

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

(Revised September 30, 2013)

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

See DoD Class Deviation [2013-00019](#), Commercial Item Omnibus Clause for Acquisitions Using the Standard Procurement System, issued September 25, 2013. This class deviation allows the contracting officer to use the SPS clause logic capability to automatically select the clauses that are applicable to the specific solicitation and contract. The contracting officer shall ensure that the deviation clause is incorporated into these solicitations and contracts because the deviation clause fulfills the statutory requirements on auditing and subcontract clauses applicable to commercial items. The deviation also authorizes adjustments to the deviation clause required by future changes to the clause at 52.212-5 that are published in the FAR. This deviation is effective for five years, or until otherwise rescinded.

(f) The following additional provisions and clauses apply to DoD solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items. If the offeror has completed any of the following provisions listed in this paragraph electronically as part of its annual representations and certifications at <https://www.acquisition.gov>, the contracting officer shall consider this information instead of requiring the offeror to complete these provisions for a particular solicitation.

(i) Use the FAR clause at 52.203-3, Gratuities, as prescribed in FAR 3.202, to comply with 10 U.S.C. 2207.

(ii) Use the clause at [252.203-7000](#), Requirements Relating to Compensation of Former DoD Officials, as prescribed in [203.171-4\(a\)](#), to comply with section 847 of Pub. L. 110-181.

(iii) Use the clause at [252.203-7003](#), Agency Office of the Inspector General, as prescribed in [203.1004\(a\)](#), to comply with section 6101 of Pub. L. 110-252 and 41 U.S.C. 3509.

(iv) Use the provision at [252.203-7005](#), Representation Relating to Compensation of Former DoD Officials, as prescribed in [203.171-4\(b\)](#).

(v) Use the provision at [252.204-7011](#), Alternative Line Item Structure, as prescribed in [204.7109\(b\)](#).

(vi) Use the clause at [252.205-7000](#), Provision of Information to Cooperative Agreement Holders, as prescribed in [205.470](#), to comply with 10 U.S.C. 2416.

(vii) Use the provision at [252.209-7001](#), Disclosure of Ownership or Control by the Government of a Terrorist Country, as prescribed in [209.104-70\(a\)](#), to comply with 10 U.S.C. 2327(b).

(viii) Use the clause at [252.211-7003](#), Item Identification and Valuation, as prescribed in [211.274-6\(a\)\(1\)](#).

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(ix) Use the provision at [252.211-7006](#), Passive Radio Frequency Identification, as prescribed in [211.275-3](#).

(x) Use the clause at [252.211-7007](#), Reporting of Government-Furnished Property, as prescribed in [211.274-6](#).

(xi) Use the provisions at [252.215-7007](#), Notice of Intent to Resolicit, and [252.215-7008](#), Only One Offer, as prescribed in [215.408](#)(3) and (4), respectively.

(xii) Use the clause at [252.219-7003](#), Small Business Subcontracting Plan (DoD Contracts), as prescribed in [219.708](#)(b)(1)(A)(1), to comply with 15 U.S.C. 637. Use the clause with its Alternate I when prescribed in [219.708](#)(b)(1)(A)(2).

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

(xiv) Use the clause at [252.223-7008](#), Prohibition of Hexavalent Chromium, as prescribed in [223.7306](#).

(xv) Use the provision at [252.225-7000](#), Buy American—Balance of Payments Program Certificate, as prescribed in [225.1101](#)(1)(i), to comply with 41 U.S.C. chapter 83 and Executive Order 10582 of December 17, 1954, Prescribing Uniform Procedures for Certain Determinations Under the Buy-American Act. Use the provision with its Alternate I as prescribed in [225.1101](#)(1)(ii).

(xvi) Use the clause at [252.225-7001](#), Buy American and Balance of Payments Program, as prescribed in [225.1101](#)(2)(i), to comply with 41 U.S.C. chapter 83 and Executive Order 10582 of December 17, 1954, Prescribing Uniform Procedures for Certain Determinations Under the Buy-American Act. Use the clause with its Alternate I as prescribed in [225.1101](#)(2)(ii).

(xvii) Use the clause at [252.225-7008](#), Restriction on Acquisition of Specialty Metals, as prescribed in [225.7003-5](#)(a)(1), to comply with 10 U.S.C. 2533b.

(xviii) Use the clause at [252.225-7009](#), Restriction on Acquisition of Certain Articles Containing Specialty Metals, as prescribed in [225.7003-5](#)(a)(2), to comply with 10 U.S.C. 2533b.

(xix) Use the provision at [252.225-7010](#), Commercial Derivative Military Article—Specialty Metals Compliance Certificate, as prescribed in [225.7003-5](#)(b), to comply with 10 U.S.C. 2533b.

(xx) Use the clause at [252.225-7012](#), Preference for Certain Domestic Commodities, as prescribed in [225.7002-3](#)(a), to comply with 10 U.S.C. 2533a.

