

**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)(i) Use one of the following provisions as prescribed in part 225:

(A) 252.225-7000, Buy American Act—Balance of Payments Program Certificate.

(B) 252.225-7020, Trade Agreements Certificate.

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

(ii) Use the provision at 252.212-7000, Offeror Representations and Certifications—Commercial Items, in all solicitations for commercial items exceeding the simplified acquisition threshold. If an exception to 10 U.S.C. 2410i applies to a solicitation exceeding the simplified acquisition threshold (see 225.7603), indicate on an addendum that “The certification in paragraph (b) of the provision at 252.212-7000 does not apply to this solicitation.”

(iii) Use the clause at 252.212-7001, Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items, in all solicitations and contracts for commercial items, completing paragraphs (a) and (b), as appropriate.

(iv) Use the provision at 252.209-7001, Disclosure of Ownership or Control by the Government of a Terrorist Country, as prescribed in 209.104-70(a).

(v) Use the clause at 252.232-7009, Mandatory Payment by Government-wide Commercial Purchase Card, as prescribed in 232.1110.

(vi) Use the clause at 252.211-7003, Item Identification, as prescribed at 211.274-4.

(vii) Use the clause at 252.225-7040, Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States, as prescribed in 225.7402-4.

(viii) Use the clause at 252.225-7043, Antiterrorism/Force Protection Policy for Defense Contractors Outside the United States, in solicitations and con-

tracts that include the clause at 252.225-7040.

(ix) Use the clause at 252.211-7006, Radio Frequency Identification, as prescribed in 211.275-3.

[60 FR 61595, Nov. 30, 1995, as amended at 61 FR 50452, Sept. 26, 1996; 62 FR 34122, June 24, 1997; 63 FR 11528, Mar. 9, 1998; 63 FR 15317, Mar. 31, 1998; 64 FR 8728, Feb. 23, 1999; 64 FR 43101, Aug. 9, 1999; 65 FR 46625, July 31, 2000; 66 FR 49861, Oct. 1, 2001; 66 FR 55122, 55123, Nov. 1, 2001; 68 FR 7439, Feb. 14, 2003; 68 FR 15618, Mar. 31, 2003; 68 FR 58633, Oct. 10, 2003; 68 FR 75200, Dec. 30, 2003; 68 FR 64558, Nov. 14, 2003; 69 FR 1927, Jan. 13, 2004; 70 FR 20836, Apr. 22, 2005; 70 FR 23801, May 5, 2005; 70 FR 53968, Sept. 13, 2005; 71 FR 9269, Feb. 23, 2006; 71 FR 34828, June 16, 2006; 71 FR 39006, July 11, 2006]

**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) Section 806, Public Law 102-190 (10 U.S.C. 2301 (repealed) note), Payment Protections for Subcontractors and Suppliers.

(ii) 10 U.S.C. 2306(b), Prohibition on Contingent Fees.

(iii) 10 U.S.C. 2324, Allowable Costs Under Defense Contracts.

(iv) 10 U.S.C. 2384(b), Requirement to Identify Suppliers.

(v) 10 U.S.C. 2397(a)(1), Reports by Employees or Former Employees of Defense Contractors.

(vi) 10 U.S.C. 2397b(f), Limits on Employment for Former DoD Officials.

(vii) 10 U.S.C. 2397c, Defense Contractor Requirements Concerning Former DoD Officials.

(viii) 10 U.S.C. 2408(a), Prohibition on Persons Convicted of Defense Related Felonies.

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

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

(xi) 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 225.7019-2(b) (Section 8064 of Public Law 106-259).

(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)).

[60 FR 61595, Nov. 30, 1995, as amended at 63 FR 11851, Mar. 11, 1998; 63 FR 55040, Oct. 14, 1998; 65 FR 77828, Dec. 13, 2000; 67 FR 4208, Jan. 29, 2002; 69 FR 65089, Nov. 10, 2004]

**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) [Reserved]

(ii) Section 806, Public Law 102-190 (10 U.S.C. 2301 (repealed) note), Payment Protections for Subcontractors and Suppliers.

(iii) 10 U.S.C. 2306(b) Prohibition on Contingent Fees.

(iv) 10 U.S.C. 2313(c), Examination of Records of a Contractor.

(v) 10 U.S.C. 2320, Rights in Technical Data.

(vi) 10 U.S.C. 2321, Validation of Proprietary Data Restrictions.

(vii) 10 U.S.C. 2324, Allowable Costs Under Defense Contracts.

(viii) 10 U.S.C. 2327, Reporting Requirement Regarding Dealings with Terrorist Countries.

(ix) 10 U.S.C. 2384(b), Requirement to Identify Suppliers.

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

(xi) 10 U.S.C. 2393, Prohibition Against Doing Business with Certain Offerors or Contractors.

(xii) 10 U.S.C. 2397(a)(1), Reports by Employees or Former Employees of Defense Contractors.

(xiii) 10 U.S.C. 2397b(f), Limits on Employment for Former DoD Officials.

(xiv) 10 U.S.C. 2397c, Defense Contractor Requirements Concerning Former DoD Officials.

(xv) 10 U.S.C. 2408(a) Prohibition on Persons Convicted of Defense Related Felonies.

(xvi) 10 U.S.C. 2410b, Contractor Inventory Accounting System Standards.

(xvii) 10 U.S.C. 2501 note, Notification of Proposed Program Termination.

(xviii) 10 U.S.C. 2534, Miscellaneous Limitations on the Procurement of Goods Other Than United States Goods.

(xix)-(xxi) [Reserved]

(xxii) 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).

(xxiii) 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 225.7009-2(b) (Section 8064 of Public Law 106-259).

(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).

[60 FR 61595, Nov. 30, 1995, as amended at 61 FR 58488, Nov. 15, 1996; 62 FR 5780, Feb. 7, 1997; 65 FR 14401, Mar. 16, 2000; 65 FR 39704, June 27, 2000; 65 FR 77828, Dec. 13, 2000; 69 FR 63331, Nov. 1, 2004]