

**SUBPART 204.8—CONTRACT FILES**

*(Revised January 24, 2008)*

**204.802 Contract files.**

Official contract files shall consist of—

(1) Only original, authenticated or conformed copies of contractual instruments—

(i) “Authenticated copies” means copies that are shown to be genuine in one of two ways—

(A) Certification as true copy by signature of an authorized person; or

(B) Official seal.

(ii) “Conformed copies” means copies that are complete and accurate, including the date signed and the names and titles of the parties who signed them.

(2) Signed or official record copies of correspondence, memoranda, and other documents.

**204.804 Closeout of contract files.**

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.

**204.805 Disposal of contract files.**

(1) The sources of the period for which official 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 cost or pricing data (see FAR 15.403-4), for six

## Defense Federal Acquisition Regulation Supplement

### Part 204—Administrative Matters

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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 204.70--UNIFORM PROCUREMENT INSTRUMENT  
IDENTIFICATION NUMBERS**

*(Revised January 24, 2008)*

**204.7000 Scope.**

This subpart--

(a) Prescribes policies and procedures for assigning numbers to all solicitations, contracts, and related instruments; and

(b) Does not apply to solicitations or orders for communication service authorizations issued by the Defense Information Technology Contracting Organization of the Defense Information Systems Agency in accordance with 239.7407-2.

**204.7001 Policy.**

(a) Use the uniform procurement instrument identification (PII) numbering system prescribed by this subpart for the solicitation/contract instruments described in 204.7003 and 204.7004.

(b) Retain the basic PII number unchanged for the life of the instrument unless the conditions in paragraph (c) of this section exist.

(c)(1) If continued performance under a contract number is not possible or is not in the Government's best interest solely for administrative reasons (e.g., when the supplementary PII serial numbering system is exhausted or for lengthy major systems contracts with multiple options), the contracting officer may assign an additional PII number by issuing a separate continued contract to permit continued contract performance.

(2) A continued contract—

(i) Does not constitute a new procurement;

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

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

(iv) Shall not evade competition, expand the scope of work, or extend the period of performance beyond that of the predecessor contract.

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

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

(A) 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

Part 204--Administrative Matters

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(B) 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

(ii) Follow the procedures at PGI 204.7001(c).

**204.7002 Procedures.**

(a) In assigning PII numbers—

(1) Use only the alpha-numeric characters, as prescribed in this subpart; and

(2) Do not use the letter “I” or “O”.

(b) If department/agency procedures require other identification on the solicitation, contract, or other related instrument forms, enter it in such a location so as to separate it clearly from the PII number.

(c) Enter the basic PII number, including Federal supply contract numbers and any supplementary numbers, in the spaces provided on the solicitation, contract, or related instrument forms. Separate the major elements by dashes, e.g., N00023-90-D-0009 (not necessary in electronic transmission). If there is no space provided on the form, enter the number in the upper right corner of the form and identify what it is (e.g., Supplementary Number N00023-90-F-0120).

**204.7003 Basic PII number.**

(a) *Elements of a number.* The number consists of 13 alpha-numeric characters grouped to convey certain information.

(1) *Positions 1 through 6.* The first six positions identify the department/agency and office issuing the instrument. Use the DoD Activity Address Code (DoDAAC) assigned to the issuing office. DoDAACs can be found at <https://www.daas.dla.mil/daasing/>.

(2) *Positions 7 through 8.* The seventh and eighth positions are the last two digits of the fiscal year in which the PII number was assigned.

(3) *Position 9.* Indicate the type of instrument by entering one of the following upper case letters in position nine—

- |       |   |   |
|-------|---|---|
| (i)   | Blanket purchase agreements   | A |
| (ii)  | Invitations for bids  | B |
| (iii) | Contracts of all types except indefinite delivery contracts, facilities contracts, sales contracts, and contracts placed with or through other Government departments or agencies or against contracts placed by such departments or agencies outside the DoD | C |

## Defense Federal Acquisition Regulation Supplement

### Part 204--Administrative Matters

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(iv)	Indefinite delivery contracts	D
(v)	Facilities contracts	E
(vi)	Contracting actions placed with or through other Government departments or agencies or against contracts placed by such departments or agencies outside the DoD (including actions with the National Industries for the Blind (NIB), the National Industries for the Severely Handicapped (NISH), and the Federal Prison Industries (UNICOR))	F
(vii)	Basic ordering agreements	G
(viii)	Agreements, including basic agreements and loan agreements, but excluding blanket purchase agreements, basic ordering agreements, and leases	H
(ix)	Do not use	I
(x)	Reserved	J
(xi)	Short form research contract	K
(xii)	Lease agreement	L
(xiii)	Purchase orders--manual (assign W when numbering capacity of M is exhausted during the fiscal year)	M
(xiv)	Notice of intent to purchase	N
(xv)	Do not use	O
(xvi)	Purchase order--automated (assign V when numbering capacity of P is exhausted during a fiscal year)	P
(xvii)	Request for quotation--manual	Q
(xviii)	Request for proposal	R
(xix)	Sales contract	S
(xx)	Request for quotation--automated (assign U when numbering capacity of T is exhausted during a fiscal year)	T
(xxi)	See T	U
(xxii)	See P	V
(xxiii)	See M	W
(xxiv)	Reserved for departmental use	X

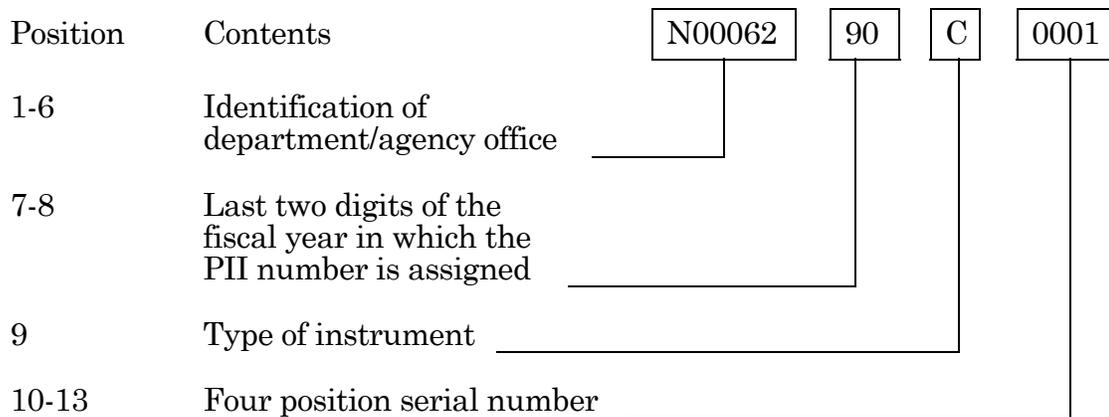
**Part 204--Administrative Matters**

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- |        |                               |   |
|--------|-------------------------------|---|
| (xxv)  | Imprest fund                  | Y |
| (xxvi) | Reserved for departmental use | Z |

(4) *Position 10 through 13.* 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 paragraph (a)(3) of this section. Activities shall assign such series of PII numbers sequentially. An activity may reserve blocks of numbers or alpha-numeric numbers for use by its various components.

(b) *Illustration of PII number.* The following illustrates a properly configured PII number—



**204.7004 Supplementary PII numbers.**

(a) *Uses of the supplementary number.* Use supplementary numbers with the basic PII number, to identify—

- (1) Amendments to solicitations;
- (2) Modifications to contracts and agreements, including provisioned item orders; and
- (3) Calls or orders under contracts, basic ordering agreements, or blanket purchase agreements, issued by the contracting office or by a DoD activity other than the contracting office, including DoD orders against Federal supply schedules.

(b) *Amendments to solicitations.* Number amendments to solicitations sequentially using a four position numeric serial number added to the basic PII number and beginning with 0001, e.g., N00062-91-R-1234-0001.

(c) *Modifications to contracts and agreements.*

- (1) Number modifications to contracts and agreements using a six position alpha-numeric added to the basic PII number.



**Defense Federal Acquisition Regulation Supplement**

**Part 204--Administrative Matters**

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Normal Modification	Provisioned Items Order (Reserved for exclusive use by the Air Force only)	Shipping Instructions
00001 — 99999	K0001 — K9999	S0001 — S9999
then	KA001 — KZ999	SA001 — SZ999
A0001 — A9999	L0001 — L9999	T0001 — T9999
B0001 — B9999	LA001 — LZ999	TA001 — TZ999
and so on to	M0001 — M9999	U0001 — U9999
H0001 — H9999	MA001 — MZ999	UA001 — UZ999
then	N0001 — N9999	V0001 — V9999
J0001 — J9999	NA001 — NZ999	VA001 — VZ999
then	P0001 — P9999	W0001 — W9999
R0001 — R9999	PA001 — PZ999	WA001 — WZ999
then	Q0001 — Q9999	X0001 — X9999
AA001 — HZ999	QA001 — QZ999	XA001 — XZ999
then		
JA001 — JZ999		Y0001 — Y9999
RA001 — RZ999		YA001 — YZ999

(5) If the contract administration office is changing the contract administration or disbursement office for the first time and is using computer generated modifications to notify many offices, it uses the six position supplementary number ARZ999. If either office has to be changed again during the life of the contract, the supplementary number will be ARZ998, and on down as needed.

(6) Each office authorized to issue modifications shall assign the supplementary identification numbers in sequence. Do not assign the numbers until it has been determined that a modification is to be issued.

(d) Delivery orders under indefinite delivery contracts, orders under basic ordering agreements, and calls under blanket purchase agreements.

(1) Calls or orders issued by the office issuing the contract or agreement. Use a four position alpha-numeric call or order serial number added to the basic PII number. These shall be identified by using serial numbers beginning 0001 through 9999. When

the numeric identifiers run out, use alpha characters in the third and fourth positions. Never use alpha characters in the first and second positions.

(2) Orders placed against another activity's contract or agreement.

(i) If the office placing the order or call is different from the office identified in the basic PII number, assign a serial number to the order or call. The first and second positions contain the call/order code assigned to the ordering office in accordance with 204.7005. Do not use the letters A or P in the first position. The third and fourth positions are a two position serial number assigned by the ordering office. The series will begin with 01. When the numbers exceed 99, the office will assign a uniform series of identifiers containing alpha and/or numeric characters, e.g., Basic #: N00383-91-D-0001 serial #: TU01.

(ii) If an office is placing calls or orders with NIB, NISH, or UNICOR, the office shall identify the instrument with a 13 position supplementary PII number using an F in the 9th position. Modifications to these calls or orders shall be numbered in accordance with paragraph (c) of this section, e.g., Order #: DLA100-91-F-0001 modification #: A00001.

(e) *Modifications to calls or orders.* Use a two position alpha-numeric suffix, known as a call or order modification indicator, to identify a modification to a call or order.

(1) Modifications to a call or order issued by a purchasing office begin with 01, 02, and so on through 99, then B1 through B9, BA through BZ, C1 through C9, and so on through ZZ.

(2) Modifications to a call or order issued by a contract administration office begin with 1A, 1B, and so on through 9Z, followed by A1, A2, and so on to A9, then AA, AB, and so on through AZ.

#### **204.7005 Assignment of order codes.**

(a) The Defense Logistics Agency, Acquisition Policy Branch (J-3311), Fort Belvoir, VA 22060-6221, is the executive agent for maintenance of code assignments for use in the first two positions of an order number when an activity places an order against another activity's contract or agreement (see 204.7004(d)(2)). The executive agent distributes blocks of two-character order codes to department/agency monitors for further assignment.

(b) Contracting activities submit requests for assignment of or changes in two-character order codes to their respective monitors in accordance with department/agency procedures. Order code monitors--

(1) Approve requests for additions, deletions, or changes; and

(2) Provide notification of additions, deletions, or changes to--

(i) The executive agent; and

(ii) The executive editor, Defense Acquisition Regulations, OUSD(AT&L)DPAP(DAR), 3062 Defense Pentagon, Washington, DC 20301-3062.

