



ACQUISITION
AND SUSTAINMENT

OFFICE OF THE ASSISTANT SECRETARY OF WAR
3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

In reply refer to
DARS Tracking Number: 2026-O0028

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES SPECIAL OPERATIONS
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION
COMMAND (ATTN: ACQUISITION EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY
(PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING)
DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Class Deviation—Revolutionary Federal Acquisition Regulation (FAR) Overhaul
Part 12, Defense FAR Supplement (DFARS) Part 212

Effective February 1, 2026, contracting officers shall use—

- The revised FAR Part 12, Acquisition of Commercial Products and Commercial Services, published on the Revolutionary FAR Overhaul web page at <https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-12> in lieu of the text codified at 48 CFR chapter 1 (<https://www.ecfr.gov>).
- The attached DFARS Part 212, Acquisition of Commercial Products and Commercial Services, in lieu of the text codified at 48 CFR chapter 2; and
- The attached DFARS Procedures, Guidance, and Information (PGI) 212, Acquisition of Commercial Products and Commercial Services, in lieu of the PGI text published on the Defense Pricing, Contracting, and Acquisition Policy web page at <https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html>.

This class deviation implements the following:

- Section 2 of E.O. 14275, Restoring Common Sense to Federal Procurement, which establishes the policy that the FAR “should only contain provisions required by statute or essential to sound procurement, and any FAR provisions that do not advance these objectives should be removed.”

- Section 4(a) of E.O. 14265, Modernizing Defense Acquisitions and Spurring Innovation in the Defense Industrial Base which requires the Secretary of War to eliminate or revise any unnecessary supplemental regulations or any other internal guidance, such as relevant parts of the Financial Management Regulation and Defense Federal Acquisition Regulation Supplement.
- The Office of Management and Budget memorandum, M-25-26 issued on May 2, 2025, titled, Overhauling the Federal Acquisition Regulation, which provided additional guidance to federal agencies regarding the FAR overhaul.

This class deviation remains in effect until rescinded or incorporated into the FAR, DFARS, and DFARS PGI. Inquiries regarding this class deviation can be addressed to osd.pentagon.ousd-a-s.mbx.dfars@mail.mil.

John M. Tenaglia
Principal Director,
Defense Pricing, Contracting, and
Acquisition Policy

Attachments:
As stated

PART 212—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

SUBPART 212.1—PRESOLICITATION

212.001-70 Applicability.

(a) *FAR part 12 procedures.* Use of FAR part 12 procedures is based on applicability of one of the following statutes that provide for treatment as a commercial product or commercial service and use of FAR part 12 procedures, even though the item may not meet the definition of “commercial product” or “commercial service” at FAR 2.101 and does not require a commercial product or commercial service determination:

(1) 41 U.S.C. 1903 – Supplies or services to be used to facilitate defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack pursuant to FAR 12.001(b).

(2) 10 U.S.C. 3457 – Supplies or services from nontraditional defense contractors pursuant to paragraph (d) of this section.

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

(b) *Prior commercial product or commercial service determinations.*

(1) Pursuant to 10 U.S.C. 3456(c), except as provided in paragraph (b)(2)(i) of this section or unless the item was acquired pursuant to paragraph (a) of this section, if the Commercial Item Database (for website see [PGI 212.001-70\(b\)\(A\)\(1\)](#)) contains a prior commerciality determination, or the contracting officer has other evidence that an item has previously been acquired by DoD using commercial product and commercial service acquisition procedures under FAR part 12, then the prior contract must serve as a prior determination that an item is a commercial product or commercial service. The contracting officer must document the file accordingly.

(2)(i) If the item to be acquired meets the criteria in paragraph (b)(1) of this section, the item may not be acquired using other than FAR part 12 procedures unless the head of the contracting activity issues a determination as specified in paragraph (b)(2)(ii)(B) of this section.

(ii) Pursuant to 10 U.S.C. 3703(d)(1), the contracting officer may presume that a prior commercial product or commercial service determination made by a DoD department, agency, or component serves as a determination for subsequent procurements of such item. In accordance with 10 U.S.C. 3703(d) and 10 U.S.C. 3456(c), if the contracting officer questions a prior determination to use FAR part 12 procedures and instead chooses to proceed with a procurement of an item previously determined to be a commercial product or commercial service using procedures other than FAR part 12 procedures, the contracting officer must request a review by the head of the contracting activity that will conduct the procurement. Not later than 30 days after receiving a request for review, the head of the contracting activity will—

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

(B) Issue a determination that the prior use of FAR part 12 procedures was improper or that it is no longer appropriate to acquire the item using FAR part 12 procedures, with a written explanation of the basis for the determination.

(c) *Commercial product or commercial service determination.* Unless the procedures in paragraph (b) of this section are applicable, when using FAR part 12 procedures for acquisitions of commercial products and commercial services that exceed the simplified acquisition threshold, the contracting officer must—

(1) Determine in writing that the acquisition meets the “commercial product” or “commercial service” definition in FAR 2.101;

(2) Include the written determination in the contract file;

(3) Obtain approval at one level above the contracting officer when a commercial product or commercial service determination relies on paragraphs (1)(ii), (3), or (4) of the “commercial product” definition at FAR 2.101 or paragraph (2) of the “commercial service” definition at FAR 2.101; and

(4) Follow the procedures and guidance at [PGI 212.001-70\(b\)](#) regarding file documentation and commercial product or commercial service determinations.

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

(1) Except as provided in paragraph (d)(2) of this section, may treat supplies and services provided by nontraditional defense contractors as commercial products or commercial services (see [PGI 212.001-70\(d\)\(1\)](#));

(2) Will treat services provided by a business unit that is a nontraditional defense contractor as commercial services, to the extent that such services use the same pool of employees as used for commercial customers and are priced using methodology similar to methodology used for commercial pricing; and

(3) Will document the file when treating supplies or services from a nontraditional defense contractor as commercial products or commercial services in accordance with paragraph (d)(1) or (2) of this section.

(e) *Commercial item guidebook.* For a link to the commercial item guidebook, see [PGI 212.001-70](#).

212.070 Definition.

As used in this part—

“Market research” means a review of existing systems, subsystems, capabilities, and technologies that are available or could be made available to meet the needs of DoD in whole or in part. The review must include, at a minimum, contacting knowledgeable individuals in Government and industry regarding existing market capabilities and pricing information, and may include any of the techniques for conducting market

research provided in FAR part 10 (section 855 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114-92)).

SUBPART 212.1—PRESOLICITATION

212.102-70 Restricting competition. See PGI 212.102-70 for guidance on promoting competition.

(a) For non-competitive follow-on acquisitions of supplies or services previously awarded on a non-competitive basis, include the additional documentation required by 206.104-71 and follow the procedures at PGI 206.104-71.

(b) In accordance with section 888(a) of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114-328), the documentation addressed in FAR 12.102 is required to use brand name or equal descriptions or proprietary specifications and standards.

212.102-71 Only one offer.

If only one offer is received in response to a competitive solicitation issued using simplified acquisition procedures for commercial products and commercial services, follow the procedures at [215.202-71](#).

212.104-70 Contract type.

In accordance with section 805 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181), use of time-and-materials and labor-hour contracts for the acquisition of commercial services is authorized only for the following:

(a) Services acquired for support of a commercial product, as described in paragraph (1) of the definition of “commercial service” at FAR 2.101 (41 U.S.C. 103a).

(b) Emergency repair services.

