12.204 Solicitation/contract form.

The Standard Form XXXX. Solicitation/Contract/Order for Commercial Items, shall be used by the contracting officer when soliciting offers and awarding contracts for commercial items. This form contains the information necessary for solicitations and contracts as well as documenting receipt, inspection and acceptance of commercial items. Other Standard Forms are not compatible with the policies for the acquisition of commercial items in that they contain references to the Uniform Contract Format and certain FAR clauses that are not applicable to the acquisition of commercial items.

12.205 Offers.

(a) Contracting officers should, as part of market research, review existing product literature generally available in the industry to determine its adequacy for purposes of evaluation. If adequate, contracting officers shall use existing product literature from offerors of commercial items in lieu of requesting unique technical proposals.

(b) Contracting officers should allow offerors to propose more than one product that will meet a Government need in response to solicitations for commercial items. The contracting officer shall evaluate each product as a separate offer.

(c) Contracting officers may allow fewer than 30 days response time for receipt of offers for commercial items. The response time shall afford potential offerors a reasonable opportunity to respond to ensure adequate competition (see 5.203).

12.206 Use of past performance.

Past performance should be an important element of every evaluation and contract award for commercial items. Contracting officers should consider past performance data from a wide variety of sources both inside and outside the Federal Government in accordance with the policies and procedures contained in 48 CFR Part 9, (FAR) subpart 9.1 and 48 CFR Part 15, (FAR) subpart 15.6.

12.207 Contract type.

Firm fixed price contracts or fixed price contracts with economic price adjustment shall be used for the acquisition of commercial items. Use of any other contract type to acquire commercial items is prohibited.

12.208 Contract quality assurance.

Solicitations and contracts for commercial items shall use contractors' existing quality assurance systems as a

substitute for Government inspection and testing before tendering for acceptance unless customary market practices for the commercial item being acquired permits in-process inspection.

12.209 Warranties.

- (a) To the maximum extent practicable, solicitations for commercial items shall require offerors to offer the Government at least the same warranty terms, including offers of extended warranties, offered to the general public in customary commercial practice. Solicitations may specify minimum warranty terms, such as minimum duration, appropriate for the Government's intended use of the item.
- (b) Agencies shall consider warranties offered in light of established systems for their administration. When necessary, agencies shall establish procedures to permit the effective administration of commercial warranties to include identifying warranted items and warranty periods, facilitating return of warranted commercial items to the contractor for repair or replacement and collection of product performance information.

12.210 Contract financing methods.

Customary industry practice for some commercial items may include a form of buyer financing such as advance (preperformance) payments or incremental (pre-delivery) payments based on time or specified performance milestones. If market research confirms that buyer financing is the customary industry practice for the commercial item to be acquired, the contracting officer may offer Government financing. Such financing shall be consistent with customary industry practices and the requirements and limitations of part 32.

12.211 Technical data.

Generally, the Government will acquire only the technical data customarily provided to the public. (See part 27.)

12.212 Other customary commercial practices.

Market research may indicate other customary commercial practices that are appropriate for the acquisition of the particular item. These practices should be considered for incorporation into the solicitation and contract if the contracting officer determines them essential to concluding a satisfactory business arrangement, in the Government's best interest, and not otherwise precluded by law or executive order.

Subpart 12.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items.

12.301 Scope of subpart.

This subpart establishes provisions and clauses to be used when acquiring commercial items.

12.302 Solicitation provisions and contract clauses for the acquisition of commercial items.

- (a) In accordance with Section 8002 of Pub. L. 103–355 (41 U.S.C 264, note), contracts for the acquisition of commercial items shall, to the maximum extent practicable, include only those clauses—
- (1) Required to implement provisions of law or executive orders applicable to the acquisition of commercial items; or
- (2) Determined to be consistent with customary commercial practice.
- (b) To implement this Act, the contracting officer shall insert the following provisions in solicitations for the acquisition of commercial items, and clauses in solicitations and contracts for the acquisition of commercial items:
- (1) The provision at 52.212–1, Instructions to Offerors—Commercial Items. This provision provides a single, streamlined set of instructions to be used when soliciting offers for commercial items and is incorporated in the solicitation by reference (see Block 26, SF XXXX). The contracting officer is not required to use any other provision. The contracting officer may tailor these instructions or provide additional instructions tailored to the specific acquisition in accordance with 12.303;
- (2) The provision at 52.212–3, Offeror Representations and Certifications—Commercial Items. This provision provides a single, consolidated and streamlined list of certifications and representations for the acquisition of commercial items and is attached to the solicitation for offerors to complete and return with their offer. The contracting officer is not required to use any other provision containing a certification or representation. This provision may not be tailored except in accordance with subpart 1.4;
- (3) The clause at 52.212-4, Contract Terms and Conditions—Commercial Items. This clause includes terms and conditions which are, to the maximum extent practicable, consistent with customary commercial practices and is incorporated in the solicitation and contract by reference (see Block 26, SF XXXX). The contracting officer is not required to use any other clause except as provided in 12.302(b)(4). The