

Recommendation 28: Simplify the selection of sources for commercial products and services.

Problem

Despite numerous revisions to statutes and regulations, selecting sources for commercial products and services continues to take too long and involve unnecessarily complex procedures for both government buyers and private-sector sellers.

Background

The Federal Acquisition Streamlining Act of 1994 (FASA) made notable changes to acquisition, including modifications to commercial buying (FAR Part 12) and simplified acquisition (FAR Part 13) procedures. FAR Part 12 established streamlined policies and procedures for acquiring *commercial items* (products and services) with no dollar limit. Part 13 established streamlined policies and procedures for buying any product or service (commercial or noncommercial) up to the simplified acquisition threshold (currently \$250,000). This applicability overlap has caused confusion since implementation of the two FAR parts in 1995.

Adding to the confusion, guidance in FAR 12.102, *Applicability*, instructs contracting officers to use Part 12 in conjunction with parts 13, 14, and 15 when selecting sources for commercial products and services.¹ FASA provided authority to publicize a synopsis for less than the standard 30 days, but offered little additional flexibility for selecting commercial products and services. As a consequence, when acquiring commercial products and services, contracting officers used a mixture of Part 13 simplified acquisition procedures below the simplified acquisition threshold (SAT), and the more formal Part 15 source selection procedures both below and above the SAT.

Section 4202 of the Federal Acquisition Reform Act of 1996 (FARA), *Application of Simplified Procedures to Certain Commercial Items*, offered the possibility of substantially simplifying the acquisition of commercial products and services.² This statute amended 41 U.S.C. § 1901(a) and 10 U.S.C. § 2304(g), authorizing use of special simplified procedures for commercial item acquisition at amounts greater than the simplified acquisition threshold but not greater than \$5 million when the contracting officer reasonably expects, based on the nature of the commercial items sought and on market research, that offers will include only commercial items. This authority was initially set to expire on January 1, 2000.

The proposed implementation of Section 4202 was published in the Federal Register dated September 6, 1996.³ The proposed rule established FAR 13.5, *Test Program for Certain Commercial Items*, and explained that the purpose of the proposed rule was “to vest contracting officers with additional procedural discretion and flexibility, so that commercial items acquisitions in this dollar range [\$100,000 – \$5,000,000] may be solicited, offered, evaluated, and awarded in a simplified manner

¹ *Applicability*, FAR 12.102.

² FY 1996 NDAA, Pub. L. No. 104-106 (1996).

³ 61 Fed. Reg. 47384 (Sep. 6, 1996).

that maximizes efficiency and economy and minimizes burden and administrative costs for both the Government and industry.”⁴

The Federal Register notice further explained:

It is clear that the drafters of this legislation intended for commercial items to be purchased in as simplified a manner as possible. A report by the House Committee of Government Reform and Oversight (No. 104-222) on H.R. 1670 noted that ‘The purchase of a commercial item logically lends itself to simplified procedures because there exists a yardstick in the commercial marketplace against which to measure price and product quality and to serve a surrogate for Government-unique procedures.’

The intent of this proposed rule is to ensure the benefits of this new authority can be fully realized by giving contracting officers a clear understanding of the procedural discretion and flexibility they have, so that acquisitions of commercial items conducted under these regulations may be solicited, offered, evaluated, and awarded in a simplified manner that maximizes efficiency and economy and minimizes burden and administrative costs for both the Government and its suppliers.⁵

The final rule implementing the test program was published in the Federal Register in January 1997, and amended several times in subsequent years to raise the threshold to \$7 million and extend the end date of the test program.⁶

Section 815 of the FY 2015 NDAA made the test program permanent for commercial item purchases greater than the SAT, but not exceeding \$7 million (\$13 million for certain emergency-related acquisitions).⁷

Discussion

Selecting sources can be one of the most important, time-consuming, and skill intensive responsibilities of a contracting officer. On occasion, it can result in an unsuccessful or disappointed offerors filing a protest. It is important contracting officers use the most appropriate and streamlined selection technique, taking into consideration factors such as the product or service being acquired, the expected value, technical complexity, and government-unique requirements.

The policies and procedures in Part 13 provide contracting officers with considerable discretion and flexibility. The Government Accountability Office (GAO) has recognized and supported this discretion and flexibility in numerous decisions.⁸ Extending the authority to use these simplified procedures for acquisition of commercial products and services up to \$7 million has the potential to substantially simplify and speed those acquisitions.

Streamlining the processes for acquiring commercial products and services is also likely to benefit small business. Small businesses are among the most affected by the heavy administrative burdens

⁴ Ibid.

⁵ Ibid.

⁶ 62 Fed. Reg. 262 (Jan. 2, 1997).

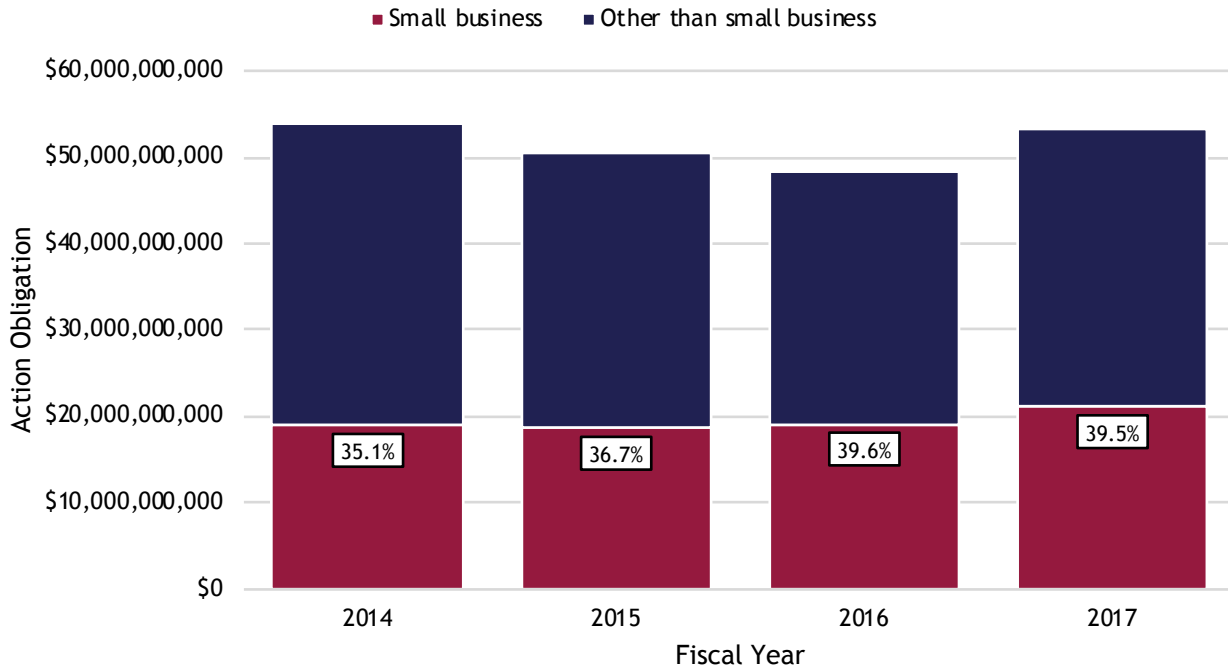
⁷ 80 Fed. Reg. 38311 (Jul. 2, 2015).

⁸ See, for example, American Artisan Products., B-293801.2, June 7 2004, 2004 CPD ¶ 127 at 3; and United Marine International, LLC, B-281512, 99 CPD ¶ 44.

imposed by government contracts. Small businesses typically lack the overhead staff to establish and maintain business systems compliant with government-unique requirements.

FPDS data indicates that in recent years between 35 percent and 39 percent of DoD’s commercial buys have been from small business (see Figure 3-1).⁹ The federal government’s commercial buys from small business for that time period are in the same range.

Figure 3-1. FPDS-Reported DoD-Contracted Obligations Using Commercial Item Procedures



The Section 809 Panel reviewed 2017 FPDS data that indicated a majority of contract obligations for commercial products or services were under the \$7 million threshold for using simplified acquisition procedures to procure commercial products and services (see Figure 3-1).¹⁰ Although the data set cannot be used to identify which of these obligations already used the streamlined procedures, it does support the notion that DoD could garner benefits from clarifying and simplifying use of Part 13 simplified acquisition procedures for commercial products and services up to \$7 million (see Table 3-1).

Table 3-1. DoD Actions by Dollar Threshold, FY 2017

| DoD Actions by Dollar Threshold, FY 2017 (Thresholds defined by base and all options value of contract action for modification-zero) | | | |
|---|------------|---------------|--------------|
| | Commercial | Noncommercial | % Commercial |
| \$3,500 to \$150K | 382,641 | 402,367 | 49% |
| \$150K to \$1M | 43,960 | 45,007 | 49% |

⁹ Data from FPDS, extracted March 22, 2018.

