

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, 12(d) (15 U.S.C. 272), directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed action includes environmental monitoring and measurement as described in EPA's proposed SMMP. The EPA will not require the use of specific, prescribed analytic methods for monitoring and managing the designated Sites. The Agency plans to allow the use of any method, whether it constitutes a voluntary consensus standard or not, that meets the monitoring and measurement criteria discussed in the proposed SMMP. The EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this proposed action.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low Income Populations

Executive Order 12898 (59 FR 7629) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. The EPA determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The EPA has assessed the overall protectiveness of designating the

disposal Sites against the criteria established pursuant to the MPRSA to ensure that any adverse impact to the environment will be mitigated to the greatest extent practicable. We welcome comments on this proposed action related to this Executive Order.

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Authority: This action is issued under the authority of Section 102 of the Marine Protection, Research, and Sanctuaries Act, as amended, 33 U.S.C. 1401, 1411, 1412.

Dated: March 20, 2012.

Dennis J. McLerran,

Regional Administrator, Region 10.

For the reasons set out in the preamble, The EPA proposes to amend chapter I, title 40 of the Code of Federal Regulations as follows:

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.15 is amended by adding paragraph (n)(15) to read as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(n) * * *

(15) Yaquina Bay, OR—North and South Ocean Dredged Material Disposal Sites.

(i) North Site.

(A) *Location:* 44°38'17.98" N, 124°07'25.95" W, 44°38'12.86" N, 124°06'31.10" W, 44°37'14.33" N, 124°07'37.57" W, 44°37'09.22" N, 124°06'42.73" W.

(B) *Size:* Approximately 1.07 nautical miles long and 0.66 nautical miles wide (0.71 square nautical miles); 597 acres (242 hectares).

(C) *Depth:* Ranges from approximately 112 to 152 feet (34 to 46 meters).

(D) *Primary Use:* Dredged material.

(E) *Period of Use:* Continuing use.

(F) *Restrictions:* (1) Disposal shall be limited to dredged material determined to be suitable for ocean disposal according to 40 CFR 227.13 from the Yaquina Bay and River navigation channel and adjacent areas;

(2) Disposal shall be managed by the restrictions and requirements contained in the currently-approved Site Management and Monitoring Plan (SMMP);

(3) Monitoring, as specified in the SMMP, is required.

(ii) South Site

(A) *Location:* 44°36'04.50" N, 124°07'52.66" W, 44°35'59.39" N, 124°06'57.84" W, 44°35'00.85" N, 124°08'04.27" W, 44°34'55.75" N, 124°07'09.47" W.

(B) *Size:* Approximately 1.07 nautical miles long and 0.66 nautical miles wide (0.71 square nautical miles); 597 acres (242 hectares).

(C) *Depth:* Ranges from approximately 112 to 152 feet (34 to 46 meters).

(D) *Primary Use:* Dredged material.

(E) *Period of Use:* Continuing use.

(F) *Restrictions:* (1) Disposal shall be limited to dredged material determined to be suitable for ocean disposal according to 40 CFR 227.13, from the Yaquina Bay and River navigation channel and adjacent areas;

(2) Disposal shall be managed by the restrictions and requirements contained in the currently-approved Site Management and Monitoring Plan (SMMP);

(3) Monitoring, as specified in the SMMP, is required.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 203, 204, 205, 209, 211, 212, 219, 225, 226, 227, 232, 237, 243, 244, 246, 247, and 252

[DFARS Case 2011-D056]

RIN 0750-AH63

Defense Federal Acquisition Regulation Supplement: Solicitation Provisions and Contract Clauses for Acquisitions of Commercial Items

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to simplify prescriptions for provisions and clauses that are applicable to the acquisition of commercial items and to specify flowdown of clauses to commercial subcontracts.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before June 4, 2012, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2011-D056, using any of the following methods:

○ *Regulations.gov*: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering “DFARS Case 2011–D056” under the heading “Enter keyword or ID” and selecting “Search.” Select the link “Submit a Comment” that corresponds with “DFARS Case 2011–D056.” Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “DFARS Case 2011–D056” on your attached document.

○ *Email*: dfars@osd.mil. Include DFARS Case 2011–D056 in the subject line of the message.

○ *Fax*: 571–372–6094.

○ *Mail*: Defense Acquisition Regulations System, Attn: Dr. Laura Welsh, OUSD (AT&L) DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Dr. Laura Welsh, telephone 571–372–6091.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to revise the DFARS to support the use of automated contract writing systems. The clause at DFARS 252.212–7001, Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items, requires the contracting officer to “check a box” to identify the clauses that are applicable to each commercial item acquisition. This requirement is not compatible with most automated contract writing systems. Section 8002 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355) requires that the regulations shall contain a list of contract clauses to be included in contracts for the acquisition of commercial end items. Each time a clause or clause alternate is added, DoD must consider whether the clause or clause alternate will be applicable to commercial items. The law does not require that this list be in the form of a clause, requiring clause dates for each applicable clause that must be revised every time a clause on the list is modified.

Furthermore, clause flowdown to commercial subcontracts is controlled by paragraph (c) of the clause 252.212–

7001 for commercial contracts under FAR part 12 and clause 252.244–7000, Subcontracts for Commercial Items and Commercial Components (DoD Contracts). These lists of clauses that require flowdown to commercial subcontracts likewise require update every time a clause on the list is modified.

II. Discussion and Analysis

DoD proposes the following changes to facilitate the use of automated contract writing systems and reduce the need for constant update of clause dates on multiple lists.

