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~~12.603 Streamlined solicitation for commercial products or commercial services.~~

~~Parent topic: Federal Acquisition Regulation~~

~~12.000 Scope of part.~~

This part ~~prescribes~~[provides](#) policies and procedures ~~unique to~~ [streamline](#) the acquisition of commercial products, including ~~commercial components, and commercial services. It implements commercially available off the Federal Government's preference for the acquisition shelf (COTS) items (a subset of commercial products), and commercial services contained in accordance with~~ 41 U.S.C. 1906, 1907, and 3307 and 10 U.S.C. 3451-3453 ~~by establishing acquisition policies more closely resembling those of the commercial marketplace and encouraging the acquisition of commercial products and commercial services.~~

~~12.001 Definition.~~

Subcontract, as used in this part, includes, but is not limited to, a transfer of commercial products or commercial services between divisions, subsidiaries, or affiliates of a contractor or subcontractor.

~~Subpart 12.1—Acquisition of Commercial Products and Commercial Services~~

~~12.101 Policy.~~

~~The head of the agency shall—~~

~~(a) Conduct market research to determine whether commercial products, commercial services, or nondevelopmental items are available that could meet the agency's requirements;~~

~~(b) Acquire commercial products, commercial services, or nondevelopmental items when they are available to meet the needs of the agency; and~~

~~(c) Require prime contractors and subcontractors at all tiers to incorporate, to the maximum extent practicable, commercial products, commercial services, or nondevelopmental items as components of items supplied to the agency.~~

~~12.102 Applicability.~~

~~(a) This part shall be used for the acquisition of supplies or services that meet the definitions of “commercial product” or “commercial service” at 2.101.~~

~~(b) Contracting officers shall use the policies in this part in conjunction with the policies and [It also implements the simplified](#) procedures for solicitation, evaluation and award prescribed in part 13, Simplified Acquisition Procedures; part 14, Sealed Bidding; or part 15, Contracting by Negotiation, as appropriate for the particular acquisition [authorized by 41 U.S.C. 1901-1903, 1905, and 3305.](#)~~

~~(c) Contracts for the acquisition [12.001 Applicability.](#)~~

~~(a) [Acquisitions](#) of commercial products or commercial services are subject to the policies in other parts of the FAR. When a policy in another part of the FAR is inconsistent with a policy in this part, this part 12 shall take [This part takes](#) precedence for the acquisition of commercial products or commercial services [when there is an inconsistency.](#)~~

~~(d) The definition of commercial product uses the phrase “purposes other than governmental purposes”. These purposes are those that are not unique to a government [\(b\) Agencies.](#)~~

~~(e) This part shall not apply to the acquisition of commercial products or commercial services—~~

~~(1) At or below the micro-purchase threshold;~~

~~(2) Using the Standard Form 44 (see 13.306);~~

~~(3) Using the imprest fund (see 13.305);~~

~~(4) Using the Governmentwide commercial purchase card as a method of purchase rather than only as a method of payment; or~~

~~(5) Directly from another Federal agency.~~

~~(f)~~

~~(1) Contracting officers~~ may treat any acquisition of supplies or services that, as determined by the head of the agency, are to be used to facilitate defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack, as an acquisition of commercial products or commercial services. However, if the contract is awarded on a sole-source basis for an amount greater than \$25 million, the contract is not exempt from Cost Accounting Standards (CAS) (see 48 CFR chapter 99) or certified cost or pricing data requirements (see part 15).

~~(2) A contract in an amount greater than \$25 million~~(c) The \$9 million ceiling for the use of simplified procedures (see 12.201-1) is increased to \$15 million if the head of the agency determines that ~~is awarded on a sole-source basis for a product~~the supplies or services are to be used to—

(1) Support a contingency operation;

(2) service ~~Facilitate the defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack (including acquisitions treated as a commercial~~ product~~products or commercial service under services according to paragraph (b));~~

(3) Support a request from the Secretary of State or the Administrator of the United States Agency for International Development to facilitate provision of international disaster assistance; or

(4) ~~f(1) of~~ Support response to an emergency or major disaster.

(d) Do not divide requirements, the aggregate value of which exceeds a threshold identified in this section but does not meet the definition of subpart, merely to permit use of a specific procedure.

(e) ~~commercial product or commercial service~~Go to <https://www.acquisition.gov/inapplicablelaws> for the lists of laws that do not apply to contracts for the acquisition of commercial products or commercial services, acquisitions of COTS items, and acquisitions valued at or below the simplified acquisition threshold (SAT) (41 U.S.C. 1905 through 1907).

Subpart 12.21 - Presolicitation

12.101 ~~shall not be exempt from—~~Preference.

(i) ~~Cost accounting standards (see subpart 30.2); or~~

(ii) Certified cost or pricing data requirements (see 15.403).

~~12.103 Commercially available off the shelf (COTS) items.~~

~~Commercially available off the shelf (COTS) items are defined in 2.101. Unless indicated otherwise, all of the policies that apply to (a) Agencies must acquire commercial products also apply to COTS items. Section 12.505 lists the laws that are not applicable to COTS (in addition to 12.503 and 12.504).~~

~~Subpart 12.2—Special Requirements for the Acquisition of Commercial Products and Commercial Services~~

~~12.201 General.~~or

~~This subpart identifies special requirements for the acquisition of commercial products and commercial services intended to more closely resemble those customarily used in the commercial marketplace, as well as other considerations necessary for proper planning, solicitation, evaluation, and award of contracts for commercial products and commercial services.~~

~~12.202 Market research and description of~~when the ~~agency need.~~

~~(a) Market research (see 10.001) is an essential element of building an effective strategy for the acquisition of commercial products and commercial services and establishes the foundation for the agency description of need determines that they are available to meet the agency's needs (see part 11), the solicitation, and resulting contract.~~10).

(b) Require prime contractors and subcontractors at all tiers to incorporate, to the maximum extent practicable, commercial products, commercial services, or nondevelopmental items as components of items supplied to the agency.

12.102 Restricting competition.

Document decisions to restrict competition, including the use of brand-name descriptions without allowing for "equal" products, as follows:

(a) For acquisitions valued at or below the simplified acquisition threshold (SAT), document the decision that only one source is available and the basis for the decision.

(b) For acquisitions valued over the SAT, prepare a written justification and obtain approval of the justification as described in 6.104. Cite the following statutory authority, as applicable:

Table 12-1 — Authority citations for restricting competition.

<u>Procedures</u>	<u>Value</u>	<u>Statutory authority</u>
<u>12.201-1, Simplified procedures</u>	<u>> SAT, ≤ \$9 million</u>	<u>41 U.S.C. 1901</u>

<u>Procedures</u>	<u>Value</u>	<u>Statutory authority</u>
<u>12.201-1, Simplified procedures, for acquisition described at 12.001(c)</u>	<u>> \$9 million, ≤ \$15 million</u>	<u>41 U.S.C. 1901 and 1903</u>
<u>12.201-2, Other procedures</u>	<u>> \$9 million (> \$15 million for acquisitions described at 12.001(c))</u>	<u>One of the statutory authorities cited in 6.103, as appropriate</u>

~~12.(b) The description of agency need must contain sufficient detail for potential offerors of commercial products or commercial services to know which commercial products or commercial services may be suitable. Generally, for acquisitions in excess of the simplified acquisition threshold, an agency's statement of need for a commercial product or commercial service will describe the type of commercial product or commercial service to be acquired and explain how the agency intends to use the product or service in terms of function to be performed, performance requirement or essential physical characteristics. Describing the agency's needs in these terms allows offerors to propose methods that will best meet the needs of the Government.~~

~~(c) Follow the procedures in subpart 11.2 regarding the identification and availability of specifications, standards and commercial item descriptions~~103 Small business.
See part 19 for small business set-aside requirements. When the acquisition is set aside under any of the small business programs, include the North American Industry Classification System (NAICS) code and small business size standard in the solicitation.

12.104 Contract type.

(a) Preference for fixed-price contracts. To the maximum extent practicable,=

~~(d) Requirements documents shall identify the applicable information and communication technology accessibility standards at 36 CFR 1194.1 (see 11.002(f) and subpart 39.2).~~

~~(e) When acquiring information technology using Internet Protocol, agencies must include the appropriate Internet Protocol compliance requirements in accordance with 11.002(g).~~

12.203 Procedures for solicitation, evaluation, and award.

~~(a) Contracting officers shall use the policies unique to the acquisition of commercial products and commercial services prescribed in this part in conjunction with the policies and procedures for solicitation, evaluation and award prescribed in part 13, Simplified Acquisition Procedures; part 14 Sealed Bidding; or part 15, Contracting by Negotiation, as appropriate for the particular acquisition. The contracting officer may use the streamlined procedure for soliciting offers for commercial product or commercial service prescribed in 12.603. For acquisitions of commercial products or commercial services exceeding the simplified acquisition threshold but not~~

exceeding \$9 million (\$15 million for acquisitions as described in 13.500 (e)), including options; contracting activities may use any of the simplified procedures authorized by subpart 13.5.

