

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](#)).