

*(Revised May 6, 2014)*

**SUBCHAPTER A—GENERAL**

**PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM**

**SUBPART 201.1—PURPOSE, AUTHORITY, ISSUANCE**

**SUBPART 201.2—ADMINISTRATION**

**SUBPART 201.3—AGENCY ACQUISITION REGULATIONS**

**SUBPART 201.4—DEVIATIONS FROM THE FAR**

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

**PART 202—DEFINITIONS OF WORDS AND TERMS**

**SUBPART 202.1—DEFINITIONS**

**PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL  
CONFLICTS OF INTEREST**

**SUBPART 203.0**

**SUBPART 203.1—SAFEGUARDS**

**SUBPART 203.5—OTHER IMPROPER BUSINESS PRACTICES**

**SUBPART 203.7—VOIDING AND RESCINDING CONTRACTS**

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

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

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

**PART 204—ADMINISTRATIVE MATTERS**

**SUBPART 204.1—CONTRACT EXECUTION**

**SUBPART 204.2—CONTRACT DISTRIBUTION**

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

**SUBPART 204.6—CONTRACT REPORTING**

Defense Federal Acquisition Regulation Supplement

Table of Contents

---

**SUBPART 204.8—CONTRACT FILES**

**SUBPART 204.9—TAXPAYER IDENTIFICATION NUMBER INFORMATION**

**SUBPART 204.11—SYSTEM FOR AWARD MANAGEMENT**

**SUBPART 204.12—ANNUAL REPRESENTATIONS AND CERTIFICATIONS**

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

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

**SUBPART 204.72—CONTRACTOR IDENTIFICATION**

**SUBPART 204.73—SAFEGUARDING UNCLASSIFIED CONTROLLED  
TECHNICAL INFORMATION**

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

**SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING**

**PART 205—PUBLICIZING CONTRACT ACTIONS**

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

**SUBPART 205.3—SYNOPSES OF CONTRACT AWARDS**

**SUBPART 205.4—RELEASE OF INFORMATION**

**SUBPART 205.5—PAID ADVERTISEMENTS**

**PART 206—COMPETITION REQUIREMENTS**

**SUBPART 206.0**

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

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

**PART 207—ACQUISITION PLANNING**

**SUBPART 207.1—ACQUISITION PLANS**

**SUBPART 207.4—EQUIPMENT LEASE OR PURCHASE**

**SUBPART 207.5—INHERENTLY GOVERNMENTAL FUNCTIONS**

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

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

**SUBPART 208.0**

**SUBPART 208.4—FEDERAL SUPPLY SCHEDULES**

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

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

**SUBPART 208.70—COORDINATED ACQUISITION**

**SUBPART 208.71—ACQUISITION FOR NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION (NASA)**

**SUBPART 208.73—USE OF GOVERNMENT-OWNED PRECIOUS METALS**

**SUBPART 208.74—ENTERPRISE SOFTWARE AGREEMENTS**

**PART 209—CONTRACTOR QUALIFICATIONS**

**SUBPART 209.1—RESPONSIBLE PROSPECTIVE CONTRACTORS**

**SUBPART 209.2—QUALIFICATIONS REQUIREMENTS**

**SUBPART 209.4—DEBARMENT, SUSPENSION, AND INELIGIBILITY**

**SUBPART 209.5—ORGANIZATIONAL AND CONSULTANT CONFLICTS OF  
INTEREST**

**PART 210—MARKET RESEARCH**

**SUBPART 210.0**

**PART 211—DESCRIBING AGENCY NEEDS**

**SUBPART 211.0**

**SUBPART 211.1—SELECTING AND DEVELOPING REQUIREMENTS  
DOCUMENTS**

**SUBPART 211.2—USING AND MAINTAINING REQUIREMENTS DOCUMENTS**

**SUBPART 211.5—LIQUIDATED DAMAGES**

**SUBPART 211.6—PRIORITIES AND ALLOCATIONS**

**PART 212—ACQUISITION OF COMMERCIAL ITEMS**

**SUBPART 212.1—ACQUISITION OF COMMERCIAL ITEMS - GENERAL**

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

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

**SUBPART 212.5—APPLICABILITY OF CERTAIN LAWS TO THE ACQUISITION OF COMMERCIAL ITEMS**

**SUBPART 212.6—STREAMLINED PROCEDURES FOR EVALUATION AND SOLICITATION FOR COMMERCIAL ITEMS**

**SUBPART 212.70—PILOT PROGRAM FOR TRANSITION TO FOLLOW-ON CONTRACTING AFTER USE OF OTHER TRANSACTION AUTHORITY**

**SUBPART 212.71—PILOT PROGRAM FOR ACQUISITION OF MILITARY-PURPOSE NONDEVELOPMENTAL ITEMS**

**SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES**

**PART 213—SIMPLIFIED ACQUISITION PROCEDURES**

**SUBPART 213.1—PROCEDURES**

**SUBPART 213.2—ACTIONS AT OR BELOW THE MICRO-PURCHASE THRESHOLD**

**SUBPART 213.3—SIMPLIFIED ACQUISITION METHODS**

**SUBPART 213.4—FAST PAYMENT PROCEDURE**

**SUBPART 213.70—SIMPLIFIED ACQUISITION PROCEDURES UNDER THE 8(A) PROGRAM**

**PART 214—SEALED BIDDING**

**SUBPART 214.2—SOLICITATION OF BIDS**

**SUBPART 214.4—OPENING OF BIDS AND AWARD OF CONTRACT**

**PART 215—CONTRACTING BY NEGOTIATION**

**SUBPART 215.1—SOURCE SELECTION PROCESSES AND TECHNIQUES**

**SUBPART 215.2—SOLICITATION AND RECEIPT OF PROPOSALS AND INFORMATION**

**SUBPART 215.3—SOURCE SELECTION**

**SUBPART 215.4—CONTRACT PRICING**

**SUBPART 215.5—PREAWARD, AWARD, AND POSTAWARD  
NOTIFICATIONS, PROTESTS, AND MISTAKES**

**PART 216—TYPES OF CONTRACTS**

**SUBPART 216.1—SELECTING CONTRACT TYPES**

**SUBPART 216.2—FIXED-PRICE CONTRACTS**

**SUBPART 216.3—COST-REIMBURSEMENT CONTRACTS**

**SUBPART 216.4—INCENTIVE CONTRACTS**

**SUBPART 216.5—INDEFINITE-DELIVERY CONTRACTS**

**SUBPART 216.6—TIME-AND-MATERIALS, LABOR-HOUR, AND LETTER  
CONTRACTS**

**SUBPART 216.7—AGREEMENTS**

**PART 217—SPECIAL CONTRACTING METHODS**

**SUBPART 217.1—MULTIYEAR CONTRACTING**

**SUBPART 217.2—OPTIONS**

**SUBPART 217.5—INTERAGENCY ACQUISITIONS UNDER THE ECONOMY  
ACT**

**SUBPART 217.6—MANAGEMENT AND OPERATING CONTRACTS**

**SUBPART 217.70—EXCHANGE OF PERSONAL PROPERTY**

**SUBPART 217.71—MASTER AGREEMENT FOR REPAIR AND ALTERATION  
OF VESSELS**

**SUBPART 217.73—IDENTIFICATION OF SOURCES OF SUPPLY**

**SUBPART 217.74—UNDEFINITIZED CONTRACT ACTIONS**

**SUBPART 217.75—ACQUISITION OF REPLENISHMENT PARTS**

**SUBPART 217.76—CONTRACTS WITH PROVISIONING REQUIREMENTS**

**SUBPART 217.77—OVER AND ABOVE WORK**

**SUBPART 217.78—CONTRACTS OR DELIVERY ORDERS ISSUED BY A NON-  
DOD AGENCY**

**PART 218—EMERGENCY ACQUISITIONS**

**SUBPART 218.1—AVAILABLE ACQUISITION FLEXIBILITIES**

**SUBPART 218.2—EMERGENCY ACQUISITION FLEXIBILITIES**

**SUBCHAPTER D—SOCIOECONOMIC PROGRAMS**

**PART 219—SMALL BUSINESS PROGRAMS**

**SUBPART 219.0**

**SUBPART 219.2—POLICIES**

**SUBPART 219.3—DETERMINATION OF SMALL BUSINESS STATUS FOR  
SMALL BUSINESS PROGRAMS**

**SUBPART 219.4—COOPERATION WITH THE SMALL BUSINESS  
ADMINISTRATION**

**SUBPART 219.5—SET-ASIDES FOR SMALL BUSINESS**

**SUBPART 219.6—CERTIFICATES OF COMPETENCY AND  
DETERMINATIONS OF RESPONSIBILITY**

**SUBPART 219.7—THE SMALL BUSINESS SUBCONTRACTING PROGRAM**

**SUBPART 219.8—CONTRACTING WITH THE SMALL BUSINESS  
ADMINISTRATION (THE 8(A) PROGRAM)**

**SUBPART 219.11—PRICE EVALUATION ADJUSTMENT FOR SMALL  
DISADVANTAGED BUSINESS CONCERNS**

**SUBPART 219.12—SMALL DISADVANTAGED BUSINESS PARTICIPATION**

**SUBPART 219.13—HISTORICALLY UNDERUTILIZED BUSINESS ZONE  
(HUBZONE) PROGRAM**

**SUBPART 219.71—PILOT MENTOR-PROTEGE PROGRAM**

**PART 220—RESERVED**

**PART 221—RESERVED**

**PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT  
ACQUISITIONS**

**SUBPART 222.0**

**SUBPART 222.1—BASIC LABOR POLICIES**

**SUBPART 222.3—CONTRACT WORK HOURS AND SAFETY STANDARDS**

**SUBPART 222.4—LABOR STANDARDS FOR CONTRACTS INVOLVING  
CONSTRUCTION**

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

**SUBPART 222.8—EQUAL EMPLOYMENT OPPORTUNITY**

**SUBPART 222.10—SERVICE CONTRACT LABOR STANDARDS**

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

**SUBPART 222.14—EMPLOYMENT OF WORKERS WITH DISABILITIES**

**SUBPART 222.17—COMBATING TRAFFICKING IN PERSONS**

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

**SUBPART 222.71—RIGHT OF FIRST REFUSAL OF EMPLOYMENT**

**SUBPART 222.72—COMPLIANCE WITH LABOR LAWS OF FOREIGN  
GOVERNMENTS**

**SUBPART 222.73—LIMITATIONS APPLICABLE TO CONTRACTS  
PERFORMED ON GUAM**

**SUBPART 222.74—RESTRICTIONS ON THE USE OF MANDATORY  
ARBITRATION AGREEMENTS**

**PART 223—ENVIRONMENT, ENERGY AND WATER EFFICIENCY,  
RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND  
DRUG-FREE WORKPLACE**

