**DFARS Case 2019-D010**

**Requirement for Firms Used to Support Department of Defense Audits**

**Final Rule**

**PART 212—ACQUISITION OF COMMERCIAL ITEMS**

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

**SUBPART 212.3—SOLICITATION PROVISIONS AND CONTRACT CLAUSES FOR THE ACQUISITION OF COMMERCIAL ITEMS**

**212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.**

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

(f) \* \* \*

(xiv) *Part 237—Service Contracting.*

(A) \* \* \*

(B) \* \* \*

**[(C) Use the provision at 252.237-7025, Preaward Transparency Requirements for Firms Offering to Support Department of Defense Audits—Representation and Disclosure, as prescribed in 237.270(e)(3), to comply with section 1006 of the National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) and section 1011 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116-92).**

**(D) Use the clause at 252.237-7026, Postaward Transparency Requirements for Firms that Support Department of Defense Audits, as prescribed in 237.270(e)(4), to comply with section 1006 of the National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) and section 1011 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116-92).]**

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

**PART 237—SERVICE CONTRACTING**

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

**SUBPART 237.2—ADVISORY AND ASSISTANCE SERVICES**

\* \* \* \* \*

**237.270 Acquisition of audit services.**

\* \* \* \* \*

**[(d) *Transparency requirement for firms used to support DoD audits*.**

**(1) This paragraph (d) implements the requirements of section 1006 of the National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) and section 1011 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116-92) for transparency of accounting firms used to support DoD audits; and extends the statutory requirement, as a matter of DoD policy, to firms other than accounting firms in order to ensure consistent availability of data for contracting officer evaluation and appropriate use.**

**(2) This requirement applies to solicitations and contracts for—**

**(i) Financial statement auditing required under 31 U.S.C. 3521(e); or**

**(ii) Audit remediation services in support of the Financial Improvement and Audit Remediation Plan described in 10 U.S.C. 240b.**

**(3) Any firm responding to a solicitation or awarded a contract for the acquisition of the services described in paragraph (d)(2) of this section is required to represent with regard to whether it has been subject to disciplinary proceedings within the last 3 years and, if the offeror represents that it has, to disclose to DoD before any contract action (including award, renewals, and modifications)—**

**(i) The details of any disciplinary proceedings, with respect to the firm or its associated persons (including principals and employees), before an entity with the authority to enforce compliance with rules or laws applying to audit services or audit remediation services offered by accounting firms or firms other than accounting firms; and**

**(ii) For subsequent contract actions after contract award, whether there has been any change with regard to previously reported disciplinary proceedings since the last contract action.]**

(~~d~~**[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, 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, that—**

**(i) Exceed the simplified acquisition threshold; and**

**(ii) Are for the acquisition of financial statement auditing or audit remediation services as described in paragraph (d)(2) of this section.]**

\* \* \* \* \*

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

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

**252.237-7000 Notice of Special Standards of Responsibility.**

As prescribed in [237.270](https://www.acq.osd.mil/dpap/dars/dfars/html/current/237_2.htm#237.270)(~~d~~**[e]**)(1), use the following provision:

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

**252.237-7001 Compliance with Audit Standards.**

As prescribed in [237.270](https://www.acq.osd.mil/dpap/dars/dfars/html/current/237_2.htm#237.270)(~~d~~**[e]**)(2), use the following clause:

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

**[252.237-7025 Preaward Transparency Requirements for Firms Offering to Support Department of Defense Audits—Representation and Disclosure.**

**As prescribed in 237.270(e)(3), use the following provision:**

**PREAWARD TRANSPARENCY REQUIREMENTS FOR FIRMS OFFERING TO SUPPORT DEPARTMENT OF DEFENSE AUDITS—REPRESENTATION AND DISCLOSURE (OCT 2022)**

**(a) *Representation.* The Offeror represents that within the 3-year period preceding this offer, the Offeror and/or any of its principals or employees have [ ] have not [ ] been the subject of disciplinary proceedings before an entity with the authority to enforce compliance with rules or laws applying to audit services or audit remediation services offered by the Offeror**, **that—**

**(1) Are not yet fully adjudicated or settled; or**

**(2) Were fully adjudicated or settled against the Offeror and/or its principals or employees.**

**(b) *Disclosure.* If the Offeror checked “have” in the representation in paragraph (a) of this provision, the Offeror shall, at a minimum, disclose for each such proceeding—**

**(1) The entity hearing the case;**

**(2) The case or file number; and**

**(3) The allegation or conduct at issue and, if fully adjudicated or settled, a brief description of the outcome.**

**(c) *Treatment of statements.* The Government will safeguard and treat as confidential all statements provided pursuant to this provision where the statement has been marked “confidential” or “proprietary” by the Offeror. Statements so marked will not be released by the Government to the public pursuant to a request under the Freedom of Information Act, 5 U.S.C. 552, without prior notification to the Offeror and opportunity for the Offeror to claim an exemption from release. The Government will treat any statement provided pursuant to this provision as confidential to the extent required by any other applicable law.**

**(End of provision)**

**252.237-7026 Postaward Transparency Requirements for Firms that Support Department of Defense Audits.**

**As prescribed in 237.270(e)(4), use the following clause:**

**POSTAWARD TRANSPARENCY REQUIREMENTS FOR FIRMS THAT SUPPORT DEPARTMENT OF DEFENSE AUDITS (OCT 2022)**

**(a) Prior to each contract action under this contract (including renewal or modification), the Contractor shall disclose the details of any disciplinary proceedings, with respect to the firm and/or its principals or employees, before an entity with the authority to enforce compliance with rules or laws applying to audit services or audit remediation services offered by the Contractor, and whether there has been any change with regard to previously reported proceedings since the last contract action.**

**(b) The disclosure shall, at a minimum, include—**

**(1) The entity hearing the case;**

**(2) The case or file number; and**

**(3) A brief description of the allegation or conduct at issue and, if fully adjudicated or settled, a brief description of the outcome.**

**(c) The Government will safeguard and treat as confidential all statements provided pursuant to this clause where the statement has been marked “confidential” or “proprietary” by the Contractor. Statements so marked will not be released by the Government to the public pursuant to a request under the Freedom of Information Act, 5 U.S.C. 552, without prior notification to the Contractor and opportunity for the Contractor to claim an exemption from release. The Government will treat any statement provided pursuant to this clause as confidential to the extent required by any other applicable law.**

**(End of clause)]**