

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