¹⁰ Data from FPDS, extracted March 22, 2018. Dollar categories are based on the number of modification-zero actions with reported “base and all options value” falling within the dollar amounts listed. USTRANSCOM (agency ID 9776), which makes up a majority of DoD contract actions, is omitted from this dataset.

| | | | |
|---------------------------------------|--------|--------|-----|
| \$1M to \$7M | 11,953 | 17,415 | 41% |
| \$7M and greater | 2,112 | 7,654 | 22% |
| <i>Data do not include USTRANSCOM</i> | | | |

A 2001 GAO evaluation of the simplified acquisition test program showed that although federal agencies argued there were positive benefits to the authority provided in the test program, there was little empirical data to support the program.¹¹ The Section 809 Panel’s review of more recent FPDS data regarding use of the test program suggests the test program is not being widely used, but the data reporting is also likely to be inaccurate due to confusion over the test program’s reporting process. Anecdotal information supports the assertion that streamlined procedures for acquiring commercial products and services up to the \$7 million threshold are underused.

Contracting officers are not taking full advantage of the simplification in selecting sources offered by the simplified acquisition procedures. If contracting officers took greater advantage of the simplified acquisition procedures, they would substantially streamline acquisition of commercial products and services.

One well respected professional publication addressed this issue, stating the following:¹²

One of the most remarkable and disappointing phenomena of Government contracting is the unwillingness or inability of many contracting officers to take advantage of the streamlining and labor-saving contract formation procedures that became available during the acquisition reform era of the 1990’s. COs needlessly resort to Federal Acquisition Regulation Part 15 solicitation, offer, and award procedures when making simplified acquisitions, when competing task orders under multiple award service contracts, and even when placing orders under General Services Administration schedules.

The article cites a GAO decision in which a DoD buying activity used the more complex Part 15-type procurement procedures to select a contractor to provide room and board for military recruits.¹³ The article cites another GAO decision in which a civilian agency used Part 13 simplified procedures but with the more complex Part 15-type solicitation, offer, evaluation, and selection procedures to select from among numerous providers of a commercial product that was sold in the millions in the commercial marketplace all around the world.¹⁴

The author concludes by observing the following:

Based on my personal observations, several factors contribute to this problem. First, many of the buyers doing simplified acquisitions lack confidence in their own know-how, so procedural formality makes them feel safe, while creative simplicity seems dangerous. Second, those buyers lack a sound conceptual grounding in procurement and contract formation, which makes it hard for them to improvise simple

¹¹ GAO, *Benefits of Simplified Test Procedures Not Clearly Demonstrated*, April 2001, GAO-01-517, accessed June 4, 2018, <https://www.gao.gov/new.items/d01517.pdf>.

¹² 21 NO. 7 Nash & Cibinic Report ¶ 31, July 2007.

¹³ Finlen Complex, Inc., Comp. Gen. Dec. B-288280, 2001 CPD ¶ 167.

¹⁴ Bio-Rad Laboratories, Inc., Comp. Gen. B-297653, 2007 CPD ¶ 58, 49 GC ¶ 198.

procedures that are suitable for the acquisition at hand. Third, FAR Part 13 is poorly organized and sometimes confusing.

Conclusions

There are abundant opportunities for more streamlining of commercial products and services procurement. Much of the authority needed to further simplify these procurements is already in place but appears not to have been widely used. Several statutory and regulatory obstacles to greater use of simplified acquisition procedures for commercial products and services exist.

Unnecessarily Narrow Applicability of the Special Streamlined Acquisition Procedures

Perhaps one possible reason for the apparent underuse of the simplified acquisition procedures for commercial procurements can be found in statute. In establishing the authority to use simplified acquisition procedures to acquired commercial products and services up to \$7 million, Section 4202 of the FY 1996 NDAA (implemented at 41 U.S.C. § 1901) included an unnecessarily narrow restriction by authorizing the use of these procedures if the contracting officer expects “offers will include only commercial items.”

§1901. Simplified acquisition procedures

(a) WHEN PROCEDURES ARE TO BE USED. — To promote efficiency and economy in contracting and to avoid unnecessary burdens for agencies and contractors, the Federal Acquisition Regulation shall provide for special simplified procedures for purchases of property and services for amounts —

(1) not greater than the simplified acquisition threshold; and

(2) greater than the simplified acquisition threshold but not greater than \$5,000,000 for which the contracting officer reasonably expects, based on the nature of the property or services sought and on market research, that offers will include only commercial items.

This restriction is unnecessary, and conflicts with statute expressing the general preference for acquiring commercial items at 41 U.S.C. § 3307(b)(3) that requires offerors of commercial items and nondevelopmental items be provided the opportunity to fill the government’s requirements.

(b) PREFERENCE — The head of each executive agency shall ensure that, to the maximum extent practicable —

(1) requirements of the executive agency with respect to a procurement of supplies or services are stated in terms of—

(A) functions to be performed;

(B) performance required; or

(C) essential physical characteristics;

(2) those requirements are defined so that commercial items or, to the extent that commercial items suitable to meet the executive agency’s needs are not available, nondevelopmental items other than commercial items may be procured to fulfill those requirements; and

(3) *offerors of commercial items and nondevelopmental items other than commercial items are provided an opportunity to compete in any procurement to fill those requirements.*

This preference is implemented, in part, in FAR 10.002 (d)(1), which states that if the government's need may be met by a type of item or service customarily available in the marketplace. It specifically states, "the contracting officer shall solicit and award and resultant contract using the policies and procedures in Part 12." As long as the need may be met by the commercial marketplace, there is no restriction that *only* commercial items may be offered to meet the government's need.

Outdated Requirement to Publish Notices of Contract Actions

41 U.S.C. § 1708(a) and 15 U.S.C. § 637(e) require publication of notices, subject to certain thresholds, in three circumstances—notice of an intent to issue a solicitation, the posting in a public place at the contracting office of that notice, and the publication of a notice announcing the award. These statutes also require public solicitations be used for all procurements for which the contract value is expected to exceed \$25,000. These publication requirements are vestiges of the commerce era when paper notices, mailing of documents, and paper solicitations were common place.

Both statutes recognize the effect of modern electronic media (such as FedBizOpps, FPDS, USASpending) has had on the need for and method of making such publications. 41 U.S.C. § 1708(b)(1) provides an exception to these requirements if the following criteria are met:

(A) *the proposed procurement is for an amount not greater than the simplified acquisition threshold and is to be conducted by –*

- (1) *using widespread electronic public notice of the solicitation in a form that allows convenient and universal user access through a single, Government-wide point of entry; and*
- (2) *permitting the public to respond to the solicitation electronically*

15 U.S.C. § 637(g) provides a similar exception. These exceptions are limited, however, to procurements not greater than the *simplified acquisition threshold*, so the effect on streamlining commercial buying using the special simplified procedures in FAR 13.5 is limited to acquisitions under the SAT (\$250,000) and does not apply to procurements of commercial products and services between the SAT and the \$7 million special simplified acquisition procedures threshold. The language at 15 U.S.C. § 637(g) leaves in place the outdated procurement notice process for electronic procurements and creates an unnecessary restriction that limits the streamlining Congress is trying to achieve.

Solicitation posting requirements have not changed since 1984; therefore, they do not reflect the extent to which the commercial marketplace has evolved during the last 30 years.¹⁵ According to FAR 5.002,

¹⁵ See Pub. L. No. 98-369, 98 STAT. 1196, Sec. 2732 (1985), codified at 41 U.S.C. § 1708. The simplified acquisition threshold has increased from \$100,000 to \$250,000, with simplified acquisition procedures authorized for commercial purchases over \$7 million, over that same period of time. The micro-purchase threshold has also been increased from \$2,500 to \$10,000. See Ron Smith, *Keep it Simple (Sometimes): Acquisition Thresholds are Changing (or Not)*, centrelawgroup.com, August 19, 2015, accessed May 17, 2018,

the purpose for publicizing contract actions is to “increase competition, broaden industry participation in meeting government requirements, assist [the various different types of] small businesses concerns...in obtaining contracts and subcontracts.”¹⁶ In today’s marketplace, using publicly posted solicitations for all commercial buying above \$25,000 has the potential to incentivize limited competition and can add unnecessary time to the process. It can result in what Assistant Secretary of the Navy for Research, Development, and Acquisition James F. Guerts described as “choosing between two bad decisions”¹⁷ when better solutions, readily available to other buyers in the marketplace, are not even considered because the vendor does not access FedBizOpps.

