

DCMA Commercial Item Group – Virtual Office Hours (Dec. 10, 2020)

< 00:00 >

- Thanks for jumping on the office hours of the Commercial Item Group of DCMA. DAU is happy to be supporting this initiative and I'm going to introduce to you Kori. Kori, say hello. Over to you, Kori.

- Hey, everybody.

- Over to you.

- Perfect. Hey. So, good afternoon. I wanted to start off by giving a huge thank you to DAU for hosting this first ever virtual industry event and a huge thank you to everybody who's joined. I'd also like to ask that if you are not speaking, please put your computer and other devices on mute. If you have a question, you can click the chat button in the bottom right-hand side of your screen and we ask that you type that question down into the chat. And then throughout the conversation for this hour, we'll answer those questions as we go along. So, I also want to mention to everybody that the session is being recorded and the recording will be shared on our public website, as well as in the beta.sam posting. So, just for your knowledge, we have a limited amount of content that we're going to push and we want to ensure that there's ample time in this forum for industry questions and answers. So, I'll point out that our team will not be answering question specific to a current acquisition, a current case, or a submittal. But we want to answer some general questions that you guys may have. So, we encourage everyone again to use the chat box to answer or...I'm sorry, to ask your questions. So, just really quick before we get started, I'm going to provide you guys with some background on the Commercial Item Group. We're a team of cost-price analysts and engineers who focus on providing support to government buying commands for commercial procurement. We currently have two warrant and contracting officers who offer commercial item determinations for requesting government agencies, and now we're providing that same opportunity to industry. The CIG's overall mission is to provide commercial acquisition insight for the integration of commercial products and services into the DoD to streamline procurements and ensure Warfighters receive cutting-edge technology at a fair and reasonable price. So, with that, the DCMA Commercial Item Group has implemented the industry request initiative to review commercial items from industry ahead of the government's need. So, your panel today is going to include the following: Patrick Crisler, Mike Whelan, Ryan Connell and myself, Kori Marietta. We are all Commercial Item Group supervisors leading a team of almost 60 cost-price analysts and engineers. And with that, I'm going to turn it over to Patrick Crisler who's taken the lead on this industry request initiative. So, Patrick, it's all yours.

- Great. Thanks a lot, Kori. So, I want to welcome everyone to the day. I'm assuming everyone can hear me now, but wanted to welcome everyone. This is our second phase of this industry request effort. We did an initial run earlier in the year and we focused mainly on non-traditional contractors—those folks who typically do not provide product or services to the Department of Defense. This time around, we went with both non-traditional and traditional contractors but we focused our efforts, or focusing this RFI, on a specific set of product categories, such as space systems, unmanned and autonomous systems, energy and materials, ruggedized and high-performing computer components, high-energy/long cycle-life batteries, engines, and IMUs. I know that almost seems like the kitchen sink, but there's a ton of other...other product areas that are out there. And we choose these because these are specific focus-areas of the Department of Defense, and have been researched and looked at across multiple platforms. So, just to give you a couple of... couple of things, what we're looking for is this...this RFI is open through February 19th. There's no rush to get a package in if you...if you have something you want to submit. I

want you to make sure that you are checking to see what are the various requirements for a package submittal.

< 05:04 >

Those are listed on the sam.gov notice. There's a couple of attachments to the notice. One of those is a listing of document requirements. One of the things that we found from the first time we did this is that a lot of folks were not presenting or were not giving some of the material, or some of the data that was needed for us to do a proper analysis of the...of the item. So, a couple of things just to...just to emphasize is we need to have detailed technical information, not just the part number and the nomenclature. We need to have side-by-side comparison between an actual commercial item and then your item, so that we can do a proper analysis between commercial items and your item. And we need to see what those...what the non-governmental end-use is, who the end-user is. And that's one of the reasons we ask for unredacted invoices for these or unredacted offers that you may have with...with non-governmental customers. These...the commercial item determinations are basically a determination that your product meets the FAR definition of what a commercial item is, which may be something that you may or may not be familiar with. The FAR 2.101 has a listing of eight definitions, two of which are for services, but the other six deal with products themselves. So, I would...I would definitely suggest that you take a look at it. There are...in the attachments to the notice, there are the documents in there. And in the documentation, it lists, briefly, what those definitions are so that you can...once you know what your...what you think your product falls under, you can identify that for us. We will look at all of the definitions if it does not fit the one that you feel that it meets. So, let's see. What else.

- Patrick, it looks like we have some questions coming through the chat. So, the first one came from Brian. And I'm going to turn this one over to you, Patrick. But the question is, is this for contractors that want their product determined commercial or could a contractor who wants a subcontractor's product determined submit a request?

- Alright. Good question. So, one of the things that...one of the things that we want to make sure that we do here, or with this particular RFI, is we want to make sure that we are not looking at anything that's currently be procured by the Department of Defense. That being said, you can submit your own product for determination or you could, if you have a subcontractor that you typically use and you have...they have a product that you think meets the commercial definition, that can be submitted as well. As long as you have the information, the data that goes along with that.

