

509.407

(iv) May identify to the Suspension and Debarment Official material facts in dispute and the bases. For an action other than one based on a conviction of civil judgment, a party may request review and a written finding by a fact-finding official.

(3) Following a review of the record and, if needed, a presentation by the contractor in opposition to the proposed action, the Suspension and Debarment Official will determine whether there is a genuine dispute of material fact. If so, the Suspension and Debarment Official will initiate the fact-finding process. The fact-finding official will:

(i) Establish a date for a fact-finding proceeding, normally to be held within 45 days of the determination of who will function as the fact-finding official.

(ii) Grant extensions for good cause.

(iii) Provide notice of the scheduled hearing.

(iv) Provide the parties with a schedule for exchange of documents and witness lists.

(v) Develop an official transcript of the fact-finding proceeding.

(vi) Provide the Government's representative and the contractor with an opportunity to present evidence relevant to the facts at issue. The contractor may appear in person or through a representative.

(vii) Conduct hearings under rules consistent with FAR 9.406-3 pertaining to fact finding. Neither the Federal Rules of Evidence nor the Federal Rules of Civil Procedure govern fact finding. Hearsay evidence may be presented and will be given appropriate weight by the fact-finding official.

(viii) Provide for witness testimony. Witnesses may testify in person. Witnesses are subject to cross examination.

(ix) Prepare written findings of fact based on a preponderance of the evidence and submit them to both the Suspension and Debarment Official and the contractor within 20 calendar days following the conclusion of the fact-finding proceeding.

[64 FR 37207, July 9, 1999, as amended at 74 FR 12733, Mar. 25, 2009; 86 FR 21666, Apr. 23, 2021]

48 CFR Ch. 5 (10-1-24 Edition)**509.407 Suspension.****509.407-1 General.**

The Suspension and Debarment Official is the designee under FAR 9.407-1(d).

[64 FR 37207, July 9, 1999, as amended at 74 FR 12733, Mar. 25, 2009]

509.407-3 Procedures.

(a) *General.* The procedures in 509.406-3 apply to suspension actions except as noted in paragraph (b) of this section.

(b) *Fact-finding.* (1) Fact-finding will not be conducted in an action:

(i) Based on an indictment.

(ii) When the Suspension and Debarment Official finds no genuine dispute of material facts.

(2) If the action is not based on an indictment, the Suspension and Debarment Official must coordinate with the Department of Justice or state prosecutorial authority through OIG. Based on the advice received, the Suspension and Debarment Official will determine if fact-finding would impair substantial interests of the Federal or state Government. In an action not based on an indictment, a suspended party may:

(i) Identify to the Suspension and Debarment Official material facts in dispute and the bases.

(ii) Request review and a written finding by a fact-finding official to resolve genuine disputes of material fact. For procedures involving a genuine dispute of material fact, see 509.406-3(d)(3).

[64 FR 37207, July 9, 1999, as amended at 74 FR 12733, Mar. 25, 2009]

PART 511—DESCRIBING AGENCY NEEDS**Subpart 511.1—Selecting and Developing Requirements Documents**

511.171 Requirements for GSA Information Systems.

Subpart 511.2—Using and Maintaining Requirements Documents

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511.204 Contract clauses.

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General Services Administration**511.204****Subpart 511.5—Liquidated Damages**

511.503 Contract clauses.

Subpart 511.6—Priorities and Allocations

511.600 Scope of subpart.

511.601 [Reserved]

511.602 General.

511.603 Procedures.

AUTHORITY: 40 U.S.C. 121(c).

SOURCE: 64 FR 37209, July 9, 1999, unless otherwise noted.

Subpart 511.1—Selecting and Developing Requirements Documents**511.171 Requirements for GSA Information Systems.**

(a) *CIO coordination.* The contracting officer shall ensure the requirements office has coordinated and identified possible CIO policy inclusions with the GSA IT prior to publication of a Statement of Work, or equivalent as well as the Security Considerations section of the acquisition plan to determine if the CIO policies apply. The CIO policies and GSA IT points of contact are available on the Acquisition Portal at <https://insite.gsa.gov/itprocurement>.