- Revise DFARS 212.301(f) to—
- Provide a single list of all fifty-eight provisions and clauses that currently apply to DoD solicitations and contracts for the acquisition of commercial items. Where any provision or clause is included to implement statutes or executive orders that are applicable to defense acquisitions of commercial items, the particular statute or Executive order is identified following the location of the prescription for each provision or clause. All provisions and clauses currently listed in DFARS 212.301(f) that are applicable to DoD solicitations and contracts for the acquisition of commercial items are retained in the revised list.
- Add DFARS provision 252.203–7005, Representation Relating to Compensation of Former DoD Officials. This provision’s application to the acquisition of commercial items was inadvertently omitted from case 2010–D020 when the final rule was published on November 18, 2011 (76 FR 71826).
- Add the two provisions currently contained in DFARS provision 252.212–7000, Offeror Representations and Certifications—Commercial Items.
- Add one FAR clause and thirty-one DFARS clauses (inclusive of alternates) currently contained in DFARS clause 252.212–7001, Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items.
- Add two DFARS provisions and two DFARS clauses in support of operations in Iraq or Afghanistan: provision 252.225–7022, Trade Agreements Certificate—Inclusion of Iraqi End Products; provision 252.225–7023, Preference for Products or Services from Iraq or Afghanistan; clause 252.225–7024, Requirement for Products or Services from Iraq or Afghanistan; and clause 252.225–7026, Acquisition Restricted to Products or Services from Iraq or Afghanistan. These provisions’ and clauses’ application to the acquisition of commercial items in support of operations in Iraq or Afghanistan was inadvertently omitted from case 2008–D002 when the final rule was published on April 8, 2010 (75 FR 18035).
- Add DFARS provision 252.225–7037, Evaluation of Offers for Air Circuit Breakers. This provision’s application to the acquisition of commercial items was inadvertently omitted from case 2002–D009 when the final rule was published in the **Federal Register** on March 31, 2003 (68 FR 15616), with an effective date of April 30, 2003. This provision is the companion to DFARS clause 252.225–7038, Restriction on Acquisition of Air Circuit Breakers, which is currently listed at paragraph (b)(17) of DFARS clause 252.212–7001.
- Revise clause 252.244–7000, Subcontracts for Commercial Items, to address the requirements regarding flow down of clauses to subcontracts of commercial items currently contained in paragraph (c) of clause 252.212–7001.
- Add DFARS clause 252.247–7025, Reflagging or Repair Work. This clause’s application to the acquisition of commercial items was inadvertently omitted from case 95–D712 for the commercial item implementation of the Federal Acquisition Streamlining Act of 1994 (FASA) when the final rule was published in the **Federal Register** on November 1, 2001 (66 FR 55151). All other clauses contained in DFARS 247.574 for ocean transportation by U.S.-flag vessels are listed as applicable to the defense acquisition of commercial items. Time charter acquisitions of vessels are commercial by their very nature. Further, 10 U.S.C. 2631 is not listed in DFARS 212.503(a) as a law not applicable to commercial contracts.
- Add provision and clause alternates that are applicable to commercial items that were previously inadvertently omitted from either DFARS 212.301(f) or DFARS clause 252.212–7001. Alternates were added as applicable to: Clause 252.219–7003, Small Business Subcontracting Plan; provision 252.225–7000, Buy American Act—Balance of Payments Program Certificate; provision 252.225–7020, Trade Agreements Certificate; provision 252.225–7035, Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate; clause 252.227–7013, Rights in Technical Data—

Noncommercial Items; and clause 252.227–7015, Technical Data—Commercial Items.

—Delete DFARS provision 252.212–7000, Offeror Representations and Certifications—Commercial Items, and DFARS clause 252.212–7001, Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items. These deletions support the use of automated contract writing systems. Rather than requiring the contracting officers to “check the applicable clauses,” the automated contract writing systems can be used to automatically select the applicable clauses, saving the DoD time and scarce resources.

- Revise the prescriptions for each of the fifty-eight provisions and clauses, including alternates, in the revised list at DFARS 212.301(f) to indicate that they are specifically used in solicitations or contracts using FAR part 12 procedures for the acquisition of commercial items. The phrase “including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items” was used in lieu of a simpler phrase such as “including commercial item solicitations and contracts” as FAR 12.102(f) and (g) allow for the use of part 12 procedures for items that do not meet the definition of a commercial item defined at FAR 2.101.

- Make technical corrections to—

—The prescription at 232.908.

—Provide the location of prescriptions for provisions and clauses for the following: 252.203–7000, 252.211–7003, and 252.227–7037.

—Provide the locations of definitions missing in 247.571 and to provide the statutory citations missing in 247.572.

- Revise DFARS clause 252.244–7000, Subcontracts for Commercial Items and Commercial Components (DoD Contracts), to indicate that the contractor is not required to flow down the terms of any DFARS clause in subcontracts for commercial items unless so specified in the particular clause.

- Revise the last paragraph of the following clauses to state that the terms should flow down to subcontracts for commercial items: 252.211–7003; 252.225–7009; 252.225–7039; 252.227–7013; 252.227–7015; 252.227–7037; 252.236–7013; 252.237–7010; 252.237–7019; 252.246–7003; 252.247–7003; and 252.247–7023. The list of clauses requiring flow down of clause terms to subcontracts for commercial items was obtained from paragraph (c) of DFARS

clause 252.212–7001 and the list contained in the current DFARS clause 252.244–7000, with the addition of clause 252.211–7003, which was previously inadvertently omitted from both lists in case 2003–D081 when the final rule was published in the **Federal Register** on April 22, 2005 (70 FR 20831). However, clause 252.247–7024 did not require revision as it already contained language specifically requiring flow down to subcontracts for commercial items.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule aims to only change the appearance of how commercial provisions and clauses are presented within commercial acquisitions and there are no substantive changes. However, an initial regulatory flexibility analysis has been performed and is summarized as follows.

The purpose of this case is to support the use of automated contract writing systems. The clause at DFARS 252.212–7001 requires the contracting officer to “check a box” to identify the clauses that are applicable to each commercial item acquisition. Rather than requiring the contracting officers to “check the applicable clauses,” this proposed rule will allow automated contract writing systems to automatically select the applicable clauses, saving DoD time and scarce resources.

Potential offerors, including small businesses, may be affected by this rule only to the extent of seeing an unfamiliar format for clauses in commercial item acquisitions issued by

any DoD contracting activities that do not already currently deviate from the current DFARS requirement to “check a box.” There were 273,042 new contracts, agreements, and purchase orders awarded in Fiscal Year 2011 using FAR part 12 procedures for the acquisition of commercial items, and 71,950 of these actions (26.35%) were awarded to small businesses. It is unknown how many of these actions were awarded using a deviation from DFARS clause 252.212–7001. Nothing substantive will change in commercial acquisitions for potential offerors, and only the appearance of how applicable clauses are presented will be changed. This rule may result in potential offerors, including small businesses, expending more time to become familiar with and to understand the new clause format issued by any DoD contracting activities not presently operating under the existing deviation. The burden caused by this rule is expected to be minimal and will not be any greater on small businesses than it is on large businesses.

