**Technical Amendment**

**April 2023**

**PART 212—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES**

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**Subpart 212.3 - Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Products and Commercial Services**

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

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(f) The following additional provisions and clauses apply to DoD solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services. 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.sam.gov, the contracting officer shall consider this information instead of requiring the offeror to complete these provisions for a particular solicitation.

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(vii) *Part 219—Small Business Programs.*

**[(A) Use the provision at 252.219–7000, Advancing Small Business Growth, as prescribed in 219.309(1), to comply with 10 U.S.C. 4959.]**

(~~A~~**[B]**) Use the clause at 252.219-7003, Small Business Subcontracting Plan (DoD Contracts), to comply with 15 U.S.C. 637.

(*1*) Use the basic clause as prescribed in 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*).

(~~B~~**[C]**) Use the clause at 252.219-7004, Small Business Subcontracting Plan (Test Program), as prescribed in 219.708(b)(1)(B), to comply with 15 U.S.C. 637 note.

~~(C) Use the provision at 252.219-7000, Advancing Small Business Growth, as prescribed in 219.309(1), to comply with 10 U.S.C. 4959.~~

(D) Use the provision at 252.219-7012, Competition for Religious-Related Services, as prescribed in 219.270-3.

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**SUBPART 212.5—APPLICABILITY OF CERTAIN LAWS TO THE ACQUISITION OF COMMERCIAL PRODUCTS, COMMERCIAL SERVICES, AND COMMERCIALLY AVAILABLE OFF-THE-SHELF ITEMS**

**212.503** **Applicability of certain laws to Executive agency contracts for the acquisition of commercial products and commercial services**.

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

(i) 10 U.S.C. 3321(b), Prohibition on Contingent Fees.

(ii) 10 U.S.C. 3741-3750, Allowable Costs Under Defense Contracts.

**[ (iii) 10 U.S.C. 3845, Contractor Inventory Accounting System Standards (see 252.242-7004).**

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

**(v) 10 U.S.C. 4656(a), Prohibition on Persons Convicted of Defense Related Felonies.**

**(vi) 10 U.S.C. 4753(b), Requirement to Identify Suppliers.**

**(vii) Section 8116 of the Defense Appropriations Act for Fiscal Year 2010 (Pub. L. 111-118) (prohibits mandatory arbitration) and similar sections in subsequent DoD appropriations acts.**

**(viii) Domestic Content Restrictions in the National Defense Appropriations Acts for Fiscal Years 1996 and Subsequent Years, unless the restriction specifically applies to commercial products or commercial services. 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).]**

~~(iii) 10 U.S.C. 4753(b), Requirement to Identify Suppliers.~~

~~(iv) 10 U.S.C. 4656(a), Prohibition on Persons Convicted of Defense Related Felonies.~~

~~(v) 10 U.S.C. 3845, Contractor Inventory Accounting System Standards (see 252.242-7004).~~

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

~~(vii) Domestic Content Restrictions in the National Defense Appropriations Acts for Fiscal Years 1996 and Subsequent Years, unless the restriction specifically applies to commercial products or commercial services. 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).~~

~~(viii) 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 products and commercial services:

(i) **[10 U.S.C. 3703, Truthful Cost or Pricing Data (see FAR 15.403-1(b)(3)).]**

**[(ii)]** 10 U.S.C. 4655, Prohibition on Limiting Subcontractor Direct Sales to the United States (see FAR 3.503 and 52.203-6).

~~(ii) 10 U.S.C. 3703, Truthful Cost or Pricing Data (see FAR 15.403-1(b)(3)).~~

**212.504 Applicability of certain laws to subcontracts for the acquisition of commercial products and services**.

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

**[(i) 10 U.S.C. 2391 note, Notification of Substantial Impact on Employment.**

**(ii) 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).**

**(iii) 10 U.S.C. 3321(b), Prohibition on Contingent Fees.**

**(iv) 10 U.S.C. 3741-3750, Allowable Costs Under Defense Contracts.**

**(v) 10 U.S.C. 3841(d), Examination of Records of a Contractor.**

**(vi) 10 U.S.C. 3845, Contractor Inventory Accounting System Standards.**

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

**(viii) 10 U.S.C. 4654, Prohibition Against Doing Business with Certain Offerors or Contractors.**

**(ix) 10 U.S.C. 4656(a), Prohibition on Persons Convicted of Defense Related Felonies.**

**(x) 10 U.S.C. 4753(b), Requirement to Identify Suppliers.**

**(xi) 10 U.S.C. 4801 note prec., Notification of Proposed Program Termination.**

**(xii) 10 U.S.C. 4864, Miscellaneous Limitations on the Procurement of Goods Other Than United States Goods.**

**(xiii) 10 U.S.C. 4871, Reporting Requirement Regarding Dealings with Terrorist Countries.**

**(xiv) Section 8116 of the Defense Appropriations Act for Fiscal Year 2010 (Pub. L. 111-118) (prohibits mandatory arbitration) and similar sections in subsequent DoD appropriations acts.**

**(xv) Domestic Content Restrictions in the National Defense Appropriations Acts for Fiscal Years 1996 and Subsequent Years, unless the restriction specifically applies to commercial products and commercial services. 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).]**

~~(i) 10 U.S.C. 3321(b), Prohibition on Contingent Fees.~~

~~(ii) 10 U.S.C. 3841(d), Examination of Records of a Contractor.~~

~~(iii) 10 U.S.C. 3741-3750, Allowable Costs Under Defense Contracts.~~

~~(iv) 10 U.S.C. 4871, Reporting Requirement Regarding Dealings with Terrorist Countries.~~

~~(v) 10 U.S.C. 4753(b), Requirement to Identify Suppliers.~~

~~(vi) 10 U.S.C. 2391 note, Notification of Substantial Impact on Employment.~~

~~(vii) 10 U.S.C. 4654, Prohibition Against Doing Business with Certain Offerors or Contractors.~~

~~(viii) 10 U.S.C. 4656(a), Prohibition on Persons Convicted of Defense Related Felonies.~~

~~(ix) 10 U.S.C. 3845, Contractor Inventory Accounting System Standards.~~

~~(x) 10 U.S.C. 4801 note prec., Notification of Proposed Program Termination.~~

~~(xi) 10 U.S.C. 4864, Miscellaneous Limitations on the Procurement of Goods Other Than United States Goods.~~

~~(xii) 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).~~

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

~~(xiv) Domestic Content Restrictions in the National Defense Appropriations Acts for Fiscal Years 1996 and Subsequent Years, unless the restriction specifically applies to commercial products and commercial services. 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).~~

~~(xv) 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 products, commercial services, or commercial components:

(i) 10 U.S.C. 4654(d), Subcontractor Reports Under Prohibition Against Doing Business with Certain Offerors (see FAR 52.209-6).

(ii) 10 U.S.C. 4655, Prohibition on Limiting Subcontractor Direct Sales to the United States (see FAR 3.503 and 52.203-6).

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**PART 228—BONDS AND INSURANCE**

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**SUBPART 228.3—INSURANCE**

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**228.371 Additional clauses.**

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(b) \* \* \*

(2) Involving aircraft not owned by or to be delivered to the Government, only if the contracting officer decides that it is in the best interest of the Government. See ~~228.371–3~~**[228.370-3]**.

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