Federal Acquisition Regulation

Parent topic: Subchapter B - Competition and Acquisition Planning

Part 5 - Publicizing Contract Actions

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5.701 Scope.

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5.703 Definition.

5.704 Publicizing preaward.

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5.000 Scope of part.

This part prescribes policies and procedures for publicizing contract opportunities and award information.

5.001 Definition.

*Contract action*, as used in this part, means an action resulting in a contract, as defined in subpart 2.1, including actions for additional *supplies* or services outside the existing contract scope, but not including actions that are within the scope and under the terms of the existing contract, such as *contract modifications* issued pursuant to the Changes clause, or funding and other administrative changes.
5.002 Policy.

*Contracting officers must* publicize *contract actions* in order to:

(a) Increase competition;

(b) Broaden industry participation in meeting Government requirements; and

(c) Assist small business concerns, *veteran-owned small business concerns*, *service-disabled veteran-owned small business concerns*, *HUBZone small business concerns*, *small disadvantaged business concerns*, and *women-owned small business concerns* in obtaining contracts and subcontracts.

5.003 Governmentwide point of entry.

For any requirement in the FAR to publish a notice, the *contracting officer must* transmit the notices to the *GPE*.

**Part 6 - Competition Requirements**

6.000 Scope of part.

6.001 Applicability.

6.002 Limitations.

6.003 [Reserved]

Subpart 6.1 - Full and Open Competition

6.100 Scope of subpart.

6.101 Policy.

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6.303 Justifications.

6.303-1 Requirements.

6.303-2 Content.

6.304 Approval of the justification.

6.305 Availability of the justification.

Subpart 6.4 - Sealed Bidding and Competitive Proposals

6.401 Sealed bidding and competitive proposals.

Subpart 6.5 - Advocates for Competition

6.501 Requirement.

6.502 Duties and responsibilities.

6.000 Scope of part.
This part prescribes policies and procedures to promote full and open competition in the acquisition process and to provide for full and open competition, full and open competition after exclusion of sources, other than full and open competition, and advocates for competition. This part does not deal with the results of competition (e.g., adequate price competition), that are addressed in other parts (e.g., part 15).

6.001 Applicability.

This part applies to all acquisitions except—

(a) Contracts awarded using the simplified acquisition procedures of part 13 (but see 13.501 for requirements pertaining to sole source acquisitions of commercial products or commercial services, under subpart 13.5);

(b) Contracts awarded using contracting procedures (other than those addressed in this part) that are expressly authorized by statute;

(c) Contract modifications, that are within the scope of the contract, including the exercise of priced options that were evaluated as part of the original competition (see 17.207(f));

(d) Orders placed under requirements contracts or definite-quantity contracts;

(e) Orders placed under indefinite-quantity contracts that were entered into pursuant to this part when-

(1) The contract was awarded under subpart 6.1 or 6.2 and all responsible sources were realistically permitted to compete for the requirements contained in the order; or

(2) The contract was awarded under subpart 6.3 and the required justification and approval adequately covers the requirements contained in the order; or

(f) Orders placed against task order and delivery order contracts entered into pursuant to subpart 16.5.

6.002 Limitations.

No agency shall contract for supplies or services from another agency for the purpose of avoiding the requirements of this part.

6.003 [Reserved]

Part 7 - Acquisition Planning

7.000 Scope of part.

Subpart 7.1 - Acquisition Plans
7.101 Definitions.

7.102 Policy.

7.103 Agency-head responsibilities.

7.104 General procedures.

7.105 Contents of written acquisition plans.

7.106 Additional requirements for major systems.

7.107 Additional requirements for acquisitions involving consolidation, bundling, or substantial bundling.

7.107-1 General.

7.107-2 Consolidation.

7.107-3 Bundling.

7.107-4 Substantial bundling.

7.107-5 Notifications.

7.107-6 Solicitation provision.

