

# Part 12 - Acquisition of Commercial Products and Commercial Services

12.000 Scope of part.

12.001 Definition.

Subpart 12.1 - Acquisition of Commercial Products and Commercial Services

12.101 Policy.

12.102 Applicability.

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

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

12.201 General.

12.202 Market research and description of agency need.

12.203 Procedures for solicitation, evaluation, and award.

12.204 Solicitation/contract form.

12.205 Offers.

12.206 Use of past performance.

12.207 Contract type.

12.208 Contract quality assurance.

12.209 Determination of price reasonableness.

12.210 Contract financing.

12.211 Technical data.

12.212 Computer software.

12.213 Other commercial practices.

12.214 Cost Accounting Standards.

12.215 Notification of overpayment.

12.216 Unenforceability of unauthorized obligations.

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

12.300 Scope of subpart.

12.301 Solicitation provisions and contract clauses for the acquisition of commercial products and commercial services.

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

12.303 Contract format.

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

12.401 General.

12.402 Acceptance.

12.403 Termination.

12.404 Warranties.

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.

12.501 Applicability.

12.502 Procedures.

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

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

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

Subpart 12.6 - Streamlined Procedures for Evaluation and Solicitation for Commercial Products and Commercial Services

12.601 General.

12.602 Streamlined evaluation of offers.

12.603 Streamlined solicitation for commercial products or commercial services.

**Parent topic:** Federal Acquisition Regulation

## **12.000 Scope of part.**

This part prescribes policies and procedures unique to the *acquisition of commercial products*, including *commercial components*, and *commercial services*. It implements the Federal

Government's preference for the *acquisition of commercial products and commercial services* contained in [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 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*.
- (c) Contracts for the *acquisition 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 precedence for the *acquisition of commercial products or commercial services*.
- (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.
- (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.*

(2) A contract in an amount greater than \$20 million that is awarded on a sole source basis for a product or service treated as a *commercial product* or *commercial service* under paragraph (f)(1) of this section but does not meet the definition of a *commercial product* or *commercial service* as defined at FAR 2.101 shall not be exempt from—

(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 *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.**

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 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 (see [part 11](#)), the *solicitation*, and resulting contract.

(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.

(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 \$7.5 million (\$15 million for *acquisitions* as described in [13.500 \(c\)](#)), 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 *commercial products* or *commercial services*.

(b)

(1) A time-and-materials contract or labor-hour contract (see [subpart 16.6](#)) *may* be used for the *acquisition* of *commercial services* when-

(i) The service is acquired under a contract awarded using-

(A) Competitive procedures (*e.g.*, the procedures in [6.102](#), 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*-

(A) Executes 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 suitable;

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

(C) Prior to increasing the ceiling price of 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 is in the best interest of the Government;

(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-

(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 on a time-and-materials or labor-hour basis, *contracting officers shall*, 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.

(3) If an indefinite-delivery contract only allows for the issuance of orders on a time-and-materials or labor-hour basis, the D&F required by paragraph (b)(2) of this section *shall* be executed to support the basic contract and *shall* also explain why providing for an alternative firm-fixed-price or fixed-price with economic price adjustment *pricing* structure is not practicable. The D&F for this contract *shall* be approved one level above the *contracting officer*. Placement of orders *shall* be in accordance with subpart 16.5.

(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 on factors other than cost (see 16.202-1 and 16.203-1).

(e) Use of any contract type other than those authorized by this subpart to acquire *commercial products* or *commercial services* is prohibited.

## **12.208 Contract quality assurance.**

Contracts for *commercial products* shall rely on contractors' existing quality assurance systems as a substitute for 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 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](#).

### **12.211 Technical data.**

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 provisions and clauses delineating the rights in the *technical data* in addenda to the *solicitation* and contract (see [part 27](#) or agency FAR supplements).

### **12.212 Computer software.**

(a) *Commercial computer software* or *commercial computer software documentation* shall 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 needs. Generally, *offerors* and *contractors* shall 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* 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 [27.405-3](#).

### **12.213 Other commercial practices.**

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.

