

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

**Parent topic:** [Part 512 - 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.