- Alright. Great. And we've got another question here. Did I cut...I didn't mean to cut someone off. Was there...

- That was...that was...that was just me, Kori. I just looked over and I saw the commercial services question.

- Oh, okay. Yeah, the next question, will commercial services be considered as part of this effort?

- Yeah. So, commercial services are not a part of this effort, currently. Every now and then, we will get a part that comes in that...that has a commercial service that's intertwined a product in some way. In which case, then we...that might be part of our analysis that we...that we look at. But typically, what we're looking at here are products only during this RFI. And...and further down the road we might...we might open it up to services as well.

- Alright, great. And we have another question from Patrick. Can you provide us with the checklist the CIG uses when reviewing assertions?

- I'm going to turn that over to Mike Whelan.

< 09:49 >

- Yeah. So, that kind of gets into a question that I...I just wanted to touch on regarding, kind of, what goes behind the decision. We have a whole lot content that we created in order to...or in support of the first industry days, and it really is a lot of good content that talks about what's going into our decisions, some of the information that really helps drive a good package. And so, I can show or screen-share our public-facing page and it may be a good way of...of showing people, you know, where some of this good information resides. Certainly, we can answer questions regarding how CIG reviews items and services, and how we operate, but the reality is Department of Defense is...is quite large, and everyone, kind of, operates under a different way. So, I can speak to how our group reviews information, but the reality is there may be PCOs that have slightly different requirements, or look at things a little bit differently. But within the Commercial Item Group, generally, the engineers are on the...the technical review and really look at the commerciality piece with industry requests. We are getting our price-cost analysts involved, as well, with the anticipation that we'll have a whole lot of requests coming in. And really, for commerciality, Patrick's hit on it really well. You know, we're really looking for technical information, good comparisons, not only of the part that you're proposing as commercial, but also the comparable part that may draw that good comparison. And in the package, we're really looking for the contractors to tell the story and provide the information for us to make the best decision possible based on the FAR regulations in FAR 2.101 for commercial item definition. I believe I probably got off on a little bit of a tangent. Ryan, you want to just do the quick screen share right now?

- Yeah, it should be [inaudible].

- Ok. I just wanted to just take a quick second to show our public-facing page. I know some of you maybe were on the industry days meeting back in February, which seems like forever ago. But for people that may be not familiar with the Commercial Item Group page, you can access it super easy. You can either Google DCMA CIG and it's the first link, or you can go to [DCMA.mil/Commercial-Item-Group](https://dcma.mil/Commercial-Item-Group) and that'll bring you to this page. And the things I really wanted to highlight are under this "what's new." If you're familiar with the sam...or beta.sam.gov link then you're probably already don't necessarily need this link. If you're not familiar, you can basically copy this link and it will bring you to what Patrick was referring to for our industry requests. Then, also just wanted to highlight DCMA.Boston email address. This is where you can ask questions or submit your package in support of these industry requests. If you go down a little bit further, there's a commercial item database. Now, right now, our public-facing database is on the left and that's where you may be able to look-up an item and...and use some of the information. Although, I will say, it's currently being evaluated and getting a little bit of a face lift. We're hoping that we have something out in February-March timeframe that's a little bit better of a product. So, that's kind of under renovation. The commercial item database that's used by...within the DoD is currently only accessible by DoD employees. So, industry is not going to be able to access that piece. And then, also under "sharing information," there's a lot of good information. Frequently-asked questions. Just wanted to highlight what I was referring to with the industry day slide. It's the fourth bullet down. And I highly encourage you to click on that and go through some of the information. It has things like how contractors can improve their packages. A lot of really good information that DCMA Commercial Item Group presented to industry already. Certainly, go through that and if you have any questions, we can answer those. And it also highlights some of the industry questions that we got from our original industry days and provides the CIG's answer to some of those questions. So, encourage you to click on some of those documents and...and pour through that information. We also have, under "additional resources," wanted to highlight the commercial acquisition resource page. So, we partnered with DAU

and went through all the definitions and, kind of, the nuances, and some of the information that...that CIG really looks for, based on the FAR 2.101 definition that the contractor is asserting. It has some other information in there to DPAP Commercial Handbook. But I would say the big one is that commercial acquisition resource page that DAU collaborated on with us.

< 15:34 >

- Yeah. So, Mike, I'd like to caveat off of what you just said. Patrick, in reference to your question about the checklist, if you access the commercial acquisition resource page there and you can actually see an example of a completed CID based on the definition that you're asserting commerciality. So, it...it'll show you, by header, each step-by-step, what information needs to be included in each section. I'll throw in, as well, that under the DCMA internal resources... I'm not sure if those are publicly-accessible. But either way, that commercial acquisition resource page, it'll show you, sort of, step-by-step, based on the definition that you're asserting commercial, what needs to be included in your package.

