

# Part 12 - Acquisition of Commercial Products and Commercial Services

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## **12.000 Scope.**

This part provides policies and procedures to streamline the acquisition of commercial products, including commercially available off-the-shelf (COTS) items (a subset of commercial products), and commercial services in accordance with 41 U.S.C. 1906, 1907, and 3307 and 10 U.S.C. 3451-3453. It also implements the simplified procedures authorized by 41 U.S.C. 1901-1903, 1905, and 3305.

## **12.001 Applicability.**

(a) Acquisitions of commercial products or commercial services are subject to other parts of the FAR. This part takes precedence when there is an inconsistency.

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

(c) The \$9 million ceiling for the use of simplified procedures (see 12.201-1) is increased to \$15 million if the head of the agency determines that the supplies or services are to be used to—

(1) Support a contingency operation;

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

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

(4) Support response to an emergency or major disaster.

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

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

## **Subpart 12.1 - Presolicitation**

### **12.101 Preference.**

(a) Agencies must acquire commercial products or commercial services when the agency determines that they are available to meet the agency's needs (see part 10).

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

### **12.102 Restricting competition.**

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

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

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

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

Table 12-1 — Authority citations for restricting competition.

### 12.103 Small business.

See part 19 for small business set-aside requirements. When the acquisition is set aside under any of the small business programs, include the North American Industry Classification System (NAICS) code and small business size standard in the solicitation.

### 12.104 Contract type.

(a) *Preference for fixed-price contracts.* To the maximum extent practicable, use firm-fixed-price or fixed-price with economic price adjustment contract types to procure commercial products or commercial services. Follow the procedures in part 16 to use these contract types.

(b) *Time-and-materials or labor-hour contracts.* A time-and-materials or labor-hour contract may be used for commercial services that are procured on a competitive basis, if the services are commonly sold to the general public using these types of contracts.

(1) To use this contract type, the contracting officer must—

(i) Execute a determination and findings (D&F) that a firm-fixed-price or fixed-price with economic price adjustment is not suitable; and

(ii) Include in the contract a ceiling price that the contractor exceeds at its own risk.

(2) Any increase to the ceiling price must be supported by a determination that doing so is in the best interest of the procuring agency.

(c) *Indefinite-delivery contracts.*

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

(i) 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) If rates are established on a time-and-materials or labor-hour basis, then to the maximum extent practicable, structure the contract to allow issuance of orders on a firm-fixed-price or fixed-price with economic price adjustment basis.

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

(ii) If the contract only allows for orders on a time-and-materials or labor-hour basis, the D&F described in paragraph (b)(1) of this section is required only for the basic contract. It must explain why providing for an alternative firm-fixed-price or fixed-price with economic price adjustment pricing structure for orders is not practicable, and an official one level above the contracting officer must approve it.

(d) *Prohibition on use of cost-reimbursement contracts.* Do not use any cost-reimbursement contract type to procure commercial products or commercial services.

## **12.105 Quality requirements.**

(a) *Quality assurance.* To the maximum extent practicable, allow a contractor under a commercial products acquisition to use its existing quality assurance system to inspect or test commercial products before the contractor presents the products to the Government for acceptance. Rely on the contractor to accomplish all inspection and

testing needed to ensure that commercial services conform to contract requirements before the contractor presents the services to the Government.

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

## **12.106 Technical data.**

Presume that data delivered under a contract for commercial products was developed exclusively at private expense. Acquire only the technical data and the rights in that data customarily provided to the public with a commercial product or process. When a contract for commercial products requires the delivery of technical data, see part 27 for provisions and clauses to delineate rights in the technical data.

## **12.107 Computer software.**

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

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

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

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

## **12.108 Contract financing.**

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

## **12.109 Cost Accounting Standards.**

CAS do not apply to contracts or subcontracts for the acquisition of commercial products or commercial services, except as provided in 12.001(c).

## **Subpart 12.2 - Solicitation, Evaluation, and Award**

### **12.200 Applicability.**

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

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

### **12.201 Solicitation procedures.**

#### **12.201-1 Simplified procedures.**

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

(b) *Legal effect of quotations.*

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

(2) A binding contract is formed when the supplier accepts the Government's offer, either by written acceptance of the purchase order or substantial

performance of the purchase order. The contracting officer may request that the contractor provide written acceptance of the order.

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

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

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

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

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

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

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

(1) Reduce administrative costs and lead time;

(2) Improve opportunities for small business concerns;

(3) Promote efficiency and economy in contracting; and

(4) Avoid unnecessary burdens for agencies and contractors.

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

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

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

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

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

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

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

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

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

(B) The following statement:

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

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

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

(i) BPAs may be established with-

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

(B) A single firm from which numerous individual purchases at or below the simplified acquisition threshold will likely be made in a given period.

