

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 Block27 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.).

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