Congress has recognized the changing landscape of buying commercial products through e-commerce in Section 846 of the FY 2018 NDAA and the proposed expansion of micropurchase procedures for procurement through the Section 846 e-commerce portal.¹⁸ These changes will streamline purchasing up to the \$25,000 threshold, but contracting officers will still be unable to use processes that already exist in the FAR for purchases above the threshold. FAR 13.103 authorizes individuals to use standing price quotations as part of the simplified acquisition procedures, and 13.106-1(c) directs contracting officers to use oral solicitations to the maximum extent practicable when they are more efficient. Both of these procedures, however, have very limited application for purchases above \$25,000 because of the requirements in 41 U.S.C. § 1708, 15 U.S.C. § 637, and FAR 5. The existing process leaves the federal government with access to a very small segment of the commercial marketplace when the value of the procurement exceeds \$25,000.

Increasing a threshold that has not been increased in more than 30 years will enable contracting officers to leverage market research, standing price quotations as properly defined below, and oral and direct electronic solicitations to efficiently find the best products and services from the most capable suppliers that provide the best value to the government. Currently, FAR Part 5 is confusing and complicated with multiple different thresholds requiring different publicizing requirements. In addition to the \$25,000 threshold, 41 U.S.C. § 1708, 15 U.S.C. § 637 still requires public posting on a bulletin board in the contracting office of all proposed contract actions expected to exceed \$15,000 but not exceed \$25,000. If contracting offices still perform this function, it is even further out of touch with the pervasive use of e-commerce and electronic communication in business today.¹⁹

Setting a single publication threshold that is consistent with obligations under U.S. trade agreements for all acquisition will help alleviate confusion created by the requirements in FAR Part 5 that are in tension with the simplified procedures in FAR Parts 12 and 13.²⁰ A threshold of \$75,000 is consistent with the increased simplified acquisition and micro-purchase thresholds and is only slightly more than

<http://dev.centrelawgroup.com/keeping-it-simple-sometimes-acquisition-thresholds-are-changing-or-not/> and FY 2018 NDAA, Pub. L. No. 115-91, Section 805 and 806.

¹⁶ Publicizing Contract Actions: Policy, FAR 5.002.

¹⁷ Testimony to House Armed Services Committee Hearing, Assessing Military Service Acquisition Reform, March 7, 2018, <https://armedservices.house.gov/legislation/hearings/assessing-military-service-acquisition-reform>.

¹⁸ H.R. 5515, Section 843, Fiscal Year 2019 National Defense Authorization Bill, Chairman’s Mark, https://armedservices.house.gov/sites/republicans.armedservices.house.gov/files/wysiwyg_uploaded/FY19%20NDAA%20Chairman%27s%20Mark%20Final.pdf.

¹⁹ In fact, for DoD, most contracting activities are on military installations that the public does not have access to. Only those contractors that already have access to the installation would be able to see notices posted to bulletin boards.

²⁰ See FAR 24.5.

\$60,000, which is what the \$25,000 threshold established in 1984 would be in inflation-adjusted dollars.²¹

Insufficient and Confusing Guidance is Provided for the Use of Commercial Policies and Procedures

The FAR direction to contracting officers regarding which procedures to use when acquiring commercial products and services can be confusing and does not drive contracting officers to use the simplest procedures available. For example, FAR 12.102, Applicability, requires that the contracting officer do the following when acquiring commercial items, regardless of dollar value:

[U]se the policies in this part in conjunction with the policies and procedures for solicitation, evaluation and award prescribed in Part 13, Simplified Acquisition Procedures; Part 14, Sealed Bidding; and Part 15, Contracting by Negotiation, as appropriate for the particular acquisition.

FAR 13.000, Scope of Part, states that when making an acquisition between the micro-purchase threshold (MPT) and the SAT, the contracting officer must use Part 13 which “prescribes policies and procedures for the acquisition of supplies and services, including...commercial items.” With this vague direction, it is understandable that contracting officers do not more widely use the streamlined acquisition procedures for procuring commercial products and services.

FAR Guidance for Streamlined Authority for Commercial Buying is Misplaced

The authority to use Part 13 simplified acquisition procedures for acquiring certain commercial products and services was implemented in Subpart 13.5, Test Program for Certain Commercial Items. Placing the policy and procedures in Part 13 makes some organizational sense, but it would be more appropriately placed in Part 12.6 where buyers would be looking when preparing to make a commercial buy, especially true if a contracting officer were preparing to make a commercial buy with an expected value greater than the SAT.

Use of Simplified Acquisition Procedures is not Sufficiently Emphasized

FAR 13.500, Simplified Procedures for Certain Commercial Items, does not require use of the simplified procedures, but merely gives contracting officers the *authority* to use simplified acquisition procedures, and provides that they *may* use any simplified procedure. As noted above, contracting officers may be uncomfortable with the flexibility it provides or may simply find greater comfort with the more structured procedures on Parts 14 and 15. If DoD is going to take greater advantage of the commercial marketplace, it must take a more aggressive approach to using streamlined acquisition procedures when acquiring commercial products and services. Commercial sellers are demanding more simplicity; Congress has provided more simplicity in statute, and contracting officers have indicated they want more simplicity for acquiring commercial products and services.²²

Existing Procedures for Using Simplified Acquisition Procedures are Disjointed

There is no shortage of references to use of simplified acquisition procedures for acquiring commercial products and services. Simply stating contracting officers should use simplified acquisition procedures

²¹ See Bureau of Labor Statistics Consumer Price Index Inflation Calculator at <https://data.bls.gov/cgi-bin/cpicalc.pl>. October 1984 and May 2018 were the dates used to calculate the inflation adjusted threshold.

²² Contracting officers, interviews with Section 809 Panel.

when acquiring commercial products and services is not enough. As noted above, Part 13 is poorly organized and confusing. For example, in researching the *simplified procedures* available under the authority in FAR 13.5, it was necessary to review policies and procedures in FAR Parts 2, 5, 6, 10, 11, 12, 13, 18, and 19. As the Section 809 Panel was told in sensing sessions with contracting officers, “simplified procedures need to be simple.”

Important Streamlining-Related Terms are Not Defined

One of the simplified procedures available in Part 13 is the use of *standing price quotations* (13.103), which allows the use of available pricing without obtaining individual quotations, yet this term is not defined. Similarly, contracting officers are authorized in Part 11.103 to require offerors to demonstrate that items offered have achieved *commercial market acceptance*, yet that term is also not defined.

Implementation

Legislative Branch

- Revise 15 U.S.C. § 637(g) and 41 U.S.C. § 1708(b) to extend the exemption to the requirement to publish notices of contract actions to procurements using *simplified acquisition procedures*. The current exemption has an upper limit of the Simplified Acquisition Threshold. By revising the statute’s threshold from the *simplified acquisition threshold* to the use of *simplified acquisition procedures*, procurements under the special simplified acquisition procedures under 41 U.S.C. § 1901 and 10 U.S.C. § 2304(g) will be included.
- Revise 15 U.S.C. § 637(e) and 41 U.S.C. § 1708(a) to eliminate the requirement to post solicitation documents in a public place and to increase the threshold for the requirement to publish notice of a proposed contract action on the GPE from \$25,000 to \$75,000. This revision eliminates the obsolete posting requirement and raises the 30 old synopsis threshold.
- Revise 41 U.S.C. § 1901(a), 41 U.S.C. § 3305 (a), and 10 U.S.C. § 2304(g) to remove the word *only*. This change will make the authority provided by these statutes consistent with the preference for commercial products and services in 41 U.S.C. § 3307(b) and 10 U.S.C. § 2377.

Executive Branch

- Revise FAR 2.101 and 11.103 to define the term *market acceptance*; revise FAR 2.101 and 13.103 to define the term *standing price quotation*. These terms are already contained in the FAR but are undefined. Both terms represent techniques that may offer contracting officers the opportunity to streamline the procurement of commercial products and services.
- Revise FAR 5.202(b)(13) and 5.301(b)(6) to conform to the statutory changes at 15 U.S.C. § 637 and 41 U.S.C. § 1708.
- Revise 12.102 and 13.000 to clarify the relationship between Part 12 and Part 13. Contracting officers are required to use Part 12 when acquiring commercial products and services with an expected value greater than the MPT; Part 13 would focus on all purchases below the MPT, and purchases of noncommercial products and services between the MPT and SAT.

