#### SUBPART 201.1 —PURPOSE, AUTHORITY, ISSUANCE

##### 201.101 Purpose.

(1) The defense acquisition system, as defined in 10 U.S.C 2545, exists to manage the investments of the United States in technologies, programs, and product support necessary to achieve the national security strategy prescribed by the President pursuant to section 108 of the National Security Act of 1947 (50 U.S.C. 3043) and to support the United States Armed Forces.

(2) The investment strategy of DoD shall be postured to support not only the current United States armed forces, but also future armed forces of the United States.

(3) The primary objective of DoD acquisition is to acquire quality supplies and services that satisfy user needs with measurable improvements to mission capability and operational support at a fair and reasonable price.

##### 201.104 Applicability.

The FAR and the Defense Federal Acquisition Regulation Supplement (DFARS) also apply to purchases and contracts by DoD contracting activities made in support of foreign military sales or North Atlantic Treaty Organization cooperative projects without regard to the nature or sources of funds obligated, unless otherwise specified in this regulation.

##### 201.105 Issuance.

###### 201.105-3 Copies.

The DFARS and the DFARS Procedures, Guidance, and Information (PGI) are available electronically via the World Wide Web at http://www.acq.osd.mil/dpap/dars/index.htm.

##### 201.106 OMB approval under the Paperwork Reduction Act.

See PGI 201.106 for a list of the information collection and recordkeeping requirements contained in this regulation that have been approved by the Office of Management and Budget.

##### 201.107 Certifications.

In accordance with 41 U.S.C. 1304, a new requirement for a certification by a contractor or offeror may not be included in the DFARS unless¾

(1) The certification requirement is specifically imposed by statute; or

(2) Written justification for such certification is provided to the Secretary of Defense by the Under Secretary of Defense (Acquisition, Technology, and Logistics), and the Secretary of Defense approves in writing the inclusion of such certification requirement.

##### 201.109 Statutory acquisition-related dollar thresholds – adjustment for inflation.

(a)(i) 41 U.S.C. 1908(d) requires the adjustment for inflation of all statutory acquisition-related dollar thresholds in the DFARS be applied to contracts and subcontracts without regard to the date of award of the contract or subcontract, except thresholds based on the Wage Rate Requirements statute, the Service Contract Labor Standards statute, or established by the United States Trade Representative pursuant to the Trade Agreement Act, which are not escalated by the statute.

(ii) Section 814(b) of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112-81) requires that the threshold established in 10 U.S.C. 2253(a)(2) for the acquisition of right-hand drive passenger sedans be included in the list of dollar thresholds that are subject to adjustment for inflation in accordance with the requirements of 41 U.S.C. 1908, and is adjusted pursuant to such provisions, as appropriate.

(d) A matrix showing the most recent escalation adjustments of statutory acquisition-related dollar thresholds is available at PGI 201.109 .

##### 201.170 Peer reviews.

(a) *DoD peer reviews.*

(1) The Office of the Director, Defense Procurement and Acquisition Policy, will organize teams of reviewers and facilitate peer reviews for solicitations and contracts, as follows using the procedures at PGI 201.170 —

(i) Preaward peer reviews for competitive procurements will be conducted in three phases for all solicitations valued at $1 billion or more;

(ii) Preaward peer reviews for noncompetitive procurements will be conducted in two phases for new contract actions valued at $500 million or more; and

(iii) Postaward peer reviews will be conducted for all contracts for services valued at $1 billion or more.

(2) To facilitate planning for peer reviews, the military departments and defense agencies shall provide a rolling annual forecast of acquisitions that will be subject to DoD peer reviews at the end of each quarter (i.e., March 31; June 30; September 30; December 31), to the Deputy Director, Defense Procurement and Acquisition Policy (Contract Policy and International Contracting) via email to osd.pentagon.ousd-atl.mbx.peer-reviews@mail.mil.

(b) *Component peer reviews*. The military departments and defense agencies shall establish procedures for—

(1) Preaward peer reviews of solicitations for competitive procurements valued at less than $1 billion;

(2) Preaward peer reviews for noncompetitive procurements valued at less than $500 million; and

(3) Postaward peer reviews of all contracts for services valued at less than $1 billion.

#### SUBPART 201.2 —ADMINISTRATION

##### 201.201 Maintenance of the FAR.

###### 201.201-1 The two councils.

(c) The composition and operation of the DAR Council is prescribed in DoD Instruction 5000.35, Defense Acquisition Regulations (DAR) System.

(d)(i) Departments and agencies process proposed revisions of FAR or DFARS through channels to the Director of the DAR Council. Process the proposed revision as a memorandum in the following format, addressed to the Director, DAR Council, OUSD(AT&L), 3060 Defense Pentagon, Washington, DC 20301-3060; datafax (571) 372-6094.

I. PROBLEM: Succinctly state the problem created by current FAR and/or DFARS coverage and describe the factual and/or legal reasons necessitating the change to the regulation.

II. RECOMMENDATION: Identify the FAR and/or DFARS citations to be revised. Attach as TAB A a copy of the text of the existing coverage, conformed to include the proposed additions and deletions. Indicate deleted coverage with dashed lines through the current words being deleted and insert proposed language in brackets at the appropriate locations within the existing coverage. If the proposed deleted portion is extensive, it may be outlined by lines forming a box with diagonal lines drawn connecting the corners.

III. DISCUSSION: Include a complete, convincing explanation of why the change is necessary and how the recommended revision will solve the problem. Address advantages and disadvantages of the proposed revision, as well as any cost or administrative impact on Government activities and contractors. Identify any potential impact of the change on automated systems, e.g., automated financial and procurement systems. Provide any other background information that would be helpful in explaining the issue.

IV. COLLATERALS: Address the need for public comment (FAR 1.301(b) and Subpart 1.5), the Paperwork Reduction Act, and the Regulatory Flexibility Act (FAR 1.301(c)).

V. DEVIATIONS: If a recommended revision of DFARS is a FAR deviation, identify the deviation and include under separate TAB a justification for the deviation that addresses the requirements of 201.402 (2). The justification should be in the form of a memorandum for the Director of Defense Procurement and Acquisition Policy, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics).

(ii) The public may offer proposed revisions of FAR or DFARS by submission of a memorandum, in the format (including all of the information) prescribed in paragraph (d)(i) of this subsection, to the Director of the DAR Council.

###### 201.201-70 Maintenance of Procedures, Guidance, and Information.

The DAR Council is also responsible for maintenance of the DFARS Procedures, Guidance, and Information (PGI).

#### SUBPART 201.3 —AGENCY ACQUISITION REGULATIONS

##### 201.301 Policy.

(a)(1) DoD implementation and supplementation of the FAR is issued in the Defense Federal Acquisition Regulation Supplement (DFARS) under authorization and subject to the authority, direction, and control of the Secretary of Defense. The DFARS contains—

(i) Requirements of law;

(ii) DoD-wide policies;

(iii) Delegations of FAR authorities;

(iv) Deviations from FAR requirements; and

(v) Policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors.

(2) Relevant procedures, guidance, and information that do not meet the criteria in paragraph (a)(1) of this section are issued in the DFARS Procedures, Guidance, and Information (PGI).

(b) When Federal Register publication is required for any policy, procedure, clause, or form, the department or agency requesting Under Secretary of Defense (Acquisition, Technology, and Logistics) (USD(AT&L)) approval for use of the policy, procedure, clause, or form (see 201.304 (1)) must include an analysis of the public comments in therequest for approval. Information on determining when a clause requires publication inthe Federal Register and approval in accordance with 201.304 (1) is provided at PGI 201.301 (b).

##### 201.303 Publication and codification.

(a)(i) The DFARS is codified under chapter 2 in Title 48, Code of Federal Regulations.

(ii) To the extent possible, all DFARS text (whether implemental or supplemental) is numbered as if it were implemental. Supplemental numbering is used only when the text cannot be integrated intelligibly with its FAR counterpart.

(A) Implemental numbering is the same as its FAR counterpart, except when the text exceeds one paragraph, the subdivisions are numbered by skipping a unit in the FAR 1.105-2(b)(2) prescribed numbering sequence. For example, three paragraphs implementing FAR 19.501 would be numbered 219.501(1), (2), and (3) rather than (a), (b), and (c). Three paragraphs implementing FAR 19.501(a) would be numbered 219.501(a)(i), (ii), and (iii) rather than (a)(1), (2), and (3). Further subdivision of the paragraphs follows the prescribed numbering sequence, e.g., 219.501(1)(i)(A*)(1)(i).*

(B) Supplemental numbering is the same as its FAR counterpart, with the addition of a number of 70 and up or (S-70) and up. Parts, subparts, sections, or subsections are supplemented by the addition of a number of 70 and up. Lower divisions are supplemented by the addition of a number of (S-70) and up. When text exceeds one paragraph, the subdivisions are numbered using the FAR 1.105-2(b)(2) prescribed sequence, without skipping a unit. For example, DFARS text supplementing FAR 19.501 would be numbered 219.501-70. Its subdivisions would be numbered 219.501-70(a), (b), and (c).

(C) Subdivision numbering below the 4th level does not repeat the numbering sequence. It uses italicized Arabic numbers and then italicized lower case Roman numerals.

(D) An example of DFARS numbering is in Table 1-1, DFARS Numbering.

(iii) Department/agency and component supplements must parallel the FAR and DFARS numbering, except department/agency supplemental numbering uses subsection numbering of 90 and up, instead of 70 and up.

|  |  |
| --- | --- |
|  |  |
| FAR | Is Implemented As | Is Supplemented As |
| 19 | 219 | 219.70 |
| 19.5 | 219.5 | 219.570 |
| 19.501 | 219.501 | 219.501-70 |
| 19.501-1 | 219.501-1 | 219.501-1-70 |
| 19.501-1(a) | 219.501-1(a) | 219.501-1(a)(S-70) |
| 19.501-1(a)(1) | 219.501-1(a)(1) | 219.501-1(a)(1)(S-70) |

##### 201.304 Agency control and compliance procedures.

Departments and agencies and their component organizations may issue acquisition regulations as necessary to implement or supplement the FAR or DFARS.

(1)(i) Approval of the USD(AT&L) is required before including in a department/agency or component supplement, or any other contracting regulation document such as a policy letter or clause book, any policy, procedure, clause, or form that—

(A) Has a significant effect beyond the internal operating procedures of the agency; or

(B) Has a significant cost or administrative impact on contractors or offerors.

(ii) Except as provided in paragraph (2) of this section, the USD(AT&L) has delegated authority to the Director of Defense Procurement and Acquisition Policy (OUSD(AT&L)DPAP) to approve or disapprove the policies, procedures, clauses, and forms subject to paragraph (1)(i) of this section.

(2) In accordance with 41 U.S.C. 1304, a new requirement for a certification by a contractor or offeror may not be included in a department/agency or component procurement regulation unless¾

(i) The certification requirement is specifically imposed by statute; or

(ii) Written justification for such certification is provided to the Secretary of Defense by USD(AT&L), and the Secretary of Defense approves in writing the inclusion of such certification requirement.

(3) Contracting activities must obtain the appropriate approval (see 201.404 ) for any class deviation (as defined in FAR Subpart 1.4) from the FAR or DFARS, before its inclusion in a department/agency or component supplement or any other contracting regulation document such as a policy letter or clause book.

(4) Each department and agency must develop and, upon approval by OUSD(AT&L)DPAP, implement, maintain, and comply with a plan for controlling the use of clauses other than those prescribed by FAR or DFARS. Additional information on department and agency clause control plan requirements is available at PGI 201.304 (4).

(5) Departments and agencies must submit requests for the Secretary of Defense, USD(AT&L), and OUSD(AT&L)DPAP approvals required by this section through the Director of the DAR Council. Procedures for requesting approval of department and agency clauses are provided at PGI 201.304 (5).

(6) The Director of Defense Procurement and Acquisition Policy publishes changes to the DFARS in the Federal Register and electronically via the World Wide Web. Each change includes an effective date. Unless guidance accompanying a change states otherwise, contracting officers must include any new or revised clauses, provisions, or forms in solicitations issued on or after the effective date of the change.

#### SUBPART 201.4 —DEVIATIONS FROM THE FAR

##### 201.402 Policy.

(1) The Director of Defense Procurement and Acquisition Policy, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics) (OUSD(AT&L)DPAP), is the approval authority within DoD for any individual or class deviation from—

(i) FAR 3.104, Procurement Integrity, or DFARS 203.104 , Procurement Integrity;

(ii) FAR Subpart 27.4, Rights in Data and Copyrights, or DFARS Subpart 227.4, Rights in Data and Copyrights;

(iii) FAR Part 30, Cost Accounting Standards Administration, or DFARS Part 230, Cost Accounting Standards Administration;

(iv) FAR Subpart 31.1, Applicability, or DFARS Subpart 231.1, Applicability (contract cost principles);

(v) FAR Subpart 31.2, Contracts with Commercial Organizations, or DFARS Subpart 231.2, Contracts with Commercial Organizations; or

(vi) FAR Part 32, Contract Financing (except Subparts 32.7 and 32.8 and the payment clauses prescribed by Subpart 32.1), or DFARS Part 232, Contract Financing (except Subparts 232.7 and 232.8).

(2) Submit requests for deviation approval through department/agency channels to the approval authority in paragraph (1) of this section, 201.403 , or 201.404 , as appropriate. Submit deviations that require OUSD(AT&L)DPAP approval through the Director of the DAR Council. At a minimum, each request must—

(i) Identify the department/agency, and component if applicable, requesting the deviation;

(ii) Identify the FAR or DFARS citation from which a deviation is needed, state what is required by that citation, and indicate whether an individual or class deviation is requested;

(iii) Describe the deviation and indicate which of paragraphs (a) through (f) of FAR 1.401 best categorizes the deviation;

(iv) State whether the deviation will have a significant effect beyond the internal operating procedures of the agency and/or a significant cost or administrative impact on contractors or offerors, and give reasons to support the statement;

(v) State the period of time for which the deviation is required;

(vi) State whether approval for the same deviation has been received previously, and if so, when;

(vii) State whether the proposed deviation was published (see FAR Subpart 1.5 for publication requirements) in the Federal Register and provide analysis of comments;

(viii) State whether the request for deviation has been reviewed by legal counsel, and if so, state results; and

(ix) Give detailed rationale for the request. State what problem or situation will be avoided, corrected, or improved if request is approved.

##### 201.403 Individual deviations.

(1) Individual deviations, except those described in 201.402 (1) and paragraph (2) of this section, must be approved in accordance with the department/agency plan prescribed by 201.304 (4).

(2) Contracting officers outside the United States may deviate from prescribed nonstatutory FAR and DFARS clauses when—

(i) Contracting for support services, supplies, or construction, with the governments of North Atlantic Treaty Organization (NATO) countries or other allies (as described in 10 U.S.C. 2341(2)), or with United Nations or NATO organizations; and

(ii) Such governments or organizations will not agree to the standard clauses.

##### 201.404 Class deviations.

(b)(i) Except as provided in paragraph (b)(ii) of this section, OUSD(AT&L)DPAP is the approval authority within DoD for any class deviation.

(ii) The senior procurement executives for the Army, Navy, and Air Force, and the Directors of the Defense Commissary Agency, the Defense Contract Management Agency, and the Defense Logistics Agency, may approve any class deviation, other than those described in 201.402 (1), that does not—

(A) Have a significant effect beyond the internal operating procedures of the department or agency;

(B) Have a significant cost or administrative impact on contractors or offerors;

(C) Diminish any preference given small business concerns by the FAR or DFARS; or

(D) Extend to requirements imposed by statute or by regulations of other agencies such as the Small Business Administration and the Department of Labor.

#### SUBPART 201.6 —CAREER DEVELOPMENT, CONTRACTING AUTHORITY, AND RESPONSIBILITIES

##### 201.602 Contracting officers.

###### 201.602-2 Responsibilities.

(d) Follow the procedures at PGI 201.602-2 regarding designation, assignment, and responsibilities of a contracting officer's representative (COR).

(1) A COR shall be an employee, military or civilian, of the U.S. Government, a foreign government, or a North Atlantic Treaty Organization/coalition partner. In no case shall contractor personnel serve as CORs.

###### 201.602-70 Contract clause.

Use the clause at 252.201-7000 , Contracting Officer's Representative, in solicitations and contracts when appointment of a contracting officer's representative is anticipated.

##### 201.603 Selection, appointment, and termination of appointment for contracting officers.

###### 201.603-2 Selection.

(1) In accordance with 10 U.S.C. 1724, in order to qualify to serve as a contracting officer with authority to award or administer contracts for amounts above the simplified acquisition threshold, a person must—

(i) Have completed all contracting courses required for a contracting officer to serve in the grade in which the employee or member of the armed forces will serve;

(ii) Have at least 2 years experience in a contracting position;

(iii) Have received a baccalaureate degree from an accredited educational institution; and

(A) Received a baccalaureate degree from an accredited educational institution; and

(B) Completed at least 24 semester credit hours, or equivalent, of study from an accredited institution of higher education in any of the following disciplines: accounting, business finance, law, contracts, purchasing, economics, industrial management, marketing, quantitative methods, and organization and management; and

(iv) Meet such additional requirements, based on the dollar value and complexity of the contracts awarded or administered in the position, as may be established by the Secretary of Defense.

(2) The qualification requirements in paragraph (1)(iii) of this subsection do not apply to a DoD employee or member of the armed forces who—

(i) On or before September 30, 2000, occupied—

(A) A contracting officer position with authority to award or administer contracts above the simplified acquisition threshold; or

(B) A position either as an employee in the GS-1102 occupational series or a member of the armed forces in an occupational specialty similar to the GS-1102 series;

(ii) Is in a contingency contracting force; or

(iii) Is an individual appointed to a 3-year developmental position. Information on developmental opportunities is contained in DoD Instruction 5000.66, Defense Acquisition Workforce Education, Training, Experience, and Career Development Program.

(3) Waivers to the requirements in paragraph (1) of this subsection may be authorized. Information on waivers is contained in DoD Instruction 5000.66.

###### 201.603-3 Appointment.

(a) Certificates of Appointment executed under the Armed Services Procurement Regulation or the Defense Acquisition Regulation have the same effect as if they had been issued under FAR.

(b) Agency heads may delegate the purchase authority in 213.301 to DoD civilian employees and members of the U.S. Armed Forces.

##### 201.670 Appointment of property administrators and plant clearance officers.

(a) The appropriate agency authority shall appoint or terminate (in writing) property administrators and plant clearance officers.

(b) In appointing qualified property administrators and plant clearance officers, the appointing authority shall consider experience, training, education, business acumen, judgment, character, and ethics.

### PART 202 - DEFINITIONS OF WORDS AND TERMS

* SUBPART 202.1 —DEFINITIONS
  + 202.101 Definitions.

#### SUBPART 202.1 —DEFINITIONS

##### 202.101 Definitions.

“Authorized aftermarket manufacturer” means an organization that fabricates an electronic part under a contract with, or with the express written authority of, the original component manufacturer based on the original component manufacturer’s designs, formulas, and/or specifications.

“Compromise” means disclosure of information to unauthorized persons, or a violation of the security policy of a system, in which unauthorized intentional or unintentional disclosure, modification, destruction, or loss of an object, or the copying of information to unauthorized media may have occurred.

“Congressional defense committees” means—

(1) In accordance with 10 U.S.C. 101(a)(16), except as otherwise specified in paragraph (2) of this definition or as otherwise specified by statute for particular applications—

(i) The Committee on Armed Services of the Senate;

(ii) The Subcommittee on Defense of the Committee on Appropriations of the Senate;

(iii) The Committee on Armed Services of the House of Representatives; and

(iv) The Subcommittee on Defense of the Committee on Appropriations of the House of Representatives.

(2) For use in subpart 217.1, see the definition at 217.103 .

“Contract administration office” also means a contract management office of the Defense Contract Management Agency.

“Contract manufacturer” means a company that produces goods under contract for another company under the label or brand name of that company.

“Contracting activity” for DoD also means elements designated by the director of a defense agency which has been delegated contracting authority through its agency charter. DoD contracting activities are listed at PGI 202.101 .

“Contracting officer's representative” means an individual designated and authorized in writing by the contracting officer to perform specific technical or administrative functions.

“Contractor-approved supplier” means a supplier that does not have a contractual agreement with the original component manufacturer for a transaction, but has been identified as trustworthy by a contractor or subcontractor.

“Counterfeit electronic part” means an unlawful or unauthorized reproduction, substitution, or alteration that has been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified electronic part from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used electronic parts represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.

“Cyber incident” means actions taken through the use of computer networks that result in a compromise or an actual or potentially adverse effect on an information system and/or the information residing therein.

“Departments and agencies,” as used in DFARS, means the military departments and the defense agencies. The military departments are the Departments of the Army, Navy, and Air Force (the Marine Corps is a part of the Department of the Navy). The defense agencies are the Defense Advanced Research Projects Agency, the Defense Commissary Agency, the Defense Contract Management Agency, the Defense Counterintelligence and Security Agency, the Defense Finance and Accounting Service, the Defense Health Agency, the Defense Information Systems Agency, the Defense Intelligence Agency, the Defense Logistics Agency, the Defense Threat Reduction Agency, the Missile Defense Agency, the National Geospatial-Intelligence Agency, the National Security Agency, the Space Development Agency, the United States Cyber Command, the United States Special Operations Command, the United States Transportation Command, and the Washington Headquarters Service.

“Department of Defense (DoD),” as used in DFARS, means the Department of Defense, the military departments, and the defense agencies.

“Electronic part” means an integrated circuit, a discrete electronic component (including, but not limited to, a transistor, capacitor, resistor, or diode), or a circuit assembly (section 818(f)(2) of Pub. L. 112-81).

“Executive agency” means for DoD, the Department of Defense, the Department of the Army, the Department of the Navy, and the Department of the Air Force.

“Head of the agency” means, for DoD, the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, and the Secretary of the Air Force. Subject to the direction of the Secretary of Defense, the Under Secretary of Defense (Acquisition, Technology, and Logistics), and the Director of Defense Procurement and Acquisition Policy, the directors of the defense agencies have been delegated authority to act as head of the agency for their respective agencies (i.e., to perform functions under the FAR or DFARS reserved to a head of agency or agency head), except for such actions that by terms of statute, or any delegation, must be exercised within the Office of the Secretary of Defense. (For emergency acquisition flexibilities, see 218.270 .)

“Major defense acquisition program” is defined in 10 U.S.C. 2430(a).

“Micro-purchase threshold,” for DoD acquisition of supplies or services funded by DoD appropriations, in lieu of the definition at FAR 2.101, means $5,000 (10 U.S.C. 2338), except—

(1) For DoD acquisition of supplies or services for basic research programs and for activities of the DoD science and technology reinvention laboratories (https://www.acq.osd.mil/rd/laboratories/labs/list\_strl.html), it means $10,000 (10 U.S.C. 2339);

(2) For acquisitions of construction subject to 40 U.S.C. chapter 31, subchapter IV, Wage Rate Requirements (Construction), $2,000;

(3) For acquisitions of services subject to 41 U.S.C. chapter 67, Service Contract Labor Standards, $2,500; and

(4) For acquisitions of supplies or services that, as determined by the head of the contracting activity, are to be used to support a contingency operation; or to facilitate defense against or recovery from cyber, nuclear, biological, chemical or radiological attack; to support a request from the Secretary of State or the Administrator of the United States Agency for International Development to facilitate provision of international disaster assistance pursuant to 22 U.S.C. 2292 et seq.; or to support response to an emergency, or major disaster (42 U.S.C. 5122), as described in 13.201(g)(1), except for construction subject to 40 U.S.C. chapter 31, subchapter IV, Wage Rate Requirements (Construction) (41 U.S.C. 1903)—

(i) $20,000 in the case of any contract to be awarded and performed, or purchase to be made, inside the United States; and

(ii) $30,000 in the case of any contract to be awarded and performed, or purchase to be made, outside the United States.

“Milestone decision authority,” with respect to a major defense acquisition program, major automated information system, or major system, means the official within the Department of Defense designated with the overall responsibility and authority for acquisition decisions for the program or system, including authority to approve entry of the program or system into the next phase of the acquisition process (10 U.S.C. 2431a).

“Non-Government sales” means sales of the supplies or services to non-Governmental entities for purposes other than governmental purposes.

“Nontraditional defense contractor” means an entity that is not currently performing and has not performed any contract or subcontract for DoD that is subject to full coverage under the cost accounting standards prescribed pursuant to 41 U.S.C. 1502 and the regulations implementing such section, for at least the 1-year period preceding the solicitation of sources by DoD for the procurement (10 U.S.C. 2302(9)).

“Obsolete electronic part” means an electronic part that is no longer available from the original manufacturer or an authorized aftermarket manufacturer.

“Offset” means a benefit or obligation agreed to by a contractor and a foreign government or international organization as an inducement or condition to purchase supplies or services pursuant to a foreign military sale (FMS). There are two types of offsets: direct offsets and indirect offsets.

(1) A direct offset involves benefits or obligations, including supplies or services that are directly related to the item(s) being purchased and are integral to the deliverable of the FMS contract. For example, as a condition of a foreign military sale, the contractor may require or agree to permit the customer to produce in its country certain components or subsystems of the item being sold. Generally, direct offsets must be performed within a specified period, because they are integral to the deliverable of the FMS contract.

(2) An indirect offset involves benefits or obligations, including supplies or services that are not directly related to the specific item(s) being purchased and are not integral to the deliverable of the FMS contract. For example, as a condition of a foreign military sale, the contractor may agree to purchase certain manufactured products, agricultural commodities, raw materials, or services, or make an equity investment or grant of equipment required by the FMS customer, or may agree to build a school, road or other facility. Indirect offsets would also include projects that are related to the FMS contract but not purchased under said contract (e.g., a project to develop or advance a capability, technology transfer, or know-how in a foreign company). Indirect offsets may be accomplished without a clearly defined period of performance.

“Offset costs” means the costs to the contractor of providing any direct or indirect offsets required (explicitly or implicitly) as a condition of a foreign military sale.

“Original component manufacturer” means an organization that designs and/or engineers a part and is entitled to any intellectual property rights to that part.

“Original equipment manufacturer” means a company that manufactures products that it has designed from purchased components and sells those products under the company's brand name.

“Original manufacturer” means the original component manufacturer, the original equipment manufacturer, or the contract manufacturer.

