**Technical Amendment**

**March 2022**

**PART 204—ADMINISTRATIVE AND INFORMATION MATTERS**

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

**SUBPART 204.6—CONTRACT REPORTING**

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

**204.604 Responsibilities.**

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

(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 **[Principal]** Director, Defense ~~Procurement and Acquisition Policy~~**[Pricing and Contracting]**, 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~~](http://www.acq.osd.mil/dpap/pdi/eb)**[*https://www.acq.osd.mil/asda/dpc/ce/cap/index.html*]**. The **[Principal]** Director, Defense ~~Procurement and Acquisition Policy~~**[Pricing and Contracting]**, will submit a consolidated DoD annual certification to the Office of Management and Budget by January 5th of each year.

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

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

**204.7302 Policy.**

(a) \* \* \*

(3) The NIST SP 800-171 DoD Assessment Methodology is located at [*~~https://www.acq.osd.mil/dpap/pdi/cyber/strategically\_assessing\_contractor\_implementation\_of\_NIST\_SP\_800-171.htm~~l*](https://www.acq.osd.mil/dpap/pdi/cyber/strategically_assessing_contractor_implementation_of_NIST_SP_800-171.html)**[*https://www.acq.osd.mil/asda/dpc/cp/cyber/safeguarding.html#nistSP800171*].**

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

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

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

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

(a) \* \* \*

(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~~](http://www.acq.osd.mil/dpap/cpic/cp/specific_policy_areas.html#federal_prison)**[*https://www.acq.osd.mil/asda/dpc/cp/policy/other-policy-areas.html#fpi*]**.

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

**PART 209—CONTRACTOR QUALIFICATIONS**

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**SUBPART 209.1—RESPONSIBLE PROSPECTIVE CONTRACTORS**

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**209.104-1 General standards.**

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

(g)(i) *Ownership or control by the government of a country that is a state sponsor of terrorism*. ~~(~~See 225.771.~~)~~

~~(~~*~~1~~*~~) Either directly or indirectly, has a significant interest -~~

~~(i) In the firm; or~~

~~(ii) In the subsidiary or the firm that owns the subsidiary; and~~

~~(~~*~~2~~*~~) Has been determined by the Secretary of State under 50 U.S.C. App. 2405(j)(1)(A) to be a government of a country that has repeatedly provided support for acts of international terrorism.~~

~~(B) The Secretary of Defense may waive the prohibition in paragraph (g)(i)(A) of this subsection in accordance with 10 U.S.C. 2327(c). This waiver authority may not be delegated.~~

~~(C) Forward any information indicating that a firm or a subsidiary of a firm may be owned or controlled by the government of a terrorist country, through agency channels, to: Deputy Director, Defense Procurement (Contract Policy and International Contracting, OUSD(AT&L)DPAP(CPIC)), 3060 Defense Pentagon, Washington, DC 20301-3060.~~

(ii) *Ownership or control by a foreign government when access to proscribed information is required to perform the contract*.

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**PART 211—DESCRIBING AGENCY NEEDS**

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

**[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**

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**SUBPART 212.2—SPECIAL REQUIREMENTS FOR THE ACQUISITION OF COMMERCIAL ITEMS**

\* \* \* \* \*

**212.207 Contract type**.

(b) In accordance with section 805 of the National Defense Authorization Act for Fiscal Year 2008 ([Pub. L. 110-181](https://www.govinfo.gov/link/plaw/110/public/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**[)]**.

\* \* \* \* \*

**Subpart 212.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items**

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

\* \* \* \* \*

(f) \* \* \*

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

(A) Use the clause at 252.227-7013, Rights in Technical Data-Noncommercial Items, as prescribed in 227.7103-6(a). Use the clause with its Alternate I as prescribed in 227.7103-6(b)(1). Use the clause with its Alternate II as prescribed in 227.7103-6(b)(2), to comply with 10 U.S.C. ~~7317~~ **[8687]** and 17 U.S.C. 1301, *et seq.*

(B) Use the clause at 252.227-7015, Technical Data-Commercial Items, as prescribed in 227.7102-4(a)(1), to comply with 10 U.S.C. 2320. Use the clause with its Alternate I as prescribed in 227.7102-4(a)(2), to comply with 10 U.S.C. ~~7317~~ **[8687]** and 17 U.S.C. 1301, *et seq.*

(C) Use the clause at 252.227-7037, Validation of Restrictive Markings on Technical Data, as prescribed in 227.7102-4(c).

