

# *Acquisition of Commercial Items: A New Paradigm*



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# *Overview*

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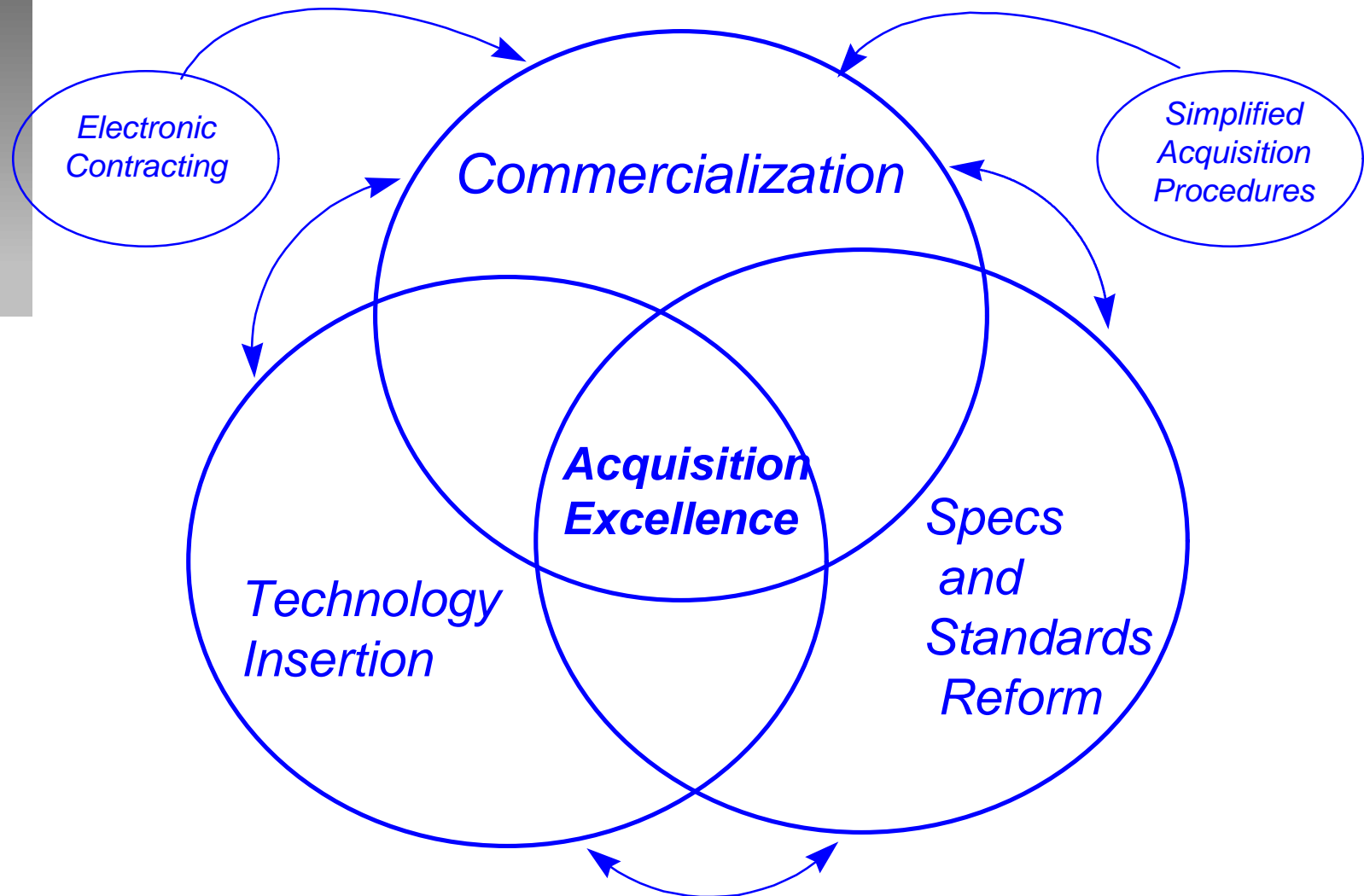
- *Commercial Item Policy*
- *Pricing*
- *Commercial Item Definition*
- *Navy Success Stories*
- *Market Research*
- *Describing Agency Needs*
- *Special Requirements*
- *FAR Provision and Clauses*
- *Pending Legislation*
- *Summary*

