**DFARS Case 2018-D066**

**Definition of Commercial Item**

**PGI Text**

**PGI Part 204—Administrative and Information Matters**

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**PGI 204.6—CONTRACT REPORTING**

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**PGI 204.606 Reporting data.**

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(3) \* \* \*

(xiii) *FPDS Entry – Product or Service Information Section*.

\* \* \* \* \*

(B) For the “Principal NAICS code” data field, enter the NAICS code that best represents the type of industry related to the predominant amount of supplies or services being procured on the award. If the award was a result of a solicitation that included any of the following provisions, use the NAICS code that was included in the provision~~:~~ 52.204-8, Annual Representations and Certifications; 52.212-3, Offeror Representations and Certifications – Commercial ~~Items~~**[Products and Commercial Services]**; or 52.219-1, Small Business Program Representations. The list of active NAICS codes for use in FPDS reporting is available on the FPDS website under the “Worksite” section under “Reference”.

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(xiv) *FPDS Entry – Competition Information Section.*

(A) *Solicitation procedures*. Select the appropriate entry from the following list:

*(1) Simplified Acquisition*. Report this code for competitive and noncompetitive contract actions that used simplified acquisition procedures in accordance with FAR part 13~~, to include acquisitions using the Commercial Items Test Program~~. However, if the action is noncompetitive and the reason for other than full and open competition is other than “Authorized by Statute,” “Authorized Resale,” or “SAP Noncompetition,” then enter “Only One Source Solicited” as the solicitation procedure. (Note that most times when in conflict, the reason for other than full and open competition takes precedence over the type of solicitation procedure used.)

\* \* \* \* \*

(B) *Extent Competed*. Select the appropriate entry from the following list. The extent competed for any modification or order against a task **[order]** or delivery order contract pulls from the basic contract and is shown in the “Extent competed for referenced IDV” data field.

(*1) Competed under SAP*. Report this for competitive contract actions that were awarded using FAR part 13 Simplified Acquisition Procedures (i.e., solicitation procedures were “Simplified Acquisition”)~~, to include for the Commercial Item Test Program~~.

\* \* \* \* \*

(E) *Other than Full and Open Competition*.

(*1*) *Simplified Acquisition Procedures (SAP)*. Select only “SAP Non-Competition,” “Authorized by Statute” if a sole source set-aside shall also be noted, or “Authorized for Resale” when the award is noncompetitive and simplified acquisition procedures were used~~, including those awards under the commercial items test program~~. Do not choose other values from the list.

\* \* \* \* \*

(H) In the “Commercial ~~Item~~**[Product or Commercial Service]** Acquisition Procedures” data field, indicate whether commercial procedures were**[—**

**(*1*) Used]** ~~(1) used~~ for commercial ~~items~~**[products or commercial services;]**~~,~~

**[(*2*) Used]**~~(2) used~~ for supplies or services pursuant to FAR 12.102(f)~~,~~**[;]**

**[(*3*) Used]**~~(3) used~~ for services pursuant to FAR 12.102(g)~~,~~**[;]** or

**[(*4*) Not]**~~(4) not~~ used.

(I) In the “Simplified Procedures for Certain Commercial ~~Items~~**[Products or Commercial Services]**” data field, indicate if the contract action utilized procedures under FAR **[subpart]** 13.5.

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**PGI 204.71—UNIFORM CONTRACT LIINE ITEM NUMBERING SYSTEM**

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**PGI 204.7108 Payment instructions.**

(a) \* \* \*

(b) For contracts and orders covered by this subpart—

(1) The contracting officer shall insert the table at (b)(2), or a link to the table at (b)(2) (<https://www.acq.osd.mil/dpap/dars/pgi/pgi_htm/current/PGI204_71.htm#payment_instructions>), in Section G of the contract, or equivalent, including contracts with incrementally funded line items. When some, but not all, of the fixed price line items in a contract are subject to contract financing payments, the contracting officer shall clearly identify to which line items the payment clause(s) included in Section I apply.

