, what form it must take, consider the?

(a) Nature and extent of the preaward survey and any other prior discussions with the contractor;

(b) Type, value, and complexity of the contract;

(c) Complexity and acquisition history of the product or service;

(d) Requirements for spare parts and related equipment;

(e) Urgency of the delivery schedule and relationship of the product or service to critical programs;

(f) Length of the planned production cycle;

(g) Extent of subcontracting;

(h) Contractor's performance history and experience with the product or service;

(i) Contractor's status, if any, as a small business, small disadvantaged, women-owned, veteran-owned, HUBZone, or service-disabled veteran-owned small business concern;

(j) Contractor's performance history with small, small disadvantaged, women-owned, veteran-owned, HUBZone, and service-disabled veteran-owned small business subcontracting programs;

(k) Safety precautions required for hazardous materials or operations; and

(l) Complex financing arrangements, such as progress payments, advance payments, or guaranteed loans.

PGI 242-7603-1 Postaward conference arrangements.

(a) The contracting officer is responsible for?

(1) Establishing the time and place of the conference;

(2) Preparing the agenda, when necessary;

(3) Notifying appropriate Government representatives (e.g., contracting/contract administration office) and the contractor;

(4) Designating or acting as the chairperson;

(5) Conducting a preliminary meeting of Government personnel; and

(6) Preparing a summary report of the conference.

(b) When the contracting office initiates a conference, the arrangements may be made by that office or, at its request, by the contract administration office.

PGI 242.7603-2 Postaward conference procedure.

(c)(1) The chairperson of the conference conducts the meeting. Unless a contract change is contemplated, emphasize that it is not the purpose of the meeting to change the contract.

(2) The contracting officer may make commitments or give directions within the scope of the contracting officer's authority and must put in writing and sign any commitment or direction, whether or not it changes the contract.

(3) Any change to the contract that results from the postaward conference must be made only by a contract modification referencing the applicable terms of the contract. Participants without authority to bind the Government must not take action that in any way alters the contract.

(4) The chairperson develops a postaward conference report that reflects all the information and guidance provided to the contractor during the conference (see PGI **242.7603-3).**

PGI 242.7603-3 Postaward conference report.

(a) The chairperson prepares and signs a report of the postaward conference.

(b) Include all items discussed, including areas requiring resolution, controversial matters, the names of the participants assigned responsibility for further actions, and the due dates for the actions.

(c) The chairperson furnishes copies of the report to the contracting office, the contract administration office, the contractor, and others who require the information.

PART 43

OFFICE OF THE ASSISTANT SECRETARY OF WAR

Status: Class D

OFFICE OF THE ASSISTANT SECRETARY OF WAR

3000 DEFENSE PENTAGON

WASHINGTON, DC 20301-3000

ACQUISITION

AND SUSTAINMENT

In reply refer to

DARS Tracking Number: 2026-O0034

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES SPECIAL OPERATIONS

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES TRANSPORTATION

COMMAND (ATTN: ACQUISITION EXECUTIVE)

DEPUTY ASSISTANT SECRETARY OF THE ARMY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE NAVY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE

(CONTRACTING)

DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Class Deviation?Revolutionary Federal Acquisition Regulation (FAR) Overhaul

Part 43, Defense FAR Supplement (DFARS) Part 243

Effective February 1, 2026, contracting officers shall use?

? The revised FAR Part 43, Contract Modifications published on the Revolutionary FAR Overhaul web page at https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-43 in lieu of the text codified at 48 CFR chapter 1 (https://www.ecfr.gov).

? The attached DFARS Part 243, Contract Modifications in lieu of the text codified at 48 CFR chapter 2; and

? The attached DFARS Procedures, Guidance, and Information (PGI) 243, Contract Modifications, in lieu of the PGI text published on the Defense Pricing, Contracting, and Acquisition Policy web page at https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html..

This class deviation implements the following:

? Section 2 of E.O. 14275, Restoring Common Sense to Federal Procurement, which establishes the policy that the FAR ?should only contain provisions required by statute or essential to sound procurement, and any FAR provisions that do not

advance these objectives should be removed.
DARS Tracking Number: 2026-O0034
Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 43
Defense FAR Supplement (DFARS) Part 243
? Section 4(a) of E.O. 14265, Modernizing Defense Acquisitions and Spurring Innovation in the Defense Industrial Base which requires the Secretary of War to eliminate or revise any unnecessary supplemental regulations or any other internal guidance, such as relevant parts of the Financial Management Regulation and Defense Federal Acquisition Regulation Supplement.
? The Office of Management and Budget memorandum, M-25-26 issued on May 2, 2025, titled, Overhauling the Federal Acquisition Regulation, which provided additional guidance to federal agencies regarding the FAR overhaul.
This class deviation remains in effect until rescinded or incorporated into the FAR, DFARS, and DFARS PGI. Inquiries regarding this class deviation can be addressed to osd.pentagon.ousd-a-s.mbx.dfars@mail.mil.
John M. Tenaglia
Principal Director,
Defense Pricing, Contracting, and
Acquisition Policy
Attachments:
As stated
2
Attachment A1
DARS Tracking Number: 2026-O0034
Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 43
Defense FAR Supplement (DFARS) Part 243

PART 243?CONTRACT MODIFICATIONS

SUBPART 243.2?GENERAL

243.206-70 Notification of substantial impact on employment.

The Secretary of Defense is required to notify the Secretary of Labor if a modification of a major defense contract or subcontract will have a substantial impact on employment. The clause at 252.249-7002 requires that the contractor notify its employees, its subcontractors, and State and local officials when a contract modification will have a substantial impact on employment.

243.270 Identification of foreign military sale (FMS) requirements.

Follow the procedures at PGI 243.270 for identifying contract modifications that add FMS requirements.

243.271 Obligation or deobligation of funds.

Follow the procedures at PGI 243.271 when obligating or deobligating funds.

243.272 Application of modifications.

Follow the procedures at 204.201-72 for determining the sequence for application of modifications to a contract or order.

SUBPART 243.3?CHANGE ORDERS

243.304 Administration.

Follow the procedures at PGI 243.304 for administration of change orders.

243.370 Definitization of change orders.

243.370-1 Scope.

(a) This subsection applies to unpriced change orders with an estimated value exceeding $5 million.

(b) Unpriced change orders for foreign military sales and special access programs are not subject to this subsection, but the contracting officer must apply the policy and procedures to them to the maximum extent practicable. If the contracting officer determines that it is impracticable to adhere to the policy and procedures of this subsection for an unpriced change order for a foreign military sale or a special access program, the contracting officer must provide prior notice, through agency channels, to the Office of the Principal Director, Defense Pricing, Contracting, and Acquisition Policy, Contract Policy via email at osd.pentagon.ousd-a-s.mbx.dpc-cp@mail.mil.

243.370-2 Price ceiling.

Unpriced change orders must include a not-to-exceed price.

Attachment A1

DARS Tracking Number: 2026-O0034

Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 43

Defense FAR Supplement (DFARS) Part 243

243.370-3 Definitization schedule.

(a) Unpriced change orders must contain definitization schedules that provide for definitization by the earlier of?

(1) The date that is 180 days after issuance of the change order (this date may be extended but may not exceed the date that is 180 days after the contractor submits a qualifying proposal); or

(2) The date on which the amount of funds obligated under the change order is equal to more than 50 percent of the not-to-exceed price.

(b) Submission of a qualifying proposal in accordance with the definitization schedule is a material element of the contract. If the contractor does not submit a timely qualifying proposal, the contracting officer may suspend or reduce progress payments under FAR 32.503-6, or take other appropriate action.

243.370-4 Limitations on obligations.

(a) The Government must not obligate more than 50 percent of the not-to-exceed price before definitization. However, if a contractor submits a qualifying proposal before the Government obligates 50 percent of the not-to-exceed price, the Government may increase the limitation on obligations before definitization to no more than 75 percent (see PGI 232.102-70 for coverage on provisional delivery payments).

(b) Obligations should be consistent with the contractor?s requirements for the undefinitized period.

243.370-5 Exceptions.

(a) The limitations in 243.370-2, 243.370-3, and 243.370-4 do not apply to

unpriced change orders for the purchase of initial spares.

(b) The limitations in 243.370-4(a) do not apply to unpriced change orders for ship construction and ship repair.

(c) The head of the agency may waive the limitations in 243.370-2, 243.370-3, and 243.370-4 for unpriced change orders if the head of the agency determines that the waiver is necessary to support?

(1) A contingency operation; or

(2) A humanitarian or peacekeeping operation.

243.370-6 Allowable Profit.

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DARS Tracking Number: 2026-O0034

Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 43

Defense FAR Supplement (DFARS) Part 243

When the final price of an unpriced change order is negotiated after completion of a substantial portion of the required performance, the head of the contracting activity must ensure the profit allowed reflects?

(a) Any reduced cost risk to the contractor for costs incurred during contract performance before negotiation of the final price;

(b) Any reduced cost risk to the contractor for costs expected to be incurred during performance of the remainder of the contract; and

(c) The extent to which costs have been incurred prior to definitization of the unpriced change order (see 215.404). The risk assessment must be documented in the price negotiation memorandum.

243.370?7 Plans and reports.

To provide for enhanced management and oversight of unpriced change orders, departments and agencies must?

(a) Include in the Consolidated Undefinitized Contract Action (UCA) Management Plan required by 217.7405, the actions planned and taken to ensure that unpriced change orders are definitized in accordance with this subsection; and

(b) Include in the Consolidated UCA Management Report required by 217.7405, each unpriced change order with an estimated value exceeding $5 million.

243.371 Certification of requests for equitable adjustment.

(a) Do not pay a request for equitable adjustment to contract terms that exceeds the simplified acquisition threshold unless the contractor certifies the request in accordance with the clause at 252.243-7002.

(b) To determine if the dollar threshold for requiring certification is met, add together the absolute value of each cost increase and each cost decrease. See PGI **243.371 for an example.**

(c) The certification required by 10 U.S.C. 3862(a), as implemented in the clause at 252.243-7002 , is different from the certification required by 41 U.S.C. 7103, Disputes. If the contractor has certified a request for equitable adjustment in accordance with 10 U.S.C. 3862(a), and desires to convert the request to a claim under the Contract Disputes statute, the contractor must certify the claim in

accordance with FAR subpart 33.2.

243.305 Contract clauses.

243.305-70 Pricing of contract modifications.

Insert the clause at 252.243-7001, Pricing of Contract Modifications, in solicitations and contracts when anticipating and using a fixed price type contract.

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DARS Tracking Number: 2026-O0034

Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 43

Defense FAR Supplement (DFARS) Part 243

243.305-71 Requests for equitable adjustment.

Insert the clause at 252.243-7002, Requests for Equitable Adjustment, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that are estimated to exceed the simplified acquisition threshold.

243.305-72 Unpriced change orders.

Insert the clauses prescribed at 217.7406 for unpriced change orders with an estimated value exceeding $5 million.

PART 252 - SOLICITATION PROVISIONS AND CONTRACT CLAUSES

SUBPART 252.2?TEXT OF PROVISIONS AND CLAUSES

252.243-7000 Reserved.

252.243-7001 Pricing of contract modifications.

As prescribed in 243.305-70, use the following clause:

PRICING OF CONTRACT MODIFICATIONS (DEC 1991)

When costs are a factor in any price adjustment under this contract, the contract cost principles and procedures in FAR part 31 and DFARS part 231, in effect on the date of this contract, apply.

(End of clause)

252.243-7002 Requests for Equitable Adjustment.

As prescribed in 243.305-71, use the following clause:

REQUESTS FOR EQUITABLE ADJUSTMENT (DEC 2022)

(a) The amount of any request for equitable adjustment to contract terms shall accurately reflect the contract adjustment for which the Contractor believes the Government is liable. The request shall include only costs for performing the change, and shall not include any costs that already have been reimbursed or that have been separately claimed. All indirect costs included in the request shall be properly allocable to the change in accordance with applicable acquisition regulations.

(b) In accordance with 10 U.S.C. 3862(a), any request for equitable adjustment to contract terms that exceeds the simplified acquisition threshold shall bear, at the time of submission, the following certificate executed by an individual authorized to certify the request on behalf of the Contractor:

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Defense FAR Supplement (DFARS) Part 243
I certify that the request is made in good faith, and that the supporting
data are accurate and complete to the best of my knowledge and belief.

(Official?s Name)

(Title)

(c) The certification in paragraph (b) of this clause requires full disclosure of all relevant facts, including?

(1) Certified cost or pricing data if required in accordance with subsection **15.403-4 of the Federal Acquisition Regulation (FAR); and**

(2) Data other than certified cost or pricing data, in accordance with subsection 15.403-3 of the FAR, including actual cost data and data to support any estimated costs, even if certified cost or pricing data are not required.

(d) The certification requirement in paragraph (b) of this clause does not apply to?

(1) Requests for routine contract payments; for example, requests for payment for accepted supplies and services, routine vouchers under a cost-reimbursement type contract, or progress payment invoices; or

(2) Final adjustment under an incentive provision of the contract.

(End of clause)

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DARS Tracking Number: 2026-O0034
Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 43
Defense FAR Supplement (DFARS) Part 243

PGI 243?CONTRACT MODIFICATIONS

PGI 243.2?GENERAL

PGI 243.270 Identification of foreign military sale (FMS) requirements.
When adding FMS requirements using a contract modification?

(1) Clearly indicate ?FMS Requirement? on the front of the modification; and

(2) Refer to each FMS case identifier code by line/subline item number within the modification, e.g., FMS Case Identifier GY-D-DCA.

PGI 243.271 Obligation or deobligation of funds.
Include sufficient information in each contract modification to permit the paying office to readily identify the changes for each contract line and subline item.

(1) Include the information under the heading ?Summary for the Payment Office? in?

(i) Section G, Contract Administration Data (Uniform Contract Format); or

(ii) The contract schedule (Simplified Contract Format).

(2) The information normally should contain?

(i) The amount of funds obligated by prior contract actions, to include?

(A) The total cost and fee if a cost-type contract;

(B) The target fee at time of contract award if a cost-plus-incentive-fee

contract;

(C) The base fee if a cost-plus-award-fee contract; or

(D) The target price and target profit if a fixed-price incentive contract;

(ii) The amount of funds obligated or deobligated by the instant modification, categorized by the types of contracts specified in paragraph (2)(i) of this section; and

(iii) The total cumulative amount of obligated or deobligated funds, categorized by the types of contracts specified in paragraph (2)(i) of this section.

PGI 243.3?CHANGE ORDERS

PGI 243.304 Administration.

(1) Whenever practicable, provide advance notice of a proposed change order to the administrative contracting officer (ACO).

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Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 43

Defense FAR Supplement (DFARS) Part 243

(i) The ACO must review the proposed change order to ensure compatibility with the status of performance.

(ii) If the contractor has progressed beyond the effective point specified in the proposed change order, the ACO must determine the earliest practical point at which the change order could be made effective and must advise the contracting officer.

(2) If a change order has been issued and the effective date has been determined to be impracticable, the contracting officer must?

(i) Issue another change order to correct, revise, or supersede the first change order; then

(ii) Definitize by supplemental agreement citing both change orders.

PGI 243.371 Certification of requests for equitable adjustment.

(b) For example, a request for equitable adjustment that involves both an increase of $100,000 and a decrease of $105,000 has an absolute value of $205,000 ($100,000 + $105,000, regardless of whether the amounts are plus or minus), which exceeds the simplified acquisition threshold.

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PART 44

OFFICE OF THE ASSISTANT SECRETARY OF WAR

Status: Class D

OFFICE OF THE ASSISTANT SECRETARY OF WAR

3000 DEFENSE PENTAGON

WASHINGTON, DC 20301-3000

ACQUISITION

AND SUSTAINMENT

In reply refer to

DARS Tracking Number: 2026-O0015

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES SPECIAL OPERATIONS

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES TRANSPORTATION

COMMAND (ATTN: ACQUISITION EXECUTIVE)

DEPUTY ASSISTANT SECRETARY OF THE ARMY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE NAVY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE

(CONTRACTING)

DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Class Deviation?Revolutionary Federal Acquisition Regulation (FAR) Overhaul

Part 44, Defense FAR Supplement (DFARS) Part 244

Effective February 1, 2026, contracting officers shall use?

? The revised FAR Part 44, Subcontracting Policies and Procedures published on the Revolutionary FAR Overhaul web page at https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-44 in lieu of the text codified at 48 CFR chapter 1 (https://www.ecfr.gov).

? The attached DFARS Part 244, Subcontracting Policies and Procedures in lieu of the text codified at 48 CFR chapter 2; and

? The attached DFARS Procedures, Guidance, and Information (PGI) 244, Subcontracting Policies and Procedures in lieu of the PGI text published on the Defense Pricing, Contracting, and Acquisition Policy web page at https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.

This class deviation implements the following:

? Section 2 of E.O. 14275, Restoring Common Sense to Federal Procurement, which establishes the policy that the FAR ?should only contain provisions required by statute or essential to sound procurement, and any FAR provisions that do not

advance these objectives should be removed.
DARS Tracking Number: 2026-O0015
Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 44
Defense FAR Supplement (DFARS) Part 244
? Section 4(a) of E.O. 14265, Modernizing Defense Acquisitions and Spurring Innovation in the Defense Industrial Base which requires the Secretary of War to eliminate or revise any unnecessary supplemental regulations or any other internal guidance, such as relevant parts of the Financial Management Regulation and Defense Federal Acquisition Regulation Supplement.
? The Office of Management and Budget memorandum, M-25-26 issued on May 2, 2025, titled, Overhauling the Federal Acquisition Regulation, which provided additional guidance to federal agencies regarding the FAR overhaul.
This class deviation remains in effect until rescinded or incorporated into the FAR, DFARS, and DFARS PGI. Inquiries regarding this class deviation can be addressed to osd.pentagon.ousd-a-s.mbx.dfars@mail.mil.
John M. Tenaglia
Principal Director,
Defense Pricing, Contracting, and
Acquisition Policy
Attachments:
As stated
2
Attachment A1
DARS Tracking Number: 2026-O0015
Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 44
Defense FAR Supplement (DFARS) Part 244

PART 244?SUBCONTRACTING POLICIES AND PROCEDURES

244.001 Definitions.

As used in this subpart?
?Acceptable purchasing system? means a purchasing system that complies with the system criteria in paragraph (c) of the clause at 252.244-7998.
?Purchasing system? means the contractor?s system or systems for purchasing and subcontracting, including make-or-buy decisions, the selection of vendors, analysis of quoted prices, negotiation of prices with vendors, placing and administering of orders, and expediting delivery of materials.

SUBPART 244.2?EVALUATION AND AWARD

244.201 Consent to subcontracts and requirements for advance notice.

244.201-1 Consent requirements.

(a) In accordance with section 824 of Pub. L. 115-232, notwithstanding the requirements in FAR 44.201-1(a), the contracting officer will not withhold consent to subcontract without the written approval of the program manager, or comparable requiring activity official exercising program management responsibilities, if the contractor has an approved purchasing system.

(i) See PGI 244.201-1(i) for considerations when contracting for information

technology, whether as a service or as a supply, that is a covered system or covered item of supply as defined at 239.7301.

244.201-3 Contracting officer?s responsibilities.

See PGI 244.201-3 for considerations when reviewing a contractor?s request to subcontract.

SUBPART 244.3?POSTAWARD

244.301 Contractor?s purchasing systems reviews.

244.301-1 Objective.

The administrative contracting officer (ACO) is responsible for initiating reviews of the contractor's purchasing systems, but other organizations may request that the ACO initiate such reviews.

244.301-2 Requirements.

(a)(1) The ACO will determine the need for a CPSR if a contractor?s sales to the Government are expected to exceed $50 million during the next 12 months.

244.370 Other reviews.

(a) Review the adequacy of rationale documenting commercial product or commercial service determinations to ensure compliance with the definition of ?commercial product? or ?commercial service? in FAR 2.101.

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Attachment A1

DARS Tracking Number: 2026-O0015

Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 44

Defense FAR Supplement (DFARS) Part 244

(b) Review the adequacy of the contractor?s counterfeit electronic part detection and avoidance system under DFARS 252.246-7007, Contractor Counterfeit Electronic Part Detection and Avoidance System.

244.301-3 Responsibility for granting, withholding, or withdrawing approval.

244.301-70 Policy.

Use this section instead of FAR 44.301-3.

(a) General. The contracting officer, with input from the purchasing system analyst or auditor, will?

(1) Determine the acceptability of the contractor?s purchasing system and approve or disapprove the system; and

(2) Pursue correction of any deficiencies.

(b) Evaluation. The contracting officer, with input from a purchasing system analyst or auditor, will evaluate the contractor's purchasing system to ensure it meets the requirements outlined in clause 252.244-7998.

(c) Disposition of findings?

(1) Reporting of findings. The purchasing system analyst or auditor will submit a written report of findings and recommendations to the contracting officer. If any material weaknesses exist, the report will describe the deficiencies in detail.

(2) Initial determination.

(i) If no material weaknesses are found, the contracting officer will promptly notify the contractor that their purchasing system is acceptable and approved; or

(ii) If there are one or more material weaknesses due to the contractor?s failure to meet one or more of the purchasing system criteria in the clause at 252.244-7998, the contracting officer will?

(A) Make an initial written determination on any material weaknesses, notify the contractor in writing, and provide a detailed description of each material weakness (see PGI 244.301-70(c)(2));

(B) Request the contractor to respond in writing, to the initial determination within 30 days; and

(C) With input from the purchasing system analyst or auditor, evaluate the contractor's response and make a final determination.

(3) Final determination.

(i) The contracting officer will make a final determination and notify the contractor in writing, that?

(A) The contractor's purchasing system is acceptable and approved, and no material weaknesses remain; or

(B) Material weaknesses remain. The notice will identify any remaining material weaknesses and indicate the adequacy of any proposed or completed corrective action. The contracting officer will?

(1) Request that the contractor, within 45 days of receipt of the final determination, either correct the weaknesses or submit an acceptable corrective action plan showing milestones and actions to eliminate the weaknesses;

(2) Disapprove the system in accordance with the clause at **252.244-7998; and**

(3) Withhold payments in accordance with the clause at 252.242-7005, Contractor Business Systems, if the clause is included in the contract.

(ii) Follow the procedures relating to monitoring a contractor's corrective action and the correction of material weaknesses in PGI 244.301-70(c)(3).

(d) System approval. The contracting officer will promptly approve a previously disapproved purchasing system and notify the contractor when the contracting officer determines there are no remaining material weaknesses.

(e) Contracting officer notifications. The cognizant contracting officer will promptly distribute copies of a determination to approve a system, disapprove a system and withhold payments, or approve a previously disapproved system and release withheld payments to the auditor; payment office; affected contracting officers at the buying activities; and cognizant contracting officers in contract administration activities.

(f) Mitigating the risk of deficiencies on specific proposals.

(1) Source selection evaluation teams will discuss identified deficiencies and their impact in all reports on contractor proposals until the deficiencies are resolved.

(2) When negotiating a proposal generated by a purchasing system with a known deficiency, the contracting officer will assess whether the deficiency impacts

negotiations. If it does not, proceed with negotiations. If it does, the contracting officer should consider other alternatives, e.g.?

(i) Allowing the contractor additional time to correct the deficiency and submit a corrected proposal;

(ii) Considering another type of contract, e.g., a fixed-price incentive (firm target) contract instead of firm-fixed-price;

(iii) Using additional cost analysis techniques to determine the reasonableness of the cost elements affected by the deficiency;

(iv) Segregating the questionable areas as a cost-reimbursable line item;

(v) Reducing the negotiation objective for profit or fee; or

(vi) Including a contract (reopener) clause that provides for adjustment of the contract amount after award.

(3) The contracting officer who incorporates a reopener clause into the contract is responsible for negotiating price adjustments required by the clause. Any reopener clause necessitated by a deficiency should?

(i) Clearly identify the amounts and items that are in question at the time of negotiation;

(ii) Specify a deadline or event by which the contractor must submit a supplemental proposal, including certified cost or pricing data, detailing the cost impact of the deficient purchasing system;

(iii) Permit the contracting officer to adjust the contract price unilaterally if the contractor fails to submit the supplemental proposal; and

(iv) Provide that failure of the Government and the contractor to agree to the price adjustment shall be a dispute under the Disputes clause.

244.301-71 Contract clause.

Insert the Contractor Purchasing System Administration basic clause or its alternate as follows:

(a) Insert the clause at 252.244-7998, Contractor Purchasing System Administration?Basic, in solicitations and contracts containing the clause at FAR **52.244-2, Subcontracts.**

(b) Insert the clause at 252.244-7998, Contractor Purchasing System Administration?Alternate I, in solicitations and contracts that contain the clause at **252.246-7007, Contractor Counterfeit Electronic Part Detection and Avoidance System,** but do not contain FAR 52.244-2, Subcontracts.

SUBPART 244.4?SUBCONTRACTS FOR COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

244.470 Requirements.

(a) Contractors are required to determine if subcontract items are commercial products or commercial services, using reasonable business judgement and following

FAR part 10 market research guidance. This requirement does not affect the contracting officer?s responsibilities or determinations made under FAR 15.403-2(c)(3).

(b) Items that are valued at less than $10,000 per item purchased for use in the performance of multiple DoD and non-DoD contracts and are not identifiable to any particular contract when purchased, shall be treated as commercial products, even though the items may not meet the definition of ?commercial product? at FAR 2.101 and do not require a commercial product determination (10 U.S.C. 3457(c)).

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244.470-1 Contract clause.

Insert the clause at 252.244-7999, Subcontracts for Commercial Products and Commercial Services, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services.

PART 252?SOLICITATION PROVISIONS AND CONTRACT CLAUSES

SUBPART 252.2?TEXT OF PROVISIONS AND CLAUSES

252.244-7998 Contractor Purchasing System Administration. (DEVIATION 2026-O0015)

Basic. As prescribed in 244.301-71(a), use the following clause:

CONTRACTOR PURCHASING SYSTEM ADMINISTRATION?BASIC (FEB 2026)(DEVIATION 2026-O0015)

(a) Definitions. As used in this clause?

?Acceptable purchasing system? means a purchasing system that complies with the system criteria in paragraph (c) of this clause.

?Material weakness? means a deficiency or combination of deficiencies in the internal control over information in contractor business systems, such that there is a reasonable possibility that a material misstatement of such information will not be prevented, or detected and corrected, on a timely basis. A reasonable possibility exists when the likelihood of an event occurring is?

(1) Probable; or

(2) More than remote but less than likely (section 806 of Pub. L. 116-283).

?Purchasing system? means the Contractor?s system or systems for purchasing and subcontracting, including make-or-buy decisions, the selection of vendors, analysis of quoted prices, negotiation of prices with vendors, placing and administering of orders, and expediting delivery of materials.

(b) General. The Contractor shall establish and maintain an acceptable purchasing system. Failure to maintain an acceptable purchasing system, as defined in this clause, may result in disapproval of the system by the Contracting Officer and/or withholding of payments.

(c) System criteria. The Contractor?s purchasing system shall?

(1) Have an adequate system description including policies, procedures, and

purchasing practices that comply with the Federal Acquisition Regulation (FAR) and the Defense Federal Acquisition Regulation Supplement (DFARS);

(2) Ensure that all applicable purchase orders and subcontracts contain all flowdown clauses, including terms and conditions and any other clauses needed to carry out the requirements of the prime contract;

(3) Maintain an organization plan that establishes clear lines of authority and responsibility;

(4) Ensure all purchase orders are based on authorized requisitions and include a complete and accurate history of purchase transactions to support vendor selected, price paid, and document the subcontract/purchase order files which are subject to Government review;

(5) Establish and maintain adequate documentation to provide a complete and accurate history of purchase transactions to support vendors selected and prices paid;

(6) Apply a consistent make-or-buy policy that is in the best interest of the Government;

(7) Use competitive sourcing to the maximum extent practicable, and ensure debarred or suspended contractors are properly excluded from contract award;

(8) Evaluate price, quality, delivery, technical capabilities, and financial capabilities of competing vendors to ensure fair and reasonable prices;

(9) Require management level justification and adequate cost or price analysis, as applicable, for any sole or single source award;

(10) Perform timely and adequate cost or price analysis and technical evaluation for each subcontractor and supplier proposal or quote to ensure fair and reasonable subcontract prices;

(11) Document negotiations in accordance with FAR 15.408;

(12) Seek, take, and document economically feasible purchase discounts, including cash discounts, trade discounts, quantity discounts, rebates, freight allowances, and company-wide volume discounts;

(13) Ensure proper type of contract selection and prohibit issuance of cost-plus-a-percentage-of-cost subcontracts;

(14) Maintain subcontract surveillance to ensure timely delivery of an acceptable product and procedures to notify the Government of potential subcontract problems that may impact delivery, quantity, or price;

(15) Document and justify reasons for subcontract changes that affect cost or price;

(16) Notify the Government of the award of all subcontracts that contain the FAR and DFARS flowdown clauses that allow for Government audit of those subcontracts, and ensure the performance of audits of those subcontracts;

(17) Enforce adequate policies on conflict of interest, gifts, and gratuities, including the requirements of 41 U.S.C. chapter 87, Kickbacks;

(18) Perform internal audits or management reviews, training, and maintain policies and procedures for the purchasing department to ensure the integrity of the purchasing system;

(19) Establish and maintain policies and procedures to ensure purchase orders and subcontracts contain mandatory and applicable flowdown clauses, as required by the FAR and DFARS, including terms and conditions required by the prime contract and any clauses required to carry out the requirements of the prime contract, including the requirements of 252.246-7007, Contractor Counterfeit Electronic Part Detection and Avoidance System, if applicable;

(20) Provide for an organizational and administrative structure that ensures effective and efficient procurement of required quality materials and parts at the best value from responsible and reliable sources, including the requirements of 252.246-7007, Contractor Counterfeit Electronic Part Detection and Avoidance System, if applicable;

(21) Establish and maintain selection processes to ensure the most responsive and responsible sources for furnishing required quality parts and materials and to promote competitive sourcing among dependable suppliers so that purchases are reasonably priced and from sources that meet contractor quality requirements, including the requirements of 252.246-7007, Contractor Counterfeit Electronic Part Detection and Avoidance System, and the item marking requirements of 252.211-7003, Item Unique Identification and Valuation, if applicable;

(22) Establish and maintain procedures to ensure performance of adequate price or cost analysis on purchasing actions;

(23) Establish and maintain procedures to ensure that proper types of subcontracts are selected, and that there are controls over subcontracting, including oversight and surveillance of subcontracted effort; and

(24) Establish and maintain procedures to timely notify the Contracting Officer, in writing, if?

(i) The Contractor changes the amount of subcontract effort after award such that it exceeds 70 percent of the total cost of the work to be performed under the contract, task order, or delivery order. The notification shall identify the revised cost of the subcontract effort and shall include verification that the Contractor will provide added value; or

(ii) Any subcontractor changes the amount of lower-tier subcontractor effort after award such that it exceeds 70 percent of the total cost of the work to be performed under its subcontract. The notification shall identify the revised cost of the subcontract effort and shall include verification that the subcontractor will provide added value as related to the work to be performed by the lower-tier subcontractor(s).

(d) Material weaknesses.

(1) The Contracting Officer will provide notification of initial determination to

the Contractor, in writing, of any material weaknesses. The initial determination will

describe the underlying deficiency in sufficient detail to allow the Contractor to understand the weakness or deficiency.

(2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies material weaknesses in the Contractor's purchasing system. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing.

(3) The Contracting Officer will evaluate the Contractor's response and notify the Contractor, in writing, of the Contracting Officer?s final determination concerning?

(i) Remaining material weaknesses;

(ii) The adequacy of any proposed or completed corrective action; and

(iii) System disapproval, if the Contracting Officer determines that one or more material weaknesses remain.

(e) If the Contractor receives the Contracting Officer?s final determination of material weaknesses, the Contractor shall, within 45 days of receipt of the final determination, either correct the material weaknesses or submit an acceptable corrective action plan showing milestones and actions to eliminate the weaknesses.

(f) Withholding payments. If the Contracting Officer makes a final determination to disapprove the Contractor?s purchasing system, and the contract includes the clause at **252.242-7005, Contractor Business Systems, the Contracting Officer will withhold** payments in accordance with that clause.

(End of clause)

Alternate I. As prescribed in 244.301-71(b), use the following clause, which amends paragraph (c) of the basic clause by deleting paragraphs (c)(1) through (c)(18) and (c)(22) through (c)(24), and revising and renumbering paragraphs (c)(19) through

(c)(21) of the basic clause.

CONTRACTOR PURCHASING SYSTEM ADMINISTRATION?ALTERNATE I

(JAN 2025)

The following paragraphs (a) through (f) of this clause do not apply unless the Contractor is subject to the Cost Accounting Standards under 41 U.S.C. chapter 15, as implemented in regulations found at 48 CFR 9903.201-1.

(a) Definitions. As used in this clause?

?Acceptable purchasing system? means a purchasing system that complies with the system criteria in paragraph (c) of this clause.

?Material weakness? means a deficiency or combination of deficiencies in the internal control over information in contractor business systems, such that there is a reasonable possibility that a material misstatement of such information will not be prevented, or detected and corrected, on a timely basis. A reasonable possibility exists when the likelihood of an event occurring is?