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

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

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

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

(iv) The BPA must include-

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

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

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

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

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

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

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

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

## **12.201-2 Other procedures.**

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

## **12.202 Publicizing.**

(a) Publicize in accordance with part 5.

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

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

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

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

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

This acquisition *[is/is not]* set-aside for small business concerns. This solicitation incorporates provisions and clauses by reference. The full text of provisions and clauses may be accessed electronically at [www.acquisition.gov](http://www.acquisition.gov).

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

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

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

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

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

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

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

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

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

## **12.203 Evaluation.**

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

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

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

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

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

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

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

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

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

## **12.204 Award.**

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

(b) *Documentation.*

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

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

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

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

(2) *Awarding contracts.* Use the SF 1449 or the forms prescribed in part 14, 15, or 36, as applicable, when awarding contracts using the procedures in those parts. Use the Uniform Contract Format, but complete only those sections that are necessary.

## **12.205 Solicitation provisions and contract clauses.**

(a) *Required provisions.*

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

(2) Include the provision at 52.212-2, Evaluation—Commercial Products and Commercial Services, when using the procedures in 12.201-2. This provision may

also be used when using the simplified procedures at 12.201-1. This provision should be tailored for the acquisition and must include all evaluation factors and criteria for award.

(3) Include the following provisions, if applicable based on the provision prescription:

Number	Title	Source
52.203-11	Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions	Statute
52.203-18	Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements or Statements-Representation	Statute
52.204-7	System for Award Management—Registration	Statute
52.204-7 with Alt I	System for Award Management—Registration, with Alternate I	Statute
52.204-90	Offeror Identification	Statute
52.207-6	Solicitation of Offers from Small Business Concerns and Small Business Teaming Arrangements or Joint Ventures (Multiple-Award Contracts)	Statute
52.209-12	Certification Regarding Tax Matters	Statute

Number	Title	Source
52.219-2	Equal Low Bids	Statute
52.222-18	Certification Regarding Knowledge of Child Labor for Listed End Products	E.O.
52.222-48	Exemption from Application of the Service Contract Labor Standards for Maintenance, Calibration, or Repair of Certain Equipment–Certification	Other
52.222-52	Exemption from Application of the Service Contract Labor Standards for Certain Services-Certification	Other
52.222-56	Certification Regarding Trafficking in Persons Compliance Plan	Statute
52.222-90	Addressing DEI Discrimination by Federal Contractors	E.O.
52.223-4	Recovered Material Certification	Statute
52.225-2	Buy American Certificate	Statute
52.225-4	Buy American-Free Trade Agreements-Israeli Trade Act Certificate	Statute

Number	Title	Source
52.225-6	Trade Agreements-Certificate	Statute
52.225-20	Prohibition on Conducting Restricted Business Operations in Sudan-Certification	Statute
52.225-25	Prohibition on Contracting with Entities Engaging in Certain Activities or Transactions Relating to Iran-Representation and Certifications	Statute
52.226-3	Disaster or Emergency Area Representation	Statute
52.229-11	Tax on Certain Foreign Procurements—Notice and Representation	Statute
52.240-90	Security Prohibitions and Exclusions Representations and Certifications	Statute

Table 12-2 — Provisions to include as prescribed.

(4) The solicitation provision at 52.204-90 is used in lieu of the solicitation provision at 52.204-7 if the solicitation will not require offerors to be registered in the System for Award Management (see policy at 4.203-2). When 52.204-90 is used, also include the individual provisions listed in paragraph (c)(1) of 52.204-7, System for Award Management—Registration, in the solicitation as applicable based on the provision prescriptions (see 4.208(c)).

(b) *Required clauses.*

(1) Include the clause at 52.212-4, Terms and Conditions—Commercial Products and Commercial Services, in solicitations and contracts for commercial products and commercial services.

(i) Use the clause with its Alternate I when expecting to award a time-and-materials or labor-hour contract or when expecting that orders will include time-and-material line items.

(ii) This clause may be tailored to reflect customary commercial practice, with the exception of the following paragraphs that implement statute: Assignments, Disputes, Payment, Invoice, Compliance with laws unique to Government contracts, Unauthorized obligations, and Comptroller General examination of records.

