**DFARS Case 2018-D066**

**Definition of “Commercial Item”**

**Final Rule**

**PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST**

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**SUBPART 203.1—SAFEGUARDS**

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**203.171 Senior DoD officials seeking employment with defense contractors.**

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**203.171-4 Solicitation provision and contract clause.**

(a) Use the clause at [252.203-7000](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252203.htm#252.203-7000), Requirements Relating to Compensation of Former DoD Officials, in all solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**.

(b) Use the provision at [252.203-7005](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252203.htm#252.203-7005), Representation Relating to Compensation of Former DoD Officials, in all solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]** and solicitations for task **[orders]** and delivery orders**[.]**

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**Subpart 203.5—Other Improper Business Practices**

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**203.570 Prohibition on persons convicted of ~~frauds~~[fraud] or other defense-contract-related felonies.**

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**203.570-3 Contract clause.**

Use the clauseat[252.203-7001](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252203.htm#252.203-7001), Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies, in all solicitations and contracts exceeding the simplified acquisition threshold, except solicitations and contracts for commercial ~~items~~**[products or commercial services]**.

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**SUBPART 203.9—WHISTLEBLOWER PROTECTIONS FOR CONTRACTOR EMPLOYEES**

**203.970 Contract clause.**

Use the clause at 252.203-7002, Requirement to Inform Employees of Whistleblower Rights, in all solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products or commercial services]**.

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**Subpart 203.10—Contractor Code of Business Ethics and Conduct**

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**203.1004 Contract clauses**.

(a) Use the clause at [252.203-7003](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252203.htm#252.203-7003), Agency Office of the Inspector General, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, that include the FAR clause 52.203-13, Contractor Code of Business Ethics and Conduct.

(b)(2)(ii) Unless the contract is for the acquisition of a commercial ~~item~~ **[product or commercial service]**, use the clause at [252.203-7004](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252203.htm#252.203-7004), Display of Hotline Posters, in lieu of the clause at FAR 52.203-14, Display of Hotline Poster(s), in solicitations and contracts, if the contract value exceeds $6 million. If the Department of Homeland Security (DHS) provides disaster relief funds for the contract, DHS will provide information on how to obtain and display the DHS fraud hotline poster (see FAR 3.1003).

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**PART 204—ADMINISTRATIVE AND INFORMATION MATTERS**

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**SUBPART 204.8—CONTRACT FILES**

**204.804-70 Contract clause.**

Use the clause at [252.204-7022](https://www.acq.osd.mil/dpap/dars/dfars/html/current/252204.htm#252.204-7022), Expediting Contract Closeout, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, when the contracting officer intends to expedite contract closeout through the mutual waiver of entitlement to a residual dollar amount of $1,000 or less determined at the time of contract closeout.

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**SUBPART 204.17—SERVICE CONTRACTS INVENTORY**

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**204.1705 Contract clauses.**

(a)(i) Use the basic or the alternate of the clause **[at]** 252.204-7023, Reporting Requirements for Contracted Services, in solicitations, contracts, agreements, and orders, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, that—

(A) \* \* \*

\* \* \* \* \*

**SUBPART 204.21—PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE [SERVICES] OR EQUIPMENT**

\* \* \* \* \*

**204.2105 Solicitation provisions and contract clause.**

(a) Use the provision at 252.204-7016, Covered Defense Telecommunications Equipment or Services—Representation, in all solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services,]** and~~,~~ solicitations for task **[orders]** and delivery orders, basic ordering agreements (BOAs), orders against BOAs, blanket purchase agreements (BPAs), and calls against BPAs.

(b) Use the provision at 252.204-7017, Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services—Representation, in all solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, and solicitations for task **[orders]** and delivery orders, BOAs, orders against BOAs, BPAs, and calls against BPAs.

(c) Use the clause at 252.204-7018, Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services, in all solicitations and resultant awards, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, and solicitations and awards for task **[orders]** and delivery orders, BOAs, orders against BOAs, BPAs, and calls against BPAs.

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**SUBPART 204.71—UNIFORM CONTRACT LINE ITEM NUMBERING SYSTEM**

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**204.7103 Contract line items.**

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**204.7103-1 Criteria for establishing.**

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(g) Certain commercial ~~items~~**[products]** and initial provisioning spares for weapons systems are requested and subsequently solicited using units of measure such as kit, set, or lot. However, there are times when individual items within that kit, set, or lot are not grouped and delivered in a single shipment. This creates potential contract administration issues with inspection, acceptance, and payment. In such cases, solicitations should be structured to allow offerors to provide information about products that may not have been known to the Government prior to solicitation and propose an alternate line item structure as long as the alternate is consistent with the requirements of 204.71, which provides explicit guidance on the use of contract line items and subline items, and with PGI 204.71.

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**SUBPART 204.72—ANTITERRORISM AWARENESS TRAINING**

\* \* \* \* \*

**204.7203 Contract clause.**

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

\* \* \* \* \*

**SUBPART 204.73—SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING**

**204.7301 Definitions.**

As used in this subpart—

\* \* \* \* \*

“Technical information” means technical data or computer software, as those terms are defined in the clause at ~~DFARS~~ [252.227-7013](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252227.htm#252.227-7013), Rights in Technical Data—~~Non Commercial Items~~ **[Other Than Commercial Products and Commercial Services]**, regardless of whether or not the clause is incorporated in ~~this~~**[the]** solicitation or contract. Examples of technical information include research and engineering data, engineering drawings, and associated lists, specifications, standards, process sheets, manuals, technical reports, technical orders, catalog-item identifications, data sets, studies and analyses and related information, and computer software executable code and source code.

\* \* \* \* \*

**204.7304 Solicitation provisions and contract clauses.**

(a) Use the provision at [252.204-7008](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252204.htm#252.204-7008), Compliance with Safeguarding Covered Defense Information Controls, in all solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, except for solicitations solely for the acquisition of commercially available off-the-shelf (COTS) items.

(b) Use the clause at [252.204-7009](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252204.htm#252.204-7009), Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information, in all solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, for services that include support for the Government’s activities related to safeguarding covered defense information and cyber incident reporting.

(c) Use the clause at [252.204-7012](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252204.htm#252.204-7012), Safeguarding Covered Defense Information and Cyber Incident Reporting, in all solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, except for solicitations and contracts solely for the acquisition of COTS items.

(d) Use the provision at 252.204-7019, Notice of NIST SP 800-171 DoD Assessment Requirements, in all solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, except for solicitations solely for the acquisition of commercially available off-the-shelf (COTS) items.

(e) Use the clause at 252.204-7020, NIST SP 800-171 DoD Assessment Requirements, in all solicitations and contracts, task orders, or delivery orders, including those using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, except for those that are solely for the acquisition of COTS items.

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**SUBPART 204.74—DISCLOSURE OF INFORMATION TO LITIGATION SUPPORT CONTRACTORS**

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**204.7403 Contract clauses.**

(a) Use the clause at [252.204-7014](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252204.htm#252.204-7014), Limitations on the Use or Disclosure of Information by Litigation Support Contractors, in all solicitations and contracts that involve litigation support services, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**.

(b) Use the clause at 252.204-7015, Notice of Authorized Disclosure of Information for Litigation Support, in all solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~ **[products and commercial services]**.

**SUBPART 204.75—CYBERSECURITY MATURITY MODEL CERTIFICATION**

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**204.7503 Contract clause**.

Use the clause at 252.204-7021, **[Contractor Compliance with the]** Cybersecurity Maturity Model Certification **[Level Requirement]** ~~Requirements~~, as follows:

(a) Until September 30, 2025, in solicitations and contracts or task orders or delivery orders, including those using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, except for solicitations and contracts or orders solely for the acquisition of commercially available off-the-shelf (COTS) items, if the requirement document or statement of work requires a contractor to have a specific CMMC level. In order to implement a phased rollout of CMMC, inclusion of a CMMC requirement in a solicitation during this time period must be approved by OUSD(A&S).

(b) On or after October 1, 2025, in all solicitations and contracts or task orders or delivery orders, including those using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, except for solicitations and contracts or orders solely for the acquisition of COTS items.

\* \* \* \* \*

**PART 205—PUBLICIZING CONTRACT ACTIONS**

\* \* \* \* \*

**SUBPART 205.4—RELEASE OF INFORMATION**

**205.470 Contract clause.**

Use the clause at [252.205-7000](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252205.htm#252.205-7000), Provision of Information to Cooperative Agreement Holders, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, that are expected to exceed $1.5 million. This clause implements 10 U.S.C. 4957.

\* \* \* \* \*

**PART 207—ACQUISITION PLANNING**

\* \* \* \* \*

**SUBPART 207.1—ACQUISITION PLANS**

\* \* \* \* \*

**207.102 Policy**.

(a)(1) See [212.102](http://www.acq.osd.mil/dpap/dars/dfars/html/current/212_1.htm#212.102) regarding requirements for a written determination that the commercial ~~item~~**[product or commercial service]** definition has been met when using FAR ~~P~~**[p]**art 12 procedures.

\* \* \* \* \*

**PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES**

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**SUBPART 208.74—ENTERPRISE SOFTWARE AGREEMENTS**

\* \* \* \* \*

**208.7401 Definitions.**

As used in this subpart—

“Enterprise software agreement” means an agreement or a contract that is used to acquire designated commercial software or related **[commercial software]** services such as software maintenance.

\* \* \* \* \*

**208.7402 General.**

(**[a]**~~1~~) Departments and agencies shall fulfill requirements for commercial software and ~~related~~**[commercial software]** services, such as software maintenance, in accordance with the DoD Enterprise Software Initiative (ESI) (see ~~Web site at~~ *~~http://www.don-imit.navy.mil/esi~~* **[*https://www.esi.mil/*]***).* ESI promotes the use of enterprise software agreements (ESAs) with contractors that allow DoD to obtain favorable terms and pricing for commercial software and ~~related~~**[commercial software]** services. ESI does not dictate the products or services to be acquired.

(**[b]**~~2~~) \* \* \*

**208.7403 Acquisition procedures.**

Follow the procedures at [PGI 208.7403](http://www.acq.osd.mil/dpap/dars/pgi/pgi_htm/PGI208_74.htm#208.7403)when acquiring commercial software and **[commercial software]**~~related~~ services.

\* \* \* \* \*

**PART 211—DESCRIBING AGENCY NEEDS**

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**SUBPART 211.1—SELECTING AND DEVELOPING REQUIREMENTS DOCUMENTS**

**211.104 Use of brand name or equal purchase descriptions.**

A justification and approval is required to use brand name or equal purchase descriptions—

(1) When using sealed bidding or negotiated acquisition procedures (see 206.302-1(c)(2) for justification requirements); or

(2) When using the simplified procedures for certain commercial ~~items~~**[products and commercial services]** at FAR 13.5 (see 213.501(a)(ii) for justification requirement).

\* \* \* \* \*

**211.170 Use of proprietary specifications or standards.**

A justification and approval is required to use proprietary specifications and standards—

(1) When using sealed bidding or negotiated acquisition procedures (see [206.302-1](https://www.acq.osd.mil/dpap/dars/dfars/html/current/206_3.htm#206.302-1)(S-70) for justification requirements); or~~,~~

(2) When using the simplified procedures for certain commercial ~~items~~**[products or commercial services]** at FAR 13.5 (see [213.501](https://www.acq.osd.mil/dpap/dars/dfars/html/current/213_5.htm#213.501)(a)(ii) for justification requirements).

**\* \* \* \* \***

**SUBPART 211.2—USING AND MAINTAINING REQUIREMENTS DOCUMENTS**

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**211.274 Item identification and valuation requirements.**

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**211.274-2 Policy for item unique identification.**

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(b) *Exceptions.* The contractor will not be required to provide DoD item unique identification if—

(1) \* \* \*

(2) A determination and findings has been executed concluding that it is more cost effective for the Government requiring activity to assign, mark, and register the unique item identifier after delivery, and the item is either acquired from a small business concern, or is a commercial ~~item~~**[product]** acquired under FAR part 12 or ~~part~~ 8.

(i) \* \* \*

\* \* \* \* \*

**211.274-6 Contract clauses.**

(a)(1) Use the clause at [252.211-7003](https://www.acq.osd.mil/dpap/dars/dfars/html/current/252211.htm#252.211-7003), Item Unique Identification and Valuation, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, for supplies, and for services involving the furnishing of supplies, unless the conditions in [211.274-2](https://www.acq.osd.mil/dpap/dars/dfars/html/current/211_2.htm#211.274-2)(b) apply.

\* \* \* \* \*

(c) Use the clause at [252.211-7008](https://www.acq.osd.mil/dpap/dars/dfars/html/current/252211.htm#252.211-7008), Use of Government-Assigned Serial Numbers, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, that—

(1) Contain the clause at [252.211-7003](https://www.acq.osd.mil/dpap/dars/dfars/html/current/252211.htm#252.211-7003), Item Unique Identification and Valuation; and

(2) Require the contractor to mark major end items under the terms and conditions of the contract.

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**PART 212—ACQUISITION OF COMMERCIAL ~~ITEMS~~[PRODUCTS AND COMMERCIAL SERVICES]**

\* \* \* \* \*

**SUBPART 212.1—ACQUISITION OF COMMERCIAL ~~ITEMS-GENERAL~~[PRODUCTS AND COMMERCIAL SERVICES]**

**212.102 Applicability.**

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

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

(B) Applicability of one of the following statutes that provide for treatment as a commercial **[product or commercial service]**~~item~~ 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 ~~item~~**[product or commercial service]** determination:

(*1*) 41 U.S.C. 1903 - Supplies or services to be used to facilitate defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack pursuant to FAR 12.102(f).

(*2*) 10 U.S.C. 3457 - Supplies or services from nontraditional defense contractors pursuant to [212.102](https://www.acq.osd.mil/dpap/dars/dfars/html/current/212_1.htm#212.102)(a)(iv).

(ii) *Prior use of FAR part 12 procedures.*

(A) Pursuant to 10 U.S.C. 3456(c), except as provided in paragraph (a)(ii)(B) of this section or unless the item was acquired pursuant to paragraph (a)(i)(B) of this section, if the Commercial Item Database (for website see [PGI 212.102](https://www.acq.osd.mil/dpap/dars/pgi/pgi_htm/PGI212_1.htm#212.102)(a)(iii)(**[(A)(*1*)]**~~B)(~~*~~4~~*~~)~~) contains a prior commerciality determination, or the contracting officer has other evidence that an item has previously been acquired by DoD using commercial ~~item~~**[product and commercial service]** acquisition procedures under FAR part 12, then the prior contract shall serve as a prior determination that an item is a commercial ~~item~~**[product or commercial service]**. The contracting officer shall document the file accordingly.

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

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

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

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

(iii) *Commercial ~~item~~****[product or commercial service]*** *determination*. Unless the procedures in paragraph (a)(ii) of this section are applicable, when using FAR part 12 procedures for acquisitions of commercial ~~items~~**[products and commercial services]** pursuant to [212.102](https://www.acq.osd.mil/dpap/dars/dfars/html/current/212_1.htm#212.102)(a)(i)(A) that exceed the simplified acquisition threshold, the contracting officer shall—

(A) Determine in writing that the acquisition meets the **[“]**commercial product**[”]** or **[“]**commercial service**[”]** definition in FAR 2.101;

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

(C) Obtain approval at one level above the contracting officer when a commercial ~~item~~**[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

(D) Follow the procedures and guidance at [PGI 212.102](https://www.acq.osd.mil/dpap/dars/pgi/pgi_htm/PGI212_1.htm#212.102)(a)(iii) regarding file documentation and commercial ~~item~~**[product or commercial service]** determinations.

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

(A) Except as provided in paragraph (a)(iv)(B) of this section, may treat supplies and services provided by nontraditional defense contractors as commercial ~~items~~**[products or commercial services]**. This permissive authority is intended to enhance defense innovation and investment, enable DoD to acquire items that otherwise might not have been available, and create incentives for nontraditional defense contractors to do business with DoD. It is not intended to recategorize current ~~noncommercial items~~ **[other than commercial** **products or commercial services]**; however, when appropriate, contracting officers may consider applying commercial ~~item~~**[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 ~~item~~**[product and commercial service]** procedures to the procurement of supplies and services from nontraditional defense contractors does not require a commercial ~~item~~**[product or commercial service]** determination and does not mean the item is commercial;

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

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

(v) *Commercial item guidebook*. For a link to the commercial item guidebook, see [PGI 212.102](https://www.acq.osd.mil/dpap/dars/pgi/pgi_htm/PGI212_1.htm#212.102)(a)(v).

**SUBPART 212.2—SPECIAL REQUIREMENTS FOR THE ACQUISITION OF COMMERCIAL ~~ITEMS~~[PRODUCTS AND COMMERCIAL SERVICES]**

**212.203 Procedures for solicitation, evaluation, and award[.]**

(1) See 215.101-2-70 for the limitations and prohibitions on the use of the lowest price technically acceptable source selection process, which are applicable to the acquisition of commercial ~~items~~**[products and commercial services]**.

\* \* \* \* \*

**212.207 Contract type.**

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

(i) Services acquired for support of a commercial ~~item~~**[product]**, as described in paragraph (~~5~~**[1]**) of the definition of “commercial ~~item~~**[service]**” at FAR 2.101 (41 U.S.C. 103**[a]**)**.**

(ii) Emergency repair services.

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

(A) The services to be acquired are commercial services as defined in paragraph ~~(6~~**[1]**) of the definition of “commercial ~~item~~**[service]**” at FAR 2.101 (41 U.S.C. 103**[a]**);

\* \* \* \* \*

**212.209 Determination of price reasonableness.**

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

(1) In the case of major weapon systems ~~items~~**[products]** acquired as commercial ~~items~~**[products]** in accordance with subpart 234.70, shall use information submitted under 234.7002(d); and

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

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

\* \* \* \* \*

**212.211 Technical data.**

The DoD policy for acquiring technical data for commercial ~~items~~**[products or commercial services]** is at [227.7102](http://www.acq.osd.mil/dpap/dars/dfars/html/current/227_71.htm#227.7102).

\* \* \* \* \*

**212.270 Major weapon systems as commercial ~~items~~[products].**

The DoD policy for acquiring major weapon systems as commercial ~~items~~**[products]** is in ~~S~~**[s]**ubpart [234.70](http://www.acq.osd.mil/dpap/dars/dfars/html/current/234_70.htm).

\* \* \* \* \*

**212.272 Preference for certain commercial products and [commercial] services.**

\* \* \* \* \*

**SUBPART 212.3—SOLICITATION PROVISIONS AND CONTRACT CLAUSES FOR THE ACQUISITION OF COMMERCIAL ~~ITEMS~~[PRODUCTS AND COMMERCIAL SERVICES]**

**212.301 Solicitation provisions and contract clauses for the acquisition of commercial ~~items~~[products andcommercial services].**

(c) \* \* \*

(f) The following additional provisions and clauses apply to DoD solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products andcommercial 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*](https://www.sam.gov), the contracting officer shall consider this information instead of requiring the offeror to complete these provisions for a particular solicitation.

\* \* \* \* \*

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

(A) Use the clause at [252.227-7013](https://www.acq.osd.mil/dpap/dars/dfars/html/current/252227.htm" \l "252.227-7013), Rights in Technical Data–~~Noncommercial Items~~**[Other Than Commercial** **Products and Commercial Services]**, as prescribed in [227.7103-6](https://www.acq.osd.mil/dpap/dars/dfars/html/current/227_71.htm#227.7103-6)(a). Use the clause with its Alternate I as prescribed in [227.7103-6](https://www.acq.osd.mil/dpap/dars/dfars/html/current/227_71.htm#227.7103-6)(b)(1). Use the clause with its Alternate II as prescribed in [227.7103-6](https://www.acq.osd.mil/dpap/dars/dfars/html/current/227_71.htm#227.7103-6)(b)(2), to comply with 10 U.S.C. 7317 and 17 U.S.C. 1301, *et seq*.

(B) Use the clause at [252.227-7015](https://www.acq.osd.mil/dpap/dars/dfars/html/current/252227.htm#252.227-7015), Technical Data–Commercial ~~Items~~**[Products and Commercial Services]**, as prescribed in [227.7102-4](https://www.acq.osd.mil/dpap/dars/dfars/html/current/227_71.htm#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](https://www.acq.osd.mil/dpap/dars/dfars/html/current/227_71.htm#227.7102-4)(a)(2), to comply with 10 U.S.C. 8687 and 17 U.S.C. 1301, *et seq*.

\* \* \* \* \*

(xviii) *Part 244—Subcontracting Policies and Procedures.* Use the clause at [252.244-7000](https://www.acq.osd.mil/dpap/dars/dfars/html/current/252244.htm#252.244-7000), Subcontracts for Commercial ~~Items~~**[Products and Commercial Services]**, as prescribed in [244.403](https://www.acq.osd.mil/dpap/dars/dfars/html/current/244_4.htm#244.403).

\* \* \* \* \*

**212.302 Tailoring of provisions and clauses for the acquisition of commercial ~~items~~[products andcommercial services].**

\* \* \* \* \*

**SUBPART 212.5—APPLICABILITY OF CERTAIN LAWS TO THE ACQUISITION OF COMMERCIAL ~~ITEMS~~[PRODUCTS, COMMERCIAL SERVICES,] AND COMMERCIALLY AVAILABLE OFF-THE-SHELF ITEMS**

**212.503 Applicability of certain laws to [E]~~e~~xecutive agency contracts for the acquisition of commercial ~~items~~[products andcommercial services].**

(a) The following laws are not applicable to contracts for the acquisition of commercial ~~items~~**[products orcommercial services]**:

\* \* \* \* \*

(vii) Domestic Content Restrictions in the National Defense Appropriations Acts for Fiscal Years 1996 and Subsequent Years, unless the restriction specifically applies to commercial ~~items~~**[products orcommercial services]**. For the restriction that specifically applies to commercial ball or roller bearings as end items, see [225.7009-3](http://www.acq.osd.mil/dpap/dars/dfars/html/current/225_70.htm#225.7009-3) (section 8065 of Pub. L. 107-117).

(viii) **\* \* \***

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

(i) \* \* \*

\* \* \* \* \*

**212.504 Applicability of certain laws to subcontracts for the acquisition of commercial ~~items~~[products and commercial services]**.