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**PART 213—SIMPLIFIED ACQUISITION PROCEDURES**

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

**SUBPART 213.3—SIMPLIFIED ACQUISITION METHODS**

**213.301 Governmentwide commercial purchase card.**

(1) \* \* \*

(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 [*~~https://www.acq.osd.mil/dpap/pdi/pc/policy\_documents.html~~*](https://www.acq.osd.mil/dpap/pdi/pc/policy_documents.html)**[*https://www.acq.osd.mil/asda/dpc/ce/pc/docs-guides.html*].** Additional guidance on the fuel card programs is available at [*https://www.dla.mil/Energy/Offers/Products/GovernmentFuel/*](https://www.dla.mil/Energy/Offers/Products/GovernmentFuel/).

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**PART 216—TYPES OF CONTRACTS**

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

**SUBPART 216.4—INCENTIVE CONTRACTS**

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

**216.402-2 Performance incentives**.

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(2) \* \* \*

(ii) The imposition of penalties to be paid by the contractor to the Government for ~~faile~~**[failure]** to achieve such design specification requirements (10 U.S.C. 2443).

\* \* \* \* \*

**PART 225—FOREIGN ACQUISITION**

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

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

**225.7003-2 Restrictions.**

**[(a)]** The following restrictions implement [10 U.S.C. 2533b](https://www.govinfo.gov/link/uscode/10/2533b). Except as provided in 225.7003-3—

(1)~~(a)~~ Do not acquire the following items, or any components of the following items, unless any specialty metals contained in the items or components are melted or produced in the United States (also see guidance at [PGI 225.7003-2](https://www.acq.osd.mil/dpap/dars/dfars/html/current/225_7.htm#225.7003-2)(a)): \* \* \*

(b) For more information on specialty metals restrictions and reporting of noncompliances, see [~~http://www.acq.osd.mil/dpap/cpic/ic/restrictions\_on\_specialty\_metals\_10\_usc\_2533b.html~~](http://www.acq.osd.mil/dpap/cpic/ic/restrictions_on_specialty_metals_10_usc_2533b.html)**[*https://www.acq.osd.mil/asda/dpc/cp/ic/specialty-metals-restrictions.html*]**.

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

**225.7700 Scope**.

\* \* \* \* \*

(e) Section **[1]**216 of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114-328).

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

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**SUBPART 227.71—RIGHTS IN TECHNICAL DATA**

**227.7100 Scope of subpart.**

This subpart—

(a) Prescribes policies and procedures for the acquisition of technical data and the rights to use, modify, reproduce, release, perform, display, or disclose technical data. It implements requirements in the following laws and Executive Order:

(1) \* \* \*

(6) 10 U.S.C. ~~7317~~**[8687]**.

\* \* \* \* \*

**227.7102-1 Policy**.

\* \* \* \* \*

(c) The Government's rights in a vessel design, and in any useful article embodying a vessel design, must be consistent with the Government's rights in technical data pertaining to the design (10 U.S.C. ~~7317~~**[8687]**; 17 U.S.C. 1301(a)(3)).

\* \* \* \* \*

**227.7103-1 Policy.**

\* \* \* \* \*

(g) The Government's rights in a vessel design, and in any useful article embodying a vessel design, must be consistent with the Government's rights in technical data pertaining to the design (10 U.S.C. ~~7317~~**[8687]**; 17 U.S.C. 1301(a)(3)).

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**PART 232—CONTRACT FINANCING**

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

**SUBPART 232.10—PERFORMANCE-BASED PAYMENTS**

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

**232.1004 Procedures.**

(b) *Establishing performance-based finance payment amounts.*

(i) \* \* \*

(ii) The contracting officer shall analyze the performance-based payment schedule using the performance-based payments (PBP) analysis tool. The PBP analysis tool is on the DPC website in the ~~Cost, Pricing & Finance~~ **[Price, Cost and Finance]** section**[. The PBP analysis tool and]**~~,~~ Performance Based Payment~~s -~~ Guide**[book]** ~~Book & Analysis Tool tab,~~ **[are available ]**at [~~http://www.acq.osd.mil/dpap/cpic/cp/Performance\_based\_payments.html~~](http://www.acq.osd.mil/dpap/cpic/cp/Performance_based_payments.html)**[*https://www.acq.osd.mil/asda/dpc/pcf/pricing-topics.html#pdp*]**.

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**PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS**

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**SUBPART 236.6—ARCHITECT-ENGINEER SERVICES**

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**236.606-70 Statutory fee limitation**.

(a) 10 U.S.C. ~~4540~~**[7540]**, ~~7212~~**[8612]**, and 9540 limit the contract price (or fee) for architect-engineer services for the preparation of designs, plans, drawings, and specifications to six percent of the project's estimated construction cost.

