

**PREFACE/CLASS OUTLINE
ACQUISITION AND LOGISTICS EXCELLENCE WEEK 2001**

TOPIC: Commercial Acquisition

LENGTH/TYPE: 1 hour/Lecture

SCOPE: FAR Part 12, Acquisition of Commercial Items, is the major acquisition reform product of the Federal Acquisition Streamlining Act (FASA) of 1994 and the Clinger-Cohen Act of 1996. FAR Part 12 establishes clear preferences and streamlined procedures for the purchase of commercial items using business practices common to the commercial sector. Implementation has been inconsistent across DoD. This class presents the latest policy guidance concerning the use of Part 12 for DoD procurements, and highlights the advantages of using commercial item procurement procedures from a requiring activity viewpoint. It also highlights the most recent changes to FAR Part 12, and includes pending FAR and DFARS cases and their potential impact on the acquisition workforce.

LEARNING OBJECTIVES:

1. Given information provided in the lecture regarding FAR Part 12 material, students will be familiar with the latest DoD Guidance concerning the use of FAR Part 12 in Government procurements.
2. Given information provided in the lecture regarding FAR Part 12 material, students will be able to recognize and apply streamlined procedures and techniques to realize resource savings and execute more effective procurements.
3. Given information provided in the lecture regarding FAR Part 12 material, students will be able to identify commercial terms and conditions that can be tailored to achieve efficient and effective business arrangements between Government and Industry.
4. Given information provided in the lecture regarding FAR Part 12 material, students will be familiar with the proposed changes to FAR Part 12 and the impact of those changes on the acquisition workforce.

MATERIALS:

Briefing Charts

Handouts

Definitions – Commercial Item, Nondevelopmental Item (NDI)

Commercial Item Clauses and Provisions

Suggested Broad Classes of Commercial Items

Commercial Acquisition

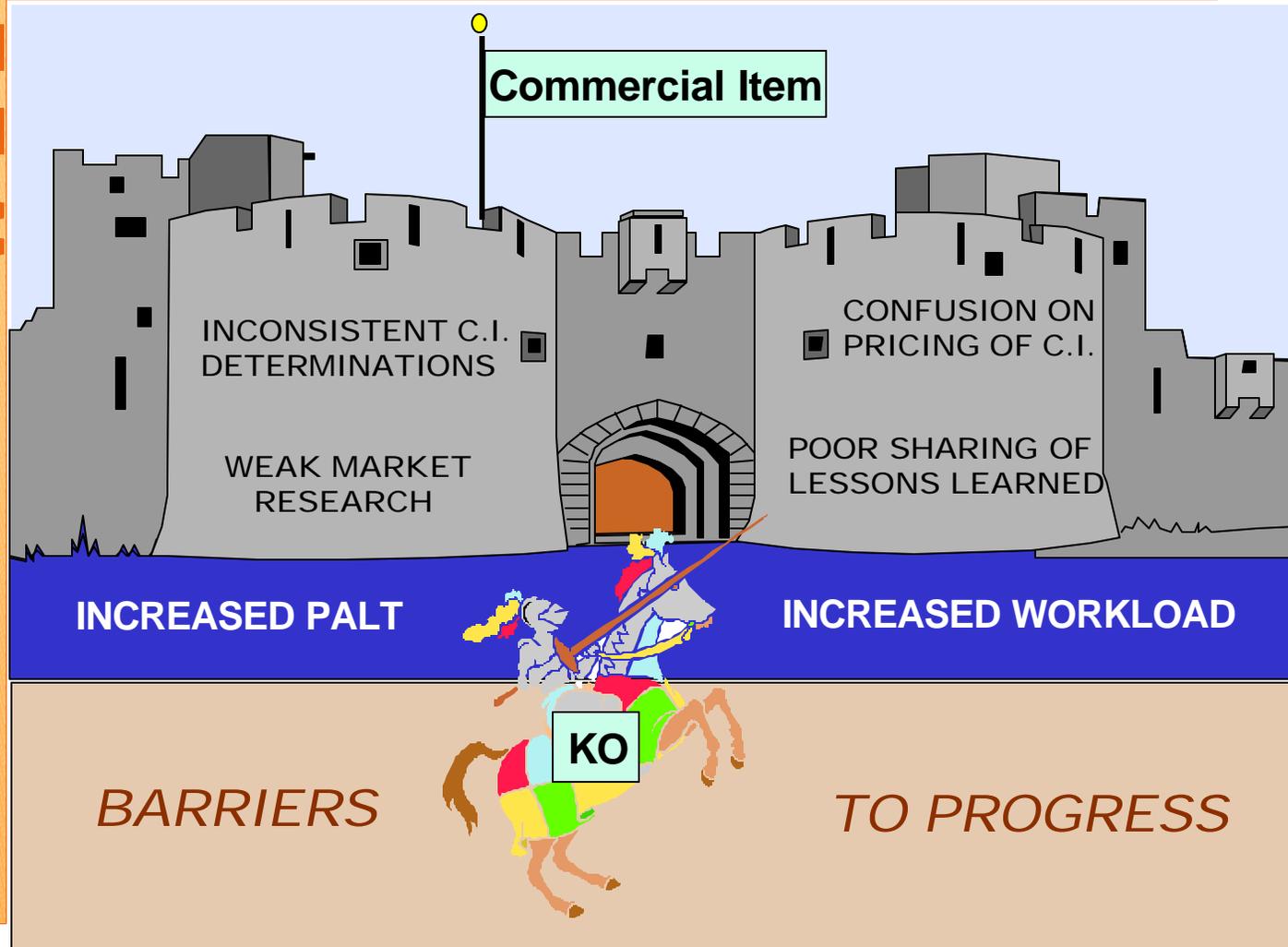


A&LE
Acquisition
WEEK
&
Logistics
Excellence

September 10-15, 2001



Results of Commercial Item IPT





IPT Findings

Government

Misunderstanding/
Confusion

Contract Type

Orders - pre-Part 12
Arrangements

Industry

Market Research

CBD Note 26

Inconsistent
Commerciality Decisions

Overall

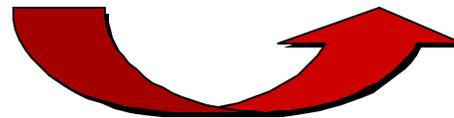
Decentralization

Competition Advocacy

Part 12 Benefits Unclear

More Training Needed

COMMERCIAL
ACQUISITION



Commercial Acquisition



Resultant USD(AT&L) Guidance

1. CLARIFY GUIDANCE

2. ESTABLISH GOALS



- ★ *Double the dollar value of Part 12 actions awarded by end of FY05*
- ★ *Increase the number of contract actions awarded to 50% by end of FY05*

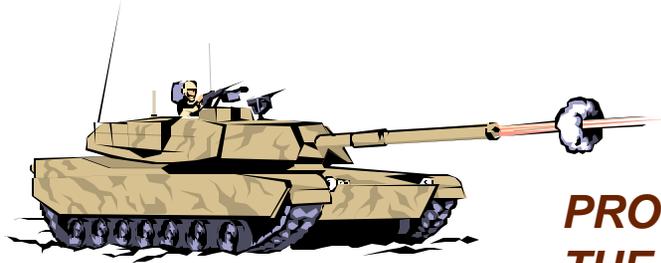
3. IMPLEMENTATION PLANS REQUIRED

4. PILOT PROGRAM

5. COMMERCIAL ITEM HANDBOOK



Why All the Emphasis on Part 12?



