

**SUBPART 222.74—RESTRICTIONS ON THE USE OF MANDATORY  
ARBITRATION AGREEMENTS**

*(Added May 19, 2010)*

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ARBITRATION AGREEMENTS**

**222.7400 Scope of subpart.**

This subpart implements section 8116 of the Defense Appropriations Act for Fiscal Year 2010 (Pub. L. 111-118).

**222.7401 Policy.**

(a) Departments and agencies are prohibited from using funds appropriated or otherwise made available by the Fiscal Year 2010 Defense Appropriations Act (Pub. L. 111-118) for any contract (including task or delivery orders and bilateral modifications adding new work) in excess of \$1 million, unless the contractor agrees not to—

(1) Enter into any agreement with any of its employees or independent contractors that requires, as a condition of employment, that the employee or independent contractor agree to resolve through arbitration—

(i) Any claim under title VII of the Civil Rights Act of 1964; or

(ii) Any tort related to or arising out of sexual assault or harassment, including assault and battery, intentional infliction of emotional distress, false imprisonment, or negligent hiring, supervision, or retention; or

(2) Take any action to enforce any provision of an existing agreement with an employee or independent contractor that mandates that the employee or independent contractor resolve through arbitration—

(i) Any claim under title VII of the Civil Rights Act of 1964; or

(ii) Any tort related to or arising out of sexual assault or harassment, including assault and battery, intentional infliction of emotional distress, false imprisonment, or negligent hiring, supervision, or retention.

(b) After June 17, 2010, no funds appropriated or otherwise made available by the Fiscal Year 2010 Defense Appropriations Act (Pub. L. 111-118) may be expended unless the contractor certifies that it requires each covered subcontractor to agree not to enter into, and not to take any action to enforce, any provision of any agreement, as described in paragraph (a) of this section, with respect to any employee or independent contractor performing work related to such subcontract.

**222.7402 Applicability.**

This requirement does not apply to the acquisition of commercial items.

**222.7403 Waiver.**

The Secretary of Defense may waive the applicability of paragraphs (a) or (b) of 222.7401, in accordance with PGI 222.7403, to a particular contract or subcontract,

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if the Secretary or the Deputy Secretary personally determines that the waiver is necessary to avoid harm to national security interests of the United States, and that the term of the contract or subcontract is not longer than necessary to avoid such harm. The Secretary of Defense shall transmit the determination to Congress and simultaneously publish it in the Federal Register, not less than 15 business days before the contract or subcontract addressed in the determination may be awarded.

#### **222.7404 Contract clause.**

Use the clause at 252.222-7006, Restrictions on the Use of Mandatory Arbitration Agreements, in all solicitations and contracts valued in excess of \$1 million utilizing funds appropriated or otherwise made available by the Fiscal Year 2010 Defense Appropriations Act (Pub. L. 111-118), except in contracts for the acquisition of commercial items, including commercially available off-the-shelf items.