~~(b) Contracting officers shall ensure the criteria at 15.101-2(c) are met when using the lowest price technically acceptable source selection process.~~

~~12.204 Solicitation/contract form.~~

~~(a)~~

~~(1) The contracting officer shall use the Standard Form 1449, Solicitation/Contract/Order for Commercial Products and Commercial Services, if—~~

~~(i) The acquisition is expected to exceed the simplified acquisition threshold;~~

~~(ii) A paper solicitation or contract is being issued; and~~

~~(iii) Procedures at 12.603 are not being used.~~

~~(2) Use of the SF 1449 is nonmandatory but encouraged for commercial acquisitions not exceeding the simplified acquisition threshold.~~

~~(b) Consistent with the requirements at 5.203(a) and (h), the contracting officer may allow fewer than 15 days before issuance of the solicitation.~~

~~12.205 Offers.~~

~~(a) Where technical information is necessary for evaluation of offers, agencies should, as part of market research, review existing literature generally available in the industry to determine its adequacy for purposes of evaluation. If adequate, contracting officers shall request existing product or service literature from offerors of commercial products or commercial services in lieu of unique technical proposals.~~

~~(b) Contracting officers should allow offerors to propose multiple offers that will meet a Government need in response to solicitations for commercial products or commercial services. The contracting officer shall evaluate each offer separately.~~

~~(c) Consistent with the requirements at 5.203(b), the contracting officer may allow fewer than 30 days response time for receipt of offers for commercial products or commercial services, unless the acquisition is covered by the World Trade Organization Government Procurement Agreement or a Free Trade Agreement (see 5.203(h)).~~

~~12.206 Use of past performance.~~

~~Past performance should be an important element of every evaluation and contract award for commercial products and commercial services. Contracting officers should consider past performance data from a wide variety of sources both inside and outside the Federal Government in accordance with the policies and procedures contained in subpart 9.1, 13.106, or subpart 15.3, as applicable.~~

~~12.207 Contract type:~~

~~(a) Except as provided in paragraph (b) of this section, agencies shall use firm-fixed-price contracts or fixed-price contracts with economic price adjustment for the acquisition of~~ contract types to procure commercial products or commercial services. Follow the procedures in part 16 to use these contract types.

~~(b)~~

~~(1) Time-and-materials or labor-hour contracts.~~ A time-and-materials or labor-hour contract ~~or labor-hour contract (see subpart 16.6)~~ may be used for ~~the acquisition of~~ commercial services when that are procured on a competitive basis, if the services are commonly sold to the general public=

~~(i) The service is acquired under a contract awarded using~~ these types of contracts.

~~(A) Competitive procedures (e.g., the procedures in 6.102(1) To use this contract type, the set-aside procedures in subpart 19.5, or competition conducted in accordance with part 13);~~

~~(B) The procedures for other than full and open competition in 6.3 provided the agency receives offers that satisfy the Government's expressed requirement from two or more responsible offerors; or~~

~~(C) The fair opportunity procedures in 16.505 (including discretionary small business set-asides under 16.505(b)(2)(i)(F)), if placing an order under a multiple-award delivery order contract; and~~

~~(ii) The contracting officer~~ must—

~~(A) Executes~~ (i) Execute a determination and findings (D&F) ~~for the contract, in accordance with paragraph (b)(2) of this section (but see paragraph (c) of this section for indefinite-delivery contracts), that no other contract type authorized by this subpart is~~ that a firm-fixed-price or fixed-price with economic price adjustment is not suitable; and

~~(B) Includes~~ (ii) Include in the contract a ceiling price ~~in the contract or order~~ that the contractor exceeds at its own risk; and.

~~(C) Prior~~ (2) Any increase to ~~increasing~~ the ceiling price ~~of~~ must be supported by a ~~time-and-materials or labor-hour contract or order, shall~~

~~(1) Conduct an analysis of pricing and other relevant factors to determine if the action~~ determination that doing so is in the best interest of the ~~Government;~~ procuring agency.

~~(2) Document the decision in the contract or order file; and~~

~~(3) When making a change that modifies the general scope of~~

~~(i) A contract, follow the procedures at 6.303;~~

~~(ii) An order issued under the Federal Supply Schedules, follow the procedures at 8.405-6; or~~

~~(iii) An order issued under multiple award task and delivery order contracts, follow the procedures at 16.505(b)(2).~~

~~(2) Each D&F required by paragraph (b)(1)(ii)(A) of this section shall contain sufficient facts and rationale to justify that no other contract type authorized by this subpart is suitable. At a minimum, the D&F shall—~~

~~(i) Include a description of the market research conducted (see 10.002(e));~~

~~(ii) Establish that it is not possible at the time of placing the contract or order to accurately estimate the extent or duration of the work or to anticipate costs with any reasonable degree of confidence;~~

~~(iii) Establish that the requirement has been structured to maximize the use of firm-fixed-price or fixed-price with economic price adjustment contracts (e.g., by limiting the value or length of the time and material/labor-hour contract or order; establishing fixed prices for portions of the requirement) on future acquisitions for the same or similar requirements; and~~

~~(iv) Describe actions planned to maximize the use of firm-fixed-price or fixed-price with economic price adjustment contracts on future acquisitions for the same requirements.~~

~~(3) See 16.601(d)(1) for additional approval required for contracts expected to extend beyond three years.~~

~~(4) See 8.404(h) for the requirement for determination and findings when using Federal Supply Schedules.~~

(c)

~~(1) Indefinite-delivery contracts (see subpart 16.5) may be used when—~~

(1) Indefinite-delivery contracts may be used when—

(i) ~~The~~ Prices are established based on a firm-fixed-price or fixed-price with economic price adjustment; or

(ii) Rates are established for commercial services acquired on a time-and-materials or labor-hour basis.

(2) ~~When an indefinite-delivery contract is awarded with services priced~~If rates are established on a time-and-materials or labor-hour basis, ~~contracting officers shall,~~then to the maximum extent practicable, ~~also~~ structure the contract to allow issuance of orders on a firm-fixed-price or fixed-price with economic price adjustment basis. ~~For such contracts, the contracting officer~~

~~shall execute the D&F required by paragraph (b)(2) of this section, for each order placed on a time-and-materials or labor-hour basis. Placement of orders shall be in accordance with subpart 8.4 or 16.5, as applicable.~~

(i) Orders placed on a time-and-materials or labor-hour basis are subject to the requirements in paragraph (b) of this section.

~~(ii)(3) If an indefinite-delivery~~ the contract only allows for ~~the issuance of~~ orders on a time-and-materials or labor-hour basis, the D&F ~~required by~~ described in paragraph (b)(21) of this section ~~shall be executed to support~~ is required only for the basic contract ~~and shall also~~. It must explain why providing for an alternative firm-fixed-price or fixed-price with economic price adjustment pricing structure for orders is not practicable. ~~The D&F for this contract shall be approved, and an official one level above the contracting officer. Placement of orders shall be in accordance with subpart 16.5~~ must approve it.

~~(d) The contract types authorized by this subpart may be used in conjunction with an award fee and performance or delivery incentives when the award fee or incentive is based solely~~ Prohibition ~~on factors other than cost (see 16.202-1 and 16.203-1).~~

~~(e) use of~~ cost-reimbursement contracts. Do not use any cost-reimbursement contract type ~~other than those authorized by this subpart to acquire~~ procure commercial products or commercial services ~~is prohibited.~~

~~12.208 Contract~~ 105 Quality requirements.

(a) Quality assurance.

~~Contracts for~~ To the maximum extent practicable, allow a contractor under a commercial products ~~shall rely on contractors' acquisition to use its~~ existing quality assurance ~~systems as a substitute for~~ system to inspect or test commercial products before the contractor presents the products to the Government ~~inspection and testing before tender for acceptance unless customary market practices for the commercial product being acquired include in-process inspection. Any in-process inspection by the Government shall be conducted in a manner consistent with commercial practice. The Government shall.~~ Rely on the contractor to accomplish all inspection and testing needed to ensure that commercial services ~~acquired~~ conform to contract requirements before ~~they are tendered~~ the contractor presents the services to the Government.

~~12.209 Determination of price reasonableness.~~

~~While the contracting officer must establish price reasonableness in accordance with 13.106-3, 14.408-2, or subpart 15.4, as applicable, the contracting officer should be aware of customary commercial products and commercial services and conditions when pricing commercial products and commercial services. Commercial product and commercial service prices are affected by factors that include, but are not limited to, speed of delivery, length and extent of warranty, limitations of seller's liability, quantities ordered, length of the performance period, and specific performance requirements. The contracting officer must ensure that contract terms, conditions, and prices are commensurate with the Government's need.~~

~~12.210 Contract financing.~~

~~Customary market practice for some commercial products and commercial services may include buyer contract financing. The contracting officer may offer Government financing in accordance with the policies and procedures in part 32.~~

~~12.214~~ (b) Warranties. To the maximum extent practicable, take advantage of commercial warranties, including extended warranties, and use those warranties for the repair and replacement of commercial products and commercial services.

12.106 Technical data.

Presume that data delivered under a contract for commercial products was developed exclusively at private expense. ~~Except as provided by agency-specific statutes, the Government shall~~ Acquire only the technical data and the rights in that data customarily provided to the public with a commercial product or process. ~~The contracting officer shall Presume that data delivered under a contract for commercial products was developed exclusively at private expense.~~ When a contract for commercial products requires the delivery of technical data, ~~the contracting officer shall include appropriate~~ see part 27 for provisions and clauses ~~delineating the~~ to delineate rights in the technical data ~~in addenda to the solicitation and contract (see part 27 or agency FAR supplements).~~

~~12.212~~ 107 Computer software.

(a) Commercial computer software or commercial computer software documentation ~~shall~~ must be acquired under licenses customarily provided to the public to the extent such licenses are consistent with Federal law and otherwise satisfy the ~~Government's~~ Government's needs. Generally, offerors and contractors ~~shall~~ must not be required to—

(1) Furnish technical information related to commercial computer software or commercial computer software documentation that is not customarily provided to the public; or

(2) Relinquish to, or otherwise provide, the Government rights to use, modify, reproduce, release, perform, display, or disclose commercial computer software or commercial computer software documentation except as mutually agreed to by the parties.

