

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Holland, Town of, Hampden County	250141	July 18, 1975, Emerg; July 5, 1984, Reg; July 16, 2013, Susp.	.....do	Do.
Holyoke, City of, Hampden County	250142	May 20, 1974, Emerg; August 15, 1979, Reg; July 16, 2013, Susp.	.....do	Do.
Longmeadow, Town of, Hampden County.	250143	August 8, 1975, Emerg; September 1, 1978, Reg; July 16, 2013, Susp.	.....do	Do.
Ludlow, Town of, Hampden County	250144	October 17, 1974, Emerg; May 19, 1981, Reg; July 16, 2013, Susp.	.....do	Do.
Monson, Town of, Hampden County	250145	May 1, 1975, Emerg; June 1, 1981, Reg; July 16, 2013, Susp.	.....do	Do.
Palmer, Town of, Hampden County	250147	June 20, 1975, Emerg; November 4, 1981, Reg; July 16, 2013, Susp.	.....do	Do.
Russell, Town of, Hampden County	250148	August 8, 1975, Emerg; December 15, 1990, Reg; July 16, 2013, Susp.	.....do	Do.
Southwick, Town of, Hampden County	250149	December 29, 1975, Emerg; July 16, 1984, Reg; July 16, 2013, Susp.	.....do	Do.
Springfield, City of, Hampden County ...	250150	February 9, 1973, Emerg; February 1, 1980, Reg; July 16, 2013, Susp.	.....do	Do.
Wales, Town of, Hampden County	250152	August 11, 1975, Emerg; July 2, 1981, Reg; July 16, 2013, Susp.	.....do	Do.
West Springfield, Town of, Hampden County.	250155	December 30, 1971, Emerg; September 30, 1977, Reg; July 16, 2013, Susp.	.....do	Do.
Westfield, City of, Hampden County	250153	May 10, 1973, Emerg; May 1, 1978, Reg; July 16, 2013, Susp.	.....do	Do.
Wilbraham, Town of, Hampden County	250154	August 21, 1975, Emerg; March 1, 1979, Reg; July 16, 2013, Susp.	.....do	Do.
Region V				
Minnesota: Redwood County, Unincorporated Areas	270644	May 23, 1974, Emerg; December 4, 1985, Reg; July 16, 2013, Susp.	.....do	Do.
Redwood Falls, City of, Redwood County.	270393	May 13, 1975, Emerg; June 22, 1984, Reg; July 16, 2013, Susp.	.....do	Do.
Sanborn, City of, Redwood County	270394	July 22, 1975, Emerg; July 3, 1985, Reg; July 16, 2013, Susp.	.....do	Do.
Seaforth, City of, Redwood County	270602	N/A, Emerg; February 9, 2011, Reg; July 16, 2013, Susp..	.....do	Do.

* -do- = Ditto.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: June 7, 2013.

David L. Miller,

Associate Administrator, Federal Insurance and Mitigation Administration, Department of Homeland Security, Federal Emergency Management Agency.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 203, 204, 205, 209, 211, 212, 215, 216, 219, 223, 225, 226, 227, 229, 232, 237, 243, 244, 246, 247, and 252

RIN 0750-AH63

Defense Federal Acquisition Regulation Supplement: Solicitation Provisions and Contract Clauses for Acquisition of Commercial Items (DFARS Case 2011-D056)

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

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending 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: *Effective Date:* June 25, 2013.

FOR FURTHER INFORMATION CONTACT: Amy Williams, Telephone 571-372-6106.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule at 77 FR 20601 on April 5, 2012, revising the Defense Federal Acquisition Regulation Supplement (DFARS) 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. 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, which requires revision 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 for contracts for noncommercial items. 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

Four respondents submitted comments on the proposed rule. The following is a discussion of the comments and the changes made to the rule as a result of those comments.

A. Summary of significant changes from the proposed rule

DoD has amended the final rule by adding a statement after the prescriptions for the provisions covered under DFARS 252.204–7007, Alternate A, Annual Representations and Certifications, that the individual provisions therein should not be included separately if the clause at FAR 52.204–7 is included in the solicitation (see section II.B.3. of this preamble). DoD did not make any other significant changes from the proposed rule.

B. Analysis of public comments

1. Consolidation at DFARS 212.301 of provisions and clauses required for the acquisition of commercial items

a. General

Several respondents commented on the consolidation at DFARS 212.301 of provisions and clauses required for the acquisition of commercial items.

Comment: One respondent applauded the revised DFARS 212.301 listing of 58 provisions and clauses for the acquisition of commercial items at the prime contract level.

Response: Noted.

Comment: One respondent wanted to know if DFARS 252.212–7001 is deleted, how does DoD plan to legally incorporate the requirements of the provisional DFARS 212.301(f) in a solicitation or contract without it being a DFARS Part 252 clause? Similarly, another respondent asked how offerors

and contractors will know what clauses the contracting officer considers to be relevant to a particular solicitation/contract, without the current structure of the contracting officer marking the applicable clauses?

Response: All commercial item clauses authorized for use will be listed at DFARS 212.301(f), and will be individually included in the solicitation and contract only when applicable to that particular acquisition. These clauses are added either in full text or incorporated by reference to legally incorporate their requirements into the solicitation and resultant contract. This is currently done in the same way for the other provisions and clauses listed in DFARS 212.301(f).