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

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

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

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

Number	Title	Source
52.219-8	Utilization of Small Business Concerns	Statute
52.219-9	Small Business Subcontracting Plan	Statute
52.219-9 with Alt I	Small Business Subcontracting Plan, with Alternate I	Statute
52.219-9 with Alt II	Small Business Subcontracting Plan, with Alternate II	Statute
52.219-9 with Alt III	Small Business Subcontracting Plan, with Alternate III	Statute
52.219-9 with Alt IV	Small Business Subcontracting Plan, with Alternate IV	Statute
52.219-14	Limitations on Subcontracting	Statute
52.219-16	Liquidated Damages—Subcontracting Plan	Statute
52.219-33	Nonmanufacturer Rule	Statute
52.222-3	Convict Labor	EO

Number	Title	Source
52.222-19	Child Labor—Cooperation with Authorities and Remedies	EO
52.222-35	Equal Opportunity for Veterans	Statute
52.222-35 with Alt I	Equal Opportunity for Veterans, with Alternate I	Statute
52.222-36	Equal Opportunity for Workers with Disabilities	Statute
52.222-36 with Alt I	Equal Opportunity for Workers with Disabilities, with Alternate I	Statute
52.222-37	Employment Reports on Veterans	Statute
52.222-40	Notification of Employee Rights Under the National Labor Relations Act	EO
52.222-41	Service Contract Labor Standards	Statute
52.222-42	Statement of Equivalent Rates for Federal Hires	Statute
52.222-43	Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (Multiple Year and Option Contracts)	Statute

Number	Title	Source
52.222-44	Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment	Statute
52.222-50	Combating Trafficking in Persons	Statute
52.222-50 with Alt I	Combating Trafficking in Persons, with its Alternate I	Statute
52.222-51	Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements	Other
52.222-53	Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services—Requirements	Other
52.222-54	Employment Eligibility Verification	EO
52.222-62	Paid Sick Leave Under Executive Order 13706	EO
52.223-9	Estimate of Percentage of Recovered Material Content for EPA-Designated Items	Statute
52.223-9 with Alt I	Estimate of Percentage of Recovered Material Content for EPA-Designated Items, with Alternate I	Statute

Number	Title	Source
52.223-11	Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons	Statute
52.223-12	Maintenance	Statute
52.223-20	Aerosols	Statute
52.223-21	Foams	Statute
52.223-23	Sustainable Products and Services	Statute
52.224-3	Privacy Training	Statute
52.224-3 with Alt I	Privacy Training, with Alternate I	Statute
52.225-1	Buy American-Supplies	Statute
52.225-1 with Alt I	Buy American-Supplies, with Alternate I	Statute
52.225-3	Buy American-Free Trade Agreements-Israeli Trade Act	Statute

Number	Title	Source
52.225-3 with Alt II	Buy American-Free Trade Agreements-Israeli Trade Act, with Alternate II	Statute
52.225-3 with Alt III	Buy American-Free Trade Agreements-Israeli Trade Act, with Alternate III	Statute
52.225-3 with Alt IV	Buy American-Free Trade Agreements-Israeli Trade Act, with Alternate IV	Statute
52.225-5	Trade Agreements	Statute
52.225-19	Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission outside the United States	Other
52.225-26	Contractors Performing Private Security Functions Outside the United States	Statute
52.226-4	Notice of Disaster or Emergency Area Set-Aside	Statute
52.226-5	Restrictions on Subcontracting Outside Disaster or Emergency Area	Statute
52.226-8	Encouraging Contractor Policies to Ban Text Messaging While Driving	EO

Number	Title	Source
52.229-12	Tax on Certain Foreign Procurements	Statute
52.232-29	Terms for Financing of Commercial Products and Commercial Services	Statute
52.232-30	Installment Payments of Commercial Products and Commercial Services	Statute
52.232-33	Payment by Electronic Funds Transfer—System for Award Management	Statute
52.232-34	Payment by Electronic Funds Transfer—Other than System for Award Management	Statute
52.232-36	Payment by Third Party	Statute
52.232-40	Providing Accelerated Payments to Small Business Subcontractors	Statute
52.232-9X	52.232-9X, Fast Payment Procedure	Statute
52.233-3	Protest After Award	Statute
52.233-4	Applicable Law for Breach of Contract Claim	Statute

Number	Title	Source
52.240-91	Security Prohibitions and Exclusions	Statute
52.240-91 with Alt I	Security Prohibitions and Exclusions, with Alternate I	Statute
52.240-92	Security Requirements	Other
52.240-92 with Alt II	Security Requirements with Alternate II	Other
52.240-93	Basic Safeguarding of Covered Contractor Information Systems	Statute
52.244-6	Subcontracts for Commercial Products and Commercial Services	Statute
52.247-64	Preference for Privately Owned U.S.-Flag Commercial Vessels	Statute
52.247-64 with Alt I	Preference for Privately Owned U.S.-Flag Commercial Vessels, with Alternate I	Statute
52.247-64 with Alt II	Preference for Privately Owned U.S.-Flag Commercial Vessels, with Alternate II	Statute

Number	Title	Source
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Table 12-3 — Clauses to include as prescribed.

(c) *Discretionary*. Include the following provisions and clauses, as needed:

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

Table 12-4 — Provisions and clauses to include as needed.

(d) *Waivers and deviations*.

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

(i) The provision or clause does not implement statute or Executive order;

(ii) The contracting officer determines the content to be inconsistent with customary commercial practice; and

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

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

*(2) Deviations.*

(i) Do not include other provisions or clauses in solicitation or contract for commercial products or commercial services, unless the agency issues an individual or class deviation according to part 1.