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

\* \* \* \* \*

(xiv) Domestic Content Restrictions in the National Defense Appropriations Acts for Fiscal Years 1996 and Subsequent Years, unless the restriction specifically applies to commercial ~~items~~**[products andcommercial services]**. For the restriction that specifically applies to commercial ball or roller bearings as end items, see [225.7009-3](http://www.acq.osd.mil/dpap/dars/dfars/html/current/225_70.htm#225.7009-3) (section 8065 of Pub. L. 107-117).

\* \* \* \* \*

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

(i) \* \* \*

\* \* \* \* \*

**SUBPART 212.6—STREAMLINED PROCEDURES FOR EVALUATION AND SOLICITATION FOR COMMERCIAL ~~ITEMS~~[PRODUCTS AND COMMERCIAL SERVICES]**

\* \* \* \* \*

**PART 213—SIMPLIFIED ACQUISITION PROCEDURES**

\* \* \* \* \*

**SUBPART 213.1—PROCEDURES**

\* \* \* \* \*

**213.106-2-70 Solicitation provision.**

Use the provision at [252.213-7000](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252213.htm#252.213-7000), Notice to Prospective Suppliers on Use of Supplier Performance Risk System in Past Performance Evaluations, in competitive solicitations for supplies when using FAR part 13 simplified acquisition procedures, including competitive solicitations using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products andcommercial services]** and acquisitions valued at less than or equal to $1 million under the authority at FAR subpart 13.5.

\* \* \* \* \*

**SUBPART 213.3--SIMPLIFIED ACQUISITION METHODS**

**213.301 Governmentwide commercial purchase card.**

Follow the procedures at PGI 213.301 for authorizing, establishing, and operating a Governmentwide commercial purchase card program.

(1) \* \* \*

(2) An individual appointed in accordance with 201.603-3(a) 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—

(i) The purchase—

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

(B) Is for a commercial ~~item~~**[product orcommercial service]**; but

\* \* \* \* \*

**SUBPART 213.4—FAST PAYMENT PROCEDURE**

**213.402 Conditions for use.**

(a) Individual orders may exceed the simplified acquisition threshold for—

(i) Brand-name **[commercial product]** commissary resale subsistence; and

(ii) Medical supplies for direct shipment overseas.

**SUBPART 213.5—SIMPLIFIED PROCEDURES FOR CERTAIN COMMERCIAL ~~ITEMS~~[PRODUCTS AND COMMERCIAL SERVICES]**

\* \* \* \* \*

**PART 215—CONTRACTING BY NEGOTIATION**

\* \* \* \* \*

**SUBPART 215.3—SOURCE SELECTION**

\* \* \* \* \*

**215.371 Only one offer.**

\* \* \* \* \*

**215.371-6 Solicitation provision.**

Use the provision at [252.215-7007](https://www.acq.osd.mil/dpap/dars/dfars/html/current/252215.htm#252.215-7007), Notice of Intent to Resolicit, in competitive solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, that will be solicited for fewer than 30 days, unless an exception at [215.371-4](https://www.acq.osd.mil/dpap/dars/dfars/html/current/215_3.htm#215.371-4) applies or the requirement is waived in accordance with [215.371-5](https://www.acq.osd.mil/dpap/dars/dfars/html/current/215_3.htm#215.371-5).

**SUBPART 215.4—CONTRACT PRICING**

\* \* \* \* \*

**215.402 Pricing policy.**

(a)(i) Pursuant to section 831 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239)—

(A) \* \* \*

\* \* \* \* \*

(ii) Follow the procedures at [PGI 215.402](https://www.acq.osd.mil/dpap/dars/pgi/pgi_htm/PGI215_4.htm#215.402) when conducting cost or price analysis, particularly with regard to acquisitions for sole source commercial ~~items~~**[products or commercial services]**.

**215.403 Obtaining certified cost or pricing data.**

**215.403-1 Prohibition on obtaining certified cost or pricing data (10 U.S.C. chapter 271 and 41 U.S.C. chapter 35).**

\* \* \* \* \*

(c) *Standards for exceptions from certified cost or pricing data requirements*. \* \* \*

\* \* \* \* \*

(3) *Commercial ~~items~~***[*products or commercial services*]**.

(A) Follow the procedures at [PGI 215.403-1](https://www.acq.osd.mil/dpap/dars/pgi/pgi_htm/PGI215_4.htm#215.403-1)(c)(3) for pricing commercial ~~items~~**[products or commercial services]**.

(B) When applying the commercial ~~item~~**[product or commercial service]** exception under FAR 15.403-1(b)(3), see [212.102](https://www.acq.osd.mil/dpap/dars/dfars/html/current/212_1.htm#212.102)(a)(ii) regarding prior commercial ~~item~~**[product or commercial service]** determinations.

\* \* \* \* \*

**215.403-3 Requiring data other than certified cost or pricing data.**

Follow the procedures at PGI 215.403-3.

\* \* \* \* \*

(c) *Commercial ~~items~~****[products or commercial services]****.* For determinations of price reasonableness of major weapon systems acquired as commercial ~~items~~**[products]**, see 234.7002(d).

\* \* \* \* \*

**215.404 Proposal analysis.**

**215.404-1 Proposal analysis techniques.**

(a) \* \* \*

(b) *Price analysis ~~for commercial and noncommercial items~~*.

(i) \* \* \*

(ii) If the contracting officer determines that the information obtained through market research is insufficient to determine the reasonableness of price, the contracting officer shall consider information submitted by the offeror of recent purchase prices paid by the Government and commercial customers for the same or similar commercial ~~items~~ **[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. Price reasonableness shall not be based solely on historical prices paid by the Government (see 215.403-3(a)(1)). The contracting officer shall consider the totality of other relevant factors such as the time elapsed since the prior purchase and any differences in the quantities purchased (10 U.S.C. 3703(e)).

\* \* \* \* \*

(vii) The contracting officer may consult with the DoD cadre of experts who are available to provide expert advice to the acquisition workforce in assisting with commercial ~~item~~**[product or commercial service determinations]** and price reasonableness determinations. The DoD cadre of experts is identified at [PGI 215.404-1](https://www.acq.osd.mil/dpap/dars/pgi/pgi_htm/PGI215_4.htm#215.404-1)(b)(vii).

\* \* \* \* \*

**215.404-71 Weighted guidelines method.**

\* \* \* \* \*

**215.404-71-4 Facilities capital employed.**

\* \* \* \* \*

(g) *Evaluation criteria*.

\* \* \* \* \*

(3) *Below normal conditions*.

(i) The contracting officer may assign a lower than normal value if the facilities capital investment has little benefit to DoD. Indicators are—

(A) Allocations of capital apply predominantly to commercial ~~item~~**[product]** lines;

\* \* \* \* \*

**215.404-71-5 Cost efficiency factor.**

(a) \* \* \*

(b) To determine if using this factor is appropriate, the contracting officer shall consider criteria, such as the following, to evaluate the benefit the contractor’s cost reduction efforts will have on the pending contract:

\* \* \* \* \*

(7) The contractor’s effective incorporation of commercial ~~items~~**[products or commercial services]** and **[commercial]** processes; or

\* \* \* \* \*

**215.408 Solicitation provisions and contract clauses.**

(1) \* \* \*

(2) When contracting with the Canadian Commercial Corporation—

(i)(A) Use the provision at [252.215-7003](https://www.acq.osd.mil/dpap/dars/dfars/html/current/252215.htm#252.215-7003), Requirement for Submission of Data Other Than Certified Cost or Pricing Data—Canadian Commercial Corporation—

(*1*) In lieu of ~~DFARS~~ [252.215-7010](https://www.acq.osd.mil/dpap/dars/dfars/html/current/252215.htm#252.215-7010), Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data, in a solicitation, including solicitations using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, for a sole source acquisition from the Canadian Commercial Corporation that is—

(*i*) \* \* \*

(*ii*) \* \* \*

(*2*) In lieu of ~~DFARS~~ [252.215-7010](https://www.acq.osd.mil/dpap/dars/dfars/html/current/252215.htm#252.215-7010), in a solicitation, including solicitations using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, for a sole source acquisition from the Canadian Commercial Corporation that does not meet the thresholds specified in paragraph (2)(i)(A)(*1*) of this section, if approval is obtained as required at [225.870-4](https://www.acq.osd.mil/dpap/dars/dfars/html/current/225_8.htm#225.870-4)(c)(2)(ii); and

(B) Do not use 252.225-7003 in lieu of ~~DFARS~~ 252.215-7010 in competitive acquisitions; and

(ii)(A) Use the clause at [252.215-7004](https://www.acq.osd.mil/dpap/dars/dfars/html/current/252215.htm#252.215-7004), Requirement for Submission of Data Other Than Certified Cost or Pricing Data—Modifications—Canadian Commercial Corporation—

(*1*) In a solicitation, including solicitations using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services],** for a sole source acquisition, from the Canadian Commercial Corporation and resultant contract that is—\* \* \*

*(2)* In a solicitation, including solicitations using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, for a sole source acquisition from the Canadian Commercial Corporation and resultant contract that does not meet the thresholds specified in paragraph (2)(ii)(A)(*1*) of this section, if approval is obtained as required at 225.870-4(c)(2)(ii); or

(*3*)(*i*) In a solicitation, including solicitations using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, for a competitive acquisition that includes FAR 52.215-21, Requirement for Data Other Than Certified Cost or Pricing Data—Modifications, or that meets the thresholds specified in paragraph (2)(ii)(A)(*1*) of this section.

(*ii*) \* \* \*

(B) \* \* \*

(3) Use the provision at 252.215-7008, Only One Offer, in competitive solicitations that exceed the simplified acquisition threshold, including solicitations using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**.

(4) \* \* \*

(5) \* \* \*

(i) Use the basic or alternate of the provision at 252.215-7010, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data, in lieu of the provision at FAR 52.215-20, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**.

(A) \* \* \*

\* \* \* \* \*

**SUBPART 215.5—PREAWARD, AWARD, AND POSTAWARD NOTIFICATIONS, PROTESTS, AND MISTAKES**

**\* \* \* \* \***

**215.570 Solicitation provision**.

Use the provision at 252.215-7016, Notification to Offerors—Postaward Debriefings, in competitive negotiated solicitations for contract awards valued at $10 million or more, including solicitations using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**.

**PART 216—TYPES OF CONTRACTS**

\* \* \* \* \*

**subpart 216.5—INDEFINITE-DELIVERY contracts**

\* \* \* \* \*

**216.506 Solicitation provisions and contract clauses.**

**216.506-70 Additional solicitation provisions and contract clause.**

(a) Use the provisions at 252.215-7007, Notice of Intent to Resolicit, and 252.215-7008, Only One Offer, as prescribed at 215.371-6 and 215.408(3), respectively.

(b) Use the clause at 252.216-7010, Postaward Debriefings for Task Orders and Delivery Orders, in competitive negotiated solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, when a multiple-award contract is contemplated and task orders or delivery orders placed under the contract may be valued at $10 million or more.

\* \* \* \* \*

**subpart 216.6—time-and-materials, labor-hour, and letter contracts**

**216.601 Time-and-materials contracts.**

(d) *Limitations*.

(i)(A) *Approval of determination and findings for time-and-materials or labor-hour contracts.*

\* \* \* \* \*

(B) *Content of determination and findings*. The determination and findings shall contain sufficient facts and rationale to justify that no other contract type is suitable. At a minimum, the determination and findings shall—

(*1*) \* \* \*

(*2*) \* \* \*

(*3*) Address why a cost-plus-fixed-fee term or other cost-reimbursement, incentive, or fixed-price contract or order is not appropriate; for contracts (including indefinite-delivery contracts) and orders for ~~noncommercial items~~**[other than** **commercial products or commercial services]** awarded to contractors with adequate accounting systems, a cost-plus-fixed-fee term contract type shall be preferred over a time-and-materials or labor-hour contract type;

\* \* \* \* \*

(e) *Solicitation provisions*. Use the provision at FAR 52.216-29, Time-and-Materials/Labor-Hour Proposal Requirements – ~~Non-Commercial Item~~**[Other Than** **Commercial]** Acquisition with Adequate Price Competition, with [252.216-7002](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252216.htm#252.216-7002), Alternate A, in solicitations contemplating the use of a time-and-materials or labor-hour contract type for ~~non-commercial items~~**[other than commercial products or commercial services]** if the price is expected to be based on adequate competition.

\* \* \* \* \*

**PART 217—SPECIAL CONTRACTING METHODS**

\* \* \* \* \*

**SUBPART 217.73—IDENTIFICATION OF SOURCES OF SUPPLY**

\* \* \* \* \*

**217.7302 Procedures.**

(a) Whenever practicable, include a requirement for contractor identification of sources of supply in all contracts for the delivery of supplies. The identification shall include—

(1) \* \* \*

\* \* \* \* \*

(b) The requirement in paragraph (a) of this section does not apply to contracts that are—

(1) For commercial ~~items~~**[products]**; or

(2) Valued at or below the simplified acquisition threshold.

\* \* \* \* \*

**PART 219—SMALL BUSINESS PROGRAMS**

\* \* \* \* \*

**SUBPART 219.2—POLICIES**

\* \* \* \* \*

**219.270-3 Solicitation provision.**

Use the provision [252.219-7012](https://www.acq.osd.mil/dpap/dars/dfars/html/current/252219.htm#252.219-7012), Competition for Religious-Related Services, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial ~~items~~**[services]**, for the acquisition of religious-related services to be performed on U.S. military installations, when the acquisition is set aside for any of the small business concerns identified in FAR 19.000(a)(3).

\* \* \* \* \*

**SUBPART 219.3—DETERMINATION OF SMALL BUSINESS STATUS FOR SMALL BUSINESS PROGRAMS**

\* \* \* \* \*

**219.309 Solicitation provisions and contract clauses.**

(1) Use the provision at [252.219-7000](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252219.htm#252.219-7000), Advancing Small Business Growth, in solicitations, including solicitations using FAR part 12 procedures for acquisition of commercial ~~items~~**[products and commercial services]**, when the estimated annual value of the contract is expected to exceed—

(i) \* \* \*

\* \* \* \* \*

**SUBPART 219.7—THE SMALL BUSINESS SUBCONTRACTING PROGRAM**

\* \* \* \* \*

**219.708 Contract clauses.**

(b)(1)(A) Use the basic, alternate I, or alternate II clause at [252.219-7003](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252219.htm#252.219-7003), Small Business Subcontracting Plan (DoD Contracts), in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, that contain the clause at FAR 52.219-9, Small Business Subcontracting Plan.

(*1*) \* \* \*

\* \* \* \* \*

(B) In contracts with contractors that have comprehensive subcontracting plans approved under the Test Program described in 219.702-70, including contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, use the clause at 252.219-7004, Small Business Subcontracting Plan (Test Program), instead of the clauses at 252.219-7003, Small Business Subcontracting Plan (DoD Contracts), FAR 52.219-9, Small Business Subcontracting Plan, and FAR 52.219-16, Liquidated Damages—Subcontracting Plan.

\* \* \* \* \*

**PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS**

\* \* \* \* \*

**SUBPART 222.74—RESTRICTIONS ON THE USE OF MANDATORY ARBITRATION AGREEMENTS**

\* \* \* \* \*

**222.7403 Applicability.**

This requirement does not apply to the acquisition of commercial ~~items~~**[products or commercial services]** (including commercially available off-the-shelf items).

\* \* \* \* \*

**222.7405 Contract clause.**

Use the clause at [252.222-7006](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252222.htm#252.222-7006), Restrictions on the Use of Mandatory Arbitration Agreements, in all solicitations and contracts (including task **[orders]** or delivery orders and bilateral modifications adding new work) valued in excess of $1 million utilizing funds appropriated or otherwise made available by the Defense Appropriations Act for Fiscal Year 2010 (Pub. L. 111-118) or subsequent DoD appropriations acts, except in contracts for the acquisition of commercial ~~items~~**[products]**, including commercially available off-the-shelf items**[, or commercial services]**.

\* \* \* \* \*

**PART 223—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE**

\* \* \* \* \*

**Subpart 223.5—Drug-Free Workplace**

\* \* \* \* \*

**223.570-2 Contract clause.**

(a) Use the clause at 252.223-7004, Drug-Free Work Force, in all solicitations and contracts—

(1) \* \* \*

(b) Do not use the clause in solicitations and contracts—

(1) For commercial ~~items~~**[products and commercial services]**;

\* \* \* \* \*

**SUBPART 223.72—SAFEGUARDING SENSITIVE CONVENTIONAL ARMS, AMMUNITION, AND EXPLOSIVES**

\* \* \* \* \*

**223.7201 Policy.**

\* \* \* \* \*

(b) The requirements of DoD 5100.76-M need not be applied to contracts when—

(1) The AA&E to be acquired under the contract is a commercial ~~item~~ **[product]** within the meaning of FAR 2.101; or

\* \* \* \* \*

**SUBPART 223.73—MINIMIZING THE USE OF MATERIALS CONTAINING HEXAVALENT CHROMIUM**

\* \* \* \* \*

**223.7306 Contract clause.**

Unless an exception in 223.7304 applies, or use has been authorized in accordance with 223.7305, use the clause at 252.223-7008, Prohibition of Hexavalent Chromium, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, that are for supplies, maintenance and repair services, or construction.

\* \* \* \* \*

**PART 225—FOREIGN ACQUISITION**

\* \* \* \* \*

**SUBPART 225.3—CONTRACTS PERFORMED OUTSIDE THE UNITED STATES**

\* \* \* \* \*

**225.302 Contractors performing private security functions outside the United States.**

**225.302-6 Contract clause.**

Use the clause at [252.225-7039](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252225.htm#252.225-7039), Defense Contractors Performing Private Security Functions Outside the United States, instead of FAR clause 52.225-26, Contractors Performing Private Security Functions Outside the United States, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, when private security functions are to be performed outside the United States in—

(1) \* \* \*

\* \* \* \* \*

**225.371 Contractor personnel supporting U.S. Armed Forces deployed outside the United States.**

**\* \* \* \* \***

**225.371-5 Contract clauses.**

\* \* \* \* \*

(a) Use the clause at [252.225-7040](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252225.htm#252.225-7040), Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States, instead of the clause at FAR 52.225-19, Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission Outside the United States, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, for performance in a designated operational area that authorize contractor personnel (including both contractors authorized to accompany the Force (CAAF) and non-CAAF) to support U.S. Armed Forces deployed outside the United States in—

(1) \* \* \*

\* \* \* \* \*

**225.372 Antiterrorism/force protection.**

**\* \* \* \* \***

**225.372-2 Contract clause.**

Use the clause at [252.225-7043](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252225.htm#252.225-7043), Antiterrorism/Force Protection Policy for Defense Contractors Outside the United States, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, that require performance or travel outside the United States, except for contracts with⎯

(a) Foreign governments;

(b) Representatives of foreign governments; or

(c) Foreign corporations wholly owned by foreign governments.

\* \* \* \* \*

**Subpart 225.7—Prohibited Sources**

\* \* \* \* \*

**225.771 Prohibition on contracting or subcontracting with a firm that is owned or controlled by the government of a country that is a state sponsor of terrorism.**

\* \* \* \* \*

**225.771-5 Solicitation provision.**

Use the provision at [252.225-7050](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252225.htm#252.225-7050), Disclosure of Ownership or Control by the Government of a Country that is a State Sponsor of Terrorism, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]** (other than commercial satellite services), that are expected to result in contracts of $150,000 or more. If the solicitation includes the provision at FAR 52.204-7, do not separately list the provision [252.225-7050](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252225.htm#252.225-7050) in the solicitation.

\* \* \* \* \*

**225.772 Prohibition on acquisition of certain foreign commercial satellite services.**

\* \* \* \* \*

**225.772-5 Solicitation provision and contract clauses.**

(a) \* \* \*

(b) Use the clause at 252.225-7051, Prohibition on Acquisition of Certain Foreign Commercial Satellite Services, in solicitations and contracts for the acquisition of commercial satellite services, including solicitation**[s]** and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**.

\* \* \* \* \*

**Subpart 225.11—Solicitation Provisions and Contract Clauses**

\* \* \* \* \*

**225.1101 Acquisition of supplies.**

(1) Use the basic or the alternate of the provision at [252.225-7000](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252225.htm#252.225-7000), Buy American—Balance of Payments Program Certificate, instead of the provision at FAR 52.225-2, Buy American Certificate, in any solicitation, including solicitations using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, that includes the basic or the alternate of the clause at [252.225-7001](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252225.htm#252.225-7001), Buy American and Balance of Payments Program. If the solicitation includes the provision at FAR 52.204-7, do not separately list the provision [252.225-7000](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252225.htm#252.225-7000) in the solicitation.

(i) \* \* \*

\* \* \* \* \*

(2)(i) Use the basic or the alternate of the clause at [252.225-7001](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252225.htm#252.225-7001), Buy American Act and Balance of Payments Program, instead of the clause at FAR 52.225-1, Buy American—Supplies, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, unless—

(A) \* \* \*

\* \* \* \* \*

(5) Use the basic or the alternate of the provision at [252.225-7020](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252225.htm#252.225-7020), Trade Agreements Certificate, instead of the provision at FAR 52.225-6, Trade Agreements Certificate, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, that include the basic or alternate II of the clause at [252.225-7021](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252225.htm#252.225-7021), Trade Agreements. If the solicitation includes the provision at FAR 52.204-7, do not separately list the provision [252.225-7020](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252225.htm#252.225-7020) in the solicitation.

(i) \* \* \*

\* \* \* \* \*

(6) Except as provided in paragraph (6)(iv) of this section, use the basic or an alternate of the clause at [252.225-7021](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252225.htm#252.225-7021), Trade Agreements, instead of the clause at FAR 52.225-5, Trade Agreements, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, if the World Trade Organization Government Procurement Agreement applies, i.e., the acquisition is of end products listed at [225.401-70](http://www.acq.osd.mil/dpap/dars/dfars/html/current/225_4.htm#225.401-70), the value of the acquisition equals or exceeds $183,000, and none of the exceptions at 25.401(a) applies.

(i) \* \* \*

\* \* \* \* \*

(9) Use the basic or an alternate of the provision at [252.225-7035](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252225.htm#252.225-7035), Buy American—Free Trade Agreements—Balance of Payments Program Certificate, instead of the provision at FAR 52.225-4, Buy American—Free Trade Agreements—Israeli Trade Act Certificate, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, that include the basic or an alternate of the clause at [252.225-7036](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252225.htm#252.225-7036), Buy American—Free Trade Agreements—Balance of Payments Program. If the solicitation includes the provision at FAR 52.204-7, do not separately list the provision [252.225-7035](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252225.htm#252.225-7035) in the solicitation.