This rule does not add any new information collection requirements. The information collection burden required by DFARS provisions 252.225–7022, Trade Agreements Certificate—Inclusion of Iraqi End Products, and 252.225–7023, Preference for Products or Services from Iraq or Afghanistan, is already covered and approved under OMB Control Number 0704–0229 entitled Foreign Acquisitions. These provisions are variants of the other existing foreign acquisition reporting burdens already used and covered for commercial acquisitions (excluding commercial information technology).

The rule does not duplicate, overlap, or conflict with any other Federal rules.

No alternatives were identified that will accomplish the objectives of the rule.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2011–D056), in correspondence.

V. Paperwork Reduction Act

This rule does not contain any new information collection requirements that require the approval of the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C chapter 35). The commercial clauses

currently approved for use in commercial contracts, which may impose any information collection burden on contractors or any subcontractors, are already covered by an existing approved OMB clearance. The burdens for all existing commercial clauses are not changed in any way by this proposed rule. Two DFARS provisions, with an associated information collection burden, are newly identified by this rule as being applicable to acquisitions of commercial items: 252.225–7022, Trade Agreements Certificate—Inclusion of Iraqi End Products; and 252.225–7023, Preference for Products or Services from Iraq of Afghanistan. The information collection burdens associated with these two DFARS provisions are already fully covered and cleared under OMB Control Number 0704–0229 entitled Foreign Acquisitions. These two provisions are variants of the other existing foreign acquisition provisions with reporting burdens already in use and covered for commercial acquisitions (excluding commercial information technology).

List of Subjects in 48 CFR Parts 203, 204, 205, 209, 211, 212, 219, 225, 226, 227, 232, 237, 243, 244, 246, 247, and 252

Government procurement.

Mary Overstreet,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 203, 204, 205, 209, 211, 212, 219, 225, 226, 227, 232, 237, 243, 244, 246, 247, and 252 are proposed to be amended as follows:

1. The authority citation for 48 CFR parts 203, 204, 205, 209, 211, 212, 219, 225, 226, 227, 232, 237, 243, 244, 246, 247, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

2. Section 203.171–4 is revised to read as follows:

203.171–4 Solicitation provision and contract clause.

(a) Use the clause at 252.203–7000, Requirements Relating to Compensation of Former DoD Officials, in all solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items.

(b) Use the provision at 252.203–7005, Representation Relating to Compensation of Former DoD Officials,

in all solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, including solicitations for task and delivery orders.

3. Section 203.1004(a) is revised to read as follows:

203.1004 Contract clauses.

(a) Use the clause at 252.203–7003, Agency Office of the Inspector General, in solicitations and contracts that include the FAR clause 52.203–13, Contractor Code of Business Ethics and Conduct, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items.

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PART 204—ADMINISTRATIVE MATTERS

4. Section 204.7109(b) is revised to read as follows:

204.7109 Solicitation provision and contract clause.

* * * * *

(b) Use the provision at 252.204–7011, Alternative Line Item Structure, in solicitations using FAR part 12 procedures for the acquisition of commercial items or for initial provisioning spares.

PART 205—PUBLICIZING CONTRACT ACTIONS

5. Section 205.470 is revised to read as follows:

205.470 Contract clause.

Use the clause at 252.205–7000, Provision of Information to Cooperative Agreement Holders, in solicitations and contracts expected to exceed \$1,000,000, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items. This clause implements 10 U.S.C. 2416.

PART 209—CONTRACTOR QUALIFICATIONS

6. Section 209.104–70(a) is revised to read as follows:

209.104–70 Solicitation provisions.

(a) Use the provision at 252.209–7001, Disclosure of Ownership or Control by the Government of a Terrorist Country, in all solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, expected to result in contracts of \$150,000 or more. Any disclosure that the government of a terrorist country has a significant interest in an offeror or a subsidiary of

an offeror shall be forwarded through agency channels to the address at 209.104–1(g)(i)(C).

* * * * *

PART 211—DESCRIBING AGENCY NEEDS

7. Section 211.274–6(a)(1) is revised to read as follows:

211.274–6 Contract clauses.

(a)(1) Use the clause at 252.211–7003, Item Identification and Valuation, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that—

* * * * *

8. Section 211.275–3 is revised to read as follows:

211.275–3 Contract clause.

Use the clause at 252.211–7006, Passive Radio Frequency Identification, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that will require shipment of items meeting the criteria at 211.275–2, and complete paragraph (b)(1)(ii) of the clause as appropriate.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

9. Section 212.301 is revised to read as follows:

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

(f) The following additional provisions and clauses apply to DoD solicitations and contracts 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 Public Law 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 Public Law 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).

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

(x) 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 as prescribed in 219.708(b)(1)(A)(2).

(xi) 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.

(xii) Use the provision at 252.225–7000, Buy American Act—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).

(xiii) Use the clause at 252.225–7001, Buy American Act 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).

(xiv) 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.

(xv) 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.

(xvi) 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.

(xvii) 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.

(xviii) 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.

(xix) 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 Public Law 107–117 and the same restriction in subsequent DoD appropriations acts.

(xx) Use the clause at 252.225–7017, Photovoltaic Devices, as prescribed in 225.7017–4(a), to comply with section 846 of Public Law 111–383.

(xxi) Use the provision at 252.225–7018, Photovoltaic Devices—Certificate, as prescribed in 225.7017–4(b), to comply with section 846 of Public Law 111–383.

(xxii) Use the provision at 252.225–7020, Trade Agreements Certificate, as prescribed in 225.1101(5)(i), to comply with 19 U.S.C. 2501–2518 and 19 U.S.C. 3301 note. Use the provision with its Alternate I as prescribed in 225.1101(5)(ii), to comply with sections 886 and 892 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181).

(xxiii) Use the clause at 252.225–7021, Trade Agreements, as prescribed in 225.1101(6)(i), to comply with 19 U.S.C. 2501–2518 and 19 U.S.C. 3301 note. Use the clause with its Alternate I as prescribed in 225.1101(6)(ii), to comply with sections 886 and 892 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181). Use the clause with its Alternate II as prescribed in 225.1101(6)(iii).