“Procedures, Guidance, and Information (PGI)” means a companion resource to the DFARS that—

(1) Contains mandatory internal DoD procedures. The DFARS will direct compliance with mandatory procedures using imperative language such as “Follow the procedures at...” or similar directive language;

(2) Contains non-mandatory internal DoD procedures and guidance and supplemental information to be used at the discretion of the contracting officer. The DFARS will point to non-mandatory procedures, guidance, and information using permissive language such as “The contracting officer may use...” or “Additional information is available at...” or other similar language;

(3) Is numbered similarly to the DFARS, except that each PGI numerical designation is preceded by the letters “PGI”; and

(4) Is available electronically at http://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.

“Senior procurement executive” means, for DoD—

Department of Defense (including the defense agencies)—Under Secretary of

Defense (Acquisition, Technology, and Logistics);

Department of the Army—Assistant Secretary of the Army (Acquisition, Logistics and Technology);

Department of the Navy—Assistant Secretary of the Navy (Research,

Development and Acquisition);

Department of the Air Force—Assistant Secretary of the Air Force

(Acquisition).

The directors of the defense agencies have been delegated authority to act as senior procurement executive for their respective agencies, except for such actions that by terms of statute, or any delegation, must be exercised by the Under Secretary of Defense (Acquisition, Technology, and Logistics).

“Sufficient non-Government sales” means relevant sales data that reflects market pricing and contains enough information to make adjustments covered by FAR 15.404-1(b)(2)(ii)(B).

“Suspect counterfeit electronic part” means an electronic part for which credible evidence (including, but not limited to, visual inspection or testing) provides reasonable doubt that the electronic part is authentic.

“Tiered evaluation of offers,” also known as “cascading evaluation of offers,” means a procedure used in negotiated acquisitions, when market research is inconclusive for justifying limiting competition to small business concerns, whereby the contracting officer—

(1) Solicits and receives offers from both small and other than small business concerns;

(2) Establishes a tiered or cascading order of precedence for evaluating offers that is specified in the solicitation; and

(3) If no award can be made at the first tier, evaluates offers at the next lower tier, until award can be made.

“Uncertified cost data” means the subset of “data other than certified cost or pricing data” (see FAR 2.101) that relates to cost.

### PART 203 - IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

* 203.070 Reporting of violations and suspected violations.
* SUBPART 203.1 —SAFEGUARDS
  + 203.104 Procurement integrity.
    - 203.104-4 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.
  + 203.170 Business practices.
  + 203.171 Senior DoD officials seeking employment with defense contractors.
    - 203.171-1 Scope.
    - 203.171-2 Definition.
    - 203.171-3 Policy.
    - 203.171-4 Solicitation provision and contract clause.
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#### 203.070 Reporting of violations and suspected violations.

Report violations and suspected violations of the following requirements in accordance with 209.406-3 or 209.407-3 and DoDD 7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities:

(a) Certificate of Independent Price Determination (FAR 3.103).

(b) Procurement integrity (FAR 3.104).

(c) Gratuities clause (FAR 3.203).

(d) Antitrust laws (FAR 3.303).

(e) Covenant Against Contingent Fees (FAR 3.405).

(f) Kickbacks (FAR 3.502).

(g) Prohibitions on persons convicted of defense-related contract felonies (203.570).

#### SUBPART 203.1 —SAFEGUARDS

##### 203.104 Procurement integrity.

###### 203.104-4 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

(d)(3) For purposes of FAR 3.104-4(d)(3) only, DoD follows the notification procedures in FAR 27.404-5(a). However, FAR 27.404-5(a)(1) does not apply to DoD.

##### 203.170 Business practices.

To ensure the separation of functions for oversight, source selection, contract negotiation, and contract award, departments and agencies shall adhere to the following best practice policies:

(a) Senior leaders shall not perform multiple roles in source selection for a major weapon system or major service acquisition.

(b) Vacant acquisition positions shall be filled on an “acting” basis from below until a permanent appointment is made. To provide promising professionals an opportunity to gain experience by temporarily filling higher positions, these oversight duties shall not be accrued at the top.

(c) Acquisition process reviews of the military departments shall be conducted to assess and improve acquisition and management processes, roles, and structures. The scope of the reviews should include—

(1) Distribution of acquisition roles and responsibilities among personnel;

(2) Processes for reporting concerns about unusual or inappropriate actions; and

(3) Application of DoD Instruction 5000.2, Operation of the Defense Acquisition System, and the disciplines in the Defense Acquisition Guidebook.

(d) Source selection processes shall be—

(1) Reviewed and approved by cognizant organizations responsible for oversight;

(2) Documented by the head of the contracting activity or at the agency level; and

(3) Periodically reviewed by outside officials independent of that office or agency.

(e) Legal review of documentation of major acquisition system source selection shall be conducted prior to contract award, including the supporting documentation of the source selection evaluation board, source selection advisory council, and source selection authority.

(f) Procurement management reviews shall determine whether clearance threshold authorities are clear and that independent review is provided for acquisitions exceeding the simplified acquisition threshold.

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

###### 203.171-1 Scope.

This section implements Section 847 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181).

###### 203.171-2 Definition.

“Covered DoD official” as used in this section, is defined in the clause at 252.203-7000 , Requirements Relating to Compensation of Former DoD Officials.

###### 203.171-3 Policy.

(a) A DoD official covered by the requirements of Section 847 of Pub. L. 110-181 (a “covered DoD official”) who, within 2 years after leaving DoD service, expects to receive compensation from a DoD contractor, shall, prior to accepting such compensation, request a written opinion from the appropriate DoD ethics counselor regarding the applicability of post-employment restrictions to activities that the official may undertake on behalf of a contractor.

(b) A DoD contractor may not knowingly provide compensation to a covered DoD official within 2 years after the official leaves DoD service unless the contractor first determines that the official has received, or has requested at least 30 days prior to receiving compensation from the contractor, the post-employment ethics opinion described in paragraph (a) of this section.

(c) If a DoD contractor knowingly fails to comply with the requirements of the clause at 252.203-7000 , administrative and contractual actions may be taken, including cancellation of a procurement, rescission of a contract, or initiation of suspension or debarment proceedings.

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

(a) Use the clause at 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.

(b) Use the provision at 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 and solicitations for task and delivery orders.

#### SUBPART 203.2

#### SUBPART 203.3

#### SUBPART 203.4

#### SUBPART 203.5 —OTHER IMPROPER BUSINESS PRACTICES

##### 203.502-2 Subcontractor kickbacks.

(h) The DoD Inspector General has designated Special Agents of the following investigative organizations as representatives for conducting inspections and audits nder 41 U.S.C. chapter 87, Kickbacks:

(i) U.S. Army Criminal Investigation Command.

(ii) Naval Criminal Investigative Service.

(iii) Air Force Office of Special Investigations.

(iv) Defense Criminal Investigative Service.

##### 203.570 Prohibition on persons convicted of fraud or other defense-contract-related felonies.

###### 203.570-1 Scope.

This subpart implements 10 U.S.C. 2408. For information on 10 U.S.C. 2408, see PGI 203.570-1 .

###### 203.570-2 Prohibition period.

DoD has sole responsibility for determining the period of the prohibition described in paragraph (b) of the clause at 252.203-7001 , Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies. The prohibition period—

(a) Shall not be less than 5 years from the date of conviction unless the agency head or a designee grants a waiver in the interest of national security. Follow the waiver procedures at PGI 203.570-2 (a); and

(b) May be more than 5 years from the date of conviction if the agency head or a designee makes a written determination of the need for the longer period. The agency shall provide a copy of the determination to the address at PGI 203.570-2 (b).

###### 203.570-3 Contract clause.

Use the clause at 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.

#### SUBPART 203.7 —VOIDING AND RESCINDING CONTRACTS

##### 203.703 Authority.

The authority to act for the agency head under this subpart is limited to a level no lower than an official who is appointed by and with the advice of the Senate, without power of redelegation. For the defense agencies, for purposes of this subpart, the agency head designee is the Under Secretary of Defense (Acquisition, Technology, and Logistics).

#### SUBPART 203.8 —LIMITATIONS ON THE PAYMENT OF FUNDS TO INFLUENCE FEDERAL TRANSACTIONS

##### 203.806 Processing suspected violations.

Report suspected violations to the address at PGI 203.8 (a).

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

##### 203.900 Scope of subpart.

This subpart applies to DoD instead of FAR subpart 3.9.

(1) This subpart implements 10 U.S.C. 2409 as amended by section 846 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181), section 842 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417), and section 827 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239).

(2) This subpart does not apply to any element of the intelligence community, as defined in 50 U.S.C. 3003(4). This subpart does not apply to any disclosure made by an employee of a contractor or subcontractor of an element of the intelligence community if such disclosure—

(i) Relates to an activity or an element of the intelligence community; or

(ii) Was discovered during contract or subcontract services provided to an element of the intelligence community.

##### 203.901 Definitions.

“Abuse of authority,” as used in this subpart, means an arbitrary and capricious exercise of authority that is inconsistent with the mission of DoD or the successful performance of a DoD contract.

##### 203.903 Policy.

(1) *Prohibition*. 10 U.S.C. 2409 prohibits contractors and subcontractors from discharging, demoting, or otherwise discriminating against an employee as a reprisal for disclosing, to any of the entities listed at paragraph (3) of this section, information that the employee reasonably believes is evidence of gross mismanagement of a DoD contract, a gross waste of DoD funds, an abuse of authority relating to a DoD contract, a violation of law, rule, or regulation related to a DoD contract (including the competition for or negotiation of a contract), or a substantial and specific danger to public health or safety. Such reprisal is prohibited even if it is undertaken at the request of an executive branch official, unless the request takes the form of a non-discretionary directive and is within the authority of the executive branch official making the request.

(2) *Classified information*. As provided in section 827(h) of the National Defense Authorization Act for Fiscal Year 2013, nothing in this subpart provides any rights to disclose classified information not otherwise provided by law.

(3) *Entities to whom disclosure may be made*:

(i) A Member of Congress or a representative of a committee of Congress.

(ii) An Inspector General that receives funding from or has oversight over contracts awarded for or on behalf of DoD.

(iii) The Government Accountability Office.

(iv) A DoD employee responsible for contract oversight or management.

(v) An authorized official of the Department of Justice or other law enforcement agency.

(vi) A court or grand jury.

(vii) A management official or other employee of the contractor or subcontractor who has the responsibility to investigate, discover, or address misconduct.

(4) *Disclosure clarified.* An employee who initiates or provides evidence of contractor or subcontractor misconduct in any judicial or administrative proceeding relating to waste, fraud, or abuse on a DoD contract shall be deemed to have made a disclosure.

(5) *Contracting officer actions*. A contracting officer who receives a complaint of reprisal of the type described in paragraph (1) of this section shall forward it to legal counsel or to the appropriate party in accordance with agency procedures.

##### 203.904 Procedures for filing complaints.

(1) Any employee of a contractor or subcontractor who believes that he or she has been discharged, demoted, or otherwise discriminated against contrary to the policy in 203.903 may file a complaint with the Inspector General of the Department of Defense.

(2) A complaint may not be brought under this section more than three years after the date on which the alleged reprisal took place.

(3) The complaint shall be signed and shall contain—

(i) The name of the contractor;

(ii) The contract number, if known; if not, a description reasonably sufficient to identify the contract(s) involved;

(iii) The violation of law, rule, or regulation giving rise to the disclosure;

(iv) The nature of the disclosure giving rise to the discriminatory act, including the party to whom the information was disclosed; and

(v) The specific nature and date of the reprisal.

##### 203.905 Procedures for investigating complaints.

(1) Unless the DoD Inspector General makes a determination that the complaint is frivolous, fails to allege a violation of the prohibition in 203.903 , or has been previously addressed in another Federal or State judicial or administrative proceeding initiated by the complainant, the DoD Inspector General will investigate the complaint.

(2) If the DoD Inspector General investigates the complaint, the DoD Inspector General will—

(i) Notify the complainant, the contractor alleged to have committed the violation, and the head of the agency; and

(ii) Provide a written report of findings to the complainant, the contractor alleged to have committed the violation, and the head of the agency.

(3) Upon completion of the investigation, the DoD Inspector General—

(i) Either will determine that the complaint is frivolous, fails to allege a violation of the prohibition in 203.903 , or has been previously addressed in another Federal or State judicial or administrative proceeding initiated by the complainant, or will submit the report addressed in paragraph (2) of this section within 180 days after receiving the complaint; and

(ii) If unable to submit a report within 180 days, will submit the report within the additional time period, up to 180 days, as agreed to by the person submitting the complaint.

(4) The DoD Inspector General may not respond to any inquiry or disclose any information from or about any person alleging the reprisal, except to the extent that such response or disclosure is—

(i) Made with the consent of the person alleging reprisal;

(ii) Made in accordance with 5 U.S.C. 552a (the Freedom of Information Act) or as required by any other applicable Federal law; or

(iii) Necessary to conduct an investigation of the alleged reprisal.

(5) The legal burden of proof specified at paragraph (e) of 5 U.S.C. 1221 (Individual Right of Action in Certain Reprisal Cases) shall be controlling for the purposes of an investigation conducted by the DoD Inspector General, decision by the head of an agency, or judicial or administrative proceeding to determine whether prohibited discrimination has occurred.

##### 203.906 Remedies.

(1) Not later than 30 days after receiving a DoD Inspector General report in accordance with 203.905 , the head of the agency shall determine whether sufficient basis exists to conclude that the contractor has subjected the complainant to a reprisal as prohibited by 203.903 and shall either issue an order denying relief or shall take one or more of the following actions:

(i) Order the contractor to take affirmative action to abate the reprisal.

(ii) Order the contractor to reinstate the person to the position that the person held before the reprisal, together with compensatory damages (including back pay), employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.

(iii) Order the contractor to pay the complainant an amount equal to the aggregate amount of all costs and expenses (including attorneys’ fees and expert witnesses’ fees) that were reasonably incurred by the complainant for, or in connection with, bringing the complaint regarding the reprisal, as determined by the head of the agency.

(2) If the head of the agency issues an order denying relief or has not issued an order within 210 days after the submission of the complaint or within 30 days after the expiration of an extension of time granted in accordance with 203.905 (3)(ii), and there is no showing that such delay is due to the bad faith of the complainant—

(i) The complainant shall be deemed to have exhausted all administrative remedies with respect to the complaint; and

(ii) The complainant may bring a de novo action at law or equity against the contractor to seek compensatory damages and other relief available under 10 U.S.C. 2409 in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy. Such an action shall, at the request of either party to the action, be tried by the court with a jury. An action under this authority may not be brought more than two years after the date on which remedies are deemed to have been exhausted.

(3) An Inspector General determination and an agency head order denying relief under paragraph (2) of this section shall be admissible in evidence in any de novo action at law or equity brought pursuant to 10 U.S.C. 2409(c).

(4) Whenever a contractor fails to comply with an order issued by the head of agency in accordance with 10 U.S.C. 2409, the head of the agency or designee shall request the Department of Justice to file an action for enforcement of such order in the United States district court for a district in which the reprisal was found to have occurred. In any action brought under this paragraph, the court may grant appropriate relief, including injunctive relief, compensatory and exemplary damages, and reasonable attorney fees and costs. The person upon whose behalf an order was issued may also file such an action or join in an action filed by the head of the agency.

(5) Any person adversely affected or aggrieved by an order issued by the head of the agency in accordance with 10 U.S.C. 2409 may obtain judicial review of the order’s conformance with the law, and the implementing regulation, in the United States Court of Appeals for a circuit in which the reprisal is alleged in the order to have occurred. No petition seeking such review may be filed more than 60 days after issuance of the order by the head of the agency or designee. Review shall conform to Chapter 7 of Title 5, Unites States Code. Filing such an appeal shall not act to stay the enforcement of the order by the head of an agency, unless a stay is specifically entered by the court.

(6) The rights and remedies provided for in this subpart may not be waived by any agreement, policy, form, or condition of employment.

##### 203.970 Contract clause.

Use the clause at 252.203-7002 , Requirement to Inform Employees of Whistleblower Rights, in all solicitations and contracts.

#### SUBPART 203.10 —CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT

##### 203.1003 Requirements.

(b) *Notification of possible contractor violation*. Upon notification of a possible contractor violation of the type described in FAR 3.1003(b), coordinate the matter with the following office:

Department of Defense Office of Inspector General

Administrative Investigations

Contractor Disclosure Program

4800 Mark Center Drive, Suite 14L25

Arlington, VA 22350-1500

Toll-Free Telephone: 866-429-8011.

Website: https://www.dodig.mil/Programs/Contractor-Disclosure-Program/.

(c) *Fraud hotline poster*. For contracts performed outside the United States, when security concerns can be appropriately demonstrated, the contracting officer may provide the contractor the option to publicize the program to contractor personnel in a manner other than public display of the poster required by 203.1004 (b)(2)(ii), such as private employee written instructions and briefings.

##### 203.1004 Contract clauses.

(a) Use the clause at 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 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, use the clause at 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 $5.5 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).

#### SUBPART 203.70

### PART 204 - ADMINISTRATIVE AND INFORMATION MATTERS

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#### SUBPART 204.1 —CONTRACT EXECUTION

##### 204.101 Contracting officer's signature.

Follow the procedures at PGI 204.101 for signature of contract documents.

#### SUBPART 204.2 —CONTRACT DISTRIBUTION

##### 204.201 Procedures.

Follow the procedures at PGI 204.201 for the distribution of contracts and modifications.

(a) In lieu of the requirement at FAR 4.201(a), contracting officers shall distribute one signed copy or reproduction of the signed contract to the contractor.

##### 204.203 Taxpayer identification information.

(b) The procedure at FAR 4.203(b) does not apply to contracts that include the provision at FAR 52.204-7, System for Award Management. The payment office obtains the taxpayer identification number and the type of organization from the System for Award Management database.

##### 204.270 Electronic Data Access.

###### 204.270-1 Policy.

(a) The Electronic Data Access (EDA) system, an online repository for contractual instruments and supporting documents, is DoD’s primary tool for electronic distribution of contract documents and contract data. Contract attachments shall be uploaded to EDA, except for contract attachments that are classified, are too sensitive for widespread distribution (e.g., personally identifiable information and Privacy Act and Health Insurance Portability and Accountability Act, or cannot be practicably converted to electronic format (e.g., samples, drawings, and models). Section J (or similar location when the Uniform Contract Format is not used) shall include the annotation “provided under separate cover” for any attachment not uploaded to EDA.

(b) Agencies are responsible for ensuring the following when posting documents, including contractual instruments, to EDA—

(1) The timely distribution of documents; and

(2) That internal controls are in place to ensure that—

(i) The electronic version of a contract document in EDA is an accurate representation of the contract; and

(ii) The contract data in EDA is an accurate representation of the underlying contract.

###### 204.270-2 Procedures.

(b) The procedures at PGI 204.270-2 (b) provide details on how to record the results of data verification in EDA. When these procedures are followed, contract documents and data in EDA are an accurate representation of the contract and therefore may beused for audit purposes.

(c) The procedures at PGI 204.270-2 (c) provide details on the creation and processing of contract deficiency reports, which are used to correct problems with contracts distributed in EDA.

#### SUBPART 204.4 —SAFEGUARDING CLASSIFIED INFORMATION WITHIN INDUSTRY

##### 204.402 General.

DoD employees or members of the Armed Forces who are assigned to or visiting a contractor facility and are engaged in oversight of an acquisition program will retain control of their work products, both classified and unclassified (see PGI 204.402 ).

##### 204.403 Responsibilities of contracting officers.

(1) Contracting officers shall ensure that solicitations comply with PGI 204.403 (1).

(2) For additional guidance on determining a project to be fundamental research in accordance with 252.204-7000 (a)(3), see PGI 204.403 (2).

##### 204.404 Contract clause.

###### 204.404-70 Additional contract clauses.

(a) Use the clause at 252.204-7000 , Disclosure of Information, in solicitations and contracts when the contractor will have access to or generate unclassified information that may be sensitive and inappropriate for release to the public.

(b) Use the clause at 252.204-7003 , Control of Government Personnel Work Product, in all solicitations and contracts.

##### 204.470 U.S.-International Atomic Energy Agency Additional Protocol.

###### 204.470-1 General.

Under the U.S.-International Atomic Energy Agency Additional Protocol (U.S.-IAEA AP), the United States is required to declare a wide range of public and private nuclear-related activities to the IAEA and potentially provide access to IAEA inspectors for verification purposes.

###### 204.470-2 National security exclusion.

(a) The U.S.-IAEA AP permits the United States unilaterally to declare exclusions from inspection requirements for activities, or locations or information associated with such activities, with direct national security significance.

(b) In order to ensure that all relevant activities are reviewed for direct national security significance, both current and former activities, and associated locations or information, are to be considered for applicability for a national security exclusion.

(c) If a DoD program manager receives notification from a contractor that the contractor is required to report any of its activities in accordance with the U.S.-IAEA AP, the program manager will—

(1) Conduct a security assessment to determine if, and by what means, access may be granted to the IAEA; or

(2) Provide written justification to the component or agency treaty office for application of the national security exclusion at that location to exclude access by the IAEA, in accordance with DoD Instruction 2060.03, Application of the National Security Exclusion to the Agreements Between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America.

###### 204.470-3 Contract clause.

Use the clause at 252.204-7010 , Requirement for Contractor to Notify DoD if the Contractor’s Activities are Subject to Reporting Under the U.S.-International Atomic Energy Agency Additional Protocol, in solicitations and contracts for research and development or major defense acquisition programs involving—

(a) Any fissionable materials (e.g., uranium, plutonium, neptunium, thorium, americium);

(b) Other radiological source materials; or

(c) Technologies directly related to nuclear power production, including nuclear or radiological waste materials.

#### SUBPART 204.6 —CONTRACT REPORTING

##### 204.602 General.

See PGI 204.602 for additional information on the Federal Procurement Data System (FPDS) and procedures for resolving technical or policy issues relating to FPDS.

##### 204.604 Responsibilities.

(1) The process for reporting contract actions to FPDS should, where possible, be automated by incorporating it into contract writing systems.

(2) Data in FPDS is stored indefinitely and is electronically retrievable. Therefore, the contracting officer may reference the contract action report (CAR) approval date in the associated Government contract file instead of including a paper copy of the electronically submitted CAR in the file. Such reference satisfies contract file documentation requirements of FAR 4.803(a).

(3) By December 15th of each year, the chief acquisition officer of each DoD component required to report its contract actions shall submit to the Director, Defense Procurement and Acquisition Policy, its annual certification and data validation results for the preceding fiscal year in accordance with the DoD Data Improvement Plan requirements at http://www.acq.osd.mil/dpap/pdi/eb. The Director, Defense Procurement and Acquisition Policy, will submit a consolidated DoD annual certification to the Office of Management and Budget by January 5th of each year.

##### 204.606 Reporting data.

In addition to FAR 4.606, follow the procedures at PGI 204.606 for reporting data to FPDS.

#### SUBPART 204.8 —CONTRACT FILES

##### 204.802 Contract files.

(a) Any document posted to the Electronic Data Access (EDA) system is part of the contract file and is accessible by multiple parties, including the contractor. Do not include in EDA contract documents that are classified, too sensitive for widespread distribution (e.g., personally identifiable information and Privacy Act and Health Insurance Portability and Accountability Act), or attachments that cannot be practicably converted to electronic format (e.g., samples, drawings, and models). Inclusion of any document in EDA other than contracts, modifications, and orders is optional.

(f) A photocopy, facsimile, electronic, mechanically-applied and printed signature, seal, and date are considered to be an original signature, seal, and date.

##### 204.804 Closeout of contract files.

(1) Except as provided in paragraph (3) of this section, contracting officers shall close out contracts in accordance with the procedures at PGI 204.804 . The closeout date for file purposes shall be determined and documented by the procuring contracting officer.

(2) The head of the contracting activity shall assign the highest priority to close out of contracts awarded for performance in a contingency area. Heads of contracting activities shall monitor and assess on a regular basis the progress of contingency contract closeout activities and take appropriate steps if a backlog occurs. For guidance on the planning and execution of closing out such contracts, see PGI 207.105 (b)(20)(C)(8) and PGI 225.373 (e).

(3)(i) In accordance with section 836 of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114-328) and section 824 of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91), contracting officers may close out contracts or groups of contracts through issuance of one or more modifications to such contracts without completing a reconciliation audit or other corrective action in accordance with FAR 4.804-5(a)(3) through (15), as appropriate, if each contract—

(A) Was entered into on a date that is at least 17 fiscal years before the current fiscal year;

(B) Has no further supplies or services due under the terms of the contract; and

(C) Has been determined by a contracting official, at least one level above the contracting officer, to be not otherwise reconcilable, because—

(*1*) The contract or related payment records have been destroyed or lost; or

(*2*) Although contract or related payment records are available, the time or effort required to establish the exact amount owed to the U.S. Government or amount owed to the contractor is disproportionate to the amount at issue.

(ii) Any contract or group of contracts meeting the requirements of paragraph (3)(i) of this section may be closed out through a negotiated settlement with the contractor. Except as provided in paragraph (3)(ii)(B) of this section, the contract closeout process shall include a bilateral modification of the affected contract, including those contracts that are closed out in accordance with a negotiated settlement.

(A) For a contract or groups of contracts, the contracting officer shall prepare a negotiation settlement memorandum that describes how the requirements of paragraph (3)(i) of this section have been met.

(B) For a group of contracts, a bilateral modification of at least one contract shall be made to reflect the negotiated settlement for a group of contracts, and unilateral modifications may be made, as appropriate, to other contracts in the group to reflect the negotiated settlement.

(iii) For contract closeout actions under paragraph (3) of this section, remaining contract balances—

(A) May be offset with balances in other contract line items within the same contract, regardless of the year or type of appropriation obligated to fund each contract line item and regardless of whether the appropriation obligated to fund such contract line item has closed; and

(B) May be offset with balances on other contracts, regardless of the year or type of appropriations obligated to fund each contract and regardless of whether such appropriations have closed.

(iv) USD(A&S) is authorized to waive any provision of acquisition law or regulation in order to carry out the closeout procedures authorized in paragraph (3)(i) of this section (see procedures at PGI 204.804 (3)(iv)).

##### 204.805 Disposal of contract files.

(1) The sources of the period for which contract files must be retained are General Records Schedule 3 (Procurement, Supply, and Grant Records) and General Records Schedule 6 (Accountable Officers' Accounts Records). Copies of the General Records Schedule may be obtained from the National Archives and Records Administration, Washington, DC 20408.

(2) Deviations from the periods cannot be granted by the Defense Acquisition Regulations Council. Forward requests for deviations to both the Government Accountability Office and the National Archives and Records Administration.