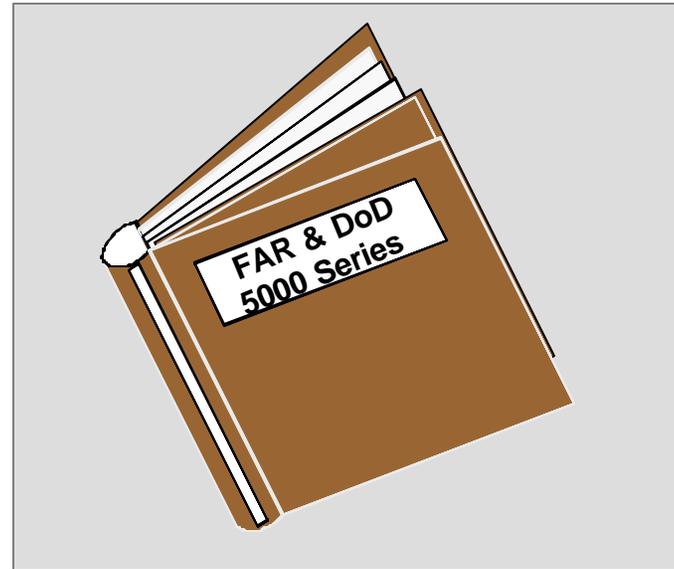
**PROVIDE WARFIGHTERS WITH
THE TECHNICAL ADVANTAGE
TO WIN FUTURE CONFLICTS**

**TAKE ADVANTAGE OF
RESOURCE SAVINGS
AND STREAMLINING BENEFITS**





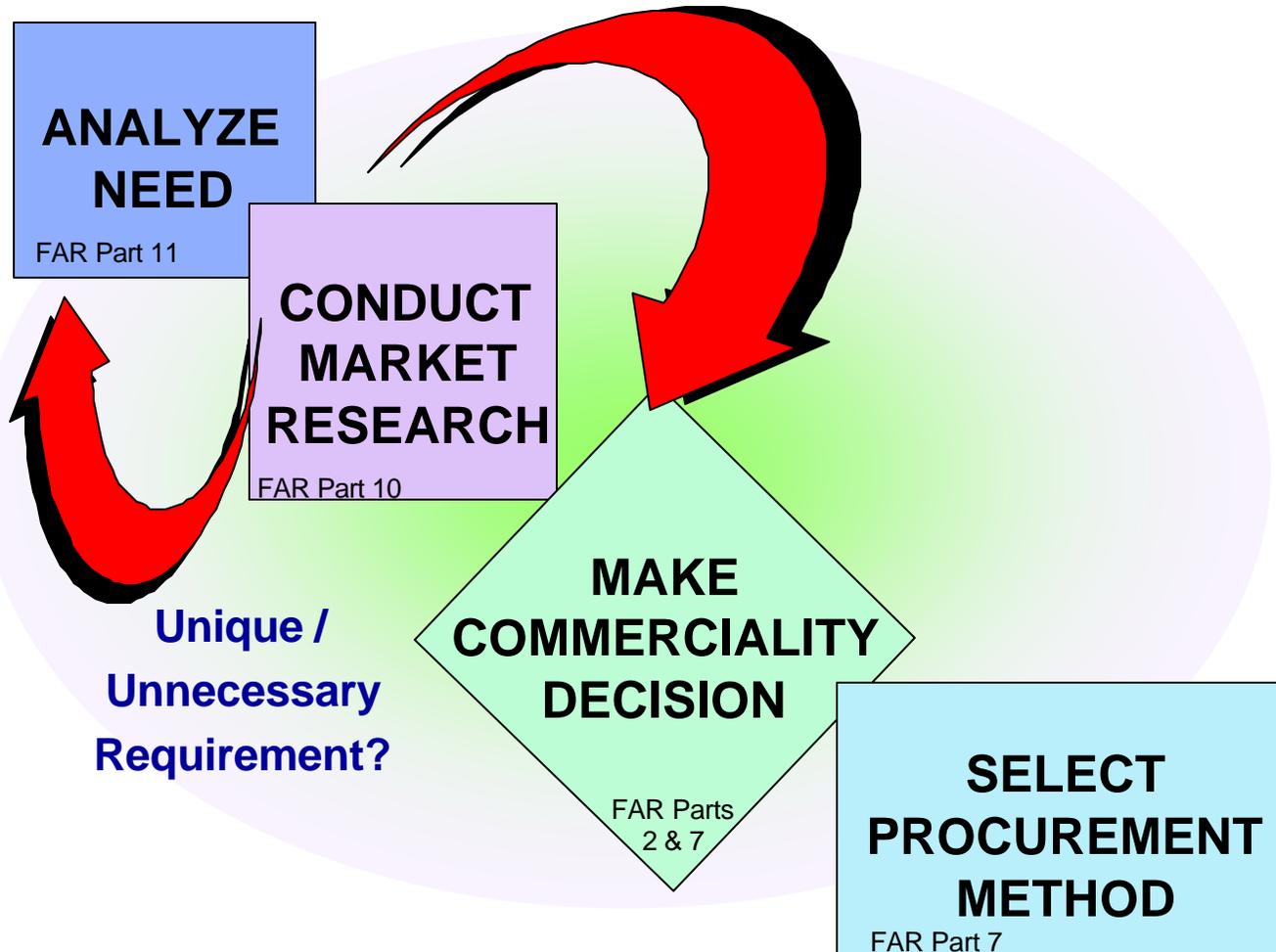
Policy



Commercial Items - Market Research



Commerciality Determination Process



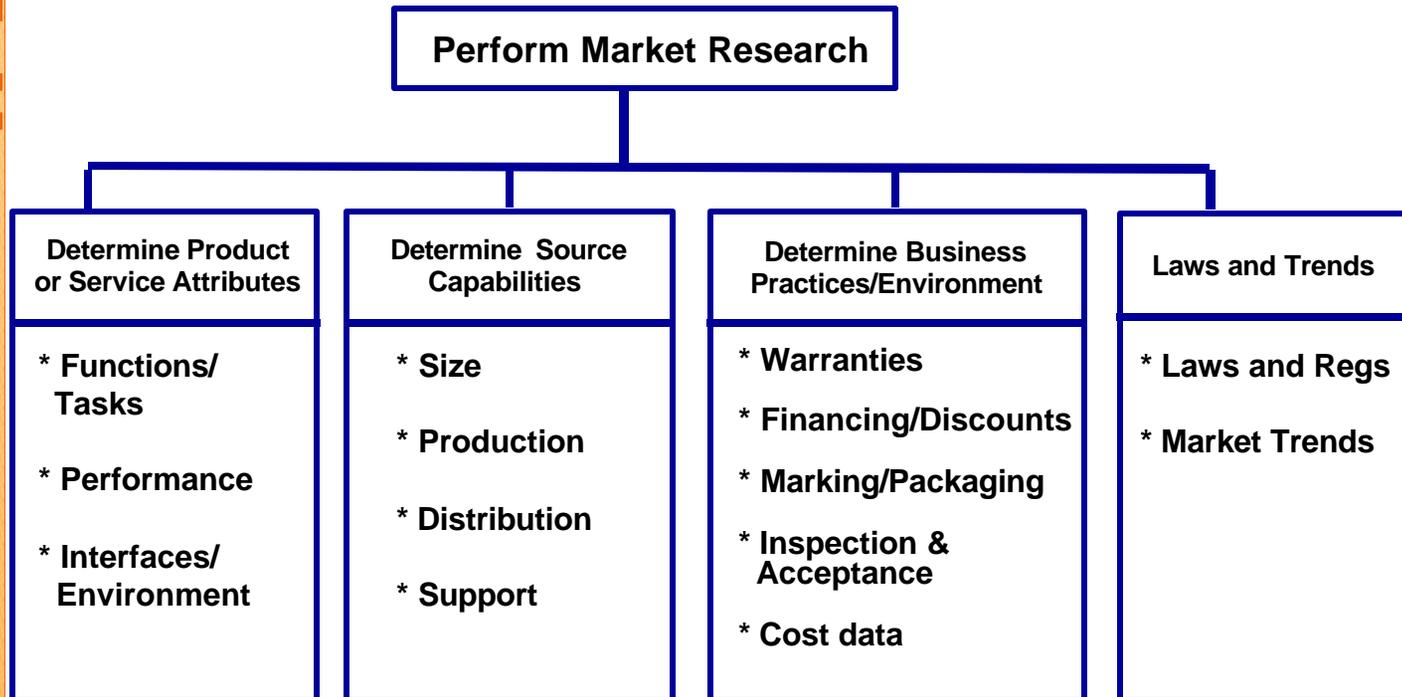
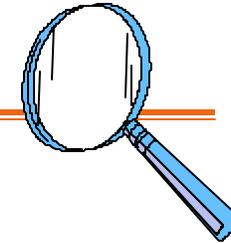


Perform Requirements Analysis





Market Research Process

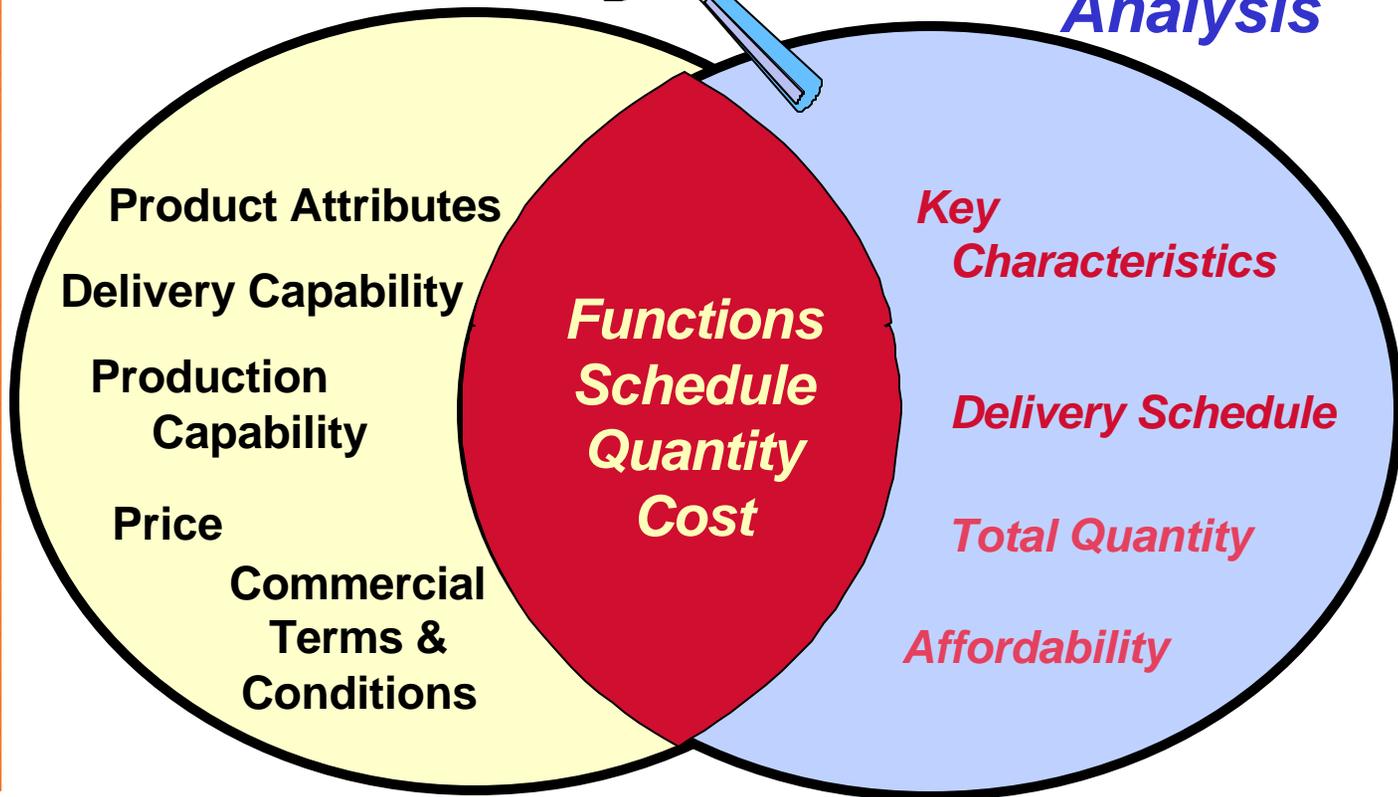
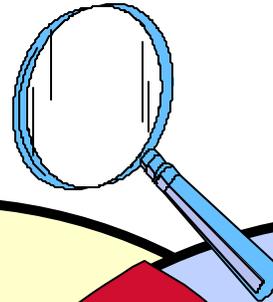




