Subpart 212.2 - SPECIAL REQUIREMENTS FOR THE ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

Parent topic: Part 212 - ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

212.203 Procedures for solicitation, evaluation, and award.

(1) See 215.101-2-70 for the limitations and prohibitions on the use of the lowest price technically acceptable source selection process, which are applicable to the acquisition of commercial products and commercial services.

(2) See 217.7801 for the prohibition on the use of reverse auctions for personal protective equipment and aviation critical safety items.

(3) See 204.7603 for procedures on the required use of Supplier Performance Risk System risk assessments as part of the award decision.

(4) See subpart 212.70 for acquisitions resulting from a commercial solutions opening.

(5) See 215.101-71 and 225.7024 for the acquisition of fuel for overseas contingency operations.

(6) See the procedures at PGI 205.102-70 for use of the Solicitation Module within the Procurement Integrated Enterprise Environment.

212.207 Contract type.

(b) In accordance with section 805 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181), use of time-and-materials and labor-hour contracts for the acquisition of commercial services is authorized only for the following:

(i) Services acquired for support of a commercial product, as described in paragraph (1) of the definition of “commercial service” at FAR 2.101 (41 U.S.C. 103(a)).

(ii) Emergency repair services.

(iii) Any other commercial services only to the extent that the head of the agency concerned approves a written determination by the contracting officer that—

(A) The services to be acquired are commercial services as defined in paragraph (2) of the definition of “commercial service” at FAR 2.101 (41 U.S.C. 103(a));

(B) If the services to be acquired are subject to FAR 15.403-1(c)(3)(ii), the offeror of the services has submitted sufficient information in accordance with that subsection;

(C) Such services are commonly sold to the general public through use of time-and-materials or

labor-hour contracts; and

(D) The use of a time-and-materials or labor-hour contract type is in the best interest of the Government.

212.209 Determination of price reasonableness.

(a) In accordance with 10 U.S.C. 3453(d), agencies shall conduct or obtain market research to support the determination of the reasonableness of price for commercial products and commercial services contained in any bid or offer submitted in response to an agency solicitation. To the extent necessary to support such market research, the contracting officer—

(1) In the case of major weapon systems, for subsystems of major weapon systems and components and spare parts of major weapon systems and of subsystems of major weapon systems acquired as commercial items in accordance with subpart 234.70, shall use information submitted under 234.7002(e); and

(2) In the case of other items, may require the offeror to submit other relevant information

(b) If the contracting officer determines that the information obtained through market research pursuant to paragraph (a) of this section, is insufficient to determine the reasonableness of price, the contracting officer shall consider information submitted by the offeror of recent purchase prices paid by the Government and commercial customers for the same or similar commercial products or commercial services under comparable terms and conditions in establishing price reasonableness on a subsequent purchase if the contracting officer is satisfied that the prices previously paid remain a valid reference for comparison. In assessing whether the prices previously paid remain a valid reference for comparison, the contracting officer shall consider the totality of other relevant factors such as the time elapsed since the prior purchase and any differences in the quantities purchased (10 U.S.C. 3703(e)).

(c) If the contracting officer determines that the offeror cannot provide sufficient information as described in paragraph (b) of this section to determine the reasonableness of price, the contracting officer should request the offeror to submit information on—

(1) Prices paid for the same or similar items sold under different terms and conditions;

(2) Prices paid for similar levels of work or effort on related products or services;

(3) Prices paid for alternative solutions or approaches; and

(4) Other relevant information that can serve as the basis for determining the reasonableness of price.

(d) Nothing in this section shall be construed to preclude the contracting officer from requiring the contractor to supply information that is sufficient to determine the reasonableness of price, regardless of whether or not the contractor was required to provide such information in connection with any earlier procurement. If the contracting officer determines that the pricing information submitted is not sufficient to determine the reasonableness of price, the contracting officer may request other relevant information regarding the basis for price or cost, including uncertified cost data such as labor costs, material costs, and other direct and indirect costs.

212.211 Technical data.

The DoD policy for acquiring technical data for commercial products or commercial services is at 227.7102 .

212.212 Computer software.

(1) Departments and agencies shall identify and evaluate, at all stages of the acquisition process (including concept refinement, concept decision, and technology development), opportunities for the use of commercial computer software and other non-developmental software in accordance with Section 803 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417).

(2) See Subpart 208.74 when acquiring commercial software or software maintenance. See 227.7202 for policy on the acquisition of commercial computer software and commercial computer software documentation.

212.270 Major weapon systems as commercial products.

The DoD policy for acquiring major weapon systems as commercial products is in subpart 234.70.

212.271 Limitation on acquisition of right-hand drive passenger sedans.

10 U.S.C. 2253(a)(2) limits the authority to purchase right-hand drive passenger sedans to a cost of not more than $55,000per vehicle.

212.272 Preference for certain commercial products and commercial services.

(a) As required by section 855 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114-92), for requirements relating to the acquisition of commercial information technology products and services, see 239.101 .

(b)(1) As required by section 876 of the National Defense Authorization Act of Fiscal Year 2017 (Pub. L. 114-328), a contracting officer may not enter into a contract above the simplified acquisition threshold for facilities-related services, knowledge-based services (except engineering services), medical services, or transportation services that are not commercial services unless the appropriate official specified in paragraph (b)(2) of this section determines in writing that no commercial services are suitable to meet the agency’s needs as provided in 10 U.S.C. 3453(c)(2).

(2) The following officials are authorized to make the determination specified in paragraph (b)(1) of this section:

(i) For contracts above $10 million, the head of the contracting activity, the combatant commander of the combatant command concerned, or the Under Secretary of Defense for Acquisition and Sustainment (as applicable).

(ii) For contracts in an amount above the simplified acquisition threshold and at or below $10 million, the contracting officer.