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.

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