(b) *GSA requirements.* For GSA procurements (contracts, actions, or orders) that may involve GSA Information Systems, excluding GSA's government-wide contracts (e.g., Federal Supply Schedules and Governmentwide Acquisition Contracts), the contracting officer shall incorporate the applicable sections of the following policies in the Statement of Work, or equivalent:

- (1) *CIO 09-48, IT Security Procedural Guide: Security and Privacy IT Acquisition Requirements;* and
- (2) *CIO 12-2018, IT Policy Requirements Guide.*

(c) *Waivers.* (1) In cases where it is not effective in terms of cost or time or where it is unreasonably burdensome to include *CIO 09-48, IT Security Procedural Guide: Security and Privacy IT Acquisition Requirements* or *CIO 12-2018, IT Policy Requirements Guide* in a contract or order, a waiver may be granted by the Acquisition Approving Official as identified in the thresholds listed at 507.103(b), the Information System Authorizing Official, and the GSA IT Approving Official.

(2) The waiver request must provide the following information—

(i) The description of the procurement and GSA Information Systems involved;

(ii) Identification of requirement requested for waiver;

(iii) Sufficient justification for why the requirement should be waived; and

(iv) Any residual risks posed by waiving the requirement.

(3) Waivers must be documented in the contract file.

(d) *Classified information.* For any procurements that may involve access to classified information or a classified information system, see subpart 504.4 for additional requirements.

[87 FR 7395, Feb. 9, 2022; 87 FR 8964, Feb. 17, 2022]

Subpart 511.2—Using and Maintaining Requirements Documents**511.204 Contract clauses.**

(a) *Specifications and drawings.* Insert the clause at 552.211-72, Reference to Specifications in Drawings, in solicitations and contracts that contain military or other drawings.

(b) *Clauses for supply contracts that exceed the simplified acquisition threshold.* When the contract amount is expected to exceed the simplified acquisition threshold, insert—

(1) The clause at 552.211-73, Marking, in solicitations and contracts for supplies when deliveries may be made to both civilian and military activities.

(2) The clause at 552.211-75, Preservation, Packaging, and Packing, in solicitations and contracts for supplies. The contracting officer may also include the clause in contracts estimated to be at or below the simplified acquisition threshold when appropriate. Use the clause with its Alternate I in solicitations and contracts for all Federal Supply Schedule contracts.

(3) A clause substantially the same as the clause at 552.211-76, Charges for Packaging, Packing, and Marking, in solicitations and contracts for supplies to be delivered to GSA distribution centers.

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(4) The clause at 552.211-85, Consistent Pack and Package Requirements, in solicitations and contracts for supplies when deliveries may be made to both civilian and military activities.

(5) The clause at 552.211-86, Maximum Weight Per Shipping Container, in solicitations and contracts for supplies when deliveries may be made to both civilian and military activities.

(6) The clause at 552.211-87, Export Packing, in solicitations and contracts for supplies when deliveries may be made to both civilian and military activities.

(7) The clause at 552.211-88, Vehicle Export Preparation, in solicitations and contracts for supplies when deliveries may be made to both civilian and military activities.

(8) The clause at 552.211-89, Non-Manufactured Wood Packaging Material for Export, in solicitations and contracts for supplies when deliveries may be made to both civilian and military activities overseas.

(9) The clause at 552.211-90, Small Parts, in solicitations and contracts for supplies when deliveries may be made to both civilian and military activities.

(10) The clause at 552.211-91, Vehicle Decals, Stickers, and Data Plates, in solicitations and contracts for supplies when deliveries may be made to both civilian and military activities.

(11) The clause at 552.211-92, Radio Frequency Identification (RFID) using Passive Tags, in solicitations and contracts for supplies when deliveries may be made to military activities.

(c) *Supply contracts.* Insert the clause at 552.211-77, Packing List, in solicitations and contracts for supplies, including purchases over the micro-purchase threshold. Use the clause with its Alternate I in solicitations and contracts for all Federal Supply Schedule contracts.