# *Commercial Item Policy*

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- *Legislative Preference for Commercial Items*
  - *Streamlined solicitation and contracts*
  - *Fewer clauses and unique government requirements*
  - *No cost or pricing data or SF 1412 requirement*
  - *Significantly less oversight*
- *Enhanced Need for Market Research*
- *Specs and Standards Reform*
- *New Commercial Item Advocate*

# *Navy Acquisition Reform: An Integrated Strategy*





# *Navy Management Action Plan (MAP)*

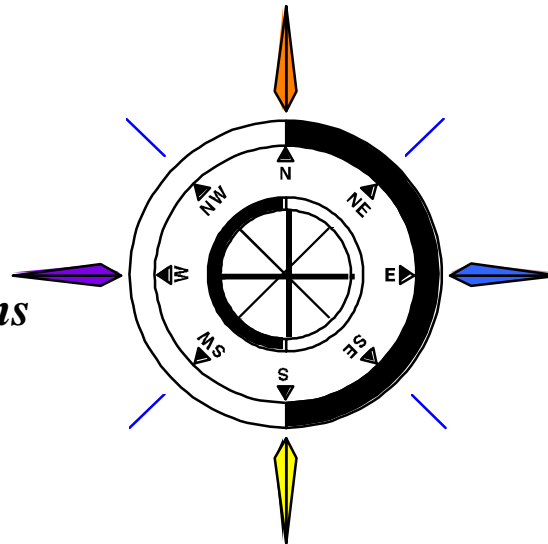
## *The Commercial Item Acquisition Foundation*

### Leadership

- *Decentralize decision authority*
- Improve program stability
- *Create an Acquisition Center of Excellence*
- *Measure improvements*

### People

- Create incentives for AR
- *Enable sound business decisions*
- Train to achieve AR



### Relationships

- Partner with the Fleet
- *Partner with Industry*
- Institutionalize IPT's

### Processes

- Achieve an integrated design environment
- Use past performance to measure performance risk
- *Employ cooperative DON/Industry procurement processes*

# *Navy MAP Connection*

- *Improve commercial item market research techniques*
- *RFP benchmarking.*
- *Deploy best solicitation practices.*
- *Encourage risk taking.*
- *Partner with industry to minimize 'buy-ins'.*
- *Design and operate an Acquisition Center of Excellence.*
- *Widely communicate acquisition success stories.*
- *Deploy outcome-based policy and procedures.*
- *Develop cooperative strategies with industry to accelerate reform process.*
- *Continue our revamping of specs and standards.*

*We are developing a process  
to change our culture!*





# *Are These Commercial Items?*

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- *C130J cargo aircraft*
- *Structural decking for attack submarine*
- *MS Word 7.0 (yet to be released)*
- *Transportation of household goods*
- *Hammer – 18 gauge steel with rubber handle*
- *Kitchenaid coffee maker adapted for shipboard installation*
- *Custom van modified for intelligence gathering*
- *GSA Government-specified file cabinet*

# *Pricing Commercial Items*

## ***New Order of Precedence for obtaining pricing information***

- *None, if based on adequate price competition.*
- *Information other than cost or pricing data:*
  - *Prices available within the Government*
  - *Price information obtained from sources other than the offeror; and,*
  - *If necessary, price information obtained from the offeror.*
- *After a written determination, cost or pricing data as a last resort!*

***In establishing the reasonableness of the offered prices, the contracting officer shall not obtain more information than is necessary***