7.108 Additional requirements for telecommuting.

Subpart 7.2 - Planning for the Purchase of Supplies in Economic Quantities

7.200 Scope of subpart.

7.201 [Reserved]

7.202 Policy.

7.203 Solicitation provision.

7.204 Responsibilities of contracting officers.

Subpart 7.3 - Contractor Versus Government Performance

7.300 [Reserved]

7.301 Definitions.

7.302 Policy.

7.303 [Reserved]

7.304 [Reserved]

7.305 Solicitation provisions and contract clause.
Subpart 7.4 - Equipment Acquisition

7.400 Scope of subpart.
7.401 Acquisition considerations.
7.402 Acquisition methods.
7.403 General Services Administration assistance and OMB guidance.
7.404 Contract clause.

Subpart 7.5 - Inherently Governmental Functions

7.500 Scope of subpart.
7.501 [Reserved]
7.502 Applicability.
7.503 Policy.

7.000 Scope of part.

This part prescribes policies and procedures for-

(a) Developing acquisition plans;

(b) Determining whether to use commercial or Government resources for acquisition of supplies or services;

(c) Deciding whether it is more economical to lease equipment rather than purchase it; and

(d) Determining whether functions are inherently governmental.

Part 8 - Required Sources of Supplies and Services

8.000 Scope of part.
8.001 General.
8.002 Priorities for use of mandatory Government sources.
8.003 Use of other mandatory sources.
8.004 Use of other sources.
8.005 Contract clause.

Subpart 8.1 - Excess Personal Property
8.101 [Reserved]

8.102 Policy.

8.103 Information on available excess personal property.

8.104 Obtaining nonreportable property.

Subpart 8.2 - [Reserved]

Subpart 8.3 - [Reserved]

Subpart 8.4 - Federal Supply Schedules

8.401 Definitions.

8.402 General.

8.403 Applicability.

8.404 Use of Federal Supply Schedules.

8.405 Ordering procedures for Federal Supply Schedules.

8.405-1 Ordering procedures for supplies, and services not requiring a statement of work.

8.405-2 Ordering procedures for services requiring a statement of work.

8.405-3 Blanket purchase agreements (BPAs).

8.405-4 Price reductions.

8.405-5 Small business.

8.405-6 Limiting sources.

8.405-7 Payment.

8.406 Ordering activity responsibilities.

8.406-1 Order placement.

8.406-2 Inspection and acceptance.

8.406-3 Remedies for nonconformance.

8.406-4 Termination for cause.

8.406-5 Termination for the Government’s convenience.

8.406-6 Disputes.

8.406-7 Contractor Performance Evaluation.

Subpart 8.5 - Acquisition of Helium
Subpart 8.6 - Acquisition from Federal Prison Industries, Inc.

8.601 General.

8.602 Policy.

8.603 Purchase priorities.

8.604 Waivers.

8.605 Exceptions.

8.606 Evaluating FPI performance.

8.607 Performance as a subcontractor.

8.608 Protection of classified and sensitive information.

Subpart 8.7 - Acquisition from Nonprofit Agencies Employing People Who Are Blind or Severely Disabled

8.700 Scope of subpart.

8.701 Definitions.

8.702 General.

8.703 Procurement List.

8.704 Purchase priorities.

8.705 Procedures.

8.705-1 General.

8.705-2 Direct-order process.

8.705-3 Allocation process.

8.705-4 Compliance with orders.

8.706 Purchase exceptions.
8.707 Prices.
8.708 Shipping.
8.709 Payments.
8.710 Quality of merchandise.
8.711 Quality complaints.
8.712 Specification changes.
8.713 Optional acquisition of supplies and services.
8.714 Communications with the central nonprofit agencies and the Committee.
8.715 Replacement commodities.
8.716 Change-of-name and successor in interest procedures.

Subpart 8.8 - Acquisition of Printing and Related Supplies
8.800 Scope of subpart.
8.801 Definitions.
8.802 Policy.

Subpart 8.9 - [Reserved]

Subpart 8.10 - [Reserved]

Subpart 8.11 - Leasing of Motor Vehicles
8.1100 Scope of subpart.
8.1101 Definitions.
8.1102 Presolicitation requirements.
8.1103 Contract requirements.
8.1104 Contract clauses.

8.000 Scope of part.

This part deals with prioritizing sources of supplies and services for use by the Government.