Section 8002 of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355) requires that the regulations contain a list of contract clauses applicable to commercial acquisitions. The list is currently split into the following three locations: DFARS provision 252.212–7000; DFARS clause 252.212–7001; and DFARS 212.301(f).

With the issuance of this final rule under DFARS rule 2011–D056, the list of clauses applicable to commercial item acquisitions is now wholly contained in DFARS 212.301(f).

The approach in this final rule makes clause listings more closely mirror the way clauses are listed for non-commercial contracts. Offerors only need to read the clause number and title in a list outside of 252.212–7001 as opposed to within paragraph (a) or (b) of 252.212–7001 to review the clauses that are being legally incorporated into the solicitation.

Comment: According to one respondent, by eliminating DFARS 252.212–7001 to save time and money on the part of the automated contract writing systems, DoD has now created a myriad of issues that can only be addressed by spending countless additional time on the part of the USG and contractor to differentiate the applicability of each clause to any particular solicitation/contract.

Response: This approach should not cause any additional time for either the Government or the offerors/contractors. As already stated, commercial item clauses authorized for use will be listed at DFARS 212.301(f) and, when applicable to a particular solicitation and contract, they will be individually included in the solicitation and contract. Offerors/contractors will only need to read and review the clause numbers and titles that are incorporated in the solicitation/contract. This proposed approach should only save

time on the part of the U.S. Government in selecting clauses, because now the contracting officer has to manually check boxes, and if using an automated system, the system can help the contracting officer determine which clauses are applicable and then automatically include them in the solicitation/contract. The applicability of any clause in a commercial acquisition will be clear, and distinguished by whether or not it is listed individually within that solicitation/contract.

Comment: One respondent asserted that revising DFARS 212.301(f) to incorporate a clause currently included under 252.212–7001, would take away a contracting officer's discretion to add and subtract clauses as necessary.

Response: As in the proposed rule, the final rule states “as prescribed” in each paragraph at DFARS 212.301(f) to indicate to the contracting officer whether or not to insert a provision or clause in the solicitation. The contract writing system does not automatically incorporate all clauses listed at 212.301(f) into all prime commercial item contracts.

b. Inclusion of Specific Clauses at 212.301

Comment: One respondent stated that DFARS Clause 252.227–7013, Rights in Technical Data-Noncommercial Items, by its nature and title does not belong in a commercial item contract. The respondent asserted that the two scenarios in the guidelines at 227.7103–6(a) for the insertion of 252.227–7013 will never materialize, i.e., the successful offeror(s) on a commercial item contract will never be required to deliver to the Government technical data pertaining to—

- Noncommercial items; or
- Commercial items for which the Government will have paid for any portion of the development costs.

Response: DoD does occasionally procure altered commercial items, or articles embodying commercial items, that are based on a commercial design. On those occasions, the otherwise commercial item design needs to be adapted for some additional Government-specific characteristics. Since these changes will be paid for at Government expense, it means that both the 252.227–7015 clause, for wholly privately-funded parts, and the 252.227–7013 clause, for parts funded in part by the Government, would be inserted.

Comment: One respondent asserted that there was no justification for the inclusion of several additional provisions/clauses into 212.301(f)

because they do not meet the statutory criteria of being a “provision of law or Executive Order” or “standard commercial practice.” The respondent also questioned clauses that were already listed in 212.301(f).

Response: The rule consolidates provisions and clauses into one list at 212.301(f) that were previously scattered throughout the DFARS. Each one of the provisions/clauses newly incorporated is required by statute or Executive Order, as indicated in the list at 212.301(f). All clauses listed within DFARS 212.301(f) have been approved for inclusion by the Director of DPAP in accordance with FAR 12.301(f) and have been cleared by OIRA. Questioning previously incorporated clauses is outside the scope of this case.

2. Flowdown of Clauses to Subcontracts for the Acquisition of Commercial Items

a. General

Comment: One respondent suggested revising DFARS 252.244–7000 to delete all prime contractor discretionary provision/clause flowdown authority due to excessive practice by the primes to flowdown any and all clauses to satisfy its contractual obligations.

Response: DoD has retained in the final rule the language at 252.244–7000(b), which is the same as FAR 52.244–6(c)(2), in order to allow the prime contractor the necessary discretion to flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

b. Specific Clause Flowdown Requirements

Comment: One respondent commented that if the automated contract writing system “automatically” inserts clause 252.227–7013, then the prime contractor will be forced to flowdown –7013 into any commercial item subcontract.

Response: Flowdown applicability of the clause is spelled out in 252.227–7013(k)(2), which stipulates to flowdown the clause *only when* a commercial item is developed in any part at Government expense”

Comment: One respondent asserts that by enacting the Federal Acquisition Streamlining Act (FASA) of 1994, Congress established a high bar for clauses that that may be applicable to subcontracts for commercial items. According to the respondent, there is no justification for flowdown of such clauses as DFARS 252.236–7013, Requirement for Competition Opportunity for American Steel Producers, Fabricators, and Manufacturers.

Response: This clause is prescribed for use in construction contracts (which cannot be acquired using part 12 procedures). The statute requires flowdown to subcontracts that involve the acquisition of steel as a construction material (generally a commercial item). This clause is not imposing a burden on the commercial subcontractors. Rather, it is requiring that American steel producers, fabricators, and manufacturers be allowed an opportunity to compete. This requirement is not new and is currently contained in the present 252.244–7000 clause.