(b) With regard to commercial computer software and commercial computer software documentation, the Government ~~shall~~ should have only those rights specified in the license contained in any addendum to the contract. For additional guidance regarding the use and negotiation of license agreements for commercial computer software, see part 27:405-3.

~~12.213~~ Other 108 Contract financing.

Government financing may be offered if buyer financing is a customary market practice for a commercial practices product or commercial service. See part 32 for contract financing policies and procedures.

~~It is a common practice in the commercial marketplace for both the buyer and seller to propose terms and conditions written from their particular perspectives. The terms and conditions prescribed in this part seek to balance the interests of both the buyer and seller. These terms and conditions are generally appropriate for use in a wide range of acquisitions. However, market research may indicate other commercial practices that are appropriate for the acquisition of the~~

~~particular item. These practices should be considered for incorporation into the solicitation and contract if the contracting officer determines them appropriate in concluding a business arrangement satisfactory to both parties and not otherwise precluded by law or Executive order.~~

12.214¹⁰⁹ Cost Accounting Standards.

~~Cost Accounting Standards (CAS)~~ do not apply to contracts ~~and~~^{or} subcontracts for the acquisition of commercial products or commercial services, except as provided in 12.001(c).

Subpart 12.2 - Solicitation, Evaluation, and Award

12.200 Applicability.

(a) If commercial products or commercial services that meet agency needs are available from any priority source identified in part 8, including existing contracts awarded for Governmentwide use (e.g., the Federal Supply Schedules and Governmentwide acquisition contracts), procure the commercial products or commercial services from that source. If not, use the streamlined procedures for solicitation, evaluation, and award in this subpart.

(b) When using the procedures in this subpart to acquire construction, comply with the requirements in part 36 for construction contracts and subpart 22.4 on labor standards for contracts involving construction.

12.201 Solicitation procedures.

12.201-1 Simplified procedures.

(a) Requirement. For acquisitions valued up to \$9 million, issue a request for quotations (RFQ) followed by a purchase order.

(b) Legal effect of quotations.

(1) Neither a quotation nor the purchase order issued by the Government in response to a quotation form a binding contract. The purchase order is the Government's offer to a supplier to buy certain products or services upon specified terms and conditions.

(2) A binding contract is formed when the supplier accepts the Government's offer, either by written acceptance of the purchase order or substantial performance of the purchase order. The contracting officer may request that the contractor provide written acceptance of the order.

(c) Method. To promote competition to the maximum extent practicable—

(1) Normally, post RFQs in the Governmentwide Point of Entry (GPE). Use the Standard Form (SF) SF 1449, Solicitation/Contract/Order for Commercial Products and Commercial Services; or SF 18, Request for Quotations; or similar agency form or automated format. For acquisitions greater than the SAT, combine the presolicitation notice and the RFQ according to 12.202(b).

(2) For acquisitions at or below the SAT, the contracting officer may choose to solicit quotations directly from suppliers. When soliciting directly—

(i) Post a presolicitation notice in the GPE according to subpart 5.1, unless an exception in 5.101(b) applies;

(ii) Solicit quotations from at least three sources; and

(iii) Whenever practicable, solicit quotations from two sources not included in the previous solicitation.

(d) Innovation. In line with 1.102, Guiding principles for the System, agencies are encouraged to use additional innovative approaches to the maximum extent practicable when soliciting quotations and issuing purchase orders to—

(1) ~~when these contracts and subcontracts~~ Reduce administrative costs and lead time;

(2) Improve opportunities for small business concerns;

(3) Promote efficiency and economy in contracting; and

(4) Avoid unnecessary burdens for agencies and contractors.

(e) Other flexibilities. The following are ~~firm-fixed~~ examples of flexibilities that may be leveraged when using simplified procedures:

(1) Standing price ~~or fixed~~ quotation. Instead of soliciting new quotations for each purchase (see 12.201-1(c)(2)), a contracting officer may rely upon standing price ~~with economic~~ quotations, as long as the contracting officer validates before award that the pricing is current and reasonable.

(2) Unpriced purchase order. An unpriced purchase order is an order for supplies or services, the price of which is not established at the time of issuance of the order.

(i) An unpriced purchase order may be used only when it is impractical to obtain pricing in advance of issuance of the purchase order. Examples of such situations include:

(A) Repairs to equipment requiring disassembly to determine the nature and extent of repairs;

(B) Material available from only one source and for which cost cannot readily be established; or

(C) Supplies or services for which prices are known to be competitive, but exact prices are not known (e.g., miscellaneous repair parts, maintenance agreements).

(ii) When issuing an unpriced purchase order, include-

(A) A realistic monetary limitation (either for each line item or for the total order) that is an obligation subject to adjustment once a firm price is established; and

(B) The following statement:

This is a firm order ONLY if your price does not exceed the maximum line item or total price in the Schedule. Submit invoices to the Contracting Officer. If you cannot perform in exact accordance with this order, Withhold Performance, and notify the Contracting Officer immediately, giving your quotation.

(iii) Follow up on each order to ensure timely pricing. Review the invoice price and, if the price is reasonable (see 12.204(a)), process the invoice for payment.

(3) Blanket purchase agreement. A blanket purchase agreement (BPA) is a method of filling anticipated repetitive needs for supplies or services by establishing "charge accounts" with qualified sources of supply. The Government is only obligated to the extent that authorized orders are placed under BPAs.

(i) BPAs may be established with-

(A) More than one supplier for supplies or services of the same type to provide maximum practicable competition; or

~~(B) (provided that the price adjustment is not based on actual costs incurred). See 30.201-1 for CAS applicability to fixed-price with economic price adjustment contracts and subcontracts for commercial products or commercial services when the price adjustment is based on actual costs incurred. When CAS applies~~ A single firm from which numerous individual purchases at or below the simplified acquisition threshold will likely be made in a given period.

(ii) If, for a particular purchase greater than the micro-purchase threshold, there is an insufficient number of BPAs to ensure maximum practicable competition, the contracting officer shall-

(A) Solicit quotations from other sources and make the purchase as appropriate; and

(B) If practical, establish additional BPAs to facilitate future purchases if recurring requirements for the same or similar supplies or services seem likely and qualified sources are willing to accept BPAs.

(iii) The existence of a BPA does not justify soliciting from only one source or avoiding small business set-asides. The requirements in 12.102 and 12.103 apply to each order under the BPA.

(iv) The BPA must include-

(A) A statement that the supplier will furnish supplies or services, described in general terms, if and when requested by authorized individuals during a specified period and within a stipulated aggregate amount, if any.

(B) A statement that the Government is obligated only to the extent of authorized purchases actually made under the BPA.

(C) The dollar limitation for each individual purchase under the BPA, which may not exceed the threshold for use of simplified procedures at 12.201-1(a) (including the increased threshold at 12.001(c)).

(D) A list of individuals authorized to place orders or make purchases under the BPA.

(E) Information that must be included in delivery or shipment documentation.

(F) Instructions for proper invoicing under the BPA (e.g., process for periodic billings).

(G) Any clauses that may be applicable to purchases under the BPA (see 12.205(b)).

(v) Review BPAs at least annually to ensure that authorized procedures are being followed. Maintain awareness of changes in market conditions, sources of supply, and other pertinent factors that may warrant making new agreements with different suppliers or modifying existing agreements.

12.201-2 Other procedures.

For acquisitions valued at greater than \$9 million, use the procedures in this subpart in conjunction with the procedures in part 15 for requests for proposals (RFPs) or part 14 for invitations for bids (IFBs), as appropriate. Use of an RFP is the preferred method because it includes consideration of past performance when evaluating offers (see 12.203(a)(2)).

12.202 Publicizing.

(a) Publicize in accordance with part 5.

(b) To reduce the time required to solicit and award contracts for acquisitions valued over the SAT, combine the presolicitation notice and solicitation notice required by part 5.

(1) Format. Select the "Combined Synopsis/Solicitation" format in the GPE, and include the following information:

(i) In the "Description" section, include the following statements:

This is a combined synopsis/solicitation for commercial products or commercial services prepared in accordance with part 12. This announcement constitutes the only solicitation. Offers are being requested and a separate written solicitation will not be issued.

Solicitation number [insert ~~the appropriate~~ solicitation number] is issued as a [insert request for quotation (RFQ), request for proposal (RFP), or invitation for bid (IFB)] for [provide a brief description of the requirement].

This acquisition [is/is not] set-aside for small business concerns. This solicitation incorporates provisions and clauses ~~as prescribed in 30.201~~ by reference. The full text of provisions and clauses may be accessed electronically at www.acquisition.gov.

~~12.215 Notification of overpayment.~~

[If applicable, insert a statement regarding the Defense Priorities and Allocations System (DPAS) and assigned rating.]

(ii) A list of line-item number(s) and items, quantities, and units of measure (including option(s), if applicable).

(iii) Description of requirements for the items to be acquired, including documentation supporting any brand name descriptions (see 12.102).

(iv) Date(s) and place(s) of delivery and acceptance and f.o.b. point (see part 47).

(v) A list of solicitation provisions that apply to the acquisition (see 12.205(a)).

(vi) A list of contract clauses that apply to the acquisition (see 12.205(b)).

(vii) The date, time, and place for receipt of offer and point of contact.

(viii) Any other additional information required by 5.101(c).