It's a Comparison of Data Bases

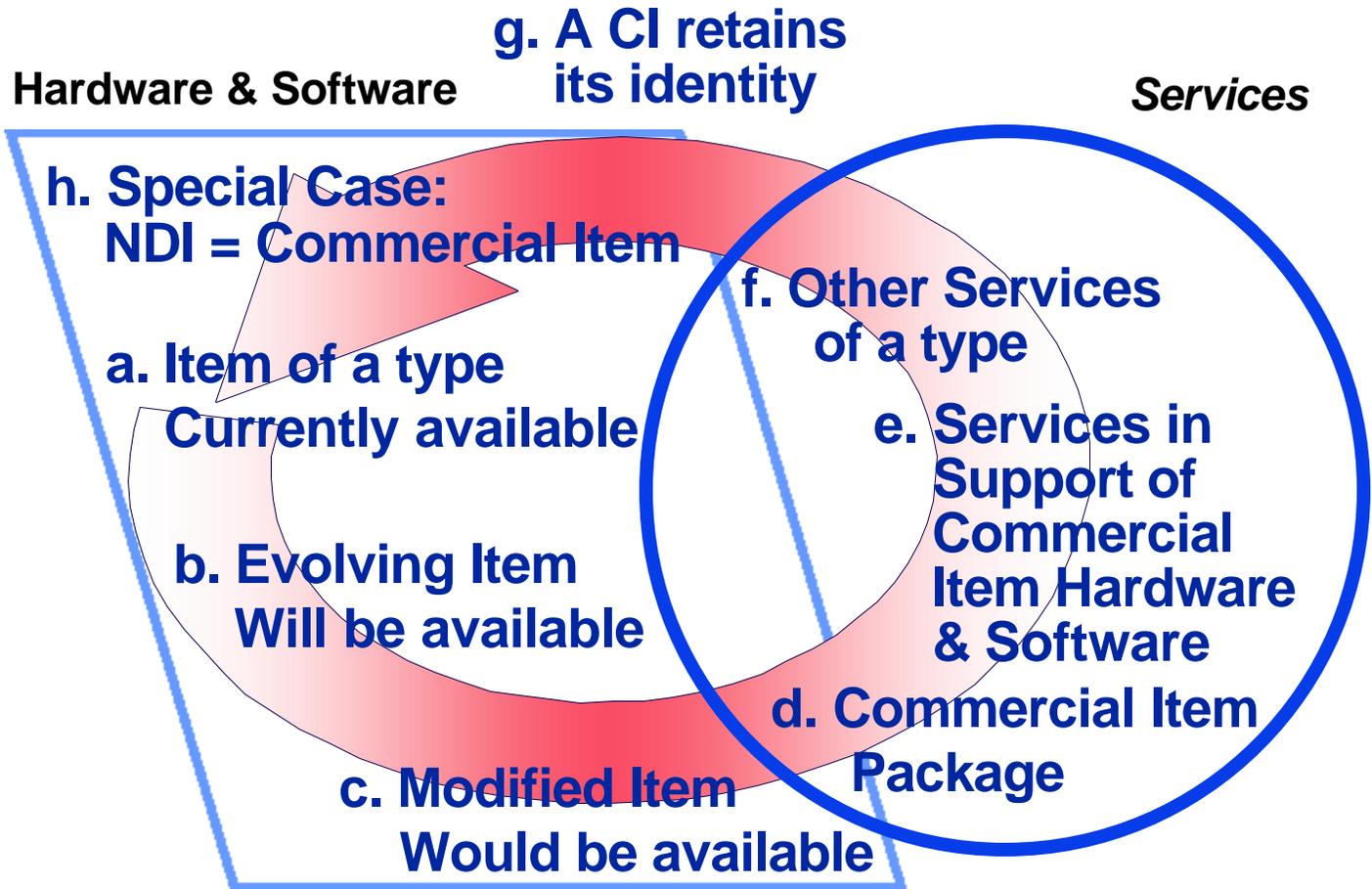
Market Research

Requirements Analysis



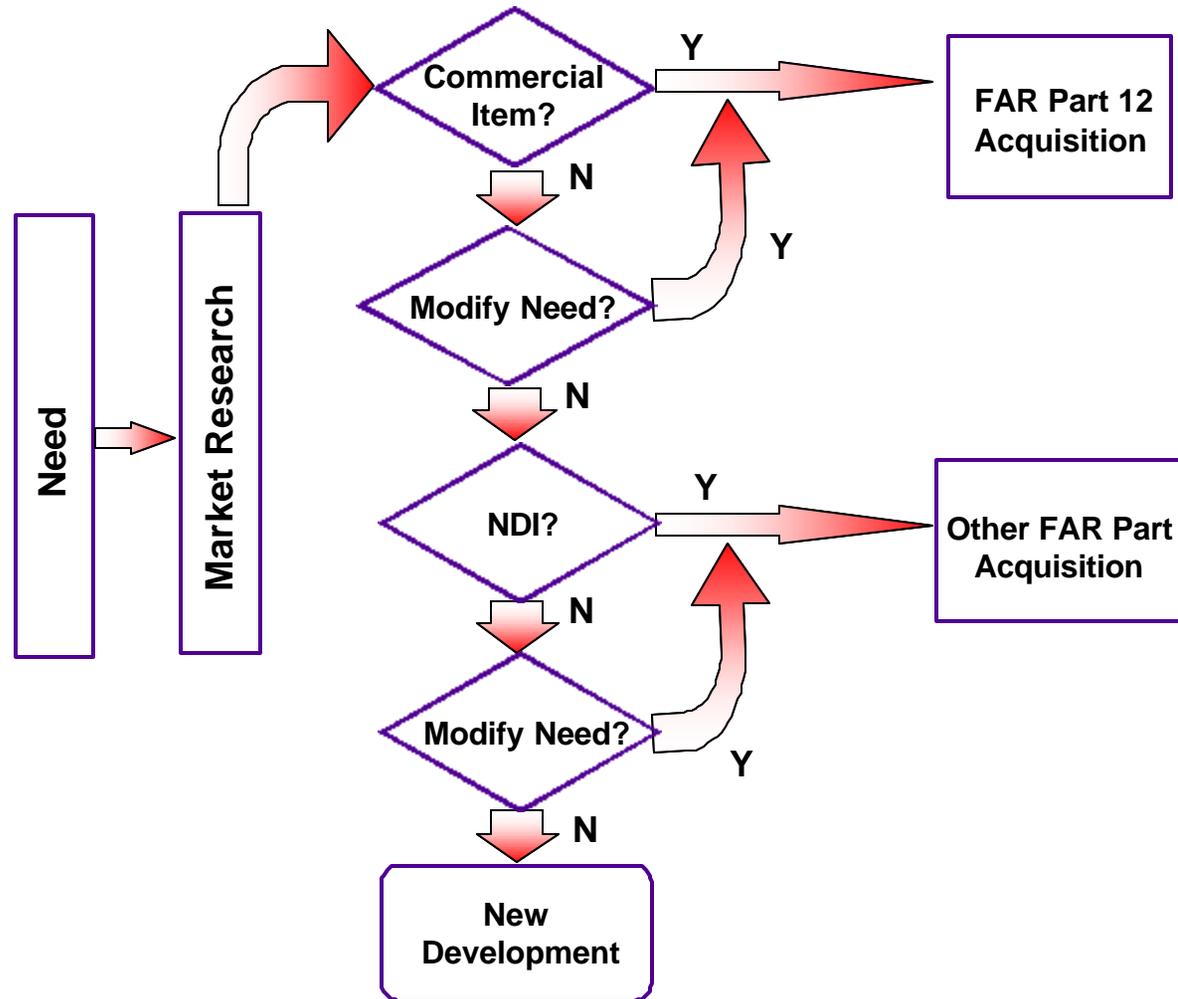


Commercial Item Definition



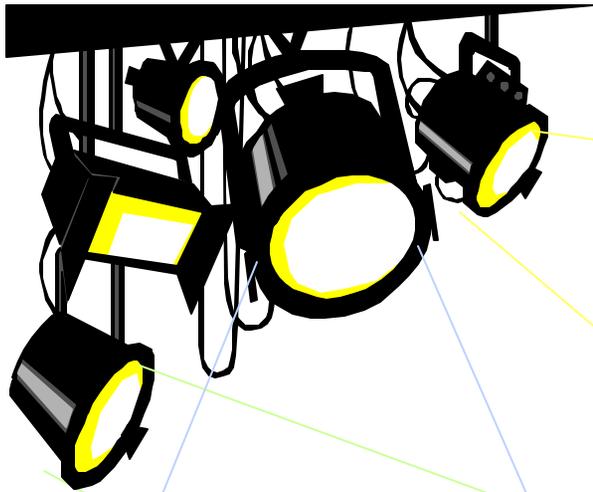


Making the Commerciality Decision





Applicability of Part 12



Applies to acquisition of supplies and services meeting the definition of commercial item

Does not apply to micropurchases, SF44 imprest fund, IMPAC card

Part 12



Commercial Item - or Not?

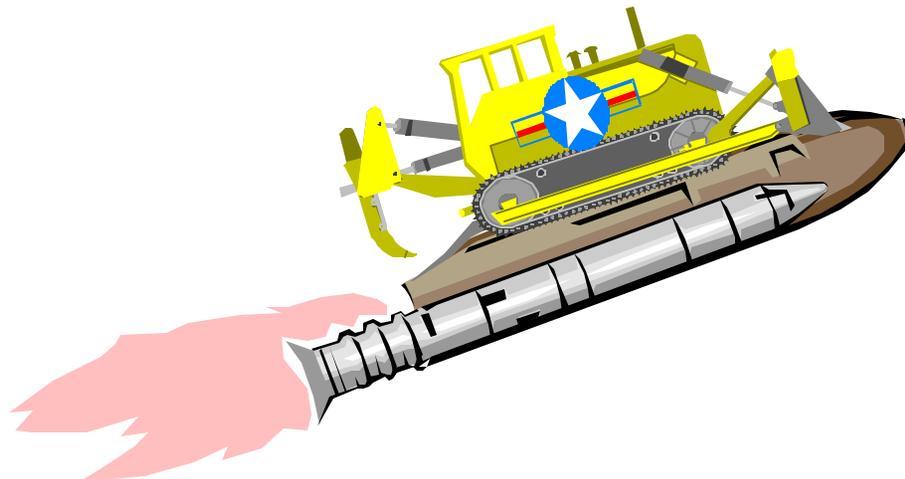


Commercial Acquisition



Circumstances Precluding Use of Part 12

- ◆ Contract type other than fixed price, fixed price with EPA, IDIQ (prices based on fixed price)
- ◆ Orders under arrangements pre-dating Part 12
- ◆ Purchases from Federal Prison Industries
- ◆ Unique Government requirement (Major modification)



Commercial Acquisition



Myths

- ✓ **Simplified Acquisition Procedures**
- ✓ **Javitts-Wagner O'Day (JWOD) purchase**
- ✓ **Lack of market price for exact item**
- ✓ **Existence of hourly rate**
- ✓ **Service Contract Act applies**
- ✓ **“Once military, always military!”**





The Other Impediment - The Workforce

Part 12 is optional

Sealed Bidding has worked for 30 years- no need to change now!