Justification of pre-existing flowdown requirements is outside the scope of this case, but each such requirement was approved by DPAP and cleared by OIRA to implement statute, Executive order, or DoD policy.

3. Prescriptions for Clauses Included in 252.204–7007 (Annual Representations and Certifications)

Comment: One respondent stated that some provision prescriptions conflict with DFARS 204.1202(2), which says not to include the provisions listed therein in solicitations that include the provision 52.204–8, Annual Representations and Certifications.

Response: In order to remedy the conflict, DoD has inserted the following statement inserted after each of the affected provision prescriptions:

“If the solicitation includes the clause at FAR 52.204–7, do not separately list the provision 252.2XX–70XX in the solicitation.”

4. Other Editorial Comments

Several respondents had editorial comments as to the language within the rule.

Comment: One respondent recommended that 232.908, Contract clauses, should have the reference to 52.212–4 removed from the text, which requires use, in certain acquisitions, of the clause 252.232–7011 “in addition to either the approved clause prescribed in FAR 32.908 or FAR 52.212–4(i)(2)” According to the respondent, FAR 32.908(c) already cites FAR 52.212–4.

Response: FAR 52.212–4 is not prescribed in FAR 32.908(c). FAR 32.908(c) reads as follows: “Insert the clause at 52.232–25, Prompt Payment, in all other solicitations and contracts, except when the clause at 52.212–4 applies” Although FAR 52.212–4 is used in part of the prescription for 52.232–25, it is prescribed in FAR 12.301(b)(3), not in FAR 32.908. However, this paragraph has been slightly revised in order to improve clarity.

Comment: One respondent questioned why the date change was proposed for 252.203–7000, because no change proposed.

Response: There is only a change to the clause preface, so the date has not been changed.

Comment: One respondent asserted that there is a conflict as to the flowdown applicability of DFARS 252.247–7023, Transportation of Supplies by Sea. It was noted that the **Federal Register**, Background Section II, states “Further, 10 U.S.C. 2631 is not listed in DFARS 212.503(a) as a law not applicable to commercial items.” On that basis, a number of provisions and clauses implementing 10 U.S.C. 2631 are included in 212.301. The respondent further noted that 10 U.S.C.2631 is listed in FAR 12.504 (a)(1) as a law “. . . not applicable to subcontracts at any tier for the acquisition of commercial items or commercial components at any tier.”

Response: No conflict exists because FAR 12.504(a)(1) provides an exception to the nonapplicability to subcontracts for the acquisition of commercial items for the types of subcontracts listed at 47.504(d).

Comment: One respondent noted lack of uniformity of word placement in the clause prescriptions that include applicability to solicitations and contracts using part 12 procedures for the acquisition of commercial items.

Response: The clause prescriptions have been revised as necessary to ensure uniformity in placement of the wording “including solicitations (and contracts) using FAR part 12 procedures for the acquisition of 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 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, a final 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. Rather than requiring the contracting officers to “check the applicable clauses,” this final 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 by 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. However, 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.

There are no new reporting requirements or recordkeeping requirements associated with this rule. Finally, there are no significant alternatives that could further minimize the already minimal impact on businesses, small or large.

V. Paperwork Reduction Act

This final 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 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, 215, 216, 219, 223, 225, 226, 227, 229, 232, 237, 243, 244, 246, 247, and 252

Government procurement.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

Therefore, DoD amends 48 CFR parts 203, 204, 205, 209, 211, 212, 215, 216, 219, 223, 225, 226, 227, 229, 232, 237, 243, 244, 246, 247, and 252 as follows:

- 1. The authority citation for parts 203, 204, 205, 209, 211, 212, 215, 216, 219, 225, 229, 232, 237, 243, 244, 247, and 252 continue 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

203.171–4 [Amended]

- 2. Amend section 203.171–4 by—
 - a. In paragraph (a), removing “solicitations and contracts” and adding “solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items” in its place.
 - b. In paragraph (b), removing “including solicitations for task and delivery orders” and adding “including solicitations using FAR part 12 procedures for the acquisition of commercial items and solicitations for task and delivery orders” in its place.

203.1004 [Amended]

- 3. Amend section 203.1004 by removing, in paragraph (a), “solicitations and contracts that include the FAR” and adding “solicitations and

contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that include the FAR” in its place.

PART 204—ADMINISTRATIVE MATTERS

- 4. Amend section 204.1202 by—
 - a. Removing the introductory text;
 - b. Revising paragraph (1); and
 - c. In paragraph (2), removing “Do not include separately” and adding “When the clause at 52.204–7, Central Contractor Registration, is included in the solicitation, do not include separately” in its place.

The revised text reads as follows:

204.1202 Solicitation provision.

(1) When using the provision at FAR 52.204–8, Annual Representations and Certifications, use the provision with 252.204–7007, Alternate A, Annual Representations and Certifications; and

* * * * *

204.7109 [Amended]

- 5. Amend section 204.7109, in paragraph (b), by removing “for commercial items and initial provisioning spares” and adding “using FAR part 12 procedures for the acquisition of commercial items or for initial provisioning spares” in its place.

PART 205—PUBLICIZING CONTRACT ACTIONS

205.470 [Amended]

- 6. Amend section 205.470 by removing “in solicitations and contracts expected to exceed \$1,000,000” and adding “in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that are expected to exceed \$1,000,000” in its place.