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(1) Probable; or

(2) More than remote but less than likely (section 806 of Pub. L. 116-283).

?Purchasing system? means the Contractor?s system or systems for purchasing and subcontracting, including make-or-buy decisions, the selection of vendors, analysis of quoted prices, negotiation of prices with vendors, placing and administering of orders, and expediting delivery of materials.

(b) Acceptable purchasing system. The Contractor shall establish and maintain an acceptable purchasing system. Failure to maintain an acceptable purchasing system, as defined in this clause, may result in disapproval of the system by the Contracting Officer and/or withholding of payments.

(c) System criteria. The Contractor?s purchasing system shall?

(1) Establish and maintain policies and procedures to ensure purchase orders and subcontracts contain mandatory and applicable flowdown clauses, as required by the FAR and DFARS, including terms and conditions required by the prime contract and any clauses required to carry out the requirements of the prime contract, including the requirements of 252.246-7007, Contractor Counterfeit Electronic Part Detection and Avoidance System;

(2) Provide for an organizational and administrative structure that ensures effective and efficient procurement of required quality materials and parts at the best value from responsible and reliable sources, including the requirements of 252.246-7007, Contractor Counterfeit Electronic Part Detection and Avoidance System, and, if applicable, the item marking requirements of 252.211-7003, Item Unique Identification and Valuation; and

(3) Establish and maintain selection processes to ensure the most responsive and responsible sources for furnishing required quality parts and materials and to promote competitive sourcing among dependable suppliers so that purchases are from sources that meet contractor quality requirements, including the requirements of **252.246-7007, Contractor Counterfeit Electronic Part Detection and Avoidance System.**

(d) Material weaknesses.

(1) The Contracting Officer will provide notification of initial determination to the Contractor, in writing, of any material weaknesses. The initial determination will describe the underlying deficiency in sufficient detail to allow the Contractor to understand the weaknesses or deficiency.

(2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies material weaknesses in the Contractor's purchasing system. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing.

(3) The Contracting Officer will evaluate the Contractor's response and notify the Contractor, in writing, of the Contracting Officer?s final determination concerning?

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(i) Remaining material weaknesses;

(ii) The adequacy of any proposed or completed corrective action; and

(iii) System disapproval, if the Contracting Officer determines that one or more material weaknesses remain.

(e) If the Contractor receives the Contracting Officer?s final determination of material weaknesses, the Contractor shall, within 45 days of receipt of the final determination, either correct the material weaknesses or submit an acceptable corrective action plan showing milestones and actions to eliminate the weaknesses.

(f) Withholding payments. If the Contracting Officer makes a final determination to disapprove the Contractor?s purchasing system, and the contract includes the clause at **252.242-7005, Contractor Business Systems, the Contracting Officer will withhold** payments in accordance with that clause.

(End of clause)

252.244-7999 Subcontracts for Commercial Products or Commercial Services. (DEVIATION 2026-O0015)

As prescribed in 244.470-1, use the following clause:

SUBCONTRACTS FOR COMMERCIAL PRODUCTS OR COMMERCIAL SERVICES (FEB 2026)(DEVIATION 2026-O0015)

(a) The Contractor shall not include the terms of any Federal Acquisition Regulation (FAR) clause or Defense Federal Acquisition Regulation Supplement (DFARS) clause in subcontracts for commercial products or commercial services at any tier under this contract, unless?

(1) For DFARS clauses, it is so specified in the particular clause; or

(2) For FAR clauses, the clause is listed at FAR 12.205 or it is so specified in paragraph (b) of the clause at FAR 52.244-6, as applicable. (Section 847(b)(1)(B), Pub. **L. 114-328)**

(b)(1) In accordance with 10 U.S.C. 3457(c), the Contractor shall treat as commercial products any items valued at less than $10,000 per item that were purchased by the Contractor for use in the performance of multiple contracts with the Department of Defense and other parties and are not identifiable to any particular contract when purchased.

(2) The Contractor shall ensure that any items to be used in performance of this contract, that are treated as commercial products pursuant to paragraph (b)(1) of this clause, meet all terms and conditions of this contract that are applicable to commercial products in accordance with the clause at FAR 52.244-6 and paragraph (a) of this clause.

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(c) Subcontracts. The Contractor shall include the terms of this clause, including this paragraph (c), in subcontracts awarded under this contract, including subcontracts for the acquisition of commercial products or commercial services.

(End of clause)

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PGI 244?SUBCONTRACTING POLICIES AND PROCEDURES

PGI 244.2?EVALUATION AND AWARD

PGI 244.201 Consent to subcontracts and requirements for advance notice.

PGI 244.201-1 Consent requirements.

(i)(A) When contracting for information technology, whether as a service or as a supply, that is a covered system or covered item of supply, consider the need for a consent to subcontract requirement regarding supply chain risk (see subpart 239.73). In collaboration with the requiring activity, assess the criticality of the component or system to be supplied and potential supply chain risk concerns.

(B) The contracting officer?s written consent to subcontract is necessary when subcontractors are selected or modified during contract performance.

(C) If a potential subcontractor?s risk is beyond the tolerance of the system and mission, the requiring activity must inform the contracting officer. The contracting officer can use the authority granted in section 806 of Pub. L. 111-383 to withhold consent for the contractor to subcontract with a particular source or exclude a source from consideration as specified in **DFARS 239.73.**

PGI 244.201-3 Contracting officer?s responsibilities.

If subcontractor selection is not based on lowest price, assess if the contractor adequately justified selecting the subcontractor as offering the best value to the government.

PGI 244.3?POSTAWARD

PGI 244.301-70 Policy.

(c) Disposition of findings.

(2) Initial determination.

(ii)(A) Within 30 days of receiving the report, if the contracting officer makes a determination that there is a material weakness, the contracting officer should provide an initial determination of material weaknesses and a copy of the report to the contractor and require the contractor to submit a written response.

(C) Evaluation of contractor's response. Within 30 days of receiving the contractor?s response, the contracting officer, with input from the auditor or functional specialist, should evaluate the contractor?s response and make a final determination.

(3) Final determination.

(ii)(A) Monitoring contractors? corrective action. The contracting officer and Purchasing System Analyst (PSA) or auditor will monitor the contractor's progress in

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correcting material weaknesses and deficiencies. If the contractor fails to make adequate progress, the contracting officer will take necessary action to ensure that the contractor corrects the weaknesses and deficiencies. Actions the contracting officer may take include: withdrawing or withholding approval of the system; bringing the issue to the attention of higher level management; recommending non-award of potential contracts, as applicable; and for material weaknesses, implementing or increasing the withholding in accordance with **252.242-7005, Contractor Business Systems.**

(B) Correction of material weaknesses.

(1) When the contractor notifies the contracting officer that the contractor has corrected the material weaknesses, the contracting officer will request the PSA or auditor to review the correction to assess if the weaknesses and deficiencies have been resolved.

(2) The contracting officer will determine if the contractor has corrected the weaknesses and deficiencies.

(3) If the contracting officer determines the contractor has corrected the deficiencies, the contracting officer's notification will be sent to the PSA; auditor; payment office; appropriate action officers responsible for reporting past performance at the requiring activities; and each contracting and contract administration office having substantial business with the contractor as applicable.

PART 45

OFFICE OF THE ASSISTANT SECRETARY OF WAR

Status: Class D

OFFICE OF THE ASSISTANT SECRETARY OF WAR

3000 DEFENSE PENTAGON

WASHINGTON, DC 20301-3000

ACQUISITION

AND SUSTAINMENT

In reply refer to

DARS Tracking Number: 2026-O0046

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES SPECIAL OPERATIONS

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES TRANSPORTATION

COMMAND (ATTN: ACQUISITION EXECUTIVE)

DEPUTY ASSISTANT SECRETARY OF THE ARMY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE NAVY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE

(CONTRACTING)

DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Class Deviation?Revolutionary Federal Acquisition Regulation (FAR) Overhaul

Part 45, Defense FAR Supplement (DFARS) Part 245

Effective March 16, 2026, contracting officers shall use?

? The revised FAR Part 45, Government Property, published on the Revolutionary FAR Overhaul web page at https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-22 in lieu of the text codified at 48 CFR chapter 1 (https://www.ecfr.gov).

? The attached DFARS Part 245, Government Property, in lieu of the text codified at 48 CFR chapter 2; and

? The attached DFARS Procedures, Guidance, and Information (PGI) 245, Government Property, in lieu of the PGI text published on the Defense Pricing, Contracting, and Acquisition Policy web page at https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.

This class deviation implements the following:

? Section 2 of E.O. 14275, Restoring Common Sense to Federal Procurement, which establishes the policy that the FAR ?should only contain provisions required by statute or essential to sound procurement, and any FAR provisions that do not

advance these objectives should be removed.?
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Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 45
Defense FAR Supplement (DFARS) Part 245
? Section 4(a) of E.O. 14265, Modernizing Defense Acquisitions and Spurring Innovation in the Defense Industrial Base which requires the Secretary of War to eliminate or revise any unnecessary supplemental regulations or any other internal guidance, such as relevant parts of the Financial Management Regulation and Defense Federal Acquisition Regulation Supplement.
? The Office of Management and Budget memorandum, M-25-26 issued on May 2, 2025, titled, Overhauling the Federal Acquisition Regulation, which provided additional guidance to federal agencies regarding the FAR overhaul.
This class deviation remains in effect until rescinded or incorporated into the FAR, DFARS, and DFARS PGI. Inquiries regarding this class deviation can be addressed to osd.pentagon.ousd-a-s.mbx.dfars@mail.mil.
John M. Tenaglia
Principal Director,
Defense Pricing, Contracting, and
Acquisition Policy
Attachments:
As stated
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PART 245?GOVERNMENT PROPERTY

SUBPART 245.1?GENERAL

245.101 Definitions.

?Mapping, charting, and geodesy property,? as used in this subpart, is defined in the clause at 252.245-7000, Government-Furnished Mapping, Charting, and Geodesy Property.

245.102 Policy.

See the policy guidance at PGI 245.102-70.

(1) Mapping, charting, and geodesy property. All Government-furnished mapping, charting, and geodesy (MC&G) property is controlled by the Director, National Geospatial Intelligence Agency.

(i) MC&G property must not be duplicated, copied, or otherwise reproduced for purposes other than those necessary for contract performance.

(ii) Upon completion of contract performance, the contracting officer must?

(A) Contact the Director, National Geospatial-Intelligence Agency, 7500 Geoint Drive, Springfield, VA 22150, for disposition instructions;

(B) Direct the contractor to destroy or return all Government-furnished MC&G property not consumed during contract performance; and

(C) Specify the destination and means of shipment for property to be returned to the Government.

(2) Government supply sources. When a contractor will be responsible for preparing requisitioning documentation to acquire Government-furnished property

(GFP) from Government supply sources, require the contractor to prepare the documentation in accordance with DLM 4000.25, Defense Logistics Management Standards (DLMS), Volume 2, Supply Standards and Procedures. Copies are available from the address cited at 208.105

(3) Acquisition and management of industrial resources. See Subpart 237.75 for policy relating to facilities projects.

(4) GFP identification.

(i) It is DoD policy that GFP be tagged, labeled, or marked based on DoD marking standards (MIL Standard 130) or other standards, when the requiring activity determines that such items are subject to serialized item management

(serially-managed items). Identify the list of GFP subject to serialized item management in the contract in accordance with 245.102, Government-furnished property attachments to solicitations and awards.

(ii) Exceptions. The Contractor is not required to tag, label, or mark?

(A) GFP that was previously tagged, labeled, or marked;

(B) Items, as determined by the head of the agency, that are to be used to support a contingency operation; or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack;

(C) Items for which a determination and findings has been executed concluding that it is more cost effective for the Government requiring activity to assign, mark, and register the unique item identification after delivery of an item acquired from a small business concern or a commercial product acquired under FAR part 12 or part 8.

(1) The determination and findings must be executed by?

(i) The Component Acquisition Executive for an Acquisition Category (ACAT) I program; or

(ii) The head of the contracting activity for all other programs.

(2) Provide a copy of the executed determination and findings to the Office of the Principal Director, Defense Pricing, Contracting, and Acquisition Policy

(Contracting eBusiness) via email at osd.pentagon.ousd-a-s.mbx.dpc-cb@mail.mil.

(D) Items that are contractor-acquired property;

(E) Property under any statutory leasing authority;

(F) Property to which the Government has acquired a lien or title solely because of partial, advance, progress, or performance-based payments;

(G) Intellectual property or software; or

(H) Real property.

(5) Reporting loss of Government property. Contractors are required to report all Government property in the GFP module of the Procurement Integrated Enterprise Environment (PIEE) in accordance with the clause at 252.245-7005, Management and Reporting of Government Property.

245.103 General.

245.103-70 Furnishing Government property to contractors.

Follow the procedures at PGI 245.103-70 for furnishing Government property to contractors.

245.103-71 Transferring Government property accountability.

Follow the procedures at PGI 245.103-71 for transferring Government property accountability.

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245.103-72 Government-furnished property attachments to solicitations and awards.

When performance will require the use of GFP, contracting officers must include the GFP attachment to solicitations and awards. See PGI 245.103-72 for procedures and helpful links.

245.103-73 Government property under sustainment contracts.

See PGI 245.103-73 for information on the reporting requirements for Government inventory held by contractors under sustainment contracts.

245.103-74 Contracting office responsibilities.

See PGI 245.103-74 for contracting office responsibilities.

245.104 Responsibility and liability for Government property.

In addition to the contract types listed at FAR 45.104, contractors are not held liable for loss of Government property under negotiated fixed-price contracts awarded on a basis other than submission of certified cost or pricing data.

245.105 Contractors property management system compliance.

(a) Definitions . As used in this section?

?Acceptable property management system? means a property system that complies with the system criteria in paragraph (c) of the clause at 252.245-7003, Contractor Property Management Administration.

?Property management system? means the contractor?s system or systems for managing and controlling Government property.

(b) Policy. The cognizant contracting officer, in consultation with the property administrator, must?

(1) Determine the acceptability of the system and approve or disapprove the system; and

(2) Pursue correction of any weaknesses or deficiencies.

(c) In evaluating the acceptability of a contractor?s property management system, the contracting officer, in consultation with the property administrator,

must determine whether the contractor?s property management system complies with the system criteria for an acceptable property management system as prescribed in the clause at 252.245-7003, Contractor Property Management System Administration.

(d) Disposition of findings?

(1) Reporting of findings. The property administrator must document findings and recommendations in a report to the contracting officer. If the property administrator identifies any material weaknesses, the report must describe

the underlying deficiencies in sufficient detail to allow the contracting officer to understand the weaknesses or deficiencies.

(2) Initial determination.

(i) The contracting officer must review findings and recommendations and, if there are no material weaknesses, must promptly notify the contractor, in writing, that the contractor?s property management system is acceptable and approved; or

(ii) If the contracting officer finds that there are one or more material weaknesses due to the contractor?s failure to meet one or more of the property management system criteria in the clause at 252.245-7003, the contracting officer must?

(A) Promptly make an initial written determination on any material weaknesses and notify the contractor, in writing, providing a description of each material weakness in sufficient detail to allow the contractor to understand the weakness (see PGI 245.105 (d)(2));

(B) Request the contractor to respond, in writing, to the initial determination within 30 days and;

(C) Evaluate the contractor?s response to the initial determination, in consultation with the property administrator, and make a final determination.

(3) Final determination.

(i) The contracting officer must make a final determination and notify the contractor, in writing, that?

(A) The contractor?s property management system is acceptable and approved, and no material weaknesses remain; or

(B) Material weaknesses remain. The notice must identify any remaining material weaknesses and indicate the adequacy of any proposed or completed corrective action. The contracting officer must?

(1) Request that the contractor, within 45 days of receipt of the final determination, either correct the weaknesses or submit an acceptable corrective action plan showing milestones and actions to eliminate the weaknesses;

(2) Disapprove the system in accordance with the clause at 252.245-7003; and

(3) Withhold payments in accordance with the clause at 252.242-7005 , Contractor Business Systems, if the clause is included in the contract.

(ii) Follow the procedures relating to monitoring a contractor?s corrective action and the correction of material weaknesses in PGI 245.105 (d)(3).

(e) System approval. The contracting officer must promptly approve a previously disapproved property management system and notify the contractor when the contracting officer determines, in consultation with the property administrator, that there are no remaining material weaknesses.

(f) Contracting officer notifications. The cognizant contracting officer must promptly distribute copies of a determination to approve a system, disapprove a system and withhold payments, or approve a previously disapproved system and release withheld payments to the auditor; payment office; affected contracting officers at the buying activities; and cognizant contracting officers in contract administration activities.

245.107 Contract clauses.

(1)(i) In lieu of the prescription at FAR 45.107(d), insert the clause at FAR **52.245-1, Government Property, in all purchase orders for repair, maintenance,** overhaul, or modification of Government property regardless of the unit acquisition cost of the items to be repaired.

(ii) For negotiated fixed-price contracts awarded on a basis other than submission of certified cost or pricing data for which Government property is provided, insert the clause at FAR 52.245-1, Government Property, without its Alternate I.

(2) Insert the clause at 252.245-7000, Government-Furnished Mapping, Charting, and Geodesy Property, in solicitations and contracts when mapping, charting, and geodesy property will be furnished.

(3) Insert the clause at 252.245-7003, Contractor Property Management System Administration, in solicitations and contracts containing the clause at FAR 52.245-1, Government Property.

(4) Insert the clause at 252.245-7005, Management and Reporting of Government Property, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that contain the clause at FAR 52.245-1, Government Property.

SUBPART 245.3?AUTHORIZING THE USE AND RENTAL OF GOVERNMENT PROPERTY

245.370 Contracts with foreign governments or international organizations.

(a) Definition. As used in this subpart?

?Major defense equipment? is defined in DoD Directive 2140.2, Recoupment of Nonrecurring Costs on Sales of U.S. Items, as any item of significant military equipment on the United States Munitions List having a nonrecurring research, development, test, and evaluation cost of more than $50 million or a total production cost of more than $200 million.

(b) General.

(1) Approval. A contractor may use Government property on work for foreign governments and international organizations only when approved in writing by the contracting officer having cognizance of the property. The contracting officer may grant approval, provided?

(i) The use will not interfere with foreseeable requirements of the United States;

(ii) The work is undertaken as a DoD foreign military sale; or

(iii) For a direct commercial sale, the foreign country or international organization would be authorized to contract with the department concerned under the Arms Export Control Act.

(2) Use charges.

(i) The Use and Charges clause is applicable on direct commercial sales to foreign governments or international organizations.

(ii) When a particular foreign government or international organization has funded the acquisition of property, do not assess the foreign government or international organization rental charges or nonrecurring recoupments for the use of such property.

(c) Special tooling and special test equipment.

(1) DoD normally recovers a fair share of nonrecurring costs of special tooling and special test equipment by including these costs in its calculation of the nonrecurring cost recoupment charge when major defense equipment is sold by foreign military sales or direct commercial sales to foreign governments or international organizations.

(2) When the cost thresholds in paragraph (2)(i) of this section are not met, the contracting officer must assess rental charges for use of special tooling and special test equipment pursuant to the Use and Charges clause if administratively practicable.

(d) Waivers.

(1) Rental charges for use of U.S. production and research property on commercial sales transactions to the Government of Canada are waived for all

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commercial contracts. This waiver is based on an understanding wherein the Government of Canada has agreed to waive its rental charges.

(2) Requests for waiver or reduction of charges for the use of Government property on work for foreign governments or international organizations must be submitted to the contracting officer, who is authorized to approve the requests in consultation with the appropriate functional specialist.

SUBPART 245.4?TITLE TO GOVERNMENT PROPERTY

245.402 Title to contractor-acquired property.

245.402-70 Policy.

Review the guidance at PGI 245.402-70 with regard to oversight and surveillance of contractor-acquired property.

245.402-71 Delivery of contractor-acquired property.

Follow the procedures at PGI 245.402-71 for the delivery of contractor-acquired property.

SUBPART 245.6?REPORTING, REUTILIZATION, AND DISPOSAL

245.602 Reutilization of Government property.

245.602-1 Inventory disposal schedules.

See PGI 245.602-1 for guidance on inventory disposal schedules.

245.602-3 Screening.

Property will be screened DoD-wide, including the contracting agency, requiring agency, and, as appropriate, the General Services Administration. The requiring agency must have priority for retention of listed items. All required screening must be completed before any sale of contractor inventory, including contractor inventory in overseas locations (foreign excess personal property) can take place. Upon request of the prospective reutilization, transfer, donation, or sales customer, the plant clearance officer must arrange for inspection of property at the contractor's plant in such a manner as to avoid interruption of the contractor's operations, and consistent with any security requirements.

245.602-70 Plant clearance procedures.

Follow the procedures at PGI 245.602-70 for establishing and processing a plant clearance case.

245.604 Sale of surplus personal property.

Follow the procedures at PGI 245.604 when selling surplus personal property.

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Part 252?SOLICITATION PROVISIONS AND CONTRACT CLAUSES

SUBPART 252.2?TEXT OF PROVISIONS AND CLAUSES

252.245-7000 Government-furnished mapping, charting, and geodesy

property.

As prescribed in 245.107(2), use the following clause:

GOVERNMENT-FURNISHED MAPPING, CHARTING, AND GEODESY PROPERTY (APR 2012)

(a) Definition?Mapping, charting, and geodesy (MC&G) property means geodetic, geomagnetic, gravimetric, aeronautical, topographic, hydrographic, cultural, and toponymic data presented in the form of topographic, planimetric, relief, or thematic maps and graphics; nautical and aeronautical charts and publications; and in simulated, photographic, digital, or computerized formats.

(b) The Contractor shall not duplicate, copy, or otherwise reproduce MC&G property for purposes other than those necessary for performance of the contract.

(c) At the completion of performance of the contract, the Contractor, as directed by the Contracting Officer, shall either destroy or return to the Government all Government-furnished MC&G property not consumed in the performance of this contract.

(End of clause)

252.245-7003 Contractor Property Management System Administration.

As prescribed in 245.107(3), insert the following clause:

CONTRACTOR PROPERTY MANAGEMENT SYSTEM ADMINISTRATION (JAN 2025)

(a) Definitions. As used in this clause?

Acceptable property management system means a property system that complies with the system criteria in paragraph (c) of this clause.

Material weakness means a deficiency or combination of deficiencies in the internal control over information in contractor business systems, such that there is a reasonable possibility that a material misstatement of such information will not be prevented, or detected and corrected, on a timely basis. A reasonable possibility exists when the likelihood of an event occurring is?

(1) Probable; or

(2) More than remote but less than likely (section 806 of Pub. L. 116-283).

Property management system means the Contractor's system or systems for managing and controlling Government property.

(b) General. The Contractor shall establish and maintain an acceptable property management system. Failure to maintain an acceptable property management system, as defined in this clause, may result in disapproval of the system by the Contracting Officer and/or withholding of payments.

(c) System criteria. The Contractor's property management system shall be in accordance with paragraphs (b) and (f) of the contract clause at Federal Acquisition Regulation 52.245-1.

(d) Material weaknesses. (1) The Contracting Officer will provide an initial determination to the Contractor, in writing, of any material weaknesses. The initial determination will describe the underlying deficiency in sufficient detail to allow the Contractor to understand the weaknesses or deficiency.

(2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies material weaknesses in the Contractor's property management system. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing.

(3) The Contracting Officer will evaluate the Contractor's response and notify the Contractor, in writing, of the Contracting Officer's final determination concerning?

(i) Remaining material weaknesses;

(ii) The adequacy of any proposed or completed corrective action; and

(iii) System disapproval, if the Contracting Officer determines that one or more material weaknesses remain.

(e) If the Contractor receives the Contracting Officer's final determination of material weaknesses, the Contractor shall, within 45 days of receipt of the final determination, either correct the material weaknesses or submit an acceptable corrective action plan showing milestones and actions to eliminate the material weaknesses.

(f) Withholding payments. If the Contracting Officer makes a final determination to disapprove the Contractor's property management system, and the contract includes the clause at 252.242-7005, Contractor Business Systems, the Contracting Officer will withhold payments in accordance with that clause.

(End of clause)

252.245-7005 Management and Reporting of Government Property.

As prescribed in 245.107(4), use the following clause:

MANAGEMENT AND REPORTING OF GOVERNMENT PROPERTY (JAN 2024)

(a) Definitions. As used in this clause?

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As is means that the Government makes no warranty with respect to the serviceability and/or suitability of the Government property for contract performance and that the Government will not pay for any repairs, replacement, and/or refurbishment of the property.

Commercial and Government Entity (CAGE) code means?

(1) An identifier assigned to entities located in the United States or its outlying areas by the Defense Logistics Agency (DLA) Commercial and Government Entity (CAGE) Branch to identify a commercial or government entity by unique location; or

(2) An identifier assigned by a member of the North Atlantic Treaty Organization (NATO) or by the NATO Support and Procurement Agency (NSPA) to entities located outside the United States and its outlying areas that the DLA Commercial and Government Entity (CAGE) Branch records and maintains in the CAGE master file. This type of code is known as a NATO CAGE (NCAGE) code.
Contractor-acquired property, contractor inventory, Government property, Government-furnished property, and loss of Government property have the meanings given in the Federal Acquisition Regulation (FAR) 52.245-1, Government Property, clause of this contract.
Demilitarization means the act of eliminating the functional capabilities and inherent military design features from DoD personal property. Methods and degree range from removal and destruction of critical features to total destruction by cutting, tearing, crushing, mangling, shredding, melting, burning, etc.
Export-controlled items has the meaning given in the Defense Federal Acquisition Regulation Supplement (DFARS) 252.225-7048, Export-Controlled Items, clause of this contract.
Ineligible transferee means an individual, an entity, or a country?

(1) Excluded from Federal programs by the General Services Administration as identified in the System for Award Management Exclusions located at https://sam.gov;

(2) Delinquent on obligations to the U.S. Government under surplus sales contracts;

(3) Designated by the Department of Defense as ineligible, debarred, or suspended from defense contracts; or

(4) Subject to denial, debarment, or other sanctions under export control laws and related laws and regulations, and orders administered by the Department of State, the Department of Commerce, the Department of Homeland Security, or the Department of the Treasury.

Item unique identification means a system of assigning, reporting, and marking DoD property with unique item identifiers that have machine-readable data elements to distinguish an item from all other like and unlike items.
National stock number means a 13-digit stock number used to identify items of supply. It consists of a four-digit Federal Supply Code and a nine-digit National Item Identification Number.
Reparable item means an item, typically in unserviceable condition, furnished to the contractor for maintenance, repair, modification, or overhaul.
Scrap means property that has no value except for its basic material content. For purposes of demilitarization, scrap is defined as recyclable waste and discarded materials derived from items that have been rendered useless beyond repair, rehabilitation, or restoration such that the item's original identity, utility, form, fit,

and function have been destroyed. Items can be classified as scrap if processed by cutting, tearing, crushing, mangling, shredding, or melting. Intact or recognizable components and parts are not ?scrap.?

Serially-managed item means an item designated by DoD to be uniquely tracked, controlled, or managed in maintenance, repair, and/or supply systems by means of its serial number or unique item identifier.

Serviceable or usable property means property with potential for reutilization or sale as is or with minor repairs or alterations.

Supply condition code means a classification of materiel in terms of readiness for issue and use or to identify action underway to change the status of materiel.

Unique item identifier (UII) means a set of data elements marked on an item that is globally unique and unambiguous. The term includes a concatenated UII or a DoD recognized unique identification equivalent.

(b) Reporting Government property. (1) The Contractor shall use the Government Furnished Property (GFP) module of the Procurement Integrated Enterprise Environment (PIEE) to?

(i) Report receipt of GFP;

(ii) Report the transfer of GFP to another DoD contract;

(iii) Report the shipment of GFP to the Government or to a contractor. The GFP module generates the electronic equivalent of the DD Form 1149, DD Form 1348-1, or other required shipping documents;

(iv) Report when serially-managed items of GFP are incorporated into a higher-level component, assembly, or end item;

(v) Report the loss of Government property in accordance with paragraph

(f)(1)(vii) of the FAR 52.245-1 clause of this contract;

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(vi) Complete the plant clearance inventory schedule in accordance with paragraph (j)(2) of the FAR 52.245-1 clause of this contract, unless disposition instructions are otherwise included in this contract. The GFP module generates the electronic equivalent of the Standard Form (SF) 1428, Inventory Disposal Schedule; and

(vii) Submit a request to buy back or to convert to GFP items of Contractor-acquired property.

(2) Information regarding the GFP module is available in the GFP Module Vendor Guide at https://dodprocurementtoolbox.com/site-pages/gfp-resources. Users may also register for access to the GFP module and obtain training on the PIEE home page at https://piee.eb.mil.

(3) In complying with paragraphs (b)(1)(i) through (iv) of this clause, the Contractor shall report the updated status of the property to the GFP module within 7 business days of the date the change in status occurs, unless otherwise specified in the contract.

(4) The Contractor shall use Wide Area WorkFlow in accordance with DFARS Appendix F, Material Inspection and Receiving Report, to report the shipment of reparable items after completion of repair, maintenance, modification, or overhaul.

(5) When Government property is in the possession of subcontractors, the Contractor shall ensure that reporting is accomplished using the data elements required in paragraph (c) of this clause.

(c) Records of Government property. To facilitate reporting of Government property to the GFP module, the Contractor's property records, in addition to the requirements of paragraph (f)(1)(iii) of the FAR 52.245-1 clause of this contract, shall enable recording of the following data elements:

(1) National stock number (NSN). If an NSN is not available, use either the combination of the manufacturer's CAGE code and part number, or model number.

(2) CAGE code on the accountable Government contract.

(3) Received/sent (shipped) date.

(4) Accountable Government contract number.

(5) Serial number (for serially-managed items that do not have a UII); and

(6) Supply condition code (only required for reporting of reparable items). For information on Federal supply condition codes, see DLM 4000.25, Defense Logistics Management Standards (DLMS), Volume 2, Supply Standards and Procedures, Appendix 2.5 at https://www.dla.mil/HQ/InformationOperations/DLMS/elibrary/manuals/v2/.

(d) Marking, reporting, and UII registration of GFP requirements. The Contractor?

(1) Shall assign the UII and mark the reparable items identified as serially managed in the GFP attachment to this contract with an item unique identification (IUID) data matrix, when the technical drawing for the item is accessible to the Contractor and includes IUID data matrix location and marking method;

(2) Shall report the UII either before or during shipment of the repaired item;

(3) Is not required to mark items that were previously marked with an IUID data matrix and registered in accordance with DFARS 252.211-7003, Item Unique Identification and Valuation; and

(4) Shall assign a new UII, then mark and register the item, when the conditions of paragraph (d)(1) are met, if an item is found to be marked but not registered in the IUID Registry.

(e) Disposing of Government property. (1) The Contractor shall complete the plant clearance inventory schedule using the plant clearance capability of the GFP module of the PIEE to generate an electronic equivalent of the SF 1428, Inventory Disposal Schedule. The plant clearance inventory schedule requires the following:

(i) If known, the applicable Federal supply code (FSC) for all items, except items in scrap condition.

(ii) If known, the manufacturer name for all aircraft components under Federal supply group 16 or 17 and FSCs 2620, 2810, 2915, 2925, 2935, 2945, 2995, 4920, 5821, 5826, 5841, 6340, and 6615.

(iii) The manufacturer name, make, model number, model year, and serial number for all aircraft under FSCs 1510 and 1520.

(2) If the schedules are acceptable, the plant clearance officer will confirm acceptance in the GFP module plant clearance capability, which will transmit a notification to the Contractor. The electronic acceptance is equivalent to the DD Form 1637, Notice of Acceptance of Inventory.

(f) Demilitarization, mutilation, and destruction. If demilitarization, mutilation, or destruction of contractor inventory is required, the Contractor shall demilitarize, mutilate, or destroy contractor inventory, in accordance with the terms and conditions of the contract and consistent with Defense Demilitarization Manual, DoD Manual (DoDM) 4160.28-M, edition in effect as of the date of this contract. If the property is available for purchase, the plant clearance officer may authorize the purchaser to demilitarize, mutilate, or destroy as a condition of sale provided the property is not inherently dangerous to public health and safety.

(g) Classified Contractor inventory. The Contractor shall dispose of classified contractor inventory in accordance with applicable security guides and regulations or as directed by the Contracting Officer.

(h) Inherently dangerous Contractor inventory. Contractor inventory that is dangerous to public health or safety shall not be disposed of unless rendered innocuous or until adequate safeguards are provided.

(i) Contractor inventory located in foreign countries. Consistent with contract terms and conditions, property disposition shall be in accordance with foreign and U.S. laws and regulations, including laws and regulations involving export controls, host nation requirements, final governing standards, and government-to-government agreements. The Contractor's responsibility to comply with all applicable laws and regulations regarding export-controlled items exists independent of, and is not established or limited by, the information provided by this clause.

(j) Disposal of scrap?(1) Contractor scrap procedures.