- Revise the FAR to move the authority to use simplified acquisition procedures for commercial products and services in FAR 13.5, Simplified Procedures for Certain Commercial Items, to FAR 12.6, Selection of Sources for Commercial Products and Services. This change makes the simplified procedures for procuring commercial products and services available in the logical part of the FAR that primarily focuses on procurements of commercial products and services.
- Revise FAR 12.203 and 12.6, Streamlined Procedures for Evaluation and Solicitation for Commercial Items, to focus more broadly on the *selection of sources for commercial products and services*. The existing language implies a more complex process for selecting sources. With the clarification of the relationship between Parts 12 and 13, and the incorporation in 12.6 of special streamlined procedures for acquiring commercial products and services, the revised Subpart 12.6 would focus on using simplified procedures for selecting sources first, and using more complex procedures only when procuring products and services over the SAT.
- Revise FAR 12.602 (d) to require contracting officers to use simplified acquisition procedures when acquiring commercial products and services with an expected value between the MPT and the thresholds provided by 41 U.S.C. §§ 1901 and 1903 implemented in FAR 12.602(c). Require contracting officers to obtain approval to use the complex policies and procedures in Part 14 or Part 15 to acquire commercial products or services below the threshold in FAR 12.602(c).
- Revise FAR 12.6 to organize in one location the simplified acquisition procedures available to contracting officers under the authority of 41 U.S.C. §§ 1901 and 1903. This change gives contracting officers more clarity, direction, and confidence in using simplified procedures rather than more familiar, but possibly inappropriate, complex procedures for procuring commercial products and services.
- Revise FAR 12.604, Combined Synopsis/Solicitation, to reflect the statutory revisions at 15 U.S.C. § 637 and 41 U.S.C. § 1708 that would limit the need to a synopsis to paper solicitations.

Implications for Other Agencies

- The recommended changes to statute and the FAR would apply to DoD and the civilian agencies that use the FAR. Both DoD and the civilian agencies will benefit from these recommendations.

RECOMMENDED REPORT LANGUAGE

SEC. 304. Revision to Source Selection Requirements for Acquisition of Commercial Products and Services.

This section would amend section 1708(a), title 41, United States Code, and section 637(e), title 15, United States Code, to increase the threshold for requiring procurement notices to be published from \$25,000 to \$75,000, and expand the use of combined synopsis and solicitations to all commercial product and service procurements made using simplified acquisition procedures. This section would also remove the requirement to post procurement opportunities valued above the micro-purchase threshold, but below \$25,000, from being posted in a public place in the contracting office, and remove the limitation on the use of simplified acquisition procedures for commercial products and services to procurements made up of only commercial products and services.

The committee notes that while the threshold for using simplified acquisition procedures is currently \$7 million (\$13 million for products or services procured in support of a contingency or recovery from a nuclear, chemical, or biological attack), the simplified procedure for using a combined synopsis and solicitation has remained limited to only those procurements below the simplified acquisition threshold. The committee is aware that this threshold has not been increased in over 30 years despite the micro-purchase and simplified acquisition thresholds being raised multiple times. The committee expects these amendments would advance efforts to further simplify the simplified acquisition procedures for the purpose of increasing agencies' ability to access commercially viable technologies and solutions from innovative and non-traditional sources.

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[FOR INTERNAL USE ONLY BY SECTION 809 PANEL]
COMMERCIAL ITEMS #2

[NOTE: The draft legislative text below is followed by a “Sections Affected” display, showing the text of each provision of law affected by the draft legislative text.]

1 **SEC. 304. REVISION TO SOURCE SELECTION REQUIREMENTS FOR**
2 **ACQUISITION OF COMMERCIAL PRODUCTS AND SERVICES.**

3 (a) THRESHOLD FOR REQUIRED PUBLICATION OF NOTICE.—

4 (1) SMALL BUSINESS ACT.—Section 8 of the Small Business Act (15 U.S.C. 637) is
5 amended—

6 (A) in subsection (e)(1)—

7 (i) by striking “\$25,000” in clauses (i) and (ii) of subparagraph (A)
8 and inserting “\$75,000”;

9 (ii) by inserting “and” at the end of subparagraph (A);

10 (iii) by striking subparagraph (B); and

11 (iv) by redesignating subparagraph (C) as subparagraph (B); and

12 (B) in subsection (g)(1)(A)—

13 (i) by striking “for an amount not greater than the simplified
14 acquisition threshold and is” in the matter preceding clause (i);

15 (ii) by redesignating clauses (i) and (ii) as clauses (ii) and (iii),
16 respectively;

17 (iii) by inserting before clause (ii), as so redesignated, the
18 following new clause (i):

19 “(i) using simplified acquisition procedures;”; and

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1 (iv) by striking the period at the end of clause (iii), as so
2 redesignated, and inserting a semicolon.

3 (2) TITLE 41, UNITED STATES CODE.—Section 1708 of title 41, United States Code,
4 is amended—

5 (A) in subsection (a)—

6 (i) by striking paragraph (1);

7 (ii) by redesignating paragraphs (2) and (3) as paragraphs (1) and
8 (2), respectively;

9 (iii) by striking “\$25,000” in subparagraphs (A) and (B) of
10 paragraph (1), as so redesignated, and inserting “\$75,000”; and

11 (iv) by striking “\$25,000” both places it appears in paragraph (2),
12 as so redesignated, and inserting “\$75,000”; and

13 (B) in subsection (b)(1)(A)—

14 (i) by striking “for an amount not greater than the simplified
15 acquisition threshold and is” in the matter preceding clause (i);

16 (ii) by redesignating clauses (i) and (ii) as clauses (ii) and (iii),
17 respectively; and

18 (iii) by inserting before clause (ii), as so redesignated, the
19 following new clause (i):

20 “(i) using simplified acquisition procedures;”.

21 (b) AVAILABILITY OF SIMPLIFIED ACQUISITION PROCEDURES FOR CERTAIN ABOVE-
22 THRESHOLD PURCHASES WHEN OFFERS ARE EXPECTED TO INCLUDE COMMERCIAL PRODUCTS OR
23 SERVICES.—

[FOR INTERNAL USE ONLY BY SECTION 809 PANEL]
COMMERCIAL ITEMS #2

1 (1) TITLE 41, UNITED STATES CODE.—Sections 1901(a)(2) and 3305(a)(2) of title
2 41, United States Code, are amended by striking “only”.

3 (2) TITLE 10, UNITED STATES CODE.—Section 2304(g)(1)(B) of title 10, United
4 States Code, is amended by striking “only”.

SECTIONS AFFECTED BY THE PROPOSAL

[The material below shows changes proposed to be made by the legislative text above to the text of existing statutes. Matter proposed to be deleted is shown in ~~stricken through text~~; matter proposed to be inserted is shown in *bold italic*.]

Section 8 of the Small Business Act
(15 U.S.C. 637)

SEC. 8. (a) ***

(e)(1) Except as provided in subsection (g)—
(A) an executive agency intending to—
(i) solicit bids or proposals for a contract for property or services for a price expected to exceed ~~\$25,000~~ ***\$75,000***; or
(ii) place an order, expected to exceed ~~\$25,000~~ ***\$75,000***, under a basic agreement, basis ordering agreement, or similar arrangement, shall publish a notice described in subsection (f); ***and***
~~(B) an executive agency intending to solicit bids or proposals for a contract for property or services shall post, for a period of not less than ten days, in a public place at the contracting office issuing the solicitation a notice of solicitation described in subsection (f)—~~
(i) ~~in the case of an executive agency other than the Department of Defense, if the contract is for a price expected to exceed \$10,000, but not to exceed \$25,000; and~~
(ii) ~~in the case of the Department of Defense, if the contract is for a price expected to exceed \$5,000, but not to exceed \$25,000; and~~
(B) an executive agency awarding a contract for property or services for a price exceeding \$100,000, or placing an order referred to in clause (A)(ii) exceeding \$100,000, shall furnish for publication by the Secretary of Commerce a notice announcing the award or order if there is likely to be any subcontract under such contract or order.

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COMMERCIAL ITEMS #2

(2)(A) A notice of solicitation required to be published under paragraph (1) may be published—

(i) by electronic means that meet the accessibility requirements under section 18(a)(7) of the Office of Federal Procurement Policy Act (41 U.S.C. 416(a)(7)); or

(ii) by the Secretary of Commerce in the Commerce Business Daily.

(B) The Secretary of Commerce shall promptly publish in the Commerce Business Daily each notice or announcement received under this subsection for publication by that means.

(3) Whenever an executive agency is required by paragraph (1)(A) to publish a notice of solicitation, such executive agency may not—

(A) issue the solicitation earlier than 15 days after the date on which the notice is published; or

(B) in the case of a contract or order estimated to be greater than the simplified acquisition threshold, establish a deadline for the submission of all bids or proposals in response to the notice required by paragraph (1)(A) that—

(i) in the case of an order under a basic agreement, basic ordering agreement, or similar arrangement, is earlier than the date 30 days after the date the notice required by paragraph (1)(A)(ii) is published;

(ii) in the case of a solicitation for research and development, is earlier than the date 45 days after the date the notice required by paragraph (1)(A)(i) is published; or

(iii) in any other case, is earlier than the date 30 days after the date the solicitation is issued.