PART 209—CONTRACTOR QUALIFICATIONS

- 7. Revise section 209.104–70 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 solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items that are 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). If the

solicitation includes the clause at FAR 52.204-7, do not separately list the provision 252.209-7001 in the solicitation.

(b) Use the provision at 252.209-7002, Disclosure of Ownership or Control by a Foreign Government, in all solicitations, including those subject to the procedures in FAR part 13, when access to proscribed information is necessary for contract performance. If the solicitation includes the clause at FAR 52.204-7, do not separately list the provision 252.209-7002 in the solicitation.

■ 8. In section 209.470-4, revise paragraph (a) to read as follows:

209.470-4 Solicitation provision and contract clause.

(a) Use the provision at 252.209-7003, Reserve Officer Training Corps and Military Recruiting on Campus—Representation, in all solicitations with institutions of higher education. If the solicitation includes the clause at FAR 52.204-7, do not separately list the provision 252.209-7003 in the solicitation.

* * * * *

PART 211—DESCRIBING AGENCY NEEDS

211.274-6 [Amended]

■ 9. Amend section 211.274-6, paragraph (a)(1), by removing “solicitations and contracts that require” and adding “solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that require” in its place.

211.275-3 [Amended]

■ 10. Amend section 211.275-3 by removing “in solicitations and contracts that will require” and adding “in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that will require” in its place.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 11. Revise section 212.301 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)(1).

(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.

(xxiii) 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.

(xxiv) 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.

(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. Alternate I also implements 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(6)(i).

(B) Use the clause with its Alternate I as prescribed in 225.1101(6)(ii).

(C) Use the clause with its Alternate II as prescribed in 225.1101(6)(iii).

(xxvii) 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).

(xxviii) 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).

(xxix) 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 section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181).

(xxx) 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 section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181).

(xxxii) 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.

(xxxiii) 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.

(xxxiiii) 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.

(xxxv) 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(10)(i).

(B) Use the provision with its Alternate I as prescribed in 225.1101(10)(ii).

(C) Use the provision with its Alternate II as prescribed in 225.1101(10)(iii).

(D) Use the provision with its Alternate III as prescribed in 225.1101(10)(iv).

(E) Use the provision with its Alternate IV as prescribed in 225.1101(10)(v).

(F) Use the provision with its Alternate V as prescribed in 225.1101(10)(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(11)(i)(A)

(B) Use the clause with its Alternate I as prescribed in 225.1101(11)(i)(B).

(C) Use the clause with its Alternate II as prescribed in 225.1101(11)(i)(A).

(D) Use the clause with its Alternate III as prescribed in 225.1101(11)(i)(B).

(E) Use the clause with its Alternate IV as prescribed in 225.1101(11)(i)(C).

(F) Use the clause with its Alternate V as prescribed in 225.1101(11)(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 Public Law 110–181, as amended by section 853 of Public Law 110–417 and sections 831 and 832 of Public Law 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 Public Law 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 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 Public Law 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 Public Law 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).

(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 Public Law 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 (Public Law 110-417).

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

PART 215—CONTRACTING BY NEGOTIATION

215.408 [Amended]

■ 12. Amend section 215.408 by—

■ a. In paragraph (3), removing “in competitive solicitations that will be solicited” and adding “in competitive solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, that will be solicited” in its place.

■ b. In paragraph (4)(i), removing “in competitive solicitations, unless an exception” and adding “in competitive solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, unless an exception” in its place.

PART 216—TYPES OF CONTRACTS

■ 13. Amend section 216.203-4-70, by revising paragraph (c)(2) to read as follows:

216.203-4-70 Additional provisions and clauses.

* * * * *

(c) * * *

(2) Use the provision at 252.216-7008, Economic Price Adjustment—Wage Rates or Material Prices Controlled by a Foreign Government—Representation, in solicitations that include the clause at 252.216-7003, Economic Price Adjustment—Wage Rates or Material Prices Controlled by a Foreign Government. If the solicitation includes the clause at FAR 52.204-7, do not separately list the provision 252.216-7008 in the solicitation.

PART 219—SMALL BUSINESS PROGRAMS

■ 14. Revise section 219.708 to read as follows:

219.708 Contract clauses.

(b)(1)(A) Except as provided in paragraph (b)(1)(B) of this section, 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)(1) In prime contracts, including 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 (DoD Contracts), and FAR 52.219-9, Small Business Subcontracting Plan.

(2) However, also include in the prime contract, solely for the purpose of flowing the clauses down to subcontractors—

(i) FAR clause 52.219-9, Small Business Subcontracting Plan, and 252.219-7003; or

(ii) When the contract will not be reported in FPDS (see FAR 4.606 (c)(5)), 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.

(2) In contracts with contractors that have comprehensive subcontracting plans approved under the test program described in 219.702, do not use the clause at FAR 52.219-16, Liquidated Damages—Subcontracting Plan.

(c)(1) Do not use the clause at FAR 52.219-10, Incentive Subcontracting Program, in contracts with contractors that have comprehensive subcontracting plans approved under the test program described in 219.702.

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

■ 15. The authority citation for part 223 is revised to read as follows:

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

223.7306 [Amended]

■ 16. Amend section 223.7306 by removing “solicitations and contracts for supplies, maintenance and repair services, or construction” and adding “solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that are for supplies, maintenance and repair services, or construction” in its place.