(ii) A deviation is not required when an agency supplement to the FAR directs that the contracting officer include a provision or clause in acquisitions of commercial products or commercial services.

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

## **Subpart 12.3 - Postaward**

### **12.301 Notifications.**

*(a) Posting requirements.*

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

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

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

(c) Notifications and debriefings of unsuccessful offerors. When using the procedures in 12.201-2, follow the procedures in part 15 or 14 for notification of

unsuccessful offerors and debriefings, as appropriate. When providing a debriefing, include the information listed at 52.212-1(e).

### **12.302 Subcontracts.**

See requirements for subcontracts for commercial products and commercial services in part 44.

### **12.303 Cancellations.**

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

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

(c) If the contractor does not accept the cancellation or claims that costs were incurred as a result of the contractor beginning performance under the purchase order, follow the procedures at 12.304 to terminate the purchase order.

### **12.304 Terminations.**

(a) General. Follow the procedures in this section and the termination paragraphs of the clause at 52.212-4, when terminating contracts for commercial products or commercial services. Do not use the procedures in part 49.

(b) *Termination for cause.*

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

(2) When a termination for cause is appropriate, send the contractor a written notification regarding the termination. At a minimum, this notification must include—

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

(ii) The reasons for the termination;

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

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

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

(c) Termination for the Government's convenience. When terminating for the Government's convenience, the parties should mutually agree upon the requirements of the termination proposal. 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.

## **Subpart 12.4 - Micro-purchases**

### **12.401 General.**

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

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

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

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

### **12.402 Purchase guidelines.**

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

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

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

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

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

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

## **12.403 Methods.**

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

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

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

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

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

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

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

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

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

# Part 52 - Solicitation Provisions and Contract Clauses

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[52.212 \[Reserved\]](#)

[52.212-1 Instructions to Offerors—Commercial Products and Commercial Services.](#)

[52.212-2 Evaluation—Commercial Products and Commercial Services.](#)

[52.212-3 \[Reserved\]](#)

[52.212-4 Terms and Conditions—Commercial Products and Commercial Services.](#)

[52.212-5 \[Reserved\]](#)

## **52.212 [Reserved]**

### **52.212-1 Instructions to Offerors—Commercial Products and Commercial Services.**

As prescribed in 12.301(a)(1), insert the following provision:

INSTRUCTIONS TO OFFERORS—COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES  
(DEVIATION NOV 2025)

(a) *Submission of offers.* Submit signed and dated offers to the office specified in this solicitation at or before the exact time specified in this solicitation. As a minimum, offers shall include—

- (1) The solicitation number;
- (2) The name, address, telephone number of the Offeror;
- (3) The Offeror's Unique Entity Identifier (UEI) and, if applicable, Electronic Funds Transfer (EFT) indicator;
- (4) Information necessary to evaluate the factors contained in the provision at 52.212-2 or as described in the solicitation;

(5) Responses to provisions that require Offeror completion of information, representations, and certifications (other than those collected via the System for Award Management (SAM)); and

(6) A statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation and any solicitation amendments.

(b) *Period for acceptance of offers.* The Offeror agrees to hold the prices in its offer firm for 60 calendar days from the date specified for receipt of offers, unless another time period is specified in an addendum to the solicitation.

(c) *Late submissions, modifications, revisions, and withdrawals of offers.*

(1) Offerors are responsible for submitting offers and any modifications or revisions to the Government office designated in the solicitation by the time specified in the solicitation.

(2) Any offer, modification, or revision received after the time specified for receipt of offers is “late” and will not be considered unless it is received before award is made and the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition. However, a late modification of an otherwise successful offer that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

(3) If an emergency or unanticipated event interrupts normal Government processes so that offers cannot be received at the Government office designated for receipt of offers by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation or other notice of an extension of the closing date, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(4) Offerors may withdraw their offers by written notice to the Government received at any time before award.

(d) *Contract award (not applicable to Invitation for Bids).* The Government intends to evaluate offers and award a contract without discussions with Offerors. Therefore, the Offeror’s initial offer should contain the Offeror’s best terms. However, the Government reserves the right to conduct discussions, if necessary. The Government may reject any or

all offers if such action is in the public interest, accept other than the lowest offer, and waive informalities and minor irregularities in offers received.

(e) *Debriefings*. If a postaward debriefing is given to requesting Offerors, the Government will disclose the following information, if applicable:

(1) The agency's evaluation of the significant weak or deficient factors in the debriefed Offeror's offer.

(2) The overall evaluated cost or price and technical rating of the successful Offeror and the debriefed Offeror and past performance information on the debriefed Offeror.

(3) The overall ranking of all Offerors when any ranking was developed by the agency during source selection.