(3) Hold completed contract files in the office responsible for maintaining them for a period of 12 months after completion. After the initial 12 month period, send the records to the local records holding or staging area until they are eligible for destruction. If no space is available locally, transfer the files to the General Services Administration Federal Records Center that services the area.

(4) Duplicate or working contract files should contain no originals of materials that properly belong in the official files. Destroy working files as soon as practicable once they are no longer needed.

(5) Retain pricing review files, containing documents related to reviews of the contractor's price proposals, subject to certified cost or pricing data (see FAR 15.403-4) , for six years. If it is impossible to determine the final payment date in order to measure the six-year period, retain the files for nine years.

#### SUBPART 204.9 —TAXPAYER IDENTIFICATION NUMBER INFORMATION

##### 204.902 General.

(b) DoD uses the Federal Procurement Data System (FPDS) to meet these reporting requirements.

#### SUBPART 204.11 —SYSTEM FOR AWARD MANAGEMENT

##### 204.1103 Procedures.

See PGI 204.1103 for helpful information on navigation and data entry in the System for Award Management (SAM) database.

(1) On contract award documents, use the contractor’s legal or “doing business as” name and physical address information as recorded in the SAM database at the time of award.

(2) When making a determination to exercise an option, or at any other time before issuing a modification other than a unilateral modification making an administrative change, ensure that—

(i) The contractor’s record is active in the SAM database; and

(ii) The contractor’s Data Universal Numbering System (DUNS) number, Commercial and Government Entity (CAGE) code, name, and physical address are accurately reflected in the contract document.

(3) At any time, if the DUNS number, CAGE code, contractor name, or physical address on a contract no longer matches the information on the contractor’s record in the SAM database, the contracting officer shall process a novation or change-of-name agreement, or an address change, as appropriate.

(4) See PGI 204.1103 for additional requirements relating to use of information in the SAM database.

(5) On contractual documents transmitted to the payment office, provide the CAGE code, instead of the DUNS number or DUNS+4 number, in accordance with agency procedures.

#### SUBPART 204.12 —ANNUAL REPRESENTATIONS AND CERTIFICATIONS

##### 204.1202 Solicitation provision and contract clause.

When using the provision at FAR 52.204-8, Annual Representations and Certifications—

(1) Use the provision with 252.204-7007 , Alternate A, Annual Representations and Certifications; and

(2) When the provision at FAR 52.204-7, System for Award Management, is included in the solicitation, do not include separately in the solicitation the following provisions, which are included in DFARS 252.204-7007 :

(i) 252.204-7016 , Covered Defense Telecommunications Equipment or Services—Representation.

(ii) 252.209-7002 , Disclosure of Ownership or Control by a Foreign Government.

(iii) 252.209-7003 , Reserve Officer Training Corps and Military Recruitingon Campus—Representation.

(iv) 252.216-7008 , Economic Price Adjustment–Wage Rates or Material Prices Controlled by a Foreign Government—Representation.

(v) 252.225-7000 , Buy American—Balance of Payments ProgramCertificate.

(vi) 252.225-7020 , Trade Agreements Certificate.

(vii) 252.225-7031 , Secondary Arab Boycott of Israel.

(viii) 252.225-7035 , Buy American—Free Trade Agreements—Balance of Payments Program Certificate.

(ix) 252.225-7042 , Authorization to Perform.

(x) 252.225-7049 , Prohibition on Acquisition of Certain Foreign Commercial Satellite Services—Representations.

(xi) 252.225-7050 , Disclosure of Ownership or Control by the Government of a Country that is a State Sponsor of Terrorism.

(xii) 252.226-7002 , Representation for Demonstration Project for Contractors Employing Persons with Disabilities.

(xiii) 252.229-7012 , Tax Exemptions (Italy)—Representation.

(xiv) 252.229-7013 , Tax Exemptions (Spain)—Representation.

(xv) 252.232-7015 , Performance-Based Payments—Representation.

(xvi) 252.247-7022 , Representation of Extent of Transportation by Sea.

#### SUBPART 204.16 —UNIFORM PROCUREMENT INSTRUMENT IDENTIFIERS

##### 204.1601 Policy.

(a) *Establishment of a Procurement Instrument Identifier (PIID).* Do not reuse a PIID once it has been assigned. Do not assign the same PIID to more than one task or delivery order, even if they are issued under different base contracts or agreements.

(b) *Transition of PIID numbering.* Effective October 1, 2016, all DoD components shall comply with the PIID numbering requirements of FAR subpart 4.16 and this subpart for all new solicitations, contracts, orders, and agreements issued, and any amendments and modifications to those new actions. See also PGI 204.1601 (b).

(c) *Change in the PIID after its assignment.* When a PIID is changed after contract award, the new PIID is known as a continued contract.

(i) A continued contract—

(A) Does not constitute a new procurement;

(B) Incorporates all prices, terms, and conditions of the predecessor contract effective at the time of issuance of the continued contract;

(C) Operates as a separate contract independent of the predecessor contract once issued; and

(D) Shall not be used to evade competition requirements, expand the scope of work, or extend the period of performance beyond that of the predecessor contract.

(ii) When issuing a continued contract, the contracting officer shall—

(A) Issue an administrative modification to the predecessor contract to clearly state that—

(*1*) Any future awards provided for under the terms of the predecessor contract (e.g*.*, issuance of orders or exercise of options) will be accomplished under the continued contract; and

(*2*) Supplies and services already acquired under the predecessor contract shall remain solely under that contract for purposes of Government inspection, acceptance, payment, and closeout; and

(B) Follow the procedures at PGI 204.1601 (c).

##### 204.1603 Procedures.

(a) *Elements of a PIID.* DoD-issued PIIDs are thirteen characters in length. Use only alpha-numeric characters, as prescribed in FAR 4.1603 and this subpart. Do not use the letter I or O in any part of the PIID.

(3) *Position 9.*

(A) DoD will use three of the letters reserved for departmental or agency use in FAR 4.1603(a)(3) in this position as follows:

(*1*) Use M to identify purchase orders and task or delivery orders issued by the enterprise FedMall system.

(*2*) Use S to identify broad agency announcements.

(*3*) Use T to identify automated requests for quotations by authorized legacy contract writing systems. See PGI 204.1603 (a)(3)(A)(*3*) for the list of authorized systems.

(B) Do not use other letters identified in FAR 4.1603(a)(3) as “Reserved for future Federal Governmentwide use” or “Reserved for departmental or agency use” in position 9 of the PIID.

(C) Do not use the letter C or H for contracts or agreements with provisions for orders or calls.

(4) *Positions 10 through 17.* In accordance with FAR 4.1603(a)(4), DoD-issued PIIDs shall only use positions 10 through 13 to complete the PIID. Enter the serial number of the instrument in these positions. A separate series of serial numbers may be used for any type of instrument listed in FAR 4.1603(a)(3). DoD components assign such series of PIID numbers sequentially. A DoD component may reserve blocks of numbers or alpha-numeric numbers for use by its various activities.

(b) *Elements of a supplementary PIID.* In addition to the supplementary PIID numbering procedures in FAR 4.1603(b), follow the procedures contained in paragraphs (b)(2)(ii)(*1*) and (*2*) of this section. See PGI 204.1603 (b) for examples of proper supplementary PIID numbering.

(2)(ii) *Positions 2 through 6.* In accordance with FAR 4.1603(b)(2)(ii), DoD-issued supplementary PIIDs shall, for positions 2 through 6 of modifications to contracts and agreements, comply with the following:

(*1*) *Positions 2 and 3*. These two digits may be either alpha or numeric characters, except—

(*i*) Use K, L, M, N, P, and Q only in position 2, and only if the modification is issued by the Air Force and is a provisioned item order;

(*ii*) Use S only in position 2, and only to identify modifications issued to provide initial or amended shipping instructions when—

(*a*) The contract has either FOB origin or destination delivery terms; and

(*b*) The price changes;

(*iii*) Use T, U, V, W, X, or Y only in position 2, and only to identify modifications issued to provide initial or amended shipping instructions when—

(*a*) The contract has FOB origin delivery terms; and

(*b*) The price does not change; and

(*iv*) Use Z only in position 2, and only to identify a modification which definitizes a letter contract or a previously issued undefinitized modification.

(*2*) *Positions 4 through 6*. These positions are always numeric. Use a separate series of serial numbers for each type of modification listed in paragraph (b)(2)(ii) of this section.

##### 204.1670 Cross reference to Federal Procurement Data System.

Detailed guidance on mapping PIID and supplementary PIID numbers stored in the Electronic Data Access system to data elements reported in the Federal Procurement Data System can be found in PGI 204.1670 .

##### 204.1671 Order of application for modifications.

(a) Circumstances may exist in which the numeric order of the modifications to a contract is not the order in which the changes to the contract actually take effect.

(b) In order to determine the sequence of modifications to a contract or order, the modifications will be applied in the following order—

(1) Modifications will be applied in order of the effective date on the modification;

(2) In the event of two or more modifications with the same effective date, modifications will be applied in signature date order; and

(3) In the event of two or more modifications with the same effective date and the same signature date, procuring contracting office modifications will be applied in numeric order, followed by contract administration office modifications in numeric order.

#### SUBPART 204.18 —COMMERCIAL AND GOVERNMENT ENTITY CODE

##### 204.1870 Procedures.

Follow the procedures and guidance at PGI 204.1870 concerning Commercial and Government Entity (CAGE) codes and CAGE file maintenance.

#### SUBPART 204.21 —PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

##### 204.2100 Scope of subpart.

This subpart implements section 1656 of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91) and section 889(a)(1)(A) of the National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232).

##### 204.2101 Definitions.

As used in this subpart—

“Covered defense telecommunications equipment or services” means—

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation, or any subsidiary or affiliate of such entities;

(2) Telecommunications services provided by such entities or using such equipment; or

(3) Telecommunications equipment or services produced or provided by an entity that the Secretary of Defense reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

“Covered foreign country” means—

(1) The People’s Republic of China; or

(2) The Russian Federation.

“Covered missions” means—

(1) The nuclear deterrence mission of DoD, including with respect to nuclear command, control, and communications, integrated tactical warning and attack assessment, and continuity of Government; or

(2) The homeland defense mission of DoD, including with respect to ballistic missile defense.

##### 204.2102 Prohibition.

(a) *Prohibited equipment, systems, or services*. In addition to the prohibition at FAR 4.2102(a), unless the covered defense telecommunications equipment or services are subject to a waiver described in 204.2104, the contracting officer shall not procure or obtain, or extend or renew a contract (e.g., exercise an option) to procure or obtain, any equipment, system, or service to carry out covered missions that uses covered defense telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

##### 204.2103 Procedures.

(a) *Representations*.

(1)(i) If the offeror selects “does not” in response to the provision at DFARS 204.2104 has been granted.(b) *Reporting*. If a contractor reports information to https://dibnet.dod.mil in accordance with the clause at FAR 52.204-25or DFARS 252.204-7018 , the Defense Cyber Crime Center will notify the contracting officer, who will consult with the requiring activity on how to proceed with the contract.

##### 204.2104 Waivers.

The Secretary of Defense may waive the prohibition in 204.2102 (a) on a case-by-case basis for a single, one-year period, if the Secretary—

(a) Determines such waiver to be in the national security interests of the United States; and

(b) Certifies to the Congressional defense committees that—

(i) There are sufficient mitigations in place to guarantee the ability of the Secretary to carry out the covered missions; and

(ii) The Secretary is removing the use of covered defense telecommunications equipment or services in carrying out such missions.

##### 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 and, solicitations for task 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, and solicitations for task 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, and solicitations and awards for task and delivery orders, BOAs, orders against BOAs, BPAs, and calls against BPAs.

#### SUBPART 204.70 —PROCUREMENT ACQUISITION LEAD TIME REPORTING

##### 204.7001 Procedures.

Follow the procedures at PGI 204.7001 for reporting procurement acquisition lead time milestones in the Procurement Integrated Enterprise Environment module.

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

##### 204.7100 Scope.

This subpart prescribes policies and procedures for assigning contract line item numbers.

##### 204.7101 Definitions.

“Accounting classification reference number (ACRN)” means any combination of a two position alpha/numeric code used as a method of relating the accounting classification citation to detailed line item information contained in the schedule.

“Attachment” means any documentation, appended to a contract or incorporated by reference, which does not establish a requirement for deliverables.

“Definitized item,” as used in this subpart, means an item for which a firm price has been established in the basic contract or by modification.

“Exhibit” means a document, referred to in a contract, which is attached and establishes requirements for deliverables. The term shall not be used to refer to any other kind of attachment to a contract. The DD Form 1423, Contract Data Requirements List, is always an exhibit, rather than an attachment.

“Nonseverable deliverable,” as used in this subpart, means a deliverable item that is a single end product or undertaking, entire in nature, that cannot be feasibly subdivided into discrete elements or phases without losing its identity.

“Undefinitized item,” as used in this subpart, means an item for which a price has not been established in the basic contract or by modification.

##### 204.7102 Policy.

(a) The numbering procedures of this subpart shall apply to all—

(1) Solicitations;

(2) Solicitation line and subline item numbers;

(3) Contracts as defined in FAR Subpart 2.1;

(4) Contract line and subline item numbers;

(5) Exhibits;

(6) Exhibit line items; and

(7) Any other document expected to become part of the contract.

(b) The numbering procedures are mandatory for all contracts where separate contract line item numbers are assigned, unless—

(1) The contract is an indefinite-delivery type for petroleum products against which posts, camps, and stations issue delivery orders for products to be consumed by them; or

(2) The contract is a communications service authorization issued by the Defense Information Systems Agency's Defense Information Technology Contracting Organization.

##### 204.7103 Contract line items.

Follow the procedures at PGI 204.7103 for establishing contract line items.

###### 204.7103-1 Criteria for establishing.

Contracts shall identify the items or services to be acquired as separate contract line items unless it is not feasible to do so.

(a) Contract line items shall have all four of the following characteristics; however, there are exceptions within the characteristics, which may make establishing a separate contract line item appropriate even though one of the characteristics appears to be missing—

(1) *Single unit price*. The item shall have a single unit price or a single total price, except—

(i) If the item is not separately priced (NSP) but the price is included in the unit price of another contract line item, enter NSP instead of the unit price;

(ii) When there are associated subline items, established for other than informational reasons, and those subline items are priced in accordance with 204.7104 ;

(iii) When the items or services are being acquired on a cost-reimbursement contract;

(iv) When the contract is for maintenance and repair services (e.g., a labor hour contract) and firm prices have been established for elements of the total price of an item but the actual number and quantity of the elements are not known until performance. The contracting officer may structure these contracts to reflect a firm or estimated total amount for each line item;

(v) When the contract line item is established to refer to an exhibit or an attachment (if management needs dictate that a unit price be entered, the price shall be set forth in the item description block and enclosed in parentheses); or

(vi) When the contract is an indefinite delivery type contract and provides that the price of an item shall be determined at the time a delivery order is placed and the price is influenced by such factors as the quantity ordered (e.g., 10-99 @ $1.00, 100-249 @ $.98, 250+ @ $.95), the destination, the FOB point, or the type of packaging required.

(2) *Separately identifiable.* A contract line item must be identified separately from any other items or services on the contract.

(i) Supplies are separately identifiable if they have no more than one—

(A) National stock number (NSN);

(B) Item description; or

(C) Manufacturer's part number.

(ii) Services are separately identifiable if they have no more than one—

(A) Scope of work; or

(B) Description of services.

(iii) This requirement does not apply if there are associated subline items, established for other than informational reasons, and those subline items include the actual detailed identification in accordance with 204.7104 . Where this exception applies, use a general narrative description instead of the contract item description.

(3) *Separate delivery schedule*. Each contract line item or service shall have its own delivery schedule, period of performance, or completion date expressly stated (“as required” constitutes an expressly stated delivery term).

(i) The fact that there is more than one delivery date, destination, performance date, or performance point may be a determining factor in the decision as to whether to establish more than one contract line item.

(ii) If a contract line item has more than one destination or delivery date, the contracting officer may create individual contract line items for the different destinations or delivery dates, or may specify the different delivery dates for the units by destination in the delivery schedule.

(4) *Single accounting classification citation*.

(i) Each contract line item shall reference a single accounting classification citation except as provided in paragraph (a)(4)(ii) of this subsection.

(ii) The use of multiple accounting classification citations for a contract line item is authorized in the following situations:

(A) A single, nonseverable deliverable to be paid for with R&D or other funds properly incrementally obligated over several fiscal years in accordance with DoD policy;

(B) A single, nonseverable deliverable to be paid for with different authorizations or appropriations, such as in the acquisition of a satellite or the modification of production tooling used to produce items being acquired by several activities; or

(C) A modification to an existing contract line item for a nonseverable deliverable that results in the delivery of a modified item(s) where the item(s) and modification are to be paid for with different accounting classification citations.

(iii) When the use of multiple accounting classification citations is authorized for a single contract line item, establish informational subline items for each accounting classification citation in accordance with 204.7105 .

(e) If the contract involves a test model or a first article which must be approved, establish a separate contract line item or subline item for each item of supply or service which must be approved. If the test model or first article consists of a lot composed of a mixture of items, a single line item or subline item may be used for the lot.

(f) If a supply or service involves ancillary functions, like packaging and handling, transportation, payment of state or local taxes, or use of reusable containers, and these functions are normally performed by the contractor and the contractor is normally entitled to reimbursement for performing these functions, do not establish a separate contract line item solely to account for these functions. However, do identify the functions in the contract schedule. If the offeror separately prices these functions, contracting officers may establish separate contract line items for the functions; however, the separate line items must conform to the requirements of paragraph (a) of this subsection.

(g) Certain commercial items 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 .

###### 204.7103-2 Numbering procedures.

Follow the procedures at PGI 204.7103-2 for numbering contract line items.

##### 204.7104 Contract subline items.

###### 204.7104-1 Criteria for establishing.

Contract subline items provide flexibility to further identify elements within a contract line item for tracking performance or simplifying administration. There are only two kinds of subline items: those which are informational in nature and those which consist of more than one item that requires separate identification.

(a) *Informational subline items.*

(1) This type of subline item identifies information that relates directly to the contract line item and is an integral part of it (e.g., parts of an assembly or parts of a kit). These subline items shall not be scheduled separately for delivery, identified separately for shipment or performance, or priced separately for payment purposes.

(2) The informational subline item may include quantities, prices, or amounts, if necessary to satisfy management requirements. However, these elements shall be included within the item description in the supplies/services column and enclosed in parentheses to prevent confusing them with quantities, prices, or amounts that have contractual significance. Do not enter these elements in the quantity and price columns.

(3) Informational subline items shall be used to identify each accounting classification citation assigned to a single contract line item number when use of multiple citations is authorized (see 204.7103-1 (a)(4)(ii)).

(b)  *Separately identified subline items*.

(1) Subline items will be used instead of contract line items to facilitate payment, delivery tracking, contract funds accounting, or other management purposes. Such subline items shall be used when items bought under one contract line item number—

(i) Are to be paid for from more than one accounting classification. A subline item shall be established for the quantity associated with the single accounting classification citation. Establish a line item rather than a subline item if it is likely that a subline item may be assigned additional accounting classification citations at a later date. Identify the funding as described in 204.7104-1 (a)(3);

(ii) Are to be packaged in different sizes, each represented by its own NSN;

(iii) Have collateral costs, such as packaging costs, but those costs are not a part of the unit price of the contract line item;

(iv) Have different delivery dates or destinations or requisitions, or a combination of the three; or

(v) Identify parts of an assembly or kit which—

(A) Have to be separately identified at the time of shipment or performance; and

(B) Are separately priced.

(2) Each separately identified contract subline item shall have its own—

(i) Delivery schedule, period of performance, or completion date;

(ii) Unit price or single total price or amount (not separately priced (NSP) is acceptable as an entry for price or amount if the price is included in another subline item or a different contract line item). This requirement does not apply—

(A) If the subline item was created to refer to an exhibit or an attachment. If management needs dictate that a unit price be entered, the price shall be set forth in the item description block of the schedule and enclosed in parentheses; or

(B) In the case of indefinite delivery contracts described at 204.7103-1 (a)(1)(vi).

(iii) Identification (e.g., NSN, item description, manufacturer's part number, scope of work, description of services).

(3) Unit prices and extended amounts.

(i) The unit price and total amount for all subline items may be entered at the contract line item number level if the unit price for the subline items is identical. If there is any variation, the subline item unit prices shall be entered at the subline item level only.

(ii) The unit price and extended amounts may be entered at the subline items level.

(iii) The two methods in paragraphs (b)(3)(i) and (ii) of this section shall not be combined in a contract line item.

(iv) When the price for items not separately priced is included in the price of another contract line or subline item, it may be necessary to withhold payment on the priced contract line or subline item until the included line or subline items that are not separately priced have been delivered. See the clause at 252.204-7002 , Payment for Contract Line or Subline Items Not Separately Priced.

###### 204.7104-2 Numbering procedures.

Follow the procedures at PGI 204.7104-2 for numbering contract subline items.

##### 204.7105 Contract exhibits and attachments.

Follow the procedures at PGI 204.7105 for use and numbering of contract exhibits and attachments.

##### 204.7106 Contract modifications.

(a) If new items are added, assign new contract line or subline item numbers or exhibit line item numbers, in accordance with the procedures established at 204.7103 , 204.7104 , and 204.7105 .

(b) *Modifications to existing contract line items or exhibit line items.*

(1) If the modification relates to existing contract line items or exhibit line items, the modification shall refer to those item numbers.

(2) If the contracting officer decides to assign new identifications to existing contract or exhibit line items, the following rules apply—

(i) *Definitized and undefinitized items*.

(A) The original line item or subline item number may be used if the modification applies to the total quantity of the original line item or subline.

(B) The original line item or subline item number may be used if the modification makes only minor changes in the specifications of some of the items ordered on the original line item or subline item and the resulting changes in unit price can be averaged to provide a new single unit price for the total quantity. If the changes in the specifications make the item significantly distinguishable from the original item or the resulting changes in unit price cannot be averaged, create a new line item.

(C) If the modification affects only a partial quantity of an existing contract line item or subline item or exhibit line item and the change does not involve either the delivery date or the ship-to/mark-for data, the original contract line item or subline item or exhibit line item number shall remain with the unchanged quantity. Assign the changed quantity the next available number.

(ii) *Undefinitized items*. In addition to the rules in paragraph (b)(2)(i), the following additional rules apply to undefinitized items—

(A) If the modification is undefinitized and increases the quantity of an existing definitized item, assign the undefinitized quantity the next available number.

(B) If the modification increases the quantity of an existing undefinitized item, the original contract line item or subline item or exhibit line item may be used if the unit price for the new quantity is expected to be the same as the price for the original quantity. If the unit prices of the two quantities will be different, assign the new quantity the next available number.

(C) If the modification both affects only a partial quantity of the existing contract line item or subline item or exhibit line item and definitizes the price for the affected portion, the definitized portion shall retain the original item number. If there is any undefinitized portion of the item, assign it the next available number. However, if the modification definitizes the price for the whole quantity of the line item, and price impact of the changed work can be apportioned equally over the whole to arrive at a new unit price, the quantity with the changes can be added into the quantity of the existing item.

(D) If the modification affects only a partial quantity of an existing contract line item or subline item or exhibit line item, but does not change the delivery schedule or definitize price, the unchanged portion shall retain the original contract line item or subline item or exhibit line item number. Assign the changed portion the next available number.

(3) If the modification will decrease the amount obligated—

(i) There shall be coordination between the administrative and procuring contracting offices before issuance of the modification; and

(ii) The contracting officer shall not issue the modification unless sufficient unliquidated obligation exists or the purpose is to recover monies owed to the Government.

##### 204.7107 Contract accounting classification reference number (ACRN) and agency accounting identifier (AAI).

Traceability of funds from accounting systems to contract actions is accomplished using ACRNs and AAIs. Follow the procedures at PGI 204.7107 for use of ACRNs and AAIs.

##### 204.7108 Payment instructions.

Follow the procedures at PGI 204.7108 for inclusion of payment instructions in contracts.

##### 204.7109 Contract clauses.

(a) Use the clause at 252.204-7002 , Payment for Contract Line or Subline Items Not Separately Priced, in solicitations and contracts when the price for items not separately priced is included in the price of another contract line or subline item.

(b) Use the clause at 252.204-7006 , Billing Instructions, in solicitations and contracts if Section G includes—

(1) Any of the standard payment instructions at PGI 204.7108 (b)(2); or

(2) Other payment instructions, in accordance with PGI 204.7108 (d)(12), that require contractor identification of the contract line item(s) on the payment request.

#### SUBPART 204.72 – ANTITERRORISM AWARENESS TRAINING

##### 204.7200 Scope of subpart.

This subpart provides policy and guidance related to antiterrorism awareness training for contractor personnel who require routine physical access to a Federally-controlled facility or military installation.

##### 204.7201 Definition.

As used in this subpart—

“Military installation” means a base, camp, post, station, yard, center, or other activity under the jurisdiction of the Secretary of a military department or, in the case of an activity in a foreign country, under the operational control of the Secretary of a military department or the Secretary of Defense (see 10 U.S.C. 2801(c)(4)).

##### 204.7202 Policy.

It is DoD policy that—

(a) Contractor personnel who, as a condition of contract performance, require routine physical access to a Federally-controlled facility or military installation are required to complete Level I antiterrorism awareness training within 30 days of requiring access and annually thereafter; and

(b) In accordance with Department of Defense Instruction O-2000.16, Volume 1, DoD Antiterrorism (AT) Program Implementation: DoD AT Standards, Level I antiterrorism awareness training may be completed—

(1) Through a DoD-sponsored and certified computer or web-based distance learning instruction for Level I antiterrorism awareness; or

(2) Under the instruction of a qualified Level I antiterrorism awareness instructor.

##### 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, 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

##### 204.7300 Scope.

(a) This subpart applies to contracts and subcontracts requiring contractors and subcontractors to safeguard covered defense information that resides in or transits through covered contractor information systems by applying specified network securityrequirements. It also requires reporting of cyber incidents.

(b) This subpart does not abrogate any other requirements regarding contractor physical, personnel, information, technical, or general administrative security operations governing the protection of unclassified information, nor does it affect requirements of the National Industrial Security Program.

##### 204.7301 Definitions.

As used in this subpart—

“Adequate security” means protective measures that are commensurate with the consequences and probability of loss, misuse, or unauthorized access to, or modification of information.

