

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

Parent topic: [Part 12 - Acquisition of Commercial Products and Commercial Services](#)

12.300 Scope of subpart.

This subpart establishes provisions and clauses to be used when acquiring *commercial products* and *commercial services*.

12.301 Solicitation provisions and contract clauses for the acquisition of commercial products and commercial services.

(a) In accordance with [41 U.S.C. 3307](#), contracts for the *acquisition of commercial products or commercial services shall*, to the maximum extent practicable, include only those clauses—

(1) Required to implement provisions of law or executive orders applicable to the *acquisition of commercial products or commercial services*; or

(2) Determined to be consistent with customary commercial practice.

(b) Insert the following provisions in *solicitations* for the *acquisition of commercial products or commercial services*, and clauses in *solicitations* and contracts for the *acquisition of commercial products or commercial services*:

(1) *The provision at [52.212-1](#), Instructions to Offerors-Commercial Products and Commercial Services*. This provision provides a single, streamlined set of instructions to be used when soliciting offers for *commercial products or commercial services* and is incorporated in the *solicitation* by reference (see Block 27 a, [SF 1449](#)). The *contracting officer* may tailor these instructions or provide additional instructions tailored to the specific *acquisition* in accordance with [12.302](#).

(2) *The provision at [52.212-3](#), Offeror Representations and Certifications-Commercial Products and Commercial Services*. This provision provides a single, consolidated list of representations and certifications for the *acquisition of commercial products or commercial services* and is attached to the *solicitation* for *offerors* to complete. This provision *may not* be tailored except in accordance with [subpart 1.4](#). Use the provision with its *Alternate I* in *solicitations* issued by DoD, NASA, or the Coast Guard.

(3) *The clause at [52.212-4](#), Contract Terms and Conditions-Commercial Products and Commercial Services*. This clause includes terms and conditions which are, to the maximum extent practicable, consistent with customary commercial practices and is incorporated in the *solicitation* and contract

by reference (see Block 27, [SF 1449](#)). Use this clause with its *Alternate I* when a time-and-materials or labor-hour contract will be awarded. The *contracting officer* may tailor this clause in accordance with [12.302](#).

(4) *The clause at 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Products and Commercial Services*. This clause incorporates by reference only those clauses required to implement provisions of law or Executive orders applicable to the *acquisition of commercial products or commercial services*. The *contracting officer* shall attach this clause to the *solicitation* and contract and, using the appropriate clause prescriptions, indicate which, if any, of the additional clauses cited in [52.212-5\(b\)](#) or (c) are applicable to the specific *acquisition*. Some of the clauses require fill-in; the fill-in language *should* be inserted as directed by [52.104\(d\)](#). When cost information is obtained pursuant to [part 15](#) to establish the reasonableness of prices for *commercial products or commercial services*, the *contracting officer* shall insert the clauses prescribed for this purpose in an addendum to the *solicitation* and contract. This clause *may* not be tailored.

(i) Use the clause with its *Alternate I* when the *head of the agency* has waived the examination of records by the Comptroller General in accordance with [25.1001](#).

(ii)

(A) If the *acquisition* will use funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), the *contracting officer* shall use the clause with its *Alternate II*.

(B)

(1) In the case of a bilateral *contract modification* that will use funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, the *contracting officer* shall specify applicability of *Alternate II* to that modification.

(2) In the case of a task- or delivery-order contract in which not all orders will use funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, the *contracting officer* shall specify the task or *delivery orders* to which *Alternate II* applies.

(C) The *contracting officer* may not use *Alternate I* when *Alternate II* applies.

(c) When the use of evaluation factors is appropriate, the *contracting officer* may—

(1) Insert the provision at [52.212-2](#), *Evaluation-Commercial Products and Commercial Services*, in *solicitations for commercial products or commercial services* (see [12.602](#)); or

(2) Include a similar provision containing all evaluation factors required by [13.106](#), [subpart 14.2](#) or [subpart 15.3](#), as an addendum (see [12.302\(d\)](#)).