(f) ***

* * * * *

(g)(1) A notice is not required under subsection (e)(1) if—

(A) the proposed procurement is ~~for an amount not greater than the simplified acquisition threshold and is to be conducted by—~~

(i) using simplified acquisition procedures;

~~(ii)~~ **(ii)** using widespread electronic public notice of the solicitation in a form that allows convenient and universal user access through a single, Government-wide point of entry; and

~~(iii)~~ **(iii)** permitting the public to respond to the solicitation notice electronically;;

(B) the notice would disclose the executive agency's needs and the disclosure of such needs would compromise the national security;

(C) the proposed procurement would result from acceptance of—

(i) any unsolicited proposal that demonstrates a unique and innovative research concept and the publication of any notice of such unsolicited research proposal would disclose the originality of thought or innovativeness of the proposal or would disclose proprietary information associated with the proposal; or

(ii) a proposal submitted under section 9 of this Act;

[FOR INTERNAL USE ONLY BY SECTION 809 PANEL]
COMMERCIAL ITEMS #2

- (D) the procurement is made against an order placed under a requirements contract;
- (E) the procurement is made for perishable subsistence supplies;
- (F) the procurement is for utility services, other than telecommunication services, and only one source is available; or
- (G) the procurement is for the services of an expert for use in any litigation or dispute (including preparation for any foreseeable litigation or dispute) that involves or could involve the Federal Government in any trial, hearing, or proceeding before any court, administrative tribunal, or agency, or in any part of an alternative dispute resolution process, whether or not the expert is expected to testify.

TITLE 41, UNITED STATES CODE

§1708. Procurement notice

- (a) NOTICE REQUIREMENT.—Except as provided in subsection (b)—
 - ~~(1) an executive agency intending to solicit bids or proposals for a contract for property or services for a price expected to exceed \$10,000, but not to exceed \$25,000, shall post, for not less than 10 days, in a public place at the contracting office issuing the solicitation a notice of solicitation described in subsection (c);~~
 - ~~(2) (1)~~ (1) an executive agency shall publish a notice of solicitation described in subsection (c) if the agency intends to—
 - (A) solicit bids or proposals for a contract for property or services for a price expected to exceed ~~\$25,000~~ **\$75,000**; or
 - (B) place an order, expected to exceed ~~\$25,000~~ **\$75,000**, under a basic agreement, basic ordering agreement, or similar arrangement; and
 - ~~(3) (2)~~ (2) an executive agency awarding a contract for property or services for a price exceeding ~~\$25,000~~ **\$75,000**, or placing an order exceeding ~~\$25,000~~ **\$75,000** under a basic agreement, basic ordering agreement, or similar arrangement, shall furnish for publication a notice announcing the award or order if there is likely to be a subcontract under the contract or order.
- (b) EXEMPTIONS.—
 - (1) IN GENERAL.—A notice is not required under subsection (a) if—
 - (A) the proposed procurement is ~~for an amount not greater than the simplified acquisition threshold and is to be conducted by—~~
 - ~~(i)~~ **(i) using simplified acquisition procedures;**
 - ~~(ii)~~ **(ii) using widespread electronic public notice of the solicitation in a form that allows convenient and universal user access through a single, Government-wide point of entry; and**
 - ~~(iii)~~ **(iii) permitting the public to respond to the solicitation electronically;**
 - (B) ***

* * * * *

[FOR INTERNAL USE ONLY BY SECTION 809 PANEL]
COMMERCIAL ITEMS #2

§1901. Simplified acquisition procedures

(a) **WHEN PROCEDURES ARE TO BE USED.**—To promote efficiency and economy in contracting and to avoid unnecessary burdens for agencies and contractors, the Federal Acquisition Regulation shall provide for special simplified procedures for purchases of property and services for amounts—

- (1) not greater than the simplified acquisition threshold; and
- (2) greater than the simplified acquisition threshold but not greater than \$5,000,000 for which the contracting officer reasonably expects, based on the nature of the property or services sought and on market research, that offers will include **only** commercial items.

* * * * *

§3305. Simplified procedures for small purchases

(a) **AUTHORIZATION.**—To promote efficiency and economy in contracting and to avoid unnecessary burdens for agencies and contractors, the Federal Acquisition Regulation shall provide for special simplified procedures for purchases of property and services for amounts—

- (1) not greater than the simplified acquisition threshold; and
- (2) greater than the simplified acquisition threshold but not greater than \$5,000,000 for which the contracting officer reasonably expects, based on the nature of the property or services sought and on market research, that offers will include **only** commercial items.

* * * * *

TITLE 10, UNITED STATES CODE

§2304 Contracts: competition requirements

(a) ***

* * * * *

(g)(1) In order to promote efficiency and economy in contracting and to avoid unnecessary burdens for agencies and contractors, the Federal Acquisition Regulation shall provide for—

- (A) special simplified procedures for purchases of property and services for amounts not greater than the simplified acquisition threshold; and
- (B) special simplified procedures for purchases of property and services for amounts greater than the simplified acquisition threshold but not greater than \$5,000,000 with respect to which the contracting officer reasonably expects, based on the nature of the property or services sought and on market research, that offers will include **only** commercial items.

Section 809

Commercial Buying Committee

Draft and Regulatory Revisions

Selecting Sources for Commercial Products and Services

FAR Subpart 2.101 - Definitions

Market Acceptance means that a product has an established record of performance in the commercial market place for a sufficiently large consumer base that warrants the product's continued production and availability in the market place.

Standing price quotation means an offer from a potential supplier to the general public to provide goods and/or services at prearranged prices under established terms and conditions. A standing price quotation is not a contract. The Government has no obligation to acquisition under the standing price quotation. No contract exists until the government issues an order against the standing price quotation. Commercial products and services offered to the public in widely available catalogs or the internet are examples of standing price quotations.

5.101 Methods of disseminating information.

(a) As required by the Small Business Act (15 U.S.C. 637(e)) and the Office of Federal Procurement Policy Act (41 U.S.C. 1708), contracting officers must disseminate information on proposed contract actions as follows:

(1) For proposed contract actions expected to exceed \$2575,000, by synopsisizing in the GPE (see 5.201).

~~(2) For proposed contract actions expected to exceed \$15,000, but not expected to exceed \$25,000, by displaying in a public place, or by any appropriate electronic means, an unclassified notice of the solicitation or a copy of the solicitation satisfying the requirements of 5.207(c). The notice must include a statement that all responsible sources may submit a response which, if timely received, must be considered by the agency. The information must be posted not later than the date the solicitation is issued, and must remain posted for at least 10 days or until after quotations have been opened, whichever is later.~~

FAR Subpart 5.2 -- Synopses of Proposed Contract Actions

5.201 -- General.

(a) As required by the Small Business Act (15 U.S.C. 637(e)) and 41 U.S.C. 1708, agencies must make notices of proposed contract actions available as specified in paragraph (b) of this section.

(b) (1) For acquisitions of supplies and services, other than those covered by the exceptions in [5.202](#), and the special situations in [5.205](#), the contracting officer must transmit a notice to the GPE, for each proposed --

5.202 -- Exceptions.

The contracting officer need not submit the notice required by [5.201](#) when --

(a) The contracting officer determines that --

(13) The proposed contract action--

(i) ~~Is for an amount not expected to exceed the simplified acquisition threshold to be conducted by using simplified acquisition procedures;~~

(ii) ~~Will be made through a means that provides access to the notice of proposed contract action through the GPE~~ Using widespread electronic public notice of the solicitation in a form that allows convenient and universal user access through a single, Government-wide point of entry (GPE); and

(iii) Permits the public to respond to the solicitation electronically;

5.203 – Publicizing and response time.

Whenever agencies are required to publicize notice of proposed contract actions under [5.201](#), they must proceed as follows:

(a) An agency must transmit a notice of proposed contract action to the GPE (see 5.201). All publicizing and response times are calculated based on the date of publication. The publication date is the date the notice appears on the GPE. The notice must be published at least 15 days before issuance of a solicitation, or a proposed contract action the Government intends to solicit and negotiate with only one source under the authority of 6.302, except that, for acquisitions of commercial items, the contracting officer may --

- (1) Establish a shorter period for issuance of the solicitation; or
- (2) Use the combined synopsis and solicitation procedure (see 12.603).

(b) The contracting officer must establish a solicitation response time that will afford potential offerors a reasonable opportunity to respond to each proposed contract action, (including actions where the notice of proposed contract action and solicitation information is accessible through the GPE), in an amount estimated to be greater than \$7525,000, but not greater than the simplified acquisition threshold; or each contract action for the acquisition of commercial items in an amount estimated to be greater than \$7525,000. The contracting officer should consider the circumstances of the individual acquisition, such as the complexity, commerciality, availability, and urgency, when establishing the solicitation response time.