“Contractor attributional/proprietary information” means information that identifies the contractor(s), whether directly or indirectly, by the grouping of information that can be traced back to the contractor(s) (e.g., program description, facility locations), personally identifiable information, as well as trade secrets, commercial or financial information, or other commercially sensitive information that is not customarily shared outside of the company.

“Controlled technical information” means technical information with military or space application that is subject to controls on the access, use, reproduction, modification, performance, display, release, disclosure, or dissemination. Controlled technical information would meet the criteria, if disseminated, for distribution statements B through F using the criteria set forth in DoD Instruction 5230.24, Distribution Statements on Technical Documents. The term does not include information that is lawfully publicly available without restrictions.

“Covered contractor information system” means an unclassified information systemthat is owned, or operated by or for, a contractor and that processes, stores, or transmitscovered defense information.

“Covered defense information” means unclassified controlled technical information or other information (as described in the Controlled Unclassified Information (CUI) Registry at http://www.archives.gov/cui/registry/category-list.html) that requires safeguarding or dissemination controls pursuant to and consistent with law, regulations, and Governmentwide policies, and is—

(1) Marked or otherwise identified in the contract, task order, or delivery order and provided to the contractor by or on behalf of DoD in support of the performance of the contract; or

(2) Collected, developed, received, transmitted, used, or stored by or on behalf of the contractor in support of the performance of the contract.

“Information system” means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.

“Media” means physical devices or writing surfaces including, but not limited to, magnetic tapes, optical disks, magnetic disks, large-scale integration memory chips, and printouts onto which covered defense information is recorded, stored, or printed within a covered contractor information system.

“Rapidly report” means within 72 hours of discovery of any cyber incident.

“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-Non Commercial Items, 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.

##### 204.7302 Policy.

(a) Contractors and subcontractors are required to provide adequate security on all covered contractor information systems.

(b) Contractors and subcontractors are required to rapidly report cyber incidents directly to DoD at http://dibnet.dod.mil. Subcontractors provide the incident report number automatically assigned by DoD to the prime contractor. Lower-tier subcontractors likewise report the incident report number automatically assigned by DoD to their higher-tier subcontractor, until the prime contractor is reached.

(1) If a cyber incident occurs, contractors and subcontractors submit to DoD—

(i) A cyber incident report;

(ii) Malicious software, if detected and isolated; and

(iii) Media (or access to covered contractor information systems and equipment) upon request.

(2) Contracting officers shall refer to PGI 204.7303-4 (c) for instructions on contractor submissions of media and malicious software.

(c) Information shared by the contractor may include contractor attributional/ proprietary information that is not customarily shared outside of the company, and thatthe unauthorized use or disclosure of such information could cause substantial competitive harm to the contractor that reported the information. The Government shall protect against the unauthorized use or release of information that includes contractor attributional/proprietary information.

(d) A cyber incident that is reported by a contractor or subcontractor shall not, by itself, be interpreted as evidence that the contractor or subcontractor has failed toprovide adequate security on their covered contractor information systems, or has otherwise failed to meet the requirements of the clause at 252.204-7012 , Safeguarding Covered Defense Information and Cyber Incident Reporting. When a cyber incident is reported, the contracting officer shall consult with the DoD component Chief Information Officer/cyber security office prior to assessing contractor compliance (see PGI 204.7303-3 (a)(3)). The contracting officer shall consider such cyber incidents in thecontext of an overall assessment of a contractor’s compliance with the requirements of the clause at 252.204-7012 .

(e) Support services contractors directly supporting Government activities related tosafeguarding covered defense information and cyber incident reporting (e.g., forensicanalysis, damage assessment, or other services that require access to data from another contractor) are subject to restrictions on use and disclosure of reported information.

##### 204.7303 Procedures.

Follow the procedures relating to safeguarding covered defense information at PGI204.7303 .

##### 204.7304 Solicitation provision and contract clauses.

(a) Use the provision at 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, except for solicitations solely forthe acquisition of commercially available off-the-shelf (COTS) items.

(b) Use the clause at 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, 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 , Safeguarding Covered Defense Information and Cyber Incident Reporting, in all solicitations and contracts, including solicitations andcontracts using FAR part 12 procedures for the acquisition of commercial items, exceptfor solicitations and contracts solely for the acquisition of COTS items.

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

##### 204.7400 Scope of subpart.

This subpart prescribes policies and procedures for the release and safeguarding of information to litigation support contractors. It implements the requirements at 10 U.S.C. 129d.

##### 204.7401 Definitions.

As used in this subpart—

“Computer software” means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer data bases or computer software documentation.

“Litigation information” means any information, including sensitive information, that is furnished to the contractor by or on behalf of the Government, or that is generated or obtained by the contractor in the performance of litigation support under a contract. The term does not include information that is lawfully, publicly available without restriction, including information contained in a publicly available solicitation.

“Litigation support” means administrative, technical, or professional services provided in support of the Government during or in anticipation of litigation.

“Litigation support contractor” means a contractor (including its experts, technical consultants, subcontractors, and suppliers) providing litigation support under a contract that contains the clause at 252.204-7014 , Limitations on the Use or Disclosure of Information by Litigation Support Contractors.

“Sensitive information” means controlled unclassified information of a commercial, financial, proprietary, or privileged nature. The term includes technical data and computer software, but does not include information that is lawfully, publicly available without restriction.

“Technical data” means recorded information, regardless of the form or method of the 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.

##### 204.7402 Policy.

(a) Any release or disclosure of litigation information that includes sensitive information to a litigation support contractor, and the litigation support contractor’s use and handling of such information, shall comply with the requirements of 10 U.S.C. 129d.

(b) To the maximum extent practicable, DoD will provide notice to an offeror or contractor submitting, delivering, or otherwise providing information to DoD in connection with an offer or performance of a contract that such information may be released or disclosed to litigation support contractors.

(c) Information that is publicly available without restriction, including publicly available solicitations for litigation support services, will not be protected from disclosure as litigation information.

(d) When sharing sensitive information with a litigation support contractor, contracting officers shall ensure that all other applicable requirements for handling and safeguarding the relevant types of sensitive information are included in the contract (e.g., FAR subparts 4.4 and 24.1; DFARS subparts 204.4 and 224.1).

##### 204.7403 Contract clauses.

(a) Use the clause at 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.

(b) Use the clause at 252.204-7015 , Notice of Authorized Disclosure of Informationfor Litigation Support, in all solicitations and contracts, including solicitations andcontracts using FAR part 12 procedures for the acquisition of commercial items.

### PART 205 - PUBLICIZING CONTRACT ACTIONS

* SUBPART 205.2 —SYNOPSES OF PROPOSED CONTRACT ACTIONS
  + 205.203 Publicizing and response time.
  + 205.205 Special situations.
    - 205.205-70 Notification of bundling of DoD contracts.
    - 205.205-71 Only one responsible source.
  + 205.207 Preparation and transmittal of synopses.
* SUBPART 205.3 —SYNOPSES OF CONTRACT AWARDS
  + 205.301 General.
  + 205.303 Announcement of contract awards.
* SUBPART 205.4 —RELEASE OF INFORMATION
  + 205.470 Contract clause.
* SUBPART 205.5 —PAID ADVERTISEMENTS
  + 205.502 Authority.

#### SUBPART 205.2 —SYNOPSES OF PROPOSED CONTRACT ACTIONS

##### 205.203 Publicizing and response time.

(b) Allow at least 45 days response time when requested by a qualifying or designated country source (as these terms are used in Part 225) and the request is consistent with the Government's requirement.

(S-70) When using competitive procedures, if a solicitation allowed fewer than 30 days for receipt of offers and resulted in only one offer, the contracting officer shall resolicit, allowing an additional period of at least 30 days for receipt of offers, except as provided in 215.371-4 and 215.371-5 .

##### 205.205 Special situations.

###### 205.205-70 Notification of bundling of DoD contracts.

(a) When a proposed acquisition is funded entirely using DoD funds and potentially involves bundling, the contracting officer shall, at least 30 days prior to the release of a solicitation or 30 days prior to placing an order without a solicitation, publish in FedBizOpps.gov (or any successor site) a notification of the intent to bundle the requirement. In addition, if the agency has determined that measurably substantial benefits are expected to be derived as a result of bundling, the notification shall include a brief description of those benefits (see FAR 7.107).

(b) This requirement is in addition to the notification requirements at FAR 10.001(c)(2)(i) and (ii).

###### 205.205-71 Only one responsible source.

Follow the procedures at PGI 206.302-1 (d) prior to soliciting a proposal without providing for full and open competition under the authority at FAR 6.302-1.

##### 205.207 Preparation and transmittal of synopses.

(a)(i) For numbering synopsis notices, follow the procedures at PGI 205.207 (a)(i).

(d) For special notices for small business events, follow the procedures at PGI 205.207 (d).

#### SUBPART 205.3 —SYNOPSES OF CONTRACT AWARDS

##### 205.301 General.

(a)(S-70) *Synopsis of exceptions to domestic source requirements*.

(i) In accordance with 10 U.S.C. 2533a(k), contracting officers also must synopsize through the GPE, awards exceeding the simplified acquisition threshold thatare for the acquisition of any clothing, fiber, yarn, or fabric items described in 225.003 (10).”

##### 205.303 Announcement of contract awards.

(a) *Public Announcement*.

(i) The threshold for DoD awards is $7 million. Report all contractual actions,including modifications, that have a face value, excluding unexercised options, of morethan $7 million.

(A) For undefinitized contractual actions, report the not-to-exceed (NTE)amount. Later, if the definitized amount exceeds the NTE amount by more than $7million, report only the amount exceeding the NTE.

(B) For indefinite delivery, time and material, labor hour, and similarcontracts, report the initial award if the estimated face value, excluding unexercisedoptions, is more than $7 million. Do not report orders up to the estimated value, butafter the estimated value is reached, report subsequent modifications and orders thathave a face value of more than $7 million.

(C) Do not report the same work twice.

(ii) Departments and agencies submit the information—

(A) To the Office of the Assistant Secretary of Defense (Public Affairs);

(B) By the close of business the day before the date of the proposed award;

(C) Using report control symbol DD-LA-(AR) 1279;

(D) Including, as a minimum, the following—

*(1)* *Contract data*. Contract number, modification number, or delivery order number, face value of this action, total cumulative face value of the contract, description of what is being bought, contract type, whether any of the buy was for foreign military sales (FMS) and identification of the FMS customer*;*

*(2)*  *Competition information.*Number of solicitations mailed and number of offers received;

*(3)* *Contractor data.* Name, address, and place of performance (if significant work is performed at a different location);

*(4)* *Funding data.* Type of appropriation and fiscal year of the funds, and whether the contract is multiyear (see FAR Subpart 17.1); and

*(5)* *Miscellaneous data.* Identification of the contracting office, the contracting office point of contact, known congressional interest, and the information release date.

(iii) Departments and agencies, in accordance with department/agency procedures and concurrent with the public announcement, shall provide information similar to that required by paragraph (a)(ii) of this section to members of Congress in whose State or district the contractor is located and the work is to be performed.

#### SUBPART 205.4 —RELEASE OF INFORMATION

##### 205.470 Contract clause.

Use the clause at 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, that are expected to exceed $1,000,000. This clause implements 10 U.S.C. 2416.

#### SUBPART 205.5 —PAID ADVERTISEMENTS

##### 205.502 Authority.

(a) *Newspapers*. Heads of contracting activities are delegated authority to approve the publication of paid advertisements in newspapers.

# SUBCHAPTER B—ACQUISITION PLANNING

## Defense Federal Acquisition Regulation

### PART 206 - COMPETITION REQUIREMENTS

* 206.000 Scope of part.
* 206.001 Applicability.
* SUBPART 206.1 —FULL AND OPEN COMPETITION
  + 206.102 Use of competitive procedures.
* SUBPART 206.2 —FULL AND OPEN COMPETITION AFTER EXCLUSION OF SOURCES
  + 206.202 Establishing or maintaining alternative sources.
* SUBPART 206.3 —OTHER THAN FULL AND OPEN COMPETITION
  + 206.302 Circumstances permitting other than full and open competition.
    - 206.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.
    - 206.302-2 Unusual and compelling urgency.
    - 206.302-3 Industrial mobilization, engineering, developmental, or research capability, or expert services.
    - 206.302-3-70 Solicitation provision.
    - 206.302-4 International agreement.
    - 206.302-5 Authorized or required by statute.
    - 206.302-7 Public interest.
  + 206.303 Justifications.
    - 206.303-1 Requirements.
    - 206.303-2 Content.
    - 206.303-70 Acquisitions in support of operations in Afghanistan.
  + 206.304 Approval of the justification.
  + 206.305 Availability of the justification.

#### 206.000 Scope of part.

For information on the various approaches that may be used to competitively fulfill DoD requirements, see PGI 206.000 .

#### 206.001 Applicability.

(b) As authorized by 10 U.S.C. 1091, contracts awarded to individuals using the procedures at 237.104 (b)(ii) are exempt from the competition requirements of FAR Part 6.

(S-70) Also excepted from this part are follow-on production contracts for products developed pursuant to the “other transactions” authority of 10 U.S.C. 2371 for prototype projects when—

(1) The other transaction agreement includes provisions for a follow-on production contract;

(2) The contracting officer receives sufficient information from the agreements officer and the project manager for the prototype other transaction agreement, which documents that the conditions set forth in 10 U.S.C. 2371 note, subsections (f)(2)(A) and (B) (see 32 CFR 3.9(d)), have been met; and

(3) The contracting officer establishes quantities and prices for the follow-on production contract that do not exceed the quantities and target prices established in the other transaction agreement.

#### SUBPART 206.1 —FULL AND OPEN COMPETITION

##### 206.102 Use of competitive procedures.

(d) *Other competitive procedures*.

(2) In lieu of FAR 6.102(d)(2), competitive selection of science and technology proposals resulting from a broad agency announcement with peer or scientific review, as described in 235.016 (a) (10 U.S.C. 2302(2)(B)).

#### SUBPART 206.2 —FULL AND OPEN COMPETITION AFTER EXCLUSION OF SOURCES

##### 206.202 Establishing or maintaining alternative sources.

(a) Agencies may use this authority to totally or partially exclude a particular source from a contract action.

(b) The determination and findings (D&F) and the documentation supporting the D&F shall identify the source to be excluded from the contract action. Include the information at PGI 206.202 (b), as applicable, and any other information that may be pertinent, in the supporting documentation.

#### SUBPART 206.3 —OTHER THAN FULL AND OPEN COMPETITION

##### 206.302 Circumstances permitting other than full and open competition.

###### 206.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.

(a) *Authority*.

(2)(i) Section 8059 of Pub. L. 101-511 and similar sections in subsequent defense appropriations acts, prohibit departments and agencies from entering into contracts for studies, analyses, or consulting services (see FAR Subpart 37.2) on the basis of an unsolicited proposal without providing for full and open competition, unless—

*(1)* The head of the contracting activity, or a designee no lower than chief of the contracting office, determines that—

*(i)* Following thorough technical evaluation, only one source is fully qualified to perform the proposed work;

*(ii)* The unsolicited proposal offers significant scientific or technological promise, represents the product of original thinking, and was submitted in confidence; or

*(iii)* The contract benefits the national defense by taking advantage of a unique and significant industrial accomplishment or by ensuring financial support to a new product or idea;

*(2)* A civilian official of the DoD, whose appointment has been confirmed by the Senate, determines the award to be in the interest of national defense; or

*(3)* The contract is related to improvement of equipment that is in development or production.

(b) *Application*. This authority may be used for acquisitions of test articles and associated support services from a designated foreign source under the DoD Foreign Comparative Testing Program.

(c) *Application for brand-name descriptions*.

(2) Notwithstanding FAR 6.302-1(c)(2), in accordance with section 888(a) of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114-328), the justification and approval addressed in FAR 6.303 is required in order to use brand name or equal descriptions.

(d) *Limitations*. Follow the procedures at PGI 206.302-1 (d) prior to soliciting a proposal without providing for full and open competition under this authority.

(S-70) Application for proprietary specifications or standards. In accordance with section 888(a) of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114-328), the justification and approval addressed in FAR 6.303 is required in order to use proprietary specifications and standards.

###### 206.302-2 Unusual and compelling urgency.

(b) *Application*. For guidance on circumstances under which use of this authority may be appropriate, see PGI 206.302-2 (b).

###### 206.302-3 Industrial mobilization, engineering, developmental, or research capability, or expert services.

###### 206.302-3-70 Solicitation provision.

Use the provision at 252.206-7000 , Domestic Source Restriction, in all solicitations that are restricted to domestic sources under the authority of FAR 6.302-3.

###### 206.302-4 International agreement.

(c) *Limitations.* Pursuant to 10 U.S.C. 2304(f)(2)(E), the justifications and approvals described in FAR 6.303 and 6.304 are not required if the head of the contracting activity prepares a document that describes the terms of an agreement or treaty or the written directions, such as a Letter of Offer and Acceptance, that have the effect of requiring the use of other than competitive procedures for the acquisition.

###### 206.302-5 Authorized or required by statute.

(b) *Application.* Agencies may use this authority to—

(i) Acquire supplies and services from military exchange stores outside the United States for use by the armed forces outside the United States in accordance with 10 U.S.C. 2424(a) and subject to the limitations of 10 U.S.C. 2424(b). The limitations of 10 U.S.C. 2424(b)(1) and (2) do not apply to the purchase of soft drinks that are manufactured in the United States. For the purposes of 10 U.S.C. 2424, soft drinks manufactured in the United States are brand name carbonated sodas, manufactured in the United States, as evidenced by product markings.

(ii) Acquire police, fire protection, airfield operation, or other community services from local governments at military installations to be closed under the circumstances in 237.7401 (Section 2907 of Fiscal Year 1994 Defense Authorization Act (Pub. L. 103-160)).

(c) *Limitations*.

(i) 10 U.S.C. 2361 precludes use of this exception for awards to colleges or universities for the performance of research and development, or for the construction of any research or other facility, unless—

(A) The statute authorizing or requiring award specifically—

*(1*) States that the statute modifies or supersedes the provisions of 10 U.S.C. 2361,

*(2)* Identifies the particular college or university involved, and

*(3)* States that award is being made in contravention of 10 U.S.C. 2361(a); and

(B) The Secretary of Defense provides Congress written notice of intent to award. The contract cannot be awarded until 180 days have elapsed since the date Congress received the notice of intent to award. Contracting activities must submit a draft notice of intent with supporting documentation through channels to the Director of Defense Procurement and Acquisition Policy, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics).

(ii) The limitation in paragraph (c)(i) of this subsection applies only if the statute authorizing or requiring award was enacted after September 30, 1989.

(iii) Subsequent statutes may provide different or additional constraints on the award of contracts to specified colleges and universities. Contracting officers should consult legal counsel on a case-by-case basis.

###### 206.302-7 Public interest.

(c) *Limitations.* For the defense agencies, the written determination to use this authority must be made by the Secretary of Defense.

##### 206.303 Justifications.

###### 206.303-1 Requirements.

(a) In accordance with section 823 of the National Defense Authorization Act for Fiscal Year 2020[(Pub. L. 116-92)](https://www.govinfo.gov/link/plaw/116/public/92?link-type=html), no justification and approval is required for a sole-source contract under the 8(a) authority [(15 U.S.C. 637(a))](https://www.govinfo.gov/content/pkg/USCODE-2018-title15/html/USCODE-2018-title15-chap14A-sec637.htm)for an amount not exceeding $100 million.

(b) In lieu of FAR 6.303-1(b), in accordance with section 823 of the National Defense Authorization Act for Fiscal Year 2020 [(Pub. L. 116-92)](https://www.govinfo.gov/link/plaw/116/public/92?link-type=html), contracting officers shall not award a sole source contract under the 8(a) authority [(15 U.S.C. 637(a))](https://www.govinfo.gov/content/pkg/USCODE-2018-title15/html/USCODE-2018-title15-chap14A-sec637.htm)for an amount exceeding $100 million unless—

(1) The contracting officer justifies the use of a sole source contract in writing in accordance with FAR 6.303-2;

(2) The justification is approved in accordance with 206.304(a)(S-71); and

(3) The justification and related information are made public after award in accordance with FAR 6.305

###### 206.303-2 Content.

(b)(i) In lieu of the threshold at FAR 6.303-2(b), each justification shall include the information at FAR 6.303-2(b), except for sole-source 8(a) contracts over $100 million (see paragraph (d) of this section).

(ii) Include the information required by PGI 206.303-2 (b)(i) in justifications citing the authority at FAR 6.302-1.

(d) In lieu of the threshold at FAR 6.303-2(d), each justification for a sole-source 8(a) contract over $100 million shall include the information at FAR 6.303-2(d).

###### 206.303-70 Acquisitions in support of operations in Afghanistan.

The justification and approval addressed in FAR 6.303 is not required for acquisitions conducted using a procedure specified in 225.7703-1 (a).

##### 206.304 Approval of the justification.

(a)(4) The Under Secretary of Defense (Acquisition, Technology, and Logistics) may delegate this authority to—

(A) An Assistant Secretary of Defense; or

(B) For a defense agency, an officer or employee serving in, assigned, or detailed to that agency who¾

*(1)*If a member of the armed forces, is serving in a rank above brigadier general or rear admiral (lower half); or

*(2)* If a civilian, is serving in a position with a grade under the General Schedule (or any other schedule for civilian officers or employees) that is comparable to or higher than the grade of major general or rear admiral.

(S-70) For a non-competitive follow-on acquisition to a previous award for the same supply or service supported by a justification for other than full and open competition citing the authority at FAR 6.302-1, follow the procedures at PGI 206.304 (a)(S-70).

(S-71) In accordance with section 823 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116-92), the head of the procuring activity is the approval authority for a proposed sole-source 8(a) contract exceeding $100 million. This authority may only be delegated to an officer or employee who—

(1) If a member of the armed forces, is serving in a rank above brigadier general or rear admiral (lower half); or

(2) If a civilian, is serving in a position with a grade under the General Schedule (or any other schedule for civilian officers or employees) that is comparable to or higher than the grade of major general or rear admiral.

##### 206.305 Availability of the justification.

See PGI 206.305 for further guidance on the requirements for preparing, obtaining approval, and posting justification and approval documents for contracts awarded using the authority of FAR 6.302-2.

### PART 207 - ACQUISITION PLANNING

* SUBPART 207.1 —ACQUISITION PLANS
  + 207.102 Policy.
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* SUBPART 207.3 —CONTRACTOR VERSUS GOVERNMENT PERFORMANCE
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* SUBPART 207.4 —EQUIPMENT LEASE OR PURCHASE
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  + 207.7001 Definition.
  + 207.7002 Authority to acquire additional quantities of end items.
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#### SUBPART 207.1 —ACQUISITION PLANS

##### 207.102 Policy.

(a)(1) See 212.102 regarding requirements for a written determination that the commercial item definition has been met when using FAR Part 12 procedures.

##### 207.103 Agency-head responsibilities.

(d)(i) Prepare written acquisition plans for—

(A) Acquisitions for development, as defined in FAR 35.001, when the total cost of all contracts for the acquisition program is estimated at $10 million or more;

(B) Acquisitions for production or services when the total cost of all contracts for the acquisition program is estimated at $50 million or more for all years or $25 million or more for any fiscal year; and

(C) Any other acquisition considered appropriate by the department or agency.

(ii) Written plans are not required in acquisitions for a final buy out or one-time buy. The terms "final buy out" and "one-time buy" refer to a single contract that covers all known present and future requirements. This exception does not apply to a multiyear contract or a contract with options or phases.

(e) Prepare written acquisition plans for acquisition programs meeting the thresholds of paragraphs (d)(i)(A) and (B) of this section on a program basis. Other acquisition plans may be written on either a program or an individual contract basis.

(g) The program manager, or other official responsible for the program, has overall responsibility for acquisition planning.

(h) For procurement of conventional ammunition, as defined in DoDD 5160.65, Single Manager for Conventional Ammunition (SMCA), the SMCA will review the acquisition plan to determine if it is consistent with retaining national technology and industrial base capabilities in accordance with 10 U.S.C. 2304(c)(3) and Section 806 of Pub. L. 105-261. The department or agency—

(i) Shall submit the acquisition plan to the address in PGI 207.103 (h); and

(ii) Shall not proceed with the procurement until the SMCA provides written concurrence with the acquisition plan. In the case of a non-concurrence, the SMCA will resolve issues with the Army Office of the Executive Director for Conventional Ammunition.

##### 207.104 General procedures.

In developing an acquisition plan, agency officials shall take into account the requirement for scheduling and conducting a Peer Review in accordance with 201.170 .

##### 207.105 Contents of written acquisition plans.

In addition to the requirements of FAR 7.105, planners shall follow the procedures at PGI 207.105 .

##### 207.106 Additional requirements for major systems.

(b)(1)(A) The contracting officer is prohibited by 10 U.S.C. 2305(d)(4)(A) from requiring offers for development or production of major systems that would enable the Government to use technical data to competitively reprocure identical items or components of the system if the item or component were developed exclusively at private expense, unless the contracting officer determines that—

*(1)* The original supplier of the item or component will be unable to satisfy program schedule or delivery requirements;

*(2)* Proposals by the original supplier of the item or component to meet mobilization requirements are insufficient to meet the agency's mobilization needs; or

*(3)* The Government is otherwise entitled to unlimited rights in technical data.

(B) If the contracting officer makes a determination, under paragraphs (b)(1)(A)*(1)* and *(2)* of this section, for a competitive solicitation, 10 U.S.C. 2305(d)(4)(B) requires that the evaluation of items developed at private expense be based on an analysis of the total value, in terms of innovative design, life-cycle costs, and other pertinent factors, of incorporating such items in the system.

(S-70)(1) In accordance with section 802(a) of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364) and DoD policy requirements, acquisition plans for major weapon systems and subsystems of major weapon systems shall—

(i) Assess the long-term technical data and computer software needs of those systems and subsystems; and

(ii) Establish acquisition strategies that provide for the technical data deliverables and associated license rights needed to sustain those systems and subsystems over their life cycle. The strategy may include—

(A) The development of maintenance capabilities within DoD; or

(B) Competition for contracts for sustainment of the systems or subsystems.