(xxiv) Use the provision at 252.225–7022, Trade Agreements Certificate—Inclusion of Iraqi End Products, as prescribed in 225.1101(7), to comply with section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181).

(xxv) Use the provision at 252.225–7023, Preference for Products or Services from Iraq or Afghanistan, as prescribed in 225.7703–5(a), to comply with section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181).

(xxvi) Use the clause at 252.225–7024, Requirement for Products or Services from Iraq or Afghanistan, as prescribed in 225.7703–5(b), to comply with sections 886 and 892 of the National

Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181).

(xxvii) Use the clause at 252.225–7026, Acquisition Restricted to Products or Services from Iraq or Afghanistan, as prescribed in 225.7703–5(c), to comply with sections 886 and 892 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181).

(xxviii) 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.

(xxix) 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.

(xxx) 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.

(xxxi) Use the provision at 252.225–7035, Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate, as prescribed in 225.1101(10)(i), to comply with 41 U.S.C. chapter 83 and 19 U.S.C. 3301 note. Use the provision with its Alternate I as prescribed in 225.1101(10)(ii). Use the provision with its Alternate II as prescribed in 225.1101(10)(iii). Use the provision with its Alternate III as prescribed in 225.1101(10)(iv), to comply with sections 886 and 892 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181).

(xxxii) Use the clause at 252.225–7036, Buy American Act—Free Trade Agreements—Balance of Payments Program, as prescribed in 225.1101(11)(i)(A), to comply with 41 U.S.C. chapter 83 and 19 U.S.C. 3301 note. Use the clause with its Alternate I as prescribed in 225.1101(11)(i)(B). Use the clause with its Alternate II as prescribed in 225.1101(11)(i)(A), to comply with sections 886 and 892 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181). Use the clause with its Alternate III as prescribed in 225.1101(11)(i)(B), to comply with sections 886 and 892 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181).

(xxxiii) 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) as amended by section 814 of the National Defense Authorization Act for Fiscal Year 1995 (Pub. L. 103–337) and section 4102(i) of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355).

(xxxiv) 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) as amended by section 814 of the National Defense Authorization Act for Fiscal Year 1995 (Pub. L. 103–337) and section 4102(i) of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355).

(xxxv) Use the clause at 252.225–7039, Contractors Performing Private Security Functions, as prescribed in 225.370–6, to comply with section 862 of Public Law 110–181, as amended by section 853 of Public Law 110–417 and sections 831 and 832 of Public Law 111–383.

(xxxvi) 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).

(xxxvii) Use the clause at 252.225–7043, Antiterrorism/Force Protection Policy for Defense Contractors Outside the United States, as prescribed in 225.7403–2.

(xxxviii) 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 Public Law 107–248 and similar sections in subsequent DoD appropriations acts.

(xxxix) 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.*

(xl) 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 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.*

(xli) Use the clause at 252.227–7037, Validation of Restrictive Markings on Technical Data, as prescribed in part 227.

(xlii) 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.

(xliii) Use the clause at 252.232–7009, Mandatory Payment by Governmentwide Commercial Purchase Card, as prescribed in 232.1110.

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

(xlv) Use the clause at 252.232–7011, Payments in Support of Emergencies

and Contingency Operations, as prescribed in 232.908.

(xlvi) 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 Public Law 111–84.

(xlvii) 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 Public Law 108–375.

(xlviii) 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.

(xlix) Use the clause at 252.244–7000, Subcontracts for Commercial Items, as prescribed in 244.403.

(l) Use the clause at 252.246–7003, Notification of Potential Safety Issues, as prescribed in 246.371(a).

(li) 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 Public Law 111–84.

(lii) 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 Public Law 110–417.

(liii) Use the provision at 252.247–7022, Representation of Extent of Transportation by Sea, as prescribed in 247.574(a).

(liv) 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).

(lv) Use the clause at 252.247–7024, Notification of Transportation of Supplies by Sea, as prescribed in 247.574(c).

(lvi) 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).

(lvii) 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 Public Law 109–364.

(lviii) 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).

PART 219—SMALL BUSINESS PROGRAMS

10. Section 219.708(b)(1) is revised to read as follows:

219.708 Contract clauses.

(b)(1)(A) Use the clause at 252.219–7003, Small Business Subcontracting Plan (DoD Contracts)—

(1) In solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items that contain the clause at FAR 52.219–9, Small Business Subcontracting Plan.

(2) With its Alternate I in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that use Alternate III of 52.219–9, Small Business Subcontracting Plan.

(B) In solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, with contractors that have comprehensive subcontracting plans approved under the test program described in 219.702, use the clause at 252.219–7004, Small Business Subcontracting Plan (Test Program), instead of the clauses at 252.219–7003, Small Business Subcontracting Plan (DoD Contracts), and FAR 52.219–9, Small Business Subcontracting Plan. Include—

(1) FAR clause 52.219–9, Small Business Subcontracting Plan, and 252.219–7003, Small Business Subcontracting Plan (DoD Contracts), in the contract for purposes of the contractor flowing these clauses down to subcontractors, except

(2) When the contract will not be reported in FPDS (see FAR 4.606(c)(5)), include FAR clause 52.219–9, Small Business Subcontracting Plan, with its Alternate III and 252.219–7003, Small Business Subcontracting Plan (DoD Contracts), with its Alternate I in the contract for purposes of the contractor flowing these clauses down to subcontractors.

* * * * *

PART 225—FOREIGN ACQUISITION

11. In section 225.370–6, the introductory text is revised to read as follows:

225.370–6 Contract clause.

Use the clause at 252.225–7039, Contractors Performing Private Security Functions, in all solicitations and contracts, including solicitations and

contracts using FAR part 12 procedures for the acquisition of commercial items, to be performed in areas of—

* * * * *

12. Section 225.1101 is amended by—
 a. Revising paragraph (1);
 b. Revising the introductory text of paragraph (2)(i); and
 c. Revising paragraphs (2)(ii); (5); (6)(i), (ii), (iii); (7); (10); and (11)(i).
 The revisions read as follows:

225.1101 Acquisition of supplies.

(1)(i) Use the provision at 252.225–7000, Buy American Act—Balance of Payments Program Certificate, instead of the provision at FAR 52.225–2, Buy American Act Certificate. Use the provision in any solicitation, including solicitations using FAR part 12 procedures for the acquisition of commercial items, that includes the clause at 252.225–7001, Buy American Act and Balance of Payments Program.