(4) A summary of the rationale for award.

(5) For acquisitions of commercial products, the make and model of the product to be delivered by the successful Offeror.

(6) Reasonable responses to relevant questions posed by the debriefed Offeror as to whether the agency followed source-selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities.

(End of provision)

## **52.212-2 Evaluation—Commercial Products and Commercial Services.**

As prescribed in 12.301(a)(2), the Contracting Officer may insert a provision substantially as follows:

### **EVALUATION—COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES (DEVIATION NOV 2025)**

(a) Evaluation factors. The Government will award a contract resulting from this solicitation to the responsible Offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered. The following factors will be used to evaluate offers:

*[Insert evaluation factors in the relative order of importance. For requests for proposals, state: Evaluation factors other than price when combined are [significantly more important*

*than price/approximately equal to price/significantly less important] than price. For invitations for bids, list only price and price-related factors.]*

(b) *Options (if applicable)*. The Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are significantly unbalanced. The evaluation of options does not obligate the Government to exercise the option(s).

(c) *Notice of award*. A written notice of award or acceptance of an offer furnished to the successful Offeror within the time for acceptance specified in the offer, shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Government may accept an offer (or part of an offer), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.

(End of provision)

### **52.212-3 [Reserved]**

### **52.212-4 Contract Terms and Conditions—Commercial Products and Commercial Services.**

As prescribed in [12.301\(b\)\(3\)](#), insert the following clause:

#### **CONTRACT TERMS AND CONDITIONS—COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES (DEVIATION NOV 2025)**

(a) *Definitions*. The clause at Federal Acquisition Regulation (FAR) 52.202-1, Definitions, is incorporated by reference.

(b) *Inspection/Acceptance*. The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. If repair/replacement or reperformance will not correct the defects or is not possible, the Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post acceptance rights—

(1) Within a reasonable time after the defect was discovered or should have been discovered; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(c) *Assignment.* The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727). However, when a third party makes payment (e.g., use of the Governmentwide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.

(d) *Changes.* Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(e) *Disputes.* This contract is subject to 41 U.S.C. chapter 71, Contract Disputes. Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal, or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause FAR 52.233-1, Disputes, which is incorporated in this contract by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(f) *Excusable delays.* The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence. Examples of occurrences include acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. When an excusable delay occurs, the Contractor shall—

(1) Notify the Contracting Officer in writing as soon as possible;

(2) Remedy the delay as quickly as possible; and

(3) Notify the Contracting Officer when the occurrence is over.

(g) *Invoice.* The Government will handle invoices according to the Prompt Payment Act (31 U.S.C. 3903) and 5 CFR part 1315. The Contractor shall submit invoices to the

address designated in the contract to receive invoices. An invoice must include the information required by 5 CFR part 1315.9(b).

(h) *Patent indemnity.* The Contractor shall indemnify the Government and its officers, employees, and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark, or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) *Payment—*

(1) *Items accepted.* Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

(2) *Prompt payment.* The Government will make payment in accordance with the Prompt Payment Act ( [31 U.S.C. 3903](#)) and prompt payment regulations at 5 CFR Part 1315.

(3) *Discount.* In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(4) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall—

(i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—

(A) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(B) Affected contract number and delivery order number, if applicable;

(C) Affected line item or subline item, if applicable; and

(D) Contractor point of contact.

(ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(5) *Interest.*

(i) All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in 41 U.S.C. 7109, which is applicable to the period in which the amount becomes due, as provided in (i)(6)(v) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(ii) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(iii) *Final decisions.* The Contracting Officer will issue a final decision as required by [33.211](#) if–

(A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt within 30 days;

(B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see [32.607-2](#)).

(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(v) Amounts shall be due at the earliest of the following dates:

(A) The date fixed under this contract.

(B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(vi) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on-

(A) The date on which the designated office receives payment from the Contractor;

(B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(vii) The interest charge made under this clause may be reduced under the procedures for interest credits prescribed in FAR part 32 in effect on the date of this contract.

(j) *Risk of loss.* Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon—

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

(k) *Taxes.* The contract price includes all applicable Federal, State, and local taxes and duties.

(l) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the

Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. The Government will send a cure notice to the Contractor, unless the reason for the termination is late delivery. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) *Title.* Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(o) *Warranty.* The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(p) *Limitation of liability.* Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(q) *Compliance with laws unique to Government contracts.* The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 40 U.S.C. chapter 37, Contract Work Hours and Safety Standards; 41 U.S.C. chapter 87, Kickbacks; 49 U.S.C. 40118, Government-financed air transportation; and 41 U.S.C. chapter 21 relating to procurement integrity.