### **12.214 Cost Accounting Standards.**

Cost Accounting Standards (CAS) do not apply to contracts and *subcontracts* for the *acquisition* of *commercial products* or *commercial services* when these contracts and *subcontracts* are firm-fixed-price or fixed-price with economic price adjustment (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, the *contracting officer* shall insert the appropriate provisions and clauses as prescribed in [30.201](#).

### **12.215 Notification of overpayment.**

If the contractor notifies the *contracting officer* of a duplicate payment or that the Government has otherwise overpaid, the *contracting officer* shall follow the procedures at [32.604](#).

### **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 Solicitation provisions and contract clauses for the acquisition of commercial products and commercial services.**

(a) In accordance with [41 U.S.C. 3307](#), contracts for the *acquisition* of *commercial products* or

*commercial services shall*, to the maximum extent practicable, include only those clauses—

(1) Required to implement provisions of law or executive orders applicable to the *acquisition of commercial products or commercial services*; or

(2) Determined to be consistent with customary commercial practice.

(b) Insert the following provisions in *solicitations* for the *acquisition of commercial products or commercial services*, and clauses in *solicitations* and contracts for the *acquisition of commercial products or commercial services*:

(1) *The provision at 52.212-1, Instructions to Offerors-Commercial Products and Commercial Services*. This provision provides a single, streamlined set of instructions to be used when soliciting offers for *commercial products or commercial services* and is incorporated in the *solicitation* by reference (see Block 27 a, [SF 1449](#)). The *contracting officer* may tailor these instructions or provide additional instructions tailored to the specific *acquisition* in accordance with [12.302](#).

(2) *The provision at 52.212-3, Offeror Representations and Certifications-Commercial Products and Commercial Services*. This provision provides a single, consolidated list of representations and certifications for the *acquisition of commercial products or commercial services* and is attached to the *solicitation* for *offerors* to complete. This provision may not be tailored except in accordance with [subpart 1.4](#). Use the provision with its *Alternate I* in *solicitations* issued by DoD, NASA, or the Coast Guard.

(3) *The clause at 52.212-4, Contract Terms and Conditions-Commercial Products and Commercial Services*. This clause includes terms and conditions which are, to the maximum extent practicable, consistent with customary commercial practices and is incorporated in the *solicitation* and contract by reference (see Block 27, [SF 1449](#)). Use this clause with its *Alternate I* when a time-and-materials or labor-hour contract will be awarded. The *contracting officer* may tailor this clause in accordance with [12.302](#).

(4) *The clause at 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Products and Commercial Services*. This clause incorporates by reference only those clauses required to implement provisions of law or Executive orders applicable to the *acquisition of commercial products or commercial services*. The *contracting officer* shall attach this clause to the *solicitation* and contract and, using the appropriate clause prescriptions, indicate which, if any, of the additional clauses cited in [52.212-5\(b\)](#) or (c) are applicable to the specific *acquisition*. Some of the clauses require fill-in; the fill-in language should be inserted as directed by [52.104\(d\)](#). When cost information is obtained pursuant to [part 15](#) to establish the reasonableness of prices for *commercial products or commercial services*, the *contracting officer* shall insert the clauses prescribed for this purpose in an addendum to the *solicitation* and contract. This clause may not be tailored.

(i) Use the clause with its *Alternate I* when the *head of the agency* has waived the examination of records by the Comptroller General in accordance with [25.1001](#).

(ii)

(A) If the *acquisition* will use funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), the *contracting officer* shall use the clause with its *Alternate II*.

(B)

(1) In the case of a bilateral *contract modification* that will use funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, the *contracting officer shall* specify applicability of *Alternate II* to that modification.

(2) In the case of a task- or delivery-order contract in which not all orders will use funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, the *contracting officer shall* specify the task or *delivery orders* to which *Alternate II* applies.

(C) The *contracting officer may* not use *Alternate I* when *Alternate II* applies.

(c) When the use of evaluation factors is appropriate, the *contracting officer may*—

(1) Insert the provision at 52.212-2, *Evaluation-Commercial Products and Commercial Services*, in *solicitations for commercial products or commercial services* (see 12.602); or

(2) Include a similar provision containing all evaluation factors required by 13.106, subpart 14.2 or subpart 15.3, as an addendum (see 12.302(d)).