(2) Response times. Set a response time that gives offerors a reasonable opportunity to respond, unless the acquisition is subject to the minimum time period for acquisitions covered by the World Trade Organization Government Procurement Agreement or a Free Trade Agreement (see subpart 5.2 and part 25).

12.203 Evaluation.

(a) Factors. For most acquisitions of commercial products or commercial services, evaluation factors need not be more detailed than technical (capability of the products or services offered to meet the agency's needs), price, and past performance.

(1) Technical. Evaluate technical based on how well the proposed products or services meet the Government's requirement. Predetermined subfactors are not required.

(2) Past performance. Past performance should be an important evaluation factor for award. Consider past performance information from a wide variety of sources both inside and outside the Government. This may include reviewing performance information reported to the Contractor Performance Assessment Reporting System, as well as other sources of information. For some commercial products or services, such as emerging technology, this should include consideration of commercial market experience. Contracting officers may consider an offeror's experience as a subcontractor.

(3) Price. Evaluate prices inclusive of transportation charges from the shipping point of the supplier to the delivery destination. Obtain prompt payment discounts to the maximum extent practicable, but do not include such discounts when evaluating the prices of quotations or offers.

(b) Basis for award. In the solicitation, notify potential quoters or offerors of the basis on which the agency will make the award decision. See 12.205(a)(2) on use of the solicitation provision at 52.212-2 for this purpose.

(c) ~~contractor notifies~~ Evaluation process. Ensure that quotations and offers can be evaluated in an efficient and minimally burdensome fashion.

(1) Timely quotations and offers. Consider all quotations or offers that are timely received. Exercise good business judgment in deciding whether or not to accept a quotation or offer received after the due date or time (see 52.212-1(c)).

(2) Quotations. The contracting officer ~~of a duplicate payment or that the Government has otherwise overpaid,~~ broad discretion in establishing how quotations will be evaluated. For example, the contracting officer ~~shall follow the~~ may perform a comparative evaluation of quotations. The evaluation procedures ~~at 32.604~~ are not subject to part 15 or 14. Contracting officers are not required to have evaluation plans, score quotations, or establish a competitive range before communicating with quoters or soliciting revised quotations.

(3) Offers. Follow the procedures in part 15 when evaluating proposals and the procedures in part 14 when opening bids. When using the procedures in part 15, do so in conjunction with the procedures in this section. Follow the procedures in part 36 when acquiring construction as a commercial service.

12.204 Award.

(a) Price reasonableness. The contracting officer must determine the price to be fair and reasonable. Whenever possible, base price reasonableness on competitive quotations or offers. For offers using the procedures in 12.201-2, see parts 15 and 14 for additional documentation requirements.

(b) Documentation.

(1) When using simplified procedures (see 12.201-1), include in the contract file a written description of the procedures used in awarding the contract and the number of quotations received.

(2) When using other procedures (see 12.201-2), document the award as required by part 15 or 14, as applicable.

(c) Forms and format. Agencies may use the following standard and optional forms or a similar agency form or automated format that conforms with the form to the maximum extent practicable.

(1) Issuing purchase orders. Issue purchase orders or blanket purchase agreement orders on the SF 1449 or the Optional Form (OF) 347, Order for Supplies or Services, and the OF 336, Continuation Sheet.

~~(2) 12.216 Unenforceability of unauthorized obligations.~~

~~Many supplies or services are acquired subject to supplier license agreements. These are particularly common in information technology acquisitions, but they may apply to any supply or service. For example, computer software and services delivered through the internet (web services) are often subject to license agreements, referred to as End User License Agreements (EULA), Terms of Service (TOS), or other similar legal instruments or agreements. Many of these agreements contain indemnification clauses that are inconsistent with Federal law and unenforceable, but which could create a violation of the Anti-Deficiency Act (31 U.S.C. 1341) if agreed to by the Government. Paragraph (u) of the clause at 52.212-4 prevents any such violations.~~

~~Subpart 12.3—Solicitation Provisions and Contract Clauses for the 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 Awarding contracts. Use the SF 1449 or the forms prescribed in part 14, 15, or 36, as applicable, when awarding contracts using the procedures in those parts. Use the Uniform Contract Format, but complete only those sections that are necessary.~~

~~12.205 Solicitation provisions and contract clauses for the acquisition of.~~

~~(a) Required provisions.~~

~~(1) Include the provision at 52.212-1, Instructions to Offerors—Commercial Products and Commercial Services, in solicitations for commercial products and commercial services. This provision may be tailored to reflect customary commercial practice, except the paragraph on Debriefings, which is required by statute.~~

~~(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~~

~~(2) Include the provision at 52.212-2, Evaluation—Commercial Products and Commercial Services, when using the procedures in 12.201-2. This provision may also be used when using the simplified procedures at 12.201-1. This provision should be tailored for the acquisition and must include all evaluation factors and criteria for award.~~

~~(3) Include—~~

~~(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, if applicable based on the provision prescription:~~

~~Table 12-2 — Provisions to include as prescribed.~~

<u>Number</u>	<u>Title</u>	<u>Source</u>
<u>52.203-11</u>	<u>Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions</u>	<u>Statute</u>
<u>52.203-18</u>	<u>Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements or Statements-Representation</u>	<u>Statute</u>
<u>52.204-7</u>	<u>System for Award Management—Registration</u>	<u>Statute</u>
<u>52.204-7 with Alt I</u>	<u>System for Award Management—Registration, with Alternate I</u>	<u>Statute</u>
<u>52.204-90</u>	<u>Offeror Identification</u>	<u>Statute</u>
<u>52.207-6</u>	<u>Solicitation of Offers from Small Business Concerns and Small Business Teaming Arrangements or Joint Ventures (Multiple-Award Contracts)</u>	<u>Statute</u>
<u>52.209-12</u>	<u>Certification Regarding Tax Matters</u>	<u>Statute</u>
<u>52.219-2</u>	<u>Equal Low Bids</u>	<u>Statute</u>
<u>52.222-18</u>	<u>Certification Regarding Knowledge of Child Labor for Listed End Products</u>	<u>E.O.</u>
<u>52.222-48</u>	<u>Exemption from Application of the Service Contract Labor Standards for Maintenance, Calibration, or Repair of Certain Equipment—Certification</u>	<u>Other</u>
<u>52.222-52</u>	<u>Exemption from Application of the Service Contract Labor Standards for Certain Services-Certification</u>	<u>Other</u>

Number	Title	Source
52.222-56	Certification Regarding Trafficking in Persons Compliance Plan	Statute
52.223-4	Recovered Material Certification	Statute
52.225-2	Buy American Certificate	Statute
52.225-4	Buy American-Free Trade Agreements-Israeli Trade Act Certificate	Statute
52.225-6	Trade Agreements-Certificate	Statute
52.225-20	Prohibition on Conducting Restricted Business Operations in Sudan-Certification	Statute
52.225-25	Prohibition on Contracting with Entities Engaging in Certain Activities or Transactions Relating to Iran-Representation and Certifications	Statute
52.226-3	Disaster or Emergency Area Representation	Statute
52.229-11	Tax on Certain Foreign Procurements—Notice and Representation	Statute
52.240-90	Security Prohibitions and Exclusions Representations and Certifications	Statute

(4) [The solicitation provision at 52.204-90 is used in lieu of the solicitation provision at 52.204-7 if the solicitation will not require offerors to be registered in the System for Award Management \(see policy at 4.203-2\). When 52.204-90 is used, also include the individual provisions listed in](#)

[paragraph \(c\)\(1\) of 52.204-7, System for Award Management—Registration, in the solicitation as applicable based on the provision prescriptions \(see 4.208\(c\)\).](#)

[\(b\) Required clauses.](#)

[\(1\) Include the clause at 52.212-4, Terms and Conditions—Commercial Products and Commercial Services, in solicitations and contracts for ~~the acquisition of~~ commercial products ~~or~~ and commercial services.](#)

~~(1) The provision at 52.212-1, Instructions~~[\(i\) Use the clause with its Alternate I when expecting to award a time-and-materials or labor-hour contract or when expecting that orders will include time-and-material line items.](#)

~~(ii) Offerors—Commercial Products and Commercial Services. This provision provides a single, streamlined set~~[This clause may be tailored to reflect customary commercial practice, with the exception of the following paragraphs that implement statute: Assignments, Disputes, Payment, Invoice, Compliance with laws unique to Government contracts, Unauthorized obligations, and Comptroller General examination of records.](#)

[\(iii\) Remove the paragraph on Comptroller General examination of records if the agency head has waived this requirement according to the procedures for waivers of right to examination of records in part 25.](#)

[\(2\) Include the clauses in the following table in solicitations and contracts, if applicable based on the clause prescription:](#)

Table 12-3 — Clauses to include as prescribed.

