

purchase "in the open market" generally (such as commercial items, see part 12); or where a specific purchase is made under the conditions described in 6.302-2 in circumstances where immediate delivery is required by the public exigency.

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PART 23—ENVIRONMENTAL, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

45. Section 23.105 is amended at the end of paragraph (b)(2) by removing "or"; by redesignating paragraphs (b)(3) and (4) as (b)(4) and (5), respectively; and adding a new paragraph (b)(3) to read as follows:

23.105 Solicitation provision and contract clause.

* * * * *

(b) * * *
 (3) The contract is for other than commercial items; or

* * * * *

46. Section 23.501 is amended by redesignating paragraphs (b) through (d) as (c) through (e) respectively, and adding a new paragraph (b) to read as follows:

23.501 Applicability.

* * * * *

(b) Contracts for the acquisition of commercial items (see part 12);

* * * * *

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

36.206 [Amended]

47. Section 36.206 is amended by removing "12.202" and inserting "11.502".

36.303 [Amended]

48. Section 36.303 is amended in paragraph (c)(4) by removing "12.1" and inserting "48 CFR part 11, subpart 11.4".

PART 42—CONTRACT ADMINISTRATION

42.1105 [Amended]

49. and 50. Section 42.1105 is amended by removing the reference "subpart 12.3" and inserting "48 CFR part 11, subpart 11.6".

Subpart 42.13 [Redesignated from subpart 12.5]

42.1304 [Amended]

51. Newly designated section 42.1304 (redesignated from 12.504) is amended in paragraph (a) by removing "52.212-15" and inserting "52.242-17".

42.1305 [Amended]

52. Newly designated section 42.1305 (redesignated from 12.505) is amended in paragraph (a) by removing "52.212-12" and inserting "52.242-14"; in paragraph (b)(1) by removing "52.212-13" and inserting "52.242-15"; in paragraph (c) by removing "52.212-14" and inserting "52.242-16"; and in paragraph (d) by removing "52.212-15" and inserting "52.242-17".

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

53. Subpart 44.4, consisting of sections 44.400 through 44.403, is added to read as follows:

Subpart 44.4—Subcontracts for Commercial Items and Commercial Components

Sec.

- 44.400 Scope of subpart.
- 44.401 Applicability.
- 44.402 Policy requirements.
- 44.403 Contract clause.

Subpart 44.4—Subcontracts for Commercial Items and Commercial Components

44.400 Scope of subpart.

This subpart prescribes the policies limiting the contract clauses a prime contractor may be required to apply to any subcontractors that are furnishing commercial items or commercial components in accordance with Section 8002(b)(2) (Pub. L. 103-355).

44.401 Applicability.

This subpart applies to all contracts and subcontracts. For the purpose of this subpart, the term "subcontract" has the same meaning as defined in part 12.

44.402 Policy requirements.

(a) To the maximum extent practicable—

(1) Contractors and subcontractors at all levels shall incorporate commercial items or nondevelopmental items other than commercial items as components of items delivered to the Government; and

(2) Agencies shall not require prime contractors to apply to any of its divisions, subsidiaries, affiliates, subcontractors or suppliers that are furnishing commercial items or commercial components any clause, except those—

(i) Required to implement provisions of law or executive orders applicable to subcontractors furnishing commercial items or commercial components; or

(ii) Determined to be consistent with customary commercial practice for the item being acquired.

(b) The clause at 52.244-XX, Subcontracts for Commercial Items and Commercial Components, implements the policy in paragraph (a) of this section. Notwithstanding any other clause in the prime contract, only those clauses identified in the clause at 52.244-XX are required to be in subcontracts for commercial items or commercial components.

(c) Agencies shall supplement the clause at 52.244-XX, as necessary to reflect agency unique statutes.

44.403 Contract clause.

The contracting officer shall insert the clause at 52.244-XX, Subcontracts for Commercial Items and Commercial Components, in solicitations and contracts for supplies or services other than commercial items.

PART 46—QUALITY ASSURANCE

54. Section 46.101 is amended by adding in alphabetical order the definition "Commercial item" to read as follows:

46.101 Definitions.

* * * * *

Commercial item (see 2.101).

* * * * *

55. Section 46.102 is amended by redesignating paragraph (f) as (g) and adding a new paragraph (f) to read as follows:

46.102 Policy.

* * * * *

(f) For the acquisition of commercial items, contractors are permitted to use their existing quality assurance system as a substitute for compliance with Government-specified requirements unless customary market practice for the commercial item being acquired permits in-process inspection (Pub. L. 103-355);

* * * * *

Subpart 46.2—Contract Quality Requirements

46.202 [Amended]

56. Section 46.202 is amended by removing "three" and inserting "four".

57. Sections 46.202-1 through 46.202-3 are redesignated as 46.202-2 through 46.202-4 respectively, and a new 46.202-1 is added to read as follows:

46.202-1 Contracts for commercial items.

When acquiring commercial items (see part 12), the Government shall use contractors' existing quality assurance system as a substitute for Government inspection and testing before tendering for acceptance unless customary market