[86 FR 55518, Oct. 6, 2021]

Subpart 511.4—Delivery or Performance Schedules**511.404 Contract clauses.**

(a) *Supplies or services.* (1) *Shelf-life items.* Insert the following clauses in

solicitations and contracts that require delivery of shelf-life items within a specified timeframe from the date of manufacture or production:

(i) The clause at 552.211-79, Acceptable Age of Supplies, if the required shelf-life period is 12 months or less, and lengthy acceptance testing may be involved. For items having a limited shelf-life and when required by the program director, use the clause with its Alternate I.

(ii) The clause at 552.211-80, Age on Delivery, if the required shelf-life period is more than 12 months, or when source inspection can be performed within a short time period.

(2) *Stock replenishment contracts.* Insert the clause at 552.211-81, Time of Shipment, in solicitations and contracts when a stock replenishment contract is contemplated that does not include the clause at 552.211-83 and requires shipment within 45 calendar days after receipt of the order. Use the clause with its Alternate I if shipment is required after 45 days of receipt of the order.

(3) *Indeterminate testing time.* Insert the clause at 552.211-83, Availability for Inspection, Testing, and Shipment/Delivery, in solicitations and contracts that provide for source inspection by Government personnel and that require lengthy testing for which time frames cannot be determined in advance. Use the clause with its Alternate I if the contract is for stock items.

(4) *Stock program time of delivery.* Insert the clause at 552.211-94, Time of Delivery, in solicitations and contracts for supplies for the Stock Program when neither the FAR clause at 52.211-8, or the FAR clause at 52.211-9 is suitable.

(b) *Construction.* Insert the following clauses in solicitations and contracts when a fixed-price construction contract is contemplated:

(1) The clause at 552.211-10, Commencement, Prosecution, and Completion of Work.

(2) The clause at 552.211-70, Substantial Completion.

[86 FR 55518, Oct. 6, 2021]

General Services Administration**511.602****Subpart 511.5—Liquidated Damages**

SOURCE: 84 FR 3716, Feb. 13, 2019, unless otherwise noted.

511.503 Contract clauses.

(a) Insert the clause at 552.211-12, Liquidated Damages-Construction, in solicitations and contracts for construction, other than cost-plus-fixed-fee, when the contracting officer determines that liquidated damages are appropriate (see FAR 11.501(a)).

(b) Insert the clause at 552.211-13, Time Extensions, in solicitations and contracts for construction that includes the clause at 552.211-12.

[86 FR 55518, Oct. 6, 2021]

Subpart 511.6—Priorities and Allocations

SOURCE: 69 FR 55934, Sept. 16, 2004, unless otherwise noted.

511.600 Scope of subpart.

Pursuant to the Defense Priorities and Allocations System (DPAS) Delegation 3, the Department of Commerce (DOC) has delegated to GSA the authority to use the DPAS under certain conditions. DPAS Delegation 3 restricts use of DPAS authority to GSA supply system procurement in support of the Department of Defense (DoD), Department of Energy (DoE), and Federal Emergency Management Agency (FEMA) approved programs.

[74 FR 66254, Dec. 15, 2009]

511.601 [Reserved]**511.602 General.**

(a) The purpose of the DPAS is to assure the timely availability of industrial resources to meet current national defense, energy, and civil emergency preparedness program requirements and to provide an operating system to support rapid industrial response in a national emergency. The primary statutory authority for the DPAS is Title I of the Defense Production Act of 1950, as amended, with additional authority from the Selective Service Act of 1948 and the Robert T.

Stafford Disaster Relief and Emergency Assistance Act. Executive Orders 12919 and 12742 delegate to the DOC authority to administer the DPAS. Within the DOC, the Office of Strategic Industries and Economic Security (SIES) is assigned responsibility for DPAS implementation, administration, and compliance.

(b) The DPAS is published in the Code of Federal Regulations at 15 CFR part 700. This regulation provides an overview, a detailed explanation of operations and procedures, and other implementing guidance, including information on special priorities assistance and compliance.

