

Commercial Resources: Examples, Roles, and References

In the below scenarios it should be assumed that all scenarios start with the market research as described in scenario 1

Commercial Item Determination (CID) Examples

The Commercial Item Determination (CID) examples presented herein are for informational purposes only. The content included in it may not be suitable for all situations.

This document is not intended to be a template for PCO's Determinations & Findings in accordance with DFARS 212.102, nor a Prime's determination concerning the commerciality of subcontracts pursuant to DFARS 244.402. It was developed as a narrative example to portray the types of information that should be considered/reviewed while making a determination of commerciality by either party.

Note: This does not address information pertaining to a price/cost analysis establishing the reasonableness of commercial prices.

This is not legal advice and not binding on the Government; contractors are responsible for making their own decisions under the applicable law, regulations, and contract terms, and that the law, regulations, and agency practice may change at any time without notice to them.

Definition 1 "Of a Type"

SUBJECT: Market Research for Commercial Items (FAR 10.002) and Commerciality Determination (FAR 2.101)

Solicitation #: XXXX-XX-R-XXXX

Item Description: Ruggedized External Hard Drive

PURPOSE: This document serves as a determination of commerciality as well as provides supportive justification for that determination. (Purpose depends on author: FAR 212.102 or DFARS 244.402)

PART I – Market Research for Definitions 1, 2, 3, and 4

(Performed during pre-solicitation phase of the acquisition to determine whether commercial items are available to meet the agency's requirement IAW FAR 12.101, or by the contractor in making determinations IAW DFARS 244.402)

A review of the item(s) was conducted in accordance with (IAW) FAR 10.002(b) and FAR 2.101, Definitions, to determine if commercial items or non-developmental items are available to meet the Government's needs or could be modified to meet the Government's needs. A summary of the findings from the review are detailed below:

- The buying command performed pre-solicitation market research and identified multiple industries that require the use of ruggedized hard drives. These industries include: military, medical, construction and oil industries. All these industries have applications that require hard drives to be able to operate reliably in hard usage environments and conditions such as strong vibrations, extreme temperature, and wet or dusty conditions.
- In addition, companies such as www.ruggedizemyparts.com provide services to ruggedizing existing electronic components and can ruggedize any hard drive to make it more durable in various harsh conditions.
- Market research found the proposed ruggedized external hard drive being offered for sale on www.buybetter.com.
- Market research also identified several companies that sell and offer ruggedized products similar to the subject hard drive the Government is procuring. These companies, which offer similar products, are HDrUS, StorageSolutionsUnlimited (SSU), waterproofstorage (WPS), and harddrivesthatbounce.com (HDTB). The offered products are typically used for non-governmental purposes in the aforementioned industries.
- The buying command confirmed that there was no prior CID for this item.
- Since alternative commercial solutions were identified and are readily available to meet the Government requirements, the buying command issued a solicitation using FAR subpart 12.6 "Streamlined Procedures for Evaluation and Solicitation for Commercial Items."

Differences between the hard drives found during market research include the hard outer shell chassis vs. a softer shell, various colors, and size (physical and storage). These customizations do not change the essential characteristics of what the item is, what it does, or how it does it (core functionality). The essential characteristics of an item are those characteristics that if removed or significantly altered would result in the item being unable to perform its core functionality. Table 1 provides the technical description of the differences between the proposed item and the comparison item(s). The proposal adequacy checklist at DFARS 252.215-7009 may be used as a guide.

PART II - COMMERCIAL ITEM DETERMINATION/ASSERTION DEFINITION (1)(i)

Part Number (P/N): XX-1A (A determination/assertion must be completed for each specific P/N opposed to a general statement that all ruggedized hard drives are commercial)

NSN: XXX-XXXX-XXXX

(1) Any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, and--

(i) Has been sold, leased, or licensed to the general public; or,

(ii) Has been offered for sale, lease, or license to the general public;

This hard drive is "of a type" of hard drives used by the general public for non-governmental purposes. As described in the Market Research section above, similar hard drives are used for storage solutions in the medical, construction and oil industries. For this determination, the hard drive being procured is compared to a commercial hard drive for sale by HDrUS, which is primarily used in the oil industry. Table 1 outlines

a technical description of the similarities and differences between the proposed item and the comparison item (technical comparisons are not limited to one item).

Market research is valuable to identify same or similar items for comparison. Additionally, PCOs should contact the seller directly for sale, lease, or licensing information. Sales data is an important facet of market research.

Table 1

Technical Capability	[Subject Hard drive, P/N XX-1A]	[Hard drive, P/N YY-1A]
Storage Capacity	1 terabyte	1 terabyte
Ruggedized Characteristics	Protected shell, stabilized interior using epoxy	Protected shell, stabilized interior using epoxy
Drive Speed	10,000 RPM	5,200 RPM
Hard Drive Interface	USB	USB

- The function of the ruggedized hard drive is to store data from a soldier’s laptop using USB connectivity while meeting durability requirements. This is a stand-alone product, without server integration, and connects using USB 2.0, a standard commercial interface.
- The ruggedization process for both the commercial and military hard drives require epoxy to stabilize interior components of the hard drive assembly. The process of adding a liquid epoxy that hardens around the wiring for stabilization is the same for both the “of a type” and the subject P/N.
- The hard drive being procured has a drive speed of 10,000 RPM which is faster than the commercial HDrUS hard drive. Further market research indicates it is typical to find hard drives available for purchase with a faster speed on consumer websites such as WPS and HDTB. Although the two drive speeds are not the same, both hard drives perform the same overall function of storing data.
- The subject hard drive P/N XX-1A has been sold to the general public and the vendor provided recent and relevant sales invoices demonstrating the sold to customer was not a governmental entity and the end use of the item was for non-governmental purposes.

SUMMARY: Ruggedized hard drive P/N XX-1A is determined to be commercial, IAW Paragraph (1)(i) of the commercial item definition at FAR 2.101. Market research was performed to assess whether the subject “ruggedized hard drive” is a type of product customarily used for non-governmental purposes by non-governmental entities; the undersigned was able to substantiate the subject item is similar in terms of form, fit and function and considered “of a type” of commercially available hard drives as well as the subject item has been sold to the general public.

Contracting Officers/Contracts Manager/Supply Chain/Buyer/Signature/Date

PART II - COMMERCIAL ITEM DETERMINATION/ASSERTION DEFINITION (1)(ii)

Part Number (P/N): XX-1B (A determination/assertion must be completed for each specific P/N opposed to a general statement that all ruggedized hard drives are commercial)

NSN: XXX-XXXX-XXXX

The subject Ruggedized Hard Drive, P/N XX-1B, has been determined/asserted to be commercial IAW Paragraph (1)(ii) of the commercial item definition at FAR 2.101, which reads:

(1) Any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, and--

- (i) Has been sold, leased, or licensed to the general public; or,
- (ii) Has been offered for sale, lease, or license to the general public;

This hard drive is “of a type” of hard drives used by the general public for non-governmental purposes. As described in the Market Research section above, this hard drive has been offered for sale to the general public, and similar hard drives are used for storage solutions in the medical, construction and oil industries. For this determination, the hard drive being procured is compared to a commercial hard drive previously sold in the commercial marketplace P/N XX-1A, which is primarily used in the oil industry. Table 1 outlines a technical description of the similarities and differences between the proposed item and the comparison item (technical comparisons are not limited to one item).

Table 1

Technical Capability	[Subject Hard drive, P/N XX-1B]	[Hard drive, P/N XX-1A]
Storage Capacity	4 terabyte	1 terabyte
Ruggedized Characteristics	Protected shell, stabilized interior using epoxy	Protected shell, stabilized interior using epoxy
Drive Speed	10,000 RPM	10,000 RPM
Hard Drive Interface	USB	USB
Processor	3rd Gen. Intel Core i7 dual/quad-core up to 2.5 GHz	5th generation Intel® Core™ i7 (Broadwell-H)
Maximum Memory	8 GB DDR3 SDRAM with ECC	512 MB DDR3L SDRAM

- The function of the ruggedized hard drive is to store data from a soldier’s laptop using USB connectivity while meeting durability requirements. This is a stand-alone product, without server integration, and connects using USB 2.0, a standard commercial interface.
- The ruggedization process for both the commercial and military hard drives require epoxy to stabilize interior components of the hard drive assembly. The process of adding a liquid epoxy that hardens around the wiring for stabilization is the same for both the “of a type” and the subject P/N.
- The hard drive being procured has a storage capacity of 4 TB, which is larger than the vendor’s commercial hard drive P/N XX-1A. Further market research indicates it is typical to find hard drives available for purchase with larger storage capacity on consumer websites such as WPS and HDTB. Although the two drive speeds and capacity are not the same, both hard drives perform the same overall function of storing data.
- The subject hard drive P/N has been offered for sale to the general public, and is listed for sale in the vendor’s regularly maintained catalog and offered on its website. A consumer (general public) can request a quote for P/N XX-1B online or by phone for non-governmental purposes. Sales data was provided for the “of a type” P/N XX-1A to verify the non-governmental purpose of the item.

SUMMARY: Ruggedized hard drive P/N XX-1B is determined to be commercial, IAW Paragraph (1)(ii) of the commercial item definition at FAR 2.101. Market research was performed to identify “of a type” products, customarily used for non-governmental purposes by non-governmental entities; additionally, the invoices to commercial customers were provided by the contractor to show that similar items were sold for non-governmental end-use; the undersigned was able to substantiate the subject item is similar in terms of form, fit and function and considered “of a type” of commercially available hard drives as well as the subject item being offered for sale to the general public.

Contracting Officers/Contracts Manager/Supply Chain/Buyer/Signature/Date

Note: IAW DFARS 212.102(a)(i), for acquisitions exceeding \$1M, the PCO shall determine in writing the acquisition meets the commercial item definition in FAR 2.101 and include the written determination in the contract and obtain approval at one level above the contracting officer when a commercial item determination relies on subsections (1)(ii), (3), (4), or (6) of the “commercial item” definition at FAR 2.101.

Definition 2 “Evolved from”

PART II - COMMERCIAL ITEM DETERMINATION/ASSERTION DEFINITION 2

Part Number (P/N): XX-EV (A determination/assertion must be completed for each specific P/N opposed to a general statement that all ruggedized hard drives are commercial)

NSN: XXX-XXXX-XXXX

The subject Ruggedized Hard Drive, P/N XX-EV, has been determined to be commercial IAW Paragraph (2) of the commercial item definition at FAR 2.101, which reads:

(2) Any item that evolved from an item described in paragraph (1) of this definition through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation

This hard drive is “of a type” of hard drives used by the general public for non-governmental purposes. As described in the Market Research section above, similar hard drives are used for storage solutions in the medical, construction and oil industries. For this determination, the hard drive being procured is compared to a commercial hard drive previously sold in the commercial marketplace P/N XX-1A, which is primarily used in the oil industry. Table 1 outlines a technical description of the similarities and differences between the proposed item and the comparison item (technical comparisons are not limited to one item).

