


COMMERCIAL ITEM SUBCONTRACTING




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January 2018

Our Mission Statement



With constant and ever changing challenges in a procurement environment, our mission is to be the most **Trusted** Provider of federal contracting consulting. Our goal is to empower your firm in terms of leveraging your procurement and management resources through **Risk Identification, Process Change and Training.**

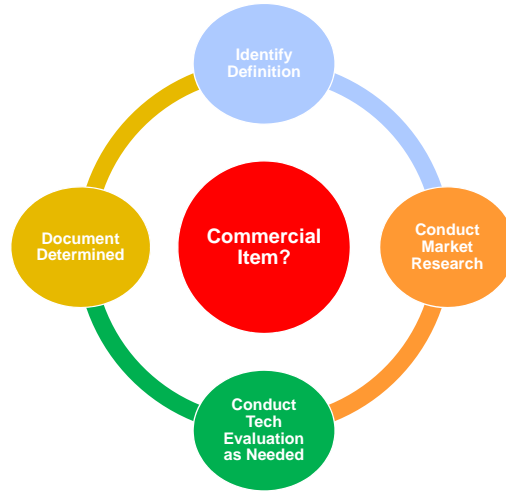
Our innovative and **tailored solutions** help customers reshape the way they do business, from cutting costs and controlling processes to enhancing policy effectiveness and providing information for better decision making.



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Commercial Item Determination Process



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Why is Commerciality Determination Required?



DFARS 244.402 (Policy Requirements) states:



“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.**”

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DCMA Oversight Requirements



DFARS 244.303 (Extent of review) directs CPSR Analysts to review the adequacy of rationale documenting commercial item Determinations to ensure compliance with the definition of “commercial item” in **FAR 2.101**.

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Oversight Trends



- **Commercial Items** Reviewed during CPSR.
- DCMA Commercial Item Centers of Excellence.
- Contractors’ Requests for Commercial Item Determinations.
- Impact of Incorrect Commercial Item Determinations.
- **Price Reasonableness** Must Be Established.



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Definition: What is a Commercial Item?



- There are **8 “categories”** of commercial items.
- Commercial Item Definition can be found at **FAR 2.101**.



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Definition 1: Basic Commercial Item



(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:

- **(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



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Definition 2: Advances in Technology



(2) Any item that evolved from an item described in paragraph

(a) 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.



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Definition 3: Modified Item



(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; or
- **(ii)** Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. Minor modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor.



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Definition 4: Combination of Items



(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.



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Definition 5: Services in Support of an Item



(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.
- **(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.



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Definition 6: Services NOT in Support of an Item



(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.
- (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.

Definition 7: Items and Services Transferred Between Affiliates



(7) 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.



Definition 8: Non-Developmental Item



(8) A non-developmental 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.



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Extent of Market Research



- **Market Research** is intended to support the Determination of Commerciality.
- Must be documented – Consider a structured form.
- Can be conducted by **Procurement of Non-Procurement Personnel**.
- Consider the “**Prudent Person**” test.
- **Address specific areas such as:**
 - “of a Type”
 - “Customarily Used”
 - “Non-Governmental Entity”
 - “Purposes other than Governmental Purposes”
 - “General Public”
 - “Lease, License, Sale”
 - “Offered and Sold Competitively”



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Market Research Techniques



FAR Part 10

- ❑ Contacting knowledgeable individuals in Government and industry regarding market capabilities to meet requirements.
- ❑ Reviewing the results of recent market research undertaken to meet similar or identical requirements.
- ❑ Publishing formal requests for information in appropriate technical or scientific journals or business publications.
- ❑ Querying Government databases that provide information relevant to agency acquisitions.



Market Research Techniques



FAR Part 10

- ❑ Participating in interactive, online communication among industry, acquisition personnel, and customers.
- ❑ Obtaining source lists of similar items from other contracting activities or agencies, trade associations, or other sources.
- ❑ Reviewing catalogs and other generally available product literature published by manufacturers, distributors, and dealers or available online.
- ❑ Conducting interchange meetings or holding presolicitation conferences to involve potential offerors early in the acquisition process.



When is a Technical Evaluation Needed?



Technical Evaluations conducted by a member(s) of the technical community can be used to support Commercial Item Determinations.

- How does the item being purchased compare against results of market research:
 - Exact Comparison
 - Similar Item
 - Item of a Kind
 - Modified Item
 - Minor Modifications
- How does the service being purchased compare against results of market research:
 - Same Services
 - Similar Services
 - Services of a Type
 - Is the alternative solution acceptable
- Does the offeror(s) have a clear understanding of the technical requirements?
- Is the technical approach sound?
- Are the correct materials (qty, quality, type, size, etc.) being proposed?
- Is the correct labor mix (labor category, qualifications, hours, etc.) being proposed?
- Does the offeror(s) possess the current machinery, tools, equipment, facilities, warehouse, or the ability to obtain them?

Documentation Requirements



- ❑ Commercial Item Determinations need to be tailored to reflect the specific procurement situation. **Don't just restate FAR text.**
- ❑ Document using **"Objective Evidence" ("OE")** to support statements and determinations made regarding commercial items.
- ❑ Documentation must address the commerciality of the actual item or service, not the supplier or a general classification of the product or service.
- ❑ If claiming that an item or service is **"of a type"**, consider obtaining a technical evaluation to validate this claim as factual.
- ❑ **Document all market research** conducted.
- ❑ Commercial Item Determinations are to be documented at all dollar values.



For Additional Information



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