Number	Title	Source
52.203-6 with Alt I	Restrictions on Subcontractor Sales to the Government	Statute
52.203-13	Contractor Code of Business Ethics and Conduct	Statute
52.203-17	Contractor Employee Whistleblower Rights	Statute
52.203-19	Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements	Statute

<u>Number</u>	<u>Title</u>	<u>Source</u>
<u>52.204-9</u>	<u>Personal Identity Verification of Contractor Personnel</u>	<u>Other</u>
<u>52.204-13</u>	<u>System for Award Management—Maintenance</u>	<u>Statute</u>
<u>52.204-91</u>	<u>Contractor identification</u>	<u>Other</u>
<u>52.209-6</u>	<u>Protecting the Government’s Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment</u>	<u>Statute</u>
<u>52.209-9</u>	<u>Updates of Publicly Available Information Regarding Responsibility Matters</u>	<u>Statute</u>
<u>52.209-10</u>	<u>Prohibition on Contracting with Inverted Domestic Corporations</u>	<u>Statute</u>
<u>52.219-4</u>	<u>Notice of Price Evaluation Preference for HUBZone Small Business Concerns</u>	<u>Statute</u>
<u>52.213-1</u>	<u>Fast Payment Procedures</u>	<u>Statute</u>
<u>52.219-6</u>	<u>Notice of Total Small Business Set-Aside</u>	<u>Statute</u>
<u>52.219-6 with Alt I</u>	<u>Notice of Total Small Business Set-Aside, with Alternate I</u>	<u>Statute</u>
<u>52.219-8</u>	<u>Utilization of Small Business Concerns</u>	<u>Statute</u>

<u>Number</u>	<u>Title</u>	<u>Source</u>
<u>52.219-9</u>	<u>Small Business Subcontracting Plan</u>	<u>Statute</u>
<u>52.219-9 with Alt I</u>	<u>Small Business Subcontracting Plan, with Alternate I</u>	<u>Statute</u>
<u>52.219-9 with Alt II</u>	<u>Small Business Subcontracting Plan, with Alternate II</u>	<u>Statute</u>
<u>52.219-9 with Alt III</u>	<u>Small Business Subcontracting Plan, with Alternate III</u>	<u>Statute</u>
<u>52.219-9 with Alt IV</u>	<u>Small Business Subcontracting Plan, with Alternate IV</u>	<u>Statute</u>
<u>52.219-14</u>	<u>Limitations on Subcontracting</u>	<u>Statute</u>
<u>52.219-16</u>	<u>Liquidated Damages—Subcontracting Plan</u>	<u>Statute</u>
<u>52.219-33</u>	<u>Nonmanufacturer Rule</u>	<u>Statute</u>
<u>52.222-3</u>	<u>Convict Labor</u>	<u>EO</u>
<u>52.222-19</u>	<u>Child Labor—Cooperation with Authorities and Remedies</u>	<u>EO</u>

<u>Number</u>	<u>Title</u>	<u>Source</u>
<u>52.222-35</u>	<u>Equal Opportunity for Veterans</u>	<u>Statute</u>
<u>52.222-35 with Alt I</u>	<u>Equal Opportunity for Veterans, with Alternate I</u>	<u>Statute</u>
<u>52.222-36</u>	<u>Equal Opportunity for Workers with Disabilities</u>	<u>Statute</u>
<u>52.222-36 with Alt I</u>	<u>Equal Opportunity for Workers with Disabilities, with Alternate I</u>	<u>Statute</u>
<u>52.222-37</u>	<u>Employment Reports on Veterans</u>	<u>Statute</u>
<u>52.222-40</u>	<u>Notification of Employee Rights Under the National Labor Relations Act</u>	<u>EO</u>
<u>52.222-41</u>	<u>Service Contract Labor Standards</u>	<u>Statute</u>
<u>52.222-42</u>	<u>Statement of Equivalent Rates for Federal Hires</u>	<u>Statute</u>
<u>52.222-43</u>	<u>Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (Multiple Year and Option Contracts)</u>	<u>Statute</u>
<u>52.222-44</u>	<u>Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment</u>	<u>Statute</u>
<u>52.222-50</u>	<u>Combating Trafficking in Persons</u>	<u>Statute</u>

<u>Number</u>	<u>Title</u>	<u>Source</u>
<u>52.222-50 with Alt I</u>	<u>Combating Trafficking in Persons, with its Alternate I</u>	<u>Statute</u>
<u>52.222-51</u>	<u>Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements</u>	<u>Other</u>
<u>52.222-53</u>	<u>Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services—Requirements</u>	<u>Other</u>
<u>52.222-54</u>	<u>Employment Eligibility Verification</u>	<u>EO</u>
<u>52.222-62</u>	<u>Paid Sick Leave Under Executive Order 13706</u>	<u>EO</u>
<u>52.223-9</u>	<u>Estimate of Percentage of Recovered Material Content for EPA-Designated Items</u>	<u>Statute</u>
<u>52.223-9 with Alt I</u>	<u>Estimate of Percentage of Recovered Material Content for EPA-Designated Items, with Alternate I</u>	<u>Statute</u>
<u>52.223-11</u>	<u>Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons</u>	<u>Statute</u>
<u>52.223-12</u>	<u>Maintenance</u>	<u>Statute</u>
<u>52.223-20</u>	<u>Aerosols</u>	<u>Statute</u>
<u>52.223-21</u>	<u>Foams</u>	<u>Statute</u>

<u>Number</u>	<u>Title</u>	<u>Source</u>
<u>52.223-23</u>	<u>Sustainable Products and Services</u>	<u>Statute</u>
<u>52.224-3</u>	<u>Privacy Training</u>	<u>Statute</u>
<u>52.224-3 with Alt I</u>	<u>Privacy Training, with Alternate I</u>	<u>Statute</u>
<u>52.225-1</u>	<u>Buy American-Supplies</u>	<u>Statute</u>
<u>52.225-1 with Alt I</u>	<u>Buy American-Supplies, with Alternate I</u>	<u>Statute</u>
<u>52.225-3</u>	<u>Buy American-Free Trade Agreements-Israeli Trade Act</u>	<u>Statute</u>
<u>52.225-3 with Alt II</u>	<u>Buy American-Free Trade Agreements-Israeli Trade Act, with Alternate II</u>	<u>Statute</u>
<u>52.225-3 with Alt III</u>	<u>Buy American-Free Trade Agreements-Israeli Trade Act, with Alternate III</u>	<u>Statute</u>
<u>52.225-3 with Alt IV</u>	<u>Buy American-Free Trade Agreements-Israeli Trade Act, with Alternate IV</u>	<u>Statute</u>
<u>52.225-5</u>	<u>Trade Agreements</u>	<u>Statute</u>

<u>Number</u>	<u>Title</u>	<u>Source</u>
<u>52.225-19</u>	<u>Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission outside the United States</u>	<u>Other</u>
<u>52.225-26</u>	<u>Contractors Performing Private Security Functions Outside the United States</u>	<u>Statute</u>
<u>52.226-4</u>	<u>Notice of Disaster or Emergency Area Set-Aside</u>	<u>Statute</u>
<u>52.226-5</u>	<u>Restrictions on Subcontracting Outside Disaster or Emergency Area</u>	<u>Statute</u>
<u>52.226-8</u>	<u>Encouraging Contractor Policies to Ban Text Messaging While Driving</u>	<u>EO</u>
<u>52.229-12</u>	<u>Tax on Certain Foreign Procurements</u>	<u>Statute</u>
<u>52.232-29</u>	<u>Terms for Financing of Commercial Products and Commercial Services</u>	<u>Statute</u>
<u>52.232-30</u>	<u>Installment Payments of Commercial Products and Commercial Services</u>	<u>Statute</u>
<u>52.232-33</u>	<u>Payment by Electronic Funds Transfer—System for Award Management</u>	<u>Statute</u>
<u>52.232-34</u>	<u>Payment by Electronic Funds Transfer—Other than System for Award Management</u>	<u>Statute</u>
<u>52.232-36</u>	<u>Payment by Third Party</u>	<u>Statute</u>

<u>Number</u>	<u>Title</u>	<u>Source</u>
<u>52.232-40</u>	<u>Providing Accelerated Payments to Small Business Subcontractors</u>	<u>Statute</u>
<u>52.233-3</u>	<u>Protest After Award</u>	<u>Statute</u>
<u>52.233-4</u>	<u>Applicable Law for Breach of Contract Claim</u>	<u>Statute</u>
<u>52.240-91</u>	<u>Security Prohibitions and Exclusions</u>	<u>Statute</u>
<u>52.240-91 with Alt I</u>	<u>Security Prohibitions and Exclusions, with Alternate I</u>	<u>Statute</u>
<u>52.240-92</u>	<u>Security Requirements</u>	<u>Other</u>
<u>52.240-92 with Alt II</u>	<u>Security Requirements with Alternate II</u>	<u>Other</u>
<u>52.240-93</u>	<u>Basic Safeguarding of Covered Contractor Information Systems</u>	<u>Statute</u>
<u>52.244-6</u>	<u>Subcontracts for Commercial Products and Commercial Services</u>	<u>Statute</u>
<u>52.247-64</u>	<u>Preference for Privately Owned U.S.-Flag Commercial Vessels</u>	<u>Statute</u>
<u>52.247-64 with Alt I</u>	<u>Preference for Privately Owned U.S.-Flag Commercial Vessels, with Alternate I</u>	<u>Statute</u>

Number	Title	Source
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52.247-64 with Alt II	Preference for Privately Owned U.S.-Flag Commercial Vessels, with Alternate II	Statute
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~~(c) instructions to be used when soliciting offers~~ [Discretionary. Include the following provisions and clauses, as needed:](#)

[Table 12-4 — Provisions and clauses to include as needed.](#)

Part	Provisions and clauses prescribed for use...
16	In certain contract types (see 12.104)
17	When including options
27	When necessary to delineate rights in certain types of data (see 12.106)
36	In construction contracts
45	When the contractor will use Government property in performance of the contract

[\(d\) Waivers and deviations.](#)

[\(1\) Waivers. Agencies may waive or tailor provisions and clauses authorized for use in acquisitions for commercial products or commercial services if—](#)

[\(i\) The provision or clause does not implement statute or Executive order;](#)

~~[\(ii\) 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.](#)~~ [determines the content to be inconsistent with customary commercial practice; and](#)

[\(iii\)\(A\) For individual acquisitions, the head of the contracting activity approves the waiver or tailoring; or](#)

[\(B\) For a class of acquisitions, the senior procurement executive approves the waiver or tailoring.](#)

(2) Deviations.