- Yeah. Thanks, Kori. Yeah, we don't have necessarily a set checklist that every engineer or a price-cost analyst goes through. But that is probably the closest thing that we do have that may be of value to industry.

- Alright. So, I'm going to go back to the chat box and it looks like we have a question from Megan. Will there be a minimum price for a product that is to be determined? So, I believe the question you're asking is, will there be a minimum price for products that we're reviewing for commerciality under this sam.gov initiative?

- Yeah. So, for this particular initiative, what we're looking for is we're looking for is we're looking for something that is going to exceed the TINA threshold. Not product-wise, per se, but extended product-wise. So, if...if, let's say, the next five years you plan on selling 100 units of this product to the government and those 100 units over that five years will exceed the TINA threshold, we will take a look at that...of that product. So, the product itself does not need to, particularly, exceed the TINA threshold, but the extended price, I'll say, of the product needs to exceed the TINA threshold.

- Alright. The next question we have comes from Jim. Does that include products that are on the GSA schedule?

- So, I've got a couple things to say on this here. So, if you do have a product that's on the GSA schedule... GSA, I believe, sometimes, will issue a determination on a particular product, or they may have further information in their...in their data banks that they can provide us or you to provide us to do a determination on your product if it's on the GSA schedule. A lot of times, that makes it, I'll say, easier or more...more efficient to be able to do an analysis of those products that are on the GSA schedule. But not everything that is on the GSA schedule, I'll say, has had a determination done on it before. So, just because it's on a GSA schedule does not mean that it has been determined commercial, but it...it should make our analysis more efficient. If...if it is...if you do have something that's on there.

< 19:27 >

- Alright. The next question we have comes from Steve. To what extent can contractors rely on the existing DCMA database for CID justification? So, I...I'm hoping that I can, maybe, answer this. So, currently, we have two databases. We have the Excel repository that shows, since 2016, all of the items or services that we've reviewed for commerciality. Unfortunately, on the public-facing Excel repository, it doesn't have the results of those reviews. So, it just shows evidence that we've actually reviewed them. We have a DoD-only CID database that was recently established that shows the actual

government CIDs that have been completed by either the buying commands or by the big contracting officers. So, the data that's in both of those databases is accurate and it...it's reliable. If you have a part or service that shows on the Excel repository that's public-facing, and you're working specifically with a buying command or with an office, you would...I would highly recommend that you suggest the buying command request that information from us. It'll have the historical technical reviews, commercial item determinations, and/or any price reasonableness reviews that our offices has conducted. I...I hope that I'm asking...or I hope that I'm answering the question correctly. If you...if you have any more, you could send me a private message on here and I could expand on that. Patrick, Mike, Ryan, anything else?

- Yeah. I mean, I would just say that...that if you have had a product that has previously been reviewed before, it should have received a determination of...of some sort, you know, either from us or from the PCO that you worked with previously. And so, I would definitely contact that PCO first before going any further on...on that.

- I'll just add quickly. So, the...the thought process and, I'll say, maybe even future regulation will require a contracting officer to take their CID, put it in the DoD database. So, at some point in the future, the idea would be that this database is all-inclusive of all PCO's determinations of commerciality. So, that said, if your particular item has been determined commercial by a contracting officer, unless—someone else correct me [inaudible] on the phone—I don't think there'd be a need for you to, you know, happen to submit for this particular RFI, I think the way forward would be to get that specific CID uploaded in the database. Because once it's in the database, other contracting officers can see it [inaudible] their acquisition strategy for their particular award.

- Alright, we'll move on. Next question is from Mark. Is selling to a prime with a DoD contract considered selling to the government?

- So, in regards to this RFI here, I would say yes—selling to a prime with a DoD contract, if you are providing a product to the prime to then provide to the government, then yes, that would be. However, if you are not currently providing that product to the prime in support of a DoD contract effort, then it is good to go for submitting a package for here. And if you have a specific question on a specific situation that may seem kind of fuzzy to you, shoot an email to the inbox and we'll try and address it specifically later.

- Alright. Next question is coming from Steve. Do existing CID need to be resubmitted under this RFI?

- If you have an existing CID right now, a determination, then you're good to go as far as determination-wise. A further submittal on the exact product that you have a determination on already would be superfluous.

- Think it'd be important to clarify, I guess, the question. Because if...if everyone remembers from industry days, there was a little bit of confusion regarding commercial item determinations that were signed by a PCO and CID that the prime [inaudible]. So, we probably need some additional clarification. If it was a CID, signed by a DoD PCO, then you're good to go. If it was a prime CID, it may be wise to submit.

< 25:25 >

- Right. Very good point, Mike. So, in the eyes of the government, the only valid commercial item determination is signed by a representative from the government. Alright. And we've got one more

question from Steve. What will be the endgame with the CID packages submitted under the RFI? Patrick, do you want to take that one?

- I think I...I think I almost need a little further clarification on what the question is asking here. So basically, the endgame for the CID packages submitted under this RFI would, hopefully, be a positive determination for your product. And, after that, you would receive the determination letter. And you could use that for any future submittals that you may have with the government when you are pursuing a procurement.