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

(1) The services to be acquired are commercial services as defined in paragraph (2) of the definition of “commercial service” at FAR 2.101 (41 U.S.C. 103a);

(2) If the services to be acquired are subject to FAR 15.403-2, the offeror of the services has submitted sufficient information in accordance with that subsection;

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

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

212.106 Technical data.

The DoD policy for acquiring technical data for commercial products or commercial services is at [227.7102](#).

212.107-70 Computer software.

(a) Departments and agencies must identify and evaluate, at all stages of the acquisition process (including concept refinement, concept decision, and technology development), opportunities for the use of commercial computer software and other non-developmental software in accordance with Section 803 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417).

(b) See Subpart [208.74](#) when acquiring commercial software or software maintenance. See [227.7202](#) for policy on the acquisition of commercial computer software and commercial computer software documentation.

212.170 Major weapon systems as commercial products.

The DoD policy for acquiring major weapon systems as commercial products is in subpart [234.70](#).

212.171 Limitation on acquisition of right-hand drive passenger sedans.

10 U.S.C. 2253(a)(2) limits the authority to purchase right-hand drive passenger sedans to a cost of not more than \$55,000 per vehicle.

212.172 Preference for certain commercial products and commercial services.

(a) As required by section 855 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114-92), for requirements relating to the acquisition of commercial information technology products and services, see [239.101](#).

(b)(1) As required by section 876 of the National Defense Authorization Act of Fiscal Year 2017 (Pub. L. 114-328), a contracting officer may not enter into a contract above the simplified acquisition threshold for facilities-related services, knowledge-based services (except engineering services), medical services, or transportation services that are not commercial services unless the appropriate official specified in paragraph (b)(2) of this section determines in writing that no commercial services are suitable to meet the agency's needs as provided in 10 U.S.C. 3453(c)(2).

(2) The following officials are authorized to make the determination specified in paragraph (b)(1) of this section:

(i) For contracts above \$10 million, the head of the contracting activity, the combatant commander of the combatant command concerned, or the Under Secretary of Defense for Acquisition and Sustainment (as applicable).

(ii) For contracts in an amount above the simplified acquisition threshold and at or below \$10 million, the contracting officer.

212.173 Procedures for solicitation.

(a) See [215.103-270](#) for the limitations and prohibitions on the use of the lowest price technically acceptable source selection process, which are applicable to the acquisition of commercial products and commercial services.

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

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

(d) See subpart [212.70](#) for acquisitions resulting from a commercial solutions opening.

(e) See [215.103-170](#) and [225.7024](#) for the acquisition of fuel for overseas contingency operations.

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

(g) See limitations on the use of tiered evaluation of offers at [215.102-70](#).

SUBPART 212.2—SOLICITATION, EVALUATION, AND AWARD

212.201 Solicitation procedures.

212.201-1 Simplified procedures.

(e) *Other flexibilities.*

(3) Blanket purchase agreement. See PGI 212.201-1 Simplified Procedures.

212.203 Evaluation.

(a)(1)(i) Include an evaluation factor regarding supply chain risk (see subpart [239.70](#)) when acquiring information technology, whether as a service or as a supply, that is a covered system, is a part of a covered system, or is in support of a covered system, as defined in [239.7001](#).

(ii) When acquiring transportation or transportation related services, see PGI 212.203.

212.204 Award.

(a) *Price reasonableness.*

(1) In accordance with 10 U.S.C. 3453(d), agencies must conduct or obtain market research to support the determination of the reasonableness of price for commercial products and commercial services contained in any bid or offer submitted in response to an agency solicitation. To the extent necessary to support such market research, the contracting officer—

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

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

(2) If the contracting officer determines that the information obtained through market research pursuant to paragraph (1) of this section is insufficient to determine the reasonableness of price, the contracting officer must consider information submitted by the offeror of recent purchase prices paid by the Government and commercial customers for the same or similar commercial products or commercial services under comparable terms and conditions in establishing price reasonableness on a subsequent purchase if the contracting officer is satisfied that the prices previously paid remain a valid reference for comparison. In assessing whether the prices previously paid remain a valid reference for comparison, the contracting officer must consider the totality of other relevant factors such as the time elapsed since the prior purchase and any differences in the quantities purchased (10 U.S.C. 3703(e)).

(3) If the contracting officer determines that the offeror cannot provide sufficient information as described in paragraph (2) of this section to determine the reasonableness of price, the contracting officer should request the offeror to submit information on—

- (i) Prices paid for the same or similar items sold under different terms and conditions;
- (ii) Prices paid for similar levels of work or effort on related products or services;
- (iii) Prices paid for alternative solutions or approaches; and
- (iv) Other relevant information that can serve as the basis for determining the reasonableness of price.

(4) The contracting officer is not restricted from requiring the contractor to supply sufficient information to determine the reasonableness of price, regardless of whether or not the contractor was required to provide such information in connection with any earlier procurement. If the contracting officer determines that the pricing information submitted is not sufficient to determine the reasonableness of price, the contracting officer should request other information regarding the basis for price or cost, including uncertified cost or pricing data such as labor costs, material costs, and other direct and indirect costs.

212.205 Solicitation provisions and contract clauses.

See DoD Class Deviation [2023-O0008](#), Commercial Products and Commercial Services Omnibus Clause for Acquisitions Using the Procurement Desktop-Defense System, issued September 18, 2023. This class deviation allows the contracting officer to use the PD2 clause logic capability to automatically select the clauses that are applicable to the specific solicitation and contract. The contracting officer must ensure that the deviation clause is incorporated into these solicitations and contracts because the deviation clause fulfills the statutory requirements on auditing and subcontract clauses applicable to commercial products and commercial services. The deviation also authorizes adjustments to the deviation clause required by future changes to the clause at FAR 52.212-5 that are published in the FAR. This deviation is effective for 3 years, or until otherwise rescinded.

(a) *Required Provisions.* Refer to Table 212.2 for a list of provisions to be included in solicitations for commercial products and commercial services.

TABLE 212.2

| Number | Title | Source |
|--------------|--|--|
| 252.203-7005 | Representation Relating to Compensation of Former DoD Officials | Section 847 of FY 2008 NDAA |
| 252.204-7019 | Notice of NIST SP 800-171 DoD Assessment Requirements | Federal CUI standards |
| 252.204-7024 | Notice on the Use of the Supplier Performance Risk System | Other |
| 252.209-7021 | Prohibition Relating to Conflicts of Interest in Consulting Services—Certification | Section 812 of the FY 2024 NDAA (Pub. L. 118-31) |
| 252.215-7008 | Only One Offer | 10 USC 3703(a)(1)(A) |
| 252.215-7010 | Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data | 10 USC 3705 |
| 252.215-7016 | Notification to Offerors—Postaward Debriefings | Section 818 of the FY 2018 NDAA |
| 252.219-7000 | Advancing Small Business Growth | 10 U.S.C. 4959 |
| 252.225-7000 | Buy American—Balance of Payments Program Certificate | 41 U.S.C. chapter 83 |
| 252.225-7020 | Trade Agreements Certificate | 19 U.S.C. 2501-2518 |
| 252.225-7031 | Secondary Arab Boycott of Israel | 10 U.S.C. 4659 |
| 252.225-7035 | Buy American—Free Trade Agreements—Balance of Payments Program Certificate | 41 U.S.C. chapter 83 |
| 252.225-7050 | Disclosure of Ownership or Control by the Government of a Country that is a State Sponsor of Terrorism | 10 U.S.C. 4871(b) |
| 252.225-7055 | Representation Regarding Business Operations with the Maduro Regime | Section 890 of FY 2020 NDAA |

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| 252.225-7059 | Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region—Representation | Section 855 of FY 2023 NDAA |
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(b) *Required Clauses.* Refer to Table 212.3 for a list of clauses to be included in contracts for commercial products and commercial services.