(2) The payment office shall allocate and record the amounts paid to the accounting classification citations in the contract using the table below based on the type of payment request submitted (see DFARS [252.232-7006](https://www.acq.osd.mil/dpap/dars/dfars/html/current/252232.htm#252.232-7006)) and the type of effort.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| For Government Use Only | | | | | |
| Contract/Order Payment Clause | Type of Payment Request | Supply | Service | Construction | Payment Office Allocation Method |
| 52.212-4 (Alt I), Contract Terms and Conditions—Commercial ~~Items~~ **[Products and Commercial Services;]** 52.216-7, Allowable Cost and Payment**[;]** 52.232-7, Payments under Time-and-Materials and Labor-Hour Contracts  \* \* \* \* \* | Cost Voucher | X | X | N/A | Line item specific proration. If there is more than one ACRN within a deliverable line or deliverable subline item, the funds will be allocated in the same proportion as the amount of funding currently unliquidated for each ACRN on the deliverable line or deliverable subline item for which payment is requested. |
|  |  |  |  |  |  |
| 52.232-29, Terms for Financing of Purchases of Commercial ~~Items~~**[Products and Commercial Services]**; 52.232-30, Installment Payments for Commercial ~~Items~~ **[Products and Commercial Services]**  **\* \* \* \* \*** | Commercial ~~Item~~**[Product and Commercial Service]** Financing\* | X | X | N/A | Specified in approved payment. The contracting officer shall specify the amount to be paid and the account(s) to be charged for each payment approval in accordance with FAR 32.207(b)(2) and 32.1007(b)(2). |
| \*Liquidation of Financing Payments. Liquidation will be applied by the payment office against those ACRNs which are identified by the payment instructions for the delivery payment and in keeping with the liquidation provision of the applicable contract financing clause (i.e., progress payment, performance-based payment, or commercial ~~item~~ **[product and commercial service]** financing). | | | | | |

**PGI Part 207—Acquisition Planning**

**PGI 207.1—ACQUISITION PLANS**

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**PGI 207.105 Contents of written acquisition plans.**

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(b) *Plan of action*.

\* \* \* \* \*

(6) *Product or service descriptions*. For development acquisitions, describe the market research undertaken to identify commercial ~~items~~**[products or commercial services]**, commercial ~~items~~**[products or commercial services]** with modifications, or nondevelopmental items **[other than commercial products]** (see FAR ~~P~~**[p]**art 10) that could satisfy the acquisition objectives.

\* \* \* \* \*

(20) *Other considerations*.

(A) *National Technology and Industrial Base.* For major defense acquisition programs, address the following (10 U.S.C. 4811(c))—

\* \* \* \* \*

*(7)* Elimination of barriers to, and facilitation of, the integrated manufacture of commercial ~~items~~**[products or commercial services]** and items being produced under DoD contracts.

*(8)* Expanded use of commercial ~~items~~**[products or commercial services]**, commercial ~~items~~**[products or commercial services]** with modifications, or to the extent commercial ~~items~~**[products or commercial services that meet the agency’s needs]** are not available, nondevelopmental items **[other than commercial products]** (see FAR ~~P~~**[p]**art 10).

*(9)* Acquisition of major weapon systems as commercial ~~items~~**[products]** (see DFARS ~~S~~**[s]**ubpart 234.70).

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**PGI Part 208—Required Sources of Supplies and Services**

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

**PGI 208.4—FEDERAL SUPPLY SCHEDULES**

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**PGI 208.406 Ordering activity responsibilities.**

**PGI 208.406-1 Order placement.**

(1) When ordering from schedules, ordering offices—

(i) May use DD Form 1155, Order for Supplies or Services, to place orders for—

(A) Commercial ~~items~~**[products or commercial services]** at or below the simplified acquisition threshold; and

(B) Other than commercial ~~items~~**[products or commercial services]** at any dollar value (see PGI 213.307);

(ii) Shall use SF 1449, Solicitation/Contract/Order for Commercial ~~Items~~**[Products and Commercial Services]**, to place orders for commercial ~~items~~**[products or commercial services]** exceeding the simplified acquisition threshold (see FAR 12.204); and

(iii) May use SF 1449 to place orders for other than commercial ~~items~~**[products or commercial services]** at any dollar value.

