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

Parent topic: Part 212 - 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.