TABLE 212.3

| Number | Title | Source |
|--------------|--|---------------------------------|
| 52.203-3 | Gratuities | 10 U.S.C. 4651 |
| 252.203-7000 | Requirements Relating to Compensation of Former DoD Officials | Section 847 of FY 2008 NDAA |
| 252.203-7002 | Requirement to Inform Employees of Whistleblower Rights | 10 USC 4701 |
| 252.204-7020 | DoD Assessment Requirements | DOD CUI Standards |
| 252.204-7021 | Cybersecurity Maturity Model Certification Requirements | DOD Cyber Standards |
| 252.204-7022 | Expediting Contract Closeout | Other |
| 252.204-7023 | Reporting Requirements for Contracted Services | 10 U.S.C. 4505 |
| 252.205-7000 | Provision of Information to Cooperative Agreement Holders | 10 U.S.C. 4957 |
| 252.211-7003 | Item Unique Identification and Valuation | Other |
| 252.211-7008 | Use of Government-Assigned Serial Numbers | Other |
| 252.216-7010 | Postaward Debriefings for Task Orders and Delivery Orders | Section 818 of the FY 2018 NDAA |
| 252.219-7003 | Small Business Subcontracting Plan (DoD Contracts) | 15 U.S.C. 637 |
| 252.223-7008 | Prohibition of Hexavalent Chromium | Other |
| 252.225-7001 | Buy American and Balance of Payments Program | 41 U.S.C. chapter 83 |
| 252.225-7012 | Preference for Certain Domestic Commodities | 10 U.S.C. 4862 |
| 252.225-7021 | Trade Agreements | 19 U.S.C. 2501-2518 |
| 252.225-7036 | Buy American—Free Trade Agreements—Balance of Payments Program | 41 U.S.C. chapter 83 |

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| 252.225-7052 | Restriction on the Acquisition of Certain Magnets, Tantalum, and Tungsten | 10 U.S.C. 4872 |
| 252.225-7056 | Prohibition Regarding Business Operations with the Maduro Regime | Section 890 of FY 2020 NDAA |
| 252.225-7060 | Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region | Section 855 of FY 2023 NDAA |
| 252.226-7001 | Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns | Recurring Approps. |
| 252.227-7015 | Technical Data—Commercial Products and Commercial Services | 10 USC 3772 |
| 252.227-7037 | Validation of Restrictive Markings on Technical Data | 10 USC 3781 |
| 252.232-7003 | Electronic Submission of Payment Requests and Receiving Reports | 10 USC 4601 |
| 252.232-7006 | Wide Area WorkFlow Payment Instructions | Other |
| 252.232-7010 | Levies on Contract Payments | 26 USC 6331(h) |
| 252.237-7010 | Prohibition on Interrogation of Detainees by Contractor Personnel | Section 1038 of FY 2010 NDAA |
| 252.237-7019 | Training for Contractor Personnel Interacting with Detainees | Section 1092 of FY 2005 NDAA |
| 252.243-7002 | Requests for Equitable Adjustment | 10 USC 3862 |
| 252.244-7000 | Subcontracts for Commercial Products and Commercial Services | Section 874 of FY 2017 NDAA |
| 252.247-7023 | Transportation of Supplies by Sea | 10 U.S.C. 2631(a) |
| 252.247-7028 | Application for U.S. Government Shipping Documentation/Instructions | Other |

212.205-70 Provisions and clauses required in limited categories of contracts and solicitations.

Refer to Table 212.4 for a list of clauses to be included in specified categories of contracts for commercial products and commercial services.

TABLE 212.4

Attachment A1
DARS Tracking Number: 2026-O0028
Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 12
Defense FAR Supplement (DFARS) Part 212

| Number | Title | Source |
|--------------|---|--|
| 252.204-7004 | Contracts Providing Access to DoD Classified Systems | DOD security directives |
| 252.204-7008 | Contracts Providing Access to DoD Classified Systems | Section 1632 of FY 2015 NDAA |
| 252.204-7009 | Contracts Providing Access to DoD Classified Systems | Section 1632 of FY 2015 NDAA |
| 252.204-7012 | Contracts Providing Access to DoD Classified Systems | Section 1632 of FY 2015 NDAA |
| 252.204-7014 | Litigation Support Contracts | 10 USC 129d |
| 252.204-7015 | Litigation Support Contracts | 10 USC 129d |
| 252.204-7016 | Support to Nuclear Deterrence and Missile Defense Contracts | 1656 of FY 2018 |
| 252.204-7017 | Support to Nuclear Deterrence and Missile Defense Contracts | 1656 of FY 2018 |
| 252.204-7018 | Support to Nuclear Deterrence and Missile Defense Contracts | 1656 of FY 2018 |
| 252.209-7011 | Contracts with Institutions of Higher Education | Section 1062 of FY 2021 NDAA |
| 252.215-7003 | Contracts with Canadian Commercial Corporation | US-Canada defense trade agreements |
| 252.215-7004 | Contracts with Canadian Commercial Corporation | US-Canada defense trade agreements |
| 252.219-7004 | Contracts with Contractors Participating in the Small Business Subcontracting Test Program | Section 834 of the FY 1990-1991 NDAA, as amended |
| 252.219-7012 | Contracts for Religious Services | Section 898 of FY 2016 NDAA |
| 252.223-7009 | Firefighting Contracts on Military Installations | section 322 of FY 2020 NDAA |
| 252.225-7006 | Contracts for The Acquisition of American Flags | Recurring Approps. |
| 252.225-7007 | Contracts for Items on the U.S. Munitions List or the 600 Series of the Commerce Control List | Section 1211 of FY 2006 NDAA |
| 252.225-7008 | Contracts for Delivery of Specialty Metals As End Items | 10 U.S.C. 4863 |
| 252.225-7009 | Contracts for Delivery of Weapon Systems Containing Specialty Metals | 10 USC 4863 |
| 252.225-7010 | Contracts for Delivery of Weapon Systems Containing Specialty Metals | 10 USC 4863 |
| 252.225-7015 | Contracts Requiring the Delivery of Hand or Measuring Tools | 10 USC 4862 |

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Defense FAR Supplement (DFARS) Part 212

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| 252.225-7016 | Contracts for Ball or Roller Bearings or Items Containing Ball or Roller Bearings | Recurring Approps. |
| 252.225-7017 | Contracts Resulting in DOD Ownership of Photovoltaic Devices | Section 846 of FY 2011 NDAA |
| 252.225-7018 | Contracts Resulting in DOD Ownership of Photovoltaic Devices | Section 846 of FY 2011 NDAA |
| 252.225-7019 | Contracts that Require Welded Shipboard Anchor or Mooring Chain | 10 U.S.C. 4864 |
| 252.225-7023 | Products or Services for use by Afghan Forces or US Operations in Afghanistan | Section 886 of FY 2008 NDAA |
| 252.225-7024 | Products or Services for use by Afghan Forces or US Operations in Afghanistan | Section 886 of FY 2008 NDAA |
| 252.225-7026 | Products or Services for use by Afghan Forces or US Operations in Afghanistan | Section 886 of FY 2008 NDAA |
| 252.225-7027 | Contracts for Foreign Military Sales | 22 U.S.C. 2779 |
| 252.225-7029, | Products or Services for use by Afghan Forces or US Operations in Afghanistan | Section 826 of FY 2013 NDAA |
| 252.225-7039 | Contracts for Private Security Functions Outside the US | Section 862 of FY 2008 NDAA |
| 252.225-7040 | Contracts for Personnel Supporting US Armed Forces Deployed Outside the US | Section 1205 of FY 2005 NDAA |
| 252.225-7043 | Contractors Performing Outside the US | Other |
| 252.225-7049 | Contracts for Commercial Satellite Services | 10 USC 2279 |
| 252.225-7051 | Contracts for Commercial Satellite Services | 10 USC 2279 |
| 252.225-7053 | Contracts for Furnished Energy on an Installation | Section 2821 of FY 2020 NDAA |
| 252.225-7054 | Contracts for Furnished Energy on an Installation | Section 2821 of FY 2020 NDAA |
| 252.225-7061 | Contracts for Personal Protective Equipment | 10 U.S.C. 4875 |
| 252.225-7062 | Contracts for Large, Medium-Speed Diesel Engines | 10 U.S.C. 4864 |
| 252.225-7063 | Contracts for Components of T-AO 205 and T-ARC Class Vessels | 10 USC 4864 |