- Patrick, let me expand upon that a bit. I had planned to talk about this anyway, so it's a good segue. So, just the "why," like the value prop, right? Like when we first talked about doing this pilot, I had a few friends reach out and just say, what is this? Like? What are you doing? What are you trying to buy? Right? Why, right? All that stuff? Right? Why would...why would we do this? Right? And we'd have to take a step back and look at it from an industry perspective as well. And, you know, we understand that we're asking, you know, you to make business decisions to put proposal packages together, and that costs money, and there's no award at the end of it. Right? So we really have to help you all understand why. Right. And so, you know, from the industry perspective, for those, you know, that might not be as knowledgeable when it comes to FAR as others, right? FAR part 12 is this reduction of barriers-to-entry-type contract authority, where you basically are exempt from certified cost and pricing data. And there's no defective pricing liability. Right? So, less clauses, right? There's less flow-down clauses. Right? And even easier to that, if it's under seven and a half million, you can even use FAR 13, if it's commercial, which is simplified acquisition procedures. Even easier, right? Less barriers to entry. Right, so...so why now, when we're not actually having an acquisition, right? And the thought process here was that this process... And, granted, our team typically looks at the gray area, we're not looking at a lot of COTS items, right? We're looking at the things that are kind of difficult to decide if they are commercial or aren't. But it takes us about 40 days to make that decision. And we're doing it right now in an acquisition, in an active acquisition that are waiting for our answer so they can go ahead and negotiate, put it on contracting, get products and services to the Warfighter. Right? So, that's 40 days of PALT. Right? And so, we're talking about taking that process and completely taking it out of the acquisition cycle, completely. Right? Because there's nothing that says we can't. So, this pilot, or this idea is to take this back-and-forth, is it commercial or not decision, do it in advance of the acquisition, so that when there's an actual award or pending contract, or upcoming procurement, you all have this document in hand that says, hey, look, what I'm selling is commercial. The government already decided, so there needs to be no back-and-forth on that at that point, right? Regulation now allows for contracting officers to use other contracting officers' decisions. Right? And then, think about it from a subcontractor standpoint. Right? Right now, you know, today's environment, the prime is the one that makes that commercial decision. Right? And...and oftentimes, there's back-and-forth between the prime and the sub. You know, is it commercial, is it not? Right? So...so rather than, again, having that back-and-forth, this is an opportunity for the government to do the review and give you that CID enhancement. Next time you go to a prime contractor, you have that document, which is precedent-setting, and you no longer need to put together that big robust package for each individual award. Right? So, you know... And then, from our perspective, you know, doing this in advance, we're sort of...we're sort of steering the future of acquisition strategy, right? So, we're sort of dictating that these are the products or that that...that you should be using a more streamlined commercial acquisition approach to... These are the products that you should be using FAR 12 and FAR 13 to buy. Right? So, we're helping the department shape acquisition strategy for the things that really are commercial.

< 30:15 >

And then, just big picture, DoD benefits, you know, commercial acquisitions should theoretically increase competition. Right? And...and so, because there's more players that can play because the

marketplace is, you know, has this...these types of technologies, the innovations, whatever it is, there's more opportunities, more companies doing that type of technology, right? So, you're...you're inherently increasing competition, and you're allowing some of the smaller non-traditionals more of an opportunity to play, which increases the Defense Industrial Base.

- Alright. Thanks, Ryan. We're gonna move on to the next question in the chat room, from Steve. Are targeted product areas in the RFI limited to parts or components? For example, are integrated satellites or spacecraft buses candidates for CIDs?

- So, yeah. So, for the...so, the various targeted product areas, if you...if you look at the RFI in sam.gov, it'll give you a little bit more, kind of, expansion of...of what we're...what we're looking for. But it is not... If you have something that...that you think meets the commercial item definition, and it is a spacecraft bus or a satellite, or whatever, you can submit that...that product. And then... But like I say, take a look at the definition and see...and see how you can, you know, explain and show evidence that it does meet that definition.

- Alright, great. The next question is from Hunter. What are some of the common reasons for a product to fail to receive a CID. Mike, do you want to take that?

- Yeah, absolutely. I would say, sometimes, the easy answer is when...when a contractor hasn't provided enough information, that tends to be the...a challenge, because our engineers and price-cost analysts, we're doing independent market research, we're trying our best to come to that commercial conclusion. But sometimes we're limited with the information that is available on the internet. So, we're really looking for contractors to help answer some of those questions. And sometimes we still come up short. I know sometimes we run into price cost analysts not getting some of the information that shows the product was sold or offered for sale, even if, you know, it could be the...the part that we're reviewing, or even the part that it's being compared to. You know, with...with products, I would just say, sometimes it's technical information and comparisons. You know, we really need help bridging that gap. But if you're comparing items, you know, what...what is...what are the big differences? What are the cost-drivers associated with those? It's not to say that, you know, something that is two times more expensive is going to be non-commercial. So, we're just trying to understand and...and really validate some of this information. I'm trying to think of other...other areas that we've, kind of, seen and experienced. But really, I would say, the biggest one is just trying to find information. And sometimes we come up short, and...and we're not gonna, you know, take that risk on as the government in saying something's commercial if we haven't validated some of these items. So, you know, at the end of the day, that that's probably the...the biggest one. Patrick, you have anything to add to that? I feel like I'm missing something.