(i) The Contractor shall include, within its property management procedure, a process for the accountability and management of Government-owned scrap. The process shall, at a minimum, provide for the effective and efficient disposition of scrap, including sales to scrap dealers, so as to minimize costs, maximize sales proceeds, and contain the necessary internal controls for mitigating the improper release of non-scrap property.

(ii) The Contractor may commingle Government and contractor-owned scrap and provide routine disposal of scrap, with plant clearance officer concurrence, when determined to be effective and efficient.

(2) Scrap warranty. The plant clearance officer may require the Contractor to secure from scrap buyers a DD Form 1639, Scrap Warranty.

(k) Sale of surplus Contractor inventory?

(1) Sales procedures.

(i) The Contractor shall conduct sales of contractor inventory (both useable property and scrap) in accordance with the requirements of this contract and plant clearance officer direction. The Contractor shall include in its invitation for bids the sales terms and conditions provided by the plant clearance officer.

(ii) The Contractor may conduct internet-based sales, to include use of a third party.

(iii) If the Contractor wishes to bid on the sale, the Contractor or its employees shall submit bids to the plant clearance officer prior to soliciting bids from other prospective bidders.

(iv) The Contractor shall solicit bids to obtain adequate competition. Negotiated sales are subject to obtaining such competition as is feasible under the circumstances of the negotiated sale.

(v) The Contractor shall solicit bids at least 15 calendar days before bid opening to allow adequate opportunity to inspect the property and prepare bids.

(vi) For large sales, the Contractor may use summary lists of items offered as bid sheets with detailed descriptions attached.

(vii) In addition to providing notice of the proposed sale to prospective bidders, the Contractor may, when the results are expected to justify the additional expense, display a notice of the proposed sale in appropriate public places, e.g., publish a sales notice on the internet, in appropriate trade journals or magazines, and in local newspapers.

(viii) The plant clearance officer or designated Government representative will witness the bid opening. The Contractor shall submit the bid abstract in electronic format to the plant clearance officer within 2 days of bid opening. If the Contractor is unable to submit the bid abstract electronically, the Contractor may submit 2 copies of the abstract manually within 2 days of bid opening. The plant clearance officer will not approve award to any bidder who is an ineligible transferee.

(2) Required terms and conditions for sales contracts. The Contractor shall include the following terms and conditions in sales contracts:

(i) For sales contracts or other documents transferring title:

?The Purchaser certifies that the property covered by this contract will be used in [insert name of country]. In the event of resale or export by the Purchaser of

any of the property, the Purchaser agrees to obtain the appropriate U.S. and foreign export or re-export license approval.?

(ii) For sales contracts that require demilitarization, mutilation, or destruction of property:

?The following items [insert list provided by plant clearance officer] require demilitarization, mutilation, or destruction by the Purchaser. Additional instructions are provided in accordance with Defense Demilitarization Manual, DoDM 4160.28-M, edition in effect as of the date of this sales contract. A Government representative will certify and verify demilitarization of items. Prepare demilitarization certificates in accordance with DoDM 4160.28, Volume 2, section 4.5, DEMIL Certificate (see figure 2, Example DEMIL Certificate).?

(iii) Removal and title transfer:

?Property requiring demilitarization shall not be removed, and title shall not pass to the Purchaser, until demilitarization has been accomplished and verified by a Government representative.?

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(iv) Assumption of cost incident to demilitarization:

?The Purchaser agrees to assume all costs incident to the demilitarization and to restore the working area to its present condition after removing the demilitarized property.?

(v) Failure to demilitarize:

?If the Purchaser fails to demilitarize, mutilate, or destroy the property as specified in the sales contract, the Contractor may, upon giving 10 days written notice to the Purchaser?

(A) Repossess, demilitarize, and return the property to the Purchaser, in which case the Purchaser hereby agrees to pay to the Contractor, prior to the return of the property, all costs incurred by the Contractor in repossessing, demilitarizing, and returning the property;

(B) Repossess, demilitarize, and resell the property, and charge the defaulting Purchaser with all costs incurred by the Contractor. The Contractor shall deduct these costs from the purchase price and refund the balance of the purchase price, if any, to the Purchaser. In the event the costs exceed the purchase price, the defaulting Purchaser hereby agrees to pay these costs to the Contractor; or

(C) Repossess and resell the property under similar terms and conditions and charge the defaulting Purchaser with all costs incurred by the Contractor. The Contractor shall deduct these costs from the original purchase price and refund the balance of the purchase price, if any, to the defaulting Purchaser. Should the excess costs to the Contractor exceed the purchase price, the defaulting Purchaser hereby agrees to pay these costs to the Contractor.?

(l) Restrictions on purchase or retention of Contractor inventory. The Contractor

may not knowingly sell the inventory to any person or that person's agent, employee, or household member if that person?

(1) Is a civilian employee of DoD or the U.S. Coast Guard;

(2) Is a member of the Armed Forces of the United States, including the U.S. Coast Guard; or

(3) Has any functional or supervisory responsibilities for or within DoD's property disposal, disposition, or plant clearance programs or for the disposal of contractor inventory.

(m) Proceeds from sales of surplus property. Unless otherwise provided in the contract, the proceeds of any sale, purchase, or retention shall be?

(1) Forwarded to the Contracting Officer;

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(2) Credited to the Government as part of the settlement agreement pursuant to the termination of the contract;

(3) Credited to the price or cost of the contract; or

(4) Applied as otherwise directed by the Contracting Officer.

(End of clause)

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PGI Part 245?GOVERNMENT PROPERTY

PGI 245.1?GENERAL

PGI 245.102-70 Policy.

(1) A basic principle of the Federal Acquisition Regulations System is that, upon contract award, contractors bring all the necessary organization, experience, accounting and operational controls, property, and technical skills, or the ability to obtain them

(reference FAR 9.104-1 (e), (f), and (g) of General Standards). Therefore, upon contract award, responsible contractors should have the means to provide effective and efficient stewardship of Government property.

(2) Government property, as defined at FAR 45.101, must be contractually accountable to a single contract and only one contract at a time. This requirement applies to both Government-furnished property and contractor-acquired property. Although accountable to only one contract at a time, contract terms and conditions may allow Government property to be used on other contracts (see FAR 52.245-9, Use and Charges).

PGI 245.103 General.

PGI 245.103-70 Furnishing Government property to contractors.

(1) The requiring activity (project or program manager, or purchase request generator), as part of its responsibility for acquisition planning (FAR part 7, Acquisition

Planning), is the decision point as to whether or not to furnish property to contractors. The basis for any decision to provide Government property must be documented by the requiring activity and provided to the contracting officer. Such documentation is not required when contractors are furnished property for repair, modification, or overhaul under a contract.

(2) Prior to furnishing Government property to the contractor, the contracting officer must ensure that each of the requirements of FAR 45.102 are addressed as follows, and documented in the contracting file?

(i) Element 1: In the Government?s best interest. Discussion should be specific, factual, and where necessary, address actual or projected dollars and percentages. Merely selecting one or two objectives supported by a general, perfunctory discussion does not address this element satisfactorily. Discussion should address the following factors:

(A) Economy ? Furnishing Government property is the lowest cost or price alternative.

(B) Standardization ? There is a critical need for precise replication.

(C) Security ? Government property is needed due to national security issues/concerns.

(D) Expedite production ? Government property is crucial to achieving timely or accelerated delivery of a supply item or service.

(E) Scarcity ? The Government can obtain scarce items or is the only source of property necessary for successful execution of a contract.

(F) Maintain the industrial base ? Government property is needed to ensure future capability to obtain a particular supply item or service.

(G) Contract type ? Government property will enable the Government to obtain a more favorable contract type.

(ii) Element 2: Overall benefit. Demonstrate that the overall benefit to the acquisition significantly outweighs the increased cost of administration, including property disposal.

(A) Property in the hands of contractors drives program costs. Therefore, in order to make the case that providing Government property to the contractor is worthwhile, the associated costs must be considered and the business decision justified. The costs of Government property removal and disposal, including demilitarization and disposal of environmentally-regulated property, must be included.

(B) Costs must be either less than what the contractor might otherwise incur, or the demonstrated benefit to the Government must outweigh these additional contract costs.

(iii) Element 3: Government assumption of risk. Demonstrate that providing the property does not substantially increase the Government?s risk.

(A) Risk must be discussed and documented. A risk analysis is warranted

to demonstrate that the Government is not substantially increasing its risk. For example, when furnishing Government property, the Government is ordinarily responsible for suitability of use, timely delivery, and replacement of defective Government property.

(B) Other risks may need to be considered, discussed, and documented.

(iv) Element 4: Government requirements cannot otherwise be met. Document why the furnishing of Government property is critical and significant to meeting acquisition plan objectives.

PGI 245.103-71 Transferring Government property accountability.

(1) Use only the Standard Form 30 to execute transfers of Government property accountability between existing contracts. No other forms or documents, such as the DD Form 1149, Requisition and Invoice/Shipping Document, are authorized for the transfer of Government property accountability from one contract to another.

(2) Modifications for the transfer of Government property accountability must:

(i) Use the Government-furnished property (GFP) attachment prescribed at **PGI 245.103-72.**

(ii) Incorporate FAR clauses 52.245-1, Government Property, and 52.245-9, Use and Charges, and the associated DFARS clauses (see 245.107, Contract clauses) to the extent that the gaining contract lacks the required clauses.

PGI 245.103-72 Government-furnished property attachments to solicitations and awards.

(a) When Government-furnished property (GFP) is anticipated, create the GFP attachment in the GFP module of the Procurement Integrated Enterprise Environment

(PIEE) at https://piee.eb.mil/piee-landing to?

(1) Specify the required GFP data elements; and

(2) Identify GFP serially-managed items, GFP nonserially-managed items, and GFP items that may be requisitioned from the DoD supply system by the contractor; and

(3) Accomplish the electronic transmission of the GFP attachment to the contract in the Electronic Data Access application in the PIEE.

(4) Where the GFP attachment is classified, the PIEE GFP Module must not be used, but a property attachment with similar data is required for the contract.

(b) Classified contracts are not exempt from including GFP attachments solely because the contracts are classified.

(c) For more information on the GFP attachments, see https://dodprocurementtoolbox.com/site-pages/gfp-attachments.

PGI 245.103-73 Government property under sustainment contracts.

(1) Sustainment contracts, including those for performance-based logistics, sustainment support, contractor logistics support, life-cycle product support, contractor inventory control points, and weapon systems product support (see 10 U.S.C. 4324(d)), may require the contractor to hold or manage Government inventory. In such cases,

regularly scheduled (typically, semiannually) inventory reporting from the contractor is required to ensure that inventory levels meet program requirements and Government inventory in excess of authorized amounts is identified. The requiring activity is responsible for providing the contracting officer with reporting requirements for Government inventory. See the Data Item Description DI-PSSS-80727A, Government Furnished Material (GFM) by National Stock Number, and the instructions for completing the DD Form 1423 Contract Data Requirements List (CDRL) for inventory reporting requirements on sustainment contracts available at http://dodprocurementtoolbox.com/site-pages/gfp-resources.

(2) During acquisition planning, pricing contracts, exercising options, and assessing past performance, contracting officers should review the requiring activity?s assessment of the information generated by the inventory reporting requirements.

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(3) In some circumstances, under fixed-price sustainment contracts, contract deliverables consist of non-hardware items, such as operational readiness rate goals or mean time between failures of a system. In order to meet these deliverables, contractors are required to provide certain property items to the Government. In such cases, the contract does not include specific delivery line items requiring formal delivery of the property. By extension, the Government will not have title to the property at the time the contractor provides the property. Not separately priced line items must be included in the contract for the delivery of items in accordance with FAR 4.1003. Tables of unit acquisition prices may be included in the contract to use as the unit price on the receiving report.

PGI 245.103-74 Contracting office responsibilities.

(1) Prepare the GFP attachments in accordance with the procedures in PGI **245.103 -72.**

(2) The following require a contract modification and an update to the GFP attachment in the GFP module of the PIEE to create a consolidated, conformed list of property to be contractually provided under the contract.

(i) Any change to the mandatory fields of the GFP attachment (see PGI **245.103-72).**

(ii) Addition or deletion of any GFP or anticipated GFP under the contract.

(iii) Transfer of GFP accountability between existing contracts (see PGI **245.103-71).**

(iv) Delivery and Government acceptance of contractor-acquired property when retained by the contractor for use under a contract (see PGI 245.402-71).

(v) Substitution of GFP for previously furnished GFP, GFP to be furnished, or property to be acquired by the contractor for the Government under the contract.

(vi) Withdrawal of authority for contractor use of GFP.

(3) Include in applicable solicitations and contracts the CDRL provided by the

requiring activity for reporting Government inventory held under sustainment contracts (see PGI 245.103-73).

PGI 245.105 Contractors property management system compliance.

(d) Disposition of findings.

(2) Initial determination.

(ii)(A) Within 30 days of receiving the report, if the contracting officer makes a determination that there is a material weakness, the contracting officer should provide an initial determination of material weaknesses and a copy of the report to the contractor and require the contractor to submit a written response.

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(C) Evaluation of contractor's response. Within 30 days of receiving the contractor?s response, the contracting officer, in consultation with the auditor or cognizant functional specialist, should evaluate the contractor?s response and make a final determination.

(3) Final determination.

(ii)(A) Monitoring contractor's corrective action. The contracting officer, with the assistance of the auditor, will monitor the contractor's progress in correcting material weaknesses and deficiencies. If the contractor fails to make adequate progress, the contracting officer will take whatever action is necessary to ensure that the contractor corrects the weaknesses and deficiencies. Actions the contracting officer may take include: withdrawing or withholding approval of the system; bringing the issue to the attention of higher level management; http://www.acq.osd.mi/dpap/dars/dfars/html/current/252242.htm#252.242-7005 recommending non-award of potential contracts, as applicable; and for material weaknesses, implementing or increasing the withholding in accordance with 252.242-7005, Contractor Business Systems.

(B) Correction of material weaknesses.

(1) When the contractor notifies the contracting officer that the contractor has corrected the material weaknesses, the contracting officer will request that the auditor review the correction to determine if the weaknesses and deficiencies have been resolved.

(2) The contracting officer will determine if the contractor has corrected the weaknesses and deficiencies.

(3) If the contracting officer determines the contractor has corrected the weaknesses and deficiencies, send the contracting officer's notification to the auditor; payment office; appropriate action officers responsible for reporting past performance at the requiring activities; and each contracting and contract administration office having substantial business with the contractor as applicable.

(e) The Procurement Integrated Enterprise Environment (PIEE) application Contractor Property Administration Management (CPAM) must be used for scheduling and managing contractor property management system reviews. Training on CPAM can

be found at CPAM Training - Introduction | PIEE.

PGI 245.4?TITLE TO GOVERNMENT PROPERTY

PGI 245.402 Title to contractor-acquired property.

PGI 245.402-70 Policy.

Title vests in the Government for all property acquired or fabricated by the contractor in accordance with paragraph (e)(3) of the clause at FAR 52.245-1, Government Property. Oversight and visibility of contractor-acquired property (CAP) is accomplished through reviews and audits of contractor business systems, including?

(1) Accounting systems (see DFARS 242.75);

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(2) Property management systems (see DFARS 245.105); and

(3) Material management and accounting systems (see DFARS 242.72).

PGI 245.402-71 Delivery of contractor-acquired property.

(1) A line item is required for the delivery of CAP. This includes property delivered to the Government as part of a sustainment contract or similar arrangement where the Government is contracting for a level of performance which will require the contractor to deliver items in support of that performance.

(2) The contractual transfer of accountability of CAP from one contract to another is prohibited. Only upon delivery under a line item can property be transferred to other contracts as Government-furnished property (GFP) (see PGI 245.103-71).

(3) Upon delivery and acceptance by the Government, and when retained by the contractor for use under a contract, the delivered CAP items become GFP and must be added to the contract GFP attachment (see PGI 245.103-72).

(4) Contractor-acquired property not anticipated at time of contract award.

(i) For CAP not anticipated at the time of contract award, or not otherwise specified for delivery on an existing line item, the contracting officer will direct delivery of the CAP items to the Government on a not separately priced (NSP) line item (e.g. contract line item, exhibit line item, etc.). Such items are typically identified through?

(A) Plant clearance in accordance with the clause at DFARS 252.245-7005, Management and Reporting of Government Property.

(B) Inventory reports provided by the contractor in accordance with FAR clause 52.245-1; or

(C) Other reporting requirements, such as CDRLs, specified in the contract.

(ii) The contracting officer will direct delivery of CAP on a line item as soon as the CAP item is identified, if?

(A) The value of the item meets or exceeds the capitalization threshold as identified in the memorandum issued jointly by the Under Secretary of Defense (USD) Comptroller and the USD (Acquisition and Sustainment) on 20 September 2013, entitled, ?Elimination of Military Equipment Definition and Increase to Capitalization Thresholds for General Property, Plant and Equipment? (available at http://www.acq.osd.mil/pepolicy/pdfs/FinancialReportingGPPEMemo.pdf) or;

(B) The item is special tooling, special test equipment, or equipment designated for preservation and storage under a major defense acquisition program

(reference: Section 815 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417)).

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(iii) Each NSP line item of CAP to be delivered to the Government must include the following information:

(A) Line Item Number

(B) Item Description

(C) Either a National Stock Number, manufacturers CAGE and **Part Number, or a Model Number**

(D) Quantity

(E) Unit of Measure

(F) Date placed in Service by the Contractor

PGI 245.602-1 Inventory Disposal Schedules

For termination inventory, plant clearance officers must verify inventory schedules, either directly or through appropriate technical personnel, to determine the following:

(a) Allocability.

(1) Review contract requirements, delivery schedules, bills of material, and other pertinent documents to determine whether schedules include property that?

(i) Is appropriate for use on the contract; or

(ii) Exceeds the quantity required for completion of the contract, but could be diverted to other commercial work or Government use.

(2) Review the contractor's?

(i) Recent purchases of similar material;

(ii) Plans for current and scheduled production;

(iii) Stock record entries; and

(iv) Bills of material for similar items.

(b) Quantity. Take measures to provide assurance that available inventory is in accordance with quantities listed on the inventory schedules. Quantities may be verified by actual item count, acceptance of labeled quantities in unopened/sealed packages, scale counts, or other appropriate methods.

(c) Condition. Ensure that the physical condition of the property is reasonably consistent with the Federal Condition Code supplied by the contractor.

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PGI 245.604 Sale of surplus personal property.

When selling surplus personal property, plant clearance officers are required to follow

the following procedures.

(a) Best value sales approach. Plant clearance officers must determine a best value sales approach, considering costs, risks, and benefits, e.g., potential sales proceeds.

(b) Invitation for bid procedures. The plant clearance officer may direct the contractor to issue informal invitations for bid (orally, telephonically, or by other informal media), provided?

(1) Maximum practical competition is obtained;

(2) Sources solicited are recorded; and

(3) Informal bids are confirmed in writing.

(c) Sale approval and award. Plant clearance officers must?

(1) Evaluate bids to establish that the sale price is fair and reasonable, taking into consideration?

(i) Knowledge or tests of the market;

(ii) Current published prices for the property;

(iii) The nature, condition, quantity, and location of the property; and

(iv) Past sale history for like or similar items;

(2) Approve award to the responsible bidder whose bid is most advantageous to the Government. The plant clearance officer must not approve award to any bidder who is an ineligible transferee, as defined in 252.245-7005, Management and Reporting of Government Property; and

(3) Notify the contractor of the bidder to whom an award will be made within 5 business days from receipt of bids.

(d) Negotiated sales.

(1) Negotiated sales include purchases or retention at less than cost by the contractor. Negotiated sales are authorized when?

(i) The plant clearance officer determines that this method is essential to expeditious plant clearance; and

(ii) The Government's interests are adequately protected.

(2) Negotiated sales must be at fair and reasonable prices, not less than those reasonably expected under competitive sales.

(3) Conditions justifying negotiated sales are?

(i) No acceptable bids are received under competitive sale;

(ii) Anticipated sales proceeds do not warrant competitive sale;

(iii) Specialized nature of the property would not create bidder interest;

(iv) Removal of the property would reduce its value or result in disproportionate handling expenses; or

(v) Such action is essential to the Government's interests.

(e) Plant clearance officers must consider any special disposal requirements such as demilitarization or trade security control requirements in accordance with DoDM

4160.28-M, Defense Demilitarization Manual, and DoDI 2030.08, Implementation of
Trade Security Controls (TSCs) for Transfers of DoD Personal Property to Parties
Outside DoD Control, respectively.
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PART 46

OFFICE OF THE ASSISTANT SECRETARY OF WAR

Status: Class D

OFFICE OF THE ASSISTANT SECRETARY OF WAR

3000 DEFENSE PENTAGON

WASHINGTON, DC 20301-3000

ACQUISITION

AND SUSTAINMENT

In reply refer to

DARS Tracking Number: 2026-O0035

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES SPECIAL OPERATIONS

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES TRANSPORTATION

COMMAND (ATTN: ACQUISITION EXECUTIVE)

DEPUTY ASSISTANT SECRETARY OF THE ARMY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE NAVY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE

(CONTRACTING)

DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Class Deviation?Revolutionary Federal Acquisition Regulation (FAR) Overhaul

Part 46, Defense FAR Supplement (DFARS) Part 246

Effective February 1, 2026, contracting officers shall use?

? The revised FAR Part 46, Quality Assurance published on the Revolutionary FAR Overhaul web page at https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-46 in lieu of the text codified at 48 CFR chapter 1 (https://www.ecfr.gov).

? The attached DFARS Part 246, Quality Assurance in lieu of the text codified at 48 CFR chapter 2; and

? The attached DFARS Procedures, Guidance, and Information (PGI) 246, Quality Assurance, in lieu of the PGI text published on the Defense Pricing, Contracting, and Acquisition Policy web page at https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.

This class deviation implements the following:

? Section 2 of E.O. 14275, Restoring Common Sense to Federal Procurement, which establishes the policy that the FAR ?should only contain provisions required by statute or essential to sound procurement, and any FAR provisions that do not

advance these objectives should be removed.
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? Section 4(a) of E.O. 14265, Modernizing Defense Acquisitions and Spurring Innovation in the Defense Industrial Base which requires the Secretary of War to eliminate or revise any unnecessary supplemental regulations or any other internal guidance, such as relevant parts of the Financial Management Regulation and Defense Federal Acquisition Regulation Supplement.
? The Office of Management and Budget memorandum, M-25-26 issued on May 2, 2025, titled, Overhauling the Federal Acquisition Regulation, which provided additional guidance to federal agencies regarding the FAR overhaul.
This class deviation remains in effect until rescinded or incorporated into the FAR, DFARS, and DFARS PGI. Inquiries regarding this class deviation can be addressed to osd.pentagon.ousd-a-s.mbx.dfars@mail.mil.
John M. Tenaglia
Principal Director,
Defense Pricing, Contracting, and
Acquisition Policy
Attachments:
As stated
2
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PART 246?QUALITY ASSURANCE

SUBPART 246.1?GENERAL

246.101 Definitions.

As used in this subpart?
?Discipline Working Group? is defined in the clause at 252.246-7004, Safety of Facilities, Infrastructure, and Equipment for Military Operations.

246.102 Policy.

Departments and agencies must also?

(1) Develop and manage a systematic, cost-effective Government contract quality assurance program to ensure that contract performance conforms to specified requirements. Apply Government quality assurance to all contracts for services and products designed, developed, purchased, produced, stored, distributed, operated, maintained, or disposed of by contractors.

(2) Conduct quality audits to ensure the quality of products and services meet contractual requirements.

(3) Base the type and extent of Government contract quality assurance actions on the particular acquisition.

(4) Provide contractors the maximum flexibility in establishing efficient and

effective quality programs to meet contractual requirements. Contractor quality programs may be modeled on military, commercial, national, or international quality standards.

246.103 Contracting office responsibilities.

(1) The contracting office must coordinate with the quality assurance activity before changing any quality requirement.

(2) The activity responsible for technical requirements may prepare instructions covering the type and extent of Government inspections for acquisitions that are complex, have critical applications, or have unusual requirements. Follow the procedures at PGI 246.103(2) for preparation of instructions.

SUBPART 246.2?CONTRACT QUALITY REQUIREMENTS

246.201 General.

246.201-70 Subsistence.

See PGI 246.201-70 for contract quality requirements for subsistence.

246.201-71 Aircraft.

See PGI 246.201-71 for contracting office responsibilities related to aircraft.

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246.202 Types of contract quality requirements.

246.202-4 Higher-level contract quality requirements.

(1) Higher-level contract quality requirements are used in addition to a standard inspection requirement.

(2) Higher-level contract quality requirements, including nongovernment quality system standards adopted to meet DoD needs, are listed in the DoD Index of Specifications and Standards.

246.270 Safety of facilities, infrastructure, and equipment for military operations.

246.270-1 Scope.

This section establishes policies and procedures intended to ensure the safety and habitability of facilities, infrastructure, and equipment acquired for use by DoD military or civilian personnel during military operations performed outside the United States, Guam, Puerto Rico, and the Virgin Islands (section 807 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111-84).

246.270-2 Policy.

(a) Contracts (including task and delivery orders) for the construction, installation, repair, maintenance, or operation of facilities, infrastructure, and equipment configured for occupancy, including but not limited to, existing host nation facilities, new construction, and relocatable buildings acquired for use by DoD military or civilian personnel, must require a pre-occupancy safety and habitability inspection.

(b) To minimize safety and health risks, each contract covered by this policy

must require the contractor?s compliance with the Unified Facilities Criteria (UFC) 1-200-01 and its referenced standards for?

(1) Fire protection;

(2) Structural integrity;

(3) Electrical systems;

(4) Plumbing;

(5) Water treatment;

(6) Waste disposal; and

(7) Telecommunications networks.

(c) Existing host nation facilities constructed to standards equivalent to or more stringent than UFC 1-200-01 are acceptable upon a written determination of the acceptability of the standards by the Discipline Working Group.

(d) Inspections to ensure compliance with UFC 1-200-01 standards must be conducted in accordance with the inspection clause of the contract.

246.270-3 Exceptions.

The combatant commander may waive compliance with the foregoing standards when it is impracticable to comply with such standards under prevailing operational conditions.

246.270-4 Contract clause.

Insert the clause at 252.246-7004, Safety of Facilities, Infrastructure, and Equipment for Military Operations, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, for the construction, installation, repair, maintenance, or operation of facilities, infrastructure, or for equipment configured for occupancy, planned for use by DoD military or civilian personnel during military operations.

SUBPART 246.3?CONTRACT CLAUSES

246.370 Notification of potential safety issues.

(a) Insert the clause at 252.246-7003, Notification of Potential Safety Issues, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, for the acquisition of?

(1) Repairable or consumable parts identified as critical safety items;

(2) Systems and subsystems, assemblies, and subassemblies integral to a system; or

(3) Repair, maintenance, logistics support, or overhaul services for systems and subsystems, assemblies, subassemblies, and parts integral to a system.

(b) Follow the procedures at PGI 246.370 for the handling of notifications received under the clause at 252.246-7003.

SUBPART 246.4?GOVERNMENT CONTRACT QUALITY ASSURANCE

246.401 General.

The requirement for a quality assurance surveillance plan must be addressed and documented in the contract file for each contract except for those awarded using simplified acquisition procedures. For contracts for services, the contracting officer should prepare a quality assurance surveillance plan to facilitate assessment of

contractor performance, see 237.172. For contracts for supplies, the contracting officer should address the need for a quality assurance surveillance plan.

246.402 Government contract quality assurance at source.

Do not require Government contract quality assurance at source for contracts or delivery orders valued below $400,000, unless?

(1) Mandated by DoD regulation;

(2) Required by a memorandum of agreement between the acquiring department or agency and the contract administration agency; or

(3) The contracting officer determines that?

(i) Contract technical requirements are significant (e.g., the technical requirements include drawings, test procedures, or performance requirements);

(ii) The product being acquired?

(A) Has critical characteristics;

(B) Has specific features identified that make Government contract quality assurance at source necessary; or

(C) Has specific acquisition concerns identified that make Government contract quality assurance at source necessary; and

(iii) The contract is being awarded to?

(A) A manufacturer or producer; or

(B) A non-manufacturer or non-producer and specific Government verifications have been identified as necessary and feasible to perform.

246.404 Government contract quality assurance for acquisitions at or below the simplified acquisition threshold.

Do not require Government contract quality assurance at source for contracts or delivery orders valued at or below the simplified acquisition threshold unless the criteria at 246.402 have been met.

246.406 Foreign governments.

(1) Quality assurance among North Atlantic Treaty Organization (NATO) countries.

(i) NATO Standardization Agreement (STANAG) 4107, Mutual Acceptance of Government Quality Assurance and Usage of the Allied Quality Assurance Publications?

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(A) Contains the processes, procedures, terms, and conditions under which one NATO member nation will perform quality assurance for another NATO member nation or NATO organization;

(B) Standardizes the development, updating, and application of the Allied Quality Assurance Publications; and

(C) Has been ratified by the United States and other nations in NATO with certain reservations identified in STANAG 4107.

(ii) Departments and agencies must follow STANAG 4107 when?

(A) Asking a NATO member nation to perform quality assurance; or

(B) Performing quality assurance when requested by a NATO member nation or NATO organization.

(2) International military sales (non-NATO). Departments and agencies must?

(i) Perform quality assurance services on international military sales contracts or in accordance with existing agreements;

(ii) Inform host or U.S. Government personnel and contractors on the use of quality assurance publications; and

(iii) Delegate quality assurance to the host government when satisfactory services are available.

(3) Reciprocal quality assurance agreements. A Memorandum of Understanding

(MOU) with a foreign country may contain an annex that provides for the reciprocal performance of quality assurance services. MOUs should be checked to determine whether such an annex exists for the country where a defense contract will be performed. (See Subpart 225.8 for more information about MOUs.)

246.407-70 Nonconforming supplies or services.

(a) If nonconforming material or services are discovered after acceptance, the defect appears to be the fault of the contractor, any warranty has expired, and there are no other contractual remedies, the contracting officer?

(1) Must notify the contractor in writing of the nonconforming material or service;

(2) Must request that the contractor repair or replace the material, or perform the service, at no cost to the Government; and

(3) May accept consideration if offered. For guidance on solicitation of a refund, see subpart 242.71.

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(b) The head of the design control activity is the approval authority for acceptance of any nonconforming aviation or ship critical safety items or nonconforming modification, repair, or overhaul of such items (see 209.270).

(c) Authority for acceptance of minor nonconformances in aviation or ship critical safety items may be delegated as determined appropriate by the design control activity. See additional information at PGI 246.407.

246.470 Government contract quality assurance actions.

246.470-1 Assessment of additional costs.

(a) Under the clause at FAR 52.246-2, Inspection of Supplies?Fixed-Price, after considering the factors in paragraph (c) of this section, the quality assurance representative (QAR) may believe that the assessment of additional costs is warranted. If so, the representative must recommend that the contracting officer take the necessary action and provide a recommendation as to the amount of additional costs. Costs are based on the applicable Federal agency, foreign military sale, or public rate in effect at the time of the delay, reinspection, or retest.

(b) If the contracting officer agrees with the QAR, the contracting officer must?

(1) Notify the contractor, in writing, of the determination to exercise the Government's right under the clause at FAR 52.246-2, Inspection of Supplies? Fixed-Price; and

(2) Demand payment of the costs in accordance with the collection procedures contained in FAR Subpart 32.6.

(c) In making a determination to assess additional costs, the contracting officer must consider?

(1) The frequency of delays, reinspection, or retest under both current and prior contracts;

(2) The cause of such delay, reinspection, or retest; and

(3) The expense of recovering the additional costs.

246.470-2 Quality evaluation data.

The contract administration office must establish a system for the collection, evaluation, and use of the types of quality evaluation data specified in PGI 246.470-**2.**

246.471 Authorizing shipment of supplies.

(a) General.

(1) Ordinarily, a representative of the contract administration office signs or stamps the shipping papers that accompany Government source-inspected supplies to release them for shipment. This is done for both prime and subcontracts.

(2) An alternative procedure (see paragraph (b) of this section) permits the contractor to assume the responsibility for releasing the supplies for shipment.

(3) The alternative procedure may include prime contractor release of supplies inspected at a subcontractor's facility.

(4) The use of the alternative procedure releases DoD manpower to perform technical functions by eliminating routine signing or stamping of the papers

accompanying each shipment.

(b) Alternative Procedures?Contract Release for Shipment.

(1) For foreign military sales contracts, do not use alternative procedures.

(2) The contract administration office may authorize, in writing, the contractor to release supplies for shipment when?

(i) The stamping or signing of the shipping papers by a representative of the contract administration office interferes with the operation of the Government contract quality assurance program or takes too much of the Government representative's time;

(ii) There is sufficient continuity of production to permit the Government to establish a systematic and continuing evaluation of the contractor's control of quality; and

(iii) The contractor has a record of satisfactory quality, including that pertaining to preparation for shipment.

(3) The contract administration office must withdraw, in writing, the authorization when there is an indication that the conditions in paragraph (b)(2) of this section no longer exist.

(4) When the alternative procedure is used, require the contractor to?

(i) Type or stamp, and sign, the following statement on the required copy or copies of the shipping paper(s), or on an attachment?