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| 252.225-7064 | Contracts for the Acquisition of Star Trackers | 10 USC 4864 |
| 252.225-7065 | Contracts for The Acquisition of Fuel for Overseas Contingency Operations | Section 843 of FY 2022 NDAA |
| 252.226-7002 | Contracts for Demonstration Project for Contractors Employing Persons with Disabilities | Section 853 of FY 2004 NDAA |
| 252.227-7013 | Contracts where the Government will have Paid for any Portion of the Development Costs of Commercial Products or Services | 10 USC 3771 |
| 252.227-7015 Alternate I | Contracts for Vessel Design | 10 USC 8687 |
| 252.227-7018 | SBIR/STTR Contracts | 10 USC 3771 |
| 252.227-7040 | SBIR/STTR Contracts | 10 USC 3771 |
| 252.227-7041 | SBIR/STTR Contracts | 10 USC 3771 |
| 252.229-7014 | Contracts with Foreign Persons | 26 USC 5000C |
| 252.232-7009 | Credit Card Purchases | Other |
| 252.232-7011 | Emergencies and Contingency Operations | Other |
| 252.237-7025 | Contracts for Audit Services | Section 1006 of FY 2019 NDAA |
| 252.237-7026 | Contracts for Audit Services | Section 1006 of FY 2019 NDAA |
| 252.237-7027 | Contracts for Working Dogs | 10 USC 2387 |
| 252.239-7009 | Contracts for IT Services | Other |
| 252.239-7010 | Contracts for IT Services | Other |
| 252.239-7017 | Contracts for National Security Systems | 10 U.S.C. 3252 |
| 252.239-7018 | Contracts for National Security Systems | 10 U.S.C. 3252 |
| 252.245-7005 | Contracts Providing for Government-Furnished Property | Other |
| 252.246-7003 | Contracts for Critical Safety Items | Other |
| 252.246-7004 | Contracts for Facilities for Military Operations | Section 807 of FY 2010 NDAA |
| 252.246-7008 | Contracts for Electronic Parts | Section 818 of FY 2012 NDAA |
| 252.247-7003 | Contracts for Shipping/Transportation | Section 884 of FY 2009 NDAA |
| 252.247-7026 | Contracts for Shipping/Transportation | Section 1017 of FY 2007 NDAA |

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| 252.247-7027 | Contracts for Shipping/Transportation | Section 33504 of FY 2009 NDAA |
| 252.270-7000 | Contracts in Pilot Program for Employee-Owned Businesses | Section 874 of FY 2022 NDAA |
| 252.270-7001 | Contracts in Pilot Program for Employee-Owned Businesses | Section 874 of FY 2022 NDAA |
| 252.270-7002 | Contracts in Pilot Program for Employee-Owned Businesses | Section 874 of FY 2022 NDAA |

212.205-71 Additional provisions and clauses that apply to DoD solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services.

If the offeror has completed any of the following provisions listed in this paragraph electronically as part of its annual representations and certifications at <https://www.scm.gov>, the contracting officer must consider this information instead of requiring the offeror to complete these provisions for a particular solicitation. The contracting officer must not use other FAR or DFARS provisions and clauses unless required by the FAR or DFARS or consistent with customary commercial practices (section 874(b)(1)(A), Pub. L. 114-328).

(a) Insert the clause at [252.225-7028](#), Exclusionary Policies and Practices of Foreign Governments, as prescribed in [225.7307](#)(b), to comply with 22 U.S.C. 2755.

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

SUBPART 212.4—MICRO-PURCHASES

212.401-70 General.

See DoD Class Deviation [2024-O0011](#), Special Acquisition Authority for Rapid Contracting for Combatant Commanders, issued April 15, 2024. When approved in accordance with this class deviation, contracting officers may use certain temporary special acquisition authorities for covered contracts, including purchases and/or payments made with the Governmentwide commercial purchase card, that directly support covered operations through September 30, 2028. Combatant commanders will provide a written determination requesting use of the special acquisition authorities. These authorities include higher micro-purchase thresholds for purchases that directly support covered operations, as defined in the class deviation. This deviation is effective until September 30, 2028, unless otherwise rescinded.

(a) Apply the prohibition at [223.7402](#) to purchases at or below the micro-purchase threshold.

(b) See [PGI 212.401-70](#) for guidance on use of the higher micro-purchase thresholds to support a declared contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack.

212.403 Methods.

(a)(1) *The Governmentwide commercial purchase card.*

(i) Follow the procedures at [PGI 212.403\(a\)\(1\)\(i\)\(A\)](#) for authorizing, establishing, and operating a Governmentwide commercial purchase card program.

(ii) “United States,” as used in this section, means the 50 States and the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, Wake Island, Johnston Island, Canton Island, the outer Continental Shelf, and any other place subject to the jurisdiction of the United States (but not including leased bases).

(iii) Use the Governmentwide commercial purchase card as the method of purchase and/or method of payment for purchases valued at or below the micro-purchase threshold. This policy applies to all types of contract actions authorized by the FAR unless—

(A) The Deputy Secretary of Defense has approved an exception for an electronic commerce/electronic data interchange system or operational requirement that results in a more cost-effective payment process;

(B)(1) A general or flag officer or a member of the Senior Executive Service (SES) makes a written determination that—

(i) The source or sources available for the supply or service do not accept the purchase card; and

(ii) The contracting office is seeking a source that accepts the purchase card.

(2) To prevent mission delays, if an activity does not have a resident general or flag officer or SES member, delegation of this authority to the level of the senior local commander or director is permitted; or

(C) The purchase or payment meets one or more of the following criteria:

(1) The place of performance is entirely outside the United States and its outlying areas.

(2) The purchase is a Standard Form 44 purchase for aviation fuel or oil.

(3) The purchase is an overseas transaction by a contracting officer in support of a contingency operation as defined in 10 U.S.C. 101(a)(13) or a humanitarian or peacekeeping operation as defined in 10 U.S.C. 3015(2).

(4) The purchase is a transaction in support of intelligence or other specialized activities addressed by Part 2.7 of Executive Order 12333.

(5) The purchase is for training exercises in preparation for overseas contingency, humanitarian, or peacekeeping operations.

(6) The payment is made with an accommodation check.

(7) The payment is for a transportation bill.

(8) The purchase is under a Federal Supply Schedule contract that does not permit use of the Governmentwide commercial purchase card.

(9) The purchase is for medical services and—

(i) It involves a controlled substance or narcotic;

(ii) It requires the submission of a Health Care Summary Record to document the nature of the care purchased;

(iii) The ultimate price of the medical care is subject to an independent determination that changes the price paid based on application of a mandatory CHAMPUS Maximum Allowable Charge determination that reduces the Government liability below billed charges;

(iv) The Government already has entered into a contract to pay for the services without the use of a purchase card;

(v) The purchaser is a beneficiary seeking medical care; or

(vi) The senior local commander or director of a hospital or laboratory determines that use of the purchase card is not appropriate or cost-effective. The Medical Prime Vendor Program and the DoD Medical Electronic Catalog Program are two examples where use of the purchase card may not be cost-effective.