(r) *Order of precedence.* Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

- (1) The schedule of supplies/services;
- (2) The Disputes, Payments, Invoice, Compliance with Laws Unique to Government Contracts, and Unauthorized Obligations paragraphs of this clause;
- (3) Other contract clauses incorporated in the solicitation or contract;

- (4) Addenda to this solicitation or contract;
- (5) Solicitation provisions incorporated in the solicitation;
- (6) Other paragraphs of this clause;
- (7) Other documents, exhibits, and attachments; and
- (8) The specification.

(s) *Unauthorized obligations.*

(1) Except as stated in paragraph (s)(2) of this clause, when any supply or service acquired under this contract is subject to any End User License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring the Government to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:

(i) Any such clause is unenforceable against the Government.

(ii) Neither the Government nor any Government-authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an "I agree" click box or other comparable mechanism (e.g., "click-wrap" or "browse-wrap" agreements), execution does not bind the Government or any Government authorized end user to such clause.

(iii) Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.

(2) Paragraph (s)(1) of this clause does not apply to indemnification by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

(t) *Comptroller General examination of record.* This paragraph applies if this contract was awarded using other than sealed bid procedures and is in excess of the simplified acquisition threshold on the date of award of this contract.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to

examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices, at all reasonable times, the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR part 4, longer period required by statute, or periods specified in other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This clause does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(u) *Incorporation by reference.* The Contractor's representations and certifications, including those completed electronically via the System for Award Management (SAM), are incorporated by reference into the contract.

(End of clause)

*Alternate I* (DEVIATION NOV 2025). When contemplating a time-and-materials or labor-hour contract, substitute the following paragraphs (a), (b), (i), (l), and (m) for those in the basic clause.

(a) The clause at Federal Acquisition Regulation (FAR) 52.202-1, Definitions, is incorporated by reference. As used in this clause—

*Direct materials* means those materials that enter directly into the end product, or that are used or consumed directly in connection with the furnishing of the end product or service.

*Hourly rate* means the rate(s) prescribed in the contract for payment for labor that meets the labor category qualifications of a labor category specified in the contract that are—

- (1) Performed by the contractor;
- (2) Performed by the subcontractors; or
- (3) Transferred between divisions, subsidiaries, or affiliates of the contractor under a common control.

*Materials* means—

- (1) Direct materials, including supplies transferred between divisions, subsidiaries, or affiliates of the contractor under a common control;
- (2) Subcontracts for supplies and incidental services for which there is not a labor category specified in the contract;
- (3) Other direct costs (e.g., incidental services for which there is not a labor category specified in the contract, travel, computer usage charges, etc.);
- (4) The following subcontracts for services which are specifically excluded from the hourly rate: *[Insert any subcontracts for services to be excluded from the hourly rates prescribed in the schedule.]*; and
- (5) Indirect costs specifically provided for in this clause.

*Subcontract* means any contract, as defined in FAR 2.101, entered into with a subcontractor to furnish supplies or services for performance of the prime contract or a subcontract including transfers between divisions, subsidiaries, or affiliates of a contractor or subcontractor. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

(b) *Inspection/Acceptance.*

(1) The Government has the right to inspect and test all materials furnished and services performed under this contract at all places and times before acceptance. The Government will perform inspections and tests in a manner that will not unduly delay the work.

(2) If the Government performs inspection or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

(3) Unless otherwise specified in the contract, the Government will accept or reject services and materials at the place of delivery as promptly as practicable after delivery, and they will be presumed accepted 60 days after the date of delivery, unless accepted earlier.

(4) At any time during contract performance, but not later than 6 months (or such other time as may be specified in the contract) after acceptance of the services or materials last delivered under this contract, the Government may require the Contractor to replace or correct services or materials that at time of delivery failed to meet contract requirements. Except as otherwise specified in paragraph (b)(6) of this clause, the cost of replacement or correction shall be determined under paragraph (i) of this clause, but the “hourly rate” for labor hours incurred in the replacement or correction shall be reduced to exclude that portion of the rate attributable to profit. Unless otherwise specified below, the portion of the “hourly rate” attributable to profit shall be 10 percent. The Contractor shall not tender for acceptance materials and services required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken. *[Insert portion of labor rate attributable to profit.]*

(5)(i) If the Contractor fails to proceed with reasonable promptness to perform required replacement or correction, and if the replacement or correction can be performed within the ceiling price (or the ceiling price as increased by the Government), the Government may—

(A) By contract or otherwise, perform the replacement or correction, charge to the Contractor any increased cost, or deduct such increased cost from any amounts paid or due under this contract; or

(B) Terminate this contract for cause.

(ii) Failure to agree to the amount of increased cost to be charged to the Contractor shall be a dispute under the Disputes clause of the contract.

(6) Notwithstanding paragraphs (b)(4) and (5) of this clause, the Government may, at any time, require the Contractor to remedy by correction or replacement, without cost to the Government, any failure by the Contractor to comply with the requirements of this contract, if the failure is due to—

(i) Fraud, lack of good faith, or willful misconduct on the part of the Contractor's managerial personnel; or

(ii) The conduct of one or more of the Contractor's employees selected or retained by the Contractor after any of the Contractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.