Table 1

Technical Capability	[Subject Hard drive, P/N XX-EV]	[Hard drive, P/N XX-1A]
Storage Capacity	12 terabyte	1 terabyte
Ruggedized Characteristics	Protected shell, stabilized interior using epoxy	Protected shell, stabilized interior using epoxy
Drive Speed	20,000 RPM	10,000 RPM
Hard Drive Interface	USB	USB
New Feature	Helium Sealed	N/A

- The function of the ruggedized hard drive is to store data from a soldier’s laptop using USB connectivity while meeting durability requirements. This is a stand-alone product, without server integration, and connects using USB 2.0, a standard commercial interface.
- The ruggedization process for both the commercial and military hard drives require epoxy to stabilize the interior components of the hard drive assembly. The process of adding a liquid epoxy that hardens around the wiring for stabilization is the same for both the “of a type” and the subject P/N.
- The hard drive being procured has a drive speed of 20,000 RPM and a storage capacity of 12 TB, which is faster and larger than the vendor’s commercial hard drive P/N XX-1A. Further market research indicates it is typical to find hard drives available for purchase with a faster speed on consumer websites such as WPS and HDTB. Although the two drive speeds and storage capacity are not the same, both hard drives perform the same overall function.

- The vendor who sells P/N XX-1A announced it's been developing new technology to increase capacities to its available hard drives by using helium sealed technology which will be available to purchase by the general public by the end of this year. The buying command submitted a RFP for this product to the vendor, P/N XX-EV, in the spring requesting initial delivery by the end of the year.
- Market Research revealed there is a demand for increased capacities in the commercial marketplace through evaluating consumer reports and consumers' need to store photos, videos, and documents digitally. Market Research also revealed that helium sealed technology has been in development for the past 5 years to address this need.
- The vendor supplied dates of trade shows/expos it attended to promote its upcoming release of P/N XX-EV, helium sealed disk drive and provided the pamphlets distributed to the consumers that attended, which confirmed the on-target release date near the end of the year. There is currently no commercial sales data since it is not yet available for purchase, but the vendor's website has this item listed for marketing purposes. The vendor's website does notify consumers of the on-target release date. Sales data is provided for the "of a type" P/N XX-1A to verify the non-governmental purpose of the item.

SUMMARY: Ruggedized hard drive P/N XX-EV is determined to be commercial, IAW Paragraph (2) of the commercial item definition at FAR 2.101. Market research was performed to identify "of a type" products, customarily used for non-governmental purposes by non-governmental entities; the undersigned was able to substantiate the subject item is similar in terms of form, fit and function and considered "of a type" of commercially available hard drives. The vendor is advancing through technology its current hard drives to include new helium sealed technology and will sell this item as P/N XX-EV and will be available for purchase by the commercial market by the time the buying command's delivery requirement is met.

Contracting Officers/Contracts Manager/Supply Chain/Buyer/Signature/Date

Definition 3(i) "Customary modifications"

PART II - COMMERCIAL ITEM DETERMINATION/ASSERTION DEFINITION (3)(i)

Part Number (P/N): XX-3A *(A determination/assertion must be completed for each specific P/N opposed to a general statement that all ruggedized hard drives are commercial)*

NSN: XXX-XXXX-XXXX

The subject Ruggedized Hard Drive, P/N XX-3A, has been determined to be commercial IAW Paragraph (3)(i) of the commercial item definition at FAR 2.101, which reads:

(3) Any item that would satisfy a criterion expressed in paragraphs (1) or (2) of this definition, but for

(i) Modifications of a type customarily available in the commercial marketplace

This hard drive is "of a type" of hard drives used by the general public for non-governmental purposes. As described in the Market Research section above, similar hard drives are used for storage solutions in the medical, construction and oil industries. For this determination, the hard drive being procured is compared to a commercial base hard drive previously sold in the commercial marketplace P/N XX-1A, which is primarily used in the oil industry. Table 1 outlines a technical description of the similarities and differences between the proposed item and the comparison item *(technical comparisons are not limited to one item)*.

Table 1

Technical Capability	[Subject Hard drive, P/N XX-3A]	[Hard drive, P/N XX-1A]
Storage Capacity	4 terabyte	1 terabyte
Ruggedized Characteristics	Protected shell, stabilized interior using epoxy	Protected shell, stabilized interior using epoxy
Drive Speed	15,000 RPM	10,000 RPM
Hard Drive Interface	USB	USB
Color	Army Green	Black
Overall length	7"	6.5"
Extra UID marking	yes	none

- The function of the ruggedized hard drive is to store data from a soldier's laptop using USB connectivity while meeting durability requirements. This is a stand-alone product, without server integration, and connects using USB 2.0, a standard commercial interface.
- The ruggedization process for both the commercial and military hard drives require epoxy to stabilize interior components of the hard drive assembly. The process of adding a liquid epoxy that hardens around the wiring for stabilization is the same for both the "of a type" and the subject P/N.
- The hard drive being procured has a drive speed of 15,000 RPM and a storage capacity of 4 TB, which is faster and larger than the vendor's commercial base hard drive P/N XX-1A. Further market research indicates it is typical to find hard drives available for purchase with a faster speed and a larger storage capacity on consumer websites such as WPS and HDTB. Although the two drive speeds and capacity are not the same, both hard drives perform the same overall function of storing data.
- The subject hard drive P/N XX-3A is not specifically listed for sale in the vendor's regularly maintained catalog and/or offered on its website; rather it is a modified version of P/N XX-1A which is offered on the vendor's website and sold to the general public (verified with commercial sales data). Customary modifications are also available in the commercial marketplace, and for this hard drive were made to meet the military requirements of the buying commands to include size specifications, colors, marking and storage capacities; the requirements of the subject hard drive are not government unique requirements and are available in the commercial marketplace.
- Market research for the subject hard drive indicates it has not been sold before for nongovernmental purposes nor did the offeror provide evidence of non-Government sales for the subject P/N XX-3A; however, it is typical for the company to customize hard drives in order to meet any of its customer's needs.
- The contractor supplied commercial sales showing various configurations of similar customized hard drives with varying technical specifications of size, speed, and color, including the technical specifications required by the government. Therefore, the buying command concurs that "of a type" products are used by the general public with customarily available modifications.

SUMMARY: Ruggedized hard drive P/N XX-3A is determined to be commercial, IAW Paragraph (3)(i) of the commercial item definition at FAR 2.101. The commercially sold base hard drive P/N XX-1A has been modified to meet the solicitation requirements, however the physical attributes that are modified were substantiated through independent market research and contractor provided sales data showing the original configuration was sold commercially and the subject item was modified to meet requirements that are not unique to the government and customarily available in the commercial marketplace.

Contracting Officers/Contracts Manager/Supply Chain/Buyer/Signature/Date

Note: IAW DFARS 212.102(a)(i), for acquisitions exceeding \$1M, the PCO shall determine in writing the acquisition meets the commercial item definition in FAR 2.101 and include the written determination in the contract and obtain approval at one level above the contracting officer when a commercial item determination relies on subsections (1)(ii), (3), (4), or (6) of the “commercial item” definition at FAR 2.101.

Definition 3(ii) “Minor modifications”

PART II - COMMERCIAL ITEM DETERMINATION/ASSERTION DEFINITION (3)(ii)

Part Number (P/N): XX-3B (A determination/assertion must be completed for each specific P/N opposed to a general statement that all ruggedized hard drives are commercial)

NSN: XXX-XXXX-XXXX

The subject Ruggedized External Hard Drive with Military-Grade Hardware Encryption, P/N XX-3B, is determined commercial IAW the FAR 2.101 Paragraph (3)(ii) definition of a commercial item, which reads:

(3) Any item that would satisfy a criterion expressed in paragraphs (1) or (2) of this definition, but for
(ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements...

This hard drive is considered “of a type” of those used by the general public for non-governmental purposes with the exception of a “minor” modification. As described in the Market Research section above, similar hard drives are used for storage solutions in the medical, construction and oil industries. For this determination, the subject hard drive is compared to a commercial base hard drive previously sold in the commercial marketplace P/N XX-1A, which is primarily used in the oil industry. Table 1 outlines a technical description of the similarities and differences between the subject item and the comparison item (technical comparisons are not limited to one item).

Table 1

Technical Capability	[Subject Hard drive, P/N XX-3B]	[Hard drive, P/N XX-1A]
Storage Capacity	4 terabyte	1 terabyte
Ruggedized Characteristics	Protected shell, stabilized interior using epoxy	Protected shell, stabilized interior using epoxy
Drive Speed	15,000 RPM	10,000 RPM
Hard Drive Interface	USB	USB
Color	Army Green	Black
Encryption	Military Encryption – enhanced security	N/A

- The function of the ruggedized hard drive is to store data from a soldier’s laptop using USB connectivity while meeting durability requirements. This is a stand-alone product, without server integration, and connects using USB 2.0, a standard commercial interface.
- The ruggedization process for both the commercial and military hard drives require epoxy potting to stabilize the interior components of the hard drive assembly. The process of adding a liquid epoxy that hardens around the wiring for stabilization is the same for both the “of a type” and the subject P/N.
- The hard drive being procured has a drive speed of 15,000 RPM and a storage capacity of 4 TB, which is faster and larger than the vendor’s commercial hard drive P/N XX-1A. Further market research indicates it is typical to find hard drives available for purchase with a faster speed and a larger storage capacity on consumer websites such as WPS and HDTB. Although the two drive speeds are not the same, both hard drives perform the same overall function of storing data.

- The subject hard drive P/N XX-3B is not specifically listed for sale in the vendor's regularly maintained catalog and/or offered on its website; rather it is a modified version of P/N XX-1A which is offered on the vendor's website and sold to the general public (verified with commercial sales data). Minor Modifications are made to meet the military requirements of the buying commands to include size specifications, colors, storage capacities, and military-grade hardware encryption.
- The requirements of the subject hard drive are not government unique requirements and are available in the commercial marketplace, with the exception of the military-grade hardware encryption.
- The military-grade hardware encryption is considered a modification to the commercial equivalent hard drive to enhance its security. This security enhancement includes physical modifications to the hard drive assembly, such as the additions of a tamper resistant, high-strength aluminum enclosure with a built-in fingerprint recognition scan pad and a slot to insert a Common Access Card (CAC). Although these military unique modifications required the slight adjustment/relocation of some of the hard drive's internal components, the overall form, fit and function of the commercial equivalent hard drive has not been significantly altered or changed. In addition, the increase in monetary value due to the modification was found to be "minor" since it attributed to approximately 4% increase from the original unit price.
- Although military-grade hardware encryption modifications are customarily available in the commercial market place, this specific military security encryption is a Government unique security encryption. The supplier uses similar manufacturing processes to perform the modifications for both the Federal Government and non-government customers.