(iv) An individual appointed in accordance with [201.403-2\(a\)\(1\)](#) also may use the Governmentwide commercial purchase card to make a purchase that exceeds the micro-purchase threshold but does not exceed \$25,000, if—

(A) The purchase—

(1) Is made outside the United States for use outside the United States; and

(2) Is for a commercial product or commercial service; but

(3) Is not for work to be performed by employees recruited within the United States;

(4) Is not for supplies or services originating from, or transported from or through, sources identified in FAR Subpart 25.7;

(5) Is not for ball or roller bearings as end items;

- and
- (6) Does not require access to classified or Privacy Act information;
 - (7) Does not require transportation of supplies by sea; and
 - (B) The individual making the purchase—
 - (1) Is authorized and trained in accordance with agency procedures;
 - (2) Complies with the requirements of FAR 8.103 in making the purchase; and
 - (3) Seeks maximum practicable competition for the purchase in accordance with FAR 12.201-4(c).
 - (v) A contracting officer supporting a contingency operation as defined in 10 U.S.C. 101(a)(13) or a humanitarian or peacekeeping operation as defined in 10 U.S.C. 3015(2) may use the Governmentwide commercial purchase card to make a purchase that exceeds the micro-purchase threshold but does not exceed the simplified acquisition threshold, if—
 - (A) The supplies or services being purchased are immediately available;
 - (B) One delivery and one payment will be made; and
 - (C) The requirements of paragraphs (iv)(A) and (B) of this section are met.
 - (vi) The contracting officer must not authorize the Governmentwide commercial purchase card as a method of payment if the contract includes the clause at FAR 52.229-12, Tax on Certain Foreign Procurements, unless the contract also includes the clause at 252.229-7014, Full Exemption from Two-Percent Excise Tax on Certain Foreign Procurements, indicating that the contractor is fully exempt from the tax.
 - (vii) Guidance on DoD purchase, travel, and fuel card programs is available in the “Department of Defense Government Charge Card Guidebook for Establishing and Managing Purchase, Travel, and Fuel Card Programs” at <https://www.acq.osd.mil/asda/dpc/ce/pc/docs-guides.html>. Additional guidance on the fuel card programs is available at <https://www.dla.mil/Energy/Offers/Products/GovernmentFuel/>.
 - (viii) When the Governmentwide commercial purchase card is used as a method of payment for contracts or orders, follow the procedures at [232.7002\(a\)\(5\)](#) and [PGI 242.302\(a\)\(13\)\(B\)\(3\)](#).
- (a)(2) *Purchase orders.*
- (i) Contracting officers must obtain written acceptance of purchase orders and modifications of purchase orders for classified acquisitions.

(ii) See [PGI 213.403\(a\)\(2\)\(ii\)\(A\)](#) for guidance on the use of unilateral modifications.

(iii) A supplemental agreement converts a unilateral purchase order to a bilateral agreement. If not previously included in the purchase order, incorporate the clause at [252.243-7001](#), Pricing of Contract Modifications, in the Standard Form 30, and obtain the contractor's acceptance by signature on the Standard Form 30.

(iv) Clauses.

(A) Insert the clause at [252.243-7001](#), Pricing of Contract Modifications, in all bilateral purchase orders.

(B) When using the clause at FAR 52.213-4, delete the reference to the clause at FAR 52.225-1, Buy American—Supplies. Instead, if the Buy American statute applies to the acquisition, insert the clause at—

(1) [252.225-7001](#), Buy American and Balance of Payments Program, or the appropriate alternate, as prescribed at [225.1101](#)(2); or

(2) [252.225-7036](#), Buy American—Free Trade Agreements—Balance of Payments Program, or the appropriate alternate, as prescribed at [225.1101](#)(10).

(b)(2)(i) The micro-purchase limitation applies to all purchases, except that purchases not exceeding the simplified acquisition threshold may be made for—

(A) Fuel and oil. U.S. Government fuel cards may be used in lieu of an SF 44 for fuel, oil, and authorized refueling-related items (see [PGI 212.403\(b\)\(2\)\(i\)\(1\)](#) for procedures on use of fuel cards);

(B) Overseas transactions by contracting officers in support of a contingency operation as defined in 10 U.S.C. 101(a)(13) or a humanitarian or peacekeeping operation as defined in 10 U.S.C. 3015(2); and

(C) Transactions in support of intelligence and other specialized activities addressed by Part 2.7 of Executive Order 12333.

(ii) See [PGI 212.403\(b\)\(2\)\(ii\)\(2\)](#) for procedures on use of forms for purchases made using simplified acquisition procedures.

(c)(1) On a very limited basis, installation commanders and commanders of other activities with contracting authority may be granted authority to establish imprest funds and third party draft (accommodation check) accounts. Use of imprest funds and third party drafts must comply with—

(i) DoD 7000.14-R, DoD Financial Management Regulation, Volume 5, Disbursing Policy and Procedures; and

(ii) The Treasury Financial Manual, Volume I, Part 4, Chapter 3000.

(2) Use of imprest funds requires approval by the Director for Financial Commerce, Office of the Deputy Chief Financial Officer, Office of the Under Secretary of Defense (Comptroller), except as provided in paragraph (c)(3) of this subsection.

(3) Imprest funds are authorized for use without further approval for—

(i) Overseas transactions at or below the micro-purchase threshold in support of a contingency operation as defined in 10 U.S.C. 101(a)(13) or a humanitarian or peacekeeping operation as defined in 10 U.S.C. 3015(2); and

(ii) Classified transactions.

SUBPART 212.70—DEFENSE COMMERCIAL SOLUTIONS OPENING *(Added August 17, 2023)*

212.7000 Scope of subpart.

This subpart implements 10 U.S.C. 3458 for the acquisition of innovative commercial products or commercial services through the use of a general solicitation known as a commercial solutions opening (CSO).

212.7001 Definition.

As used in this subpart—

“Innovative” means—

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

(b) Any application that is new as of the date of submission of a proposal of a technology, process, or method existing as of such date.

212.7002 Policy.

(a) Contracting officers may only use a CSO—

(1) To obtain innovative solutions or potential capabilities that fulfill requirements;

(2) To close capability gaps, or provide potential innovative technological advancements; and

(3) When meaningful proposals with varying technical or scientific approaches can be reasonably anticipated.

(b) Notwithstanding FAR 12.104, contracting officers must use fixed-price type contracts, including fixed-price incentive contracts, for awards resulting from a CSO. When using a fixed-price incentive contract, see subpart 16.4 for additional requirements.

(c) Contracting officers must treat products and services acquired using a CSO as commercial products or commercial services.

(d) When using a CSO to acquire research and development, contracting officers must use the procedures of this subpart in conjunction with FAR part 35 and part 235. A CSO is not subject to the limitations at [235.016](#) and may be used to fulfill requirements for research and development, ranging from advanced component development through operational systems development.

212.7003 Limitations.

Contracting officers must follow the procedures at [PGI 212.7003](#) to obtain senior procurement executive approval to award a contract in excess of \$100 million resulting from a CSO.

212.7004 Procedures.

This section prescribes procedures for the use of a CSO.