**SUBPART 223.3—HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL  
SAFETY DATA**

**SUBPART 223.4—USE OF RECOVERED MATERIAL**

**SUBPART 223.5—DRUG-FREE WORKPLACE**

**SUBPART 223.7—CONTRACTING FOR ENVIRONMENTALLY PREFERABLE  
PRODUCTS AND SERVICES**

**SUBPART 223.8—OZONE-DEPLETING SUBSTANCES**

**SUBPART 223.71—STORAGE AND DISPOSAL OF TOXIC AND HAZARDOUS  
MATERIALS**

**SUBPART 223.72—SAFEGUARDING SENSITIVE CONVENTIONAL ARMS,  
AMMUNITION, AND EXPLOSIVES**

Defense Federal Acquisition Regulation Supplement

Table of Contents

---

**SUBPART 223.73—MINIMIZING THE USE OF MATERIALS CONTAINING  
HEXAVALENT CHROMIUM**

**PART 224—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION**

**SUBPART 224.1—PROTECTION OF INDIVIDUAL PRIVACY**

**SUBPART 224.2—FREEDOM OF INFORMATION ACT**

**PART 225—FOREIGN ACQUISITION**

**SUBPART 225.0**

**SUBPART 225.1—BUY AMERICAN—SUPPLIES**

**SUBPART 225.2—BUY AMERICAN—CONSTRUCTION MATERIALS**

**SUBPART 225.3—CONTRACTS PERFORMED OUTSIDE THE UNITED  
STATES**

**SUBPART 225.4—TRADE AGREEMENTS**

**SUBPART 225.5—EVALUATING FOREIGN OFFERS—SUPPLY CONTRACTS**

**SUBPART 225.7—PROHIBITED SOURCES**

**SUBPART 225.8—OTHER INTERNATIONAL AGREEMENTS AND  
COORDINATION**

**SUBPART 225.9—CUSTOMS AND DUTIES**

**SUBPART 225.10—ADDITIONAL FOREIGN ACQUISITION REGULATIONS**

**SUBPART 225.11—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

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

**SUBPART 225.71—OTHER RESTRICTIONS ON FOREIGN ACQUISITION**

**SUBPART 225.72—REPORTING CONTRACT PERFORMANCE OUTSIDE  
THE UNITED STATES**

**SUBPART 225.73—ACQUISITIONS FOR FOREIGN MILITARY SALES**

**SUBPART 225.74—DEFENSE CONTRACTORS OUTSIDE THE UNITED  
STATES**

**SUBPART 225.75—BALANCE OF PAYMENTS PROGRAM**

**SUBPART 225.76—SECONDARY ARAB BOYCOTT OF ISRAEL**

Defense Federal Acquisition Regulation Supplement

Table of Contents

---

**SUBPART 225.77–ACQUISITIONS IN SUPPORT OF OPERATIONS IN AFGHANISTAN**

**SUBPART 225.78– ACQUISITIONS IN SUPPORT OF GEOGRAPHIC COMBATANT COMMAND’S THEATER SECURITY COOPERATION EFFORTS**

**SUBPART 225.79– EXPORT CONTROL**

**PART 226–OTHER SOCIOECONOMIC PROGRAMS**

**SUBPART 226.1–INDIAN INCENTIVE PROGRAM**

**SUBPART 226.3–HISTORICALLY BLACK COLLEGES AND UNIVERSITIES AND MINORITY INSTITUTIONS**

**SUBPART 226.71–PREFERENCE FOR LOCAL AND SMALL BUSINESS**

**SUBCHAPTER E–GENERAL CONTRACTING REQUIREMENTS**

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

**SUBPART 227.3–PATENT RIGHTS UNDER GOVERNMENT CONTRACTS**

**SUBPART 227.4–RIGHTS IN DATA AND COPYRIGHTS**

**SUBPART 227.6–FOREIGN LICENSE AND TECHNICAL ASSISTANCE AGREEMENTS**

**SUBPART 227.70–INFRINGEMENT CLAIMS, LICENSES, AND ASSIGNMENTS**

**SUBPART 227.71–RIGHTS IN TECHNICAL DATA**

**SUBPART 227.72–RIGHTS IN COMPUTER SOFTWARE AND COMPUTER SOFTWARE DOCUMENTATION**

**PART 228–BONDS AND INSURANCE**

**SUBPART 228.1–BONDS**

**SUBPART 228.3–INSURANCE**

**PART 229–TAXES**

**SUBPART 229.1–GENERAL**

**SUBPART 229.4–CONTRACT CLAUSES**

**SUBPART 229.70–SPECIAL PROCEDURES FOR OVERSEAS CONTRACTS**

**PART 230–COST ACCOUNTING STANDARDS ADMINISTRATION**

**SUBPART 230.2–CAS PROGRAM REQUIREMENTS**

**PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES**

**SUBPART 231.1—APPLICABILITY**

**SUBPART 231.2—CONTRACTS WITH COMMERCIAL ORGANIZATIONS**

**SUBPART 231.3—CONTRACTS WITH EDUCATIONAL INSTITUTIONS**

**SUBPART 231.6—CONTRACTS WITH STATE, LOCAL, AND FEDERALLY  
RECOGNIZED INDIAN TRIBAL GOVERNMENTS**

**SUBPART 231.7—CONTRACTS WITH NONPROFIT ORGANIZATIONS**

**PART 232—CONTRACT FINANCING**

**SUBPART 232.0**

**SUBPART 232.1—NON-COMMERCIAL ITEM PURCHASE FINANCING**

**SUBPART 232.2—COMMERCIAL ITEM PURCHASE FINANCING**

**SUBPART 232.3—LOAN GUARANTEES FOR DEFENSE PRODUCTION**

**SUBPART 232.4—ADVANCE PAYMENTS FOR NON-COMMERCIAL ITEMS**

**SUBPART 232.5—PROGRESS PAYMENTS BASED ON COSTS**

**SUBPART 232.6—CONTRACT DEBTS**

**SUBPART 232.7—CONTRACT FUNDING**

**SUBPART 232.8—ASSIGNMENT OF CLAIMS**

**SUBPART 232.9—PROMPT PAYMENT**

**SUBPART 232.10—PERFORMANCE-BASED PAYMENTS**

**SUBPART 232.11—ELECTRONIC FUNDS TRANSFER**

**SUBPART 232.70—ELECTRONIC SUBMISSION AND PROCESSING OF  
PAYMENT REQUESTS AND RECEIVING REPORTS**

**SUBPART 232.71—LEVIES ON CONTRACT PAYMENTS**

**PART 233—PROTESTS, DISPUTES, AND APPEALS**

**SUBPART 233.1—PROTESTS**

**SUBPART 233.2—DISPUTES AND APPEALS**

**SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING**

**PART 234—MAJOR SYSTEM ACQUISITION**

**SUBPART 234.0**

**SUBPART 234.2—EARNED VALUE MANAGEMENT SYSTEM**

**SUBPART 234.70—ACQUISITION OF MAJOR WEAPON SYSTEMS AS  
COMMERCIAL ITEMS**

**SUBPART 234.71—COST AND SOFTWARE DATA REPORTING**

**PART 235—RESEARCH AND DEVELOPMENT CONTRACTING**

**SUBPART 235.0**

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

**SUBPART 236.1—GENERAL**

**SUBPART 236.2—SPECIAL ASPECTS OF CONTRACTING FOR  
CONSTRUCTION**

**SUBPART 236.5—CONTRACT CLAUSES**

**SUBPART 236.6—ARCHITECT-ENGINEER SERVICES**

**SUBPART 236.7—STANDARD AND OPTIONAL FORMS FOR CONTRACTING  
FOR CONSTRUCTION, ARCHITECT-ENGINEER SERVICES, AND  
DISMANTLING, DEMOLITION, OR REMOVAL OF IMPROVEMENTS**

**PART 237—SERVICE CONTRACTING**

**SUBPART 237.1—SERVICE CONTRACTS—GENERAL**

**SUBPART 237.2—ADVISORY AND ASSISTANCE SERVICES**

**SUBPART 237.5—MANAGEMENT OVERSIGHT OF SERVICE CONTRACTS**

**SUBPART 237.70—MORTUARY SERVICES**

**SUBPART 237.71—LAUNDRY AND DRY CLEANING SERVICES**

**SUBPART 237.72—EDUCATIONAL SERVICE AGREEMENTS**

**SUBPART 237.73—SERVICES OF STUDENTS AT RESEARCH AND  
DEVELOPMENT LABORATORIES**

**SUBPART 237.74—SERVICES AT INSTALLATIONS BEING CLOSED**

**SUBPART 237.75—ACQUISITION AND MANAGEMENT OF INDUSTRIAL  
RESOURCES**

**SUBPART 237.76—CONTINUATION OF ESSENTIAL CONTRACTOR SERVICES**

**PART 238—FEDERAL SUPPLY SCHEDULE CONTRACTING**

**PART 239—ACQUISITION OF INFORMATION TECHNOLOGY**

**SUBPART 239.1—GENERAL**

**SUBPART 239.70—EXCHANGE OR SALE OF INFORMATION TECHNOLOGY**

**SUBPART 239.71—SECURITY AND PRIVACY FOR COMPUTER SYSTEMS**

**SUBPART 239.72—STANDARDS**

**SUBPART 239.73—REQUIREMENTS FOR INFORMATION RELATING TO  
SUPPLY CHAIN RISK**

**SUBPART 239.74—TELECOMMUNICATIONS SERVICES**

**PART 240—RESERVED**

**PART 241—ACQUISITION OF UTILITY SERVICES**

**SUBPART 241.1—GENERAL**

**SUBPART 241.2—ACQUIRING UTILITY SERVICES**

**SUBPART 241.5—SOLICITATION PROVISION AND CONTRACT CLAUSES**

**SUBCHAPTER G—CONTRACT MANAGEMENT**

**PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES**

**SUBPART 242.0**

**SUBPART 242.2—CONTRACT ADMINISTRATION SERVICES**

**SUBPART 242.3—CONTRACT ADMINISTRATION OFFICE FUNCTIONS**

**SUBPART 242.5—POSTAWARD ORIENTATION**

**SUBPART 242.6—CORPORATE ADMINISTRATIVE CONTRACTING OFFICER**

**SUBPART 242.7—INDIRECT COST RATES**

**SUBPART 242.8—DISALLOWANCE OF COSTS**

**SUBPART 242.11—PRODUCTION SURVEILLANCE AND REPORTING**

**SUBPART 242.12—NOVATION AND CHANGE-OF-NAME AGREEMENTS**

# Defense Federal Acquisition Regulation Supplement

## Table of Contents

---

**SUBPART 242.15—CONTRACTOR PERFORMANCE INFORMATION**

**SUBPART 242.70—CONTRACTOR BUSINESS SYSTEMS**

**SUBPART 242.71—VOLUNTARY REFUNDS**

**SUBPART 242.72—CONTRACTOR MATERIAL MANAGEMENT AND  
ACCOUNTING SYSTEM**

**SUBPART 242.73—CONTRACTOR INSURANCE/PENSION REVIEW**

**SUBPART 242.74—TECHNICAL REPRESENTATION AT CONTRACTOR  
FACILITIES**

**SUBPART 242.75—CONTRACTOR ACCOUNTING SYSTEMS AND RELATED  
CONTROLS**

### **PART 243—CONTRACT MODIFICATIONS**

**SUBPART 243.1—GENERAL**

**SUBPART 243.2—CHANGE ORDERS**

### **PART 244—SUBCONTRACTING POLICIES AND PROCEDURES**

**SUBPART 244.1—GENERAL**

**SUBPART 244.2—CONSENT TO SUBCONTRACTS**

**SUBPART 244.3—CONTRACTORS' PURCHASING SYSTEMS REVIEWS**

**SUBPART 244.4—SUBCONTRACTS FOR COMMERCIAL ITEMS AND  
COMMERCIAL COMPONENTS**

### **PART 245—GOVERNMENT PROPERTY**

**SUBPART 245.1—GENERAL**

**SUBPART 245.2—SOLICITATION AND EVALUATION PROCEDURES**

**SUBPART 245.3—AUTHORIZING THE USE AND RENTAL OF  
GOVERNMENT PROPERTY**

**SUBPART 245.4—TITLE TO GOVERNMENT PROPERTY**

**SUBPART 245.5—SUPPORT GOVERNMENT PROPERTY ADMINISTRATION**

**SUBPART 245.6—REPORTING, REUTILIZATION, AND DISPOSAL**

**SUBPART 245.70—PLANT CLEARANCE FORMS**

**PART 246–QUALITY ASSURANCE**

**SUBPART 246.1–GENERAL**

**SUBPART 246.2–CONTRACT QUALITY REQUIREMENTS**

**SUBPART 246.3–CONTRACT CLAUSES**

**SUBPART 246.4–GOVERNMENT CONTRACT QUALITY ASSURANCE**

**SUBPART 246.5–ACCEPTANCE**

**SUBPART 246.6–MATERIAL INSPECTION AND RECEIVING REPORTS**

**SUBPART 246.7–WARRANTIES**

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

**PART 247–TRANSPORTATION**

**SUBPART 247.0**

**SUBPART 247.1–GENERAL**

**SUBPART 247.2–CONTRACTS FOR TRANSPORTATION OR FOR  
TRANSPORTATION-RELATED SERVICES**

**SUBPART 247.3–TRANSPORTATION IN SUPPLY CONTRACTS**

**SUBPART 247.5–OCEAN TRANSPORTATION BY U.S.-FLAG VESSELS**

**PART 248–VALUE ENGINEERING**

**PART 249–TERMINATION OF CONTRACTS**

**SUBPART 249.1–GENERAL PRINCIPLES**

**SUBPART 249.5–CONTRACT TERMINATION CLAUSES**

**SUBPART 249.70–SPECIAL TERMINATION REQUIREMENTS**

**PART 250–EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY  
ACT**

**SUBPART 250.1–EXTRAORDINARY CONTRACTUAL ACTIONS**

**PART 251–USE OF GOVERNMENT SOURCES BY CONTRACTORS**

**SUBPART 251.1–CONTRACTOR USE OF GOVERNMENT SUPPLY SOURCES**

**SUBPART 251.2–CONTRACTOR USE OF INTERAGENCY FLEET  
MANAGEMENT SYSTEM (IFMS) VEHICLES**

**SUBCHAPTER H—CLAUSES AND FORMS**

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

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

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

**PART 253—FORMS**

**SUBPART 253.3—ILLUSTRATION OF FORMS**

**APPENDICES**

**APPENDIX A—ARMED SERVICES BOARD OF CONTRACT APPEALS**

**Part 1—Charter**

**Part 2—Rules**

**APPENDIX B—RESERVED**

**APPENDIX C—RESERVED**

**APPENDIX D—RESERVED**

**APPENDIX E—RESERVED**

**APPENDIX F—MATERIAL INSPECTION AND RECEIVING REPORT**

**Part 1—Introduction.**

**Part 2—Contract Quality Assurance on Shipments Between Contractors.**

**Part 3—Preparation of the Wide Area Workflow Receiving Report (WAWF RR).**

**Part 4—Preparation of the DD Form 250 and DD Form 250c.**

**Part 5—Distribution of Wide Area Workflow Receiving Report (WAWF RR), DD Form 250 and DD Form 250c.**

**Part 6—Preparation of the DD Form 250-1 (Loading Report).**

**Part 7—Preparation of the DD Form 250-1 (Discharge Report).**

**Part 8—Distribution of the DD Form 250-1.**

**APPENDIX G—RESERVED**

**APPENDIX H—DEBARMENT AND SUSPENSION PROCEDURES**

**Defense Federal Acquisition Regulation Supplement**

**Table of Contents**

---

**APPENDIX I—POLICY AND PROCEDURES FOR THE DOD PILOT  
MENTOR-PROTEGE PROGRAM**

**SUBPART 202.1—DEFINITIONS**

*(Revised May 6, 2014)*

**202.101 Definitions.**

“Congressional defense committees” means—

- (1) The Committee on Armed Services of the Senate;
- (2) The Subcommittee on Defense of the Committee on Appropriations of the Senate;
- (3) The Committee on Armed Services of the House of Representatives; and
- (4) The Subcommittee on Defense of the Committee on Appropriations of the House of Representatives.