The supplies in this shipment?

1. Have been subjected to and have passed all examinations and tests required by the contract;

2. Were shipped in accordance with authorized shipping instructions;

3. Conform to the quality, identity, and condition called for by the contract; and

4. Are of the quantity shown on this document.

This shipment was?

1. Released in accordance with section 246.471 of the Defense FAR Supplement; and

2. Authorized by (name and title of the authorized representative of the contract administration office) in a letter dated (date of authorizing letter). (Signature and title of contractor's designated official.)

(ii) Release and process, in accordance with established instructions, the DD Form 250, Material Inspection and Receiving Report, or other authorized receiving report.

246.472 Inspection stamping.

(a) See PGI 246.472 (a) for use of DoD inspection stamps.

(b) Policies and procedures regarding the use of National Aeronautics and Space Administration (NASA) quality status stamps are contained in NASA publications. When requested by NASA centers, the DoD inspector must use NASA quality status stamps in accordance with current NASA requirements.

SUBPART 246.5?ACCEPTANCE

246.504 Certificate of conformance.

Before authorizing a certificate of conformance for aviation or ship critical safety items, obtain the concurrence of the head of the design control activity

(see 209.270).

SUBPART 246.6?MATERIAL INSPECTION AND RECEIVING REPORTS

246.601 General.

See Appendix F, Material Inspection and Receiving Report, for procedures and instructions for the use, preparation, and distribution of?

(1) The Material Inspection and Receiving Report (DD Form 250 series); and

(2) Supplier's commercial shipping/packing lists used to evidence Government contract quality assurance.

SUBPART 246.7?WARRANTIES

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246.702 General.

246.702-70 Definitions.

As used in this subpart?

?Acceptance,? as used in the warranty clauses at FAR 52.246-17, Warranty of Supplies of a Noncomplex Nature; FAR 52.246-18, Warranty of Supplies of a Complex Nature; FAR 52.246-19, Warranty of Systems and Equipment Under Performance Specifications or Design Criteria; and FAR 52.246-20, Warranty of Services, includes the execution of an official document (e.g., DD Form 250, Material Inspection and Receiving Report) by an authorized representative of the Government.

?Defect? means any condition or characteristic in any supply or service furnished by the contractor under the contract that is not in compliance with the requirements of the contract.

?Enterprise? means the entity (e.g., a manufacturer or vendor) responsible for granting the warranty and/or assigning unique item identifiers to serialized warranty items.

?Enterprise identifier? means a code that is uniquely assigned to an enterprise by an issuing agency.

?Issuing agency? means an organization responsible for assigning a globally unique identifier to an enterprise, as indicated in the Register of Issuing Agency Codes for International Standards Organization/International Electrotechnical

Commission 15459, located at http://www.aimglobal.org/?Reg_Authority15459.
?Serialized item? means each item produced is assigned a serial number that is unique among all the collective tangible items produced by the enterprise, or each item of a particular part, lot, or batch number is assigned a unique serial number within that part, lot, or batch number assignment within the enterprise identifier. The enterprise is responsible for ensuring unique serialization within the enterprise identifier or within the part, lot, or batch numbers, and that serial numbers, once assigned, are never used again.
?Unique item identifier? means a set of data elements marked on an item that is globally unique and unambiguous.
?Warranty tracking? means the ability to trace a warranted item from delivery through completion of the effectivity of the warranty.

246.703 Criteria for use of warranties.

246.703-1 Authority for use of warranties.

(1) The chief of the contracting office must approve use of a warranty, except in acquisitions for?

(i) Commercial products or commercial services (see FAR part 12);

(ii) Technical data, unless the warranty provides for extended liability (see 246.708);

(iii) Supplies and services in fixed-price type contracts containing quality assurance provisions that reference higher-level contract quality requirements (see 246.202-4); or

(iv) Supplies and services in construction contracts when using the warranties that are contained in Federal, military, or construction guide specifications.

(2) The chief of the contracting office must approve the use of a warranty only when the benefits are expected to outweigh the cost.

246.705 Limitations.

(a) In addition to the exceptions provided in FAR 46.705(a), warranties in the clause at 252.246-7XXX Warranty of Data, may be used in cost-reimbursement contracts.

246.706 Warranty terms and conditions.

(b)(5) Markings. For other than commercial products, use MIL-STD-129, Marking for Shipments and Storage, and MIL-STD-130, Identification Marking of U.S. Military Property, when marking warranty items.

246.708 Warranties of data.

Obtain warranties on technical data when practicable and cost effective. Consider the factors in FAR 46.703 in deciding whether to obtain warranties of technical data. Consider the following in deciding whether to use extended liability

provisions?

(1) The likelihood that correction or replacement of the nonconforming data, or a price adjustment, will not give adequate protection to the Government; and

(2) The effectiveness of the additional remedy as a deterrent against furnishing nonconforming data.

246.710 Contract clauses.

(1) Insert a clause substantially the same as the basic or one of the alternates of the clause at 252.246-7998, Warranty of Data, in solicitations and contracts that include the clause at 252.227-7989 Rights in Technical Data, Computer Software, and Computer Software Documentation?Other Than Commercial Products or Commercial Services, , when there is a need for greater protection or period of liability than provided by the inspection and warranty clauses prescribed in FAR

part 46.

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(i) Insert the basic clause in solicitations and contracts that are not firm-fixed price or fixed-price incentive.

(ii) Insert alternate I in fixed-price-incentive solicitations and contracts.

(iii) Insert alternate II in firm-fixed-price solicitations and contracts.

(2) Insert the clause at 252.246-7002 , Warranty of Construction (Germany), instead of the clause at FAR 52.246-21, Warranty of Construction, in solicitations and contracts for construction when a fixed-price contract will be awarded and contract performance will be in Germany.

(3) When the solicitation includes the clause at 252.211-7003 , Item Unique Identification and Valuation, which is prescribed in 211.274-5 (a), and it is anticipated that the resulting contract will include a warranty for serialized items?

(i) Insert the provision at 252.246-7005 , Notice of Warranty Tracking of Serialized Items, in the solicitation if the Government does not specify a warranty and offerors will be required to enter data with the offer;

(ii) Insert the clause at 252.246-7006 , Warranty Tracking of Serialized Items, in the solicitation and contract; and

(iii) Include the following warranty attachments, available at https://www.pdrep.csd.disa.mil/pdrep_files/other/wsr.htm, in the solicitation and contract and see 246.710-70:

(A) Warranty Tracking Information.

(B) Source of Repair Instructions.

246.710-70 Warranty attachments.

Follow the procedures at PGI 246.710-70 regarding warranty attachments.

SUBPART 246.8?CONTRACTOR LIABILITY FOR LOSS OF OR DAMAGE TO PROPERTY OF THE GOVERNMENT

246.870 Contractors Counterfeit Electronic Part Detection and Avoidance.

246.870-0 Scope.

This section?

(a) Partially implements section 818(c) and (e) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2012 (Pub. L. 112-81), section 817 of the NDAA for FY 2015 (Pub. L. 113-291) and section 885 of the NDAA for 2016

(Pub. L. 114-92); and

(b) Prescribes policy and procedures for preventing counterfeit electronic parts and suspect counterfeit electronic parts from entering the supply chain when procuring electronic parts or end items, components, parts, or assemblies that contain electronic parts.

246.870-1 Definition.

As used in this subpart?

?Authorized supplier,? means a supplier, distributor, or an aftermarket manufacturer with a contractual arrangement with, or the express written authority of, the original manufacturer or current design activity to buy, stock, repackage, sell, or distribute the part.

246.870-2 Policy.

(a) Sources of electronic parts.

(1) Except as provided in paragraph (a)(2) of this section, the Government requires contractors and subcontractors at all tiers, to?

(i) Obtain electronic parts that are in production by the original manufacturer or an authorized aftermarket manufacturer or currently available in stock from?

(A) The original manufacturers of the parts;

(B) Their authorized suppliers; or

(C) Suppliers that obtain such parts exclusively from the original manufacturers of the parts or their authorized suppliers; and

(ii) Obtain electronic parts that are not in production by the original manufacturer or an authorized aftermarket manufacturer, and that are not currently available in stock from a source listed in paragraph (a)(1)(i) of this section, from suppliers identified by the Contractor as contractor-approved suppliers, provided that?

(A) For identifying and approving such contractor-approved suppliers, the contractor uses established counterfeit prevention industry standards and processes (including inspection, testing, and authentication), such as the DoD-adopted standards at https://assist.dla.mil;

(B) The contractor assumes responsibility for the authenticity of parts provided by such contractor-approved suppliers (see 231.205-71); and

(C) The selection of such contractor-approved suppliers is subject to

review, audit, and approval by the Government, generally in conjunction with a contractor purchasing system review or other surveillance of purchasing practices by the contract administration office, or if the Government obtains credible evidence that a contractor?approved supplier has provided counterfeit parts. The contractor

may proceed with the acquisition of electronic parts from a contractor-approved supplier unless otherwise notified by DoD.

(2) The Government requires contractors and subcontractors to comply with the notification, inspection, testing, and authentication requirements of paragraph

(b)(3)(ii) of the clause at 252.246-7008, Sources of Electronic Parts, if the contractor?

(i) Obtains an electronic part from?

(A) A source other than any of the sources identified in paragraph

(a)(1) of this section, due to nonavailability from such sources; or

(B) A subcontractor (other than the original manufacturer) that refuses to accept flowdown of this clause; or

(ii) Cannot confirm that an electronic part is new or not previously used and that it has not been comingled in supplier new production or stock with used, refurbished, reclaimed, or returned parts.

(3) Contractors and subcontractors are still required to comply with the requirements of paragraphs (a)(1) or (2) of this section, as applicable, if?

(i) Authorized to purchase electronic parts from the Federal Supply Schedule;

(ii) Purchasing electronic parts from suppliers accredited by the Defense Microelectronics Activity; or

(iii) Requisitioning electronic parts from Government inventory/stock under the authority of the clause at 252.251-7000 , Ordering from Government Supply Sources.

(A) The cost of any required inspection, testing, and authentication of such parts may be charged as a direct cost.

(B) The Government is responsible for the authenticity of the requisitioned electronic parts. If any such part is subsequently found to be counterfeit or suspect counterfeit, the Government will?

(1) Promptly replace such part at no charge; and

(2) Consider an adjustment in the contract schedule to the extent that replacement of the counterfeit or suspect counterfeit electronic parts caused a delay in performance.

(b) Contractor counterfeit electronic part detection and avoidance system.

(1) Contractors that are subject to the cost accounting standards and that supply electronic parts or products that include electronic parts, and their

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subcontractors that supply electronic parts or products that include electronic parts, are required to establish and maintain an acceptable counterfeit electronic part detection and avoidance system. Failure to do so may result in disapproval of the purchasing system by the contracting officer and/or withholding of payments

(see 252.244-7001 , Contractor Purchasing System Administration).

(2) System criteria. A counterfeit electronic part detection and avoidance system must include risk-based policies and procedures that address, at a minimum, the following areas (see the clause at 252.246-7007 , Contractor Counterfeit Electronic Part Detection and Avoidance System):

(i) The training of personnel.

(ii) The inspection and testing of electronic parts, including criteria for acceptance and rejection.

(iii) Processes to abolish counterfeit parts proliferation.

(iv) Processes for maintaining electronic part traceability.

(v) Use of suppliers in accordance with paragraph (a) of this section.

(vi) The reporting and quarantining of counterfeit electronic parts and suspect counterfeit electronic parts.

(vii) Methodologies to identify suspect counterfeit electronic parts and to rapidly determine if a suspect counterfeit electronic part is, in fact, counterfeit.

(viii) Design, operation, and maintenance of systems to detect and avoid counterfeit electronic parts and suspect counterfeit electronic parts.

(ix) Flow down of counterfeit detection and avoidance requirements.

(x) Process for keeping continually informed of current counterfeiting information and trends.

(xi) Process for screening the Government-Industry Data Exchange Program (GIDEP) reports and other credible sources of counterfeiting information.

(xii) Control of obsolete electronic parts.

246.870-3 Contract clauses.

(a)(1) Except as provided in paragraph (a)(2) of this section, insert the clause at 252.246-7007, Contractor Counterfeit Electronic Part Detection and Avoidance System, in solicitations and contracts when procuring?

(i) Electronic parts;

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(ii) End items, components, parts, or assemblies containing electronic parts; or

(iii) Services, if the contractor will supply electronic parts or components, parts, or assemblies containing electronic parts as part of the service.

(2) Do not use the clause in solicitations and contracts that are set aside for small business.

(b) Insert the clause at 252.246-7008 , Sources of Electronic Parts, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, when procuring?

(1) Electronic parts;

(2) End items, components, parts, or assemblies containing electronic parts; or

(3) Services, if the contractor will supply electronic parts or components, parts, or assemblies containing electronic parts as part of the service.

* * * * *

PART 252?SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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SUBPART 252.2?TEXT OF PROVISIONS AND CLAUSES

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252.246-7000 [Reserved]

252.246-7998 Warranty of data. (DEVIATION 2026-O0035)

Basic. As prescribed in 246.710(1) and (1)(i), use the following clause:

WARRANTY OF DATA?BASIC (DEVIATION 2026-O0035) (FEB 2026)

(a) Definition?Technical data has the same meaning as given in the clause at **252.227-7989 Rights in Technical Data, Computer Software, and Computer** Software Documentation?Other Than Commercial Products or Commercial Services.

(b) Warranty. Notwithstanding inspection and acceptance by the Government of technical data furnished under this contract, and notwithstanding any provision of this contract concerning the conclusiveness of acceptance, the Contractor warrants that all technical data delivered under this contract will at the time of delivery conform with the specifications and all other requirements of this contract. The warranty period shall extend for three years after completion of the delivery of the

line item of data (as identified in DD Form 1423, Contract Data Requirements List) of which the data forms a part; or any longer period specified in the contract.

(c) Contractor notification. The Contractor agrees to notify the Contracting Officer in writing immediately of any breach of the above warranty which the Contractor discovers within the warranty period.

(d) Remedies. The following remedies shall apply to all breaches of the warranty, whether the Contractor notifies the Contracting Officer in accordance with paragraph (c) of this clause or if the Government notifies the Contractor of the breach in writing within the warranty period:

(1) Within a reasonable time after such notification, the Contracting Officer may?

(i) By written notice, direct the Contractor to correct or replace at the Contractor's expense the nonconforming technical data promptly; or

(ii) If the Contracting Officer determines that the Government no longer has a requirement for correction or replacement of the data, or that the data can be more reasonably corrected by the Government, inform the Contractor by written notice that the Government elects a price or fee adjustment instead of correction or replacement.

(2) If the Contractor refuses or fails to comply with a direction under paragraph (d) (1)(i) of this clause, the Contracting Officer may, within a reasonable time of the refusal or failure?

(i) By contract or otherwise, correct or replace the nonconforming technical data and charge the cost to the Contractor; or

(ii) Elect a price or fee adjustment instead of correction or replacement.

(3) The remedies in this clause represent the only way to enforce the Government's rights under this clause.

(e) The provisions of this clause apply anew to that portion of any corrected or replaced technical data furnished to the Government under paragraph (d)(1)(i) of this clause.

(End of clause)

Alternate I. As prescribed in 246.710(1) and (1)(ii), use the following clause, which uses a different paragraph (d)(3) than the basic clause:

WARRANTY OF DATA?ALTERNATE I (DEVIATION 2026-O0035) (FEB 2026)

(a) Definition. Technical data has the same meaning as given in the clause at **252.227-7989 Rights in Technical Data, Computer Software, and Computer**

Software Documentation?Other Than Commercial Products or Commercial Services.?

(b) Warranty. Notwithstanding inspection and acceptance by the Government of technical data furnished under this contract, and notwithstanding any provision of this contract concerning the conclusiveness of acceptance, the Contractor warrants that all technical data delivered under this contract will at the time of delivery conform with the specifications and all other requirements of this contract. The warranty period shall extend for three years after completion of the delivery of the line item of data (as identified in DD Form 1423, Contract Data Requirements List) of which the data forms a part; or any longer period specified in the contract.

(c) Contractor Notification. The Contractor agrees to notify the Contracting Officer in writing immediately of any breach of the above warranty which the Contractor discovers within the warranty period.

(d) Remedies. The following remedies shall apply to all breaches of the warranty, whether the Contractor notifies the Contracting Officer in accordance with paragraph (c) of this clause or if the Government notifies the Contractor of the breach in writing within the warranty period:

(1) Within a reasonable time after such notification, the Contracting Officer may?

(i) By written notice, direct the Contractor to correct or replace at the Contractor's expense the nonconforming technical data promptly; or

(ii) If the Contracting Officer determines that the Government no longer has a requirement for correction or replacement of the data, or that the data can be more reasonably corrected by the Government, inform the Contractor by written notice that the Government elects a price or fee adjustment instead of correction or replacement.

(2) If the Contractor refuses or fails to comply with a direction under paragraph (d)(1)(i) of this clause, the Contracting Officer may, within a reasonable time of the refusal or failure?

(i) By contract or otherwise, correct or replace the nonconforming technical data and charge the cost to the Contractor; or

(ii) Elect a price or fee adjustment instead of correction or replacement.

(3) In addition to the remedies under paragraphs (d)(1) and (2) of this clause, the Contractor shall be liable to the Government for all damages to the Government as a result of the breach of warranty.

(i) The additional liability under paragraph (d)(3) of this clause shall not exceed 75 percent of the target profit.

(ii) If the breach of the warranty is with respect to the data supplied by an equipment subcontractor, the limit of the Contractor's liability shall be?

(A) Ten percent of the total subcontract price in a firm-fixed-price subcontract;

(B) Seventy-five percent of the total subcontract fee in a cost-plus-fixed-fee or cost-plus-award-fee subcontract; or

(C) Seventy-five percent of the total subcontract target profit or fee in a fixed-price-incentive or cost-plus-incentive subcontract.

(iii) Damages due the Government under the provisions of this warranty are not an allowable cost.

(iv) The additional liability in paragraph (d)(3) of this clause shall not apply?

(A) With respect to the requirements for product drawings and associated lists, special inspection equipment (SIE) drawings and associated lists, special tooling drawings and associated lists, SIE operating instructions, SIE descriptive documentation, and SIE calibration procedures under MIL-T-31000,

General Specification for Technical Data Packages, Amendment 1, or MIL-T-47500, General Specification for Technical Data Packages, Supp 1, or drawings and associated lists under level 2 or level 3 of MIL-D-1000A, Engineering and Associated Data Drawings, or DoD-D-1000B, Engineering and Associated Lists Drawings (Inactive for New Design) Amendment 4, Notice 1; or drawings and associated lists under category E or I of MIL-D-1000, Engineering and Associated Lists Drawings, provided that the data furnished by the Contractor was current, accurate at time of submission, and did not involve a significant omission of data necessary to comply with the requirements; or

(B) To defects the Contractor discovers and gives written notice to the Government before the Government discovers the error.

(e) The provisions of this clause apply anew to that portion of any corrected or replaced technical data furnished to the Government under paragraph (d)(1)(i) of this clause.

(End of clause)

Alternate II. As prescribed in 246.710(1) and (1)(iii), use the following clause, which uses a different paragraph (d)(3) than the basic clause:

WARRANTY OF DATA?ALTERNATE II (DEVIATION 2026-O0035) (FEB 2026)

(a) Definition. Technical data has the same meaning as given in the clause at **252.227-7989 Rights in Technical Data, Computer Software, and Computer** Software Documentation?Other Than Commercial Products or Commercial Services.

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(b) Warranty. Notwithstanding inspection and acceptance by the Government of technical data furnished under this contract, and notwithstanding any provision of this contract concerning the conclusiveness of acceptance, the Contractor warrants that all technical data delivered under this contract will at the time of delivery conform with the specifications and all other requirements of this contract. The warranty period shall extend for three years after completion of the delivery of the line item of data (as identified in DD Form 1423, Contract Data Requirements List) of which the data forms a part; or any longer period specified in the contract.

(c) Contractor Notification. The Contractor agrees to notify the Contracting Officer in writing immediately of any breach of the above warranty which the Contractor discovers within the warranty period.

(d) Remedies. The following remedies shall apply to all breaches of the warranty, whether the Contractor notifies the Contracting Officer in accordance with paragraph (c) of this clause or if the Government notifies the Contractor of the breach in writing within the warranty period:

(1) Within a reasonable time after such notification, the Contracting Officer may?

(i) By written notice, direct the Contractor to correct or replace at the Contractor's expense the nonconforming technical data promptly; or

(ii) If the Contracting Officer determines that the Government no longer has a requirement for correction or replacement of the data, or that the data can be more reasonably corrected by the Government, inform the Contractor by written notice that the Government elects a price or fee adjustment instead of correction or replacement.

(2) If the Contractor refuses or fails to comply with a direction under paragraph (d)(1)(i) of this clause, the Contracting Officer may, within a reasonable time of the refusal or failure?

(i) By contract or otherwise, correct or replace the nonconforming technical data and charge the cost to the Contractor; or

(ii) Elect a price or fee adjustment instead of correction or replacement.

(3) In addition to the remedies under paragraphs (d)(1) and (2) of this clause, the Contractor shall be liable to the Government for all damages to the Government as a result of the breach of the warranty.

(i) The additional liability under paragraph (d)(3) of this clause shall not exceed ten percent of the total contract price.

(ii) If the breach of the warranty is with respect to the data supplied by an equipment subcontractor, the limit of the Contractor's liability shall be?

(A) Ten percent of the total subcontract price in a firm[-]fixed[-]price subcontract;

(B) Seventy-five percent of the total subcontract fee in a cost-plus-fixed-fee or cost-plus-award-fee subcontract; or

(C) Seventy-five percent of the total subcontract target profit or fee in a fixed-price-incentive or cost-plus-incentive subcontract.

(iii) The additional liability specified in paragraph (d)(3) of this clause shall not apply?

(A) With respect to the requirements for product drawings and associated lists, special inspection equipment (SIE) drawings and associated lists, special tooling drawings and associated lists, SIE operating instructions, SIE descriptive documentation, and SIE calibration procedures under MIL-T-31000, General Specification for Technical Data Packages, Amendment 1, or MIL-T-47500, General Specification for Technical Data Packages, Supp 1, or drawings and associated lists under level 2 or level 3 of MIL-D-1000A, Engineering and Associated Data Drawings, or DoD-D-1000B, Engineering and Associated Lists Drawings (Inactive for New Design) Amendment 4, Notice 1; or drawings and associated lists under category E or I of MIL-D-1000, Engineering and Associated Lists Drawings, provided that the data furnished by the Contractor was current, accurate at time of submission, and did not involve a significant omission of data

necessary to comply with the requirements; or

(B) To defects the Contractor discovers and gives written notice to the Government before the Government discovers the error.

(e) The provisions of this clause apply anew to that portion of any corrected or replaced technical data furnished to the Government under paragraph (d)(1)(i) of this clause.

(End of clause)

252.246-7002 Warranty of construction (Germany).

As prescribed in 246.710(2), use the following clause:

WARRANTY OF CONSTRUCTION (GERMANY) (JUN 1997)

(a) In addition to any other representations in this contract, the Contractor warrants, except as provided in paragraph (j) of this clause, that the work performed under this contract conforms to the contract requirements and is free of any defect of equipment, material, or design furnished or workmanship performed by the Contractor or any subcontractor or supplier at any tier.

(b) This warranty shall continue for the period(s) specified in Section 13, VOB, **Part B, commencing from the date of final acceptance of the work under this** contract. If the Government takes possession of any part of the work before final acceptance, this warranty shall continue for the period(s) specified in Section 13, VOB, Part B, from the date the Government takes possession.

(c) The Contractor shall remedy, at the Contractor's expense, any failure to conform or any defect. In addition, the Contractor shall remedy, at the Contractor's expense, any damage to Government-owned or -controlled real or personal property when that damage is the result of?

(1) The Contractor's failure to conform to contract requirements; or

(2) Any defect of equipment, material, or design furnished or workmanship performed.

(d) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause.

(e) The Contracting Officer shall notify the Contractor, in writing, within a reasonable period of time after the discovery of any failure, defect, or damage.

(f) If the Contractor fails to remedy any failure, defect, or damage within a reasonable period of time after receipt of notice, the Government shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.

(g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall?

(1) Obtain all warranties that would be given in normal commercial

practice;

(2) Require all warranties to be executed in writing, for the benefit of the Government, if directed by the Contracting Officer; and

(3) Enforce all warranties for the benefit of the Government as directed by the Contracting Officer.

(h) In the event the Contractor's warranty under paragraph (b) of this clause has expired, the Government may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.

(i) Unless a defect is caused by the Contractor's negligence, or the negligence of a subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the Government or for the repair of any damage resulting from any defect in Government-furnished material or design.

(j) This warranty shall not limit the Government's right under the Inspection clause of this contract, with respect to latent defects, gross mistakes, or fraud.

(End of clause)

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252.246-7003 Notification of Potential Safety Issues.

As prescribed in 246.370(a), use the following clause:

NOTIFICATION OF POTENTIAL SAFETY ISSUES (JAN 2023)

(a) Definitions. As used in this clause?

Credible information means information that, considering its source and the surrounding circumstances, supports a reasonable belief that an event has occurred or will occur.

Critical safety item means a part, subassembly, assembly, subsystem, installation equipment, or support equipment for a system that contains a characteristic, any failure, malfunction, or absence of which could have a safety impact.

Safety impact means the occurrence of death, permanent total disability, permanent partial disability, or injury or occupational illness requiring hospitalization; loss of a weapon system; or property damage exceeding $1,000,000.

Subcontractor means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for the Contractor or another subcontractor under this contract.

(b) The Contractor shall provide notification, in accordance with paragraph (c) of this clause, of?

(1) All nonconformances for parts identified as critical safety items acquired by the Government under this contract; and

(2) All nonconformances or deficiencies that may result in a safety impact for systems, or subsystems, assemblies, subassemblies, or parts integral to a

system, acquired by or serviced for the Government under this contract.

(c) The Contractor?

(1) Shall notify the Administrative Contracting Officer (ACO) and the Procuring Contracting Officer (PCO) as soon as practicable, but not later than 72 hours, after discovering or acquiring credible information concerning nonconformances and deficiencies described in paragraph (b) of this clause; and

(2) Shall provide a written notification to the ACO and the PCO within 5 working days that includes?

(i) A summary of the defect or nonconformance;

(ii) A chronology of pertinent events;

(iii) The identification of potentially affected items to the extent known at the time of notification;

(iv) A point of contact to coordinate problem analysis and resolution; and

(v) Any other relevant information.

(d) The Contractor?

(1) Is responsible for the notification of potential safety issues occurring with regard to an item furnished by any subcontractor; and

(2) Shall facilitate direct communication between the Government and the subcontractor as necessary.

(e) Notification of safety issues under this clause shall be considered neither an admission of responsibility nor a release of liability for the defect or its consequences. This clause does not affect any right of the Government or the Contractor established elsewhere in this contract.

(f)(1) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (f), in subcontracts for?

(i) Parts identified as critical safety items;

(ii) Systems and subsystems, assemblies, and subassemblies integral to a system; or

(iii) Repair, maintenance, logistics support, or overhaul services for systems and subsystems, assemblies, subassemblies, and parts integral to a system.

(2) For those subcontracts, including subcontracts for commercial products or commercial services, described in paragraph (f)(1) of this clause, the Contractor shall require the subcontractor to provide the notification required by paragraph (c) of this clause to?

(i) The Contractor or higher-tier subcontractor; and

(ii) The ACO and the PCO, if the subcontractor is aware of the ACO and the PCO for the contract.

(End of clause)

252.246-7004 Safety of Facilities, Infrastructure, and Equipment for Military Operations.

As prescribed in 246.270-4, use the following clause:

SAFETY OF FACILITIES, INFRASTRUCTURE, AND EQUIPMENT FOR MILITARY OPERATIONS (OCT 2010)

(a) Definition. Discipline Working Group, as used in this clause, means representatives from the DoD Components, as defined in MIL-STD-3007F, who are

responsible for the unification and maintenance of the Unified Facilities Criteria (UFC) documents for a particular discipline area.

(b) The Contractor shall ensure, consistent with the requirements of the applicable inspection clause in this contract, that the facilities, infrastructure, and equipment acquired, constructed, installed, repaired, maintained, or operated under this contract comply with Unified Facilities Criteria (UFC) 1-200-01 for?

(1) Fire protection;
(2) Structural integrity;
(3) Electrical systems;
(4) Plumbing;
(5) Water treatment;
(6) Waste disposal; and
(7) Telecommunications networks.

(c) The Contractor may apply a standard equivalent to or more stringent than UFC 1-200-01 upon a written determination of the acceptability of the standard by the Contracting Officer with the concurrence of the relevant Discipline Working Group.

(End of clause)

252.246-7005 Notice of Warranty Tracking of Serialized Items.

As prescribed in 246.710(3)(i), use the following provision:

NOTICE OF WARRANTY TRACKING OF SERIALIZED ITEMS (MAR 2016)

(a) Definitions. Duration, enterprise, enterprise identifier, fixed expiration, item type, serialized item, starting event, unique item identifier, usage, warranty administrator, warranty guarantor, and warranty tracking are defined in the clause at 252.246-7006, Warranty Tracking of Serialized Items.

(b) Reporting of data for warranty tracking and administration. (1) The Offeror shall provide the information required by the attachment entitled ?Warranty Tracking Information? on each contract line item number, subline item number, or exhibit line item number for warranted items with its offer. Information required in the warranty attachment for each warranted item shall include such information as duration, fixed expiration, item type, starting event, usage, warranty administrator enterprise identifier, and warranty guarantor enterprise identifier.

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(2) The successful offeror will be required to provide the following information no later than when the warranted items are presented for receipt and/or acceptance, in accordance with the clause at 252.246-7006?

(i) The unique item identifier for each warranted item required by the attachment entitled ?Warranty Tracking Information;? and

(ii) All information required by the attachment entitled ?Source of Repair Instructions? for each warranted item.

(3) For additional information on warranty attachments, see the ?Warranty and Source of Repair? training and ?Warranty and Source of Repair Tracking User Guide? accessible on the Product Data Reporting and Evaluation Program (PDREP) Web site at https://www.pdrep.csd.disa.mil/pdrep_files/other/wsr.htm.

(End of provision)

252.246-7006 Warranty Tracking of Serialized Items.

As prescribed in 246.710(3)(ii), use the following clause:

WARRANTY TRACKING OF SERIALIZED ITEMS (MAR 2016)

(a) Definitions. As used in this clause?

Duration means the warranty period. This period may be a stated period of time, amount of usage, or the occurrence of a specified event, after formal acceptance of delivery, for the Government to assert a contractual right for the correction of defects.

Enterprise means the entity (e.g., a manufacturer or vendor) responsible for granting the warranty and/or assigning unique item identifiers to serialized warranty items.

Enterprise identifier means a code that is uniquely assigned to an enterprise by an issuing agency.

First use means the initial or first-time use of a product by the Government.

Fixed expiration means the date the warranty expires and the Contractor's obligation to provide for a remedy or corrective action ends.

Installation means the date a unit is inserted into a higher level assembly in order to make that assembly operational.

Issuing agency means an organization responsible for assigning a globally unique identifier to an enterprise, as indicated in the Register of Issuing Agency Codes for International Standards Organization/International Electrotechnical Commission 15459, located at http://www.aimglobal.org/?Reg_Authority15459.

Item type means a coded representation of the description of the item being warranted, consisting of the codes C?component procured separate from end item,

S?subassembly procured separate from end item or subassembly, E?embedded in component, subassembly or end item parent, and P?parent end item.
Starting event means the event or action that initiates the warranty, such as first use or upon installation.
Serialized item means each item produced is assigned a serial number that is unique among all the collective tangible items produced by the enterprise, or each item of a particular part, lot, or batch number is assigned a unique serial number within that part, lot, or batch number assignment within the enterprise identifier. The enterprise is responsible for ensuring unique serialization within the enterprise identifier or within the part, lot, or batch numbers, and that serial numbers, once assigned, are never used again.
Unique item identifier means a set of data elements marked on an item that is globally unique and unambiguous.
Usage means the quantity and an associated unit of measure that specifies the amount of a characteristic subject to the contractor's obligation to provide for remedy or corrective action, such as a number of miles, hours, or cycles.
Warranty administrator means the organization specified by the guarantor for managing the warranty.
Warranty guarantor means the enterprise that provides the warranty under the terms and conditions of a contract.
Warranty repair source means the organization specified by a warranty guarantor for receiving and managing warranty items that are returned by a customer.
Warranty tracking means the ability to trace a warranted item from delivery through completion of the effectivity of the warranty.

(b) Reporting of data for warranty tracking and administration. (1) The Contractor shall provide the information required by the attachment entitled ?Warranty Tracking Information? on each contract line item number, subline item number, or exhibit line item number for warranted items no later than the time of award. Information required in the warranty attachment shall include such information as duration, fixed expiration, item type, starting event, usage, warranty administrator enterprise identifier, and warranty guarantor enterprise identifier.

(2) The Contractor shall provide the following information no later than when the warranted items are presented for receipt and/or acceptance?

