Subpart 212.5 - APPLICABILITY OF CERTAIN LAWS TO THE ACQUISITION OFCOMMERCIAL PRODUCTS, COMMERCIAL SERVICES, AND COMMERCIALLY AVAILABLEOFF-THE-SHELF ITEMS

Parent topic: Part 212 - ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

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).