(d) Other required provisions and clauses. Notwithstanding prescriptions contained elsewhere in the FAR, when acquiring *commercial products* or *commercial services*, *contracting officers shall* be required to use only those provisions and clauses prescribed in this part. The provisions and clauses prescribed in this part *shall* be revised, as necessary, to reflect the applicability of statutes and executive orders to the *acquisition of commercial products or commercial services*.

(1) Insert the provision at 52.204-7, *System for Award Management*, as prescribed in 4.1105(a).

(2) Insert the clause at 52.204-13, *System for Award Management Maintenance*, as prescribed in 4.1105(b).

(3) Insert the provision at 52.204-16, *Commercial and Government Entity Code Reporting*, as prescribed in 4.1804(a).

(4) Insert the clause at 52.204-18, *Commercial and Government Entity Code Maintenance*, as prescribed in 4.1804(c).

(5) Insert the clause at 52.204-21, *Basic Safeguarding of Covered Contractor Information Systems*, in *solicitations* and *contracts* (except for *acquisitions* of COTS items), as prescribed in 4.1903.

(6) Insert the provision at 52.204-24, *Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment*, as prescribed in 4.2105(a).

(7) Insert the provision at 52.207-6, *Solicitation of Offers from Small Business Concerns and Small Business Teaming Arrangements or Joint Ventures (Multiple-Award Contracts)*, as prescribed at 7.107-6.

(8) Insert the provision at 52.209-7, *Information Regarding Responsibility Matters*, as prescribed in 9.104-7(b).

(9) Insert the provision at 52.209-12, *Certification Regarding Tax Matters*, as prescribed at 9.104-7(e).

(10) Insert the provision at 52.222-56, *Certification Regarding Trafficking in Persons Compliance*

Plan, in *solicitations* as prescribed at 22.1705(b).

(11) Insert the clause at 52.225-19, Contractor Personnel in a *Designated Operational Area* or *Supporting a Diplomatic or Consular Mission* outside the *United States*, as prescribed in 25.301-4.

(12) Insert the provision at 52.229-11, Tax on Certain Foreign *Procurements*—Notice and Representation, in *solicitations* as prescribed in 29.402-3(a). The representation in the provision at 52.229-11 is not in the *System for Award Management*.

(13) Insert the clause at 52.229-13, Taxes—Foreign Contracts in Afghanistan, as prescribed in 29.402-4(a).

(14) Insert the clause at 52.229-14, Taxes—Foreign Contracts in Afghanistan (North Atlantic Treaty Organization Status of Forces Agreement), as prescribed in 29.402-4(b).

(e) *Discretionary use of FAR provisions and clauses*. The *contracting officer* may include in *solicitations* and contracts by addendum other FAR provisions and clauses when their use is consistent with the limitations contained in 12.302. For example:

(1) The *contracting officer* may use the provision at 52.201-1, *Acquisition* 360: Voluntary Survey, as prescribed in 1.102-3(b).

(2) The *contracting officer* may include appropriate clauses when an indefinite-delivery type of contract will be used. The clauses prescribed at 16.506 may be used for this purpose.

(3) The *contracting officer* may include appropriate provisions and clauses when the use of *options* is in the Government's interest. The provisions and clauses prescribed in 17.208 may be used for this purpose. If the provision at 52.212-2 is used, paragraph (b) provides for the evaluation of *options*.

(4) The *contracting officer* may use the provisions and clauses contained in part 23 regarding the use of *products* containing *recovered materials* and *biobased products* when appropriate for the item being acquired.

(5) When setting aside under the Stafford Act (subpart 26.2), include the provision at 52.226-3, Disaster or *Emergency Area* Representation, in the *solicitation*. The representation in this provision is not in the *System for Award Management*.

(f) Agencies may supplement the provisions and clauses prescribed in this part (to require use of additional provisions and clauses) only as necessary to reflect agency unique statutes applicable to the *acquisition* of *commercial products* or *commercial services* or as may be approved by the agency *senior procurement executive*, or the individual responsible for representing the agency on the FAR Council, without power of delegation.