(i) The unique item identifier for each warranted item required by the attachment entitled ?Warranty Tracking Information;? and

(ii) The warranty repair source information and instructions for each warranted item required by the attachment entitled ?Source of Repair Instructions.?

(3) The Contractor shall submit the data for warranty tracking to the Contracting Officer with a copy to the requiring activity and the Contracting Officer

Representative.

(4) For additional information on warranty attachments, see the ?Warranty and Source of Repair? training and ?Warranty and Source of Repair Tracking User Guide? accessible on the Product Data Reporting and Evaluation Program (PDREP) Web site at https://www.pdrep.csd.disa.mil/pdrep_files/other/wsr.htm.

(c) Reservation of rights. The terms of this clause shall not be construed to limit the Government's rights or remedies under any other contract clause.

(End of clause)

252.246-7007 Contractor Counterfeit Electronic Part Detection and Avoidance System.

As prescribed in 246.870-3(a), use the following clause:

CONTRACTOR COUNTERFEIT ELECTRONIC PART DETECTION AND AVOIDANCE SYSTEM (JAN 2023)

The following paragraphs (a) through (e) of this clause do not apply unless the Contractor is subject to the Cost Accounting Standards under 41 U.S.C. chapter 15, as implemented in regulations found at 48 CFR 9903.201-1.

(a) Definitions. As used in this clause?

Authorized aftermarket manufacturer means an organization that fabricates a **part under a contract with, or with the express written authority of, the original** component manufacturer based on the original component manufacturer's designs, formulas, and/or specifications.

Authorized supplier means a supplier, distributor, or an aftermarket manufacturer with a contractual arrangement with, or the express written authority of, the original manufacturer or current design activity to buy, stock, repackage, sell, or distribute the part.

Contract manufacturer means a company that produces goods under contract for another company under the label or brand name of that company.

Contractor-approved supplier means a supplier that does not have a contractual agreement with the original component manufacturer for a transaction, but has been identified as trustworthy by a contractor or subcontractor.

Counterfeit electronic part means an unlawful or unauthorized reproduction, substitution, or alteration that has been knowingly mismarked, misidentified, or

otherwise misrepresented to be an authentic, unmodified electronic part from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used electronic parts represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.

Electronic part means an integrated circuit, a discrete electronic component

(including, but not limited to, a transistor, capacitor, resistor, or diode), or a circuit assembly (section 818(f)(2) of Pub. L. 112-81).

Obsolete electronic part means an electronic part that is no longer available from the original manufacturer or an authorized aftermarket manufacturer.

Original component manufacturer means an organization that designs and/or engineers a part and is entitled to any intellectual property rights to that part.

Original equipment manufacturer means a company that manufactures products that it has designed from purchased components and sells those products under the company's brand name.

Original manufacturer means the original component manufacturer, the original equipment manufacturer, or the contract manufacturer.

Suspect counterfeit electronic part means an electronic part for which credible evidence (including, but not limited to, visual inspection or testing) provides reasonable doubt that the electronic part is authentic.

(b) Acceptable counterfeit electronic part detection and avoidance system. The Contractor shall establish and maintain an acceptable counterfeit electronic part detection and avoidance system. Failure to maintain an acceptable counterfeit electronic part detection and avoidance system, as defined in this clause, may result in disapproval of the purchasing system by the Contracting Officer and/or withholding of payments and affect the allowability of costs of counterfeit electronic parts or suspect counterfeit electronic parts and the cost of rework or corrective action that may be required to remedy the use or inclusion of such parts (see **DFARS 231.205-71).**

(c) System criteria. A counterfeit electronic part detection and avoidance system shall include risk-based policies and procedures that address, at a minimum, the following areas:

(1) The training of personnel.

(2) The inspection and testing of electronic parts, including criteria for acceptance and rejection. Tests and inspections shall be performed in accordance with accepted Government- and industry-recognized techniques. Selection of tests and inspections shall be based on minimizing risk to the Government. Determination of risk shall be based on the assessed probability of receiving a counterfeit electronic part; the probability that the inspection or test selected will

detect a counterfeit electronic part; and the potential negative consequences of a counterfeit electronic part being installed (e.g., human safety, mission success) where such consequences are made known to the Contractor.

(3) Processes to abolish counterfeit parts proliferation.

(4) Risk-based processes that enable tracking of electronic parts from the original manufacturer to product acceptance by the Government, whether the electronic parts are supplied as discrete electronic parts or are contained in

assemblies, in accordance with paragraph (c) of the clause at 252.246-7008, Sources of Electronic Parts (also see paragraph (c)(2) of this clause).

(5) Use of suppliers in accordance with the clause at 252.246-7008.

(6) Reporting and quarantining of counterfeit electronic parts and suspect counterfeit electronic parts. Reporting is required to the Contracting Officer and to the Government-Industry Data Exchange Program (GIDEP) when the Contractor becomes aware of, or has reason to suspect that, any electronic part or end item, component, part, or assembly containing electronic parts purchased by the DoD, or purchased by a Contractor for delivery to, or on behalf of, the DoD, contains counterfeit electronic parts or suspect counterfeit electronic parts. Counterfeit electronic parts and suspect counterfeit electronic parts shall not be returned to the seller or otherwise returned to the supply chain until such time that the parts are determined to be authentic.

(7) Methodologies to identify suspect counterfeit parts and to rapidly determine if a suspect counterfeit part is, in fact, counterfeit.

(8) Design, operation, and maintenance of systems to detect and avoid counterfeit electronic parts and suspect counterfeit electronic parts. The Contractor may elect to use current Government- or industry-recognized standards to meet this requirement.

(9) Flowdown of counterfeit detection and avoidance requirements, including applicable system criteria provided herein, to subcontractors at all levels in the supply chain that are responsible for buying or selling electronic parts or assemblies containing electronic parts, or for performing authentication testing.

(10) Process for keeping continually informed of current counterfeiting information and trends, including detection and avoidance techniques contained in appropriate industry standards, and using such information and techniques for continuously upgrading internal processes.

(11) Process for screening GIDEP reports and other credible sources of counterfeiting information to avoid the purchase or use of counterfeit electronic parts.

(12) Control of obsolete electronic parts in order to maximize the availability and use of authentic, originally designed, and qualified electronic parts throughout the product's life cycle.

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(d) Government review and evaluation of the Contractor's policies and procedures will be accomplished as part of the evaluation of the Contractor's purchasing system in accordance with 252.244-7001, Contractor Purchasing System Administration?Basic, or Contractor Purchasing System Administration? Alternate I.

(e) Subcontracts. The Contractor shall include the substance of this clause, excluding the introductory text and including only paragraphs (a) through (e), in

subcontracts, including subcontracts for commercial products, for electronic parts or assemblies containing electronic parts.

(End of clause)

252.246-7008 Sources of Electronic Parts.

As prescribed in 246.870-3(b), use the following clause:

SOURCES OF ELECTRONIC PARTS (JAN 2023)

(a) Definitions. As used in this clause?

Authorized aftermarket manufacturer means an organization that fabricates a **part under a contract with, or with the express written authority of, the original** component manufacturer based on the original component manufacturer's designs, formulas, and/or specifications.

Authorized supplier means a supplier, distributor, or an aftermarket manufacturer with a contractual arrangement with, or the express written authority of, the original manufacturer or current design activity to buy, stock, repackage, sell, or distribute the part.

Contract manufacturer means a company that produces goods under contract for another company under the label or brand name of that company.

Contractor-approved supplier means a supplier that does not have a contractual agreement with the original component manufacturer for a transaction, but has been identified as trustworthy by a contractor or subcontractor.

Electronic part means an integrated circuit, a discrete electronic component (including, but not limited to, a transistor, capacitor, resistor, or diode), or a circuit assembly (section 818(f)(2) of Pub. L. 112-81).

Original component manufacturer means an organization that designs and/or engineers a part and is entitled to any intellectual property rights to that part.

Original equipment manufacturer means a company that manufactures products that it has designed from purchased components and sells those products under the company's brand name.

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Original manufacturer means the original component manufacturer, the original equipment manufacturer, or the contract manufacturer.

(b) Selecting suppliers. In accordance with section 818(c)(3) of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112-81), as amended by section 817 of the National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113-291 and section 885 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114-92)), the Contractor shall?

(1) First obtain electronic parts that are in production by the original manufacturer or an authorized aftermarket manufacturer or currently available in stock from?

(i) The original manufacturers of the parts;

(ii) Their authorized suppliers; or

(iii) Suppliers that obtain such parts exclusively from the original manufacturers of the parts or their authorized suppliers;

(2) If electronic parts are not available as provided in paragraph (b)(1) of this clause, obtain electronic parts that are not in production by the original manufacturer or an authorized aftermarket manufacturer, and that are not currently available in stock from a source listed in paragraph (b)(1) of this clause, from suppliers identified by the Contractor as contractor-approved suppliers, provided that?

(i) For identifying and approving such contractor-approved suppliers, the Contractor uses established counterfeit prevention industry standards and processes (including inspection, testing, and authentication), such as the DoD-adopted standards at https://assist.dla.mil;

(ii) The Contractor assumes responsibility for the authenticity of parts provided by such contractor-approved suppliers; and

(iii) The Contractor's selection of such contractor-approved suppliers is subject to review, audit, and approval by the Government, generally in conjunction with a contractor purchasing system review or other surveillance of purchasing practices by the contract administration office, or if the Government obtains credible evidence that a contractor-approved supplier has provided counterfeit parts. The Contractor may proceed with the acquisition of electronic parts from a contractor-approved supplier unless otherwise notified by DoD; or

(3)(i) Take the actions in paragraphs paragraph (b)(3)(ii) of this clause if the Contractor?

(A) Obtains an electronic part from?

(1) A source other than any of the sources identified in paragraph (b)(1) or (b)(2) of this clause, due to nonavailability from such sources; or

(2) A subcontractor (other than the original manufacturer) that refuses to accept flowdown of this clause; or

(B) Cannot confirm that an electronic part is new or previously unused and that it has not been comingled in supplier new production or stock with used, refurbished, reclaimed, or returned parts.

(ii) If the contractor obtains an electronic part or cannot confirm an electronic part pursuant to paragraph (b)(3)(i) of this clause?

(A) Promptly notify the Contracting Officer in writing. If such notification is required for an electronic part to be used in a designated lot of assemblies to be acquired under a single contract, the Contractor may submit one notification for the lot, providing identification of the assemblies containing the parts (e.g., serial numbers);

(B) Be responsible for inspection, testing, and authentication, in

accordance with existing applicable industry standards; and

(C) Make documentation of inspection, testing, and authentication of such electronic parts available to the Government upon request.

(c) Traceability. If the Contractor is not the original manufacturer of, or authorized supplier for, an electronic part, the Contractor shall?

(1) Have risk-based processes (taking into consideration the consequences of failure of an electronic part) that enable tracking of electronic parts from the original manufacturer to product acceptance by the Government, whether the electronic part is supplied as a discrete electronic part or is contained in an assembly;

(2) If the Contractor cannot establish this traceability from the original manufacturer for a specific electronic part, be responsible for inspection, testing, and authentication, in accordance with existing applicable industry standards; and

(3)(i) Maintain documentation of traceability (paragraph (c)(1) of this clause) or the inspection, testing, and authentication required when traceability cannot be established (paragraph (c)(2) of this clause) in accordance with FAR **subpart 4.7; and**

(ii) Make such documentation available to the Government upon request.

(d) Government sources. Contractors and subcontractors are still required to comply with the requirements of paragraphs (b) and (c) of this clause, as applicable, if?

(1) Authorized to purchase electronic parts from the Federal Supply Schedule;

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(2) Purchasing electronic parts from suppliers accredited by the Defense Microelectronics Activity; or

(3) Requisitioning electronic parts from Government inventory/stock under the authority of 252.251-7000, Ordering from Government Supply Sources.

(i) The cost of any required inspection, testing, and authentication of such parts may be charged as a direct cost.

(ii) The Government is responsible for the authenticity of the requisitioned parts. If any such part is subsequently found to be counterfeit or suspect counterfeit, the Government will?

(A) Promptly replace such part at no charge; and

(B) Consider an adjustment in the contract schedule to the extent that replacement of the counterfeit or suspect counterfeit electronic parts caused a delay in performance.

(e) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (e), in subcontracts, including subcontracts for commercial products, that are for electronic parts or assemblies containing electronic parts,

unless the subcontractor is the original manufacturer.

(End of clause)

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PGI Part 246?QUALITY ASSURANCE

PGI 246.1?GENERAL

PGI 246.103 Contracting office responsibilities.

(2)(i) In preparing instructions for Government inspections, the technical activity must consider, as applicable?

(A) The past quality history of the contractor;

(B) The criticality of the material procured in relation to its intended use, considering factors such as?

(1) Reliability;

(2) Safety;

(3) Interchangeability; and

(4) Maintainability;

(C) Problems encountered in the development of the material;

(D) Problems encountered in other procurements of the same or similar material;

(E) Available feedback data from contract administration, receiving, testing, or using activities; and

(F) The experience of other contractors in overcoming manufacturing problems.

(ii) The instructions must?

(A) Be kept to a minimum;

(B) Ensure that the activities requested are in direct relation to contract quality requirements to serve as objective evidence of quality conformance; and

(C) Be prepared on a contract-by-contract basis.

(iii) The instructions must not?

(A) Serve as a substitute for incomplete contract quality requirements;

(B) Impose greater inspection requirements than are in the contract;

(C) Use broad or general designations such as?

(1) All requirements;

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(2) All characteristics; or

(3) All characteristics in the classification of defects;

(D) Be used for routine administrative procedures; or

(E) Specify continued inspection requirements when statistically sound

sampling will provide an adequate degree of protection.

(iv) After issuing the instructions, the technical activity must?

(A) Provide the contract administration office with available information regarding those factors that resulted in the requirement for Government inspection;

(B) Periodically analyze the need to continue, change, or discontinue the instructions; and

(C) Advise the contract administration office of the results of the periodic analyses.

PGI 246.2?CONTRACT QUALITY REQUIREMENTS

PGI 246.201 General

PGI 246.201-70 Subsistence.

(a) The Surgeons General of the military departments are responsible for?

(1) Acceptance criteria;

(2) Technical requirements; and

(3) Inspection procedures needed to assure wholesomeness of foods.

(b) The contracting office may designate any Federal activity, capable of assuring wholesomeness and quality in food, to perform quality assurance for subsistence contract items. The designation may?

(1) Include medical service personnel of the military departments; and

(2) Be on a reimbursable basis.

PGI 246.201-71 Aircraft.

(a) The Federal Aviation Administration (FAA) has certain responsibilities and prerogatives in connection with some commercial aircraft and of aircraft equipment and accessories (Pub. L. 85-726 (72 Stat 776, 49 U.S.C. 1423)). This includes the issuance of various certificates applicable to design, manufacture, and airworthiness.

(b) FAA evaluations are not a substitute for normal DoD evaluations of the contractor's quality assurance measures. Actual records of FAA evaluations may be of use to the contract administration office (CAO) and should be used to their maximum advantage.

(c) The CAO must ensure that the contractor possesses any required FAA certificates prior to acceptance. In addition, ensure that?

(i) A detailed consultation with the FAA Military Certification Office (MCO)

(contact the MCO here: https://www.faa.gov/about/office_org/headquarters_offices/avs/offices/air/hq/compliance_airworthiness_air700/mco is documented regarding the scope of the acquisition or modification project;

(ii) Supporting contractual documents (meeting minutes, an email record of consultations, memoranda, etc.) demonstrate that the scope of work is feasible and compatible with FAA regulations and policy;

(iii) The period of performance and contract deliverable dates are consistent

with FAA capabilities; and

(iv) Contract provisions requiring FAA approval or processes are coordinated with the MCO prior to a solicitation.

PGI 246.3?CONTRACT CLAUSES

PGI 246.370 Notification of potential safety issues.

(1) The objective of this requirement is to ensure that the Government receives timely notification of potential safety defects so that?

(i) Systems and equipment likely affected by the situation can be identified; and

(ii) An appropriate engineering investigation and follow-on actions can be taken to establish and mitigate risk.

(2) The notification is intended to be neither an admission of nor a release from liability.

(3) Upon notification of a potential safety nonconformance or deficiency?

(i) The procuring contracting officer must?

(A) Advise the affected program office(s) or integrated materiel manager(s); and

(B) Request a point of contact from the affected program office(s) or materiel management organization to assess the impact of the situation, address technical concerns, and provide recommendations;

(ii) The administrative contracting officer must?

(A) Confirm that potentially affected program offices, integrated materiel managers, and other contract management offices that may be recipients of the suspect items are aware of the situation; and

(B) Identify a point of contact to provide support and technical assistance to the investigative team; and

(iii) For replenishment parts, the integrated materiel manager must?

(A) Identify any potentially affected programs or equipment; and

(B) Request engineering assistance from affected engineering support activities, as prescribed by?

(1) DLAI 3200.1/PAM 715.13/NAVSUPINST 4120.30A/AFI 21-408/MCO 4000.18, Engineering Support Instruction for Items Supplied by Defense Logistics Agency;

(2) SECNAVINST 4140.2/AFI 20-106/DA PAM 95-9/DLAI 3200.4/DCMA INST CSI (AV), Management of Aviation Critical Safety Items;

(3) DA PAM 738-751, Functional Users Manual for the Army Maintenance Management System?Aviation (TAMMS-A);

(4) AMCOM REG 702-7, Flight Safety Parts/New Source Testing Program Management; or

(5) Internal agency procedures.

PGI 246.4?GOVERNMENT CONTRACT QUALITY ASSURANCE

PGI 246.407-70 Nonconforming supplies or services.

Additional information on delegation of authority for acceptance of minor nonconformances in aviation and ship critical safety items is available at https://www.dla.mil/portals/104/documents/aviation/source%20approval%20handbook.pdf.

PGI 246.470 Government contract quality assurance actions.

PGI 246.470-2 Quality evaluation data.

Types of quality evaluation data are?

(1) Quality data developed by the contractor during performance;

(2) Data developed by the Government through contract quality assurance actions; and

(3) Reports by users and customers.

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PGI 246.472 Inspection stamping.

(a)(i) There are two DoD quality inspection approval marking designs (stamps).

(A) Both stamps are used?

(1) Only by, or under the direct supervision of, the Government representative; and

(2) For both prime and subcontracts.

(B) The designs of the two stamps and the differences in their uses are?

(1) Partial (Circle) Inspection Approval Stamp.

(i) This circular stamp is used to identify material inspected for conformance to only a portion of the contract quality requirements.

(ii) Further inspection is to be performed at another time and/or place.

(iii) Material not inspected is so listed on the associated DD Form 250 (Material Inspection and Receiving Report), packing list, or comparable document.

(2) Complete (Square) Inspection Approval Stamp.

(i) This square stamp is used to identify material completely inspected for all contract quality requirements at source.

(ii) The material satisfies all contract quality requirements and is in complete conformance with all contract quality requirements applicable at the time and place of inspection.

(iii) Complete inspection approval establishes that material that once was partially approved has subsequently been completely approved.

(iv) One imprint of the square stamp voids multiple imprints of the circle stamp.

(ii) The marking of each item is neither required nor prohibited. Ordinarily, the stamping of shipping containers, packing lists, or routing tickets serves to adequately indicate the status of the material and to control or facilitate its movement.

(iii) Stamping material does not mean that it has been accepted by the Government. Evidence of acceptance is ordinarily a signed acceptance certificate on the DD Form 250, Material Inspection and Receiving Report.

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PGI 246.7?WARRANTIES

PGI 246.701 Definitions.

?Duration,? ?fixed expiration,? ?starting event,? ?usage,? and ?warranty repair source? are defined in the clause at 252.246-7006, Warranty Tracking of Serialized Items.

PGI 246.710 RESERVED

PGI 246.710-70 Warranty attachments.

(1) The following attachments must be included in solicitations and awards to specify the required data elements for warranties of serialized items:

(i) Warranty Tracking Information. This format is used to specify the required warranty tracking data elements and accomplish the electronic transmission of the list of warranty items. All fields of this attachment must be completed at the time of award, except the unique item identifier field, which may be completed after the time of award, but no later than when the warranted items are presented for receipt and/or acceptance.

(ii) Source of Repair Instructions. This format is used to specify the required warranty source of repair data elements and accomplish the electronic transmission of the source of repair data for each warranty item. This attachment must be completed no later than when the warranted items are presented for receipt and/or acceptance.

(2) Warranty attachments must be?

(i) Completed electronically using the fillable PDF format or downloadable Excel format available on the Product Data Reporting and Evaluation Program (PDREP) website at https://www.pdrep.csd.disa.mil/pdrep_files/other/wsr.htm; and

(ii) Numbered in accordance with PGI 204.

(3) If the Government specifies a warranty, the contracting officer must request the requiring activity to provide information to ensure that the ?Warranty Tracking Information? attachment is populated with data specifying the Government?s required warranty terms by contract line item number, subline item number, or exhibit line item number prior to solicitation. One of the following is required to populate the attachment for each warranted item: starting event, usage, duration, or fixed expiration date.

(4) If the Government does not specify a warranty, the contracting officer may require offerors to provide warranty data by populating the ?Warranty Tracking Information? attachment, as appropriate, and include the attachment as part of its offer, in accordance with the provision at 252.246-7005, Notice of Warranty Tracking of Serialized Items.

(5) As required in the clause at 252.246-7006, Warranty Tracking of Serialized Items, the contractor is required to provide the following information no later than the time of receipt and/or acceptance of warranted items:

(i) The unique item identifier for each warranted item on the ?Warranty Tracking Information? attachment.

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(ii) The warranty repair source information and instructions required by the ?Source of Repair Instructions? attachment.

(6) The contracting officer must ensure the completed warranty attachments are uploaded to the Electronic Data Access (EDA) system (see DFARS part 204 for information on obtaining an EDA account).

(7) For additional information on the warranty attachments, see the ?Warranty and Source of Repair? training and ?Warranty and Source of Repair Tracking User Guide? accessible on the PDREP site at https://www.pdrep.csd.disa.mil/pdrep_files/other/wsr.htm.

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PART 47

OFFICE OF THE ASSISTANT SECRETARY OF WAR

Status: Class D

OFFICE OF THE ASSISTANT SECRETARY OF WAR

3000 DEFENSE PENTAGON

WASHINGTON, DC 20301-3000

ACQUISITION

AND SUSTAINMENT

In reply refer to

DARS Tracking Number: 2026-O0047

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES SPECIAL OPERATIONS

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES TRANSPORTATION

COMMAND (ATTN: ACQUISITION EXECUTIVE)

DEPUTY ASSISTANT SECRETARY OF THE ARMY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE NAVY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE

(CONTRACTING)

DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Class Deviation?Revolutionary Federal Acquisition Regulation (FAR) Overhaul

Part 47, Defense FAR Supplement (DFARS) Part 247

Effective March 16, 2026, contracting officers shall use?

? The revised FAR Part 47, Transportation, published on the Revolutionary FAR Overhaul web page at https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-47 in lieu of the text codified at 48 CFR chapter 1 (https://www.ecfr.gov).

? The attached DFARS Part 247, Transportation, in lieu of the text codified at 48 CFR chapter 2; and

? The attached DFARS Procedures, Guidance, and Information (PGI) 247, Transportation, in lieu of the PGI text published on the Defense Pricing, Contracting, and Acquisition Policy web page at https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.

This class deviation implements the following:

? Section 2 of E.O. 14275, Restoring Common Sense to Federal Procurement, which establishes the policy that the FAR ?should only contain provisions required by statute or essential to sound procurement, and any FAR provisions that do not

advance these objectives should be removed.?
DARS Tracking Number: 2026-O0047
Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 47
Defense FAR Supplement (DFARS) Part 247
? Section 4(a) of E.O. 14265, Modernizing Defense Acquisitions and Spurring Innovation in the Defense Industrial Base which requires the Secretary of War to eliminate or revise any unnecessary supplemental regulations or any other internal guidance, such as relevant parts of the Financial Management Regulation and Defense Federal Acquisition Regulation Supplement.
? The Office of Management and Budget memorandum, M-25-26 issued on May 2, 2025, titled, Overhauling the Federal Acquisition Regulation, which provided additional guidance to federal agencies regarding the FAR overhaul.
This class deviation remains in effect until rescinded or incorporated into the FAR, DFARS, and DFARS PGI. Inquiries regarding this class deviation can be addressed to osd.pentagon.ousd-a-s.mbx.dfars@mail.mil.
John M. Tenaglia
Principal Director,
Defense Pricing, Contracting, and
Acquisition Policy
Attachments:
As stated
2
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Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 47
Defense FAR Supplement (DFARS) Part 247

PART 247?TRANSPORTATION

247.001 [Reserved]

SUBPART 247.1?GENERAL

247.101 Policies.

(h) Shipping documents covering f.o.b. origin shipments.

(i) Procedures for the contractor to obtain bills of lading are in the clause at **252.247-7028, Application for U.S. Government Shipping Documentation/Instructions.**

(ii) The term ?commercial bills of lading? includes the use of any commercial form or procedure.

SUBPART 247.2?CONTRACTS FOR TRANSPORTATION OR FOR TRANSPORTATION-RELATED SERVICES

247.200 Scope of subpart.

This subpart does not apply to the operation of vessels owned by, or bareboat chartered by, the Government. See additional guidance at PGI 247.200 for procurement of transportation or related services.

247.206 [Reserved]

247.207 Solicitation provisions, contract clauses, and special requirements.

(1) Insert the clause at 252.247-7003, Pass-Through of Motor Carrier Fuel

Surcharge Adjustment to the Cost Bearer, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that are for carriage in which a motor carrier, broker, or freight forwarder will provide or arrange truck transportation services that provide for a fuel-related adjustment.

(2) Insert the clause at 252.247-7028, Application for U.S. Government Shipping Documentation/Instructions in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, when shipping under Bills of Lading and Domestic Route Order under FOB origin contracts, Export Traffic Release regardless of FOB terms, or foreign military sales shipments.

247.270 Stevedoring contracts.

247.270-1 [Reserved]

247.270-2 Technical provisions.

See PGI 247.270-2 for guidance regarding technical provisions of stevedoring contracts.

247.270-3 Evaluation of bids and proposals.

As a minimum, require that offers include?

(a) Tonnage or commodity rates that apply to the bulk of the cargo worked under normal conditions;

(b) Labor-hour rates that apply to services not covered by commodity rates, or to work performed under hardship conditions; and

(c) Rates for equipment rental.

247.270-4 Contract clauses.

Insert the following clauses in solicitations and contracts for stevedoring services as indicated:

(a) 252.247-7000, Hardship Conditions.

(b) 252.247-7002, Revision of Prices, when using negotiation.

(c) 252.247-7007, Liability and Insurance.

247.271 Contracts for the preparation of personal property for shipment or storage or for performance of intra-city or intra-area movement.

247.271-1 Policy.

When establishing maximum requirements-minimum capability?

(1) Establish realistic quantities on the Estimated Quantities Report in DoD **4500.9-R, Defense Transportation Regulation, Part IV;**

(2) Ensure that the Government's minimum acceptable daily capability?

(i) Will at least equal the maximum authorized individual weight allowance as prescribed by the Joint Federal Travel Regulations; and

(ii) Will encourage maximum participation of small business concerns as offerors.

247.271-2 Procedures.

Follow the procedures at PGI 247.271-2 for contracting for the preparation of personal property for shipment or storage.

247.271-3 Solicitation provisions, schedule formats, and contract clauses.

When acquiring services for the preparation of personal property for movement or storage, or for performance of intra-city or intra-area movement, use the following provisions, clauses, and schedules. Revise solicitation provisions and schedules, as appropriate, if using negotiation rather than sealed bidding. Overseas commands,

except those in Alaska and Hawaii, may modify these clauses to conform to local practices, laws, and regulations.

(a) In solicitations and resulting contracts, use the schedules provided by the installation personal property shipping office. Follow the procedures at PGI 247.271-**3(c).**

(b) In addition to designating each ordering activity, as required by the clause at FAR 52.216-18, Ordering, identify by name or position title the individuals authorized to place orders for each activity.

(c) The clause at 252.247-7014, Demurrage. See additional information at PGI **247.271-3(c)(1) for demurrage and detention charges.**

(d) The clause at 252.247-7016, Contractor Liability for Loss and Damage.

(e) The clauses at FAR 52.247-8, Estimated Weight or Quantities Not Guaranteed, and FAR 52.247-13, Accessorial Services?Moving Contracts.

247.272 Preparation of solicitations and contracts.

Consider using the following as evaluation factors or subfactors:

(1) Record of claims involving loss or damage; and

(2) Commitment of transportation assets to readiness support (e.g., Civil Reserve Air Fleet and Voluntary Intermodal Sealift Agreement).

SUBPART 247.3?TRANSPORTATION IN SUPPLY CONTRACTS

247.301 General.

See PGI 247.301 for transportation guidance relating to Government Purchase Card purchases.

247.301-70 [Reserved]

247.301-71 Evaluation factor or subfactor.

For contracts that will include a significant requirement for transportation of items outside the contiguous United States, include an evaluation factor or subfactor that favors suppliers, third-party logistics providers, and integrated logistics managers that commit to using carriers that participate in one of the readiness programs (e.g., Civil Reserve Air Force Fleet and Voluntary Intermodal Sealift Agreement).

247.305 Solicitation provisions, contract clauses, and transportation factors.

247.305-10 Packing, marking, and consignment instructions.

Follow the procedures at PGI 247.305-10 for preparation of consignment instructions.

247.370 DD Form 1384, Transportation Control and Movement Document.

See PGI 247.370 regarding DD Form 1384.

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247.371 DD Form 1653, Transportation Data for Solicitations.

See PGI 247.371 regarding DD Form 1653.

247.372 DD Form 1654, Evaluation of Transportation Cost Factors.

See PGI 247.372 regarding DD form 1654.

SUBPART 247.5?OCEAN TRANSPORTATION BY U.S.-FLAG VESSELS

247.570 Scope.

This subpart?

(a) Implements?

(1) The Military Cargo Preference Act of 1904 (?the 1904 Act?), 10 U.S.C. 2631, which applies to the ocean transportation of cargo owned by, destined for use by, or otherwise transported by DoD;

(2) Section 1017 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2007 (Pub. L. 109-364) (10 U.S.C. 2631 note), which requires consideration, in solicitations requiring a covered vessel, of the extent to which offerors have had overhaul, repair, and maintenance work performed in shipyards located in the United States or Guam;

(3) Section 3504 of the NDAA for FY 2009 (Pub. L. 110-417) (10 U.S.C. chapter 257 note), which addresses requirements that apply to riding gang members and DoD-exempted individuals (see 252.247-7027(c)) who perform work on U.S.-flag vessels under DoD contracts for transportation services documented under 46 U.S.C. chapter 121; and

(4) Section 1024 of the NDAA for FY 2021 (Pub. L. 116-283), which updates the listed circumstances where DoD may waive the requirement that DoD supplies be transported by sea in vessels belonging to the United States or vessels of the United States, and it modifies the requirement for reflagging or repair work in the United States for vessels used under time-charter contracts.

(b) Does not specifically implement the Cargo Preference Act of 1954 (?the 1954 Act?), 46 U.S.C. chapter 553. The 1954 Act is applicable to DoD, but DFARS coverage is not required because compliance with the 1904 Act historically has resulted in DoD exceeding the 1954 Act's requirements; and

(c) Does not implement?

(1) Section 27 of the Merchant Marine Act, 1920 (46 U.S.C. chapters 121 and 552), commonly known as the ?Jones Act,? for the application of coastwise trade; or

(2) Waivers thereof pursuant to 46 U.S.C. 501.

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247.571 Definitions.

As used in this subpart?

?Corrective and preventive maintenance or repair? means?

(1) Maintenance or repair actions performed as a result of a failure in order to return or restore equipment to acceptable performance levels; and

(2) Scheduled maintenance or repair actions to prevent or discover functional failures.

?Covered vessel? means a vessel?

(1) Owned, operated, or controlled by the offeror; and

(2) Qualified to engage in the carriage of cargo in the coastwise or noncontiguous trade under 46 U.S.C. 12112 and 50501 and 46 U.S.C. chapter 551.

?Foreign-flag vessel? means any vessel that is not a U.S.-flag vessel.

?Ocean transportation? means any water-borne transportation aboard a ship, vessel, boat, barge, ferry, or the like outside the internal waters of the United States (as defined in 33 CFR 2.24).

?Overhaul, repair, and maintenance work? means work requiring a shipyard period greater than or equal to 5 calendar days.

?Reflagging or repair work? means work performed on a vessel?

(1) To enable the vessel to meet applicable standards to become a vessel of the United States; or

(2) To convert the vessel to a more useful military configuration.

?Supplies? means supplies that are clearly identifiable for eventual use by or owned by DoD at the time of transportation by sea, or are otherwise transported by DoD, regardless of ownership or use by DoD. An item is clearly identifiable for eventual use by DoD if, for example, the contract documentation contains a reference to a DoD contract number or a military destination.

?U.S.-flag vessel? means either a vessel belonging to the United States or a vessel of the United States as that term is defined in 46 U.S.C. 116.

