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212.001 Definitions.

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 shall 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 10.002(b)(2) (section 855 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114-92)).

Subpart 212.1 - ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

212.102 Applicability.

(a)(i) *Use of FAR part 12 procedures*. Use of FAR part 12 procedures is based on—

(A) A determination that an item is a commercial product or commercial service (see paragraph (a)(iii) of this section); or

(B) 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 12.102(f).

(*2)* 10 U.S.C. 3457 - Supplies or services from nontraditional defense contractors pursuant to 212.102 (a)(iv).

(*3*) 10 U.S.C. 3458 – Supplies or services resulting from a commercial solutions opening pursuant to subpart 212.70.

(ii) Prior use of FAR part 12 procedures.

(A) Pursuant to 10 U.S.C. 3456(c), except as provided in paragraph (a)(ii)(B) of this section or unless the item was acquired pursuant to paragraph (a)(i)(B) of this section, if the Commercial Item Database (for website see PGI 212.102(a)(iii)(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 shall serve as a prior determination that an item is a commercial product or commercial service. The contracting officer shall document the file accordingly.

(B)(*1*) If the item to be acquired meets the criteria in paragraph (a)(ii)(A) 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 (a)(ii)(B)(2)(ii) of this section.

(*2*) 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 military department, a defense agency, or another component of DoD shall serve 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 and commercial service using procedures other than FAR part 12 procedures, the contracting officer shall 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 shall—

(*i*) Confirm that the prior use of FAR part 12 procedures was appropriate and still applicable; or

(*ii*) 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.

(iii) Commercial product or commercial service determination. Unless the procedures in paragraph (a)(ii) of this section are applicable, when using FAR part 12 procedures for acquisitions of commercial products and commercial services pursuant to 212.102(a)(i)(A) that exceed the simplified acquisition threshold , the contracting officer shall—

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

(B) Include the written determination in the contract file; and

(C) 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), or (6) of the “commercial product” definition at FAR 2.101 or paragraph (2) of the "commercial service" definition at FAR 2.101; and

(D) Follow the procedures and guidance at PGI 212.102 (a)(iii) regarding file documentation and commercial product or commercial service determinations.

(iv) *Nontraditional defense contractors.* In accordance with 10 U.S.C. 3457, contracting officers—

(A) Except as provided in paragraph (a)(iv)(B) of this section, may treat supplies and services provided by nontraditional defense contractors as commercial products or commercial services. 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 noncommercial 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;

(B) Shall 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

(C) Shall document the file when treating supplies or services from a nontraditional defense contractor as commercial products or commercial services in accordance with paragraph (a)(iv)(A) or (B) of this section.

(v) *Commercial item guidebook*. For a link to the commercial item guidebook, see PGI 212.102(a)(v).

Subpart 212.2 - SPECIAL REQUIREMENTS FOR THE ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

212.203 Procedures for solicitation, evaluation, and award.

(1) 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 the acquisition of commercial products and commercial services.

(2) See 217.7801 for the prohibition on the use of reverse auctions for personal protective equipment and aviation critical safety items.

(3) See 204.7603 for procedures on the required use of Supplier Performance Risk System risk assessments as part of the award decision.

(4) See subpart 212.70 for acquisitions resulting from a commercial solutions opening.

(5) See 215.101-71 and 225.7024 for the acquisition of fuel for overseas contingency operations.

(6) See the procedures at PGI 205.102-70 for use of the Solicitation Module within the Procurement Integrated Enterprise Environment.

212.207 Contract type.

(b) 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:

(i) 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. 103(a)).

(ii) Emergency repair services.

(iii) Any other commercial services only to the extent that the head of the agency concerned approves a written determination by the contracting officer that—

(A) 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. 103(a));

(B) If the services to be acquired are subject to FAR 15.403-1(c)(3)(ii), the offeror of the services has submitted sufficient information in accordance with that subsection;

(C) Such services are commonly sold to the general public through use of time-and-materials or labor-hour contracts; and

(D) The use of a time-and-materials or labor-hour contract type is in the best interest of the Government.