- About why it fails to receive a...a CID?

- Just some of the stuff that we kind of commonly see as why things are...are deemed commercial.

- Yeah. Yeah, I mean, for me...for me, the...the big thing is that, a lot of times, contractors or...or submitters will fail to provide the evidence that it meets the various parts of the definition. So, if you...if you sit down with a definition, and you parse out the various parts of it, you will find that it's a lot...it's a lot bigger than at first looks.

< 35:04 >

So, you have to, kind of like, step through it. You have to say, okay, it's an item. It's generally used. It's for non-governmental purposes. And you just, kind of, step through the...the definition. And as long as

you're providing evidence that shows that it does meet those various parts of the definition, you should be good. And... But sometimes, there...the evidence does not show what, you know, what...what you think it...what do you think it might show. But we would ask you about that if we came upon something that we're, like, going, "Hey, we don't think this evidence that you've submitted," you know, "shows that it meets this part of the definition." We'll go back to you, and we'll say, "Hey," you know, "this is the type of...this is the type of information that we need to show that it does meet that." So...so, there definitely...definitely...there are, you know, various, you know, various things. But those are probably the...the biggest things for me is...is not providing that definition...or not providing that evidence to show that it meets the definition. And some of it is just, you know, just the...the mere fact that the various parts were not addressed adequately.

- Yeah, and you kind of jogged my memory, as well, when...when you were responding. But, you know, one of the big definitions that we come across is paragraph three and the commercial item definition. You know, either three I or three double I. So, if you're using that, you know, we really need to understand what the modifications are. I mean, if it's three I and...and that modification is really available to anybody, you know, providing that evidence and really helping us understand that really any...anybody, any customer for your company could potentially have that...their product...product modified. And then, also, three double I, in order minor modification in the federal government requirements. We all know that the government, federal government likes to ask for crazy things. So, we understand it. We've seen that a lot. But it's just, again, connecting the dots, helping tell the story, answering some of the questions to help us understand a little bit better, really goes a long way in order for us to understand it, and then provide the best recommendation to our contracting officers to make a determination.

- Alright. Great. We're gonna go to the next question from Gary. Will government contracting officers be required to provide contractors an approval or disapproval of CID packages submitted by the contractor? So, will government contracting officers be required to provide contractors an approval or disapproval of CID packages by the contractor?

- Kori, I think the question's asking, are we gonna, basically, let people know if they're...if we're gonna approve or disapprove, essentially, a CID or a non-CID? That's kind of how I read it. And, I guess, to answer that question, when we're getting these packages in, we have somebody that, kind of, is doing the intake, and...and we have a vetting team that's reviewing some of the content that's being provided by the contractor. So, based on the information provided is really how we're operating in terms of is there enough there based on what we, I guess, required as far as the submittal goes. Is there enough there to assign an engineer or price cost analyst? If it is, then it gets assigned. And the answer is yes, you will hear back from us whether we go commercial or non-commercial. And if there are challenges with the package, maybe an important component is missing, I believe, Patrick, that we'll be reaching back out to the individual that submitted it to see if they can provide that missing information. And if they do, it'll get assigned and you'll get an answer. But if we're missing information, I believe—a significant amount of information—I believe we're not going to be moving forward with the...the review. Is that correct?

- Yeah, so let me just do a quick...a quick overview of the time...timeframe...timeline that...that happens with the cases. When you submit a case to the...to the inbox, industry requests inbox, our program analyst takes it in, they log it, and they assign it to our vetting team.

< 40:00 >

And at that time, you will also receive an email from our program analyst saying, "Hey, we got your package. It's been assigned to a vetting team." And it will also give you, kind of, a timeframe for data