8.001 General.

Regardless of the source of supplies or services to be acquired, information technology acquisitions shall comply with capital planning and investment control requirements in 40 U.S.C.11312 and OMB
8.002 Priorities for use of mandatory Government sources.

(a) Except as required by 8.003, or as otherwise provided by law, agencies shall satisfy requirements for supplies and services from or through the mandatory government sources and publications listed below in descending order of priority:

(1) Supplies.

(i) Inventories of the requiring agency.

(ii) Excess from other agencies (see subpart 8.1).

(iii) Federal Prison Industries, Inc. (see subpart 8.6).

(iv) Supplies which are on the Procurement List maintained by the Committee for Purchase From People Who Are Blind or Severely Disabled (see subpart 8.7).

(v) Wholesale supply sources, such as stock programs of the General Services Administration (GSA) (see 41 CFR 101-26.3), the Defense Logistics Agency (see 41 CFR 101-26.6), the Department of Veterans Affairs (see 41 CFR 101-26.704), and military inventory control points.

(2) Services. Services that are on the Procurement List maintained by the Committee for Purchase From People Who Are Blind or Severely Disabled (see subpart 8.7).

(b) Sources other than those listed in paragraph (a) of this section may be used as prescribed in 41 CFR 101-26.301 and in an unusual and compelling urgency as prescribed in 6.302-2 and in 41 CFR 101-25.101-5.

(c) The statutory obligation for Government agencies to satisfy their requirements for supplies or services available from the Committee for Purchase From People Who Are Blind or Severely Disabled also applies when contractors purchase the supplies or services for Government use.

8.003 Use of other mandatory sources.

Agencies shall satisfy requirements for the following supplies or services from or through specified sources, as applicable:

(a) Public utility services (see part 41).

(b) Printing and related supplies (see subpart 8.8).

(c) Leased motor vehicles (see subpart 8.11).

(d) Strategic and critical materials (e.g., metals and ores) from inventories exceeding Defense National Stockpile requirements (detailed information is available from the DLA Strategic Materials, 8725 John J. Kingman Rd., Suite 3229, Fort Belvoir, VA 22060-6223).

(e) Helium (see subpart 8.5-Acquisition of Helium).
8.004 Use of other sources.

If an agency is unable to satisfy requirements for supplies and services from the mandatory sources listed in 8.002 and 8.003, agencies are encouraged to consider satisfying requirements from or through the non-mandatory sources listed in paragraph (a) of this section (not listed in any order of priority) before considering the non-mandatory source listed in paragraph (b) of this section. When satisfying requirements from non-mandatory sources, see 7.105(b) and part 19 regarding consideration of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business (including 8(a) participants), and women-owned small business concerns.

(a)

(1) Supplies. Federal Supply Schedules, Governmentwide acquisition contracts, multi-agency contracts, and any other procurement instruments intended for use by multiple agencies, including blanket purchase agreements (BPAs) under Federal Supply Schedule contracts (e.g., Federal Strategic Sourcing Initiative (FSSI) agreements accessible at http://www.gsa.gov/fssi (see also 5.601)).

(2) Services. Agencies are encouraged to consider Federal Prison Industries, Inc., as well as the sources listed in paragraph (a)(1) of this section (see subpart 8.6).

(b) Commercial sources (including educational and non-profit institutions) in the open market.

8.005 Contract clause.

Insert the clause at 52.208-9, Contractor Use of Mandatory Sources of Supply and Services, in solicitations and contracts that require a contractor to provide supplies or services for Government use that are on the Procurement List maintained by the Committee for Purchase From People Who Are Blind or Severely Disabled. The contracting officer shall identify in the contract schedule the supplies or services that shall be purchased from a mandatory source and the specific source.

Subpart 8.2 - [Reserved]

Subpart 8.3 - [Reserved]

Subpart 8.9 - [Reserved]

Subpart 8.10 - [Reserved]

Part 9 - Contractor Qualifications

9.000 Scope of part.
Subpart 9.1 - Responsible Prospective Contractors

9.100 Scope of subpart.

9.101 Definitions.

9.102 Applicability.

9.103 Policy.

9.104 Standards.

9.104-1 General standards.