Our stuff is unique

I don't have time to learn

The customer can refuse a commercial item



TRANSLATION - "I DON'T WANT TO!"

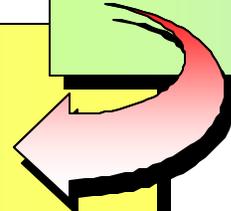
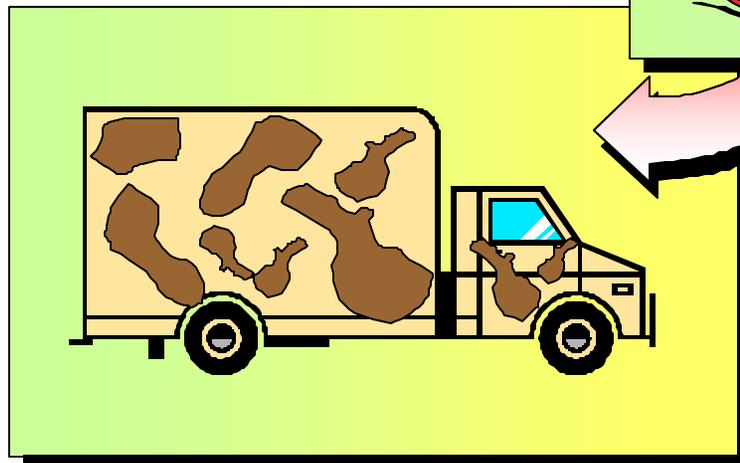
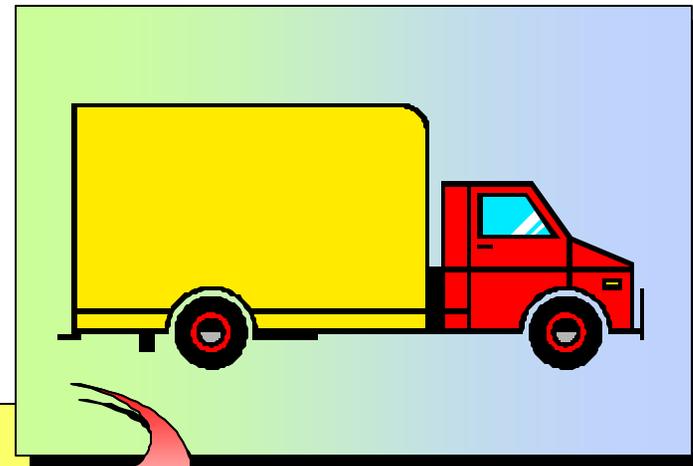


Benefits - Acquisition of Commercial Items

Streamlined Process

Increased Competition

Reduced Paperwork



Increased Industry Participation

Empowerment!



New Skill Required



- ✓ **Determining Customary Practices**
- ✓ **Tailoring Terms and Conditions**
- ✓ **Determining Response Times**
- ✓ **Evaluating Different Offers**
- Evaluating Alternative Terms and Conditions**
- Dealing with Different People**
- Acting Empowered**



Categories of Benefits



Streamlines the process



Saves time



Saves dollars/people



Empowers the CO



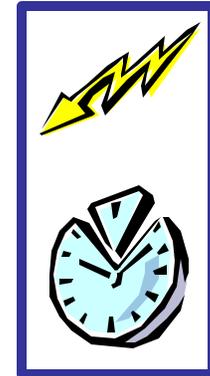
Encourages competition





Streamlined Procedure - Evaluation

- When evaluation factors are used, contracting officer may use provision similar to 52.212-2.
- Keep evaluation factors simple (suggests technical, price, past performance).
- Select offer most advantageous to the government



12.203,12.602



Streamlined Procedure - Solicitation

- **Combines CBD synopsis and solicitation into single document**
 - limited to 12,000 textual characters
 - for simple solicitations only
- **SF 1449 not used - required statements, notices, are in synopsis**
- **Response time - 15 days**

12.603

Federal Agencies have until Oct 1 to complete their transition to FedBizOpps, the government wide point of entry for contract notice.



Contract Type



Firm-fixed price or fixed price with Economic Price Adjustment



Indefinite Delivery based on Firm-fixed price or Fixed-price with Economic Price Adjustment



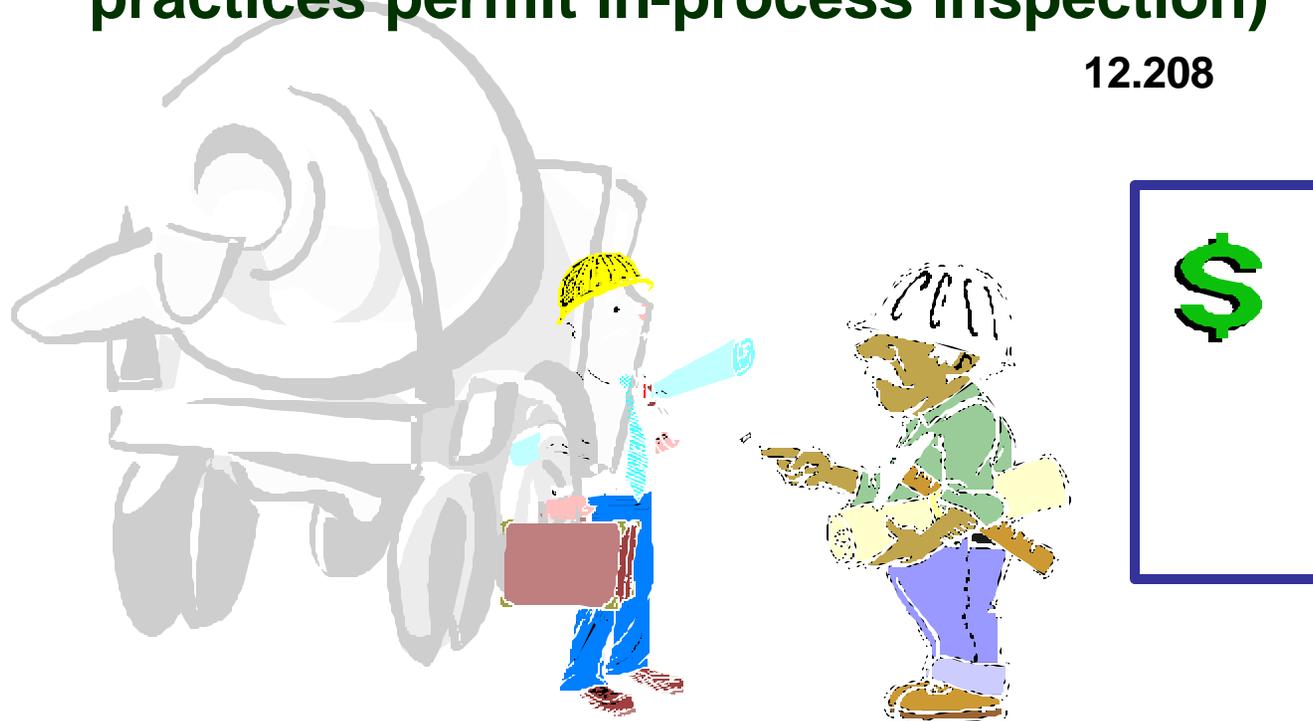
12.207



Contractor Quality Assurance

- Rely on contractor's existing quality system (unless customary market practices permit in-process inspection)

12.208





Pricing of Commercial Items

- Acquisitions for commercial items are excepted from the requirement to obtain cost or pricing data
- Policies and procedures for establishing price reasonableness - FAR Subpart 15.4
- Pricing modifications

12.209

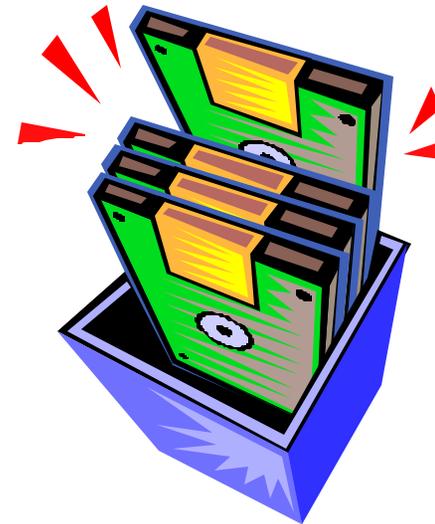




08/01/01

Computer Software

- Acquired under licenses customarily provided to general public
- Contractors not required to
 - furnish information not customarily provided to the public
 - relinquish rights (e.g. reproduction) unless mutually agreed to



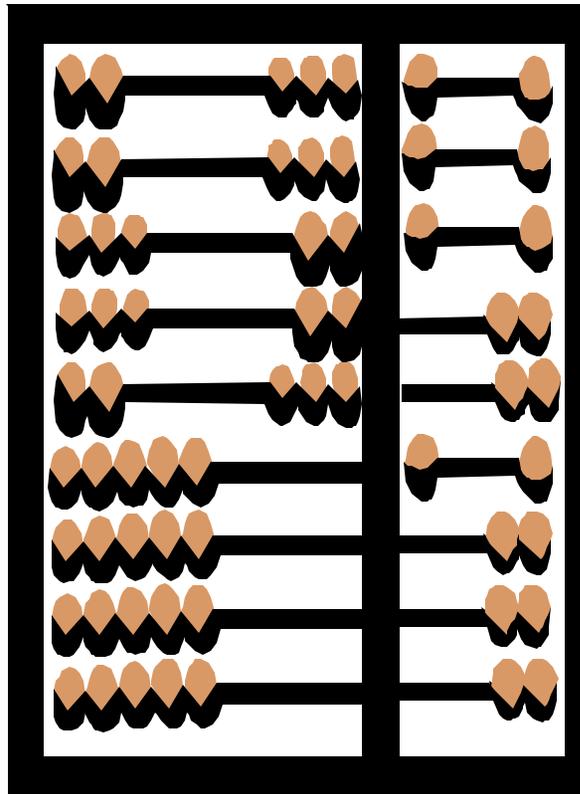
12.212

Commercial Acquisition

26



Other Customary Practices



- If other customary practices are appropriate, they should be considered for inclusion

12.213





Common Commercial Practices

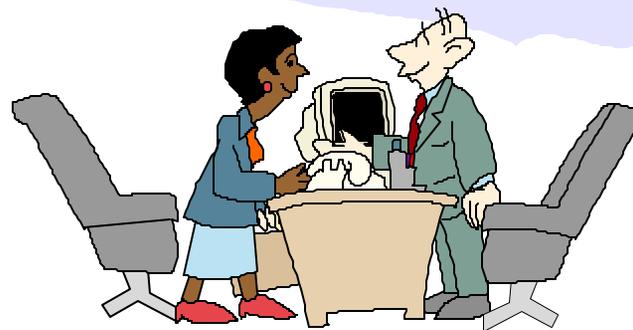
- Other practices (in Offeror's contract). Be cautious. May be acceptable, but investigate:
 - > Merger clause
 - > Non-disclosure provisions
 - > Notice requirements
 - > Right to substitute goods





Common Commercial Practices/Clauses

- **Waivers/waiver clause, Course of Performance**
- **Assignment clause**
- **Seller insisting on buyer inspection**
- **Exclusive remedies clause**





Common Commercial Practices, Cont.