(7) This clause applies in the same manner and to the same extent to corrected or replacement materials or services as to materials and services originally delivered under this contract.

(8) The Contractor has no obligation or liability under this contract to correct or replace materials and services that at time of delivery do not meet contract requirements, except as provided in this clause or as may be otherwise specified in the contract.

(9) Unless otherwise specified in the contract, the Contractor's obligation to correct or replace Government-furnished property shall be governed by the clause pertaining to Government property.

(i) *Payments.*

(1) *Work performed.* The Government will pay the Contractor as follows upon the submission of commercial invoices approved by the Contracting Officer:

(i) *Hourly rate.*

(A) The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the contract by the number of direct labor hours performed. Fractional parts of an hour shall be payable on a prorated basis.

(B) The rates shall be paid for all labor performed on the contract that meets the labor qualifications specified in the contract. Labor hours incurred to perform tasks for which labor qualifications were specified in the contract will not be paid to the extent the work is performed by individuals that do not meet the qualifications specified in the contract, unless specifically authorized by the Contracting Officer.

(C) Invoices may be submitted once each month (or at more frequent intervals, if approved by the Contracting Officer) to the Contracting Officer or the authorized representative.

(D) When requested by the Contracting Officer or the authorized representative, the Contractor shall substantiate invoices (including any subcontractor hours reimbursed at the hourly rate in the schedule) by evidence of actual payment, individual daily job timecards, records that verify the employees meet the qualifications for the labor categories specified in the contract, or other substantiation specified in the contract.

(E) Unless the Schedule prescribes otherwise, the hourly rates in the Schedule shall not be varied by virtue of the Contractor having performed work on an overtime basis.

(1) If no overtime rates are provided in the Schedule and the Contracting Officer approves overtime work in advance, overtime rates shall be negotiated.

(2) Failure to agree upon these overtime rates shall be treated as a dispute under the Disputes clause of this contract.

(3) If the Schedule provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the Contracting Officer.

(ii) *Materials.*

(A) If the Contractor furnishes materials that meet the definition of a commercial product at FAR 2.101, the price to be paid for such materials shall not exceed the Contractor's established catalog or market price, adjusted to reflect the—

(1) Quantities being acquired; and

(2) Any modifications necessary because of contract requirements.

(B) Except as provided for in paragraph (i)(1)(ii)(A) and (D)(2) of this clause, the Government will reimburse the Contractor the actual cost of materials (less any rebates, refunds, or discounts received by the contractor that are identifiable to the contract) provided the Contractor—

(1) Has made payments for materials in accordance with the terms and conditions of the agreement or invoice; or

(2) Makes these payments within 30 days of the submission of the Contractor's payment request to the Government and such payment is in accordance with the terms and conditions of the agreement or invoice.

(C) To the extent able, the Contractor shall—

(1) Obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and

(2) Give credit to the Government for cash and trade discounts, rebates, scrap, commissions, and other amounts that are identifiable to the contract.

(D) Unless listed below, other direct and indirect costs will not be reimbursed.

(1) *Other direct costs.* The Government will reimburse the Contractor on the basis of actual cost for the following, provided such costs comply with the requirements in paragraph (i)(1)(ii)(B) of this clause: *[Insert each element of other direct costs (e.g., travel, computer usage charges, etc. Insert "None" if no reimbursement for other direct costs will be provided. If this is an indefinite delivery contract, the Contracting Officer may insert "Each order must list separately the elements of other direct charge(s) for that order or, if no reimbursement for other direct costs will be provided, insert "None".]*

*(2) Indirect costs (material handling, subcontract administration, etc.). The Government will reimburse the Contractor for indirect costs on a pro-rata basis over the period of contract performance at the following fixed price: [Insert a fixed amount for the indirect costs and payment schedule. Insert "\$0" if no fixed price reimbursement for indirect costs will be provided. (If this is an indefinite delivery contract, the Contracting Officer may insert "Each order must list separately the fixed amount for the indirect costs and payment schedule or, if no reimbursement for indirect costs, insert 'None')."]*

(2) *Total cost.* The total cost to the Government for the performance of this contract shall not exceed the ceiling price set forth in the Schedule. The Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within such ceiling price. If at any time the Contractor has reason to believe that the hourly rate payments and material costs that will accrue in performing this contract in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 85 percent of the ceiling price in the Schedule, the Contractor shall notify the Contracting Officer giving a revised estimate of the total price to the Government for performing this contract with supporting reasons and documentation. If at any time during the performance of this contract, the Contractor has reason to believe that the total price to the Government for performing this contract will be substantially greater or less than the stated ceiling price, the Contractor shall so notify the Contracting Officer, giving a revised estimate of the total price for performing this contract, with supporting reasons and documentation. If at any time during performance of this contract, the Government has reason to believe that the work to be required in performing this contract will be substantially greater or less than the stated ceiling price, the Contracting Officer will so advise the Contractor, giving the revised estimate of the total amount of effort to be required under the contract.