5.205 Special situations.

(d) Architect-engineering services. Contracting officers must publish notices of intent to contract for architect-engineering services as follows:

(1) Except when exempted by 5.202, contracting officers must transmit to the GPE a synopsis of each proposed contract action for which the total fee (including phases and options) is expected to exceed \$2575,000.

~~(2) When the total fee is expected to exceed \$15,000 but not exceed \$25,000, the contracting officer must comply with 5.101(a)(2). When the proposed contract action is not required to be synopsized under paragraph (d)(1) of this section, the contracting officer must display a notice of the solicitation or a copy of the solicitation in a public place at the contracting office. Other optional publicizing methods are authorized in accordance with 5.101(b). —~~

Subpart 5.3 -- Synopses of Contract Awards

5.301 -- General.

(a) Except for contract actions described in paragraph (b) of this section and as provided in [5.003](#), contracting officers must synopsize through the GPE the following:

(b) A notice is not required under paragraph (a)(1) of this section if –

(6) The contract action –

(i) ~~Is~~ Was conducted using simplified acquisition procedures ~~for an amount not greater than the simplified acquisition threshold;~~

(ii) Using widespread electronic public notice of the solicitation in a form that allows convenient and universal user access through a single, Government-wide

~~point of entry (GPE); Was made through a means where access to the notice of proposed contract action was provided through the GPE; and~~

(iii) Permitted the public to respond to the solicitation electronically; or

FAR Part 11 – Describing Agency Needs

11.103 -- Market Acceptance.

(a) 41 U.S.C. 3307(e) provides that, in accordance with agency procedures, the head of an agency may, under appropriate circumstances, require offerors to demonstrate that the items offered --

(1) Have either --

(i) Achieved commercial market acceptance as defined in 2.101; or

(ii) Been satisfactorily supplied to an agency under current or recent contracts for the same or similar requirements; and

(2) Otherwise meet the item description, specifications, or other criteria prescribed in the public notice and solicitation.

(b) Appropriate circumstances may, for example, include situations where the agency's minimum need is for an item that has a demonstrated reliability, performance or product support record in a specified environment. Use of market acceptance is inappropriate when new or evolving items may meet the agency's needs.

(c) In developing criteria for demonstrating that an item has achieved commercial market acceptance, the contracting officer shall ensure the criteria in the solicitation --

(1) Reflect the minimum need of the agency and are reasonably related to the demonstration of an item's acceptability to meet the agency's minimum need;

(2) Relate to an item's performance and intended use, not an offeror's capability;

(3) Are supported by market research;

(4) Include consideration of items supplied satisfactorily under recent or current Government contracts, for the same or similar items; and

(5) Consider the entire relevant commercial market, including small business concerns.

(d) Commercial market acceptance shall not be used as a sole criterion to evaluate whether an item meets the Government's requirements.

(e) When commercial market acceptance is used, the contracting officer shall document the file to --

(1) Describe the circumstances justifying the use of commercial market acceptance criteria; and

(2) Support the specific criteria being used.

FAR Part 12 – Acquisition of Commercial Items Products and Services

Subpart 12.1 – Acquisition of Commercial Items Products and Services -- General

12.102 -- Applicability.

(a) This part shall be used for the acquisition of ~~supplies~~ products or services that meet the definition of commercial ~~items~~ products and commercial services at [2.101](#).

(b) ~~Contracting officers shall use the policies in this part in conjunction with the policies and procedures for solicitation, evaluation and award prescribed in Part 13, Simplified Acquisition Procedures; Part 14, Sealed Bidding; or Part 15, Contracting by Negotiation, as appropriate for the particular acquisition.~~

(c) Contracts for the acquisition of commercial items are subject to the policies in other parts of the FAR. When a policy in another part of the FAR is inconsistent with a policy in this part, this part 12 shall take precedence for the acquisition of commercial items.

Subpart 12.2 – Special Requirements for the Acquisition of Commercial Items Products and Services

12.203 – Procedures for Solicitation, Evaluation, and Award Selection of Sources for Commercial Products and Services.

Contracting officers shall use the policies ~~unique to~~ for the acquisition of commercial ~~items~~ products and services prescribed in ~~subpart 12.6. this part in conjunction with the policies and procedures for solicitation, evaluation and award prescribed in Part 13, Simplified Acquisition Procedures; Part 14, Sealed Bidding; or Part 15, Contracting by Negotiation, as appropriate for the particular acquisition.~~ The contracting officer may use the streamlined procedure for soliciting offers for commercial items prescribed in [12.603](#). ~~For acquisitions of commercial items exceeding the simplified acquisition threshold but not exceeding \$7 million (\$13 million for~~

acquisitions as described in [13.500\(c\)](#)), including options, contracting activities may use any of the simplified procedures authorized by [Subpart 13.5](#).

Subpart 12.6 -- Streamlined Procedures for Evaluation and Solicitation Selection of Sources for Commercial Items Products and Services

12.601 -- General.

This subpart provides optional procedures for

(a) streamlined evaluation of offers for commercial items; and

(b) streamlined solicitation of offers for commercial items for use where appropriate. These procedures are intended to simplify the process of preparing and issuing solicitations, and evaluating offers for commercial items consistent with customary commercial practices.

This subpart provides streamlined procedures for selecting sources for commercial products or services.

- (a) Part 12 shall be used for acquiring commercial products or services where the contract action is expected to exceed the micro-purchase threshold.
- (b) The policies and procedures in this subpart include the authority provided by Section 4202, P.L. 104-106 for acquiring certain commercial products or services exceeding the simplified acquisition threshold using the simplified acquisition procedures contained in Part 13.

12.602 -- Streamlined Evaluation of Offers.

(a) When evaluation factors are used, 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 or comply with the procedures in [13.106](#) if the acquisition is being made using simplified acquisition procedures. When the provision at [52.212-2](#) is used, paragraph (a) of the provision shall be tailored to the specific acquisition to describe the evaluation factors and relative importance of those factors. However, when using the simplified acquisition procedures in Part 13, contracting officers are not required to describe the relative importance of evaluation factors.

(b) Offers shall be evaluated in accordance with the criteria contained in the solicitation. 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 the item's intended use. A technical evaluation would normally 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 [13.106](#) or [Subpart 15.3](#), as applicable. 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.~~

12.602 – Taking advantage of the commercial marketplace.

(a) By definition, commercial products and commercial services are available or will be available in time to satisfy the government's requirement. As a result, ample information should be readily available with regard to product specifications and features, service plans, capabilities, past performance and other information relevant to the seller's conduct of business in the commercial marketplace.

(b) If, after conducting appropriate market research, the contracting officer determines the government's requirement can be satisfied by a commercial product or commercial service, the contracting officer should proceed to identify and select a source(s) using the simplest, most efficient and expeditious methods.

(c) To simplify purchases and avoid unnecessary costs and administrative burdens for agencies and contractors, contracting officer shall use the procedures in this subpart to acquire commercial products or services. This subpart includes the authority to use simplified acquisition procedures (Part 13) when –

- 1) acquiring commercial products or services with a value not greater than \$7,000,000 (including options) for which the contracting officer reasonably expects, based on the nature of the property or services sought and on market research, that offers will include commercial items (See 10 U.S.C §2304(g); 41 U.S.C. §1901 and §3305); and
- 2) acquiring commercial products or services with a value not greater than \$13,000,000 (including options) that, as determined by the head of the agency, are to be used in support of a contingency operation or to facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attack, international disaster assistance, or an emergency or major disaster. (See 41 U.S.C. 1903)

(d) Contracting Officers may use the more complex selection techniques, such as those in Part 14 or Part 15, if the value of the acquisition exceeds or is expected to exceed the thresholds in

12.602 (c). The justification for use of procedures in Part 14 or Part 15 to select a source for a commercial product or commercial service with an expected value below the thresholds in 12.602(c) shall be approved by a level above the contracting officer.

12.603 Selecting sources for commercial products and services below the threshold in 12.602(c)

(a) The GPC is the preferred method for acquiring commercial products and services below the micro purchase threshold.

(b) For acquisitions of commercial products or services above the micro purchase threshold, the use of the simplified acquisition procedures for acquiring commercial products or services gives contracting officers significant flexibility to adapt selection procedures specifically to the commercial product or service being acquired. The contracting officer is also given considerable discretion in the conduct of the solicitation, evaluation and award consistent with the nature of the products or services and their availability in the commercial marketplace.

(c) The key flexibilities available when acquiring commercial products or commercial services (including construction) below the thresholds in 12.602 are summarized below –

(1) Market research. Information regarding commercial products or services should be readily available from a variety of public sources. Contracting officers should conduct market research for products or services acquired under this subpart to an extent consistent with the relative complexity and value of the proposed acquisition, and the intent of the simplified acquisition procedures. (See Subpart 10.002.)