SUMMARY: The Ruggedized External Hard Drive with Military-Grade Hardware Encryption, P/N XX-3B, is determined commercial IAW the FAR 2.101 Paragraph (3)(ii) definition of a commercial item. The subject item is similar in form, fit and function to the commercial of a type items. In addition, the military unique modification is determined to be minor because the modification does not significantly alter the core functionality of the hard drive and the value of the modification (4% of the unit price) does not warrant a major modification.

Note: IAW FAR 15.403-1(c)(3)(iii)(B) & (C), if the value of the minor modification exceeds the greater of the threshold for obtaining certified cost or pricing data or 5% of the total contract price at the time of contract award, then Certified Cost or Pricing Data for the minor modification portion of the item is required. If the value does not exceed this, then the minor modification is exempt from the requirement for submission of certified cost or pricing data.

Contracting Officers/Contracts Manager/Supply Chain/Buyer/Signature/Date

Note: IAW DFARS 212.102(a)(i), for acquisitions exceeding \$1M, the PCO shall determine in writing the acquisition meets the commercial item definition in FAR 2.101 and include the written determination in the contract and obtain approval at one level above the contracting officer when a commercial item determination relies on subsections (1)(ii), (3), (4), or (6) of the "commercial item" definition at FAR 2.101.

Definition 4 "Combination of items"

PART II - COMMERCIAL ITEM DETERMINATION/ASSERTION DEFINITION (4)

Part Number (P/N): XX-4 (A determination/assertion must be completed for each specific P/N opposed to a general statement that all ruggedized hard drives are commercial)

NSN: XXX-XXXX-XXXX

The Ruggedized External Hard Drive, P/N XX-4, is determined commercial IAW the FAR 2.101 Paragraph (4) definition of a commercial item, which reads:

(4) Any combination of items meeting the requirements of paragraphs (1), (2), (3), or (5) of this definition that are of a type customarily combined and sold in combination to the general public;

This hard drive is considered “of a type” of those used by the general public for non-governmental purposes with the exception of a “minor” modification. As described in the Market Research section above, similar hard drives are used for storage solutions in the medical, construction and oil industries. For this determination, the subject hard drive is compared to a commercial hard drive previously sold in the commercial marketplace P/N XX-1A, which is primarily used in the oil industry. Table 1 outlines a technical description of the similarities and differences between the subject item and the comparison item (technical comparisons are not limited to one item).

Table 1

Technical Capability	[Subject Hard drive, P/N XX-4]	[Hard drive, P/N XX-1A]
Storage Capacity	4 terabyte	1 terabyte
Ruggedized Characteristics	Protected shell, stabilized interior using epoxy	Protected shell, stabilized interior using epoxy
Drive Speed	15,000 RPM	10,000 RPM
Hard Drive Interface	USB	USB
Color	Army Green	Black
Warranty	In Lab Recovery Services	None
Additional Hardware	Circuit Card Assembly - Flexible Rear Panel	None

- The function of the ruggedized hard drive is to store data from a soldier’s laptop using USB connectivity while meeting durability requirements. This is a stand-alone product, without server integration, and connects using USB 2.0, a standard commercial interface.
- The ruggedization process for both the commercial and military hard drives require epoxy potting to stabilize the interior components of the hard drive assembly. The process of adding a liquid epoxy that hardens around the wiring for stabilization is the same for both the “of a type” and the subject P/N.
- The hard drive being procured has a drive speed of 15,000 RPM and a storage capacity of 4 TB, which is faster and larger than vendor’s commercial hard drive P/N XX-1A. Further market research indicates it is typical to find hard drives available for purchase with a faster speed and a larger storage capacity on consumer websites such as WPS and HDTB. Although the two drive speeds are not the same, both hard drives perform the same overall function of storing data.
- The subject hard drive P/N XX-4 is not listed for sale in the vendor’s regularly maintained catalog and/or offered on its website; it is a customarily modified version of P/N XX-1A which is offered on the vendor’s website and sold to the general public (verified with commercial sales data). Customary modifications are made to meet the military requirements of the buying commands to include size specifications, colors, and storage capacities; however, the requirements of the subject hard drive are not government unique requirements and are available in the commercial marketplace.
- At the time of purchase of the hard drive, consumers have the option to pay an additional fee for In-Lab Data Recovery service in case of damage to the hard drive. This service is also offered after the time of purchase for a higher fee as a stand-alone service.
- Due to the environment the hard drive will be used in, at the time of the purchase, the buying command determines the additional recovery services is a necessary requirement. The vendor provides sales invoices to show that when commercial customer purchases various hard drives with similar technical specifications as the subject P/N, the In-Lab services are customarily purchased at the same time for the discounted price. Invoices also showed that the additional hardware (i.e. flexible rear panel) is purchased by the commercial customers for ease of installation.

SUMMARY: The Ruggedized External Hard Drive with warranty covering in lab recovery services, P/N XX-4, is determined commercial IAW the FAR 2.101 Paragraph (4) definition of a commercial item. Market research identified “of a type” products, customarily used for non-governmental purposes by non-governmental entities. The subject item is similar in form, fit and function to the commercial of a type items and the item combined with a warranty providing data recovery services is sold to the general public.

Contracting Officers/Contracts Manager/Supply Chain/Buyer/Signature/Date

Note: IAW DFARS 212.102(a)(i), for acquisitions exceeding \$1M, the PCO shall determine in writing the acquisition meets the commercial item definition in FAR 2.101 and include the written determination in the contract and obtain approval at one level above the contracting officer when a commercial item determination relies on subsections (1)(ii), (3), (4), or (6) of the “commercial item” definition at FAR 2.101.

Definition 5 “Special Services”

SUBJECT: Market Research for Commercial Items (FAR 10.002) and Commerciality Determination (FAR 2.101)

Solicitation #: XXXXX-XX-X-XXXX

Service Description: Power Take-Off (PTO) Shaft Repair Services (May be a list, appendix, attachment, should be specific to a service, opposed to a determination that all repair services are commercial.)

PURPOSE: The purpose of this document is to document a determination of commerciality as well as provide supportive justification for that determination. Purpose will depend on author, DFARS 212.102 or DFARS 244.402

PART I –Market Research for Definition 5 (performed during pre-solicitation phase of the acquisition to determine whether commercial items are available to meet the agency’s requirement IAW FAR 12.101, or by the contractor in making determinations IAW DFARS 244.402)

A review of the service(s) was conducted in accordance with FAR 10.002(b) and FAR 2.101, Definitions, to determine if commercial services were available to meet the Government’s needs. A summary of the findings from the review are detailed below:

- The buying command performed pre-solicitation market research and identified that the need for PTO shaft repair services is not solely for Governmental purposes. The purpose of the PTO shaft is to transmit power/torque from the engine to the accessory drive gearbox. This is a basic function required on every aircraft.
- Through market research, it was determined that customizations are commonly offered in the commercial market for PTO shafts, and applied on various commercial aircrafts. The customizations for the subject PTO shaft are also available in the commercial market.
- XYZflight.com provides PTO shafts to the commercial market with customizations to the following characteristics: length, material, diameter, and balance.
- Market research also identified several companies that sell and offer customized aircraft products similar to the subject PTO shaft the Government is procuring. Companies who offer similar products and services are Exceptional Aviation (EA), Up & Away Parts, XYZ Flight, and intheskies.com (ITS). These companies’ products and services are typically used for non-governmental purposes in the aerospace industry.
- Overall, the market research indicates that commercial solutions are available to meet the government requirements; as a result, the buying command issued a FAR part 12 RFP using FAR subpart 12.6 “Streamlined Procedures for Evaluation and Solicitation of Commercial Items.”

PART II - COMMERCIAL ITEM DETERMINATION/ASSERTION DEFINITION (5)

The buying command is making the determination that the subject PTO-shaft, part number and NSN listed above, is commercial according to Paragraph (3)(i) of the commercial item definition at FAR 2.101, which reads:

- (1) Any item that would satisfy a criterion expressed in paragraphs (1) or (2) of this definition, but for
- (i) Modifications of a type customarily available in the commercial marketplace; or,
 - (ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements...

Therefore, the repair services on the subject PTO-shaft have also been determined commercial in accordance with Paragraph (5) of the commercial item definition at FAR 2.101, which reads:

(5) Installation services, maintenance services, repair services, training services, and other services if –

- (i) Such services are procured for support of an item referred to in paragraph (1), (2), (3), or (4) of this definition, regardless of whether such services are provided by the same source or at the same time as the item; and
 - (ii) The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government;
- This PTO-shaft is of a type with modifications customarily available in the commercial marketplace. As described above, similar PTO shafts are used for various commercial helicopters. In addition, the source of this PTO shaft repair service provides similar services contemporaneously to the general public under terms conditions similar to those offered to the Federal Government.
 - For this determination, the PTO shaft being purchased is compared to the commercial PTO shafts for sale by XYZ Flight and Exceptional Aviation, which are used in the commercial aviation industry. The table below outlines similarities and differences between the three products.

Table 1

Technical Capability	[Subject PTO shaft, PN XX]	[XYZ Flight PTO shaft , PN XX]	[Exceptional Aviation PTO shaft, PN XX]
Length	24.5 inches	17.2 inches	16.3 inches
Material	Steel	Steel	Titanium
Diameter	5.7 inches	4.5 inches	5.2 inches
Speed	21,540 RPM	13,400 RPM	6,300 RPM

- As shown above, the three PTO shafts have similarities and differences. The manufacturing process for both the commercial and military PTO shafts includes customizations specific to the aviation platform. The PTO shaft being procured has a speed of 21,540 RPM, which is faster than the commercial PTO shafts. Further market research indicates it is typical to find PTO shafts available for purchase with speeds up to 26,250 RPM in the commercial market from companies such as Up & Away Parts and ITS.
- Table 2 is an example of two different PTO shafts as well as the subject PTO shaft being procured. Appearance-wise, there are obvious differences such as color, length, and width.

However, none of these differences change the essential characteristics of what the item is, what it does, or how it does it (core functionality). The essential characteristics of an item are those characteristics that if removed or significantly altered would result in the item being unable to perform its core functionality.


Subject PTO shaft	XYZ Flight	Exceptional Aviation
		

Table 2

Market research for the subject PTO shaft indicates it has not been sold before for nongovernmental purposes; however, it is typical for the company to customize PTO shafts in order to meet their customer's needs. Additionally, the contractor supplied information showing:

- Various commercial sales for customized PTO shafts. Therefore, the buying command concurs that like-products, are used by and offered for sale to the general public.
- For a service deemed commercial per FAR 2.101 (5) definition, the services have to be in support of a commercial item, which based on the previous analysis, the determination is that PTO shaft meets the FAR 2.101(3)(i) definition of a commercial of a type with modifications customarily available in the commercial marketplace.
- Further, the source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government. The repair services to be rendered in this procurement have been provided to customers in the commercial marketplace. The source of this service has provided commercial agreements (attached on this report) with commercial aircraft manufacturers to provide such services to commercial aircraft.
- The commercial agreements abide by standard terms and conditions of purchase services, which are similar to the terms and conditions offered to the Federal Government. The difference between the terms and conditions of the commercial agreements and the services to be rendered under this procurement is the addition of provisions and clauses for US Government Contracts. Therefore the services meet the second commercial service criteria of FAR 2.101 (5)(ii). The source's terms and conditions for commercial services and Government contracts have been attached on this report.