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

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

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

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

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

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

## Defense Federal Acquisition Regulation Supplement

### Part 202--Definitions of Words and Terms

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

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

“General public” and “non-governmental entities,” as used in the definition of “commercial item” at FAR 2.101, do not include the Federal Government or a State, local, or foreign government (Pub. L. 110-181, section 815(b)).

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

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

“Obsolete electronic part” means an electronic part that is no longer in production by the original manufacturer or an aftermarket manufacturer that has been provided express written authorization from the current design activity or original manufacturer.

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

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

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

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

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

“Senior procurement executive” means, for DoD—  
Department of Defense (including the defense agencies)--Under Secretary of Defense (Acquisition, Technology, and Logistics);

## Defense Federal Acquisition Regulation Supplement

### Part 202--Definitions of Words and Terms

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Department of the Army--Assistant Secretary of the Army (Acquisition, Logistics and Technology);  
Department of the Navy--Assistant Secretary of the Navy (Research, Development and Acquisition);  
Department of the Air Force--Assistant Secretary of the Air Force (Acquisition).

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

“Simplified acquisition threshold,” in addition to the meaning at FAR 2.101, means \$300,000 when soliciting or awarding contracts to be awarded and performed outside the United States, or making purchases outside the United States, for acquisitions of supplies and services that, as determined by the head of the contracting activity, are to be used to support a humanitarian or peacekeeping operation, as defined at FAR 2.101.

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

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

- (1) Solicits and receives offers from both small and other than small business concerns;
- (2) Establishes a tiered or cascading order of precedence for evaluating offers that is specified in the solicitation; and
- (3) If no award can be made at the first tier, evaluates offers at the next lower tier, until award can be made.

# Defense Federal Acquisition Regulation Supplement

## Part 231—Contract Cost Principles and Procedures

---

### TABLE OF CONTENTS *(Revised May 6, 2014)*

#### **SUBPART 231.1—APPLICABILITY**

- 231.100 Scope of subpart.
- 231.100-70 Contract clause.

#### **SUBPART 231.2—CONTRACTS WITH COMMERCIAL ORGANIZATIONS**

- 231.205 Selected costs.
- 231.205-1 Public relations and advertising costs.
- 231.205-6 Compensation for personal services.
- 231.205-18 Independent research and development and bid and proposal costs.
- 231.205-19 Insurance and indemnification.
- 231.205-22 Legislative lobbying costs.
- 231.205-70 External restructuring costs.
- 231.205-71 Cost of remedy for use or inclusion of counterfeit electronic parts and suspect counterfeit electronic parts.

#### **SUBPART 231.3—CONTRACTS WITH EDUCATIONAL INSTITUTIONS**

- 231.303 Requirements.

#### **SUBPART 231.6—CONTRACTS WITH STATE, LOCAL, AND FEDERALLY RECOGNIZED INDIAN TRIBAL GOVERNMENTS**

- 231.603 Requirements.

#### **SUBPART 231.7—CONTRACTS WITH NONPROFIT ORGANIZATIONS**

- 231.703 Requirements.

**SUBPART 231.2—CONTRACTS WITH COMMERCIAL ORGANIZATIONS**  
(Revised May 6, 2014)

**231.205 Selected costs.**

**231.205-1 Public relations and advertising costs.**

(e) See [225.7303-2\(e\)](#) for allowability provisions affecting foreign military sales contracts.

(f) Unallowable public relations and advertising costs include the following:

(1) Monies paid to the Government associated with the leasing of Government equipment, including lease payments and reimbursements for support services, except for foreign military sales contracts as provided for at [225.7303-2](#).

**231.205-6 Compensation for personal services.**

(f)(1) In accordance with Section 8122 of Pub. L. 104-61, and similar sections in subsequent Defense appropriations acts, costs for bonuses or other payments in excess of the normal salary paid by the contractor to an employee, that are part of restructuring costs associated with a business combination, are unallowable under DoD contracts funded by fiscal year 1996 or subsequent appropriations. This limitation does not apply to severance payments or early retirement incentive payments. (See [231.205-70\(b\)](#) for the definitions of “business combination” and “restructuring costs.”)

(m)(1) Fringe benefit costs that are contrary to law, employer-employee agreement, or an established policy of the contractor are unallowable.

**231.205-18 Independent research and development and bid and proposal costs.**

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

(i) “Covered contract” means a DoD prime contract for an amount exceeding the simplified acquisition threshold, except for a fixed-price contract without cost incentives. The term also includes a subcontract for an amount exceeding the simplified acquisition threshold, except for a fixed-price subcontract without cost incentives under such a prime contract.

(ii) “Covered segment” means a product division of the contractor that allocated more than \$1,100,000 in independent research and development and bid and proposal (IR&D/B&P) costs to covered contracts during the preceding fiscal year. In the case of a contractor that has no product divisions, the term means that contractor as a whole. A product division of the contractor that allocated less than \$1,100,000 in IR&D/B&P costs to covered contracts during the preceding fiscal year is not subject to the limitations in paragraph (c) of this subsection.

(iii) “Major contractor” means any contractor whose covered segments allocated a total of more than \$11,000,000 in IR&D/B&P costs to covered contracts during the

## Defense Federal Acquisition Regulation Supplement

### Part 231—Contract Cost Principles and Procedures

---

preceding fiscal year. For purposes of calculating the dollar threshold amounts to determine whether a contractor meets the definition of “major contractor,” do not include contractor segments allocating less than \$1,100,000 of IR&D/B&P costs to covered contracts during the preceding fiscal year.

(c) *Allowability.*

(i) Departments/agencies shall not supplement this regulation in any way that limits IR&D/B&P cost allowability.

(ii) See [225.7303-2\(c\)](#) for allowability provisions affecting foreign military sale contracts.

(iii) For major contractors, the following limitations apply:

(A) The amount of IR&D/B&P costs allowable under DoD contracts shall not exceed the lesser of—

(1) Such contracts’ allocable share of total incurred IR&D/B&P costs; or

(2) The amount of incurred IR&D/B&P costs for projects having potential interest to DoD.

(B) Allowable IR&D/B&P costs are limited to those for projects that are of potential interest to DoD, including activities intended to accomplish any of the following:

(1) Enable superior performance of future U.S. weapon systems and components.

(2) Reduce acquisition costs and life-cycle costs of military systems.

(3) Strengthen the defense industrial and technology base of the United States.

(4) Enhance the industrial competitiveness of the United States.

(5) Promote the development of technologies identified as critical under 10 U.S.C. 2522.

(6) Increase the development and promotion of efficient and effective applications of dual-use technologies.

(7) Provide efficient and effective technologies for achieving such environmental benefits as: improved environmental data gathering, environmental cleanup and restoration, pollution reduction in manufacturing, environmental conservation, and environmentally safe management of facilities.

(C) For a contractor's annual IR&D costs to be allowable, the IR&D projects generating the costs must be reported to the Defense Technical Information Center (DTIC) using the DTIC's on-line input form and instructions at <http://www.dtic.mil/ird/dticdb/index.html>. The inputs must be updated at least

annually and when the project is completed. Copies of the input and updates must be made available for review by the cognizant administrative contracting officer (ACO) and the cognizant Defense Contract Audit Agency auditor to support the allowability of the costs. Contractors that do not meet the threshold as a major contractor are encouraged to use the DTIC on-line input form to report IR&D projects to provide DoD with visibility into the technical content of the contractors' IR&D activities.

(iv) For major contractors, the ACO or corporate ACO shall—

and (A) Determine whether IR&D/B&P projects are of potential interest to DoD;

(B) Provide the results of the determination to the contractor.

(v) The cognizant contract administration office shall furnish contractors with guidance on financial information needed to support IR&D/B&P costs and on technical information needed from major contractors to support the potential interest to DoD determination (also see [242.771-3\(a\)](#)).

#### **231.205-19 Insurance and indemnification.**

(e) In addition to the cost limitations in FAR 31.205-19(e), self-insurance and purchased insurance costs are subject to the requirements of the clauses at [252.217-7012](#), Liability and Insurance, and [252.228-7001](#), Ground and Flight Risk.

#### **231.205-22 Legislative lobbying costs.**

(a) Costs associated with preparing any material, report, list, or analysis on the actual or projected economic or employment impact in a particular State or congressional district of an acquisition program for which all research, development, testing, and evaluation has not been completed also are unallowable (10 U.S.C. 2249).

#### **231.205-70 External restructuring costs.**

(a) *Scope.* This subsection—

(1) Prescribes policies and procedures for allowing contractor external restructuring costs when savings would result for DoD; and

(2) Implements 10 U.S.C. 2325.

(b) *Definitions.* As used in this subsection:

(1) “Business combination” means a transaction whereby assets or operations of two or more companies not previously under common ownership or control are combined, whether by merger, acquisition, or sale/purchase of assets.

(2) “External restructuring activities” means restructuring activities occurring after a business combination that affect the operations of companies not previously under common ownership or control. They do not include restructuring activities occurring after a business combination that affect the operations of only one of the companies not previously under common ownership or control, or, when there has been

## Defense Federal Acquisition Regulation Supplement

### Part 231—Contract Cost Principles and Procedures

---

no business combination, restructuring activities undertaken within one company. External restructuring activities are a direct outgrowth of a business combination. They normally will be initiated within 3 years of the business combination.

(3) “Restructuring activities” means nonroutine, nonrecurring, or extraordinary activities to combine facilities, operations, or workforce, in order to eliminate redundant capabilities, improve future operations, and reduce overall costs. Restructuring activities do not include routine or ongoing repositionings and redeployments of a contractor’s productive facilities or workforce (e.g., normal plant rearrangement or employee relocation), nor do they include other routine or ordinary activities charged as indirect costs that would otherwise have been incurred (e.g., planning and analysis, contract administration and oversight, or recurring financial and administrative support).

(4) “Restructuring costs” means the costs, including both direct and indirect, of restructuring activities. Restructuring costs that may be allowed include, but are not limited to, severance pay for employees, early retirement incentive payments for employees, employee retraining costs, relocation expense for retained employees, and relocation and rearrangement of plant and equipment. For purposes of this definition, if restructuring costs associated with external restructuring activities allocated to DoD contracts are less than \$2.5 million, the costs shall not be subject to the audit, review, and determination requirements of paragraph (c)(4) of this subsection; instead, the normal rules for determining cost allowability in accordance with FAR Part 31 shall apply.

(5) “Restructuring savings” means cost reductions, including both direct and indirect cost reductions, that result from restructuring activities. Reassignments of cost to future periods are not restructuring savings.

(c) *Limitations on cost allowability.* Restructuring costs associated with external restructuring activities shall not be allowed unless—

(1) Such costs are allowable in accordance with FAR Part 31 and DFARS Part 231;

(2) An audit of projected restructuring costs and restructuring savings is performed;

(3) The cognizant administrative contracting officer (ACO) reviews the audit report and the projected costs and projected savings, and negotiates an advance agreement in accordance with paragraph (d) of this subsection; and

(4)(i) The official designated in paragraph (c)(4)(ii) of this subsection determines in writing that the audited projected savings, on a present value basis, for DoD resulting from the restructuring will exceed either—

(A) The costs allowed by a factor of at least two to one; or

(B) The costs allowed, and the business combination will result in the preservation of a critical capability that might otherwise be lost to DoD.