## Defense Federal Acquisition Regulation Supplement

### Part 204--Administrative Matters

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(c) Order code monitors are--

ARMY

Army Contracting Agency  
Attn: SFCA-IT  
5109 Leesburg Pike, Suite 302  
Falls Church, VA 22041-3201

NAVY AND MARINE CORPS

Office of the Assistant Secretary  
of the Navy (RD&A)  
1000 Navy Pentagon, Room BF992  
Washington, DC 20350-1000

AIR FORCE

SAF/AQCI  
1060 Air Force Pentagon  
Washington, DC 20330-1060

DEFENSE LOGISTICS AGENCY

Defense Logistics Agency  
Acquisition Policy Branch (J71)  
John J. Kingman Road  
Fort Belvoir, VA 22060-6221

OTHER DEFENSE AGENCIES

Army Contracting Agency  
Attn: SFCA-IT  
5109 Leesburg Pike, Suite 302  
Falls Church, VA 22041-3201

(d) Order code assignments can be found at  
<http://www.acq.osd.mil/dpap/dars/ordercodes/index.htm>.

**SUBPART 207.1—ACQUISITION PLANS**

*(Revised January 24, 2008)*

**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.

**207.105 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 reprocur 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) 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;

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

(iv) 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.

**207.170 Consolidation of contract requirements.**

**207.170-1 Scope.**

This section implements 10 U.S.C. 2382.

**207.170-2 Definitions.**

As used in this section—

“Consolidation of contract requirements” means the use of a solicitation to obtain offers for a single contract or a multiple award contract to satisfy two or more requirements of a department, agency, or activity for supplies or services that previously have been provided to, or performed for, that department, agency, or activity under two or more separate contracts.

“Multiple award contract” means—

(1) Orders placed using a multiple award schedule issued by the General Services Administration as described in FAR Subpart 8.4;

(2) A multiple award task order or delivery order contract issued in accordance with FAR Subpart 16.5; or

(3) Any other indefinite-delivery, indefinite-quantity contract that an agency enters into with two or more sources for the same line item under the same solicitation.

**207.170-3 Policy and procedures.**

(a) Agencies shall not consolidate contract requirements with an estimated total value exceeding \$5.5 million unless the acquisition strategy includes—

(1) The results of market research;

(2) Identification of any alternative contracting approaches that would involve a lesser degree of consolidation; and

(3) A determination by the senior procurement executive that the consolidation is necessary and justified.

(i) Market research may indicate that consolidation of contract requirements is necessary and justified if the benefits of the acquisition strategy substantially exceed the benefits of each of the possible alternative contracting approaches. Benefits may include costs and, regardless of whether quantifiable in dollar amounts—

- (A) Quality;
- (B) Acquisition cycle;
- (C) Terms and conditions; and
- (D) Any other benefit.

(ii) Savings in administrative or personnel costs alone do not constitute a sufficient justification for a consolidation of contract requirements unless the total amount of the cost savings is expected to be substantial in relation to the total cost of the procurement.

(b) Include the determination made in accordance with paragraph (a)(3) of this section in the contract file.

### **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

## Defense Federal Acquisition Regulation Supplement

### Part 207—Acquisition Planning

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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.

# Defense Federal Acquisition Regulation Supplement

## Part 212—Acquisition of Commercial Items

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### SUBPART 212.1—ACQUISITION OF COMMERCIAL ITEMS - GENERAL *(Revised January 24, 2008)*

#### **212.102 Applicability.**

(a)(i) When using FAR Part 12 procedures for acquisitions exceeding \$1 million in value, the contracting officer shall—

(A) Determine in writing that the acquisition meets the commercial item definition in FAR 2.101; and

(B) Include the written determination in the contract file.

(ii) Follow the procedures at PGI 212.102(a) regarding file documentation.

(f) See DoD Class Deviation [2003-O0002](#), Federal Acquisition Regulation (FAR) Concerning Implementation of the Homeland Security Act Provisions Relating to Procurements for Defense Against or Recovery from Terrorism or Nuclear, Biological, Chemical or Radiological Attack, issued on April 18, 2003. This deviation is effective until incorporated into the DFARS or otherwise rescinded.

**SUBPART 212.3—SOLICITATION PROVISIONS AND CONTRACT CLAUSES  
FOR THE ACQUISITION OF COMMERCIAL ITEMS**

*(Revised January 24, 2008)*

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

(f) The following additional provisions and clauses apply to DoD solicitations and contracts for the acquisition of commercial items. If the offeror has completed the provisions listed in paragraph (f)(i) or (ii) of this section electronically as part of its annual representations and certifications at <https://orca.bpn.gov>, the contracting officer may consider this information instead of requiring the offeror to complete these provisions for a particular solicitation.

(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.

See DoD Class Deviation [2004-O0002](#), Commercial Item Omnibus Clauses for Acquisitions Using the Standard Procurement System, issued on April 29, 2004. This deviation expires on April 30, 2009.

(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 Governmentwide Commercial Purchase Card, as prescribed in 232.1110.

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

## Defense Federal Acquisition Regulation Supplement

### Part 212—Acquisition of Commercial Items

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(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 contracts 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.

(x) Use the clause at 252.232-7010, Levies on Contract Payments, as prescribed in 232.7102.

(xi) Use the clause at 252.246-7003, Notification of Potential Safety Issues, as prescribed in 246.371.

(xii) Use the provision at 252.247-7026, Evaluation Preference for Use of Domestic Shipyards – Applicable to Acquisition of Carriage by Vessel for DoD Cargo in the Coastwise or Noncontiguous Trade, as prescribed in 247.574(e).

#### **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).

## Defense Federal Acquisition Regulation Supplement

### Part 222—Application of Labor Laws to Government Acquisitions

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#### SUBPART 222.17—COMBATING TRAFFICKING IN PERSONS *(Revised January 24, 2008)*

##### **222.1703 Policy.**

See PGI 222.1703 for additional information regarding DoD policy for combating trafficking in persons outside the United States.

##### **222.1704 Violations and remedies.**

Follow the procedures at PGI 222.1704 for notifying the Combatant Commander if a violation occurs.

**SUBPART 225.1—BUY AMERICAN ACT—SUPPLIES**

*(Revised January 24, 2008)*

**225.101 General.**

(a) For DoD, the following two-part test determines whether a manufactured end product is a domestic end product:

(i) The end product is manufactured in the United States; and

(ii) The cost of its U.S. and qualifying country components exceeds 50 percent of the cost of all its components. This test is applied to end products only and not to individual components.

(c) Additional exceptions that allow the purchase of foreign end products are listed at 225.103.

**225.103 Exceptions.**

(a)(i)(A) Public interest exceptions for certain countries are in 225.872.

(B) For procurements covered by the World Trade Organization Government Procurement Agreement, the Under Secretary of Defense (Acquisition, Technology, and Logistics) has determined that it is inconsistent with the public interest to apply the Buy American Act to end products that are substantially transformed in the United States.

(ii)(A) Normally, use the evaluation procedures in Subpart 225.5, but consider recommending a public interest exception if the purposes of the Buy American Act are not served, or in order to meet a need set forth in 10 U.S.C. 2533. For example, a public interest exception may be appropriate—

(1) If accepting the low domestic offer will involve substantial foreign expenditures, or accepting the low foreign offer will involve substantial domestic expenditures;

(2) To ensure access to advanced state-of-the-art commercial technology; or

(3) To maintain the same source of supply for spare and replacement parts (also see paragraph (b)(iii)(B) of this section)—

(i) For an end item that qualifies as a domestic end product; or

(ii) In order not to impair integration of the military and commercial industrial base.

(B) Except as provided in PGI 225.872-4, process a determination for a public interest exception after consideration of the factors in 10 U.S.C. 2533—

## Defense Federal Acquisition Regulation Supplement

### Part 225—Foreign Acquisition

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(1) At a level above the contracting officer for acquisitions valued at or below the simplified acquisition threshold;

(2) By the head of the contracting activity for acquisitions with a value greater than the simplified acquisition threshold but less than \$1,000,000; or

(3) By the agency head for acquisitions valued at \$1,000,000 or more.

(b)(i) A determination that an article, material, or supply is not reasonably available is required when domestic offers are insufficient to meet the requirement and award is to be made on other than a qualifying country or eligible end product.

(ii) Except as provided in FAR 25.103(b)(3), the determination shall be approved—

(A) At a level above the contracting officer for acquisitions valued at or below the simplified acquisition threshold;

(B) By the chief of the contracting office for acquisitions with a value greater than the simplified acquisition threshold but less than \$1,000,000; or

(C) By the head of the contracting activity or immediate deputy for acquisitions valued at \$1,000,000 or more.

(iii) A separate determination as to whether an article is reasonably available is not required for the following articles. DoD has already determined that these articles are not reasonably available from domestic sources:

(A) End products or components listed in 225.104(a).

(B) Spare or replacement parts that must be acquired from the original foreign manufacturer or supplier.

(C) Foreign drugs acquired by the Defense Supply Center, Philadelphia, when the Director, Pharmaceuticals Group, Directorate of Medical Materiel, determines that only the requested foreign drug will fulfill the requirements.

(iv) Under coordinated acquisition (see Subpart 208.70), the determination is the responsibility of the requiring department when the requiring department specifies acquisition of a foreign end product.

(c) The cost of a domestic end product is unreasonable if it is not the low evaluated offer when evaluated under Subpart 225.5.

#### **225.104 Nonavailable articles.**

(a) DoD has determined that the following articles also are nonavailable in accordance with FAR 25.103(b):

(i) Aluminum clad steel wire.

(ii) Sperm oil.

## Defense Federal Acquisition Regulation Supplement

### Part 225—Foreign Acquisition

---

#### **225.105 Determining reasonableness of cost.**

(b) Use an evaluation factor of 50 percent instead of the factors specified in FAR 25.105(b).

#### **225.170 Acquisition from or through other Government agencies.**

Contracting activities must apply the evaluation procedures in Subpart 225.5 when using Federal supply schedules.

**SUBPART 225.11—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**  
(Revised January 24, 2008)

**225.1100 Scope of subpart.**

This subpart prescribes the clauses that implement Subparts 225.1 through 225.10. The clauses that implement Subparts 225.70 through 225.75 are prescribed within those subparts.

**225.1101 Acquisition of supplies.**

(1) Use the provision at 252.225-7000, Buy American Act--Balance of Payments Program Certificate, instead of the provision at FAR 52.225-2, Buy American Act Certificate. Use the provision in any solicitation that includes the clause at 252.225-7001, Buy American Act and Balance of Payments Program.

(2) Use the clause at 252.225-7001, Buy American Act and Balance of Payments Program, instead of the clause at FAR 52.225-1, Buy American Act--Supplies, in solicitations and contracts unless--

(i) All line items will be acquired from a particular source or sources under the authority of FAR 6.302-3;

(ii) All line items must be domestic or qualifying country end products in accordance with Subpart 225.70. (However, the clause may still be required if Subpart 225.70 requires manufacture of the end product in the United States or in the United States or Canada, without a corresponding requirement for use of domestic components);

(iii) An exception to the Buy American Act or Balance of Payments Program applies (see FAR 25.103, 225.103, and 225.7501); or

(iv) One or both of the following clauses will apply to all line items in the contract:

(A) 252.225-7021, Trade Agreements.

(B) 252.225-7036, Buy American Act--Free Trade Agreements--Balance of Payments Program.

(3) Use the clause at 252.225-7002, Qualifying Country Sources as Subcontractors, in solicitations and contracts that include one of the following clauses:

(i) 252.225-7001, Buy American Act and Balance of Payments Program.

(ii) 252.225-7021, Trade Agreements.

(iii) 252.225-7036, Buy American Act--Free Trade Agreements--Balance of Payments Program.

## Defense Federal Acquisition Regulation Supplement

### Part 225—Foreign Acquisition

---

(4) Use the clause at 252.225-7013, Duty-Free Entry, instead of the clause at FAR 52.225-8. Do not use the clause for acquisitions of supplies that will not enter the customs territory of the United States.

(5) Use the provision at 252.225-7020, Trade Agreements Certificate, instead of the provision at FAR 52.225-6, Trade Agreements Certificate, in solicitations that include the clause at 252.225-7021, Trade Agreements.

(6)(i) Use the clause at 252.225-7021, Trade Agreements, instead of the clause at FAR 52.225-5, Trade Agreements, if the Trade Agreements Act applies.

(ii) Do not use the clause if purchase from foreign sources is restricted, unless the contracting officer anticipates a waiver of the restriction.