(3) *Ceiling price.* The Government will not be obligated to pay the Contractor any amount in excess of the ceiling price in the Schedule, and the Contractor shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the Schedule, unless and until the Contracting Officer notifies the Contractor in writing that the ceiling price has been increased and specifies in the

notice a revised ceiling that shall constitute the ceiling price for performance under this contract. When and to the extent that the ceiling price set forth in the Schedule has been increased, any hours expended and material costs incurred by the Contractor in excess of the ceiling price before the increase shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the ceiling price.

(4) *Access to records.* At any time before final payment under this contract, the Contracting Officer (or authorized representative) will have access to the following (access shall be limited to the listing below unless otherwise agreed to by the Contractor and the Contracting Officer):

(i) Records that verify that the employees whose time has been included in any invoice meet the qualifications for the labor categories specified in the contract;

(ii) For labor hours (including any subcontractor hours reimbursed at the hourly rate in the schedule), when timecards are required as substantiation for payment—

(A) The original timecards (paper-based or electronic);

(B) The Contractor's timekeeping procedures;

(C) Contractor records that show the distribution of labor between jobs or contracts; and

(D) Employees whose time has been included in any invoice for the purpose of verifying that these employees have worked the hours shown on the invoices.

(iii) For material and subcontract costs that are reimbursed on the basis of actual cost—

(A) Any invoices or subcontract agreements substantiating material costs; and

(B) Any documents supporting payment of those invoices.

(5) *Overpayments/Underpayments.* Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices, that are found by the Contracting Officer not to have been properly payable and shall also be

subject to reduction for overpayments or to increase for underpayments. The Contractor shall promptly pay any such reduction within 30 days unless the parties agree otherwise. The Government will pay any such increases within 30 days, unless the parties agree otherwise. The Contractor's payment will be made by check. If the Contractor becomes aware of a duplicate invoice payment or that the Government has otherwise overpaid on an invoice payment, the Contractor shall—

(i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—

(A) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(B) Affected contract number and delivery order number, if applicable;

(C) Affected line item or subline item, if applicable; and

(D) Contractor point of contact.

(ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(6) *Interest.*

(i) All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury, as provided in 41 U.S.C. 7109, which is applicable to the period in which the amount becomes due, and then at the rate applicable for each six-month period as established by the Secretary until the amount is paid.

(ii) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(iii) The Contracting Officer will issue a final decision if—

(A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt in a timely manner;

(B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer.

(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(v) Amounts shall be due at the earliest of the following dates:

(A) The date fixed under this contract.

(B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(vi) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—

(A) The date on which the designated office receives payment from the Contractor;

(B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(vii) The interest charge made under this clause may be reduced under the procedures prescribed in FAR part 32 in effect on the date of this contract.

(viii) Upon receipt and approval of the invoice designated by the Contractor as the “completion invoice” and supporting documentation, and upon compliance by the Contractor with all terms of this contract, any outstanding balances will be paid within 30 days unless the parties agree

otherwise. The completion invoice, and supporting documentation, shall be submitted by the Contractor as promptly as practicable following completion of the work under this contract, but in no event later than 1 year (or such longer period as the Contracting Officer may approve in writing) from the date of completion.

(7) *Release of claims.* The Contractor, and each assignee under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, a release discharging the Government, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions:

(i) Specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible to exact statement by the Contractor.

(ii) Claims, together with reasonable incidental expenses, based upon the liabilities of the Contractor to third parties arising out of performing this contract, that are not known to the Contractor on the date of the execution of the release, and of which the Contractor gives notice in writing to the Contracting Officer not more than 6 years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier.

(iii) Claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Government against patent liability), including reasonable incidental expenses, incurred by the Contractor under the terms of this contract relating to patents.

(9) *Discount.* In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(8) *Prompt payment.* The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and prompt payment regulations at 5 CFR part 1315.

(l) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work under this contract and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid 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 contract, less any hourly rate payments already made to the Contractor plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system that have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

(m) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon written request, with adequate assurances of future performance. The Government will send a cure notice to the Contractor, unless the reason for the termination is late delivery. Subject to the terms of this contract, the Contractor shall be paid an amount computed under paragraph (i), Payments, of this clause, but the "hourly rate" for labor hours expended in furnishing work not delivered to or accepted by the Government shall be reduced to exclude that portion of the rate attributable to profit. Unless otherwise specified in paragraph (b)(4) of this clause, the portion of the "hourly rate" attributable to profit shall be 10 percent. In the event of termination for cause, the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

**52.212-5 [Reserved]**