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**PART 241—ACQUISITION OF UTILITY SERVICES**

**SUBPART 241.1—GENERAL**

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

**241.102 Applicability.**

(a) \* \* \*

(b)(7) \* \* \*

(C) 10 U.S.C. ~~2689~~ **[2917]** for geothermal resources that result in energy production facilities;

\* \* \* \* \*

**PART 246—QUALITY ASSURANCE**

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

\* \* \* \* \*

**246.870-2 Policy**.

(a) *Sources of electronic parts.*

(1) \* \* \*

(2) The Government requires contractors and subcontractors to comply with the notification, inspection, testing, and authentication requirements of paragraph ~~(b)(3)(ii) through (b)(3)(iv)~~**[(b)(3)(ii)]** of the clause at 252.246-7008, Sources of Electronic Parts, if the contractor—

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

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

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**SUBPART 252.2—TEXT OF PROVISIONS AND CLAUSES**

\* \* \* \* \*

**252.204-7019 Notice of NIST SP 800-171 DoD Assessment Requirements**.

As prescribed in [204.7304](https://www.acq.osd.mil/dpap/dars/dfars/html/current/204_73.htm#204.7304)(d), use the following provision:

NOTICE OF NIST SP 800-171 DOD ASSESSMENT REQUIREMENTS (~~NOV 2020~~**[MAR 2022]**)

(a) *Definitions*. \* \* \*

(b) *Requirement.* In order to be considered for award, if the Offeror is required to implement NIST SP 800-171, the Offeror shall have a current assessment (i.e., not more than 3 years old unless a lesser time is specified in the solicitation) (see [252.204-7020](https://www.acq.osd.mil/dpap/dars/dfars/html/current/252204.htm#252.204-7020)) for each covered contractor information system that is relevant to the offer, contract, task order, or delivery order. The Basic, Medium, and High NIST SP 800-171 DoD Assessments are described in the NIST SP 800-171 DoD Assessment Methodology located at [~~https://www.acq.osd.mil/dpap/pdi/cyber/strategically\_assessing\_contractor\_implementation\_of\_NIST\_SP\_800-171.html~~](https://www.acq.osd.mil/dpap/pdi/cyber/strategically_assessing_contractor_implementation_of_NIST_SP_800-171.html) **[*https://www.acq.osd.mil/asda/dpc/cp/cyber/safeguarding.html#nistSP800171*]**.

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

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

As prescribed in [204.7304](https://www.acq.osd.mil/dpap/dars/dfars/html/current/204_73.htm#204.7304)(e), use the following clause:

NIST SP 800-171 DOD ASSESSMENT REQUIREMENTS (~~NOV 2020~~**[MAR 2022]**)

(a) *Definitions.* \* \* \*

(c) *Requirements.* The Contractor shall provide access to its facilities, systems, and personnel necessary for the Government to conduct a Medium or High NIST SP 800-171 DoD Assessment, as described in NIST SP 800-171 DoD Assessment Methodology at [~~https://www.acq.osd.mil/dpap/pdi/cyber/strategically\_assessing\_contractor\_implementation\_of\_NIST\_SP\_800-171.html~~](https://www.acq.osd.mil/dpap/pdi/cyber/strategically_assessing_contractor_implementation_of_NIST_SP_800-171.html) **[*https://www.acq.osd.mil/asda/dpc/cp/cyber/safeguarding.html#nistSP800171*]**, if necessary.

\* \* \* \* \*

(g) *Subcontracts.*

(1) \* \* \*

(2) The Contractor shall not award a subcontract or other contractual instrument, that is subject to the implementation of NIST SP 800-171 security requirements, in accordance with DFARS clause [252.204-7012](https://www.acq.osd.mil/dpap/dars/dfars/html/current/252204.htm#252.204-7012) of this contract, unless the subcontractor has completed, within the last 3 years, at least a Basic NIST SP 800-171 DoD Assessment, as described in [~~https://www.acq.osd.mil/dpap/pdi/cyber/strategically\_assessing\_contractor\_implementation\_of\_NIST\_SP\_800-171.html~~](https://www.acq.osd.mil/dpap/pdi/cyber/strategically_assessing_contractor_implementation_of_NIST_SP_800-171.html) **[*https://www.acq.osd.mil/asda/dpc/cp/cyber/safeguarding.html#nistSP800171*]**, for all covered contractor information systems relevant to its offer that are not part of an information technology service or system operated on behalf of the Government.

\* \* \* \* \*

**252.211-7003 Item Unique Identification and Valuation.**

As prescribed in [211.274-6](http://www.acq.osd.mil/dpap/dars/dfars/html/current/211_2.htm#211.274-6)(a)(1), use the following clause:

ITEM UNIQUE IDENTIFICATION AND VALUATION (~~MAR 2016~~**[MAR 2022]**)

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

“DoD recognized unique identification equivalent” means a unique identification method that is in commercial use and has been recognized by DoD. All DoD recognized unique identification equivalents are listed at [~~http://www.acq.osd.mil/dpap/pdi/uid/iuid\_equivalents.html~~](http://www.acq.osd.mil/dpap/pdi/uid/iuid_equivalents.html) **[*https://www.acq.osd.mil/asda/dpc/ce/ds/unique-id.html*]**.