9.104-2 Special standards.

9.104-3 Application of standards.

9.104-4 Subcontractor responsibility.

9.104-5 Representation and certifications regarding responsibility matters.

9.104-6 Federal Awardee Performance and Integrity Information System.

9.104-7 Solicitation provisions and contract clauses.

9.105 Procedures.

9.105-1 Obtaining information.

9.105-2 Determinations and documentation.

9.105-3 Disclosure of preaward information.

9.106 Preaward surveys.

9.106-1 Conditions for preaward surveys.

9.106-2 Requests for preaward surveys.

9.106-3 Interagency preaward surveys.

9.106-4 Reports.

9.107 Surveys of nonprofit agencies participating in the AbilityOne Program.

9.108 Prohibition on contracting with inverted domestic corporations.

9.108-1 Definitions.


9.108-3 Representation by the offeror.

9.108-4 Waiver.

9.109 Prohibition on contracting with an entity involved in activities that violate arms control treaties or agreements with the United States.

9.109-1 Authority.


9.109-3 Exception.

9.109-4 Certification by the offeror.


9.110 Reserve Officer Training Corps and military recruiting on campus.

9.110-1 Definitions.

9.110-2 Authority.

9.110-3 Policy.

9.110-4 Procedures.

9.110-5 Contract clause.

Subpart 9.2 - Qualifications Requirements

9.200 Scope of subpart.

9.201 Definitions.

9.202 Policy.

9.203 QPL’s, QML’s, and QBL’s.

9.204 Responsibilities for establishment of a qualification requirement.

9.205 Opportunity for qualification before award.

9.206 Acquisitions subject to qualification requirements.

9.206-1 General.


9.206-3 Competition.

9.207 Changes in status regarding qualification requirements.

Subpart 9.3 - First Article Testing and Approval

9.301 Definition.
9.302 General.
9.303 Use.
9.304 Exceptions.
9.305 Risk.
9.306 Solicitation requirements.
9.307 Government administration procedures.
9.308 Contract clauses.
  9.308-1 Testing performed by the contractor.
  9.308-2 Testing performed by the Government.

Subpart 9.4 - Debarment, Suspension, and Ineligibility

9.400 Scope of subpart.
9.401 Applicability.
9.402 Policy.
9.403 Definitions.
9.404 Exclusions in the System for Award Management.
9.405 Effect of listing.
  9.405-1 Continuation of current contracts.
  9.405-2 Restrictions on subcontracting.
9.406 Debarment.
9.407 Suspension.
Subpart 9.4 - Period of Suspension


9.408 [Reserved]

9.409 Contract clause.

Subpart 9.5 - Organizational and Consultant Conflicts of Interest

9.500 Scope of subpart.

9.501 Definition.

9.502 Applicability.

9.503 Waiver.

9.504 Contracting officer responsibilities.

9.505 General rules.

9.505-1 Providing systems engineering and technical direction.

9.505-2 Preparing specifications or work statements.

9.505-3 Providing evaluation services.

9.505-4 Obtaining access to proprietary information.

9.506 Procedures.

9.507 Solicitation provisions and contract clause.

9.507-1 Solicitation provisions.


9.508 Examples.

Subpart 9.6 - Contractor Team Arrangements

9.601 Definition.

9.602 General.

9.603 Policy.

9.604 Limitations.

Subpart 9.7 - Defense Production Pools and Research and Development Pools

9.701 Definition.

9.702 Contracting with pools.
9.703 Contracting with individual pool members.

9.000 Scope of part.

This part prescribes policies, standards, and procedures pertaining to prospective contractors’ responsibility; debarment, suspension, and ineligibility; qualified products; first article testing and approval; contractor team arrangements; defense production pools and research and development pools; and organizational conflicts of interest.