submittal. So, it'll...it'll talk about, you know, if you get a request for more data, you have so many days to provide that data, et cetera, et cetera. When the vetting team gets it, the vetting team will take a look at what you've submitted and...at which point, when they get...get through that, which typically is done within five working days or so, you know, they're gonna...they're going to send an email to you if they need further information that was not provided. And then, in that email that you receive, there will be a deadline for providing that information. One of the...one of the things that we had issues with in the very first go-round, earlier in the year is that we had a lot of these cases dragging out due to not getting the information that was required for us to do the analysis. So, I want to...I want to basically, kind of, you know, restate that there's not a rush to get a package in as long as you get in before February 19th. So, make sure that your package includes all of the documentation and data that is required in the RFI. So, what we're going to do is if your package is missing some of this data, we're going to send you an email requesting the information further. And if that data does not come back by the time that we request it by, we're going to cancel that case. So, we just need...we want you to, you know, submit as good of a package as you can. We are here to help you. I know that's a...that's kind of an oxymoron with the government. But we are here to help you. We want you to have the...the best outcome, you know, that you can. So...so, take your time. You know, make sure you get, you know, all the data together before you submit the information, making sure that you're, you know...the technical characteristics comparison, form fit function performance, making sure that you have unredacted invoices showing non-governmental end-users or purchase orders. And make sure that you are looking at things on a, basically, a part number basis. I know one of the things that...one of the things that we...that we really need is we need to have a configuration that is settled and that's firm so that when we do a determination, we're basically doing that determination on that item itself. And so, we want to make sure that we have...have a set configuration in which to issue a determination on.

-Hey, Patrick, I just wanted to provide one quick clarification. So, my original answer was based on industry requests. And I just wanted to clarify that our process for, you know, DoD customer requests is slightly different. You know, we...we tend to get a request from, you know, DoD PCOs to look at their program or certain subcontractor part. And, you know, we...we write a commercial item determination. And those determinations are not sent to the contractor. So, it's only the DoD...or sorry, it's only the industry requests where industry will find out what our decision was. DoD customer requests are only sent to the...or CIDs are only sent to the PCO. And we do that because we've run into a couple of issues and challenges with various programs where, you know, we were trying to share information as widely as we could with contractors, and it just was a problem with negotiations for their programs on the PCO side. So, we made an executive decision and that's kind of the...the reason behind why we do not share our...our DoD customer request CIDs with industry. At least, for the time being.

< 44:57 >

- Alright. So, it looks like we're pushing up on 15 minutes left, and we still have quite a few questions. So, as promptly as possible, if we can move out on these answers. It looks like I overlooked a question from Brian. How long might a determination be expected to take? So, Patrick, what's the approximate turn time for a commercial item determination on your industry request team?

- So, it all depends on...on how much information we get, if we have all the information, all the ducks in a row. We have the... In the very first round of the industry requests, we had a case that was turned within 48 hours, where we had a determination actually written and...and sent out within 48 hours, all the way up to about 40 days. And that one was basically due to needing further data from the contractor to do the determination. But the timeline for these cases will depend on what our workload is at the time of submittal. So, if we have a...a heavy workload of government requests for determinations, that might slow down our timeline for...for these industry request determinations.

- Alright. Next question from Hunter. If a product fails to receive a CID, is the applicant allowed to apply again in the future for the same product?

- I can take a stab at it. I would say yes. I mean, just in general, everything is evolving, changing. We looked at a...an engine for a helicopter at some point in the last year. And if we had looked at that product five, 10 years ago, it would've 100 percent been non-commercial. No way, no how. And we ended up going commercial on it. So, I...I would say yes. I mean, it makes a whole lot of sense. I would just, you know, obviously read through the CID and figure out where, maybe, some of our hurdles were. And, you know, I...I think that we'd be open to revaluations, especially knowing, you know, some of these...some of you all, the contractors, you know, are trying to expand into various markets with your products and know that evolution may make it easier to hit some of the commercial item definition criteria.

- Alright. I'm seeing some exchange in here about audio issues. And I know that when Ryan was speaking earlier, we were having a problem. For those that have video up, can you give me a thumbs up if you're hearing everything okay? Everybody good to go? Awesome. All right. We had a question in here about examples of bid packages. I can respond to you privately afterwards, but there are examples of commercial item determinations on the commercial acquisition resource that's on our forward-facing website. Again, we'll address those privately after the call, too. Let's see. There's a recent change to the commercial item definition under 2.1018 adds products developed at private expense and sold in substantial quantities on a competitive basis to multiple foreign governments may change an existing FAR 15 determination to FAR 12. Can the original FAR 15 determination be challenged via the CIG?

- Can you hear me okay? [inaudible] Yeah, I'll try.

- Yeah, there you go.

- So...so it's, kind of right now the way regulation is written, it's almost a one-way street where you can determine something to be commercial, which allows you to use FAR 12. But there's really nothing in regulation that talks about a non-commercial determination that would be precedent setting. So, if something was awarded previously using FAR 15, non-commercial, and any PCO, including the ones in the commercial item group, happened to write a commercial line determination for that part, that would effectively dictate that [inaudible] 12 would be the correct [inaudible] going forward. I think that answered the question.

< 50:05 >

- Alright. We've got another question in here from Steve. Are CIDs only determined on part-number-by-part-number basis. Alternatively, can a product line be submitted for a CID?

- Okay. So, yes. Currently, determinations are done on a part-number-by-part-number basis. We do not issue CIDs for family of parts, nor do we issue CIDs for [inaudible] process views. These are areas of discussion within the CIG. But currently, we are not issuing CIDs on family of parts because that family could, you know, could expand, it could include other things that weren't in there originally. And we want to avoid that. Obviously, we've...we've talked about, you know, different ways of kind of limiting the applicability of the of the CID, you know, going forward. But that is not something that we are currently doing right now. And the...and the same for technological processes, like foundry services and such like that. We have not...we are not issuing determinations on...on those technological processes either.

