

# **Subpart 12.5 - Applicability of Certain Laws to the Acquisition of Commercial Products, Commercial Services and Commercially Available Off-the-Shelf Items**

**Parent topic:** [Part 12 - Acquisition of Commercial Products and Commercial Services](#)

## **12.500 Scope of subpart.**

(a) As required by [41 U.S.C. 1906](#) and [1907](#), this subpart lists provisions of law that are not applicable to-

- (1) Contracts for the acquisition of commercial products or commercial services;
- (2) Subcontracts, at any tier, for the acquisition of commercial products or commercial services; and
- (3) Contracts and subcontracts, at any tier, for the acquisition of commercially available off-the-shelf (COTS) items.

(b) This subpart also lists provisions of law that have been amended to eliminate or modify their applicability to either contracts or subcontracts for the acquisition of commercial products or commercial services.

## **12.501 Applicability.**

(a) This subpart applies to any contract or subcontract at any tier for the acquisition of commercial products or commercial services.

(b) Nothing in this subpart shall be construed to authorize the waiver of any provision of law with respect to any subcontract if the prime contractor is reselling or distributing commercial products or commercial services of another contractor without adding value. This limitation is intended to preclude establishment of unusual contractual arrangements solely for the purpose of Government sales.

(c) For purposes of this subpart, contractors awarded subcontracts under [subpart 19.8](#), Contracting with the Small Business Administration (the 8(a) Program), shall be considered prime contractors.

## **12.502 Procedures.**

(a) The FAR prescription for the provision or clause for each of the laws listed in [12.503](#) has been revised in the appropriate part to reflect its proper application to prime contracts for the acquisition of commercial products or commercial services.

(b) For subcontracts for the acquisition of commercial products or commercial services, the clauses at [52.212-5](#), Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Products and Commercial Services, and [52.244-6](#), Subcontracts for Commercial Products and Commercial Services, reflect the applicability of the laws listed in [12.504](#) by identifying the only provisions and clauses that are required to be included in a subcontract at any tier for the acquisition of commercial products or commercial services.

(c) The FAR prescription for the provision or clause for each of the laws listed in [12.505](#) has been revised in the appropriate part to reflect its proper application to contracts and subcontracts for the acquisition of COTS items.

## **12.503 Applicability of certain laws to Executive agency contracts for the acquisition of commercial products and commercial services.**

(a) The following laws are not applicable to Executive agency contracts for the acquisition of commercial products or commercial services:

(1) [10 U.S.C. 983](#), Institutions of Higher Education that Prevent ROTC Access or Military Recruiting on Campus: Denial of Grants and Contracts from Department of Defense, Department of Education, and Certain Other Departments and Agencies (see [9.110](#)).

(2) [31 U.S.C. 1354\(a\)](#), Limitation on Use of Appropriated Funds for Contracts with Entities Not Meeting Veterans' Employment Reporting Requirements (see [22.1302](#)).

(3) [41 U.S.C. 1708\(e\)\(3\)](#), Minimum Response Time for Offers (see [5.203](#)).

(4) [41 U.S.C. 2303\(b\)](#), Policy on Personal Conflicts of Interest by Contractor Employees (see [subpart 3.11](#)).

(5) [41 U.S.C. 3901\(b\)](#) and [10 U.S.C. 3321\(b\)](#), Contingent Fees (see [3.404](#)).

(6) [41 U.S.C. 4706\(d\)\(1\)](#) and [10 U.S.C. 3841\(d\)\(1\)](#), GAO Access to Contractor Employees, section 871 of Public Law 110-417 (see [52.214-26](#) and [52.212-2](#)).

(7) [41 U.S.C. chapter 65](#), Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$10,000 (see [subpart 22.6](#)).

(8) [41 U.S.C. chapter 81](#), Drug-Free Workplace (see [26.501](#)).

(9) Section 806(a)(3) of Public Law 102-190, as amended by sections 2091 and 8105 of Public Law 103-355 ([10 U.S.C. 4601 note prec.](#)), Payment Protections for Subcontractors and Suppliers (see [28.106-6](#)).

(10) [15 U.S.C. 644\(w\)](#), Solicitation Notice Regarding Administration of Change Orders for Construction (see [36.211](#)).

(b) Certain requirements of the following laws are not applicable to executive agency contracts for the acquisition of commercial products and commercial services:

- (1) [22 U.S.C. 2593e](#), Requirement for a certification under Measures Against Persons Involved in Activities that Violate Arms Control Treaties or Agreements with the United States (see [9.109](#)).
  - (2) [40 U.S.C. chapter 37](#), Requirement for a certificate and clause under the Contract Work Hours and Safety Standards statute (see [22.305](#)).
  - (3) [41 U.S.C. 8703](#) and [8703](#), Requirement for a clause and certain other requirements related to kickbacks (see [3.502](#)).
  - (4) [49 U.S.C.40118](#), Requirement for a clause under provisions of the Government-financed air transportation statute, commonly referred to as the Fly America Act, except that [49 U.S.C.40118\(g\)](#) is applicable to the acquisition of commercial services (see [47.405](#)).
- (c) The applicability of the following laws have been modified in regard to Executive agency contracts for the acquisition of commercial products and commercial services:
- (1) [41 U.S.C.4704](#) and [10 U.S.C. 4655](#), Prohibition on Limiting Subcontractor Direct Sales to the United States (see [3.503](#)).
  - (2) [41 U.S.C. chapter 35](#), and [10 U.S.C. chapter 271](#), Truthful Cost or Pricing Data (see [15.403](#)).
  - (3) [41 U.S.C. chapter 15](#), Cost Accounting Standards (48 CFR Chapter 99) (see [12.214](#)).