212.209 Determination of price reasonableness.

(a) In accordance with 10 U.S.C. 3453(d), agencies shall 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—

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

(2) In the case of other items, may require the offeror to submit other relevant information

(b) If the contracting officer determines that the information obtained through market research pursuant to paragraph (a) of this section, is insufficient to determine the reasonableness of price, the contracting officer shall 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 shall 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)).

(c) If the contracting officer determines that the offeror cannot provide sufficient information as described in paragraph (b) of this section to determine the reasonableness of price, the contracting officer should request the offeror to 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) Nothing in this section shall be construed to preclude the contracting officer from requiring the contractor to supply information that is sufficient 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 may request other relevant information regarding the basis for price or cost, including uncertified cost data such as labor costs, material costs, and other direct and indirect costs.

212.211 Technical data.

The DoD policy for acquiring technical data for commercial products or commercial services is at 227.7102 .

212.212 Computer software.

(1) Departments and agencies shall 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).

(2) 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.

212.270 Major weapon systems as commercial products.

The DoD policy for acquiring major weapon systems as commercial products is in subpart 234.70.

212.271 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 $55,000per vehicle.

212.272 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.

Subpart 212.3 - SOLICITATION PROVISIONS AND CONTRACT CLAUSES FOR THE ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

212.301 Solicitation provisions and contract clauses for the acquisition of commercial products and commercial services.

(c) Include an evaluation factor regarding supply chain risk (see subpart 239.73) 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 239.7301.

(f) The following additional provisions and clauses 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 shall consider this information instead of requiring the offeror to complete these provisions for a particular solicitation. The contracting officer shall 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).

(i) *Part 203 - Improper Business Practices and Personal Conflicts of Interest.*

(A) Use the FAR clause at 52.203-3, Gratuities, as prescribed in FAR 3.202, to comply with 10 U.S.C. 4651.

(B) Use the clause at 252.203-7000, Requirements Relating to Compensation of Former DoD Officials, as prescribed in 203.171-4(a), to comply with section 847 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181).

(C) Use the clause at 252.203-7002, Requirement to Inform Employees of Whistleblower Rights, as prescribed in 203.970, to comply with 10 U.S.C. 4701.

(D) Use the provision at 252.203-7005, Representation Relating to Compensation of Former DoD Officials, as prescribed in 203.171-4(b).

(ii) *Part 204-Administrative and Information Matters.*

(A) Use the clause at 252.204-7004, Antiterrorism Awareness Training for Contractors, as prescribed in 204.7203.

(B) Use the provision at 252.204-7008, Compliance with Safeguarding Covered Defense Information Controls, as prescribed in 204.7304(a), to comply with section 941 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and section 1632 of the National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113-291).

(C) Use the clause at 252.204-7009, Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information, as prescribed in 204.7304(b), to comply with section 941 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and section 1632 of the National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113-291).

(D) Use the clause at 252.204-7012, Safeguarding Covered Defense Information and Cyber Incident Reporting, as prescribed in 204.7304(c), to comply with section 941 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and section 1632 of the National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113-291).

(E) Use the clause at 252.204-7014, Limitations on the Use or Disclosure of Information by Litigation Support Contractors, as prescribed in204.7403(a), to comply with 10 U.S.C. 129d.

(F) Use the clause at 252.204-7015, Notice of Authorized Disclosure of Information for Litigation Support, as prescribed in 204.7403(b), to comply with 10 U.S.C. 129d.

(G) Use the provision at 252.204-7016, Covered Defense Telecommunications Equipment or Services - Representation, as prescribed in 204.2105(a), to comply with section 1656 of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91).

(H) Use the provision at 252.204-7017, Prohibition on the Acquisition of Covered Defense

Telecommunications Equipment or Services - Representation, as prescribed in 204.2105(b), to comply with section 1656 of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91).

(I) Use the clause at 252.204-7018, Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services, as prescribed in 204.2105(c), to comply with section 1656 of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91).

(J) Use the provision at 252.204-7019, Notice of NIST SP 800-171 DoD Assessment Requirements, as prescribed in 204.7304 (d).