Part 10 - Market Research

10.000 Scope of part.

10.001 Policy.

(a) Agencies shall—

(1) Ensure that legitimate needs are identified and trade-offs evaluated to acquire items that meet those needs;

(2) Conduct market research appropriate to the circumstances-

(i) Before developing new requirements documents for an acquisition by that agency;

(ii) Before soliciting offers for acquisitions with an estimated value in excess of the simplified acquisition threshold;

(iii) Before soliciting offers for acquisitions with an estimated value less than the simplified acquisition threshold when adequate information is not available and the circumstances justify its cost;

(iv) Before soliciting offers for acquisitions that could lead to consolidation or bundling (15 U.S.C. 644(e)(2)(A)) and 15 U.S.C. 657q);
(v) Before awarding a task or delivery order under an indefinite-delivery/indefinite-quantity (ID/IQ) contract (e.g., GWACs, MACs) for other than a commercial product or commercial service in excess of the simplified acquisition threshold (10 U.S.C. 2377(c)); and

(vi) On an ongoing basis, take advantage (to the maximum extent practicable) of commercially available market research methods in order to effectively identify the capabilities of small businesses and new entrants into Federal contracting that are available in the marketplace for meeting the requirements of the agency in furtherance of-

(A) A contingency operation or defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack; and

(B) Disaster relief to include debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities (See 26.205); and

(3) Use the results of market research to–

(i) Determine if sources capable of satisfying the agency’s requirements exist;

(ii) Determine if commercial products or commercial services, or, to the extent commercial products suitable to meet the agency’s needs are not available, nondevelopmental items are available that-

(A) Meet the agency’s requirements;

(B) Could be modified to meet the agency’s requirements; or

(C) Could meet the agency’s requirements if those requirements were modified to a reasonable extent;

(iii) Determine the extent to which commercial products, or nondevelopmental items could be incorporated at the component level;

(iv) Determine the practices of firms engaged in producing, distributing, and supporting commercial products or commercial services, such as type of contract, terms for warranties, buyer financing, maintenance and packaging, and marking;

(v) Ensure maximum practicable use of recovered materials (see subpart 23.4) and promote energy conservation and efficiency;

(vi) Determine whether consolidation is necessary and justified (see 7.107-2) (15 U.S.C. 657q);

(vii) Determine whether bundling is necessary and justified (see 7.107-3) (15 U.S.C. 644(e)(2)(A));

(viii) Determine whether the acquisition should utilize any of the small business programs in accordance with part 19; and

(ix) Assess the availability of supplies or services that meet all or part of the applicable information and communication technology accessibility standards at 36 CFR 1194.1 (see subpart 39.2).

(b) When conducting market research, agencies should not request potential sources to submit
more than the minimum information necessary.

(c) If an agency contemplates consolidation or bundling, the agency—

(1) When performing market research, should consult with the agency small business specialist and the local Small Business Administration procurement center representative (PCR). If a PCR is not assigned, see 19.402(a); and

(2) Shall notify any affected incumbent small business concerns of the Government’s intention to bundle the requirement and how small business concerns may contact the appropriate Small Business Administration procurement center representative (see 7.107-5(a)).

(d) See 10.003 for the requirement for a prime contractor to perform market research in contracts in excess of $6 million, other than contracts for the acquisition of commercial products or commercial services (section 826 of Pub. L. 110-181).


(a) Acquisitions begin with a description of the Government’s needs stated in terms sufficient to allow conduct of market research.

(b) Market research is then conducted to determine if commercial products, commercial services, or nondevelopmental items are available to meet the Government’s needs or could be modified to meet the Government’s needs.

(1) The extent of market research will vary, depending on such factors as urgency, estimated dollar value, complexity, and past experience. The contracting officer may use market research conducted within 18 months before the award of any task or delivery order if the information is still current, accurate, and relevant. Market research involves obtaining information specific to the product or service being acquired and should include-

(i) Whether the Government’s needs can be met by-

(A) Products or services of a type customarily available in the commercial marketplace;

(B) Products or services of a type customarily available in the commercial marketplace with modifications; or

(C) Products or services used exclusively for governmental purposes;

(ii) Customary practices regarding customizing, modifying or tailoring of products or services to meet customer needs and associated costs;

(iii) Customary practices, including warranty, buyer financing, discounts, contract type considering the nature and risk associated with the requirement, etc., under which commercial sales of the products or services are made;

(iv) The requirements of any laws and regulations unique to the item being acquired;

(v) The availability of items that contain recovered materials and items that are energy efficient;
(vi) The distribution and support capabilities of potential suppliers, including alternative arrangements and cost estimates; and

(vii) Whether the Government’s needs can be met by small business concerns that will likely submit a competitive offer at fair market prices (see part 19).