SUMMARY: The repair services for the PTO shaft being procured are determined commercial, IAW Paragraph (5) of the commercial item definition at FAR 2.101, based on 1) such services being procured in support of a commercial item 2) the source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government. Market research was performed to identify similar "of a type" products, used for non-governmental purposes and used by non-governmental entities. Additionally, the undersigned was able to substantiate the items discussed are similar in terms of form, fit and function and considered of-a-type of commercially available PTO shaft. Lastly, there is a market for these types of items, and non-governmental buyers have purchased similar items and services. Repair services for item(s) XXXX will be purchased under contract XXXX and are determined to be commercial. This decision will be part of the contract file.

Contracting Officers/Contracts Manager/Supply Chain/Buyer/Signature/Date

Definition 6 “Services of a type”

SUBJECT: Market Research for Commercial Items (FAR 10.002) and Commerciality Determination (FAR 2.101)

Solicitation #: XXXXX-XX-X-XXXX

Service Description: Air Ambulance Services (a commercial determination/assertion for this definition may be completed at a company's service level or for an overall/general service)

PURPOSE: The purpose of this document is to document a determination of commerciality as well as provide supportive justification for that determination.

PART I –Market Research for Definition 6 (performed during pre-solicitation phase of the acquisition to determine whether commercial items are available to meet the agency's requirement IAW FAR 12.101, or by the contractor in making determinations IAW DFARS 244.402)

A review of Air Ambulance Services was conducted in accordance with (IAW) FAR 10.002(b) and FAR 2.101, Definitions, to determine if the proposed Air Ambulance Services meet the Commercial Item paragraph (6) definition. A summary of the market research and findings are detailed below:

- Air Ambulance services is a comprehensive term covering the use of air transportation to move patients to and from healthcare facilities and scenes of accidents.
- Internet market research conducted for air ambulance services yielded numerous commercial providers with differing levels of services, capabilities, and certifications in the commercial marketplace. Some of the air ambulance service provider websites reviewed were: ABC Aviation, Airlift Me Corporation, and Safe & Sound Transport.
- A review of the commercial certification programs for the National Accreditation of Alliance of Medical Transport Applications (NAAMTA) and the Commission of Accreditation of Medical Transport Systems (CAMTS) was conducted.
- An evaluation of the DoD Commercial Airlift Review Board Requirements (CARB).
- The proposal company is a national FAA-certified Air Ambulance MEDEVAC operator, currently supporting commercial and military customers, represented \$220 million in commercial contract revenue and \$7.5 million in Government contract revenue in the past year.
- Contract pricing options for the Government and civilian customer are analogous. Pricing information is readily available through the companies' websites, hence the market price can be easily established.
- The proposal company's terms and conditions for Government and commercial contracts are identical.
- The proposed certification for this effort is specific to the DoD, but the certification process shares a similar method required for commercial air ambulance services.

PART II - COMMERCIAL ITEM DETERMINATION/ASSERTION DEFINITION 6

Service Number/Identification: Air Ambulance Service (A determination/assertion must be completed for each specific service opposed to a general statement)

NSN: XXX-XXXX-XXXX Air Ambulance Services (Rotary-Wing only), is determined commercial IAW the FAR 2.101 Paragraph (6) definition of a commercial service which reads:

(6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed or specific outcomes to be achieved and under standard commercial terms and conditions. For purposes of these services—

i. "Catalog price" means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and ii. "Market prices" means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors.

These services are considered "of a type" to those offered in substantial quantities in the commercial marketplace with established market prices which use standard commercial terms and conditions. Some of the key components that led to this determination are outlined below:

- The function of Air Ambulance Services is to transport patients in medical emergencies over distances or terrains impractical for ground transportation, this overall function remains consistent regardless of whether it is for a commercial or Government/Military customer.
- The Air Ambulance Services being procured are the same services procured in the commercial marketplace (a specific outcome of transporting patients in emergencies). Further market research indicates that these services are readily available and offered by multiple vendors/suppliers.
- The terms and conditions reviewed for military and commercial contracts are identical.
- Certification requirements differ between the DoD and commercial customers, but while the actual certifications may differ in name, the certification process is similar and share a paramount guidance founded on safety.
- Air Ambulance Services are not government unique requirements and are widely available and used in the commercial marketplace.
- Pricing structures and options are negotiated and agreed to for both commercial and military customers and are established through competition.

SUMMARY: Air Ambulance Services are determined commercial IAW FAR 2.101 Paragraph (6) definition of a commercial service. Market research identified a significant number of air ambulance service providers that provide the same overall function of medical air transport for the patient. Prices for these services are set by competition and what the market will bear, while operating under standard commercial terms and conditions.

Note: IAW FAR 15.403-1(c)(3)(ii)(A) When purchasing services that are not offered and sold competitively in substantial quantities in the commercial marketplace, but are of a type offered and sold competitively in substantial quantities in the commercial marketplace, they may be considered commercial items (thus meeting the purpose of 41 U.S.C. chapter 35 and 10 U.S.C. 2306a for truth in negotiations) only if the contracting officer determines in writing that the offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of the price of such services.

Contracting Officers/Contracts Manager/Supply Chain/Buyer/Signature/Date

Note: IAW DFARS 212.102(a)(i), for acquisitions exceeding \$1M, the PCO shall determine in writing the acquisition meets the commercial item definition in FAR 2.101 and include the written determination in the contract and obtain approval at one level above the contracting officer when a commercial item determination relies on subsections (1)(ii), (3), (4), or (6) of the "commercial item" definition at FAR 2.101.

Definition 7 "Transferred items"

SUBJECT: *Market Research for Commercial Items (FAR 10.002) and Commerciality Determination (FAR 2.101)*

Solicitation #: XXXXX-XX-R-XXXX

Item Description: Long Range Aircraft

PURPOSE: *This document serves as a determination of commerciality as well as provides supportive justification for that determination. (Purpose depends on author: DFARS 212.102 or DFARS 244.402)*

PART I – Market Research for Definition 7 (performed during pre-solicitation phase of the acquisition to determine whether commercial items are available to meet the agency's requirement IAW FAR 12.101, or by the contractor in making determinations IAW FAR 244.402)

A review of the item was conducted in accordance with (IAW) FAR 10.002(b) and FAR 2.101, Definitions, to determine if commercial items or non-developmental items are available to meet the Government's needs or could be modified to meet the Government's needs. A summary of the findings from the review are detailed below:

- Based upon the program office research, there are no commercial long range aircraft that would meet all of the agency's requirements, nor could be modified to meet the requirements
- Therefore, the program office researched if commercial items could be incorporated at the component level
- Research did show that there are several aircraft engines that are available in the marketplace from multiple suppliers that meet the required specifications for this program
- While the function of the engines produced by alternate suppliers are nearly identical and all meet the required performance specifications for the aircraft, the form and fit would need to be modified to be incorporated into the aircraft, which could bear additional costs
- The prime contractor for this program also has a division that sells commercial and military aircraft engines
- Market research indicated that no commercial solution was available to meet the program office requirements of a long range aircraft and therefore the buying command issued a FAR part 15 solicitation, however the solicitation required the prime contractor to incorporate commercial items as components of the aircraft to the maximum extent practicable as a result of the market research performed for aircraft engines

PART II – COMMERCIAL ITEM DETERMINATION/ASSERTION DEFINITION (7)

Part Number (P/N): XX-7

NSN: XXX-XXXX-XXXX

Aircraft Engine P/N XX-7, is determined commercial IAW the FAR 2.101 Paragraph (7) of the commercial item definition which reads:

Any item, combination of items, or service referred to in paragraphs (1) through (6) of this definition, notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor

All requirements to assert or determine the item/service as shown in the previous examples for FAR 2.101 Paragraphs (1) – (6) apply.

Ultimate Aerospace Corporation is one of a handful of companies that dominate the global commercial aviation marketplace, and it also produces many aircraft solely for military use. The Army has a FAR part 15 aircraft program that shares many functions and performance characteristics uses with long range commercial aircraft. Ultimate Aerospace Corporation has proposed to utilize its own commercial engines transferred directly from another production line under a separate division within the corporation. DCMA has verified that the same engine was produced on the contractor's commercial production lines and transferred without change for use on the production line for the Army's aircraft. Additionally, commercial sales invoices other than interdivisional sales were provided by Ultimate Aerospace Corporation to demonstrate that the engine is customarily used by the general public on a long range commercial aircraft platform and has been sold to the general public, thus meeting the requirements under definition paragraph 1.

SUMMARY: Aircraft Engine P/N XX-7 is determined to be commercial, IAW Paragraph (7) of the commercial item definition at FAR 2.101. Market research was performed to identify “of a type” products, customarily used for non-governmental purposes by non-governmental entities; the undersigned was able to substantiate the subject item is similar in terms of form, fit, and function and considered “of a type” of commerciality available aircraft engines as well as has been sold to the general public. Since the engine is being transferred between divisions internal to the contractor, the engine is determined to have met the criteria for a commercial item under paragraph (7) of the FAR 2.101 definition of commercial item.

Contracting Officers/Contracts Manager/Supply Chain/Buyer/Signature/Date

Definition 8 “Nondevelopmental items”

SUBJECT: Market Research for Commercial Items (FAR 10.002) and Commerciality Determination (FAR 2.101)

Solicitation #: XXXXX-XX-R-XXXX

Item: Test Set

PURPOSE: This document serves as a determination of commerciality as well as provides supportive justification for that determination. (Purpose depends on author: DFARS 212.102 or DFARS 244.402)

PART I – Market Research (performed during pre-solicitation phase of the acquisition to determine whether commercial items are available to meet the agency’s requirement IAW FAR 12.101, or by the contractor in making determinations IAW DFARS 244.402)

A review of the item(s) was conducted in accordance with (IAW) FAR 10.002(b) and FAR 2.101, Definitions, to determine if commercial items or non-developmental items are available to meet the Government’s needs or could be modified to meet the Government’s needs. A summary of the findings from the review are detailed below:

- The Test Set was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local governments
- The Test Set requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency
- The buying command performed pre-solicitation market research and identified multiple vendors who sell test sets, thus creating a competitive environment to purchase test sets.
- Confidence testing of medical equipment that adopt RF receivers are used by State and Local governments

PART II - Commercial Item Determination

Part Number (P/N): XX-8

Test Set P/N XX-8, is determined commercial IAW the FAR 2.101 Paragraph (8) definition of a commercial service which reads:

(8) A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local governments.