(K) Use the clause at 252.204-7020, NIST SP 800-171 DoD Assessment Requirements, as prescribed in 204.7304 (e).

(L) Use the clause at 252.204-7021, Cybersecurity Maturity Model Certification Requirements, as prescribed in 204.7504(a).

(M) Use the clause at 252.204-7022, Expediting Contract Closeout, as prescribed in 204.804-70.

(N) Use the clause at 252.204-7023, Reporting Requirements for Contracted Services, to comply with 10 U.S.C. 4505 .

(1) Use the basic clause as prescribed in 204.1705(a)(i) and (ii).

(2) Use the alternate I clause as prescribed in 204.1705(a)(i) and (iii).

(O) Use the provision at 252.204-7024, Notice on the Use of the Supplier Performance Risk System, as prescribed in 204.7604.

(P) Use the provision at 252.204-7025, Notice of Cybersecurity Maturity Model Certification Level Requirements, as prescribed in 204.7504(b).

(iii) *Part 205 - Publicizing Contract Actions.* Use the clause at 252.205-7000, Provision of Information to Cooperative Agreement Holders, as prescribed in 205.470, to comply with 10 U.S.C. 4957.

(iv) *Part 209 - Contractor Qualifications*.

(A) Use the provision at 252.209-7011, Representation for Restriction on the Use of Certain Institutions of Higher Education, as prescribed in 209.170-4, to comply with section 1062 of the National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116-283).

(B) Use the provision at 252.209-7012, Prohibition Relating to Conflicts of Interest in Consulting Services—Certification, as prescribed in 209.572(e), to comply with section 812 of the National Defense Authorization Act for Fiscal Year 2024 (Pub. L. 118-31).

(v) *Part 211 - Describing Agency Needs.*

(A) Use the clause at 252.211-7003, Item Unique Identification and Valuation, as prescribed in 211.274-5(a)(1).

(B) Use the clause at 252.211-7008, Use of Government-Assigned Serial Numbers, as prescribed in 211.274-5(c).

(vi) *Part 215 - Contracting by Negotiation.*

(A) Use the provision at 252.215-7003, Requirements for Submission of Data Other Than Certified Cost or Pricing Data - Canadian Commercial Corporation, as prescribed at 215.408(2)(i).

(B) Use 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 215.408(2)(ii).

(C) Use the provision 252.215-7008, Only One Offer, as prescribed at 215.408(3).

(D) Use the provision 252.215-7010, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data, as prescribed at 215.408(5)(i) to comply with section 831 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and sections 851 and 853 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114-92).

(*1*) Use the basic provision as prescribed at 215.408(5)(i)(A).

(*2*) Use the alternate I provision as prescribed at 215.408(5)(i)(B).

(E) Use the provision at 252.215-7016, Notification to Offerors—Postaward Debriefings, as prescribed in 215.570, to comply with section 818 of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91).

(vii) *Part 216—Types of Contracts*. Use the clause at 252.216-7010, Postaward Debriefings for Task Orders and Delivery Orders, as prescribed in 216.506-70(b), to comply with section 818 of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91).

(viii) *Part 219 - Small Business Programs.*

(A) Use the provision at 252.219-7000, Advancing Small Business Growth, as prescribed in 219.309(1), to comply with 10 U.S.C. 4959.

(B) Use the clause at 252.219-7003, Small Business Subcontracting Plan (DoD Contracts), to comply with 15 U.S.C. 637.

(*1*) Use the basic clause as prescribed in 219.708(b)(1)(A)(*1*).

(*2*) Use the alternate I clause as prescribed in 219.708(b)(1)(A)(*2*).

(*3*) Use the alternate II clause as prescribed in 219.708(b)(1)(A)(*3*).

(C) Use the clause at 252.219-7004, Small Business Subcontracting Plan (Test Program), as prescribed in 219.708(b)(1)(B), to comply with 15 U.S.C. 637 note.

(D) Use the provision at 252.219-7012, Competition for Religious-Related Services, as prescribed in 219.270-3, to comply with section 898 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114-92).

(ix) *Part 223—Environment, Sustainable Acquisition, and Material Safety* .

