

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

Parent topic: [Part 12 - Acquisition of Commercial Products and Commercial Services](#)

12.300 Scope of subpart.

This subpart establishes provisions and clauses to be used when acquiring *commercial products* and *commercial services*.

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).

(15) Insert the clause at 52.232-40, Providing Accelerated Payments to *Small Business Subcontractors*, as prescribed in 32.009-2.

(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 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.

(2) 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*.

(3) 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.

(4) 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.

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 Block 27 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.).

12.303 Contract format.

Solicitations and contracts for the acquisition of *commercial products* or *commercial services* prepared using this [part 12](#) shall be assembled, to the maximum extent practicable, using the following format:

(a) [Standard Form \(SF\) 1449](#);

(b) Continuation of any block from [SF 1449](#), such as-

(1) Block 10 if an incentive subcontracting clause is used (the contracting officer shall indicate the applicable percentage);

(2) Block 18 B for remittance address;

(3) Block 19 for *line item numbers*;

(4) Block 20 for schedule of supplies/services; or

(5) Block 25 for accounting data;

(c) *Contract clauses-*

(1) [52.212-4](#), Contract Terms and Conditions-*Commercial Products* and *Commercial Services*, by reference (see [SF 1449](#) block 27 a);

(2) Any addendum to [52.212-4](#); and

(3) [52.212-5](#), Contract Terms and Conditions Required to Implement Statutes or Executive

Orders-*Commercial Products and Commercial Services*.

(d) Any contract documents, exhibits or attachments; and

(e) Solicitation provisions-

(1) 52.212-1, Instructions to *Offerors-Commercial Products and Commercial Services*, by reference (see SF 1449, Block27 a);

(2) Any addendum to 52.212-1;

(3) 52.212-2, Evaluation-*Commercial Products and Commercial Services*, or other description of evaluation factors for award, if used; and

(4) 52.212-3, Offeror Representations and Certifications-*Commercial Products and Commercial Services*.