(i) \* \* \*

\* \* \* \* \*

(10)(i) Except as provided in paragraph (10)(ii) of this section, use the basic or an alternate of the clause at [252.225-7036](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252225.htm#252.225-7036), Buy American—Free Trade Agreements—Balance of Payments Program, instead of the clause at FAR 52.225-3, Buy American—Free Trade Agreements–Israeli Trade Act, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, for the items listed at [225.401-70](http://www.acq.osd.mil/dpap/dars/dfars/html/current/225_4.htm#225.401-70), when the estimated value is less than $183,000, unless an exception at FAR 25.401 or [225.401](http://www.acq.osd.mil/dpap/dars/dfars/html/current/225_4.htm#225.401) applies.

(A) \* \* \*

\* \* \* \* \*

(ii) Do not use the basic or an alternate of the clause in paragraph (10)(i) of this section if—

(A) Purchase from foreign sources is restricted (see [225.401](http://www.acq.osd.mil/dpap/dars/dfars/html/current/225_4.htm#225.401)(a)(2)), unless the contracting officer anticipates a waiver of the restriction;

(B) Acquiring information technology that is a commercial ~~item~~**[product]**, using fiscal year 2004 or subsequent funds (~~S~~**[s]**ection 535 of Division F of the Consolidated Appropriations Act, 2004 (Pub. L. 108-199), and the same provision in subsequent appropriations acts); or

\* \* \* \* \*

**SUBPART 225.70—AUTHORIZATION ACTS, APPROPRIATIONS ACTS, AND OTHER STATUTORY RESTRICTIONS ON FOREIGN ACQUISITION**

\* \* \* \* \*

**225.7002 Restrictions on food, clothing, fabrics, hand or measuring tools, and flags.**

**\* \* \* \* \***

**225.7002-3 Contract clauses.**

Unless an exception at [225.7002-2](http://www.acq.osd.mil/dpap/dars/dfars/html/current/225_70.htm#225.7002-2) applies—

(a) Use the clause at [252.225-7012](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252225.htm#252.225-7012), Preference for Certain Domestic Commodities, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**.

(b) Use the clause at [252.225-7015](https://www.acq.osd.mil/dpap/dars/dfars/html/current/252225.htm#252.225-7015), Restriction on Acquisition of Hand or Measuring Tools, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, that exceed the threshold at 225.7002-2(a) that require delivery of hand or measuring tools.

(c) Use the clause at [252.225-7006](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252225.htm#252.225-7006), Acquisition of the American Flag, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, that are for the acquisition of the American flag, with an estimated value that exceeds the threshold at [225.7002-2](https://www.acq.osd.mil/dpap/dars/dfars/html/current/225_70.htm#225.7002-2)(a).

\* \* \* \* \*

**225.7003 Restrictions on acquisition of specialty metals.**

**\* \* \* \* \***

**225.7003-3 Exceptions.**

\* \* \* \* \*

(b) One or more of the following exceptions may apply to an end item or component that includes any of the following, under a prime contract or subcontract at any tier. The restrictions in [225.7003-2](http://www.acq.osd.mil/dpap/dars/dfars/html/current/225_70.htm#225.7003-2) do not apply to the following:

(1) \* \* \*

(2)(i) Commercially available off-the-shelf (COTS) items containing specialty metals, except the restrictions do apply to contracts or subcontracts for the acquisition of—

(A) \* \* \*

(D) COTS fasteners, unless—

(*1*) The fasteners are incorporated into COTS end items, subsystems, or assemblies; or

(*2*) The fasteners qualify for the commercial ~~item~~**[product]** exception in paragraph (b)(3) of this ~~sub~~section.

\* \* \* \* \*

(3) Fasteners that are commercial ~~items~~**[products]** and are acquired under a contract or subcontract with a manufacturer of such fasteners, if the manufacturer has certified that it will purchase, during the relevant calendar year, an amount of domestically melted or produced specialty metal, in the required form, for use in the production of fasteners for sale to DoD and other customers, that is not less than 50 percent of the total amount of the specialty metal that the manufacturer will purchase to carry out the production of such fasteners for all customers.

\* \* \* \* \*

**225.7003-5 Solicitation provision and contract clauses.**

(a) Unless the acquisition is wholly exempt from the specialty metals restrictions at [225.7003-2](http://www.acq.osd.mil/dpap/dars/dfars/html/current/225_70.htm#225.7003-2) because the acquisition is covered by an exception in [225.7003-3](http://www.acq.osd.mil/dpap/dars/dfars/html/current/225_70.htm#225.7003-3)(a) or (d) (but see paragraph (d) of this ~~sub~~section)—

(1) Use the clause at [252.225-7008](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252225.htm#252.225-7008), Restriction on Acquisition of Specialty Metals, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, that—

(i) Exceed the simplified acquisition threshold; and

(ii) Require the delivery of specialty metals as end items.

(2) Use the clause at [252.225-7009](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252225.htm#252.225-7009), Restriction on Acquisition of Certain Articles Containing Specialty Metals, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, that—

(i) \* \* \*

\* \* \* \* \*

(b) Use the provision at 252.225-7010, Commercial Derivative Military Article—Specialty Metals Compliance Certificate, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**~~,~~—

(1) \* \* \*

\* \* \* \* \*

**225.7006 Restriction on air circuit breakers for naval vessels.**

\* \* \* \* \*

**225.7006-4 Solicitation provision and contract clause.**

(a) Use the provision at [252.225-7037](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252225.htm#252.225-7037), Evaluation of Offers for Air Circuit Breakers, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, that require air circuit breakers for naval vessels unless—

(1) An exception applies; or

(2) A waiver has been granted.

(b) Use the clause at [252.225-7038](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252225.htm#252.225-7038), Restriction on Acquisition of Air Circuit Breakers, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, that require air circuit breakers for naval vessels unless—

(1) \* \* \*

\* \* \* \* \*

**225.7009 Restriction on ball and roller bearings.**

\* \* \* \* \*

**225.7009-3 Exception.**

The restriction in [225.7009-2](http://www.acq.osd.mil/dpap/dars/dfars/html/current/225_70.htm#225.7009-2) does not apply to contracts or subcontracts for the acquisition of commercial ~~items~~**[products]**, except for commercial ball and roller bearings acquired as end items.

\* \* \* \* \*

**225.7009-5 Contract clause.**

Use the clause at [252.225-7016](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252225.htm#252.225-7016), Restriction on Acquisition of Ball and Roller Bearings, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, unless—

(a) The items being acquired are commercial ~~items~~**[products]** other than ball or roller bearings acquired as end items;

\* \* \* \* \*

**225.7017 Utilization of domestic photovoltaic devices.**

\* \* \* \* \*

**225.7017-4 Solicitation provision and contract clause.**

(a)(1) Use the clause at [252.225-7017](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252225.htm#252.225-7017), Photovoltaic Devices, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, for a contract expected to exceed the simplified acquisition threshold that may be a covered contract, i.e., an energy savings performance contract, a utility service contract, or a private housing contract awarded by DoD, if such contract will result in DoD ownership of photovoltaic devices, by means other than DoD purchase as end products.

(2) Use the clause in the resultant contract, including contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, if it is a covered contract.

(b) Use the provision at [252.225-7018](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252225.htm#252.225-7018), Photovoltaic Devices—Certificate, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, that contain the clause at [252.225-7017](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252225.htm#252.225-7017).

**225.7018 Restriction on acquisition of certain magnets, tantalum, and tungsten.**

\* \* \* \* \*

**225.7018-5 Contract clause.**

Unless acquiring items outside the United States for use outside the United States or a nonavailability determination has been made in accordance with 225.7018-4, use the clause at 252.225-7052, Restriction on Acquisition of Certain Magnets, Tantalum, and Tungsten, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, that exceed the simplified acquisition threshold.

**225.7019 Prohibition on use of certain energy sourced from inside the Russian Federation**

\* \* \* \* \*

**225.7019-4 Solicitation provision and contract clause**

Unless a waiver has been granted in accordance with 225.7019-3 –

(a) Use the provision at 252.225-7053, Representation Regarding Prohibition on Use of Certain Energy Sourced from Inside the Russian Federation, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]** and solicitations at or below the simplified acquisition threshold, that are for the acquisition of furnished energy for a covered military installation; and

(b) Use the clause at 252.225-7054, Prohibition on Use of Certain Energy Sourced from Inside the Russian Federation, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]** and solicitations and contracts at or below the simplified acquisition threshold, that are for the acquisition of furnished energy for a covered military installation.

**225.7020 Prohibition on contracting with the Maduro regime.**

\* \* \* \* \*

**225.7020-5 Solicitation provision and contract clause.**

(a) Use the provision at 252.225-7055, Representation Regarding Business Operations with the Maduro Regime, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, that include the clause at 252.225-7056, Prohibition Regarding Business Operations with the Maduro Regime.

(b) Unless the exception at 225.7020-3(b) applies or a joint determination has been made in accordance with 225.7020-4, use the clause at 252.225-7056, Prohibition Regarding Business Operations with the Maduro Regime, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**.

**225.7021 Disclosure requirements for employment transparency regarding individuals who perform work in the People's Republic of China.**

**225.7021-1 Definitions.**

As used in this section—

*Covered contract* means any DoD contract or subcontract with a value in excess of $5 million, not including contracts for commercial ~~items~~**[products and commercial services]**.

\* \* \* \* \*

**225.7022 Prohibition on certain procurements from the Xinjiang Uyghur Autonomous Region.**

**\* \* \* \* \***

**225.7022-5 Solicitation provision and contract clause.**

(a) Use the provision at 252.225-7059, Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region—Certification, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products, commercial services,]** and COTS items, that contain the clause at 252.225-7060, Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region.

(b) Use the clause at 252.225-7060, Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region, in solicitations, contracts, and orders for products utilizing funds appropriated or otherwise made available for fiscal year 2022, including solicitations, contracts, and orders using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products, commercial services,]** and COTS items.

**\* \* \* \* \***

**subpart 225.72—reporting CONTRACT PERFORMANCE OUTSIDE THE UNITED STATES**

\* \* \* \* \*

**225.7202 Exception.**

This subpart does not apply to contracts for commercial ~~items~~**[products**, **commercial services]**, construction, ores, natural gas, utilities, petroleum products and crudes, timber (logs), or subsistence.

\* \* \* \* \*

**SUBPART 225.73—ACQUISITIONS FOR FOREIGN MILITARY SALES**

\* \* \* \* \*

**225.7307 Contract clauses.**

(a) Use the clause at [252.225-7027](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252225.htm#252.225-7027), Restriction on Contingent Fees for Foreign Military Sales, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, that are for FMS. Insert in paragraph (b)(1) of the clause the name(s) of any foreign country customer(s) listed in [225.7303-4](http://www.acq.osd.mil/dpap/dars/dfars/html/current/225_73.htm#225.7303-4)(b).

(b) Use the clause at [252.225-7028](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252225.htm#252.225-7028), Exclusionary Policies and Practices of Foreign Governments, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, that are for the purchase of supplies and services for international military education training and FMS.

\* \* \* \* \*

**SUBPART 225.75—BALANCE OF PAYMENTS PROGRAM**

\* \* \* \* \*

**225.7501 Policy.**

Acquire only domestic end products for use outside the United States, and use only domestic construction material for construction to be performed outside the United States, including end products and construction material for foreign military sales, unless—

(a) Before issuing the solicitation—

(1) The estimated cost of the acquisition or the value of a particular construction material is at or below the simplified acquisition threshold;

(2) The end product or particular construction material is—

(i) \* \* \*

(vi) Information technology that is a commercial ~~item~~**[product]**, using fiscal year 2004 or subsequent funds (~~S~~**[s]**ection 535 of Division F of the Consolidated Appropriations Act, 2004 (Pub. L. 108-199), and the same provision in subsequent appropriations acts);

\* \* \* \* \*

**225.7503 Contract clauses.**

Unless the entire acquisition is exempt from the Balance of Payments Program—

(a) Use the basic or an alternate of the clause at [252.225-7044](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252225.htm#252.225-7004), Balance of Payments Program—Construction Material, in solicitations and contracts for construction to be performed outside the United States, including acquisitions of commercial ~~items~~**[products or commercial components]** ~~or components~~, with an estimated value greater than the simplified acquisition threshold but less than $7,032,000.

(1) \* \* \*

(2) \* \* \*

(b) Use the basic or an alternate of the clause at [252.225-7045](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252225.htm#252.225-7045), Balance of Payments Program—Construction Material Under Trade Agreements, in solicitations and contracts for construction to be performed outside the United States with an estimated value of $7,032,000 or more, including acquisitions of commercial ~~items~~**[products or commercial components]** ~~or components~~.

(1) \* \* \*

\* \* \* \* \*

**subpart 225.76—SECONDARY ARAB BOYCOTT OF ISRAEL**

\* \* \* \* \*

**225.7605 Solicitation provision.**

Unless an exception at [225.7603](http://www.acq.osd.mil/dpap/dars/dfars/html/current/225_76.htm#225.7603) applies or a waiver has been granted in accordance with [225.7604](http://www.acq.osd.mil/dpap/dars/dfars/html/current/225_76.htm#225.7604), use the provision at [252.225-7031](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252225.htm#252.225-7031), Secondary Arab Boycott of Israel, in all solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**. If the solicitation includes the provision at FAR 52.204-7, do not separately list [252.225-7031](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252225.htm#252.225-7031) in the solicitation.

\* \* \* \* \*

**SUBPART 225.77—ACQUISITIONS IN SUPPORT OF OPERATIONS IN AFGHANISTAN**

**\* \* \* \* \***

**225.7703-4 Solicitation provisions and contract clauses.**

(a) Use the provision at [252.225-7023](https://www.acq.osd.mil/dpap/dars/dfars/html/current/252225.htm#252.225-7023), Preference for Products or Services from Afghanistan, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, that provide a preference for products or services from Afghanistan in accordance with [225.7703-1](https://www.acq.osd.mil/dpap/dars/dfars/html/current/225_77.htm#225.7703-1)(a)(1). The contracting officer may modify the 50 percent evaluation factor in accordance with contracting office procedures.

(b) Use the clause at [252.225-7024](https://www.acq.osd.mil/dpap/dars/dfars/html/current/252225.htm#252.225-7024), Requirement for Products or Services from Afghanistan, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, that include the provision at [252.225-7023](https://www.acq.osd.mil/dpap/dars/dfars/html/current/252225.htm#252.225-7023), Preference for Products or Services from Afghanistan, and in the resulting contract.

(c) Use the clause at [252.225-7026](https://www.acq.osd.mil/dpap/dars/dfars/html/current/252225.htm#252.225-7026), Acquisition Restricted to Products or Services from Afghanistan, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, that—

(1) \* \* \*

(2) \* \* \*

(d) Use the clause at 252.225-7029, Acquisition of Uniform Components for Afghan Military or Afghan National Police, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, for the acquisition of any textile components that DoD intends to supply to the Afghan National Army or the Afghan National Police for purposes of production of uniforms.

\* \* \* \* \*

**PART 226—OTHER SOCIOECONOMIC PROGRAMS**

\* \* \* \* \*

**SUBPART 226.1—INDIAN INCENTIVE PROGRAM**

\* \* \* \* \*

**226.104 Contract clause.**

Use the clause at [252.226-7001](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252226.htm#252.226-7001), Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, that are for supplies or services exceeding $500,000 in value.

\* \* \* \* \*

**SUBPART 226.72—DEMONSTRATION PROJECT FOR CONTRACTORS EMPLOYING PERSONS WITH DISABILITIES**

\* \* \* \* \*

**226.7203 Solicitation provision.**

Use the provision at 252.226-7002, Representation for Demonstration Project for Contractors Employing Persons with Disabilities, in solicitations when using this Demonstration Project, including solicitations using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**.

**PART 227—PATENTS, DATA, AND COPYRIGHTS**

\* \* \* \* \*

**SUBPART 227.71—RIGHTS IN TECHNICAL DATA**

\* \* \* \* \*

**227.7101 Definitions.**

(a) As used in this subpart, unless otherwise specifically indicated, the terms “offeror” and “contractor” include an offeror's or contractor's subcontractors, suppliers, or potential subcontractors or suppliers at any tier.

(b) Other terms used in this subpart are defined in the clause at [252.227-7013](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252227.htm#252.227-7013), Rights in Technical Data–~~Noncommercial Items~~**[Other Than Commercial Products and Commercial Services]**.

**227.7102 Commercial ~~items~~[products, commercial] components, [commercial services,] or [commercial] processes.**

**227.7102-1 Policy.**

(a) DoD shall acquire only the technical data customarily provided to the public with a commercial ~~item~~**[product, commercial service,]** or **[commercial]** process, except technical data that—

(1) Are form, fit, or function data;

(2) Are required for repair or maintenance of commercial ~~items~~**[products]** or **[commercial]** processes, or for the proper installation, operating, or handling of a commercial ~~item~~**[product]**, either as a stand alone unit or as a part of a military system, when such data are not customarily provided to commercial users or the data provided to commercial users is not sufficient for military purposes; or

(3) Describe the modifications made at Government expense to a commercial i~~tem~~**[product, commercial service,]** or **[commercial]** process in order to meet the requirements of a Government solicitation.

(b) To encourage offerors and contractors to offer or use commercial products to satisfy military requirements, offerors~~,~~ and contractors shall not be required, except for the technical data described in paragraph (a) of this ~~sub~~section, to—

(1) Furnish technical information related to commercial ~~items~~**[products, commercial services,]** or **[commercial]** processes that is not customarily provided to the public; or

(2) Relinquish to, or otherwise provide, the Government rights to use, modify, reproduce, release, perform, display, or disclose technical data pertaining to commercial ~~items~~**[products, commercial services,]** or **[commercial]** processes except for a transfer of rights mutually agreed upon.

(c) \* \* \*

**227.7102-2 Rights in technical data.**

(a) The clause at [252.227-7015](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252227.htm#252.227-7015), Technical Data–Commercial ~~Items~~**[Products and Commercial Services]**, provides the Government specific license rights in technical data pertaining to commercial ~~items~~**[products, commercial services,]** or **[commercial]** processes. DoD may use, modify, reproduce, release, perform, display, or disclose data only within the Government. The data may not be used to manufacture additional quantities of the commercial ~~items~~**[products]** and, except for emergency repair or overhaul and for covered Government support contractors, may not be released or disclosed to, or used by, third parties without the contractor's written permission. Those restrictions do not apply to the technical data described in [227.7102-1](http://www.acq.osd.mil/dpap/dars/dfars/html/current/227_71.htm#227.7102)(a).

\* \* \* \* \*

**227.7102-3 Government right to review, verify, challenge[,] and validate asserted restrictions.**

Follow the procedures at [227.7103-13](http://www.acq.osd.mil/dpap/dars/dfars/html/current/227_71.htm#227.7103-13) and the clause at [252.227-7037](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252227.htm#252.227-7037), Validation of Restrictive Markings on Technical Data, regarding the validation of asserted restrictions on technical data related to commercial ~~items~~**[products or commercial services]**.

**227.7102-4 Contract clauses.**

(a)(1) Except as provided in paragraph (b) of this ~~sub~~section, use the clause at [252.227-7015](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252227.htm#252.227-7015), Technical Data–Commercial ~~Items~~**[Products and Commercial Services]**, in ~~all~~ solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, when the contractor will be required to deliver technical data pertaining to commercial ~~items,~~ **[products, commercial]** components, ~~or~~ **[commercial services, or commercial]** processes.

(2) Use the clause at [252.227-7015](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252227.htm#252.227-7015) with its Alternate I in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, for the development or delivery of a vessel design or any useful article embodying a vessel design.

(b) In accordance with the clause prescription at [227.7103-6](http://www.acq.osd.mil/dpap/dars/dfars/html/current/227_71.htm#227.7103-6)(a), use the clause at [252.227-7013](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252227.htm#252.227-7013), Rights in Technical Data–~~Noncommercial Items~~**[Other Than Commercial** **Products and Commercial Services]**, in addition to the clause at [252.227-7015](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252227.htm#252.227-7015), if the Government will have paid for any portion of the development costs of a commercial ~~item~~**[product or commercial service]**. The clause at [252.227-7013](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252227.htm#252.227-7013) will govern the technical data pertaining to any portion of a commercial ~~item~~**[product or commercial service]** that was developed in any part at Government expense, and the clause at [252.227-7015](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252227.htm#252.227-7015) will govern the technical data pertaining to any portion of a commercial ~~item~~**[product or commercial service]** that was developed exclusively at private expense.

(c) Use the clause at [252.227-7037](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252227.htm#252.227-7037), Validation of Restrictive Markings on Technical Data, in solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]** that include the clause at [252.227-7015](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252227.htm#252.227-7015) or the clause at [252.227-7013](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252227.htm#252.227-7013).

\* \* \* \* \*

**227.7103 ~~Noncommercial items~~[Other than commercial products, commercial services,] or [commercial] processes.**

\* \* \* \* \*

**227.7103-3 Early identification of technical data to be furnished to the Government with restrictions on use, reproduction[,] or disclosure.**

(a) 10 U.S.C. 3772(a) requires, to the maximum extent practicable, an identification prior to delivery of any technical data to be delivered to the Government with restrictions on use.

(b) Use the provision at 252.227-7017, Identification and Assertion of Use, Release, or Disclosure Restrictions, in all solicitations that include the clause at 252.227-7013, Rights in Technical Data—~~Noncommercial Items~~ **[Other Than Commercial Products and Commercial Services]**. The provision requires offerors to identify any technical data for which restrictions, other than copyright, on use, release, or disclosure are asserted and to attach the identification and assertions to the offer.

(c) Subsequent to contract award, the clause at 252.227-7013 permits a contractor, under certain conditions, to make additional assertions of use, release, or disclosure restrictions. The prescription for the use of that clause and its alternate is at 227.7103-6(a) and (b).