(A) Use the clause at 252.223–7008, Prohibition of Hexavalent Chromium, as prescribed in 223.7306.

(B) Use the clause at 252.223-7009, Prohibition of Procurement of Fluorinated Fire-Fighting Agent for Use on Military Installations, as prescribed at 223.7404 to comply with section 322(b), (c), and

(d) of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116-92).

(x) *Part 225 - Foreign Acquisition.*

(A) Use the provision at 252.225-7000, Buy American - Balance of Payments Program Certificate, to comply with 41 U.S.C. chapter 83 and Executive Order 10582 of December 17, 1954, Prescribing Uniform Procedures for Certain Determinations Under the Buy-American Act.

(*1*) Use the basic provision as prescribed in 225.1101(1)(i).

(*2*) Use the alternate I provision as prescribed in 225.1101(1)(ii).

(B) Use the clause at 252.225-7001, Buy American and Balance of Payments Program, to comply with 41 U.S.C. chapter 83 and Executive Order 10582 of December 17, 1954, Prescribing Uniform Procedures for Certain Determinations Under the Buy-American Act.

(*1*) Use the basic clause as prescribed in 225.1101(2)(ii).

(*2*) Use the alternate I clause as prescribed in 225.1101(2)(iii).

(C) Use the clause at 252.225-7006, Acquisition of the American Flag, as prescribed in 225.7002-3(c), to comply with section 8123 of the DoD Appropriations Act, 2014 (Pub. L. 113-76, division C, title VIII), and the same provision in subsequent DoD appropriations acts.

(D) Use the clause at 252.225-7007, Prohibition on Acquisition of Certain Items from Communist Chinese Military Companies, as prescribed in 225.1103(4), to comply with section 1211 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2006 (Pub. L. 109-163) as amended by the NDAAs for FY 2012 and FY 2017.

(E) Use the clause at 252.225-7008, Restriction on Acquisition of Specialty Metals, as prescribed in 225.7003-5(a)(1), to comply with 10 U.S.C. 4863.

(F) Use the clause at 252.225-7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals, as prescribed in 225.7003-5(a)(2), to comply with 10 U.S.C. 4863.

(G) Use the provision at 252.225-7010, Commercial Derivative Military Article - Specialty Metals Compliance Certificate, as prescribed in 225.7003-5(b), to comply with 10 U.S.C. 4863.

(H) Use the clause at 252.225-7012, Preference for Certain Domestic Commodities, as prescribed in 225.7002-3(a), to comply with 10 U.S.C. 4862.

(I) Use the clause at 252.225-7015, Restriction on Acquisition of Hand or Measuring Tools, as prescribed in 225.7002-3(b), to comply with 10 U.S.C. 4862.

(J) Use the clause at 252.225-7016, Restriction on Acquisition of Ball and Roller Bearings, as prescribed in 225.7009-5, to comply with section 8065 of Public Law 107-117 and the same restriction in subsequent DoD appropriations acts.

(K) Use the clause at 252.225-7017, Photovoltaic Devices, as prescribed in 225.7017-4(a), to comply with section 846 of the National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111-383).

(L) Use the provision at 252.225-7018, Photovoltaic Devices - Certificate, as prescribed in 225.7017-4(b), to comply with section 846 of Public Law 111-383, to comply with section 846 of the

National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111-383).

(M) Use the clause at 252.225-7019, Restriction on Acquisition of Anchor and Mooring Chain, as prescribed in 225.7004-7(a), to comply with 10 U.S.C. 4864 and section 8041 of the Fiscal Year 1991 DoD Appropriations Act (Pub. L. 101-511) and similar sections in subsequent DoD appropriations acts.

(N) Use the provision at 252.225–7020, Trade Agreements Certificate, to comply with 19 U.S.C. 2501–2518 and 19 U.S.C. 4501–4732. Alternate I also implements section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181).

(*1*) Use the basic provision as prescribed in 225.1101(5)(i).

(*2*) Use the alternate I provision as prescribed in 225.1101(5)(ii).

(O) Use the clause at 252.225-7021, Trade Agreements, to comply with 19 U.S.C. 2501-2518 and 19 U.S.C. 4501-4732.