## Defense Federal Acquisition Regulation Supplement

### Part 231—Contract Cost Principles and Procedures

---

(ii)(A) If the amount of restructuring costs is expected to exceed \$25 million over a 5-year period, the designated official is the Under Secretary of Defense (Acquisition, Technology, and Logistics) or the Principal Deputy. This authority may not be delegated below the level of an Assistant Secretary of Defense.

(B) For all other cases, the designated official is the Director of the Defense Contract Management Agency. The Director may not delegate this authority.

(d) *Procedures and ACO responsibilities.* As soon as it is known that the contractor will incur restructuring costs for external restructuring activities, the cognizant ACO shall follow the procedures at [PGI 231.205-70\(d\)](#).

(e) *Information needed to obtain a determination.*

(1) The novation agreement (if one is required).

(2) The contractor's restructuring proposal.

(3) The proposed advance agreement.

(4) The audit report.

(5) Any other pertinent information.

(6) The cognizant ACO's recommendation for a determination. This recommendation must clearly indicate one of the following, consistent with paragraph (c)(4)(i) of this subsection:

(i) The audited projected savings for DoD will exceed the costs allowed by a factor of at least two to one on a present value basis.

(ii) The business combination will result in the preservation of a critical capability that might otherwise be lost to DoD, and the audited projected savings for DoD will exceed the costs allowed on a present value basis.

(f) *Contracting officer responsibilities.*

(1) The contracting officer, in consultation with the cognizant ACO, should consider including a repricing clause in noncompetitive fixed-price contracts that are negotiated during the period between—

(i) The time a business combination is announced; and

(ii) The time the contractor's forward pricing rates are adjusted to reflect the impact of restructuring.

(2) The decision to use a repricing clause will depend upon the particular circumstances involved, including—

(i) When the restructuring will take place;

(ii) When restructuring savings will begin to be realized;

## Defense Federal Acquisition Regulation Supplement

### Part 231—Contract Cost Principles and Procedures

---

- (iii) The contract performance period;
  - (iv) Whether the contracting parties are able to make a reasonable estimate of the impact of restructuring on the contract; and
  - (v) The size of the potential dollar impact of restructuring on the contract.
- (3) If the contracting officer decides to use a repricing clause, the clause must provide for a downward-only price adjustment to ensure that DoD receives its appropriate share of restructuring net savings.

#### **231.205-71 Cost of remedy for use or inclusion of counterfeit electronic parts and suspect counterfeit electronic parts.**

(a) *Scope.* This subsection implements the requirements of section 818(c)(2), National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112-81) and section 833, National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239).

(b) The costs of counterfeit electronic parts or suspect counterfeit electronic parts and the cost of rework or corrective action that may be required to remedy the use or inclusion of such parts are unallowable, unless—

- (1) The contractor has an operational system to detect and avoid counterfeit parts and suspect counterfeit electronic parts that has been reviewed and approved by DoD pursuant to 244.303;
- (2) The counterfeit electronic parts or suspect counterfeit electronic parts are Government-furnished property as defined in FAR 45.101; and
- (3) The contractor provides timely (i.e., within 60 days after the contractor becomes aware) notice to the Government.

**SUBPART 244.3—CONTRACTORS' PURCHASING SYSTEMS REVIEWS**  
(Revised May 6, 2014)

**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.**

(a) Also review the adequacy of rationale documenting commercial item determinations to ensure compliance with the definition of “commercial item” in FAR 2.101.

(b) Also review the adequacy of the contractor's counterfeit electronic part detection and avoidance system under DFARS [252.246-7007](#), Contractor Counterfeit Electronic Part Detection and Avoidance System.

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

**244.305-70 Policy.**

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

(a) The cognizant contracting officer, in consultation with the purchasing system analyst or auditor, shall—

(1) Determine the acceptability of the contractor's purchasing system and approve or disapprove the system; and

(2) Pursue correction of any deficiencies.

(b) In evaluating the acceptability of the contractor's purchasing system, the contracting officer, in consultation with the purchasing system analyst or auditor, shall determine whether the contractor's purchasing system complies with the system criteria for an acceptable purchasing system as prescribed in the clause at [252.244-7001](#), Contractor Purchasing System Administration.

(c) *Disposition of findings*—

(1) *Reporting of findings.* The purchasing system analyst or auditor shall document findings and recommendations in a report to the contracting officer. If the auditor or purchasing system analyst identifies any significant purchasing system deficiencies, the report shall describe the deficiencies in sufficient detail to allow the contracting officer to understand the deficiencies.

(2) *Initial determination.* (i) The contracting officer shall review all findings and recommendations and, if there are no significant deficiencies, shall promptly notify the contractor that the contractor's purchasing system is acceptable and approved; or

(ii) If the contracting officer finds that there are one or more significant deficiencies (as defined in the clause at [252.244-7001](#), Contractor Purchasing System

## Defense Federal Acquisition Regulation Supplement

### Part 244—Subcontracting Policies and Procedures

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Administration) due to the contractor's failure to meet one or more of the purchasing system criteria in the clause at [252.244-7001](#), the contracting officer shall—

(A) Promptly make an initial written determination on any significant deficiencies and notify the contractor, in writing, providing a description of each significant deficiency in sufficient detail to allow the contractor to understand the deficiency;

(B) Request the contractor to respond, in writing, to the initial determination within 30 days; and

(C) Evaluate the contractor's response to the initial determination in consultation with the auditor or purchasing system analyst, and make a final determination.

(3) *Final determination.* (i) The contracting officer shall make a final determination and notify the contractor, in writing, that—

(A) The contractor's purchasing system is acceptable and approved, and no significant deficiencies remain, or

(B) Significant deficiencies remain. The notice shall identify any remaining significant deficiencies, and indicate the adequacy of any proposed or completed corrective action. The contracting officer shall—

(1) Request that the contractor, within 45 days of receipt of the final determination, either correct the deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the deficiencies;

(2) Disapprove the system in accordance with the clause at [252.244-7001](#), Contractor Purchasing System Administration; and

(3) Withhold payments in accordance with the clause at [252.242-7005](#), Contractor Business Systems, if the clause is included in the contract.

(ii) Follow the procedures relating to monitoring a contractor's corrective action and the correction of significant deficiencies in [PGI 244.305-70](#).

(d) *System approval.* The contracting officer shall promptly approve a previously disapproved purchasing system and notify the contractor when the contracting officer determines that there are no remaining significant deficiencies.

(e) *Contracting officer notifications.* The cognizant contracting officer shall promptly distribute copies of a determination to approve a system, disapprove a system and withhold payments, or approve a previously disapproved system and release withheld payments to the auditor; payment office; affected contracting officers at the buying activities; and cognizant contracting officers in contract administration activities.

(f) *Mitigating the risk of purchasing system deficiencies on specific proposals.*

## Defense Federal Acquisition Regulation Supplement

### Part 244—Subcontracting Policies and Procedures

---

(1) Source selection evaluation teams shall discuss identified purchasing system deficiencies and their impact in all reports on contractor proposals until the deficiencies are resolved.

(2) The contracting officer responsible for negotiation of a proposal generated by a purchasing system with an identified deficiency shall evaluate whether the deficiency impacts the negotiations. If it does not, the contracting officer should proceed with negotiations. If it does, the contracting officer should consider other alternatives, e.g.—

(i) Allowing the contractor additional time to correct the purchasing system deficiency and submit a corrected proposal;

(ii) Considering another type of contract, e.g., a fixed-price incentive (firm target) contract instead of firm-fixed-price;

(iii) Using additional cost analysis techniques to determine the reasonableness of the cost elements affected by the purchasing system's deficiency;

(iv) Segregating the questionable areas as a cost-reimbursable line item;

(v) Reducing the negotiation objective for profit or fee; or

(vi) Including a contract (reopener) clause that provides for adjustment of the contract amount after award.

(3) The contracting officer who incorporates a reopener clause into the contract is responsible for negotiating price adjustments required by the clause. Any reopener clause necessitated by a purchasing system deficiency should—

(i) Clearly identify the amounts and items that are in question at the time of negotiation;

(ii) Indicate a specific time or subsequent event by which the contractor will submit a supplemental proposal, including certified cost or pricing data, identifying the cost impact adjustment necessitated by the deficient purchasing system;

(iii) Provide for the contracting officer to adjust the contract price unilaterally if the contractor fails to submit the supplemental proposal; and

(iv) Provide that failure of the Government and the contractor to agree to the price adjustment shall be a dispute under the Disputes clause.

#### **244.305-71 Contract clause.**

Use the Contractor Purchasing System Administration basic clause or its alternate as follows:

(a) Use the clause at [252.244-7001](#), Contractor Purchasing System Administration—Basic, in solicitations and contracts containing the clause at FAR 52.244-2, Subcontracts.

## Defense Federal Acquisition Regulation Supplement

### Part 244—Subcontracting Policies and Procedures

---

(b) Use the clause at [252.244-7001](#), Contractor Purchasing System Administration—Alternate I, in solicitations and contracts that contain the clause at [252.246-7007](#), Contractor Counterfeit Electronic Part Detection and Avoidance System, but do not contain FAR 52.244-2, Subcontracts.

**TABLE OF CONTENTS**  
*(Revised May 6, 2014)*

**SUBPART 246.1—GENERAL**

- 246.101 Definitions.
- 246.102 Policy.
- 246.103 Contracting office responsibilities.

**SUBPART 246.2—CONTRACT QUALITY REQUIREMENTS**

- 246.202 Types of contract quality requirements.
- 246.202-4 Higher-level contract quality requirements.
- 246.270 Safety of facilities, infrastructure, and equipment for military operations.
  - 246.270-1 Scope.
  - 246.270-2 Policy.
  - 246.270-3 Exceptions.
  - 246.270-4 Contract clause.

**SUBPART 246.3—CONTRACT CLAUSES**

- 246.370 Material inspection and receiving report.
- 246.371 Notification of potential safety issues.

**SUBPART 246.4—GOVERNMENT CONTRACT QUALITY ASSURANCE**

- 246.401 General.
- 246.402 Government contract quality assurance at source.
- 246.404 Government contract quality assurance for acquisitions at or below the simplified acquisition threshold.
  - 246.406 Foreign governments.
  - 246.407 Nonconforming supplies or services.
  - 246.408 Single-agency assignments of Government contract quality assurance.
    - 246.408-70 Subsistence.
    - 246.408-71 Aircraft.
  - 246.470 Government contract quality assurance actions.
    - 246.470-1 Assessment of additional costs.
    - 246.470-2 Quality evaluation data.
  - 246.471 Authorizing shipment of supplies.
  - 246.472 Inspection stamping.

**SUBPART 246.5—ACCEPTANCE**

- 246.504 Certificate of conformance.

**SUBPART 246.6—MATERIAL INSPECTION AND RECEIVING REPORTS**

- 246.601 General.

**SUBPART 246.7—WARRANTIES**

- 246.701 Definitions.
- 246.704 Authority for use of warranties.
- 246.705 Limitations.
- 246.706 Warranty terms and conditions.
- 246.708 Warranties of data.

## Defense Federal Acquisition Regulation Supplement

### Part 246—Quality Assurance

---

246.710 Solicitation provision and contract clauses.  
246.710-70 Warranty attachment.

#### SUBPART 246.8--CONTRACTOR LIABILITY FOR LOSS OF OR DAMAGE TO PROPERTY OF THE GOVERNMENT

246.870 Contractors' Counterfeit Electronic Part Detection and Avoidance  
Systems.  
246.870-1 Scope.  
246.870-2 Policy.  
246.870-3 Contract clause.

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

*(Added May 6, 2014)*

**246.870 Contractors' Counterfeit Electronic Part Detection and Avoidance  
Systems.**

**246.870-1 Scope.** This section—

(a) Implements section 818(c) of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112-81); and

(b) Prescribes policy and procedures for preventing counterfeit electronic parts and suspect counterfeit electronic parts from entering the supply chain when procuring electronic parts or end items, components, parts, or assemblies that contain electronic parts.

**246.870-2 Policy.**

(a) *General.* Contractors that are subject to the Cost Accounting Standards (CAS) and that supply electronic parts or products that include electronic parts and their subcontractors that supply electronic parts or products that include electronic parts, are required to establish and maintain an acceptable counterfeit electronic part detection and avoidance system. Failure to do so may result in disapproval of the purchasing system by the contracting officer and/or withholding of payments (see [252.244-7001](#), Contractor Purchasing System Administration).

