Subpart 12.1 - Acquisition of Commercial Products and Commercial Services

Parent topic: Part 12 - Acquisition of Commercial Products and Commercial Services

12.101 Policy.

The *head of the agency shall*—

(a) Conduct *market research* to determine whether *commercial products*, *commercial services*, or *nondevelopmental items* are available that could meet the agency's requirements;

(b) Acquire *commercial products*, *commercial services*, or *nondevelopmental items* when they are available to meet the needs of the agency; and

(c) Require prime contractors and subcontractors at all tiers to incorporate, to the maximum extent practicable, *commercial products*, *commercial services*, or *nondevelopmental items* as *components* of items supplied to the agency.

12.102 Applicability.

(a) This part *shall* be used for the *acquisition* of *supplies* or services that meet the definitions of "*commercial product*" or "*commercial service*" at 2.101.

(b) *Contracting officers shall* use the policies in this part in conjunction with the policies and procedures for *solicitation*, evaluation and award prescribed in part 13, *Simplified Acquisition Procedures*; part 14, Sealed Bidding; or part 15, *Contracting* by Negotiation, as appropriate for the particular *acquisition*.

(c) Contracts for the *acquisition* of *commercial products* or *commercial services* are subject to the policies in other parts of the FAR. When a policy in another part of the FAR is inconsistent with a policy in this part, this part 12 *shall* take precedence for the *acquisition* of *commercial products* or *commercial services*.

(d) The definition of *commercial product* uses the phrase "purposes other than governmental purposes". These purposes are those that are not unique to a government.

(e) This part *shall* not apply to the *acquisition* of *commercial products* or *commercial services*—

(1) At or below the *micro-purchase threshold*;

(2) Using the Standard Form 44 (see 13.306);

(3) Using the imprest fund (see 13.305);

(4) Using the Governmentwide commercial purchase card as a method of purchase rather than only as a method of payment; or

(5) Directly from another *Federal agency*.

(f)

(1) *Contracting officers may* treat any *acquisition* of *supplies* or services that, as determined by the *head of the agency*, are to be used to facilitate defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack, as an *acquisition* of *commercial products* or *commercial services*.

(2) A contract in an amount greater than $25 million that is awarded on a sole source basis for a product or service treated as a *commercial product* or *commercial service* under paragraph (f)(1) of this section but does not meet the definition of a *commercial product* or *commercial service* at 2.101 *shall* not be exempt from—

(i) Cost accounting standards (see subpart 30.2); or

(ii) *Certified cost or pricing data* requirements (see 15.403).

12.103 Commercially available off-the-shelf (COTS) items.

Commercially available off-the-shelf (COTS) items are defined in 2.101. Unless indicated otherwise, all of the policies that apply to *commercial products* also apply to COTS items. Section 12.505 lists the laws that are not applicable to COTS (in addition to 12.503 and 12.504).