FAR 2.101 definition of a Nondevelopmental Item (NDI) is defined as:

(1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;

(2) Any item described in paragraph (1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or

(3) Any item of supply being produced that does not meet the requirements of paragraph (1) or (2) solely because the item is not yet in use.

To meet both the commercial and military test needs for multispectral test, Testing Systems (TS) under its own company funding embarked on a program to develop and provide multipurpose test set for both the aviation/automotive markets. The tester includes testing of Electro-Optical/Radio Frequency found in the aviation and automotive products including: Radio frequency, Sensors and Optics.

With this multispectral capability, the TS equipment addresses the remote testing of a number commercial equipment:

- Confidence testing of safety related emitters e.g. IR Beacons to prevent aircraft collision of high obstructions e.g. power pylons, tall buildings
- Confidence testing of the response of Speed Cameras both Laser and RF
- Response of Automobile RF/EO sensors for auto cruise and collision avoidance
- Confidence testing of EO and RF sensors on commercial Unmanned Vehicles and Aircraft
- Confidence testing of medical equipment that adopt RF receivers

All the subcomponents were taken from their commercial off the shelf Test Set family which was developed in Germany using internal company funding. The first test system was delivered 5 years ago out of the Germany facility delivered to Superjet Industries for their factory use for testing of their aviation products. Superjet procured the test set using capital equipment funds.

The test set is listed on our open web site at:

(Show web address in your report)

SUMMARY: Test Set P/N XX-8 is determined to be commercial, IAW Paragraph (8) of the commercial item definition at FAR 2.101. Market research was performed to identify the Test Set requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency: Confidence testing of medical equipment that adopt RF receivers are used by State, and Local governments. Since the Test Set is an NDI and is used in substantial quantities by the State and Local governments and requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency the test set is determined to have met the criteria for a commercial item under paragraph (8) of the FAR 2.101 definition of commercial item.

Contracting Officers/Contracts Manager/Supply Chain/Buyer/Signature/Date

Government and Contractor Responsibilities in making CIDs

This portion helps identify who is supposed to do what, in various scenarios, and the associated FAR/DFARS references.

This informational toolbox is not comprehensive and may not include all FAR/DFARS references and responsibilities for determining commercial price reasonableness for your organization.

Government PCO:	Prime Contractor:	Subcontractor:
Acquisition Phase	Acquisition Phase	Acquisition Phase
<ul style="list-style-type: none"> • Pre-Solicitation • Contractor pre-award objection to non-commercial solicitation • Evaluating commerciality of subcontracts 	<ul style="list-style-type: none"> • Commercial Item Solicitation • Non-Commercial Item Solicitation • Prime analysis of subcontractor commerciality assertion 	<ul style="list-style-type: none"> • Request for Commercial Quote • Request for CCOPD Proposal

Applies to all of the above scenarios:

DFARS 212.102(ii): *Prior commercial item determination.* (A) The contracting officer may presume that a prior commercial item determination made by a military department, a defense agency, or another component of DoD shall serve as a determination for subsequent procurements of such item.

PGI 212.102 (a)(i)(1)(C): Particular care must be taken to document determinations involving “modifications of a type customarily available in the marketplace,” and items only “offered for sale, lease, or license to the general public,” but not yet actually sold, leased, or licensed. In these situations, the documentation must clearly detail the particulars of the modifications and sales offers. When such items lack sufficient market pricing histories, additional diligence must be given to determinations that prices are fair and reasonable as required by FAR subpart 15.4.

***This is not legal advice and not binding on the Government; contractors are responsible for making their own decisions under the applicable law, regulations, and contract terms, and that the law, regulations, and agency practice may change at any time without notice to them. ***

Government PCO:

Pre-Solicitation

Scenario:

Prior to release of the solicitation, the Government performs market research to determine if commercial items are available to meet the agency’s needs. If commercial items are not available, agencies shall re-evaluate the need and determine if the solicitation can be revised to allow for commercial items. This includes incorporating commercial items at the component level. If commercial items are available, FAR subpart 12.6 procedures are utilized and PCOs make Commercial Item Determinations (CIDs) and include a written determination in the contract file for acquisitions over \$1M. PCOs shall provide a copy of their CID to the DCMA CIG website to archive for the use of and benefit to other DoD PCOs. CIDs are not necessary for items already deemed commercial by a previous CID.

References:

1. FAR 10.001(a)(3): Agencies shall use the results of market research to (ii) Determine if commercial items or, to the extent commercial items suitable to meet the agency’s needs are not available, nondevelopmental items are available that (A) Meet the agency’s requirements; (B) Could be modified to meet the agency’s requirements; or (C) Could meet the agency’s requirements if those requirements were modified to a reasonable extent;
2. FAR 10.001(a)(3)(iii): Determine the extent to which commercial items or nondevelopmental items could be incorporated at the component level

3. FAR 10.002: (b) Market research is then conducted to determine if commercial items or nondevelopmental items are available to meet the Government's needs or could be modified to meet the Government's needs. (1)...Market research involves obtaining information specific to the item being acquired and should include (i) Whether the Government's needs can be met by (A) Items of a type customarily available in the commercial marketplace; (B) Items of a type customarily available in the commercial marketplace with modifications; or (C) Items used exclusively for governmental purposes...(c) If market research indicates commercial or nondevelopmental items might not be available to satisfy agency needs, agencies shall reevaluate the need in accordance with 10.001(a)(3)(ii) and determine whether the need can be restated to permit commercial or nondevelopmental items to satisfy the agency's needs (d) (1) If market research establishes that the Government's need may be met by a type of item or service customarily available in the commercial marketplace that would meet the definition of a commercial item at Subpart 2.1, the PCO shall solicit and award any resultant contract using the policies and procedures in Part 12. (2) If market research establishes that the Government's need cannot be met by a type of item or service customarily available in the marketplace, Part 12 shall not be used. When publication of the notice at 5.201 is required, the PCO shall include a notice to prospective offerors that the Government does not intend to use Part 12 for the acquisition. (e) Agencies should document the results of market research in a manner appropriate to the size and complexity of the acquisition.

4. FAR 12.101: Agencies shall (a) conduct market research to determine whether commercial items or nondevelopmental items are available that could meet the agency's requirements; (b) Acquire commercial items or nondevelopmental items when they are available to meet the needs of the agency; and (c) Require prime contractors and subcontracts at all tiers to incorporate, to the maximum extent practicable, commercial items or nondevelopmental items as components of items supplied to the agency.

5. FAR 12.102(a): This part shall be used for the acquisition of supplies or services that meet the definition of commercial items at 2.101.

6. DFARS 212.102 (a)(i) When using FAR part 12 procedures for acquisitions exceeding \$1M in value...the PCO shall (A) Determine in writing that the acquisition meets the commercial item definition in FAR 2.101; (B) Include the written determination in the contract file; and (C) Obtain approval at one level above the contracting officer when a commercial item determination relies on subsections (1)(ii), (3), (4), or (6) of the "commercial item" definition at FAR 2.101. (D) Follow the procedures and guidance at PGI 212.102(a)(i) regarding file documentation and commercial item determinations.

7. DFARS 215.408(5)(i) When reasonably certain that the submission of certified cost or pricing data or data other than certified cost or pricing data will be required—(i) Use the basic or alternate of the provision at 252.215-7010, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data, in lieu of the provision at FAR 52.215-20, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items.

8. PCOs shall provide a copy of their CID to the DCMA CIG website to archive for the use of and benefit to other DoD PCOs

(Reference: DoD Guidebook for Acquiring Commercial Items, Part A).

The DCMA CIG can be contacted at <http://www.dcms.mil/commercial-item-group/>

Government PCO:

Contractor pre-award objection to non-commercial solicitation

Scenario:

The Government RFP was released to the Prime Contractor using FAR part 15 procedures and the Prime Contractor submits a written request claiming an exemption from certified cost or pricing data by asserting the item(s)/service(s) is commercial. PCOs shall determine if the item(s)/service(s) meets the commercial item definition. The PCO will evaluate the Prime Contractor's commerciality assertion and if in concurrence, include a written CID for the item in the contract file for acquisitions over \$1M and provide a copy of their CID to the DCMA CIG website to archive for the use of and benefit to other DoD PCOs. If the PCO does not agree and does not grant an exception, the PCO shall require certified cost or pricing data be submitted.

References:

1. FAR 15.403-1(b): *Exceptions to certified cost or pricing data requirements.* The PCO shall not require certified cost or pricing data to support any action (contracts, subcontracts, or modifications) (but may require data other than certified cost or pricing data as defined in FAR 2.101 to support a determination of a fair and reasonable price or cost realism)—(3) When a commercial item is being acquired
2. FAR 15.403-1(c)(3): *Commercial Items.*(i) Any acquisition of an item that the PCO determines meets the commercial item definition in 2.101, or any modification, as defined in paragraph (3)(i) of that definition, that does not change the item from a commercial item to a noncommercial item, is exempt from the requirement for certified cost or pricing data. **If the PCO determines that an item claimed to be commercial is, in fact, not commercial and that no other exception or waiver applies, (e.g. the acquisition is not based on adequate price competition; the acquisition is not based on prices set by law or regulation; and the acquisition exceeds the threshold for the submission of certified cost or pricing data at 15.403-4(a)(1)) the PCO shall require submission of certified cost or pricing data...**
3. FAR 52.215-20(a)(1) / DFARS 252.215-7010(b)(1): *Exceptions from certified cost or pricing data.* In lieu of submitting certified cost or pricing data, offerors may submit a written request for exception by submitting the information described in the following subparagraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable.
4. FAR 12.101 Agencies shall (c): Require prime contractors and subcontracts at all tiers to incorporate, to the maximum extent practicable, commercial items or nondevelopmental items as components of items supplied to the agency.
5. DFARS 212.102 (a)(i) When using FAR part 12 procedures for acquisitions exceeding \$1M in value...the PCO shall (A) Determine in writing that the acquisition meets the commercial item definition in FAR 2.101; (B) Include the written determination in the contract file; and (C) Obtain approval at one level above the contracting officer when a commercial item determination relies on subsections (1)(ii), (3), (4), or (6) of the "commercial item" definition at FAR 2.101. (D) Follow the procedures and guidance at PGI 212.102(a)(i) regarding file documentation and commercial item determinations.
6. PCOs shall provide a copy of their CID to the DCMA CIG website to archive for the use of and benefit to other DoD PCOs (Reference: DoD Guidebook for Acquiring Commercial Items, Part A).