(*1*) Use the basic clause as prescribed in 225.1101(6)(i).

(*2*) Use the alternate II clause as prescribed in 225.1101(6)(iii).

(P) Use the provision at 252.225-7023, Preference for Products or Services from Afghanistan, as prescribed in 225.7703-4(a), to comply with section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181).

(Q) Use the clause at 252.225-7024, Requirement for Products or Services from Afghanistan, as prescribed in 225.7703-4(b), to comply with section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181).

(R) Use the clause at 252.225-7026, Acquisition Restricted to Products or Services from Afghanistan, as prescribed in 225.7703-4(c), to comply with section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181).

(S) Use the clause at 252.225-7027, Restriction on Contingent Fees for Foreign Military Sales, as prescribed in 225.7307(a), to comply with 22 U.S.C. 2779.

(T) Use 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.

(U) Use the clause at 252.225-7029, Acquisition of Uniform Components for Afghan Military or Afghan National Police, as prescribed in 225.7703-4(d), to comply with section 826 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239).

(V) Use the provision at 252.225-7031, Secondary Arab Boycott of Israel, as prescribed in 225.7605, to comply with 10 U.S.C. 4659.

(W) Use the provision at 252.225-7035, Buy American - Free Trade Agreements - Balance of Payments Program Certificate, to comply with 41 U.S.C. chapter 83 and 19 U.S.C. 4501-4732. Alternates II, III, and V also implement section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181).

(*1*) Use the basic provision as prescribed in 225.1101(9)(i).

(*2*) Use the alternate I provision as prescribed in 225.1101(9)(ii).

(*3*) Use the alternate II provision as prescribed in 225.1101(9)(iii).

(*4*) Use the alternate III provision as prescribed in 225.1101(9)(iv).

(*5*) Use the alternate IV provision as prescribed in 225.1101(9)(v).

(*6*) Use the alternate V provision as prescribed in 225.1101(9)(vi).

(X) Use the clause at 252.225-7036, Buy American - Free Trade Agreements - Balance of Payments Program, to comply with 41 U.S.C. chapter 83 and 19 U.S.C. 4501-4732. Alternates II, III, and V also implement section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181).

(*1*) Use the basic clause as prescribed in 225.1101(10)(i)(A).

(*2*) Use the alternate I clause as prescribed in 225.1101(10)(i)(B).

(*3*) Use the alternate II clause as prescribed in 225.1101(10)(i)(C).

(*4*) Use the alternate III clause as prescribed in 225.1101(10)(i)(D).

(*5*) Use the alternate IV clause as prescribed in 225.1101(10)(i)(E).

(*6*) Use the alternate V clause as prescribed in 225.1101(10)(i)(F).

(Y) Use the clause at 252.225-7039, Defense Contractors Performing Private Security Functions Outside the United States, as prescribed in 225.302-6, to comply with section 862 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181).

(Z) Use the clause at 252.225-7040, Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States, as prescribed in 225.371-5(a).

(AA) Use the clause at 252.225-7043, Antiterrorism/Force Protection Policy for Defense Contractors Outside the United States, as prescribed in 225.372-2.

(BB) Use the provision at 252.225-7049, Prohibition on Acquisition of Certain Foreign Commercial Satellite Services - Representations, as prescribed in 225.772-5(a), to comply with 10 U.S.C. 2279.

(CC) Use the provision at 252.225-7050, Disclosure of Ownership or Control by the Government of a Country that is a State Sponsor of Terrorism, as prescribed in 225.771-5, to comply with 10 U.S.C. 4871(b).

(DD) Use the clause at 252.225-7051, Prohibition on Acquisition for Certain Foreign Commercial Satellite Services, as prescribed in 225.772-5(b), to comply with 10 U.S.C. 2279.

(EE) Use the clause at 252.225-7052, Restriction on the Acquisition of Certain Magnets, Tantalum, and Tungsten, as prescribed in 225.7018-5, to comply with 10 U.S.C. 4872.