(iii) The acquisition of eligible and noneligible products under the same contract may result in the application of trade agreements to only some of the items acquired. In such case, indicate in the Schedule those items covered by the Trade Agreements clause.

(7) Use the provision at 252.225-7032, Waiver of United Kingdom Levies—Evaluation of Offers, in solicitations if a U.K. firm is expected to--

(i) Submit an offer; or

(ii) Receive a subcontract exceeding \$1 million.

(8) Use the clause at 252.225-7033, Waiver of United Kingdom Levies, in solicitations and contracts if a U.K. firm is expected to--

(i) Submit an offer; or

(ii) Receive a subcontract exceeding \$1 million.

(9) Use the provision at 252.225-7035, Buy American Act--Free Trade Agreements--Balance of Payments Program Certificate, instead of the provision at FAR 52.225-4, Buy American Act--Free Trade Agreements--Israeli Trade Act Certificate, in solicitations that include the clause at 252.225-7036, Buy American Act--Free Trade Agreements--Balance of Payments Program. Use the provision with its Alternate I when the clause at 252.225-7036 is used with its Alternate I.

(10)(i) Except as provided in paragraph (10)(ii) of this section, use the clause at 252.225-7036, Buy American Act--Free Trade Agreements-- Balance of Payments Program, instead of the clause at FAR 52.225-3, Buy American Act--Free Trade Agreements--Israeli Trade Act, in solicitations and contracts for the items listed at 225.401-70, when the estimated value equals or exceeds \$25,000, but is less than \$194,000, and a Free Trade Agreement applies to the acquisition.

(A) Use the basic clause when the estimated value equals or exceeds \$67,826.

(B) Use the clause with its Alternate I when the estimated value equals or exceeds \$25,000 but is less than \$67,826.

(ii) Do not use the clause if—

(A) Purchase from foreign sources is restricted (see 225.401(a)(2)), unless the contracting officer anticipates a waiver of the restriction; or

(B) Acquiring information technology that is a commercial item, using fiscal year 2004 or subsequent funds (Section 535 of Division F of the Consolidated Appropriations Act, 2004 (Pub. L. 108-199), and the same provision in subsequent appropriations acts).

(iii) The acquisition of eligible and noneligible products under the same contract may result in the application of a Free Trade Agreement to only some of the items acquired. In such case, indicate in the Schedule those items covered by the Buy American Act--Free Trade Agreements--Balance of Payments Program clause.

**225.1103 Other provisions and clauses.**

(1) Unless the contracting officer knows that the prospective contractor is not a domestic concern, use the clause at 252.225-7005, Identification of Expenditures in the United States, in solicitations and contracts that--

(i) Exceed the simplified acquisition threshold; and

(ii) Are for the acquisition of--

(A) Supplies for use outside the United States;

(B) Construction to be performed outside the United States; or

(C) Services to be performed primarily outside the United States.

(2) Use the clause at 252.225-7041, Correspondence in English, in solicitations and contracts when contract performance will be wholly or in part in a foreign country.

(3) Use the provision at 252.225-7042, Authorization to Perform, in solicitations when contract performance will be wholly or in part in a foreign country.

(4) Unless an exception in 225.770-3 applies, use the clause at 252.225-7007, Prohibition on Acquisition of United States Munitions List Items from Communist Chinese Military Companies, in solicitations and contracts involving the delivery of items covered by the United States Munitions List.

**SUBPART 225.75—BALANCE OF PAYMENTS PROGRAM**

*(Revised January 24, 2008)*

**225.7500 Scope of subpart.**

This subpart provides policies and procedures implementing the Balance of Payments Program. It applies to contracts for the acquisition of--

- (a) Supplies for use outside the United States; and
- (b) Construction to be performed outside the United States.

**225.7501 Policy.**

Acquire only domestic end products for use outside the United States, and use only domestic construction material for construction to be performed outside the United States, including end products and construction material for foreign military sales, unless--

- (a) Before issuing the solicitation--
  - (1) The estimated cost of the acquisition or the value of a particular construction material is at or below the simplified acquisition threshold;
  - (2) The end product or particular construction material is--
    - (i) Listed in FAR 25.104 or 225.104(a)(iii);
    - (ii) A petroleum product;
    - (iii) A spare part for foreign-manufactured vehicles, equipment, machinery, or systems, provided the acquisition is restricted to the original manufacturer or its supplier;
    - (iv) An industrial gas;
    - (v) A brand drug specified by the Defense Medical Materiel Board; or
    - (vi) Information technology that is a commercial item, using fiscal year 2004 or subsequent funds (Section 535 of Division F of the Consolidated Appropriations Act, 2004 (Pub. L. 108-199), and the same provision in subsequent appropriations acts);
  - (3) The acquisition is covered by the World Trade Organization Government Procurement Agreement;
  - (4) The acquisition of foreign end products or construction material is required by a treaty or executive agreement between governments;
  - (5) The end product is acquired for commissary resale; or
  - (6) The contracting officer determines that a requirement can best be filled by a foreign end product or construction material, including determinations that--

## Defense Federal Acquisition Regulation Supplement

### Part 225—Foreign Acquisition

---

(i) A subsistence product is perishable and delivery from the United States would significantly impair the quality at the point of consumption;

(ii) An end product or construction material, by its nature or as a practical matter, can best be acquired in the geographic area concerned, e.g., ice or books; or bulk material, such as sand, gravel, or other soil material, stone, concrete masonry units, or fired brick;

(iii) A particular domestic construction material is not available;

(iv) The cost of domestic construction material would exceed the cost of foreign construction material by more than 50 percent, calculated on the basis of--

(A) A particular construction material; or

(B) The comparative cost of application of the Balance of Payments Program to the total acquisition; or

(v) Use of a particular domestic construction material is impracticable;

(b) After receipt of offers--

(1) The evaluated low offer (see Subpart 225.5) is an offer of an end product that--

(i) Is a qualifying country end product;

(ii) Is an eligible product; or

(iii) Is a nonqualifying country end product, but application of the Balance of Payments Program evaluation factor would not result in award on a domestic offer; or

(2) The construction material is an eligible product; or

(c) At any time during the acquisition process, the head of the agency determines that it is not in the public interest to apply the restrictions of the Balance of Payments Program to the end product or construction material.

#### **225.7502 Procedures.**

If the Balance of Payments Program applies to the acquisition, follow the procedures at PGI 225.7502.

#### **225.7503 Contract clauses.**

Unless the entire acquisition is exempt from the Balance of Payments Program--

(a) Use the clause at 252.225-7044, Balance of Payments Program--Construction Material, in solicitations and contracts for construction to be performed outside the United States with a value greater than the simplified acquisition threshold but less than \$7,443,000.

## Defense Federal Acquisition Regulation Supplement

### Part 225—Foreign Acquisition

---

(b) Use the clause at 252.225-7045, Balance of Payments Program--Construction Material Under Trade Agreements, in solicitations and contracts for construction to be performed outside the United States with a value of \$7,443,000 or more. For acquisitions with a value of \$7,443,000 or more, but less than \$8,817,449, use the clause with its Alternate I.

**SUBPART 232.1—NON-COMMERCIAL ITEM PURCHASE FINANCING**  
*(Revised January 24, 2008)*

**232.102 Description of contract financing methods.**

(e)(2) Progress payments based on percentage or stage of completion are authorized only for contracts for construction (as defined in FAR 36.102), shipbuilding, and ship conversion, alteration, or repair. However, percentage or stage of completion methods of measuring contractor performance may be used for performance-based payments in accordance with FAR Subpart 32.10.

**232.102-70 Provisional delivery payments.**

(a) The contracting officer may establish provisional delivery payments to pay contractors for the costs of supplies and services delivered to and accepted by the Government under the following contract actions, if undefinitized:

- (1) Letter contracts contemplating a fixed-price contract.
- (2) Orders under basic ordering agreements.
- (3) Spares provisioning documents annexed to contracts.
- (4) Unpriced equitable adjustments on fixed-price contracts.
- (5) Orders under indefinite-delivery contracts.

(b) Provisional delivery payments shall be—

- (1) Used sparingly;
- (2) Priced conservatively; and

(3) Reduced by liquidating previous progress payments in accordance with the Progress Payments clause.

(c) Provisional delivery payments shall not—

- (1) Include profit;
- (2) Exceed funds obligated for the undefinitized contract action; or
- (3) Influence the definitized contract price.

## Defense Federal Acquisition Regulation Supplement

### Part 234—Major System Acquisition

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*(Revised January 24, 2008)*

#### **234.003 Responsibilities.**

DoDD 5000.1, The Defense Acquisition System, and DoDI 5000.2, Operation of the Defense Acquisition System, contain the DoD implementation of OMB Circular A-109 and OMB Circular A-11.

#### **234.004 Acquisition strategy.**

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

(2) In accordance with Section 818 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364), for major defense acquisition programs as defined in 10 U.S.C. 2430—

(i) The Milestone Decision Authority shall select, with the advice of the contracting officer, the contract type for a development program at the time of Milestone B approval or, in the case of a space program, Key Decision Point B approval;

(ii) The basis for the contract type selection shall be documented in the acquisition strategy. The documentation—

(A) Shall include an explanation of the level of program risk; and

(B) If program risk is determined to be high, shall outline the steps taken to reduce program risk and the reasons for proceeding with Milestone B approval despite the high level of program risk; and

(iii) If a cost-type contract is selected, the contract file shall include the Milestone Decision Authority's written determination that—

(A) The program is so complex and technically challenging that it would not be practicable to reduce program risk to a level that would permit the use of a fixed-price type contract; and

(B) The complexity and technical challenge of the program is not the result of a failure to meet the requirements of 10 U.S.C. 2366a.

#### **234.005 General requirements.**

See 242.1106(a) for information on the use of earned value management systems and the use of cost/schedule status reports.

*(Revised January 24, 2008)*

**235.001 Definitions.**

“Research and development” means those efforts described by the Research, Development, Test, and Evaluation (RDT&E) budget activity definitions found in the DoD Financial Management Regulation (DoD 7000.14-R), Volume 2B, Chapter 5.

**235.006 Contracting methods and contract type.**

(b)(i) For major defense acquisition programs as defined in 10 U.S.C. 2430—

(A) Follow the procedures at 234.004; and

(B) Notify the Under Secretary of Defense (Acquisition, Technology, and Logistics) (USD(AT&L)) of an intent not to exercise a fixed-price production option on a development contract for a major weapon system reasonably in advance of the expiration of the option exercise period.

(ii) For other than major defense acquisition programs—

(A) Do not award a fixed-price type contract for a development program effort unless—

(1) The level of program risk permits realistic pricing;

(2) The use of a fixed-price type contract permits an equitable and sensible allocation of program risk between the Government and the contractor; and

(3) A written determination that the criteria of paragraphs (b)(ii)(A)(1) and (2) of this section have been met is executed—

(i) By the USD(AT&L) if the contract is over \$25 million and is for: research and development for a non-major system; the development of a major system (as defined in FAR 2.101); or the development of a subsystem of a major system; or

(ii) By the contracting officer for any development not covered by paragraph (b)(ii)(A)(3)(i) of this section.

(B) Obtain USD(AT&L) approval of the Government’s prenegotiation position before negotiations begin, and obtain USD(AT&L) approval of the negotiated agreement with the contractor before the agreement is executed, for any action that is—

(1) An increase of more than \$250 million in the price or ceiling price of a fixed-price type development contract, or a fixed-price type contract for the lead ship of a class;

(2) A reduction in the amount of work under a fixed-price type development contract or a fixed-price type contract for the lead ship of a class, when the value of the work deleted is \$100 million or more; or

(3) A repricing of fixed-price type production options to a development contract, or a contract for the lead ship of a class, that increases the price or ceiling price by more than \$250 million for equivalent quantities.

**235.006-70 Manufacturing Technology Program.**

In accordance with 10 U.S.C. 2521(d), for acquisitions under the Manufacturing Technology Program—

(a) Award all contracts using competitive procedures; and

(b) Include in all solicitations an evaluation factor that addresses the extent to which offerors propose to share in the cost of the project (see FAR 15.304).

**235.008 Evaluation for award.**

See 209.570 for limitations on the award of contracts to contractors acting as lead system integrators.

