

## 12.302

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

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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.

[60 FR 48241, Sept. 18, 1995]

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.govinfo.gov](http://www.govinfo.gov).

### **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 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.).

[60 FR 48241, Sept. 18, 1995, as amended at 61 FR 45772, Aug. 29, 1996; 61 FR 67430, Dec. 20, 1996; 62 FR 264, Jan. 2, 1997; 78 FR 37688, June 21, 2013; 86 FR 61023, Nov. 4, 2021; 87 FR 24844, Apr. 26, 2022]

### 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 18B 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 27a);

(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 27a);

(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.

[60 FR 48241, Sept. 18, 1995; 60 FR 54817, Oct. 26, 1995; 61 FR 67430, Dec. 20, 1996; 63 FR 35720, June 30, 1997; 63 FR 36121, July 1, 1998; 64 FR 10536, Mar. 4, 1999; 71 FR 220, Jan. 3, 2006; 75 FR 82567, Dec. 30, 2010; 79 FR 61750, Oct. 14, 2014; 82 FR 4713, Jan. 13, 2017; 86 FR 61023, Nov. 4, 2021]

## 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