

## Defense Federal Acquisition Regulation Supplement

### Part 252—Solicitation Provisions and Contract Clauses

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(Revised October 4, 2011)

#### **252.212-7000 Offeror Representations and Certifications—Commercial Items.**

As prescribed in [212.301](#)(f)(ii), use the following provision:

##### **OFFEROR REPRESENTATIONS AND CERTIFICATIONS—COMMERCIAL ITEMS (JUN 2005)**

(a) *Definitions.* As used in this clause—

(1) “Foreign person” means any person other than a United States person as defined in Section 16(2) of the Export Administration Act of 1979 (50 U.S.C. App. Sec. 2415).

(2) “United States” means the 50 States, the District of Columbia, outlying areas, and the outer Continental Shelf as defined in 43 U.S.C. 1331.

(3) “United States person” is defined in Section 16(2) of the Export Administration Act of 1979 and means any United States resident or national (other than an individual resident outside the United States and employed by other than a United States person), any domestic concern (including any permanent domestic establishment of any foreign concern), and any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern which is controlled in fact by such domestic concern, as determined under regulations of the President.

(b) *Certification.* By submitting this offer, the Offeror, if a foreign person, company or entity, certifies that it—

(1) Does not comply with the Secondary Arab Boycott of Israel; and

(2) Is not taking or knowingly agreeing to take any action, with respect to the Secondary Boycott of Israel by Arab countries, which 50 U.S.C. App. Sec. 2407(a) prohibits a United States person from taking.

(c) *Representation of Extent of Transportation by Sea.* (This representation does not apply to solicitations for the direct purchase of ocean transportation services).

(1) The Offeror shall indicate by checking the appropriate blank in paragraph (c)(2) of this provision whether transportation of supplies by sea is anticipated under the resultant contract. The term “supplies” is defined in the Transportation of Supplies by Sea clause of this solicitation.

(2) Representation. The Offeror represents that it—

\_\_\_\_\_ Does anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

\_\_\_\_\_ Does not anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

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(3) Any contract resulting from this solicitation will include the Transportation of Supplies by Sea clause. If the Offeror represents that it will not use ocean transportation, the resulting contract will also include the Defense Federal Acquisition Regulation Supplement clause at [252.247-7024](#), Notification of Transportation of Supplies by Sea.

(End of provision)

#### **252.212-7001 Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items.**

As prescribed in [212.301](#)(f)(iii) and [227.7103-6](#)(a) and (e), use the following clauses as applicable:

##### CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS APPLICABLE TO DEFENSE ACQUISITIONS OF COMMERCIAL ITEMS (OCT 2011)

(a) The Contractor agrees to comply with the following Federal Acquisition Regulation (FAR) clause which, if checked, is included in this contract by reference to implement a provision of law applicable to acquisitions of commercial items or components.

\_\_\_ [52.203-3](#), Gratuities (APR 1984) (10 U.S.C. 2207).

(b) The Contractor agrees to comply with any clause that is checked on the following list of Defense FAR Supplement clauses which, if checked, is included in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items or components.

(1) \_\_\_ [252.203-7000](#), Requirements Relating to Compensation of Former DoD Officials (JAN 2009) (Section 847 of Pub. L. 110-181).

(2) \_\_\_ [252.203-7003](#), Agency Office of the Inspector General (SEP 2010)(section 6101 of Pub. L. 110-252, 41 U.S.C. 3509).

(3) \_\_\_ [252.205-7000](#), Provision of Information to Cooperative Agreement Holders (DEC 1991) (10 U.S.C. 2416).

(4) \_\_\_ [252.219-7003](#), Small Business Subcontracting Plan (DoD Contracts) (OCT 2010) (15 U.S.C. 637).

(5) \_\_\_ [252.219-7004](#), Small Business Subcontracting Plan (Test Program) (JAN 2011) (15 U.S.C. 637 note).

(6)(i) \_\_\_ [252.225-7001](#), Buy American Act and Balance of Payments Program (OCT 2011) (41 U.S.C. chapter 83, E.O. 10582).

(ii) \_\_\_ Alternate I (OCT 2011) of [252.225-7001](#).

(7) \_\_\_ [252.225-7008](#), Restriction on Acquisition of Specialty Metals (JUL 2009) (10 U.S.C. 2533b).