247.572 Policy.

(a) In accordance with 10 U.S.C. 2631(a), DoD contractors are required to transport supplies exclusively on U.S.-flag vessels. In accordance with 10 U.S.C. 2631(b), DoD (see **247.573(a)) may waive this requirement when a U.S.-flag vessel?**

(1) Is not available at a fair and reasonable rate for commercial vessels of the United States; or

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(2) Is not otherwise available.

(b) Contracts must provide for the use of vessels belonging to the United States

when security classifications prohibit the use of other than vessels belonging to the United States.

(c) In accordance with 10 U.S.C. 2631(c)?

(1) Any vessel used under a time charter contract for the transportation of supplies under this section are required to have the following work performed in the United States or its outlying areas:

(i) Reflagging or repair work, if the reflagging or repair work is performed?

(A) On a vessel for which the contractor submitted an offer in response to the solicitation for the contract; and

(B) Prior to acceptance of the vessel by the Government.

(ii) Corrective and preventive maintenance or repair work for the duration of the contract, to the greatest extent practicable.

(2) The Secretary of Defense may waive this requirement if the Secretary determines that such waiver is critical to the national security of the United States. In accordance with 10 U.S.C. 2631(c)(2), DoD must immediately submit, in writing, a notice to the congressional committees listed at 10 U.S.C. 2631(e) of such a waiver and the reason for the waiver.

(d) In accordance with section 1017 of the NDAA for FY 2007 (Pub. L. 109-364), when obtaining carriage requiring a covered vessel, the consider the extent to which offerors have had overhaul, repair, and maintenance work for covered vessels performed in shipyards located in the United States or Guam.

(e) In accordance with section 3504 of the NDAA for FY 2009 (Pub. L. 110-417), do not award, renew or extend, or exercise an option under a charter of, or contract for carriage of cargo by, a U.S.-flag vessel documented under 46 U.S.C. chapter 121, unless the contract contains the clause at 252.247-7027.

247.573 General.

(a) Delegated authority. Pursuant to 10 U.S.C. 2631(b)(2), the Secretary of Defense has delegated (see PGI 247.573) the authority to make determinations either that a U.S.-flag vessel is not available at a fair and reasonable rate for commercial vessels of the United States or is otherwise not available to?

(1) The Commander, United States Transportation Command; and

(2) The Secretary of the Navy.

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(b) Procedures. (1) Follow the procedures at PGI 247.573(b)(1) when purchase of ocean transportation services is incidental to a contract for supplies, services, or construction.

(2) Follow the procedures at PGI 247.573(b)(2) when direct purchase of ocean transportation services is the principal purpose of the contract.

(3) See PGI 247.573(b)(3) for agency and department procedures relating to annual reporting requirements of waivers granted for nonavailability of U.S.-flag vessels.

(4) Follow the procedures at PGI 247.573(b)(4) to accomplish security background checks pursuant to clause 252.247-7027, Riding Gang Member Requirements.

(5)(i) In accordance with 10 U.S.C. 2631(d), exercise contractual rights and remedies against contractors who fail to comply. Such remedies may include the determination that a contractor is ineligible for award of future contracts, termination of an existing contract, or suspension or debarment of the contractor. See part 242 regarding assessments of the contractor's past performance.

(ii) Consider an equitable adjustment in the event of a contractor's unauthorized use of foreign-flag vessels in the performance of a contract.

247.574 Solicitation provisions and contract clauses.

(a) Insert the basic or one of the alternates of the clause at 252.247-7023, Transportation of Supplies by Sea, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, except those for direct purchase of ocean transportation services.

(1) Insert the basic clause unless any of the supplies to be transported are commercial products and commercial services that are?

(i) Shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations when the contract is not a construction contract; or

(ii) Commissary or exchange cargoes transported outside of the Defense Transportation System when the contract is not a construction contract.

(2) Insert the alternate I clause if any of the supplies to be transported are commercial products and commercial services that are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations when the contract is not a construction contract.

(3) Insert the alternate II clause if any of the supplies to be transported are commercial products and commercial services that are commissary or exchange cargoes transported outside of the Defense Transportation System (10 U.S.C. 2643), when the contract is not a construction contract.

(b) Insert the clause at 252.247-7025, Reflagging or Repair Work, in all time charter solicitations and contracts, including time charter solicitations and contracts using FAR **part 12 procedures for the acquisition of commercial products and commercial services,** for the use of a vessel for the transportation of supplies, unless a waiver applies (see **247.572(c)(2)).**

(c) Insert the provision at 252.247-7026, Evaluation Preference for Use of Domestic Shipyards?Applicable to Acquisition of Carriage by Vessel for DoD Cargo in the Coastwise or Noncontiguous Trade, in solicitations, including solicitations using FAR

part 12 procedures for the acquisition of commercial products and commercial services, that require a covered vessel for carriage of cargo for DoD.

(d) Insert the clause at 252.247-7027, Riding Gang Member Requirements, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, for the charter of, or contract for carriage of cargo by, a U.S.-flag vessel documented 46 U.S.C. chapter 121.

PART 252?SOLICITATION PROVISIONS AND CONTRACT CLAUSES

SUBPART 252.2?TEXT OF PROVISIONS AND CLAUSES

252.247-7000 Hardship conditions.

As prescribed in 247.270-4(a), use the following clause:

HARDSHIP CONDITIONS (AUG 2000)

(a) If the Contractor finds unusual ship, dock, or cargo conditions associated with loading or unloading a particular cargo, that will work a hardship on the Contractor if loaded or unloaded at the basic commodity rates, the Contractor shall?

(1) Notify the Contracting Officer before performing the work, if feasible, but no later than the vessel sailing time; and

(2) Submit any associated request for price adjustment to the Contracting Officer within 10 working days of the vessel sailing time.

(b) Unusual conditions include, but are not limited to, inaccessibility of place of stowage to the ship's cargo gear, side port operations, and small quantities of cargo in any one hatch.

(c) The Contracting Officer will investigate the conditions promptly after receiving the notice. If the Contracting Officer finds that the conditions are unusual and do materially affect the cost of loading or unloading, the Contracting Officer will authorize payment at the applicable man-hour rates set forth in the schedule of rates of this contract.

(End of clause)

252.247-7001 [Reserved]

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252.247-7002 Revision of prices.

As prescribed in 247.270-4(b), use the following clause:

REVISION OF PRICES (DEC 1991)

(a) Definition. Wage adjustment, as used in this clause, means a change in the wages, salaries, or other terms or conditions of employment which?

(1) Substantially affects the cost of performing this contract;

(2) Is generally applicable to the port where work under this contract is performed; and

(3) Applies to operations by the Contractor on non-Government work as well as to work under this contract.

(b) General. The prices fixed in this contract are based on wages and working conditions established by collective bargaining agreements, and on other conditions in effect on the date of this contract. The Contracting Officer and the Contractor may agree to increase or decrease such prices in accordance with this clause.

(c) Demand for negotiation. (1) At any time, subject to the limitations specified in this clause, either the Contracting Officer or the Contractor may deliver to the other a written demand that the parties negotiate to revise the prices under this contract.

(2) No such demand shall be made before 90 days after the date of this contract, and thereafter neither party shall make a demand having an effective date within 90 days of the effective date of any prior demand. However, this limitation does not apply to a wage adjustment during the 90 day period.

(3) Each demand shall specify a date (the same as or subsequent to the date of the delivery of the demand) as to when the revised prices shall be effective. This date is the effective date of the price revision.

(i) If the Contractor makes a demand under this clause, the demand shall briefly state the basis of the demand and include the statements and data referred to in paragraph (d) of this clause.

(ii) If the demand is made by the Contracting Officer, the Contractor shall furnish the statements and data within 30 days of the delivery of the demand.

(d) Submission of data. At the times specified in paragraphs (c)(3)(i) and (ii) of this clause, the Contractor shall submit?

(1) A new estimate and breakdown of the unit cost and the proposed prices for the services the Contractor will perform under this contract after the effective date of the price revision, itemized to be consistent with the original negotiations of the contract;

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(2) An explanation of the difference between the original (or last preceding) estimate and the new estimate;

(3) Such relevant operating data, cost records, overhead absorption reports, and accounting statements as may be of assistance in determining the accuracy and reliability of the new estimate;

(4) A statement of the actual costs of performance under this contract to the extent that they are available at the time of the negotiation of the revision of prices under this clause; and

(5) Any other relevant data usually furnished in the case of negotiations of prices under a new contract. The Government may examine and audit the Contractor's accounts, records, and books as the Contracting Officer considers necessary.

(e) Negotiations. (1) Upon the filing of the statements and data required by paragraph (d) of this clause, the Contractor and the Contracting Officer shall negotiate promptly in good faith to agree upon prices for services the Contractor will perform on and after the effective date of the price revision.

(2) If the prices in this contract were established by competitive negotiation, they shall not be revised upward unless justified by changes in conditions occurring after the contract was awarded.

(3) The agreement reached after each negotiation will be incorporated into the contract by supplemental agreement.

(f) Disagreements. If, within 30 days after the date on which statements and data are required pursuant to paragraph (c) of this clause, the Contracting Officer and the Contractor fail to agree to revised prices, the failure to agree shall be resolved in accordance with the Disputes clause of this contract. The prices fixed by the Contracting Officer will remain in effect for the balance of the contract, and the Contractor shall continue performance.

(g) Retroactive changes in wages or working conditions. (1) In the event of a retroactive wage adjustment, the Contractor or the Contracting Officer may request an equitable adjustment in the prices in this contract.

(2) The Contractor shall request a price adjustment within 30 days of any retroactive wage adjustment. The Contractor shall support its request with?

(i) An estimate of the changes in cost resulting from the retroactive wage adjustment;

(ii) Complete information upon which the estimate is based; and

(iii) A certified copy of the collective bargaining agreement, arbitration award, or other document evidencing the retroactive wage adjustment.

(3) Subject to the limitation in paragraph (g)(2) of this clause as to the time of making a request, completion or termination of this contract shall not affect the Contractor's right under paragraph (g) of this clause.

(4) In case of disagreement concerning any question of fact, including whether any adjustment should be made, or the amount of such adjustment, the disagreement will be resolved in accordance with the Disputes clause of this contract.

(5) The Contractor shall notify the Contracting Officer in writing of any request by or on behalf of the employees of the Contractor which may result in a retroactive wage adjustment. The notice shall be given within 20 days after the request, or if the request occurs before contract execution, at the time of execution.

(End of clause)

252.247-7003 Pass-Through of Motor Carrier Fuel Surcharge Adjustment To The Cost Bearer.

As prescribed in 247.207, use the following clause:

PASS-THROUGH OF MOTOR CARRIER FUEL SURCHARGE ADJUSTMENT TO THE COST BEARER (JAN 2023)

(a) This clause implements section 884 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417).

(b) Unless an exception is authorized by the Contracting Officer, the Contractor shall pass through any motor carrier fuel-related surcharge adjustments to the person, corporation, or entity that directly bears the cost of fuel for shipment(s) transported under this contract.

(c) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts, including subcontracts for commercial products or commercial services, with motor carriers, brokers, or freight forwarders.

(End of clause)

252.247-7004--252.247-7006 [Reserved]

252.247-7007 Liability and insurance.

As prescribed in 247.270-4(c), use the following clause:

LIABILITY AND INSURANCE (DEC 1991)

(a) The Contractor shall be?

(1) Liable to the Government for loss or damage to property, real and personal, owned by the Government or for which the Government is liable;

(2) Responsible for, and hold the Government harmless from, loss of or damage to property not included in paragraph (a)(1); and

(3) Responsible for, and hold the Government harmless from, bodily injury and death of persons, resulting either in whole or in part from the negligence or fault of the Contractor, its officers, agents, or employees in the performance of work under this contract.

(b) For the purpose of this clause, all cargo loaded or unloaded under this contract is agreed to be property owned by the Government or property for which the Government is liable.

(1) The amount of the loss or damage as determined by the Contracting Officer will be withheld from payments otherwise due the Contractor.

(2) Determination of liability and responsibility by the Contracting Officer will constitute questions of fact within the meaning of the Disputes clause of this contract.

(c) The general liability and responsibility of the Contractor under this clause are subject only to the following specific limitations. The Contractor is not responsible to the Government for, and does not agree to hold the Government harmless from, loss or damage to property or bodily injury to or death of persons if?

(1) The unseaworthiness of the vessel, or failure or defect of the gear or equipment furnished by the Government, contributed jointly with the fault or negligence of the Contractor in causing such damage, injury, or death; and

(i) The Contractor, his officers, agents, and employees, by the exercise of due diligence, could not have discovered such unseaworthiness or defect of gear or equipment; or

(ii) Through the exercise of due diligence could not otherwise have avoided

such damage, injury, or death.

(2) The damage, injury, or death resulted solely from an act or omission of the Government or its employees, or resulted solely from proper compliance by officers, agents, or employees of the Contractor with specific directions of the Contracting Officer.

(d) The Contractor shall at its own expense acquire and maintain insurance during the term of this contract, as follows?

(1) Standard workmen's compensation and employer's liability insurance and longshoremen's and harbor workers' compensation insurance, or such of these as may be proper under applicable state or Federal statutes.

(i) The Contractor may, with the prior approval of the Contracting Officer, be a self-insurer against the risk of this paragraph (d)(1).

(ii) This approval will be given upon receipt of satisfactory evidence that the Contractor has qualified as a self-insurer under applicable provision of law.

(2) Bodily injury liability insurance in an amount of not less than $300,000 on account of any one occurrence.

(3) Property damage liability insurance (which shall include any and all property, whether or not in the care, custody, or control of the Contractor) in an amount of not less than $300,000 for any one occurrence.

(e) Each policy shall provide, by appropriate endorsement or otherwise, that cancellation or material change in the policy shall not be effective until after a 30 day written notice is furnished the Contracting Officer.

(f) The Contractor shall furnish the Contracting Officer with satisfactory evidence of the insurance required in paragraph (d) before performance of any work under this contract.

(g) The Contractor shall, at its own cost and expense, defend any suits, demands, claims, or actions, in which the United States might be named as a co-defendant of the Contractor, resulting from the Contractor's performance of work under this contract. This requirement is without regard to whether such suit, demand, claim, or action was the result of the Contractor's negligence. The Government shall have the right to appear in such suit, participate in defense, and take such actions as may be necessary to protect the interest of the United States.

(h) It is expressly agreed that the provisions in paragraphs (d) through (g) of this clause shall not in any manner limit the liability or extend the liability of the Contractor as provided in paragraphs (a) through (c) of this clause.

(i) The Contractor shall?

(1) Equitably reimburse the Government if the Contractor is indemnified, reimbursed, or relieved of any loss or damage to Government property;

(2) Do nothing to prevent the Government's right to recover against third parties for any such loss or damage; and

(3) Furnish the Government, upon the request of the Contracting Officer, at the Government's expense, all reasonable assistance and cooperation in obtaining recovery, including the prosecution of suit and the execution of instruments of assignment in favor of the Government.

(End of clause)

252.247-7008--252.247-7013 [Reserved]

252.247-7014 Demurrage.

As prescribed in 247.271-3(c), use the following clause:

DEMURRAGE (DEC 1991)

The Contractor shall be liable for all demurrage, detention, or other charges as a result of its failure to load or unload trucks, freight cars, freight terminals, vessel piers, or warehouses within the free time allowed under applicable rules and tariffs.

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(End of clause)

252.247-7015 [Reserved]

252.247-7016 Contractor liability for loss or damage.

As prescribed in 247.271-3(d), use the following clause:

CONTRACTOR LIABILITY FOR LOSS OR DAMAGE (DEC 1991)

(a) Definitions. As used in this clause?

Article means any shipping piece or package and its contents.

Schedule means the level of service for which specific types of traffic apply as described in DoD 4500.34-R, Personal Property Traffic Management Regulation.

(b) For shipments picked up under Schedule I, Outbound Services, or delivered under Schedule II, Inbound Services?

(1) If notified within one year after delivery that the owner has discovered loss or damage to the owner's property, the Contractor agrees to indemnify the Government for loss or damage to the property which arises from any cause while it is in the Contractor's possession. The Contractor's liability is?

(i) Non-negligent damage. For any cause, other than the Contractor's negligence, indemnification shall be at a rate not to exceed sixty cents per pound per article.

(ii) Negligent damage. When loss or damage is caused by the negligence of the Contractor, the liability is for the full cost of satisfactory repair or for the current replacement value of the article.

(2) The Contractor shall make prompt payment to the owner of the property for any loss or damage for which the Contractor is liable.

(3) In the absence of evidence or supporting documentation which places liability on a carrier or another contractor, the destination contractor shall be presumed to be liable for the loss or damage, if timely notified.

(c) For shipments picked up or delivered under Schedule III, Intra-City and Intra-

Area?

(1) If notified of loss or damage within 75 days following delivery, the Contractor agrees to indemnify the Government for loss or damage to the owner's property.

(2) The Contractor's liability shall be for the full cost of satisfactory repair, or for the current replacement value of the article less depreciation, up to a maximum liability of $1.25 per pound times the net weight of the shipment.

(3) The Contractor has full salvage rights to damaged items which are not repairable and for which the Government has received compensation at replacement value.

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(End of clause)

252.247-7017--252.247-7021 [Reserved]

252.247-7022 [Reserved]

252.247-7023 Transportation of Supplies by Sea.

As prescribed in 247.574(a) and (a)(1), use the following basic clause:

TRANSPORTATION OF SUPPLIES BY SEA?BASIC (OCT 2024)

(a) Definitions. As used in this clause?

Foreign-flag vessel means any vessel that is not a U.S.-flag vessel.

Ocean transportation means any water-borne transportation aboard a ship, vessel, boat, barge, ferry, or the like outside the internal waters of the United States as defined in 33 **CFR 2.24.**

Subcontractor means a supplier, materialman, distributor, or vendor at any level below the prime contractor whose contractual obligation to perform results from, or is conditioned upon, award of the prime contract and who is performing any part of the work or other requirement of the prime contract.

Supplies means supplies that are clearly identifiable for eventual use by or owned by DoD at the time of transportation by sea, or are otherwise transported by DoD, regardless of ownership or use by DoD. An item is clearly identifiable for eventual use by DoD if, for example, the contract documentation contains a reference to a DoD contract number or a military destination.

U.S.-flag vessel means either a vessel belonging to the United States or a vessel of the United States as that term is defined in 46 U.S.C. 116.

(b) If the transportation of supplies by sea is anticipated under this contract, the Contractor shall?

(1) Notify the Contracting Officer and Maritime Administration (MARAD) at Cargo.Marad@dot.gov?

(i) Within 3 business days after contract award; or

(ii) Immediately prior to the shipment departure date necessary to meet delivery schedules, whichever is earlier; and

(2) Include in the notification?

(i) A statement of the Contractor's intent to transport supplies by sea;

(ii) The contract number; and

(iii) The task-order or delivery-order number, when applicable.

(c)(1) The Contractor shall use U.S.-flag vessels when transporting any supplies by sea under this contract.

(2) A subcontractor transporting supplies by sea under this contract shall use U.S.-flag vessels if?

(i) This contract is a construction contract; or

(ii) The supplies being transported are?

(A) Other than commercial products or

(B) Commercial products that?

(1) The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it contracts for f.o.b. destination shipment);

(2) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or

(3) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643.

(d) The Contractor and its subcontractors may request, via the Contracting Officer, a waiver of the requirement to use a U.S.-flag vessel, or identification of any available U.S.-flag vessels, if the Contractor or a subcontractor sufficiently explains that?

(1) U.S.-flag vessels are not available at a fair and reasonable rate for commercial vessels of the United States; or

(2) U.S.-flag vessels are otherwise not available.

(e) The Contractor must submit any request for use of foreign-flag vessels in writing to the Contracting Officer at least 45 days prior to the sailing date necessary to meet its delivery schedules. The Contracting Officer will process requests submitted after such date(s) as expeditiously as possible, however, if a DoD waiver is not approved prior to the shipper's sailing date, this will not of itself constitute a compensable delay under this or any other clause of this contract. Requests shall contain at a minimum?

(1) Type, weight, and cube of cargo;

(2) Required shipping date(s) and required delivery date(s);

(3) Special handling and discharge requirements;

(4) Loading and discharge points;

(5) Name of shipper and consignee;

(6) Prime contract number; and

(7) A documented description of current, diligent efforts made to secure U.S.-flag vessels, including points of contact (with names and telephone numbers) with at least two U.S.-flag carriers contacted. Copies of quotes will suffice for this purpose. Copies of telephone notes, emails, and other relevant communications will otherwise be considered for this purpose.

(f) The Contractor shall, within 30 days after each shipment covered by this clause, provide the Contracting Officer and MARAD at Cargo.Marad@dot.gov, Attention: Military Team, one copy of the rated on board vessel operating carrier's ocean bill of lading, which shall contain the following information:

(1) Prime contract number;

(2) Name of vessel;

(3) Vessel flag of registry;

(4) Date of loading;

(5) Port of loading;

(6) Port of final discharge;

(7) Description of commodity;

(8) Gross weight in pounds and cubic feet if available;

(9) Total ocean freight in U.S. dollars; and

(10) Name of the carrier.

(g) If this contract exceeds the simplified acquisition threshold, the Contractor shall provide with its final invoice under this contract a representation that to the best of its knowledge and belief?

(1) No ocean transportation was used in the performance of this contract;

(2) Ocean transportation was used and only U.S.-flag vessels were used for all ocean shipments under the contract;

(3) Ocean transportation was used, and the Contractor had received a prior-approved waiver for U.S.-flag vessels for all foreign-flag ocean transportation; or

(4) Ocean transportation was used and some or all of the shipments were made on foreign-flag vessels without the written consent of DoD. The Contractor shall describe these shipments in the following format:

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Item Description

Contract Line Items

Quantity

Total

(h) If this contract exceeds the simplified acquisition threshold and the final invoice does not include the required representation, the Government will reject and return it to the Contractor as an improper invoice for the purposes of the Prompt Payment clause of this contract. In the event there has been unauthorized use of foreign-flag vessels in the performance of this contract, the Contracting Officer is entitled to equitably adjust the contract, based on the unauthorized use.

(i) If the Contractor did not anticipate transporting any supplies by sea at the time of contract award and, therefore, did not provide the notification required by paragraph

(b) of this clause, but prior to shipment of supplies, the Contractor learns that supplies will be transported by sea, the Contractor shall?

(1) Provide the notification required by paragraph (b) of this clause to the Contracting Officer and MARAD as soon as it is known that supplies will be transported by sea; and

(2) Comply with all the terms and conditions of this clause.

(j) Subcontracts. In the award of subcontracts for the types of supplies described in paragraph (c)(2) of this clause, including subcontracts for commercial products, the Contractor shall flow down the requirements of this clause as follows:

(1) The Contractor shall insert the substance of this clause, including this paragraph (j), in subcontracts that exceed the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation.

(2) The Contractor shall insert the substance of paragraphs (a) through (f) of this clause, and this paragraph (j), in subcontracts that are at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation.

(End of clause)

Alternate I. As prescribed in 247.574(a) and (a)(2), use the following clause, which uses a different paragraph (c) than the basic clause:

TRANSPORTATION OF SUPPLIES BY SEA?ALTERNATE I (OCT 2024)

(a) Definitions. As used in this clause?

Foreign-flag vessel means any vessel that is not a U.S.-flag vessel.

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Ocean transportation means any water-borne transportation aboard a ship, vessel, boat, barge, ferry, or the like outside the internal waters of the United States as defined in 33 **CFR 2.24.**

Subcontractor means a supplier, materialman, distributor, or vendor at any level below the prime contractor whose contractual obligation to perform results from, or is conditioned upon, award of the prime contract and who is performing any part of the work or other requirement of the prime contract.

Supplies means supplies that are clearly identifiable for eventual use by or owned by DoD at the time of transportation by sea, or are otherwise transported by DoD, regardless of ownership or use by DoD. An item is clearly identifiable for eventual use by DoD if, for example, the contract documentation contains a reference to a DoD contract number or a military destination.

U.S.-flag vessel means either a vessel belonging to the United States or a vessel of the United States as that term is defined in 46 U.S.C. 116.

(b) If the transportation of supplies by sea is anticipated under this contract, the Contractor shall?

(1) Notify the Contracting Officer and Maritime Administration (MARAD) at Cargo.Marad@dot.gov?

(i) Within 3 business days after contract award; or

(ii) Immediately prior to the shipment departure date necessary to meet delivery schedules, whichever is earlier; and

(2) Include in the notification?

(i) A statement of the Contractor's intent to transport supplies by sea;

(ii) The contract number; and

(iii) The task-order or delivery-order number, when applicable.

(c)(1) The Contractor shall use U.S.-flag vessels when transporting any supplies by sea under this contract.

(2) A subcontractor transporting supplies by sea under this contract shall use U.S.-flag vessels if the supplies being transported are?

(i) Other than commercial products; or

(ii) Commercial products that?

(A) The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it subcontracts for f.o.b. destination shipment);

(B) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations

(Note: This contract requires shipment of commercial products in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations); or

(C) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643.

(d) The Contractor and its subcontractors may request, via the Contracting Officer, a waiver of the requirement to use a U.S.-flag vessel, or identification of any available U.S.-flag vessels, if the Contractor or a subcontractor sufficiently explains that?

(1) U.S.-flag vessels are not available at a fair and reasonable rate for commercial vessels of the United States; or

(2) U.S.-flag vessels are otherwise not available.

(e) The Contractor must submit any request for use of foreign-flag vessels in writing to the Contracting Officer at least 45 days prior to the sailing date necessary to meet its delivery schedules. The Contracting Officer will process requests submitted after such date(s) as expeditiously as possible, however, if a DoD waiver is not approved prior to the shipper's sailing date, this will not of itself constitute a compensable delay under this or any other clause of this contract. Requests shall contain at a minimum?

(1) Type, weight, and cube of cargo;

(2) Required shipping date(s) and required delivery date(s);

(3) Special handling and discharge requirements;

(4) Loading and discharge points;

(5) Name of shipper and consignee;

(6) Prime contract number; and

(7) A documented description of current, diligent efforts made to secure U.S.-flag vessels, including points of contact (with names and telephone numbers) with at least two U.S.-flag carriers contacted. Copies of quotes will suffice for this purpose. Copies of telephone notes, emails, and other relevant communications will otherwise be considered for this purpose.

(f) The Contractor shall, within 30 days after each shipment covered by this clause, provide the Contracting Officer and MARAD at Cargo.Marad@dot.gov, Attention: Military Team, one copy of the rated on board vessel operating carrier's ocean bill of lading, which shall contain the following information:

(1) Prime contract number;

(2) Name of vessel;

(3) Vessel flag of registry;

(4) Date of loading;

(5) Port of loading;

(6) Port of final discharge;

(7) Description of commodity;

(8) Gross weight in pounds and cubic feet if available;

(9) Total ocean freight in U.S. dollars; and

(10) Name of the carrier.

(g) If this contract exceeds the simplified acquisition threshold, the Contractor shall provide with its final invoice under this contract a representation that to the best of its knowledge and belief?

(1) No ocean transportation was used in the performance of this contract;

(2) Ocean transportation was used and only U.S.-flag vessels were used for all ocean shipments under the contract;

(3) Ocean transportation was used, and the Contractor had had received a prior-approved waiver for U.S.-flag vessels for all foreign-flag ocean transportation; or

(4) Ocean transportation was used and some or all of the shipments were made on foreign-flag vessels without the written consent of the DoD. The Contractor shall describe these shipments in the following format:

Item description
Contract line items
Quantity
TOTAL

(h) If this contract exceeds the simplified acquisition threshold and the final invoice does not include the required representation, the Government will reject and return it to the Contractor as an improper invoice for the purposes of the Prompt Payment clause

of this contract. In the event there has been unauthorized use of foreign-flag vessels in the performance of this contract, the Contracting Officer is entitled to equitably adjust the contract, based on the unauthorized use.

(i) If the Contractor did not anticipate transporting any supplies by sea at the time of contract award and, therefore, did not provide the notification required by paragraph

(b) of this clause, but prior to shipment of supplies, the Contractor learns that supplies will be transported by sea, the Contractor shall?

(1) Provide the notification required by paragraph (b) of this clause to the Contracting Officer and MARAD as soon as it is known that supplies will be transported by sea; and

(2) Comply with all the terms and conditions of this clause.

(j) Subcontracts. In the award of subcontracts for the types of supplies described in paragraph (c)(2) of this clause, including subcontracts for commercial products, the Contractor shall flow down the requirements of this clause as follows:

(1) The Contractor shall insert the substance of this clause, including this paragraph (j), in subcontracts that exceed the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation.

(2) The Contractor shall insert the substance of paragraphs (a) through (f) of this clause, and this paragraph (j), in subcontracts that are at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation.

(End of clause)

Alternate II. As prescribed in 247.574(a) and (a)(3), use the following clause, which uses a different paragraph (c) than the basic clause:

TRANSPORTATION OF SUPPLIES BY SEA?ALTERNATE II (OCT 2024)

(a) Definitions. As used in this clause?

Foreign-flag vessel means any vessel that is not a U.S.-flag vessel.

Ocean transportation means any water-borne transportation aboard a ship, vessel, boat, barge, ferry, or the like outside the internal waters of the United States as defined in 33 **CFR 2.24.**

Subcontractor means a supplier, materialman, distributor, or vendor at any level below the prime contractor whose contractual obligation to perform results from, or is conditioned upon, award of the prime contract and who is performing any part of the work or other requirement of the prime contract.

Supplies means supplies that are clearly identifiable for eventual use by or owned by DoD at the time of transportation by sea, or are otherwise transported by DoD, regardless of ownership or use by DoD. An item is clearly identifiable for eventual use by DoD if, for example, the contract documentation contains a reference to a DoD contract number or a military destination.

U.S.-flag vessel means either a vessel belonging to the United States or a vessel of the

United States as that term is defined in 46 U.S.C. 116.

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(b) If the transportation of supplies by sea is anticipated under this contract, the Contractor shall?

(1) Notify the Contracting Officer and Maritime Administration (MARAD) at Cargo.Marad@dot.gov?

(i) Within 3 business days after contract award; or

(ii) Immediately prior to the shipment departure date necessary to meet delivery schedules, whichever is earlier; and

(2) Include in the notification?

(i) A statement of the Contractor's intent to transport supplies by sea;

(ii) The contract number; and

(iii) The task-order or delivery-order number, when applicable.

(c)(1) The Contractor shall use U.S.-flag vessels when transporting any supplies by sea under this contract.

(2) A subcontractor transporting supplies by sea under this contract shall use U.S.-flag vessels if the supplies being transported are?

(i) Other than commercial products; or

(ii) Commercial products that?

(A) The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it subcontracts for f.o.b. destination shipment);

(B) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or

(C) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643 (Note: This contract requires transportation of commissary or exchange cargoes outside of the Defense Transportation System in accordance with 10 U.S.C. 2643).

(d) The Contractor and its subcontractors may request, via the Contracting Officer, a waiver of the requirement to use a U.S.-flag vessel, or identification of any available U.S.-flag vessels, if the Contractor or a subcontractor sufficiently explains that?

(1) U.S.-flag vessels are not available at a fair and reasonable rate for commercial vessels of the United States; or

(2) U.S.-flag vessels are otherwise not available.

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(e) The Contractor must submit any request for use of foreign-flag vessels in writing to the Contracting Officer at least 45 days prior to the sailing date necessary to meet its

delivery schedules. The Contracting Officer will process requests submitted after such date(s) as expeditiously as possible, however, if a DoD waiver is not approved prior to the shipper's sailing date, this will not of itself constitute a compensable delay under this or any other clause of this contract.

(2) Required shipping date(s) and required delivery date(s);

(3) Special handling and discharge requirements;

(4) Loading and discharge points;

(5) Name of shipper and consignee;

(6) Prime contract number; and

(7) A documented description of current, diligent efforts made to secure U.S.-flag vessels, including points of contact (with names and telephone numbers) with at least two U.S.-flag carriers contacted. Copies of quotes will suffice for this purpose. Copies of telephone notes, emails, and other relevant communications will otherwise be considered for this purpose.

(f) The Contractor shall, within 30 days after each shipment covered by this clause, provide the Contracting Officer and MARAD at Cargo.Marad@dot.gov, Attention: Military Team, one copy of the rated on board vessel operating carrier's ocean bill of lading, which shall contain the following information:

(1) Prime contract number;

(2) Name of vessel;

(3) Vessel flag of registry;

(4) Date of loading;

(5) Port of loading;

(6) Port of final discharge;

(7) Description of commodity;

(8) Gross weight in pounds and cubic feet if available;

(9) Total ocean freight in U.S. dollars; and

(10) Name of steamship company.

(g) If this contract exceeds the simplified acquisition threshold, the Contractor shall provide with its final invoice under this contract a representation that to the best of its knowledge and belief?