# *Commercial Item Definition*

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- *Commercial item means any item, other than real property, that is **of a type** customarily used for non-governmental purposes and that:*
  - *Has been sold, leased, or licensed to the general public; or*
  - *Has been offered for sale, lease, or license to the general public.*
- *Question: What is 'of a type'?*
  - *... furniture*
  - *... file cabinets*
  - *... cargo aircraft*

## *Definition (continued)*

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- *Any item that evolved from a commercial item through advances in technology or performance... BUT ... not yet available*
  - *Microsoft Word 7.0*
- *A commercial item that falls into any of the above categories... but requires:*
  - *Modifications of a type customarily available in the marketplace, or*
  - *Minor modifications for unique Government purposes.*

## *Definition* (continued)

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- *What are customary modifications?*
  - *Custom vans, construction build out, more...?*
- *What is a minor modification?*
  - *Does not significantly alter the function or essential physical characteristics of an item or component, or change the purpose of a process.*
  - *What must be considered?*
    - *Value and size of the modification*
    - *Value and percentages used as guideposts*
      - *...but not conclusive*

*Raises Questions...*

## *Definition* (continued)

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- *Services such as installation, maintenance, repair, and training.*
- *Services **of a type** sold competitively in the commercial marketplace based on established catalog or market prices for specific tasks performed.*
  - *Training*
  - *Maintenance*
  - *Computer support*

*Some (but not all) Services*

## *Definition* (continued)

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- *Non-developmental items that are developed exclusively at private expense and sold to multiple state and local governments.*
- *Any of the above items*
  - *Even if it has been transferred between separate divisions of a contractor.*



# *Navy Success Stories*

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- *New Attack Submarine*
- *MSTRAP Torpedo Sensor*
- *ARC-210 Radio*

***Send YOUR success stories to:***

*Acquisition Reform Office, 2211 S. Clark Place,  
CP5/Room 924, Arlington, VA 22244-5104*

*Phone: 703-602-5506/8*

*Fax: 703-602-5481*

*Internet: [dean\\_alex@asnrdad.acq-ref.navy.mil](mailto:dean_alex@asnrdad.acq-ref.navy.mil)*

# *New Attack Submarine*

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- *Open Systems Architecture (OSA) Demonstration Project*
- *Promoted early industrial partnership and involvement in Commercial off-the-shelf (COTS)/OSA*
- *Demonstrated feasibility and rapid integration of COTS/OSA combat system components*
- *Demonstrated combat systems ADA software reuse in a COTS/OSA environment*
- *Winner of 1994 'Buy Our Spares Smartly' (BOSS) award*
  - *Top Federal Government project in planning and migration to open systems*

# *MSTRAP Torpedo Sensor*

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- *Multi-Sensor Torpedo Recognition and Alertment Processor (MSTRAP)*
- *Reduced development cost by >\$700K*
  - *From >\$1M to > \$300K*
- *Reduced development time by 50%*
- ***HOW?***
  - *COTS hardware and software*
  - *Reduced documentation requirements*
  - *Open systems practices and standards*
  - *Integrated product teams*



# *AN/ARC-210 Radio*

## ***FY 94 Baseline***

- *Unit Cost of \$50.6K*
- *MTBF:500 hours Fleet-wide*
- *Obsolete parts*
- *1980s technology*

## ***FY 99 Projection***

- *Unit Cost of \$38K*
- *MTBF:1100 hours Fleet-wide*
- *No obsolescence*
- *1990s technology*
- *5 year savings - \$65M*

## **HOW?**

- *Modernization grew from a VECP*
- *Use of commercial components, e.g., plastic parts*
- *Streamlining of requirements ... from 78 MILSPECS to 35*
- *Flow down to subcontractors streamlined... reduced clauses*
- *Reduced CDRLs (56 to 20) and allowed for commercial type reporting*
- *Commercial Depot-Level Maintenance in lieu of organic*

# *Market Research*

*(New FAR Part 10)*

## ■ *Market Research*

- *“Collecting and analyzing information about capabilities within the commercial market to satisfy agency needs”*