\* \* \* \* \*

“Unique item identifier type” means a designator to indicate which method of uniquely identifying a part has been used. The current list of accepted unique item identifier types is maintained at [~~http://www.acq.osd.mil/dpap/pdi/uid/uii\_types.html~~](http://www.acq.osd.mil/dpap/pdi/uid/uii_types.html) **[*https://www.acq.osd.mil/asda/dpc/ce/ds/unique-id.html*]**.

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**252.211-7007 Reporting of Government-Furnished Property.**

As prescribed in [211.274-6](http://www.acq.osd.mil/dpap/dars/dfars/html/current/211_2.htm#211.274-6)(b), use the following clause:

REPORTING OF GOVERNMENT-FURNISHED PROPERTY (~~AUG 2012~~**[MAR 2022]**)

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

(f) *Procedures for reporting of Government-furnished property*. Except as provided in paragraph (c) of this clause, the Contractor shall establish and report to the IUID Registry the information required by FAR clause 52.245-1, paragraphs (e) and (f)(1)(iii), in accordance with the data submission procedures at [~~http://www.acq.osd.mil/dpap/pdi/uid/data\_submission\_information.html~~](http://www.acq.osd.mil/dpap/pdi/uid/data_submission_information.html) **[*https://dodprocurementtoolbox.com/cms/sites/default/files/resources/2021-09/GFP%20Reporting%20Guide\_Vendors\_June%202018.pdf*]**.

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**252.225-7013 Duty-Free Entry**.

\* \* \* \* \*

DUTY-FREE ENTRY (~~APR 2020~~**[MAR 2022]**)

\* \* \* \* \*

(e)\* \* \*

(2) \* \* \*

(iv)(A) For direct shipments to a U.S. military installation, the notation: “UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE Duty-Free Entry to be claimed pursuant to Section XXII, Chapter 98, Subchapter VIII, Item 9808.00.30 of the Harmonized Tariff Schedule of the United States. Upon arrival of shipment at the appropriate port of entry, District Director of Customs, please release shipment under 19 CFR part 142 and notify Commander, ~~Defense Contract Management Agency (DCMA) New York, ATTN: Customs Team, DCMAE-GNTF, 201 Varick Street, Room 905C, New York, New York 10014~~**[Defense Contract Management Agency (DCMA), St. Louis, MO, ATTN: Duty Free Entry Team, 1222 Spruce Street, Room 9.300, St. Louis, MO 63103-2812]**, for execution of Customs Form 7501, 7501A, or 7506 and any required duty-free entry certificates.”

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**252.227-7013 Rights in Technical Data—Noncommercial Items.**

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RIGHTS IN TECHNICAL DATA—NONCOMMERCIAL ITEMS (FEB 2014)

\* \* \* \* \*

Alternate II (~~MAR 2011~~**[MAR 2022]**)

As prescribed in 227.7103-6(b)(2), add the following paragraphs (a)(17) and (b)(7) to the basic clause:

(a)(17) “Vessel design” means the design of a vessel, boat, or craft, and its components, including the hull, decks, superstructure, and the exterior surface shape of all external shipboard equipment and systems. The term includes designs covered by 10 U.S.C. ~~7317~~**[8687]**, and designs protectable under 17 U.S.C. 1301, *et seq.*

(b)(7) *Vessel designs.* For a vessel design (including a vessel design embodied in a useful article) that is developed or delivered under this contract, the Government shall have the right to make and have made any useful article that embodies the vessel design, to import the article, to sell the article, and to distribute the article for sale or to use the article in trade, to the same extent that the Government is granted rights in the technical data pertaining to the vessel design.

\* \* \* \*

**252.227-7015 Technical Data—Commercial Items.**

\* \* \* \* \*

TECHNICAL DATA—COMMERCIAL ITEMS (FEB 2014)

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Alternate I (~~DEC 2011~~**[MAR 2022]**)

As prescribed in 227.7102-4(a)(2), add the following paragraphs (a)(6) and (b)(4) to the basic clause:

(a)(6) *Vessel design* means the design of a vessel, boat, or craft, and its components, including the hull, decks, superstructure, and the exterior surface shape of all external shipboard equipment and systems. The term includes designs covered by 10 U.S.C. ~~7317~~**[8687]**, and designs protectable under 17 U.S.C. 1301, *et seq.*

(b)(4) *Vessel designs.* For a vessel design (including a vessel design embodied in a useful article) that is developed or delivered under this contract, the Government shall have the right to make and have made any useful article that embodies the vessel design, to import the article, to sell the article, and to distribute the article for sale or to use the article in trade, to the same extent that the Government is granted rights in the technical data pertaining to the vessel design.

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