(ii) Use the provision with its Alternate I in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, when the acquisition is of end products listed in 225.401–70 in support of operations in Afghanistan.

(2)(i) Use the clause at 252.225–7001, Buy American Act and Balance of Payments Program, instead of the clause at FAR 52.225–1, Buy American Act—Supplies, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, unless—

* * * * *

(ii) Use the clause with its Alternate I in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, when the acquisition is of end products listed in 225.401–70 in support of operations in Afghanistan

* * * * *

(5)(i) Except as provided in paragraph (7) of this section, use the provision at 252.225–7020, Trade Agreements Certificate, instead of the provision at FAR 52.225–6, Trade Agreements Certificate, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, that include the clause at 252.225–7021, Trade Agreements.

(ii) Use the provision with its Alternate I in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, when the acquisition is of end products in support of operations in Afghanistan.

(6)(i) Use the clause at 252.225–7021, Trade Agreements, instead of the clause at FAR 52.225–5, Trade Agreements, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, if the World Trade Organization Government Procurement Agreement applies.

(ii) Use the clause with its Alternate I in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that include the clause at 252.225–7024, Requirement for Products or Services from Iraq or Afghanistan, unless the clause at 252.225–7024 has been modified to provide a preference only for the products of Afghanistan.

(iii) Use the clause with its Alternate II in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, when the acquisition is of end products in support of operations in Afghanistan and Alternate I is not applicable.

* * * * *

(7) Use the provision at 252.225–7022, Trade Agreements Certificate—Inclusion of Iraqi End Products, instead of the provision at FAR 52.225–6, Trade Agreements Certificate, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, that include the clause at 252.225–7021, Trade Agreements, with its Alternate I.

* * * * *

(10)(i) Use the provision at 252.225–7035, Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate, instead of the provision at FAR 52.225–4, Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, that include the clause at 252.225–7036, Buy American Act—Free Trade Agreements—Balance of Payments Program.

(ii) Use the provision with its Alternate I in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, when the clause at 252.225–7036 is used with its Alternate I.

(iii) Use the provision with its Alternate II in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, when the clause at 252.225–7036 is used with its Alternate II.

(iv) Use the provision with its Alternate III in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, when the clause at 252.225–7036 is used with its Alternate III.

(11)(i) Except as provided in paragraph (11)(ii) of this section, use the clause at 252.225–7036, Buy American Act—Free Trade Agreements—Balance of Payments Program, instead of the clause at FAR 52.225–3, Buy American Act—Free Trade Agreements—Israeli Trade Act, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, for the items listed at 225.401–70, when the estimated value equals or exceeds \$25,000, but is less than \$202,000, and a Free Trade Agreement applies to the acquisition.

(A) Use the basic clause in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, when the estimated value equals or exceeds \$77,494, except if the acquisition is of end products in support of operations in Afghanistan, use with its Alternate II.

(B) Use the clause with its Alternate I in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, when the estimated value equals or exceeds \$25,000 but is less than \$77,494, except if the acquisition is of end products in support of operations in Afghanistan, use with its Alternate III.

* * * * *

13. Section 225.7002–3 is revised to read as follows:

225.7002–3 Contract clauses.

Unless an exception applies—

(a) Use the clause at 252.225–7012, Preference for Certain Domestic Commodities, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, exceeding the simplified acquisition threshold.

(b) Use the clause at 252.225–7015, Restriction on Acquisition of Hand or Measuring Tools, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, exceeding the simplified acquisition threshold that require delivery of hand or measuring tools.

14. In section 225.7003–5, the introductory text of paragraphs (a)(1), (a)(2), and (b) are revised to read as follows:

225.7003–5 Solicitation provision and contract clauses.

(a) * * *

(1) Use the clause at 252.225–7008, Restriction on Acquisition of Specialty Metals, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that—

* * * * *

(2) Use the clause at 252.225–7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that—

* * * * *

(b) Use the provision at 252.225–7010, Commercial Derivative Military Article—Specialty Metals Compliance Certificate, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items—

* * * * *

15. In section 225.7006–4, the introductory text of paragraphs (a) and (b) are revised to read as follows:

225.7006–4 Solicitation provision and contract clause.

(a) Use the provision at 252.225–7037, Evaluation of Offers for Air Circuit Breakers, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, requiring air circuit breakers for naval vessels unless—

* * * * *

(b) Use the clause at 252.225–7038, Restriction on Acquisition of Air Circuit Breakers, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, requiring air circuit breakers for naval vessels unless—

* * * * *

16. In section 225.7009–5, the introductory text is revised to read as follows:

225.7009–5 Contract clause.

Use the clause at 252.225–7016, Restriction on Acquisition of Ball and Roller Bearings, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, unless—

* * * * *

17. Section 225.7017–4 is amended by—

- a. Revising the introductory text of paragraph (a)(1); and
- b. Revising paragraphs (a)(2) and (b). The revisions read as follows:

225.7017–4 Solicitation provisions and contract clauses.

(a)(1) Use the clause at 252.225–7017, Photovoltaic Devices, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, for a contract that—

* * * * *

(2) Use the clause in the resultant contract, including contracts using FAR part 12 procedures for the acquisition of commercial items, if it is a covered contract (i.e., will result in DoD ownership of photovoltaic devices, by means other than DoD purchase as end products).

(b) Use the provision at 252.225–7018, Photovoltaic Devices—Certificate, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, containing the clause at 252.225–7017.

18. Section 225.7307 is revised to read as follows:

225.7307 Contract clauses.

(a) Use the clause at 252.225–7027, Restriction on Contingent Fees for Foreign Military Sales, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, for FMS. Insert in paragraph (b)(1) of the clause the name(s) of any foreign country customer(s) listed in 225.7303–4(b).

(b) Use the clause at 252.225–7028, Exclusionary Policies and Practices of Foreign Governments, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, for the purchase of supplies and services for international military education training and FMS.