(2) Assessments and corresponding acquisition strategies developed under this section shall—

(i) Be developed before issuance of a solicitation for the weapon system or subsystem;

(ii) In accordance with 10 U.S.C. 2443, to emphasize reliability and maintainability in weapon system design, ensure that reliability and maintainability are included in the performance attributes of the key performance parameters on sustainment during the development of capabilities requirements. For additional guidance see PGI 207.105 (b)(14)(ii)*(2)*;

(iii) Address the merits of including a priced contract option for the future delivery of technical data and computer software, and associated license rights, that were not acquired upon initial contract award;

(iv) Address the potential for changes in the sustainment plan over the life cycle of the weapon system or subsystem; and

(v) Apply to weapon systems and subsystems that are to be supported by performance-based logistics arrangements as well as to weapon systems and subsystems that are to be supported by other sustainment approaches.

(S-71) See 209.570 for policy applicable to acquisition strategies that consider the use of lead system integrators.

(S-72)(1) In accordance with section 202 of the Weapon Systems Acquisition Reform Act of 2009 (Pub. L. 111-23), acquisition plans for major defense acquisition programs as defined in 10 U.S.C. 2430, shall include measures that—

(i) Ensure competition, or the option of competition, at both the prime contract level and subcontract level (at such tier or tiers as are appropriate) throughout the program life cycle as a means to improve contractor performance; and

(ii) Document the rationale for the selection of the appropriate subcontract tier or tiers under paragraph (S-72)(1)(i) of this section, and the measures which will be employed to ensure competition, or the option of competition.

(2) Measures to ensure competition, or the option of competition, may include, but are not limited to, cost-effective measures intended to achieve the following:

(i) Competitive prototyping.

(ii) Dual-sourcing.

(iii) Unbundling of contracts.

(iv) Funding of next-generation prototype systems or subsystems.

(v) Use of modular, open architectures to enable competition for upgrades.

(vi) Use of build-to-print approaches to enable production through multiple sources.

(vii) Acquisition of complete technical data packages.

(viii) Periodic competitions for subsystem upgrades.

(ix) Licensing of additional suppliers.

(x) Periodic system or program reviews to address long-term competitive effects of program decisions.

(3) In order to ensure fair and objective “make-or-buy” decisions by prime contractors, acquisition strategies and resultant solicitations and contracts shall—

(i) Require prime contractors to give full and fair consideration to qualified sources other than the prime contractor for the development or construction of major subsystems and components of major weapon systems;

(ii) Provide for Government surveillance of the process by which prime contractors consider such sources and determine whether to conduct such development or construction in-house or through a subcontract; and

(iii) Provide for the assessment of the extent to which the prime contractor has given full and fair consideration to qualified sources in sourcing decisions as a part of past performance evaluations.

(4) Whenever a source-of-repair decision results in a plan to award a contract for the performance of maintenance and sustainment services on a major weapon system, to the maximum extent practicable and consistent with statutory requirements, the acquisition plan shall prescribe that award will be made on a competitive basis after giving full consideration to all sources (including sources that partner or subcontract with public or private sector repair activities).

(5) In accordance with 10 U.S.C. 2443, acquisition plans for engineering manufacturing and development and production of major systems as defined in 10 U.S.C. 2302 and 2302d and for major defense acquisition programs as defined in 202.101 , shall include performance measures that are developed using best practices for responding to the positive or negative performance of a contractor for the engineering and manufacturing development or production of a weapon system, including embedded software. At a minimum the contracting officer shall—

(i) Encourage the use of incentive fees and penalties as appropriate; and

(ii) Allow the program manager or comparable requiring activity official exercising program management responsibilities, to base determinations of a contractor’s performance on reliability and maintainability data collected during the program. Such data collection and associated evaluation metrics shall be described in detail in the contract; and to the maximum extent practicable, the data shall be shared with appropriate contractor and Government organizations.

(S-73) In accordance with section 815 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417) and DoD policy requirements, acquisition plans for major weapons systems shall include a plan for the preservation and storage of special tooling associated with the production of hardware for major defense acquisition programs through the end of the service life of the related weapons system. The plan shall include the identification of any contract clauses, facilities, and funding required for the preservation and storage of such tooling. The Undersecretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L)) may waive this requirement if USD(AT&L) determines that it is in the best interest of DoD.

(S-74) When selecting contract type, see 234.004 (section 811 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239)).

##### 207.170 Reserved.

##### 207.171 Component breakout.

###### 207.171-1 Scope.

(a) This section provides policy for breaking out components of end items for future acquisitions so that the Government can purchase the components directly from the manufacturer or supplier and furnish them to the end item manufacturer as Government-furnished material.

(b) This section does not apply to—

(1) The initial decisions on Government-furnished equipment or contractor-furnished equipment that are made at the inception of an acquisition program; or

(2) Breakout of parts for replenishment (see Appendix E).

###### 207.171-2 Definition.

“Component,” as used in this section, includes subsystems, assemblies, subassemblies, and other major elements of an end item; it does not include elements of relatively small annual acquisition value.

###### 207.171-3 Policy.

DoD policy is to break out components of weapons systems or other major end items under certain circumstances.

(a) When it is anticipated that a prime contract will be awarded without adequate price competition, and the prime contractor is expected to acquire any component without adequate price competition, the agency shall break out that component if—

(1) Substantial net cost savings probably will be achieved; and

(2) Breakout action will not jeopardize the quality, reliability, performance, or timely delivery of the end item.

(b) Even when either or both the prime contract and the component will be acquired with adequate price competition, the agency shall consider breakout of the component if substantial net cost savings will result from—

(1) Greater quantity acquisitions; or

(2) Such factors as improved logistics support (through reduction in varieties of spare parts) and economies in operations and training (through standardization of design).

(c) Breakout normally is not justified for a component that is not expected to exceed $1 million for the current year's requirement.

###### 207.171-4 Procedures.

Agencies shall follow the procedures at PGI 207.171-4 for component breakout.

##### 207.172 Human research.

Any DoD component sponsoring research involving human subjects—

(a) Is responsible for oversight of compliance with 32 CFR Part 219, Protection of Human Subjects; and

(b) Must have a Human Research Protection Official, as defined in the clause at 252.235-7004 , Protection of Human Subjects, and identified in the DoD component’s Human Research Protection Management Plan. This official is responsible for the oversight and execution of the requirements of the clause at 252.235-7004 and shall be identified in acquisition planning.

#### SUBPART 207.3 —CONTRACTOR VERSUS GOVERNMENT PERFORMANCE

##### 207.302 Policy.

See PGI 207.302 for information on the Governmentwide moratorium and restrictions on public-private competitions conducted pursuant to Office of Management and Budget (OMB) Circular A-76.

#### SUBPART 207.4 —EQUIPMENT LEASE OR PURCHASE

##### 207.401 Acquisition considerations.

If the equipment will be leased for more than 60 days, the requiring activity must prepare and provide the contracting officer with the justification supporting the decision to lease or purchase.

##### 207.470 Statutory requirements.

(a) *Requirement for authorization of certain contracts relating to vessels, aircraft, and combat vehicles.* The contracting officer shall not enter into any contract for the lease or charter of any vessel, aircraft, or combat vehicle, or any contract for services that would require the use of the contractor’s vessel, aircraft, or combat vehicle, unless the Secretary of the military department concerned has satisfied the requirements of 10 U.S.C. 2401, when—

(1) The contract will be a long-term lease or charter as defined in 10 U.S.C. 2401(d)(1); or

(2) The terms of the contract provide for a substantial termination liability as defined in 10 U.S.C. 2401(d)(2). Also see PGI 207.470 .

(b) *Limitation on contracts with terms of 18 months or more.* As required by 10 U.S.C. 2401a, the contracting officer shall not enter into any contract for any vessel, aircraft, or vehicle, through a lease, charter, or similar agreement with a term of 18 months or more, or extend or renew any such contract for a term of 18 months or more, unless the head of the contracting activity has—

(1) Considered all costs of such a contract (including estimated termination liability); and

(2) Determined in writing that the contract is in the best interest of the Government.

(c) *Leasing of commercial vehicles and associated equipment*. Except as provided in paragraphs (a) and (b) of this section, the contracting officer may use leasing in the acquisition of commercial vehicles and associated equipment whenever the contracting officer determines that leasing of such vehicles is practicable and efficient (10 U.S.C. 2401a).

##### 207.471 Funding requirements.

(a) Fund leases in accordance with DoD Financial Management Regulation (FMR) 7000.14-R, Volume 2A, Chapter 1.

(b) DoD leases are either capital leases or operating leases. See FMR 7000.14-R, Volume 4, Chapter 6, Section 060206.

(c) Use procurement funds for capital leases, as these are essentially installment purchases of property.

#### SUBPART 207.5 —INHERENTLY GOVERNMENTAL FUNCTIONS

##### 207.500 Scope of subpart.

This subpart also implements 10 U.S.C. 2383.

##### 207.503 Policy.

(e) The written determination required by FAR 7.503(e), that none of the functions to be performed by contract are inherently governmental—

(i) Shall be prepared using DoD Instruction 1100.22, Guidance for Determining Workforce Mix; and

(ii) Shall include a determination that none of the functions to be performed are exempt from private sector performance, as addressed in DoD Instruction 1100.22.

(S-70) Contracts for acquisition functions.

(1) In accordance with 10 U.S.C. 2383, the head of an agency may enter into a contract for performance of the acquisition functions closely associated with inherently governmental functions that are listed at FAR 7.503(d) only if—

(i) The contracting officer determines that appropriate military or civilian DoD personnel—

(A) Cannot reasonably be made available to perform the functions;

(B) Will oversee contractor performance of the contract; and

(C) Will perform all inherently governmental functions associated with the functions to be performed under the contract; and

(ii) The contracting officer ensures that the agency addresses any potential organizational conflict of interest of the contractor in the performance of the functions under the contract (see FAR Subpart 9.5).

(2) See related information at PGI 207.503 (S-70).

#### SUBPART 207.70 —BUY-TO-BUDGET – ADDITIONAL QUANTITIES OF END ITEMS

##### 207.7001 Definition.

“End item,” as used in this subpart, means a production product assembled, completed, and ready for issue or deployment.

##### 207.7002 Authority to acquire additional quantities of end items.

10 U.S.C. 2308 authorizes DoD to use funds available for the acquisition of an end item to acquire a higher quantity of the end item than the quantity specified in a law providing for the funding of that acquisition, if the head of an agency determines that—

(a) The agency has an established requirement for the end item that is expected to remain substantially unchanged throughout the period of the acquisition;

(b) It is possible to acquire the higher quantity of the end item without additional funding because of production efficiencies or other cost reductions;

(c) The amount of funds used for the acquisition of the higher quantity of the end item will not exceed the amount provided under that law for the acquisition of the end item; and

(d) The amount provided under that law for the acquisition of the end item is sufficient to ensure that each unit of the end item acquired within the higher quantity is fully funded as a complete end item.

##### 207.7003 Limitation.

For noncompetitive acquisitions, the acquisition of additional quantities is limited to not more than 10 percent of the quantity approved in the justification and approval prepared in accordance with FAR Part 6 for the acquisition of the end item.

### PART 208 - REQUIRED SOURCES OF SUPPLIES AND SERVICES

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#### 208.002 Priorities for use of mandatory Government sources.

(a)(1) Supplies. (i) See the guidance at PGI 208.002(a)(1)(i) to obtain information on available items in DoD’s property inventories.

(v) See subpart 208.70, Coordinated Acquisition, and subpart 208.74, Enterprise Software Agreements.

#### SUBPART 208.4 —FEDERAL SUPPLY SCHEDULES

##### 208.404 Use of Federal Supply Schedules.

See DoD Class Deviation 2014-O0011- Determination of Fair and Reasonable Prices When Using Federal Supply Schedule Contracts, dated March 13, 2014. Effective immediately, contracting officers shall comply with the following policy, in lieu of FAR 8.404(d), Pricing, when using Federal Supply Schedules. This class deviation remains in effect until incorporated in the DFARS or otherwise rescinded.

(a)(i) If only one offer is received in response to an order exceeding the simplified acquisition threshold that is placed on a competitive basis, the procedures at 215.371 apply.

(ii) Departments and agencies shall comply with the review, approval, and reporting requirements established in accordance with subpart 217.7 when placing orders for supplies or services in amounts exceeding the simplified acquisitionthreshold.

(iii) When a schedule lists both foreign and domestic items that will meet the needs of the requiring activity, the ordering office must apply the procedures of part 225 and FAR part 25, Foreign Acquisition. When purchase of an item of foreign origin is specifically required, the requiring activity must furnish the ordering office sufficient information to permit the determinations required by part 225 and FAR part 25 to be made.

(iv) Use the provisions at 215.408 (3), respectively.

##### 208.405 Ordering procedures for Federal Supply Schedules.

(1) Include an evaluation factor regarding supply chain risk (see subpart 239.73) when acquiring information technology, whether as a service or as a supply, that is a covered system, is a part of a covered system, or is in support of a covered system, as defined in 239.7301 .

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

###### 208.405-6 Limiting sources.

For an order or blanket purchase agreement (BPA) exceeding the simplified acquisition threshold that is a follow-on to an order or BPA for the same supply or service previously issued based on a limiting sources justification citing the authority at FAR 8.405-6(a)(1)(i)(B) or (C), follow the procedures at PGI 208.405-6 .

##### 208.406 Ordering activity responsibilities.

###### 208.406-1 Order placement.

Follow the procedures at PGI 208.406-1 when ordering from schedules.

#### SUBPART 208.6 —ACQUISITION FROM FEDERAL PRISON INDUSTRIES, INC.

##### 208.602-70 Acquisition of items for which FPI has a significant market share.

(a) *Scope*. This subsection implements Section 827 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181).

(b) *Definition*. “Item for which FPI has a significant market share,” as used in this subsection, means an item for which FPI’s share of the DoD market for the federal supply class including that item is greater than 5 percent, as determined by DoD in consultation with the Office of Federal Procurement Policy. A list of the federal supply classes of items for which FPI has a significant market share is maintained at http://www.acq.osd.mil/dpap/cpic/cp/specific\_policy\_areas.html#federal\_prison.

(c) *Policy*.

(1) When acquiring an item for which FPI has a significant market share—

(i) Acquire the item using—

(A) Competitive procedures (e.g., the procedures in FAR 6.102, the set-aside procedures in FAR Subpart 19.5, or competition conducted in accordance with FAR Part 13); or

(B) The fair opportunity procedures in FAR 16.505, if placing an order under a multiple award delivery-order contract; and

(ii) Include FPI in the solicitation process, consider a timely offer from FPI, and make an award in accordance with the policy at FAR 8.602(a)(4)(ii) through (v).

(2) When acquiring an item for which FPI does not have a significant market share, acquire the item in accordance with the policy at FAR 8.602.

##### 208.606 Evaluating FPI performance.

See DoD Class Deviation 2013-O0018, Past Performance Evaluation Requirements, issued on September 24, 2013. This class deviation requires past performance reporting for contracts awarded under FAR 8.6, Acquisition from Federal Prison Industries, Inc., when the thresholds in this deviation are exceeded. This deviation is effective until incorporated in the DFARS or rescinded.

#### SUBPART 208.7 —ACQUISITION FROM NONPROFIT AGENCIES EMPLOYING PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

See DoD Class Deviation 2013-O0018, Past Performance Evaluation Thresholds and Reporting Requirements, issued on September 24, 2013. This class deviation requires past performance reporting for contracts awarded under FAR subpart 8.7, Acquisition from Nonprofit Agencies Employing People Who are Blind or Severely Handicapped, when the thresholds in this deviation are exceeded. This deviation is effective until incorporated in the DFARS or rescinded.

##### 208.705 Procedures.

Follow the procedures at PGI 208.705 when placing orders with central nonprofit agencies.

#### SUBPART 208.70 —COORDINATED ACQUISITION

##### 208.7000 Scope of subpart.

This subpart prescribes policy and procedures for acquisition of items for which contracting responsibility is assigned to one or more of the departments/agencies or the General Services Administration. Contracting responsibility is assigned through—

(a) The Coordinated Acquisition Program (commodity assignments are listed in PGI 208.7006 ); or

(b) The Integrated Materiel Management Program (assignments are in DoD 4140.26-M, Defense Integrated Materiel Management Manual for Consumable Items).

##### 208.7001 Definitions.

For purposes of this subpart—

“Acquiring department” means the department, agency, or General Services Administration which has contracting responsibility under the Coordinated Acquisition Program.

“Integrated materiel management” means assignment of acquisition management responsibility to one department, agency, or the General Service Administration for all of DoD's requirements for the assigned item. Acquisition management normally includes computing requirements, funding, budgeting, storing, issuing, cataloging, standardizing, and contracting functions.

“Requiring department” means the department or agency which has the requirement for an item.

##### 208.7002 Assignment authority.

(a) Under the DoD Coordinated Acquisition Program, contracting responsibility for certain commodities is assigned to a single department, agency, or the General Services Administration (GSA). Commodity assignments are made—

(1) To the departments and agencies, by the Deputy Under Secretary of Defense (Logistics);

(2) To GSA, through agreement with GSA, by the Deputy Under Secretary of Defense (Logistics);

(3) Outside the contiguous United States, by the Unified Commanders; and

(4) For acquisitions to be made in the contiguous United States for commodities not assigned under paragraphs (a)(1), (2), or (3) of this section, by agreement of agency heads (10 U.S.C. 2311).

(i) Agreement may be on either a one-time or a continuing basis. The submission of a military interdepartmental purchase request (MIPR) by a requiring activity and its acceptance by the contracting activity of another department, even though based on an oral communication, constitutes a one-time agreement.

(ii) Consider repetitive delegated acquisition responsibilities for coordinated acquisition assignment. If not considered suitable for coordinated acquisition assignment, formalize continuing agreements and distribute them to all activities concerned.

(b) Under the Integrated Materiel Management Program, assignments are made by the Deputy Under Secretary of Defense (Logistics)—

(1) To the departments and agencies; and

(2) To GSA, through agreement with GSA.

###### 208.7002-1 Acquiring department responsibilities.

See PGI 208.7002-1 for the acquiring department’s responsibilities.

###### 208.7002-2 Requiring department responsibilities.

See PGI 208.7002-2 for the requiring department’s responsibilities.

##### 208.7003 Applicability.

###### 208.7003-1 Assignments under integrated materiel management (IMM).

(a) Acquire all items assigned for IMM from the IMM manager except—

(1) Items purchased under circumstances of unusual and compelling urgency as defined in FAR 6.302-2. After such a purchase is made, the requiring activity must send one copy of the contract and a statement of the emergency to the IMM manager;

(2) Items for which the IMM manager assigns a supply system code for local purchase or otherwise grants authority to purchase locally; or

(3) When purchase by the requiring activity is in the best interest of the Government in terms of the combination of quality, timeliness, and cost that best meets the requirement. This exception does not apply to items—

(i) Critical to the safe operation of a weapon system;

(ii) With special security characteristics; or

(iii) Which are dangerous (e.g., explosives, munitions).

(b) Follow the procedures at PGI 208.7003-1 (b) when an item assigned for IMM is to be acquired by the requiring department in accordance with paragraph (a)(3) of this subsection.

###### 208.7003-2 Assignments under coordinated acquisition.

Requiring departments must submit to the acquiring department all contracting requirements for items assigned for coordinated acquisition, except—

(a) Items obtained through the sources in FAR 8.002(a)(1)(i) through (vii);

(b) Items obtained under 208.7003-1 (a);

(c) Requirements not in excess of the simplified acquisition threshold in FAR Part 2, when contracting by the requiring department is in the best interest of the Government;

(d) In an emergency. When an emergency purchase is made, the requiring department must send one copy of the contract and a statement of the emergency to the contracting activity of the acquiring department;

(e) Requirements for which the acquiring department's contracting activity delegates contracting authority to the requiring department;

(f) Items in a research and development stage (as described in FAR Part 35). Under this exception, the military departments may contract for research and development requirements, including quantities for testing purposes and items undergoing in-service evaluation (not yet in actual production, but beyond prototype). Generally, this exception applies only when research and development funds are used.

(g) Items peculiar to nuclear ordnance material where design characteristics or test-inspection requirements are controlled by the Department of Energy (DoE) or by DoD to ensure reliability of nuclear weapons.

(1) This exception applies to all items designed for and peculiar to nuclear ordnance regardless of agency control, or to any item which requires test or inspection conducted or controlled by DoE or DoD.

(2) This exception does not cover items used for both nuclear ordnance and other purposes if the items are not subject to the special testing procedures.

(h) Items to be acquired under FAR 6.302-6 (national security requires limitation of sources);

(i) Items to be acquired under FAR 6.302-1 (supplies available only from the original source for follow-on contract);

(j) Items directly related to a major system and which are design controlled by and acquired from either the system manufacturer or a manufacturer of a major subsystem;

(k) Items subject to rapid design changes, or to continuous redesign or modification during the production and/or operational use phases, which require continual contact between industry and the requiring department to ensure that the item meets the requirements:

(1) This exception permits the requiring department to contract for items of highly unstable design. For use of this exception, it must be clearly impractical, both technically and contractually, to refer the acquisition to the acquiring department. Anticipation that contracting by negotiation will be appropriate, or that a number of design changes may occur during contract performance is not in itself sufficient reason for using this exception.

(2) This exception also applies to items requiring compatibility testing, provided such testing requires continual contact between industry and the requiring department;

(l) Containers acquired only with items for which they are designed;

(m) One-time buy of a noncataloged item.

(1) This exception permits the requiring departments to contract for a nonrecurring requirement for a noncataloged item. This exception could cover a part or component for a prototype which may be stock numbered at a later date.

(2) This exception does not permit acquisitions of recurring requirements for an item, based solely on the fact that the item is not stock numbered, nor may it be used to acquire items which have only slightly different characteristics than previously cataloged items.

##### 208.7004 Procedures.

Follow the procedures at PGI 208.7004 for processing coordinated acquisition requirements.

##### 208.7005 Military interdepartmental purchase requests.

Follow the procedures at—

(a) PGI 253.208-1 when using DD Form 448, Military Interdepartmental Purchase Request; and

(b) PGI 253.208-2 when using DD Form 448-2, Acceptance of MIPR.

##### 208.7006 Coordinated acquisition assignments.

See PGI 208.7006 for coordinated acquisition assignments.

#### SUBPART 208.71 —ACQUISITION FOR NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (NASA)

##### 208.7100 Authorization.

NASA is authorized by Pub. L. 85-568 to use the acquisition services, personnel, equipment, and facilities of DoD departments and agencies with their consent, with or without reimbursement, and on a similar basis to cooperate with the departments/ agencies in the use of acquisition services, equipment, and facilities.

##### 208.7101 Policy.

Departments and agencies shall cooperate fully with NASA in making acquisition services, equipment, personnel, and facilities available on the basis of mutual agreement.

##### 208.7102 Procedures.

Follow the procedures at PGI 208.7102 when contracting or performing services for NASA.

#### SUBPART 208.72

#### SUBPART 208.73 —USE OF GOVERNMENT-OWNED PRECIOUS METALS

##### 208.7301 Definitions.

As used in this subpart—

“Defense Supply Center, Philadelphia (DSCP)” means the Defense Logistics Agency field activity located at 700 Robbins Avenue, Philadelphia, PA 19111-5096, which is the assigned commodity integrated material manager for refined precious metals and is responsible for the storage and issue of such material.

“Refined precious metal” means recovered silver, gold, platinum, palladium, iridium, rhodium, or ruthenium, in bullion, granulation or sponge form, which has been purified to at least .999 percentage of fineness.

##### 208.7302 Policy.

DoD policy is for maximum participation in the Precious Metals Recovery Program. DoD components shall furnish recovered precious metals contained in the DSCP inventory to production contractors rather than use contractor-furnished precious metals whenever the contracting officer determines it to be in the Government's best interest.

##### 208.7303 Procedures.

Follow the procedures at PGI 208.7303 for use of the Precious Metals Recovery Program.

##### 208.7304 Refined precious metals.

See PGI 208.7304 for a list of refined precious metals managed by DSCP.

##### 208.7305 Contract clause.

(a) Use the clause at 252.208-7000 , Intent to Furnish Precious Metals as Government-Furnished Material, in all solicitations and contracts except—

(1) When the contracting officer has determined that the required precious metals are not available from DSCP;

(2) When the contracting officer knows that the items being acquired do not require precious metals in their manufacture; or

(3) For acquisitions at or below the simplified acquisition threshold.

(b) To make the determination in paragraph (a)(1) of this section, the contracting officer shall consult with the end item inventory manager and comply with the procedures in Chapter 11, DoD 4160.21-M, Defense Materiel Disposition Manual.

#### SUBPART 208.74 —ENTERPRISE SOFTWARE AGREEMENTS

##### 208.7400 Scope of subpart.

This subpart prescribes policy and procedures for acquisition of commercial software and software maintenance, including software and software maintenance that is acquired—

(a) As part of a system or system upgrade, where practicable;

(b) Under a service contract;

(c) Under a contract or agreement administered by another agency (e.g., under an interagency agreement);

(d) Under a Federal Supply Schedule contract or blanket purchase agreement established in accordance with FAR 8.405; or

(e) By a contractor that is authorized to order from a Government supply source pursuant to FAR 51.101.

##### 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 services such as software maintenance.

“Enterprise Software Initiative” means an initiative led by the DoD Chief Information Officer to develop processes for DoD-wide software asset management.

“Software maintenance” means services normally provided by a software company as standard services at established catalog or market prices, e.g., the right to receive and use upgraded versions of software, updates, and revisions.

##### 208.7402 General.

(1) Departments and agencies shall fulfill requirements for commercial software and related services, such as software maintenance, in accordance with the DoD Enterprise Software Initiative (ESI) (see website at http://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 services. ESI does not dictate the products or services to be acquired.

(2) Include an evaluation factor regarding supply chain risk (see subpart 239.73) when acquiring information technology, whether as a service or as a supply, that is a covered system, is a part of a covered system, or is in support of a covered system, as defined in 239.7301 .

##### 208.7403 Acquisition procedures.

Follow the procedures at PGI 208.7403 when acquiring commercial software and related services.

### PART 209 - CONTRACTOR QUALIFICATIONS

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#### SUBPART 209.1 —RESPONSIBLE PROSPECTIVE CONTRACTORS

##### 209.101 Definitions.

“Entity controlled by a foreign government,” “foreign government,” and “proscribed information” are defined in the provision at 252.209-7002 , Disclosure of Ownership or Control by a Foreign Government.

##### 209.104 Standards.

###### 209.104-1 General standards.

(e) For cost-reimbursement or incentive type contracts, or contracts which provide for progress payments based on costs or on a percentage or stage of completion, the prospective contractor’s accounting system and related internal controls must provide reasonable assurance that—

(i) Applicable laws and regulations are complied with;

(ii) The accounting system and cost data are reliable;

(iii) Risk of misallocations and mischarges are minimized; and

(iv) Contract allocations and charges are consistent with invoice procedures.

