

212.371 Inapplicability of certain provisions and clauses to contracts for the acquisition of commercially available off-the-shelf items.

Commercially available off-the-shelf (COTS) items are a subset of commercial products. Therefore, the provisions and clauses listed in 212.370 as not applicable to contracts or subcontracts for the acquisition of commercial products are also not applicable to contracts or subcontracts for the acquisition of COTS items. In addition, the following provisions and clauses published after January 1, 2015, not expressly authorized in law, are not applicable to contracts for the acquisition of COTS items:

(a) FAR 52.204–21, Basic Safeguarding of Covered Contractor Information Systems.

(b) [Reserved]

■ 5. Revise section 212.505 to read as follows:

212.505 Applicability of certain laws to contracts for the acquisition of COTS items.

Commercially available off-the-shelf (COTS) items are a subset of commercial products. Therefore, any laws listed at FAR 12.503, FAR 12.504, 212.503, or 212.504 are also not applicable or modified in their applicability to contracts for the acquisition of COTS items. In addition to the laws listed at FAR 12.505 as specifically not applicable to COTS items, the following laws are not applicable to contracts for the acquisition of COTS items:

(1) 10 U.S.C. 391, Reporting on Cyber Incidents with Respect to Networks and Information Systems of Operationally Critical Contractors and Certain Other Contractors, and 10 U.S.C. 393, Reporting on Penetrations of Networks and Information Systems of Certain Contractors.

(2) Paragraph (a)(1) of 10 U.S.C. 4863, Requirement to buy strategic materials critical to national security from American sources, except as provided at 225.7003–3(b)(2)(i).

(3) Paragraph (a)(1) of 10 U.S.C. 4872, Prohibition on acquisition of sensitive materials from non-allied foreign nations, except as provided at 225.7018–3(c)(1).

PART 219—SMALL BUSINESS PROGRAMS

■ 6. Amend section 219.811–3 by revising paragraph (2) to read as follows:

219.811–3 Contract clauses.

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(2) Use the clause at 252.219–7010, Notification of Competition Limited to Eligible 8(a) Participants-Partnership Agreement, in lieu of the clause at FAR

52.219–18, Notification of Competition Limited to Eligible 8(a) Participants, in competitive solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, when the acquisition is accomplished using the procedures of FAR 19.805 and processed in accordance with the PA cited in 219.800.

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PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 7. Revise section 252.244–7000 to read as follows:

252.244–7000 Subcontracts for Commercial Products or Commercial Services.

As prescribed in 244.403, use the following clause:

Subcontracts for Commercial Products or Commercial Services (NOV 2023)

(a) The Contractor shall not include the terms of any Federal Acquisition Regulation (FAR) clause or Defense Federal Acquisition Regulation Supplement (DFARS) clause in subcontracts for commercial products or commercial services at any tier under this contract, unless—

(1) For DFARS clauses, it is so specified in the particular clause; or

(2) For FAR clauses, the clause is listed at FAR 12.301(d) or it is so specified in paragraph (e)(1) of the clause at FAR 52.212–5 or paragraph (b)(1) of the clause at FAR 52.244–6, as applicable. (Section 847(b)(1)(B), Pub. L. 114–328)

(b)(1) In accordance with 10 U.S.C. 3457(c), the Contractor shall treat as commercial products any items valued at less than \$10,000 per item that were purchased by the Contractor for use in the performance of multiple contracts with the Department of Defense and other parties and are not identifiable to any particular contract when purchased.

(2) The Contractor shall ensure that any items to be used in performance of this contract, that are treated as commercial products pursuant to paragraph (b)(1) of this clause, meet all terms and conditions of this contract that are applicable to commercial products or commercial services in accordance with the clause at FAR 52.244–6 and paragraph (a) of this clause.

(c) *Subcontracts.* 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 products or commercial services.

(End of clause)

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 211, 215, 223, 234, and 252

[Docket DARS–2023–0001; Req No. DARS–2024–00013–FR]

Defense Federal Acquisition Regulation Supplement; Technical Amendments

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

ACTION: Final rule; technical amendment.