~~(i) (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.~~

Do not include other provisions or clauses in solicitation or contract

~~(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.~~

~~(e) 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, unless the agency issues an individual or class deviation according to part 1.~~

~~(2) (ii) A deviation is not required when an agency supplement to the FAR directs that the contracting officer 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 clause in the FAR, when acquiring acquisitions of 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 SF 1449 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 SF 1449; a continuation of the description of the supplies/services being acquired; further elaboration of any other item(s) on the SF 1449; 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, Block 27 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.~~

~~Subpart 12.4—Unique Requirements Regarding Terms and Conditions for Commercial Products and Commercial Services~~

~~12.401 General.~~

(3) Notifications. Provide copies of approved class waivers or tailoring or class deviations to the Chair of the Civilian Agency Acquisition Council (for civilian agencies) or the Director of the Defense Acquisition Regulations System (for defense departments and agencies).

Subpart 12.3 - Postaward

12.301 Notifications.

(a) Posting requirements.

(1) Comply with the award notice posting requirements in subpart 5.3.

(2) Make the justifications required by 12.102(b) for acquisitions valued over the SAT publicly available in accordance with 6.301.

(b) Explanations for unsuccessful quoters. When using the simplified procedures at 12.201-1, upon request, provide a brief explanation of the award decision that explains why the unsuccessful quoter was not selected. If an award notice was not required to be posted to the GPE, also provide the information that would be included in an award notice (see 5.301(c)).

~~(c) This subpart provides—~~

~~(a) Guidance regarding tailoring of the paragraphs in the clause at 52.212-4, Contract Terms and Conditions Commercial Products and Commercial Services, when the paragraphs do not reflect the customary practice for a particular market; and~~

~~(b) Guidance on the administration of contracts~~Notifications and debriefings of unsuccessful offerors. When using the procedures in 12.201-2, follow the procedures in part 15 or 14 for notification of unsuccessful offerors and debriefings, as appropriate. When providing a debriefing, include the information listed at 52.212-1(e).

12.302 Subcontracts.

See requirements for subcontracts for commercial products ~~or~~and commercial services in these areas where the terms and conditions in 52.212-4 differ substantially from those contained elsewhere in the FARpart 44.

~~12.402 Acceptance~~303 Cancellations.

(a) The Government may withdraw, amend, or cancel purchase orders by written notice to the supplier at any time before acceptance of the order occurs (see 12.201-1(b)).

(b) If the supplier did not accept the purchase order in writing, request that the supplier provide written acceptance of the cancellation.

~~(c)(a) The acceptance paragraph in 52.212-4 is based upon the assumption that the Government will rely on the contractor's assurances that the commercial product or commercial service tendered for acceptance conforms to the contract requirements. The Government inspection of commercial products or commercial services will not prejudice its other rights under the acceptance paragraph. Additionally, although the paragraph does not address the issue of rejection, the Government always has the right to refuse acceptance of nonconforming items. This paragraph is generally appropriate when the Government is acquiring noncomplex commercial products and commercial services.~~

~~(b) Other acceptance procedures may be more appropriate for the acquisition of complex commercial products or commercial services, or commercial products or commercial services used in critical applications. In such cases, the contracting officer shall include alternative inspection procedure(s) in an addendum and ensure these procedures and the postaward remedies adequately protect the interests of the Government. The contracting officer must carefully examine the terms and conditions of any express warranty with regard to the effect it may have on the Government's available postaward remedies (see 12.404).~~

~~(c) The acquisition of commercial products or commercial services under other circumstances such as on an "as is" basis may also require acceptance procedures different from those contained in 52.212-4. The contracting officer should consider the effect the specific circumstances will have on the acceptance paragraph as well as other~~ If the contractor does not accept the cancellation or claims that costs were incurred as a result of the contractor beginning performance under the purchase order, follow the procedures at 12.304 to terminate the purchase order.

12.304 Terminations.

(a) General. Follow the procedures in this section and the termination paragraphs of the clause at 52.212-4, =

~~12.403 Termination:~~

~~(a) General. The clause at 52.212-4 permits the Government to terminate a contract for commercial products or commercial services either for the convenience of the Government or for cause. However, the paragraphs in 52.212-4 entitled "Termination for the Government's Convenience" and "Termination for Cause" contain concepts which differ from those contained in the termination clauses prescribed in part 49. Consequently, the requirements of part 49 do not apply when terminating contracts for commercial products or commercial services and contracting officers shall follow the procedures in this section. Contracting officers may continue to use part 49 as guidance to the extent that part 49 does not conflict with this section and the language of the termination paragraphs in 52.212-4. Do not use the procedures in part 49.~~

~~(b) Policy. The contracting officer should exercise the Government's right to terminate a contract for commercial products or commercial services either for convenience or for cause only when such a termination would be in the best interests of the Government. The contracting officer should consult with counsel prior to terminating for cause.~~

(b) Termination for cause.

(1) Before terminating a contract for cause, send a cure notice to the contractor, unless the reason for the termination is late delivery.

(2)

~~(c) Termination for cause:~~

~~(1) The paragraph in 52.212-4 entitled "Excusable Delay" requires contractors notify the contracting officer as soon as possible after commencement of any excusable delay. In most situations, this requirement should eliminate the need for a show cause notice prior to terminating a contract. The contracting officer shall send a cure notice prior to terminating a contract for a reason other than late delivery.~~

~~(2) The Government's rights after a termination for cause shall include all the remedies available to any buyer in the marketplace. The Government's preferred remedy will be to acquire similar items from another contractor and to charge the defaulted contractor with any excess procurement costs together with any incidental or consequential damages incurred because of the termination.~~

~~(3) When a termination for cause is appropriate, the contracting officer shall send the contractor a written notification regarding the termination. At a minimum, this notification shall—~~
include—

(i) ~~Indicate~~ A statement that the contract is terminated for cause;

(ii) ~~Specify~~ The reasons for the termination;

(iii) ~~Indicate~~ Which remedies the Government intends to seek or ~~provide~~ give a date by which the Government will inform the contractor of the remedy; and

(iv) ~~State~~ A statement that the notice constitutes a final decision of the contracting officer, and that the contractor has the right to appeal under the Disputes clause ~~(see 33.211).~~

(3) Follow the procedures in part 42 to report termination information to the Federal Awardee Performance and Integrity Information System.

~~(c)(4) The contracting officer, in accordance with agency procedures, shall ensure that information related to termination for cause notices and any amendments are reported. In the event the termination for cause is subsequently converted to a termination for convenience, or is otherwise withdrawn, the contracting officer shall ensure that a notice of the conversion or withdrawal is reported. All reporting shall be in accordance with 42.1503(h).~~

~~(d)~~ Termination for the ~~Government's~~ Government's convenience. When terminating for the Government's convenience:

~~(1) When the contracting officer terminates a contract for commercial products or commercial services for the Government's convenience, the contractor shall be paid-~~

~~(i)~~

~~(A) The percentage of the contract price reflecting the percentage of the work performed prior to the notice of the termination for fixed price or fixed price with economic price adjustment contracts; or~~

~~(B) An amount for direct labor hours (as defined in the Schedule of the contract) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the Schedule; and~~

~~(ii) Any charges the contractor can demonstrate directly resulted from the termination. The contractor may demonstrate such charges using its standard record keeping system and is not required to comply with the cost accounting standards or the contract cost principles in part 31. The Government does not have any right to audit the contractor's records solely because of the termination for convenience.~~

~~(2) Generally~~, the parties should mutually agree upon the requirements of the termination proposal. ~~The parties must~~ Balance the ~~Government's~~ Government's need to obtain sufficient documentation to support payment to the contractor against the goal of having a simple and expeditious settlement.

Subpart 12.4 - Micro-purchases

12.401 General.

(a) Agency heads are encouraged to delegate micro-purchase authority (see part 1).

(b) Micro-purchases do not require written provisions or clauses. This paragraph takes precedence over any other FAR requirement to the contrary but does not prohibit the use of any clause.

(c) The security prohibitions and exclusions addressed at subpart 40.2 apply to micro-purchases, unless an exception applies or waiver is granted according to that subpart. However, the provisions and clauses in that subpart are not used for micro-purchases.

(d) Paragraph (s) , Unauthorized Obligations, of the clause at 52.212-4, Terms and Conditions—Commercial Products and Commercial Services, automatically applies to any micro-purchase, including those made with the Governmentwide commercial purchase card. This clause prevents violations of the Anti-Deficiency Act (31 U.S.C. 1341).

12.402 Purchase guidelines.

(a) To the extent practicable, distribute micro-purchases equitably among qualified suppliers.

(b) Micro-purchases may be awarded without soliciting competitive quotations if the contracting officer or individual appointed in accordance with 1.403-2(b) considers the price to be reasonable.

(c) The administrative cost of verifying the reasonableness of the price for purchases may more than offset potential savings from detecting instances of overpricing. Therefore, action to verify price reasonableness need only be taken if there is—

(1) A lack of understanding of competitive pricing; or

(2) Reason to suspect that a price is not reasonable.

(d) If the contracting officer solicited competitive quotations and made award to a supplier that did not provide the lowest quote, documentation of the award must include identification of the suppliers solicited and a brief explanation of the award decision.