(d) Other required provisions and clauses. Notwithstanding prescriptions contained elsewhere in the FAR, when acquiring *commercial products or commercial services*, *contracting officers* shall be required to use only those provisions and clauses prescribed in this part. The provisions and clauses prescribed in this part shall be revised, as necessary, to reflect the applicability of statutes and executive orders to the *acquisition of commercial products or commercial services*.

- (1) Insert the provision at 52.204-7, *System for Award Management*, as prescribed in 4.1105(a).
- (2) Insert the clause at 52.204-13, *System for Award Management Maintenance*, as prescribed in 4.1105(b).
- (3) Insert the provision at 52.204-16, *Commercial and Government Entity Code Reporting*, as prescribed in 4.1804(a).
- (4) Insert the clause at 52.204-18, *Commercial and Government Entity Code Maintenance*, as prescribed in 4.1804(c).
- (5) Insert the clause at 52.204-21, *Basic Safeguarding of Covered Contractor Information Systems*, in *solicitations* and contracts (except for *acquisitions* of COTS items), as prescribed in 4.1903.
- (6) Insert the provision at 52.204-24, *Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment*, as prescribed in 4.2105(a).
- (7) Insert the provision at 52.207-6, *Solicitation of Offers from Small Business Concerns and Small Business Teaming Arrangements or Joint Ventures (Multiple-Award Contracts)*, as prescribed at 7.107-6.
- (8) Insert the provision at 52.209-7, *Information Regarding Responsibility Matters*, as prescribed in 9.104-7(b).
- (9) Insert the provision at 52.209-12, *Certification Regarding Tax Matters*, as prescribed at 9.104-7(e).
- (10) Insert the provision at 52.222-56, *Certification Regarding Trafficking in Persons Compliance Plan*, in *solicitations* as prescribed at 22.1705(b).
- (11) Insert the clause at 52.225-19, *Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission outside the United States*, as prescribed in 25.301-4.
- (12) Insert the provision at 52.229-11, *Tax on Certain Foreign Procurements—Notice and Representation*, in *solicitations* as prescribed in 29.402-3(a). The representation in the provision at 52.229-11 is not in the *System for Award Management*.
- (13) Insert the clause at 52.229-13, *Taxes—Foreign Contracts in Afghanistan*, as prescribed in 29.402-4(a).
- (14) Insert the clause at 52.229-14, *Taxes—Foreign Contracts in Afghanistan (North Atlantic Treaty Organization Status of Forces Agreement)*, as prescribed in 29.402-4(b).

(e) *Discretionary use of FAR provisions and clauses.* The *contracting officer* may include in *solicitations* and contracts by addendum other FAR provisions and clauses when their use is consistent with the limitations contained in 12.302. For example:

- (1) The *contracting officer* may use the provision at 52.201-1, *Acquisition 360: Voluntary Survey*, as prescribed in 1.102-3(b).
- (2) The *contracting officer* may include appropriate clauses when an indefinite-delivery type of contract will be used. The clauses prescribed at 16.506 may be used for this purpose.
- (3) The *contracting officer* may include appropriate provisions and clauses when the use of *options* is

in the Government's interest. The provisions and clauses prescribed in [17.208](#) may be used for this purpose. If the provision at [52.212-2](#) is used, paragraph (b) provides for the evaluation of *options*.

(4) The *contracting officer* may use the provisions and clauses contained in [part 23](#) regarding the use of *products* containing *recovered materials* and *biobased products* when appropriate for the item being acquired.

(5) When setting aside under the Stafford Act ([subpart 26.2](#)), include the provision at [52.226-3](#), Disaster or *Emergency Area Representation*, in the *solicitation*. The representation in this provision is not in the *System for Award Management*.

(f) Agencies may supplement the provisions and clauses prescribed in this part (to require use of additional provisions and clauses) only as necessary to reflect agency unique statutes applicable to the *acquisition* of *commercial products* or *commercial services* or as may be approved by the agency *senior procurement executive*, or the individual responsible for representing the agency on the FAR Council, without power of delegation.