**235.010 Scientific and technical reports.**

(b) For DoD, the Defense Technical Information Center is responsible for collecting all scientific and technical reports. For access to these reports, follow the procedures at PGI 235.010(b).

**235.015-70 Special use allowances for research facilities acquired by educational institutions.**

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

(1) “Research facility” means—

(i) Real property, other than land; and

(ii) Includes structures, alterations, and improvements, acquired for the purpose of conducting scientific research under contracts with departments and agencies of the DoD.

(2) “Special use allowance” means a negotiated direct or indirect allowance—

(i) For construction or acquisition of buildings, structures, and real property, other than land; and

(ii) Where the allowance is computed at an annual rate exceeding the rate which normally would be allowed under FAR Subpart 31.3.

(b) *Policy.*

(1) Educational institutions are to furnish the facilities necessary to perform defense contracts. FAR 31.3 governs how much the Government will reimburse the institution for the research programs. However, in extraordinary situations, the Government may give special use allowances to an educational institution when the institution is unable to provide the capital for new laboratories or expanded facilities needed for defense contracts.

## Defense Federal Acquisition Regulation Supplement

### Part 235—Research and Development Contracting

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(2) Decisions to provide a special use allowance must be made on a case-by-case basis, using the criteria in paragraph (c) of this subsection.

(c) *Authorization for special use allowance.* The head of a contracting activity may approve special use allowances only when all of the following conditions are met—

- (1) The research facility is essential to the performance of DoD contracts;
- (2) Existing facilities, either Government or nongovernment, cannot meet program requirements practically or effectively;
- (3) The proposed agreement for special use allowances is a sound business arrangement;
- (4) The Government's furnishing of Government-owned facilities is undesirable or impractical; and
- (5) The proposed use of the research facility is to conduct essential Government research which requires the new or expanded facilities.

(d) *Application of the special use allowance.*

- (1) In negotiating a special use allowance—
  - (i) Compare the needs of DoD and of the institution for the research facility to determine the amount of the special use allowance;
  - (ii) Consider rental costs for similar space in the area where the research facility is or will be located to establish the annual special use allowance;
  - (iii) Do not include or allow—
    - (A) The costs of land; or
    - (B) Interest charges on capital;
  - (iv) Do not include maintenance, utilities, or other operational costs;
  - (v) The period of allowance generally will be—
    - (A) At least ten years; or
    - (B) A shorter period if the total amount to be allowed is less than the construction or acquisition cost for the research facility;
  - (vi) Generally, provide for allocation of the special use allowance equitably among the Government contracts using the research facility;
  - (vii) Special use allowances apply only in the years in which the Government has contracts in effect with the institution. However, if in any given year there is a reduced level of Government research effort which results in the special use

## Defense Federal Acquisition Regulation Supplement

### Part 235—Research and Development Contracting

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allowance being excessive compared to the Government research funding, a separate special use allowance may be negotiated for that year;

(viii) Special use allowances may be adjusted for the period before construction is complete if the facility is partially occupied and used for Government research during that period.

(2) A special use allowance may be based on either total or partial cost of construction or acquisition of the research facility.

(i) When based on total cost neither the normal use allowance nor depreciation will apply—

(A) During the special use allowance period; and

(B) After the educational institution has recovered the total construction or acquisition cost from the Government or other users.

(ii) When based on partial cost, normal use allowance and depreciation—

(A) Apply to the balance of costs during the special use allowance period to the extent negotiated in the special use allowance agreement; and

(B) Do not apply after the special use allowance period, except for normal use allowance applied to the balance.

(3) During the special use allowance period, the research facility—

(i) Shall be available for Government research use on a priority basis over nongovernment use; and

(ii) Cannot be put to any significant use other than that which justified the special use allowance, unless the head of the contracting activity, who approved the special use allowance, consents.

(4) The Government will pay only an allocable share of the special use allowance when the institution makes any substantial use of the research facility for parties other than the Government during the period when the special use allowance is in effect.

(5) In no event shall the institution be paid more than the acquisition costs.

#### **235.016 Broad agency announcement.**

To help achieve the goals of Section 1207 of Pub. L. 99-661 (see Part 226), contracting officers shall—

(1) Whenever practicable, reserve discrete or severable areas of research interest contained in broad agency announcements for exclusive competition among historically black colleges and universities and minority institutions;

(2) Indicate such reservation—

- (i) In the broad agency announcement; and
- (ii) In the announcement synopsis (see 205.207(d)).

**235.017 Federally Funded Research and Development Centers.**

(a) *Policy.*

(2) No DoD fiscal year 1992 or later funds may be obligated or expended to finance activities of a DoD Federally Funded Research and Development Center (FFRDC) if a member of its board of directors or trustees simultaneously serves on the board of directors or trustees of a profit-making company under contract to DoD, unless the FFRDC has a DoD-approved conflict of interest policy for its members (Section 8107 of Pub. L. 102-172 and similar sections in subsequent Defense appropriations acts).

**235.017-1 Sponsoring agreements.**

(c)(4) DoD-sponsored FFRDCs that function primarily as research laboratories (C3I Laboratory operated by the Institute for Defense Analysis, Lincoln Laboratory operated by Massachusetts Institute of Technology, and Software Engineering Institute operated by Carnegie Mellon) may respond to solicitations and announcements for programs which promote research, development, demonstration, or transfer of technology (Section 217, Pub. L. 103-337).

**235.070 Indemnification against unusually hazardous risks.**

**235.070-1 Indemnification under research and development contracts.**

(a) Under 10 U.S.C. 2354, and if authorized by the Secretary concerned, contracts for research and/or development may provide for indemnification of the contractor or subcontractors for—

- (1) Claims by third persons (including employees) for death, bodily injury, or loss of or damage to property; and
- (2) Loss of or damage to the contractor's property to the extent that the liability, loss, or damage—
  - (i) Results from a risk that the contract defines as “unusually hazardous;”
  - (ii) Arises from the direct performance of the contract; and
  - (iii) Is not compensated by insurance or other means.

(b) Clearly define the specific unusually hazardous risks to be indemnified. Submit this definition for approval with the request for authorization to grant indemnification. Include the approved definition in the contract.

**235.070-2 Indemnification under contracts involving both research and development and other work.**

These contracts may provide for indemnification under the authority of both 10 U.S.C. 2354 and Pub. L. 85-804. Pub. L. 85-804 will apply only to work to which 10 U.S.C.

## Defense Federal Acquisition Regulation Supplement

### Part 235—Research and Development Contracting

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2354 does not apply. Actions under Pub. L. 85-804 must also comply with FAR Subpart 50.4.

#### **235.070-3 Contract clauses.**

When the contractor is to be indemnified in accordance with 235.070-1, use either—

(a) The clause at 252.235-7000, Indemnification Under 10 U.S.C. 2354--Fixed Price; or

(b) The clause at 252.235-7001, Indemnification Under 10 U.S.C. 2354--Cost-Reimbursement, as appropriate.

#### **235.071 Additional contract clauses.**

(a) Use the clause at 252.235-7002, Animal Welfare, or one substantially the same, in solicitations and contracts awarded in the United States or its outlying areas involving research on live vertebrate animals.

(b) Use the clause at 252.235-7003, Frequency Authorization, in solicitations and contracts for developing, producing, constructing, testing, or operating a device requiring a frequency authorization.

(c) Use the clause at 252.235-7010, Acknowledgment of Support and Disclaimer, in solicitations and contracts for research and development.

(d) Use the clause at 252.235-7011, Final Scientific or Technical Report, in solicitations and contracts for research and development.

**SUBPART 244.3—CONTRACTORS' PURCHASING SYSTEMS REVIEWS**  
*(Revised January 24, 2008)*

**244.301 Objective.**

The administrative contracting officer (ACO) is solely responsible for initiating reviews of the contractor's purchasing systems, but other organizations may request that the ACO initiate such reviews.

**244.303 Extent of review.**

Also review the adequacy of rationale documenting commercial item determinations to ensure compliance with the definition of "commercial item" in FAR 2.101.

**244.304 Surveillance.**

(b) The ACO, or the purchasing system analyst (PSA) with the concurrence of the ACO, may initiate a special review of specific weaknesses in the contractor's purchasing system. See PGI 244.304(b) for guidance on how weaknesses may arise and may be discovered.

**244.305 Granting, withholding, or withdrawing approval.**

**244.305-70 Granting, withholding, or withdrawing approval.**

Use this subsection instead of FAR 44.305-2(c) and 44.305-3(b).

(a) At the completion of the in-plant portion of the review, the ACO shall hold an exit conference with the contractor. At the conference, the ACO should—

- (1) Present the review team's recommendations, signed by the ACO;
- (2) Request the contractor submit its plan for correcting deficiencies or making improvements within 15 days; and
- (3) Not comment on the pending or planned decision to grant or withhold approval of the contractor's purchasing system.

(b) The PSA should submit the complete report to the ACO, or any department or agency established review board, within ten days after receipt of the contractor's response under paragraph (a)(2) of this subsection.

(c) The ACO should completely review the report and consider the contractor's response before making a decision on granting, withholding, or withdrawing purchasing system approval. The ACO shall notify the contractor of the decision within ten days after receipt of the report with a copy of the decision to the PSA and the contracting office, when requested.

(d) When a contractor advises that it has corrected deficiencies that led the ACO to withhold or withdraw the purchasing system approval, the ACO—

- (1) Shall request the PSA to verify that the contractor has—
  - (i) Corrected the deficiencies; and

## Defense Federal Acquisition Regulation Supplement

### Part 244—Subcontracting Policies and Procedures

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(ii) Implemented any other ACO recommendations.

(2) Should ask for a review of purchasing policies and procedures issued since the last review.

**Defense Federal Acquisition Regulation Supplement**

**Part 252--Solicitation Provisions and Contract Clauses**

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*(Revised January 24, 2008)*

**252.222-7000 Restrictions on Employment of Personnel.**

As prescribed in 222.7004, use the following clause:

**RESTRICTIONS ON EMPLOYMENT OF PERSONNEL (MAR 2000)**

(a) The Contractor shall employ, for the purpose of performing that portion of the contract work in \_\_\_\_\_, individuals who are residents thereof and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills to perform the contract.

(b) The Contractor shall insert the substance of this clause, including this paragraph (b), in each subcontract awarded under this contract.

(End of clause)

**252.222-7001 Right of First Refusal of Employment--Closure of Military Installations.**

As prescribed in 222.7102, use the following clause:

**RIGHT OF FIRST REFUSAL OF EMPLOYMENT--CLOSURE OF MILITARY INSTALLATIONS (APR 1993)**

(a) The Contractor shall give Government employees, who have been or will be adversely affected by closure of the military installation where this contract will be performed, the right of first refusal for employment openings under the contract. This right applies to positions for which the employee is qualified, if consistent with post-Government employment conflict of interest standards.

(b) Government personnel seeking preference under this clause shall provide the Contractor with evidence of eligibility from the Government personnel office.

(End of clause)

**252.222-7002 Compliance with Local Labor Laws (Overseas).**

As prescribed in 222.7201(a), use the following clause:

**COMPLIANCE WITH LOCAL LABOR LAWS (OVERSEAS) (JUN 1997)**

(a) The Contractor shall comply with all—

(1) Local laws, regulations, and labor union agreements governing work hours;  
and

(2) Labor regulations including collective bargaining agreements, workers' compensation, working conditions, fringe benefits, and labor standards or labor contract matters.

(b) The Contractor indemnifies and holds harmless the United States Government from all claims arising out of the requirements of this clause. This indemnity includes

## Defense Federal Acquisition Regulation Supplement

### Part 252--Solicitation Provisions and Contract Clauses

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the Contractor's obligation to handle and settle, without cost to the United States Government, any claims or litigation concerning allegations that the Contractor or the United States Government, or both, have not fully complied with local labor laws or regulations relating to the performance of work required by this contract.

(c) Notwithstanding paragraph (b) of this clause, consistent with paragraphs 31.205-15(a) and 31.205-47(d) of the Federal Acquisition Regulation, the Contractor will be reimbursed for the costs of all fines, penalties, and reasonable litigation expenses incurred as a result of compliance with specific contract terms and conditions or written instructions from the Contracting Officer.