\* \* \* \* \*

**227.7103-5 Government rights.**

The standard license rights that a licensor grants to the Government are unlimited rights, government purpose rights, or limited rights. Those rights are defined in the clause at 252.227-7013, Rights in Technical Data–~~Noncommercial Items~~**[Other Than Commercial Products and Commercial Services]**. In unusual situations, the standard rights may not satisfy the Government's needs or the Government may be willing to accept lesser rights in data in return for other consideration. In those cases, a special license may be negotiated. However, the licensor is not obligated to provide the Government greater rights and the contracting officer is not required to accept lesser rights than the rights provided in the standard grant of license. The situations under which a particular grant of license applies are enumerated in paragraphs (a) through (d) of this ~~sub~~section.

(a) \* \* \*

\* \* \* \* \*

**227.7103-6 Contract clauses.**

(a) Use the clause at 252.227-7013, Rights in Technical Data–~~Noncommercial Items~~ **[Other Than Commercial Products and Commercial Services]**, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, when the successful offeror(s) will be required to deliver to the Government technical data pertaining to ~~noncommercial items~~**[other than commercial products or commercial services]**, or pertaining to commercial ~~items~~ **[products or commercial services]** for which the Government will have paid for any portion of the development costs (in which case the clause at 252.227-7013 will govern the technical data pertaining to any portion of a commercial ~~item~~ **[product or commercial service]** that was developed in any part at Government expense, and the clause at 252.227-7015 will govern the technical data pertaining to any portion of a commercial ~~item~~**[product or commercial service]** that was developed exclusively at private expense). Do not use the clause when the only deliverable items are computer software or computer software documentation (see 227.72), commercial ~~items~~**[products or commercial services]** developed exclusively at private expense (see 227.7102-4), existing works (see 227.7105), special works (see 227.7106), or when contracting under the Small Business Innovation Research Program (see 227.7104). Except as provided in 227.7107-2, do not use the clause in architect-engineer and construction contracts.

(b)(1) Use the clause at 252.227-7013 with its Alternate I in research solicitations and contracts, including research solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, when the contracting officer determines, in consultation with counsel, that public dissemination by the contractor would be—

(i) In the interest of the Government; and

(ii) Facilitated by the Government relinquishing its right to publish the work for sale, or to have others publish the work for sale on behalf of the Government.

(2) Use the clause at 252.227-7013 with its Alternate II in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, that are for the development or delivery of a vessel design or any useful article embodying a vessel design.

\* \* \* \* \*

**227.7103-9 Copyright.**

(a) *Copyright license*.

(1) The clause at 252.227-7013, Rights in Technical Data–~~Noncommercial Items~~ **[Other Than Commercial Products and Commercial Services]**, requires a contractor to grant or obtain for the Government license rights which permit the Government to reproduce data, distribute copies of the data, publicly perform or display the data or, through the right to modify data, prepare derivative works. The extent to which the Government, and others acting on its behalf, may exercise these rights varies for each of the standard data rights licenses obtained under the clause. When non-standard license rights in technical data will be negotiated, negotiate the extent of the copyright license concurrent with negotiations for the data rights license. Do not negotiate a copyright license that provides less rights than the standard limited rights license in technical data.

\* \* \* \* \*

**227.7103-10 Contractor identification and marking of technical data to be furnished with restrictive markings.**

(a) *Identification requirements*.

(1) \* \* \*

(2) \* \* \*

(3) The restrictions asserted by a successful offeror shall be attached to its contract unless, in accordance with the procedures at 227.7103-13, the parties have agreed that an asserted restriction is not justified. The contract attachment shall provide the same information regarding identification of the technical data, the asserted rights category, the basis for the assertion, and the name of the person asserting the restrictions as required by paragraph (d) of the solicitation provision at 252.227-7017. Subsequent to contract award, the clause at 252.227-7013, Rights in Technical Data–~~Noncommercial Items~~**[Other Than Commercial Products and Commercial Services]**, permits the contractor to make additional assertions under certain conditions. The additional assertions must be made in accordance with the procedures and in the format prescribed by that clause.

(4) \* \* \*

(5) \* \* \*

(b) *Contractor marking requirements*. The clause at 252.227-7013, Rights in Technical Data––~~Noncommercial Items~~**[Other Than Commercial Products and Commercial Services]**—

(1) \* \* \*

\* \* \* \* \*

**227.7103-11 Contractor procedures and records.**

(a) The clause at 252.227-7013, Rights in Technical Data –~~Noncommercial Items~~**[Other Than Commercial Products and Commercial Services]**, requires a contractor, and its subcontractors or suppliers that will deliver technical data with other than unlimited rights, to establish and follow written procedures to assure that restrictive markings are used only when authorized and to maintain records to justify the validity of asserted restrictions on delivered data.

\* \* \* \* \*

**227.7103-12 Government right to establish conformity of markings.**

(a) *Nonconforming markings.*

(1) Authorized markings are identified in the clause at 252.227-7013, Rights in Technical Data– ~~Noncommercial Items~~ **[Other Than Commercial Products and Commercial Services]**. All other markings are nonconforming markings. An authorized marking that is not in the form, or differs in substance, from the marking requirements in the clause at 252.227-7013 is also a nonconforming marking.

\* \* \* \* \*

**227.7103-13 Government right to review, verify, challenge, and validate asserted restrictions.**

(a) \* \* \*

(b) \* \* \*

(c) *Challenge considerations and presumption*.

(1) *Requirements to initiate a challenge*. Contracting officers shall have reasonable grounds to challenge the validity of an asserted restriction. Before issuing a challenge to an asserted restriction, carefully consider all available information pertaining to the assertion.

(2) *Commercial ~~items~~****[products and commercial services]*** *- presumption regarding development exclusively at private expense*. 10 U.S.C. 3772(a)(1) and 3784 establish a presumption and procedures regarding validation of asserted restrictions for technical data related to commercial ~~items~~ **[products or commercial services]** on the basis of development exclusively at private expense. Contracting officers shall presume that a commercial ~~item~~ **[product or commercial service]** was developed exclusively at private expense whether or not a contractor or subcontractor submits a justification in response to a challenge notice. The contracting officer shall not challenge a contractor's assertion that a commercial ~~item~~**[product or commercial service]** was developed exclusively at private expense unless the Government can specifically state the reasonable grounds to question the validity of the assertion. The challenge notice shall include sufficient information to reasonably demonstrate that the commercial ~~item~~**[product or commercial service]** was not developed exclusively at private expense. In order to sustain the challenge, the contracting officer shall provide information demonstrating that the commercial ~~item~~**[product or commercial service]** was not developed exclusively at private expense. The challenge notice and all related correspondence shall be subject to handling procedures for classified information and controlled unclassified information. A contractor's or subcontractor's failure to respond to the challenge notice cannot be the sole basis for issuing a final decision denying the validity of an asserted restriction.

\* \* \* \* \*

(d) \* \* \*

(4) *Challenge notice.* The contracting officer shall not issue a challenge notice unless there are reasonable grounds to question the validity of an assertion. For commercial ~~items~~**[products or commercial services]**, also see [paragraph (c)(2)](https://www.ecfr.gov/current/title-48/section-227.7103-13#p-227.7103-13(c)(2)) of this section. The contracting officer may challenge an assertion whether or not supporting documentation was requested under [paragraph (d)(2)](https://www.ecfr.gov/current/title-48/section-227.7103-13#p-227.7103-13(d)(2)) of this section. Challenge notices shall be in writing and issued to the contractor or, after consideration of the situations described in [paragraph (d)(3)](https://www.ecfr.gov/current/title-48/section-227.7103-13#p-227.7103-13(d)(3)) of this section, the person asserting the restriction. The challenge notice shall include the information in paragraph (e) of the clause at 252.227-7037.

\* \* \* \* \*

**227.7103-15 Subcontractor rights in technical data.**

(a) 10 U.S.C. 3771 provides subcontractors at all tiers the same protection for their rights in data as is provided to prime contractors. The clauses at 252.227-7013, Rights in Technical Data–~~Noncommercial Items~~ **[Other Than Commercial Products and Commercial Services]**, and 252.227-7037, Validation of Restrictive Markings on Technical Data, implement the statutory requirements.

(b) \* \* \*

(c) Require prime contractors whose contracts include the following clauses to include those clauses, without modification except for appropriate identification of the parties, in contracts with subcontractors or suppliers, at all tiers, who will be furnishing technical data for ~~non-commercial items~~**[other than commercial products or commercial services]** in response to a Government requirement:

(1) 252.227-7013, Rights in Technical Data– ~~Noncommercial Items~~ **[Other Than Commercial Products and Commercial Services]**;

(2) \* \* \*

(d) Do not require contractors to have their subcontractors or suppliers at any tier relinquish rights in technical data to the contractor, a higher tier subcontractor, or to the Government, as a condition for award of any contract, subcontract, purchase order, or similar instrument except for the rights obtained by the Government under the Rights in Technical Data– ~~Noncommercial Items~~ **[Other Than Commercial Products and Commercial Services]** clause contained in the contractor's contract with the Government.

**227.7103-16 Providing technical data to foreign governments, foreign contractors, or international organizations.**

Technical data may be released or disclosed to foreign governments, foreign contractors, or international organizations only if release or disclosure is otherwise permitted both by Federal export controls and other national security laws or regulations. Subject to such laws and regulations, the Department of Defense—

(a) May release or disclose technical data in which it has obtained unlimited rights to such foreign entities or authorize the use of such data by those entities; and

(b) Shall not release or disclose technical data for which restrictions on use, release, or disclosure have been asserted to foreign entities, or authorize the use of technical data by those entities, unless the intended recipient is subject to the same provisions as included in the use and non-disclosure agreement at 227.7103-7 and the requirements of the clause at 252.227-7013, Rights in Technical Data––~~Noncommercial Items~~ **[Other Than Commercial Products and Commercial Services]**, governing use, modification, reproduction, release, performance, display, or disclosure of such data have been satisfied.

**227.7103-17 Overseas contracts with foreign sources.**

(a) The clause at 252.227-7032, Rights in Technical Data and Computer Software (Foreign), may be used in contracts with foreign contractors to be performed overseas, except Canadian purchases (see paragraph (c) of this ~~sub~~section), in lieu of the clause at 252.227-7013, Rights in Technical Data–~~Noncommercial Items~~**[Other Than Commercial Products and Commercial Services]**, when the Government requires the unrestricted right to use, modify, reproduce, perform, display, release**[,]** or disclose all technical data to be delivered under the contract. Do not use the clause in contracts for existing or special works.

\* \* \* \* \*

**227.7104 Contracts under the Small Business Innovation Research (SBIR) Program.**

(a) Use the clause at 252.227-7018, Rights in ~~Noncommercial~~ **[Other Than Commercial]** Technical Data and Computer Software–Small Business Innovation Research (SBIR) Program, when technical data or computer software will be generated during performance of contracts under the SBIR program.

\* \* \* \* \*

**227.7105-2 Acquisition of existing works without modification.**

(a) Use the clause at 252.227-7021, Rights in Data—Existing Works, in lieu of the clause at 252.227-7013, Rights in Technical Data—~~Noncommercial Items~~**[Other Than Commercial Products and Commercial Services]**, in solicitations and contracts exclusively for existing works when—

(1) \* \* \*

\* \* \* \* \*

**227.7106 Contracts for special works.**

(a) \* \* \*

(1) In lieu of the clause at 252.227-7013, Rights in Technical Data–~~Noncommercial Items~~**[Other Than Commercial Products and Commercial Services]**, when the Government must own or control copyright in all works first produced, created, or generated and required to be delivered under a contract; or

\* \* \* \* \*

**SUBPART 227.72—RIGHTS IN COMPUTER SOFTWARE AND COMPUTER SOFTWARE DOCUMENTATION**

\* \* \* \* \*

**227.7201 Definitions.**

(a) As used in this subpart, unless otherwise specifically indicated, the terms “offeror” and “contractor” include an offeror's or contractor's subcontractors, suppliers, or potential subcontractors or suppliers at any tier.

(b) Other terms used in this subpart are defined in the clause at 252.227-7014, Rights in ~~Noncommercial~~**[Other Than Commercial]** Computer Software and ~~Noncommercial~~**[Other Than Commercial]** Computer Software Documentation.

\* \* \* \* \*

**227.7203 ~~Noncommercial~~[Other than commercial] computer software and ~~noncommercial~~[other than commercial] computer software documentation.**

\* \* \* \* \*

**227.7203-2 Acquisition of ~~noncommercial~~[other than commercial] computer software and computer software documentation.**

\* \* \* \* \*

**227.7203-3 Early identification of computer software or computer software documentation to be furnished to the Government with restrictions on use, reproduction[,] or disclosure.**

(a) Use the provision at 252.227-7017, Identification and Assertion of Use, Release, or Disclosure Restrictions, in all solicitations that include the clause at 252.227-7014, Rights in ~~Noncommercial~~ **[Other Than Commercial]** Computer Software and ~~Noncommercial~~ **[Other Than Commercial]** Computer Software Documentation. The provision requires offerors to identify any computer software or computer software documentation for which restrictions, other than copyright, on use, modification, reproduction, release, performance, display, or disclosure are asserted and to attach the identification and assertion to the offer.

\* \* \* \* \*

**227.7203-4 License rights.**

(a) \* \* \*

(b) *Source of funds determination.* The determination of the source of funds used to develop computer software should be made at the lowest practicable segregable portion of the software or documentation (e.g., a software sub-routine that performs a specific function). Contractors may assert restricted rights in a segregable portion of computer software which otherwise qualifies for restricted rights under the clause at 252.227-7014, Rights in ~~Noncommercial~~ **[Other Than Commercial]** Computer Software and ~~Noncommercial~~ **[Other Than Commercial]** Computer Software Documentation.

**227.7203-5 Government rights.**

The standard license rights in computer software that a licensor grants to the Government are unlimited rights, government purpose rights, or restricted rights. The standard license in computer software documentation conveys unlimited rights. Those rights are defined in the clause at 252.227-7014, Rights in ~~Noncommercial~~**[Other Than Commercial]** Computer Software and ~~Noncommercial~~ **[Other Than Commercial]** Computer Software Documentation. In unusual situations, the standard rights may not satisfy the Government's needs or the Government may be willing to accept lesser rights in return for other consideration. In those cases, a special license may be negotiated. However, the licensor is not obligated to provide the Government greater rights and the contracting officer is not required to accept lesser rights than the rights provided in the standard grant of license. The situations under which a particular grant of license applies are enumerated in paragraphs (a) through (d) of this ~~sub~~section.

(a) \* \* \*

\* \* \* \* \*

(c) *Restricted rights*.

(1) The Government obtains restricted rights in ~~noncommercial~~ **[other than** **commercial]** computer software, required to be delivered or otherwise provided to the Government under a contract, that was developed exclusively at private expense.

\* \* \* \* \*

**227.7203-6 Contract clauses.**

(a)(1) Use the clause at 252.227-7014, Rights in ~~Noncommercial~~ **[Other Than Commercial]** Computer Software and ~~Noncommercial~~ **[Other Than Commercial]** Computer Software Documentation, in solicitations and contracts when the successful offeror(s) will be required to deliver computer software or computer software documentation. Do not use the clause when the only deliverable items are technical data (other than computer software documentation), commercial computer software or commercial computer software documentation, commercial ~~items~~**[products, commercial services]** (see 227.7102-3), special works (see 227.7205), or contracts under the Small Business Innovation Research Program (see 227.7104)~~,~~**[.]** Except as provided in 227.7107-2, do not use the clause in architect-engineer and construction contracts.

\* \* \* \* \*

(f) Use the clause at 252.227-7037, Validation of Restrictive Markings on Technical Data, in solicitations and contracts that include the clause at 252.227-7014 when the contractor will be required to deliver ~~noncommercial~~ **[other than commercial]** computer software documentation (technical data). The clause implements statutory requirements under 10 U.S.C. 3781-3786. Paragraph (e) of the clause contains information that must be included in a formal challenge.

\* \* \* \* \*

**227.7203-9 Copyright.**

(a) *Copyright license.*

(1) The clause at 252.227-7014, Rights in ~~Noncommercial~~ **[Other Than Commercial]** Computer Software and ~~Noncommercial~~ **[Other Than Commercial]** Computer Software Documentation, requires a contractor to grant, or obtain for the Government license rights which permit the Government to reproduce the software or documentation, distribute copies, perform or display the software or documentation and, through the right to modify data, prepare derivative works. The extent to which the Government, and others acting on its behalf, may exercise these rights varies for each of the standard data rights licenses obtained under the clause. When non-standard license rights in computer software or computer software documentation will be negotiated, negotiate the extent of the copyright license concurrent with negotiations for the data rights license. Do not negotiate copyright licenses for computer software that provide less rights than the standard restricted rights in computer software license. For computer software documentation, do not negotiate a copyright license that provides less rights than the standard limited rights in technical data license.

(2) The clause at 252.227-7013, Rights in Technical Data—~~Noncommercial Items~~ **[Other Than Commercial Products and Commercial Services]**, does not permit a contractor to incorporate a third party's copyrighted software into a deliverable software item unless the contractor has obtained an appropriate license for the Government and, when applicable, others acting on the Government's behalf, or has obtained the contracting officer's written approval to do so. Grant approval to use third party copyrighted software in which the Government will not receive a copyright license only when the Government's requirements cannot be satisfied without the third party material or when the use of the third party material will result in cost savings to the Government which outweigh the lack of a copyright license.

\* \* \* \* \*

**227.7203-10 Contractor identification and marking of computer software or computer software documentation to be furnished with restrictive markings.**

(a) \* \* \*

(3) The restrictions asserted by a successful offeror shall be attached to its contract unless, in accordance with the procedures at 227.7203-13, the parties have agreed that an asserted restriction is not justified. The contract attachment shall provide the same information regarding identification of the computer software or computer software documentation, the asserted rights category, the basis for the assertion, and the name of the person asserting the restrictions as required by paragraph (d) of the solicitation provision at 252.227-7017. Subsequent to contract award, the clause at 252.227-7014, Rights in ~~Noncommercial~~**[Other Than Commercial]** Computer Software and ~~Noncommercial~~**[Other Than Commercial]** Computer Software Documentation, permits a contractor to make additional assertions under certain conditions. The additional assertions must be made in accordance with the procedures and in the format prescribed by that clause.

\* \* \* \* \*

(b) *Contractor marking requirements*. The clause at 252.227-7014, Rights in ~~Noncommercial~~ **[Other Than Commercial]** Computer Software and ~~Noncommercial~~ **[Other Than Commercial]** Computer Software Documentation—

(1) \* \* \*

\* \* \* \* \*

**227.7203-11 Contractor procedures and records.**

(a) The clause at 252.227-7014, Rights in ~~Noncommercial~~ **[Other Than Commercial]** Computer Software and ~~Noncommercial~~ **[Other Than Commercial]** Computer Software Documentation, requires a contractor, and its subcontractors or suppliers that will deliver computer software or computer software documentation with other than unlimited rights, to establish and follow written procedures to assure that restrictive markings are used only when authorized and to maintain records to justify the validity of restrictive markings.

\* \* \* \* \*

**227.7203-12 Government right to establish conformity of markings.**

(a) *Nonconforming markings*.

(1) Authorized markings are identified in the clause at 252.227-7014, Rights in ~~Noncommercial~~ **[Other Than Commercial]** Computer Software and ~~Noncommercial~~ **[Other Than Commercial]** Computer Software Documentation. All other markings are nonconforming markings. An authorized marking that is not in the form, or differs in substance, from the marking requirements in the clause at 252.227-7014 is also a nonconforming marking.

\* \* \* \* \*

**227.7203-15 Subcontractor rights in computer software or computer software documentation.**

(a) \* \* \*

(b) \* \* \*

(c) \* \* \*

(1) 252.227-7014, Rights in ~~Noncommercial~~ **[Other Than Commercial]** Computer Software and ~~Noncommercial~~ **[Other Than Commercial]** Computer Software Documentation;

\* \* \* \* \*

(d) Do not require contractors to have their subcontractors or suppliers at any tier relinquish rights in technical data to the contractor, a higher tier subcontractor, or to the Government, as a condition for award of any contract, subcontract, purchase order, or similar instrument except for the rights obtained by the Government under the provisions of the Rights in ~~Noncommercial~~ **[Other Than Commercial]** Computer Software and ~~Noncommercial~~ **[Other Than Commercial]** Computer Software Documentation clause contained in the contractor's contract with the Government.

**227.7203-16 Providing computer software or computer software documentation to foreign governments, foreign contractors, or international organizations.**

\* \* \* \* \*

(b) Shall not release or disclose computer software or computer software documentation for which restrictions on use, release, or disclosure have been asserted to such foreign entities or authorize the use of such data by those entities, unless the intended recipient is subject to the same provisions as included in the use and non-disclosure agreement at 227.7103-7 and the requirements of the clause at 252.227-7014, Rights in ~~Noncommercial~~ **[Other Than Commercial]** Computer Software and ~~Noncommercial~~ **[Other Than Commercial]** Computer Software Documentation, governing use, modification, reproduction, release, performance, display, or disclosure of such data have been satisfied.

**227.7203-17 Overseas contracts with foreign sources.**

(a) The clause at 252.227-7032, Rights in Technical Data and Computer Software (Foreign), may be used in contracts with foreign contractors to be performed overseas, except Canadian purchases (see paragraph (c) of this ~~sub~~section) in lieu of the clause at 252.227-7014, Rights in ~~Noncommercial~~ **[Other Than Commercial]** Computer Software and ~~Noncommercial~~ **[Other Than Commercial]** Computer Software Documentation, when the Government requires the unrestricted right to use, modify, reproduce, release, perform, display, or disclose all computer software or computer software documentation to be delivered under the contract. Do not use the clause in contracts for special works.

\* \* \* \* \*

**227.7205 Contracts for special works.**

(a) Use the clause at 252.227-7020, Rights in Special Works, in solicitations and contracts where the Government has a specific need to control the distribution of computer software or computer software documentation first produced, created, or generated in the performance of a contract and required to be delivered under that contract, including controlling distribution by obtaining an assignment of copyright, or a specific need to obtain indemnity for liabilities that may arise out of the creation, delivery, use, modification, reproduction, release, performance, display, or disclosure of such software or documentation. Use the clause—

(1) In lieu of the clause at 252.227-7014, Rights in ~~Noncommercial~~ **[Other Than Commercial]** Computer Software and ~~Noncommercial~~ **[Other Than Commercial]** Computer Software Documentation, when the Government must own or control copyright in all computer software or computer software documentation first produced, created, or generated and required to be delivered under a contract; or

\* \* \* \* \*

**PART 232—CONTRACT FINANCING**

\* \* \* \* \*

**232.009-2 Contract clause.**

Use the clause at 252.232-7017, Accelerating Payments to Small Business Subcontractors—Prohibition on Fees and Consideration, in solicitations and contracts, including those using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, that include the clause at FAR 52.232-40, Providing Accelerated Payments to Small Business Subcontractors.

