**DFARS Case 2022-D010**

**(S) Employment Transparency Regarding Individuals Who Perform Work in the People’s Republic of China**

**Interim Rule**

**PART 212—ACQUISITION OF COMMERCIAL ITEMS**

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**Subpart 212.5—Applicability of Certain Laws to the Acquisition of Commercial Items and Commercially Available Off-the-Shelf Items**

**212.503 Applicability of certain laws to executive agency contracts for the acquisition of commercial items.**

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

\* \* \* \* \*

(viii) 10 U.S.C. 2410b, Contractor Inventory Accounting System Standards (see 252.242-7004).

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

~~(ix) 107 Stat 1720 (Section 843(a), Public Law 103-160), Reporting Requirement Regarding Dealings with Terrorist Countries~~.

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**212.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.**

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

\* \* \* \* \*

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

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

(xvi**[i]**) \* \* \*

(xvii**[i]**) \* \* \*

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**PART 225–FOREIGN ACQUISITION**

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

**225.7000 Scope of subpart.**

(a) This subpart contains restrictions on the acquisition of foreign products and services, imposed by DoD appropriations and authorization acts and other statutes. Refer to the acts to verify current applicability of the restrictions.

(b) Nothing in this subpart affects the applicability of the Buy American statute or the Balance of Payments Program.

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

**See PGI 225.7021 for additional procedures regarding disclosures.**

**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.**

**“Covered entity” means any corporation, company, limited liability company, limited partnership, business trust, business association, or other similar entity, including any subsidiary thereof, performing work on a covered contract in the People’s Republic of China, including by leasing or owning real property used in the performance of the covered contract in the People’s Republic of China.**

**225.7021-2****Restrictions.**

**In accordance with section 855 of the National Defense Authorization Act for Fiscal Year 2022 (Pub. L. 117-81, 10 U.S.C. 4651 note prec.), do not award, extend, or exercise an option on a covered contract unless a covered entity has submitted each required disclosure.**

**225.7021-3 National security waiver of disclosure.**

**The senior procurement executive (SPE) may waive the disclosure requirements at 225.7021-2 if the SPE determines in writing that such disclosure would not be in the national security interests of the United States. This authority may not be delegated. See PGI 225.7021-3 for procedures and content requirements regarding the SPE’s written determination.**

**225.7021-4 Solicitation provision and contract clause.**

**(a) Use the provision at 252.225-7057, Preaward Disclosure of Employment of Individuals Who Work in the People’s Republic of China, in solicitations that include the clause at 252.225-7058.**

**(b) Unless a waiver has been granted, use the clause at 252.225-7058, Postaward Disclosure of Employment of Individuals Who Work in the People’s Republic of China, in solicitations and contracts with an estimated value in excess of $5 million.]**

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

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

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**[252.225-7057 Preaward Disclosure of Employment of Individuals Who Work in the People’s Republic of China.**

**As prescribed in 225.7021-4(a), use the following provision:**

**PREAWARD DISCLOSURE OF EMPLOYMENT OF INDIVIDUALS WHO WORK IN THE PEOPLE’S REPUBLIC OF CHINA**

**(AUG 2022)**

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

**“Covered contract” and “covered entity” have the meaning given in the clause** **252.225-7058, Postaward Disclosure of Employment of Individuals Who Work in the People’s Republic of China.**

**(b) *Prohibition on award*. In accordance with section 855 of the National Defense Authorization Act for Fiscal Year 2022 (Pub. L. 117-81, 10 U.S.C. 4651 note prec.), DoD may not award a contract to the Offeror if it is a covered entity and proposes to employ one or more individuals who will perform work in the People’s Republic of China on a covered contract, unless the Offeror has disclosed its use of workforce and facilities in the People’s Republic of China.**

**(c) *Preaward disclosure requirement*. At the time of submission of an offer for a covered contract, an Offeror that is a covered entity shall provide disclosures to include—**

**(1) The proposed use of workforce on a covered contract or subcontract, if the Offeror employs one or more individuals who perform work in the People’s Republic of China;**

**(2) The total number of such individuals who will perform work in the People’s Republic of China; and**

**(3) A description of the physical presence, including street address or addresses, in the People’s Republic of China, where work on the covered contract will be performed.**

**(End of provision)**

**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)**

**(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.**

**“Covered entity” means any corporation, company, limited liability company, limited partnership, business trust, business association, or other similar entity, including any subsidiary thereof, performing work on a covered contract in the People’s Republic of China, including by leasing or owning real property used in the performance of the covered contract in the People’s Republic of China.**

**(b) *Disclosure requirement.***

**(1) In accordance with section 855 of the National Defense Authorization Act for Fiscal Year 2022 (Pub. L. 117-81, 10 U.S.C. 4651 note prec.), DoD may not award, extend, or exercise an option on a covered contract with a covered entity unless such covered entity submits each required disclosure of its use of workforce and facilities in the People’s Republic of China, if it employs one or more individuals who perform work in the People’s Republic of China on a covered contract.**

**(2) If the Contractor is a covered entity, the Contractor shall disclose for the Government’s fiscal years 2023 and 2024, the Contractor’s employment of one or more individuals who perform work in the People’s Republic of China on any covered contract. The disclosures shall include—**

**(i) The total number of such individuals who perform work in the People’s Republic of China on the covered contracts funded by DoD; and**

**(ii) A description of the physical presence, including street address or addresses in the People’s Republic of China, where work on the covered contract is performed.**

**(c) *Subcontracts*. The Contractor shall insert this clause, including this paragraph (c), without alteration other than to identify the appropriate parties, in all subcontracts that meet the definition of a covered contract.**

**(End of clause)]**