(xxi) Use the clause at [252.225-7015](#), Restriction on Acquisition of Hand or Measuring Tools, as prescribed in [225.7002-3](#)(b), to comply with 10 U.S.C. 2533a.

(xxii) Use the clause at [252.225-7016](#), Restriction on Acquisition of Ball and Roller Bearings, as prescribed in [225.7009-5](#), to comply with section 8065 of Pub. L. 107-117 and the same restriction in subsequent DoD appropriations acts.

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(xxiii) Use the clause at [252.225-7017](#), Photovoltaic Devices, as prescribed in [225.7017-4\(a\)](#), to comply with section 846 of Pub. L. 111-383.

(xxiv) Use the provision at [252.225-7018](#), Photovoltaic Devices—Certificate, as prescribed in [225.7017-4\(b\)](#), to comply with section 846 of Pub. L. 111-383.

(xxv) Use the provision at [252.225-7020](#), Trade Agreements Certificate, to comply with 19 U.S.C. 2501-2518 and 19 U.S.C. 3301 note. Alternate I also implements section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181).

(A) Use the basic provision as prescribed in [225.1101\(5\)\(i\)](#),

(B) Use the provision with its Alternate I as prescribed in [225.1101\(5\)\(ii\)](#).

(xxvi) Use the clause at [252.225-7021](#), Trade Agreements to comply with 19 U.S.C. 2501-2518 and 19 U.S.C. 3301 note.

(A) Use the basic clause as prescribed in [225.1101\(6\)\(i\)](#).

(B) Use the clause with its Alternate II as prescribed in [225.1101\(6\)\(ii\)](#).

(xxvii) Use the provision at [252.225-7023](#), Preference for Products or Services from Afghanistan, as prescribed in [225.7703-54\(a\)](#), to comply with section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181).

(xxviii) Use the clause at [252.225-7024](#), Requirement for Products or Services from Afghanistan, as prescribed in [225.7703-54\(b\)](#), to comply with section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181).

(xxix) Use the clause at [252.225-7026](#), Acquisition Restricted to Products or Services from Afghanistan, as prescribed in [225.7703-54\(c\)](#), to comply with section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181).

(xxx) Use the clause at [252.225-7027](#), Restriction on Contingent Fees for Foreign Military Sales, as prescribed in [225.7307\(a\)](#), to comply with 22 U.S.C. 2779.

(xxxii) Use the clause at [252.225-7028](#), Exclusionary Policies and Practices of Foreign Governments, as prescribed in [225.7307\(b\)](#), to comply with 22 U.S.C. 2755.

(xxxii) Use the clause at [252.225-7029](#), Acquisition of Uniform Components for Afghan Military or Afghan National Police, as prescribed in [225.7703-4\(d\)](#).

(xxxiii) Use the provision at [252.225-7031](#), Secondary Arab Boycott of Israel, as prescribed in [225.7605](#), to comply with 10 U.S.C. 2410i.

(xxxiv) Use the provision at [252.225-7035](#), Buy American—Free Trade Agreements—Balance of Payments Program Certificate, to comply with 41 U.S.C. chapter 83 and 19 U.S.C. 3301 note. Alternates II, III, and V also implement section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181).

(A) Use the basic provision as prescribed in [225.1101\(9\)\(i\)](#).

(B) Use the provision with its Alternate I as prescribed in [225.1101\(9\)\(ii\)](#).

(C) Use the provision with its Alternate II as prescribed in [225.1101\(9\)\(iii\)](#).

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(D) Use the provision with its Alternate III as prescribed in [225.1101\(9\)\(iv\)](#).

(E) Use the provision with its Alternate IV as prescribed in [225.1101\(9\)\(v\)](#).

(F) Use the provision with its Alternate V as prescribed in [225.1101\(9\)\(vi\)](#).

(xxxv) Use the clause at [252.225-7036](#), Buy American--Free (B) Trade Agreements-- Balance of Payments Program to comply with 41 U.S.C. chapter 83 and 19 U.S.C. 3301 note. Alternates II, III, and V also implement section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181).

(A) Use the basic clause as prescribed in [225.1101\(10\)\(i\)\(A\)](#).

(B) Use the clause with its Alternate I as prescribed in [225.1101\(10\)\(i\)\(B\)](#).

(C) Use the clause with its Alternate II as prescribed in [225.1101\(10\)\(i\)\(A\)](#).

(D) Use the clause with its Alternate III as prescribed in [225.1101\(10\)\(i\)\(B\)](#).

(E) Use the clause with its Alternate IV as prescribed in [225.1101\(10\)\(i\)\(C\)](#).

(F) Use the clause with its Alternate V as prescribed in [225.1101\(10\)\(i\)\(C\)](#).

(xxxvi) Use the provision at [252.225-7037](#), Evaluation of Offers for Air Circuit Breakers, as prescribed in [225.7006-4\(a\)](#), to comply with 10 U.S.C. 2534(a)(3).