(b) *System criteria.* A counterfeit electronic part detection and avoidance system shall include risk-based policies and procedures that address, at a minimum, the following areas (see [252.246-7007](#), Contractor Counterfeit Electronic Part Detection and Avoidance System):

- (1) The training of personnel.
- (2) The inspection and testing of electronic parts, including criteria for acceptance and rejection.
- (3) Processes to abolish counterfeit parts proliferation.
- (4) Processes for maintaining electronic part traceability.
- (5) Use of suppliers that are the original manufacturer, sources with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer or suppliers that obtain parts exclusively from one or more of these sources.
- (6) The reporting and quarantining of counterfeit electronic parts and suspect counterfeit electronic parts.
- (7) Methodologies to identify suspect counterfeit electronic parts and to rapidly determine if a suspect counterfeit electronic part is, in fact, counterfeit.

## Defense Federal Acquisition Regulation Supplement

### Part 246—Quality Assurance

---

- (8) Design, operation, and maintenance of systems to detect and avoid counterfeit electronic parts and suspect counterfeit electronic parts.
- (9) Flow down of counterfeit detection and avoidance requirements.
- (10) Process for keeping continually informed of current counterfeiting information and trends.
- (11) Process for screening the Government-Industry Data Exchange Program (GIDEP) reports and other credible sources of counterfeiting information.
- (12) Control of obsolete electronic parts.

#### **246.870-3 Contract clause.**

(a) Except as provided in paragraph (b) of this section, use the clause at [252.246-7007](#), Contractor Counterfeit Electronic Part Detection and Avoidance System, in solicitations and contracts when procuring—

- (1) Electronic parts;
- (2) End items, components, parts, or assemblies containing electronic parts; or
- (3) Services where the contractor will supply electronic parts or components, parts, or assemblies containing electronic parts as part of the service.

(b) Do not use the clause in solicitations and contracts that are set-aside for small business.

**TABLE OF CONTENTS**

*(Revised May 6, 2014)*

**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	Requirements Relating to Compensation of Former DoD Officials.
252.203-7001	Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies.
252.203-7002	Requirement to Inform Employees of Whistleblower Rights.
252.203-7003	Agency Office of the Inspector General.
252.203-7004	Display of Fraud Hotline Poster(s).
252.203-7005	Representation Relating to Compensation of Former DoD Officials.
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, System for Award Management.
252.204-7005	Oral Attestation of Security Responsibilities.
252.204-7006	Billing Instructions.
252.204-7007	Alternate A, Annual Representations and Certifications.
252.204-7008	Reserved.
252.204-7009	Reserved.
252.204-7010	Requirement for Contractor to Notify DoD if the Contractor's Activities are Subject to Reporting Under the U.S.-International Atomic Energy Agency Additional Protocol.
252.204.7011	Alternative Line Item Structure.
252.204-7012	Safeguarding of Unclassified Controlled Technical Information.
252.204-7013	Limitations on the Use or Disclosure of Information by Litigation Support Solicitation Offerors.
252.204-7014	Limitations on the Use or Disclosure of Information by Litigation Support Contractors.
252.204-7015	Disclosure of Information to Litigation Support Contractors.
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	Reserve Officer Training Corps and Military Recruiting on Campus—Representation.
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.
252.209-7008	Notice of Prohibition Relating to Organizational Conflict of Interest—

## Defense Federal Acquisition Regulation Supplement

### Part 252—Solicitation Provisions and Contract Clauses

---

- 252.209-7009 Major Defense Acquisition Program.  
Organizational Conflict of Interest—Major Defense Acquisition Program.
- 252.209-7010 Critical Safety Items.
- 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 Unique 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 Passive Radio Frequency Identification.
- 252.211-7007 Reporting of Government-Furnished Property.
- 252.211-7008 Use of Government-Assigned Serial Numbers.
- 252.212-7000 Reserved.
- 252.212-7001 Reserved.
- 252.212-7002 Pilot Program for Acquisition of Military-Purpose Nondevelopmental Items.
- 252.215-7000 Pricing Adjustments.
- 252.215-7001 Reserved.
- 252.215-7002 Cost Estimating System Requirements.
- 252.215-7003 Requirement for Submission of Data Other Than Certified Cost or Pricing Data—Canadian Commercial Corporation.
- 252.215-7004 Requirement for Submission of Data Other Than Certified Cost or Pricing Data—Modifications—Canadian Commercial Corporation.
- 252.215-7005 Evaluation Factor for Employing or Subcontracting with Members of the Selected Reserve.
- 252.215-7006 Use of Employees or Individual Subcontractors Who are Members of the Selected Reserve.
- 252.215-7007 Notice of Intent to Resolicit.
- 252.215-7008 Only One Offer.
- 252.215-7009 Proposal Adequacy Checklist
- 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.
- 252.216.7004 Award Fee Reduction or Denial for Jeopardizing the Health or Safety of Government Personnel.
- 252.216-7005 Award-Fee Contracts.
- 252.216-7006 Ordering
- 252.216-7007 Economic Price Adjustment—Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products—Representation.
- 252.216-7008 Economic Price Adjustment—Wage Rates or Material Prices Controlled by a Foreign Government—Representation.
- 252.216-7009 Allowability of Legal Costs Incurred in Connection With a Whistleblower Proceeding.

## Defense Federal Acquisition Regulation Supplement

### Part 252—Solicitation Provisions and Contract Clauses

---

252.216-7010	Requirements.
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.
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.
252.222-7006	Restrictions on the Use of Mandatory Arbitration Agreements
252.223-7000	Reserved.
252.223-7001	Hazard Warning Labels.

## Defense Federal Acquisition Regulation Supplement

### Part 252—Solicitation Provisions and Contract Clauses

---

- 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.
- 252.223-7008 Prohibition of Hexavalent Chromium.
- 252.225-7000 Buy American—Balance of Payments Program Certificate.
- 252.225-7001 Buy American 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 Restriction on Acquisition of Specialty Metals.
- 252.225-7009 Restriction on Acquisition of Certain Articles Containing Specialty Metals.
- 252.225-7010 Commercial Derivative Military Article—Specialty Metals Compliance Certificate.
- 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 Reserved.
- 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 Photovoltaic Devices.
- 252.225-7018 Photovoltaic Devices—Certificate.
- 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 Preference for Products or Services from Afghanistan.
- 252.225-7024 Requirement for Products or Services from Afghanistan.
- 252.225-7025 Restriction on Acquisition of Forgings.
- 252.225-7026 Acquisition Restricted to Products or Services from Afghanistan.
- 252.225-7027 Restriction on Contingent Fees for Foreign Military Sales.
- 252.225-7028 Exclusionary Policies and Practices of Foreign Governments.
- 252.225-7029 Acquisition of Uniform Components for Afghan Military or Afghan National Police.
- 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.

## Defense Federal Acquisition Regulation Supplement

### Part 252—Solicitation Provisions and Contract Clauses

---

- 252.225-7035 Buy American—Free Trade Agreements—Balance of Payments Program Certificate.
- 252.225-7036 Buy American—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.
- 252.225-7046 Exports by Approved Community Members in Response to the Solicitation.
- 252.225-7047 Exports by Approved Community Members in Performance of the Contract.
- 252.225-7048 Export-Controlled Items.
- 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).
- 252.227-7023 Drawings and Other Data to Become Property of Government.

## Defense Federal Acquisition Regulation Supplement

### Part 252—Solicitation Provisions and Contract Clauses

---

- 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 Reserved.
- 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.
- 252.229-7012 Tax Exemptions (Italy)—Representation.
- 252.229-7013 Tax Exemptions (Spain)—Representation.
- 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 and Receiving Reports.
- 252.232-7004 DoD Progress Payment Rates.
- 252.232-7005 Reimbursement of Subcontractor Advance Payments—DoD Pilot Mentor-Protege Program.
- 252.232-7006 Wide Area WorkFlow Payment Instructions.
- 252.232-7007 Limitation of Government’s Obligation.
- 252.232-7008 Assignment of Claims (Overseas).

## Defense Federal Acquisition Regulation Supplement

### Part 252—Solicitation Provisions and Contract Clauses

---

- 252.232-7009 Mandatory Payment by Governmentwide Commercial Purchase Card.
- 252.232-7010 Levies on Contract Payments.
- 252.232-7011 Payments in Support of Emergencies and Contingency Operations.
- 252.232-7012 Performance-Based Payments—Whole-Contract Basis.
- 252.232-7013 Performance-Based Payments—Deliverable-Item Basis.
- 252.233-7000 Reserved.
- 252.233-7001 Choice of Law (Overseas).
- 252.234-7001 Notice of Earned Value Management System.
- 252.234-7002 Earned Value Management System.
- 252.234-7003 Notice of Cost and Software Data Reporting System.
- 252.234-7004 Cost and Software Data Reporting System.
- 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 Protection of Human Subjects.
- 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.
- 252.236-7013 Requirement for Competition Opportunity for American Steel Producers, Fabricators, and Manufacturers.
- 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 Prohibition on Interrogation of Detainees by Contractor Personnel.
- 252.237-7011 Preparation History.

## Defense Federal Acquisition Regulation Supplement

### Part 252—Solicitation Provisions and Contract Clauses

---

- 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.
- 252.237-7022 Services at Installations Being Closed.
- 252.237-7023 Continuation of Essential Contractor Services.
- 252.237-7024 Notice of Continuation of Essential Contractor Services.
- 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.
- 252.239-7017 Notice of Supply Chain Risk.
- 252.239-7018 Supply Chain risk.
- 252.241-7000 Superseding Contract.
- 252.241-7001 Government Access.
- 252.242-7000 Reserved.
- 252.242-7001 Reserved.
- 252.242-7002 Reserved.
- 252.242-7003 Reserved.
- 252.242-7004 Material Management and Accounting System.
- 252.242-7005 Contractor Business Systems.
- 252.242-7006 Accounting System Administration.
- 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.
- 252.244-7001 Contractor Purchasing System Administration.
- 252.245-7000 Government-Furnished Mapping, Charting, and Geodesy Property.
- 252.245-7001 Tagging, Labeling, and Marking of Government-Furnished Property
- 252.245-7002 Reporting Loss of Government Property.
- 252.245-7003 Contractor Property Management System Administration.
- 252.245-7004 Reporting, Reutilization, and Disposal.

## Defense Federal Acquisition Regulation Supplement

### Part 252—Solicitation Provisions and Contract Clauses

---

- 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.
- 252.246-7004 Safety of Facilities, Infrastructure, and Equipment for Military Operations.
- 252.246-7005 Notice of Warranty Tracking of Serialized Items.
- 252.246-7006 Warranty Tracking of Serialized Items.
- 252.246-7007 Contractor Counterfeit Electronic Part Detection and Avoidance System.
- 252.247-7000 Hardship Conditions.
- 252.247-7001 Price Adjustment.
- 252.247-7002 Revision of Prices.
- 252.247-7003 Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer.
- 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.
- 252.247-7013 Contract Areas of Performance.
- 252.247-7014 Demurrage.
- 252.247-7015 Reserved.
- 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.
- 252.247-7027 Riding Gang Member Requirements.
- 252.247-7028 Application for U.S. Government Shipping Documentation/Instructions.
- 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.

**Defense Federal Acquisition Regulation Supplement**

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

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## Defense Federal Acquisition Regulation Supplement

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

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(Revised May 6, 2014)

#### **252.244-7000 Subcontracts for Commercial Items.**

As prescribed in [244.403](#), use the following clause:

##### SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (DOD CONTRACTS) (JUN 2013)

(a) The Contractor is not required to flow down the terms of any Defense Federal Acquisition Regulation Supplement (DFARS) clause in subcontracts for commercial items at any tier under this contract, unless so specified in the particular clause.

(b) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligation.

(c) The Contractor shall include the terms of this clause, including this paragraph (c), in subcontracts awarded under this contract, including subcontracts for the acquisition of commercial items.

(End of clause)

#### **252.244-7001 Contractor Purchasing System Administration.**

As prescribed in [244.305-71](#), use one of the following clauses:

*Basic.* As prescribed in [244.305-71](#)(a), use the following clause.

##### CONTRACTOR PURCHASING SYSTEM ADMINISTRATION-BASIC (MAY 2014)

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

“Acceptable purchasing system” means a purchasing system that complies with the system criteria in paragraph (c) of this clause.

“Purchasing system” means the Contractor’s system or systems for purchasing and subcontracting, including make-or-buy decisions, the selection of vendors, analysis of quoted prices, negotiation of prices with vendors, placing and administering of orders, and expediting delivery of materials.

“Significant deficiency” means a shortcoming in the system that materially affects the ability of officials of the Department of Defense to rely upon information produced by the system that is needed for management purposes.