Government PCO:

Evaluating Commerciality of Subcontracts

Scenario:

If a Prime Contractor uses a CID to set out the specifications for a particular subcontract item, the PCO still has the responsibility to determine if an item meets the commercial item definition in FAR 2.101. The PCO shall document any exceptions granted to certified cost or pricing data in the Price Negotiation

Memorandum (PNM). If the PCO does not agree and does not grant an exception, the PCO shall require certified cost or pricing data be submitted (if subcontractor proposal exceeds the threshold for submission).

References:

1. DFARS 244.402(a): Contractors shall determine whether a particular subcontract item meets the definition of a commercial item. This requirement does not affect the PCOs responsibilities or determinations made under FAR 15.403-1(c)(3).
2. FAR 15.406-3(a): The PCO shall document in the contract file the principal elements of the negotiated agreement. The documentation (e.g., price negotiation memorandum (PNM)) shall include the following:
... (5) If certified cost or pricing data were not required in the case of any price negotiation exceeding the certified cost or pricing data threshold, the exception used and the basis for it.
3. FAR 10.003: The PCO shall insert the clause at 52.210-1, Market Research in solicitation and contracts over \$5.5M for the procurement of items other than commercial items.
4. FAR 44.403: The PCO shall insert the clause at 52.244-6, Subcontracts for Commercial Items, in solicitations and contracts other than those for commercial items
5. FAR 12.101: Agencies shall (c) Require prime contractors and subcontracts at all tiers to incorporate, to the maximum extent practicable, commercial items or nondevelopmental items as components of items supplied to the agency.
6. FAR 15.403-1(b): *Exceptions to certified cost or pricing data requirements.* The PCO shall not require certified cost or pricing data to support any action (contracts, subcontracts, or modifications) (but may require data other than certified cost or pricing data as defined in FAR 2.101 to support a determination of a fair and reasonable price or cost realism)—(3) When a commercial item is being acquired
7. FAR 15.403-1(c)(3): *Commercial Items.*(i) Any acquisition of an item that the PCO determines meets the commercial item definition in 2.101, or any modification, as defined in paragraph (3)(i) of that definition, that does not change the item from a commercial item to a noncommercial item, is exempt from the requirement for certified cost or pricing data. If the PCO determines that an item claimed to be commercial is, in fact, not commercial and that no other exception or waiver applies, (e.g. the acquisition is not based on adequate price competition; the acquisition is not based on prices set by law or regulation; and the acquisition exceeds the threshold for the submission of certified cost or pricing data at 15.403-4(a)(1)) the PCO shall require submission of certified cost or pricing data...
8. FAR 52.215-20(a)(1) / DFARS 252.215-7010(b)(1): *Exceptions from certified cost or pricing data.* In lieu of submitting certified cost or pricing data, offerors may submit a written request for exception by submitting the information described in the following subparagraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable.

Prime Contractor:

Commercial Item Solicitation

Scenario:

If the PCO uses a CID in the solicitation, and FAR subpart 12.6 procedures, the Prime Contractor is exempt from submitting certified cost or pricing data, however the Prime Contractor still has the responsibility of supporting price reasonableness in a sole source acquisition.

References:

1. DFARS 252.215-7010(b) *Exceptions from certified cost or pricing data.* (1) In lieu of submitting certified cost or pricing data, the offeror may submit a written request for exception by submitting the information described in paragraphs (b)(1)(i) and (ii) of this provision. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted and whether the price is fair and reasonable... (ii) *Commercial item exception.* For a commercial item exception, the Offeror shall submit, at a minimum, information that is adequate for evaluating the reasonableness of the price for this acquisition, including prices at which the same item or similar items have been sold in the commercial market...
2. DFARS 252.215-7010(b)(2): The Offeror grants the PCO or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this provision, and to determine the reasonableness of price.
3. DFARS 252.215-7010(d)(3): Within 10 days of a written request from the PCO for additional information to permit an adequate evaluation of the proposed price in accordance with FAR 15.403-3, the Offeror shall provide either the requested information, or a written explanation for the inability to fully comply.

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Prime Contractor:

Non-Commercial Solicitation from Government

Scenario:

The Prime Contractor receives a FAR part 15 RFP from the Government and includes a request for the submission of certified cost or pricing data with the proposal submission to be compliant with the RFP. As the Prime Contractor, you believe the solicited item(s) meet the FAR 2.101 commercial item definition. The Prime Contractor can claim an exemption from certified cost or pricing data by asserting the item proposed is a commercial item in a written request to the Government. Justification can include a prior DoD PCO CID for the exact same proposed item. The assertion must include which commercial item definition the item meets and the basis, plus a technical analysis of the difference between the proposed item and the comparison items. If the PCO does not agree and does not grant an exception, the Offeror shall submit certified cost or pricing data if the proposal exceeds the threshold for submission.

References:

1. FAR 52.215-20(a): *Exceptions from certified cost or pricing data.* (1) In lieu of submitting certified cost or pricing data, offerors may submit a written request for exception by submitting the information described in the following subparagraphs. (ii) *Commercial item exception.* For a commercial item exception, the offeror shall submit, at a minimum, information on prices at which the same item or similar items have previously been sold in the commercial market that is adequate for evaluating the reasonableness of the price for this acquisition...
2. DFARS 252.215-7010(b): *Exceptions from certified cost or pricing data.* (1) In lieu of submitting certified cost or pricing data, the Offeror may submit a written request for exception by submitting the information described in paragraphs (b)(1)(i) and (ii) of this provision. (ii) *Commercial item exception.* For a commercial item exception, the Offeror shall submit, at a minimum, information that is adequate for evaluating the reasonableness of the price for this acquisition, including prices at which the same item or similar items have been sold in the commercial market...

3. DFARS 252.215-7010(b)(ii)(A): For items previously determined to be commercial, the contract number and military department, defense agency, or other DoD component that rendered such determination, and if available, a Government point of contact

4. DFARS 252.215-7010(c)(1) *Requirements for certified cost or pricing data*. If the Offeror is not granted an exception from the requirement to submit certified cost or pricing data, the following applies: (1) The Offeror shall prepare and submit certified cost or pricing data and supporting attachments in accordance with the instructions contained in Table 15-2 of FAR 15.408

5. DFARS 252.215-7009: Item 18: Has the offeror submitted an exception to the submission of certified cost or pricing data for commercial items proposed either at the **prime** or subcontractor level...
Reference: Proposal Adequacy Checklist

a. Has the offeror specifically identified the type of commercial item claim (FAR 2.101 commercial item definition, paragraphs (1)-(8)), and the basis on which the item meets the definition?

b. For modified commercial items (paragraph (3)), did the offeror classify the modification as either i. a modification of a type customarily available in the commercial marketplace (3)(i) or ii. A minor modification (3)(ii) of a type not customarily available in the commercial marketplace made to meet Federal Government requirements not exceeding the thresholds in FAR 15.403-1(c)(3)(iii)(B)?

c. For proposed commercial items “of a type”, or “evolved” or modification (paragraphs (1) –(3)), did the contractor provide a technical description of the differences between the proposed items and the comparison items?

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Prime Contractor:

Non-Commercial Item Solicitation with commercial subcontractors

Prime Request for Commercial Item(s) to Subcontractors:

Scenario:

The Prime Contractor shall incorporate commercial items to the maximum extent practical at the subcontract/component level. The prime performed an independent assessment including market research and solicited for a commercial item from a subcontractor. The Prime CID was made prior to release of its RFQ to its subcontractors and included which commercial item definition the item meets, the basis, and a technical analysis of the difference between the proposed item and the comparison items.

Subcontractor Proposed Commercial Items to the Prime:

Scenario:

The Prime Contractor requested the submission of certified cost or pricing data from its subcontractors. The subcontractor submitted a proposal claiming an exception to certified cost or pricing data for commercial items. The Prime Contractor shall perform their independent assessment including market research and submit its CID (if in concurrence with the sub’s assertion) for the subcontracted item(s) in its proposal submission to the Government. The Prime Contractor submitting a subcontractor “assertion of commerciality” is not meeting the requirement. If the Prime Contractor does not concur with the

subcontractor commercial assertion, the Prime Contractor shall request the submission of certified cost or pricing data if the proposed amount exceeds the threshold and no other exemption applies.

References:

1. FAR 52.244-6(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.
2. FAR 52.210-1(b)(1): Before awarding subcontracts over the simplified acquisition threshold for items other than commercial items, the Contractor shall conduct market research to—(1) Determine if commercial items or, to the extent commercial items suitable to meet the agency's needs are not available, nondevelopmental items are available that—(i) Meet the agency's requirements; (ii) Could be modified to meet the agency's requirements; or (iii) Could meet the agency's requirements if those requirements were modified to a reasonable extent;
3. FAR 52.210-1(b)(2): Before awarding subcontracts over the simplified acquisition threshold for items other than commercial items, the Contractor shall conduct market research to—(2) Determine the extent to which commercial items or nondevelopmental items could be incorporated at the component level.
4. DFARS 244.402(a): Contractors shall determine whether a particular subcontract item meets the definition of a commercial item...Contractors are expected to exercise reasonable business judgment in making such determinations, consistent with the guidelines for conducting market research in FAR part 10.
5. FAR 52.215-20(a)(1) / DFARS 252.215-7010(b)(1): *Exceptions from certified cost or pricing data.* (1) In lieu of submitting certified cost or pricing data, offerors may submit a written request for exception by submitting the information described in the following subparagraphs. (ii) *Commercial item exception.* For a commercial item exception, the offeror shall submit, at a minimum, information on prices at which the same item or similar items have previously been sold in the commercial market that is adequate for evaluating the reasonableness of the price for this acquisition...
6. DFARS 252.215-7010(b)(4) *Subcontract price evaluation.* (i) Offerors shall obtain from subcontractors the minimum information necessary to support a determination of price reasonableness, as described in FAR part 15 and DFARS part 215; (ii) No cost data may be required from a prospective subcontractor in any case in which there are sufficient non-Government sales of the same item to establish reasonableness of price; (iii) If the Offeror relies on relevant sales data for similar items to determine the price is reasonable, the Offeror shall obtain only that technical information necessary—(A) To support the conclusion that items are technically similar; and (B) To explain any technical differences that account for variances between the proposed prices and the sales data presented.
7. DFARS 252.215-7010(c)(1): *Requirements for certified cost or pricing data.* If the Offeror is not granted an exception from the requirement to submit certified cost or pricing data, the following applies: (1) The Offeror shall prepare and submit certified cost or pricing data and supporting attachments in accordance with the instructions contained in Table 15-2 of FAR 15.4088.
8. DFARS 252.215-7009: Item 18: Has the offeror submitted an exception to the submission of certified cost or pricing data for commercial items proposed either at the prime or **subcontractor** level...
 - a. Has the offeror specifically identified the type of commercial item claim (FAR 2.101 commercial item definition, paragraphs (1)-(8)), and the basis on which the item meets the definition?
 - b. For modified commercial items (paragraph (3)), did the offeror classify the modification as either i. a modification of a type customarily available in the commercial marketplace (3)(i) or ii. A minor modification (3)(ii) of a type not customarily available in the commercial marketplace made to meet Federal Government requirements not exceeding the thresholds in FAR 15.403-1(c)(3)(iii)(B)?

c. For proposed commercial items “of a type”, or “evolved” or modification (paragraphs (1) –(3)), did the contractor provide a technical description of the differences between the proposed items and the comparison items?