(c) Orders placed under DPAS are “rated orders.” Rated orders must receive preferential treatment only as necessary to meet delivery requirements. Rated orders are identified by a rating symbol of either “DX” or “DO” followed by a program identification symbol. All “DO” rated orders have equal priority with each other and take preference over unrated orders. All “DX” rated orders have equal priority with each other and take preference over “DO” rated orders and unrated orders. A program identification symbol indicates which approved program is supported by the rated order.

(d) The authority delegated to GSA shall not be used to support the procurement of any product or service that—

(1) Are commonly available in commercial markets for general consumption;

(2) Do not require major modification when purchased for approved program use;

(3) Are readily available in sufficient quantity so as to cause no delay in meeting approved program requirements; or

(4) Are to be used primarily for administrative purposes (including Federal Supply Classification (FSC) classes, groups, or items), such as for personnel or financial management. The Commissioner, FAS, shall issue additional guidance, as may be necessary, to ensure effective implementation of its delegated DPAS authority.

[74 FR 66254, Dec. 15, 2009, as amended at 86 FR 68442, Dec. 2, 2021]

511.603**511.603 Procedures.**

(a) A DPAS rating may be placed against an entire contract at time of award or an individual order issued under an existing, otherwise unrated, contract. FAR 11.604 requires contracting officers to insert the provision at 52.211-14, Notice of Priority Rating for National Defense, Emergency Preparedness, and Energy Program Use, in solicitations when the contract or order to be awarded will be a rated order and to insert the clause at 52.211-15, Defense Priority and Allocation Requirements, in contracts that are rated orders.

(b) In addition to the FAR provision and clause referenced in paragraph (a) of this section, the contract or order must include the following (see 15 CFR 700.12):

(1) The appropriate priority rating symbol (*i.e.*, either “DO” or “DX”) along with the program identification symbol. When GSA contracting officers place DO rated orders, they must use program identification symbol “K1”. When placing a DX-rated order for other agencies, GSA contracting officers must use the requesting agency program identification symbol from the DoD Master Urgency List and may only do so when GSA is acting as the procuring agent for DoD or DoE and has received a “DX” rated contract or order from either department.

(2) A required delivery date. The words “as soon as possible” or “immediately” do not constitute a required delivery date. Use of either a specific date or a specified number of days ARO (after receipt of order) is acceptable.

(3) The written signature on a manually placed order, or the digital signature or name on an electronically placed order of an individual authorized to place rated orders.

(4) A statement that reads substantially as follows: “This is a rated order certified for national defense use, and you are required to follow all the provisions of the Defense Priorities and Allocations System regulation (15 CFR part 700)”.

(c) Multiple and Single Award Schedule contracts are not rated at time of award.

[74 FR 66254, Dec. 15, 2009]

48 CFR Ch. 5 (10-1-24 Edition)**PART 512—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES****Subpart 512.2—Special Requirements for the Acquisition of Commercial Items**

Sec.

512.216 Unenforceability of unauthorized obligations (FAR DEVIATION).

Subpart 512.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Products and Commercial Services

512.301 Solicitation provisions and contract clauses for the acquisition of commercial products and commercial services. (FAR DEVIATION)

AUTHORITY: 40 U.S.C. 121(c).

Subpart 512.2—Special Requirements for the Acquisition of Commercial Items**512.216 Unenforceability of unauthorized obligations (FAR DEVIATION).**

GSA has a deviation to FAR 12.216 for this section. For commercial contracts, supplier license agreements are referred to as commercial supplier agreements (defined in 502.101). Paragraph (u) of clause 552.212-4 prevents violations of the Anti-Deficiency Act (31 U.S.C. 1341) for supplies or services acquired subject to a commercial supplier agreement.

[83 FR 7634, Feb. 22, 2018, as amended at 89 FR 55086, July 3, 2024]

Subpart 512.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Products and Commercial Services**512.301** **Solicitation provisions and contract clauses for the acquisition of commercial products and commercial services (FAR DEVIATION).**

(a) *Contract clauses.* Insert the following clauses in solicitations and contracts for the acquisition of commercial products and commercial services (FAR DEVIATION):

(1) The clause at 552.212-71, Contract Terms and Conditions Applicable to