(2) Competition. Acquisitions under this subpart are exempt from the requirements of Part 6. (See 41 USC §1901(c); FAR 6.001(a)) The contracting officer shall solicit from a reasonable number of sources to promote competition to the maximum extent practicable.

(3) Soliciting from only one source.

(i) For acquisitions not exceeding the simplified acquisition threshold, the contracting officers may solicit from only one source (including brand name) if the contracting officer determines that the circumstances of the acquisition deem only one source is reasonably available. (See 13.106-1(b))

(ii) For acquisitions exceeding the simplified acquisition threshold but not exceeding the threshold in 12.602, Contracting officers shall –

(A) Prepare and obtain approval of a justifications for a sole source (including brand name) acquisition or portions of an acquisition requiring brand name using the format at [6.303-2](#), modified to reflect that the procedures in FAR subpart 12.6 were used in accordance with the authority of 41 U.S.C. §1901 or 41 U.S.C §1903;

(B) For acquisitions exceeding the simplified acquisition threshold, but not exceeding \$700,000, the contracting officer's certification that the justification is accurate and complete to the best of the contracting officer's knowledge and belief will serve as approval, unless a higher approval level is established in accordance with agency procedures.

(C) For acquisitions exceeding \$700,000, but not exceeding the threshold in 12.602, the advocate for competition for the procuring activity must approve the justification and approval. This authority may not be redelegated.

(iii) Make brand name justifications publicly available with the solicitation. (See 5.102 (a)(6) and 6.302-1 (c)); and

(iv) Make justifications (other than brand name) publicly available within 14 days after contract award, or in the case of unusual and compelling urgency, within 30 days after contract award.

(4) Small business set-asides. Small Business set-asides remain applicable at the threshold in 19.502-2(a).

(5) Synopsis of proposed contract actions

(i) Oral solicitations do not need to be synopsisized and may be used up to the WTO GPA threshold (see Subpart 25.4).

(ii) Electronic solicitations do not need to be synopsisized if the solicitation will be available through the GPE at FedBizOpps and it permits the public to respond to the solicitation electronically. (See 5.202 (a)(13)).

(iii) Written (paper) solicitations shall be synopsisize when the proposed contract action is expected to exceed \$75,000. Synopsis may be published less than 15 days prior to issuance of the solicitation (See 5.203(a)), or a combined synopsis and solicitation may be used. (See 12.604)

(6) Terms and conditions. Contracting officers shall use the terms and conditions prescribed in 12.3 when acquiring commercial products or services under this subpart. Indicate in Block 27 of the DD 1449 if additional terms beyond 52.212-4, Contract Terms and Conditions - Commercial Products and Services, are included.

(7) Solicitation method

(i) Contracting officers may solicit quotations using an oral solicitation, a request for quotation (RFQ), or proposals using a request for proposal (RFP), as appropriate for the particular circumstance.

(ii) The contracting officer shall solicit quotations orally to the maximum extent practicable for acquisitions under \$75,000, or if covered by an exception in 5.202. (See 13.106-

1(c)) When using oral solicitation, the contracting officer should consider soliciting at least three sources. (See 13.104(b))

(iii) When an oral solicitation is not practicable, the preferred method of soliciting commercial products or services is an electronic solicitation available through the GPE at FedBizOpps permitting the public to respond to the solicitation electronically. Solicitations may also be distributed electronically directly to potential offerors in addition to posting them to the GPE.

(iv) A written (paper) solicitation should be used only if obtaining electronic or oral quotations is deemed to be uneconomical or impracticable and the acquisition will exceed \$25,000. (See 13.106-1(d))

(v) Solicitations for construction exceeding \$2000 (where Wage Rate Requirements apply) and solicitations for services exceeding \$2500 (where the Service Contract Labor Standards apply) shall be electronic or written (paper).

(vi) The solicitation shall include a statement that all responsible sources may submit a proposal or quotation (as appropriate) that the agency shall consider. (See 41 USC §1708 (c)(4))

(vii) Standing price quotations, as defined in 2.101, may be used (See 13.103).

(8) Offeror response time: The contracting officer must establish a solicitation response time for each acquisition in an amount expected to be greater than \$25,000. When acquiring commercial products or services, the contracting officer has the flexibility to establish response times that consider the circumstances of the acquisition such as complexity, commerciality, availability, and urgency when establishing the response time. (See 5.203(b)).

(9) Basis of award: The contracting office has broad discretion in fashioning suitable evaluation procedures under this subpart.

(i) The solicitation should make it clear to potential offerors that the selection process is being conducted under this subpart and not Part 14 or Part 15. Conduct of the selection process must be consistent with that statement.

(ii) Use of best value is encouraged.

(iii) Submission of detailed technical and management plans, the use of formal evaluation plans, use of a competitive range, conducting discussions or exchanges to make an offer acceptable, scoring quotations and offers, and final price revisions are not required and are generally discouraged as inconsistent with the objective of simplification under the subpart. (see 41 USC §3306 and 10 U.S.C. §2305(a)(2))

(iv) Contracting officers shall state the evaluation factor(s) to be used as the basis for award. Use of sub factors is not required. Solicitations under this subpart are not required to establish the relative importance of each evaluation factor or sub factor (thereby making them of equal importance). For many commercial products or services, for example, the evaluation factors need not be more detailed than price and past performance, or technical (e.g., how well the propose product meets the agency need, technical features, warranty provisions), price and past performance.

(v) If market research indicates the government's need can be met by commercial products with demonstrated performance in the market place, the contracting officer may

require offerors to demonstrate the commercial market's acceptance of their product, as defined in 2.101, as one criterion in a selecting source. (See 11.103)

(vi) When evaluating past performance, use of a formal data base is not required. The evaluation may be based on the contracting officer's knowledge and prior experience with acquiring the commercial product or commercial service, customer surveys, PPIRS, or any reasonable basis. (See 13.106-2) There is no obligation to discuss adverse past performance.

(vii) The contracting officer must make an affirmative determination of responsibility for the selected offeror. Simplified procedures could include determining that the offeror has adequate financial resources to do the job, can comply with the delivery or performance schedule, has a satisfactory performance record, and is not listed in the EPLS. (See 9.104)

(10) Award: Quotations or offers shall be evaluated on the basis of award established in the solicitation. For acquisitions that permit offerors to provide an electronic response to the solicitation, the contracting officer may –

(i) After preliminary consideration of all quotations or offers, select one that will satisfy the government's requirement, and then screen all other lower price offers on readily discernable value indicators. When evaluation is based only on price and past performance, make an award based on whether the lowest price quotation or offer with the highest past performance represents the best value. (See 13.106-2 (b))

(iii) The contracting officer must determine that the proposed price is fair and reasonable based on competition, or if only one response is received, a statement that the price is reasonable. (See 13.106-3 (a))

(iv) The contracting officer shall consider offers or proposals received from any responsible source. (See 41 USC§1901(e); 41 USC§1708 (c)(4))

(11) Forms for solicitation and award. For acquisitions above the micro-purchase threshold, contracting officers shall use the Standard Form 1449, Solicitation/Contract/Order for Commercial Products or Services, for awards under this subpart.

(12) Debrief and Notification:

(i) Debriefings of unsuccessful offerors shall be provided, if requested. If the award was based on price alone, no further explanation should be necessary. If the award was based on factors other than price alone, provide a brief explanation of the basis for the contract award.

(ii) Notification of contract award is not required where access to the notice of proposed contract action and solicitation was made available through the GPE at FedBizOpps and the notice permitted the public to respond to the solicitation electronically. (See 5.301(b)(6)).

(14) File documentation. Consistent with the objective of this subpart, file documentation should be kept to a minimum with due consideration for the size and complexity of the award. (See 13.106-3(b))

(i) Oral solicitation – keep records to reflect clearly the propriety of placing the order at the price paid with the supplier concerned.

(ii) Electronic and written (paper) solicitations – Limit records of solicitations or offers to notes or abstracts to show the number of suppliers contacted, offers received, prices, references to printed price lists used, delivery, the fact that the procedures in FAR 12.6 were used, and other pertinent data.

(A) For acquisitions not exceeding the simplified acquisition threshold, if only one source was solicited (including brand name), explain the absence of competition.

(B) For acquisitions exceeding the simplified acquisition threshold but not exceeding the threshold in 12.602, if only one source was solicited or it is a brand name acquisition, include the approved justification and approval.

(iii) Include a brief description of the procedures used to make the award and support for the award decision if other than price-related factors were considered.