(End of clause)

#### **252.222-7003 Permit from Italian Inspectorate of Labor.**

As prescribed in 222.7201(b), use the following clause:

##### PERMIT FROM ITALIAN INSPECTORATE OF LABOR (JUN 1997)

Prior to the date set for commencement of work and services under this contract, the Contractor shall obtain the prescribed permit from the Inspectorate of Labor having jurisdiction over the work site, in accordance with Article 5g of Italian Law Number 1369, dated October 23, 1960. The Contractor shall ensure that a copy of the permit is available at all reasonable times for inspection by the Contracting Officer or an authorized representative. Failure to obtain such permit may result in termination of the contract for the convenience of the United States Government, at no cost to the United States Government.

(End of clause)

#### **252.222-7004 Compliance with Spanish Social Security Laws and Regulations.**

As prescribed in 222.7201(c), use the following clause:

##### COMPLIANCE WITH SPANISH SOCIAL SECURITY LAWS AND REGULATIONS (JUN 1997)

(a) The Contractor shall comply with all Spanish Government social security laws and regulations. Within 30 calendar days after the start of contract performance, the Contractor shall ensure that copies of the documents identified in paragraph (a)(1) through (a)(5) of this clause are available at all reasonable times for inspection by the Contracting Officer or an authorized representative. The Contractor shall retain the records in accordance with the Audit and Records clause of this contract.

- (1) TC1--Certificate of Social Security Payments;
  - (2) TC2--List of Employees;
  - (3) TC2/1--Certificate of Social Security Payments for Trainees;
  - (4) Nominal (pay statements) signed by both the employee and the Contractor;
- and

## Defense Federal Acquisition Regulation Supplement

### Part 252--Solicitation Provisions and Contract Clauses

---

(5) Informa de Situacion de Empresa (Report of the Condition of the Enterprise) from the Ministerio de Trabajo y S.S., Tesoreria General de la Seguridad Social (annotated with the pertinent contract number(s) next to the employee's name).

(b) All TC1's, TC2's, and TC2/1's shall contain a representation that they have been paid by either the Social Security Administration Office or the Contractor's bank or savings institution. Failure by the Contractor to comply with the requirements of this clause may result in termination of the contract under the clause of the contract entitled "Default."

(End of clause)

#### **252.222-7005 Prohibition on Use of Nonimmigrant Aliens--Guam.**

As prescribed in 222.7302, use the following clause:

##### PROHIBITION ON USE OF NONIMMIGRANT ALIENS--GUAM (SEP 1999)

The work required by this contract shall not be performed by any alien who is issued a visa or otherwise provided nonimmigrant status under Section 101(a)(15)(H)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)). This prohibition does not apply to the performance of work by lawfully admitted citizens of the freely associated states of the Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau.

(End of clause)

**Defense Federal Acquisition Regulation Supplement**

**Part 252—Solicitation Provisions and Contract Clauses**

---

*(Revised January 24, 2008)*

**252.232-7000 Advance Payment Pool.**

As prescribed in 232.412-70(a), use the following clause:

**ADVANCE PAYMENT POOL (DEC 1991)**

(a) Notwithstanding any other provision of this contract, advance payments will be made for contract performance in accordance with the Determinations, Findings, and Authorization for Advance payment dated \_\_\_\_\_.

(b) Payments made in accordance with this clause shall be governed by the terms and conditions of the Advance Payment Pool Agreement between the United States of America and (insert the name of the contractor). The Agreement is incorporated in the contract by reference.

(End of clause)

**252.232-7001 Disposition of Payments.**

As prescribed in 232.412-70(b), use the following clause:

**DISPOSITION OF PAYMENTS (DEC 1991)**

Payment will be by a dual payee Treasury check made payable to the contractor or the (insert the name of the disbursing office in the advance payment pool agreement), and will be forwarded to that disbursing office for appropriate disposition.

(End of clause)

**252.232-7002 Progress Payments for Foreign Military Sales Acquisitions.**

As prescribed in 232.502-4-70(a), use the following clause:

**PROGRESS PAYMENTS FOR FOREIGN MILITARY SALES ACQUISITIONS  
(DEC 1991)**

If this contract includes foreign military sales (FMS) requirements, the Contractor shall—

(a) Submit a separate progress payment request for each progress payment rate; and

(b) Submit a supporting schedule showing—

(1) The amount of each request distributed to each country's requirements; and

(2) Total price per contract line item applicable to each separate progress payment rate.

(c) Identify in each progress payment request the contract requirements to which it applies (i.e., FMS or U.S.);

## Defense Federal Acquisition Regulation Supplement

### Part 252—Solicitation Provisions and Contract Clauses

---

(d) Calculate each request on the basis of the prices, costs (including costs to complete), subcontractor progress payments, and progress payment liquidations of the contract requirements to which it applies; and

(e) Distribute costs among contract line items and countries in a manner acceptable to the Administrative Contracting Officer.

(End of clause)

#### **252.232-7003 Electronic Submission of Payment Requests.**

As prescribed in 232.7004, use the following clause:

##### ELECTRONIC SUBMISSION OF PAYMENT REQUESTS (MAR 2007)

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

(1) “Contract financing payment” and “invoice payment” have the meanings given in section 32.001 of the Federal Acquisition Regulation.

(2) “Electronic form” means any automated system that transmits information electronically from the initiating system to all affected systems. Facsimile, e-mail, and scanned documents are not acceptable electronic forms for submission of payment requests. However, scanned documents are acceptable when they are part of a submission of a payment request made using one of the electronic forms provided for in paragraph (b) of this clause.

(3) “Payment request” means any request for contract financing payment or invoice payment submitted by the Contractor under this contract.

(b) Except as provided in paragraph (c) of this clause, the Contractor shall submit payment requests using one of the following electronic forms:

(1) Wide Area WorkFlow-Receipt and Acceptance (WAWF-RA). Information regarding WAWF-RA is available on the Internet at <https://wawf.eb.mil>.

(2) Web Invoicing System (WInS). Information regarding WInS is available on the Internet at <https://ecweb.dfas.mil>.

(3) American National Standards Institute (ANSI) X.12 electronic data interchange (EDI) formats.

(i) Information regarding EDI formats is available on the Internet at <http://www.X12.org>.

(ii) EDI implementation guides are available on the Internet at <http://www.dod.mil/dfas/contractorpay/electroniccommerce.html>.

(4) Another electronic form authorized by the Contracting Officer.

(c) The Contractor may submit a payment request in non-electronic form only when—

## Defense Federal Acquisition Regulation Supplement

### Part 252—Solicitation Provisions and Contract Clauses

---

(1) DoD is unable to receive a payment request in electronic form; or

(2) The Contracting Officer administering the contract for payment has determined, in writing, that electronic submission would be unduly burdensome to the Contractor. In such cases, the Contractor shall include a copy of the Contracting Officer's determination with each request for payment.

(d) The Contractor shall submit any non-electronic payment requests using the method or methods specified in Section G of the contract.

(e) In addition to the requirements of this clause, the Contractor shall meet the requirements of the appropriate payment clauses in this contract when submitting payment requests.

(End of clause)

#### **252.232-7004 DoD Progress Payment Rates.**

As prescribed in 232.502-4-70(b), use the following clause:

##### DOD PROGRESS PAYMENT RATES (OCT 2001)

(a) If the contractor is a small business concern, the Progress Payments clause of this contract is modified to change each mention of the progress payment rate and liquidation rate (excepting paragraph (k), *Limitations on Unfinalized Contract Actions*) to 90 percent.

(b) If the contractor is a small disadvantaged business concern, the Progress Payments clause of this contract is modified to change each mention of the progress payment rate and liquidation rate (excepting paragraph (k), *Limitations on Unfinalized Contract Actions*) to 95 percent.

(End of clause)

#### **252.232-7005 Reimbursement of Subcontractor Advance Payments—DoD Pilot Mentor-Protege Program.**

As prescribed in 232.412-70(c), use the following clause:

##### REIMBURSEMENT OF SUBCONTRACTOR ADVANCE PAYMENTS--DOD PILOT MENTOR-PROTEGE PROGRAM (SEP 2001)

(a) The Government will reimburse the Contractor for any advance payments made by the Contractor, as a mentor firm, to a protege firm, pursuant to an approved mentor-protege agreement, provided—

(1) The Contractor's subcontract with the protege firm includes a provision substantially the same as FAR 52.232-12, Advance Payments;

(2) The Contractor has administered the advance payments in accordance with the policies of FAR Subpart 32.4; and

(3) The Contractor agrees that any financial loss resulting from the failure or inability of the protege firm to repay any unliquidated advance payments is the sole

## Defense Federal Acquisition Regulation Supplement

### Part 252—Solicitation Provisions and Contract Clauses

---

financial responsibility of the Contractor.

(b) For a fixed price type contract, advance payments made to a protege firm shall be paid and administered as if they were 100 percent progress payments. The Contractor shall include as a separate attachment with each Standard Form (SF) 1443, Contractor's Request for Progress Payment, a request for reimbursement of advance payments made to a protege firm. The attachment shall provide a separate calculation of lines 14a through 14e of SF 1443 for each protege, reflecting the status of advance payments made to that protege.

(c) For cost reimbursable contracts, reimbursement of advance payments shall be made via public voucher. The Contractor shall show the amounts of advance payments made to each protege on the public voucher, in the form and detail directed by the cognizant contracting officer or contract auditor.

(End of clause)

#### **252.232-7006 Reserved.**

#### **252.232-7007 Limitation of Government's Obligation.**

As prescribed in 232.705-70, use the following clause:

##### LIMITATION OF GOVERNMENT'S OBLIGATION (MAY 2006)

(a) Contract line item(s)   \*   through   \*   are incrementally funded. For these item(s), the sum of \$   \*   of the total price is presently available for payment and allotted to this contract. An allotment schedule is set forth in paragraph (j) of this clause.

(b) For item(s) identified in paragraph (a) of this clause, the Contractor agrees to perform up to the point at which the total amount payable by the Government, including reimbursement in the event of termination of those item(s) for the Government's convenience, approximates the total amount currently allotted to the contract. The Contractor is not authorized to continue work on those item(s) beyond that point. The Government will not be obligated in any event to reimburse the Contractor in excess of the amount allotted to the contract for those item(s) regardless of anything to the contrary in the clause entitled "Termination for Convenience of the Government." As used in this clause, the total amount payable by the Government in the event of termination of applicable contract line item(s) for convenience includes costs, profit, and estimated termination settlement costs for those item(s).

(c) Notwithstanding the dates specified in the allotment schedule in paragraph (j) of this clause, the Contractor will notify the Contracting Officer in writing at least ninety days prior to the date when, in the Contractor's best judgment, the work will reach the point at which the total amount payable by the Government, including any cost for termination for convenience, will approximate 85 percent of the total amount then allotted to the contract for performance of the applicable item(s). The notification will state (1) the estimated date when that point will be reached and (2) an estimate of additional funding, if any, needed to continue performance of applicable line items up to the next scheduled date for allotment of funds identified in paragraph (j) of this clause, or to a mutually agreed upon substitute date. The notification will also advise the Contracting Officer of the estimated amount of additional funds that will be required

## Defense Federal Acquisition Regulation Supplement

### Part 252—Solicitation Provisions and Contract Clauses

---

for the timely performance of the item(s) funded pursuant to this clause, for a subsequent period as may be specified in the allotment schedule in paragraph (j) of this clause or otherwise agreed to by the parties. If after such notification additional funds are not allotted by the date identified in the Contractor's notification, or by an agreed substitute date, the Contracting Officer will terminate any item(s) for which additional funds have not been allotted, pursuant to the clause of this contract entitled "Termination for Convenience of the Government."

(d) When additional funds are allotted for continued performance of the contract line item(s) identified in paragraph (a) of this clause, the parties will agree as to the period of contract performance which will be covered by the funds. The provisions of paragraphs (b) through (d) of this clause will apply in like manner to the additional allotted funds and agreed substitute date, and the contract will be modified accordingly.

(e) If, solely by reason of failure of the Government to allot additional funds, by the dates indicated below, in amounts sufficient for timely performance of the contract line item(s) identified in paragraph (a) of this clause, the Contractor incurs additional costs or is delayed in the performance of the work under this contract and if additional funds are allotted, an equitable adjustment will be made in the price or prices (including appropriate target, billing, and ceiling prices where applicable) of the item(s), or in the time of delivery, or both. Failure to agree to any such equitable adjustment hereunder will be a dispute concerning a question of fact within the meaning of the clause entitled "Disputes."