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(1) No ocean transportation was used in the performance of this contract;

(2) Ocean transportation was used and only U.S.-flag vessels were used for all ocean shipments under the contract;

(3) Ocean transportation was used, and the Contractor had the written consent of the Contracting Officer for all foreign-flag ocean transportation; or

(4) Ocean transportation was used and some or all of the shipments were made on foreign-flag vessels without the written consent of the Contracting Officer. The Contractor shall describe these shipments in the following format:

Item description

Contract line items
Quantity
TOTAL

(h) If this contract exceeds the simplified acquisition threshold and the final invoice does not include the required representation, the Government will reject and return it to the Contractor as an improper invoice for the purposes of the Prompt Payment clause of this contract. In the event there has been unauthorized use of foreign-flag vessels in the performance of this contract, the Contracting Officer is entitled to equitably adjust the contract, based on the unauthorized use.

(i) If the Contractor did not anticipate transporting any supplies by sea at the time of contract award, and, therefore, did not provide the notification required by paragraph

(b) of this clause, but prior to shipment of the supplies, the Contractor learns after the award of the contract that supplies will be transported by sea, the Contractor shall?

(1) Provide the notification required by paragraph (b) of this clause to the Contracting Officer and MARAD as soon as it is known that supplies will be transported by sea; and

(2) Comply with all the terms and conditions of this clause.

(j) Subcontracts. In the award of subcontracts for the types of supplies described in paragraph (c)(2) of this clause, including subcontracts for commercial products, the Contractor shall flow down the requirements of this clause as follows:

(1) The Contractor shall insert the substance of this clause, including this paragraph (j), in subcontracts that exceed the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation.

(2) The Contractor shall insert the substance of paragraphs (a) through (f) of this clause, and this paragraph (j), in subcontracts that are at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation.

(End of clause)

252.247-7024 [Reserved]

252.247-7025 Reflagging or Repair Work.

As prescribed in 247.574(b), use the following clause:

REFLAGGING OR REPAIR WORK (OCT 2024)

(a) Definitions. As used in this clause?

Corrective and preventive maintenance or repair means?

(1) Maintenance or repair actions performed as a result of a failure in order to return or restore equipment to acceptable performance levels; and

(2) Scheduled maintenance or repair actions to prevent or discover functional failures.

Reflagging or repair work means work performed on a vessel?

(1) To enable the vessel to meet applicable standards to become a vessel of the

United States; or

(2) To convert the vessel to a more useful military configuration.

(b) Requirement. Unless DoD waives this requirement, the Contractor shall ensure performance of the following in the United States or its outlying areas:

(1) Reflagging or repair work, if the reflagging or repair work is performed?

(i) On a vessel for which the Contractor submitted an offer in response to the solicitation for this contract; and

(ii) Prior to acceptance of the vessel by the Government.

(2) Corrective and preventive maintenance or repair work for the duration of the contract, to the greatest extent practicable.

(End of clause)

252.247-7026 Evaluation Preference for Use of Domestic Shipyards?

Applicable to Acquisition of Carriage by Vessel for DoD Cargo in the Coastwise or Noncontiguous Trade.

As prescribed in 247.574(c), use the following provision:

EVALUATION PREFERENCE FOR USE OF DOMESTIC SHIPYARDS?

APPLICABLE TO ACQUISITION OF CARRIAGE BY VESSEL FOR DOD CARGO IN THE COASTWISE OR NONCONTIGUOUS TRADE (OCT 2024)

(a) Definitions. As used in this provision?

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Covered vessel means a vessel?

(1) Owned, operated, or controlled by the offeror; and

(2) Qualified to engage in the carriage of cargo in the coastwise or noncontiguous trade under 46 U.S.C. 12112 and 50501 and 46 U.S.C. chapter 551.

Foreign shipyard means a shipyard that is not a U.S. shipyard.

Overhaul, repair, and maintenance work means work requiring a shipyard period greater than or equal to 5 calendar days.

U.S. shipyard means a shipyard that is located in any State of the United States or in Guam.

(b) This solicitation includes an evaluation criterion that considers the extent to which the Offeror has had overhaul, repair, and maintenance work for covered vessels performed in U.S. shipyards.

(c) The Offeror shall provide the following information with its offer, addressing all covered vessels for which overhaul, repair, and maintenance work has been performed during the period covering the current calendar year, up to the date of proposal submission, and the preceding four calendar years:

(1) Name of vessel.

(2) Description and cost of qualifying shipyard work performed in U.S. shipyards.

(3) Description and cost of qualifying shipyard work performed in foreign

shipyards and whether?

(i) Such work was performed as emergency repairs in foreign shipyards due to accident, emergency, Act of God, or an infirmity to the vessel, and safety considerations warranted taking the vessel to a foreign shipyard; or

(ii) Such work was paid for or reimbursed by the U.S. Government.

(4) Names of shipyards that performed the work.

(5) Inclusive dates of work performed.

(d) Offerors are responsible for submitting accurate information. The Contracting Officer?

(1) Will use the information to evaluate offers in accordance with the criteria specified in the solicitation; and

(2) Reserves the right to request supporting documentation if determined necessary in the proposal evaluation process.

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(e) The Department of Defense will provide the information submitted in response to this provision to the congressional defense committees, as required by section 1017 of Public Law 109-364 (10 U.S.C. 2631 note).

(End of provision)

252.247-7027 Riding Gang Member Requirements.

As prescribed in 247.574(d), use the following clause:

RIDING GANG MEMBER REQUIREMENTS (MAY 2018)

(a) Definition. Riding gang member, as used in this clause, has the same definition as ?riding gang member? in title 46 U.S.C. 2101.

(b) Requirements relating to riding gang members. Notwithstanding 46 U.S.C. 8106, the Contractor shall ensure each riding gang member holds a valid U.S. Merchant Mariner's Document issued under 46 U.S.C. chapter 73, or a transportation security card issued under section 70105 of such title.

(c) Exemption. (1) An individual is exempt from the requirements of paragraph (b) of this clause and shall not be treated as a riding gang member for the purposes of section 8106 of title 46, if that individual is on a vessel for purposes other than engaging in the operation or maintenance of the vessel and is?

(i) One of the personnel who accompanies, supervises, guards, or maintains unit equipment aboard a ship, commonly referred to as supercargo personnel;

(ii) One of the force protection personnel of the vessel;

(iii) A specialized repair technician; or

(iv) An individual who is otherwise required by the Secretary of Defense or designee to be aboard the vessel.

(2) Any individual who is exempt under paragraph (c)(1) of this clause must pass a DoD background check before going aboard the vessel.

(i) The Contractor shall?

(A) Render all necessary assistance to U.S. Armed Forces personnel with respect to the identification and screening of exempted individuals. This will require, at a minimum, the Contractor to submit the name and other biographical information necessary to the Government official specified in the contract for the purposes of conducting a background check; and

(B) Deny access or immediately remove any individual(s) from the vessel deemed unsuitable for any reason by the Government agency conducting the background checks. The Contractor agrees to replace any such individual promptly and require such replacements to fully comply with all screening requirements.

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(ii) The head of the contracting activity may waive this requirement if the individual possesses a valid U.S. Merchant Mariner's Document issued under 46 U.S.C. chapter 73, or a transportation security card issued under section 70105 of such title.

(3) An individual exempted under paragraph (c)(1) of this clause is not treated as a riding gang member and shall not be counted as an individual in addition to the crew for the purposes of 46 U.S.C. 3304.

(End of clause)

252.247-7028 Application for U.S. Government Shipping

Documentation/Instructions.

As prescribed in 247.207, use the following clause:

APPLICATION FOR U.S. GOVERNMENT SHIPPING

DOCUMENTATION/INSTRUCTIONS (JUN 2012)

(a) Except as provided in paragraph (b) of this clause, the Contractor shall request bills of lading by submitting a DD Form 1659, Application for U.S. Government Shipping Documentation/Instructions, to the?

(1) Transportation Officer, if named in the contract schedule; or

(2) Contract administration office.

(b) If an automated system is available for shipment requests, use service/agency systems (e.g., Navy's Global Freight Management-Electronic Transportation Acquisition (GFM-ETA) and Financial Air Clearance Transportation System (FACTS) Shipment Processing Module, Air Force's Cargo Movement Operations System, DCMA's Shipment Instruction Request (SIR) E-tool, and DLA's Distribution Standard System Vendor Shipment Module in lieu of DD Form 1659.

(End of clause)

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PGI PART 247?TRANSPORTATION

PGI 247.2?CONTRACTS FOR TRANSPORTATION OR FOR TRANSPORTATION-RELATED SERVICES

PGI 247.200 Scope of subpart.

For general cargo provisions, see DTR 4500.9-R, Defense Transportation Regulation (DTR), Part II, Chapter 201, paragraphs L, M, N, and S (available at https://www.ustranscom.mil/dtr/part-ii/dtr_part_ii_201.pdf).

PGI 247.270-2 Technical provisions.

(a) Because conditions vary at different ports, and sometimes within the same port, developing standard technical provisions covering all phases of stevedoring operations might be impracticable.

(b) When including rail car, truck, or intermodal equipment loading and unloading, or other dock and terminal work under a stevedoring contract, include these requirements as separate items of work.

PGI 247.271-2 Procedures.

(a) Contiguous United States military activities assigned multi-service personal property areas of responsibility.

(1) When two or more military installations or activities have personal property responsibilities in a given area, one activity must contract for the estimated requirements of all activities in the area. The installation commanders concerned must designate the activity by mutual agreement.

(2) The Commander, United States Army Transportation Command (ARTRANS), must designate the contracting activity when local commanders are unable to reach agreement.

(b) Additional services and excess requirements.

(1) When requiring activities need additional services that exceed contractor capabilities available under contracts, contracting officers should use simplified acquisition procedures to satisfy those excess requirements.

(2) Additional services are those not specified in the bid items.

(i) Additional services may include?

(A) Hoisting or lowering of articles;

(B) Waiting time;

(C) Special packaging; and

(D) Stuffing or unstuffing of sea van containers.

(ii) Contracting officers should consider contracting for local moves that do not require drayage by using hourly rate or constructive weight methods. The rate will include those services necessary for completion of the movement, including?

(A) Packing and unpacking;

(B) Movement;

(C) Inventorying; and

(D) Removal of debris.

(iii) Each personal property shipping activity must determine if local requirements exist for any additional services.

(iv) The contracting officer may obtain additional services by?

(A) Including them as items within the contract, provided they are not used in the evaluation of bids (see DFARS 252.247-7008, Evaluation of Bids); or

(B) Using simplified acquisition procedures.

(v) Either predetermine prices for additional services with the contractor, or negotiate them on a case-by-case basis.

(vi) The contracting officer must authorize the contractor to perform any additional services, other than attempted pick up or delivery, regardless of the contracting method.

(vii) To the maximum extent possible, identify additional services required that are incidental to an order before placing the order, or, when applicable, during the pre-move survey.

(c) Contract distribution.

(1) Contiguous United States personal property shipping activities must send the copy to the Commander, United States Army Transportation Command (ARTRANS), ATTN: AMSSD-PP, 709 Ward Drive, Scott AFB IL 62225.

(2) In the European and Pacific areas, personal property shipping activities must send the copy to either the Property Directorate, ARTRANS Europe, or the Field Office-Pacific.

(3) Other overseas personal property shipping activities must send the copy to the Commander, Military Surface Deployment and Distribution Command, ATTN: AMSSD-PP, 709 Ward Drive, Scott AFB IL 62225.

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(d) When preparing solicitations for personal property for shipment or storage, and intra-area or intra-city movement, contracting officers should follow the procedures in DTR 4500.9-R, Part IV, Chapter 404 at https://www.ustranscom.mil/dtr/part-iv/dtr_part_iv_404.pdf, and Appendix G at https://www.ustranscom.mil/dtr/part-iv/dtr_part_iv_app_g.pdf.

PGI 247.271-3 Solicitation provisions, schedule formats, and contract clauses.

(c) DTR 4500.9-R, Defense Transportation Regulation, Part IV, Attachment A-G3

(available at https://www.ustranscom.mil/dtr/part-iv/dtr_part_iv_att_A-g3.pdf), contains guidance on schedules as follows:

Schedule I Outbound Services, Pages 6-12.

Schedule II Inbound Services, Pages 13-17.

Schedule III Intra-City and Intra-Area Moves, Page 18.

(1) Demurrage and detention charges.

(i) Carrier demurrage/detention is a charge made against a consignor (shipper) or consignee (receiver) for the extended use of carrier-furnished equipment when delays

attributable to the consignor or consignee occur. Carrier demurrage/detention rules usually allow a period of free time for loading, unloading, or holding equipment.

(ii) Carrier-published demurrage/detention rules and charges are not uniform from one carrier to another. Contracting officers should specifically address them in the contract. While demurrage/detention rules are published in individual carrier tariffs or agency tenders, Contracting Officers may negotiate contract-specific demurrage/detention rules and charges independent of any existing tariffs or tenders.

(6) Process any modification of schedule format, other than those authorized in paragraph (c) of this subsection, as a request for deviation to the Commander, ARTRANS.

PGI 247.3?TRANSPORTATION IN SUPPLY CONTRACTS

PGI 247.301 General.

Transportation guidance relating to Governmentwide commercial purchase card purchases is available in the Department of Defense Government Charge Card Guidebook for Establishing and Managing Purchase, Travel, and Fuel Card Programs, Appendix C, at https://www.acq.osd.mil/asda/dpc/ce/pc/docs-guides.html.

PGI 247.305 Solicitation provisions, contract clauses, and transportation factors.

PGI 247.305-10 Packing, marking, and consignment instructions.

Follow the procedures in DTR 4500.9-R, Defense Transportation Regulation, Part II, Chapter 208 https://www.ustranscom.mil/dtr/part-ii/dtr_part_ii_208.pdf. Additional guidance for marking can be found at MIL-STD-129P and AR 700-15. Consignment

locations can be found in the Transportation Facilities Guide (TFG) on the ARTRANS website at https://eta-teams.transport.mil. Access to this site requires an Electronic Transportation Account.

PGI 247.370 DD Form 1384, Transportation Control and Movement.

(a) The transportation office of the shipping activity prepares the DD Form 1384 to accompany all shipments made through a military air or water port, in accordance with DoD **4500.9-R, Defense Transportation Regulation, Part II, Chapter 203.**

(b) DTR 4500.9-R, Defense Transportation Regulation, Part II, Chapter 203 is available at https://www.ustranscom.mil/dtr/part-ii/dtr_part_ii_203.pdf.

PGI 247.371 DD Form 1653, Transportation Data for Solicitations.

The transportation specialist prepares the DD Form 1653 to accompany requirements for the acquisition of supplies. The completed form should contain recommendations for suitable f.o.b. terms and other suggested transportation provisions for inclusion in the solicitation.

247.372 DD Form 1654, Evaluation of Transportation Cost Factors.

Contracting personnel may use the DD Form 1654 to furnish information to the transportation office for development of cost factors for use by the contracting officer in the evaluation of f.o.b. origin offers.

PGI 247.5?OCEAN TRANSPORTATION BY U.S.-FLAG VESSELS

PGI 247.573 General.

(a) Delegated authority.

(1) The authority to make determinations that a U.S.-flag vessel is not available at a fair and reasonable rate for commercial vessels of the United States, or is otherwise not available, is delegated in the Secretary of Defense Memorandum dated August 25, 2021, to?

(i) The Commander, United States Transportation Command (USTRANSCOM); and

(ii) The Secretary of the Navy.

(2) In accordance with the Commander, USTRANSCOM, Memorandum dated March 1, 2023, the authority at paragraph (a)(1) of this section is further delegated as follows:

(i) The Director, Acquisition (TCAQ) is delegated the authority to make determinations that a U.S.-flag vessel is not available for liner or intermodal services at a fair and reasonable rate for commercial vessels of the United States.

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(ii) The Commander, United States Army Transportation Command (ARTRANS) is delegated the authority to make determinations that a U.S.-flag vessel is otherwise not available for liner or intermodal services.

(iii) The Commander, Military Sealift Command (MSC) is delegated the authority to make determinations that a U.S.-flag vessel is not available at a fair and reasonable rate for commercial vessels of the United States or is otherwise not available for charter contracts.

(3) In accordance with the Secretary of the Navy Memorandum dated March 3, 2022, the Commander, MSC is delegated the authority to make determinations that a U.S.-flag vessel is not available at a fair and reasonable rate for commercial vessels of the United States or is otherwise not available for charter contracts.

(4) Contracting officers are not delegated the authority at paragraph (a)(1) of this section and therefore are not authorized to waive the use of U.S.-flag vessels.

(b) Procedures.

(1) Follow these procedures when ocean transportation is not the principal purpose of the contract, and the cargo to be transported is owned by, destined for use by, or otherwise transported by DoD.

(i)(A) If the contractor notifies the contracting officer that the contractor considers that no U.S.-flag vessels are available, review that notification. If the contracting officer agrees with the contractor?s request, then request a nonavailability waiver, in determination and findings format, using details received from the contractor in accordance with paragraph (d) of the clause at DFARS 252.247-7023, from?

(1) The Commander, MSC, through the Contracts and Business Management Directorate, MSC (MSC_N103_FFW@us.navy.mil), for vessel charters; or

(2) The Commander, ARTRANS, by email at

usarmy.scott.sddc.mbx.g3 ffw-team@army.mil for ocean liner and intermodal transportation.

(B) Purs?uant to their delegations from the Secretary of the Navy or the Commander, USTRANSCOM, the Commander, MSC, or the Commander, ARTRANS, will make a determination to approve a waiver based on nonavailability of a U.S.-flag vessel. Upon receipt of an approved waiver, provide the contractor with written approval to use a non-U.S. flag carrier in accordance with that waiver. Variances from that approved waiver, including changing the foreign-flag vessel approved for use, may require a new request and approval from the cognizant waiver approval authority. Additionally, see contractors? bill of lading submission requirement at paragraph (e) of the clause at DFARS 252.247-7023.

(ii) If the contractor notifies the contracting officer that the contractor considers that U.S.-flag carriers are not available at a fair and reasonable rate for commercial vessels of the United States, and if the contracting officer agrees with the contractor?s assertion, then?

(A) Prepare a waiver request in determination and findings format, and?

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(1) Take into consideration that the Military Cargo Preference Act of 1904 is, in part, a subsidy of the U.S.-flag commercial shipping industry that recognizes that lower prices may be available from foreign-flag carriers. Therefore, a lower price for use of a foreign-flag vessel is not a sufficient basis, on its own, to determine that a U.S.-flag vessel is not available at a fair and reasonable rate for commercial vessels of the United States for the services sought. However, such a price differential may indicate a need for further review;

(2) Include a description of efforts taken pursuant to FAR 15.405 to negotiate a reasonable price. For the purpose of FAR 15.405(d), this waiver request is the referral to a level above the contracting officer; and

(3) Include an analysis of price reasonableness, taking into account factors such as?

(i) A comparison of U.S.-flag rates charged on comparable routes, or for similar services;

(ii) Any other relevant economic and financial considerations; and

(B) Forward the waiver request to?

(1) The Commander, MSC, through the Contracts and Business Management Directorate, MSC (MSC_N103_FFW@us.navy.mil), for charters; or

(2) The USTRANSCOM Director of Acquisition, through the Sealift Services Division (transcom.scott.tcaq.mbx.i-foreign-flag-waiver@mail.mil), for ocean liner and intermodal transportation.

(C) Pursuant to their delegations from the Secretary of the Navy and the Commander, USTRANSCOM, the Commander, MSC, or the USTRANSCOM Director of Acquisition, will make a determination whether to approve the request that a U.S.-flag vessel is not available at a fair and reasonable rate for commercial vessels of the United States. Upon receipt of an approved waiver, provide the contractor with written approval to use a

non-U.S. flag carrier, in accordance with the terms of that waiver. Variances from that approved waiver, including changing the foreign-flag vessel approved for use, may require a new request and approval from the cognizant waiver approval authority. Additionally, see contractors? bill of lading submission requirement at paragraph (e)(1) of the clause at DFARS **252.247-7023.**

(2) Follow these procedures when the direct purchase of ocean transportation services is the principal purpose of the contract.

(i) Direct purchase of ocean transportation may include?

(A) Contracts for full or partial charter vessel services;

(B) Dedicated contractor contracts for charter vessel services;

(C) Ocean bills of lading;

(D) Subcontracts under Government contracts or agreements for ocean transportation services;

(E) Ocean liner contracts (including contracts where ocean liner transportation is part of an intermodal movement); and

(F) Ferry service.

(ii) Coordinate these acquisitions, as appropriate, with USTRANSCOM, the DoD single manager for commercial transportation and related services, other than Service-unique or theater-assigned transportation assets, in accordance with DoDD 4500.09, Transportation and Traffic Management, and DoDI 4500.57, Transportation and Traffic Management.

(iii) All solicitations within the scope of this section must provide?

(A) A preference for U.S.-flag vessels in accordance with the Military Cargo Preference Act of 1904;

(B) An evaluation criterion for offeror participation in the Voluntary Intermodal Sealift Agreement (for cargo movement only); and

(C) An evaluation criterion considering the extent to which offerors have had overhaul, repair, and maintenance work for all covered vessels in an offeror?s fleet performed in shipyards located in the United States or Guam as applicable under DFARS **247.572(d).**

(iv) Do not award a contract of the type described in paragraph (b)(2)(i) of this section for a foreign-flag vessel unless?

(A) The Commander, MSC, or the Commander, ARTRANS, has issued a waiver that no U.S.-flag vessels are available;

(1) The Commander, MSC, and the Commander, ARTRANS, are authorized to issue waivers regarding the availability of U.S.-flag vessels to ensure the proper use of Government and private U.S. vessels;

(2) Request such waivers?

(i) For vessel charters, through the Contracts and Business

Management Directorate, MSC (MSC_N103_FFW@us.navy.mil); and

(ii) For ocean liner and intermodal transportation, including contracts for shipment of military household goods and privately-owned vehicles, through ARTRANS by email at usarmy.scott.sddc.mbx.g3 ffw-team@army.mil;

(3) For ocean liner and int?ermodal transportation, in the absence of regularly scheduled U.S.-flag service to fulfill stated DoD requirements, the Commander, ARTRANS, may grant, on a case-by-case basis, an on-going nonavailability waiver for foreign-flag service approval with predetermined review date(s);

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Defense FAR Supplement (DFARS) Part 247

(4) Prepare a waiver request documenting nonavailability in determination and findings format and forward the waiver request to?

(i) The Commander, MSC, through the Contracts and Business Management Directorate, MSC (MSC_N103_FFW@us.navy.mil), for vessel charters; or

(ii) The Commander, ARTRANS, by email at usarmy.scott.sddc.mbx.g3-ffw-team@mail.mil for ocean liner and intermodal transportation; and

(5) Upon receipt of an approved waiver, provide the contractor with written approval to use a non-U.S. flag carrier, in accordance with that waiver.

(B) Pursuant to their delegations from the Secretary of the Navy and the Commander, USTRANSCOM, the Commander, MSC, or the USTRANSCOM Director of Acquisition possess approval authority to grant a waiver based on nonavailability of a U.S.-flag vessel based on a determination that the proposed freight charges for U.S.-flag vessels are not fair and reasonable for commercial vessels of the United States.

(1) After considering the factors in paragraph (b)(1)(ii)(A)(1) of this section, if the contracting officer concludes that the freight or charter charges proposed by U.S.-flag carriers may not be fair and reasonable for commercial vessels of the United States, then prepare a waiver request in determination and findings format that includes?

(i) A description of efforts taken pursuant to FAR 15.405 to negotiate a reasonable price. For the purpose of FAR 15.405(d), this waiver request is the referral to a level above the contracting officer; and

(ii) An analysis of price reasonableness, taking into consideration factors such as those listed at paragraph (b)(1)(ii)(A)(3) of this section.

(2) Forward the waiver request to?

(i) The Commander, MSC, through the Contracts and Business Management Directorate, MSC (MSC_N103_FFW@us.navy.mil), for vessel charters; or

(ii) The USTRANSCOM Director of Acquisition, through the Sealift Services Division (transcom.scott.tcaq.mbx.i-foreign-flag-waiver@mail.mil).

(3) Upon receipt of a an approved waiver, provide the contractor with written approval to use a non-U.S. flag carrier, in accordance with that waiver.

(3) When security background checks are required pursuant to paragraph (c)(2) of

the clause at DFARS 252.247-7027, Riding Gang Member Requirements, specify in the contract the responsible security office to coordinate a Tier 1 investigation pursuant to Federal Investigations Notice 15-03, dated November 4, 2014. Accordingly, specify in the contract the requirement for Tier 1 investigations to satisfy the requirement for background checks at paragraph (c)(2) of the clause at DFARS 252.247-7027.

PART 48

OFFICE OF THE ASSISTANT SECRETARY OF WAR

Status: Class D

OFFICE OF THE ASSISTANT SECRETARY OF WAR

3000 DEFENSE PENTAGON

WASHINGTON, DC 20301-3000

ACQUISITION

AND SUSTAINMENT

In reply refer to

DARS Tracking Number: 2026-O0016

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES SPECIAL OPERATIONS

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES TRANSPORTATION

COMMAND (ATTN: ACQUISITION EXECUTIVE)

DEPUTY ASSISTANT SECRETARY OF THE ARMY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE NAVY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE

(CONTRACTING)

DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Class Deviation?Revolutionary Federal Acquisition Regulation (FAR) Overhaul

Part 48

Effective February 1, 2026, contracting officers shall use the revised FAR Part 48, Value Engineering published on the Revolutionary FAR Overhaul web page at https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-48 in lieu of the text codified at 48 CFR chapter 1 (https://www.ecfr.gov).

This class deviation implements the following:

? Section 2 of E.O. 14275, Restoring Common Sense to Federal Procurement, which establishes the policy that the FAR ?should only contain provisions required by statute or essential to sound procurement, and any FAR provisions that do not advance these objectives should be removed.

? Section 4(a) of E.O. 14265, Modernizing Defense Acquisitions and Spurring Innovation in the Defense Industrial Base which requires the Secretary of War to eliminate or revise any unnecessary supplemental regulations or any other internal guidance, such as relevant parts of the Financial Management Regulation and Defense Federal Acquisition Regulation Supplement.

? The Office of Management and Budget memorandum, M-25-26 issued on

May 2, 2025, titled, Overhauling the Federal Acquisition Regulation, which provided additional guidance to federal agencies regarding the FAR overhaul.
DARS Tracking Number: 2026-O0016
Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 48
This class deviation remains in effect until rescinded or incorporated into the FAR.
Inquiries regarding this class deviation can be addressed to osd.pentagon.ousd-a-s.mbx.dfars@mail.mil.
John M. Tenaglia
Principal Director,
Defense Pricing, Contracting, and
Acquisition Policy
2

PART 49

OFFICE OF THE ASSISTANT SECRETARY OF WAR

Status: Class D

OFFICE OF THE ASSISTANT SECRETARY OF WAR

3000 DEFENSE PENTAGON

WASHINGTON, DC 20301-3000

ACQUISITION

AND SUSTAINMENT

In reply refer to

DARS Tracking Number: 2026-O0010

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES SPECIAL OPERATIONS

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES TRANSPORTATION

COMMAND (ATTN: ACQUISITION EXECUTIVE)

DEPUTY ASSISTANT SECRETARY OF THE ARMY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE NAVY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE

(CONTRACTING)

DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Class Deviation?Revolutionary Federal Acquisition Regulation (FAR) Overhaul

Part 49, Defense FAR Supplement (DFARS) Part 249

Effective February 1, 2026, contracting officers shall use?

? The revised FAR Part 49, Termination of Contracts published on the Revolutionary FAR Overhaul web page at https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-49 in lieu of the text codified at 48 CFR chapter 1 (https://www.ecfr.gov).

? The attached DFARS Part 249, Termination of Contracts in lieu of the text codified at 48 CFR chapter 2; and

? The attached DFARS Procedures, Guidance, and Information (PGI) 249, Termination of Contracts in lieu of the PGI text published on the Defense Pricing, Contracting, and Acquisition Policy web page at https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.

This class deviation implements the following:

? Section 2 of E.O. 14275, Restoring Common Sense to Federal Procurement, which establishes the policy that the FAR ?should only contain provisions required by statute or essential to sound procurement, and any FAR provisions that do not

advance these objectives should be removed.
DARS Tracking Number: 2026-O0010
Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 49,
Defense FAR Supplement (DFARS) Part 249
? Section 4(a) of E.O. 14265, Modernizing Defense Acquisitions and Spurring Innovation in the Defense Industrial Base which requires the Secretary of War to eliminate or revise any unnecessary supplemental regulations or any other internal guidance, such as relevant parts of the Financial Management Regulation and Defense Federal Acquisition Regulation Supplement.
? The Office of Management and Budget memorandum, M-25-26 issued on May 2, 2025, titled, Overhauling the Federal Acquisition Regulation, which provided additional guidance to federal agencies regarding the FAR overhaul.
This class deviation remains in effect until rescinded or incorporated into the FAR, DFARS, and DFARS PGI. Inquiries regarding this class deviation can be addressed to osd.pentagon.ousd-a-s.mbx.dfars@mail.mil.
John M. Tenaglia
Principal Director,
Defense Pricing, Contracting, and
Acquisition Policy
Attachments:
As stated
2
Attachment A1
DARS Tracking Number: 2026-O0010
Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 49
Defense FAR Supplement (DFARS) Part 249

PART 249?TERMINATION OF CONTRACTS

SUBPART 249.1?GENERAL PRINCIPLES

249.105 Duties of termination contracting officer after issuance of notice of termination.

249.105-1 Release of excess funds.

See PGI 249.105-1 for recommending the release of excess funds.

249.105-70 Termination status reports.

Follow the procedures at PGI 249.105-70 for reporting status of termination actions.

249.109 Settlement agreements.

249.109-7 Settlement by determination.

Follow the procedures at PGI 249.109-7 for settlement by determination.

249.109-70 Limitation on pricing of the terminated effort.

When there is a termination for convenience (partial or whole) or a change that reduces scope, follow the procedures at PGI 249.109-70 for limitation on pricing of the terminated or reduced effort.

249.110 Settlement negotiation memorandum.

Follow the procedures at PGI 249.110 for preparation of a settlement negotiation memorandum.

SUBPART 249.5?CONTRACT TERMINATION CLAUSES

249.501 General.

249.501-70 Special termination costs.

(a) The clause at 252.249-7000, Special Termination Costs, may be used in an incrementally funded contract when its use is approved by the agency head.

(b) The clause is authorized when?

(1) The contract term is two years or more;

(2) The contract is estimated to require?

(i) Total RDT&E financing in excess of $25 million; or

(ii) Total production investment in excess of $100 million; and

(3) Adequate funds are available to cover the contingent reserve liability for special termination costs.

(c) The contractor and the contracting officer must agree upon an amount that represents their best estimate of the total special termination costs to which the

contractor would be entitled in the event of termination of the contract. Insert this amount in paragraph (c) of the clause.

(d)(1) Consider substituting an alternate paragraph (c) for paragraph (c) of the basic clause when?

(i) The contract covers an unusually long performance period; or

(ii) The contractor's cost risk associated with contingent special termination costs is expected to fluctuate extensively over the period of the contract.

(2) The alternate paragraph (c) should provide for periodic negotiation and adjustment of the amount reserved for special termination costs. Occasions for periodic adjustment may include?

(i) The Government's incremental assignment of funds to the contract;

(ii) The time when certain performance milestones are accomplished by the contractor; or

(iii) Other specific time periods agreed upon by the contracting officer and the contractor.

SUBPART 249.70?SPECIAL TERMINATION REQUIREMENTS

249.7000 Terminated contracts with Canadian Commercial Corporation.

(a) General. Terminate contracts with the Canadian Commercial Corporation in accordance with?

(1) The Letter of Agreement (LOA) between the Department of Defence Production (Canada) and the U.S. DoD, ?Canadian Agreement? (for a copy of the LOA or for questions on its currency, contact the Office of the Principal Director, Defense Pricing, Contracting, and Acquisition Policy (Contract Policy), at osd.pentagon.ousd-a-s.mbx.asda-dp-c-contractpolicy@mail.mil;

(2) Policies in the Canadian Agreement and Part 249; and

(3) The Canadian Supply Manual, Chapter 8, Annex 8.3, available at http://www.tpsgc-pwgsc.gc.ca/app-acq/ga-sm/index-eng.html, ?Termination for convenience process.?

(b) Settlement proposals. Ensure that the Canadian Commercial Corporation submits?

(1) Termination settlement proposals that?

(i) Are in the format prescribed in FAR 49.602; and

(ii) Contain the amount of settlements with subcontractors; and

(2) A letter transmitting the termination settlement proposal which certifies that?

(i) Disposition of inventory has been completed; and

(ii) The Contract Claims Resolution Board of the Public Works and Government Services Canada has approved settlements with Canadian subcontractors when the Procedures Manual on Termination of Contracts requires such approval.

(c) Settlement agreements. The termination contracting officer (TCO) must prepare an appropriate settlement agreement. (See FAR 49.603.)

(1) After screening, the TCO must provide guidance to the Canadian Commercial Corporation for disposition of the contractor inventory.

(2) Settlement of Canadian subcontractor claims are not subject to the approval and ratification of the TCO. However, when the proposed negotiated settlement exceeds the total contract price of the prime contract, the TCO must obtain from the U.S. contracting officer prior to final settlement?

(i) Ratification of the proposed settlement; and

(ii) A contract modification increasing the contract price and obligating the additional funds.