- **More Common Practices. Probably not acceptable:**

- > **Statute of limitations**
- > **Advertisement/endorsement**
- > **Designating state as forum for actions**





Solicitation Provisions and Contract Clauses

- Agencies shall include only those clauses
 - required by law
 - determined to be consistent with commercial practice in Part 12
- Agencies may include other FAR provisions when use is consistent with Part 12
- Agencies may supplement these provisions to reflect agency unique statutes



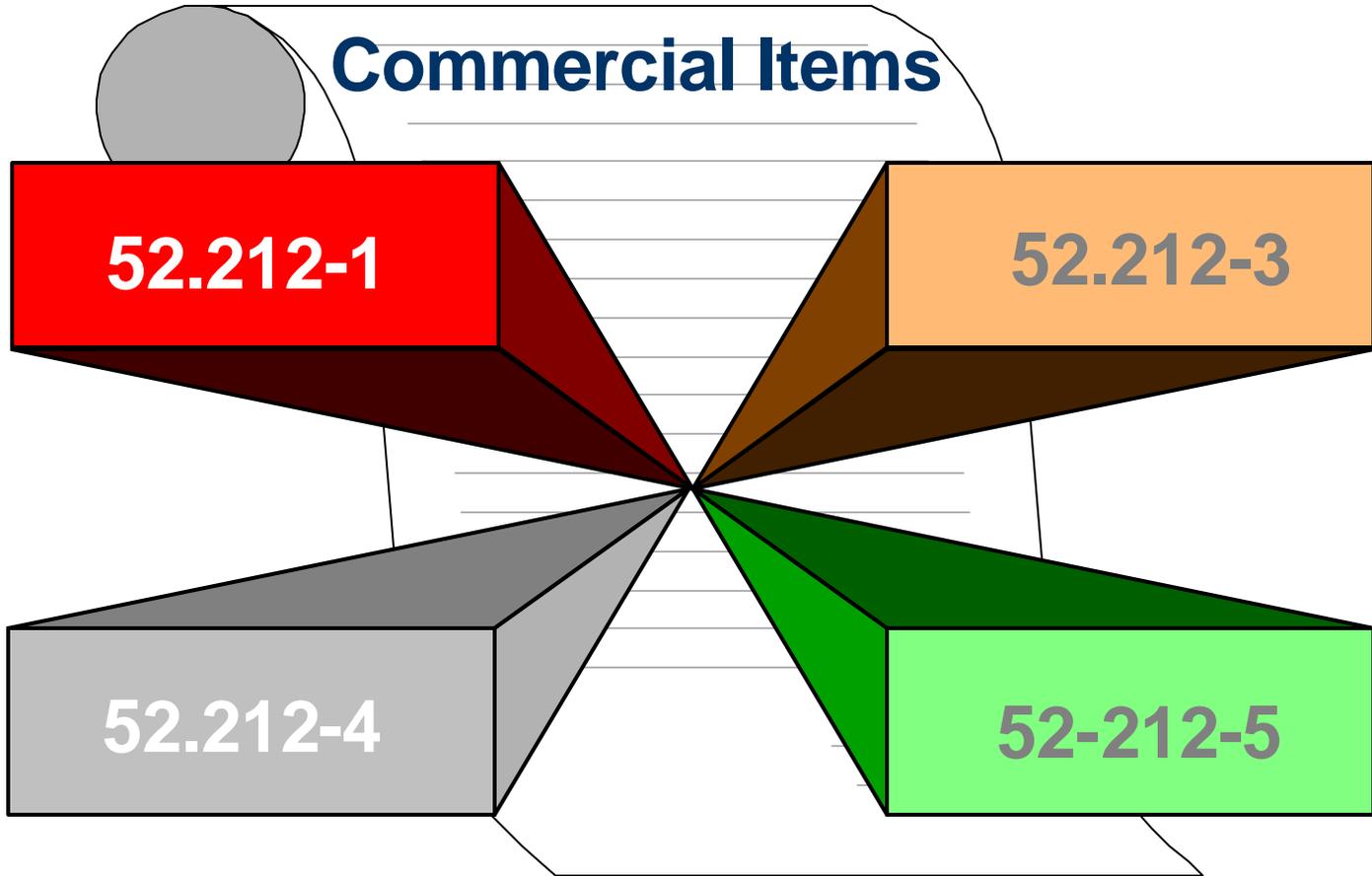
Commercial Acquisition

12.301



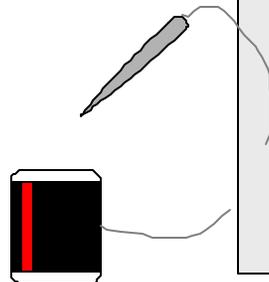
Required Courses

Commercial Items





Tailoring of Clauses



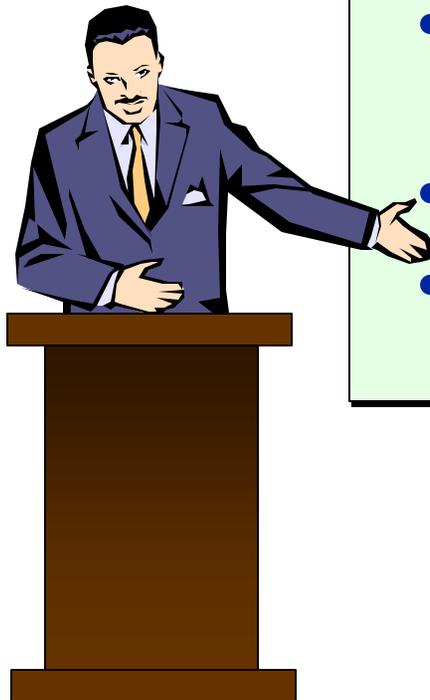
- May tailor 52.212-1 and -4 to adapt to market conditions
- Can not tailor 52.212-4, statutory provisions
- May not tailor inconsistent with customary practices - waivable by agency if practice inconsistent with needs of the government
- Tailoring accomplished by addenda



12.302



52.212-1, Instructions to Offerors- Commercial Items



- **Single streamlined set of instructions to offerors**
- **Incorporated by reference**
- **Tailorable**





52.212-4, Contract Terms and Conditions - Commercial Items

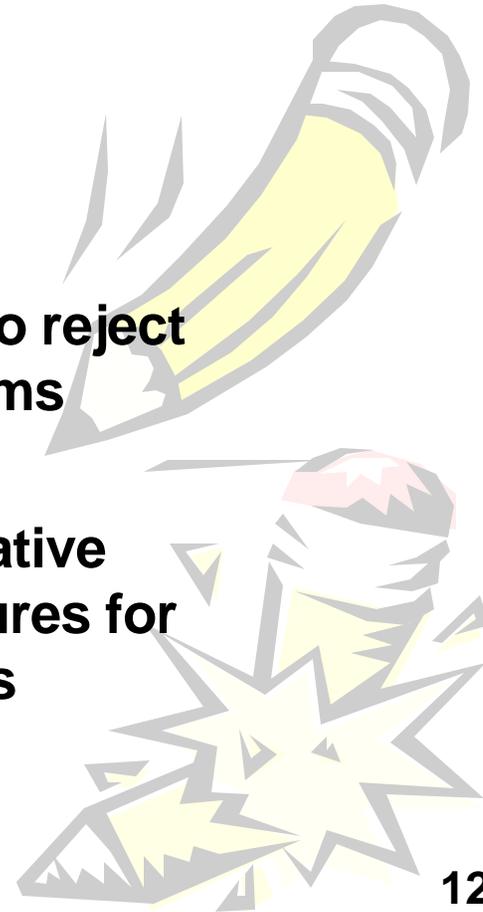
- Customary terms and conditions
- Incorporated by reference
- Tailorable (except statutory provisions)





Acceptance - Tailor to Situation

- Rely on contractor assurances
- Maintain the right to reject nonconforming items
- May include alternative inspection procedures for critical applications





Termination - 52.212-4

- **Concepts differ from clauses in Part 49**
- **Termination for Cause**
 - Includes all remedies available to any buyer in the marketplace
- **Termination for Convenience**
 - Contractor paid for percentage of work completed, direct charges



12.403





Implied Warranty

52.212-4(o)

Implied warranties of:

- **Merchantability**
- **Fitness for a particular purpose**



Commercial Practices may exclude implied warranties. If so:

- **Obtain acceptable express warranty**





Express Warranty

(12.404/FASA) Express warranties:

- Take advantage of commercial warranties
- Solicit same warranties provided to public
- May specify minimum terms
- Warranty should: protect needs, be cost effective and allow post-award admin
- Comply with notice period/method





Recent Changes to Part 12 - FACs

- 97-19 Revised 52-212.5 (e) - Removed SCA from list of laws that are inapplicable to Subcontracts for the procurement of commercial items.
- 97- 22 Revised 52-212.4 (b) - Added prohibition against assignment of claims when payment is made by a third party.
- 97- 26  Required that all Agencies use FedBusOpps for public notice of procurement actions over \$25,000 by 1 October 2001.
- 97- 27  Implemented Section 508 of the Rehabilitation Act of 1973.