(f) The Government may at any time prior to termination allot additional funds for the performance of the contract line item(s) identified in paragraph (a) of this clause.

(g) The termination provisions of this clause do not limit the rights of the Government under the clause entitled "Default." The provisions of this clause are limited to the work and allotment of funds for the contract line item(s) set forth in paragraph (a) of this clause. This clause no longer applies once the contract is fully funded except with regard to the rights or obligations of the parties concerning equitable adjustments negotiated under paragraphs (d) and (e) of this clause.

(h) Nothing in this clause affects the right of the Government to terminate this contract pursuant to the clause of this contract entitled "Termination for Convenience of the Government."

(i) Nothing in this clause shall be construed as authorization of voluntary services whose acceptance is otherwise prohibited under 31 U.S.C. 1342.

(j) The parties contemplate that the Government will allot funds to this contract in accordance with the following schedule:

On execution of contract	\$ _____
(month) (day), (year)	\$ _____
(month) (day), (year)	\$ _____
(month) (day), (year)	\$ _____

(End of clause)

ALTERNATE I (MAY 2006).

## Defense Federal Acquisition Regulation Supplement

### Part 252—Solicitation Provisions and Contract Clauses

---

If only one line item will be incrementally funded, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) Contract line item \_\_\_\_\_ is incrementally funded. The sum of \$ \_\_\_\* is presently available for payment and allotted to this contract. An allotment schedule is contained in paragraph (j) of this clause.

\* To be inserted after negotiation.

#### **252.232-7008 Assignment of Claims (Overseas).**

As prescribed in 232.806(a)(1), use the following clause:

##### ASSIGNMENT OF CLAIMS (OVERSEAS) (JUN 1997)

(a) No claims for monies due, or to become due, shall be assigned by the Contractor unless—

- (1) Approved in writing by the Contracting Officer;
- (2) Made in accordance with the laws and regulations of the United States of America; and
- (3) Permitted by the laws and regulations of the Contractor's country.

(b) In no event shall copies of this contract or of any plans, specifications, or other similar documents relating to work under this contract, if marked "Top Secret," "Secret," or "Confidential" be furnished to any assignee of any claim arising under this contract or to any other person not entitled to receive such documents. However, a copy of any part or all of this contract so marked may be furnished, or any information contained herein may be disclosed, to such assignee upon the Contracting Officer's prior written authorization.

(c) Any assignment under this contract shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment may be made to one party as agent or trustee for two or more parties participating in such financing. On each invoice or voucher submitted for payment under this contract to which any assignment applies, and for which direct payment thereof is to be made to an assignee, the Contractor shall—

- (1) Identify the assignee by name and complete address; and
- (2) Acknowledge the validity of the assignment and the right of the named assignee to receive payment in the amount invoiced or vouchered.

(End of clause)

#### **252.232-7009 Mandatory Payment by Governmentwide Commercial Purchase Card.**

As prescribed in 232.1110, use the following clause:

MANDATORY PAYMENT BY GOVERNMENTWIDE COMMERCIAL PURCHASE  
CARD (DEC 2006)

## Defense Federal Acquisition Regulation Supplement

### Part 252—Solicitation Provisions and Contract Clauses

---

The Contractor agrees to accept the Governmentwide commercial purchase card as the method of payment for orders or calls valued at or below the micro-purchase threshold in Part 2 of the Federal Acquisition Regulation, under this contract or agreement.

(End of clause)

#### **252.232-7010 Levies on Contract Payments.**

As prescribed in 232.7102, use the following clause:

##### LEVIES ON CONTRACT PAYMENTS (DEC 2006)

(a) 26 U.S.C. 6331(h) authorizes the Internal Revenue Service (IRS) to continuously levy up to 100 percent of contract payments, up to the amount of tax debt.

(b) When a levy is imposed on a payment under this contract and the Contractor believes that the levy may result in an inability to perform the contract, the Contractor shall promptly notify the Procuring Contracting Officer in writing, with a copy to the Administrative Contracting Officer, and shall provide—

(1) The total dollar amount of the levy;

(2) A statement that the Contractor believes that the levy may result in an inability to perform the contract, including rationale and adequate supporting documentation; and

(3) Advice as to whether the inability to perform may adversely affect national security, including rationale and adequate supporting documentation.

(c) DoD shall promptly review the Contractor's assessment, and the Procuring Contracting Officer shall provide a written notification to the Contractor including—

(1) A statement as to whether DoD agrees that the levy may result in an inability to perform the contract; and

(2)(i) If the levy may result in an inability to perform the contract and the lack of performance will adversely affect national security, the total amount of the monies collected that should be returned to the Contractor; or

(ii) If the levy may result in an inability to perform the contract but will not impact national security, a recommendation that the Contractor promptly notify the IRS to attempt to resolve the tax situation.

(d) Any DoD determination under this clause is not subject to appeal under the Contract Disputes Act.

(End of clause)

# Defense Federal Acquisition Regulation Supplement

## Part 204—Administrative Matters

---

### TABLE OF CONTENTS (Revised January 24, 2008)

#### **SUBPART 204.1—CONTRACT EXECUTION**

204.101 Contracting officer's signature.

#### **SUBPART 204.2—CONTRACT DISTRIBUTION**

204.201 Procedures.

204.203 Taxpayer identification information.

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

204.402 General.

204.404 Contract clause.

204.404-70 Additional contract clauses.

#### **SUBPART 204.6—CONTRACT REPORTING**

204.670 Contract action reporting requirements.

#### **SUBPART 204.8—CONTRACT FILES**

204.802 Contract files.

204.804 Closeout of contract files.

204.805 Disposal of contract files.

#### **SUBPART 204.9—TAXPAYER IDENTIFICATION NUMBER INFORMATION**

204.902 General.

#### **SUBPART 204.11—CENTRAL CONTRACTOR REGISTRATION**

204.1103 Procedures.

204.1104 Solicitation provision and contract clauses.

#### **SUBPART 204.12—ANNUAL REPRESENTATIONS AND CERTIFICATIONS**

204.1202 Solicitation provision and contract clause.

#### **SUBPART 204.70—UNIFORM PROCUREMENT INSTRUMENT IDENTIFICATION NUMBERS**

204.7000 Scope.

204.7001 Policy.

204.7002 Procedures.

204.7003 Basic PII number.

204.7004 Supplementary PII numbers.

204.7005 Assignment of order codes.

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

204.7100 Scope.

204.7101 Definitions.

204.7102 Policy.

204.7103 Contract line items.

204.7103-1 Criteria for establishing.

204.7103-2 Numbering procedures.

## Defense Federal Acquisition Regulation Supplement

### Part 204—Administrative Matters

---

204.7104	Contract subline items.
204.7104-1	Criteria for establishing.
204.7104-2	Numbering procedures.
204.7105	Contract exhibits and attachments.
204.7106	Contract modifications.
204.7107	Contract accounting classification reference number (ACRN).
204.7108	Payment instructions.
204.7109	Contract clause.

#### **SUBPART 204.72—CONTRACTOR IDENTIFICATION**

204.7200	Scope of subpart.
204.7201	Definitions.
204.7202	General.
204.7202-1	CAGE codes.
204.7202-2	DUNS numbers.
204.7202-3	TINs.
204.7203	Responsibilities of contracting officers.
204.7204	Maintenance of the CAGE file.
204.7205	Novation agreements, mergers and sales of assets.
204.7206	Using CAGE codes to identify agents and brokers.
204.7207	Solicitation provision.

# Defense Federal Acquisition Regulation Supplement

## Part 207—Acquisition Planning

---

### TABLE OF CONTENTS (Revised January 24, 2008)

#### **SUBPART 207.1—ACQUISITION PLANS**

207.102	Policy.
207.103	Agency-head responsibilities.
207.105	Contents of written acquisition plans.
207.106	Additional requirements for major systems.
207.170	Consolidation of contract requirements.
207.170-1	Scope.
207.170-2	Definitions.
207.170-3	Policy and procedures.
207.171	Component breakout.
207.171-1	Scope.
207.171-2	Definition.
207.171-3	Policy.
207.171-4	Procedures.

#### **SUBPART 207.4—EQUIPMENT LEASE OR PURCHASE**

207.401	Acquisition considerations.
207.470	Statutory requirement.
207.471	Funding requirements.

#### **SUBPART 207.5—INHERENTLY GOVERNMENTAL FUNCTIONS**

207.500	Scope of subpart.
207.503	Policy.

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

207.7001	Definition.
207.7002	Authority to acquire additional quantities of end items.
207.7003	Limitation.

# Defense Federal Acquisition Regulation Supplement

## Part 222--Application of Labor Laws to Government Acquisitions

---

### TABLE OF CONTENTS (Revised January 24, 2008)

222.001 Definitions.

#### **SUBPART 222.1--BASIC LABOR POLICIES**

222.101 Labor relations.  
222.101-1 General.  
222.101-3 Reporting labor disputes.  
222.101-3-70 Impact of labor disputes on defense programs.  
222.101-4 Removal of items from contractors' facilities affected by work stoppages.  
222.101-70 Acquisition of stevedoring services during labor disputes.  
222.102 Federal and State labor requirements.  
222.102-1 Policy.  
222.103 Overtime.  
222.103-4 Approvals.

#### **SUBPART 222.3--CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

222.302 Liquidated damages and overtime pay.

#### **SUBPART 222.4--LABOR STANDARDS FOR CONTRACTS INVOLVING CONSTRUCTION**

222.402 Applicability.  
222.402-70 Installation support contracts.  
222.403 Statutory and regulatory requirements.  
222.403-4 Department of Labor regulations.  
222.404 Davis-Bacon Act wage determinations.  
222.404-2 General requirements.  
222.406 Administration and enforcement.  
222.406-1 Policy.  
222.406-6 Payrolls and statements.  
222.406-8 Investigations.  
222.406-9 Withholding from or suspension of contract payments.  
222.406-10 Disposition of disputes concerning construction contract labor standards enforcement.  
222.406-13 Semiannual enforcement reports.

#### **SUBPART 222.6--WALSH-HEALEY PUBLIC CONTRACTS ACT**

222.604 Exemptions.  
222.604-2 Regulatory exemptions.

#### **SUBPART 222.8--EQUAL EMPLOYMENT OPPORTUNITY**

222.806 Inquiries.  
222.807 Exemptions.

#### **SUBPART 222.10--SERVICE CONTRACT ACT OF 1965, AS AMENDED**

222.1003 Applicability.  
222.1003-1 General.  
222.1008 Procedures for obtaining wage determinations.  
222.1008-1 Obtaining wage determinations.

## Defense Federal Acquisition Regulation Supplement

### Part 222--Application of Labor Laws to Government Acquisitions

---

#### **SUBPART 222.13--SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS**

- 222.1305      Waivers.
- 222.1308      Complaint procedures.
- 222.1310      Solicitation provision and contract clauses.

#### **SUBPART 222.14--EMPLOYMENT OF THE HANDICAPPED**

- 222.1403      Waivers.
- 222.1406      Complaint procedures.

#### **SUBPART 222.17--COMBATING TRAFFICKING IN PERSONS**

- 222.1703      Policy.
- 222.1704      Violations and remedies.

#### **SUBPART 222.70--RESTRICTIONS ON THE EMPLOYMENT OF PERSONNEL FOR WORK ON CONSTRUCTION AND SERVICE CONTRACTS IN NONCONTIGUOUS STATES**

- 222.7000      Scope of subpart.
- 222.7001      Definition.
- 222.7002      General.
- 222.7003      Waivers.
- 222.7004      Contract clause.

#### **SUBPART 222.71--RIGHT OF FIRST REFUSAL OF EMPLOYMENT**

- 222.7101      Policy.
- 222.7102      Contract clause.

#### **SUBPART 222.72--COMPLIANCE WITH LABOR LAWS OF FOREIGN GOVERNMENTS**

- 222.7201      Contract clauses.

#### **SUBPART 222.73--LIMITATIONS APPLICABLE TO CONTRACTS PERFORMED ON GUAM**

- 222.7300      Scope of subpart.
- 222.7301      Prohibition on use of nonimmigrant aliens.
- 222.7302      Contract clause.