(g)(i) *Ownership or control by the government of a country that is a state sponsor of terrorism*. (See 225.771 .)

(ii) *Ownership or control by a foreign government when access to proscribed information is required.*

(A) Under 10 U.S.C. 2536(a), no DoD contract under a national security program may be awarded to an entity controlled by a foreign government if that entity requires access to proscribed information to perform the contract.

(B) Whenever the contracting officer has a question about application of the provision at 252.209-7002 , the contracting officer may seek advice from the Security Directorate, Office of the Deputy Under Secretary of Defense, Human Intelligence, Counterintelligence, and Security.

(C) In accordance with 10 U.S.C. 2536(b)(1)(A), the Secretary of Defense may waive the prohibition in paragraph (g)(ii)(A) of this subsection upon determining that the waiver is essential to the national security interests of the United States. The Secretary has delegated authority to grant this waiver to the Undersecretary of Defense for Intelligence. Waiver requests, prepared by the requiring activity in coordination with the contracting officer, shall be processed through the Director of Defense Procurement and Acquisition Policy, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics), and shall include a proposed national interest determination. The proposed national interest determination, prepared by the requiring activity in coordination with the contracting officer, shall include:

*(1)* Identification of the proposed awardee, with a synopsis of its foreign ownership (include solicitation and other reference numbers to identify the action);

*(2)* General description of the acquisition and performance requirements;

*(3)* Identification of the national security interests involved and the ways in which award of the contract helps advance those interests;

*(4)* A statement as to availability of another entity with the capacity, capability and technical expertise to satisfy defense acquisition, technology base, or industrial base requirements; and

*(5)* A description of any alternate means available to satisfy the requirement, e.g., use of substitute products or technology or alternate approaches to accomplish the program objectives*.*

(D) In accordance with 10 U.S.C. 2536(b)(1)(B), the Secretary of Defense may, in the case of a contract awarded for environmental restoration, remediation, or waste management at a DoD facility, waive the prohibition in paragraph (g)(ii)(A) of this subsection upon¾

*(1)* Determining that¾

*(i)* The waiver will advance the environmental restoration, remediation, or waste management objectives of DoD and will not harm the national security interests of the United States; and

*(ii)* The entity to which the contract is awarded is controlled by a foreign government with which the Secretary is authorized to exchange Restricted Data under section 144 c. of the Atomic Energy Act of 1954 (42 U.S.C. 2164(c)); and

*(2)* Notifying Congress of the decision to grant the waiver. The contract may be awarded only after the end of the 45-day period beginning on the date the notification is received by the appropriate Congressional committees.

###### 209.104-4 Subcontractor responsibility.

Generally, the Canadian Commercial Corporation's (CCC) proposal of a firm as its subcontractor is sufficient basis for an affirmative determination of responsibility. However, when the CCC determination of responsibility is not consistent with other information available to the contracting officer, the contracting officer shall request from CCC and any other sources whatever additional information is necessary to make the responsibility determination.

###### 209.104-70 Solicitation provision.

Use the provision at 252.209-7002 , Disclosure of Ownership or Control by a Foreign Government, in all solicitations, including those subject to the procedures in FAR part 13, when access to proscribed information is necessary for contract performance. If the solicitation includes the provision at FAR 52.204-7, do not separately list the provision 252.209-7002 in the solicitation.

##### 209.105 Procedures.

###### 209.105-1 Obtaining information.

(1) For guidance on using the Exclusion section of the System for Award Management, see PGI 209.105-1 .

(2) A satisfactory performance record is a factor in determining contractor responsibility (see FAR 9.104-1(c)). One source of information relating to contractor performance is Contractor Performance Assessment Reporting System (CPARS), available at https://ww.cpars.gov/. Information relating to contract terminations for cause and for default is also available through the Federal Awardee Performance and Integrity Information System (FAPIIS) module of CPARS, available at https://www.fapiis.gov. (see subpart 42.15). This termination information is just one consideration in determining contractor responsibility.

###### 209.105-2 Determinations and documentation.

(a) The contracting officer shall submit a copy of a determination of nonresponsibility to the appropriate debarring and suspending official listed in 209.403 .

209.105-2-70 Inclusion of determination of contractor fault in Federal Awardee Performance and Integrity Information System (FAPIIS).

If the contractor or a subcontractor at any tier is not subject to the jurisdiction of the U.S. courts and the DoD appointing official that requested a DoD investigation makes a final determination that a contractor’s or subcontractor’s gross negligence or reckless disregard for the safety of civilian or military personnel of the Government caused serious bodily injury or death of such personnel, the contracting officer shall enter in FAPIIS the appropriate information regarding such determination within three days of receiving notice of the determination, pursuant to section 834 of the National Defense Authorization Act for Fiscal Year 2011 (Public Law 111-383). Information posted in FAPIIS regarding such determinations will be publicly available.

##### 209.106 Preaward surveys.

When requesting a preaward survey, follow the procedures at PGI 209.106 .

See DoD Class Deviation 2012-O0004, Prohibition Against Contracting with Corporations That Have an Unpaid Delinquent Tax Liability or a Felony Conviction under Federal Law, issued January 23, 2012. This deviation is effective until incorporated in the FAR or otherwise rescinded.

See DoD Class Deviation 2012-O0007, Prohibition Against Contracting with Corporations that have a Felony Conviction under Federal or State Law, issued March 9, 2012. This deviation is effective for contract actions issued using DoD funds appropriated by the Consolidated Appropriations Act, 2012 (Pub. L. 112-74).

See DoD Class Deviation 2013-O0006, Prohibition Against Using Fiscal Year 2013 Funds to Contract with Corporations that have an Unpaid Delinquent Tax Liability or a Felony Conviction under Federal Law, issued January 22, 2013. This deviation is effective for contract actions issued using DoD funds appropriated by the Continuing Appropriations Resolution, 2013 (Pub. L. 112-175).

See DoD Class Deviation 2013-O0010, Prohibition Against Using Fiscal Year 2013 Funds to Contract with Corporations that have an Unpaid Delinquent Tax Liability or a Felony Conviction under Federal Law, issued April 8, 2013. This deviation is effective for contract actions issued using DoD funds appropriated by the Consolidated and Further Continuing Appropriations Act, 2013 (Public Law 113-6).

See DoD Class Deviation 2014-O0004, Prohibition Against Using FY 2014 Funds to Contract with Corporations that Have an Unpaid Delinquent Tax Liability or a Felony Conviction under Federal Law, issued February 21, 2014. This deviation is effective for contract actions issued using DoD funds appropriated by the Continuing Appropriations Act, 2014 (Pub. L. 113-46).

See DoD Class Deviation 2014-O0009, Prohibition Against Using FY 2014 Funds to Contract with Corporations that Have an Unpaid Delinquent Tax Liability or a Felony Conviction under Federal Law, issued February 21, 2014. This deviation is effective for contract actions issued using DoD funds appropriated by the Department of Defense Appropriations Act, 2014, and the Military Construction and Veterans Affairs, and Related Agencies Appropriations Act, 2014 (Pub. L. 113-76, Divisions C and J, enacted January 17, 2014).

#### SUBPART 209.2 —QUALIFICATIONS REQUIREMENTS

##### 209.202 Policy.

(a)(1) Except for aviation or ship critical safety items, obtain approval in accordance with PGI 209.202 (a)(1) when establishing qualification requirements. See 209.270 for approval of qualification requirements for aviation or ship critical safety items.

##### 209.270 Aviation and ship critical safety items.

###### 209.270-1 Scope.

This section—

(a) Implements—

(1) Section 802 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136); and

(2) Section 130 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364); and

(b) Prescribes policy and procedures for qualification requirements in the procurement of aviation and ship critical safety items and the modification, repair, and overhaul of those items.

###### 209.270-2 Definitions.

As used in this section—

“Aviation critical safety item” means a part, an assembly, installation equipment, launch equipment, recovery equipment, or support equipment for an aircraft or aviation weapon system if the part, assembly, or equipment contains a characteristic any failure, malfunction, or absence of which could cause—

(1) A catastrophic or critical failure resulting in the loss of or serious damage to the aircraft or weapon system;

(2) An unacceptable risk of personal injury or loss of life; or

(3) An uncommanded engine shutdown that jeopardizes safety.

“Design control activity”—

(1) With respect to an aviation critical safety item, means the systems command of a military department that is specifically responsible for ensuring the air worthiness of an aviation system or equipment in which an aviation critical safety item is to be used; and

(2) With respect to a ship critical safety item, means the systems command of a military department that is specifically responsible for ensuring the seaworthiness of a ship or ship equipment in which a ship critical safety item is to be used.

“Ship critical safety item” means any ship part, assembly, or support equipment containing a characteristic the failure, malfunction, or absence of which could cause—

(1) A catastrophic or critical failure resulting in loss of or serious damage to the ship; or

(2) An unacceptable risk of personal injury or loss of life.

###### 209.270-3 Policy.

(a) The head of the contracting activity responsible for procuring an aviation or ship critical safety item may enter into a contract for the procurement, modification, repair, or overhaul of such an item only with a source approved by the head of the design control activity.

(b) The approval authorities specified in this section apply instead of those otherwise specified in FAR 9.202(a)(1), 9.202(c), or 9.206-1(c), for the procurement, modification, repair, and overhaul of aviation or ship critical safety items.

###### 209.270-4 Procedures.

(a) The head of the design control activity shall—

(1) Identify items that meet the criteria for designation as aviation or ship critical safety items. See additional information at PGI 209.270-4 ;

(2) Approve qualification requirements in accordance with procedures established by the design control activity; and

(3) Qualify and identify aviation and ship critical safety item suppliers and products.

(b) The contracting officer shall—

(1) Ensure that the head of the design control activity has determined that a prospective contractor or its product meets or can meet the established qualification standards before the date specified for award of the contract;

(2) Refer any offers received from an unapproved source to the head of the design control activity for approval. The head of the design control activity will determine whether the offeror or its product meets or can meet the established qualification standards before the date specified for award of the contract; and

(3) Refer any requests for qualification to the design control activity.

(c) See 246.407 (S-70) and 246.504 for quality assurance requirements.

###### 209.270-5 Contract clause.

The contracting officer shall insert the clause at 252.209-7010 , Critical Safety Items, in solicitations and contracts when the acquisition includes one or more items designated by the design control activity as critical safety items.

#### SUBPART 209.3

#### SUBPART 209.4 —DEBARMENT, SUSPENSION, AND INELIGIBILITY

##### 209.402 Policy.

(d) The suspension and debarment procedures in Appendix H are to be followed by all debarring and suspending officials.

(e) The department or agency shall provide a copy of Appendix H, Debarment and Suspension Procedures, to contractors at the time of their suspension or when they are proposed for debarment, and upon request to other interested parties.

##### 209.403 Definitions.

“Debarring and suspending official.”

(1) For DoD, the designees are—

Army—Director, Soldier & Family Legal Services

Navy/Marine Corps—The Assistant General Counsel (Acquisition Integrity)

Air Force—Deputy General Counsel (Contractor Responsibility)

Defense Advanced Research Projects Agency—The Director

Defense Information Systems Agency—The General Counsel

Defense Logistics Agency—The Special Assistant for Contracting Integrity

Defense Intelligence Agency—The Senior Procurement Executive

National Geospatial Intelligence Agency—The General Counsel

Defense Threat Reduction Agency—The Director

National Security Agency—The Senior Acquisition Executive

Missile Defense Agency—The General Counsel

United States Cyber Command—The Staff Judge Advocate

Defense Health Agency—The General Counsel

Overseas installations—as designated by the agency head

(2) Overseas debarring and suspending officials—

(i) Are authorized to debar or suspend contractors located within the official's geographic area of responsibility under any delegation of authority they receive from their agency head.

(ii) Debar or suspend in accordance with the procedures in FAR Subpart 9.4 or under modified procedures approved by the agency head based on consideration of the laws or customs of the foreign countries concerned.

(iii) In addition to the bases for debarment in FAR 9.406-2, may consider the following additional bases—

(A) The foreign country concerned determines that a contractor has engaged in bid-rigging, price-fixing, or other anti-competitive behavior; or

(B) The foreign country concerned declares the contractor to be formally debarred, suspended, or otherwise ineligible to contract with that foreign government or its instrumentalities.

(3) The Defense Logistics Agency Special Assistant for Contracting Integrity is the exclusive representative of the Secretary of Defense to suspend and debar contractors from the purchase of Federal personal property under the Federal Property Management Regulations (41 CFR 101-45.6) and the Defense Materiel Disposition Manual (DoD 4160.21-M).

##### 209.405 Effect of listing.

(a) Under 10 U.S.C. 2393(b), when a department or agency determines that a compelling reason exists for it to conduct business with a contractor that is debarred or suspended from procurement programs, it must provide written notice of thedetermination to the General Services Administration (GSA), GSA Suspension and Debarment Official, Office of Acquisition Policy, 1275 First Street, N.E., Washington, DC 20417. Examples of compelling reasons are—

(i) Only a debarred or suspended contractor can provide the supplies or services;

(ii) Urgency requires contracting with a debarred or suspended contractor;

(iii) The contractor and a department or agency have an agreement covering the same events that resulted in the debarment or suspension and the agreement includes the department or agency decision not to debar or suspend the contractor; or

(iv) The national defense requires continued business dealings with the debarred or suspended contractor.

(b)(i) The Procurement Cause and Treatment Code "H" annotation in the Exclusions section of the System for Award Management (SAM Exclusions) identifies contractor facilities where no part of a contract or subcontract may beperformed because of a violation of the Clean Air Act (42 U.S.C. 7606) or the Clean Water Act (33 U.S.C. 1368).

(ii) Under the authority of Section 8 of Executive Order 11738, the agency head may grant an exemption permitting award to a contractor using a Code "H" ineligible facility if the agency head determines that such an exemption is in the paramount interest of the United States.

(A) The agency head may delegate this exemption authority to a level no lower than a general or flag officer or a member of the Senior Executive Service.

(B) The official granting the exemption—

*(1)* Shall promptly notify the Environmental Protection Agency suspending and debarring official of the exemption and the corresponding justification; and

*(2)* May grant a class exemption only after consulting with the Environmental Protection Agency suspending and debarring official.

(C) Exemptions shall be for a period not to exceed one year. The continuing necessity for each exemption shall be reviewed annually and, upon the making of a new determination, may be extended for periods not to exceed one year.

(D) All exemptions must be reported annually to the Environmental Protection Agency suspending and debarring official.

(E) See PGI 209.405 for additional procedures and information.

###### 209.405-2 Restrictions on subcontracting.

(a) The contracting officer shall not consent to any subcontract with a firm, or asubsidiary of a firm, that is identified by the Secretary of Defense in SAM Exclusions as being owned or controlled by the government of a country that is a state sponsor of terrorism unless the agency head states in writing the compelling reasons for the subcontract. (See also 225.771 .)

##### 209.406 Debarment.

###### 209.406-1 General.

(a)(i) When the debarring official decides that debarment is not necessary, the official may require the contractor to enter into a written agreement which includes—

(A) A requirement for the contractor to establish, if not already established, and to maintain the standards of conduct and internal control systems prescribed by FAR subpart 3.10; and

(B) Other requirements the debarring official considers appropriate.

(ii) Before the debarring official decides not to suspend or debar in the case of an indictment or conviction for a felony, the debarring official must determine that the contractor has addressed adequately the circumstances that gave rise to the misconduct, and that appropriate standards of ethics and integrity are in place and are working.

###### 209.406-2 Causes for debarment.

(1) Any person shall be considered for debarment if criminally convicted of intentionally affixing a label bearing a “Made in America” inscription to any product sold in or shipped to the United States or its outlying areas that was not made in the United States or its outlying areas (10 U.S.C. 2410f).

(i) The debarring official will make a determination concerning debarment not later than 90 days after determining that a person has been so convicted.

(ii) In cases where the debarring official decides not to debar, the debarring official will report that decision to the Director of Defense Procurement and Acquisition Policy, who will notify Congress within 30 days after the decision is made.

(2) Any contractor that knowingly provides compensation to a former DoD official in violation of section 847 of the National Defense Authorization Act for Fiscal Year 2008 may face suspension and debarment proceedings in accordance with 41 U.S.C. 2105(c)(1)(C).

###### 209.406-3 Procedures.

Refer all matters appropriate for consideration by an agency debarring and suspending official as soon as practicable to the appropriate debarring and suspending official identified in 209.403 . Any person may refer a matter to the debarring and suspending official. Follow the procedures at PGI 209.406-3 .

##### 209.407 Suspension.

###### 209.407-3 Procedures.

Refer all matters appropriate for consideration by an agency debarring and suspending official as soon as practicable to the appropriate debarring and suspending official identified in 209.403 . Any person may refer a matter to the debarring and suspending official. Follow the procedures at PGI 209.407-3 .

##### 209.409 Solicitation provision and contract clause.

Use the clause at 252.209-7004 , Subcontracting with Firms that are Owned or Controlled by the Government of a Country that is a State Sponsor of Terrorism, in solicitations and contracts with a value of $150,000 or more.

##### 209.470 Reserve Officer Training Corps and military recruiting on campus.

###### 209.470-1 Definition.

"Institution of higher education," as used in this section, means an institution that meets the requirements of 20 U.S.C. 1001 and includes all subelements of such an institution.

###### 209.470-2 Policy.

(a) Except as provided in paragraph (b) of this subsection, 10 U.S.C. 983 prohibits DoD from providing funds by contract or grant to an institution of higher education if the Secretary of Defense determines that the institution has a policy or practice that prohibits or in effect prevents—

(1) The Secretary of a military department from maintaining, establishing, or operating a unit of the Senior Reserve Officer Training Corps (ROTC) at that institution;

(2) A student at that institution from enrolling in a unit of the Senior ROTC at another institution of higher education;

(3) The Secretary of a military department or the Secretary of Transportation from gaining entry to campuses, or access to students on campuses, for purposes of military recruiting; or

(4) Military recruiters from accessing certain information pertaining to students enrolled at that institution.

(b) The prohibition in paragraph (a) of this subsection does not apply to an institution of higher education if the Secretary of Defense determines that—

(1) The institution has ceased the policy or practice described in paragraph (a) of this subsection; or

(2) The institution has a long-standing policy of pacifism based on historical religious affiliation.

###### 209.470-3 Procedures.

If the Secretary of Defense determines that an institution of higher education is ineligible to receive DoD funds because of a policy or practice described in 209.470-2 (a)—

(a) The Secretary of Defense will list the institution on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs published by the General Services Administration (also see FAR 9.404 and 32 CFR Part 216); and

(b) DoD components—

(1) Shall not solicit offers from, award contracts to, or consent to subcontracts with the institution;

(2) Shall make no further payments under existing contracts with the institution; and

(3) Shall terminate existing contracts with the institution.

###### 209.470-4 Solicitation provision and contract clause.

(a) Use the provision at 252.209-7003 , Reserve Officer Training Corps and Military Recruiting on Campus—Representation, in all solicitations with institutions of higher education. If the solicitation includes the provision at FAR 52.204-7, do not separately list the provision 252.209-7003 in the solicitation.

(b) Use the clause at 252.209-7005 , Reserve Officer Training Corps and Military Recruiting on Campus, in all solicitations and contracts with institutions of higher education.

##### 209.471 Congressional Medal of Honor.

In accordance with Section 8118 of Pub. L. 105-262, do not award a contract to, extend a contract with, or approve the award of a subcontract to any entity that, within the preceding 15 years, has been convicted under 18 U.S.C. 704 of the unlawful manufacture or sale of the Congressional Medal of Honor. Any entity so convicted will be listed as ineligible on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs published by the General Services Administration.

#### SUBPART 209.5 —ORGANIZATIONAL AND CONSULTANT CONFLICTS OF INTEREST

##### 209.505 General rules.

###### 209.505-4 Obtaining access to proprietary information.

(b)(i) For contractors, other than litigation support contractors, accessing third party proprietary technical data or computer Software, non-disclosure requirements are addressed at 204.7403 (a). Pursuant to the clause, litigation support contractors are not required to enter into non-disclosure agreements directly with any third party asserting restrictions on any litigation information.

##### 209.570 Limitations on contractors acting as lead system integrators.

###### 209.570-1 Definitions.

“Lead system integrator,” as used in this section, is defined in the clause at 252.209-7007 , Prohibited Financial Interests for Lead System Integrators. See PGI 209.570-1 for additional information.

###### 209.570-2 Policy.

(a) Except as provided in paragraph (b) of this subsection, 10 U.S.C. 2410p prohibits any entity performing lead system integrator functions in the acquisition of a major system by DoD from having any direct financial interest in the development or construction of any individual system or element of any system of systems.

(b) The prohibition in paragraph (a) of this subsection does not apply if—

(1) The Secretary of Defense certifies to the Committees on Armed Services of the Senate and the House of Representatives that—

(i) The entity was selected by DoD as a contractor to develop or construct the system or element concerned through the use of competitive procedures; and

(ii) DoD took appropriate steps to prevent any organizational conflict of interest in the selection process; or

(2) The entity was selected by a subcontractor to serve as a lower-tier subcontractor, through a process over which the entity exercised no control.

(c) In accordance with Section 802 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181), DoD may award a new contract for lead system integrator functions in the acquisition of a major system only if—

(1) The major system has not yet proceeded beyond low-rate initial production; or

(2) The Secretary of Defense determines in writing that it would not be practicable to carry out the acquisition without continuing to use a contractor to perform lead system integrator functions and that doing so is in the best interest of DoD. The authority to make this determination may not be delegated below the level of the Under Secretary of Defense for Acquisition, Technology, and Logistics. (Also see 209.570-3 (b).)

(d) Effective October 1, 2010, DoD is prohibited from awarding a new contract for lead system integrator functions in the acquisition of a major system to any entity that was not performing lead system integrator functions in the acquisition of the major system prior to January 28, 2008.

###### 209.570-3 Procedures.

(a) In making a responsibility determination before awarding a contract for the acquisition of a major system, the contracting officer shall—

(1) Determine whether the prospective contractor meets the definition of “lead system integrator”;

(2) Consider all information regarding the prospective contractor’s direct financial interests in view of the prohibition at 209.570-2 (a); and

(3) Follow the procedures at PGI 209.570-3 .

(b) A determination to use a contractor to perform lead system integrator functions in accordance with 209.570-2 (c)(2)—

(1) Shall specify the reasons why it would not be practicable to carry out the acquisition without continuing to use a contractor to perform lead system integrator functions, including a discussion of alternatives, such as use of the DoD workforce or a system engineering and technical assistance contractor;

(2) Shall include a plan for phasing out the use of contracted lead system integrator functions over the shortest period of time consistent with the interest of the national defense; and

(3) Shall be provided to the Committees on Armed Services of the Senate and the House of Representatives at least 45 days before the award of a contract pursuant to the determination.

###### 209.570-4 Solicitation provision and contract clause.

(a) Use the provision at 252.209-7006 , Limitations on Contractors Acting as Lead System Integrators, in solicitations for the acquisition of a major system when the acquisition strategy envisions the use of a lead system integrator.

(b) Use the clause at 252.209-7007 , Prohibited Financial Interests for Lead System Integrators—

(1) In solicitations that include the provision at 252.209-7006 ; and

(2) In contracts when the contractor will fill the role of a lead system integrator for the acquisition of a major system.

##### 209.571 Organizational conflicts of interest in major defense acquisition programs.

###### 209.571-0 Scope of subpart.

This subpart implements section 207 of the Weapons System Acquisition Reform Act of 2009 (Pub. L. 111-23).

###### 209.571-1 Definitions.

As used in this section—

“Lead system integrator” includes “lead system integrator with system responsibility” and “lead system integrator without system responsibility”.

(i) “Lead system integrator with system responsibility” means a prime contractor for the development or production of a major system, if the prime contractor is not expected at the time of award to perform a substantial portion of the work on the system and the major subsystems.

(ii) “Lead system integrator without system responsibility” means a prime contractor under a contract for the procurement of services, the primary purpose of which is to perform acquisition functions closely associated with inherently governmental functions (see section 7.503(d) of the Federal Acquisition Regulation) with respect to the development or production of a major system.

“Major subcontractor” means a subcontractor that is awarded a subcontract that equals or exceeds—

(i) Both the certified cost or pricing data threshold and 10 percent of the value of the contract under which the subcontract is awarded; or

(ii) $55 million.

“Pre-Major Defense Acquisition Program” means a program that is in the Materiel Solution Analysis or Technology Development Phases preceding Milestone B of the Defense Acquisition System and has been identified to have the potential to become a major defense acquisition program.

“Systems engineering and technical assistance.”

(1) “Systems engineering” means an interdisciplinary technical effort to evolve and verify an integrated and total life cycle balanced set of system, people, and process solutions that satisfy customer needs.

(2) “Technical assistance” means the acquisition support, program management support, analyses, and other activities involved in the management and execution of an acquisition program.

(3) “Systems engineering and technical assistance”—

(i) Means a combination of activities related to the development of technical information to support various acquisition processes. Examples of systems engineering and technical assistance activities include, but are not limited to, supporting acquisition efforts such as—

(A) Deriving requirements;

**(B) Performing technology assessments**;

(C) Developing acquisition strategies;

(D) Conducting r**isk assessments;**

(E) Developing cost estimates;

(F) Determining specifications;

(G) Evaluating contractor performance and conducting independent verification and validation;

(H) Directing other contractors’ (other than subcontractors) operations;

(I) Developing test requirements and evaluating test data;

(J) Developing work statements (but see paragraph (ii)(B) of this definition).

(ii) Does not include—

(A) Design and development work of design and development contractors, in accordance with FAR 9.505-2(a)(3) or FAR 9.505-2(b)(3), and the guidance at PGI 209.571-7 ; or

(B) Preparation of work statements by contractors, acting as industry representatives, under the supervision and control of Government representatives, in accordance with FAR 9.505-2(b)(1)(ii).

###### 209.571-2 Applicability.

(a) This subsection applies to major defense acquisition programs.

(b) To the extent that this section is inconsistent with FAR subpart 9.5, this section takes precedence.

###### 209.571-3 Policy.

It is DoD policy that—

(a) Agencies shall obtain advice on major defense acquisition programs and pre-major defense acquisition programs from sources that are objective and unbiased; and

(b) Contracting officers generally should seek to resolve organizational conflicts of interest in a manner that will promote competition and preserve DoD access to the expertise and experience of qualified contractors. Accordingly, contracting officers should, to the extent feasible, employ organizational conflict of interest resolution strategies that do not unnecessarily restrict the pool of potential offerors in current or future acquisitions. Further, contracting activities shall not impose per se restrictions or limitations on the use of particular resolution methods, except as may be required under 209.571-7 or as may be appropriate in particular acquisitions.