(xxxvii) Use the clause at [252.225-7038](#), Restriction on Acquisition of Air Circuit Breakers, as prescribed in [225.7006-4\(b\)](#), to comply with 10 U.S.C. 2534(a)(3).

(xxxviii) Use the clause at [252.225-7039](#), Contractors Performing Private Security Functions, as prescribed in [225.370-6](#), to comply with section 862 of Pub. L. 110-181, as amended by section 853 of Pub. L. 110-417 and sections 831 and 832 of Pub. L. 111-383.

(xxxix) Use the clause at [252.225-7040](#), Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States, as prescribed in [225.7402-5\(a\)](#).

(xl) Use the clause at [252.225-7043](#), Antiterrorism/Force Protection Policy for Defense Contractors Outside the United States, as prescribed in [225.7403-2](#).

(xli) Use the clause at [252.226-7001](#), Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns, as prescribed in [226.104](#), to comply with section 8021 of Pub. L. 107-248 and similar sections in subsequent DoD appropriations acts.

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

(xliii) Use the clause at [252.227-7015](#), Technical Data--Commercial Items, as prescribed in [227.7102-4\(a\)\(1\)](#), to comply with 10 U.S.C. 2320. Use the clause with its

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Alternate I as prescribed in [227.7102-4\(a\)\(2\)](#), to comply with 10 U.S.C. 7317 and 17 U.S.C. 1301, et. seq.

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

(xlv) Use the clause at [252.232-7003](#), Electronic Submission of Payment Requests and Receiving Reports, as prescribed in [232.7004](#), to comply with 10 U.S.C. 2227.

(xlvi) Use the clause at [252.232-7009](#), Mandatory Payment by Governmentwide Commercial Purchase Card, as prescribed in [232.1110](#).

(xlvii) Use the clause at [252.232-7010](#), Levies on Contract Payments, as prescribed in [232.7102](#).

(xlviii) Use the clause at [252.232-7011](#), Payments in Support of Emergencies and Contingency Operations, as prescribed in [232.908](#).

(xlix) Use the clause at [252.237-7010](#), Prohibition on Interrogation of Detainees by Contractor Personnel, as prescribed in [237.173-5](#), to comply with section 1038 of Pub. L. 111-84.

(l) Use the clause at [252.237-7019](#), Training for Contractor Personnel Interacting with Detainees, as prescribed in [237.171-4](#), to comply with section 1092 of Pub. L. 108-375.

(li) Use the clause at [252.243-7002](#), Requests for Equitable Adjustment, as prescribed in [243.205-71](#), to comply with 10 U.S.C. 2410.

(lii) Use the clause at [252.244-7000](#), Subcontracts for Commercial Items, as prescribed in [244.403](#).

(liii) Use the clause at [252.246-7003](#), Notification of Potential Safety Issues, as prescribed in [246.371\(a\)](#).

(liv) Use the clause at [252.246-7004](#), Safety of Facilities, Infrastructure, and Equipment for Military Operations, as prescribed in [246.270-4](#), to comply with section 807 of Pub. L. 111-84.

(lv) Use the clause at [252.247-7003](#), Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer, as prescribed in [247.207](#), to comply with section 884 of Pub. L. 110-417.

(lvi) Use the provision at [252.247-7022](#), Representation of Extent of Transportation by Sea, as prescribed in [247.574\(a\)](#).

(lvii) Use the clause at [252.247-7023](#), Transportation of Supplies by Sea, as prescribed in [247.574\(b\)\(1\)](#), to comply with the Cargo Preference Act of 1904 (10 U.S.C. 2631(a)). Use the clause with its Alternate I as prescribed in [247.574\(b\)\(2\)](#). Use the clause with its Alternate II as prescribed in [247.574\(b\)\(3\)](#). Use the clause with its Alternate III as prescribed in [247.574\(b\)\(4\)](#).

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(lviii) Use the clause at [252.247-7024](#), Notification of Transportation of Supplies by Sea, as prescribed in [247.574\(c\)](#).

(lix) Use the clause [252.247-7025](#), Reflagging or Repair Work, as prescribed in [247.574\(d\)](#), to comply with 10 U.S.C. 2631(b).

(lx) Use the provision at [252.247-7026](#), Evaluation Preference for Use of Domestic Shipyards – Applicable to Acquisition of Carriage by Vessel for DoD Cargo in the Coastwise or Noncontiguous Trade, as prescribed in [247.574\(e\)](#), to comply with section 1017 of Pub. L. 109-364.

(lxi) Use the clause at [252.247-7027](#), Riding Gang Member Requirements, as prescribed in [247.574\(f\)](#), to comply with section 3504 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417).

(lxii) Use the clause at [252.247-7028](#), Application for U.S Government Shipping Documentation/Instructions, as prescribed in [247.207](#).

212.302 Tailoring of provisions and clauses for the acquisition of commercial items.

(c) *Tailoring inconsistent with customary commercial practice.* The head of the contracting activity is the approval authority within the DoD for waivers under FAR 12.302(c).