(3) The TCO must inform the Canadian Commercial Corporation of the amount of the net settlement of U.S. subcontractors and suppliers so that this amount can be included in the Canadian Commercial Corporation termination proposal. The Canadian Commercial Corporation is responsible for execution of the settlement agreement with these subcontractors.

(d) Contract administration support. Provide any contract administration services required by the Canadian Commercial Corporation, including disposal of inventory, for settlement of any subcontracts placed in the United States.

(e) Other responsibilities. See PGI 249.7000 for information on other responsibilities associated with terminating contracts with the Canadian Commercial Corporation.

249.7001 Congressional notification on significant contract terminations.

Congressional notification is required for any termination involving a reduction in employment of 100 or more contractor employees. The contracting officer must?

(a) Clear proposed terminations through department/agency liaison offices before release of the termination notice, or any information on the proposed termination, to the

contractor.

(b) Follow the procedures at PGI 249.7001 for congressional notification and release of information.

249.7002 Reserved.

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DARS Tracking Number: 2026-O0010

Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 49

Defense FAR Supplement (DFARS) Part 249

249.7003 Notification of anticipated contract terminations or reductions.

(a) Section 1372 of the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103-160) and section 824 of the National Defense Authorization Act for Fiscal Year 1997 (Pub. L. 104-201) are intended to help establish benefit eligibility under the Workforce Innovation and Opportunity Act (29 U.S.C. Chapter 32) for employees of DoD contractors and subcontractors adversely affected by termination or substantial reductions in major defense programs.

(b) Departments and agencies are responsible for establishing procedures to?

(1) Identify which contracts (if any) under major defense programs will be terminated or substantially reduced as a result of the funding levels provided in an appropriations act; and

(2) Within 60 days of the enactment of such an act, provide notice of the anticipated termination of or substantial reduction in the funding of affected contracts?

(i) Directly to the Secretary of Labor; and

(ii) Through the contracting officer to each prime contractor.

(c) When subcontracts have been issued, the prime contractor is responsible for?

(1) Providing notice of the termination or substantial reduction in funding to all first-tier subcontractors with a subcontract valued equal to or greater than $700,000; and

(2) Requiring that each subcontractor?

(i) Provide such notice to each of its subcontractors for subcontracts valued greater than $150,000; and

(ii) Impose a similar notice and flowdown requirement in subcontracts valued greater than $150,000 at all tiers.

249.7004 Contract clause.

Insert the clause at 252.249-7002, Notification of Anticipated Contract Termination or Reduction, in all contracts under a major defense program.

PART 252?SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.249-7000 Special Termination Costs.

As prescribed in 249.501-70, insert the following clause:

SPECIAL TERMINATION COSTS (DEC 1991)

(a) Definition. ?Special termination costs,? as used in this clause, means only costs in the following categories as defined in Part 31 of the Federal Acquisition Regulation **(FAR)?**

(1) Severance pay, as provided in FAR 31.205-6(g);

(2) Reasonable costs continuing after termination, as provided in FAR 31.205-42(b);

(3) Settlement of expenses, as provided in FAR 31.205-42(g);

(4) Costs of return of field service personnel from sites, as provided in FAR **31.205-35 and FAR 31.205-46(c); and**

(5) Costs in paragraphs (a)(1), (2), (3), and (4) of this clause to which subcontractors may be entitled in the event of termination.

(b) Notwithstanding the Limitation of Cost/Limitation of Funds clause of this contract, the Contractor shall not include in its estimate of costs incurred or to be incurred, any amount for special termination costs to which the Contractor may be entitled in the event this contract is terminated for the convenience of the Government.

(c) The Contractor agrees to perform this contract in such a manner that the Contractor's claim for special termination costs will not exceed $_____. The Government shall have no obligation to pay the Contractor any amount for the special termination costs in excess of this amount.

(d) In the event of termination for the convenience of the Government, this clause shall not be construed as affecting the allowability of special termination costs in any manner other than limiting the maximum amount of the costs payable by the Government.

(e) This clause shall remain in full force and effect until this contract is fully funded.

(End of clause)

252.249-7001 Reserved.

252.249-7002 Notification of Anticipated Contract Termination or Reduction.

As prescribed in 249.7004, use the following clause:

NOTIFICATION OF ANTICIPATED CONTRACT TERMINATION OR REDUCTION (DEC 2022)

(a) Definitions. As use in this clause?

?Major defense program? means a program that is carried out to produce or acquire a major system (as defined in 10 U.S.C. 3041(a)).

(b) Scope. This clause implements section 1372 of the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103-160) and section 824 of the National Defense Authorization Act for Fiscal Year 1997 (Pub. L. 104-201), which are intended to help establish benefit eligibility under the Workforce Innovation and Opportunity Act

(29 U.S.C. Chapter 32) for employees of DoD contractors and subcontractors adversely affected by contract terminations or substantial reductions under major defense programs.

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Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 49
Defense FAR Supplement (DFARS) Part 249

(c) Notice to employees and state and local officials.

(1) Within 2 weeks after the Contracting Officer notifies the Contractor that contract funding will be terminated or substantially reduced, the Contractor shall provide notice of such anticipated termination or reduction to?

(i) Each employee representative of the Contractor?s employees whose work is directly related to the defense contract; or

(ii) If there is no such representative, each such employee;

(iii) The State or entity designated by the State to carry out rapid response activities described in the Workforce Innovation and Opportunity Act (29 U.S.C. 3174(a)(2)(A)(i)); and

(iv) The chief elected official of the unit of general local government within which the adverse effect may occur.

(2) The notice provided an employee under paragraph (c)(1) of this clause shall have the same effect as a notice of termination to the employee for the purposes of determining whether such employee is eligible for training, adjustment assistance, and employment services under the Workforce Innovation and Opportunity Act (29 U.S.C. Chapter 32).

(d) Notice to subcontractors. Not later than 60 days after the Contractor receives the Contracting Officer?s notice of the anticipated termination or reduction, the Contractor shall?

(1) Provide notice of the anticipated termination or reduction to each first-tier subcontractor with a subcontract that equals or exceeds the threshold specified in Defense Federal Acquisition Regulation Supplement (DFARS) 249.7003(c)(1) at the time of the notice; and

(2) Require that each such subcontractor?

(i) Provide notice to each of its subcontractors with a subcontract that equals or exceeds the threshold specified in DFARS 249.7003(c)(2)(i) at the time of the notice; and

(ii) Impose a similar notice and flowdown requirement to subcontractors with subcontracts that equal or exceed the threshold specified in DFARS **249.7003(c)(2)(ii) at the time of the notice.**

(End of clause)

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Defense FAR Supplement (DFARS) Part 249

PGI 249?TERMINATION OF CONTRACTS

PGI 249.1?GENERAL PRINCIPLES

PGI 249.105 Duties of termination contracting officer after issuance of notice of termination.

PGI 249.105-1 Release of excess funds.
The DD Form 1598, Contract Termination Status Report, may be used to recommend the release of excess funds. Include the accounting classification reference numbers, funds citations, and allocated amounts in any recommendation for release of excess funds.
PGI 249.105-70 Termination status reports.
When the contract administration office receives a termination notice, it will?

(1) Prepare a DD Form 1598, Contract Termination Status Report;

(2) Within 30 days, send one copy to the purchasing office and one copy to the headquarters office to which the contract administration office is directly responsible;

(3) Continue reporting semiannually to cover the six-month periods ending March and September. Submit the semiannual reports within 30 days after the end of the reporting period; and

(4) Submit a final report within 30 days after closing the termination case.

PGI 249.109 Settlement agreements.
PGI 249.109-7 Settlement by determination.

(1) Use a Standard Form 30 (SF 30), Amendment of Solicitation/Modification of Contract, to settle a convenience termination by determination?

(i) When the contractor has lost its right of appeal because it failed to submit a timely settlement proposal; and

(ii) To confirm the determination when the contractor does not appeal the termination contracting officer's decision.

(2) The effective date of the SF 30 must be the same as the date of the letter of determination. Do not assign a supplementary procurement instrument identification number to the letter of determination. Send a copy of the SF 30 to the contractor by certified mail return receipt requested.

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Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 49
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PGI 249.109-70 Limitation on pricing of the terminated effort.
When there is a termination for convenience (partial or whole) or a change that reduces scope, the price of the terminated or reduced effort that the contractor is required to credit back to the Government must not be more than the original amount placed on contract for that effort.
PGI 249.110 Settlement negotiation memorandum.

(1) Fixed-price contracts. Use the format in Table 49-1, Settlement Memorandum Fixed-Price Contracts, for the termination contracting officer's settlement memorandum for fixed-price contracts terminated for the convenience of the Government. Encourage contractors and subcontractors to use this format, appropriately modified, for subcontract settlements submitted for review and approval.

(2) Cost-reimbursement contracts. Use Part I of the format in Table 49-1 and Part II of the format in Table 49-2, Settlement Memorandum for Cost-Reimbursement Contracts, for the termination contracting officer's settlement memorandum for cost-reimbursement contracts:

TABLE 49-1, SETTLEMENT MEMORANDUM FIXED-PRICE CONTRACTS

PART I--GENERAL INFORMATION

1. Identification. (Identify memorandum as to its purpose and content.)

a. Name and address of the contractor. Comment on any pertinent affiliation between prime and subcontractors relative to the overall settlement.

b. Names and titles of both contractor and Government personnel who participated in the negotiation.

2. Description of terminated contract.

a. Date of contract and contract number.

b. Type of contract (e.g., fixed-price, fixed-price incentive).

c. General description of contract items.

d. Total contract price.

e. Furnish reference to the contract termination clauses (cite FAR/DFARS designation or other special provisions).

3. Termination notice.

a. Reference termination notice and state effective date of termination.

b. Scope and nature of termination (complete or partial), items terminated, and unit price and total price of items terminated.

c. State whether termination notice was amended, and explain any amendment.

d. State whether contractor stopped work on effective termination date. If not, furnish details.

e. State whether the contractor promptly terminated subcontracts.

f. Statement as to the diversion of common items and return of goods to suppliers, if any.

g. Furnish information as to contract performance and timeliness of deliveries by the contractor.

4. Contractor's settlement proposal.

a. Date and amount. Indicate date and location where claim was filed. State gross amount of claim. (If interim settlement proposals were filed, furnished information for each claim.)

b. Basis of claim. State whether claim was filed on inventory, total cost, or other basis. Explain rationale for approval when claim is filed on other than inventory basis.

c. Examination of proposal. State type of reviews made and by whom (audit, engineering, legal, or other).

PART II--SUMMARY OF CONTRACTOR'S CLAIM AND NEGOTIATED SETTLEMENT

Prepare a summary substantially as follows:

TCO

Item Contractor's Dollars Costs Unresolved Negotiated

Claimed Proposal Accepted Questioned Items Amount

1. Contractor's costs

as set forth on

settlement proposal.

Metals, raw materials,

etc.

Total

2. Profit

3. Settlement

expenses

4. Total

5. Settlement with

subs

6. Acceptable finished

product

7. Gross Total

8. Disposal and other

credits

9. Net settlement

10. Partial progress &

advance payments

11. Net payments

requested

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Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 49

Defense FAR Supplement (DFARS) Part 249

PART III--DISCUSSION OF SETTLEMENT

1. Contractor's cost.

a. If the settlement was negotiated on the basis of individual items, specify the factors and consideration for each item.

b. In the case of a lump-sum settlement, comment on the general basis for and major factors concerning each element of cost and profit included.

c. Comment on any important adjustments made to costs claimed or any significant amounts in relation to the total claim.

d. If a partial termination is involved, state whether the contractor has requested an equitable adjustment in the price of the continued portion of the contract.

e. Comment on any unadjusted contractual changes that are included in the settlement.

f. Comment on whether or not a loss would have been incurred and explain adjustment for loss, if any.
g. Furnish other information believed helpful to any reviewing authority in understanding the recommended settlement.

2. Profit. Explain the basis and factors considered in arriving at a fair profit.

3. Settlement expenses. Comment on and summarize those expenses not included in the audit review.

4. Subcontractor's settlements. Include the number of no-cost settlements, settlements concluded by the contractor under delegation of authority and those approved by the termination contracting officer, as well as the net amount of each.

5. Partial payments. Furnish the total amount of partial payments, if any.

6. Progress or advance payments. Furnish the total of unliquidated amounts, if any.

7. Claims of the Government against the contractor included in settlement agreement reservations. List all outstanding claims, if any, that the Government has against the contractor in connection with the terminated contract or terminated portion of the contract.

8. Assignments. List any assignments, giving name and address of assignee.

9. Disposal credits. Furnish information as to applicable disposal credits and give dollar amounts of all disposal credits.

10. Plant clearance. State whether plant clearance action has been completed and all inventory sold, retained, or otherwise properly disposed of in accordance with applicable plant clearance regulations. Comment on any unusual matters pertaining to plant clearances. Attach consolidated closing plant clearance report.

11. Government property. State whether all Government property has been accounted for.

12. Special tooling. If involved, furnish comment on disposition.

13. Summary of settlement. Summarize the settlement in tabular form substantially as follows:

TABULAR SUMMARY FOR COMPLETE OR PARTIAL TERMINATION

	Amount Claimed	Amount Allowed
Prime contractors charges (before disposal credits)		
Plus: Subcontractor charges (after disposal credits)		
Gross settlement:		
Less: disposal credits--Prime		
Net settlement--Less:		
Prior payment credits (this settlement)		
Previous partial settlements		
Other credits or deductions		
Net payment:		

Total contract price (complete termination)
Contract Price of Items Terminated (for partial
termination)--Less:
Total payments to date
Net payment from this settlement
Fund reserved for reservations
Reduction in contract price

14. Exclusions. Describe any proposed reservation of rights to the Government or to the contractor.

15. Include a statement that the settlement is fair and reasonable for the Government and the contractor. The contracting officer must sign and date the memorandum.

(End of memorandum)

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Defense FAR Supplement (DFARS) Part 249

TABLE 49-2, SETTLEMENT MEMORANDUM FOR COST-REIMBURSEMENT CONTRACTS

PART II--SUMMARY OF SETTLEMENT

1. Summary. Summarize the proposed settlement in tabular form substantially as shown in Tables 49-3 and 49-4. Partial settlements may be summarized on Table 49-4.

2. Comments. Explain tabular summaries.

a. Summary of final settlement (see Table 49-3).

(1) Explain why the auditor's final report was not available for consideration, if applicable.

(2) Explain how the fixed-fee was adjusted. Identify basis used, such as percentage of completion. Include a description of factors considered and how they were considered. Include any tabular summaries and breakdowns deemed helpful to an understanding of the process. Factors that may be given consideration are outlined in FAR **49.305.**

(3) Briefly identify matters included in liability for property and other charges against the contractor arising from the contract.

(4) Identify reservations included in the settlement that are other than standard reservations required by regulations and that are concerned with pending claims and refunds.

(5) Explain substantial or otherwise important adjustments made in cost figures submitted by the contractor in arriving at the proposed settlement.

(6) If unreimbursed costs were settled on a lump sum basis, explain the general basis for and the major factors considered in arriving at this settlement.

(7) Comment on any unusual items of cost included in the claim and on any phase of cost allocation requiring particular attention and not covered above.

(8) If the auditor's recommendations for nonacceptance were not followed, explain briefly the main reasons why such recommendations were not followed.

(9) On items recommended for further consideration by the auditor, explain, in general, the basis for the action taken.

(10) If any cost previously disallowed by a contracting officer is included in the proposed settlement, identify and explain the reason for inclusion of such costs.

(11) Show number and amounts of settlements with subcontractors.

(12) Use the following summary where settlement includes costs and fixed-fee in a complete termination:

Gross settlement $_____
Less: Disposal credits _____
Net settlement _____
Less: Prior payments _____
Other credits or deductions _____
Total _____
Net payment $_____
Total contract estimated cost plus fixed fee _____
Less: Net settlement _____
Estimated reserve for exclusions _____
Final contract price
(Consisting of $_____ for reimbursement of costs and $_____ for adjusted fixed fee) _____ _____
Reduction in contract price (credit) _____

(13) Plant clearance. Indicate dollar value of termination inventory and state whether plant clearance has been completed. Attach consolidated plant clearance report (SF 1424, Inventory Disposal Report).

(14) Government property. State whether all Government property has been accounted for.

(15) Include a statement that the settlement is fair and reasonable to the Government and the contractor. The contracting officer must sign and date the memorandum.

(End of memorandum)

TABLE 49-3, SUMMARY OF SETTLEMENT

	AMOUNT CLAIMED	AMOUNT ALLOWED
1. Previous reimbursed costs--Prime and Subs	**$**	**$**

2. Previous unreimbursed costs _____ _____

3. Total cost settlement $ $

4. Previous fees paid--Prime $ $

5. Previous fees unpaid--Prime _____ _____

6. Total fee settlement $ $

7. Gross settlement _____ _____

$_____ $_____

_____ _____

Less: Deductions not reflected in Items 1-7

a. Disposal credits $_____

b. Other charges against contractor

arising from contract $_____

8. Net settlement $

Less: Prior payment credits _____

9. Net payment $

10. Recapitulation of previous settlements (insert

number of previous partial settlements effected on

account of this particular termination):

Aggregate gross amount of previous settlements $_____

Aggregate net amount of previous partial settlements $_____

Aggregate net payment provided in previous partial settlements $_____

Aggregate amount allowed for prime contractor acquired property

taken over by the Government in connection with previous

partial settlements $_____

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TABLE 49-4, UNREIMBURSED COSTS SUBMITTED ON SF 1437*

Amounts Auditor's

Claimed by Recommendation

Costs Contractor's Cost Unresolved TCO's

Proposal Questioned Items Computation

1. Direct material

2. Direct labor

3. Indirect factory expense

4. Dies, jigs, fixtures and

special tools

5. Other costs

6. General and administrative

expenses

7. Fee

8. Settlement expense

9. Settlement with subs

10. Total costs (Items 1-9)

*Expand the format to include recommendations of technical personnel as required.

PGI 249.70? SPECIAL TERMINATION REQUIREMENTS

PGI 249.7000 Terminated contracts with Canadian Commercial Corporation.

(e) Other responsibilities. Understand the responsibilities of the Canadian Commercial Corporation associated with terminating contracts, including?

(1) Settling all Canadian subcontractor termination claims under the Canadian Agreement;

(2) Submitting schedules listing serviceable and usable contractor inventory for screening to the TCO (see FAR 45.6);

(3) Sending all termination settlement proposals submitted by U.S. subcontractors and suppliers to the TCO of the cognizant contract administration office of the Defense Contract Management Agency for settlement;

(4) Including the amount of the net settlement of U.S. subcontractors and suppliers in the termination proposal;

(5) Executing the settlement agreement with these subcontractors;

(6) Administering contracts that the U.S. contracting officer terminates; and

(7) Settling all Canadian subcontracts in accordance with the policies, practices, and procedures of the Canadian Government.

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Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 49

Defense FAR Supplement (DFARS) Part 249

PGI 249.7001 Congressional notification on significant contract terminations.

(1) Department and agency liaison offices will coordinate timing of the congressional notification and public release of the information with release of the termination notice to the contractor. Department and agency liaison offices are?

(i) Army - Chief, Legislative Liaison (SALL-SPA).

(ii) Navy - Chief of Legislative Affairs (OLA-N).

(iii) Air Force - SAF/AQC.

(iv) Defense Advanced Research Projects Agency ? CMO.

(v) Defense Information Systems Agency - Contract Management Division (Code **260).**

(vi) Defense Intelligence Agency ? RSQ.

(vii) Defense Logistics Agency - DLSC-P.

(viii) National Geospatial-Intelligence Agency - NGA (A).

(ix) Defense Threat Reduction Agency - Acquisition Management Office (AM).

(x) National Security Agency/Central Security Service - Chief, Office of Contracting.

(xi) Missile Defense Agency - Director of Contracts (MDA-DCT).

(2) Request clearance to release information in accordance with departmental procedures as soon as possible after the decision to terminate is made. Until clearance has

been obtained, treat this information as ?Controlled Unclassified Information? unless the information is classified.

(3) Include in the request for clearance?

(i) Contract number, date, and type of contract;

(ii) Name of the company;

(iii) Nature of contract or end item;

(iv) The reason for the termination;

(v) Contract price of the items terminated;

(vi) Total number of contractor employees involved, including the Government's estimate of the number who may be discharged;

(vii) Statement of anticipated impact on the company and the community;

(viii) The area labor category, whether the contractor is a large or small business, and any known impact on hard core disadvantaged employment programs;

(ix) Total number of subcontractors involved and the impact in this area; and

(x) An unclassified draft of a suggested press release.

(4) To minimize termination costs, liaison offices will act promptly on all requests for clearance and will provide a response not later than two working days after receipt of the request.

PART 50

OFFICE OF THE ASSISTANT SECRETARY OF WAR

Status: Class D

OFFICE OF THE ASSISTANT SECRETARY OF WAR

3000 DEFENSE PENTAGON

WASHINGTON, DC 20301-3000

ACQUISITION

AND SUSTAINMENT

In reply refer to

DARS Tracking Number: 2026-O0030

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES SPECIAL OPERATIONS

COMMAND (ATTN: ACQUISITION EXECUTIVE)

COMMANDER, UNITED STATES TRANSPORTATION

COMMAND (ATTN: ACQUISITION EXECUTIVE)

DEPUTY ASSISTANT SECRETARY OF THE ARMY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE NAVY

(PROCUREMENT)

DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE

(CONTRACTING)

DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Class Deviation?Revolutionary Federal Acquisition Regulation (FAR) Overhaul

Part 50, Defense FAR Supplement (DFARS) Part 250

Effective February 1, 2026, contracting officers shall use?

? The revised FAR Part 50, Extraordinary Contractual Actions and the SAFETY Act published on the Revolutionary FAR Overhaul web page at https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-50 in lieu of the text codified at 48 CFR chapter 1 (https://www.ecfr.gov).

? The attached DFARS Part 250, Extraordinary Contractual Actions and the SAFETY Act in lieu of the text codified at 48 CFR chapter 2; and

? The attached DFARS Procedures, Guidance, and Information (PGI) 250, Extraordinary Contractual Actions and the SAFETY Act in lieu of the PGI text published on the Defense Pricing, Contracting, and Acquisition Policy web page at https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.

This class deviation implements the following:

? Section 2 of E.O. 14275, Restoring Common Sense to Federal Procurement, which establishes the policy that the FAR ?should only contain provisions required by statute or essential to sound procurement, and any FAR provisions that do not

advance these objectives should be removed.
DARS Tracking Number: 2026-O0030
Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 50
Defense FAR Supplement (DFARS) Part 250
? Section 4(a) of E.O. 14265, Modernizing Defense Acquisitions and Spurring Innovation in the Defense Industrial Base which requires the Secretary of War to eliminate or revise any unnecessary supplemental regulations or any other internal guidance, such as relevant parts of the Financial Management Regulation and Defense Federal Acquisition Regulation Supplement.
? The Office of Management and Budget memorandum, M-25-26 issued on May 2, 2025, titled, Overhauling the Federal Acquisition Regulation, which provided additional guidance to federal agencies regarding the FAR overhaul.
This class deviation remains in effect until rescinded or incorporated into the FAR, DFARS, and DFARS PGI. Inquiries regarding this class deviation can be addressed to osd.pentagon.ousd-a-s.mbx.dfars@mail.mil.
John M. Tenaglia
Principal Director,
Defense Pricing, Contracting, and
Acquisition Policy
Attachments:
As stated
2
Attachment A1
DARS Tracking Number: 2026-O0030
Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 50
Defense FAR Supplement (DFARS) Part 250

PART 250?EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT

SUBPART 250.1?EXTRAORDINARY CONTRACTUAL ACTIONS

250.100 Definitions.

As used in this subpart?

?Secretarial level? means?

(1) An official at or above the level of an Assistant Secretary (or Deputy) of Defense or of the Army, Navy, or Air Force; and

(2) A contract adjustment board established by the Secretary concerned.

250.101 General.

250.101-2 Policy.

250.101-270 Limitations on payment.

See 10 U.S.C. 3862 for limitations on Congressionally directed payment of a request for equitable adjustment to contract terms or a request for relief under Pub. L. 85-804.

250.101-370 Records.

Follow the procedures at PGI 250.101-370 for preparation of records.

250.102 Delegation of and limitations on exercise of authority.

250.102-1 Delegation of authority.

(b) Authority under FAR 50.104 to approve actions obligating $90,000 or less may not be delegated below the head of the contracting activity.

(d) In accordance with the acquisition authority of the Under Secretary of Defense (Acquisition and Sustainment (USD(A&S)) under 10 U.S.C. 133(b), in addition to the Secretary of Defense and the Secretaries of the military departments, the USD(A&S) may exercise authority to indemnify against unusually hazardous or nuclear risks.

250.102-170 Delegations.

(a) Military departments. The Departments of the Army, Navy, and Air Force will specify delegations and levels of authority for actions under the Act and the Executive Order in departmental supplements or agency acquisition guidance.

(b) Defense agencies. Subject to the restrictions on delegations of authority in **250.102-1 (b) and FAR 50.102-1, the directors of the defense agencies may exercise** and redelegate the authority contained in the Act and the Executive Order. The agency supplements or agency acquisition guidance must specify the delegations and levels of authority.

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Attachment A1

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Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 50

Defense FAR Supplement (DFARS) Part 250

(1) Requests to obligate the Government in excess of $90,000 must be submitted to the USD(A&S) for approval.

(2) Requests for indemnification against unusually hazardous or nuclear risks must be submitted to the USD(A&S) for approval before using the indemnification clause at FAR 52.250-1, Indemnification Under Public Law 85-804.

(c) Approvals. The Secretary of the military department or the agency director must approve any delegations in writing.

250.102-2 Contract adjustment boards.

The Departments of the Army, Navy, and Air Force each have a contract adjustment board. The board consists of a Chair and not less than two nor more than six other members, one of whom may be designated the Vice-Chair. A majority constitutes a quorum for any purpose and the concurring vote of a majority of the total board membership constitutes an action of the board. Alternates may be appointed to act in the absence of any member.

250.103 Contract adjustments.

250.103-3 Contract adjustment.

(a) Contractor requests should be filed with the procuring contracting officer (PCO). However, if filing with the PCO is impractical, requests may be filed with an authorized representative, an administrative contracting officer, or the Office of General Counsel of the applicable department or agency, for forwarding to the cognizant PCO.

250.103-5 Processing cases.

(1) At the time the request is filed, the activity must prepare the record described at PGI 250.101-370 (1)(i) and forward it to the appropriate official within 30 days after the close of the month in which the record is prepared.

(2) The officer or official responsible for the case must forward to the contract adjustment board, through departmental channels, the documentation described at **PGI 250.103-5.**

(3) Contract adjustment boards will render decisions as expeditiously as practicable. The Chair must sign a memorandum of decision disposing of the case. The decision must be dated and must contain the information required by FAR **50.103-6. The memorandum of decision must not contain any information classified** ?Confidential? or higher. The board's decision will be sent to the appropriate official for implementation.

250.103-6 Disposition.

For requests denied or approved below the Secretarial level, follow the disposition procedures at PGI 250.103-6.

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DARS Tracking Number: 2026-O0030

Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 50

Defense FAR Supplement (DFARS) Part 250

250.104 Residual powers.

250.104-3 Special procedures for unusually hazardous or nuclear risks.

250.104-370 Indemnification under contracts involving both research and development and other work.

When indemnification is to be provided on contracts requiring both research and development work and other work, the contracting officer must insert an appropriate clause using the authority of both 10 U.S.C. 3861 and Pub. L. 85-804.

(a) The use of Pub. L. 85-804 is limited to work which cannot be indemnified under 10 U.S.C. 3861 and is subject to compliance with FAR 50.104.

(b) Indemnification under 10 U.S.C. 3861 is covered by 235.070.

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DARS Tracking Number: 2026-O0030

Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 50

Defense FAR Supplement (DFARS) Part 250

PGI?EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT

PGI 250.1?EXTRAORDINARY CONTRACTUAL ACTIONS

PGI 250.101 General.

PGI 250.101-370 Records.

(a) Departments and agencies must?

(1) Prepare a preliminary record when a request for a contract adjustment under FAR 50.103 is filed (see DFARS 250.103-5(1)).

(2) Prepare a final record stating the disposition of the request (see **PGI 250.103-6).**

(3) Designate the offices or officials responsible for preparing, submitting, and receiving all records required by DFARS Subpart 250.1. Records must be maintained by the contract adjustment boards of the Army, Navy, and Air Force, respectively, and by the headquarters of the defense agencies.

(b) A suggested format for the record is the Record of Request for Adjustment shown at the end of this section. This format permits the information required for the preliminary and final records to be combined on one form.

The following instructions are provided for those items in the format that are not self-explanatory:

(1) Extent of performance as of date of request. State the degree of completion of the contract; e.g., 50 percent completed or performance not yet begun. If work is completed, state the date of completion and whether final payment has been made.

(2) Award procedure. State whether the contract was awarded under sealed bidding or negotiated procedures. Cite the specific authority for using other than full and open competition, if applicable, e.g., 10 U.S.C. 3204(a).

(3) Type of contract. State the type of contract (see FAR Part 16); e.g., FFP (firm-fixed-price).

(4) Category of case. State whether the request involves a modification without consideration, a mistake, or an informal commitment. If the case involves more than one category, identify both; list the most significant category first.

(5) Amount or description of request. If the request is expressed in dollars, state the amount and whether it is an increase or decrease. If the request cannot be expressed in monetary terms, provide a brief description; e.g., "Cancellation" or "Modification." Even if the adjustment is not easily expressed in terms of dollars, if the contractor has made an estimate in the request, that estimate should be stated.

(6) Action below Secretarial level. State the disposition of the case, the office that took the action and the date the action was taken. The disposition should be stated

as "Withdrawn," "Denied," "Approved," or "Forwarded." If the request was approved, in whole or in part, state the dollar amount or nature of the action (as explained in paragraph (2)(v) of this section). The date should correspond with the date of the memorandum of decision or of the letter forwarding the request to the contract adjustment board or other deciding body.

(7) Action by contract adjustment board and date. State the disposition and date of disposition of the case by the contract adjustment board. Provide the same information as for paragraph (2)(vi) of this section.

(8) Implementation and date. State the appropriate action; e.g., "Modification," "New Contract," or "Letter of Denial."

€ PRELIMINARY RECORD OF FINAL €

REQUEST FOR ADJUSTMENT

DATE OF REQUEST PUBLIC LAW 85-804 DATE RECEIVED

BY

GOVERNMENT

CONTRACTOR?S NAME AND ADDRESS

€ SMALL BUSINESS

NAME AND ADDRESS OF CONTRACTOR?S REPRESENTATIVE, IF ANY

COGNIZANT CONTRACTING PROCURING ACTIVITY

OFFICER OR OFFICE

PROPERTY OR SERVICE INVOLVED EXTENT OF PERFORMANCE AS OF

DATE OF REQUEST

CONTRACT NUMBER DATE ADVERTISED TYPE OF

OR CONTRACT

NEGOTIATED

CATEGORY OF CASE AMOUNT OF DESCRIPTION OF

REQUEST

ACTION BELOW SECRETARIAL LEVEL DATE

ACTION BY CAB DATE

IMPLEMENTATION DATE

ADDITIONAL DATA OR REMARKS

DATE THIS RECORD SIGNED SIGNATURE

PGI 250.103 Contract adjustments.

PGI 250.103-5 Processing cases.

(1) The officer or official responsible for the case must forward to the contract adjustment board, through departmental channels, two copies of the following:

(i) A letter stating?

(A) The nature of the case;

(B) The basis for the board's authority to act;

(C) The findings of fact essential to the case (see FAR 50.103-4). Arrange the findings chronologically with cross-references to supporting enclosures;

(D) The conclusions drawn;

(E) The recommended disposition; and

(F) If contractual action is recommended, a statement by the signer that the action will facilitate the national defense.

(ii) The contractor's request.

(iii) All evidentiary materials.

(iv) All endorsements, reports and comments of cognizant Government officials.

(2) A letter to the Board recommending an amendment without consideration where essentiality is a factor (see FAR 50.103-2(a)(1)) should also provide?

(i) The information required by FAR 50.103-4(a) and (b), and

(ii) Findings as to?

(A) The contractor's performance record, including the quality of product, rate of production, and promptness of deliveries;

(B) The importance to the Government, particularly to the active duty military, of the performance of the contract and the importance of the contractor to the national defense;

(C) The forecast of future contracts with the contractor; and

(D) Other available sources of supply for the supplies or services covered by the contract, and the time and cost of having contract performance completed by such other sources.

PGI 250.103-6 Disposition.

(1) When the request for relief is denied or approved below the Secretarial level, submit the following documents to the appropriate office within 30 days after the close of the month in which the decision is executed:

(i) Two copies of the memorandum of decision.

(ii) Except for the Army, one copy of the contractual document implementing any decision approving contractual action.

(iii) One copy of a final record, as described at PGI 250.101-370.

(2) When a contract adjustment board decision is implemented, the activity that forwarded the case to the board must prepare and submit to the board the documents identified in paragraphs (1)(ii) and (iii) of this section.