(2) Techniques for conducting market research may include any or all of the following:

(i) Contacting knowledgeable individuals in Government and industry regarding market capabilities to meet requirements.

(ii) Reviewing the results of recent market research undertaken to meet similar or identical requirements.

(iii) Publishing formal requests for information in appropriate technical or scientific journals or business publications.

(iv) Querying the Governmentwide database of contracts and other procurement instruments intended for use by multiple agencies available at https://www.contractdirectory.gov/contractdirectory and other Government and commercial databases that provide information relevant to agency acquisitions.

(v) Participating in interactive, on-line communication among industry, acquisition personnel, and customers.

(vi) Obtaining source lists of similar items from other contracting activities or agencies, trade associations or other sources.

(vii) Reviewing catalogs and other generally available product literature published by manufacturers, distributors, and dealers or available on-line.

(viii) Conducting interchange meetings or holding presolicitation conferences to involve potential offerors early in the acquisition process.

(ix) Reviewing systems such as the System for Award Management, the Federal Procurement Data System, and the Small Business Administration's Dynamic Small Business Search.

(c) If market research indicates commercial products, commercial services, or nondevelopmental items might not be available to satisfy agency needs, agencies shall reevaluate the need in accordance with 10.001(a)(3)(ii) and determine whether the need can be restated to permit commercial products, commercial services, or nondevelopmental items to satisfy the agency’s needs.

(d)

(1) If market research establishes that the Government’s need may be met by a type of product or service customarily available in the commercial marketplace that would meet the definition of a commercial product or commercial service at subpart 2.1, the contracting officer shall solicit and award any resultant contract using the policies and procedures in part 12.

(2) If market research establishes that the Government’s need cannot be met by a type of item or service customarily available in the marketplace, part 12 shall not be used. When publication of the notice at 5.201 is required, the contracting officer shall include a notice to
prospective offerors that the Government does not intend to use part 12 for the acquisition.

(e) The head of the agency shall document the results of market research in a manner appropriate to the size and complexity of the acquisition.

10.003 Contract clause.

The contracting officer shall insert the clause at 52.210-1, Market Research, in solicitations and contracts over $6 million, other than solicitations and contracts for the acquisition of commercial products or commercial services.

Part 11 - Describing Agency Needs

11.000 Scope of part.

11.001 Definitions.

11.002 Policy.

Subpart 11.1 - Selecting and Developing Requirements Documents

11.101 Order of precedence for requirements documents.

11.102 Standardization program.

11.103 Market acceptance.

11.104 Use of brand name or equal purchase descriptions.

11.105 Items peculiar to one manufacturer.

11.106 Purchase descriptions for service contracts.

11.107 Solicitation provision.

Subpart 11.2 - Using and Maintaining Requirements Documents

11.201 Identification and availability of specifications.

11.202 Maintenance of standardization documents.

11.203 Customer satisfaction.

11.204 Solicitation provisions and contract clauses.

Subpart 11.3 - Acceptable Material

11.301 Definitions.

11.302 Policy.
11.303 Special requirements for paper.

11.304 Contract clause.

**Subpart 11.4 - Delivery or Performance Schedules**

11.401 General.

11.402 Factors to consider in establishing schedules.

11.403 Supplies or services.

11.404 Contract clauses.

**Subpart 11.5 - Liquidated Damages**

11.500 Scope.

11.501 Policy.

11.502 Procedures.

11.503 Contract clauses.

**Subpart 11.6 - Priorities and Allocations**

11.600 Scope of subpart.

11.601 Definitions.

11.602 General.

11.603 Procedures.

11.604 Solicitation provision and contract clause.

**Subpart 11.7 - Variation in Quantity**

11.701 Supply contracts.

11.702 Construction contracts.

11.703 Contract clauses.

**Subpart 11.8 - Testing**

11.801 Preaward in-use evaluation.

**11.000 Scope of part.**

This part prescribes policies and procedures for describing agency needs.
11.001 Definitions.