Changes Pending to Part 12 - FAR Cases

- 2001- 004** Exemption of Certain Commercial Service Contracts from the SCA.
- 2000- 305** Commercially Available Off-The-Shelf Items (COTS)
- 2000- 303** Acquisition of Commercial Items
- 2000- 013** Contract Types for Commercial Item Acquisitions
- 2000- 012** Update to SF1449
- 2000- 011** Revisions to Provisions/Clauses to Accommodate Sealed Bidding and Simplified Procedures in Commercial Item Acquisitions
- 2000- 010** Acquisition of Construction Under Part 12 
- 2000- 009** Update to 52-212.5



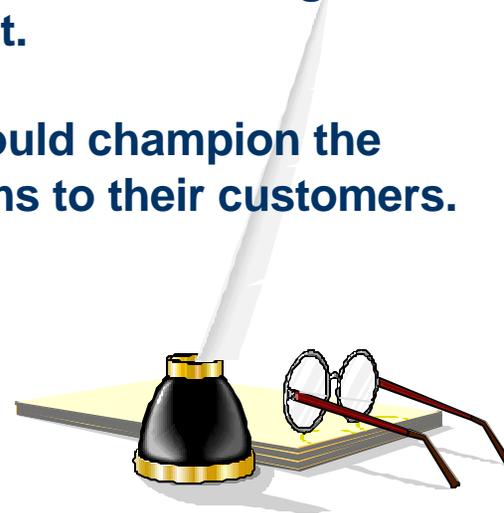
Changes Pending to Part 12 - DFARS Cases

- 2001- D011** Treatment of Proprietary Data Concerning Commercial Items
- 2000- D306** Performance-Based Service Contracts Using Part 12 Procedures
- 1995- D712** Acquisition of Commercial Items



Summary

-  **The majority of DoD purchases are commercial items, and should be procured using Part 12 procedures.**
-  **Contracting activities can realize significant benefits by using Part 12 procedures.**
-  **Contractor costs are reduced, and the savings are passed on to the Government.**
-  **Contracting professionals should champion the acquisition of commercial items to their customers.**





**COMMERCIAL ITEMS
KEY DEFINITIONS**

**FEDERAL ACQUISITION REGULATION
PART 2-DEFINITIONS OF WORDS AND TERMS**

2.101 Definitions.

Commercial component means any component that is a commercial item.

Commercial item means ----

- a) Any item, other than real property, that is of a type customarily used for nongovernmental purposes and that ----
 - (1) Has been sold, leased, or licensed to the general public; or,
 - (2) Has been offered for sale, lease, or license to the general public;
- b) Any item that evolved from an item described in paragraph (a) of this definition through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;
- c) Any item that would satisfy a criterion expressed in paragraphs (a) or (b) of this definition, but for----
 - (1) Modifications of a type customarily available in the commercial marketplace; or
 - (2) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. "Minor" modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;
- d) Any combination of items meeting the requirements of paragraphs (a), (b), (c), or (e) of this definition that are of a type customarily combined and sold in combination to the general public;
- e) Installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred to in paragraphs (a), (b), (c), or (d) of this definition, and if the source of such services----
 - (1) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and
 - (2) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public;

PART 2-DEFINITIONS OF WORDS AND TERMS (continued)

f) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed;

g) Any item, combination of items, or service referred to in paragraphs (a) through (f), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor; or

h) A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local governments.

Component means any item supplied to the Federal Government as part of an end item or of another component except that for use in 52.225-9 and 52.225-11, see the definitions in 52.225-9(a) and 52.225.11(a).

Market research means collecting and analyzing information about capabilities within the market to satisfy agency needs.

Nondevelopmental item means ----

a) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;

b) Any item described in paragraph (a), of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or

c) Any item of supply being produced that does not meet the requirements paragraph (a) or (b) solely because the item is not yet in use.

* * * * *

**HANDOUT
COMMERCIAL ITEMS CLAUSES AND PROVISIONS
52.212-1 THROUGH 52.212-5**

FAR 52.212-1 Instructions to Offerors--Commercial Items. (10/2000)

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

INSTRUCTIONS TO OFFERORS--COMMERCIAL ITEMS (OCT 2000)

(a) North American Industry Classification System (NAICS) code and small business size standard. The NAICS code and small business size standard for this acquisition appear in Block 10 of the solicitation cover sheet (SF 1449). However, the small business size standard for a concern which submits an offer in its own name, but which proposes to furnish an item which it did not itself manufacture, is 500 employees.

(b) 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. Offers may be submitted on the SF 1449, letterhead stationery, or as otherwise specified in the solicitation. As a minimum, offers must show --

(1) The solicitation number;

(2) The time specified in the solicitation for receipt of offers;

(3) The name, address, and telephone number of the offeror;

(4) A technical description of the items being offered in sufficient detail to evaluate compliance with the requirements in the solicitation. This may include product literature, or other documents, if necessary;

(5) Terms of any express warranty;

(6) Price and any discount terms;

(7) "Remit to" address, if different than mailing address;

(8) A completed copy of the representations and certifications at FAR 52.212-3;

(9) Acknowledgment of Solicitation Amendments;

(10) Past performance information, when included as an evaluation factor, to include recent and relevant contracts for the same or similar items and other references (including contract numbers, points of contact with telephone numbers and other relevant information); and

(11) If the offer is not submitted on the SF 1449, include a statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation. Offers that fail to furnish required representations or information, or reject the terms and conditions of the solicitation may be excluded from consideration.

(c) Period for acceptance of offers. The offeror agrees to hold the prices in its offer firm for 30 calendar days from the date specified for receipt of offers, unless another time period is specified in an addendum to the solicitation.

(d) Product samples. When required by the solicitation, product samples shall be submitted at or prior to the time specified for receipt of offers. Unless otherwise specified in this solicitation, these samples shall be submitted at no expense to the Government, and returned at the sender's request and expense, unless they are destroyed during preaward testing.

(e) Multiple offers. Offerors are encouraged to submit multiple offers presenting alternative terms and conditions or commercial items for satisfying the requirements of this solicitation. Each offer submitted will be evaluated separately.

(f) Late submissions, modifications, revisions, and withdrawals of offers. (1) Offerors are responsible for submitting offers, and any modifications, revisions, or withdrawals, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that offers or revisions are due.

(2)(i) Any offer, modification, revision, or withdrawal of an offer received at the Government office designated in the solicitation after the exact time specified for receipt of offers is "late" and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and--

(A) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of offers; or

(B) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers; or

(C) If this solicitation is a request for proposals, it was the only proposal received.

(ii) 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) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the offer wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(4) 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.

(5) Offers may be withdrawn by written notice received at any time before the exact time set for receipt of offers. Oral offers in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received at any time before the exact time set for receipt of offers, subject to the conditions specified in the solicitation concerning facsimile offers.

(i) Automatic distribution may be obtained on a subscription basis.

(ii) Order forms, pricing information, and customer support information may be obtained--

(A) By telephone at (215) 697-2667/2179; or

(B) Through the DoDSSP Internet site at <http://assist.daps.mil>.

(3) Nongovernment (voluntary) standards must be obtained from the organization responsible for their preparation, publication, or maintenance.

(j) Data Universal Numbering System (DUNS) Number. (Applies to offers exceeding \$25,000.) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" followed by the DUNS number that identifies the offeror's name and address. If the offeror does not have a DUNS number, it should contact Dun and Bradstreet to obtain one at no charge. An offeror within the United States may call 1-800-333-0505. The offeror may obtain more information regarding the DUNS number, including locations of local Dun and Bradstreet Information Services offices for offerors located outside the United States, from the Internet home page at <http://www.customerservice@dnb.com>. If an offeror is unable to locate a local service center, it may send an e-mail to Dun and Bradstreet at globalinfo@mail.dnb.com.

(End of provision)

FAR 52.212-2 Evaluation--Commercial Items. (1/99)

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

EVALUATION-- COMMERCIAL ITEMS (JAN 1999)

(a) 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 shall be used to evaluate offers:

[Contracting Officer shall insert the significant evaluation factors, such as (i) technical capability of the item offered to meet the Government requirement; (ii) price; (iii) past performance (see FAR 15.304); (iv) small disadvantaged business participation; and include them in the relative order of importance of the evaluation factors, such as in descending order of importance.]

Technical and past performance, when combined, are ____ [Contracting Officer state, in accordance with FAR 15.304, the relative importance of all other evaluation factors, when combined, when compared to price.]

(b) Options. 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. Evaluation of options shall not obligate the Government to exercise the option(s).

(c) A written notice of award or acceptance of an offer, mailed or otherwise 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)

FAR 52.212-3 Offeror Representations and Certifications--Commercial Items. (4/2001)

As prescribed in 12.301(b)(2), insert the following provision:

OFFEROR REPRESENTATIONS AND CERTIFICATIONS--COMMERCIAL ITEMS (APR 2001)

(a) Definitions. As used in this provision:

"Emerging small business" means a small business concern whose size is no greater than 50 percent of the numerical size standard for the NAICS code designated.

Forced or indentured child labor means all work or service--

(1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or

(2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

Service-disabled veteran-owned small business concern--

(1) Means a small business concern--

(i) Not less than 51 percent of which is owned by one or more service--disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

"Small business concern" means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR Part 121 and size standards in this solicitation.

Veteran-owned small business concern means a small business concern--

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

"Women-owned small business concern" means a small business concern--

(1) Which is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of its stock is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

"Women-owned business concern" means a concern which is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of its stock is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

(b) Taxpayer Identification Number (TIN) (26 U.S.C. 6109, 31 U.S.C. 7701). (Not applicable if the offeror is required to provide this information to a central contractor registration database to be eligible for award.)

(1) All offerors must submit the information required in paragraphs (b)(3) through (b)(5) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the Internal Revenue Service (IRS).

(2) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationship with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

(3) Taxpayer Identification Number (TIN).

TIN:

TIN has been applied for.

TIN is not required because:

Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;

Offeror is an agency or instrumentality of a foreign government;

Offeror is an agency or instrumentality of the Federal Government.

(4) Type of organization.

Sole proprietorship;

Partnership;

Corporate entity (not tax-exempt);

Corporate entity (tax-exempt);

Government entity (Federal, State, or local);

Foreign government;

International organization per 26 CFR 1.6049-4;

Other

(5) Common parent.

Offeror is not owned or controlled by a common parent;

Name and TIN of common parent:

Name

TIN

(c) Offerors must complete the following representations when the resulting contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. Check all that apply.

(1) Small business concern. The offeror represents as part of its offer that it is, is not a small business concern.

(2) Veteran-owned small business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents as part of its offer that it is, is not a veteran-owned small business concern.

(3) Service-disabled veteran-owned small business concern. [Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (c)(2) of this provision.] The offeror represents as part of its offer that it is, is not a service-disabled veteran-owned small business concern.

(4) Small disadvantaged business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents, for general statistical purposes, that it is is not a small disadvantaged business concern as defined in 13 CFR 124.1002.

(5) Women-owned small business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents that it is, is not a women-owned small business concern.

Note: Complete paragraphs (c)(6) and (c)(7) only if this solicitation is expected to exceed the simplified acquisition threshold.