SUMMARY: DoD is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to make needed editorial changes.

DATES: Effective November 17, 2023.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer D. Johnson, Defense Acquisition Regulations System, telephone 703–717–8226.

SUPPLEMENTARY INFORMATION: This final rule amends the DFARS to make needed editorial changes to 48 CFR parts 211, 215, 234, and 252 as follows:

1. Update the title of DoD Directive 5000.02 at DFARS 211.002, 234.003, and 234.7100.

2. At DFARS 215.404–75(b), remove an obsolete document reference “DoD FFRDC Management Plan” and replace it with the current reference “DoD Instruction 5000.77, DoD Federally Funded Research and Development Center Program”.

3. Update references to DoD Manual 4145.26 at DFARS 223.370–3 and 252.223–7002, and update references to DoD Manual 5100.76 at DFARS 223.7200, 223.7201, 223/7202, 223.7202, and 252.223–7007.

4. Provide a cross-reference to DFARS Procedures, Guidance, and Information 234.005–1 at DFARS 234.005–1.

5. Update the System for Award Management internet link at DFARS 252.204–7007.

6. Update internet links to the Basic NIST SP 800–171 DoD Assessment reference document at DFARS 252.204–7019 and 252.204–7020.

7. Update references to replace “Bahrainian” with “Bahraini” at DFARS 252.225–7013, 252.227–7017, 252.225–7018, 252.225–7035, 252.225–7036, 252.225–7045, and 252.227–7018.

8. Correct a reference at DFARS 252.227–7018 to “60 days”.

List of Subjects in 48 CFR Parts 211, 215, 223, 234, and 252

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 211, 215, 223, 234, and 252 are amended as follows:

- 1. The authority citation for 48 CFR parts 211, 215, 223, 234, and 252 continues to read as follows:

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

PART 211—DESCRIBING AGENCY NEEDS

211.002 [Amended]

- 2. Amend section 211.002 by removing "Operation of the Defense Acquisition System" and adding "Operation of the Adaptive Acquisition Framework" in its place.

PART 215—CONTRACTING BY NEGOTIATION

215.404–75 [Amended]

- 3. Amend section 215.404–75 in paragraph (b) by removing "DoD FFRDC Management Plan" and adding "DoD Instruction 5000.77, DoD Federally Funded Research and Development Center Program" in its place.

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

223.370–3 [Amended]

- 4. Amend section 223.370–3 in paragraph (b) by removing "DoD Manual 4145.26–M" and "these regulations" and adding "DoD Manual 4145.26" and "the ammunition and explosives regulation of the DoD component or installation" in their places, respectively.

- 5. Revise section 223.7200 to read as follows:

223.7200 Definition.

As used in this subpart—

Arms, ammunition, and explosives (AA&E) means those items within the scope of DoD Manual 5100.76, Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives.

223.7201 [Amended]

- 6. Amend section 223.7201 in paragraphs (a) introductory text, (b) introductory text, and (b)(2) by removing "DoD 5100.76–M" and adding "DoD Manual 5100.76" in its place.

223.7202 [Amended]

- 7. Amend section 223.7202 in paragraph (b) by removing "DoD 5100.76–M" and adding "DoD Manual 5100.76" in its place.

223.7203 [Amended]

- 8. Amend section 223.7203 by removing "DoD 5100.76–M" and adding "DoD Manual 5100.76" in its place.

PART 234—MAJOR SYSTEM ACQUISITION

234.003 [Amended]

- 9. Amend section 234.003 by removing "Operation of the Defense Acquisition System" and adding "Operation of the Adaptive Acquisition Framework" in its place.
- 10. Amend section 234.005–1 by adding paragraph (4) to read as follows:

234.005–1 Competition.

* * * * *

(4) See PGI 234.005–1 for guidance on providing, upon request, the benefits derived from use of this competitive selection method.