19. In section 225.7402–5(a), the introductory text is revised to read as follows:

225.7402–5 Contract clauses.

(a) Use the clause at 252.225–7040, Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States, instead of the clause at FAR 52.225–19, Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission Outside the United States, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that authorize contractor personnel to accompany U.S. Armed Forces deployed outside the United States in—

* * * * *

20. In section 225.7403–2, the introductory text is revised to read as follows:

225.7403–2 Contract clause.

Use the clause at 252.225–7043, Antiterrorism/Force Protection Policy for Defense Contractors Outside the United States, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that require performance or travel outside the United States, except for contracts with—

* * * * *

21. Section 225.7605 is revised to read as follows:

225.7605 Solicitation provision.

Unless an exception applies or a waiver has been granted in accordance with 225.7604, use the provision at 252.225–7031, Secondary Arab Boycott of Israel, in all solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items.

22. Section 225.7703–5 is amended by—

- a. Revising the introductory text of paragraph (a);
- b. Revising paragraph (b); and
- c. Revising the introductory text of paragraph (c)(1).

The revisions read as follows:

225.7703–5 Solicitation provisions and contract clauses.

(a) Use the provision at 252.225–7023, Preference for Products or Services from Iraq or Afghanistan, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, that provide a preference for products or services from Iraq or Afghanistan in accordance with 225.7703–1(a)(1). The contracting officer—

* * * * *

(b) Use the clause at 252.225–7024, Requirement for Products or Services from Iraq or Afghanistan, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, that include the provision at 252.225–7023, Preference for Products or Services from Iraq or Afghanistan, and in the resulting contract. If the provision at 252.225–7023 has been modified to provide a preference exclusively for Iraq or exclusively for Afghanistan, in accordance with paragraph (a)(1) of this subsection, the clause at 252.225–7024 shall be modified accordingly.

(c)(1) Use the clause at 252.225–7026, Acquisition Restricted to Products or Services from Iraq or Afghanistan, in solicitations and contracts, including solicitations and contracts using FAR

part 12 procedures for the acquisition of commercial items, that—

* * * * *

PART 226—OTHER SOCIOECONOMIC PROGRAMS

23. Section 226.104 is revised to read as follows:

226.104 Contract clause.

Use the clause at 252.226–7001, Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, for supplies or services exceeding \$500,000 in value.

Subpart 227.71—Rights in Technical Data

24. In section 227.7102–4, paragraphs (a) and (c) are revised to read as follows:

227.7102–4 Contract clauses.

(a)(1) Except as provided in paragraph (b) of this subsection, use the clause at 252.227–7015, Technical Data—Commercial Items, in all solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, when the contractor will be required to deliver technical data pertaining to commercial items, components, or processes.

(2) Use the clause at 252.227–7015 with its Alternate I in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, for the development or delivery of a vessel design or any useful article embodying a vessel design.

* * * * *

(c) Use the clause at 252.227–7037, Validation of Restrictive Markings on Technical Data, in all solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items that include the clause at 252.227–7015 or the clause at 252.227–7013.

25. Section 227.7103–6 is amended by—

- a. Revising paragraph (a);
 - b. Revising the introductory text of paragraph (b)(1); and
 - c. Revising paragraph (b)(2).
- The revisions read as follows:

227.7103–6 Contract clauses.

(a) Use the clause at 252.227–7013, Rights in Technical Data—Noncommercial Items, in solicitations and contracts, including solicitations and contracts using FAR part 12

procedures for the acquisition of commercial items, when the successful offeror(s) will be required to deliver to the Government technical data pertaining to noncommercial items, or pertaining to commercial items for which the Government will have paid for any portion of the development costs (in which case the clause at 252.227–7013 will govern the technical data pertaining to any portion of a commercial item that was developed in any part at Government expense, and the clause at 252.227–7015 will govern the technical data pertaining to any portion of a commercial item that was developed exclusively at private expense). Do not use the clause when the only deliverable items are computer software or computer software documentation (see 227.72), commercial items developed exclusively at private expense (see 227.7102–4), existing works (see 227.7105), special works (see 227.7106), or when contracting under the Small Business Innovation Research Program (see 227.7104). Except as provided in 227.7107–2, do not use the clause in architect-engineer and construction contracts.

(b)(1) Use the clause at 252.227–7013 with its Alternate I in research solicitations and contracts, including research solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, when the contracting officer determines, in consultation with counsel, that public dissemination by the contractor would be—

* * * * *

(2) Use the clause at 252.227–7013 with its Alternate II in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, for the development or delivery of a vessel design or any useful article embodying a vessel design.

* * * * *

PART 232—CONTRACT FINANCING

26. Section 232.908 is revised to read as follows:

232.908 Contract clauses.

Use the clause at 252.232–7011, Payments in Support of Emergencies and Contingency Operations, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, in addition to either the approved clause prescribed in FAR 32.908 or paragraph (i)(2) of 52.212–4 in acquisitions that meet the applicability criteria at 232.901(1).

27. In section 232.1110, the introductory text is revised to read as follows:

232.1110 Solicitation provision and contract clauses.

Use the clause at 252.232–7009, Mandatory Payment by Governmentwide Commercial Purchase Card, in solicitations, contracts, and agreements, including solicitations, contracts, and agreements using FAR part 12 procedures for the acquisition of commercial items, when—

* * * * *

28. Section 232.7004 is revised to read as follows:

232.7004 Contract clause.

Except as provided in 232.7002(a), use the clause at 252.232–7003, Electronic Submission of Payment Requests and Receiving Reports, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items.

29. Section 232.7102 is revised to read as follows:

232.7102 Contract clause.

Use the clause at 252.232–7010, Levies on Contract Payments, in all solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, other than those for micropurchases.

PART 237—SERVICE CONTRACTING

30. In section 237.171–4, the introductory text is revised to read as follows:

237.171–4 Contract clause.

Use the clause at 252.237–7019, Training for Contractor Personnel Interacting with Detainees, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, for the acquisition of services if—

* * * * *

31. Section 237.173–5 is revised to read as follows:

237.173–5 Contract clause.

Insert the clause at 252.237–7010, Prohibition on Interrogation of Detainees by Contractor Personnel, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, for the provision of services.