- Okay, I'm jumping through some of the audio issues here. So, Ryan, Mike, if you guys see a question in the chat that I've missed, please let me know. Alright, so it looks like a question from Deborah. If invoices are redacted from the subcontractor will CIG engage with the subcontractor to review the unredacted document?

- I'll take it. The answer is yes. So, when we're... I believe that it is a [inaudible] as far as industry requests go, because the reality is the subcontractor could be compiling direct requests to our group. But in terms of doing a commercial item determination in support of a DoD customer, we certainly will reach out to the subcontractor if we are essentially granted that authority. So, we will never reach out to a subcontractor without the permission of the prime. And that's just standard practice for our group. But certainly we...we are able to at least request some of that information, which really does help support some of our reviews. And especially if we're looking at if a product has been sold or offered for sale, the unredacted documents really help us see who it was actually sold to and, you know, for what amount. And so, we definitely will do that as part of our review, but only when the prime contractor says that we can.

- Alright, I think that I've got a question here for Ryan. Will services incidental to a product be commercially procured by the government being considered? I believe...

- So...

- ...this question is in reference to commercial services for a commercial product.

- Got it. So, I mean, at least as far as it concerns for this industry day pilot, or we're [inaudible], but I don't believe we're doing [inaudible] thinking about earlier, I guess, out of this pilot program. Sure we review things for services all the time. But specific to this initiative, I believe we're just doing products.

- Correct. So, yeah, products is the...is the main focus of this particular effort. We did have, in the...in the initial phase, which was also focused on products, we did have one service that was integral to...the to the part that was being provided. And so, we reviewed that service as well. But if...if it's not integral to the product, then we are not reviewing it.

- Okay, next question from Mark. Can an item still be commercial if there's adequate competition, even if the only user is the Government?

< 55:09 >

- I'll...I'll start, but Patrick might come in after, if you want. So, can your item still be commercial if there's adequate competition? I think, yes. And I think we see this, you know, all the time. The government is often the only buyer on things that happen to still meet the commercial definition. Just because of the way that the language is written, it allows for some flexibility, you know, of a type, even things that are minor modification, but specifically for DoD. So, in those eight definitions that definitely [inaudible] latitude to the government being the only buyer of that [inaudible] item. But that said, you still want a marketplace for other type items, or a base that was modified from, etc. And so, as far as competition is concerned, the [inaudible] relationship between those two is they're both exceptions to certified cost and pricing data. Right? But you'd still want to go commercial if you're doing... If you're buying commercial, you can still have it be a competitive action, I guess what I'm trying to say. But commercial can also be sole source. So they're...they're mutually exclusive.

- Alright, I have a question here from Sean. Patrick, I'm going to pitch this one to you. It's a three-part question. So, if we can do this step-by-step, it might make it easier.

- Eight-hundred dollars.

- Eight hundred.

- That's... Oh, this isn't Jeopardy. Sorry. Go on.

- Alright. So, the first question. If a higher assembly has a CID, can you consider a piece part in that assembly as commercial?

- Okay. So that's a...that's a slightly tricky way of asking that question. But a lot of times, piece parts within a higher-level assembly that has been determined commercial could be considered commercial. However, just because the higher-level assembly has been determined commercial does not necessarily infer commerciality on the piece parts that make up that assembly. This is especially true on those items that were determined to commercial under a three II—modifications made for government use. However, if it was a...if it was a definition one or a definition three I, or, you know, some form along the way there, then a lot of times those...those piece parts, or those parts that make up the higher-level assembly, most likely will be commercial. But it is not a...it is not a, I'll say, a "free pass," so to speak, for those piece parts.

- Okay, the second part of that question. Do we need to provide a commercial assertion package for a lower assembly to get a CID? So, in that scenario, if you have a three I—a modified item—the overarching assembly, the major assembly is considered commercial, but there's a component, can you review it a component...at a component level? So, for a lower assembly?

- So, for whichever part you are looking for commercial...a commerciality determination on, we need to have data specific to that part. So if, let's say, you have a laptop that has a, I'll say, a military hard drive or an external hard drive or something, and let's say the whole overarching thing was a...was a...was a commercial assembly of parts, but you want it specific on that hard drive, that external hard drive, we would need to have specific information regarding that lower assembly in order to issue a determination. And that might be...

- But I think you... [inaudible]

- ...that might be a quick...a quick thing to do. So.

- And that just answered the third part of the question. What situation would have a piece part of subassembly not getting approved for commerciality?

- Yeah. So, typically the...in those types of situations, it is a three II-type of a commercial determination. Where the piece part that is...that does not receive a determination of commerciality, is that part that was modified for government use is typically why a piece part might not get approved for commerciality. That's not a...end all, be all, but that is the most common reason.

