SUBPART 239.76—CLOUD COMPUTING
(Added August 26, 2015)

239.7600 Scope of subpart.
This subpart prescribes policies and procedures for the acquisition of cloud computing services.

239.7601 Definitions.
As used in this subpart—

"Authorizing official," as described in DoD Instruction 8510.01, Risk Management Framework (RMF) for DoD Information Technology (IT), means the senior Federal official or executive with the authority to formally assume responsibility for operating an information system at an acceptable level of risk to organizational operations (including mission, functions, image, or reputation), organizational assets, individuals, other organizations, and the Nation.

"Cloud computing" means a model for enabling ubiquitous, convenient, on-demand network access to a shared pool of configurable computing resources (e.g., networks, servers, storage, applications, and services) that can be rapidly provisioned and released with minimal management effort or service provider interaction. This includes other commercial terms, such as on-demand self-service, broad network access, resource pooling, rapid elasticity, and measured service. It also includes commercial offerings for software-as-a-service, infrastructure-as-a-service, and platform-as-a-service.

"Government data" means any information, document, media, or machine readable material regardless of physical form or characteristics, that is created or obtained by the Government in the course of official Government business.

"Government-related data" means any information, document, media, or machine readable material regardless of physical form or characteristics that is created or obtained by a contractor through the storage, processing, or communication of Government data. This does not include a contractor's business records (e.g., financial records, legal records, etc.) or data such as operating procedures, software coding, or algorithms that are not uniquely applied to the Government data.

"Spillage" means a security incident that results in the transfer of classified or controlled unclassified information onto an information system not accredited (i.e., authorized) for the appropriate security level.

239.7602 Policy and responsibilities.

239.7602-1 General.

(a) Generally, the DoD shall acquire cloud computing services using commercial terms and conditions that are consistent with Federal law, and an agency's needs, including those requirements specified in this subpart. Some examples of commercial terms and conditions are license agreements, End User License Agreements (EULAs), Terms of Service (TOS), or other similar legal instruments or agreements. Contracting officers shall incorporate any applicable service provider terms and conditions into the contract by attachment or other appropriate mechanism. Contracting officers shall

carefully review commercial terms and conditions and consult counsel to ensure these are consistent with Federal law, regulation, and the agency's needs.

(b) The contracting officer shall only award a contract to acquire cloud computing services from any cloud service provider (e.g., contractor or subcontractor, regardless of tier) that has been granted provisional authorization by Defense Information Systems Agency, at the level appropriate to the requirement, to provide the relevant cloud computing services in accordance with the Cloud Computing Security Requirements Guide (SRG) (version in effect at the time the solicitation is issued or as authorized by the contracting officer) found at http://iase.disa.mil/cloud_security/Pages/index.aspx. Provisional authorization processes are also available at the SRG website. Cloud service providers with existing provisional authorization are listed at http://www.disa.mil/Computing/Cloud-Services/Cloud-Support.

(c) When contracting for cloud computing services, the contracting officer shall ensure the following information is provided in the purchase request—

(1) Government data and Government-related data descriptions;

(2) Data ownership, licensing, delivery and disposition instructions specific to the relevant types of Government data and Government-related data (e.g., CDRL, SOW task, line item). Disposition instructions shall provide for the transition of data in commercially available, or open and non-proprietary format (and for permanent records, in accordance with disposition guidance issued by National Archives and Record Administration);

(3) Appropriate limitations and requirements regarding contractor and third-party access to, and use and disclosure of, Government data and Government-related data;

(4) Appropriate requirements to support applicable inspection, audit, investigation, or other similar authorized activities specific to the relevant types of Government data and Government-related data, or specific to the type of cloud computing services being acquired;

(5) Appropriate requirements to support and cooperate with applicable system-wide search and access capabilities for inspections, audits, investigations, litigation, eDiscovery, records management associated with the agency's retention schedules, and similar authorized activities; and

(6) A requirement for the contractor to coordinate with the responsible Government official designated by the contracting officer, in accordance with agency procedures, to respond to any spillage occurring in connection with the cloud computing services being provided.

239.7602-2 Required storage of data within the United States or outlying areas.

(a) Cloud computing service providers are required to maintain within the 50 states, the District of Columbia, or outlying areas of the United States, all Government data that is not physically located on DoD premises, unless otherwise authorized by the authorizing official, as described in DoD Instruction 8510.01, Risk

Management Framework (RMF) for DoD Information Technology (IT), in accordance with the SRG.

(b) The contracting officer shall provide written notification to the contractor when the contractor is permitted to maintain Government data at a location outside the 50 States, the District of Columbia, and outlying areas of the United States.

239.7603 Solicitation provision and contract clause.

(a) Use the provision at 252.239-7009, Representation of Use of Cloud Computing, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial item, for information technology services.

(b) Use the clause at 252.239-7010, Cloud Computing Services, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial item, for information technology services.