###### 209.571-4 Mitigation*.*

(a) Mitigation is any action taken to minimize an organizational conflict of interest. Mitigation may require Government action, contractor action, or a combination of both.

(b) If the contracting officer and the contractor have agreed to mitigation of an organizational conflict of interest, a Government-approved Organizational Conflict of Interest Mitigation Plan, reflecting the actions a contractor has agreed to take to mitigate a conflict, shall be incorporated into the contract.

(c) If the contracting officer determines, after consultation with agency legal counsel, that the otherwise successful offeror is unable to effectively mitigate an organizational conflict of interest, then the contracting officer, taking into account both the instant contract and longer term Government needs, shall use another approach to resolve the organizational conflict of interest, select another offeror, or request a waiver in accordance with FAR 9.503 (but see statutory prohibition in 209.571-7 , which cannot be waived).

(d) For any acquisition that exceeds $1 billion, the contracting officer shall brief the senior procurement executive before determining that an offeror’s mitigation plan is unacceptable.

###### 209.571-5 Lead system integrators.

For limitations on contractors acting as lead systems integrators, see 209.570 .

###### 209.571-6 Identification of organizational conflicts of interest.

When evaluating organizational conflicts of interest for major defense acquisition programs or pre-major defense acquisition programs, contracting officers shall consider—

(a) The ownership of business units performing systems engineering and technical assistance, professional services, or management support services to a major defense acquisition program or a pre-major defense acquisition program by a contractor who simultaneously owns a business unit competing (or potentially competing) to perform as—

(1) The prime contractor for the same major defense acquisition program; or

(2) The supplier of a major subsystem or component for the same major defense acquisition program.

(b) The proposed award of a major subsystem by a prime contractor to business units or other affiliates of the same parent corporate entity, particularly the award of a subcontract for software integration or the development of a proprietary software system architecture; and

(c) The performance by, or assistance of, contractors in technical evaluation.

###### 209.571-7 Systems engineering and technical assistance contracts.

(a) Agencies shall obtain advice on systems architecture and systems engineering matters with respect to major defense acquisition programs or pre-major defense acquisition programs from Federally Funded Research and Development Centers or other sources independent of the major defense acquisition program contractor.

(b) *Limitation on Future Contracting.*

(1) Except as provided in paragraph (c) of this subsection, a contract for the performance of systems engineering and technical assistance for a major defense acquisition program or a pre-major defense acquisition program shall prohibit the contractor or any affiliate of the contractor from participating as a contractor or major subcontractor in the development or production of a weapon system under such program.

(2) The requirement in paragraph (b)(1) of this subsection cannot be waived.

(c) *Exception.*

(1) The requirement in paragraph (b)(1) of this subsection does not apply if the head of the contracting activity determines that—

(i) An exception is necessary because DoD needs the domain experience and expertise of the highly qualified, apparently successful offeror; and

(ii) Based on the agreed-to resolution strategy, the apparently successful offeror will be able to provide objective and unbiased advice, as required by 209.571-3 (a), without a limitation on future participation in development and production.

(2) The authority to make this determination cannot be delegated.

###### 209.571-8 Solicitation provision and contract clause.

(a) Use the provision at 252.209-7008 , Notice of Prohibition Relating to Organizational Conflict of Interest—Major Defense Acquisition Program, if the solicitation includes the clause at 252.209-7009 , Organizational Conflict of Interest—Major Defense Acquisition Program; and

(b) Use the clause at 252.209-7009 , Organizational Conflict of Interest—Major Defense Acquisition Program, in solicitations and contracts for systems engineering and technical assistance for major defense acquisition programs or pre-major defense acquisition programs.

NO DFARS TEXT

### PART 210 - MARKET RESEARCH

* 210.001 Policy.
* 210.002 Procedures.

#### 210.001 Policy.

(a) In addition to the requirements of FAR 10.001(a)—

(i)(A) Agencies shall conduct market research appropriate to the circumstances before issuing a solicitation with tiered evaluation of offers (section 816 of Pub. L. 109-163); and

(B) Use the results of market research to determine whether the criteria in FAR part 19 are met for setting aside the acquisition for small business or, for a task or delivery order, whether there are a sufficient number of qualified small business concerns available to justify limiting competition under the terms of the contract. If the contracting officer cannot determine whether the criteria are met, the contracting officer shall include a written explanation in the contract file as to why such a determination could not be made (section 816 of Pub. L. 109-163).

(ii) Contracting officers shall use market research, where appropriate, to inform price reasonableness determinations (see 212.209 and 234.7002).

(c)(2) In addition to the notification requirements at FAR 10.001(c)(2)(i) and (ii), see 205.205-70 for the bundling notification publication requirement.

#### 210.002 Procedures.

(e)(i) When contracting for services, see PGI 210.070 , for the “Market Research Report Guide for Improving the Tradecraft in Services Acquisition”.

(ii) See PGI 210.002 (e)(ii) regarding potential offerors that express an interest in an acquisition.

(iii) Follow the procedures at PGI 210.002 (e)(iii) regarding contract file documentation.

### PART 211 - DESCRIBING AGENCY NEEDS

* 211.002 Policy
* SUBPART 211.1 —SELECTING AND DEVELOPING REQUIREMENTS DOCUMENTS
  + 211.104 Use of brand name or equal purchase descriptions.
  + 211.105 Items peculiar to one manufacturer.
  + 211.106 Purchase descriptions for service contracts.
  + 211.107 Solicitation provision.
  + 211.170 Use of proprietary specifications or standards.
* SUBPART 211.2 —USING AND MAINTAINING REQUIREMENTS DOCUMENTS
  + 211.201 Identification and availability of specifications.
  + 211.204 Solicitation provisions and contract clauses.
  + 211.270 Reserved.
  + 211.271 Elimination of use of class I ozone-depleting substances.
  + 211.272 Alternate preservation, packaging, and packing.
  + 211.273 Substitutions for military or Federal specifications and standards.
    - 211.273-1 Definition.
    - 211.273-2 Policy.
    - 211.273-3 Procedures.
    - 211.273-4 Contract clause.
  + 211.274 Item identification and valuation requirements.
    - 211.274-1 General.
    - 211.274-2 Policy for item unique identification.
    - 211.274-3 Policy for valuation.
    - 211.274-4 Policy for reporting of Government-furnished property.
    - 211.274-5 Policy for assignment of Government-assigned serial numbers.
    - 211.274-6 Contract clauses.
  + 211.275 Passive radio frequency identification.
    - 211.275-1 Definitions.
    - 211.275-2 Policy.
    - 211.275-3 Contract clause.
* SUBPART 211.5 —-LIQUIDATED DAMAGES
  + 211.500 Scope.
  + 211.503 Contract clauses.
* SUBPART 211.6 —PRIORITIES AND ALLOCATIONS
  + 211.602 General.
* SUBPART 211.70 —PURCHASE REQUESTS
  + 211.7001 Procedures.

#### 211.002 Policy

All defense technology and acquisition programs in DoD are subject to the policies and procedures in DoDD 5000.01, The Defense Acquisition System, and DoDI 5000.02, Operation of the Defense Acquisition System.

#### 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 213.501 (a)(ii) for justification requirement).

##### 211.105 Items peculiar to one manufacturer.

Follow the publication requirements at PGI 211.105 .

##### 211.106 Purchase descriptions for service contracts.

Agencies shall require that purchase descriptions for service contracts and resulting requirements documents, such as statements of work or performance work statements, include language to provide a clear distinction between Government employees and contractor employees. Agencies shall be guided by the characteristics and descriptive elements of personal-services contracts at FAR 37.104. Service contracts shall require contractor employees to identify themselves as contractor personnel by introducing themselves or being introduced as contractor personnel and displaying distinguishing badges or other visible identification for meetings with Government personnel. In addition, contracts shall require contractor personnel to appropriately identify themselves as contractor employees in telephone conversations and in formal and informal written correspondence.

##### 211.107 Solicitation provision.

(b) To comply with section 875(c) of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114-328), use the provision at FAR 52.211-7, Alternatives to Government-Unique Standards, in DoD solicitations that include military or Government-unique specifications and standards.

##### 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 213.501 (a)(ii) for justification requirements).

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

##### 211.201 Identification and availability of specifications.

Follow the procedures at PGI 211.201 for obtaining specifications, standards, and data item descriptions from the ASSIST database, including DoD adoption notices on voluntary consensus standards.

##### 211.204 Solicitation provisions and contract clauses.

(c) When contract performance requires use of specifications, standards, and data item descriptions that are not listed in the Acquisition Streamlining and Standardization Information System database, use a provision, as appropriate, substantially the same as 252.211-7002 , Availability for Examination of Specifications,

Standards, Plans, Drawings, Data Item Descriptions, and Other Pertinent Documents.

##### 211.270 Reserved.

##### 211.271 Elimination of use of class I ozone-depleting substances.

See Subpart 223.8 for restrictions on contracting for ozone-depleting substances.

##### 211.272 Alternate preservation, packaging, and packing.

Use the provision at 252.211-7004 , Alternate Preservation, Packaging, and Packing, in solicitations which include military preservation, packaging, or packing specifications when it is feasible to evaluate and award using commercial or industrial preservation, packaging, or packing.

##### 211.273 Substitutions for military or Federal specifications and standards.

###### 211.273-1 Definition.

“SPI process,” as used in this section, is defined in the clause at 252.211-7005 , Substitutions for Military or Federal Specifications and Standards.

###### 211.273-2 Policy.

(a) Under the Single Process Initiative (SPI), DoD accepts SPI processes in lieu of specific military or Federal specifications or standards that specify a management or manufacturing process.

(b) DoD acceptance of an SPI process follows the decision of a Management Council, which includes representatives of the contractor, the Defense Contract Management Agency, the Defense Contract Audit Agency, and the military departments.

(c) In procurements of previously developed items, SPI processes that previously were accepted by the Management Council shall be considered valid replacements for military or Federal specifications or standards, absent a specific determination to the contrary.

###### 211.273-3 Procedures.

Follow the procedures at PGI 211.273-3 for encouraging the use of SPI processes instead of military or Federal specifications and standards.

###### 211.273-4 Contract clause.

Use the clause at 252.211-7005 , Substitutions for Military or Federal Specifications and Standards, in solicitations and contracts exceeding the micro-purchase threshold, when procuring previously developed items.

##### 211.274 Item identification and valuation requirements.

###### 211.274-1 General.

Item unique identification and valuation is a system of marking, valuing, and tracking items delivered to DoD that enhances logistics, contracting, and financial business transactions supporting the United States and coalition troops. Through item unique identification policy, which capitalizes on leading practices and embraces open standards, DoD—

(a) Achieves lower life-cycle cost of item management and improves life-cycle property management;

(b) Improves operational readiness;

(c) Provides reliable accountability of property and asset visibility throughout the life cycle;

(d) Reduces the burden on the workforce through increased productivity and efficiency; and

(e) Ensures item level traceability throughout lifecycle to strengthen supply chain integrity, enhance cyber security, and combat counterfeiting.

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

(a) It is DoD policy that DoD item unique identification, or a DoD recognized unique identification equivalent, is required for all delivered items, including items of contractor-acquired property delivered on contract line items (see PGI 245.402-71 for guidance when delivery of contractor acquired property is required)—

(1) For which the Government’s unit acquisition cost is $5,000 or more;

(2) For which the Government’s unit acquisition cost is less than $5,000 when the requiring activity determines that item unique identification is required for mission essential or controlled inventory items; or

(3) Regardless of value for any—

(i) DoD serially managed item (reparable or nonreparable) or subassembly, component, or part embedded within a subassembly, component, or part;

(ii) Parent item (as defined in 252.211-7003 (a)) that contains the embedded subassembly, component, or part;

(iii) Warranted serialized item;

(iv) Item of special tooling or special test equipment, as defined at FAR 2.101, for a major defense acquisition program that is designated for preservation and storage in accordance with the requirements of section 815 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417); and

(v) High risk item identified by the requiring activity as vulnerable to supply chain threat, a target of cyber threats, or counterfeiting.

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

(1) The items, as determined by the head of the contracting activity, are to be used to support a contingency or humanitarian or peacekeeping operation; to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack; to facilitate the provision of international disaster assistance; or to support response to an emergency or major disaster; or

(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 acquired under FAR part 12 or part 8.

(i) The determination and findings shall be executed by—

(A) The Component Acquisition Executive for an acquisition category (ACAT) I program; or

(B) The head of the contracting activity for all other programs.

(ii) The DoD Unique Identification Policy Office must receive a copy of the determination and findings required by paragraph (b)(2)(i) of this subsection. Follow the procedures at PGI 211.274-2 .

###### 211.274-3 Policy for valuation.

(a) It is DoD policy that contractors shall be required to identify the Government’s unit acquisition cost for all deliverable end items to which item unique identification applies.

(b) The Government’s unit acquisition cost is—

(1) For fixed-price type line, subline, or exhibit line items, the unit price identified in the contract at the time of delivery;

(2) For cost-type or undefinitized line, subline, or exhibit line items, the contractor’s estimated fully burdened unit cost to the Government at the time of delivery; and

(3) For items delivered under a time-and-materials contract, the contractor’s estimated fully burdened unit cost to the Government at the time of delivery.

(c) The Government’s unit acquisition cost of subassemblies, components, and parts embedded in delivered items shall not be separately identified.

###### 211.274-4 Policy for reporting of Government-furnished property.

(a) It is DoD policy that all Government-furnished property be recorded in the DoD Item Unique Identification (IUID) Registry, as defined in the clause at 252.211-7007 , Reporting of Government-Furnished Property.

(b) The following items are not required to be reported:

(1) Contractor-acquired property, as defined in FAR part 45.

(2) Property under any statutory leasing authority.

(3) Property to which the Government has acquired a lien or title solely because of partial, advance, progress, or performance-based payments.

(4) Intellectual property or software.

(5) Real property.

(6) Property released as work in process.

(7) Non-serial managed items (reporting is limited to receipt transactions only).

###### 211.274-5 Policy for assignment of Government-assigned serial numbers.

It is DoD policy that contractors apply Government-assigned serial numbers, such as tail numbers/hull numbers and equipment registration numbers, in human-readable format on major end items when required by law, regulation, or military operational necessity. The latest version of MIL-STD-130, Marking of U.S. Military Property, shall be used for the marking of human-readable information.

###### 211.274-6 Contract clauses.

(a)(1) Use the clause at 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, for supplies, and for services involving the furnishing of supplies, unless the conditions in 211.274-2 (b) apply.

(2) Identify in paragraph (c)(1)(ii) of the clause the contract line, subline, or exhibit line item number and description of any item(s) below $5,000 in unit acquisition cost for which DoD item unique identification or a DoD recognized unique identification equivalent is required in accordance with 211.274-2 (a)(2).

(3) Identify in paragraph (c)(1)(iii) of the clause the applicable attachment number, when DoD item unique identification or a DoD recognized unique identification equivalent is required in accordance with 211.274-2 (a)(3)(i) through (v).

(b) Use the clause at 252.211-7007 , Reporting of Government-Furnished Property, in solicitations and contracts that contain the clause at FAR 52.245-1, Government Property.

(c) Use the clause at 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, that—

(1) Contain the clause at 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.

##### 211.275 Passive radio frequency identification.

###### 211.275-1 Definitions.

“Bulk commodities,” “case,” “palletized unit load,” “passive RFID tag,” and “radio frequency identification” are defined in the clause at 252.211-7006 , Passive Radio Frequency Identification.

###### 211.275-2 Policy.

(a) Except as provided in paragraph (b) of this subsection, radio frequency identification (RFID), in the form of a passive RFID tag, is required for cases and palletized unit loads packaging levels and any additional consolidation level(s) deemed necessary by the requiring activity for shipments of items that—

(1) Contain items in any of the following classes of supply, as defined in DoD Manual 4140.01, Volume 6, DoD Supply Chain Materiel Management Procedures: Material Returns, Retention, and Disposition:

(i) Subclass of Class I – Packaged operational rations.

(ii) Class II – Clothing, individual equipment, tentage, organizational tool kits, hand tools, and administrative and housekeeping supplies and equipment.

(iii) Class IIIP – Packaged petroleum, lubricants, oils, preservatives, chemicals, and additives.

(iv) Class IV – Construction and barrier materials.

(v) Class VI – Personal demand items (non-military sales items).

(vi) Subclass of Class VIII – Medical materials (excluding pharmaceuticals, biologicals, and reagents – suppliers should limit the mixing of excluded and non-excluded materials).

(vii) Class IX – Repair parts and components including kits, assemblies and subassemblies, reparable and consumable items required for maintenance support of all equipment, excluding medical-peculiar repair parts; and

(2) Will be shipped to one of the locations listed at https://www.acq.osd.mil/log/sci/RFID\_ship-to-locations.html or to—

(i) A location outside the contiguous United States when the shipment has been assigned Transportation Priority 1; or

(ii) Any additional location(s) deemed necessary by the requiring activity.

(b) The following are excluded from the requirements of paragraph (a) of this subsection:

(1) Shipments of bulk commodities.

(2) Shipments to locations other than Defense Distribution Depots when the contract includes the clause at FAR 52.213-1, Fast Payment Procedures.

###### 211.275-3 Contract clause.

Use the clause at 252.211-7006 , Passive Radio Frequency Identification, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that will require shipment of items meeting the criteria at 211.275-2 , and complete paragraph (b)(1)(ii) of the clause as appropriate.

#### SUBPART 211.5 —-LIQUIDATED DAMAGES

##### 211.500 Scope.

This subpart and FAR subpart 11.5 do not apply to liquidated damages for comprehensive subcontracting plans under the Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans. See 219.702-70 for coverage of liquidated damages for comprehensive subcontracting plans.

##### 211.503 Contract clauses.

(b) Use the clause at FAR 52.211-12, Liquidated Damages—Construction, in all construction contracts exceeding $700,000, except cost-plus-fixed-fee contracts or contracts where the contractor cannot control the pace of the work. Use of the clause in contracts of $700,000 or less is optional.

#### SUBPART 211.6 —PRIORITIES AND ALLOCATIONS

##### 211.602 General.

DoD implementation of the Defense Priorities and Allocations System is in DoDD 4400.1, Defense Production Act Programs.

#### SUBPART 211.70 —PURCHASE REQUESTS

##### 211.7001 Procedures.

Follow the procedures at PGI 211.7001 for developing and distributing purchase requests, except for the requirements for Military Interdepartmental Purchase Requests (DD Form 448) addressed in 253.208-1 .

### PART 212 - ACQUISITION OF COMMERCIAL ITEMS

* 212.001 Definitions. As used in this part—
* SUBPART 212.1 —ACQUISITION OF COMMERCIAL ITEMS - GENERAL
  + 212.102 Applicability.
* SUBPART 212.2 —SPECIAL REQUIREMENTS FOR THE ACQUISITION OF COMMERCIAL ITEMS
  + 212.203 Procedures for solicitation, evaluation, and award.
  + 212.205 Offers.
  + 212.207 Contract type.
  + 212.209 Determination of price reasonableness.
  + 212.211 Technical data.
  + 212.212 Computer software.
  + 212.270 Major weapon systems as commercial items.
  + 212.271 Limitation on acquisition of right-hand drive passenger sedans.
  + 212.272 Preference for certain commercial products and services.
* 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.
  + 212.302 Tailoring of provisions and clauses for the acquisition of commercial items.
* SUBPART 212.5 —APPLICABILITY OF CERTAIN LAWS TO THE ACQUISITION OF COMMERCIAL ITEMS
  + 212.503 Applicability of certain laws to Executive agency contracts for the acquisition of commercial items.
  + 212.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.
  + 212.570 Applicability of certain laws to contracts and subcontracts for the acquisition of commercially available off-the-shelf items.
* SUBPART 212.6 —STREAMLINED PROCEDURES FOR EVALUATION AND SOLICITATION FOR COMMERCIAL ITEMS
  + 212.602 Streamlined evaluation of offers.
* SUBPART 212.70 —LIMITATION ON CONVERSION OF PROCUREMENT FROM COMMERCIAL ACQUISITION PROCEDURES
  + 212.7000 Scope.
  + 212.7001 Procedures.
* SUBPART 212.71 —PILOT PROGRAM FOR ACQUISITION OF MILITARY-PURPOSE NONDEVELOPMENTAL ITEMS
  + 212.7100 Scope.
  + 212.7101 Definitions.
  + 212.7102 Pilot program.
    - 212.7102-1 Contracts under the program.
    - 212.7102-2 Reporting requirements.
    - 212.7102-3 Sunset of the pilot authority.
  + 212.7103 Solicitation provision.

#### 212.001 Definitions. As used in this part—

“Market research” means a review of existing systems, subsystems, capabilities, and technologies that are available or could be made available to meet the needs of DoD in whole or in part. The review shall include, at a minimum, contacting knowledgeable individuals in Government and industry regarding existing market capabilities and pricing information, and may include any of the techniques for conducting market research provided in FAR 10.002(b)(2) (section 855 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114-92)).

#### SUBPART 212.1 —ACQUISITION OF COMMERCIAL ITEMS - GENERAL

##### 212.102 Applicability.

(a)(i) Commercial item determination. When using FAR part 12 procedures foracquisitions exceeding $1 million in value, except for acquisitions made pursuant to FAR 12.102(f)(1), the contracting officer shall—

(A) Determine in writing that the acquisition meets the commercial itemdefinition in FAR 2.101;

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

(C) Obtain approval at one level above the contracting officer when a commercial item determination relies on subsections (1)(ii), (3), (4), or (6) of the “commercial item” definition at FAR 2.101.

(D) Follow the procedures and guidance at PGI 212.102 (a)(i) regarding file documentation and commercial item determinations.

(ii) *Prior commercial item determination.*  This section implements 10 U.S.C. 2306a(b)(4) and 10 U.S.C. 2380(b).

(A) The contracting officer may presume that a prior commercial item 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. See PGI 212.102 (a)(ii) for information about items that the Department has historically acquired as military unique, noncommercial items.

(B) If the contracting officer does not make the presumption that a prior commercial item determination is valid, and instead chooses to proceed with a procurement of an item previously determined to be a commercial item using procedures other than the procedures authorized for the procurement of a commercial item, the contracting officer shall request a review of the commercial item determination by the head of the contracting activity that will conduct the procurement. Not later than 30 days after receiving a request for review of a commercial item determination, the head of a contracting activity shall—

(*1*) Confirm that the prior determination was appropriate and still applicable; or

(*2*) 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 (see 212.70).

(iii) *Nontraditional defense contractors.* In accordance with 10 U.S.C. 2380a, contracting officers may treat supplies and services provided by nontraditional defense contractors as commercial items. 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, however, when appropriate, contracting officers may consider applying commercial item 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 procedures to the procurement of supplies and services from nontraditional defense contractors does not require a commercial item determination and does not mean the item is commercial.

#### SUBPART 212.2 —SPECIAL REQUIREMENTS FOR THE ACQUISITION OF COMMERCIAL ITEMS

See DoD Class Deviation 2018-O0016, Defense Commercial Solutions Opening Pilot Program, issued June 26, 2018. This class deviation allows the contracting officer to acquire innovative commercial items, technologies, or services using the competitive procedure outlined in the class deviation called a commercial solutions opening (CSO). Use of a CSO is authorized by section 879 of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114-328). Under a CSO, DoD may competitively select proposals received in response to a general solicitation, similar to a broad agency announcement, based on a review of proposals by scientific, technological, or other subject matter experts. This class deviation remains in effect until September 30, 2022.

##### 212.203 Procedures for solicitation, evaluation, and award.

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

##### 212.205 Offers.

(c) When using competitive procedures, if only one offer is received, the contracting officer shall follow the procedures at 215.371 .

##### 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 is authorized only for the following:

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

(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) of the definition of “commercial item” at FAR 2.101 (41 U.S.C. 103);

(B) If the services to be acquired are subject to FAR 15.403-1(c)(3)(ii), the offeror of the services has submitted sufficient information in accordance with that subsection;

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

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

##### 212.209 Determination of price reasonableness.

(a) In accordance with [10 U.S.C. 2377(d)](https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title10-section2377(d)&num=0&edition=prelim), agencies shall conduct or obtain market research to support the determination of the reasonableness of price for commercial items 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 acquired as commercial items in accordance with subpart  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 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. 2306a(b)](https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title10-section2306a&num=0&edition=prelim)).

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

(1) Prices paid for the same or similar items sold under different terms and conditions;

(2) Prices paid for similar levels of work or effort on related products or services;

(3) Prices paid for alternative solutions or approaches; and

(4) Other relevant information that can serve as the basis for determining the reasonableness of price.

(d) Nothing in this section shall be construed to preclude the contracting officer from requiring the contractor to supply information that is sufficient to determine the reasonableness of price, regardless of whether or not the contractor was required to provide such information in connection with any earlier procurement. If the contracting officer determines that the pricing information submitted is not sufficient to determine the reasonableness of price, the contracting officer may request other relevant information regarding the basis for price or cost, including uncertified cost data such as labor costs, material costs, and other direct and indirect costs.

##### 212.211 Technical data.

The DoD policy for acquiring technical data for commercial items is at 227.7102 .

##### 212.212 Computer software.

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

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

##### 212.270 Major weapon systems as commercial items.

The DoD policy for acquiring major weapon systems as commercial items is in Subpart 234.70.

##### 212.271 Limitation on acquisition of right-hand drive passenger sedans.

10 U.S.C. 2253(a)(2) limits the authority to purchase right-hand drive passenger sedans to a cost of not more than $40,000 per vehicle.

##### 212.272 Preference for certain commercial products and services.

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

(b)(1) As required by section 876 of the National Defense Authorization Act of Fiscal Year 2017 (Pub. L. 114-328), a contracting officer may not enter into a contract above the simplified acquisition threshold for facilities-related services, knowledge-based services (except engineering services), medical services, or transportation services that are not commercial services unless the appropriate official specified in paragraph (b)(2) of this section determines in writing that no commercial services are suitable to meet the agency’s needs as provided in section 10 U.S.C. 2377(c)(2).