(FF) Use the provision at 252.225-7053, Representation Regarding Prohibition on Use of Certain Energy Sourced from Inside the Russian Federation, as prescribed in 225.7019-4(a), to comply with section 2821 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116-92).

(GG) Use the clause at 252.225-7054, Prohibition on Use of Certain Energy Sourced from Inside the Russian Federation, as prescribed in 225.7019-4(b), to comply with section 2821 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116-92).

(HH) Use the provision at 252.225-7055, Representation Regarding Business Operations with the Maduro Regime, as prescribed in 225.7020-5(a), to comply with section 890 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116-92).

(II) Use the clause at 252.225-7056, Prohibition Regarding Business Operations with the Maduro Regime, as prescribed in 225.7020-5(b), to comply with section 890 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116-92).

(JJ) Use the provision at 252.225-7059, Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region—Representation, as prescribed in 225.7022-5(a), to comply with section 855 of the National Defense Authorization Act for Fiscal Year 2023 (Pub. L. 117- 263) and 10 U.S.C. 4661.

(KK) Use the clause at 252.225-7060, Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region, as prescribed in 225.7022-5(b), to comply with section 855 of the National Defense Authorization Act for Fiscal Year 2023 (Pub. L. 117-263) and 10 U.S.C. 4661.

(LL) Use the clause at 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, to comply with (10 U.S.C. 4875).

(MM) Use the clause at 252.225-7062, Restriction on Acquisition of Large Medium-Speed Diesel Engines, as prescribed in 225.7004-7(b), to comply with 10 U.S.C. 4864.

(NN) Use the clause at 252.225-7063, Restriction on Acquisition of Components of T–AO 205 and T-ARC Class Vessels, as prescribed in 225.7004-7(c), to comply with 10 U.S.C. 4864.

(OO) Use the clause at 252.225-7064, Restriction on Acquisition of Certain Satellite Components, as prescribed in 225.7004-7(d), to comply with 10 U.S.C. 4864.

(PP) Use the provision at 252.225-7065, Restriction on Acquisition of Fuel for Overseas Contingency Operations, as prescribed in 225.7024-4, to comply with section 843 of the National Defense Authorization Act for Fiscal Year 2022 (Pub. L. 117-81).

(xi) *Part 226 - Other Socioeconomic Programs.*

(A) Use the clause at 252.226-7001, Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns, as prescribed in 226.104, to comply with section 8021 of Pubic Law 107-248 and similar sections in subsequent DoD appropriations acts.

(B) Use the provision at 252.226-7002, Representation for Demonstration Project for Contractors Employing Persons with Disabilities, as prescribed in 226.7203, to comply with section 853 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136).

(xii) *Part 227 - Patents, Data, and Copyrights.*

(A) Use the clause at 252.227-7013, Rights in Technical Data-Other Than Commercial Products and Commercial Services, as prescribed in 227.7102-4(b) and 227.7103-6(a). Use the clause with its Alternate I as prescribed in 227.7103-6(b)(1). Use the clause with its Alternate II as prescribed in

227.7103-6(b)(2), to comply with 10 U.S.C. 8687 and 17 U.S.C. 1301, *et seq.*

(B) Use the clause at 252.227-7015, Technical Data-Commercial Products and Commercial Services, as prescribed in 227.7102-4(a)(1), to comply with 10 U.S.C. 3772(a). Use the clause with its Alternate I as prescribed in 227.7102-4(a)(2), to comply with 10 U.S.C. 8687 and 17 U.S.C. 1301, *et seq.*

(C) Use the clause at 252.227-7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program, as prescribed in 227.7104-4(a)(1).

(D) Use the clause at 252.227-7037, Validation of Asserted Restrictions on Technical Data, as prescribed in 227.7102-4(c), to comply with 10 U.S.C. 3781-3786.

(E) Use the provision at 252.227-7040, Additional Preaward Requirements for Small Business Technology Transfer Program, as prescribed in 227.7104-4(c)(1).

(F) Use the clause at 252.227-7041, Additional Postaward Requirements for Small Business Technology Transfer Program, as prescribed in 227.7104-4(c)(2).