12.403 Methods.

(a) Use the following methods as the primary means of making micro-purchases:

(1) The Governmentwide commercial purchase card. The Governmentwide commercial purchase card is authorized for use in making purchases of supplies, services, or construction. Contracting officers and other individuals designated according to part 1 may use the Governmentwide commercial purchase card. The card may be used only for purchases authorized by law or regulation.

(2) Purchase orders. Purchase orders (including orders against blanket purchase agreements) may be used to make micro-purchases. See 12.203(d)(1).

(b) The SF 44, Purchase Order-Invoice-Voucher, is a multipurpose pocket-size purchase order form designed primarily for on-the-spot, over-the-counter purchases of supplies and nonpersonal services while away from the purchasing office or at isolated activities. Contracting officers may use it in limited circumstances and only when advantageous to the Government if all of the following conditions are satisfied:

(1) An agency authorizes use of the SF 44.

(2) The amount of the purchase is at or below the micro-purchase threshold or higher dollar thresholds established by an agency for purchases made under unusual and compelling urgency or in support of contingency operations.

(3) The supplies or services are immediately available, and one delivery and one payment will be made.

(4) Its use is determined to be more economical and efficient than use of the Governmentwide commercial purchase card.

(c) 12.404 Warranties.

~~(a) Implied warranties. The Government's post award rights contained in 52.212-4 are the implied warranty of merchantability, the implied warranty of fitness for particular purpose and the remedies contained in the acceptance paragraph.~~

~~(1) The implied warranty of merchantability provides that an item is reasonably fit for the ordinary purposes for which such items are used. The items must be of at least average, fair or medium grade quality and must be comparable in quality to those that will pass without objection in the trade or market for items of the same description.~~

~~(2) The implied warranty of fitness for a particular purpose provides that an item is fit for use for the particular purpose for which the Government will use the items. The Government can rely upon an implied warranty of fitness for particular purpose when-~~

Imprest funds and third-party drafts may be used to acquire supplies or services if an agency receives authorization from the Department of Treasury to use these methods and the purchases are made in accordance with Part IV of the Treasury Financial Manual for Guidance of Departments and Agencies. An imprest fund transaction shall not exceed \$500 or such other limits as have been approved by the agency head. A third-party draft transaction shall not exceed \$2,500, unless authorized at a higher level in accordance with Treasury restrictions.

~~(i) The seller knows the particular purpose for which the Government intends to use the item; and~~

~~(ii) The Government relied upon the contractor's skill and judgment that the item would be appropriate for that particular purpose.~~

~~(3) Contracting officers should consult with legal counsel prior to asserting any claim for a breach of an implied warranty.~~

~~(b) Express warranties. 41 U.S.C. 3307(e)(5)(B) requires contracting officers to take advantage of commercial warranties. To the maximum extent practicable, solicitations for commercial products shall require offerors to offer the Government at least the same warranty terms, including offers of extended warranties, offered to the general public in customary commercial practice. Solicitations may specify minimum warranty terms, such as minimum duration, appropriate for the Government's intended use of the item.~~

~~(1) Any express warranty the Government intends to rely upon must meet the needs of the Government. The contracting officer should analyze any commercial warranty to determine if-~~

~~(i) The warranty is adequate to protect the needs of the Government, e.g., items covered by the warranty and length of warranty;~~

~~(ii) The terms allow the Government effective postaward administration of the warranty to include the identification of warranted items, procedures for the return of warranted items to the contractor for repair or replacement, and collection of product performance information; and~~

~~(iii) The warranty is cost effective.~~

~~(2) In some markets, it may be customary commercial practice for contractors to exclude or limit the implied warranties contained in 52.212-4 in the provisions of an express warranty. In such cases, the contracting officer shall ensure that the express warranty provides for the repair or replacement of defective items discovered within a reasonable period of time after acceptance.~~

~~(3) Express warranties shall be included in the contract by addendum (see 12.302).~~

~~Subpart 12.5—Applicability of Certain Laws to the Acquisition of Commercial Products, Commercial Services and Commercially Available Off the Shelf Items~~

~~12.500 Scope of subpart.~~

~~(a) As required by 41 U.S.C. 1906 and 1907, this subpart lists provisions of law that are not applicable to—~~

~~(1) Contracts for the acquisition of commercial products or commercial services;~~

~~(2) Subcontracts, at any tier, for the acquisition of commercial products or commercial services; and~~

~~(3) Contracts and subcontracts, at any tier, for the acquisition of commercially available off the shelf (COTS) items.~~

~~(b) This subpart also lists provisions of law that have been amended to eliminate or modify their applicability to either contracts or subcontracts for the acquisition of commercial products or commercial services.~~

~~12.501 Applicability.~~

~~(a) This subpart applies to any contract or subcontract at any tier for the acquisition of commercial products or commercial services.~~

~~(b) Nothing in this subpart shall be construed to authorize the waiver of any provision of law with respect to any subcontract if the prime contractor is reselling or distributing commercial products or commercial services of another contractor without adding value. This limitation is intended to preclude establishment of unusual contractual arrangements solely for the purpose of Government sales.~~

~~(c) For purposes of this subpart, contractors awarded subcontracts under subpart 19.8, Contracting with the Small Business Administration (the 8(a) Program), shall be considered prime contractors.~~

~~12.502 Procedures.~~

~~(a) The FAR prescription for the provision or clause for each of the laws listed in 12.503 has been revised in the appropriate part to reflect its proper application to prime contracts for the acquisition of commercial products or commercial services.~~

~~(b) For subcontracts for the acquisition of commercial products or commercial services, the clauses at 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Products and Commercial Services, and 52.244-6, Subcontracts for Commercial Products and Commercial Services, reflect the applicability of the laws listed in 12.504 by identifying the only provisions and clauses that are required to be included in a subcontract at any tier for the acquisition of commercial products or commercial services.~~

~~(c) The FAR prescription for the provision or clause for each of the laws listed in 12.505 has been revised in the appropriate part to reflect its proper application to contracts and subcontracts for the acquisition of COTS items.~~

~~12.503 Applicability of certain laws to Executive agency contracts for the acquisition of commercial products and commercial services.~~

~~(a) The following laws are not applicable to Executive agency contracts for the acquisition of commercial products or commercial services:~~

~~(1) 10 U.S.C. 983, Institutions of Higher Education that Prevent ROTC Access or Military Recruiting on Campus: Denial of Grants and Contracts from Department of Defense, Department of Education, and Certain Other Departments and Agencies (see 9.110).~~

~~(2) 31 U.S.C. 1354(a), Limitation on Use of Appropriated Funds for Contracts with Entities Not Meeting Veterans' Employment Reporting Requirements (see 22.1302).~~

~~(3) 41 U.S.C. 1708(e)(3), Minimum Response Time for Offers (see 5.203).~~

~~(4) 41 U.S.C. 2303(b), Policy on Personal Conflicts of Interest by Contractor Employees (see subpart 3.11).~~

~~(5) 41 U.S.C. 3901(b) and 10 U.S.C. 3321(b), Contingent Fees (see 3.404).~~

~~(6) 41 U.S.C. 4706(d)(1) and 10 U.S.C. 3841(d)(1), GAO Access to Contractor Employees, section 871 of Public Law 110-417 (see 52.214-26 and 52.212-2).~~

~~(7) 41 U.S.C. chapter 65, Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$10,000 (see subpart 22.6).~~

~~(8) 41 U.S.C. chapter 81, Drug-Free Workplace (see 26.501).~~

~~(9) Section 806(a)(3) of Public Law 102-190, as amended by sections 2091 and 8105 of Public Law 103-355 (10 U.S.C. 4601 note prec.), Payment Protections for Subcontractors and Suppliers (see 28.106-6).~~

~~(10) 15 U.S.C. 644(w), Solicitation Notice Regarding Administration of Change Orders for Construction (see 36.211).~~

~~(b) Certain requirements of the following laws are not applicable to executive agency contracts for the acquisition of commercial products and commercial services:~~

~~(1) 22 U.S.C. 2593e, Requirement for a certification under Measures Against Persons Involved in Activities that Violate Arms Control Treaties or Agreements with the United States (see 9.109).~~

~~(2) 40 U.S.C. chapter 37, Requirement for a certificate and clause under the Contract Work Hours and Safety Standards statute (see 22.305).~~

~~(3) 41 U.S.C. 8703 and 8703, Requirement for a clause and certain other requirements related to kickbacks (see 3.502).~~

~~(4) 49 U.S.C. 40118, Requirement for a clause under provisions of the Government-financed air transportation statute, commonly referred to as the Fly America Act, except that 49 U.S.C. 40118(g) is applicable to the acquisition of commercial services (see 47.405).~~

~~(e) The applicability of the following laws have been modified in regard to Executive agency contracts for the acquisition of commercial products and commercial services:~~

~~(1) 41 U.S.C. 4704 and 10 U.S.C. 4655, Prohibition on Limiting Subcontractor Direct Sales to the United States (see 3.503).~~

~~(2) 41 U.S.C. chapter 35, and 10 U.S.C. chapter 271, Truthful Cost or Pricing Data (see 15.403).~~

~~(3) 41 U.S.C. chapter 15, Cost Accounting Standards (48 CFR Chapter 99) (see 12.214).~~

~~12.504 Applicability of certain laws to subcontracts for the acquisition of commercial products and commercial services:~~

~~(a) The following laws are not applicable to subcontracts at any tier for the acquisition of commercial products or commercial services at any tier:~~