\* \* \* \* \*

**PGI Part 212—Acquisition of Commercial ~~Items~~[Products and Commercial Services]**

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

**PGI 212.102 Applicability.**

(a)(iii) *Commercial ~~item~~****[product or commercial service]*** *determination*.

(A) *Making the commercial ~~item~~***[*product or commercial service*]** *determination.*

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

(*2*) \* \* \*

(*3*) The contracting officer may make the commercial ~~item~~**[product or commercial service]** determination or the decision that the item is ~~not commercial~~**[other than commercial]** in accordance with the commercial product or commercial service definition at FAR 2.101 or request a DCMA CIG contracting officer make the determination or the decision that the ~~item~~**[product or service]** is ~~not commercial~~**[other than commercial]** in accordance with the commercial product or commercial service definition at FAR 2.101 by submitting a request to *dcma.boston-ma.eastern-rc.mbx.Commercial@mail.mil*. The contracting officer may withdraw the request at any point prior to the determination being made.

(B) *Documenting the commercial ~~item~~****[product or commercial service]*** *determination*.

(*1*) The contracting officer making the determination shall document the market research and rationale supporting a conclusion that the ~~item~~**[product or service]** is ~~or is not~~ commercial **[or is other than commercial]** and include it in the contract file.

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

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

(*4*) The contracting officer shall include the commercial ~~item~~**[product or commercial service]** determination or the decision that the ~~item~~**[product or service]** does not meet the commercial product or commercial service definition at FAR 2.101 in the contract file.

(C) *DoD commercial item database*. In accordance with [10 U.S.C.](http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title10-section2380&num=0&edition=prelim) 3456(b)(2), within 30 days of contract award, the contracting officer making the determination shall upload the signed commercial ~~item~~**[product or service]** determination or the decision that the item does not meet the commercial product or commercial service definition at FAR [2.101](https://www.acquisition.gov/far/part-2#FAR_2_101) to the DoD Commercial Item Database at [https://piee.eb.mil](https://piee.eb.mil/). The only documentation that is required to be uploaded to the database is the commercial ~~item~~**[product or service]** determination or the decision that the item is ~~not commercial~~**[other than commercial]**. Contracting officers shall avoid uploading any data marked as proprietary or controlled unclassified information to the Commercial Item Database. Additional information is available at <https://www.dcma.mil/commercial-item-group/>.

(D) *Prior commercial ~~item~~****[product or commercial service]*** *determination.*

(1) If a prior DoD commercial ~~item~~**[product or commercial service]** determination for the same ~~item~~**[product or service]** is made by a military department, defense agency, or another component of DoD, contracting officers may presume that the prior commercial ~~item~~**[product or commercial service]** determination shall serve as a determination for subsequent procurements of such ~~item~~**[product or service]**, unless the process is followed to overturn the prior determination (see DFARS 212.102(a)(ii)(B)). If there is no prior commercial ~~item~~**[product or commercial service]** determination, see PGI 212.102(a)(ii**[i]**)(B).

(2) If the DoD Commercial Item Database contains a prior decision that a~~n item~~**[product or service]** does not meet the definition of a commercial product or commercial service at FAR 2.101, the contracting officer may use the prior decision to serve as the decision for subsequent procurements of the same ~~item~~**[product or service]**. To promote consistent acquisition procedures across DoD, contracting officers should consult contracting activities that regularly procure the ~~item~~**[product or service]** to understand the basis for determining that the ~~item~~**[product or service]** does not meet the commercial product or commercial service definition at FAR 2.101. If there is no prior commercial ~~item~~**[product or commercial service]** determination or prior decision that a~~n~~ ~~item~~**[product or service]** does not meet the definition of a commercial product or commercial service at FAR 2.101, see PGI 212.102(a)(i**[ii]**)(~~A~~**[B]**).