- *Can needs be met by items available in the commercial marketplace?*
- *Are the items being acquired ‘of a type’ in the marketplace?*
- *What are commercial practices regarding customizing, modifying or tailoring items to meet customer needs?*
- *What are customary commercial terms and conditions?*
- *What are normal commercial market distribution and logistics support capabilities?*

# *Market Research – Who, When and How Much?*

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- *Who does it?*
  - *The Contracting Officer?*
  - *The Program Officer?*
  - *The Team!*
- *Begin with a description of the Government's needs stated in terms sufficient to allow conduct of market research.*
- *The extent of market research is based on urgency, estimated dollar value, complexity and past experience.*

# *Market Research – Techniques*

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- *Contact experts; consultants*
- *Review recent market research*
  - *On-line libraries*
- *Publish requests for information*
  - *Internet connection*
- *Query databases/on-line communication*
- *Obtain source lists*
- *Review catalogs and product literature*
  - *On-line catalogs (CDs)*
- *Hold pre-solicitation conferences*

# *Describing Agency Needs*

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- *Requirements **shall** be stated in terms of:*
  - *Functions to be performed;*
  - *Performance required; or*
  - *Essential physical characteristics.*
- *Requirements documents order of precedence:*
  - *Mandated by law*
  - *Performance-oriented*
    - *Non-government voluntary standards*
    - *Commercial item descriptions*
    - *Federal specifications and standards*
    - *Defense specifications and standards*
  - *Design-oriented*
    - *Non-government voluntary standard*
    - *Federal specifications and standards*
    - *Defense specifications and standards*
  - *Agency-unique*

# *What is Market Acceptance?*

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- ***When appropriate...** offerors may be required to demonstrate that items have a demonstrated reliability, performance or product support record **in a specified environment***
- *Criteria must:*
  - *Reflect minimum needs*
  - *Relate to an item's performance and intended use... not an offeror's capability*
  - *Be supported by market research*
  - *Consider items supplied under other Government contracts*
  - *Consider the entire relevant market, including small businesses*

# *Special Requirements*

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- *Offers*
  - *Use existing product literature... minimize technical proposals*
  - *Allow offer of multiple products*
  - *May allow less than 30-day response time*
  - *May use combined CBD synopsis/solicitation*
- *Use firm fixed price (FFP) or FFP with Economic Price Adjustment only*
  - *Indefinite delivery permissible*
- *Use contractors' existing QA system unless customary practice permits in-process inspection*
- *Require warranties consistent with customary market practices*

## *Special Requirements (continued)*

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- *Past performance should be considered*
  - *No pre-award surveys unless cost is justified*
- *Acquire only tech data customarily provided to public*
- *Use Standard Form 1449*
- *Include additional customary commercial practices if:*
  - *Essential to business arrangement,*
  - *In Government's best interest, and*
  - *Not precluded by law or Executive Order*



# *FAR Provisions and Clauses*

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- *Contracts for commercial items shall, to the maximum extent practicable, include only those clauses:*
  - *Required to implement provisions of law or E.O.; or*
  - *Determined to be consistent with “standard” commercial practices.*
- *Provisions and clauses prescribed in Part 12:*
  - *Shall be used in all acquisitions for commercial items, and*
  - *Shall be the only provisions and clauses required in contracts for commercial items*
    - *Must be continually updated by FAR Council*
- *Very limited flow down provisions to subcontractors*
  - *Encourages small business involvement*

# *FAR Provisions and Clauses*

*(continued)*

<u><i>Solicitation</i></u>	<u><i>Contract</i></u>
<ul style="list-style-type: none"><li>■ <i>SF 1449</i></li><li>■ <i>52.212-1 Instructions</i></li><li>■ <i>52.212-2 Evaluation (optional)</i></li><li>■ <i>52.212-3 Reps &amp; Certs.</i></li><li>■ <i>52.212-4 Ts &amp; Cs</i></li><li>■ <i>52.212-5 Laws &amp; EOs</i></li><li>■ <i>Addenda</i></li></ul>	<ul style="list-style-type: none"><li>■ <i>SF 1449</i></li><li>■ <i>52.212-4 Ts &amp; Cs</i></li><li>■ <i>52.212-5 Laws &amp; EOs</i></li><li>■ <i>Addenda</i></li></ul>

