

## “Ask the Commercial Item Group (CIG)” –

### Unanswered Questions submitted by Industry prior to the first Industry Days Meeting

#### CATEGORY: EVOLUTION

**Question:** What is the objective of instituting the commerciality concept in U.S. Government procurement?

**Response:** FAR12 was implemented to streamline and improve the efficiency and effectiveness of the commercial acquisition process. As a result of Federal Acquisition Reform Act (FARA) and Federal Acquisition Streamlining Act (FASA) in 1994 and 1996 respectively. If we implemented the traditional contracting methods used in FAR 15 to procure everything, the result would be longer acquisition timelines and fewer companies willing to do business with the federal Government. FAR12 allows for deviations to requirements such as certified cost & pricing data, cost accounting standards and possible Government involvement with inspection.

**Question:** Please define CIG's charter

**Response:** The CIG was created to comply with the 2013 National Defense Authorization Act (NDAA) and 10 U.S. Code § 2380, to serve as the Department of Defense's Centralized Cadre of experts for commercial acquisitions. The CIG serves as a business advisor to the Department's procuring officials with respect to providing acquisition strategy, commercial item determinations, market research and price reasonableness for items/services that meet the commercial definition.

**Question:** When will Industry Day happen and where will it likely occur?

**Response:** The first Industry Days meeting was held on Feb 20, 2020 in Tampa, FL. The second Industry Days Meeting has been postponed due to Coronavirus. The CIG plans to continue hosting periodic industry days and is exploring a mix of in-person and virtual opportunities to continue this invaluable communication with Industry.

**Question:** The CIG has taken a very narrow view of commercial products and services. The Sec. 809 Panel wrote that the overly restrictive view of "commercial" has stifled innovation and created barriers for commercial companies to do business with the Government. How is this narrow view benefitting the Government?

**Response:** The CIG has broadened the definition further than its original intent. In March 2020 we met with one of the original authors of the commercial definition and FAR12. We learned that when developing the commerciality concept, there was no expectation that anything would fit the definition without a competitive market. Under this initial viewpoint, any new company that has an innovative product or service would be considered a nontraditional defense company, and the PCO has permissive authority to use FAR12 regardless of a commercial determination.

By the CIG taking a broader viewpoint, we have relaxed the initial intentions to make commercial acquisition less restrictive, thereby, providing a greater opportunity for Industry to support and justify their commerciality assertions/determinations. This broader viewpoint does not however automatically mean that all proposed items/services meet the commercial definition requirements under FAR 2.101 – each case will continue to be evaluated on the merits and supporting documentation (justification) package provided by Industry and independent market research/information obtained by the CIG.

**Question:** Why is the Commercial Item Determination (CID) list (Repository) no longer available to contractors?

**Response:** The 2017 National Defense Authorization Act (NDAA) requested the addition of market research and pricing information be added to the commercial item determination database. Due to the addition of this proprietary information, the Secretary of Defense restricted public access,

**Question:** If industry is able to submit directly to the DCMA CIG for determinations of their products, will the determination suffice for a prime contractor? Currently, there is inconsistency based upon how the CIG and DCMA make determinations vs. how a prime contractor makes determinations, due to Contractor Purchasing System Review (CPSR) requirements that are inconsistent with the NDAA, and DCMA's guidebook for determining commerciality.

**Response:** The question above contained two separate elements that we want to address individually. 1) In the future, if industry is able to submit directly to the DCMA CIG for determinations of their products, this would be a DoD Warranted Contracting Officer issuing a commercial item determination. Industry is able to use any existing DoD Warranted Contracting Officer CID. 2) Regarding inconsistencies between the CIG and DCMA making determinations, the CIG is the only group within DCMA to issue commercial item determinations. Regarding inconsistencies with CPSR requirements, NDAA and DCMA's guidebook for determining commerciality, please contact the CIG at (<https://www.dcms.mil/commercial-item-group/>) to discuss further.

**Question:** Will there be a data warehouse or repository that is more user-friendly than what is currently available so that prime contractors and PCOs can see which products DCMA has classified as commercial?

**Response:** Given current regulations, there will not be a data warehouse or repository. The 2017 NDAA requested that the Secretary of Defense remove public access to the database of commercial item determinations. If future regulations/law changes, there may be the possibility of Industry gaining access to this repository.

**Question:** How likely is it that industry will be given full access to DCMA's CID database?

**Response:** This is dependent upon the laws that are passed and language released in upcoming NDAA's. The 2017 NDAA directed that the Secretary of Defense remove public access to the database of commercial item determinations. We see value in Industry having access to the determination portion of this database and will advocate for the release of the determination portion only in the future. We will continue to work with OSD to find ways to release this information to Industry. If a future NDAA changes this, DCMA will respond accordingly.

**Question:** Does the CIG have a comprehensive list of all commercial items by ITAR category?

**Response:** DCMA CIG has a list of all the items we have reviewed both prior to determination authority (issuing commercial recommendations) and after (commercial determinations). DCMA CIG also collects CIDs, which are sent to the database by buying activity's contracting officers. This list is not all-inclusive. It relies on collecting information from the buying activities as items are being acquired.

**Question: (Thresholds)** Since a CID is directly related to the Truth in Negotiations Act (TINA), why wouldn't the threshold for the requirement for a CID be based on the TINA threshold? While DoD has a class deviation for Government disallowing the use of GSA Schedules to determine price reasonableness, why does this apply to Contractors? GSA schedules are determined to be "commercial" by the government and therefore should be considered a reliable source for determining commerciality and price reasonableness.