# Defense Federal Acquisition Regulation Supplement

## Part 232—Contract Financing

---

### TABLE OF CONTENTS *(Revised January 24, 2008)*

232.001	Definitions.
232.006	Reduction or suspension of contract payments upon finding of fraud.
232.006-5	Reporting.
232.007	Contract financing payments.
232.070	Responsibilities.
232.071	Reserved.
232.072	Financial responsibility of contractors.
232.072-1	Required financial reviews.
232.072-2	Appropriate information.
232.072-3	Cash flow forecasts.
<b>SUBPART 232.1—NON-COMMERCIAL ITEM PURCHASE FINANCING</b>	
232.102	Description of contract financing methods.
232.102-70	Provisional delivery payments.
<b>SUBPART 232.2—COMMERCIAL ITEM PURCHASE FINANCING</b>	
232.202-4	Security for Government financing.
232.206	Solicitation provisions and contract clauses.
<b>SUBPART 232.3—LOAN GUARANTEES FOR DEFENSE PRODUCTION</b>	
232.302	Authority.
<b>SUBPART 232.4—ADVANCE PAYMENTS FOR NON-COMMERCIAL ITEMS</b>	
232.404	Exclusions.
232.409	Contracting officer action.
232.409-1	Recommendation for approval.
232.410	Findings, determination, and authorization.
232.412	Contract clause.
232.412-70	Additional clauses.
232.470	Advance payment pool.
<b>SUBPART 232.5—PROGRESS PAYMENTS BASED ON COSTS</b>	
232.501	General.
232.501-1	Customary progress payment rates.
232.501-2	Unusual progress payments.
232.501-3	Contract price.
232.502	Preaward matters.
232.502-1	Use of customary progress payments.
232.502-4	Contract clauses.
232.502-4-70	Additional clauses.
232.503	Postaward matters.
232.503-6	Suspension or reduction of payments.
232.503-15	Application of Government title terms.

## Defense Federal Acquisition Regulation Supplement

### Part 232—Contract Financing

---

#### **SUBPART 232.6—CONTRACT DEBTS**

- 232.605 Responsibilities and cooperation among Government officials.
- 232.606 Debt determination and collection.
- 232.610 Demand for payment of contract debt.
- 232.616 Compromise actions.
- 232.617 Contract clause.
- 232.670 Transfer of responsibility for debt collection.
- 232.671 Bankruptcy reporting.

#### **SUBPART 232.7—CONTRACT FUNDING**

- 232.702 Policy.
- 232.703 Contract funding requirements.
- 232.703-1 General.
- 232.703-3 Contracts crossing fiscal years.
- 232.703-70 Military construction appropriations act restriction.
- 232.704 Limitation of cost or funds.
- 232.704-70 Incrementally funded fixed-price contracts.
- 232.705 Contract clauses.
- 232.705-70 Clause for limitation of Government's obligation.

#### **SUBPART 232.8—ASSIGNMENT OF CLAIMS**

- 232.803 Policies.
- 232.805 Procedure.
- 232.806 Contract clause.

#### **SUBPART 232.9—PROMPT PAYMENT**

- 232.903 Responsibilities.
- 232.904 Determining payment due dates.
- 232.906 Making payments.

#### **SUBPART 232.10—PERFORMANCE-BASED PAYMENTS**

- 232.1001 Policy.
- 232.1004 Procedure.

#### **SUBPART 232.11—ELECTRONIC FUNDS TRANSFER**

- 232.1110 Solicitation provision and contract clauses.

#### **SUBPART 232.70—ELECTRONIC SUBMISSION AND PROCESSING OF PAYMENT REQUESTS**

- 232.7000 Scope of subpart.
- 232.7001 Definitions.
- 232.7002 Policy.
- 232.7003 Procedures.
- 232.7004 Contract clause.

#### **SUBPART 232.71—LEVIES ON CONTRACT PAYMENTS**

- 232.7100 Scope of subpart.
- 232.7101 Policy and procedures.
- 232.7102 Contract clause.

**TABLE OF CONTENTS**  
*(Revised January 24, 2008)*

**SUBPART 252.1—INSTRUCTIONS FOR USING PROVISIONS AND CLAUSES**

252.101 Using Part 252.

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

252.201-7000 Contracting Officer's Representative.  
252.203-7000 Reserved.  
252.203-7001 Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies.  
252.203-7002 Display of DoD Hotline Poster.  
252.204-7000 Disclosure of Information.  
252.204-7001 Commercial and Government Entity (CAGE) Code Reporting.  
252.204-7002 Payment for Subline Items Not Separately Priced.  
252.204-7003 Control of Government Personnel Work Product.  
252.204-7004 Alternate A.  
252.204-7005 Oral Attestation of Security Responsibilities.  
252.204-7006 Billing Instructions.  
252.204-7007 Alternate A, Annual Representations and Certifications.  
252.205-7000 Provision of Information to Cooperative Agreement Holders.  
252.206-7000 Domestic Source Restriction.  
252.208-7000 Intent to Furnish Precious Metals as Government-Furnished Material.  
252.209-7000 Reserved.  
252.209-7001 Disclosure of Ownership or Control by the Government of a Terrorist Country.  
252.209-7002 Disclosure of Ownership or Control by a Foreign Government.  
252.209-7003 Reserved.  
252.209-7004 Subcontracting with Firms That Are Owned or Controlled by the Government of a Terrorist Country.  
252.209-7005 Reserve Officer Training Corps and Military Recruiting on Campus.  
252.209-7006 Limitations on Contractors Acting as Lead System Integrators.  
252.209-7007 Prohibited Financial Interests for Lead System Integrators.  
252.211-7000 Acquisition Streamlining.  
252.211-7001 Availability of Specifications, Standards, and Data Item Descriptions Not Listed in the Acquisition Streamlining and Standardization Information System (ASSIST), and Plans, Drawings, and Other Pertinent Documents.  
252.211-7002 Availability for Examination of Specifications, Standards, Plans, Drawings, Data Item Descriptions, and Other Pertinent Documents.  
252.211-7003 Item Identification and Valuation.  
252.211-7004 Alternate Preservation, Packaging, and Packing.  
252.211-7005 Substitutions for Military or Federal Specifications and Standards.  
252.211-7006 Radio Frequency Identification.  
252.211-7007 Item Unique Identification of Government Property.  
252.212-7000 Offeror Representations and Certifications--Commercial Items.  
252.212-7001 Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items.  
252.215-7000 Pricing Adjustments.

## Defense Federal Acquisition Regulation Supplement

### Part 252—Solicitation Provisions and Contract Clauses

---

252.215-7001	Reserved.
252.215-7002	Cost Estimating System Requirements.
252.215-7003	Excessive Pass-Through Charges – Identification of Subcontract Effort.
252.215-7004	Excessive Pass-Through Charges.
252.216-7000	Economic Price Adjustment--Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products.
252.216-7001	Economic Price Adjustment--Nonstandard Steel Items.
252.216-7002	Alternate A, Time-and-Materials/Labor-Hour Proposal Requirements – Non-Commercial Item Acquisition with Adequate Price Competition.
252.216-7003	Economic Price Adjustment--Wage Rates or Material Prices Controlled by a Foreign Government.
252.217-7000	Exercise of Option to Fulfill Foreign Military Sales Commitments.
252.217-7001	Surge Option.
252.217-7002	Offering Property for Exchange.
252.217-7003	Changes.
252.217-7004	Job Orders and Compensation.
252.217-7005	Inspection and Manner of Doing Work.
252.217-7006	Title.
252.217-7007	Payments.
252.217-7008	Bonds.
252.217-7009	Default.
252.217-7010	Performance.
252.217-7011	Access to Vessel.
252.217-7012	Liability and Insurance.
252.217-7013	Guarantees.
252.217-7014	Discharge of Liens.
252.217-7015	Safety and Health.
252.217-7016	Plant Protection.
252.217-7017	Reserved.
252.217-7018	Reserved.
252.217-7019	Reserved.
252.217-7020	Reserved.
252.217-7021	Reserved.
252.217-7022	Reserved.
252.217-7023	Reserved.
252.217-7024	Reserved.
252.217-7025	Reserved.
252.217-7026	Identification of Sources of Supply.
252.217-7027	Contract Definitization.
252.217-7028	Over and Above Work.
252.219-7000	Reserved.
252.219-7001	Reserved.
252.219-7002	Reserved.
252.219-7003	Small Business Subcontracting Plan (DoD Contracts).
252.219-7004	Small Business Subcontracting Plan (Test Program).
252.219-7005	Reserved.
252.219-7006	Reserved.
252.219-7007	Reserved.
252.219-7008	Reserved.
252.219-7009	Section 8(a) Direct Award.
252.219-7010	Alternate A.
252.219-7011	Notification to Delay Performance.

## Defense Federal Acquisition Regulation Supplement

### Part 252—Solicitation Provisions and Contract Clauses

---

- 252.222-7000 Restrictions on Employment of Personnel.
- 252.222-7001 Right of First Refusal of Employment--Closure of Military Installations.
- 252.222-7002 Compliance with Local Labor Laws (Overseas).
- 252.222-7003 Permit from Italian Inspectorate of Labor.
- 252.222-7004 Compliance with Spanish Social Security Laws and Regulations.
- 252.222-7005 Prohibition on Use of Nonimmigrant Aliens--Guam.
- 252.223-7000 Reserved.
- 252.223-7001 Hazard Warning Labels.
- 252.223-7002 Safety Precautions for Ammunition and Explosives.
- 252.223-7003 Change in Place of Performance--Ammunition and Explosives.
- 252.223-7004 Drug-Free Work Force.
- 252.223-7005 Reserved.
- 252.223-7006 Prohibition on Storage and Disposal of Toxic and Hazardous Materials.
- 252.223-7007 Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives.
- 252.225-7000 Buy American Act--Balance of Payments Program Certificate.
- 252.225-7001 Buy American Act and Balance of Payments Program.
- 252.225-7002 Qualifying Country Sources as Subcontractors.
- 252.225-7003 Report of Intended Performance Outside the United States and Canada--Submission with Offer.
- 252.225-7004 Report of Intended Performance Outside the United States and Canada--Submission after Award.
- 252.225-7005 Identification of Expenditures in the United States.
- 252.225-7006 Quarterly Reporting of Actual Contract Performance Outside the United States.
- 252.225-7007 Prohibition on Acquisition of United States Munitions List Items from Communist Chinese Military Companies.
- 252.225-7008 Reserved.
- 252.225-7009 Reserved.
- 252.225-7010 Reserved.
- 252.225-7011 Restriction on Acquisition of Supercomputers.
- 252.225-7012 Preference for Certain Domestic Commodities.
- 252.225-7013 Duty-Free Entry.
- 252.225-7014 Preference for Domestic Specialty Metals.
- 252.225-7015 Restriction on Acquisition of Hand or Measuring Tools.
- 252.225-7016 Restriction on Acquisition of Ball and Roller Bearings.
- 252.225-7017 Reserved.
- 252.225-7018 Notice of Prohibition of Certain Contracts with Foreign Entities for the Conduct of Ballistic Missile Defense Research, Development, Test, and Evaluation.
- 252.225-7019 Restriction on Acquisition of Anchor and Mooring Chain.
- 252.225-7020 Trade Agreements Certificate.
- 252.225-7021 Trade Agreements.
- 252.225-7022 Reserved.
- 252.225-7023 Restriction on Acquisition of Vessel Propellers.
- 252.225-7024 Reserved.
- 252.225-7025 Restriction on Acquisition of Forgings.
- 252.225-7026 Reserved.
- 252.225-7027 Restriction on Contingent Fees for Foreign Military Sales.
- 252.225-7028 Exclusionary Policies and Practices of Foreign Governments.

