

utilized by contractors or any sub-contractors.

(b) The purpose of the liquidated damages to be paid for by the contractor in the event of a data breach of personal sensitive information is for VA to provide credit protection services to affected individuals pursuant to 38 U.S.C. 5724(a)–(b).

811.503–70 Contract clause.

(a) Insert the clause at 852.211–76, Liquidated Damages—Reimbursement for Data Breach Costs, in all solicitations, contracts, or orders, where VA requires access to sensitive personal information for the performance of a Department function where—

(1) Sensitive personal information (see the definition in 802.101) will be created, received, maintained, or transmitted, or that will be stored, generated, accessed, or exchanged such as protected health information (PHI) or utilized by a contractor, subcontractor, business associate, or an employee of one of these entities; or,

(2) When VA information systems will be designed or developed at non-VA facilities where such sensitive personal information is required to be created, received, maintained, or transmitted, or that will be stored, generated, accessed, exchanged, processed, or utilized.

(b) Insert the clause at 852.211–76 with its Alternate I in all solicitations, contracts, or orders, for commercial products or commercial services acquisitions awarded under the procedures of FAR part 8 or 12.

(c) Insert the clause at 852.211–76 with its Alternate II, in all solicitations, contracts, or orders, in simplified acquisitions exceeding the micro-purchase threshold that are for other than commercial products or commercial services awarded under the procedures of FAR part 13 (see FAR 13.302–5(d)(1) and the clause at FAR 52.213–4).

Subpart 811.6 [Reserved]

PART 812—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

Subpart 812.1—Acquisition of Commercial Items—General

Sec.
812.102 Applicability.
812.102–70 Applicability of Veterans preferences.

Subpart 812.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Products and Commercial Services

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

AUTHORITY: 38 U.S.C. 8127–8128; 40 U.S.C. 121(c); 41 U.S.C. 1702 and 48 CFR 1.301 through 1.304.

SOURCE: 73 FR 2717, Jan. 15, 2008, unless otherwise noted.

Subpart 812.1—Acquisition of Commercial Items—General

812.102 Applicability.

812.102–70 Applicability of Veterans preferences.

Based on the authority under 38 U.S.C. 8127 and 8128, the Veterans First Contracting Program in subpart 819.70 applies to VA contracts under this part. The provisions and clauses prescribed reflect agency unique statutes applicable to the acquisition of commercial items.

[85 FR 16905, Mar. 25, 2020]

Subpart 812.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Products and Commercial Services

SOURCE: 88 FR 4746, Jan. 25, 2023, unless otherwise noted.

812.301 Solicitation provisions and contract clauses for the acquisition of commercial products and commercial services.

(f)(1) Contracting officers shall insert the clause at 852.212–71, Gray Market and Counterfeit Items, in solicitations

812.301

and contracts for new medical supplies, new medical equipment, new information technology equipment, and maintenance of medical or information technology equipment that includes replacement parts if used, refurbished, or remanufactured parts are unacceptable, when the associated solicitation includes FAR 52.212-1, Instruction to Offerors—Commercial Products and Commercial Services, and 52.212-2, Evaluation—Commercial Products and Commercial Services.

(2) Contracting officers shall insert the clause at 852.212-72, Gray Market

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and Counterfeit Items—Information Technology Maintenance Allowing Other-than-New Parts, in solicitations and contracts for the maintenance of information technology equipment that includes replacement parts, if used, refurbished, or remanufactured parts are acceptable, when the associated solicitation includes FAR 52.212-1, Instruction to Offerors—Commercial Products and Commercial Services, and 52.212-2, Evaluation—Commercial Products and Commercial Services.