

# Part 512 - Acquisition of Commercial Products and Commercial Services

Subpart 512.2 - Special Requirements for the Acquisition of Commercial Products and Commercial Services

512.201 General.

512.203 Procedures for solicitation, evaluation, and award.

512.204 Solicitation/contract form.

512.212 Computer software.

512.216 Unenforceability of unauthorized obligations (FAR DEVIATION).

Subpart 512.3 - Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Products and Commercial Services

512.301 Solicitation provisions and contract clauses for the acquisition of commercial products and commercial services (FAR DEVIATION).

512.302 Tailoring of provisions and clauses for the acquisition of commercial products and commercial services.

**Parent topic:** General Services Administration Acquisition Manual

## Subpart 512.2 - Special Requirements for the Acquisition of Commercial Products and Commercial Services

### 512.201 General.

See subpart 504.70 for guidance on identifying and mitigating supply chain risks.

### 512.203 Procedures for solicitation, evaluation, and award.

(a) *Federal Supply Schedule contracts.* For Federal Supply Schedule contracts, the contracting officer shall use the policies in FAR 12 and this part 512 in conjunction with the policies and procedures in FAR 38 and part 538. See , Use of Bid Samples, if applicable.

(b) *Deregulated/Competitive Acquisitions for Natural Gas and Electricity.* For deregulated/competitive acquisitions, the contracting officer shall use policies and procedures in FAR 12 and this part 512 in conjunction with the policies and procedures in FAR 41.202 (a) and (b), the review requirements of FAR 41, and GSAM part 541, as applicable.

(c) *Contracting for Construction.* The provisions and clauses in FAR 36 and GSAM part 536 address

the fundamental aspects of construction contracting. FAR 36 and GSAM [part 536](#) apply well-established commercial principles that are designed to result in an equitable distribution of risk between the Government and its contractors. The contracting officer should consider the following when contemplating a construction acquisition as a commercial purchase—

(1) FAR 12, as currently promulgated, should rarely be used for new construction acquisitions or non-routine alteration and repair services.

(2) FAR 12 and GSAM [part 512](#) may be used in limited circumstances involving construction contracting, primarily for routine alteration and repair services as well as for the acquisition of commercial construction materials and associated ancillary services. It may be appropriate to use FAR 12 and GSAM [part 512](#) for routine projects such as painting or carpeting, simple hanging of drywall, everyday electrical or plumbing work, and similar noncomplex services, as well as for purchases of commercial construction material and associated ancillary services.

(3) Whether a construction acquisition is conducted under FAR 36 or FAR 12, the contracting officer must adhere to the policies of FAR Subpart 22.4. This subpart addresses labor standards for contracts involving construction. Prior to making the determination that a construction acquisition can be conducted as a commercial purchase, the contracting officer should conduct appropriate market research in accordance with FAR 10 and GSAM [part 510](#).

(4) Construction contracts in excess of \$2,000 must include an applicable Construction Wage Rate Requirements statute wage determination found under the System for Award Management Wage Determinations at <https://www.sam.gov>. If the construction contract is greater than \$30,000, then the SF 1442 should be used in lieu of the SF 1449 and the bonds or alternate payment protection provisions of FAR 28.102-1, 28.102-2 and 28.102-3 apply.

(5) Construction contracts awarded as commercial acquisitions should not exceed the prospectus threshold. The prospectus threshold as referenced in section 102-73.35 of the Federal Management Regulation (FMR) is posted at <https://www.gsa.gov/annualprospectusthreshold>.

(d) *Acquisitions with Commercial Supplier Agreements.* For acquisitions with commercial supplier agreements, the deviated commercial products and commercial services clause [552.212-4](#) as prescribed in [512.301](#) addresses common commercial terms that conflict with Federal law and makes the terms unenforceable against the Government. The contracting officer is responsible for:

(1) Identifying objectionable terms not covered by the deviated clause;

(2) Negotiating terms as necessary to meet the Government's needs; and

(3) Documenting the full commercial supplier agreement, including referenced terms, as addenda to the contract (see [504.803\(b\)\(23\)](#)).

## **512.204 Solicitation/contract form.**

COs shall follow the INFORM procedures in section [515.370](#) for all applicable GSA acquisitions.

## **512.212 Computer software.**

Common commercial supplier agreement terms that conflict with Federal law have been addressed

in paragraphs (u) and (w) of the clause at [552.212-4](#).

## **512.216 Unenforceability of unauthorized obligations (FAR DEVIATION).**

GSA has a deviation to FAR 12.216 for this section. For commercial contracts, supplier license agreements are referred to as commercial supplier agreements (defined in [502.101](#)). Paragraph (u) of clause [552.212-4](#) prevents violations of the Anti-Deficiency Act ([31 U.S.C. 1341](#)) for supplies or services acquired subject to a commercial supplier agreement.

## **Subpart 512.3 - Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Products and Commercial Services**

### **512.301 Solicitation provisions and contract clauses for the acquisition of commercial products and commercial services (FAR DEVIATION).**

(a) *Contract clauses.* Insert the following clauses in solicitations and contracts for the acquisition of commercial products and commercial services:

(1) The clause at [552.212-71](#), Contract Terms and Conditions Applicable to GSA Acquisitions of Commercial Products and commercial services. This clause incorporates by reference only those clauses required to implement GSA requirements applicable to the acquisition of commercial products and commercial services. This clause may be tailored in accordance with FAR [12.302](#) and GSAM [512.302](#).

(2) The clause at [552.212-72](#), Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to GSA Acquisitions of Commercial Products and commercial services, when any listed clauses therein apply. This clause incorporates by reference only those clauses required to implement provisions of law or Executive orders that apply to commercial products and commercial services acquisitions.

(b) *FAR deviation.* GSA has a deviation from FAR [52.212-4](#) that allows use of the clause at [552.212-4](#) in lieu of the FAR clause at [52.212-4](#). Insert the clause at [552.212-4](#), Contract Terms and Conditions- Commercial Products and commercial services, in lieu of the FAR clause at [52.212-4](#). This clause may be tailored in accordance with FAR [12.302](#) and GSAM [512.302](#).

(c) *Discretionary use of GSAR provisions and clauses.* Consistent with the limitations contained in FAR [12.302](#) and [512.302](#), the contracting officer may include in solicitations and contracts by addendum other GSAR provisions and clauses.

(d) *Use of additional provisions and clauses.* The Senior Procurement Executive shall approve the use of a provision or clause that is either not:

(1) Prescribed in the FAR or GSAR for use in acquisitions for commercial products and commercial services.

(2) Consistent with customary commercial practice.

## **512.302 Tailoring of provisions and clauses for the acquisition of commercial products and commercial services.**

(a) FAR 12.302(c) severely limits tailoring of clauses or otherwise including additional terms or conditions in commercial products and commercial services solicitations or contracts in a manner that is inconsistent with customary commercial practice. Such tailoring requires a waiver approved as follows:

(1) *Individual contract*. The contracting officer's supervisor approves the request.

(2) *Class of contracts*. The contracting director approves the request.

(b) Paragraph (w) of [552.212-4](#), Contract Terms and Conditions - Commercial Products and Commercial Services (FAR DEVIATION), implements statutory requirements, clarifies the application of statutory requirements to common terms and conditions in commercial supplier agreements, sets forth a list of such terms and conditions that do not meet the Government's needs, and shall not be tailored.