12.302 Tailoring of provisions and clauses for the acquisition of commercial products and commercial services.

(a) *General*. The provisions and clauses established in this subpart are intended to address, to the maximum extent practicable, commercial market practices for a wide range of potential Government *acquisitions* of *commercial products* and *commercial services*. However, because of the broad range of *commercial products* and *commercial services* acquired by the Government, variations in commercial practices, and the relative volume of the Government's *acquisitions* in the specific market, *contracting officers* may, within the limitations of this subpart, and after conducting appropriate *market research*, tailor the provision at [52.212-1](#), Instructions to *Offerors-Commercial Products* and *Commercial Services*, and the clause at [52.212-4](#), Contract Terms and Conditions-*Commercial Products* and *Commercial Services*, to adapt to the market conditions for each *acquisition*.

(b) *Tailoring* [52.212-4](#), Contract Terms and Conditions-*Commercial Products* and *Commercial Services*. The following paragraphs of the clause at [52.212-4](#), Contract Terms and Conditions-*Commercial Products* and *Commercial Services*, implement statutory requirements and *shall* not be tailored—

- (1) Assignments;
- (2) Disputes;
- (3) Payment (except as provided in [subpart 32.11](#));
- (4) *Invoice*;
- (5) Other compliances;
- (6) Compliance with laws unique to Government contracts; and
- (7) Unauthorized obligations.

(c) *Tailoring inconsistent with customary commercial practice.* The contracting officer shall not tailor any clause or otherwise include any additional terms or conditions in a *solicitation* or contract for *commercial products* or *commercial services* in a manner that is inconsistent with customary commercial practice for the item being acquired unless a waiver is approved in accordance with agency procedures. The request for waiver *must* describe the customary commercial practice found in the marketplace, support the need to include a term or condition that is inconsistent with that practice and include a determination that use of the customary commercial practice is inconsistent with the needs of the Government. A waiver *may* be requested for an individual or class of contracts for that specific item.

(d) Tailoring *shall* be by addenda to the *solicitation* and contract. The *contracting officer shall* indicate in Block27 a of the [SF1449](#) if addenda are attached. These addenda *may* include, for example, a continuation of the schedule of *supplies/services* to be acquired from blocks 18 through 21 of the [SF1449](#); a continuation of the description of the *supplies/services* being acquired; further elaboration of any other item(s) on the [SF1449](#); any other terms or conditions necessary for the performance of the proposed contract (such as *options*, ordering procedures for indefinite-delivery type contracts, *warranties*, contract financing arrangements, etc.).

12.303 Contract format.

Solicitations and contracts for the *acquisition of commercial products* or *commercial services* prepared using this [part 12](#) shall be assembled, to the maximum extent practicable, using the following format:

(a) [Standard Form \(SF\) 1449](#);

(b) Continuation of any block from [SF 1449](#), such as-

(1) Block 10 if an incentive subcontracting clause is used (the *contracting officer shall* indicate the applicable percentage);

(2) Block18 B for remittance address;

(3) Block19 for *line item numbers*;

(4) Block20 for schedule of *supplies/services*; or

(5) Block25 for accounting data;

(c) *Contract clauses-*

(1) [52.212-4](#), Contract Terms and Conditions-*Commercial Products* and *Commercial Services*, by reference (see [SF 1449](#) block27 a);

(2) Any addendum to [52.212-4](#); and

(3) [52.212-5](#), Contract Terms and Conditions Required to Implement Statutes or Executive Orders-*Commercial Products* and *Commercial Services*.

(d) Any contract documents, exhibits or attachments; and

(e) *Solicitation* provisions-

(1) 52.212-1, *Instructions to Offerors-Commercial Products and Commercial Services*, by reference (see SF 1449, Block27 a);

(2) Any addendum to 52.212-1;

(3) 52.212-2, *Evaluation-Commercial Products and Commercial Services*, or other description of evaluation factors for award, if used; and

(4) 52.212-3, *Offeror Representations and Certifications-Commercial Products and Commercial Services*.