

## 212.302

(C) 252.225-7035, Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate.

(ii) Use the provision at 252.212-7000, Offeror Representations and Certifications—Commercial Items, in all solicitations for commercial items exceeding the simplified acquisition threshold. If an exception to 10 U.S.C. 2410i applies to a solicitation exceeding the simplified acquisition threshold (see 225.7603), indicate on an addendum that “The certification in paragraph (b) of the provision at 252.212-7000 does not apply to this solicitation.”

(iii) Use the clause at 252.212-7001, Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items, in all solicitations and contracts for commercial items, completing paragraphs (a) and (b), as appropriate.

(iv) 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).

(v) Use the clause at 252.232-7009, Mandatory Payment by Government-wide Commercial Purchase Card, as prescribed in 232.1110.

(vi) Use the clause at 252.211-7003, Item Identification, as prescribed at 211.274-4.

(vii) Use the clause at 252.225-7040, Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States, as prescribed in 225.7402-4.

(viii) Use the clause at 252.225-7043, Antiterrorism/Force Protection Policy for Defense Contractors Outside the United States, in solicitations and contracts that include the clause at 252.225-7040.

(ix) Use the clause at 252.211-7006, Radio Frequency Identification, as prescribed in 211.275-3.

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

(xi) Use the clause at 252.246-7003, Notification of Potential Safety Issues, as prescribed in 246.371.

(xii) Use the provision at 252.247-7026, Evaluation Preference for Use of Domestic Shipyards—Applicable to Acquisition of Carriage by Vessel for DoD

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Cargo in the Coastwise or Noncontiguous Trade, as prescribed in 247.574(e).

(xiii) Use the provision at 252.225-7010, Commercial Derivative Military Article—Specialty Metals Compliance Certificate, as prescribed in 225.7003-5(b).

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

[60 FR 61595, Nov. 30, 1995]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting section 212.301, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

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

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

### **Subpart 212.5—Applicability of Certain Laws to the Acquisition of Commercial Items**

#### **212.503 Applicability of certain laws to executive agency contracts for the acquisition of commercial items.**

(a) The following laws are not applicable to contracts for the acquisition of commercial items:

(i) 10 U.S.C. 2306(b), Prohibition on Contingent Fees.

(ii) 10 U.S.C. 2324, Allowable Costs Under Defense Contracts.

(iii) 10 U.S.C. 2384(b), Requirement to Identify Suppliers.

(iv) 10 U.S.C. 2397(a)(1), Reports by Employees or Former Employees of Defense Contractors.

(v) 10 U.S.C. 2397b(f), Limits on Employment for Former DoD Officials.

(vi) 10 U.S.C. 2397c, Defense Contractor Requirements Concerning Former DoD Officials.

(vii) 10 U.S.C. 2408(a), Prohibition on Persons Convicted of Defense Related Felonies.

(viii) 10 U.S.C. 2410b, Contractor Inventory Accounting System Standards (see 252.242-7004).

(ix) 107 Stat 1720 (Section 843(a), Public Law 103-160), Reporting Requirement Regarding Dealings with Terrorist Countries.

(x) Domestic Content Restrictions in the National Defense Appropriations Acts for Fiscal Years 1996 and Subsequent Years, unless the restriction specifically applies to commercial items. For the restriction that specifically applies to commercial ball or roller bearings as end items, see 225.7019-2(b) (Section 8064 of Public Law 106-259).

(xi) Section 8116 of the Defense Appropriations Act for Fiscal Year 2010 (Pub. L. 111-118).

(c) The applicability of the following laws has been modified in regard to contracts for the acquisition of commercial items:

(i) 10 U.S.C. 2402, Prohibition on Limiting Subcontractor Direct Sales to the United States (see FAR 3.503 and 52.203-6).

(ii) 10 U.S.C. 2306a, Truth in Negotiations Act (see FAR 15.403-1(b)(3)).

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**212.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.**

(a) The following laws are not applicable to subcontracts at any tier for the acquisition of commercial items or commercial components:

(i) 10 U.S.C. 2306(b) Prohibition on Contingent Fees.

(ii) 10 U.S.C. 2313(c), Examination of Records of a Contractor.

(iii) 10 U.S.C. 2320, Rights in Technical Data.

(iv) 10 U.S.C. 2321, Validation of Proprietary Data Restrictions.

(v) 10 U.S.C. 2324, Allowable Costs Under Defense Contracts.

(vi) 10 U.S.C. 2327, Reporting Requirement Regarding Dealings with Terrorist Countries.

(vii) 10 U.S.C. 2384(b), Requirement to Identify Suppliers.

(viii) 10 U.S.C. 2391 note, Notification of Substantial Impact on Employment.

(ix) 10 U.S.C. 2393, Prohibition Against Doing Business with Certain Offerors or Contractors.

(x) 10 U.S.C. 2397(a)(1), Reports by Employees or Former Employees of Defense Contractors.

(xi) 10 U.S.C. 2397b(f), Limits on Employment for Former DoD Officials.

(xii) 10 U.S.C. 2397c, Defense Contractor Requirements Concerning Former DoD Officials.

(xiii) 10 U.S.C. 2408(a) Prohibition on Persons Convicted of Defense Related Felonies.

(xiv) 10 U.S.C. 2410b, Contractor Inventory Accounting System Standards.

(xv) 10 U.S.C. 2501 note, Notification of Proposed Program Termination.

(xvi) 10 U.S.C. 2534, Miscellaneous Limitations on the Procurement of Goods Other Than United States Goods.

(xvii) 10 U.S.C. 2631, Transportation of Supplies by Sea (except as provided in the clause at 252.247-7023, Transportation of Supplies by Sea).

(xviii) Domestic Content Restrictions in the National Defense Appropriations Acts for Fiscal Years 1996 and Subsequent Years, unless the restriction specifically applies to commercial items. For the restriction that specifically applies to commercial ball or roller bearings as end items, see 225.7009-2(b) (Section 8064 of Public Law 106-259).

(xix) Section 8116 of the Defense Appropriations Act for Fiscal Year 2010 (Pub. L. 111-118).

(b) Certain requirements of the following laws have been eliminated for subcontracts at any tier for the acquisition of commercial items or commercial components:

(i) 10 U.S.C. 2393(d), Subcontractor Reports Under Prohibition Against Doing Business with Certain Offerors (see FAR 52.209-6).

(ii) 10 U.S.C. 2402, Prohibition on Limiting Subcontractor Direct Sales to the United States (see FAR 3.503 and 52.203-6).

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