(a) The CSO must—

(1) Describe the agency's interest for an individual program requirement or for broadly defined areas of interest covering the full range of the agency's requirements;

(2) Specify the technical data required that may be necessary to meet DoD's minimum requirements (see [227.7102](#) and [227.7202](#));

(3) Describe the evaluation factors for selecting proposals to include—

(i) Technical and importance to agency programs as the primary evaluation factors;

(ii) Price to the extent appropriate, but at a minimum to determine that the price is fair and reasonable; and

(iii) Relative importance of the factors, and the method of evaluation;

(4) Specify the period of time during which proposals submitted in response to the CSO will be accepted; and

(5) Contain instructions for the preparation and submission of proposals.

(b) The contracting officer must publicize the CSO through the Governmentwide point of entry and, if authorized pursuant to FAR subpart 5.5, may also publish a notice regarding the CSO in noted scientific, technical, or engineering periodicals. The contracting officer must publish the notice at least annually.

(c) Proposals received in response to the CSO must be evaluated in accordance with evaluation factors specified therein through a scientific, technological, or other subject-matter expert peer review process. Written evaluation reports on individual proposals are required, but proposals need not be evaluated against each other since they are not submitted in response to a common performance work statement or statement of work.

(d) Synopsis of proposed contract actions under FAR subpart 5.1 of individual contract actions based upon proposals received in response to the CSO is not required.

The notice published pursuant to paragraph (b) of this section fulfills the synopsis requirement.

(e) When a small business concern would otherwise be selected for award but is considered not responsible, follow the Small Business Administration Certificate of Competency procedure (see FAR subpart 19.204).

(f) The contracting officer must document the decision that the requirements of this subpart have been met and include the documentation in the contract file.

212.7005 Congressional notification.

See [PGI 212.7005](#) for congressional notification requirements for contracts valued at more than \$100 million that are awarded pursuant to a CSO.

**SUBPART 212.72—APPLICABILITY OF CERTAIN LAWS, PROVISIONS,
AND CLAUSES TO THE ACQUISITION OF COMMERCIAL PRODUCTS,
COMMERCIAL SERVICES, AND COMMERCIALLY AVAILABLE OFF-THE-SHELF ITEMS**

212.7201 Applicability of certain laws to executive agency contracts for the acquisition of commercial products and commercial services.

See PGI 212.7201 Applicability of Certain Laws to Executive Agency Contracts for the Acquisition of Commercial Products and Commercial Services.

212.7202 Applicability of certain laws to subcontracts for the acquisition of commercial products and commercial services.

See PGI 212.7202 applicability of certain laws to subcontracts for the acquisition of commercial products and commercial services.

212.7203 Applicability of certain laws to contracts for the acquisition of COTS items. Commercially available off-the-shelf (COTS) items are a subset of commercial products.

See PGI 212.7203 Applicability of certain laws to contracts for the acquisition of COTS items. Commercially available off-the-shelf (COTS) items are a subset of commercial products.

212.7204 Inapplicability of certain provisions and clauses to contracts and subcontracts for the acquisition of commercial products, commercial services, and commercially available off-the-shelf items.

The following provisions and clauses, not expressly authorized in law, are not applicable to contracts for the acquisition of commercial products and commercial services:

- (a) FAR 52.204-22, Alternative Line Item Proposal.
- (b) [252.203-7003](#), Agency Office of the Inspector General.
- (c) [252.215-7007](#), Notice of Intent to Resolicit.

212.7205 Inapplicability of certain provisions and clauses to contracts for the acquisition of commercially available off-the-shelf items.

Commercially available off-the-shelf (COTS) items are a subset of commercial products. Therefore, the provisions and clauses listed in [212.7204](#) as not applicable to contracts or subcontracts for the acquisition of commercial products are also not applicable to contracts or subcontracts for the acquisition of COTS items. In addition, the following provisions and clauses published after October 13, 1994, not expressly authorized in law, are not applicable or are modified in their applicability to contracts for the acquisition of COTS items:

- (a) FAR 52.204-21, Basic Safeguarding of Covered Contractor Information Systems.
- (b) [252.204-7008](#), Compliance with Safeguarding Covered Defense Information Controls.
- (c) [252.204-7012](#), Safeguarding Covered Defense Information and Cyber Incident Reporting.
- (d) [252.204-7019](#), Notice of NIST SP 800-171 DoD Assessment Requirements.
- (e) [252.204-7020](#), NIST SP 800-171 DoD Assessment Requirements.
- (f) [252.204-7021](#), Cybersecurity Maturity Model Certification Requirements.
- (g) [252.205-7000](#), Provision of Information to Cooperative Agreement Holders.
- (h) [252.270-7000](#), Pilot Program to Incentivize Contracting with Employee-Owned Businesses—Representation.
- (i) [252.270-7001](#), Pilot Program to Incentivize Contracting with Employee-Owned Businesses—Subcontracting Certification.
- (j) [252.270-7002](#), Pilot Program to Incentivize Contracting with Employee-Owned Businesses.

PGI 212—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

PGI 212.1—PRESOLICITATION

PGI 212.001-70 Applicability.

(b) *Commercial product or commercial service determination.*

(A) *Making the commercial product or commercial service determination.*

(1) Before making a commercial product or commercial service determination, the contracting officer must search the DoD Commercial Item Database at <https://piee.eb.mil> for the item and an associated commercial product or commercial service determination or the decision that the item is not commercial in accordance with the commercial product or commercial service definition at FAR 2.101.

(2) In accordance with 10 U.S.C. 3456(b)(1), the contracting officer may—

(i) Request support from the Defense Contract Management Agency (DCMA) by sending an email to DCMA Commercial Item Group (CIG) at dcma.boston-ma.eastern-rc.mbx.Commercial@mail.mil;

(ii) Request support from the cognizant Defense Contract Audit Agency (DCAA) office;

(iii) Request support from other appropriate experts in DoD such as program office technical evaluators, program managers, cognizant engineers, or other contracting officers; or

(iv) Consider the views of appropriate public and private sector entities such as documents provided by the contractor asserting commerciality to include technical drawings, product or catalog descriptions, or national stock numbers.

(3) The contracting officer may make the commercial product or commercial service determination or the decision that the item is other than commercial in accordance with the commercial product or commercial service definition at FAR 2.101 or request a DCMA CIG contracting officer make the determination or the decision that the product or service is other than commercial in accordance with the commercial product or commercial service definition at FAR 2.101 by submitting a request to dcma.boston-ma.eastern-rc.mbx.Commercial@mail.mil. The contracting officer may withdraw the request at any point prior to the determination being made.

(B) *Documenting the commercial product or commercial service determination.*

(1) The contracting officer making the determination must document the market research and rationale supporting a conclusion that the product or service is commercial or is other than commercial and include it in the contract file.

(2) Particular care must be taken when documenting determinations

involving items that are of a type customarily used by the general public or by nongovernmental entities, modifications of a type customarily available in the marketplace, and items only offered for sale, lease, or license to the general public but not yet actually sold, leased, or licensed. In these situations, the documentation must clearly detail the particulars of the items and modifications of a type and sales offers. When such items lack sufficient market pricing information, additional diligence must be given to determinations that prices are fair and reasonable as required by FAR subpart 15.4.

(3) The contracting officer must include the part number, the national stock number, or both, as applicable, in the commercial product or commercial service determination or the decision that the product or service does not meet the commercial product or commercial service definition at FAR 2.101.

(4) The contracting officer must include the commercial product or commercial service determination or the decision that the product or service does not meet the commercial product or commercial service definition at FAR 2.101 in the contract file.