## Defense Federal Acquisition Regulation Supplement

### Part 252—Solicitation Provisions and Contract Clauses

---

- 252.225-7029 Reserved.
- 252.225-7030 Restriction on Acquisition of Carbon, Alloy, and Armor Steel Plate.
- 252.225-7031 Secondary Arab Boycott of Israel.
- 252.225-7032 Waiver of United Kingdom Levies—Evaluation of Offers.
- 252.225-7033 Waiver of United Kingdom Levies.
- 252.225-7034 Reserved.
- 252.225-7035 Buy American Act--Free Trade Agreements--Balance of Payments Program Certificate.
- 252.225-7036 Buy American Act--Free Trade Agreements--Balance of Payments Program.
- 252.225-7037 Evaluation of Offers for Air Circuit Breakers.
- 252.225-7038 Restriction on Acquisition of Air Circuit Breakers.
- 252.225-7039 Reserved.
- 252.225-7040 Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States.
- 252.225-7041 Correspondence in English.
- 252.225-7042 Authorization to Perform.
- 252.225-7043 Antiterrorism/Force Protection Policy for Defense Contractors Outside the United States.
- 252.225-7044 Balance of Payments Program--Construction Material.
- 252.225-7045 Balance of Payments Program--Construction Material Under Trade Agreements.
- 252.226-7000 Notice of Historically Black College or University and Minority Institution Set-Aside.
- 252.226-7001 Utilization of Indian Organizations and Indian-Owned Economic Enterprises—DoD Contracts
- 252.227-7000 Non-Estoppel.
- 252.227-7001 Release of Past Infringement.
- 252.227-7002 Readjustment of Payments.
- 252.227-7003 Termination.
- 252.227-7004 License Grant.
- 252.227-7005 License Term.
- 252.227-7006 License Grant--Running Royalty.
- 252.227-7007 License Term--Running Royalty.
- 252.227-7008 Computation of Royalties.
- 252.227-7009 Reporting and Payment of Royalties.
- 252.227-7010 License to Other Government Agencies.
- 252.227-7011 Assignments.
- 252.227-7012 Patent License and Release Contract.
- 252.227-7013 Rights in Technical Data--Noncommercial Items.
- 252.227-7014 Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation.
- 252.227-7015 Technical Data--Commercial Items.
- 252.227-7016 Rights in Bid or Proposal Information.
- 252.227-7017 Identification and Assertion of Use, Release, or Disclosure Restrictions.
- 252.227-7018 Rights in Noncommercial Technical Data and Computer Software--Small Business Innovation Research (SBIR) Program.
- 252.227-7019 Validation of Asserted Restrictions--Computer Software.
- 252.227-7020 Rights in Special Works.
- 252.227-7021 Rights in Data--Existing Works.
- 252.227-7022 Government Rights (Unlimited).

## Defense Federal Acquisition Regulation Supplement

### Part 252—Solicitation Provisions and Contract Clauses

---

- 252.227-7023 Drawings and Other Data to Become Property of Government.
- 252.227-7024 Notice and Approval of Restricted Designs.
- 252.227-7025 Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.
- 252.227-7026 Deferred Delivery of Technical Data or Computer Software.
- 252.227-7027 Deferred Ordering of Technical Data or Computer Software.
- 252.227-7028 Technical Data or Computer Software Previously Delivered to the Government.
- 252.227-7029 Reserved.
- 252.227-7030 Technical Data--Withholding of Payment.
- 252.227-7031 Reserved.
- 252.227-7032 Rights in Technical Data and Computer Software (Foreign).
- 252.227-7033 Rights in Shop Drawings.
- 252.227-7034 Reserved.
- 252.227-7035 Reserved.
- 252.227-7036 Reserved.
- 252.227-7037 Validation of Restrictive Markings on Technical Data.
- 252.227-7038 Patent Rights--Ownership by the Contractor (Large Business).
- 252.227-7039 Patents--Reporting of Subject Inventions.
- 252.228-7000 Reimbursement for War-Hazard Losses.
- 252.228-7001 Ground and Flight Risk.
- 252.228-7002 Aircraft Flight Risk.
- 252.228-7003 Capture and Detention.
- 252.228-7004 Bonds or Other Security.
- 252.228-7005 Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles.
- 252.228-7006 Compliance with Spanish Laws and Insurance.
- 252.229-7000 Invoices Exclusive of Taxes or Duties.
- 252.229-7001 Tax Relief.
- 252.229-7002 Customs Exemptions (Germany).
- 252.229-7003 Tax Exemptions (Italy).
- 252.229-7004 Status of Contractor as a Direct Contractor (Spain).
- 252.229-7005 Tax Exemptions (Spain).
- 252.229-7006 Value Added Tax Exclusion (United Kingdom).
- 252.229-7007 Verification of United States Receipt of Goods.
- 252.229-7008 Relief from Import Duty (United Kingdom).
- 252.229-7009 Relief From Customs Duty and Value Added Tax on Fuel (Passenger Vehicles) (United Kingdom).
- 252.229-7010 Relief from Customs Duty on Fuel (United Kingdom).
- 252.229-7011 Reporting of Foreign Taxes – U.S. Assistance Programs.
- 252.231-7000 Supplemental Cost Principles.
- 252.232-7000 Advance Payment Pool.
- 252.232-7001 Disposition of Payments.
- 252.232-7002 Progress Payments for Foreign Military Sales Acquisitions.
- 252.232-7003 Electronic Submission of Payment Requests.
- 252.232-7004 DoD Progress Payment Rates.
- 252.232-7005 Reimbursement of Subcontractor Advance Payments--DoD Pilot Mentor-Protege Program.
- 252.232-7006 Reserved.
- 252.232-7007 Limitation of Government's Obligation.
- 252.232-7008 Assignment of Claims (Overseas).
- 252.232-7009 Mandatory Payment by Governmentwide Commercial Purchase Card.

## Defense Federal Acquisition Regulation Supplement

### Part 252—Solicitation Provisions and Contract Clauses

---

- 252.232-7010 Levies on Contract Payments.
- 252.233-7000 Reserved.
- 252.233-7001 Choice of Law (Overseas).
- 252.235-7000 Indemnification Under 10 U.S.C. 2354--Fixed Price.
- 252.235-7001 Indemnification Under 10 U.S.C. 2354--Cost Reimbursement.
- 252.235-7002 Animal Welfare.
- 252.235-7003 Frequency Authorization.
- 252.235-7004 Reserved.
- 252.235-7005 Reserved.
- 252.235-7006 Reserved.
- 252.235-7007 Reserved.
- 252.235-7008 Reserved.
- 252.235-7009 Reserved.
- 252.235-7010 Acknowledgement of Support and Disclaimer.
- 252.235-7011 Final Scientific or Technical Report.
- 252.236-7000 Modification Proposals--Price Breakdown.
- 252.236-7001 Contract Drawings and Specifications.
- 252.236-7002 Obstruction of Navigable Waterways.
- 252.236-7003 Payment for Mobilization and Preparatory Work.
- 252.236-7004 Payment for Mobilization and Demobilization.
- 252.236-7005 Airfield Safety Precautions.
- 252.236-7006 Cost Limitation.
- 252.236-7007 Additive or Deductive Items.
- 252.236-7008 Contract Prices--Bidding Schedules.
- 252.236-7009 Option for Supervision and Inspection Services.
- 252.236-7010 Overseas Military Construction--Preference for United States Firms.
- 252.236-7011 Overseas Architect-Engineer Services--Restriction to United States Firms.
- 252.236-7012 Military Construction on Kwajalein Atoll--Evaluation Preference.
- 252.237-7000 Notice of Special Standards of Responsibility.
- 252.237-7001 Compliance with Audit Standards.
- 252.237-7002 Award to Single Offeror.
- 252.237-7003 Requirements.
- 252.237-7004 Area of Performance.
- 252.237-7005 Performance and Delivery.
- 252.237-7006 Subcontracting.
- 252.237-7007 Termination for Default.
- 252.237-7008 Group Interment.
- 252.237-7009 Permits.
- 252.237-7010 Reserved.
- 252.237-7011 Preparation History.
- 252.237-7012 Instruction to Offerors (Count-of-Articles).
- 252.237-7013 Instruction to Offerors (Bulk Weight).
- 252.237-7014 Loss or Damage (Count-of-Articles).
- 252.237-7015 Loss or Damage (Weight of Articles).
- 252.237-7016 Delivery Tickets.
- 252.237-7017 Individual Laundry.
- 252.237-7018 Special Definitions of Government Property.
- 252.237-7019 Training for Contractor Personnel Interacting with Detainees.
- 252.237-7020 Reserved.
- 252.237-7021 Reserved.

## Defense Federal Acquisition Regulation Supplement

### Part 252—Solicitation Provisions and Contract Clauses

---

- 252.237-7022 Services at Installations Being Closed.
- 252.239-7000 Protection Against Compromising Emanations.
- 252.239-7001 Information Assurance Contractor Training and Certification.
- 252.239-7002 Access.
- 252.239-7003 Reserved.
- 252.239-7004 Orders for Facilities and Services.
- 252.239-7005 Rates, Charges, and Services.
- 252.239-7006 Tariff Information.
- 252.239-7007 Cancellation or Termination of Orders.
- 252.239-7008 Reuse Arrangements.
- 252.239-7009 Reserved.
- 252.239-7010 Reserved.
- 252.239-7011 Special Construction and Equipment Charges.
- 252.239-7012 Title to Telecommunication Facilities and Equipment.
- 252.239-7013 Obligation of the Government.
- 252.239-7014 Term of Agreement.
- 252.239-7015 Continuation of Communication Service Authorizations.
- 252.239-7016 Telecommunications Security Equipment, Devices, Techniques, and Services.
  
- 252.241-7000 Superseding Contract.
- 252.241-7001 Government Access.
- 252.242-7000 Reserved.
- 252.242-7001 Notice of Earned Value Management System.
- 252.242-7002 Earned Value Management System.
- 252.242-7003 Application for U.S. Government Shipping Documentation/ Instructions.
- 252.242-7004 Material Management and Accounting System.
- 252.242-7005 Cost/Schedule Status Report.
- 252.242-7006 Cost/Schedule Status Report Plans.
- 252.243-7000 Reserved.
- 252.243-7001 Pricing of Contract Modifications.
- 252.243-7002 Requests for Equitable Adjustment.
- 252.244-7000 Subcontracts for Commercial Items and Commercial Components (DoD Contracts).
- 252.245-7000 Government-Furnished Mapping, Charting, and Geodesy Property.
- 252.246-7000 Material Inspection and Receiving Report.
- 252.246-7001 Warranty of Data.
- 252.246-7002 Warranty of Construction (Germany).
- 252.246-7003 Notification of Potential Safety Issues.
- 252.247-7000 Hardship Conditions.
- 252.247-7001 Price Adjustment.
- 252.247-7002 Revision of Prices.
- 252.247-7003 Reserved.
- 252.247-7004 Indefinite Quantities--Fixed Charges.
- 252.247-7005 Indefinite Quantities--No Fixed Charges.
- 252.247-7006 Removal of Contractor's Employees.
- 252.247-7007 Liability and Insurance.
- 252.247-7008 Evaluation of Bids.
- 252.247-7009 Award.
- 252.247-7010 Scope of Contract.
- 252.247-7011 Period of Contract.
- 252.247-7012 Ordering Limitation.

## Defense Federal Acquisition Regulation Supplement

### Part 252—Solicitation Provisions and Contract Clauses

---

- 252.247-7013 Contract Areas of Performance.
- 252.247-7014 Demurrage.
- 252.247-7015 Requirements.
- 252.247-7016 Contractor Liability for Loss or Damage.
- 252.247-7017 Erroneous Shipments.
- 252.247-7018 Subcontracting.
- 252.247-7019 Drayage.
- 252.247-7020 Additional Services.
- 252.247-7021 Returnable Containers Other Than Cylinders.
- 252.247-7022 Representation of Extent of Transportation by Sea.
- 252.247-7023 Transportation of Supplies by Sea.
- 252.247-7024 Notification of Transportation of Supplies by Sea.
- 252.247-7025 Reflagging or Repair Work.
- 252.247-7026 Evaluation Preference for Use of Domestic Shipyards – Applicable to Acquisition of Carriage by Vessel for DoD Cargo in the Coastwise or Noncontiguous Trade.
  
- 252.249-7000 Special Termination Costs.
- 252.249-7001 Reserved.
- 252.249-7002 Notification of Anticipated Contract Termination or Reduction.
- 252.251-7000 Ordering From Government Supply Sources.
- 252.251-7001 Use of Interagency Fleet Management System (IFMS) Vehicles and Related Services.