(b) *General.* The Contractor shall establish and maintain an acceptable purchasing system. Failure to maintain an acceptable purchasing system, as defined in this clause, may result in disapproval of the system by the Contracting Officer and/or withholding of payments.

(c) *System criteria.* The Contractor’s purchasing system shall—

## Defense Federal Acquisition Regulation Supplement

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

---

- (1) Have an adequate system description including policies, procedures, and purchasing practices that comply with the Federal Acquisition Regulation (FAR) and the Defense Federal Acquisition Regulation Supplement (DFARS);
- (2) Ensure that all applicable purchase orders and subcontracts contain all flowdown clauses, including terms and conditions and any other clauses needed to carry out the requirements of the prime contract;
- (3) Maintain an organization plan that establishes clear lines of authority and responsibility;
- (4) Ensure all purchase orders are based on authorized requisitions and include a complete and accurate history of purchase transactions to support vendor selected, price paid, and document the subcontract/purchase order files which are subject to Government review;
- (5) Establish and maintain adequate documentation to provide a complete and accurate history of purchase transactions to support vendors selected and prices paid;
- (6) Apply a consistent make-or-buy policy that is in the best interest of the Government;
- (7) Use competitive sourcing to the maximum extent practicable, and ensure debarred or suspended contractors are properly excluded from contract award;
- (8) Evaluate price, quality, delivery, technical capabilities, and financial capabilities of competing vendors to ensure fair and reasonable prices;
- (9) Require management level justification and adequate cost or price analysis, as applicable, for any sole or single source award;
- (10) Perform timely and adequate cost or price analysis and technical evaluation for each subcontractor and supplier proposal or quote to ensure fair and reasonable subcontract prices;
- (11) Document negotiations in accordance with FAR 15.406-3;
- (12) Seek, take, and document economically feasible purchase discounts, including cash discounts, trade discounts, quantity discounts, rebates, freight allowances, and company-wide volume discounts;
- (13) Ensure proper type of contract selection and prohibit issuance of cost-plus-a-percentage-of-cost subcontracts;
- (14) Maintain subcontract surveillance to ensure timely delivery of an acceptable product and procedures to notify the Government of potential subcontract problems that may impact delivery, quantity, or price;
- (15) Document and justify reasons for subcontract changes that affect cost or price;

## Defense Federal Acquisition Regulation Supplement

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

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(16) Notify the Government of the award of all subcontracts that contain the FAR and DFARS flowdown clauses that allow for Government audit of those subcontracts, and ensure the performance of audits of those subcontracts;

(17) Enforce adequate policies on conflict of interest, gifts, and gratuities, including the requirements of 41 U.S.C. chapter 87, Kickbacks;

(18) Perform internal audits or management reviews, training, and maintain policies and procedures for the purchasing department to ensure the integrity of the purchasing system;

(19) Establish and maintain policies and procedures to ensure purchase orders and subcontracts contain mandatory and applicable flowdown clauses, as required by the FAR and DFARS, including terms and conditions required by the prime contract and any clauses required to carry out the requirements of the prime contract, including the requirements of [252.246-7007](#), Contractor Counterfeit Electronic Part Detection and Avoidance System, if applicable;

(20) Provide for an organizational and administrative structure that ensures effective and efficient procurement of required quality materials and parts at the best value from responsible and reliable sources, including the requirements of [252.246-7007](#), Contractor Counterfeit Electronic Part Detection and Avoidance System, if applicable;

(21) Establish and maintain selection processes to ensure the most responsive and responsible sources for furnishing required quality parts and materials and to promote competitive sourcing among dependable suppliers so that purchases are reasonably priced and from sources that meet contractor quality requirements, including the requirements of [252.246-7007](#), Contractor Counterfeit Electronic Part Detection and Avoidance System, and the item marking requirements of [252.211-7003](#), Item Unique Identification and Valuation, if applicable;

(22) Establish and maintain procedures to ensure performance of adequate price or cost analysis on purchasing actions;

(23) Establish and maintain procedures to ensure that proper types of subcontracts are selected, and that there are controls over subcontracting, including oversight and surveillance of subcontracted effort; and

(24) Establish and maintain procedures to timely notify the Contracting Officer, in writing, if—

(i) The Contractor changes the amount of subcontract effort after award such that it exceeds 70 percent of the total cost of the work to be performed under the contract, task order, or delivery order. The notification shall identify the revised cost of the subcontract effort and shall include verification that the Contractor will provide added value; or

(ii) Any subcontractor changes the amount of lower-tier subcontractor effort after award such that it exceeds 70 percent of the total cost of the work to be performed under its subcontract. The notification shall identify the revised cost of the subcontract

## Defense Federal Acquisition Regulation Supplement

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

---

effort and shall include verification that the subcontractor will provide added value as related to the work to be performed by the lower-tier subcontractor(s).

(d) *Significant deficiencies.* (1) The Contracting Officer will provide notification of initial determination to the Contractor, in writing, of any significant deficiencies. The initial determination will describe the deficiency in sufficient detail to allow the Contractor to understand the deficiency.

(2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies significant deficiencies in the Contractor's purchasing system. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing.

(3) The Contracting Officer will evaluate the Contractor's response and notify the Contractor, in writing, of the Contracting Officer's final determination concerning—

(i) Remaining significant deficiencies;

(ii) The adequacy of any proposed or completed corrective action; and

(iii) System disapproval, if the Contracting Officer determines that one or more significant deficiencies remain.

(e) If the Contractor receives the Contracting Officer's final determination of significant deficiencies, the Contractor shall, within 45 days of receipt of the final determination, either correct the significant deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the deficiencies.

(f) *Withholding payments.* If the Contracting Officer makes a final determination to disapprove the Contractor's purchasing system, and the contract includes the clause at [252.242-7005](#), Contractor Business Systems, the Contracting Officer will withhold payments in accordance with that clause.

(End of clause)

*Alternate I.* As prescribed in [244.305-71](#)(b), use the following clause, which amends paragraph (c) of the basic clause by deleting paragraphs (c)(1) through (c)(18) and (c)(22) through (c)(24), and revising and renumbering paragraphs (c)(19) through (c)(21) of the basic clause.

#### CONTRACTOR PURCHASING SYSTEM ADMINISTRATION—ALTERNATE I (MAY 2014)

The following paragraphs (a) through (f) of this clause do not apply unless the Contractor is subject to the Cost Accounting Standards under 41 U.S.C. chapter 15, as implemented in regulations found at 48 CFR 9903.201-1.

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

“Acceptable purchasing system” means a purchasing system that complies with the system criteria in paragraph (c) of this clause.

## Defense Federal Acquisition Regulation Supplement

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

---

“Purchasing system” means the Contractor’s system or systems for purchasing and subcontracting, including make-or-buy decisions, the selection of vendors, analysis of quoted prices, negotiation of prices with vendors, placing and administering of orders, and expediting delivery of materials.

“Significant deficiency” means a shortcoming in the system that materially affects the ability of officials of the Department of Defense to rely upon information produced by the system that is needed for management purposes.

(b) *Acceptable purchasing system.* The Contractor shall establish and maintain an acceptable purchasing system. Failure to maintain an acceptable purchasing system, as defined in this clause, may result in disapproval of the system by the Contracting Officer and/or withholding of payments.

(c) *System criteria.* The Contractor’s purchasing system shall—

(1) Establish and maintain policies and procedures to ensure purchase orders and subcontracts contain mandatory and applicable flowdown clauses, as required by the FAR and DFARS, including terms and conditions required by the prime contract and any clauses required to carry out the requirements of the prime contract, including the requirements of [252.246-7007](#), Contractor Counterfeit Electronic Part Detection and Avoidance System;

(2) Provide for an organizational and administrative structure that ensures effective and efficient procurement of required quality materials and parts at the best value from responsible and reliable sources, including the requirements of [252.246-7007](#), Contractor Counterfeit Electronic Part Detection and Avoidance System, and, if applicable, the item marking requirements of [252.211-7003](#), Item Unique Identification and Valuation; and

(3) Establish and maintain selection processes to ensure the most responsive and responsible sources for furnishing required quality parts and materials and to promote competitive sourcing among dependable suppliers so that purchases are from sources that meet contractor quality requirements, including the requirements of [252.246-7007](#), Contractor Counterfeit Electronic Part Detection and Avoidance System.

(d) *Significant deficiencies.* (1) The Contracting Officer will provide notification of initial determination to the Contractor, in writing, of any significant deficiencies. The initial determination will describe the deficiency in sufficient detail to allow the Contractor to understand the deficiency.

(2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies significant deficiencies in the Contractor's purchasing system. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing.

(3) The Contracting Officer will evaluate the Contractor's response and notify the Contractor, in writing, of the Contracting Officer’s final determination concerning—

(i) Remaining significant deficiencies;

(ii) The adequacy of any proposed or completed corrective action; and

## Defense Federal Acquisition Regulation Supplement

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

---

(iii) System disapproval, if the Contracting Officer determines that one or more significant deficiencies remain.

(e) If the Contractor receives the Contracting Officer's final determination of significant deficiencies, the Contractor shall, within 45 days of receipt of the final determination, either correct the significant deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the deficiencies.

(f) *Withholding payments.* If the Contracting Officer makes a final determination to disapprove the Contractor's purchasing system, and the contract includes the clause at [252.242-7005](#), Contractor Business Systems, the Contracting Officer will withhold payments in accordance with that clause.

(End of clause)

## Defense Federal Acquisition Regulation Supplement

### Part 252—Solicitation Provisions and Contract Clauses

---

(Revised May 6, 2014)

#### **252.246-7000 Material Inspection and Receiving Report.**

As prescribed in [246.370](#), use the following clause:

##### MATERIAL INSPECTION AND RECEIVING REPORT (MAR 2008)

(a) At the time of each delivery of supplies or services under this contract, the Contractor shall prepare and furnish to the Government a material inspection and receiving report in the manner and to the extent required by Appendix F, Material Inspection and Receiving Report, of the Defense FAR Supplement.

(b) Contractor submission of the material inspection and receiving information required by Appendix F of the Defense FAR Supplement by using the Wide Area WorkFlow (WAWF) electronic form (see paragraph (b) of the clause at [252.232-7003](#)) fulfills the requirement for a material inspection and receiving report (DD Form 250). Two copies of the receiving report (paper copies of either the DD Form 250 or the WAWF report) shall be distributed with the shipment, in accordance with Appendix F, Part 4, F-401, Table 1, of the Defense FAR Supplement.

(End of clause)

#### **252.246-7001 Warranty of Data.**

As prescribed in [246.710](#)(1), use one of the following clauses:

*Basic.* As prescribed at [246.710](#)(1)(i), use the following clause.

##### WARRANTY OF DATA—BASIC (MAR 2014)

(a) *Definition.* “Technical data” has the same meaning as given in the clause in this contract entitled Rights in Technical Data and Computer Software.

(b) *Warranty.* Notwithstanding inspection and acceptance by the Government of technical data furnished under this contract, and notwithstanding any provision of this contract concerning the conclusiveness of acceptance, the Contractor warrants that all technical data delivered under this contract will at the time of delivery conform with the specifications and all other requirements of this contract. The warranty period shall extend for three years after completion of the delivery of the line item of data (as identified in DD Form 1423, Contract Data Requirements List) of which the data forms a part; or any longer period specified in the contract.

(c) *Contractor Notification.* The Contractor agrees to notify the Contracting Officer in writing immediately of any breach of the above warranty which the Contractor discovers within the warranty period.

(d) *Remedies.* The following remedies shall apply to all breaches of the warranty, whether the Contractor notifies the Contracting Officer in accordance with paragraph (c) of this clause or if the Government notifies the Contractor of the breach in writing within the warranty period:

## Defense Federal Acquisition Regulation Supplement

### Part 252—Solicitation Provisions and Contract Clauses

---

(1) Within a reasonable time after such notification, the Contracting Officer may—

(i) By written notice, direct the Contractor to correct or replace at the Contractor's expense the nonconforming technical data promptly; or

(ii) If the Contracting Officer determines that the Government no longer has a requirement for correction or replacement of the data, or that the data can be more reasonably corrected by the Government, inform the Contractor by written notice that the Government elects a price or fee adjustment instead of correction or replacement.

(2) If the Contractor refuses or fails to comply with a direction under paragraph (d)(1)(i) of this clause, the Contracting Officer may, within a reasonable time of the refusal or failure—

(i) By contract or otherwise, correct or replace the nonconforming technical data and charge the cost to the Contractor; or

(ii) Elect a price or fee adjustment instead of correction or replacement.

(3) The remedies in this clause represent the only way to enforce the Government's rights under this clause.