PART 225—FOREIGN ACQUISITION

225.370-6 [Amended]

■ 17. Amend section 225.370-6 introductory text by removing “in all solicitations and contracts to be performed” and adding “in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that are to be performed” in its place.

■ 18. Amend section 225.1101 by—

■ a. In paragraph (1)(i), removing “solicitation that includes the clause” and adding “solicitation, including solicitations using FAR part 12 procedures for the acquisition of commercial items, that includes the clause” in its place; and removing “Balance of Payments Program” and adding “Balance of Payments Program. If the solicitation includes the clause at FAR 52.204-7, do not separately list the provision 252.225-7000 in the solicitation” in its place;

■ b. In paragraph (1)(ii), removing “Alternate I when the acquisition” and adding “Alternate I in solicitations, including solicitations using FAR part

12 procedures for the acquisition of commercial items, when the acquisition” in its place;

■ c. In paragraph (2)(i) introductory text, removing “in solicitations and contracts unless—” and adding “in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, unless—” in its place;

■ d. In paragraph (2)(ii), removing “Alternate I when the” and adding “Alternate I in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, when the” in its place;

■ e. Revising paragraphs (5)(i) through(ii);

■ f. In paragraph (6)(i) removing “Trade Agreements, instead of the clause at FAR 52.225–5, Trade Agreements, if the World” and adding “Trade Agreements, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, if the World” in its place;

■ g. In paragraph (6)(ii) removing “solicitations and contracts that include” and adding “solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that include” in its place;

■ h. In paragraph (6)(iii) removing “Alternate II when the” and adding “Alternate II in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, when the” in its place;

■ i. Revising paragraph (7);

■ j. Revising paragraph (10);

■ k. In paragraph (11)(i) introductory text, removing “in solicitations and contracts for the items listed at 225.401–70, including acquisitions of commercial items or components, when the estimated” and adding “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” in its place;

■ l. In paragraph (11)(i)(A), removing “Use the basic clause when” and adding “Use the basic clause in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, when” in its place;

■ m. In paragraph (11)(i)(B), removing “Use the clause with its Alternate I when” and adding “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” in its place; and

■ n. In paragraph (11)(i)(C), removing “Use the clause with its Alternate IV when” and adding “Use the clause with its Alternate IV in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, when” in its place.

The revised text reads as follows:

225.1101 Acquisition of supplies.

* * * * *

(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. If the solicitation includes the clause at FAR 52.204–7, do not separately list the provision 252.225–7020 in the solicitation.

(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.

* * * * *

(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. If the solicitation includes the clause at FAR 52.204–7, do not separately list the provision 252.225–7022 in the solicitation.

* * * * *

(10)(i) Use the provision at 252.225–7035, Buy American—Free Trade Agreements—Balance of Payments Program Certificate, instead of the provision at FAR 52.225–4, Buy American—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—Free Trade Agreements—Balance of Payments Program. If the solicitation includes the clause at FAR 52.204–7, do not separately list the provision 252.225–7035 in the solicitation.

(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.

(v) Use the provision with its Alternate IV 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 IV.

(vi) Use the provision with its Alternate V 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 V.

* * * * *

225.1103 [Amended]

■ 19. In paragraph (3) of section 225.1103, remove “in a foreign country” and add “in a foreign country. If the solicitation includes the clause at FAR 52.204–7, do not separately list the provision 252.225–7042 in the solicitation” in its place.

225.7002–3 [Amended]

■ 20. Amend section 225.7002–3 by—
■ a. In paragraph (a), removing “contracts exceeding” and adding “contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that exceed” in its place; and

■ b. In paragraph (b), removing “solicitations and contracts exceeding” and adding “solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that exceed” in its place.

225.7003–5 [Amended]

■ 21. Amend section 225.7003–5 by—
■ a. In paragraph (a)(1) introductory text, removing “solicitations and contracts that—” and adding “solicitations and contracts, including solicitations and contracts using FAR

part 12 procedures for the acquisition of commercial items, that—” in its place;

■ b. In paragraph (a)(2) introductory text, removing “solicitations and contracts that—” and adding “solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that—” in its place; and

■ c. In paragraph (b) introductory text, removing “in solicitations—” and adding “in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items,—” in its place.

225.7006–4 [Amended]

■ 22. Amend section 225.7006–4 by—

■ a. In paragraph (a) introductory text, removing “in solicitations requiring air circuit” and adding “in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, that require air circuit” in its place; and

■ b. In paragraph (b) introductory text, removing “solicitations and contracts requiring air circuit” and adding “solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that require air circuit” in its place; and

■ c. In paragraph (b)(1), removing “An exception applies” and adding “An exception at 225.7006–2 applies” in its place.

225.7009–5 [Amended]

■ 23. Amend section 225.7009–5 introductory text by removing “in solicitations and contracts, unless—” and adding “in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, unless—” in its place.

225.7017–4 [Amended]

■ 24. Amend section 225.7017–4 by—

■ a. In paragraph (a)(1) introductory text, by removing “in solicitations for a contract” and adding “in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, for a contract” in its place; and

■ b. In paragraph (a)(2), removing “resultant contract if it” and adding “resultant contract, including contracts using FAR part 12 procedures for the acquisition of commercial items, if it” in its place; and

■ c. In paragraph (b), removing “in solicitations containing the clause” and adding “in solicitations, including solicitations using FAR part 12 procedures for the acquisition of

commercial items, that contain the clause” in its place.