< 01:00:16 >

- Alright. We have a question from Laurie. Can the CIG provide guidance on the new rule Defense Federal Acquisition Regulation supplement, treatment of certain items as commercial items? Looks like it's DFARS case 2019 dash Delta zero two nine.

- Is that that co...comingled?

- [inaudible] Yeah.

- Yep. Brian, you want to go ahead with that one?

- Sure. I know we're kind of up against it, so I'll be brief. So, effectively, two parts to this rule. The comingled part, I don't think the CIG will get too involved with. This is really just an authority that allows the prime to treat their suppliers or subcontracted items as commercial...treat as commercial, not that they are commercial, as long as they meet this definition of a comingled item, which is that they were purchased in advance of a specific solicitation for use on multiple contracts, and under ten thousand dollars apiece. So, it's just an additional authority to help, you know... In my line, it's more of like the stock-type items. And the second part to this DFARS rule is the non-traditional defense contractor language. So previously, you could award a FAR 12 to a non-traditional defense contractor just because they were a non-traditional contractor. It didn't need to be commercial. And this authority added a second bullet [inaudible] that says you shall [inaudible] for non-traditional services, as long as they use the same [inaudible] with the service as they do for non-government and it's priced in a similar manner. So, that's basically the change that rolled out on October first.

- Thanks, Ryan. Looks like we're starting to wrap this up. For those of you that are still on the call, if I've missed any of your questions, please feel free to enter them again at the bottom and we'll get to them. Next question, from Matthew. To what extent does the CIG value quote over invoices, so offers for sale over actual sale?

- I'll answer it. Um, you know, offer-for-sale is a huge part of the definition. So, I would say equal. I would say most of the time we see actual sales invoices, not quotes. But that's not to say that quotes aren't a part of, you know, how we can get to commerciality. So, the important thing with offer-for-sale is that, you know, maybe there's more than just one quote. Also, it would be beneficial if we could see who the quote was to. You know, again, who are we...who were you offering this for-sale to? Was it a DoD entity for DoD end-use? Or was it, you know, really just to...to anybody? So, that's kind of the important piece, but maybe another supervisor has something to chime in on. But they are still important.

- Yeah, no. This is...this is one of those areas that we want to make sure, definitely both can be used to show, you know, commercial...commerciality or non-government, I'll say, sales or uses. However, if you are providing offers, they need to make...you need to make sure that they are bona fide offers, something that is not just a quote without an intent to follow through if they would order that part. So that's the...that's...that's part of the...that's part of the thing that we need to make sure that any of the offers that, if you do show and an offer, that it is a bona fide offer, and not just a...you know, like a online I'll say catalog-quote type of a situation.

- Alright. Looks like we may have gotten through all of the questions in the chat. Do we have anything else out there?

- I do want to...I do want to kind of follow up on one of the questions that was...was asked about the endgame of the determinations. So, as a result of this current effort that we're running here, the contractor would receive the commercial determination, or if it was assessed as non-commercial, they would receive that non-commercial assessment, as well explaining why we did not find the item to be commercial. And, yeah, that could run the gamut of, you know, missing data or whatever the situation may be. So...

< 01:05:30 >

- Alright. I will say, too, that—just to kind of reiterate what Patrick and...and Mike and Ryan have all said—if you have questions specific to your...to your package, please submit a request to the...to the inbox for... As contradictory sounds, we really are here to help. We want as many industry packages to be as successful as possible. So, don't hesitate to send a question in through the inbox. And with that, I'm going to say thank you to everyone who participated. Thank you very much to our panel, who provided answers to some of these very complex and difficult questions. And then, also, one last time, thank you very much to Michelle and Chris, and DAU for hosting this event for us. We appreciate all of your feedback. We look forward to doing many of these in the future and hope that we can continue to provide support and assistance wherever you guys need it. So with that, I'm going to turn it over to Patrick to close out the session. And again, thank you guys very much.

- Okay, yeah, I want to thank everyone for calling in and dialing in and webbing in. It's been...it's been good. Definitely, if you have further questions, shoot us an email to our industry request inbox there. Ryan put it into a chat. It's also on our public website. And we will get to those questions as soon as we can. And then...yeah, it's... Like...like everyone has said, we're...we are here to try and, you know, get you a positive outcome on your submittal. So if you have...if you have questions, you know, we're gonna...we're gonna try and work with you. But, yeah, definitely look at the notice, look at the required documentation. If you have questions on something that we're requiring, shoot us an email and ask a question. No question is...is stupid. So, you know, just shoot us...shoot us what you have and we'll get you the best answer we can.

- So, Patrick, let's make this a habit. Let's get together more often. You just let us know when you have another bright idea and we'll...we'll host the platform and we'll share. So, good for you. This was fabulous conversation. Thanks for doing this.

- Thanks, Michelle.

- Okay, everybody. Good luck. Have a wonderful holiday and we'll see you next time.

- Thanks, everybody.