

## 12.102 Applicability.

(a) This part shall be used for the acquisition of supplies or services that meet the definition of commercial items 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 items 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 items.

(d) The definition of commercial item in section [2.101](#) 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 items-

(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 items.

(2) A contract in an amount greater than \$20 million that is awarded on a sole source basis for an item or service treated as a commercial item under paragraph (f)(1) of this section but does not meet the definition of a commercial item as defined at FAR [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](#)).

(g)

(1) In accordance with [41 U.S.C. 2310](#), the contracting officer also may use [part 12](#) for any acquisition for services that does not meet the definition of commercial item in FAR [2.101](#), if the contract or task order-

(i) Is entered into on or before November 24, 2013;

(ii) Has a value of \$29.5 million or less;

(iii) Meets the definition of performance-based acquisition at FAR [2.101](#);

(iv) Uses a quality assurance surveillance plan;

(v) Includes performance incentives where appropriate;

(vi) Specifies a firm-fixed price for specific tasks to be performed or outcomes to be achieved;

and

(vii) Is awarded to an entity that provides similar services to the general public under terms and conditions similar to those in the contract or task order.

(2) In exercising the authority specified in paragraph (g)(1) of this section, the contracting officer may tailor paragraph (a) of the clause at FAR [52.212-4](#) as may be necessary to ensure the contract's remedies adequately protect the Government's interests.

**Parent topic:** [Subpart 12.1 - Acquisition of Commercial Items-General](#)