12.403 Applicability of certain laws to subcontracts for the acquisition of commercial items.

(a) The following laws are not applicable to subcontracts under either a contract for the acquisition of commercial items or a subcontract for the acquisition of commercial items: [list of laws to be published in the **Federal Register** in a future proposed rule under FAR case 94–791]

(b) Certain requirements of the following laws have been eliminated for subcontracts under either a contract for the acquisition of commercial items or subcontract for the acquisition of commercial items: [list of laws to be published in the **Federal Register** in a future proposed rule under FAR case 94–791]

(c) The applicability of the following laws have been modified in regards to subcontracts under either a contract for the acquisition of commercial items or a subcontract for the acquisition of commercial items: [list of laws to be published in the **Federal Register** in a future proposed rule under FAR case 94–791]

(d) The FAR prescription, provision or clause for each of these statutes has been revised in the appropriate part to reflect their proper application to the acquisition of commercial items.

Subpart 12.5—Unique Requirements for the Administration of Contracts for Commercial Items

12.501 General.

This subpart outlines selected areas where the administration of contracts for commercial items differs substantially from the administration of other Government contracts.

12.502 Pricing of changes.

When the exceptions at 15.804–1(a) do not apply, the contracting officer shall include the appropriate clauses prescribed by part 15.

12.503 Acceptance.

Acceptance under the clause at 52.212–4, Contract Terms and Conditions—Commercial Items, assumes that the Government will rely on the contractor's assurances that commercial items tendered for acceptance conform to the requirements of the contract. The acceptance provision at 52.212–4 includes patent defects as a reason to revoke finality of acceptance.

12.504 Termination.

(a) The clause at 52.212–4, Contract Terms and Conditions—Commercial Items, contains procedures for termination of contracts for commercial items, either for convenience or for cause, that are consistent with customary commercial practice. The contracting officer should consult with legal counsel prior to terminating any contract for cause.

(b) Contractors are required to notify the Government when there will be an excusable delay. Failure to notify the Government as soon as it is reasonably possible could result in termination for cause.

(c) The remedies available to the Government if a contract is terminated for cause are those available to any buyer in the marketplace and are not limited by part 49. The Government's preferred remedy will be to acquire similar items from another contractor and charge the terminated contractor with any excess reprocurement costs.

Subpart 12.6—Streamlined Procedures for Solicitation and Award of Contracts for Commercial Items

12.601 General.

This subpart provides (a) a streamlined procedure for evaluating offers for commercial items; and (b) a streamlined procedure for soliciting offers for commercial items. These procedures are intended to simplify the process of preparing and issuing solicitations, and evaluating offers for commercial items consistent with customary commercial practices. While the procedures described in this subpart are appropriate for many commercial items, other methods of evaluation may also be appropriate. The contracting officer may use these procedures for soliciting offers for commercial items in lieu of procedures contained in parts 13, 14 or 15.

12.602 Streamlined evaluation of offers.

(a) The Contracting officer may insert a provision substantially the same as the provision at 52.212-2, Evaluation-Commercial Items, in solicitations for commercial items. Paragraph (a) of the provision shall be tailored to the specific acquisition to describe the evaluation factors and relative importance of those factors. This provision contemplates an approach designed to select the source whose offer will provide the Government with the greatest value in terms of performance and other factors. Other methods of evaluation and basis for award may be more appropriate for a given acquisition.

(b) Offers shall be evaluated in accordance with the tailored criteria contained in the provision at 52.212–2, Evaluation—Commercial Items, and any addenda. For many commercial items,

the criteria need not be more detailed than technical (capability of the item offered to meet the Agency need), price and past performance. Technical capability may be evaluated by how well the proposed products meet the Government requirement instead of predetermined subfactors. Solicitations for commercial items do not have to contain subfactors for technical capability when the solicitation adequately describes its intended use. A technical evaluation would include examination of such things as product literature, product samples (if requested), technical features and warranty provisions. Past performance shall be evaluated in accordance with the procedures in 48 CFR part 15, subpart 15.6. The contracting officer shall ensure the instructions provided in the provision at 52.212-1, Instructions to Offerors—Commercial Items, and the evaluation criteria provided in the provision at 52.212-2. Evaluation—Commercial Items, are in agreement.

(c) Select the offer that is most advantageous to the Government based on the factors contained in the solicitation. Fully document the rationale for selection of the successful offeror including discussion of any trade-offs considered.

12.603 Streamlined solicitation for commercial items.

(a) To reduce the time required to solicit and award contracts for the acquisition of commercial items, the contracting officer may use this procedure which combines the CBD synopsis required by 5.203 and the issuance of the solicitation into a single document with the following limitations:

(1) FAR 5.207 limits submissions to the CBD to 12,000 textual characters (approximately 3½ single-spaced

pages).

(2) This combined CBD synopsis/ solicitation is only appropriate where the solicitation is relatively simple and is not recommended for use when lengthy addenda to the solicitation are necessary.

(b) To use these procedures, the contracting officer shall—

(1) Prepare the synopsis as described at 5.207 for items 1–16;

(2) In item 17, Description, include the following additional information:

(i) A statement that this is a combined synopsis/solicitation for commercial items prepared in accordance with the format in subpart 12.6, as supplemented with additional information included in this notice, and that a written solicitation will not be issued.