Reference: Proposal Adequacy Checklist

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Subcontractor:

Request for Commercial Item(s) from Government/Prime

Request for Commercial Item Quote from Prime Contractor under FAR part 12 procedures:

Scenario:

The Government PCO uses a CID to describe the Government requirement in a solicitation to the Prime Contractor and did not request the submission of certified cost or pricing data. The Subcontractor still has the responsibility of supporting price reasonableness in a sole source acquisition.

Request for Commercial Item Quote from Prime Contractor under FAR part 15 procedures:

Scenario:

The Prime Contractor uses a CID to set out specifications for supplies in a solicitation to the Subcontractor and did not request the submission of certified cost or pricing data. The Subcontractor still has the responsibility of supporting price reasonableness in a sole source acquisition. If the Government PCO determines that an item claimed to be commercial is not commercial, the Government PCO shall require submission of certified cost or pricing data if the subcontractor quote exceeds the threshold.

References:

1. DFARS 252.215-7010(b)(4) *Subcontract price evaluation*. (i) Offerors shall obtain from subcontractors the minimum information necessary to support a determination of price reasonableness, as described in FAR part 15 and DFARS part 215; (ii) No cost data may be required from a prospective subcontractor in any case in which there are sufficient non-Government sales of the same item to establish reasonableness of price; (iii) If the Offeror relies on relevant sales data for similar items to determine the price is reasonable, the Offeror shall obtain only that technical information necessary—(A) To support the conclusion that items are technically similar; and (B) To explain any technical differences that account for variances between the proposed prices and the sales data presented.
2. FAR 15.403-1(c)(3): *Commercial Items*. (i) ...If the PCO determines that an item claimed to be commercial is, in fact, not commercial and that no other exception or waiver applies...and the acquisition exceeds the threshold for the submission of certified cost or pricing data at 15.403-4(a)(1)) the PCO shall require submission of certified cost or pricing data...
3. DFARS 252.215-7010(c)(1): *Requirements for certified cost or pricing data*. If the Offeror is not granted an exception from the requirement to submit certified cost or pricing data, the following applies:

(1) The Offeror shall prepare and submit certified cost or pricing data and supporting attachments in accordance with the instructions contained in Table 15-2 of FAR 15.408

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Subcontractor:

Request for CCOPD proposal from Prime

Request for CCOPD from Prime Contractor to Support Offer in Response to a Non-Commercial Solicitation:

Scenario:

The Prime Contractor requests its subcontractor to submit certified cost or pricing data (CCOPD). The subcontractor claims an exemption from CCOPD by asserting the item(s) is commercial. Include in the assertion to the Prime Contractor the substantiating data and cite a specific commercial item definition and the basis on which the item meets the FAR 2.101 definition. Justification can include a prior DoD PCO CID as supporting documentation if available for the exact same proposed item. The Prime Contractor will evaluate the assertion and may request additional supporting documentation. If the Prime Contractor determines that an item claimed to be commercial is not commercial, the Prime Contractor shall require and the subcontractor shall submit certified cost or pricing data. If the Prime Contractor does not concur with the assertion, additional supporting documentation and market research may be required to substantiate the position, discuss with the Prime Contractor why they concluded the item was not commercial to better understand what additional documentation may be relevant to support the justification.

References:

1. FAR 52.215-20(a)(ii) / DFARS 252.215-7010(b): *Exceptions from certified cost or pricing data.* (1) In lieu of submitting certified cost or pricing data, the Offeror may submit a written request for exception by submitting the information described in paragraphs (b)(1)(i) and (ii) of this provision. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted and whether the price is fair and reasonable. (ii) *Commercial item exception.* For a commercial item exception, the Offeror shall submit, at a minimum, information that is adequate for evaluating the reasonableness of the price for this acquisition, including prices at which the same item or similar items have been sold in the commercial market...
2. DFARS 252.215-7009: Item 18: Has the offeror submitted an exception to the submission of certified cost or pricing data for commercial items proposed either at the prime or subcontractor level...
 - a. Has the offeror specifically identified the type of commercial item claim (FAR 2.101 commercial item definition, paragraphs (1)-(8)), and the basis on which the item meets the definition?
 - b. For modified commercial items (paragraph (3)), did the offeror classify the modification as either i. a modification of a type customarily available in the commercial marketplace (3)(i) or ii. A minor modification (3)(ii) of a type not customarily available in the commercial marketplace made to meet Federal Government requirements not exceeding the thresholds in FAR 15.403-1(c)(3)(iii)(B)?

c. For proposed commercial items “of a type”, or “evolved” or modification (paragraphs (1) –(3)), did the contractor provide a technical description of the differences between the proposed items and the comparison items?

Reference: Proposal Adequacy Checklist

3. DFARS 252.215-7010(c)(1): *Requirements for certified cost or pricing data.* If the Offeror is not granted an exception from the requirement to submit certified cost or pricing data, the following applies: (1) The Offeror shall prepare and submit certified cost or pricing data and supporting attachments in accordance with the instructions contained in Table 15-2 of FAR 15.408

4. FAR 15.403-1(c)(3): *Commercial Items.*(i) ...If the PCO determines that an item claimed to be commercial is, in fact, not commercial and that no other exception or waiver applies...and the acquisition exceeds the threshold for the submission of certified cost or pricing data at 15.403-4(a)(1)) the PCO shall require submission of certified cost or pricing data...

5. DFARS 252.215-7010(b)(4) *Subcontract price evaluation.*(i) Offerors shall obtain from subcontractors the minimum information necessary to support a determination of price reasonableness, as described in FAR part 15 and DFARS part 215; (ii) No cost data may be required from a prospective subcontractor in any case in which there are sufficient non-Government sales of the same item to establish reasonableness of price; (iii) If the Offeror relies on relevant sales data for similar items to determine the price is reasonable, the Offeror shall obtain only that technical information necessary—(A) To support the conclusion that items are technically similar; and (B) To explain any technical differences that account for variances between the proposed prices and the sales data presented.

6. DFARS 252.215-7010(b)(ii)(A): For items previously determined to be commercial, the contract number and military department, defense agency, or other DoD component that rendered such determination, and if available, a Government point of contact

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Justification for Asserting Commerciality

Scenario:

A non-commercial solicitation was issued and you believe your item(s)/service(s) meet the FAR 2.101 commercial item definition. In order to substantiate your claim to the Government or Prime Contractor, here are samples of types of data you should be willing and ready to provide:

1. Prior non-government sales data of the proposed item for non-governmental purposes, including the name of the customer and the end use of the item that was sold
2. Evidence of the proposed item (or the item from which the proposed item evolved from) was sold, leased, licensed, or offered for sale; an advertisement on a website does not constitute an “offer”
3. Information and descriptions of similar item(s) that are customarily used by the general public for non-governmental purposes
4. Relevant sales data of similar item(s) sold to non-governmental entities for non-governmental purposes
5. Prior signed DoD PCO CID for the proposed item (not a FAR part 12 - SF1449 commercial contract); if you do not have a copy of the signed CID, provide the contract number and military department, defense

agency, or other DoD component that rendered such determination, and if available, a Government point of contact

6. Market Research results (if prime determining commerciality for its subcontracted item(s)): market prices of same or similar items and publicly available data of similar items and/or with the same modifications (evidence of customarily available)

7. Market Industry data showing how and by who the same or similar items are used for non-governmental purposes

8. Technical Analysis of the differences between the proposed item and the commercial comparison item(s)

Definitions:

“Purposes other than governmental purposes” means purposes that are not unique to a government

“Non-Government sales” means sales of the supplies or services to non-Governmental entities for purposes other than governmental purposes

“Relevant sales data” means information provided by an offeror on sales of the same or similar items that can be used to establish price reasonableness taking into consideration the age, volume, and nature of the transactions

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DCMA Commercial Item Group (CIG) Support

The DCMA CIG contracting officer will make a Commercial Item Determinations when a prime contractor claims the Commercial Item Exception to Certified Cost or Pricing Data, following the same regulations as a PCO for commercial acquisitions. DCMA CIG maintains a database for all prior CIDs, which can be relied upon for future acquisitions. Additional resources such as Training, FAQs, How to Request Support, and upcoming events can be found at the DCMA Commercial Item Group webpage, <https://www.dcms.mil/Commercial-Item-Group/>

When requesting DCMA CIG support services, please provide the following information:

1. Prime Contractor’s Assertion (if item/service is being procured through the prime contractor)
2. Prime Contractor’s Commercial Item Determination (if item/service is being procured through the subcontractor)
3. Subcontractor’s Commercial Assertion (if item/service is being procured through the subcontractor)
4. Determination / Assertion must explicitly state which FAR 2.101 commercial item definition is being claimed (paragraphs 1 through 8), and the basis on which the item meets that definition. If claiming definition paragraph (3), classify as either (3)(i) customarily available modifications or (3)(ii) minor modifications made to meet Government requirements.
5. Prime Contractor’s comparative Technical Analysis of the proposed item and the similar (“of a type”) commercial item.

6. Evidence that the similar (“of a type”) item is customarily used by the general public for non-governmental purposes (what the end use of the item is).
7. Un-redacted sales of the same or similar (“of a type”) item has been sold in the commercial market
8. Technical Specification Sheets/Drawings and Performance Specification Sheets for both the proposed item and the similar (“of a type”) item.
9. RFP / solicitation (both the Government to Prime and Prime to Sub)
10. Prime Contractor’s proposal and Subcontractor’s proposal

References:

1. Letter from the Office of the Under Secretary of Defense dated 20 December 2018: “Effective immediately, DCMA CIG Contracting Officers will serve as determining officials for all commercial item review requests submitted to DCMA. DFARS PGI 212.102, advises PCOs how to request assistance from the DoD cadre of experts in the DCMA CIG. Determinations by the CIG will relieve buying activity PCOs from duplicating effort expended reviewing the CIG recommendations to determine whether an item meets the FAR 2.101 definition of “commercial item” as well as provide consistency in the commerciality review process. Determinations made by the DCMA CIG will be contained in the commercial item database available for all DoD PCOs to rely upon for future purchases of the same item or service.”
2. PCOs shall provide a copy of their CID to the DCMA CIG website to archive for the use of and benefit to other DoD PCOs (reference: DoD Guidebook for Acquiring Commercial Items, Part A).
3. See the DCMA Commercial Item Group webpage for current acceptance thresholds for review and how to request DCMA CIG support.
4. DFARS 252.215-7009, Proposal Adequacy Checklist, Item 18 (a) –(c)
5. DFARS 252.215-7010(b)(1)(ii), Commercial Item Exception, For a commercial item exception, the Offeror shall submit, at a minimum, information that is adequate for evaluating the reasonableness of the price for this acquisition, including prices at which the same item or similar items have been sold in the commercial market.