(v) *Commercial ~~item~~****[product or commercial service]*** *guidebook*. See the [Department of Defense Guidebook for Acquiring Commercial Items, Part A: Commercial Item Determination](https://www.acq.osd.mil/dpap/dars/pgi/docs/DoD_Guidebook_PartA_Commercial_Item_Determination_07_10_19.pdf), for detailed guidance and practical examples on improving the consistency and timeliness of commercial ~~item~~**[product or commercial service]** determinations to include a template for new commercial ~~item~~**[product or commercial service]** determinations and for general information related to commercial ~~items~~**[products or commercial services]**.

**PGI 212.4—UNIQUE REQUIREMENTS REGARDING TERMS AND CONDITIONS FOR COMMERCIAL ~~ITEMS~~[PRODUCTS AND COMMERCIAL SERVICES]**

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**PGI Part 213—SIMPLIFIED ACQUISITION PROCEDURES**

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

**PGI 213.3—SIMPLIFIED ACQUISITION METHODS**

\* \* \* \* \*

**PGI 213.307 Forms.**

(a) *Commercial**~~items~~****[products and commercial services*]*.*** If SF 1449 is not used, use DD Form 1155 in accordance with paragraph (b)(i) of this section.

(b) *Other than commercial ~~items~~****[products and commercial services.*]**

(i) Use DD Form 1155, Order for Supplies or Services, for purchases made using simplified acquisition procedures.

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**PGI Part 215—CONTRACTING BY NEGOTIATION**

\* \* \* \* \*

**PGI 215.4—CONTRACT PRICING**

**PGI 215.402 Pricing policy.**

\* \* \* \* \*

(3) Obtaining sufficient data from the offeror is particularly critical in situations where a~~n~~ ~~item~~**[product or service]** is determined to be a commercial ~~item~~**[product or commercial service]** in accordance with FAR 2.101 and the contract is being awarded on a sole source basis. This includes commercial sales data of ~~items~~**[products or services]** sold in similar quantities and, if such data is insufficient, cost data to support the proposed price.

(4) See PGI 215.404-1 and the [Department of Defense Guidebook for Acquiring Commercial Items](https://www.acq.osd.mil/dpap/cpic/cp/commercial_pricing.html), Part B: Pricing Commercial Items, for more detailed procedures and guidance on obtaining data needed to determine fair and reasonable prices.

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

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

(b) *Exceptions to certified cost or pricing data requirements*. Even if an exception to certified cost or pricing data applies, the contracting officer is still required to determine price reasonableness. In order to make this determination, the contracting officer may require data other than certified cost or pricing data, including data related to prices and cost data that would otherwise be defined as certified cost or pricing data if certified.

(c)(3) *Commercial ~~items~~****[products or commercial services]***. See the [Department of Defense Guidebook for Acquiring Commercial Items](https://www.acq.osd.mil/dpap/cpic/cp/commercial_pricing.html), Part B: Pricing Commercial Items for detailed guidance about techniques and approaches to pricing commercial products and **[commercial]** services.

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

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(4) *Analysis of historical prices paid by the Government*.

(i) \* \* \*

(ii) Not verifying that a previous analysis was performed, or the consistencies in quantities, has been a recurring issue on sole source commercial ~~items~~**[products and commercial services]** reported by oversight organizations. Sole source commercial ~~items~~**[products and commercial services]** require extra attention to verify that previous prices paid on Government contracts were sufficiently analyzed and determined to be fair and reasonable.

