

Part 512 - Acquisition of Commercial Items

[Subpart 512.2 - Special Requirements for the Acquisition of Commercial Items](#)

[512.201 General.](#)

[512.203 Procedures for solicitation, evaluation, and award.](#)

[512.212 Computer software.](#)

[512.216 Unenforceability of unauthorized obligations.](#)

[Subpart 512.3 - Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items](#)

[512.301 Solicitation provisions and contract clauses for the acquisition of commercial items.](#)

[512.302 Tailoring of provisions and clauses for the acquisition of commercial items.](#)

Parent topic: [General Services Administration Acquisition Manual](#)

Subpart 512.2 - Special Requirements for the Acquisition of Commercial Items

512.201 General.

See [subpart 504.70](#) for guidance on identifying and mitigating supply chain risks.

512.203 Procedures for solicitation, evaluation, and award.

(a) *Federal Supply Schedule contracts.* For Federal Supply Schedule contracts, the contracting officer shall use the policies in FAR 12 and this [part 512](#) in conjunction with the policies and procedures in FAR 38 and [part 538](#). See , Use of Bid Samples, if applicable.

(b) *Deregulated/Competitive Acquisitions for Natural Gas and Electricity.* For deregulated/competitive acquisitions, the contracting officer shall use policies and procedures in FAR 12 and this [part 512](#) in conjunction with the policies and procedures in FAR 41.202 (a) and (b), the review requirements of FAR 41, and GSAM [part 541](#), as applicable.

(c) *Construction as a commercial item.* The provisions and clauses in FAR 36 and GSAM [part 536](#) address the fundamental aspects of construction contracting. FAR 36 and GSAM [part 536](#) apply well-established commercial principles that are designed to result in an equitable distribution of risk between the Government and its contractors. The contracting officer should consider the following when contemplating a construction acquisition as a commercial item—

- (1) FAR 12, as currently promulgated, should rarely be used for new construction

acquisitions or non-routine alteration and repair services.

(2) FAR 12 and GSAM [part 512](#) may be used in limited circumstances involving construction contracting, primarily for routine alteration and repair services as well as for the acquisition of commercial construction materials and associated ancillary services. It may be appropriate to use FAR 12 and GSAM [part 512](#) for routine projects such as painting or carpeting, simple hanging of drywall, everyday electrical or plumbing work, and similar noncomplex services, as well as for purchases of commercial construction material and associated ancillary services.

(3) Whether a construction acquisition is conducted under FAR 36 or FAR 12, the contracting officer must adhere to the policies of FAR Subpart 22.4. This subpart addresses labor standards for contracts involving construction. Prior to making the determination that a construction acquisition can be conducted as a commercial item, the contracting officer should conduct appropriate market research in accordance with FAR 10 and GSAM .

(4) Construction contracts in excess of \$2,000 must include an applicable Construction Wage Rate Requirements statute wage determination found at <http://www.wdol.gov>. If the construction contract is greater than \$30,000, then the SF 1442 should be used in lieu of the SF 1449 and the bonds or alternate payment protection provisions of FAR 28.102-1, 28.102-2 and 28.102-3 apply.

(5) Construction contracts awarded as commercial item acquisitions should not exceed the prospectus threshold. The prospectus threshold as referenced in section 102-73.35 of the Federal Management Regulation (FMR) is posted at <http://www.gsa.gov/annualprospectusthreshold>.

(d) *Acquisitions with Commercial Supplier Agreements.* For acquisitions with commercial supplier agreements, the deviated commercial items clause [552.212-4](#) as prescribed in [512.301](#) addresses common commercial terms that conflict with Federal law and makes the terms unenforceable against the Government. The contracting officer is responsible for:

(1) Identifying objectionable terms not covered by the deviated clause;

(2) Negotiating terms as necessary to meet the Government's needs; and

(3) Documenting the full commercial supplier agreement, including referenced terms, as addenda to the contract (see [504.803\(b\)\(23\)](#)).

512.212 Computer software.

Common commercial supplier agreement terms that conflict with Federal law have been addressed in paragraphs (u) and (w) of the clause at [552.212-4](#).

512.216 Unenforceability of unauthorized obligations.

GSA has a deviation to FAR 12.216 for this section. For commercial contracts, supplier license agreements are referred to as commercial supplier agreements (defined in [502.101](#)). Paragraph (u) of clause [552.212-4](#) prevents violations of the Anti-Deficiency Act ([31 U.S.C. 1341](#)) for supplies or services acquired subject to a commercial supplier agreement.

Subpart 512.3 - Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

512.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(a) *Solicitation provisions and clauses.* Insert these provisions or clauses in solicitations or solicitations and contracts, respectively, in accordance with the instructions provided:

(1) [552.212-71](#), Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Items, when listed clauses apply. The clause provides for incorporation by reference of terms and conditions which are, to the maximum extent practicable, consistent with customary commercial practice. If necessary, tailor this clause.

(2) [552.212-72](#), Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to GSA Acquisitions of Commercial Items, when listed clauses apply. The clause provides for the incorporation by reference of terms and conditions required to implement provisions of law or executive orders that apply to commercial item acquisitions.

(b) *Discretionary use of GSAR provisions and clauses.* Consistent with the limitations contained in FAR 12.302(c), include in solicitations and contracts by addendum other GSAR provisions and clauses.

(c) *Use of additional provisions and clauses.* The Senior Procurement Executive must approve the use of a provision or clause that is either not:

- (1) Prescribed in the FAR or GSAR for use in contracts for commercial items.
- (2) Consistent with customary commercial practice.

(d) In solicitations issued in conjunction with the policy and procedures in FAR 14, Sealed Bidding; or FAR 15, Contracting by Negotiation, include the two notices in paragraphs (d)(1) and (d)(2) of this section, except that acquisitions of leasehold interests in real property, must include only the notice in paragraph (d)(1) of this section.

(1) The information collection requirements contained in this solicitation/contract are either required by regulation or approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act and assigned OMB Control No. 3090-0163.

(2) The General Services Administration's hours of operation are 8 a.m. to 4:30 p.m. Requests for preaward debriefings postmarked or otherwise submitted after 4:30 p.m. will be considered submitted the following business day. Requests for postaward debriefings delivered after 4:30 p.m. will be considered received and filed the following business day.

(e) GSA has a deviation to revise certain paragraphs of FAR clause 52.212-4. Use clause [552.212-4](#) Contract Terms and Conditions - Commercial Items (FAR DEVIATION), for acquisitions of commercial items in lieu of FAR 52.212-4 or 52.212-4 Alternate I. The contracting officer may tailor this clause in accordance with FAR 12.302 and GSAM [512.302](#).

512.302 Tailoring of provisions and clauses for the acquisition of commercial items.

(a) FAR 12.302(c) severely limits tailoring of clauses or otherwise including additional terms or conditions in commercial item contracts in a manner that is inconsistent with customary commercial practice. Such tailoring requires a waiver approved as follows:

(1) *Individual contract.* The contracting officer's supervisor approves the request.

(2) *Class of contracts.* The contracting director approves the request.

(b) Paragraph (w) of [552.212-4](#), Contract Terms and Conditions - Commercial Items (FAR DEVIATION), implements statutory requirements, clarifies the application of statutory requirements to common terms and conditions in commercial supplier agreements, sets forth a list of such terms and conditions that do not meet the Government's needs, and shall not be tailored.