(C) *DoD commercial item database.* In accordance with 10 U.S.C. 3456(b)(2), within 30 days of contract award, the contracting officer making the determination must upload the signed commercial product or service determination or the decision that the item does not meet the commercial product or commercial service definition at FAR 2.101 to the DoD Commercial Item Database at <https://piee.eb.mil>. The only documentation that is required to be uploaded to the database is the commercial product or service determination or the decision that the item is other than commercial. Contracting officers must avoid uploading any data marked as proprietary or controlled unclassified information to the Commercial Item Database. Additional information is available at <https://www.dcmi.mil/commercial-item-group/>.

(D) *Prior commercial product or commercial service determination.*

(1) If a prior DoD commercial product or commercial service determination for the same product or service is made by a military department, defense agency, or another component of DoD, contracting officers may presume that the prior commercial product or commercial service determination must serve as a determination for subsequent procurements of such product or service, unless the process is followed to overturn the prior determination.

(2) If the DoD Commercial Item Database contains a prior decision that a product or service does not meet the definition of a commercial product or commercial service at FAR 2.101, the contracting officer may use the prior decision to serve as the decision for subsequent procurements of the same product or service. To promote consistent acquisition procedures across DoD, contracting officers should consult contracting activities that regularly procure the product or service to understand the basis for determining that the product or service does not meet the commercial product or commercial service definition at FAR 2.101.

(v) *Commercial product or commercial service guidebook.* See the [Department of Defense Guidebook for Acquiring Commercial Items, Part A: Commercial Item Determination](#), for detailed guidance and practical examples on improving the

consistency and timeliness of commercial product or commercial service determinations to include a template for new commercial product or commercial service determinations and for general information related to commercial products or commercial services.

(d)(1) This permissive authority is intended to enhance defense innovation and investment, enable DoD to acquire items that otherwise might not have been available, and create incentives for nontraditional defense contractors to do business with DoD. It is not intended to recategorize current other than commercial products or commercial services; however, when appropriate, contracting officers may consider applying commercial product or commercial service procedures to the procurement of supplies and services from business segments that meet the definition of “nontraditional defense contractor” even though they have been established under traditional defense contractors. The decision to apply commercial product and commercial service procedures to the procurement of supplies and services from nontraditional defense contractors does not require a commercial product or commercial service determination and does not mean the item is commercial.

PGI 212.102-70 Promoting competition.

For more information on the approaches that may be used to competitively fulfill DoD requirements, see the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics [Guidelines for Creating and Maintaining a Competitive Environment for Supplies and Services in the Department of Defense](https://www.acq.osd.mil/asda/dpc/cp/policy/competition.html), <https://www.acq.osd.mil/asda/dpc/cp/policy/competition.html>.

PGI 212.2—SOLICITATION, EVALUATION, AND AWARD

PGI 212.201 Solicitation procedures.

PGI 212.201-1 Simplified procedures.

(e) Other flexibilities

(3) Blanket purchase agreement. Individual purchases for subsistence may be made at any dollar value; however, the contracting officer must satisfy the competition requirements of FAR part 6 for any action not using simplified acquisition procedures.

PGI 212.203 Evaluation.

(a) *Factors.*

(1) *Technical.*

(A) When acquiring transportation or transportation-related services, also consider evaluating offers in accordance with the criteria at 247.206(1).

(B) For the acquisition of transportation in supply contracts that will include a significant requirement for transportation of items outside the contiguous United States, also evaluate offers in accordance with the criterion at 247.301-71.

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

PGI 212.4—MICRO PURCHASES

PGI 212.401-70 General.

(b)(i) Higher micro-purchase thresholds are authorized for purchases that have a clear and direct relationship to the support of a contingency operation; to facilitate defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack; to support a request from the Secretary of State or the Administrator of the United States Agency for International Development to facilitate provision of international disaster assistance pursuant to 22 U.S.C. 2292 et seq.; or to support response to an emergency or major disaster (42 U.S.C. 5122).

(ii) “United States,” as used in this section, is defined in FAR 2.101.

(iii) Except as provided in paragraph (iv) of this section, the following tables illustrate the higher micro-purchase threshold based on the physical location of the Government purchaser and, for services, the place of performance:

(A) For supplies—

| Government Purchaser Physical Location | Authorized Micro-Purchase Threshold |
|---|--|
| Inside United States | \$25,000 |
| Outside United States | \$40,000 |

(B) For services—

| Government Purchaser Physical Location | Place of Performance | Authorized Micro-Purchase Threshold |
|---|---------------------------------|--|
| Inside United States | Inside or outside United States | \$25,000 |
| Outside United States | Inside United States | \$25,000 |
| Outside United States | Outside United States | \$40,000 |

(iv)(A) Unless authorized by statute, Government purchasers physically located inside the United States are prohibited from using the higher micro-purchase threshold authorized for purchases made and/or with a place of performance outside the United States.

(B) The micro-purchase threshold for acquisitions subject to 41 U.S.C. chapter 67, Service Contract Labor Standards, remains at \$2,500.

(C) The micro-purchase threshold for acquisitions of construction subject to 40 U.S.C. chapter 31, subchapter IV, Wage Rate Requirements (Construction), remains at \$2,000.

(D) The higher micro-purchase thresholds in paragraph (g)(iii) of this section are not authorized for acquisitions supporting humanitarian or peacekeeping operations.

PGI 212.403 Methods.

(a)(1)(i)(A) A Governmentwide commercial purchase card program is authorized pursuant to a delegation of contracting authority and designation as a DoD contracting activity for the purpose of streamlining the purchase and payment processes for supplies and services by use of a Government-issued purchase card.

(B) Governmentwide commercial purchase card programs cannot be established or operated unless contracting authority is granted in accordance with governing laws and regulations, and delegated through a contracting activity identified at PGI 202.101. Further guidance regarding establishment, operation, and oversight of Governmentwide commercial purchase card programs can be found in the “Department of Defense Government Charge Card Guidebook for Establishing and Managing Purchase, Travel, and Fuel Card Programs” at <https://www.acq.osd.mil/asda/dpc/ce/pc/docs-guides.html>.

(a)(2)(ii)(A) Generally, use unilateral modifications (see far 43.103) for—

(1) No-cost amended shipping instructions if—

(i) The amended shipping instructions modify a unilateral purchase order; and

(ii) The contractor agrees orally or in writing; and

(2) Any change made before work begins if—

(i) The change is within the scope of the original order;

(ii) The contractor agrees;

(iii) The modification references the contractor’s oral or written agreement; and

(iv) Block 13d of Standard Form 30, Amendment of Solicitation/Modification of Contract, is annotated to reflect the authority for issuance of the modification.

(b)(2)(i)(1) Establish fuel card accounts—

(i) For DoD customers, contact the service or agency component program manager for fuel cards (see <http://www.desc.dla.mil/dcm/files/cpmpocs06022010.pdf>; and

(ii) For non-DoD customers, contact the designated account manager identified at <http://www.desc.dla.mil/dcm/dcmpage.asp?pageid=41>.

(2) Purchasers using the air card® and sea card® must follow the guidance found at <http://www.desc.dla.mil/dcm/dcmpage.asp?pageid=28>.

(b)(2)(ii)(2) Commercial products and commercial services. If SF 1449 is not used, use DD Form 1155 in accordance with paragraph (b)(2)(ii)(2)(3) of this section.

(3) The DD Form 1155 is authorized for use for—

(i) Orders placed in accordance with FAR part 8 and 16; and

(ii) Classified acquisitions when the purchase is made within the United States. Attach the DD Form 254, Contract Security Classification Specification, to the purchase order.

(iii) Do not use Optional Form 347, Order for Supplies or Services, or Optional Form 348, Order for Supplies or Services Schedule--Continuation.

(iv) Use Standard Form 30, Amendment of Solicitation/Modification of Contract, to—

(A) Modify a purchase order; or

(B) Cancel a unilateral purchase order.