## **12.504 Applicability of certain laws to subcontracts for the acquisition of commercial products and commercial services.**

- (a) The following laws are not applicable to subcontracts at any tier for the acquisition of commercial products or commercial services at any tier:
- (1) [10 U.S.C. 2631](#), Transportation of Supplies by Sea (except for the types of subcontracts listed at [47.504\(d\)](#)).
  - (2) [15 U.S.C. 644\(d\)](#), Requirements relative to labor surplus areas under the Small Business Act (see [subpart 19.2](#)).
  - (3) [Reserved]
  - (4) [41 U.S.C. chapter 65](#), Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$10,000 (see [subpart 22.6](#)).
  - (5) [41 U.S.C. 4703](#), Validation of Proprietary Data restrictions (see [subpart 27.4](#)).
  - (6) [41 U.S.C. 3901\(b\)](#) and [10 U.S.C. 3321\(b\)](#), Contingent Fees (see [subpart 3.4](#)).
  - (7) [41 U.S.C. 4706\(d\)](#) and [10 U.S.C. 3841\(d\)](#), Examination of Records of Contractor, when a subcontractor is not required to provide certified cost or pricing data (see [15.209\(b\)](#)), unless using funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).

- (8) [41 U.S.C. 1708\(e\)\(3\)](#), Minimum Response Time for Offers (see [subpart 5.2](#)).
- (9) [41 U.S.C. 2302](#), Rights in Technical Data (see [subpart 27.4](#)).
- (10) [41 U.S.C. chapter 81](#), Drug-Free Workplace Act (see [subpart 26.5](#)).
- (11) [46 U.S.C.App.1241\(b\)](#), Transportation in American Vessels of Government Personnel and Certain Cargo (see [subpart 47.5](#)) (except for the types of subcontracts listed at [47.504\(d\)](#)).
- (12) [49 U.S.C. 40118](#), Fly American provisions (see [subpart 47.4](#)).
- (13) Section 806(a)(3) of Pub. L. 102-190, as amended by Sections 2091 and 8105 of Pub. L. 103-355 ([10 U.S.C. 4601 note prec.](#)), Payment Protections for Subcontractors and Suppliers (see [28.106-6](#)).
- (b) The requirements for a certificate and clause under the Contract Work Hours and Safety Standards statute, [40 U.S.C. 37](#), (see [subpart 22.3](#)) are not applicable to subcontracts at any tier for the acquisition of commercial products or commercial services or commercial components.
- (c) The applicability of the following laws has been modified in regard to subcontracts at any tier for the acquisition of commercial products or commercial services:
- (1) [41 U.S.C. 4704](#) and [10 U.S.C. 4655](#), Prohibition on Limiting Subcontractor Direct Sales to the United States (see [subpart 3.5](#)).
- (2) [41 U.S.C. chapter 35](#), and [10 U.S.C. chapter 271](#), Truthful Cost or Pricing Data (see [subpart 15.4](#)).
- (3) [41 U.S.C. chapter 15](#), Cost Accounting Standards (48 CFR Chapter 99) (see [12.214](#)).

## **12.505 Applicability of certain laws to contracts for the acquisition of COTS items.**

COTS items are a subset of commercial products. Therefore, any laws listed in sections [12.503](#) and [12.504](#) are also inapplicable or modified in their applicability to contracts or subcontracts for the acquisition of COTS items. In addition, the following laws are not applicable to contracts for the acquisition of COTS items:

- (a)
- (1) The portion of [41 U.S.C. 8302](#) , American Materials Required for Public Use, paragraph (a)(1) that reads “substantially all from articles, materials, or supplies mined, produced, or manufactured in the United States,” Buy American—Supplies, domestic content test, except as provided in [25.101\(a\)\(2\)\(ii\)](#) (see [52.225-1](#) and [52.225-3](#)).
- (2)The portion of [41 U.S.C. 8303](#), Contracts for Public Works, paragraph (a)(2) that reads “substantially all from articles, materials, or supplies mined, produced, or manufactured in the United States,” Buy American—Construction Materials, domestic content test, except as provided in [25.201\(b\)\(2\)\(ii\)](#)(see [52.225-9](#) and [52.225-11](#)).
- (b) [42 U.S.C. 69 62\(c\)\(3\)\(A\)](#), Certification and Estimate of Percentage of Recovered Material.

(c) Compliance Plan and Certification Requirement, section 1703 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239), Title XVII, Ending trafficking in Government Contracting (see [52.222-50\(h\)](#) and [52.222-56](#)).