(e) The provisions of this clause apply anew to that portion of any corrected or replaced technical data furnished to the Government under paragraph (d)(1)(i) of this clause.

(End of clause)

*Alternate I.* As prescribed in [246.710\(1\)\(ii\)](#), use the following clause, which uses a different paragraph (d)(3) than the basic clause.

#### WARRANTY OF DATA—ALTERNATE I (MAR 2014)

(a) *Definition.* “Technical data” has the same meaning as given in the clause in this contract entitled “Rights in Technical Data and Computer Software.”

(b) *Warranty.* Notwithstanding inspection and acceptance by the Government of technical data furnished under this contract, and notwithstanding any provision of this contract concerning the conclusiveness of acceptance, the Contractor warrants that all technical data delivered under this contract will at the time of delivery conform with the specifications and all other requirements of this contract. The warranty period shall extend for three years after completion of the delivery of the line item of data (as identified in DD Form 1423, Contract Data Requirements List) of which the data forms a part; or any longer period specified in the contract.

(c) *Contractor Notification.* The Contractor agrees to notify the Contracting Officer in writing immediately of any breach of the above warranty which the Contractor discovers within the warranty period.

## Defense Federal Acquisition Regulation Supplement

### Part 252—Solicitation Provisions and Contract Clauses

---

(d) *Remedies.* The following remedies shall apply to all breaches of the warranty, whether the Contractor notifies the Contracting Officer in accordance with paragraph (c) of this clause or if the Government notifies the Contractor of the breach in writing within the warranty period:

(1) Within a reasonable time after such notification, the Contracting Officer may—

(i) By written notice, direct the Contractor to correct or replace at the Contractor's expense the nonconforming technical data promptly; or

(ii) If the Contracting Officer determines that the Government no longer has a requirement for correction or replacement of the data, or that the data can be more reasonably corrected by the Government, inform the Contractor by written notice that the Government elects a price or fee adjustment instead of correction or replacement.

(2) If the Contractor refuses or fails to comply with a direction under paragraph (d)(1)(i) of this clause, the Contracting Officer may, within a reasonable time of the refusal or failure—

(i) By contract or otherwise, correct or replace the nonconforming technical data and charge the cost to the Contractor; or

(ii) Elect a price or fee adjustment instead of correction or replacement.

(3) In addition to the remedies under paragraphs (d)(1) and (2) of this clause, the Contractor shall be liable to the Government for all damages to the Government as a result of the breach of warranty.

(i) The additional liability under paragraph (d)(3) of this clause shall not exceed 75 percent of the target profit.

(ii) If the breach of the warranty is with respect to the data supplied by an equipment subcontractor, the limit of the Contractor's liability shall be—

(A) Ten percent of the total subcontract price in a firm-fixed-price subcontract;

(B) Seventy-five percent of the total subcontract fee in a cost-plus-fixed-fee or cost-plus-award-fee subcontract; or

(C) Seventy-five percent of the total subcontract target profit or fee in a fixed-price-incentive or cost-plus-incentive subcontract.

(iii) Damages due the Government under the provisions of this warranty are not an allowable cost.

(iv) The additional liability in paragraph (d)(3) of this clause shall not apply—

## Defense Federal Acquisition Regulation Supplement

### Part 252—Solicitation Provisions and Contract Clauses

---

(A) With respect to the requirements for product drawings and associated lists, special inspection equipment (SIE) drawings and associated lists, special tooling drawings and associated lists, SIE operating instructions, SIE descriptive documentation, and SIE calibration procedures under MIL-T-31000, General Specification for Technical Data Packages, Amendment 1, or MIL-T-47500, General Specification for Technical Data Packages, Supp 1, or drawings and associated lists under level 2 or level 3 of MIL-D-1000A, Engineering and Associated Data Drawings, or DoD-D-1000B, Engineering and Associated Lists Drawings (Inactive for New Design) Amendment 4, Notice 1; or drawings and associated lists under category E or I of MIL-D-1000, Engineering and Associated Lists Drawings, provided that the data furnished by the Contractor was current, accurate at time of submission, and did not involve a significant omission of data necessary to comply with the requirements; or

(B) To defects the Contractor discovers and gives written notice to the Government before the Government discovers the error.

(e) The provisions of this clause apply anew to that portion of any corrected or replaced technical data furnished to the Government under paragraph (d)(1)(i) of this clause.

(End of clause)

*Alternate II.* As prescribed at [246.710](#)(1)(iii), use the following clause, which uses a different paragraph (d)(3) than the basic clause.

#### WARRANTY OF DATA—ALTERNATE II (MAR 2014)

(a) *Definition.* “Technical data” has the same meaning as given in the clause in this contract entitled “Rights in Technical Data and Computer Software.”

(b) *Warranty.* Notwithstanding inspection and acceptance by the Government of technical data furnished under this contract, and notwithstanding any provision of this contract concerning the conclusiveness of acceptance, the Contractor warrants that all technical data delivered under this contract will at the time of delivery conform with the specifications and all other requirements of this contract. The warranty period shall extend for three years after completion of the delivery of the line item of data (as identified in DD Form 1423, Contract Data Requirements List) of which the data forms a part; or any longer period specified in the contract.

(c) *Contractor Notification.* The Contractor agrees to notify the Contracting Officer in writing immediately of any breach of the above warranty which the Contractor discovers within the warranty period.

(d) *Remedies.* The following remedies shall apply to all breaches of the warranty, whether the Contractor notifies the Contracting Officer in accordance with paragraph (c) of this clause or if the Government notifies the Contractor of the breach in writing within the warranty period:

(1) Within a reasonable time after such notification, the Contracting Officer may—

## Defense Federal Acquisition Regulation Supplement

### Part 252—Solicitation Provisions and Contract Clauses

---

(i) By written notice, direct the Contractor to correct or replace at the Contractor's expense the nonconforming technical data promptly; or

(ii) If the Contracting Officer determines that the Government no longer has a requirement for correction or replacement of the data, or that the data can be more reasonably corrected by the Government, inform the Contractor by written notice that the Government elects a price or fee adjustment instead of correction or replacement.

(2) If the Contractor refuses or fails to comply with a direction under paragraph (d)(1)(i) of this clause, the Contracting Officer may, within a reasonable time of the refusal or failure—

(i) By contract or otherwise, correct or replace the nonconforming technical data and charge the cost to the Contractor; or

(ii) Elect a price or fee adjustment instead of correction or replacement.

(3) In addition to the remedies under paragraphs (d)(1) and (2) of this clause, the Contractor shall be liable to the Government for all damages to the Government as a result of the breach of the warranty.

(i) The additional liability under paragraph (d)(3) of this clause shall not exceed ten percent of the total contract price.

(ii) If the breach of the warranty is with respect to the data supplied by an equipment subcontractor, the limit of the Contractor's liability shall be—

(A) Ten percent of the total subcontract price in a firm-fixed-price subcontract;

(B) Seventy-five percent of the total subcontract fee in a cost-plus-fixed-fee or cost-plus-award-fee subcontract; or

(C) Seventy-five percent of the total subcontract target profit or fee in a fixed-price-incentive or cost-plus-incentive subcontract.

(iii) The additional liability specified in paragraph (d)(3) of this clause shall not apply—

(A) With respect to the requirements for product drawings and associated lists, special inspection equipment (SIE) drawings and associated lists, special tooling drawings and associated lists, SIE operating instructions, SIE descriptive documentation, and SIE calibration procedures under MIL-T-31000, General Specification for Technical Data Packages, Amendment 1, or MIL-T-47500, General Specification for Technical Data Packages, Supp 1, or drawings and associated lists under level 2 or level 3 of MIL-D-1000A, Engineering and Associated Data Drawings, or DoD-D-1000B, Engineering and Associated Lists Drawings (Inactive for New Design) Amendment 4, Notice 1; or drawings and associated lists under category E or I of MIL-D-1000, Engineering and Associated Lists Drawings, provided that the data furnished by the Contractor was current, accurate at time of submission, and did not involve a significant omission of data necessary to comply with the requirements; or

## Defense Federal Acquisition Regulation Supplement

### Part 252—Solicitation Provisions and Contract Clauses

---

(B) To defects the Contractor discovers and gives written notice to the Government before the Government discovers the error.

(e) The provisions of this clause apply anew to that portion of any corrected or replaced technical data furnished to the Government under paragraph (d)(1)(i) of this clause.

(End of clause)

#### **252.246-7002 Warranty of Construction (Germany).**

As prescribed in [246.710\(2\)](#), use the following clause:

##### WARRANTY OF CONSTRUCTION (GERMANY) (JUN 1997)

(a) In addition to any other representations in this contract, the Contractor warrants, except as provided in paragraph (j) of this clause, that the work performed under this contract conforms to the contract requirements and is free of any defect of equipment, material, or design furnished or workmanship performed by the Contractor or any subcontractor or supplier at any tier.

(b) This warranty shall continue for the period(s) specified in Section 13, VOB, Part B, commencing from the date of final acceptance of the work under this contract. If the Government takes possession of any part of the work before final acceptance, this warranty shall continue for the period(s) specified in Section 13, VOB, Part B, from the date the Government takes possession.

(c) The Contractor shall remedy, at the Contractor's expense, any failure to conform or any defect. In addition, the Contractor shall remedy, at the Contractor's expense, any damage to Government-owned or -controlled real or personal property when that damage is the result of—

(1) The Contractor's failure to conform to contract requirements; or

(2) Any defect of equipment, material, or design furnished or workmanship performed.

(d) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause.

(e) The Contracting Officer shall notify the Contractor, in writing, within a reasonable period of time after the discovery of any failure, defect, or damage.

(f) If the Contractor fails to remedy any failure, defect, or damage within a reasonable period of time after receipt of notice, the Government shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.

(g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall—

## Defense Federal Acquisition Regulation Supplement

### Part 252—Solicitation Provisions and Contract Clauses

---

- (1) Obtain all warranties that would be given in normal commercial practice;
  - (2) Require all warranties to be executed in writing, for the benefit of the Government, if directed by the Contracting Officer; and
  - (3) Enforce all warranties for the benefit of the Government as directed by the Contracting Officer.
- (h) In the event the Contractor's warranty under paragraph (b) of this clause has expired, the Government may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.
- (i) Unless a defect is caused by the Contractor's negligence, or the negligence of a subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the Government or for the repair of any damage resulting from any defect in Government-furnished material or design.
- (j) This warranty shall not limit the Government's right under the Inspection clause of this contract, with respect to latent defects, gross mistakes, or fraud.

(End of clause)

#### **252.246-7003 Notification of Potential Safety Issues.**

As prescribed in [246.371\(a\)](#), use the following clause:

##### NOTIFICATION OF POTENTIAL SAFETY ISSUES (JUN 2013)

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

“Credible information” means information that, considering its source and the surrounding circumstances, supports a reasonable belief that an event has occurred or will occur.

“Critical safety item” means a part, subassembly, assembly, subsystem, installation equipment, or support equipment for a system that contains a characteristic, any failure, malfunction, or absence of which could have a safety impact.

“Safety impact” means the occurrence of death, permanent total disability, permanent partial disability, or injury or occupational illness requiring hospitalization; loss of a weapon system; or property damage exceeding \$1,000,000.

“Subcontractor” means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for the Contractor or another subcontractor under this contract.

(b) The Contractor shall provide notification, in accordance with paragraph (c) of this clause, of—

- (1) All nonconformances for parts identified as critical safety items acquired by the Government under this contract; and
- (2) All nonconformances or deficiencies that may result in a safety impact for

## Defense Federal Acquisition Regulation Supplement

### Part 252—Solicitation Provisions and Contract Clauses

---

systems, or subsystems, assemblies, subassemblies, or parts integral to a system, acquired by or serviced for the Government under this contract.

(c) The Contractor—

(1) Shall notify the Administrative Contracting Officer (ACO) and the Procuring Contracting Officer (PCO) as soon as practicable, but not later than 72 hours, after discovering or acquiring credible information concerning nonconformances and deficiencies described in paragraph (b) of this clause; and

(2) Shall provide a written notification to the ACO and the PCO within 5 working days that includes—

(i) A summary of the defect or nonconformance;

(ii) A chronology of pertinent events;

(iii) The identification of potentially affected items to the extent known at the time of notification;

(iv) A point of contact to coordinate problem analysis and resolution; and

(v) Any other relevant information.

(d) The Contractor—

(1) Is responsible for the notification of potential safety issues occurring with regard to an item furnished by any subcontractor; and

(2) Shall facilitate direct communication between the Government and the subcontractor as necessary.

(e) Notification of safety issues under this clause shall be considered neither an admission of responsibility nor a release of liability for the defect or its consequences. This clause does not affect any right of the Government or the Contractor established elsewhere in this contract.

