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DEPARTMENT OF DEFENSE
Headquarters A
Wright-Patterson

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FORM-101

GENERAL SERVICES ADMINISTRATION

24 Mar 91

MEMORANDUM FOR SEE DISTRIBUTION

FROM: HQ AFMC/PKP
4375 Chidlaw Road, Suite 6
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SUBJECT: Acquisition of Commercial Items, FAR Part 12, Clarifications

- Over the past several months, many questions concerning FAR Part 12 Commercial Acquisitions have surfaced to SAF/AQCP and HQ AFMC/PKP. In an effort to answer these questions and help organizations conduct acquisitions of Commercial Items, this memorandum clarifies the use of FAR Part 12 authority and explains the contract types which are allowable under the implementation in the FAR of Title VIII of the Federal Acquisition Streamlining Act (FASA) of 1994 (Public Law 103-355).
- FAR Part 12.207 states agencies shall use firm-fixed-price contracts or fixed-price contracts with economic price adjustment (FP EPA) for the acquisition of commercial items. This requirement is statutory. FASA Section 8002(d) USE OF FIRM, FIXED PRICE CONTRACTS states:

"The Federal Acquisition Regulation shall include, for acquisition of commercial items

 - a requirement that firm, fixed price contracts or fixed price with economic price adjustment contracts be used to the maximum extent practicable; and*
 - a prohibition on use of cost-type contracts."*

In addition, FAR 12.207 reiterates that no other contract type is authorized.
- FAR Part 12.204 states the Standard Form (SF) 1449 shall be used in the acquisition of commercial items. FAR Part 12.102(d) identifies exceptions to this requirement for the acquisition of commercial items: "(1) at or below the micro-purchase threshold; (2) Using the SF 44; (3) Using the imprest fund; or (4) Using the Governmentwide commercial purchase card."
- FAR 12.3 implements Section 8000 of FASA which restricts, to the maximum extent practicable, the use of nonstandard commercial clauses. Only clauses required to implement provisions of law or executive orders applicable to acquisition of commercial items or determined to be consistent with customary commercial practice may be included. If special clauses will be included in a commercial contract, then the Contracting Officer must justify its use and document the rationale behind why it is considered to be consistent with customary

70 41, Atch 97-11A (FAR 12)

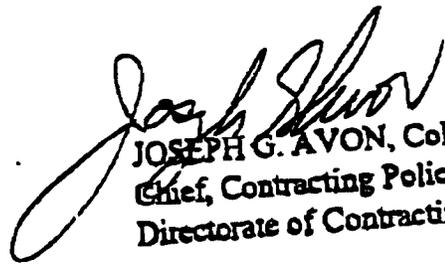
Post to FAR 12.207 by circling the reference and noting in the margin: "70-41, Atch 97-11A". Then file this atch behind the sups to FAR 12.

commercial practice. The inclusion of provisions or clauses that are inconsistent with commercial practices or the tailoring of Part 12 clauses in a way that is inconsistent with commercial practices must be approved in accordance with FAR 12.301(f) and DFARS 212.302(c).

5. When Market Research (FAR Part 10) identifies commercial items are available to meet agency needs, then agencies must acquire Commercial Items using FAR Part 12 policies and the SF 1449, including the use of firm-fixed-price contracts. The use of a firm-fixed-price contract with an award fee provision that is not based on cost performance is acceptable.

6. FASA strictly prohibits the use of cost reimbursement contracts in the acquisition of Commercial Items. Therefore, contracts with cost reimbursement line items are strictly prohibited under FAR Part 12, SF 1449, Commercial Acquisition Contracts. In other words, "Hybrid" SF 1449 contracts which have cost reimbursement provision for time and materials, level of effort, etc., are not authorized. We are aware of the restrictions this creates; however, FASA is clear on this issue. It is important to remember one of the intents of FASA is to create very straightforward and nonrestrictive contracts for commercial industry. The intent was not to create commercial contracts which mirror standard Government contracts. Alternatives are available such as awarding an SF 1449 contract and another contract vehicle for the cost reimbursement portion or awarding an Indefinite Delivery/Indefinite Quantity contract and issuing firm-fixed-price delivery orders against it.

7. These clarifications were coordinated with SAF/AQCP, Col Terry Raney, USAF DAR Council Representative. If you have any questions, please contact my point of contact for Commercial Acquisitions, Capt Douglas E. James, HQ AFMC/PKPA, DSN 787-8154, com (937) 257-8154, E-mail: jamesde@wpgate1.wpafb.af.mil.



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