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

(a) *General*. The provisions and clauses established in this subpart are intended to address, to the maximum extent practicable, commercial market practices for a wide range of potential Government *acquisitions* of *commercial products* and *commercial services*. However, because of the broad range of *commercial products* and *commercial services* acquired by the Government, variations in commercial practices, and the relative volume of the Government's *acquisitions* in the specific

market, *contracting officers may*, within the limitations of this subpart, and after conducting appropriate *market research*, tailor the provision at [52.212-1](#), Instructions to *Offerors-Commercial Products and Commercial Services*, and the clause at [52.212-4](#), Contract Terms and Conditions-*Commercial Products and Commercial Services*, to adapt to the market conditions for each *acquisition*.

(b) *Tailoring* [52.212-4](#), Contract Terms and Conditions-*Commercial Products and Commercial Services*. The following paragraphs of the clause at [52.212-4](#), Contract Terms and Conditions-*Commercial Products and Commercial Services*, implement statutory requirements and *shall* not be tailored—

- (1) Assignments;
- (2) Disputes;
- (3) Payment (except as provided in [subpart 32.11](#));
- (4) *Invoice*;
- (5) Other compliances;
- (6) Compliance with laws unique to Government contracts; and
- (7) Unauthorized obligations.

(c) *Tailoring inconsistent with customary commercial practice*. The *contracting officer shall* not tailor any clause or otherwise include any additional terms or conditions in a *solicitation* or contract for *commercial products* or *commercial services* in a manner that is inconsistent with customary commercial practice for the item being acquired unless a waiver is approved in accordance with agency procedures. The request for waiver *must* describe the customary commercial practice found in the marketplace, support the need to include a term or condition that is inconsistent with that practice and include a determination that use of the customary commercial practice is inconsistent with the needs of the Government. A waiver *may* be requested for an individual or class of contracts for that specific item.

(d) Tailoring *shall* be by addenda to the *solicitation* and contract. The *contracting officer shall* indicate in Block27 a of the [SF1449](#) if addenda are attached. These addenda *may* include, for example, a continuation of the schedule of *supplies/services* to be acquired from blocks 18 through 21 of the [SF1449](#); a continuation of the description of the *supplies/services* being acquired; further elaboration of any other item(s) on the [SF1449](#); any other terms or conditions necessary for the performance of the proposed contract (such as *options*, ordering procedures for indefinite-delivery type contracts, *warranties*, contract financing arrangements, etc.).

### **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) Block18 B for remittance address;

(3) Block19 for *line item numbers*;

(4) Block20 for schedule of *supplies/services*; or

(5) Block25 for accounting data;

(c) *Contract clauses-*

(1) 52.212-4, Contract Terms and Conditions-*Commercial Products and Commercial Services*, by reference (see SF 1449 block27 a);

(2) Any addendum to 52.212-4; and

(3) 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders-*Commercial Products and Commercial Services*.

(d) Any contract documents, exhibits or attachments; and

(e) *Solicitation* provisions-

(1) 52.212-1, Instructions to *Offerors-Commercial Products and Commercial Services*, by reference (see SF 1449, Block27 a);

(2) Any addendum to 52.212-1;

(3) 52.212-2, Evaluation-*Commercial Products and Commercial Services*, or other description of evaluation factors for award, if used; and

(4) 52.212-3, *Offeror Representations and Certifications-Commercial Products and Commercial Services*.

## **Subpart 12.4 - Unique Requirements Regarding Terms and Conditions for Commercial Products and Commercial Services**

### **12.401 General.**

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 for *commercial products* or *commercial services* in those areas where the terms and conditions in 52.212-4 differ substantially from those contained



elsewhere in the FAR.

## **12.402 Acceptance.**

(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 paragraphs of the clause.

## **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](#).

(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.

(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 reprocurement 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*-

(i) Indicate the contract is terminated for cause;

(ii) Specify the reasons for the termination;

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

(iv) State 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](#)).

(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 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 need to obtain sufficient documentation to support payment to the contractor against the goal of having a simple and expeditious settlement.

## 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-

(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 the Fly American provisions (see [47.405](#)).

(c) 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*.

(c) 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\(c\)\(3\)\(A\)](#), Certification and Estimate of Percentage of *Recovered Material*.

(c) 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.

(c) 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*.