# *Tailoring FAR ...What?*

- *New provisions and clauses are intended for wide range of commercial items, but **may require tailoring***
  - *52.212-1, Instructions to Offerors—Commercial Items*
  - *52.212-4, Contract Terms and Conditions—Commercial Items*
- *Tailor, after market research to:*
  - *Adapt to market conditions*
  - *Adapt to variations in customary commercial practices across markets*
  - *Include other necessary terms and conditions*
    - *Options*
    - *Ordering procedures*
    - *Financing*

# *FARA*

## *Commercial Item Changes*

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- *Federal Acquisition Reform Act (FARA) of 1995*
  - *FY 96 Defense Authorization Act*
- *More streamlining for 'off-the-shelf' commercial items*
- *Broader definition of commercial services*
- *CAS and TINA exempted*
- *Simplified Acquisition Procedures applied to commercial items if less than \$5M*
  - *electronic solicitation*
  - *solicit three offers*
  - *additional clauses don't apply*

# *Summary...*

## *So now what do you do?*

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### ***Industry***

- *Share your newest technology with us*
- *Challenge government unique requirements*
- *Comment on draft RFPs to aid in pushing paradigm*
- *Connect with the Competition Advocate*
- *Help buyers with market research ideas*
- *Sell, sell, sell!*

### ***Government***

- *Perform market research*
- *Focus specs on performance*
- *Understand the breadth of the new commercial item definitions*
- *Tailor terms and conditions to the marketplace*
- *Don't ask for cost and pricing data*
- *Go forward and streamline... SAVE \$\$\$\$!*



# *FAR Clause and Provisions Detailed Information*

# *Provisions*

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## ■ *52.212-1, Instructions to Offerors - Commercial Items*

- *Incorporated by reference*
- *Streamlined instructions*
- *Generally consistent with FAR*
- *Some unique language:*
  - *Submission of offers*
  - *Multiple offers*
  - *Late offers*
- *Contracting officer may tailor*

## *52.212-1 Includes*

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### ■ *Submission of offers*

- *Solicitation number*
- *Time for receipt of offers*
- *Offeror's name, address and telephone*
- *Technical description of items being offered*
- *Express warranty terms*
- *Price and discount terms*
- *Remit to address*
- *Reps and Certs.*
- *Acknowledgment of solicitation amendments*
- *Past performance information*

### ■ *Sic Code*

- *Period for acceptance*
- *Product samples*
- *Multiple offers*
- *Late offers*
- *Contract award*
- *Multiple awards*
- *Availability of requirements documents*



## *Provisions (continued)*

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- *52.212-2, Evaluation - Commercial Items*
  - *Optional use*
    - *If used, attach to solicitation*
    - *If not used, include similar provision*
- *Simplified format and procedures*
- *Generally consistent with FAR*
- *Greatest value approach*
- *Contracting officer must tailor to each acquisition*

## *52.212-2 Includes*

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- *Insert evaluation factors, e.g.,*
  - *Technical capability of item to meet requirement*
  - *Price*
  - *Past performance*
- *Identify relative importance of all other evaluation factors, when combined, when compared to price.*

## *Provisions (continued)*

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- *52.212-3, Offerors Representations and Certifications - Commercial Items*
  - *Attach to solicitation*
  - *Single, consolidated list of representations and certifications: streamlined FAR language*
  - *Contracting officer may not tailor*

