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.).

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