

# 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).
- (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.

## **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*.