(6) Women-owned business concern (other than small business concern). [Complete only if the offeror is a women-owned business concern and did not represent itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents that it is, is not a women-owned business concern.

(7) Tie bid priority for labor surplus area concerns. If this is an invitation for bid, small business offerors may identify the labor surplus areas in which costs to be incurred on account of manufacturing or production (by offeror or first-tier subcontractors) amount to more than 50 percent of the contract price: _____

(8) Small Business Size for the Small Business Competitiveness Demonstration Program and for the Targeted Industry Categories under the Small Business Competitiveness Demonstration Program. [Complete only if the offeror has represented itself to be a small business concern under the size standards for this solicitation.]

(i) (Complete only for solicitations indicated in an addendum as being set-aside for emerging small businesses in one of the four designated industry groups (DIGs).) The offeror represents as part of its offer that it is, is not an emerging small business.

(ii) (Complete only for solicitations indicated in an addendum as being for one of the targeted industry categories (TICs) or four designated industry groups (DIGs).) Offeror represents as follows:

(A) Offeror's number of employees for the past 12 months (check the Employees column if size standard stated in the solicitation is expressed in terms of number of employees); or

(B) Offeror's average annual gross revenue for the last 3 fiscal years (check the Average Annual Gross Number of Revenues column if size standard stated in the solicitation is expressed in terms of annual receipts)

(Check one of the following):

Number of Employees Average Annual Gross Revenues

- 50 or fewer ---- \$1 million or less
- 51--100 ---- \$1,000,001--\$2 million
- 101--250 ---- \$2,000,001--\$3.5 million
- 251--500 ---- \$3,500,001--\$5 million
- 501--750 ---- \$5,000,001--\$10 million
- 751--1,000 ---- \$10,000,001--\$17 million
- Over 1,000 ---- Over \$17 million

(9) (Complete only if the solicitation contains the clause at [FAR 52.219-23](#), Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns, or [FAR 52.219-25](#), Small Disadvantaged Business Participation Program--Disadvantaged Status and Reporting, and the offeror desires a benefit based on its disadvantaged status.)

(i) General. The offeror represents that either--

(A) It is, is not certified by the Small Business Administration as a small disadvantaged business concern and identified, on the date of this representation, as a certified small disadvantaged business concern in the database maintained by the Small Business Administration (PRO-Net), and that no material change in disadvantaged ownership and control has occurred since its certification, and, where the concern is owned by one or more individuals claiming disadvantaged status, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); or

(B) It has, has not submitted a completed application to the Small Business Administration or a Private Certifier to be certified as a small disadvantaged business concern in accordance with 13 CFR 124, Subpart B, and a decision on that application is pending, and that no material change in disadvantaged ownership and control has occurred since its application was submitted.

(ii) Joint Ventures under the Price Evaluation Adjustment for Small Disadvantaged Business Concerns. The offeror represents, as part of its offer, to enter the name of the small disadvantaged business concern that is participating in the joint venture: _____

(d) Representations required to implement provisions of Executive Order 11246--

(1) Previous contracts and compliance. The offeror represents that--

(i) It has, has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation; and

(ii) It has, has not filed all required compliance reports.

(2) Affirmative Action Compliance. The offeror represents that--

(i) It [] has developed and has on file, [] has not developed and does not have on file, at each establishment, affirmative action programs required by rules and regulations of the Secretary of Labor (41 CFR parts 60-1 and 60-2, or

(ii) It [] has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

(e) Certification Regarding Payments to Influence Federal Transactions (31 U.S.C. 1352). (Applies only if the contract is expected to exceed \$100,000.) By submission of its offer, the offeror certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress on his or her behalf in connection with the award of any resultant contract.

(f) Buy American Act--Balance of Payments Program Certificate. (Applies only if the clause at Federal Acquisition Regulation (FAR) 52.225-1, Buy American Act--Balance of Payments Program--Supplies, is included in this solicitation.)

(1) The offeror certifies that each end product, except those listed in paragraph (f)(2) of this provision, is a domestic end product as defined in the clause of this solicitation entitled "Buy American Act--Balance of Payments Program--Supplies" and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

(2) Foreign End Products:

Line item No. Country of origin

(List as necessary)

(3) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25.

(g)(1) Buy American Act--North American Free Trade Agreement--Israeli Trade Act--Balance of Payments Program Certificate. (Applies only if the clause at FAR 52.225-3, Buy American Act--North American Free Trade Agreement--Israeli Trade Act--Balance of Payments Program, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (g)(1)(ii) or (g)(1)(iii) of this provision, is a domestic end product as defined in the clause of this solicitation entitled "Buy American Act--North American Free Trade Agreement--Israeli Trade Act--Balance of Payments Program" and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States.

(ii) The offeror certifies that the following supplies are NAFTA country end products or Israeli end products as defined in the clause of this solicitation entitled "Buy American Act--North American Free Trade Agreement--Israeli Trade Act--Balance of Payments Program":

NAFTA Country or Israeli End Products

Line item No. Country of origin

(List as necessary)

(iii) The offeror shall list those supplies that are foreign end products (other than those listed in paragraph (g)(1)(ii) of this provision) as defined in the clause of this solicitation entitled "Buy American Act--North American Free Trade Agreement--Israeli Trade Act--Balance of Payments Program." The offeror shall list as other foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

Other Foreign End Products

Line item No. Country of origin

(List as necessary)

(iv) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25.

(2) Buy American Act--North American Free Trade Agreements--Israeli Trade Act--Balance of Payments Program Certificate, Alternate I (Feb 2000). If Alternate I to the clause at FAR 52.225-3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Canadian end products as defined in the clause of this solicitation entitled "Buy American Act--North American Free Trade Agreement--

Israeli Trade Act--Balance of Payments Program":

Canadian End Products

Line Item No.: _____

(List as necessary)

(3) Buy American Act--North American Free Trade Agreements--Israeli Trade Act--Balance of Payments Program Certificate, Alternate II (Feb 2000). If Alternate II to the clause at FAR 52.225-3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Canadian end products or Israeli end products as defined in the clause of this solicitation entitled "Buy American Act--North American Free Trade Agreement--Israeli Trade Act--Balance of Payments Program":

Canadian or Israeli End Products

Line Item No.: _____

Country of Origin: _____

(List as necessary)

(4) Trade Agreements Certificate. (Applies only if the clause at FAR 52.225-5, Trade Agreements, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (g)(4)(ii) of this provision, is a U.S.-made, designated country, Caribbean Basin country, or NAFTA country end product, as defined in the clause of this solicitation entitled "Trade Agreements."

(ii) The offeror shall list as other end products those end products that are not U.S.-made, designated country, Caribbean Basin country, or NAFTA country end products.

Other End Products

Line Item No.: _____

Country of Origin: _____

(List as necessary)

(iii) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25. For line items subject to the Trade Agreements Act, the Government will evaluate offers of U.S.-made, designated country, Caribbean Basin country, or NAFTA country end products without regard to the restrictions of the Buy American Act or the Balance of Payments Program. The Government will consider for award only offers of U.S.-made, designated country, Caribbean Basin country, or NAFTA country end products unless the Contracting Officer determines that there are no offers for such products or that the offers for such products are insufficient to fulfill the requirements of the solicitation.

(h) Certification Regarding Debarment, Suspension or Ineligibility for Award (Executive Order 12549). (Applies only if the contract value is expected to exceed the simplified acquisition threshold.) The offeror certifies, to the best of its knowledge and belief, that--

(1) The offeror and/or any of its principals [] are, [] are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(2) [] Have, [] have not, within the three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Federal, state or local government contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property;

(3) [] Are, [] are not presently indicted for, or otherwise criminally or civilly charged by a government entity with, commission of any of these offenses; and

(4)(i) The offeror, aside from the offenses enumerated in paragraphs (1), (2), and (3) of this paragraph (h), [] has [] has not within the past three years, relative to tax, labor and employment, environmental, antitrust, or consumer protection laws-

(A) Been convicted of a Federal or state felony (or has any Federal or state felony indictments currently pending against them); or

(B) Had a Federal court judgment in a civil case brought by the United States rendered against them; or

(C) Had an adverse decision by a Federal administrative law judge, board, or commission indicating a willful violation of law.

(ii) If the offeror has responded affirmatively, the offeror shall provide additional information if requested by the Contracting Officer.

(i) Certification Regarding Debarment, Suspension or Ineligibility for Award (Executive Order 12549). The offeror certifies, to the best of its knowledge and belief, that--

(1) The offeror and/or any of its principals [] are, [] are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency; and

(2) [] Have, [] have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Federal, state or local government contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and [] are, [] are not presently indicted for, or otherwise criminally or civilly charged by a Government entity with, commission of any of these offenses.

(j) Certification Regarding Knowledge of Child Labor for Listed End Products (Executive Order 13126). [The Contracting Officer must list in paragraph (i)(1) any end products being acquired under this solicitation that are included in the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, unless excluded at 22.1503(b).]

(1) Listed end products.

Listed End Product

Listed Countries of Origin

(2) Certification. [If the Contracting Officer has identified end products and countries of origin in paragraph (i)(1) of this provision, then the offeror must certify to either (i)(2)(i) or (i)(2)(ii) by checking the appropriate block.]

(i) The offeror will not supply any end product listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product.

(ii) The offeror may supply an end product listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product. The offeror certifies that it has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any such end product furnished under this contract. On the basis of those efforts, the offeror certifies that it is not aware of any such use of child labor.

(End of provision)

Alternate I (Oct 2000). As prescribed in 12.301(b)(2), add the following paragraph (c)(10) to the basic provision:

(10) (Complete if the offeror has represented itself as disadvantaged in paragraph (c)(2) or (c)(9) of this provision.) [The offeror shall check the category in which its ownership falls]:

_____ Black American.

_____ Hispanic American.

_____ Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).

_____ Asian-Pacific American (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru).

_____ Subcontinent Asian (Asian-Indian) American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal).

_____ Individual/concern, other than one of the preceding.

Alternate II (Oct 2000). As prescribed in 12.301(b)(2), add the following paragraph (c)(9)(iii) to the basic provision:

(iii) Address. The offeror represents that its address [] is, [] is not in a region for which a small disadvantaged business procurement mechanism is authorized and its address has not changed since its certification as a small disadvantaged business concern or submission of its application for certification. The list of authorized small disadvantaged business procurement mechanisms and regions is posted at <http://www.arnet.gov/References/sdbadjustments.htm>. The offeror shall use the list in effect on the date of this solicitation. "Address," as used in this provision, means the address of the offeror as listed on the Small Business Administration's register of small disadvantaged business concerns or the address on the completed application that the concern has submitted to the Small Business Administration or a Private Certifier in accordance with 13 CFR part 124, subpart B. For joint ventures, "address" refers to the address of the small disadvantaged business concern that is participating in the joint venture.