~~(1) 10 U.S.C. 2631, Transportation of Supplies by Sea (except for the types of subcontracts listed at 47.504(d)).~~

~~(2) 15 U.S.C. 644(d), Requirements relative to labor surplus areas under the Small Business Act (see subpart 19.2).~~

~~(3) [Reserved]~~

~~(4) 41 U.S.C. chapter 65, Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$10,000 (see subpart 22.6).~~

~~(5) 41 U.S.C. 4703, Validation of Proprietary Data restrictions (see subpart 27.4).~~

~~(6) 41 U.S.C. 3901(b) and 10 U.S.C. 3321(b), Contingent Fees (see subpart 3.4).~~

~~(7) 41 U.S.C. 4706(d) and 10 U.S.C. 3841(d), Examination of Records of Contractor, when a subcontractor is not required to provide certified cost or pricing data (see 15.209(b)), unless using funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).~~

~~(8) 41 U.S.C. 1708(e)(3), Minimum Response Time for Offers (see subpart 5.2).~~

~~(9) 41 U.S.C. 2302, Rights in Technical Data (see subpart 27.4).~~

~~(10) 41 U.S.C. chapter 81, Drug-Free Workplace Act (see subpart 26.5).~~

~~(11) 46 U.S.C.App.1241(b), Transportation in American Vessels of Government Personnel and Certain Cargo (see subpart 47.5) (except for the types of subcontracts listed at 47.504(d)).~~

~~(12) 49 U.S.C. 40118, Fly American provisions (see subpart 47.4).~~

~~(13) Section 806(a)(3) of Pub. L. 102-190, as amended by Sections 2091 and 8105 of Pub. L. 103-355 (10 U.S.C. 4601 note prec.), Payment Protections for Subcontractors and Suppliers (see 28.106-6).~~

~~(b) The requirements for a certificate and clause under the Contract Work Hours and Safety Standards statute, 40 U.S.C. 37, (see subpart 22.3) are not applicable to subcontracts at any tier for the acquisition of commercial products or commercial services or commercial components.~~

~~(e) The applicability of the following laws has been modified in regard to subcontracts at any tier for the acquisition of commercial products or commercial services:~~

~~(1) 41 U.S.C. 4704 and 10 U.S.C. 4655, Prohibition on Limiting Subcontractor Direct Sales to the United States (see subpart 3.5).~~

~~(2) 41 U.S.C. chapter 35, and 10 U.S.C. chapter 271, Truthful Cost or Pricing Data (see subpart 15.4).~~

~~(3) 41 U.S.C. chapter 15, Cost Accounting Standards (48 CFR Chapter 99) (see 12.214).~~

~~12.505 Applicability of certain laws to contracts for the acquisition of COTS items.~~

~~COTS items are a subset of commercial products. Therefore, any laws listed in sections 12.503 and 12.504 are also inapplicable or modified in their applicability to contracts or subcontracts for the acquisition of COTS items. In addition, the following laws are not applicable to contracts for the acquisition of COTS items:~~

~~(a)~~

~~(1) The portion of 41 U.S.C. 8302, American Materials Required for Public Use, paragraph (a)(1) that reads “substantially all from articles, materials, or supplies mined, produced, or manufactured in the United States,” Buy American—Supplies, domestic content test, except as provided in 25.101(a)(2)(ii) (see 52.225-1 and 52.225-3).~~

~~(2) The portion of 41 U.S.C. 8303, Contracts for Public Works, paragraph (a)(2) that reads “substantially all from articles, materials, or supplies mined, produced, or manufactured in the United States,” Buy American—Construction Materials, domestic content test, except as provided in 25.201(b)(2)(ii) (see 52.225-9 and 52.225-11).~~

~~(b) 42 U.S.C. 69-62(e)(3)(A), Certification and Estimate of Percentage of Recovered Material.~~

~~(e) Compliance Plan and Certification Requirement, section 1703 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239), Title XVII, Ending trafficking in Government Contracting (see 52.222-50(h) and 52.222-56).~~

~~Subpart 12.6—Streamlined Procedures for Evaluation and Solicitation for Commercial Products and Commercial Services~~

~~12.601 General.~~

~~(a) This subpart provides optional procedures for—~~

~~(1) Streamlined evaluation of offers for commercial products or commercial services; and~~

~~(2) Streamlined solicitation of offers for commercial products or commercial services for use where appropriate.~~

~~(b) These procedures are intended to simplify the process of preparing and issuing solicitations and evaluating offers for commercial products or commercial services consistent with customary commercial practices.~~

~~12.602 Streamlined evaluation of offers.~~

~~(a) When evaluation factors are used, the contracting officer may insert a provision substantially the same as the provision at 52.212-2, Evaluation—Commercial Products and Commercial Services, in solicitations for commercial products or commercial services or comply with the procedures in 13.106 if the acquisition is being made using simplified acquisition procedures. When the provision at 52.212-2 is used, paragraph (a) of the provision shall be tailored to the specific acquisition to describe the evaluation factors and relative importance of those factors. However, when using the simplified acquisition procedures in part 13, contracting officers are not required to describe the relative importance of evaluation factors.~~

~~(b) Offers shall be evaluated in accordance with the criteria contained in the solicitation. For many commercial products or commercial services, the criteria need not be more detailed than technical (capability of the item offered to meet the agency need), price, and past performance. Technical capability may be evaluated by how well the proposed products or services meet the Government requirement instead of predetermined subfactors. Solicitations for commercial~~

products or commercial services do not have to contain subfactors for technical capability when the solicitation adequately describes the intended use of the commercial product or commercial service. A technical evaluation would normally include examination of such things as product or service literature, product samples (if requested), technical features, and warranty provisions. Past performance shall be evaluated in accordance with the procedures in section 13.106 or subpart 15.3, as applicable. The contracting officer shall ensure the instructions provided in the provision at 52.212-1, Instructions to Offerors—Commercial Products and Commercial Services, and the evaluation criteria provided in the provision at 52.212-2, Evaluation—Commercial Products and Commercial Services, are in agreement.

~~(e) Select the offer that is most advantageous to the Government based on the factors contained in the solicitation. Fully document the rationale for selection of the successful offeror including discussion of any trade-offs considered.~~

12.603 Streamlined solicitation for commercial products or commercial services.

(a) When a written solicitation will be issued, the contracting officer may use the following procedure to reduce the time required to solicit and award contracts for the acquisition of commercial products or commercial services. This procedure combines the synopsis required by 5.203 and the issuance of the solicitation into a single document.

(b) When using the combined synopsis/solicitation procedure, the SF1449 is not used for issuing the solicitation.

~~(c) To use these procedures, the contracting officer shall~~

~~(1) Prepare the synopsis as described at 5.207.~~

~~(2) In the Description, include the following additional information:~~

~~(i) The following statement:~~

~~This is a combined synopsis/solicitation for commercial products or commercial services prepared in accordance with the format in subpart 12.6, as supplemented with additional information included in this notice. This announcement constitutes the only solicitation; proposals are being requested and a written solicitation will not be issued.~~

~~(ii) The solicitation number and a statement that the solicitation is issued as an invitation to bid (IFB), request for quotation (RFQ) or request for proposal (RFP).~~

~~(iii) A statement that the solicitation document and incorporated provisions and clauses are those in effect through Federal Acquisition Circular ____.~~

~~(iv) A notice regarding any set aside and the associated NAICS code and small business size standard.~~

~~(v) A list of line item number(s) and items, quantities, and units of measure (including option(s), if applicable).~~

~~(vi) Description of requirements for the items to be acquired.~~

~~(vii) Date(s) and place(s) of delivery and acceptance and FOB point.~~

~~(viii) A statement that the provision at 52.212-1, Instructions to Offerors-Commercial Products and Commercial Services, applies to this acquisition and a statement regarding any addenda to the provision.~~

~~(ix) A statement regarding the applicability of the provision at 52.212-2, Evaluation-Commercial Products and Commercial Services, if used, and the specific evaluation criteria to be included in paragraph (a) of that provision. If this provision is not used, describe the evaluation procedures to be used.~~

~~(x) A statement advising offerors to include a completed copy of the provision at 52.212-3, Offeror Representations and Certifications-Commercial Products and Commercial Services, with its offer.~~

~~(xi) A statement that the clause at 52.212-4, Contract Terms and Conditions-Commercial Products and Commercial Services, applies to this acquisition and a statement regarding any addenda to the clause.~~

~~(xii) A statement that the clause at 52.212-5, Contract Terms and Conditions Required To Implement Statutes or Executive Orders-Commercial Products and Commercial Services, applies to this acquisition and a statement regarding which, if any, of the additional FAR clauses cited in the clause are applicable to the acquisition.~~

~~(xiii) A statement regarding any additional contract requirement(s) or terms and conditions (such as contract financing arrangements or warranty requirements) determined by the contracting officer to be necessary for this acquisition and consistent with customary commercial practices.~~

~~(xiv) A statement regarding the Defense Priorities and Allocations System (DPAS) and assigned rating, if applicable.~~

~~(xv) The date, time and place offers are due.~~

~~(xvi) The name and telephone number of the individual to contact for information regarding the solicitation.~~

~~(3) Allow response time for receipt of offers as follows:~~

~~(i) Because the synopsis and solicitation are contained in a single document, it is not necessary to publicize a separate synopsis 15 days before the issuance of the solicitation.~~

~~(ii) When using the combined synopsis and solicitation, contracting officers must establish a response time in accordance with 5.203(b) (but see 5.203(h)).~~

~~(4) Publicize amendments to solicitations in the same manner as the initial synopsis and solicitation.~~