**\* \* \* \* \***

**SUBPART 232.1—~~NON-COMMERCIAL ITEM PURCHASE~~ FINANCING [FOR OTHER THAN A COMMERCIAL PURCHASE]**

\* \* \* \* \*

**SUBPART 232.2—COMMERCIAL ~~ITEM~~ [PRODUCT AND COMMERCIAL SERVICE] PURCHASE FINANCING**

\* \* \* \* \*

**232.206 Solicitation provisions and contract clauses.**

\* \* \* \* \*

(f) *Prompt payment for commercial purchase payments*. The contracting officer shall incorporate the following standard prompt payment terms for commercial ~~item~~**[product and commercial service]** contract financing:

(i) \* \* \*

(ii) \* \* \*

(g) *Installment payment financing for commercial ~~items~~****[products and commercial services]****.* Installment payment financing shall not be used for DoD contracts, unless market research has established that this form of contract financing is both appropriate and customary in the commercial marketplace. When installment payment financing is used, the contracting officer shall use the ceiling percentage of contract price that is customary in the particular marketplace (not to exceed the maximum rate established in FAR 52.232-30).

**\* \* \* \* \***

**SUBPART 232.4—ADVANCE PAYMENTS FOR [OTHER THAN COMMERCIAL ACQUISITIONS]~~NON-COMMERCIAL ITEMS~~**

**\* \* \* \* \***

**SUBPART 232.9—PROMPT PAYMENT**

**\* \* \* \* \***

**232.908 Contract clauses**.

Use the clause at 252.232-7011, Payments in Support of Emergencies and Contingency Operations, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, in acquisitions that meet the applicability criteria at 232.901(1). Use of this clause is in addition to use of either the approved Payment clause prescribed in FAR 32.908 or the clause at FAR 52.212-4, Contract Terms and Conditions—Commercial ~~Items~~**[Products and Commercial Services]**.

**\* \* \* \* \***

**SUBPART 232.11—ELECTRONIC FUNDS TRANSFER**

**\* \* \* \* \***

**232.1110 Solicitation provision and contract clauses.**

Use the clause at 252.232-7009, Mandatory Payment by Governmentwide Commercial Purchase Card, in solicitations, contracts, and agreements, including solicitations, contracts, and agreements using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, when—

(1) \* \* \*

\* \* \* \* \*

**SUBPART 232.70—ELECTRONIC SUBMISSION AND PROCESSING OF PAYMENT REQUESTS AND RECEIVING REPORTS**

\* \* \* \* \*

**232.7004 Contract clauses.**

(a) Unless an exception to submission in electronic form at 232.7002(a) applies and instructions for invoices are contained in the contract administration data section of the contract**[,]** ~~or~~ task **[order,]** or delivery order, use the clause at 252.232-7003, Electronic Submission of Payment Requests and Receiving Reports, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**.

(b) Use the clause at 252.232-7006, Wide Area WorkFlow Payment Instructions, in solicitations and contracts**[,]** ~~or~~ task **[orders,]** or delivery orders, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, when 252.232-7003 is used and none of the exceptions at 232.7002(b)(1) apply. See PGI 232.7004 for instructions on completing the clause.

\* \* \* \* \*

**SUBPART 232.71—LEVIES ON CONTRACT PAYMENTS**

\* \* \* \* \*

**232.7102 Contract clause.**

Use the clause at 252.232-7010, Levies on Contract Payments, in all solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**.

\* \* \* \* \*

**PART 234—MAJOR SYSTEM ACQUISITION**

\* \* \* \* \*

**SUBPART 234.70—ACQUISITION OF MAJOR WEAPON SYSTEMS AS COMMERCIAL ~~ITEMS~~[PRODUCTS]**

**234.7000 Scope of subpart.**

This subpart—

(a) Implements 10 U.S.C. 3455; and

(b) Requires a determination by the Secretary of Defense and a notification to Congress before acquiring a major weapon system as a commercial ~~item~~**[product]**.

\* \* \* \* \*

**234.7002 Policy.**

(a) *Major weapon systems*.

(1) A DoD major weapon system may be treated as a commercial ~~item~~**[product]**, or acquired under procedures established for the acquisition of commercial ~~items~~**[products]**, only if—

(i) The Secretary of Defense determines that—

(A) The major weapon system is a commercial ~~item~~**[product]** as defined in FAR 2.101; and

\* \* \* \* \*

(b) *Subsystems*. A subsystem of a major weapon system (other than a commercially available off-the-shelf item) shall be treated as a commercial ~~item~~**[product]** and acquired under procedures established for the acquisition of commercial ~~items~~**[products]** if—

(1) The subsystem is intended for a major weapon system that is being acquired, or has been acquired, under procedures established for the acquisition of commercial ~~items~~**[products]** in accordance with paragraph (a) of this section; or

(2) The contracting officer determines in writing that the subsystem is a commercial ~~item~~**[product]**.

(c) *Components and spare parts*.

(1) A component or spare part for a major weapon system (other than a commercially available off-the-shelf item) may be treated as a commercial ~~item~~**[product]** only if—

(i) The component or spare part is intended for—

(A) A major weapon system that is being acquired, or has been acquired, under procedures established for the acquisition of commercial ~~items~~**[products]** in accordance with paragraph (a) of this section; or

(B) A subsystem of a major weapon system that is being acquired, or has been acquired, under procedures established for the acquisition of commercial ~~items~~**[products]** in accordance with paragraph (b) of this section; or

(ii) The contracting officer determines in writing that the component or spare part is a commercial ~~item~~**[product]**.

(2) \* \* \*

(d) *Relevant information*. See 212.209(a) for requirements of 10 U.S.C. 3453 with regard to market research.

(1) To the extent necessary to make a determination of price reasonableness, the contracting officer shall require the offeror to submit prices paid for the same or similar commercial ~~items~~**[products]** under comparable terms and conditions by both Government and commercial customers.

\* \* \* \* \*

(5) An offeror may submit information or analysis relating to the value of a commercial ~~item~~**[product]** to aid in the determination of the reasonableness of the price of such ~~item~~**[commercial product]**. A contracting officer may consider such information or analysis in addition to the information submitted pursuant to paragraphs (d)(1) and (2) of this section. For additional guidance see PGI 234.7002(d)(5).

\* \* \* \* \*

**PART 237—SERVICE CONTRACTING**

**SUBPART 237.1—SERVICE CONTRACTS—GENERAL**

\* \* \* \* \*

**237.171-4 Contract clause.**

Use the clause at 252.237-7019, Training for Contractor Personnel Interacting with Detainees, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, that are for the acquisition of services if—

(a) \* \* \*

\* \* \* \* \*

**237.173-5 Contract clause.**

Insert the clause at 252.237-7010, Prohibition on Interrogation of Detainees by Contractor Personnel, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, that are for the provision of services.

\* \* \* \* \*

**SUBPART 237.2—ADVISORY AND ASSISTANCE SERVICES**

**237.270 Acquisition of audit services.**

\* \* \* \* \*

(e) *Solicitation provisions and contract clauses.*

\* \* \* \* \*

(3) Use the provision at 252.237-7025, Preaward Transparency Requirements for Firms Offering to Support Department of Defense Audits - Representation and Disclosure, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, that include the clause at 252.237-7026, Postaward Transparency Requirements for Firms that Support Department of Defense Audits.

(4) Use the clause at 252.237-7026, Postaward Transparency Requirements for Firms that Support Department of Defense Audits, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, that—

(i) \* \* \*

\* \* \* \* \*

**PART 239—ACQUISITION OF INFORMATION TECHNOLOGY**

**\* \* \* \* \***

**SUBPART 239.1—GENERAL**

**239.101 Policy.**

(1) A contracting officer may not enter into a contract in excess of the simplified acquisition threshold for information technology products or services that are not commercial ~~items~~**[products or commercial services]** unless the head of the contracting activity determines in writing that no commercial ~~items~~**[products or commercial services]** are suitable to meet the agency's needs, as determined through the use of market research appropriate to the circumstances (see FAR 10.001(a)(3)) (section 855 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114-92)).

\* \* \* \* \*

**SUBPART 239.73—REQUIREMENTS FOR INFORMATION RELATING TO SUPPLY CHAIN RISK**

\* \* \* \* \*

**239.7306 Solicitation provision and contract clause**.

(a) Insert the provision at 252.239-7017, Notice of Supply Chain Risk, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, for information technology, whether acquired as a service or as a supply, that is a covered system, is a part of a covered system, or is in support of a covered system, as defined at 239.7301.

(b) Insert the clause at 252.239-7018, Supply Chain Risk, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, for information technology, whether acquired as a service or as a supply, that is a covered system, is a part of a covered system, or is in support of a covered system, as defined at 239.7301.

\* \* \* \* \*

**SUBPART 239.76—CLOUD COMPUTING**

**\* \* \* \* \***

**239.7604 Solicitation provision and contract clause.**

(a) Use the provision at 252.239-7009, Representation of Use of Cloud Computing, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial ~~item~~**[products and commercial services]**, for information technology services.

(b) Use the clause at 252.239-7010, Cloud Computing Services, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~item~~**[products and commercial services]**, for information technology services.

\* \* \* \* \*

**PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES**

\* \* \* \* \*

**SUBPART 242.72—CONTRACTOR MATERIAL MANAGEMENT AND ACCOUNTING SYSTEM**

**242.7200 Scope of subpart.**

(a) This subpart provides policies, procedures, and standards for use in the evaluation of a contractor's material management and accounting system (MMAS).

(b) The policies, procedures, and standards in this subpart—

(1) Apply only when the contractor has contracts exceeding the simplified acquisition threshold that are not for the acquisition of commercial ~~items~~**[products or commercial services]** and are either—

(i) \* \* \*

\* \* \* \* \*

**242.7204 Contract clause.**

Use the clause at 252.242-7004, Material Management and Accounting System, in all solicitations and contracts exceeding the simplified acquisition threshold that are not for the acquisition of commercial ~~items~~**[products or commercial services]** and—

(a) \* \* \*

\* \* \* \* \*

**PART 243—CONTRACT MODIFICATIONS**

\* \* \* \* \*

**SUBPART 243.2—CHANGE ORDERS**

\* \* \* \* \*

**243.205 Contract clauses.**

**\* \* \* \* \***

**243.205-71 Requests for equitable adjustment.**

Use the clause at 252.243-7002, Requests for Equitable Adjustment, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, that are estimated to exceed the simplified acquisition threshold.

\* \* \* \* \*

**PART 244—SUBCONTRACTING POLICIES AND PROCEDURES**

\* \* \* \* \*

**SUBPART 244.3—CONTRACTORS’ PURCHASING SYSTEMS REVIEWS**

\* \* \* \* \*

**244.303 Extent of review.**

(a) Also review the adequacy of rationale documenting commercial ~~item~~**[product or commercial service]** determinations to ensure compliance with the definition of “commercial ~~item”~~**[product” or “commercial service”]** in FAR 2.101.

\* \* \* \* \*

**SUBPART 244.4—SUBCONTRACTS FOR COMMERCIAL ~~ITEMS~~ [PRODUCTS, ~~AND~~ COMMERCIAL SERVICES,] AND COMMERCIAL COMPONENTS**

**244.402 Policy requirements.**

(a) Contractors are required to determine whether a particular subcontract item meets the definition of a commercial ~~item~~**[product or commercial service]**. This requirement does not affect the contracting officer’s responsibilities or determinations made under FAR 15.403-1(c)(3). Contractors are expected to exercise reasonable business judgment in making such determinations, consistent with the guidelines for conducting market research in FAR part 10.

(S-70) In accordance with 10 U.S.C. 3457(c), items that are valued at less than $10,000 per item that are purchased by a contractor for use in the performance of multiple contracts with the Department of Defense and other parties and are not identifiable to any particular contract when purchased shall be treated as commercial ~~items~~**[products]**, even though the items may not meet the definition of “commercial ~~item~~ **[product]**” at FAR 2.101 and do not require a commercial ~~item~~**[product]** determination.

**244.403 Contract clause.**

Use the clause at 252.244-7000, Subcontracts for Commercial ~~Items~~**[Products and Commercial Services]**, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~ **[products and commercial services]**.

\* \* \* \* \*

**PART 245—GOVERNMENT PROPERTY**

**SUBPART 245.1—GENERAL**

\* \* \* \* \*

**245.102 Policy.**

~~(~~See the policy guidance at PGI 245.102-70.~~)~~

(1) \* \* \*

\* \* \* \* \*

(4) *Government-furnished property identification.*

(i) \* \* \*

(ii) *Exceptions.* The Contractor will not be required to tag, label or mark—

(A) \* \* \*

\* \* \* \* \*

(C) Items for which a determination and findings has been executed concluding that it is more cost effective for the Government requiring activity to assign, mark, and register the unique item identification after delivery of an item acquired from a small business concern or a commercial ~~item~~**[product]** acquired under FAR part 12 or part 8.

(*1*) \* \* \*

\* \* \* \* \*

**PART 246—QUALITY ASSURANCE**

\* \* \* \* \*

**SUBPART 246.2—CONTRACT QUALITY REQUIREMENTS**

\* \* \* \* \*

**246.270-4 Contract clause.**

Use the clause at 252.246-7004, Safety of Facilities, Infrastructure, and Equipment for Military Operations, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, for the construction, installation, repair, maintenance, or operation of facilities, infrastructure, or for equipment configured for occupancy, planned for use by DoD military or civilian personnel during military operations.

**SUBPART 246.3—CONTRACT CLAUSES**

**246.370 Notification of potential safety issues.**

(a) Use the clause at 252.246-7003, Notification of Potential Safety Issues, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~**[products and commercial services]**, for the acquisition of—

(1) \* \* \*

\* \* \* \* \*

**SUBPART 246.7—WARRANTIES**

**\* \* \* \* \***

**246.704 Authority for use of warranties.**

(1) The chief of the contracting office must approve use of a warranty, except in acquisitions for—

(i) Commercial ~~items~~ **[products or commercial services]** (see FAR 46.709);

\* \* \* \* \*

**246.706 Warranty terms and conditions.**

(b)(5) *Markings.* For ~~non-commercial items~~ **[other than** **commercial products]** use MIL-STD-129, Marking for Shipments and Storage, and MIL-STD-130, Identification Marking of U.S. Military Property, when marking warranty items.

\* \* \* \* \*

**SUBPART 246.8—CONTRACTOR LIABILITY FOR LOSS OF OR DAMAGE TO PROPERTY OF THE GOVERNMENT**

\* \* \* \* \*

**246.870-3 Contract clauses**.

\* \* \* \* \*

(b) Use the clause at 252.246-7008, Sources of Electronic Parts, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~ **[products and commercial services]**, when procuring—

(1) \* \* \*

\* \* \* \* \*

**PART 247—TRANSPORTATION**

\* \* \* \* \*

**SUBPART 247.2—CONTRACTS FOR TRANSPORTATION OR FOR TRANSPORTATION-RELATED SERVICES**

\* \* \* \* \*

**247.207 Solicitation provisions, contract clauses, and special requirements.**

(1) Use the clause at [252.247-7003](https://www.acq.osd.mil/dpap/dars/dfars/html/current/252247.htm#252.247-7003), Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~ **[products and commercial services]**, that are for carriage in which a motor carrier, broker, or freight forwarder will provide or arrange truck transportation services that provide for a fuel-related adjustment.

(2) Use the clause at [252.247-7028](https://www.acq.osd.mil/dpap/dars/dfars/html/current/252247.htm#252.247-7028), Application for U.S. Government Shipping Documentation/Instructions in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~ **[products and commercial services]**, when shipping under Bills of Lading and Domestic Route Order under FOB origin contracts, Export Traffic Release regardless of FOB terms, or foreign military sales shipments.

\* \* \* \* \*

**SUBPART 247.5—OCEAN TRANSPORTATION BY U.S.-FLAG VESSELS**

\* \* \* \* \*

**247.574 Solicitation provisions and contract clauses.**

(a)(1) Use the provision at 252.247-7022, Representation of Extent of Transportation by Sea, in all solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial ~~items~~ **[products and commercial services]**, except—

(i) \* \* \*

\* \* \* \* \*

(b) Use the basic or one of the alternates of the clause at 252.247-7023, Transportation of Supplies by Sea, in all solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~ **[products and commercial services]**, except those for direct purchase of ocean transportation services.

(1) Use the basic clause unless any of the supplies to be transported are commercial ~~items~~ **[products]** that are—

(i) \* \* \*

\* \* \* \* \*

(2) Use the alternate I clause if any of the supplies to be transported are commercial ~~items~~ **[products]** that are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations when the contract is not a construction contract.

(3) Use the alternate II clause if any of the supplies to be transported are commercial ~~items~~ **[products]** that are commissary or exchange cargoes transported outside of the Defense Transportation System (10 U.S.C. 2643), when the contract is not a construction contract.

(c) Use the clause at 252.247-7025, Reflagging or Repair Work, in all time charter solicitations and contracts, including time charter solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~ **[products and commercial services]**, that are for the use of a vessel for the transportation of supplies, unless a waiver has been granted in accordance with 247.572(c)(2).

(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, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial ~~items~~ **[products and commercial services]**, that require a covered vessel for carriage of cargo for DoD.

(e) Use the clause at 252.247-7027, Riding Gang Member Requirements, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial ~~items~~ **[products and commercial services]**, that are for the charter of, or contract for carriage of cargo by, a U.S.-flag vessel documented under chapter 121 of title 46 U.S.C.

\* \* \* \* \*

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

**\* \* \* \* \***

**Subpart 252.2—Text of Provisions and Clauses**

\* \* \* \* \*

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

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

PROHIBITION ON PERSONS CONVICTED OF FRAUD OR OTHER DEFENSE CONTRACT-RELATED FELONIES (~~DEC 2022~~**[JAN 2023]**)

\* \* \* \* \*

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

\* \* \* \* \*

**252.203-7004 Display of Hotline Posters.**

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

DISPLAY OF HOTLINE POSTERS (~~AUG 2019~~**[JAN 2023])**

\* \* \* \* \*

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

(End of clause)

\* \* \* \* \*

**252.204-7004 Antiterrorism Awareness Training for Contractors.**

As prescribed in 204.7203, use the following clause:

~~LEVEL I~~ ANTITERRORISM AWARENESS TRAINING FOR CONTRACTORS

~~(FEB 2019~~**[JAN 2023]**)

\* \* \* \* \*

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

(End of clause)

\* \* \* \* \*

**252.204-7009 Limitations on the ~~u~~[U]se or ~~d~~[D]isclosure of ~~t~~[T]hird-~~p~~[P]arty ~~c~~[C]ontractor ~~r~~[R]eported ~~c~~[C]yber ~~i~~[I]ncident ~~i~~[I]nformation.**

As prescribed in 204.7304(b), use the following clause:

LIMITATIONS ON THE USE OR DISCLOSURE OF THIRD-PARTY CONTRACTOR REPORTED CYBER INCIDENT INFORMATION

(~~OCT 2016~~**[JAN 2023]**)

(a) \* \* \*

“Technical information” means technical data or computer software, as those terms are defined in the clause at DFARS 252.227-7013, Rights in Technical Data—~~Noncommercial Items~~ **[Other Than Commercial Products and Commercial Services]**, regardless of whether or not the clause is incorporated in this solicitation or contract. Examples of technical information include research and engineering data, engineering drawings, and associated lists, specifications, standards, process sheets, manuals, technical reports, technical orders, catalog-item identifications, data sets, studies and analyses and related information, and computer software executable code and source code.

\* \* \* \* \*

(c) *Subcontracts*. The Contractor shall include this clause, including this paragraph (c), in subcontracts, or similar contractual instruments, for services that include support for the Government’s activities related to safeguarding covered defense information and cyber incident reporting, including subcontracts for commercial ~~items~~ **[products and commercial services]**, without alteration, except to identify the parties.

(End of clause)

\* \* \* \* \*

**252.204-7012 Safeguarding ~~c~~[C]overed ~~d~~[D]efense ~~i~~[I]nformation and ~~c~~[C]yber ~~i~~[I]ncident ~~r~~[R]eporting.**

As prescribed in 204.7304**[(]**c**[)]**, use the following clause:

SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING (~~DEC 2019~~**[JAN 2023]**)

(a) \* \* \*

“Technical information” means technical data or computer software, as those terms are defined in the clause at DFARS 252.227-7013, Rights in Technical Data—~~Noncommercial Items~~**[Other Than Commercial Products and Commercial Services]**, regardless of whether or not the clause is incorporated in this solicitation or contract. Examples of technical information include research and engineering data, engineering drawings, and associated lists, specifications, standards, process sheets, manuals, technical reports, technical orders, catalog-item identifications, data sets, studies and analyses and related information, and computer software executable code and source code.

\* \* \* \* \*

(m) *Subcontracts*. The Contractor shall—

(1) Include this clause, including this paragraph (m), in subcontracts, or similar contractual instruments, for operationally critical support, or for which subcontract performance will involve covered defense information, including subcontracts for commercial ~~items~~ **[products or commercial services]**, without alteration, except to identify the parties. The Contractor shall determine if the information required for subcontractor performance retains its identity as covered defense information and will require protection under this clause, and, if necessary, consult with the Contracting Officer; and

(2) \* \* \*

\* \* \* \* \*

**252.204-7014 Limitations on the Use or Disclosure of Information by Litigation Support Contractors.**

As prescribed in 204.7403(a), use the following clause:

LIMITATIONS ON THE USE OR DISCLOSURE OF INFORMATION BY LITIGATION SUPPORT CONTRACTORS (~~MAY 2016~~**[JAN 2023]**)

\* \* \* \* \*

(f) *~~Flowdown~~****[Subcontracts].*** Include the substance of this clause, including this paragraph (f), in all subcontracts, including subcontracts for commercial ~~items~~ **[products or commercial services]**.

