

DFARS Case 2014-D010
(S) Foreign Commercial Satellite Services
Draft Interim Rule

PART 204—ADMINISTRATIVE MATTERS

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SUBPART 204.12—ANNUAL REPRESENTATIONS AND CERTIFICATIONS

204.1202 Solicitation provision.

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(2) When the provision at FAR 52.204-7, ~~Central Contractor Registration~~ **[System for Award Management]**, is included in the solicitation, do not include separately in the solicitation the following provisions, which are included in DFARS [252.204-7007](#):

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(x) [252.225-7042](#), Authorization to Perform.

[(xi) 252.225-70ZZ, Prohibition on Acquisition of Commercial Satellite Services from Certain Foreign Entities—Representations.]

{Redesignate subsequent paragraphs (xi) through (xiii) as (xii) through (xiv), respectively.}

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PART 212—ACQUISITION OF COMMERCIAL ITEMS

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SUBPART 212.3--SOLICITATION PROVISIONS AND CONTRACT CLAUSES FOR THE ACQUISITION OF COMMERCIAL ITEMS

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.

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(xlvii) Use the clause at [252.225-7043](#), Antiterrorism/Force Protection Policy for Defense Contractors Outside the United States, as prescribed in [225.7403-2](#).

[(xlvii) Use the provision at 252.225-70ZZ, Prohibition on Acquisition of Commercial Satellite Services from Certain Foreign Entities—Representations, as prescribed at 225.772-5.]

{Redesignate paragraphs (xlvii) through (lxiv) as (xlviii) through (lxx) respectively.}

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PART 225—FOREIGN ACQUISITION

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SUBPART 225.7--PROHIBITED SOURCES

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[225.771 Reserved.]

[225.772 Prohibition on acquisition of commercial satellite services from certain foreign entities.

225.772-0 Scope.

This section implements 10 U.S.C. 2279.

225.772-1 Definitions.

As used in this section, “covered foreign country,” “foreign entity,” “government of a covered foreign country,” “satellite services,” and “state sponsor of terrorism” are defined in the provision at 252.225-70ZZ, Prohibition on Acquisition of Commercial Satellite Services from Certain Foreign Entities—Representations.

225.772-2 Prohibition.

The contracting officer shall not award a contract for commercial satellite services to—

(a) A foreign entity if the Under Secretary of Defense for Acquisition, Technology, and Logistics or the Under Secretary of Defense for Policy reasonably believes that the foreign entity—

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(1) Is an entity in which the government of a covered foreign country has an ownership interest that enables the government to affect satellite operations; or

(2) Plans to or is expected to provide or use launch or other satellite services under the contract from a covered foreign country; or

(b) An offeror that is offering commercial satellite services provided by a foreign entity as described in paragraph (a) of this section.

225.772-3 Procedures.

(a) If an offeror discloses information in accordance with paragraph (d) of the provision 252.225-70ZZ, Prohibition on Acquisition of Commercial Satellite Services from Certain Foreign Entities—Representations, the contracting officer—

(1) Shall forward the information regarding the offeror through agency channels to the address at PGI 225.772-3; and

(2) Shall not award to that offeror, unless an exception is determined to apply in accordance with 225.772-4.

(b)(1) If the otherwise successful offeror provides negative responses to all representations in the provision at 252.225-70ZZ, the contracting officer may rely on the representations, unless the contracting officer has an independent reason to question the representations.

(2) If the contracting officer has an independent reason to question a negative representation of the otherwise successful offeror, the contracting officer shall consult with the office specified in PGI 225.772-3, prior to deciding whether to award to that offeror.

225.772-4 Exception.

(a) The prohibition in 225.772-2 does not apply if-

(1) The Under Secretary of Defense for Acquisition, Technology, and Logistics, or the Under Secretary of Defense for Policy, without power of redelegation, determines that it is in the national security interest of the United States to enter into such contract; and

(2) Not later than seven days before entering into such contract, the Under Secretary of Defense making the determination in paragraph (a)(1) of this section, in consultation with the Director of National Intelligence, submits to the congressional defense committees a national security assessment, in accordance with 10 U.S.C. 2279.

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(b) If requesting an exception pursuant to paragraph (a) of this section, the contracting officer shall forward the request through agency channels to the address at PGI 225.772-3, providing any available information necessary for the Under Secretary of Defense making the determination in paragraph(a) (1) of this section to evaluate the request and perform a national security assessment, in accordance with 10 U.S.C. 2279.

225.772-5 Solicitation provision.

Use the provision at [252.225-70ZZ](#), Prohibition on Acquisition of Commercial Satellite Services from Certain Foreign Entities—Representations, in solicitations for the acquisition of commercial satellite services. If the solicitation includes the provision at FAR 52.204-7, do not separately list the provision [252.225-70ZZ](#) in the solicitation.]