(iv) Include the contracting officer's determination of price reasonableness (See 13.106-3) and affirmative determination of responsibility (See 9.104)

12.6034 -- Streamlined Solicitation for Commercial Items Combined Synopsis/Solicitation

(a) 5.202 provides an exception to the 5.201 requirement to synopsise proposed contract actions if the proposed contract action is for an amount not expected to exceed the simplified acquisition threshold, it will be available through the GPE at FedBizOpps, and it permits the public to respond to the solicitation electronically. When a written (paper) solicitation will be issued and a synopsis is required, the contracting officer may use the following procedure to reduce the time required to solicit and award contracts for the acquisition of commercial items. This procedure combines the synopsis required by [5.203](#) and the issuance of the solicitation into a single document.

(b) When using the combined synopsis/solicitation procedure, the SF 1449 is not used for issuing the solicitation.

(c) To use these procedures, the contracting officer shall --

(1) Prepare the synopsis as described at [5.207](#).

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

(i) The following statement:

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. This announcement constitutes the only solicitation; proposals are being requested and a written solicitation will not be issued.

- (ii) The solicitation number and a statement that the solicitation is issued as an invitation to bid (IFB), request for quotation (RFQ) or request for proposal (RFP).
- (iii) A statement that the solicitation document and incorporated provisions and clauses are those in effect through Federal Acquisition Circular ____.
- (iv) A notice regarding any set-aside and the associated NAICS code and small business size standard.
- (v) A list of line item number(s) and items, quantities, and units of measure, (including option(s), if applicable).
- (vi) Description of requirements for the items to be acquired.
- (vii) Date(s) and place(s) of delivery and acceptance and FOB point.
- (viii) A statement that the provision at [52.212-1](#), Instructions to Offerors -- Commercial, applies to this acquisition and a statement regarding any addenda to the provision.
- (ix) A statement regarding the applicability of the provision at [52.212-2](#), Evaluation -- Commercial Items, if used, and the specific evaluation criteria to be included in paragraph (a) of that provision. If this provision is not used, describe the evaluation procedures to be used.
- (x) A statement advising offerors to include a completed copy of the provision at [52.212-3](#), Offeror Representations and Certifications -- Commercial Items, with its offer.
- (xi) A statement that the clause at [52.212-4](#), Contract Terms and Conditions -- Commercial Items, applies to this acquisition and a statement regarding any addenda to the clause.
- (xii) A statement that the clause at [52.212-5](#), Contract Terms and Conditions Required To Implement Statutes Or Executive Orders -- Commercial Items, applies to this acquisition and a statement regarding which, if any, of the additional FAR clauses cited in the clause are applicable to the acquisition.
- (xiii) A statement regarding any additional contract requirement(s) or terms and conditions (such as contract financing arrangements or warranty requirements) determined by the contracting officer to be necessary for this acquisition and consistent with customary commercial practices.

(xiv) A statement regarding the Defense Priorities and Allocations System (DPAS) and assigned rating, if applicable.

(xv) The date, time and place offers are due.

(xvi) The name and telephone number of the individual to contact for information regarding the solicitation.

(3) Allow response time for receipt of offers as follows:

(i) Because the synopsis and solicitation are contained in a single document, it is not necessary to publicize a separate synopsis 15 days before the issuance of the solicitation.

(ii) When using the combined synopsis and solicitation, contracting officers must establish a response time in accordance with [5.203\(b\)](#) (but see [5.203\(h\)](#)).

(4) Publicize amendments to solicitations in the same manner as the initial synopsis and solicitation.

FAR Part 13 – Simplified Acquisition Procedures

13.000 -- Scope of Part.

This part prescribes policies and procedures for the acquisition of –

- (i) Products and services below the micro purchase threshold;
- (ii) Products ~~supplies and services, including construction and research and development, and commercial items,~~ the aggregate amount of which does not exceed the simplified acquisition threshold (see [2.101](#)). ~~Subpart 13.5 provides special authority for acquisitions of commercial items exceeding the simplified acquisition threshold but not exceeding \$7 million (\$13 million for acquisitions as described in [13.500\(c\)](#)), including options.~~

Use Part 12 for policies applicable to the streamlined acquisition of commercial products or services, including construction, exceeding the micro-purchase threshold.

See [36.602-5](#) for simplified procedures to be used when acquiring architect-engineer services.

13.103 -- Use of Standing Price Quotations.

Authorized individuals do not have to obtain individual quotations for each purchase. Standing price quotations, as defined in 2.101, may be used if --

- (a) The pricing information is current; and
- (b) The Government obtains the benefit of maximum discounts before award.

Subpart 13.5—Simplified Procedures for Certain Commercial Items

13.500-- General.

~~(a) This subpart authorizes the use of simplified procedures for the acquisition of supplies and services in amounts greater than the simplified acquisition threshold but not exceeding \$7 million (\$13 million for acquisitions as described in 13.500(c)), including options, if the contracting officer reasonably expects, based on the nature of the supplies or services sought, and on market research, that offers will include only commercial items. Contracting officers may use any simplified acquisition procedure in this part, subject to any specific dollar limitation applicable to the particular procedure. The purpose of these simplified procedures is to vest contracting officers with additional procedural discretion and flexibility, so that commercial item acquisitions in this dollar range may be solicited, offered, evaluated, and awarded in a simplified manner that maximizes efficiency and economy and minimizes burden and administrative costs for both the Government and industry (10 U.S.C. 2304(g) and 2305 and 41 U.S.C. 3305, 3306, and chapter 37, Awarding of Contracts).~~

~~(b) When acquiring commercial items using the procedures in this part, the requirements of part 12 apply subject to the order of precedence provided at [12.102\(c\)](#). This includes use of the provisions and clauses in [Subpart 12.3](#).~~

~~(c) Under 41 U.S.C. 1903, the simplified acquisition procedures authorized in this subpart may be used for acquisitions that do not exceed \$13 million when—~~

~~(1) The acquisition is for commercial items that, as determined by the head of the agency, are to be used in support of a contingency operation or to facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attack; or;~~

~~(2) The acquisition will be treated as an acquisition of commercial items in accordance with 12.102(f)(1).~~

13.501-- Special Documentation Requirements.

~~(a) Sole source (including brand name) acquisitions.~~

~~(1) Acquisitions conducted under simplified acquisition procedures are exempt from the requirements in [Part 6](#). However, contracting officers must —~~

~~(i) Conduct sole source acquisitions, as defined in [2.101](#), (including brand name) under this subpart only if the need to do so is justified in writing and approved at the levels specified in paragraph (a)(2) of this section;~~

~~(ii) Prepare sole source (including brand name) justifications using the format at [6.303-2](#), modified to reflect that the procedures in FAR subpart 13.5 were used in accordance with 41 U.S.C. 1901 or the authority of 41 U.S.C. 1903.~~

~~(iii) Make publicly available the justifications (excluding brand name) required by [6.305\(a\)](#) within 14 days after contract award or in the case of unusual and compelling urgency within 30 days after contract award, in accordance with [6.305](#) procedures at paragraphs (b), (d), (e), and (f); and~~

~~(iv) Make publicly available brand name justifications with the solicitation, in accordance with [5.102\(a\)\(6\)](#).~~

~~(2) Justifications and approvals are required under this subpart only for sole source (including brand name) acquisitions or portions of an acquisition requiring a brand name. If the justification is to cover only the portion of the acquisition which is brand name, then it should so state; the approval level requirements will then only apply to that portion.~~

~~(i) For a proposed contract exceeding \$150,000, but not exceeding \$700,000, the contracting officer's certification that the justification is accurate and complete to the best of the contracting officer's knowledge and belief will serve as approval, unless a higher approval level is established in accordance with agency procedures.~~

~~(ii) For a proposed contract exceeding \$700,000, but not exceeding \$13.5 million, the advocate for competition for the procuring activity, designated pursuant to [6.501](#); or an official described in [6.304\(a\)\(3\)](#) or (a)(4) must approve the justification and approval. This authority is not delegable.~~

~~(iii) For a proposed contract exceeding \$13.5 million but not exceeding \$68 million, or for DoD, NASA, and the Coast Guard, not exceeding \$93 million, the head of the procuring activity or the official described in [6.304\(a\)\(3\)](#) or (a)(4) must approve the justification and approval. This authority is not delegable.~~

(iv) For a proposed contract exceeding \$68 million, or, for DoD, NASA, and the Coast Guard, \$93 million, the official described in [6.304\(a\)\(4\)](#) must approve the justification and approval. This authority is not delegable except as provided in [6.304\(a\)\(4\)](#).

~~(b) *Contract file documentation.* The contract file must include—~~

~~(1) A brief written description of the procedures used in awarding the contract, including the fact that the procedures in FAR [Subpart 13.5](#) were used;~~

~~(2) The number of offers received;~~

~~(3) An explanation, tailored to the size and complexity of the acquisition, of the basis for the contract award decision; and~~

~~(4) Any justification approved under paragraph (a) of this section.~~