(End of clause)

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

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

NOTICE OF AUTHORIZED DISCLOSURE OF INFORMATION FOR LITIGATION SUPPORT (~~MAY 2016~~**[JAN 2023]**)

\* \* \* \* \*

(c) *~~Flowdown~~****[Subcontracts]****.* Include the substance of this clause, including this paragraph (c), in all subcontracts, including subcontracts for commercial ~~items~~ **[products or commercial services]**.

\* \* \* \* \*

**252.204-7018 Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services.**

As prescribed in 204.2105(c), use the following clause:

PROHIBITION ON THE ACQUISITION OF COVERED DEFENSE TELECOMMUNICATIONS EQUIPMENT OR SERVICES (~~JAN 2021~~**[JAN 2023]**)

\* \* \* \* \*

(e) *Subcontracts*. The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial ~~items~~ **[products or commercial services]**.

(End of clause)

\* \* \* \* \*

**252.204-7020 NIST SP 800-171 DoD Assessment Requirements.**

As prescribed in 204.7304(e), use the following clause:

NIST SP 800-171 DOD ASSESSMENT REQUIREMENTS (~~MAR 2022~~**[JAN 2023]**)

\* \* \* \* \*

(g) *Subcontracts.*

(1) The Contractor shall insert the substance of this clause, including this paragraph (g), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial ~~items~~ **[products or commercial services]** (excluding ~~COTS~~**[commercially available off-the-shelf]** items).

\* \* \* \* \*

**252.204-7021 Contractor Compliance with the Cybersecurity Maturity Model Certification Level Requirement.**

As prescribed in 204.7503(a) and (b), insert the following clause:

CONTRACTOR COMPLIANCE WITH THE CYBERSECURITY MATURITY MODEL CERTIFICATION LEVEL REQUIREMENT

(~~NOV 2020~~**[JAN 2023]**)

\* \* \* \* \*

(c) *Subcontracts.* The Contractor shall—

(1) Insert the substance of this clause, including this paragraph (c), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial ~~items~~ **[products or commercial services]**, excluding commercially available off-the-shelf items; and

\* \* \* \* \*

**252.211-7003 Item ~~u~~[U]nique ~~i~~[I]dentification and ~~v~~[V]aluation.**

As prescribed in 211.274-6(a)(1), use the following clause:

ITEM UNIQUE IDENTIFICATION AND VALUATION (~~MAR 2022~~**[JAN 2023]**)

\* \* \* \* \*

(g) *Subcontracts*. If the Contractor acquires by **[sub]**contract any ~~items~~ **[item(s)]** for which item unique identification is required in accordance with paragraph (c)(1) of this clause, the Contractor shall include this clause, including this paragraph (g), in the applicable subcontract(s), including subcontracts for commercial ~~items~~ **[products or commercial services]**.

(End of clause)

\* \* \* \* \*

**252.215-7009 Proposal ~~a~~[A]dequacy ~~c~~[C]hecklist.**

As prescribed in 215.408(4), use the following provision:

PROPOSAL ADEQUACY CHECKLIST (~~JAN 2014~~**[JAN 2023]**)

\* \* \* \* \*

*EXCEPTIONS TO CERTIFIED COST OR PRICING DATA*

|  |  |  |  |
| --- | --- | --- | --- |
| 18. FAR 52.215-20  FAR 2.101, “commercial ~~item~~**[product” or “commercial service]**” | Has the offeror submitted an exception to the submission of certified cost or pricing data for commercial ~~items~~**[products]** proposed either at the prime or subcontractor level, in accordance with provision 52.215-20?  a. Has the offeror specifically identified the type of commercial ~~item~~**[product]** claim (FAR 2.101 **[“]**commercial ~~item~~**[product”]** definition~~, paragraphs (1) through (8))~~, and the basis on which the ~~item~~**[commercial product]** meets the definition?  b. For modified commercial ~~item~~**[products]** (FAR 2.101 **[“]**commercial ~~item~~**[product”]** definition ~~paragraph (3))~~; did the offeror classify the modification(s) as either—  i. A modification of a type customarily available in the commercial marketplace (paragraph (3)(i)); or  ii. A minor modification (paragraph (3)(ii)) of a type not customarily available in the commercial marketplace made to meet Federal Government requirements not exceeding the thresholds in FAR 15.403-1(c)(3)(iii)(B)?  c. For proposed commercial ~~items~~**[products]** “of a type”, or “evolved” or modified (FAR 2.101 **[“]**commercial ~~item~~**[product”]** definition ~~paragraphs (1) through (3)~~), did the contractor provide a technical description of the differences between the proposed item and the comparison item(s)? |  |  |

\* \* \* \* \*

**252.215-7010 Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data**.

*Basic*. As prescribed in 215.408(5)(i) and (5)(i)(A), use the following provision:

REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA AND DATA OTHER THAN CERTIFIED COST OR PRICING DATA—BASIC

(~~JUL 2019~~**[JAN 2023]**)

\* \* \* \* \*

(b) *Exceptions from certified cost or pricing data*. (1) \* \* \*

\* \* \* \* \*

(ii) *Commercial ~~item~~* **[*product or commercial service*]** *exception*. For a commercial ~~item~~ **[product or commercial service]** exception, the Offeror shall submit, at a minimum, information that is adequate for evaluating the reasonableness of the price for this acquisition, including prices at which the same ~~item~~ **[product or service]** or similar ~~items~~ **[products or services]** have been sold in the commercial market. Such information shall include—

(A) For ~~items~~ **[products or services]** previously determined to be commercial, the contract number and military department, defense agency, or other DoD component that rendered such determination, and if available, a Government point of contact;

\* \* \* \* \*

*Alternate I.* As prescribed in 215.408(5)(i) and (5)(i)(B), use the following provision, which includes a different paragraph (c)(1).

REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA AND DATA OTHER THAN CERTIFIED COST OR PRICING DATA—ALTERNATE I

(~~JUL 2019~~**[JAN 2023]**)

\* \* \* \* \*

(b) *Exceptions from certified cost or pricing data.* (1) \* \* \*

\* \* \* \* \*

(ii) *Commercial ~~item~~****[product or commercial service]*** *exception.* For a commercial ~~item~~**[product or commercial service]** exception, the Offeror shall submit, at a minimum, information that is adequate for evaluating the reasonableness of the price for this acquisition, including prices at which the same ~~item~~**[product or service]** or similar ~~items~~**[products or services]** have been sold in the commercial market. Such information shall include—

(A) For ~~items~~**[products or services]** previously determined to be commercial, the contract number and military department, defense agency, or other DoD component that rendered such determination, and if available, a Government point of contact;

\* \* \* \* \*

**252.215-7013 Supplies and Services Provided by Nontraditional Defense Contractors**.

As prescribed in 215.408(6), use the following provision:

SUPPLIES AND SERVICES PROVIDED BY NONTRADITIONAL DEFENSE CONTRACTORS (~~DEC 2022~~**[JAN 2023]**)

Offerors are advised that in accordance with 10 U.S.C. 3457, supplies and services provided by a nontraditional defense contractor, as defined in DFARS 202.101, may be treated as commercial ~~items~~ **[products or commercial services]**. The decision to apply commercial ~~item~~ **[product or commercial service]** procedures to the procurement of supplies and services from a nontraditional defense contractor does not require a commercial ~~item~~ **[product or commercial service]** determination and does not mean the supplies or services are commercial.

(End of provision)

\* \* \* \* \*

**252.216-7000 Economic ~~p~~[P]rice ~~a~~[A]djustment—~~b~~[B]asic ~~s~~[S]teel, ~~a~~[A]luminum, ~~b~~[B]rass, ~~b~~[B]ronze, or ~~c~~[C]opper ~~m~~[M]ill ~~p~~[P]roducts.**

As prescribed in 216.203-4-70(a)(1), use the following clause:

ECONOMIC PRICE ADJUSTMENT—BASIC STEEL, ALUMINUM, BRASS, BRONZE, OR COPPER MILL PRODUCTS (~~MAR 2012~~**[JAN 2023]**)

(a) *Definitions.* As used in this clause—

“Established price” means a price which is an established catalog or market price for a commercial ~~item~~ **[product]** sold in substantial quantities to the general public.

\* \* \* \* \*

**252.216-7001 Economic ~~p~~[P]rice ~~a~~[A]djustment–~~n~~[N]onstandard ~~s~~[S]teel ~~i~~[I]tems**.

As prescribed in 216.203-4-70(b), use the following clause:

ECONOMIC PRICE ADJUSTMENT—NONSTANDARD STEEL ITEMS (~~JUL 1997~~**[JAN 2023]**)

(a) \* \* \*

\* \* \* \* \*

“Established price” is—

(1) A price which is an established catalog or market price of a commercial ~~item~~ **[product]** sold in substantial quantities to the general public; and

\* \* \* \* \*

**252.216-7002 Alternate A, Time-and-Materials/Labor-Hour Proposal Requirements—~~Non-Commercial Item~~ [Other Than Commercial]** **Acquisition with Adequate Price Competition.**

As prescribed in 216.601(e), substitute the following paragraph (c) for paragraph (c) of the provision at FAR 52.216-29:

ALTERNATE A, TIME-AND-MATERIALS/LABOR-HOUR PROPOSAL REQUIREMENTS—~~NON-COMMERCIAL ITEM~~ **[OTHER THAN COMMERCIAL]** ACQUISITION WITH ADEQUATE PRICE COMPETITION (~~FEB 2007~~**[JAN 2023]**)

\* \* \* \* \*

**252.217-7026 Identification of Sources of Supply.**

As prescribed in 217.7303, use the following provision:

IDENTIFICATION OF SOURCES OF SUPPLY (~~DEC 2022~~**[JAN 2023]**)

(a) \* \* \*

(b) The apparently successful Offeror agrees to complete and submit the following table before award:

TABLE

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Line Items  (1) | National Stock Number  (2) | Commercial  ~~Item~~**[Product or Commercial Service]**  (Y or N)  (3) | |  | | --- | | Company |   (4) | Source of Supply Address  (4) | Part No.  (5) | Actual  Mfg?  (6) |
| (1) List each deliverable item of supply and item of technical data.  (2) If there is no national stock number, list “none~~.~~”**[.]**  (3) Use “Y” if the item is a commercial ~~item~~**[product or commercial service]**; otherwise use “N.” If “Y” is listed, the Offeror need not complete the remaining columns in the table.  (4) For items of supply, list all sources. For technical data, list the source.  (5) For items of supply, list each source’s part number for the item.  (6) Use “Y” if the source of supply is the actual manufacturer; “N” if it is not; and “U” if unknown. | | | | | | |

(End of provision)

\* \* \* \* \*

**252.222-7006 Restrictions on the Use of Mandatory Arbitration Agreements.**

As prescribed in 222.7405, use the following clause:

RESTRICTIONS ON THE USE OF MANDATORY ARBITRATION AGREEMENTS (~~DEC 2010~~**[JAN 2023]**)

(a) *Definitions.* As used in this clause–

“Covered subcontractor” means any entity that has a subcontract valued in excess of $1 million, except a subcontract for the acquisition of commercial ~~items~~**[products or commercial services]**, including commercially available off-the-shelf items.

\* \* \* \* \*

**252.223-7008 Prohibition of Hexavalent Chromium.**

As prescribed in 223.7306, use the following clause:

PROHIBITION OF HEXAVALENT CHROMIUM (~~JUN 2013~~**[JAN 2023]**)

\* \* \* \* \*

(d) *Subcontracts*. The Contractor shall include the substance of this clause, including this paragraph (d), in all subcontracts, including subcontracts for commercial ~~items~~ **[products or commercial services]**, that are for supplies,~~,~~ maintenance and repair services, or construction materials.

(End of clause)

\* \* \* \* \*

**252.225-7001 Buy American and Balance of Payments Program.**

*Basic*. As prescribed in 225.1101(2)(i) and (2)(ii), use the following clause:

BUY AMERICAN AND BALANCE OF PAYMENTS PROGRAM—BASIC

(~~JUN 2022~~**[JAN 2023]**)

(a) *Definitions.* As used in this clause—

*Commercially available off-the-shelf (COTS) item*—

(1) Means any item of supply (including construction material) that is—

(i) A commercial ~~item~~**[product]** (as defined in paragraph (1) of the definition of “commercial ~~item~~**[product]**” in section 2.101 of the Federal Acquisition Regulation);

\* \* \* \* \*

*Alternate I*. \* \* \*

BUY AMERICAN AND BALANCE OF PAYMENTS PROGRAM—ALTERNATE I

(~~JUN 2022~~**[JAN 2023]**)

(a) *Definitions.* As used in this clause—

*Commercially available off-the-shelf (COTS) item*—

(1) Means any item of supply (including construction material) that is—

(i) A commercial ~~item~~**[product]** (as defined in paragraph (1) of the definition of “commercial ~~item~~**[product]**” in section 2.101 of the Federal Acquisition Regulation);

\* \* \* \* \*

**252.225-7009 Restriction on Acquisition of Certain Articles Containing Specialty Metals.**

As prescribed in 225.7003-5(a)(2), use the following clause:

RESTRICTION ON ACQUISITION OF CERTAIN ARTICLES CONTAINING SPECIALTY METALS (~~DEC 2022~~**[JAN 2023]**)

(a) *Definitions*. As used in this clause—

\* \* \* \* \*

“Commercially available off-the-shelf item”—

(i) Means any item of supply that is—

(A) A commercial ~~item~~**[product]** (as defined in paragraph (1) of the definition of “commercial ~~item~~**[product**”**]** in section 2.101 of the Federal Acquisition Regulation);

\* \* \* \* \*

(c) *Exceptions*. The restriction in paragraph (b) of this clause does not apply to—

(1) \* \* \*

(2)(i) \* \* \*

(D) COTS fasteners, unless—

*(1)* The fasteners are incorporated into COTS end items, subsystems, assemblies, or components; or

*(2)* The fasteners qualify for the commercial ~~item~~**[product]** exception in paragraph (c)(3) of this clause.

\* \* \* \* \*

(3) Fasteners that are commercial ~~items~~**[products]**, if the manufacturer of the fasteners certifies it will purchase, during the relevant calendar year, an amount of domestically melted or produced specialty metal, in the required form, for use in the production of fasteners for sale to the Department of Defense and other customers, that is not less than 50 percent of the total amount of the specialty metal that it will purchase to carry out the production of such fasteners for all customers.

\* \* \* \* \*

(e) *Subcontracts.*

(1) The Contractor shall exclude and reserve paragraph (d) and this paragraph (e)(1) when flowing down this clause to subcontracts.

(2) The Contractor shall insert paragraphs (a) through (c) and this paragraph (e)(2) of this clause in subcontracts, including subcontracts for commercial ~~items~~**[products]**, that are for items containing specialty metals to ensure compliance of the end products that the Contractor will deliver to the Government. When inserting this clause in subcontracts, the Contractor shall—

(i) \* \* \*

\* \* \* \* \*

**252.225-7016 Restriction on ~~a~~[A]cquisition of ~~b~~[B]all and ~~r~~[R]oller ~~b~~[B]earings.**

As prescribed in 225.7009-5, use the following clause:

RESTRICTION ON ACQUISITION OF BALL AND ROLLER BEARINGS

(~~JUN 2011~~**[JAN 2023]**)

\* \* \* \* \*

(c) The restriction in paragraph (b) of this clause does not apply to ball or roller bearings that are acquired as—

(1) Commercial components of a**[n]** ~~noncommercial~~ **[other than** **commercial]** end product; or

(2) Commercial or ~~noncommercial~~ **[other than commercial]** components of a commercial component of a**[n]** ~~noncommercial~~ **[other than** **commercial]** end product.

\* \* \* \* \*

(f) **[*Subcontracts*.]** The Contractor shall insert the substance of this clause, including this paragraph (f), in all subcontracts, except those for—

(1) Commercial ~~items~~**[products]**; or

(2) Items that do not contain ball or roller bearings.

\* \* \* \* \*

**252.225-7021 Trade ~~a~~[A]greements.**

*Basic*. As prescribed in 225.1101(6) and (6)(i), use the following clause:

TRADE AGREEMENTS—BASIC (~~MAR 2022~~**[JAN 2023]**)

(a) \* \* \*

\* \* \* \* \*

“Commercially available off-the-shelf (COTS) item”—

(1) Means any item of supply (including construction material) that is—

(i) A commercial ~~item~~**[product]** (as defined in paragraph (1) of the definition of “commercial ~~item~~**[product]**” in section 2.101 of the Federal Acquisition Regulation);

\* \* \* \* \*

*Alternate II.* As prescribed in 225.1101(6) and (6)(ii), use the following clause, which (i) adds *South Caucasus/Central and South Asian (SC/CASA) state* and *South Caucasus/Central and South Asian (SC/CASA) state end product* to paragraph (a); (ii) uses a different paragraph (c) than the basic clause; (iii) adds a new paragraph (d); and (iv) includes paragraphs (e) and (f) which are the same paragraphs (d) and (e) of the basic clause:

Trade Agreements—Alternate II (~~MAR 2022~~**[JAN 2023])**

(a) \* \* \*

\* \* \* \* \*

“Commercially available off-the-shelf (COTS) item”—

(1) Means any item of supply (including construction material) that is—

(i) A commercial ~~item~~**[product]** (as defined in paragraph (1) of the definition of *~~commercial item~~***[“commercial product”]** in section 2.101 of the Federal Acquisition Regulation);

\* \* \* \* \*

**252.225-7036 Buy American—Free Trade Agreements—Balance of Payments Program.**

*Basic*. As prescribed in 225.1101(10)(i) and (10)(i)(A), use the following clause:

BUY AMERICAN—FREE TRADE AGREEMENTS—BALANCE OF PAYMENTS PROGRAM—BASIC (~~JUN 2022~~**[JAN 2023]**)

(a) *Definitions.* As used in this clause—

\* \* \* \* \*

“Commercially available off-the-shelf (COTS) item”—

(1) Means any item of supply (including construction material) that is—

(i) A commercial ~~item~~**[product]** (as defined in paragraph (1) of the definition of “commercial ~~item~~**[product]**” in section 2.101 of the Federal Acquisition Regulation);

\* \* \* \* \*

*Alternate I.* As prescribed in 225.1101(10)(i) and (10)(i)(B), use the following clause, which adds “Canadian end product” to paragraph (a), and uses a different paragraph (c) than the basic clause:

Buy American—Free Trade Agreements—Balance of Payments Program—Alternate I (~~JUN 2022~~**[JAN 2023]**)

(a) *Definitions.* As used in this clause—

\* \* \* \* \*

“Commercially available off-the-shelf (COTS) item”—

(1) Means any item of supply (including construction material) that is—

(i) A commercial ~~item~~**[product]** (as defined in paragraph (1) of the definition of *~~commercial item~~***[“commercial product”]** in section 2.101 of the Federal Acquisition Regulation);

\* \* \* \* \*

*Alternate II.* As prescribed in 225.1101(10)(i) and (10)(i)(C), use the following clause, which adds *South Caucasus/Central and South Asian (SC/CASA) state* and *South Caucasus/Central and South Asian (SC/CASA) state end product* to paragraph (a), and uses a different paragraph (c) than the basic clause:

Buy American—Free Trade Agreements—Balance of Payments Program—Alternate II (~~JUN 2022~~**[JAN 2023]**)

(a) *Definitions.* As used in this clause—

\* \* \* \* \*

“Commercially available off-the-shelf (COTS) item”—

(1) Means any item of supply (including construction material) that is—

(i) A commercial ~~item~~**[product]** (as defined in paragraph (1) of the definition of *~~commercial item~~***[“commercial product”]** in section 2.101 of the Federal Acquisition Regulation);

\* \* \* \* \*

*Alternate III.* As prescribed in 225.1101(10)(i) and (10)(i)(D), use the following clause, which adds *Canadian end product*, *South Caucasus/Central and South Asian (SC/CASA) state*, and *South Caucasus/Central and South Asian (SC/CASA) state end product* to paragraph (a) and uses a different paragraph (c) than the basic clause:

Buy American—Free Trade Agreements—Balance of Payments Program—Alternate III (~~JUN 2022~~**[JAN 2023]**)

(a) *Definitions.* As used in this clause—

\* \* \* \* \*

“Commercially available off-the-shelf (COTS) item”—

(1) Means any item of supply (including construction material) that is—

(i) A commercial ~~item~~**[product]** (as defined in paragraph (1) of the definition of *~~commercial item~~***[“commercial product”]** in section 2.101 of the Federal Acquisition Regulation);

\* \* \* \* \*

*Alternate IV*. As prescribed in 225.1101(10)(i) and (10)(i)(E), use the following clause, which adds *Korean end product* to paragraph (a), and uses a different paragraph (c) than the basic clause:

BUY AMERICAN—FREE TRADE AGREEMENTS—BALANCE OF PAYMENTS PROGRAM—ALTERNATE IV (~~JUN 2022~~**[JAN 2023]**)

(a) *Definitions.* As used in this clause—

\* \* \* \* \*

“Commercially available off-the-shelf (COTS) item”—

(1) Means any item of supply (including construction material) that is—

(i) A commercial ~~item~~**[product]** (as defined in paragraph (1) of the definition of *~~commercial item~~***[“commercial product”]** in section 2.101 of the Federal Acquisition Regulation);

\* \* \* \* \*

*Alternate V*. As prescribed in 225.1101(10)(i) and (10)(i)(F), use the following clause, which adds *Korean end product*, *South Caucasus/Central and South Asian (SC/CASA) state*, and *South Caucasus/Central and South Asian (SC/CASA) state end product* to paragraph (a), and uses a different paragraph (c) than the basic clause:

BUY AMERICAN—FREE TRADE AGREEMENTS—BALANCE OF PAYMENTS PROGRAM—ALTERNATE V (~~JUN 2022~~**[JAN 2023]**)

(a) *Definitions.* As used in this clause—

\* \* \* \* \*

“Commercially available off-the-shelf (COTS) item”—

(1) Means any item of supply (including construction material) that is—

(i) A commercial ~~item~~**[product]** (as defined in paragraph (1) of the definition of *~~commercial item~~***[“commercial product”]** in section 2.101 of the Federal Acquisition Regulation);

\* \* \* \* \*

**252.225-7039 Defense Contractors Performing Private Security Functions Outside the United States.**

As prescribed in 225.302-6, insert the following clause:

DEFENSE CONTRACTORS PERFORMING PRIVATE SECURITY FUNCTIONS

OUTSIDE THE UNITED STATES (~~JUN 2016~~**[JAN 2023]**)

