SUBPART 12.3 – SOLICITATION PROVISIONS AND CONTRACT CLAUSES FOR THE ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

(Revised May 17, 2018 through PROCLTR 2018-07)

Parent topic: PART 12 – ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

12.301 Solicitation provisions and contract clauses for acquisition(s) of commercial products and commercial services .

(e) *Discretionary use of FAR provisions and clauses*. Pursuant to FAR 12.301 and 12.302, contracting officers must use their authority to tailor the standard FAR Part 12 terms and conditions as necessary to meet the Government's needs. (See 12.208 Contract quality assurance. concerning how to tailor FAR 52.212-4(a), Inspection/ Acceptance.) Subject to the procedures in FAR and DLAD 12.302, the contracting officer may include other DLAD provisions, clauses and procurement notes; and if necessary, make accompanying changes to the provision FAR 52.212-1 and clause FAR 52.212-4.

(f) The DLA SPE has approved supplementation of the provisions and clauses in FAR Part 12 to require use of the following provisions, clauses, and procurement notes, when applicable:

(S-90) Reserved.

(S-91) Procurement notes C01, Superseded Part Numbered Items, as prescribed in 11.391 Part numbered items.(a); L04, Offers for Part Numbered Items, as prescribed in 11.391 Part numbered items.(b); and M06, Evaluation of Offers of Alternate Product for Part Numbered Items, as prescribed in 11.391 Part numbered items.(b).

(S-92) Provisions and clauses below, as prescribed in FAR 16.203-4(a), 16.506(a)-(f), and 17.208(c):

(i) FAR 52.216-2, Economic Price Adjustment – Standard Supplies;

(ii) FAR 52.216-18, Ordering;

(iii) FAR 52.216-19, Order Limitations;

(iv) FAR 52.216-20, Definite Quantity;

(v) FAR 52.216-21, Requirements;

(vi) FAR 52.216-22, Indefinite Quantity;

(vii) FAR 52.216-27, Single or Multiple Awards; and

(viii) FAR 52.217-5, Evaluation of Options.

(S-93) Provision FAR 52.215-20, Requirements for Certified Cost or Pricing Data and Data Other Than Cost or Pricing Data, as prescribed in FAR 15.408(l); and clause 52.215-21, Requirements for Certified Cost or Pricing Data and Data Other Than Cost or Pricing Data – Modifications, as prescribed in FAR 15.408(m).

(S-94) Procurement note C02, Manufacturing Phase Out or Discontinuation of Production, Diminishing Sources, and Obsolete Materials or Components, as prescribed in 11.9001 Notification of product phase–out.(a).

(S-95) Procurement note C03, Contractor Retention of Supply Chain Traceability Documentation, as prescribed in 4.703 Policy.(a).

(S-96) Provision DFARS 252.209-7002, Disclosure of Ownership or Control by a Foreign Government, as prescribed in DFARS 209.104-70.

(S-97) Procurement note H04, Sourcing for Critical Safety Items as prescribed in 9.270-3 Policy.(a).

(S-98) Procurement note E05, Product Verification Testing, as prescribed in 46.292.

(S-99) Procurement note E06, Inspection and Acceptance at Source, as prescribed in 46.402.

(S-100) Clause FAR 52.211-5, Material Requirements, as prescribed in FAR 11.304; procurement note C04, Unused Former Government Surplus Property, as prescribed in 11.390 Unused former Government surplus property.(a); and procurement note M05, Evaluation Factor for Unused Former Government Surplus Property, as prescribed in 11.390 Unused former Government surplus property.(b)(1).

(S-101) Procurement notes H01, Qualified Products List (QPL) for Federal Supply Class (FSC) 5935 Connector Assemblies and Contacts, as prescribed in 9.202 Policy.(a)(2)(i); H02, Component Qualified Products List (QPL)/Qualified Manufacturers List (QML), as prescribed in 9.202 Policy.(a)(2)(v); M01, Qualified Suppliers for Federal Supply Class (FSC) 5961 Semiconductors and Hardware Devices and FSC 5962 Electronic Microcircuits, as prescribed in 9.202 Policy.(a)(2)(ii); and M03, Qualified Suppliers List for Manufacturers (QSLM)/Qualified Suppliers List for Distributors (QSLD) for Troop Support, as prescribed in 9.202 Policy.(a)(2)(iv).