225.7307 [Amended]

■ 25. Amend section 225.7307 by—

■ a. In paragraph (a), removing “solicitations and contracts for FMS” and adding “solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that are for FMS” in its place; and

■ b. In paragraph (b), removing “solicitations and contracts for the purchase” and adding “solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that are for the purchase” in its place.

225.7402–5 [Amended]

■ 26. In section 225.7402–5, amend paragraph (a) by removing “solicitations and contracts that authorize” and adding “solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that authorize” in its place.

225.7403–2 [Amended]

■ 27. Amend section 225.7403–2 introductory text by removing “solicitations and contracts that require” and adding “solicitations and contracts, and contracts using FAR part 12 procedures for the acquisition of commercial items, that require” in its place.

225.7605 [Amended]

■ 28. Section 225.7605 is amended by—

■ a. Removing “Unless an exception applies” and adding “Unless an exception at 225.7603 applies” in its place; and

■ b. Removing “in all solicitations” and adding “in all solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items. If the solicitation includes the clause at FAR 52.204–7, do not separately list 252.225–7031 in the solicitation” in its place.

225.7703–5 [Amended]

■ 29. Amend section 225.7703–5 by—

■ a. In paragraph (a) introductory text, removing “in solicitations that provide” and adding “in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, that provide” in its place;

■ b. In paragraph (b), removing “in solicitations that include” and adding “in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, that include” in its place; and

■ c. In paragraph (c)(1) introductory text, removing “in solicitations and contracts that—” and adding “in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that—” in its place.

PART 226—OTHER SOCIOECONOMIC PROGRAMS

■ 30. The authority citation for part 226 is revised to read as follows:

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

226.104 [Amended]

■ 31. Amend section 226.104 by removing “in solicitations and contracts for supplies” and adding “in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that are for supplies” in its place.

PART 227—PATENTS, DATA, AND COPYRIGHTS

■ 32. The authority citation for part 227 is revised to read as follows:

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

227.7102–4 [Amended]

■ 33. Amend section 227.7102–4 by—

■ a. In paragraph (a)(1), removing “in all solicitations and contracts when” and adding “in all solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, when” in its place;

■ b. In paragraph (a)(2), removing “Alternate I in contracts for the” and adding “Alternate I in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, for the” in its place; and

■ c. In paragraph (c), removing “in all solicitations and contracts for commercial items” and adding “in solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items” in its place.

227.7103–6 [Amended]

■ 34. Amend section 227.7103–6 by—

■ a. In paragraph (a), removing “solicitations and contracts when the” and adding “solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, when the” in its place;

■ b. In paragraph (b)(1) introductory text, removing “Alternate I in research contracts when the” and adding

“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” in its place; and

■ c. In paragraph (b)(2), removing “Alternate II in contracts for the” and adding “Alternate II in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that are for the” in its place.

PART 229—TAXES

229.402–70 [Amended]

■ 35. Amend section 229.402–70 by—

■ a. In paragraph (c)(2), removing “252.229–7003, Tax Exemptions (Italy)” and adding “252.229–7003, Tax Exemptions (Italy). If the solicitation includes the clause at FAR 52.204–7, do not separately list 252.229–7012 in the solicitation” in its place.

■ b. In paragraph (e)(2), removing “252.229–7005, Tax Exemptions (Spain)” and adding “252.229–7005, Tax Exemptions (Spain). If the solicitation includes the clause at FAR 52.204–7, do not separately list 252.229–7013 in the solicitation.” in its place.

PART 232—CONTRACT FINANCING

■ 36. Revise section 232.908 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 acquisitions that meet the applicability criteria at 232.901(1). Use of this clause is in addition to use of either the approved Payment clause prescribed in FAR 32.908 or the clause at FAR 52.212–4, Contract Terms and Conditions—Commercial Items.

■ 37. Revise section 232.1110 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—

(1) Placement of orders or calls valued at or below the micro-purchase threshold is anticipated; and

(2) Payment by Governmentwide commercial purchase card is required for orders or calls valued at or below the micro-purchase threshold under the contract or agreement.

232.7004 [Amended]

■ 38. Amend paragraph (a) of section 232.704 by removing “solicitations and contracts” and adding “solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items” in its place.

232.7102 [Amended]

■ 39. Amend section 232.7102 by removing “solicitations and contracts other than those for micro-purchases” and adding “solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items” in its place.

PART 237—SERVICE CONTRACTING

237.171–4 [Amended]

■ 40. Amend section 237.171–4 by removing “in solicitations and contracts for the acquisition” and adding “in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that are for the acquisition” in its place.

237.173–5 [Amended]

■ 41. Amend section 237.173–5 by removing “solicitations and contracts for the provision” and adding “solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that are for the provision” in its place.

PART 243—CONTRACT MODIFICATIONS

243.205–71 [Amended]

■ 42. Amend section 243.205–71 by removing “solicitations and contracts estimated” and adding “solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that are estimated” in its place.

PART 244—SUBCONTRACTING POLICIES AND PROCEDURES

■ 43. Revise section 244.403 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.

PART 246—QUALITY ASSURANCE

■ 44. The authority citation for part 246 is revised to read as follows:

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

246.270–4 [Amended]

■ 45. Amend section 246.270–4 by removing “solicitations and contracts for the construction” and adding “solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, for the construction” in its place.