234.7100 [Amended]

- 11. Amend section 234.7100 in paragraphs (a) and (b) by removing "Operation of the Defense Acquisition System" and adding "Operation of the Adaptive Acquisition Framework" in its place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.204–7007 [Amended]

- 12. Amend section 252.204–7007—
 - a. By removing the clause date "(MAY 2021)" and adding "(NOV 2023)" in its place; and
 - b. In paragraph (e) by removing "https://www.acquisition.gov/" and adding "https://www.sam.gov" in its place.

252.204–7019 [Amended]

- 13. Amend section 252.204–7019—
 - a. By removing the clause date "(MAR 2022)" and adding "(NOV 2023)" in its place; and
 - b. In paragraph (b) by removing "https://www.acq.osd.mil/asda/dpc/cp/cyber/safeguarding.html#nistSP800171" and adding "https://www.acq.osd.mil/asda/dpc/cp/cyber/docs/safeguarding/NIST-SP-800-171-Assessment-Methodology-Version-1.2.1-6.24.2020.pdf" in its place.

252.204–7020 [Amended]

- 14. Amend section 252.204–7020—

- a. By removing the clause date "(JAN 2023)" and adding "(NOV 2023)" in its place; and

- b. In paragraphs (c) and (g)(2) by removing "https://www.acq.osd.mil/asda/dpc/cp/cyber/safeguarding.html#nistSP800171" and adding "https://www.acq.osd.mil/asda/dpc/cp/cyber/docs/safeguarding/NIST-SP-800-171-Assessment-Methodology-Version-1.2.1-6.24.2020.pdf" in its place.

- 15. Amend section 252.223–7002 by revising the section heading, clause date, and paragraph (b)(1) to read as follows:

252.223–7002 Safety Precautions for Ammunition and Explosives.

* * * * *

Safety Precautions for Ammunition and Explosives (NOV 2023)

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(b) * * *

(1) The Contractor shall comply with the requirements of DoD Manual 4145.26, DoD Contractors' Safety Manual for Ammunition and Explosives, hereafter referred to as "the manual," in effect on the date of the solicitation for this contract. The Contractor shall also comply with any other additional requirements included in the schedule of this contract.

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- 16. Amend section 252.223–7007—

- a. By revising the section heading, clause date, and paragraph (a);
- b. In paragraphs (b) and (c) by removing "DoD 5100.76–M" and adding "DoD Manual 5100.76" in its place wherever it appears;
- c. In paragraph (d) by removing "Defense Security Service (DSS)" and adding "Defense Counterintelligence and Security Agency (DCSA)" in its place;
- d. In paragraph (e) by removing "DSS" and adding "DCSA" in its place; and
- e. In paragraph (f) by adding a paragraph heading.

The revisions and addition read as follows:

252.223–7007 Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives.

* * * * *

Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives (NOV 2023)

(a) Definition. As used in this clause— Arms, ammunition, and explosives (AA&E) means those items within the scope of DoD Manual 5100.76, Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives.

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(f) Subcontracts. * * *

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252.225–7013 [Amended]

- 17. Amend section 252.225–7013—
 - a. By removing the clause date “(DEC 2022)” and adding “(NOV 2023)” in its place; and
 - b. In paragraph (a), in paragraphs (2) and (3) of the definition of “Eligible product”, by removing “Bahrainian” and adding “Bahraini” in its place.

252.225–7017 [Amended]

- 18. Amend section 252.225–7017—
 - a. By removing the clause date “(OCT 2023)” and adding “(NOV 2023)” in its place; and
 - b. In paragraph (a), in the definition of “Bahrainian photovoltaic device”, and paragraphs (c)(2) and (3) by removing “Bahrainian” and adding “Bahraini” in its place wherever it appears.

252.225–7018 [Amended]

- 19. Amend section 252.225–7018—
 - a. By removing the provision date “(DEC 2022)” and adding “(NOV 2023)” in its place; and
 - b. In paragraph (a) by removing “Bahrainian” and adding “Bahraini” in its place; and
 - c. In paragraphs (d)(4)(ii) and (d)(5)(ii) by removing “Bahrainian” and adding “Bahraini” in its place.