As used in this part-

*Reconditioned* means restored to the original normal operating condition by readjustments and material replacement.

*Remanufactured* means factory rebuilt to original specifications.

11.002 Policy.

(a) In fulfilling requirements of 10 U.S.C.2305(a)(1), 10 U.S.C.2377, 41 U.S.C.3306(a), and 41 U.S.C.3307, agencies shall-

1. Specify needs using *market research* in a manner designed to-

   (i) Promote full and open competition (see part 6), or maximum practicable competition when using *simplified acquisition procedures*, with due regard to the nature of the *supplies* or services to be acquired; and

   (ii) Only include restrictive provisions or conditions to the extent necessary to satisfy the needs of the agency or as authorized by law.

2. To the maximum extent practicable, ensure that *acquisition* officials-

   (i) State requirements with respect to an *acquisition* of *supplies* or services in terms of-

      (A) Functions to be performed;

      (B) Performance required; or

      (C) Essential physical characteristics;

   (ii) Define requirements in terms that enable and encourage *offerors* to supply *commercial products* or *commercial services* or, to the extent that *commercial products* suitable to meet the agency’s needs are not available, *nondevelopmental items*, in response to the agency *solicitations*;

   (iii) Provide *offerors* of *commercial products*, *commercial services*, and *nondevelopmental items* an opportunity to compete in any *acquisition* to fill such requirements;

   (iv) Require prime contractors and subcontractors at all tiers under the agency contracts to incorporate *commercial products*, *commercial services*, or *nondevelopmental items* as *components* of items supplied to the agency; and

   (v) Modify requirements in appropriate cases to ensure that the requirements can be met by *commercial products* or *commercial services* or, to the extent that *commercial products* suitable to meet the agency’s needs are not available, *nondevelopmental items*.

(b) The Metric Conversion Act of 1975, as amended by the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C.205a, *et seq.*), designates the metric system of measurement as the preferred system of weights and measures for United States trade and commerce, and it requires that each
agency use the metric system of measurement in its *acquisitions*, except to the extent that such use is impracticable or is likely to cause significant inefficiencies or loss of markets to *United States* firms. Requiring activities are responsible for establishing guidance implementing this policy in formulating their requirements for *acquisitions*.

(c) To the extent practicable and consistent with *subpart 9.5*, potential *offerors should* be given an opportunity to comment on agency requirements or to recommend application and tailoring of requirements documents and alternative approaches. Requiring agencies *should* apply specifications, standards, and related documents initially for guidance only, making final decisions on the application and tailoring of these documents as a product of the design and development process. Requiring agencies *should* not dictate detailed design solutions prematurely (see 7.101 and 7.105(a)(8)).

(d) 

(1) When agencies acquire *products* and services, various statutes and executive orders (identified in part 23) require consideration of *sustainable acquisition* (see subpart 23.1) including-

(i) Energy-efficient and water-efficient services and *products* (including *products* containing *energy-efficient standby power devices*) (subpart 23.2);

(ii) *Products* and services that utilize *renewable energy technologies* (subpart 23.2);

(iii) *Products* containing *recovered materials* (subpart 23.4);

(iv) *Biobased products* (subpart 23.4);

(v) *Environmentally preferable products* and services, including EPEAT®-registered electronic *products* and non-toxic or low-toxic alternatives (subpart 23.7); and

(vi) Non-ozone-depleting substances, and *products* and services that minimize or eliminate, when feasible, the use, release, or emission of *high global warming potential hydrofluorocarbons*, such as by using reclaimed instead of virgin *hydrofluorocarbons* (subpart 23.8).

(2) Unless an exception applies and is documented by the requiring activity, *Executive agencies shall*, to the maximum practicable, require the use of *products* and services listed in paragraph (d)(1) of this section when-

(i) Developing, reviewing, or revising Federal and military specifications, product descriptions (including commercial item descriptions) and standards;

(ii) Describing Government requirements for *products* and services; and

(iii) Developing source-selection factors.