PART 243—CONTRACT MODIFICATIONS

32. Section 243.205–71 is revised to read as follows:

243.205–71 Requests for equitable adjustment.

Use the clause at 252.243–7002, Requests for Equitable Adjustment, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, estimated to exceed the simplified acquisition threshold.

PART 244—SUBCONTRACTING POLICIES AND PROCEDURES

33. Section 244.403 is revised to read as follows:

244.403 Contract clause.

Use the clause at 252.244–7000, Subcontracts for Commercial Items, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that contain any of the following clauses:

- (1) 252.211–7003, Item Identification and Valuation.
- (2) 252.225–7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals.
- (3) 252.225–7039, Contractors Performing Private Security Functions.
- (4) 252.227–7013, Rights in Technical Data—Noncommercial Items.
- (5) 252.227–7015, Technical Data—Commercial Items.
- (6) 252.227–7037, Validation of Restrictive Markings on Technical Data.
- (7) 252.236–7013, Requirement for Competition Opportunity for American Steel Producers, Fabricators, and Manufacturers.
- (8) 252.237–7010, Prohibition on Interrogation of Detainees by Contractor Personnel.
- (9) 252.237–7019, Training for Contractor Personnel Interacting with Detainees.
- (10) 252.246–7003, Notification of Potential Safety Issues.
- (11) 252.247–7003, Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer.
- (12) 252.247–7023, Transportation of Supplies by Sea.
- (13) 252.247–7024, Notification of Transportation of Supplies by Sea.

PART 246—QUALITY ASSURANCE

34. Section 246.270–4 is revised to read as follows:

246.270–4 Contract clause.

Use the clause at 252.246–7004, Safety of Facilities, Infrastructure, and

Equipment for Military Operations, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, for the construction, installation, repair, maintenance, or operation of facilities, infrastructure, or for equipment configured for occupancy, planned for use by DoD military or civilian personnel during military operations.

35. In section 246.371(a), the introductory text is revised to read as follows:

246.371 Notification of potential safety issues.

(a) Use the clause at 252.246–7003, Notification of Potential Safety Issues, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, for the acquisition of—

* * * * *

PART 247—TRANSPORTATION

36. Section 247.207 is revised to read as follows:

247.207 Solicitation provisions, contract clauses, and special requirements.

Use the clause at 252.247–7003, Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, for carriage in which a motor carrier, broker, or freight forwarder will provide or arrange truck transportation services that provide for a fuel-related adjustment.

37. Section 247.571 is revised to read as follows:

247.571 Definitions.

(a) “Components,” “foreign flag vessel,” “ocean transportation,” “supplies,” and “U.S.-flag vessel,” as used in this subpart, have the meaning given in the clause at 252.247–7023, Transportation of Supplies by Sea.

(b) “Reflagging or repair work,” as used in this subpart, has the meaning given in the clause at 252.247–7025, Reflagging or Repair Work.

(c) “Covered vessel,” “foreign shipyard,” “overhaul, repair, and maintenance work,” “shipyard,” and “U.S. shipyard,” as used in this subpart, have the meaning given in 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.

38. Section 247.572 is amended by—

- a. Revising the introductory text of paragraph (a); and
- b. Adding introductory text to paragraph (c).

The revisions read as follows:

247.572 Policy.

(a) In accordance with 10 U.S.C. 2631(a), DoD contractors must transport supplies, as defined in the clause at 252.247–7023, Transportation of Supplies by Sea, exclusively on U.S.-flag vessels unless—

* * * * *

(c) In accordance with 10 U.S.C. 2631(b)—

* * * * *

39. Section 247.574 is amended by—

- a. Revising the introductory text of paragraph (a); and
- b. Revising paragraphs (b)(1), (c), (d), (e), and (f).

The revisions read as follows:

247.574 Solicitation provisions and contract clauses.

(a) Use the provision at 252.247–7022, Representation of Extent of Transportation by Sea, in all solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, except—

* * * * *

(b)(1) Use the clause at 252.247–7023, Transportation of Supplies by Sea, in all solicitations and resultant contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, except those for direct purchase of ocean transportation services.

* * * * *

(c) Use the clause at 252.247–7024, Notification of Transportation of Supplies by Sea, in all contracts, including contracts using FAR part 12 procedures for the acquisition of commercial items, for which the offeror made a negative response to the inquiry in the provision at 252.247–7022, Representation of Extent of Transportation by Sea.

(d) Use the clause at 252.247–7025, Reflagging or Repair Work, in all time charter solicitations and contracts, including time charter solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, for the use of a vessel for the transportation of supplies, unless a waiver has been granted in accordance with 247.572(c)(2).

(e) 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, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, that require a covered vessel for carriage of cargo for DoD. See 247.573–3 for reporting of the information received from offerors in response to the provision. See 247.573–2(c)(3) for the required evaluation criterion.

(f) Use the clause at 252.247–7027, Riding Gang Member Requirements, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, for the charter of, or contract for carriage of cargo by, a U.S.-flag vessel documented under chapter 121 of title 46 U.S.C. Follow the procedures at PGI 247.574.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.203–7000 [Amended]

40. Section 252.203–7000 is amended by—

a. Removing from the introductory paragraph “201.171–4” and adding “201.171–4(a)” in its place; and

b. Removing from the clause heading “(JUN 2011)” and adding “(DATE)” in its place.

41. Section 252.211–7003 is amended by—

a. Removing from the clause heading “(JUN 2011)” and adding “(DATE)” in its place; and

b. Revising paragraph (g) to read as follows:

252.211–7003 Item Identification and Valuation.

* * * * *

(g) *Subcontracts*. If the Contractor acquires by subcontract, any item(s) for which unique item identification is required in accordance with paragraph (c)(1) of this clause, the Contractor shall include this clause, including this paragraph (g), in the applicable subcontract(s), including subcontracts for commercial items.

* * * * *

252.212–7000 [Removed]

42. Section 252.212–7000 is removed.

252.212–7001 [Removed]

43. Section 252.212–7001 is removed.

44. Section 252.225–7009 is amended by—

a. Removing from the clause heading “(JAN 2011)” and adding “(DATE)” in its place; and

b. Revising the introductory text of paragraph (e) to read as follows:

252.225–7009 Restriction on Acquisition of Certain Articles Containing Specialty Metals.

