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48 CFR Ch. 1 (10–1–11 Edition)

12.302 Tailoring of provisions and clauses for the acquisition of commercial items.

(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 items. However, because of the broad range of commercial items acquired by the Government, variations 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 Items, in solicitations for commercial items (see 12.602); or

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

(d) Other required provisions and clauses. (1) Notwithstanding prescriptions contained elsewhere in the FAR, when acquiring commercial items, 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 items.

(2) 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.

(3) Insert the provision at 52.209–7, Information Regarding Responsibility Matters, as prescribed in 9.104–7(b).

(4)(i) Insert the clause at 52.209–9, Updates of Publicly Available Information Regarding Responsibility Matters, as prescribed in 9.104–7(c).

(ii) Use the clause with its Alternate I as prescribed in 9.104–7(c)(2).

(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 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.

(2) 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.

(3) 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.

(4) 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 Online Representations and Certifications Application (ORCA) Database.

(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 items 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.

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EDITORIAL NOTE: For Federal Register citations affecting section 12.301, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.
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 Items, and the clause at 52.212–4, Contract Terms and Conditions—Commercial Items, to adapt to the market conditions for each acquisition.

(b) Tailoring 52.212–4, Contract Terms and Conditions—Commercial Items. The following paragraphs of the clause at 52.212–4, Contract Terms and Conditions—Commercial Items, 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; and
6. Compliance with laws unique to Government contracts.

(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 items 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 27a 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 items 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 a price evaluation adjustment for small disadvantaged business concerns is applicable (the contracting officer shall indicate the percentage(s) and applicable line item(s)), if an incentive subcontracting clause is used (the contracting officer shall indicate the applicable percentage);
2. Block 18B for remittance address;
3. Block 19 for contract 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 Items, by reference (see SF 1449, Block 27a);
2. Any addendum to 52.212–4; and
3. 52.212–5, Contract Terms and Conditions Required to Implement Statutes and Executive Orders;
(d) Any contract documents, exhibits or attachments; and
(e) Solicitation provisions—

1. 52.212–1, Instructions to Offerors—Commercial Items, by reference (see SF 1449, Block 27a);
2. Any addendum to 52.212–1;
3. 52.212–2, Evaluation—Commercial Items, or other description of evaluation factors for award, if used; and