(e) Some or all of the performance levels or performance specifications in a *solicitation* may be identified as targets rather than as fixed or minimum requirements.

(f) In accordance with section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d), the *contracting officer shall* obtain from the requiring activity the requirement documents, which *must* identify—

(1) The needs of current and future users with disabilities to determine how-
Users with disabilities will perform the functions supported by the information and communication technology (ICT);

The ICT will be developed, installed, configured and maintained to support users with disabilities;

The applicable ICT accessibility standards (see subpart 39.2); and

Any ICT accessibility standards that cannot be met due to an exception or an exemption for any component or portion of the product (see 7.105(b)(5)(iv), 39.204, and 39.205).

Unless the agency Chief Information Officer waives the requirement, when acquiring information technology using Internet Protocol, the requirements documents must include reference to the appropriate technical capabilities defined in the USGv6 Profile (NIST Special Publication 500-267) and the corresponding declarations of conformance defined in the USGv6 Test Program. The applicability of IPv6 to agency networks, infrastructure, and applications specific to individual acquisitions will be in accordance with the agency’s Enterprise Architecture (see OMB Memorandum M-05-22 dated August 2, 2005).

Agencies shall not include in a solicitation a requirement that prohibits an offeror from permitting its employees to telecommute unless the contracting officer executes a written determination in accordance with FAR 7.108(a).

Part 12 - Acquisition of Commercial Products and Commercial Services

12.000 Scope of part.

12.001 Definition.

Subpart 12.1 - Acquisition of Commercial Products and Commercial Services

12.101 Policy.

12.102 Applicability.

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

Subpart 12.2 - Special Requirements for the Acquisition of Commercial Products and Commercial Services

12.201 General.

12.202 Market research and description of agency need.

12.203 Procedures for solicitation, evaluation, and award.

12.204 Solicitation/contract form.

12.205 Offers.
12.206 Use of past performance.
12.207 Contract type.
12.208 Contract quality assurance.
12.209 Determination of price reasonableness.
12.210 Contract financing.
12.211 Technical data.
12.212 Computer software.
12.213 Other commercial practices.
12.214 Cost Accounting Standards.
12.215 Notification of overpayment.
12.216 Unenforceability of unauthorized obligations.

Subpart 12.3 - Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Products and Commercial Services

12.300 Scope of subpart.
12.301 Solicitation provisions and contract clauses for the acquisition of commercial products and commercial services.
12.302 Tailoring of provisions and clauses for the acquisition of commercial products and commercial services.
12.303 Contract format.

Subpart 12.4 - Unique Requirements Regarding Terms and Conditions for Commercial Products and Commercial Services

12.401 General.
12.402 Acceptance.
12.403 Termination.
12.404 Warranties.

Subpart 12.5 - Applicability of Certain Laws to the Acquisition of Commercial Products, Commercial Services and Commercially Available Off-the-Shelf Items

12.500 Scope of subpart.
12.501 Applicability.
12.502 Procedures.
12.503 Applicability of certain laws to Executive agency contracts for the acquisition of commercial products and commercial services.

12.504 Applicability of certain laws to subcontracts for the acquisition of commercial products and commercial services.

12.505 Applicability of certain laws to contracts for the acquisition of COTS items.

Subpart 12.6 - Streamlined Procedures for Evaluation and Solicitation for Commercial Products and Commercial Services

12.601 General.

12.602 Streamlined evaluation of offers.

12.603 Streamlined solicitation for commercial products or commercial services.

12.000 Scope of part.

This part prescribes policies and procedures unique to the acquisition of commercial products, including commercial components, and commercial services. It implements the Federal Government’s preference for the acquisition of commercial products and commercial services contained in 41 U.S.C. 1906, 1907, and 3307 and 10 U.S.C. 2375-2377 by establishing acquisition policies more closely resembling those of the commercial marketplace and encouraging the acquisition of commercial products and commercial services.

12.001 Definition.

Subcontract, as used in this part, includes, but is not limited to, a transfer of commercial products or commercial services between divisions, subsidiaries, or affiliates of a contractor or subcontractor.