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

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

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

#### 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.

See DoD Class Deviation 2018-O0021, Commercial Item Omnibus Clause for Acquisitions Using the Standard Procurement System, issued October 1, 2018. This class deviation allows the contracting officer to use the SPS clause logic capability to automatically select the clauses that are applicable to the specific solicitation and contract. The contracting officer shall ensure that the deviation clause is incorporated into these solicitations and contracts because the deviation clause fulfills the statutory requirements on auditing and subcontract clauses applicable to commercial items. The deviation also authorizes adjustments to the deviation clause required by future changes to the clause at 52.212-5 that are published in the FAR. This deviation is effective for five years, or until otherwise rescinded.

(c) Include an evaluation factor regarding supply chain risk (see subpart 239.73) when acquiring information technology, whether as a service or as a supply, that is a covered system, is a part of a covered system, or is in support of a covered system, as defined in 239.7301 .

(f) The following additional provisions and clauses apply to DoD solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items. 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.acquisition.gov, the contracting officer shall consider this information instead of requiring the offeror to complete these provisions for a particular solicitation.

(i)  *Part 203—Improper Business Practices and Personal Conflicts of Interest.*

(A) Use the FAR clause at 52.203-3, Gratuities, as prescribed in FAR 3.202, to comply with 10 U.S.C. 2207.

(B) Use the clause at 203.1004 (a), to comply with section 6101 of Pub. L. 110-252 and 41 U.S.C. 3509.

(D) Use the provision at 204.7203 .

(B) Use the provision at 204.7304 (a).

(C) Use the clause at 204.7304 (b).

(D) Use the clause at 204.7304 (c).

(E) Use the clause at 204.7403 (a), to comply with 10 U.S.C. 129d.

(F) Use the clause at 204.7403 (b), to comply with10 U.S.C. 129d.

(G) Use the provision at 204.2105 (a), to comply with section 1656 of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91).

(H) Use the provision at 204.2105 (b), to comply with section 1656 of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91).

(I) Use the clause at 204.2105 (c), to comply with section 1656 of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91).

(iii)  *Part 205—Publicizing Contract Actions.*

Use the clause at 205.470 , to comply with 10 U.S.C. 2416.

(iv)  *Part 211—Describing Agency Needs.*

(A) Use the clause at 215.408 (2)(i).

(B) Use the clause at 215.408 (2)(ii).

(C) Use the provision at 215.408 (3).

(E) Use the provision 215.408 (5)(i) to comply with section 831 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and sections 851 and 853 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114-92).

(*1*) Use the basic provision as prescribed at 215.408 (5)(i)(A).

(*2*) Use the alternate I provision as prescribed at 215.408 (5)(i)(B).

(vii)  *Part 219—Small Business Programs.*

(A) Use the provision at 219.309 (1), to comply with 10 U.S.C. 2419.

(B) Use the clause at 219.708 (b)(1)(A)(*1*).

(*2*) Use the alternate I clause as prescribed in 219.708 (b)(1)(A)(*2*).

(*3*) Use the alternate II clause as prescribed in 219.708 (b)(1)(A)(*3*).

(C) Use the clause at 219.708 (b)(1)(B), to comply with 15 U.S.C. 637 note.

(D) Use the clause at 223.7306 .

(ix)  *Part 225—Foreign Acquisition.*

(A) Use the provision at 225.1101 (1)(i).

(*2*) Use the alternate I provision as prescribed in 225.1101 (1)(ii).

(B) Use the clause at 225.1101 (2)(ii).

(*2*) Use the alternate I clause as prescribed in 225.1101 (2)(iii).

(C) Use the clause at 225.1103 (4), to comply with section 1211 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2006 (Pub. L. 109-163) as amended by the NDAAs for FY 2012 and FY 2017.

(E) Use the clause at 225.1101 (5)(i).

(*2*) Use the alternate I provision as prescribed in 225.1101 (5)(ii).

(N) Use the clause at 225.1101 (6)(i).

(*2*) Use the alternate II clause as prescribed in 225.1101 (6)(iii).

(O) Use the provision at 225.7307 (a), to comply with 22 U.S.C. 2779.

(S) Use the clause at 225.7307 (b), to comply with 22U.S.C. 2755.

(T) Use the clause at 225.7605 , to comply with 10 U.S.C. 2410i.

(V) Use the provision at 225.1101 (9)(i).

(*2*) Use the alternate I provision as prescribed in 225.1101 (9)(ii).

(*3*) Use the alternate II provision as prescribed in 225.1101 (9)(iii).

(*4*) Use the alternate III provision as prescribed in 225.1101 (9)(iv).

(*5*) Use the alternate IV provision as prescribed in 225.1101 (9)(v).

(*6*) Use the alternate V provision as prescribed in 225.1101 (9)(vi).

(W) Use the clause at 225.1101 (10)(i)(A).

(*2*) Use the alternate I clause as prescribed in 225.1101 (10)(i)(B).

(*3*) Use the alternate II clause as prescribed in 225.1101 (10)(i)(C).

(*4*) Use the alternate III clause as prescribed in 225.1101 (10)(i)(D).

(*5*) Use the alternate IV clause as prescribed in 225.1101 (10)(i)(E).

(*6*) Use the alternate V clause as prescribed in 225.1101 (10)(i)(F).

(X) Use the provision at 226.104 , to comply with section 8021 of Pub. L. 107-248 and similar sections in subsequent DoD appropriations acts.

(B) Use the provision at 226.7203 .

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

(A) Use the clause at 232.7004 , to comply with 10 U.S.C. 2227.

(B) Use the clause at 232.7004 (b).

(C) Use the clause at 232.1110 .

(D) Use the clause at 232.7102 .

(E) Use the clause at 232.908 .

(F) Use the provision at 232.7202 .

(G) Use the clause at 239.7604 (a).

(B) Use the clause 239.7604 (b).

(C) Use the provision at 239.7306 (a), to comply with 10 U.S.C. 2339a.

(D) Use the clause at 244.403 .

(xviii)  *Part 246—Quality Assurance*.

(A) Use the clause at 246.370 (a).

(B) Use the clause at 247.207 , to comply with section 884 of Pub. L. 110-417.

(B) Use the provision at 247.574 (a).

(C) Use the basic or one of the alternates of the clause at 247.574 (b), to comply with the Cargo Preference Act of 1904 (10 U.S.C. 2631(a)).

(*1*) Use the basic clause as prescribed in 247.574 (b)(1).

(*2*) Use the alternate I clause as prescribed in 247.574 (b)(2).

(*3*) Use the alternate II clause as prescribed in 247.574 (b)(3).

(D) Use the clause 247.574 (c), to comply with 10 U.S.C. 2631(b).

(E) Use the provision at 247.574 (d), to comply with section 1017 of Pub. L. 109-364.

(F) Use the clause at 247.574 (f), to comply with section 3504 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417).

(G) Use the clause at 247.207 .

##### 212.302 Tailoring of provisions and clauses for the acquisition of commercial items.

(c) *Tailoring inconsistent with customary commercial practice*.

The head of the contracting activity is the approval authority within the DoD for waivers under FAR 12.302(c).

#### SUBPART 212.5 —APPLICABILITY OF CERTAIN LAWS TO THE ACQUISITION OF COMMERCIAL 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:

(i) 10 U.S.C. 2306(b), Prohibition on Contingent Fees.

(ii) 10 U.S.C. 2324, Allowable Costs Under Defense Contracts.

(iii) 10 U.S.C. 2384(b), Requirement to Identify Suppliers.

(iv) 10 U.S.C. 2397(a)(1), Reports by Employees or Former Employees of Defense Contractors.

(v) 10 U.S.C. 2397b(f), Limits on Employment for Former DoD Officials.

(vi) 10 U.S.C. 2397c, Defense Contractor Requirements Concerning Former DoD Officials.

(vii) 10 U.S.C. 2408(a), Prohibition on Persons Convicted of Defense Related Felonies.

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

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

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

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

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

(i) 10 U.S.C. 2402, Prohibition on Limiting Subcontractor Direct Sales to the United States (see FAR 3.503 and 52.203-6).

(ii) 10 U.S.C. 2306a, Truth in Negotiations Act (see FAR 15.403-1(b)(3)).

##### 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:

(i) 10 U.S.C. 2306(b), Prohibition on Contingent Fees.

(ii) 10 U.S.C. 2313(c), Examination of Records of a Contractor.

(iii) 10 U.S.C. 2324, Allowable Costs Under Defense Contracts.

(iv) 10 U.S.C. 2327, Reporting Requirement Regarding Dealings with Terrorist Countries.

(v) 10 U.S.C. 2384(b), Requirement to Identify Suppliers.

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

(vii) 10 U.S.C. 2393, Prohibition Against Doing Business with Certain Offerors or Contractors.

(viii) 10 U.S.C. 2397(a)(1), Reports by Employees or Former Employees of Defense Contractors.

(ix) 10 U.S.C. 2397b(f), Limits on Employment for Former DoD Officials.

(x) 10 U.S.C. 2397c, Defense Contractor Requirements Concerning Former DoD Officials.

(xi) 10 U.S.C. 2408(a), Prohibition on Persons Convicted of Defense Related Felonies.

(xii) 10 U.S.C. 2410b, Contractor Inventory Accounting System Standards.

(xii) 10 U.S.C. 2501 note, Notification of Proposed Program Termination.

(xiv) 10 U.S.C. 2534, Miscellaneous Limitations on the Procurement of Goods Other Than United States Goods.

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

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

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

(i) 10 U.S.C. 2393(d), Subcontractor Reports Under Prohibition Against Doing Business with Certain Offerors (see FAR 52.209-6).

(ii) 10 U.S.C. 2402, Prohibition on Limiting Subcontractor Direct Sales to the United States (see FAR 3.503 and 52.203-6).

##### 212.570 Applicability of certain laws to contracts and subcontracts for the acquisition of commercially available off-the-shelf items.

Paragraph (a)(1) of 10 U.S.C. 2533b, Requirement to buy strategic materials critical to national security from American sources, is not applicable to contracts and subcontracts for the acquisition of commercially available off-the-shelf items, except as provided at 225.7003-3 (b)(2)(i).

#### SUBPART 212.6 —STREAMLINED PROCEDURES FOR EVALUATION AND SOLICITATION FOR COMMERCIAL ITEMS

##### 212.602 Streamlined evaluation of offers.

(b)(i) For the acquisition of transportation and transportation-related services, also consider evaluating offers in accordance with the criteria at 247.206 (1).

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

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

#### SUBPART 212.70 —LIMITATION ON CONVERSION OF PROCUREMENT FROM COMMERCIAL ACQUISITION PROCEDURES

##### 212.7000 Scope.

This subpart implements section 856 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114-92).

##### 212.7001 Procedures.

(a) *Limitation*.

(1) For a procurement valued at more than $1 million, but less than $100 million, previously procured under a prime contract using FAR part 12 procedures based on a commercial item determination made by a military department, a defense agency, or another DoD component, prior to converting the procurement from commercial acquisition procedures to noncommercial acquisition procedures under FAR part 15, the head of the contracting activity shall determine in writing, upon recommendation from the contracting officer for the procurement that—

(i) The earlier use of commercial acquisition procedures under FAR part 12 was in error or based on inadequate information; and

(ii) DoD will realize a cost savings compared to the cost of procuring a similar quantity or level of such item or service using commercial acquisition procedures.

(2) In the case of a procurement valued at $100 million or more, a contract may not be awarded pursuant to a conversion of the procurement described in paragraph (a)(1) of this section until a copy of the head of contracting activity determination is provided to the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics.

(b) In making a determination under paragraph (a) of this section, the determining official shall, at a minimum, consider the following factors:

(1) The estimated cost of research and development to be performed by the existing contractor to improve future products or services.

(2) The costs for DoD and the contractor in assessing and responding to data requests to support a conversion to noncommercial acquisition procedures.

(3) Changes in purchase quantities.

(4) Costs associated with potential procurement delays resulting from the conversion.

(c) The requirements of this subpart terminate November 25, 2020.

#### SUBPART 212.71 —PILOT PROGRAM FOR ACQUISITION OF MILITARY-PURPOSE NONDEVELOPMENTAL ITEMS

##### 212.7100 Scope.

This subpart establishes the pilot program authorized by section 866 of the National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111-383), as modified bysection 892 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114-92).

##### 212.7101 Definitions.

As used in this subpart—

“Military-purpose nondevelopmental item” means a nondevelopmental item that meets a validated military requirement, as determined in writing by the responsible program manager, and has been developed exclusively at private expense. An item shall not be considered to be developed at private expense if development of the item was paid for in whole or in part through—

(1) Independent research and development costs or bid and proposal costs, per the definition in FAR 31.205-18, that have been reimbursed directly or indirectly by a Federal agency or have been submitted to a Federal agency for reimbursement; or

(2) Foreign government funding.

“Nondevelopmental item” is defined in FAR 2.101 and also includes previously developed items of supply that require modifications other than those customarily available in the commercial marketplace if such modifications are consistent with the requirement at 212.7102-1 (c)(1).

##### 212.7102 Pilot program.

###### 212.7102-1 Contracts under the program.

The contracting officer may utilize this pilot program to enter into contracts for theacquisition of military-purpose nondevelopmental items. See PGI 212.7102 for filedocumentation requirements. Each contract entered into under the pilot programshall—

(a) Be a firm-fixed-price contract, or a fixed-price contract with an economic price adjustment clause;

(b) Be in an amount not in excess of $100 million;

(c) Provide—

(1) For the delivery of an initial lot of production quantities of completed items not later than nine months after the date of the award of such contract; and

(2) That failure to make delivery as provided for under paragraph (c)(1) mayresult in termination for cause; and

(d) Be—

(1) Exempt from the requirement to submit certified cost or pricing data;

(2) Exempt from the cost accounting standards under 41 U.S.C. 1502; and

(3) Subject to the requirement to provide data other than certified cost or pricing data for the purpose of price reasonableness determinations.

###### 212.7102-2 Reporting requirements.

Departments and agencies shall prepare a consolidated annual report to provide information about contracts awarded under this pilot authority. The report shall be submitted to the Office of the Deputy Director, Defense Procurement and Acquisition Policy (Contract Policy and International Contracting), by October 31 each year in accordance with the procedures at PGI 212.7102 . See PGI 212.7102 for annual reporting format.

###### 212.7102-3 Sunset of the pilot authority.

(a) The authority to carry out the pilot program described in this subpart expires on December 31, 2019.

(b) The expiration under paragraph (a) of this section of the authority to carry out the pilot program will not affect the validity of any contract awarded under the pilot program before the expiration of the pilot program under that paragraph.

##### 212.7103 Solicitation provision.

Use the provision at 252.212-7002 , Pilot Program for Acquisition of Military-Purpose Nondevelopmental Items, in solicitations when use of the pilot program is planned and the applicability criteria of 212.7102-1 are met.

# SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

## Defense Federal Acquisition Regulation

### PART 213 - SIMPLIFIED ACQUISITION PROCEDURES

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#### SUBPART 213.0

#### SUBPART 213.1 —PROCEDURES

##### 213.101 General.

Structure awards valued above the micro-purchase threshold (e.g., contract line items, delivery schedule, and invoice instructions) in a manner that will minimize the generation of invoices valued at or below the micro-purchase threshold.

##### 213.104 Promoting competition.

For information on the various approaches that may be used to competitively fulfill DoD requirements, see PGI 213.104 .

###### 213.106-1 Soliciting competition.

(a) *Considerations*.

(2)(i) Include an evaluation factor regarding supply chain risk (see subpart 239.73) when acquiring information technology, whether as a service or as a supply, that is a covered system, is a part of a covered system, or is in support of a covered system, as defined in 239.7301 .

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

213.106-1-70 Soliciting competition – tiered evaluation of offers.

See limitations on the use of tiered evaluation of offers at 215.203-70 .

###### 213.106-2 Evaluation of quotations or offers.

(b)(i) For competitive solicitations for supplies using FAR part 13 simplified acquisition procedures, including acquisitions valued at less than or equal to $1 million under the authority at FAR subpart 13.5, the contracting officer shall—

(A) Consider data available in the statistical reporting module of the Supplier Performance Risk System (SPRS) regarding the supplier’s past performance history for the Federal supply class (FSC) and product or service code (PSC) of the supplies being purchased. Procedures for the use of SPRS in the evaluation of quotations or offers are provided in the SPRS User's Manual available under the references section of the SPRS website at https://www.ppirssrng.csd.disa.mil;

(B) Ensure the basis for award includes an evaluation of each supplier’s past performance history in SPRS for the FSC and PSC of the supplies being purchased; and

(C) In the case of a supplier without a record of relevant past performance history in SPRS for the FSC or PSC of the supplies being purchased, the supplier may not be evaluated favorably or unfavorably for its past performance history.

213.106-2-70 Solicitation provision.

Use the provision at 252.213-7000 , Notice to Prospective Suppliers on the Use of Past Performance Information Retrieval System—Statistical Reporting 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 and acquisitions valued at less than or equal to $1 million under the authority at FAR subpart 13.5.

#### SUBPART 213.2 —ACTIONS AT OR BELOW THE MICRO-PURCHASE THRESHOLD

##### 213.201 General.

**(g) See PGI 213.201 (g) for guidance on use of the higher micro-purchase thresholds prescribed in FAR 13.201(g) to support a declared contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack.**

(j) Do not procure or obtain, or extend or renew a contract to procure or obtain, any equipment, system, or service to carry out covered missions that use covered defense telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless a waiver is granted. (See subpart 204.21.)

##### 213.270 Use of the Governmentwide commercial purchase card.

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

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

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

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

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

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

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

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

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

(3) The purchase is an overseas transaction by a contracting officer in support of a contingency operation as defined in 10 U.S.C. 101(a)(13) or a humanitarian or peacekeeping operation as defined in 10 U.S.C. 2302(8).

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

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

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

(7) The payment is for a transportation bill.

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

(9) The purchase is for medical services and—

(i) It involves a controlled substance or narcotic;

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

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

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

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

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

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

(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; but

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

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

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

(F) Does not require access to classified or Privacy Act information; and

(G) Does not require transportation of supplies by sea; and

(ii) The individual making the purchase—

(A) Is authorized and trained in accordance with agency procedures;

(B) Complies with the requirements of FAR 8.002 in making the purchase; and

(C) Seeks maximum practicable competition for the purchase in accordance with FAR 13.104(b).

(3) A contracting officer supporting a contingency operation as defined in 10 U.S.C. 101(a)(13) or a humanitarian or peacekeeping operation as defined in 10 U.S.C. 2302(8) also may use the Governmentwide commercial purchase card to make a purchase that exceeds the micro-purchase threshold but does not exceed the simplified acquisition threshold, if—

(i) The supplies or services being purchased are immediately available;

(ii) One delivery and one payment will be made; and

(iii) The requirements of paragraphs (2)(i) and (ii) of this section are met.

(4) Guidance on DoD purchase, travel, and fuel card programs is available in the “Department of Defense Government Charge Card Guidebook for Establishing and Managing Purchase, Travel, and Fuel Card Programs” at http://www.acq.osd.mil/dpap/pdi/pc/policy\_documents.html. Additional guidance on the fuel card programs is available at http://www.energy.dla.mil.

##### 213.302 Purchase orders.

###### 213.302-3 Obtaining contractor acceptance and modifying purchase orders.

(1) Require written acceptance of purchase orders for classified acquisitions.

(2) See PGI 213.302-3 for guidance on the use of unilateral modifications.

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

###### 213.302-5 Clauses.

(a) Use the clause at 225.1101 (2); or

(ii) 225.1101 (10).

##### 213.303 Blanket purchase agreements (BPAs).

###### 213.303-5 Purchases under BPAs.

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

##### 213.305 Imprest funds and third party drafts.

###### 213.305-3 Conditions for use.

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

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

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

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

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

(A) Overseas transactions at or below the micro-purchase threshold in support of a contingency operation as defined in 10 U.S.C. 101(a)(13) or a humanitarian or peacekeeping operation as defined in 10 U.S.C. 2302(8); and

(B) Classified transactions.

##### 213.306 SF 44, Purchase Order-Invoice-Voucher.

(a)(1) The micro-purchase limitation applies to all purchases, except that purchases not exceeding the simplified acquisition threshold may be made for—

(A) Fuel and oil. U.S. Government fuel cards may be used in lieu of an SF 44 for fuel, oil, and authorized refueling-related items (see PGI 213.306 for procedures on use of fuel cards);

(B) Overseas transactions by contracting officers in support of a contingency operation as defined in 10 U.S.C. 101(a)(13) or a humanitarian or peacekeeping operation as defined in 10 U.S.C. 2302(8); and

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

##### 213.307 Forms.

See PGI 213.307 for procedures on use of forms for purchases made using simplified acquisition procedures.

#### SUBPART 213.4 —FAST PAYMENT PROCEDURE

##### 213.402 Conditions for use.

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

(i) Brand-name commissary resale subsistence; and

(ii) Medical supplies for direct shipment overseas.

#### SUBPART 213.5 —SIMPLIFIED PROCEDURES FOR CERTAIN COMMERCIAL ITEMS

##### 213.500-70 Only one offer.

If only one offer is received in response to a competitive solicitation issued using simplified acquisition procedures authorized under FAR subpart 13.5, follow theprocedures at 215.371-2 .

##### 213.501 Special documentation requirements.

(a) *Sole source (including brand name) acquisitions.*

(i) For non-competitive follow-on acquisitions of supplies or services previously awarded on a non-competitive basis, include the additional documentation required by 206.303-2 (b)(i) and follow the procedures at PGI 206.304 (a)(S-70).

(ii) In accordance with section 888(a) of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114-328), the justification and approval addressed in FAR 13.501(a) is required in order to use brand name or equal descriptions or proprietary specifications and standards.

#### SUBPART 213.70 —SIMPLIFIED ACQUISITION PROCEDURES UNDER THE 8(A) PROGRAM

##### 213.7001 Procedures.

(a)(1) For acquisitions that are otherwise appropriate to be conducted using procedures set forth in this part, and also eligible for the 8(a) Program, contracting officers may use¾

(i) For sole source purchase orders not exceeding the simplified acquisition threshold, the procedures in PGI 219.804-2 (2); or

(ii) For other types of acquisitions, the procedures in PGI 219.8 , excluding the procedures in PGI 219.804-2 (2); or

(2) The procedures for award to the Small Business Administration in FAR subpart 19.8.

(b) To comply with section 898 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114-92), contracting officers shall not use the sole source authority at FAR 6.302-5(b)(4) to purchase religious-related services to be performed on a United States military installation. For competitive purchases under the 8(a) program, contracting officers shall not exclude a nonprofit organization from the competition. See 219.270 for additional procedures.

##### 213.7002 Purchase orders.

The contracting officer need not obtain a contractor’s written acceptance of a purchase order or modification of a purchase order for an acquisition under the 8(a) Program pursuant to 219.804-2(2).

### PART 214 - SEALED BIDDING

* SUBPART 214.2 —SOLICITATION OF BIDS
  + 214.201-5 Part IV—Representations and instructions.
  + 214.201-6 Solicitation provisions.
  + 214.202 General rules for solicitation of bids.
    - 214.202-5 Descriptive literature.
  + 214.209 Cancellation of invitations before opening.
* SUBPART 214.4 —OPENING OF BIDS AND AWARD OF CONTRACT
  + 214.404 Rejection of bids.
    - 214.404-1 Cancellation of invitations after opening.
  + 214.407 Mistakes in bids.
    - 214.407-3 Other mistakes disclosed before award.
  + 214.408 Award.
    - 214.408-1 General.
* SUBPART 214.5 —TWO-STEP SEALED BIDDING
  + 214.503 Procedures.
    - 214.503-1 Step one.

#### SUBPART 214.2 —SOLICITATION OF BIDS

##### 214.201-5 Part IV—Representations and instructions.

(c) Include an evaluation factor regarding supply chain risk (see subpart 239.73) when acquiring information technology, whether as a service or as a supply, that is a covered system, is a part of a covered system, or is in support of a covered system, as defined in 239.7301 .

##### 214.201-6 Solicitation provisions.

(2) Use the provisions at 215.408 (3), respectively.

##### 214.202 General rules for solicitation of bids.

###### 214.202-5 Descriptive literature.

(c) *Requirements of invitation for bids.* When brand name or equal purchase descriptions are used, use of the provision at FAR 52.211-6, Brand Name or Equal, satisfies this requirement.

##### 214.209 Cancellation of invitations before opening.

If an invitation for bids allowed fewer than 30 days for receipt of offers, and resulted in only one offer, the contracting officer shall cancel and resolicit, allowing an additional period of at least 30 days for receipt of offers, as provided in 215.371 .

#### SUBPART 214.4 —OPENING OF BIDS AND AWARD OF CONTRACT

##### 214.404 Rejection of bids.

###### 214.404-1 Cancellation of invitations after opening.

(1) The contracting officer shall make the written determinations required by FAR 14.404-1(c) and (e)(1).

(2) If only one offer is received, follow the procedures at 215.371 , in lieu of the procedures at FAR 14.404-1(f).

##### 214.407 Mistakes in bids.

###### 214.407-3 Other mistakes disclosed before award.

(e) Authority for making a determination under FAR 14.407-3(a), (b), and (d) is delegated for the defense agencies, without power of redelegation, as follows:

|  |  |
| --- | --- |
| (i) | Defense Advanced Research Projects Agency:  General Counsel, DARPA. |
|  |  |
| (ii) | Defense Information Systems Agency:  General Counsel, DISA. |
|  |  |
| (iii) | Defense Intelligence Agency:  Principal Assistant for Acquisition. |
|  |  |
| (iv) | Defense Logistics Agency:  (A) General Counsel, DLA; and  (B) Associate General Counsel, DLA. |
| (v) | National Geospatial-Intelligence Agency: |
|  | General Counsel, NGA |
|  |  |
| (vi) | Defense Threat Reduction Agency:  General Counsel, DTRA. |
|  |  |
| (vii) | National Security Agency:  Director of Procurement, NSA. |
|  |  |
| (viii) | Missile Defense Agency:  General Counsel, MDA. |
|  |  |
| (ix) | Defense Contract Management Agency  General Counsel, DCMA |

##### 214.408 Award.

###### 214.408-1 General.

(b) For acquisitions that exceed the simplified acquisition threshold, if only one offer is received, follow the procedures at 215.371 .

#### SUBPART 214.5 —TWO-STEP SEALED BIDDING

##### 214.503 Procedures.

###### 214.503-1 Step one.

(a)(4) Include an evaluation factor regarding supply chain risk (see subpart 239.73) when acquiring information technology, whether as a service or as a supply, that is a covered system, is a part of a covered system, or is in support of a covered system, as defined in 239.7301 .