## *52.212-3 Includes*

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- *Small business type and size*
- *Taxpayer identification number*
- *Corporate status*
- *Non-segregated facilities certification*
- *Previous EEO contracts and compliance*
- *Anti-influence*
- *Buy American - Trade Agreements - Balance of Payments (non DoD)*
- *Buy American-NAFTA (non-DoD)*
- *Debarment, suspension or ineligibility certification*
- *Procurement integrity certification*

# *Clauses*

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- *52.212-4, Contract Terms and Conditions - Commercial Items*
  - *Incorporated by reference*
  - *Consistent with “customary” commercial practice: based upon commercial terms and conditions*
  - *Unique language, including acceptance, changes, excusable delay, termination for convenience, warranty, compliance with laws*
  - *Contracting officer may:*
    - *Tailor if consistent with customary commercial practice*
    - *Tailor, with approved waiver, if inconsistent with commercial practice*

## *52.212-4 Includes*

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- *Inspection/acceptance*
- *Assignment*
- *Changes*
- *Disputes*
- *Definitions*
- *Excusable delays*
- *Invoice*
- *Patent indemnity*
- *Payment*
- *Risk of loss*
- *Taxes*
- *Termination for cause*
- *Title*
- *Warranty*
- *Limitation of liability*
- *Other compliances*
- *Compliance with laws unique to Government contracts*
- *Order of precedence*

## *52.212-5 Includes*

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- *Convict labor*
- *Protest after award*
- *As appropriate:*
  - *Restrictions on subcontractor sales to the Government*
  - *Price or fee adjustment for illegal or improper activity*
  - *Utilization of small business concerns and small disadvantaged business concerns*
  - *Small, small disadvantaged and women-owned small business subcontracting plan*

## *52.212-5 (continued)*

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- *Limitation on subcontracting*
- *Equal opportunity*
- *Affirmative action for special disabled and Vietnam era veterans*
- *Affirmative action for handicapped workers*
- *Employment reports on special disabled veterans and veterans of the Vietnam era*



## *52.212-5 (continued)*

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- *Buy American Act - Trade Agreements Act - Balance of Payments Program*
- *Buy American Act - Supplies Under European Community Sanctions for End Products*
- *European Community Sanctions for End Products*
- *European Community Sanctions for Services*
- *Buy American Act - NAFTA Implementation Act - Balance of Payments Program*
- *Preference for Privately Owned U.S.-Flagged Commercial Vessels*
- *Procurement Authority (FIRMR)*

# *Clauses* (continued)

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- *52.244-6, Subcontracts for Commercial Items and Commercial Components*
  - *Inserted in all contracts for other than commercial items*
  - *Flows down to all subcontractors*
  - *Requires contractor to incorporate commercial items/NDI at all levels to the maximum extent practicable*
  - *Includes the following flow down clauses*
    - *EEO*
    - *Affirmative Action for Special Disabled and Vietnam Era Veterans*
    - *Affirmative Action for Handicapped Workers*
    - *Preference for Privately Owned US-Flagged Commercial Vessels*
      - *effective May 1, 1996*
  - *Contracting officer may not tailor without FAR deviation*

# *DFARS*

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- *DAC 91 - 9 November 30, 1995 -
  - *Effective December 1, 1995**
- *DFARS 211 & Clauses Deleted*
- *DFARS 227 & Clauses Conformed to Part 12*
- *Brand Name or Equal Below \$100K*
- *252.212-7000 DoD Reps & Certs*
- *252.212-7001 DoD Statutory Requirements - 24 total*
- *252.225-7013 Domestic Wool Preference, as appropriate.*
- *Use appropriate Buy American provision.*

## *Clauses (continued)*

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- *52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders*
  - *Attach to solicitation*
  - *Includes FAR clauses:*
    - *Required in all contracts for commercial items*
    - *That may be required under certain conditions*
    - *That may be required for service contracts*
    - *To be flowed down*
  - *FAR Part 15 clauses added if necessary*
  - *Comptroller general examination of records authority included*
  - *Contracting officer may not tailor without FAR deviation*