246.371 [Amended]

■ 46. Amend section 246.371, in the introductory text of paragraph (a), by removing “solicitations and contracts for the acquisition of—” and adding “solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, for the acquisition of—” in its place.

PART 247—TRANSPORTATION

247.207 [Amended]

■ 47. Amend section 247.207 by—

■ a. In paragraph (1), removing “solicitations and contracts for carriage” and adding “solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that are for carriage” in its place.

■ b. In paragraph (2), removing “Documentation/Instructions, when shipping” and adding “Documentation/Instructions in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, when shipping” in its place.

■ 48. Revise section 247.571 to read as follows:

247.571 Definitions.

As used in this subpart—

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

(b) *Reflagging or repair work* 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* 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.

247.572 [Amended]

- 49. Amend section 247.572 by—
- a. In paragraph (a) introductory text, removing “DoD contractors must transport” and adding “In accordance with 10 U.S.C. 2631(a), DoD contractors must transport” in its place; and
- b. In paragraph (c), adding introductory text.

The added text reads as follows:

247.572 Policy.

* * * * *

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

* * * * *

- 50. Amend section 247.574 by—
- a. Revising paragraph (a) and paragraph (b)(1);
- b. In paragraph (c), removing “in all contracts for which” and adding “in all contracts, including contracts using FAR part 12 procedures for the acquisition of commercial items, for which” in its place;
- c. In paragraph (d), removing “solicitations and contracts for the use of” and adding “solicitations and contracts, including time charter solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that are for the use of” in its place; and removing “in accordance with 247.572(c)” and adding “in accordance with 247.572(c)(2)” in its place;
- d. In paragraph (e), removing “in solicitations that require” and adding “in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, that require” in its place; and
- e. In paragraph (f), removing “solicitations and contracts for the charter of” and adding “solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that are for the charter of” in its place.

The revised text reads as follows:

247.574 Solicitation provisions and contract clauses.

(a)(1) 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—

(i) Those for direct purchase of ocean transportation services; or

(ii) Those with an anticipated value at or below the simplified acquisition threshold.

(2) If the solicitation includes the clause at FAR 52.204–7, do not separately list 252.247–7022 in the solicitation.

(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.

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.203–7000 [Amended]

- 51. Amend the introductory text of section 252.203–7000 by removing “203.171–4” and adding “203.171–4(a)” in its place.

252.211–7003 [Amended]

- 52. Amend section 252.211–7003 by—
- a. In introductory text, removing “211.274–6(a)” and adding “211.274–6(a)(1)” in its place; and removing the clause date “(JUN 2011)” and adding “(JUN 2013)” in its place; and
- b. In paragraph (g), removing “paragraph (g), in the applicable subcontract(s)” and adding “paragraph (g), in the applicable subcontract(s), including subcontracts for commercial items” in its place.

■ 53. Remove and reserve section 252.212–7000.

■ 54. Remove and reserve section 252.212–7001.

252.223–7008 [Amended]

- 55. Amend section 252.223–7008 by—
- a. Removing the clause date “(MAY 2011)” and adding “(JUN 2013)” in its place; and
- b. In paragraph (d), removing “in all subcontracts for supplies,” and adding “in all subcontracts, including subcontracts for commercial items, that are for supplies,” in its place.

252.225–7009 [Amended]

- 56. Amend section 252.225–7009 by—
- a. Removing the clause date “(MAR 2013)” and adding “(JUN 2013)” in its place; and
- b. In paragraph (e), removing “substance of this clause in subcontracts for items” and adding “substance of this clause in subcontracts, including subcontracts for commercial items, that are for items” in its place.

252.225–7039 [Amended]

- 57. Amend section 252.225–7039 by—
- a. Removing the clause date “(JUN 2012)” and adding “(JUN 2013)” in its place; and
- b. In paragraph (e), removing “in all subcontracts that will be performed” and adding “in all subcontracts, including subcontracts for commercial items, that will be performed” in its place.

252.227–7013 [Amended]

- 58. Amend section 252.227–7013 by—
- a. Removing the clause date “(MAY 2013)” and adding “(JUN 2013)” in its place; and
- b. In paragraph (k)(2), removing “contractual instrument, and require” and adding “contractual instrument, including subcontracts or other contractual instruments for commercial items, and require” in its place.

252.227–7015 [Amended]

- 59. Amend section 252.227–7015 by—
- a. Removing the clause date “(MAY 2013)” and adding “(JUN 2013)” in its place; and
- b. In paragraph (e)(2), removing “other contractual instrument, and require its subcontractors” and adding “other contractual instrument, including subcontracts and other contractual instruments for commercial items, and require its subcontractors” in its place.

- 60. Amend section 252.227–7037 by—
- a. Revising the introductory text;
- b. Removing the clause date “(JUN 2012)” and adding “(JUN 2013)” in its place; and

- c. In paragraph (l), removing “contractual instruments with its subcontractors” and adding “contractual instruments, including subcontracts and other contractual instruments for commercial items, with its subcontractors” in its place.

The revision reads as follows:

252.227–7037 Validation of restrictive markings on technical data.