Alternate III (Oct 2000). As prescribed in 12.301(b)(2), add the following paragraph (c)(11) to the basic provision:

(11) HUBZone small business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents as part of its offer that--

(i) It [] is, [] is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal place of ownership, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR part 126; and

(ii) It [] is, [] is not a joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (c)(11)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. [The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture: _____.] Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

(End of Provision)

FAR 52.212-4 Contract Terms and Conditions--Commercial Items. (3/2001)

As prescribed in 12.301(b)(3), insert the following clause:

CONTRACT TERMS AND CONDITIONS--COMMERCIAL ITEMS (MAR 2001)

(a) 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. The Government must exercise its postacceptance 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.

(b) 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.

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

(d) Disputes. This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). 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 at FAR 52.233-1, Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) Definitions. The clause at FAR 52.202-1, Definitions, is incorporated herein by reference.

(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 such as, 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. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) Invoice. The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized,) to the address designated in the contract to receive invoices. An invoice must include--

- (1) Name and address of the Contractor;
- (2) Invoice date;
- (3) Contract number, contract line item number and, if applicable, the order number;
- (4) Description, quantity, unit of measure, unit price and extended price of the items delivered;
- (5) Shipping number and date of shipment including the bill of lading number and weight of shipment if shipped on Government bill of lading;
- (6) Terms of any prompt payment discount offered;
- (7) Name and address of official to whom payment is to be sent; and
- (8) Name, title, and phone number of person to be notified in event of defective invoice.

Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) Circular A-125, Prompt Payment. Contractors are encouraged to assign an identification number to each invoice.

(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. Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract. The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) Circular A-125, Prompt Payment. If the Government makes payment by Electronic Funds Transfer (EFT), see 52.212-5(b) for the appropriate EFT clause.

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.

(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 hereunder 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. 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 or implied warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(q) Other compliances. The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

(r) 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; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 327, et seq., Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.

(s) 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 Assignments, Disputes, Payments, Invoice, Other Compliances, and Compliance with Laws Unique to Government Contracts paragraphs of this clause; (3) the clause at 52.212-5; (4) addenda to this solicitation or contract, including any license agreements for computer software; (5) solicitation provisions if this is a solicitation; (6) other paragraphs of this clause; (7) the Standard Form 1449; (8) other documents, exhibits, and attachments; and (9) the specification.

(End of clause)

FAR 52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders--Commercial Items. (1/2001)

As prescribed in 12.301(b)(4), insert the following clause:

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS--COMMERCIAL ITEMS (FEB 2001)

(a) The Contractor shall comply with the following FAR clauses, which are incorporated in this contract by reference, to implement provisions of law or executive orders applicable to acquisitions of commercial items:

(1) 52.222-3, Convict Labor (E.O. 11755).

(2) 52.233-3, Protest after Award (31 U.S.C. 3553).

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items or components:

[Contracting Officer shall check as appropriate.]

_____ (1) 52.203-6, Restrictions on Subcontractor Sales to the Government, with Alternate I (41 U.S.C. 253g and 10 U.S.C. 2402).

_____ (2) 52.219-3, Notice of HUBZone Small Business Set-Aside (Jan 1999).

_____ (3) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Jan 1999) (if the offeror elects to waive the preference, it shall so indicate in its offer).

_____ (4)(i) 52.219-5, Very Small Business Set-Aside (Pub. L. 103-403, section 304, Small Business Reauthorization and Amendments Act of 1994).

_____ (ii) Alternate I to 52.219-5.

- _____ (iii) Alternate II to 52.219-5.
- _____ (5) 52.219-8, Utilization of Small Business Concerns (15 U.S.C. 637 (d)(2) and (3)).
- _____ (6) 52.219-9, Small Business Subcontracting Plan (15 U.S.C. 637(d)(4)).
- _____ (7) 52.219-14, Limitations on Subcontracting (15 U.S.C. 637(a)(14)).
- _____ (8)(i) 52.219-23, Notice of Price Evaluation

Adjustment for Small Disadvantaged Business Concerns (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).

- _____ (ii) Alternate I of 52.219-23.
- _____ (9) 52.219-25, Small Disadvantaged Business Participation Program--Disadvantaged Status and Reporting (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).
- _____ (10) 52.219-26, Small Disadvantaged Business Participation Program--Incentive Subcontracting (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).
- _____ (11) 52.222-21, Prohibition of Segregated Facilities (Feb 1999).
- _____ (12) 52.222-26, Equal Opportunity (E.O. 11246).
- _____ (13) 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212).
- _____ (14) 52.222-36, Affirmative Action for Handicapped Workers (29 U.S.C. 793).
- _____ (15) 52.222-37, Employment Reports on Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212).
- _____ (16) 52.222-19, Child Labor--Cooperation with Authorities and Remedies (E.O. 13126).
- _____ (17)(i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA -Designated Products (42 U.S.C. 6962(c)(3)(A)(ii)).
- _____ (ii) Alternate I of 52.223-9 (42 U.S.C. 6962(i)(2)(C)).
- _____ (18) 52.225-1, Buy American Act--Balance of Payments Program--Supplies (41 U.S.C. 10a-10d).
- _____ (19)(i) 52.225-3, Buy American Act--North American Free Trade Agreement--Israeli Trade Act--Balance of Payments Program (41 U.S.C. 10a-10d, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note).
- _____ (ii) Alternate I of 52.225-3.
- _____ (iii) Alternate II of 52.225-3.
- _____ (20) 52.225-5, Trade Agreements (19 U.S.C. 2501, et seq., 19 U.S.C. 3301 note).
- _____ (21) 52.225-13, Restriction on Certain Foreign Purchases (E.O. 12722, 12724, 13059, 13067, 13121, and 13129).
- _____ (22) 52.225-15, Sanctioned European Union Country End Products (E.O. 12849).
- _____ (23) 52.225-16, Sanctioned European Union Country Services (E.O. 12849).
- _____ (24) 52.232-33, Payment by Electronic Funds Transfer--Central Contractor Registration (31 U.S.C. 3332).
- _____ (25) 52.232-34, Payment by Electronic Funds Transfer--Other than Central Contractor Registration (31 U.S.C. 3332).
- _____ (26) 52.232-36, Payment by Third Party (31 U.S.C. 3332).
- _____ (27) 52.239-1, Privacy or Security Safeguards (5 U.S.C. 552a).
- _____ (28) (i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (46 U.S.C. 1241).
- _____ (ii) Alternate I of 52.247-64.

(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, which the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or executive orders applicable to acquisitions of commercial items or components:

[Contracting Officer check as appropriate.]

_____ (1) 52.222-41, Service Contract Act of 1965, As Amended (41 U.S.C. 351, et seq.).

_____ (2) 52.222-42, Statement of Equivalent Rates for Federal Hires (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).

_____ (3) 52.222-43, Fair Labor Standards Act and Service Contract Act-Price Adjustment (Multiple Year and Option Contracts) (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).

_____ (4) 52.222-44, Fair Labor Standards Act and Service Contract Act-Price Adjustment (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).

_____ (5) 52.222-47, SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreement (CBA) (41 U.S.C. 351, et seq.).

_____ (6) 52.222-50, Nondisplacement of Qualified Workers (Executive Order 12933).

(d) Comptroller General Examination of Record. The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at 52.215-2, Audit and Records--Negotiation.

(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 Subpart 4.7, Contractor Records Retention, of the 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 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.

(e) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c) or (d) of this clause, the Contractor is not required to include any FAR clause, other than those listed below (and as may be required by an addenda to this paragraph to establish the reasonableness of prices under Part 15), in a subcontract for commercial items or commercial components--

(1) 52.222-26, Equal Opportunity (E.O. 11246);

(2) 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212);

(3) 52.222-36, Affirmative Action for Workers with Disabilities (29 U.S.C. 793);

(4) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (46 U.S.C. 1241) (flow down not required for subcontracts awarded beginning May 1, 1996); and

(5) 52.222-41, Service Contract Act of 1965, As Amended (41 U.S.C. 351, et seq.).

(End of clause)

Alternate I (Feb 2000). As prescribed in 12.301(b)(4), delete paragraph (d) from the basic clause, redesignate paragraph (e) as paragraph (d), and revise the reference to "paragraphs (a), (b), (c), or (d) of this clause" in the redesignated paragraph (d) to read "paragraphs (a), (b), and (c) of this clause".

(End of clause)

Suggested Broad Classes of Commercial Items

2840 Gas Turbines and Jet Engines, Acft & Comps
3920 Mat Handling Equip, Nonself-propelled
3930 Warehouse Trks & Tractors, Self-propelled
3940 Blocks Tackle Rigging and Slings
4110 Refrigeration Equip
4120 Air Conditioning Equip
5805 Telephone and Telegraph Equipment
6115 Generators and Generator Sets, Electrical
7030 ADP Software
7035 ADP Support Equip
J058 Maint & Repair of Eq/Communication Equipment
J059 Maint & Repair of Eq/Electrical & Elct Equip Comps
J065 Maint & Repair of Eq/Medical & Dental Equipment
J066 Maint & Repair of Eq/Instruments & Lab Equipment
J069 Maint & Repair of Eq/Training Aids & Devices
J070 Maint & Repair of Eq/ADP Equip & Supplies
J073 Maint & Repair of Eq/Food Prep & Serving Equip
J074 Maint & Repair of Eq/Office Machines
Q201 General Health Care Services
Q301 Laboratory Testing Services
Q401 Nursing Services
Q501 Anesthesiology Services
Q502 Cardio-Vascular Services
Q503 Dentistry Services
Q504 Dermatology Services
R706 Logistics Support Services
R707 Contract, Procurement & Acquisition Support Svcs
R708 Public Relations Services
S113 Telephone and/or Communications Services
S114 Water Services
S119 Other Utilities
S201 Custodial - Janitorial Services
S202 Fire Protection Services
S203 Food Services
S204 Fueling & Other Petroleum Svcs-Excluding Storage
S205 Trash/Garbage Collection Svcs-Incl Port San Svcs
S206 Guard Services
S207 Insect & Rodent Control Services
S208 Landscaping/Groundskeeping Services
S218 Snow Removal/Salt Services
S222 Waste Treatment & Storage
U009 Education Services