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(8) \_\_\_\_ [252.225-7009](#), Restriction on Acquisition of Certain Articles Containing Specialty Metals (JAN 2011) (10 U.S.C. 2533b).

(9) \_\_\_\_ [252.225-7012](#), Preference for Certain Domestic Commodities (JUN 2010) (10 U.S.C. 2533a).

(10) \_\_\_\_ [252.225-7015](#), Restriction on Acquisition of Hand or Measuring Tools (JUN 2005) (10 U.S.C. 2533a).

(11) \_\_\_\_ [252.225-7016](#), Restriction on Acquisition of Ball and Roller Bearings (JUN 2011) (Section 8065 of Pub. L. 107-117 and the same restriction in subsequent DoD appropriations acts).

(12)(i) \_\_\_\_ [252.225-7021](#), Trade Agreements (OCT 2011) (19 U.S.C. 2501-2518 and 19 U.S.C. 3301 note).

(ii) \_\_\_\_ Alternate I (OCT 2011) of [252.225-7021](#).

(iii) \_\_\_\_ Alternate II (OCT 2011) of [252.225-7021](#).

(13) \_\_\_\_ [252.225-7027](#), Restriction on Contingent Fees for Foreign Military Sales (APR 2003) (22 U.S.C. 2779).

(14) \_\_\_\_ [252.225-7028](#), Exclusionary Policies and Practices of Foreign Governments (APR 2003) (22 U.S.C. 2755).

(15)(i) \_\_\_\_ [252.225-7036](#), Buy American Act—Free Trade Agreements—Balance of Payments Program (OCT 2011) (41 U.S.C. chapter 83 and 19 U.S.C. 3301 note).

(ii) \_\_\_\_ Alternate I (OCT 2011) of [252.225-7036](#).

(iii) \_\_\_\_ Alternate II (OCT 2011) of [252.225-7036](#).

(iv) \_\_\_\_ Alternate III (OCT 2011) of [252.225-7036](#).

(16) \_\_\_\_ [252.225-7039](#), Contractors Performing Private Security Functions (AUG 2011) (Section 862 of Pub. L. 110-181, as amended by section 853 of Pub. L. 110-417 and sections 831 and 832 of Pub. L. 111-383).

(17) \_\_\_\_ [252.225-7038](#), Restriction on Acquisition of Air Circuit Breakers (JUN 2005) (10 U.S.C. 2534(a)(3)).

(18) \_\_\_\_ [252.226-7001](#), Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns (SEP 2004) (Section 8021 of Pub. L. 107-248 and similar sections in subsequent DoD appropriations acts).

(19) \_\_\_\_ [252.227-7013](#), Rights in Technical Data—Noncommercial Items (SEP 2011), if applicable (see [227.7103-6\(a\)](#)).

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(20) \_\_\_\_ [252.227-7015](#), Technical Data—Commercial Items (SEP 2011) (10 U.S.C. 2320).

(21) \_\_\_\_ [252.227-7037](#), Validation of Restrictive Markings on Technical Data (SEP 2011), if applicable (see 227.7102-4(c)).

(22) \_\_\_\_ [252.232-7003](#), Electronic Submission of Payment Requests and Receiving Reports (MAR 2008) (10 U.S.C. 2227).

(23) \_\_\_\_ [252.237-7010](#), Prohibition on Interrogation of Detainees by Contractor Personnel (NOV 2010) (Section 1038 of Pub. L. 111-84)

(24) \_\_\_\_ [252.237-7019](#), Training for Contractor Personnel Interacting with Detainees (SEP 2006) (Section 1092 of Pub. L. 108-375).

(25) \_\_\_\_ [252.243-7002](#), Requests for Equitable Adjustment (MAR 1998) (10 U.S.C. 2410).

(26) \_\_\_\_ [252.246-7004](#), Safety of Facilities, Infrastructure, and Equipment For Military Operations (OCT 2010) (Section 807 of Pub. L. 111-84).

(27) \_\_\_\_ [252.247-7003](#), Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer (SEP 2010) (Section 884 of Pub. L. 110-417).

(28)(i) \_\_\_\_ [252.247-7023](#), Transportation of Supplies by Sea (MAY 2002) (10 U.S.C. 2631).

