



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS AIR FORCE MATERIAL COMMAND
WRIGHT PATTERSON AIR FORCE BASE OHIO

64-10, FAR 12
Reynolds
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5 JAN 2000

MEMORANDUM FOR SEE DISTRIBUTION

FROM: HQ AFMC/PK
4375 Chidlaw Road, Room S208
Wright-Patterson AFB OH 45433-5006

SUBJECT: FAR Part 12 Contract Types and Tailoring of FAR Part 12 Contract Clauses

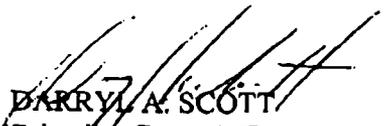
REFERENCE: HQ AFMC/PAK Policy Letter, "Acquisition of Commercial Items, FAR Part 12. Clarifications," 24 Mar 97

1. We've received several questions on what's permissible under FAR Part 12, so let me clarify the policy on using cost-reimbursement type contracts (or line items), incentives, and tailoring Part 12 clauses. FAR Part 12.207 states agencies shall use firm-fixed-price contracts or fixed-price contracts with economic price adjustment to acquire commercial items. No other contract type is authorized for commercial acquisition in the statute FAR Part 12.207 is based on.
2. That said, many of you have pointed out that Time and Materials (T&M) instruments are a common industry practice in certain marketplaces (e.g., aircraft maintenance, repair, and overhaul). The statutory limitation prevents expanded use of FAR Part 12 commercial contracts in these instances. We have submitted a legislative initiative requesting permission to use T&M type contracts for commercial item acquisition via several fora. Until this initiative is adopted, we recommend you use firm fixed price level of effort arrangements for situations where the parameters of the commercial requirement cannot be adequately defined to allow for the use of a fixed price arrangement.
3. Some of you have asked if it's OK to use award fee or award term provisions under FAR Part 12. Yes, as long as the incentives are based on technical performance, not cost performance.
4. FAR Part 12.302(a) encourages tailoring provisions and clauses for acquiring commercial items. "...[C]ontracting officers may, within the limitations of this subpart, and after conducting appropriate market research, tailor the provision at 52.212-1, Instructions to Offerors-- Commercial Items, and the clause at 52.212-4, Contract Terms and Conditions-- Commercial Items, to adapt to the market conditions for each acquisition. FAR Part 12.213 allows for the incorporation of "other commercial practices" "...if the contracting officer determines them appropriate in concluding a business arrangement satisfactory to both parties and not otherwise precluded by law or Executive order." You don't need a waiver to incorporate these types of practices. For example, adding a DD Form 254 to a FAR Part 12 contract that requires security clearances for the contractor employees would not require a waiver.

5. A waiver is required by FAR Part 12.302(c) for tailoring commercial contract clauses "inconsistent with customary commercial practice." Requiring Certified Cost or Pricing Data on a FAR Part 12 contract would be an example of an inconsistent practice. You should limit such tailoring to those peculiar circumstances where government-unique clauses are necessary to ensure we receive the value our customers expect. You shouldn't use them for administrative convenience, or to eliminate risks that could be effectively managed with customary commercial practices.

6. Market research is key to successful FAR Part 12 acquisitions. Our PCOs and buyers must understand the marketplace in order to accomplish the tailoring encouraged in FAR Part 12.302(a). Usually, the commercial marketplace has developed appropriate mechanisms to manage technical and administrative risk- we should also use those mechanisms. Waivers should be rare exceptions, as the whole point of FAR Part 12 contracting is to emulate commercial practices as much as practicable.

7. My POC on this topic is Mr. Mark Bennington, HQ AFMC/PKPC, DSN 986-0325. His e-mail address is mark.bennington@wpafb.af.mil.


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