(xiii) *Part 229—Taxes*. Use the clause at 252.229-7014 , Full Exemption from Two-Percent Excise Tax on Certain Foreign Procurements, as prescribed in 229.402-70 , to comply with 26 U.S.C. 5000C.

(xiv) *Part 232—Contract Financing.]*

(A) Use the clause at 252.232-7003, Electronic Submission of Payment Requests and Receiving Reports, as prescribed in 232.7004 , to comply with 10 U.S.C. 4601 .

(B) Use the clause at 252.232-7006 , Wide Area WorkFlow Payment Instructions, as prescribed in 232.7004 (b).

(C) Use the clause at 252.232-7009 , Mandatory Payment by Governmentwide Commercial Purchase Card, as prescribed in 232.1110 .

(D) Use the clause at 252.232-7010 , Levies on Contract Payments, as prescribed in 232.7102 , to comply with 26 U.S.C. 6331(h).

(E) Use the clause at 252.232-7011 , Payments in Support of Emergencies and Contingency Operations, as prescribed in 232.908 .

(F) Use the provision at 252.232-7014 , Notification of Payment in Local Currency (Afghanistan), as prescribed in 232.7202 .

(xv) *Part 237 - Service Contracting.*

(A) Use the clause at 252.237-7010, Prohibition on Interrogation of Detainees by Contractor Personnel, as prescribed in 237.173-5, to comply with section 1038 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111-84).

(B) Use the clause at 252.237-7019, Training for Contractor Personnel Interacting with Detainees, as prescribed in 237.171-4, to comply with section 1092 of the National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108-375).

(C) Use the provision at 252.237-7025, Preaward Transparency Requirements for Firms Offering to

Support Department of Defense Audits—Representation and Disclosure, as prescribed in 237.270(e)(3), to comply with section 1006 of the National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) and section 1011 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116-92).

(D) Use the clause at 252.237-7026, Postaward Transparency Requirements for Firms that Support Department of Defense Audits, as prescribed in 237.270(e)(4), to comply with section 1006 of the National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) and section 1011 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116-92).

(E) Use the clause at 252.237-7027, Transfer and Adoption of Military Animals, as prescribed in 237.7804 to comply with 10 U.S.C. 2387.

(xvi) *Part 239 - Acquisition of Information Technology.* (A) Use the provision 252.239-7009, Representation of Use of Cloud Computing, as prescribed in 239.7604(a).

(B) Use the clause 252.239-7010, Cloud Computing Services, as prescribed in 239.7604(b).

(C) Use the provision at 252.239-7017, Notice of Supply Chain Risk, as prescribed in 239.7306(a), to comply with 10 U.S.C. 3252.

(D) Use the clause at 252.239-7018, Supply Chain Risk, as prescribed in 239.7306(b), to comply with 10 U.S.C. 3252.

(xvii) *Part 243 - Contract Modifications.* Use the clause at 252.243-7002, Requests for Equitable Adjustment, as prescribed in 243.205-71, to comply with 10 U.S.C. 3862.

(xviii) *Part 244 - Subcontracting Policies and Procedures.* Use the clause at 252.244-7000, Subcontracts for Commercial Products and Commercial Services, as prescribed in 244.403.

(xix) Part 245—Government Property. Use the clause at 252.245-7005 Management and Reporting of Government Property., Management and Reporting of Government Property, as prescribed in 245.107 Contract clauses.(4).

(xx) *Part 246 - Quality Assurance.*

(A) Use the clause at 252.246-7003, Notification of Potential Safety Issues, as prescribed in246.370(a).

(B) Use the clause at 252.246-7004, Safety of Facilities, Infrastructure, and Equipment for Military Operations, as prescribed in 246.270-4, to comply with section 807 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111-84).

(C) Use the clause at 252.246-7008, Sources of Electronic Parts, as prescribed in 246.870-3(b), to comply with section 818(c)(3) of Public Law 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).

(xxi) *Part 247 - Transportation.*(A) Use the clause at 252.247-7003, Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer, as prescribed in 247.207, to comply with section 884 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417).