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DCMA CIG Participation in CPSRs

The purpose of the CIGs participation in Contractor Purchasing System Reviews (CPSRs) is to review the adequacy of rationale documenting Commercial Item Determinations (CIDs) to ensure compliance with the definition of “Commercial Item” in FAR 2.101 and to review the adequacy of price analysis to assess fair and reasonable subcontract prices.

The scope of the CIG augmentation to the CPSR includes:

- Policy and Procedures (P&P) Review to assess compliance with the applicable FAR and DFARS requirements:
 - Market Research
 - Commercial Item Determinations (CIDs)
 - Technical Evaluation
 - Price Analysis

- Contract file review to assess whether the contract files contain a complete and accurate history of purchase transactions to support vendors selected, prices paid, and CID documentation and practices

References:

1. Contractor Purchasing System Review - DFARS 244.303(a)
2. Market Research (FAR clause 52.210-1 – Market Research, FAR part 10, DFARS 244.402(a))
3. CIDs (FAR clause 52.244-6, Subcontracts for Commercial Items; DFARS provision 252.215-7009 Item 18; DFARS 244.402(a))
4. Technical Evaluations (FAR 15.404-1(b)(2)(ii)(C); FAR 15.404-1(e)(3); DFARS provision 252.215-7009 Item 18)
5. Price Analysis (15.403-3(c)(1); FAR 15.404-1(b); FAR provision 52.215-20(a)(ii); DFARS 212.209; DFARS 215.402; DFARS 215.404-1(b); DFARS provision 252.215-7009 Sec 17; DFARS provision 252.215-7010(b)(1)(ii); DFARS clause 252.244-7001(c)(5) and (8))

FAR Provisions and Clauses

FAR 12.303 -Solicitations and contracts for the acquisition of commercial items prepared using FAR part 12 shall be assembled to the maximum extent practicable, using Standard Form (SF) 1449

FAR 12.302 –The contracting officer shall not tailor any clause or include any additional terms or conditions in a solicitation or contract for commercial items in a manner that is inconsistent with customary commercial practice for the item being acquired unless a waiver is approved in accordance with agency procedures.

FAR Provisions in solicitations for the acquisition of commercial items

1. 52.212-1, Instructions to Offerors –Commercial Items
2. 52.212-3, Offeror Representations and Certifications –Commercial Items
3. 52.212-2, Evaluation –Commercial Items
4. 52.204-16, Commercial and Government Entity Code Reporting
5. 52.207-6, Solicitation of Offers from Small Business Concerns and Small Business Teaming Arrangements or Joint Ventures (Multiple-Award Contracts)
6. 52.209-7, Information Regarding Responsibility Matters
7. 52.209-12, Certification Regarding Tax Matters
8. 52.222-56, Certification Regarding Trafficking in Persons Compliance Plan
9. 52.226-3, Disaster or Emergency Area Representation, when setting aside under the Stafford Act (subpart 26.2)

FAR Clauses in solicitations and contracts for the acquisition of commercial items

1. 52.212-4, Contract Terms and Conditions –Commercial Items
2. 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive orders – Commercial Items
3. 52.204-18, Commercial and Government Entity Code Maintenance
4. 52.204-21, Basic Safeguarding of Covered Contractor Information Systems
5. 52.225-19, Contractor Personnel in a Designated Operational Area of Supporting a Diplomatic or Consular Mission outside the United States
6. 52.232-40, Providing Accelerated Payments to Small Business Subcontractors
7. 52.203-3, Gratuities
8. Clauses prescribed at 16.506 may be used when an indefinite-delivery type of contract will be used
9. Provisions and Clauses prescribed in 17.208 may be used when the use of options is in the Government's interest
10. Provisions and Clauses prescribed in Part 23 may be used for products containing recovered materials and bio-based products

DFARS Provisions and Clauses

DFARS Provisions in solicitations for the acquisition of commercial items

1. 252.204-7008 Compliance with Safeguarding Covered Defense Information Controls
2. 252.204-7013, Limitations on the Use or Disclosure of Information by Litigation Support Offerors
3. 252.211-7006, Passive Radio Frequency Identification
4. 252.213-7000, Notice to Prospective Suppliers on Use of Past Performance Information Retrieval System—Statistical Reporting in Past Performance Evaluations
5. 252.215-7003, Requirements for Submission of Data Other Than Certified Cost or Pricing Data— Canadian Commercial Corporation
6. 252.215-7007, Notice of Intent to Resolicit
7. 252.215-7008, Only One Offer
8. 252.215-7010, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data
9. 252.219-7000, Advancing Small Business Growth
10. 252.219-7012, Competition for Religious-Related Services
11. 252.225-7000, Buy American—Balance of Payments Program Certificate

12. 252.225-7010, Commercial Derivative Military Article—Specialty Metals Compliance Certificate
13. 252.225-7018, Photovoltaic Devices—Certificate
14. 252.225-7020, Trade Agreements Certificate
15. 252.225-7023, Preference for Products or Services from Afghanistan
16. 252.225-7031, Secondary Arab Boycott of Israel
17. 252.225-7035, Buy American—Free Trade Agreements—Balance of Payments Program Certificate
18. 252.225-7037, Evaluation of Offers for Air Circuit Breakers
19. 252.225-7049, Prohibition on Acquisition of Certain Foreign Commercial Satellite Services—Representations
20. 252.225-7050, Disclosure of Ownership or Control by the Government of a Country that is a State Sponsor of Terrorism
21. 252.232-7014, Notification of Payment in Local Currency (Afghanistan)
22. 252.239-7009, Representation of Use of Cloud Computing
23. 252.239-7017, Notice of Supply Chain Risk
24. 252.247-7022, Representation of Extent of Transportation by Sea
25. 252.247-7026, Evaluation Preference for Use of Domestic Shipyards—Applicable to Acquisition of Carriage by Vessel for DoD Cargo in the Coastwise or Noncontiguous Trade
26. 252.203-7005, Representation Relating to Compensation of Former DoD Officials

DFARS Clauses in solicitations and contracts for the acquisition of commercial items

1. 252.203-7000, Requirements Relating to Compensation of Former DoD officials
2. 252.203-7003, Agency Office of the Inspector General
3. 252.204-7004, Antiterrorism Awareness Training for Contractors
4. 252.204-7009, Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident information
5. 252.204-7012, Safeguarding Covered Defense Information and Cyber Incident Reporting
6. 252.204-7014, Limitations on the Use or Disclosure of Information by Litigation Support Contractors
7. 252.204-7015, Notice of Authorized Disclosure of Information for Litigation Support,
8. 252.205-7000, Provision of Information to Cooperative Agreement Holders
9. 252.211-7003, Item Unique Identification and Valuation
10. 252.211-7007, Reporting of Government-Furnished Property
11. 252.211-7008, Use of Government-Assigned Serial Numbers
12. 252.215-7004, Requirement for Submission of Data other Than Certified Cost or Pricing Data—Modifications—Canadian Commercial Corporation

13. 252.219-7003, Small Business Subcontracting Plan (DoD Contracts)
14. 252.219-7004, Small Business Subcontracting Plan (Test Program)
15. 252.223-7008, Prohibition of Hexavalent Chromium
16. 252.225-7001, Buy American and Balance of Payments Program
17. 252.225-7006, Acquisition of the American Flag
18. 252.225-7007, Prohibition on Acquisition of Certain Items from Communist Chinese Military Companies
19. 252.225-7008, Restriction on Acquisition of Specialty Metals
20. 252.225-7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals
21. 252.225-7012, Preference for Certain Domestic Commodities
22. 252.225-7015, Restriction on Acquisition of Hand or Measuring Tools
23. 252.225-7016, Restriction on Acquisition of Ball and Roller Bearings
24. 252.225-7017, Photovoltaic Devices
25. 252.225-7021, Trade Agreements
26. 252.225-7024, Requirement for Products or Services from Afghanistan
27. 252.225-7026, Acquisition Restricted to Products or Services from Afghanistan
28. 252.225-7027, Restriction on Contingent Fees for Foreign Military Sales
29. 252.225-7028, Exclusionary Policies and Practices of Foreign Governments
30. 252.225-7029, Acquisition of Uniform Components for Afghan Military or Afghan National Police
31. 31.252.225-7036, Buy American—Free Trade Agreements—Balance of Payments Program
32. 252.225-7038, Restriction on Acquisition of Air Circuit Breakers
33. 252.225-7039, Defense Contractors Performing Private Security Functions Outside the United States
34. 252.225-7040, Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States
35. 252.225-7043, Antiterrorism/Force Protection Policy for Defense Contractors Outside the United States
36. 252.225-7051, Prohibition on Acquisition for Certain Foreign Commercial Satellite Services
37. 252.225-7052, Restriction on the Acquisition of Certain Magnets and Tungsten
38. 252.226-7001, Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns
39. 252.227-7013, Rights in Technical Data—Noncommercial Items
40. 252.227-7015, Technical Data—Commercial Items
41. 252.227-7037, Validation of Restrictive Markings on Technical Data
42. 252.229-7014, Taxes—Foreign Contracts in Afghanistan

43. 252.229-7015, Taxes—Foreign Contracts in Afghanistan (North Atlantic Treaty Organization Status of Forces Agreement)
44. 252.232-7003, Electronic Submission of Payment Requests and Receiving Reports
45. 252.232-7006, Wide Area WorkFlow Payment Instructions
46. 252.232-7009, Mandatory Payment by Governmentwide Commercial Purchase Card
47. 252.232-7010, Levies on Contract Payments
48. 252.232-7011, Payments in Support of Emergencies and Contingency Operations
49. 252.237-7010, Prohibition on Interrogation of Detainees by Contractor Personnel
50. 252.237-7019, Training for Contractor Personnel Interacting with Detainees
51. 252.239-7010, Cloud Computing Services
52. 252.239-7018, Supply Chain Risk
53. 252.243-7002, Requests for Equitable Adjustment
54. 252.244-7000, Subcontracts for Commercial Items
55. 252.246-7003, Notification of Potential Safety Issues
56. 252.246-7004, Safety of Facilities, Infrastructure, and Equipment for Military Operations
57. 252.246-7008, Sources of Electronic Parts
58. 252.247-7003, Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer
59. 252.247-7023, Transportation of Supplies by Sea
60. 252.247-7025, Reflagging or Repair Work
61. 252.247-7027, Riding Gang Member Requirements
62. 252.247-7028, Application for U.S. Government Shipping Documentation/Instructions

This is not legal advice and not binding on the Government; contractors are responsible for making their own decisions under the applicable law, regulations, and contract terms, and that the law, regulations, and agency practice may change at any time without notice to them.