(f)(1) The Contractor shall include the substance of this clause, including this paragraph (f), in subcontracts for—

(i) Parts identified as critical safety items;

(ii) Systems and subsystems, assemblies, and subassemblies integral to a system; or

(iii) Repair, maintenance, logistics support, or overhaul services for systems and subsystems, assemblies, subassemblies, and parts integral to a system.

(2) For those subcontracts, including subcontracts for commercial items, described in paragraph (f)(1) of this clause, the Contractor shall require the subcontractor to provide the notification required by paragraph (c) of this clause to—

## Defense Federal Acquisition Regulation Supplement

### Part 252—Solicitation Provisions and Contract Clauses

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(i) The Contractor or higher-tier subcontractor; and

(ii) The ACO and the PCO, if the subcontractor is aware of the ACO and the PCO for the contract.

(End of clause)

#### **252.246-7004 Safety of Facilities, Infrastructure, and Equipment for Military Operations.**

As prescribed in [246.270-4](#), use the following clause:

##### SAFETY OF FACILITIES, INFRASTRUCTURE, AND EQUIPMENT FOR MILITARY OPERATIONS (OCT 2010)

(a) *Definition.* “Discipline Working Group,” as used in this clause, means representatives from the DoD Components, as defined in MIL-STD-3007F, who are responsible for the unification and maintenance of the Unified Facilities Criteria (UFC) documents for a particular discipline area.

(b) The Contractor shall ensure, consistent with the requirements of the applicable inspection clause in this contract, that the facilities, infrastructure, and equipment acquired, constructed, installed, repaired, maintained, or operated under this contract comply with Unified Facilities Criteria (UFC) 1-200-01 for—

- (1) Fire protection;
- (2) Structural integrity;
- (3) Electrical systems;
- (4) Plumbing;
- (5) Water treatment;
- (6) Waste disposal; and
- (7) Telecommunications networks.

(c) The Contractor may apply a standard equivalent to or more stringent than UFC 1-200-01 upon a written determination of the acceptability of the standard by the Contracting Officer with the concurrence of the relevant Discipline Working Group.

(End of clause)

#### **252.246-7005 Notice of Warranty Tracking of Serialized Items.**

As prescribed in [246.710\(3\)\(i\)\(A\)](#), use the following provision:

##### NOTICE OF WARRANTY TRACKING OF SERIALIZED ITEMS (JUN 2011)

(a) *Definition.* “Unique item identifier” and “warranty tracking” are defined in the clause at [252.246-7006](#), Warranty Tracking of Serialized Items.

## Defense Federal Acquisition Regulation Supplement

### Part 252—Solicitation Provisions and Contract Clauses

---

(b) *Reporting of data for warranty tracking and administration.* The offeror shall provide the information required by Attachment \_\_, Warranty Tracking Information, (indicated by a single asterisk (\*)), on each contract line item number, subline item number, or exhibit line item number for warranted items. The offeror shall provide all information required by Attachment \_\_, Warranty Repair Source Instruction, prior to, but not later than when the warranted items are presented for receipt and/or acceptance. The “Warranty Item Unique Item Identifier data category may also be completed in conjunction with Attachment \_\_, Warranty Repair Source Instruction. Information required in the warranty attachment shall include such information as duration, enterprise, enterprise identifier, first use, fixed expiration, installation, issuing agency, item type, starting event, serialized item, unique item identifier, usage, warranty administrator, warranty guarantor, warranty repair source, and warranty tracking. The offeror shall submit the data for warranty tracking to the Contracting Officer.

(End of provision)

#### **252.246-7006 Warranty Tracking of Serialized Items.**

As prescribed in [246.710\(3\)\(i\)\(B\)](#), use the following clause:

#### WARRANTY TRACKING OF SERIALIZED ITEMS (JUN 2011)

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

“Duration” means the warranty period. This period may be a stated period of time, amount of usage, or the occurrence of a specified event, after formal acceptance of delivery, for the Government to assert a contractual right for the correction of defects.

“Enterprise” means the entity (e.g., a manufacturer or vendor) responsible for granting the warranty and/or assigning unique item identifiers to serialized warranty items.

“Enterprise identifier” means a code that is uniquely assigned to an enterprise by an issuing agency.

“First use” means the initial or first-time use of a product by the Government.

“Fixed expiration” means the date the warranty expires and the Contractor’s obligation to provide for a remedy or corrective action ends.

“Installation” means the date a unit is inserted into a higher level assembly in order to make that assembly operational.

“Issuing agency” means an organization responsible for assigning a globally unique identifier to an enterprise (e.g., Dun & Bradstreet’s Data Universal Numbering System (DUNS) Number, GS1 Company Prefix, Allied Committee 135 NATO Commercial and Government Entity (NCAGE)/Commercial and Government Entity (CAGE) Code, or the Coded Representation of the North American Telecommunications Industry Manufacturers, Suppliers, and Related Service Companies (ATIS-0322000) Number), European Health Industry Business Communication Council (EHIBCC) and Health Industry Business Communication Council (HIBCC)), as indicated in the Register of Issuing Agency Codes for ISO/IEC 15459, located at

## Defense Federal Acquisition Regulation Supplement

### Part 252—Solicitation Provisions and Contract Clauses

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<http://www.nen.nl/web/Normen-ontwikkelen/ISOIEC-15459-Issuing-Agency-Codes.htm>.

“Item type” means a coded representation of the description of the item being warranted, consisting of the codes C - component procured separate from end item, S - subassembly procured separate from end item or subassembly, E – embedded in component, subassembly or end item parent, and P – parent end item.

“Starting event” means the event or action that initiates the warranty.

“Serialized item” means each item produced is assigned a serial number that is unique among all the collective tangible items produced by the enterprise, or each item of a particular part, lot, or batch number is assigned a unique serial number within that part, lot, or batch number assignment within the enterprise identifier. The enterprise is responsible for ensuring unique serialization within the enterprise identifier or within the part, lot, or batch numbers, and that serial numbers, once assigned, are never used again.

“Unique item identifier” means a set of data elements marked on an item that is globally unique and unambiguous.

“Usage” means the quantity and an associated unit of measure that specifies the amount of a characteristic subject to the contractor’s obligation to provide for remedy or corrective action, such as a number of miles, hours, or cycles.

“Warranty administrator” means the organization specified by the guarantor for managing the warranty.

“Warranty guarantor” means the enterprise that provides the warranty under the terms and conditions of a contract.

“Warranty repair source” means the organization specified by a warranty guarantor for receiving and managing warranty items that are returned by a customer.

“Warranty tracking” means the ability to trace a warranted item from delivery through completion of the effectivity of the warranty.

(b) *Reporting of data for warranty tracking and administration.* The Contractor shall provide all information required by Attachment \_\_, Warranty Tracking Information on each contract line item number, subline item number, or exhibit line item number for warranted items. The Contractor shall provide all information required by Attachment \_\_, Warranty Repair Source Instructions, prior to, but not later than when the warranted items are presented for receipt and/or acceptance. The “Warranty Item Unique Item Identifier” data category may also be completed in conjunction with Attachment \_\_, Warranty Repair Source Instructions. Information required in the warranty attachment shall include such information as duration, enterprise, enterprise identifier, first use, fixed expiration, installation, issuing agency, item type, starting event, serialized item, unique item identifier, usage, warranty administrator, warranty guarantor, warranty repair source, and warranty tracking. The Contractor shall submit the data for warranty tracking to the Contracting Officer with a copy to the requiring activity and the Contracting Officer Representative.

## Defense Federal Acquisition Regulation Supplement

### Part 252—Solicitation Provisions and Contract Clauses

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(c) *Reservation of rights.* The terms of this clause shall not be construed to limit the Government's rights or remedies under any other contract clause.

(End of clause)

#### **252.246-7007 Contractor Counterfeit Electronic Part Detection and Avoidance System.**

As prescribed in [246.870-3](#), use the following clause:

#### CONTRACTOR COUNTERFEIT ELECTRONIC PART DETECTION AND AVOIDANCE SYSTEM (MAY 2014)

The following paragraphs (a) through (e) of this clause do not apply unless the Contractor is subject to the Cost Accounting Standards under 41 U.S.C. chapter 15, as implemented in regulations found at 48 CFR 9903.201-1.

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

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

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

“Obsolete electronic part” means an electronic part that is no longer in production by the original manufacturer or an aftermarket manufacturer that has been provided express written authorization from the current design activity or original manufacturer.

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

(b) *Acceptable counterfeit electronic part detection and avoidance system.* The Contractor shall establish and maintain an acceptable counterfeit electronic part detection and avoidance system. Failure to maintain an acceptable counterfeit electronic part detection and avoidance system, as defined in this clause, may result in disapproval of the purchasing system by the Contracting Officer and/or withholding of payments.

(c) *System criteria.* A counterfeit electronic part detection and avoidance system shall include risk-based policies and procedures that address, at a minimum, the following areas:

## Defense Federal Acquisition Regulation Supplement

### Part 252—Solicitation Provisions and Contract Clauses

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- (1) The training of personnel.
- (2) The inspection and testing of electronic parts, including criteria for acceptance and rejection. Tests and inspections shall be performed in accordance with accepted Government- and industry-recognized techniques. Selection of tests and inspections shall be based on minimizing risk to the Government. Determination of risk shall be based on the assessed probability of receiving a counterfeit electronic part; the probability that the inspection or test selected will detect a counterfeit electronic part; and the potential negative consequences of a counterfeit electronic part being installed (*e.g.*, human safety, mission success) where such consequences are made known to the Contractor.
- (3) Processes to abolish counterfeit parts proliferation.
- (4) Processes for maintaining electronic part traceability (*e.g.*, item unique identification) that enable tracking of the supply chain back to the original manufacturer, whether the electronic parts are supplied as discrete electronic parts or are contained in assemblies. This traceability process shall include certification and traceability documentation developed by manufacturers in accordance with Government and industry standards; clear identification of the name and location of supply chain intermediaries from the manufacturer to the direct source of the product for the seller; and, where available, the manufacturer's batch identification for the electronic part(s), such as date codes, lot codes, or serial numbers. If IUID marking is selected as a traceability mechanism, its usage shall comply with the item marking requirements of [252.211-7003](#), Item Unique Identification and Valuation.
- (5) Use of suppliers that are the original manufacturer, or sources with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer or suppliers that obtain parts exclusively from one or more of these sources. When parts are not available from any of these sources, use of suppliers that meet applicable counterfeit detection and avoidance system criteria.
- (6) Reporting and quarantining of counterfeit electronic parts and suspect counterfeit electronic parts. Reporting is required to the Contracting Officer and to the Government-Industry Data Exchange Program (GIDEP) when the Contractor becomes aware of, or has reason to suspect that, any electronic part or end item, component, part, or assembly containing electronic parts purchased by the DoD, or purchased by a Contractor for delivery to, or on behalf of, the DoD, contains counterfeit electronic parts or suspect counterfeit electronic parts. Counterfeit electronic parts and suspect counterfeit electronic parts shall not be returned to the seller or otherwise returned to the supply chain until such time that the parts are determined to be authentic.
- (7) Methodologies to identify suspect counterfeit parts and to rapidly determine if a suspect counterfeit part is, in fact, counterfeit.
- (8) Design, operation, and maintenance of systems to detect and avoid counterfeit electronic parts and suspect counterfeit electronic parts. The Contractor may elect to use current Government- or industry-recognized standards to meet this requirement.

## Defense Federal Acquisition Regulation Supplement

### Part 252—Solicitation Provisions and Contract Clauses

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(9) Flow down of counterfeit detection and avoidance requirements, including applicable system criteria provided herein, to subcontractors at all levels in the supply chain that are responsible for buying or selling electronic parts or assemblies containing electronic parts, or for performing authentication testing.

(10) Process for keeping continually informed of current counterfeiting information and trends, including detection and avoidance techniques contained in appropriate industry standards, and using such information and techniques for continuously upgrading internal processes.

(11) Process for screening GIDEP reports and other credible sources of counterfeiting information to avoid the purchase or use of counterfeit electronic parts.

(12) Control of obsolete electronic parts in order to maximize the availability and use of authentic, originally designed, and qualified electronic parts throughout the product's life cycle.

(d) Government review and evaluation of the Contractor's policies and procedures will be accomplished as part of the evaluation of the Contractor's purchasing system in accordance with [252.244-7001](#), Contractor Purchasing System Administration--Basic, or Contractor Purchasing System Administration--Alternate I.

(e) The Contractor shall include the substance of this clause, including paragraphs (a) through (e), in subcontracts, including subcontracts for commercial items, for electronic parts or assemblies containing electronic parts.

(End of clause)