(B) Use the basic or one of the alternates of the clause at 252.247-7023, Transportation of Supplies

by Sea, as prescribed in 247.574(a), to comply with the Cargo Preference Act of 1904 (10 U.S.C. 2631(a)).

(*1*) Use the basic clause as prescribed in 247.574(a)(1).

(*2*) Use the alternate I clause as prescribed in 247.574(a)(2).

(*3*) Use the alternate II clause as prescribed in 247.574(a)(3).

(C) Use the clause 252.247-7025, Reflagging or Repair Work, as prescribed in 247.574(c), to comply with 10 U.S.C. 2631(b).

(D) Use 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, as prescribed in 247.574(c), to comply with section 1017 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364).

(E) Use the clause at 252.247-7027, Riding Gang Member Requirements, as prescribed in 247.574(d), to comply with section 3504 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417).

(F) Use the clause at 252.247-7028, Application for U.S. Government Shipping Documentation/Instructions, as prescribed in 247.207.

(xxii) Part 270—Defense Contracting Programs.

(A) Use the provision at 252.270-7000, Pilot Program to Incentivize Contracting with Employee-Owned Businesses—Representation, as prescribed at 270.105(a) to comply with section 874 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2022 (Pub. L. 117-81; 10 U.S.C. 3204 note) and section 872 of the NDAA for FY 2024 (Pub. L. 118-31; 10 U.S.C. 3204 note).

(B) Use the provision at 252.270-7001, Pilot Program to Incentivize Contracting with Employee-Owned Businesses—Subcontracting Certification, as prescribed at 270.105(b), to comply with section 874 of the NDAA for FY 2022 (Pub. L. 117-81; 10 U.S.C. 3204 note) and section 872 of the NDAA for FY 2024 (Pub. L. 118-31; 10 U.S.C. 3204 note).

(C) Use the clause at 252.270-7002, Pilot Program to Incentivize Contracting with Employee-Owned Businesses, as prescribed at 270.105(c), to comply with section 874 of the NDAA for FY 2022 (Pub. L. 117-81; 10 U.S.C. 3204 note) and section 872 of the NDAA for FY 2024 (Pub. L. 118-31; 10 U.S.C. 3204 note).

212.302 Tailoring of provisions and clauses for the acquisition of commercial products and commercial services.

(c) *Tailoring inconsistent with customary commercial practice*.

The head of the contracting activity is the approval authority within the DoD for waivers under FAR 12.302(c).

212.370 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.

212.371 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 212.370 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.

Subpart 212.5 - APPLICABILITY OF CERTAIN LAWS TO THE

ACQUISITION OFCOMMERCIAL PRODUCTS, COMMERCIAL SERVICES, AND COMMERCIALLY AVAILABLEOFF-THE-SHELF ITEMS

212.503 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.

(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(b)(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).

212.504 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.

(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. 24024655, 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.

212.505 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 FAR 12.503, FAR 12.504, 212.503, or 212.504 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 FAR 12.505 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).

Subpart 212.6 - STREAMLINED PROCEDURES FOR EVALUATION AND SOLICITATION FOR COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

212.602 Streamlined evaluation of offers.

(b)(i) For the acquisition of transportation and transportation-related services, also consider evaluating offers in accordance with the criteria at 247.206 (1).

(ii) 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 .

(iii) For the direct purchase of ocean transportation services, also evaluate offers in accordance with the criteria at 247.573-2(c).

Subpart 212.70 - DEFENSE COMMERCIAL SOLUTIONS OPENING

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—

(1) Any technology, process, or method, including research and development, that is new as of the date of submission of a proposal; or

(2) 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 12.207, contracting officers shall use fixed-price type contracts, including fixed-price incentive contracts, for awards resulting from a CSO. When using a fixed-price incentive contract, see FAR 12.214 and subpart 16.4 for additional requirements.

(c) Contracting officers shall 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 shall 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 shall 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 shall—

(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 shall 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 shall publish the notice at least annually.

(c) Proposals received in response to the CSO shall 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 5.2 of individual contract actions based upon proposals received in response to the CSO is not required. 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 19.6).

(f) The contracting officer shall 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 212.71 - RESERVED