As prescribed in 227.7102–4(c), 227.7103–6(e)(3), 27.7104(e)(5), or 227.7203–6(f), use the following clause:

* * * * *

252.236–7013 [Amended]

- 61. Amend section 252.236–7013 by—
- a. Removing the clause date “(JAN 2009)” and adding “(JUN 2013)” in its place; and
- b. In paragraph (c), removing “acquisition of steel as a construction material” and adding “acquisition of steel as a construction material, including subcontracts for the

acquisition of commercial items” in its place.

252.237–7010 [Amended]

- 62. Amend section 252.237–7010 by—
- a. Removing the clause date “(NOV 2010)” and adding “(JUN 2013)” in its place; and
- b. In paragraph (c), removing “in all subcontracts that may require” and adding “in all subcontracts, including subcontracts for commercial items, that may require” in its place.

252.237–7019 [Amended]

- 63. Amend section 252.237–7019 by—
- a. Removing the clause date “(SEP 2006)” and adding “(JUN 2013)” in its place; and
- b. In paragraph (c), removing “in all subcontracts that may require” and adding “in all subcontracts, including subcontracts for commercial items, that may require” in its place.
- 64. Revise section 252.244–7000 to read as follows:

252.244–7000 Subcontracts for Commercial Items.

As prescribed in 244.403, use the following clause: SUBCONTRACTS FOR COMMERCIAL ITEMS (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)

252.246–7003 [Amended]

- 65. Amend section 252.246–7003 by—
- a. Removing the clause date “(JAN 2007)” and adding “(JUN 2013)” in its place; and
- b. In paragraph (f)(2) introductory text, removing “For those subcontracts, described in” and adding “For those subcontracts, including subcontracts for commercial items, described in” in its place.

252.247–7003 [Amended]

- 66. Amend section 252.247–7003 by—
- a. Removing the clause date “(SEP 2010)” and adding “(JUN 2013)” in its place; and
- b. In paragraph (c), removing “in all subcontracts with motor carriers” and

adding “in all subcontracts, including subcontracts for commercial items, with motor carriers” in its place.

252.247–7023 [Amended]

- 67. Amend section 252.247–7023 by—
- a. Removing the clause date “(MAY 2002)” and adding “(JUN 2013)” in its place; and
- b. In paragraph (h) introductory text, removing “of this clause, the Contractor shall” and adding “of this clause, including subcontracts for commercial items, the Contractor shall” in its place.

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DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 655

[Docket No. FTA–2013–0012]

RIN 2132–AB09

Alcohol and Controlled Substances Testing

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Final rule.

SUMMARY: This final rule is issued to revise sections of the Alcohol and Controlled Substances (D&A) Testing regulation to reflect recent amendments to the law. The final rule also includes technical corrections to the D&A testing regulation to more clearly explain existing compliance requirements, update regulatory terms, and remove repealed statutory provisions. Because this rule merely implements a statutory provision without agency interpretation FTA finds that public comment is unnecessary under the circumstances.

DATES: This final rule is effective on June 25, 2013.

FOR FURTHER INFORMATION CONTACT: For program issues, contact Vincent Valdes, Office of Transit Safety and Oversight (TSO), Federal Transit Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001 (telephone: 202–366–4052); or email: Vincent.Valdes@dot.gov. For legal issues, contact Bruce Walker, Office of Chief Counsel (TCC), FTA, 1200 New Jersey Avenue SE., Washington, DC 20590–0001 (telephone: 202–366–9109); (email: Bruce.Walker@dot.gov). Office hours are from 8 a.m. to 6 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Background

FTA is publishing this rule without a prior proposal because it merely incorporates recent statutory changes to FTA’s drug and alcohol testing program and makes other minor technical amendments. Specifically, this rule amends 49 CFR part 655 to implement 49 U.S.C. 5331(g)(2), as amended by § 20022 of the Moving Ahead for Progress in the 21st Century Act, Public Law 112–141 (2012) (MAP–21). The new legislation provides the Secretary of the Department of Transportation (DOT) with the option of barring a recipient from receiving Federal public transportation funds, in an amount the Secretary considers appropriate, for non-compliance with FTA’s D&A regulations which are codified at 49 CFR part 655. This authority is delegated to the FTA Administrator pursuant to 49 CFR 1.91.

With this rule, FTA is amending part 655 to implement this discretionary statutory enforcement remedy available to the Administrator. Additionally, this rule makes several technical corrections to part 655 that include: (1) Removing reference to 23 U.S.C. 103(e)(4) from 49 CFR part 655 as it relates to recipients of the Federal Highway Administration’s Interstate Substitute Program which has been repealed; (2) replacing the terms “mass transportation” and “mass transit” with the term “public transportation” as defined in 49 U.S.C. 5331(a)(3); and (3) revising Subpart I to more clearly explain the statutory requirement to establish a compliant D&A testing program as a condition for receiving Federal transit funds and the associated compliance and certification requirements for recipients.

This rule simply adopts the statute without agency interpretation and includes ministerial technical corrections; therefore, pursuant to 5 U.S.C. 553(b)(3)(A), FTA finds good cause to publish this as a final rule without public comment because prior notice and comment would be unnecessary under the circumstances. Further, for these reasons, FTA also finds good cause pursuant to 5 U.S.C. 553(d)(2), to make the rule effective upon publication in the **Federal Register**.

II. Overview and General Discussion of the Rule

A. Purpose

In order to implement 49 U.S.C. 5331(g)(2), as amended by section 20022 of MAP–21, this rule amends 49 CFR part 655 to effect the FTA Administrator’s discretionary authority