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**PGI 215.404-1 Proposal analysis techniques.**

(a) \* \* \*

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(i) \* \* \*

(C) Particular attention should be paid to sole source commercial **[products]**~~supplies~~ or **[commercial]** services. While the order of preference at FAR 15.402 must be followed, if the contracting officer cannot determine price reasonableness without obtaining data other than cost or pricing data from the offeror, at a minimum, the contracting officer must obtain appropriate data on the prices at which the same or similar items have been sold previously (often previous sales data was the basis of the commercial ~~item~~**[product or commercial service]** determination and must be requested during price analysis of the data provided by the offeror). If previous sales data is not sufficient to determine price reasonableness, the contracting officer must obtain “data other than certified cost or pricing data” and, if necessary, perform a cost analysis.

(D) \* \* \*

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

(i) See the [Department of Defense Guidebook for Acquiring Commercial Items](https://www.acq.osd.mil/dpap/cpic/cp/commercial_pricing.html), Part B: Pricing Commercial Items, for detailed guidance about techniques and approaches to pricing commercial products and **[commercial]** services.

(v) Contracting officers must obtain and document sufficient data to confirm that previous prices paid by the Government were based on a thorough price and/or cost analysis. For example, it would not be sufficient to use price(s) from a database paid by another contracting officer without understanding the type of analysis that was performed to determine the price(s), and without verifying that the quantities were similar for pricing purposes. This does not necessarily need to be another analysis, but there should be coordination with the other office that acknowledges an analysis was performed previously.

(vii) See the [Department of Defense Guidebook for Acquiring Commercial Items](https://www.acq.osd.mil/dpap/cpic/cp/commercial_pricing.html), Part B: Pricing Commercial Items, for information about how to obtain advisory assistance from the DoD cadre of experts in the Defense Contract Management Agency (DCMA) Commercial Item Group (CIG) via email at ~~commercial@dcma.mil~~ **[**[***dcma.boston-ma.eastern-rc.mbx.Commercial@mail.mil***](mailto:dcma.boston-ma.eastern-rc.mbx.Commercial@mail.mil)**]** or at [*http://www.dcma.mil/commercial-item-group/*](http://www.dcma.mil/commercial-item-group/).

\* \* \* \* \*

(e) *Technical analysis*. Requesting technical assistance is particularly important when evaluating pricing related to items that are “similar to” items being purchased or commercial ~~items~~**[products or commercial services]** that are “of a type” or require “minor modifications.” Technical analysis can assist in pricing these types of items by identifying any differences between the item being acquired and the “similar to” item. In particular, the technical review can assist in evaluating the changes that are required to get from the “similar to” item, to the item being solicited, so the contracting officer can determine sufficient price/cost analysis techniques when evaluating that the price for the item being solicited is fair and reasonable. See the [Department of Defense Guidebook for Acquiring Commercial Items](https://www.acq.osd.mil/dpap/cpic/cp/commercial_pricing.html), Part B: Pricing Commercial Items, for information about how to obtain advisory assistance from the DoD cadre of experts in the ~~Defense Contract Management Agency (~~DCMA~~)~~ ~~Commercial Item Group (~~CIG~~)~~ via email at ~~commercial@dcma.mil~~ **[**[***dcma.boston-ma.eastern-rc.mbx.Commercial@mail.mil***](mailto:dcma.boston-ma.eastern-rc.mbx.Commercial@mail.mil)**]** or at [*http://www.dcma.mil/commercial-item-group/*](http://www.dcma.mil/commercial-item-group/).

\* \* \* \* \*

**PGI 215.406-3 Documenting the negotiation.**

(a) \* \* \*

(11) The contracting officer is responsible to ensure the approved ~~pre~~**-[prenegotiation]** and postnegotiation noncompetitive business clearance documents (e.g., price negotiation memoranda) are uploaded into the Contract Business Analysis Repository (CBAR) at [*https://piee.eb.mil*](https://piee.eb.mil/) for the purpose of sharing negotiation experience with other contracting officers preparing to negotiate. This includes both noncompetitive actions using the procedures at FAR part 12, Acquisition of Commercial ~~Items~~**[Products and Commercial Services]**, as well as noncompetitive actions using the procedures at FAR part 15, Contracting by Negotiation, that are valued in excess of $25 million and awarded on or after June 24, 2013 (and for all definitized or awarded actions over $100 million, which occurred on or after October 1, 2012).