PGI 212.70—DEFENSE COMMERCIAL SOLUTIONS OPENING

PGI 212.7003 Limitations.

(a) Prior to awarding a contract in excess of \$100 million pursuant to a commercial solutions opening (CSO), contracting officers must prepare a written determination for approval by the senior procurement executive that includes—

(1) A description of the innovative commercial product, commercial service, or technology acquired;

(2) A description of the requirement, capability gap, or potential technological advancement with respect to which the innovative commercial product, commercial service, or technology acquired provides a solution or a potential new capability;

(3) A description of the efficacy of the effort to meet the mission needs of DoD or the relevant military department or defense agency;

(4) The proposed contract award amount; and

(5) The prospective contractor.

(b) Include a copy of the approved determination in the contract file.

PGI 212.7005 Congressional notification.

Military departments and defense agencies must provide notification to the congressional defense committees no later than 45 days after the award of a contract valued at more than \$100 million resulting from a CSO.

(a) The contracting officer must prepare a notice of award for the congressional defense committees that includes—

(1) A description of the innovative commercial product, commercial service, or technology acquired;

(2) A description of the requirement, capability gap, or potential technological advancement with respect to which the innovative commercial product, commercial service, or technology acquired provides a solution or a potential new capability;

(3) The contract award amount; and

(4) The contractor awarded the contract.

(b) Submit the notice of award in accordance with department/agency procedures.

(c) Include a copy of the notice of award in the contract file.

PGI 212.72—APPLICABILITY OF CERTAIN LAWS TO THE ACQUISITION OF COMMERCIAL PRODUCTS, COMMERCIAL SERVICES, AND COMMERCIALY AVAILABLE OFF-THE-SHELF ITEMS

PGI 212.7201 Applicability of certain laws to Executive agency contracts for the acquisition of commercial products and commercial services.

(a) The following laws are not applicable to contracts for the acquisition of commercial products or commercial services:

(i) 10 U.S.C. 3321(b), Prohibition on Contingent Fees.

(ii) 10 U.S.C. 3741-3750, Allowable Costs Under Defense Contracts.

(iii) 10 U.S.C. 3845, Contractor Inventory Accounting System Standards (see 252.242-7004).

(iv) 10 U.S.C. 4651, note prec. (section 855, Pub. L. 117-81), Employment Transparency Regarding Individuals Who Perform Work in the People's Republic of China.

(v) 10 U.S.C. 4656(a), Prohibition on Persons Convicted of Defense Related Felonies.

(vi) 10 U.S.C. 4753(b), Requirement to Identify Suppliers.

(vii) 10 U.S.C. 4864, Miscellaneous Limitations on the Procurement of Goods Other Than United States Goods. 10 U.S.C. 4864 is not applicable to contracts valued at or below the simplified acquisition threshold.

(viii) Section 8116 of the Defense Appropriations Act for Fiscal Year 2010 (Pub. L. 111-118) (prohibits mandatory arbitration) and similar sections in subsequent DoD appropriations acts.

(ix) Domestic Content Restrictions in the National Defense Appropriations Acts for Fiscal Years 1996 and Subsequent Years, unless the restriction specifically applies to commercial products or commercial services. For the restriction that specifically applies to commercial ball or roller bearings as end items, see 225.7009-3 (section 8065 of Pub. L. 107-117).

(c) The applicability of the following laws has been modified in regard to contracts for the acquisition of commercial products and commercial services:

(i) 10 U.S.C. 3703, Truthful Cost or Pricing Data (see FAR 15.403-1(c)(3)).

(ii) 10 U.S.C. 4655, Prohibition on Limiting Subcontractor Direct Sales to the United States (see FAR 3.503 and 52.203-6).

PGI 212.7202 Applicability of certain laws to subcontracts for the acquisition of commercial products and commercial services.

(a) The following laws are not applicable to subcontracts at any tier for the acquisition of commercial products, commercial services, or commercial components:

(i) 10 U.S.C. 2391 note, Notification of Substantial Impact on Employment.

(ii) 10 U.S.C. 2631, Transportation of Supplies by Sea (except as provided in the clause at 252.247-7023, Transportation of Supplies by Sea).

(iii) 10 U.S.C. 3321(b), Prohibition on Contingent Fees.

(iv) 10 U.S.C. 3741-3750, Allowable Costs Under Defense Contracts.

(v) 10 U.S.C. 3841(d), Examination of Records of a Contractor.

(vi) 10 U.S.C. 3845, Contractor Inventory Accounting System Standards.

(vii) 10 U.S.C. 4651, note prec. (section 855, Pub. L. 117-81), Employment Transparency Regarding Individuals Who Perform Work in the People's Republic of China.

(viii) 10 U.S.C. 4654, Prohibition Against Doing Business with Certain Offerors or Contractors.

(ix) 10 U.S.C. 4656(a), Prohibition on Persons Convicted of Defense Related Felonies.

(x) 10 U.S.C. 4753(b), Requirement to Identify Suppliers.

(xi) 10 U.S.C. 4801 note prec., Notification of Proposed Program Termination.

(xii) 10 U.S.C. 4864, Miscellaneous Limitations on the Procurement of Goods Other Than United States Goods. 10 U.S.C. 4864 is not applicable to subcontracts valued at or below the simplified acquisition threshold.

(xiii) Section 8116 of the Defense Appropriations Act for Fiscal Year 2010 (Pub. L. 111-118) (prohibits mandatory arbitration) and similar sections in subsequent DoD appropriations acts.

(xiv) Domestic Content Restrictions in the National Defense Appropriations Acts for Fiscal Years 1996 and Subsequent Years, unless the restriction specifically applies to commercial products and commercial services. For the restriction that specifically applies to commercial ball or roller bearings as end items, see 225.7009-3 (section 8065, Pub. L. 107-117).

(b) Certain requirements of the following laws have been eliminated for subcontracts at any tier for the acquisition of commercial products, commercial services, or commercial components:

(i) 10 U.S.C. 4654(d), Subcontractor Reports Under Prohibition Against Doing Business with Certain Offerors (see FAR 52.209-6).

(ii) 10 U.S.C. 4655, Prohibition on Limiting Subcontractor Direct Sales to the United States (see FAR 3.503 and 52.203-6).

(iii) 10 U.S.C. 4864, Miscellaneous Limitations on the Procurement of Goods Other Than United States Goods. 10 U.S.C. 4864 is not applicable to subcontracts at any tier valued at or below the simplified acquisition threshold.

PGI 212.7203 Applicability of certain laws to contracts for the acquisition of COTS items. Commercially available off-the-shelf (COTS) items are a subset of commercial products.

Therefore, any laws listed at https://www.acquisition.gov/inapplicable_laws, PGI 212.7201, or 212.7202 are also not applicable or are modified in their applicability to contracts for the acquisition of COTS items. In addition to the laws listed at https://www.acquisition.gov/inapplicable_laws as specifically not applicable to COTS items, the following laws are not applicable to contracts for the acquisition of COTS items:

(1) 10 U.S.C. 391, Reporting on Cyber Incidents with Respect to Networks and Information Systems of Operationally Critical Contractors and Certain Other Contractors, and 10 U.S.C. 393, Reporting on Penetrations of Networks and Information Systems of Certain Contractors.

(2) Paragraph (a)(1) of 10 U.S.C. 4863, Requirement to buy strategic materials critical to national security from American sources, except as provided at 225.7003-3(b)(2)(i).

(3) Paragraph (a)(1) of 10 U.S.C. 4872, Prohibition on acquisition of sensitive materials from non-allied foreign nations, except as provided at 225.7018-3(c)(1).