

# Part 812 - Acquisition of Commercial Items

## Subpart 812.1—Acquisition of Commercial Items - General

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AUTHORITY: 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301-1.304.

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## **Subpart 812.1 - Acquisition of Commercial Items - General**

### **812.102 Applicability.**

(a) This part shall be used for the acquisition of supplies and services that meet the definition of commercial items at [FAR 2.101](#).

(b) Contracting officers shall use the policies in this part in conjunction with the policies and procedures for the solicitation, evaluation, and award prescribed in [Parts 813](#), Simplified Acquisition Procedures, [814](#), Sealed Bidding, and [815](#), Contracting by Negotiation, as appropriate for the particular acquisition.

(c) Contracts for the acquisition of commercial items are subject to the policies of other parts of this chapter. When a policy in another part of this chapter differs from a policy in this part, this Part 812 applies to the acquisition of commercial items.

[Deviation per [Class Deviation](#)—Veterans First Contracting Program (VFCP 2016), dated July 25, 2016, clarifies that when a policy in VAAR part 819 differs from a policy in VAAR part 812, the policies in VAAR subpart 819.70 will apply. This deviation is effective until incorporated in the VAAR or the VAAM or is otherwise rescinded.]

### **812.102-70 Applicability of Veterans preferences.**

Based on the authority under 38 U.S.C. 8127 and 8128, the Veterans First Contracting Program in subpart [819.70](#) applies to VA contracts under this part. When a policy in [FAR part 12](#) or VAAR part 812 is inconsistent with a policy in subpart [819.70](#), the policy in subpart [819.70](#) takes precedence.

## **Subpart 812.3 - Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items**

### **812.301 Solicitation provisions and contract clauses for the acquisition of commercial items.**

(a) Regardless of provisions in other parts of the VAAR, contracting officers may use, as appropriate, only those provisions and clauses referred to in this part when acquiring commercial

items.

(b) Contracting officers may use the provisions and clauses in the following VAAR sections, as appropriate and in accordance with the prescriptions for the provisions and clauses, in requests for quotations, solicitations, and contracts:

- (1) [852.203-70](#), Commercial advertising.
- (2) 852.203-71 , Display of Department of Veterans Affairs Hotline poster.
- (3) [852.207-70](#), Report of employment under commercial activities.
- (4) [852.209-70](#), Organizational conflicts of interest.
- (5) 852.211-71 , Special notice.
- (6) [852.211-72](#), Technical industry standards.
- (7) 852.211-73 , Brand name or equal.
- (8) 852.211-75 , Product specifications.
- (9) 852.214-70 , Caution to bidders-bid envelopes.
- (10) [852.214-71](#), Restrictions on alternate item(s).
- (11) [852.214-72](#), Alternate item(s).
- (12) [852.214-73](#), Alternate packaging and packing.
- (13) [852.214-74](#), Marking of Bid samples.
- (14) 852.216-70 , Estimated quantities.
- (15) [852.228-71](#), Indemnification and insurance.
- (16) 852.229-70 , Sales and use taxes.
- (17) [852.233-70](#), Protest content/alternative dispute resolution.
- (18) [852.233-71](#), Alternate protest procedure.
- (19) 852.237-7 , Indemnification and medical liability insurance.
- (20) [852.237-70](#), Contractor responsibilities.
- (21) 852.246-70 , Guarantee.
- (22) [852.246-71](#), Inspection.
- (23) [852.246-72](#), Frozen processed foods.
- (24) [852.252-70](#), Solicitation provisions or clauses incorporated by reference.
- (25) [852.270-1](#), Representatives of contracting officers.

- (26) 852.270-2 , Bread and bakery products-quantities.
- (27) 852.270-3 , Purchase of shellfish.
- (28) [852.271-72](#), Time spent by counselee in counseling process.
- (29) [852.271-73](#), Use and publication of counseling results.
- (30) [852.271-74](#), Inspection.
- (31) [852.271-75](#), Extension of contract period.

(c) When appropriate in accordance with the prescriptions for the clauses, the contracting officer may use the clauses in the following VAAR sections in requests for quotations, solicitations, and contracts for the acquisition of commercial items if the contracting officer determines that the use is consistent with customary commercial practices:

- (1) [852.211-70](#), Service data manuals.
- (2) 852.211-74 , Liquidated damages.

(d) All requests for quotations, solicitations, and contracts for commercial item services to be provided to beneficiaries must include the clause at 852.271-70 , Nondiscrimination in services provided to beneficiaries.

(e) Micro-purchases that use the procedures of this part in conjunction with [part 813](#) do not require clauses unless the contracting officer determines that the use of clauses serves the Government's best interest.

(f) When soliciting for health care resources that are commercial services or the use of medical equipment or space under the authority of [part 873](#) and 38 U.S.C. 8151-8153, the provisions and clauses in the following VAAR sections may be used in accordance with the prescriptions contained therein or elsewhere in the VAAR:

- (1) [852.273-70](#), Late offers.
- (2) [852.273-71](#), Alternative negotiation techniques.
- (3) [852.273-72](#), Alternative evaluation.
- (4) [852.273-73](#), Evaluation - health-care resources.
- (5) [852.273-74](#), Award without exchanges.

(38 U.S.C. 8151-8153)

### **812.302 Tailoring of provisions and clauses for the acquisition of commercial items.**

(a) Contracting officers may tailor solicitations to be inconsistent with customary commercial practice if they prepare and obtain approval of a waiver under paragraph [\(c\)](#) of this section.

(b) The contracting officer must prepare the waiver in accordance with [FAR 12.302\(c\)](#). The waiver is subject to the tailoring prohibitions in [FAR 12.302\(b\)\(1\) through 12.302\(b\)\(6\)](#).

(c) The contracting officer must obtain approval for waivers from the following:

(1) The Chief, Acquisition Assistance Division, for individual contracts.

(2) The Chief, Acquisition Program Management Division, for a class of contracts.

(d) Contracting officers must submit waiver requests no later than the solicitation issue date.

(e) Contracting officers must retain approved requests in the contract file.