(ii) \_\_\_\_ Alternate I (MAR 2000) of [252.247-7023](#).

(iii) \_\_\_\_ Alternate II (MAR 2000) of [252.247-7023](#).

(iv) \_\_\_\_ Alternate III (MAY 2002) of [252.247-7023](#).

(29) \_\_\_\_ [252.247-7024](#), Notification of Transportation of Supplies by Sea (MAR 2000) (10 U.S.C. 2631).

(30) \_\_\_\_ [252.247-7027](#), Riding Gang Member Requirements (OCT 2011) (Section 3504 of Pub. L. 110-417).

(c) In addition to the clauses listed in paragraph (e) of the Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items clause of this contract (FAR 52.212-5), the Contractor shall include the terms of the following clauses, if applicable, in subcontracts for commercial items or commercial components, awarded at any tier under this contract:

(1) [252.225-7039](#), Contractors Performing Private Security Functions (AUG 2011) (Section 862 of Pub. L. 110-181, as amended by section 853 of Pub. L. 110-417 and sections 831 and 832 of Pub. L. 111-383).

(2) [252.227-7013](#), Rights in Technical Data--Noncommercial Items (SEP 2011), if applicable (see [227.7103-6\(a\)](#)).

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(3) [252.227-7015](#), Technical Data—Commercial Items (SEP 2011), if applicable (see [227.7102-4\(a\)](#)).

(4) [252.227-7037](#), Validation of Restrictive Markings on Technical Data (SEP 2011), if applicable (see [227.7102-4\(c\)](#)).

(5) [252.237-7010](#), Prohibition on Interrogation of Detainees by Contractor Personnel (NOV 2010) (Section 1038 of Pub. L. 111-84).

(6) [252.237-7019](#), Training for Contractor Personnel Interacting with Detainees (SEP 2006) (Section 1092 of Pub. L. 108-375).

(7) [252.247-7003](#), Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer (SEP 2010) (Section 884 of Pub. L. 110-417).

(8) [252.247-7023](#), Transportation of Supplies by Sea (MAY 2002) (10 U.S.C. 2631).

(9) [252.247-7024](#), Notification of Transportation of Supplies by Sea (MAR 2000) (10 U.S.C. 2631).

(End of clause)

#### **252.212-7002 Pilot Program for Acquisition of Military-Purpose Nondevelopmental Items.**

As prescribed in [212.7103](#), use the following provision:

##### **PILOT PROGRAM FOR ACQUISITION OF MILITARY-PURPOSE NONDEVELOPMENTAL ITEMS (JUN 2011)**

(a) *Definitions.* As used in this provision—

“Military-purpose nondevelopmental item” means a nondevelopmental item that meets a validated military requirement, as determined in writing by the responsible program manager, and has been developed exclusively at private expense. An item shall not be considered to be developed at private expense if development of the item was paid for in whole or in part through—

(1) Independent research and development costs or bid and proposal costs, per the definition in FAR 31.205-18, that have been reimbursed directly or indirectly by a Federal agency or have been submitted to a Federal agency for reimbursement; or

(2) Foreign government funding.

“Nondevelopmental item” is defined in FAR 2.101 and for the purpose of this subpart also includes previously developed items of supply that require modifications other than those customarily available in the commercial marketplace if such modifications are consistent with the requirement of [212.7102-2\(d\)\(1\)](#).

“Nontraditional defense contractor” means an entity that is not currently performing and has not performed, for at least the one-year period preceding the solicitation of

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sources by the Department of Defense for the procurement or transaction, any of the following for the Department of Defense—

(1) Any contract or subcontract that is subject to full coverage under the cost accounting standards prescribed pursuant to Section 26 of the Office of Federal Procurement Policy Act (41 U.S.C. section 1502) and the regulations implementing such section; or

(2) Any other contract in excess of the certified cost or pricing data threshold under which the contractor is required to submit certified cost or pricing data.

(b) *Notice.* This is a procurement action under section 866 of the National Defense Authorization Act for Fiscal Year 2011, Pilot Program for Acquisition of Military-Purpose Nondevelopmental Items, and is subject to the limitations outlined in [212.7102](#).

(c) *Representation.* By submission of its offer, the offeror represents that it is a nontraditional defense contractor.

(End of provision)