252.225–7035 [Amended]

- 20. Amend section 252.225–7035—
 - a. By removing the clause date “(DEC 2022)” and adding “(NOV 2023)” in its place;
 - b. In paragraphs (a), (b)(2), and (c)(2)(ii) by removing “Bahrainian” and adding “Bahraini” in its place;
 - c. In Alternate I introductory text by removing “Bahrainian” and adding “Bahraini” in its place wherever it appears;
 - d. In Alternate II—
 - i. By removing the clause date “(DEC 2022)” and adding “(NOV 2023)” in its place; and
 - ii. In paragraphs (a), (b)(2), and (c)(2)(ii) by removing “Bahrainian” and adding “Bahraini” in its place;
 - e. In Alternate III—

- i. By removing the clause date “(DEC 2022)” and adding “(NOV 2023)” in its place; and
- ii. In paragraph (c)(2)(ii) by removing “Bahrainian” and adding “Bahraini” in its place;
- f. In Alternate IV—
 - i. In the introductory text by removing “Bahrainian” and adding “Bahraini” in its place wherever it appears;
 - ii. By removing the clause date “(DEC 2022)” and adding “(NOV 2023)” in its place; and
 - iii. In paragraphs (a), (b)(2), and (c)(2)(ii) by removing “Bahrainian” and adding “Bahraini” in its place; and
- g. In Alternate V—
 - i. By removing the clause date “(DEC 2022)” and adding “(NOV 2023)” in its place; and
 - ii. In paragraphs (a), (b)(2), and (c)(2)(ii) by removing “Bahrainian” and adding “Bahraini” in its place.

252.225–7036 [Amended]

- 21. Amend section 252.225–7036—
 - a. By removing the clause date “(JAN 2023)” and adding “(NOV 2023)” in its place;
 - b. In paragraphs (a) and (c) by removing “Bahrainian” and adding “Bahraini” in its place wherever it appears;
 - c. In Alternate I—
 - i. By revising the clause title;
 - ii. By removing the clause date “(JAN 2023)” and adding “(NOV 2023)” in its place; and
 - iii. In paragraph (a), in the definition of “Bahrainian end product”, by removing “Bahrainian” and adding “Bahraini” in its place;
 - d. In Alternate II—
 - i. By removing the clause date “(JAN 2023)” and adding “(NOV 2023)” in its place; and
 - ii. In paragraphs (a) and (c) by removing “Bahrainian” and adding “Bahraini” in its place wherever it appears;
 - e. In Alternate III—
 - i. By removing the clause date “(JAN 2023)” and adding “(NOV 2023)” in its place; and

- ii. In paragraph (a), in the definition of “Bahrainian end product”, by removing “Bahrainian” and adding “Bahraini” in its place;
- f. In Alternate IV—
 - i. By removing the clause date “(JAN 2023)” and adding “(NOV 2023)” in its place; and
 - ii. In paragraphs (a) and (c) by removing “Bahrainian” and adding “Bahraini” in its place wherever it appears; and
- g. In Alternate V—
 - i. By removing the clause date “(JAN 2023)” and adding “(NOV 2023)” in its place; and
 - ii. In paragraphs (a) and (c) by removing “Bahrainian” and adding “Bahraini” in its place wherever it appears.

252.225–7045 [Amended]

- 22. Amend section 252.225–7045—
 - a. In Alternate I—
 - i. In the introductory text by removing “Bahrainian” and adding “Bahraini” in its place;
 - ii. By removing the clause date “(OCT 2023)” and adding “(NOV 2023)” in its place; and
 - iii. In paragraphs (a) and (b) and paragraph (c) introductory text by removing “Bahrainian” and adding “Bahraini” in its place.
 - b. In Alternate III—
 - i. By removing the clause date “(OCT 2023)” and adding “(NOV 2023)” in its place; and
 - ii. In paragraph (b) and paragraph (c) introductory text by removing “Bahrainian” and adding “Bahraini” in its place.

252.227–7018 [Amended]

- 23. Amend section 252.227–7018—
 - a. By removing the clause date “(MAR 2023)” and adding “(NOV 2023)” in its place; and
 - b. In paragraph (h)(2) by removing “sixty (6) days” and adding “60 days” in its place.

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