* * * * *

(e) *Subcontracts*. The Contractor shall insert the substance of this clause in subcontracts, including subcontracts for commercial items, for items containing specialty metals, to the extent necessary to ensure compliance of the end products that the Contractor will deliver to the Government. When inserting the substance of this clause in subcontracts, the Contractor shall—

* * * * *

45. Section 252.225–7039 is amended by—

a. Removing from the clause heading “(AUG 2011)” and adding “(DATE)” in its place; and

b. Revising paragraph (e) to read as follows:

252.225–7039 Contractors Performing Private Security Functions.

* * * * *

(e) *Subcontracts*. The Contractor shall include the substance of this clause, including this paragraph (e), in all subcontracts, including subcontracts for commercial items, that will be performed in areas of contingency operations, complex contingency operations, or other military operations or exercises designated by the Combatant Commander.

* * * * *

46. Section 252.227–7013 is amended by—

a. Removing from the clause heading “(FEB 2012)” and adding “(DATE)” in its place; and

b. Revising paragraph (k)(2) to read as follows:

252.227–7013 Rights in Technical Data—Noncommercial Items.

* * * * *

(k) * * *

(2) Whenever any technical data for noncommercial items, or for commercial items developed in any part at Government expense, is to be obtained from a subcontractor or supplier for delivery to the Government under this contract, the Contractor shall use this same clause in the subcontract or other contractual instrument, including subcontracts or other contractual instruments for commercial items, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties. This clause will govern the technical data pertaining to noncommercial items, or to any portion of a commercial item that was developed in any part at Government expense, and the clause at 252.227–7015 will govern the technical data pertaining

to any portion of a commercial item that was developed exclusively at private expense. No other clause shall be used to enlarge or diminish the Government's, the Contractor's, or a higher-tier subcontractor's or supplier's rights in a subcontractor's or supplier's technical data.

* * * * *

47. Section 252.227–7015 is amended by—

a. Removing from the clause heading “(DEC 2011)” and adding “(DATE)” in its place; and

b. Revising paragraph (e)(2) to read as follows:

252.227–7015 Technical Data—Commercial Items.

* * * * *

(e) * * *

(2) Whenever any technical data related to commercial items developed in any part at private expense will be obtained from a subcontractor or supplier for delivery to the Government under this contract, the Contractor shall use this same clause in the subcontract or other contractual instrument, including subcontracts and other contractual instruments for commercial items, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties. This clause will govern the technical data pertaining to any portion of a commercial item that was developed exclusively at private expense, and the clause at 252.227–7013 will govern the technical data pertaining to any portion of a commercial item that was developed in any part at Government expense.

* * * * *

48. Section 252.227–7037 is amended by—

a. Removing from the introductory paragraph “227.7102–3(c)” and adding “227.7102–4(c)” in its place;

b. Removing from the clause heading “(SEP 2011)” and adding “(DATE)” in its place; and

c. Revising paragraph (l) to read as follows:

252.227–7037 Validation of Restrictive Markings on Technical Data.

* * * * *

(l) *Flowdown*. The Contractor or subcontractor agrees to insert this clause in contractual instruments, including subcontracts and other contractual instruments for commercial items, with its subcontractors or suppliers at any tier requiring the delivery of technical data.

* * * * *

49. Section 252.236–7013 is amended by—

a. Removing from the clause heading “(JAN 2009)” and adding “(DATE)” in its place; and

b. Revising paragraph (c) to read as follows:

252.236–7013 Requirement for Competition Opportunity for American Steel Producers, Fabricators, and Manufacturers.

* * * * *

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in any subcontract that involves the acquisition of steel as a construction material, including subcontracts for the acquisition of commercial items.

* * * * *

50. Section 252.237–7010 is amended by—

a. Removing from the clause heading “(NOV 2010)” and adding “(DATE)” in its place; and

b. Revising paragraph (c) to read as follows:

252.237–7010 Prohibition on Interrogation of Detainees by Contractor Personnel.

* * * * *

(c) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (c), in all subcontracts, including subcontracts for commercial items, that may require subcontractor personnel to interact with detainees in the course of their duties.

* * * * *

51. Section 252.237–7019 is amended by—

a. Removing from the clause heading “(SEP 2006)” and adding “(DATE)” in its place; and

b. Revising paragraph (c) to read as follows:

252.237–7019 Training for Contractor Personnel Interacting with Detainees.

* * * * *

(c) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (c), in all subcontracts, including subcontracts for commercial items, that may require subcontractor personnel to interact with detainees in the course of their duties.

* * * * *

52. Section 252.244–7000 is revised to read as follows:

252.244–7000 Subcontracts for Commercial Items.

As prescribed in 244.403, use the following clause:

SUBCONTRACTS FOR COMMERCIAL ITEMS (DATE)

(a) The Contractor is not required to flow down the terms of any Defense Federal Acquisition Regulation Supplement 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 at any tier under this contract, including subcontracts for the acquisition of commercial items.

* * * * *

53. Section 252.246–7003 is amended by—

a. Removing from the clause heading “(JAN 2007)” and adding “(DATE)” in its place; and

b. Revising the introductory text of paragraph (f)(2) to read as follows:

252.246–7003 Notification of Potential Safety Issues.

* * * * *

(f) * * *

(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—

* * * * *

54. Section 252.247–7003 is amended by—

a. Removing from the clause heading “(SEP 2010)” and adding “(DATE)” in its place; and

b. Revising paragraph (c) to read as follows:

252.247–7003 Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer.

* * * * *

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts, including subcontracts for commercial items, with motor carriers, brokers, or freight forwarders.

* * * * *

55. Section 252.247–7023 is amended by—

a. Removing from the clause heading “(May 2002)” and adding “(DATE)” in its place;

b. Revising the introductory text of paragraph (h); and

c. Removing from paragraphs (h)(1) and (h)(2) “Part 2” and adding “part 2” in both places.

The revision reads as follows:

252.247–7023 Transportation of Supplies by Sea.

* * * * *

(h) In the award of subcontracts, for the types of supplies described in paragraph (b)(2) of this clause, including subcontracts for commercial items, the Contractor shall flow down the requirements of this clause as follows:

* * * * *

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