\* \* \* \* \*

(f) *Subcontracts*. The Contractor shall include the substance of this clause, including this paragraph (f), in subcontracts, including subcontracts for commercial ~~items~~**[products or commercial services]**, when private security functions will be performed outside the United States in areas of—

(1) \* \* \*

\* \* \* \* \*

**252.225-7044 Balance of Payments Program--Construction Material.**

*Basic*. As prescribed in 225.7503(a) and (a)(1), use the following clause:

BALANCE OF PAYMENTS PROGRAM—CONSTRUCTION MATERIAL—BASIC (~~JUN 2022~~**[JAN 2023]**)

(a) *Definitions.* As used in this clause—

“Commercially available off-the-shelf (COTS) item”—

(1) Means any item of supply (including construction material) that is—

(i) A commercial ~~item~~**[product]** (as defined in paragraph (1) of the definition of “commercial ~~item~~**[product]**” in section 2.101 of the Federal Acquisition Regulation);

\* \* \* \* \*

(b) *Domestic preference.* This clause implements the Balance of Payments Program by providing a preference for domestic construction material. The Contractor shall use only domestic construction material in performing this contract, except for—

(1) Construction material valued at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation;

(2) Information technology that is a commercial ~~item~~**[product]**; or

\* \* \* \* \*

*Alternate I.* As prescribed in 225.7503(a) and (a)(2), use the following clause, which adds definitions for *South Caucasus/Central and South Asian (SC/CASA) state* and *SC/CASA state construction material* to paragraph (a), and uses “domestic construction material or SC/CASA state construction material” instead of “domestic construction material” in the second sentence of paragraph (b):

BALANCE OF PAYMENTS PROGRAM—CONSTRUCTION MATERIAL—ALTERNATE I (~~JUN 2022~~**[JAN 2023]**)

(a) *Definitions.* As used in this clause—

“Commercially available off-the-shelf (COTS) item”—

(1) Means any item of supply (including construction material) that is—

(i) A commercial ~~item~~**[product]** (as defined in paragraph (1) of the definition of *~~commercial item~~***[“commercial product”]** in section 2.101 of the Federal Acquisition Regulation);

\* \* \* \* \*

(b) *Domestic preference.* This clause implements the Balance of Payments Program by providing a preference for domestic construction material. The Contractor shall use only domestic construction material or SC/CASA state construction material in performing this contract, except for—

(1) Construction material valued at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation;

(2) Information technology that is a commercial ~~item~~**[product]**; or

\* \* \* \* \*

**252.225-7045 Balance of Payments Program—Construction Material Under Trade Agreements.**

*Basic*. As prescribed in 225.7503(b) and (b)(1), use the following clause:

BALANCE OF PAYMENTS PROGRAM—CONSTRUCTION MATERIAL UNDER TRADE AGREEMENTS—BASIC (~~JUN 2022~~**[JAN 2023]**)

(a*) Definitions*. As used in this clause—

**\* \* \* \* \***

“Commercially available off-the-shelf (COTS) item”—

(1) Means any item of supply (including construction material) that is—

(i) A commercial ~~item~~**[product]** (as defined in paragraph (1) of the definition of “commercial ~~item~~**[product]**” in section 2.101 of the Federal Acquisition Regulation);

**\* \* \* \* \***

(c) The Contractor shall use only domestic or designated country construction material in performing this contract, except for—

(1) Construction material valued at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation;

(2) Information technology that is a commercial ~~item~~**[product]**;or

**\* \* \* \* \***

*Alternate I*. As prescribed in 225.7503(b) and (b)(2), use the following clause, which adds *Bahrainian or Mexican construction material* to paragraph (a), and uses a different paragraph (b) and (c) than the basic clause:

BALANCE OF PAYMENTS PROGRAM—CONSTRUCTION MATERIAL UNDER TRADE AGREEMENTS—ALTERNATE I (~~JUN 2022~~**[JAN 2023]**)

(a) *Definitions*. As used in this clause—

\* \* \* \* \*

“Commercially available off-the-shelf (COTS) item”—

(1) Means any item of supply (including construction material) that is—

(i) A commercial ~~item~~**[product]** (as defined in paragraph (1) of the definition of *~~commercial item~~***[“commercial product”]** in section 2.101 of the Federal Acquisition Regulation);

\* \* \* \* \*

(c) The Contractor shall use only domestic or designated country construction material other than Bahrainian or Mexican construction material in performing this contract, except for—

(1) Construction material valued at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation; or

(2) Information technology that is a commercial~~item~~**[product]**; or

**\* \* \* \* \***

*Alternate II*. As prescribed in 225.7503(b) and (b)(3), use the following clause, which adds *South Caucasus/Central and South Asian (SC/CASA) state* and *SC/CASA state construction material* to paragraph (a), uses a different paragraph (b) and introductory text for paragraph (c) than the basic clause, and adds paragraph (d):

BALANCE OF PAYMENTS PROGRAM—CONSTRUCTION MATERIAL UNDER TRADE AGREEMENTS—ALTERNATE II (~~JUN 2022~~**[JAN 2023]**)

(a*) Definitions*. As used in this clause—

\* \* \* \* \*

“Commercially available off-the-shelf (COTS) item”—

(1) Means any item of supply (including construction material) that is—

(i) A commercial ~~item~~**[product]** (as defined in paragraph (1) of the definition of *~~commercial item~~***[“commercial product”]** in section 2.101 of the Federal Acquisition Regulation);

**\* \* \* \* \***

(c) The Contractor shall use only domestic, SC/CASA state, or designated country construction material in performing this contract, except for—

(1) Construction material valued at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation;

(2) Information technology that is a commercial ~~item~~**[product]**; or

**\* \* \* \* \***

*Alternate III.* As prescribed in 225.7503(b) and (b)(4), use the following clause, which adds *South Caucasus/Central and South Asian (SC/CASA)* *state* and *SC/CASA state construction material* to paragraph (a), uses a different paragraph (b) and introductory text for paragraph (c) than the basic clause, and adds paragraph (d):

BALANCE OF PAYMENTS PROGRAM—CONSTRUCTION MATERIAL UNDER TRADE AGREEMENTS—ALTERNATE III (~~JUN 2022~~**[JAN 2023]**)

(a) *Definitions*. As used in this clause—

\* \* \* \* \*

“Commercially available off-the-shelf (COTS) item”—

(1) Means any item of supply (including construction material) that is—

(i) A commercial ~~item~~**[product]** (as defined in paragraph (1) of the definition of *~~commercial item~~***[“commercial product”]** in section 2.101 of the Federal Acquisition Regulation);

\* \* \* \* \*

(c) The Contractor shall use only domestic, SC/CASA state, or designated country construction material other than Bahrainian or Mexican construction material in performing this contract, except for—

(1) Construction material valued at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation;

(2) Information technology that is a commercial ~~item~~**[product]**; or

\* \* \* \* \*

**252.225-7052 Restriction on the Acquisition of Certain Magnets, Tantalum, and Tungsten.**

As prescribed in 225.7018-5, use the following clause:

RESTRICTION ON THE ACQUISITION OF CERTAIN MAGNETS, TANTALUM, AND TUNGSTEN (~~DEC 2022~~**[JAN 2023]**)

(a) *Definitions.* As used in this clause—

\* \* \* \* \*

“Commercially available off-the-shelf item”—

(1) Means any item of supply that is—

(i) A commercial ~~item~~**[product]** (as defined in paragraph (1) of the definition of “commercial ~~item~~**[product]**” in section 2.101 of the Federal Acquisition Regulation);

\* \* \* \* \*

(d) *Subcontracts*. The Contractor shall insert the substance of this clause, including this paragraph (d), in subcontracts and other contractual instruments that are for items containing a covered material, including subcontracts and other contractual instruments for commercial ~~items~~**[products]**, unless an exception in paragraph (c) of this clause applies. The Contractor shall not alter this clause other than to identify the appropriate parties.

\* \* \* \* \*

**252.225-7054 Prohibition on Use of Certain Energy Sourced from Inside the Russian Federation.**

As prescribed in 225.7019-4(b), use the following clause:

PROHIBITION ON USE OF CERTAIN ENERGY SOURCED FROM INSIDE THE RUSSIAN FEDERATION (~~AUG 2021~~**[JAN 2023]**)

\* \* \* \* \*

(c) *Subcontracts.* The Contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts and other commercial instruments that are for furnished energy at a covered military installation, including subcontracts and commercial instruments for commercial ~~items~~**[products]**.

\* \* \* \* \*

**252.225-7056 Prohibition Regarding Business Operations with the Maduro Regime.**

As prescribed in 225.7020-5(b), use the following clause:

PROHIBITION REGARDING BUSINESS OPERATIONS WITH THE MADURO REGIME (~~MAY 2022~~**[JAN 2023]**)

\* \* \* \* \*

(d) *Subcontracts.* The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts, including subcontracts for the acquisition of commercial ~~items~~**[products]**.

\* \* \* \* \*

**252.225-7058 Postaward Disclosure of Employment of Individuals Who Work in the People’s Republic of China.**

As prescribed in 225.7021-4(b), use the following clause:

POSTAWARD DISCLOSURE OF EMPLOYMENT OF INDIVIDUALS WHO WORK IN THE PEOPLE’S REPUBLIC OF CHINA (~~AUG 2022~~**[JAN 2023]**)

(a) *Definitions.* As used in this clause—

“Covered contract” means any DoD contract or subcontract with a value in excess of $5 million, not including contracts for commercial ~~items~~**[products and commercial services]**.

\* \* \* \* \*

**252.225-7060 Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region.**

As prescribed in 225.7022-5(b), use the following clause:

PROHIBITION ON CERTAIN PROCUREMENTS FROM THE XINJIANG UYGHUR AUTONOMOUS REGION (~~DEC 2022~~**[JAN 2023]**)

\* \* \* \* \*

(c) *Subcontracts.* The Contractor shall insert this clause, including this paragraph (c), without alteration other than to identify the appropriate parties, in subcontracts including subcontracts for commercial ~~items~~**[products,]** ~~and~~ commercially available off-the-shelf items**[, and commercial services]**.

\* \* \* \* \*

**252.226-7001 Utilization of Indian ~~o~~[O]rganizations, Indian-~~o~~[O]wned ~~e~~[E]conomic ~~e~~[E]nterprises, and ~~n~~[N]ative Hawaiian ~~s~~[S]mall ~~b~~[B]usiness ~~c~~[C]oncerns.**

As prescribed in 226.104, use the following clause:

UTILIZATION OF INDIAN ORGANIZATIONS, INDIAN-OWNED ECONOMIC ENTERPRISES, AND NATIVE HAWAIIAN SMALL BUSINESS CONCERNS

(~~APR 2019~~**[JAN 2023]**)

\* \* \* \* \*

(f)(1) The Contractor, on its own behalf or on behalf of a subcontractor at any tier, may request an incentive payment in accordance with this clause.

(2) The incentive amount that may be requested is 5 percent of the estimated cost, target cost, or fixed price included in the subcontract at the time of award to the Indian organization, Indian-owned economic enterprise, or Native Hawaiian small business concern.

(3) In the case of a subcontract for commercial ~~items~~**[products or commercial services]**, the Contractor may receive an incentive payment only if the subcontracted items are produced or manufactured in whole or in part by an Indian organization, Indian-owned economic enterprise, or Native Hawaiian small business concern.

\* \* \* \* \*

**252.227-7013 Rights in Technical Data ~~- Noncommercial Items~~[Other Than Commercial Products and Commercial Services].**

As prescribed in 227.7103-6(a), use the following clause:

RIGHTS IN TECHNICAL DATA–~~NONCOMMERCIAL ITEMS~~**[OTHER THAN COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES]** (~~DEC 2022~~**[JAN 2023]**)

\* \* \* \* \*

(b) *Rights in technical data*. The Contractor grants or shall obtain for the Government the following royalty free, ~~world-wide~~**[worldwide]**, nonexclusive, irrevocable license rights in technical data other than computer software documentation (see the Rights in ~~Noncommercial~~**[Other Than Commercial]** Computer Software and ~~Noncommercial~~**[Other Than Commercial]** Computer Software Documentation clause of this contract for rights in computer software documentation):

(1) \* \* \*

\* \* \* \* \*

(f) *Marking requirements*. \* \* \*

(1) *General marking instructions.* \* \* \*

(2) *Government purpose rights markings.* Data delivered or otherwise furnished to the Government **[with government]** purpose rights shall be marked as follows:

|  |
| --- |
| GOVERNMENT PURPOSE RIGHTS  Contract No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Contractor Name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Contractor Address \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Expiration Date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted by paragraph (b)(2) of the Rights in Technical Data–~~Noncommercial Items~~**[Other Than Commercial Products and Commercial Services]** clause contained in the above identified contract. No restrictions apply after the expiration date shown above. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(3) *Limited rights markings*. Data delivered or otherwise furnished to the Government with limited rights shall be marked with the following legend:

|  |
| --- |
| LIMITED RIGHTS  Contract No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Contractor Name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Contractor Address \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  |

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted by paragraph (b)(3) of the Rights in Technical Data–~~Noncommercial Items~~**[Other Than Commercial Products and Commercial Services]** clause contained in the above identified contract. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such data must promptly notify the above named Contractor.

(End of legend)

\* \* \* \* \*

(k) *Applicability to subcontractors or suppliers*.

(1) The Contractor shall ensure that the rights afforded its subcontractors and suppliers under 10 U.S.C. 3771-3775, 10 U.S.C. 3781-3786, and the identification, assertion, and delivery processes of paragraph (e) of this clause are recognized and protected.

(2) Whenever any technical data for ~~noncommercial items~~**[other than commercial products or commercial services]**, or for commercial ~~items~~**[products or commercial services]** developed in any part at Government expense, is to be obtained from a subcontractor or supplier for delivery to the Government under this contract, the Contractor shall use this same clause in the subcontract or other contractual instrument, including subcontracts or other contractual instruments for commercial ~~items~~**[products or commercial services]**, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties. This clause will govern the technical data pertaining to ~~noncommercial items~~**[other than commercial products or commercial services]** or to any portion of a commercial ~~item~~**[product or commercial service]** that was developed in any part at Government expense, and the clause at 252.227-7015 will govern the technical data pertaining to any portion of a commercial ~~item~~**[product or commercial service]**that was developed exclusively at private expense. No other clause shall be used to enlarge or diminish the Government's, the Contractor's, or a higher-tier subcontractor's or supplier's rights in a subcontractor's or supplier's technical data.

\* \* \* \* \*

**252.227-7014 Rights in ~~noncommercial~~[Other Than Commercial C]~~c~~omputer ~~s~~[S]oftware and ~~noncommercial~~[Other Than Commercial] ~~c~~[C]omputer ~~s~~[S]oftware ~~d~~[D]ocumentation.**

As prescribed in 227.7203-6(a)(1), use the following clause~~.~~**[:]**

RIGHTS IN ~~NONCOMMERCIAL~~**[OTHER THAN COMMERCIAL]** COMPUTER SOFTWARE AND ~~NONCOMMERCIAL~~ **[OTHER THAN COMMERCIAL]** COMPUTER SOFTWARE DOCUMENTATION (~~FEB 2014~~**[JAN 2023]**)

(a) \* \* \*

\* \* \* \* \*

(14) “~~Noncommercial~~**[Other than commercial]** computer software” means software that does not qualify as commercial computer software under ~~paragraph (a)(1)~~**[the definition of “commercial computer software”]** of this clause.

(15) “Restricted rights” apply only to ~~noncommercial~~**[other than commercial]** computer software and mean the Government's rights to—\* \* \*

(i) \* \* \*

\* \* \* \* \*

(b) *Rights in computer software or computer software documentation*. The Contractor grants or shall obtain for the Government the following royalty free, ~~world-wide~~**[worldwide]**, nonexclusive, irrevocable license rights in ~~noncommercial~~**[other than commercial]** computer software or computer software documentation. All rights not granted to the Government are retained by the Contractor.

(1) \* \* \*

(2) \* \* \*

(3) *Restricted rights*.

(i) The Government shall have restricted rights in ~~noncommercial~~**[other than commercial]** computer software required to be delivered or otherwise provided to the Government under this contract that were developed exclusively at private expense.

(ii) The Contractor, its subcontractors, or suppliers are not required to provide the Government additional rights in ~~noncommercial~~**[other than commercial]** computer software delivered or otherwise provided to the Government with restricted rights. However, if the Government desires to obtain additional rights in such software, the Contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. All ~~noncommercial~~**[other than commercial]** computer software in which the Contractor has granted the Government additional rights shall be listed or described in a license agreement made part of the contract (see paragraph (b)(4) of this clause). The license shall enumerate the additional rights granted the Government.

(iii) \* \* \*

(4) *Specifically negotiated license rights*.

(i) The standard license rights granted to the Government under paragraphs (b)(1) through ~~(b)~~(3) of this clause, including the period during which the Government shall have government purpose rights in computer software, may be modified by mutual agreement to provide such rights as the parties consider appropriate but shall not provide the Government lesser rights in computer software than are enumerated in ~~paragraph (a)(15)~~**[the definition of “restricted rights”]** of this clause or lesser rights in computer software documentation than are enumerated in ~~paragraph (a)(14)of~~**[the definition of “limited rights**” **of]** the Rights in Technical Data—~~Noncommercial Items~~**[Other Than Commercial Products and Commercial Services]** clause of this contract.

\* \* \* \* \*

(f) *Marking requirements*. \* \* \*

\* \* \* \* \*

(2) *Government purpose rights markings*. Computer software delivered or otherwise furnished to the Government with government purpose rights shall be marked as follows:

|  |
| --- |
| GOVERNMENT PURPOSE RIGHTS  Contract No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Contractor Name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Contractor Address \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Expiration Date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by paragraph (b)(2) of the Rights in ~~Noncommercial~~**[Other Than Commercial]** Computer Software and ~~Noncommercial~~**[Other Than** **Commercial]** Computer Software Documentation clause contained in the above identified contract. No restrictions apply after the expiration date shown above. Any reproduction of the software or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(3) *Restricted rights markings*. Software delivered or otherwise furnished to the Government with restricted rights shall be marked with the following legend:

|  |
| --- |
| RESTRICTED RIGHTS  Contract No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Contractor Name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Contractor Address \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  |

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by paragraph (b)(3) of the Rights in ~~Noncommercial~~**[Other Than Commercial]** Computer Software and ~~Noncommercial~~ **[Other Than Commercial]** Computer Software Documentation clause contained in the above identified contract. Any reproduction of computer software or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such software must promptly notify the above named Contractor.

(End of legend)

\* \* \* \* \*

(k) *Applicability to subcontractors or suppliers*.

(1) Whenever any ~~noncommercial~~**[other than commercial]** computer software or computer software documentation is to be obtained from a subcontractor or supplier for delivery to the Government under this contract, the Contractor shall use this same clause in its subcontracts or other contractual instruments, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties. No other clause shall be used to enlarge or diminish the Government's, the Contractor's, or a higher tier subcontractor's or supplier's rights in a subcontractor's or supplier's computer software or computer software documentation.

\* \* \* \* \*

**252.227-7015 Technical Data–Commercial ~~Items~~[Products and Commercial Services]**.

As prescribed in 227.7102-4(a)(1), use the following clause:

TECHNICAL DATA—COMMERCIAL ~~ITEMS~~**[PRODUCTS AND COMMERCIAL SERVICES]** (~~DEC 2022~~**[JAN 2023]**)

(a) *Definitions*. As used in this clause—

(1) ~~“~~*Commercial ~~item~~****[product* and *commercial service*]**~~”~~ **[includes commercial components and commercial processes but]** does not include commercial computer software.

(2) \* \* \*

(3) \* \* \*

~~(4) The term item includes components or processes.~~

(~~5~~**[4]**) Technical data means recorded information, regardless of the form or method of recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.

(b) *License.\* \* \**

**\* \* \* \* \***

(2) Except as provided in paragraph (b)(1) of this clause, the Government may use, modify, reproduce, release, perform, display, or disclose technical data within the Government only. The Government shall not—

(i) Use the technical data to manufacture additional quantities of the commercial ~~items~~**[products]**; or

(ii) Release, perform, display, disclose, or authorize use of the technical data outside the Government without the Contractor's written permission unless a release, disclosure, or permitted use is necessary for emergency repair or overhaul of the commercial ~~items~~**[products]** furnished under this contract, or for performance of work by covered Government support contractors.

\* \* \* \* \*

(e) *Applicability to subcontractors or suppliers*.

(1) The Contractor shall recognize and protect the rights afforded its subcontractors and suppliers under 10 U.S.C. 3771-3775 and 10 U.S.C. 3781-3786.

(2) Whenever any technical data related to commercial ~~items~~ **[products or commercial services]** developed in any part at private expense will be obtained from a subcontractor or supplier for delivery to the Government under this contract, the Contractor shall use this same clause in the subcontract or other contractual instrument, including subcontracts and other contractual instruments for commercial ~~items~~**[products or commercial services]**, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties. This clause will govern the technical data pertaining to any portion of a commercial ~~item~~**[product or commercial service]** that was developed exclusively at private expense, and the clause at 252.227-7013 will govern the technical data pertaining to any portion of a commercial ~~item~~**[product or commercial service]** that was developed in any part at Government expense.

(End of clause)

**252.227-7016 Rights in ~~b~~[B]id or ~~p~~[P]roposal ~~i~~[I]nformation.**

As prescribed in 227.7103-6(e)(1), 227.7104(e)(1), or 227.7203-6(b), use the following clause:

RIGHTS IN BID OR PROPOSAL INFORMATION (~~JAN 2011~~**[JAN 2023]**)

(a) *Definitions*.

(1) For contracts that require the delivery of technical data, the terms “technical data” and “computer software” are defined in the Rights in Technical Data—~~Noncommercial Item~~**[Other Than Commercial Products and Commercial Services]** clause of this contract or, if this is a contract awarded under the Small Business Innovation Research Program, the Rights in ~~Noncommercial~~**[Other Than Commercial]** Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program clause of this contract.

(2) For contracts that do not require the delivery of technical data, the term “computer software” is defined in the Rights in ~~Noncommercial~~**[Other Than Commercial]** Computer **[Software]** and ~~Noncommercial~~**[Other Than Commercial]** Computer Software Documentation clause of this contract or, if this is a contract awarded under the Small Business Innovation Research Program, the Rights in ~~Noncommercial~~**[Other Than Commercial]** Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program clause of this contract.