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**PGI Part 217—Special Contracting Methods**

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

**PGI 217.7506—SPARE PARTS BREAKOUT PROGRAM**

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

**2-201.2 Acquisition method suffix codes.**

The following codes shall be assigned by DoD activities to further describe the acquisition method code. Valid combinations of AMCs/AMSCs are indicated in paragraphs (a) through (z) of this subsection and summarized in Exhibit I.

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

(z) *AMSC Z.* This part is a commercial **[product,]**~~/~~ nondevelopmental **[item, or ]**~~/~~**[commercially available ]**off-the-shelf item. Commercial ~~item~~**[product]** descriptions, commercial vendor catalog or price lists**[,]** or commercial manuals assigned a technical manual number apply. If one source is available, AMCs 3, 4, or 5 are valid. If at least two sources are available, AMCs 1 or 2 are valid.

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**PGI Part 225—Foreign Acquisition**

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

**PGI 225.070 Reporting of acquisition of end products manufactured outside the United States.**

(1) *Definitions.* “Manufactured end product” and “place of manufacture” are defined in the provision at FAR 52.225-18, Place of Manufacture.

\* \* \* \* \*

(4) The other options in the drop down box apply only to contracts awarded and orders issued on or after October 1, 2006. If the solicitation for the contract contains the provision at FAR 52.225-18, Place of Manufacture (or the commercial ~~item~~**[product]** equivalent at FAR 52.212-3(j)), the contracting officer must review the successful offeror’s response to this provision to select the correct option.

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**PGI 225.79—Export Control**

**PGI 225.7901 Export-controlled items.**

**PGI 225.7901-2 General.**

\* \* \* \* \*

(2) *Regulations*. The Department of State and the Department of Commerce are the lead agencies responsible for regulations governing the export of defense articles, commercial ~~items~~**[products or commercial services]**, and dual use items.

(i) *The International Traffic in Arms Regulations (ITAR)*, issued by the Department of State, control the export of defense-related articles and services, including technical data, ensuring compliance with the Arms Export Control Act (22 U.S.C. 2751 *et seq*.). The United States Munitions List (USML) identifies defense articles, services, and related technical data that are inherently military in character and could, if exported, jeopardize national security or foreign policy interests of the United States.

\* \* \* \* \*

(E) Contracting officers should not answer any questions a contractor may ask regarding the State Department requirement, mentioned in the clause at 252.225-7048, for contractors to register with the Department of State in accordance with the ITAR. If asked, the contracting officer should direct the contractor’s attention to paragraph (b) of the clause, which directs the contractor to consult with the Department of State regarding any questions relating to compliance with the ITAR. (The registration requirements are in Subpart 122.1 of the ITAR. Subpart 122.1 requires any person who engages in the United States in the business of either manufacturing or exporting defense articles or furnishing defense services to register with the Directorate of Defense Trade Controls.)

\* \* \* \* \*

(ii) *The Export Administration Regulations (EAR)*, issued by the Department of Commerce, control the export of dual-use items~~,~~ (items that have both commercial and military or proliferation applications) and purely commercial ~~items~~**[products or commercial services]**. These items include commodities, software, and technology. Many items subject to the EAR are set forth by Export Control Classification Number on the Commerce Control List.

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**PGI Part 232—Contract Financing**

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

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**PGI Part 234—Major System Acquisition**

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

**PGI 234.7002 Policy.**

(a) *Major weapon systems*.

(1)(ii) Departments and agencies shall obtain a determination by the Secretary of Defense and shall notify the congressional defense committees before acquiring a major weapon system as a commercial ~~item~~**[product]**.

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