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PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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252.204-7007 Alternate A, Annual Representations and Certifications.

As prescribed in [204.1202](#), use the following provision:

**ALTERNATE A, ANNUAL REPRESENTATIONS AND CERTIFICATIONS
(~~MAR 2014~~[DATE])**

Substitute the following paragraphs (d) and (e) for paragraph (d) of the provision at FAR 52.204-8:

(d)(1) The following representations or certifications in the System for Award Management (SAM) database are applicable to this solicitation as indicated:

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[(v) [252.225-70ZZ](#), Prohibition on Acquisition of Commercial Satellite Services from Certain Foreign Entities—Representations. Applies to solicitations for the acquisition of commercial satellite services.]

(v[i]) [252.229-7012](#), Tax Exemptions (Italy)—Representation. Applies to solicitations and contracts when contract performance will be in Italy.

(vi[i]) [252.229-7013](#), Tax Exemptions (Spain)—Representation. Applies to solicitations and contracts when contract performance will be in Spain.

(vii[i]) [252.247-7022](#), Representation of Extent of Transportation by Sea. Applies to all solicitations except those for direct purchase of ocean transportation services or those with an anticipated value at or below the simplified acquisition

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[252.225-70ZZ Prohibition on Acquisition of Commercial Satellite Services from Certain Foreign Entities—Representations.

As prescribed in 225.772-5, use the following provision:

PROHIBITION ON ACQUISITION OF COMMERCIAL SATELLITE SERVICES FROM CERTAIN FOREIGN ENTITIES—REPRESENTATIONS (DATE)

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

“Covered foreign country” means—

- (i) The People’s Republic of China;
- (ii) North Korea; or
- (iii) Any country that is a state sponsor of terrorism. (10 U.S.C. 2279)

“Foreign entity” means—

(i) Any branch, partnership, group or sub-group, association, estate, trust, corporation or division of a corporation, or organization organized under the laws of a foreign state if either its principal place of business is outside the United States or its equity securities are primarily traded on one or more foreign exchanges.

(ii) Notwithstanding paragraph (i) of this definition, any branch, partnership, group or sub-group, association, estate, trust, corporation or division of a corporation, or organization that demonstrates that a majority of the equity interest in such entity is ultimately owned by U.S. nationals is not a foreign entity. (31 CFR 800.212)

“Government of a covered foreign country” includes the state and the government of a covered foreign country, as well as any political subdivision, agency, or instrumentality thereof.

“Satellite services” means communications capabilities that utilize an on-orbit satellite for transmitting the signal from one location to another.

“State sponsor of terrorism” means a country determined by the Secretary of State, under section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(i)(A)), to be a country the government of which has repeatedly provided support for acts of international terrorism. As of the

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date of this provision, state sponsors of terrorism subject to this provision are Cuba, Iran, Sudan, and Syria. (10 U.S.C. 2327)

(b) *Prohibition on award.* In accordance with 10 U.S.C. 2279, unless an exception is determined to apply in accordance with DFARS 225.71-4, no contract for commercial satellite services may be awarded to—

(1) A foreign entity if the Under Secretary of Defense for Acquisition, Technology, and Logistics or the Under Secretary of Defense for Policy reasonably believes that the foreign entity—

(i) Is an entity in which the government of a covered foreign country has an ownership interest that enables the government to affect satellite operations; or

(ii) Plans to, or is expected to, provide or use launch or other satellite services under the contract from a covered foreign country; or

(2) An offeror that is offering to provide the commercial satellite services of a foreign entity as described in paragraph (b)(1) of this section.

(c) *Representations.* The Offeror represents that—

(1) It [] is, [] is not a foreign entity in which the government of a covered foreign country has an ownership interest that enables the government to affect satellite operations;

(2) It [] is, [] is not a foreign entity that plans to provide or use launch or other satellite services under the contract from a covered foreign country;

(3) It [] is, [] is not offering commercial satellite services provided by a foreign entity in which the government of a covered foreign country has an ownership interest that enables the government to affect satellite operations; and

(4) It [] is, [] is not offering commercial satellite services provided by a foreign entity that plans to or is expected to provide or use launch or other satellite services under the contract from a covered foreign country.

(d) *Disclosure.* If the Offeror has responded affirmatively to any of the above representations, provide the following information, as applicable:

(1) Identification of the foreign entity proposed to provide the commercial satellite services, if other than the Offeror.

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(2) To the extent practicable, a description of any ownership interest that the government of a covered foreign country has in the foreign entity proposed to provide the satellite services, including identification of the covered foreign country.

(3) Identification of any covered foreign country in which launch or other satellite services will be provided or used, and a description of any satellite services planned to be provided or used in that country.

(e) The representations in paragraph (c) of this provision are a material representation of fact upon which reliance will be placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous representation, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

(End of provision)]

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