(S-102) Procurement notes L01, Electronic Award Transmission; and L02, Electronic Order Transmission, as prescribed in 4.502 Policy.(b).

(S-103) Procurement note C05, Changes to Key Personnel, as prescribed in 37.103 Contracting officer responsibility.(S-90).

(S-104) Reserved.

(S-105) Clause FAR 52.232-17, Interest, as prescribed in FAR 32.611.

(S-106) Clause FAR 52.242-13, Bankruptcy, as prescribed in FAR 42.903.

(S-107) Clause FAR 52.242-15, Stop Work Order, as prescribed in FAR 42.1305(b)(1).

(S-108) Provision 52.233-9001, Disputes – Agreement to Use Alternative Dispute Resolution (ADR),

as prescribed in 33.214 Alternative dispute resolution (ADR).; and procurement note L06, Agency Protests, as prescribed in 33.103 Protests to the agency.(d)(4).

(S-109) Procurement note L07, Site Visit Instructions, as prescribed in 37.110 Solicitation provisions and contract clauses.(a).

(S-110) Procurement notes E01, Supplemental First Article Exhibit Disposition – Contractor Maintained, and E02, Supplemental First Article Exhibit Disposition – Government Maintained, as prescribed in 9.306 Solicitation requirements.(h); procurement note E08, First Article Testing Requirements H03, Supplemental First Article Testing Requirements, as prescribed in 9.306 Solicitation requirements.(S-90); and procurement note M04, Evaluation Factor for Government Testing of First Articles, as prescribed in 9.306 Solicitation requirements.(i).

(S-111) Procurement note L08, Use of Supplier Performance Risk System (SPRS) in Past Performance Evaluations, as prescribed in 15.303 Responsibilities.(c)(3)(i).

(S-112) Procurement notes L09, Reverse Auction, as prescribed in 15.407-90 Reverse Auction.(c); and L10, Competing Individual Delivery Orders Through Reverse Auctions, as prescribed in 15.407-90 Reverse Auction.(d).

(S-113) Clauses FAR 52.246-11, Higher-Level Contract Quality Requirement, as prescribed in 46.311; and 52.246-2, Inspection of Supplies – Fixed Price, as prescribed in 46.302.

(S-114) Procurement notes E03, Production Lot Testing – Contractor, as prescribed in 46.291(a); and E04, Production Lot Testing – Government, as prescribed in 46.291(b).

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

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(a) Terms and conditions that can reasonably be presumed to have application in both Government and commercial markets (e.g., shipping instructions for extreme climates) may be included in solicitations and contracts for commercial product and commercial services without conducting additional market research.

(b) *Tailoring 52.212-4, Contract Terms and Conditions – Commercial Products and Commeical Services.*

(3) When fast payment procedures are authorized (see Subpart SUBPART 12.3 – SOLICITATION PROVISIONS AND CONTRACT CLAUSES FOR THE ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES), contracting officers may tailor the paragraph at FAR 52.212-4 (i), Payment, as necessary, to reflect fast payment procedure, which are authorized when specified conditions are met pursuant to the Prompt Payment Act and OMB Circular A-125.

(c) *Tailoring inconsistent with customary commercial practice.* Approval authority for waivers under FAR 12.302(c) is delegated to one level above the contracting officer.

(S-90) Contracting officers may delete from solicitations and contracts the portions of the provision

at FAR 52.212-3 and the clause at FAR 52.212-5 that do not apply and replace them with applicable language, if any.

(S-91) Contracting officers must use their authority to tailor the standard FAR Part 12 terms and conditions as necessary to meet the Government's needs (see 12.301 Solicitation provisions and contract clauses for acquisition(s) of commercial products and commercial services .(e)).