(b) \* \* \*

(c) *Government rights subsequent to contract award*. The Contractor agrees—

(1) Except as provided in paragraphs (c)(2), (d), and (e) of this clause, the Government shall have the rights to use, modify, reproduce, release, perform, display, or disclose information contained in the Contractor's bid or proposal within the Government. The Government shall not release, perform, display, or disclose such information outside the Government without the Contractor's written permission.

(2) The Government’s right to use, modify, reproduce, release, perform, display, or disclose information that is technical data or computer software required to be delivered under this contract are determined by the Rights in Technical Data—~~Noncommercial~~ **[Other Than Commercial Products and Commercial Services]** ~~Items~~, Rights in ~~Noncommercial~~**[Other Than Commercial]** Computer Software and ~~Noncommercial~~**[Other Than Commercial]** Computer Software Documentation, or Rights in ~~Noncommercial~~**[Other Than Commercial]** Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program clause(s) of this contract.

\* \* \* \* \*

**252.227-7017 Identification and ~~a~~[A]ssertion of ~~u~~[U]se, ~~r~~[R]elease, or ~~d~~[D]isclosure ~~r~~[R]estrictions.**

As prescribed in 227.7103-3(b), 227.7104(e)(2), or 227.7203-3(a), use the following provision:

IDENTIFICATION AND ASSERTION OF USE, RELEASE, OR DISCLOSURE RESTRICTIONS (~~JAN 2011~~**[JAN 2023]**)

(a) The terms used in this provision are defined in **[the]** following clause or clauses contained in this solicitation**[:]**~~—~~

(1) If a successful offeror will be required to deliver technical data, the Rights in Technical Data–~~Noncommercial Items~~**[Other Than Commercial** **Products and Commercial Services]** clause, or, if this solicitation contemplates a contract under the Small Business Innovation Research Program, the Rights in ~~Noncommercial~~**[Other Than Commercial]** Technical Data and Computer Software–Small Business Innovation Research (SBIR) Program clause.

(2) If a successful offeror will not be required to deliver technical data, the Rights in ~~Noncommercial~~**[Other Than Commercial]** Computer Software and ~~Noncommercial~~**[Other Than Commercial]** Computer Software Documentation clause, or, if this solicitation contemplates a contract under the Small Business Innovation Research Program, the Rights in ~~Noncommercial~~**[Other Than** **Commercial]** Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program clause.

\* \* \* \* \*

**252.227-7018 Rights in ~~Noncommercial~~[Other Than Commercial T]~~t~~echnical Data and Computer Software—Small Business Innovation Research (SBIR) Program.**

As prescribed in 227.7104(a), use the following clause:

RIGHTS IN ~~Noncommercial~~**[OTHER THAN COMMERCIAL]** TECHNICAL DATA AND COMPUTER SOFTWARE—SMALL BUSINESS INNOVATION RESEARCH (SBIR) PROGRAM (~~DEC 2022~~**[JAN 2023]**)

(a) \* \* \*

\* \* \* \* \*

(17) “~~Noncommercial~~**[Other than commercial]** computer software” means software that does not qualify as commercial computer software under ~~paragraph (a)(1)~~ **[the definition of “commercial computer software”]** of this clause.

(18) “Restricted rights” apply only to ~~noncommercial~~ **[other than commercial]** computer software and mean the Government's rights to—

(i) \* \* \*

\* \* \* \* \*

(b) *Rights in technical data and computer software*. The Contractor grants or shall obtain for the Government the following royalty-free, ~~world-wide~~**[worldwide]**, nonexclusive, irrevocable license rights in technical data or ~~noncommercial~~**[other than commercial]** computer software. All rights not granted to the Government are retained by the Contractor.

\* \* \* \* \*

(3) *Restricted rights in computer software*. The Government shall have restricted rights in ~~noncommercial~~**[other than commercial]** computer software required to be delivered or otherwise furnished to the Government under this contract that were developed exclusively at private expense and were not generated under this contract.

\* \* \* \* \*

(f) *Marking requirements*. \* \* \*

\* \* \* \* \*

(2) *Limited rights markings*. Technical data not generated under this contract that pertain to items, components, or processes developed exclusively at private expense and delivered or otherwise furnished with limited rights shall be marked with the following legend:

|  |
| --- |
| LIMITED RIGHTS  Contract No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Contractor Name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Contractor Address \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  |

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted by paragraph (b)(2) of the Rights in ~~Noncommercial~~**[Other Than Commercial]** Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program clause contained in the above identified contract. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such data must promptly notify the above named Contractor.

(End of legend)

\* \* \* \* \*

(3) *Restricted rights markings.* Computer software delivered or otherwise furnished to the Government with restricted rights shall be marked with the following legend:

|  |
| --- |
| RESTRICTED RIGHTS  Contract No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Contractor Name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Contractor Address \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  |

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by paragraph (b)(3) of the Rights in ~~Noncommercial~~**[Other Than Commercial]** Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program clause contained in the above identified contract. Any reproduction of computer software or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such software must promptly notify the above named Contractor.

(End of legend)

(4) *SBIR data rights markings~~:~~***[.]** Except for technical data or computer software in which the Government has acquired unlimited rights under paragraph (b)(1) of this clause, or negotiated special license rights as provided in paragraph (b)(5) of this clause, technical data or computer software generated under this contract shall be marked with the following legend. The Contractor shall enter the expiration date for the SBIR data rights period on the legend:

|  |
| --- |
| SBIR DATA RIGHTS  Contract No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Contractor Name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Address \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Expiration of SBIR Data Rights Period\_\_\_\_\_\_\_ |
|  |

The Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software marked with this legend are restricted during the period shown as provided in paragraph (b)(4) of the Rights in ~~Noncommercial~~**[Other Than Commercial]** Technical Data and Computer Software–Small Business Innovation Research (SBIR) Program clause contained in the above identified contract. No restrictions apply after the expiration date shown above. Any reproduction of technical data, computer software, or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

\* \* \* \* \*

(k) *Applicability to subcontractors or suppliers.*

(1) \* \* \*

(2) Whenever any ~~noncommercial~~**[other than commercial]** technical data or computer software is to be obtained from a subcontractor or supplier for delivery to the Government under this contract, the Contractor shall use this same clause in the subcontract or other contractual instrument, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties. The Contractor shall use the Technical Data—Commercial ~~Items~~ **[Products and Commercial Services]** clause of this contract to obtain technical data pertaining to commercial ~~items~~**[products, commercial components, commercial services]**, ~~components~~ or **[commercial]** processes. No other clause shall be used to enlarge or diminish the Government's, the Contractor's, or a higher tier subcontractor's or supplier's rights in a subcontractor's or supplier's technical data or computer software.

\* \* \* \* \*

**252.227-7019 Validation of ~~a~~[A]sserted ~~r~~[R]estrictions—Computer ~~s~~[S]oftware.**

As prescribed in 227.7104(e)(3) or 227.7203-6(c), use the following clause:

VALIDATION OF ASSERTED RESTRICTIONS—COMPUTER SOFTWARE

(~~SEP 2016~~**[JAN 2023]**)

(a) *Definitions.*

(1) \* \* \*

(2) Other terms used in this clause are defined in the Rights in ~~Noncommercial~~ **[Other Than Commercial]** Computer Software and ~~Noncommercial~~**[Other Than Commercial]** Computer Software Documentation clause of this contract.

\* \* \* \* \*

**252.227-7025 Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.**

As prescribed in 227.7103-6(c), 227.7104(f)(1), or 227.7203-6(d), use the following clause:

LIMITATIONS ON THE USE OR DISCLOSURE OF GOVERNMENT-FURNISHED INFORMATION MARKED WITH RESTRICTIVE LEGENDS

(~~MAY 2013~~**[JAN 2023]**)

(a)(1) For contracts in which the Government will furnish the Contractor with technical data, the terms “covered Government support contractor,” “limited rights,” and “Government purpose rights” are defined in the clause at 252.227-7013, Rights in Technical Data-~~Noncommercial~~**[Other Than Commercial Products and Commercial Services]** ~~Items~~.

(2) For contracts in which the Government will furnish the Contractor with computer software or computer software documentation, the terms “covered Government support contractor,” “government purpose rights,” and “restricted rights” are defined in the clause at 252.227-7014, Rights in ~~Noncommercial~~**[Other Than Commercial]** Computer Software and ~~Noncommercial~~**[Other Than Commercial]** Computer Software Documentation.

(3) For Small Business Innovation Research program contracts, the terms “covered Government support contractor,” “limited rights,” “restricted rights,” and “SBIR data rights” are defined in the clause at 252.227-7018, Rights in ~~Noncommercial~~**[Other Than Commercial]** Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program.

(b) \* \* \* \* \*

(4) *GFI technical data marked with commercial restrictive legends*.

(i) The Contractor shall use, modify, reproduce, perform, or display technical data that is or pertains to a commercial ~~item~~**[product or commercial service]** and is received from the Government with a commercial restrictive legend (i.e., marked to indicate that such data are subject to use, modification, reproduction, release, performance, display, or disclosure restrictions) only in the performance of this contract. The Contractor shall not, without the express written permission of the party whose name appears in the legend, use the technical data to manufacture additional quantities of the commercial ~~items~~**[products]**, or release or disclose such data to any unauthorized person.

\* \* \* \* \*

**252.227-7037 Validation of Restrictive Markings on Technical Data.**

As prescribed in 227.7102-4(c), 227.7103-6(e)(3), 227.7104(e)(5), or 227.7203-6(f), use the following clause:

VALIDATION OF RESTRICTIVE MARKINGS ON TECHNICAL DATA

(~~DEC 2022~~**[JAN 2023]**)

(a) *Definitions.* The terms used in this clause are defined in the Rights in Technical Data—~~Noncommercial~~**[Other Than Commercial Products and Commercial Services]** ~~Items~~ clause of this contract.

(b) Commercial ~~items~~**[products or commercial services]** - presumption regarding development exclusively at private expense. The Contracting Officer will presume that the Contractor's or a subcontractor's asserted use or release restrictions with respect to a commercial ~~item~~**[product or commercial service]** are justified on the basis that the item was developed exclusively at private expense. The Contracting Officer will not issue a challenge unless there are reasonable grounds to question the validity of the assertion that the commercial ~~item~~**[product or commercial service]** was developed exclusively at private expense.

(c) \* \* \*

(d) \* \* \*

(e) *Challenge.*

(1) \* \* \*

(i) State the specific grounds for challenging the asserted restriction including, for commercial ~~items~~**[products or commercial services]**, sufficient information to reasonably demonstrate that the commercial ~~item~~**[product or commercial service]** was not developed exclusively at private expense;

\* \* \* \* \*

(f) Final decision when Contractor or subcontractor fails to respond. Upon a failure of a Contractor or subcontractor to submit any response to the challenge notice the Contracting Officer will issue a final decision to the Contractor or subcontractor in accordance with the Disputes clause of this contract. In order to sustain the challenge for commercial ~~items~~**[products or commercial services]** the Contracting Officer will provide information demonstrating that the commercial ~~item~~**[product or commercial service]** was not developed exclusively at private expense. This final decision will be issued as soon as possible after the expiration of the time period of paragraph (e)(1)(ii) or (e)(2) of this clause. Following issuance of the final decision, the Contracting Officer will comply with the procedures in paragraphs (g)(2)(ii) through (iv) of this clause.

(g) *Final decision when Contractor or subcontractor responds.* (1) \* \* \*

(2)(i) If the Contracting Officer determines that the validity of the restrictive marking is not justified, the Contracting Officer will issue a final decision to the Contractor or subcontractor in accordance with the Disputes clause of this contract. In order to sustain the challenge for commercial ~~items~~**[products or commercial services]**, the Contracting Officer will provide information demonstrating that the commercial ~~item~~**[product or service]** was not developed exclusively at private expense. Notwithstanding paragraph (e) of the Disputes clause, the final decision will be issued within 60 days after receipt of the Contractor's or subcontractor's response to the challenge notice, or within such longer period that the Contracting Officer has notified the Contractor or subcontractor that the Government will require. The notification of a longer period for issuance of a final decision will be made within 60 days after receipt of the response to the challenge notice.

\* \* \* \* \*

(l) Flowdown. The Contractor or subcontractor agrees to insert this clause in contractual instruments, including subcontracts and other contractual instruments for commercial ~~items~~**[products or commercial services]**, with its subcontractors or suppliers at any tier requiring the delivery of technical data.

\* \* \* \* \*

**252.232-7006 Wide Area WorkFlow Payment Instructions.**

As prescribed in 232.7004(b), use the following clause:

WIDE AREA WORKFLOW PAYMENT INSTRUCTIONS (~~DEC 2018~~**[JAN 2023]**)

\* \* \* \* \*

(f) \* \* \*

(1) \* \* \*

(v) For commercial ~~item~~ financing, submit a commercial ~~item~~ financing request.

\* \* \* \* \*

**252.232-7017 Accelerating Payments to Small Business Subcontractors—Prohibition on Fees and Consideration.**

As prescribed in 232.009-2, use the following clause:

ACCELERATING PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS—PROHIBITION ON FEES AND CONSIDERATION (~~APR 2020~~**[JAN 2023]**)

\* \* \* \* \*

(c) *Subcontracts*. Include the substance of this clause, including this paragraph (c), in all subcontracts with small business concerns, including those for the acquisition of commercial ~~items~~**[products or commercial services]**.

\* \* \* \* \*

**252.236-7013 Requirement for ~~c~~[C]ompetition ~~o~~[O]pportunity for American ~~s~~[S]teel ~~p~~[P]roducers, ~~f~~[F]abricators, and ~~m~~[M]anufacturers.**

As prescribed in 236.570(d), use the following clause:

Requirement for Competition Opportunity for American Steel Producers, Fabricators, and Manufacturers (~~JUN 2013~~**[JAN 2023]**)

\* \* \* \* \*

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in any subcontract that involves the acquisition of steel as a construction material, including subcontracts for the acquisition of commercial ~~items~~**[products]**.

\* \* \* \* \*

**252.237-7010 Prohibition on ~~i~~[I]nterrogation of ~~d~~[D]etainees by ~~c~~[C]ontractor ~~p~~[P]ersonnel.**

As prescribed in 237.173-5, use the following clause:

PROHIBITION ON INTERROGATION OF DETAINEES BY CONTRACTOR PERSONNEL (~~(JUN 2013~~**[JAN 2023]**~~)~~)

\* \* \* \* \*

(c) *Subcontracts*. The Contractor shall include the substance of this clause, including this paragraph (c), in all subcontracts, including subcontracts for commercial ~~items~~**[services]**, that may require subcontractor personnel to interact with detainees in the course of their duties.

\* \* \* \* \*

**252.237-7019 Training for Contractor Personnel Interacting with Detainees.**

As prescribed in 237.171-4, use the following clause:

TRAINING FOR CONTRACTOR PERSONNEL INTERACTING WITH DETAINEES (~~JUN 2013~~**[JAN 2023]**)

\* \* \* \* \*

(c) *Subcontracts*. The Contractor shall include the substance of this clause, including this paragraph (c), in all subcontracts, including subcontracts for commercial ~~items~~**[services]**, that may require subcontractor personnel to interact with detainees in the course of their duties.

\* \* \* \* \*

**252.239-7010 Cloud Computing Services.**

As prescribed in 239.7604(b), use the following clause:

CLOUD COMPUTING SERVICES (~~SEP 2022~~**[JAN 2023]**)

\* \* \* \* \*

(l) *Subcontracts*. The Contractor shall include this clause, including this paragraph (l), in all subcontracts that involve or may involve cloud services, including subcontracts for commercial ~~items~~**[services]**.

\* \* \* \* \*

**252.244-7000 Subcontracts for Commercial ~~Items~~[Products or Commercial Services].**

As prescribed in 244.403, use the following clause:

SUBCONTRACTS FOR COMMERCIAL ~~ITEMS~~**[PRODUCTS OR COMMERCIAL SERVICES]** (~~JAN 2021~~**[JAN 2023]**)

(a) The Contractor is not required to flow down the terms of any Defense Federal Acquisition Regulation Supplement (DFARS) clause in subcontracts for commercial ~~items~~**[products or commercial services]** at any tier under this contract, unless so specified in the particular clause.

(b) While not required, the Contractor may flow down to subcontracts for commercial ~~items~~**[products or commercial services]** a minimal number of additional clauses necessary to satisfy its contractual obligation.

(c)(1) In accordance with 10 U.S.C. 3457(c), the Contractor shall treat as commercial ~~items~~**[products]** any items valued at less than $10,000 per item that were purchased by the Contractor for use in the performance of multiple contracts with the Department of Defense and other parties and are not identifiable to any particular contract when purchased.

(2) The Contractor shall ensure that any items to be used in performance of this contract, that are treated as commercial ~~items~~**[products]** pursuant to paragraph (c)(1) of this clause, meet all terms and conditions of this contract that are applicable to commercial ~~items~~**[products]** in accordance with the clause at Federal Acquisition Regulation 52.244-6 and paragraph (a) of this clause.

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract, including subcontracts for the acquisition of commercial ~~items~~**[products or commercial services]**.

\* \* \* \* \*

**252.246-7003 Notification of Potential Safety Issues.**

As prescribed in 246.370(a), use the following clause:

NOTIFICATION OF POTENTIAL SAFETY ISSUES (~~JUN 2013~~**[JAN 2023]**)

(f) **[*Subcontracts*.]** (1) \* \* \*

(2) For those subcontracts, including subcontracts for commercial ~~items~~**[products or commercial services]**, described in paragraph (f)(1) of this clause, the Contractor shall require the subcontractor to provide the notification required by paragraph (c) of this clause to—

(i) \* \* \*

\* \* \* \* \*

**252.246-7007 Contractor Counterfeit Electronic Part Detection and Avoidance System.**

As prescribed in 246.870-3(a), use the following clause:

CONTRACTOR COUNTERFEIT ELECTRONIC PART DETECTION AND AVOIDANCE SYSTEM (~~AUG 2016~~**[JAN 2023]**)

\* \* \* \* \*

(e) **[*Subcontracts*.]** The Contractor shall include the substance of this clause, excluding the introductory text and including only paragraphs (a) through (e), in subcontracts, including subcontracts for commercial ~~items~~**[products]**, for electronic parts or assemblies containing electronic parts.

(End of clause)

**252.246-7008 Sources of Electronic Parts.**

As prescribed in 246.870-3(b), use the following clause:

SOURCES OF ELECTRONIC PARTS (~~MAY 2018~~**[JAN 2023]**)

\* \* \* \* \*

(e) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (e), in subcontracts, including subcontracts for commercial ~~items~~**[products]**, that are for electronic parts or assemblies containing electronic parts, unless the subcontractor is the original manufacturer.

(End of clause)

\* \* \* \* \*

**252.247-7003 Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer.**

As prescribed in 247.207, use the following clause:

PASS-THROUGH OF MOTOR CARRIER FUEL SURCHARGE ADJUSTMENT TO THE COST BEARER (~~JUN 2013~~**[JAN 2023]**)

\* \* \* \* \*

(c) **[*Subcontracts*.]** The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts, including subcontracts for commercial ~~items~~**[products or commercial services]**, with motor carriers, brokers, or freight forwarders.

(End of clause)

\* \* \* \* \*

**252.247-7023 Transportation of ~~s~~[S]upplies by ~~s~~[S]ea.**

*Basic*. As prescribed in 247.574(b) and (b)(1), use the following clause:

TRANSPORTATION OF SUPPLIES BY SEA—BASIC (~~FEB 2019~~**[JAN 2023]**)

\* \* \* \* \*

(b)(1) The Contractor shall use U.S.-flag vessels when transporting any supplies by sea under this contract.

(2) A subcontractor transporting supplies by sea under this contract shall use U.S.-flag vessels if—

(i) This contract is a construction contract; or

(ii) The supplies being transported are—

(A) ~~Noncommercial items~~**[Other than commercial products]**; or

(B) Commercial ~~items~~**[products]** that—

(*1*) \* \* \*

\* \* \* \* \*

(i) **[*Subcontracts*.]** In the award of subcontracts for the types of supplies described in paragraph (b)(2) of this clause, including subcontracts for commercial ~~items~~**[products]**, the Contractor shall flow down the requirements of this clause as follows:

(1) \* \* \*

\* \* \* \* \*

*Alternate I*. As prescribed in 247.574(b) and (b)(2), use the following clause, which uses a different paragraph (b) than the basic clause:

TRANSPORTATION OF SUPPLIES BY SEA—ALTERNATE I (~~FEB 2019~~**[JAN 2023]**)

\* \* \* \* \*

(b)(1) The Contractor shall use U.S.-flag vessels when transporting any supplies by sea under this contract.

(2) A subcontractor transporting supplies by sea under this contract shall use U.S.-flag vessels if the supplies being transported are—

(i) ~~Noncommercial items~~**[Other than commercial products]**; or

(ii) Commercial ~~items~~**[products]** that—

(A) \* \* \*

(B) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations (Note: This contract requires shipment of commercial ~~items~~**[products]** in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations); or

\* \* \* \* \*

(i) **[*Subcontracts*.]** In the award of subcontracts for the types of supplies described in paragraph (b)(2) of this clause, including subcontracts for commercial ~~items~~**[products]**, the Contractor shall flow down the requirements of this clause as follows:

(1) \* \* \*

\* \* \* \* \*

*Alternate II*. As prescribed in 247.574(b) and (b)(3), use the following clause, which uses a different paragraph (b) than the basic clause:

TRANSPORTATION OF SUPPLIES BY SEA—ALTERNATE II (~~FEB 2019~~**[JAN 2023]**)

\* \* \* \* \*

(b)(1) The Contractor shall use U.S.-flag vessels when transporting any supplies by sea under this contract.

(2) A subcontractor transporting supplies by sea under this contract shall use U.S.-flag vessels if the supplies being transported are—

(i) ~~Noncommercial items~~**[Other than** c**ommercial products]**; or

(ii) Commercial ~~items~~**[products]** that—

(A) \* \* \*

(B) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or

\* \* \* \* \*

(i) **[*Subcontracts*.]** In the award of subcontracts for the types of supplies described in paragraph (b)(2) of this clause, including subcontracts for commercial ~~items~~**[products]**, the Contractor shall flow down the requirements of this clause as follows:

(1) \* \* \*

\* \* \* \* \*