**Response:** The CID threshold in recent history has never coincided with TINA. Prior to the Defense Pricing and Contracting (DPC) class deviation adjusting TINA from \$750k to \$2M, the CID requirement has always been \$1M. DCMA CIG was not involved in the regulation language; however, intends to research whether or not tying a regulation like this to TINA makes sense. Like most regulations in FAR/DFAR, they are applicable to the Contracting Officer with whom the prime is doing business. The prime is expected to act in a similar capacity, and within regulations with its subcontractors. The GSA schedule does not continually update price reasonableness based on changing market conditions. Additionally, the GSA schedule is typically based on a quantity of one. The CIG will certainly consider the price in which an item is on a schedule during the price analysis, however, this is not the only data point considered in the review. DCMA CIG has hosted a series of conversations with GSA to better understand the process GSA works through to evaluate "commerciality." Unfortunately, GSA does not perform a commerciality assessment or produce documented commercial determinations (as required per DFARS) which would allow DCMA CIG to rely on. GSA has both commercial and non-commercial items on schedules; therefore, based on these widely variations in practice and associated regulatory requirements for DoD contracting, the CIG does not rely on GSA schedules as a sole-determining factor of commerciality.

**Question:** Is the CIG considering implementing a dollar threshold above the micro purchase threshold for subcontractor CID's?

**Response:** The language in DFARs 244 does not provide a threshold, however pursuant to Contractor Purchasing System Review (CPSR), DCMA CIG is working with the CPSR team to create a reasonable threshold for CIDs to be reviewed during the CPSR process.

**Question:** For commercial item determinations, is there a dollar threshold for a less-than-fully documented determination and price reasonableness packages?

**Response:** The amount of research and documentation should be commensurate with the dollar value and risk of the purchase. The language in DFARs 244 does not provide a threshold, however pursuant to CPSRs, DCMA CIG is working with the CPSR team to create a reasonable threshold in which CIDs will be reviewed during the CPSR process.

**Question:** What is the threshold for providing CIDs associated with commercial procurements in support of a Government prime contract? 41 U.S.C. 3307 entitled Preference for Commercial Items (in effect March 13, 2019) states: "(d) MARKET RESEARCH. - (1) WHEN TO BE USED.-The head of an executive agency shall conduct market research appropriate to the circumstances- (A) before developing new specifications for a procurement by that executive agency; and (B) before soliciting bids or proposals for a contract in excess of the simplified acquisition threshold." I read that to say that CIDs are not required until the SAT threshold (\$250,000) is met.

**Response:** The language in DFARs 244 does not provide a threshold. The first sentence reads, "Contractors shall determine whether a particular subcontract item meets the definition of a commercial item." The CIG's position mirrors the requirement 'The amount of research, and documentation should be commensurate with the dollar value and risk of the purchase.' Pursuant to CPSRs, the DCMA CIG has been working with the CPSR team to create a reasonable threshold in which CIDs will be reviewed during the CPSR process.

**Question:** Once a determination has been deemed commercial, can a product with no design changes lose that designation?

**Response:** It is possible that a product that was once determined commercial can lose that designation, even if there are no changes in the product design. As stated under DFARS 212.102, "the contracting officer may presume that a prior commercial item determination made by a military department, a defense agency, or another component of the DoD shall serve as a determination for subsequent procurements of such item". However, the contracting officer has a responsibility to review the content of the CID. They may agree with the conclusion that the item is commercial, or, they may disagree with the logic, facts or documentation supporting the previous determination.

If the contracting officer does presume a prior commercial item determination is valid, but instead chooses to proceed with a procurement of an item previously determined to be a commercial item using procedures other than the those authorized for the procurement of a commercial item, the contracting officer shall request a review of the commercial item determination by the head of the contracting activity that will conduct the procurement. The head of the contracting activity may issue a determination that the prior use of FAR part 12 procedures was improper, or that it is no longer appropriate to acquire the item/service using FAR part 12 procedures, with a written explanation of the basis for the determination.

**Question:** If the CIG has determined an item to be commercial, can the prime contractor use this determination or does it still have the responsibility to do its own determination? Could you share any insight on what is being done to get the DCMA and the various contracting authorities (PCOs) unified on this topic? There have been multiple instances of PCOs wanting to go against the CIG's recommendations and move forward with their own determination. We try to explain that we are not comfortable going against the position of the DCMA CIG because that risk ultimately falls back upon us (the prime) in a post-audit situation.

**Response:** Prime contractors can use the CIG CIDs. It is the contractor's responsibility to support the commerciality claim of the proposed items with a quality CID package as stated in the FAR and DFARS regulations. This package may include a DoD Contracting Officer CID as its basis of determining the item commercial.

**Question:** Why is the CIG reluctant to recommend previously procured under FAR Part 12 as commercial items?

**Response:** An item/service previously procured under FAR part 12 does not indicate that such item was determined commercial. There are other criteria that allow an item to be procured under FAR 12, even though they are not determined to be commercial items. Nontraditional defense contractors are one example. We acknowledge that current NDAA language addresses this concern, however, there is no current published language or DoD guidance implementing this language – we will continue to work this.

**Question:** Would DCMA be willing to review industry CIDs before we submit them to the USG customer?

**Response:** Currently, DCMA writes and reviews CIDs on behalf of the government. If the PCO or Buying Command were to request DCMA CIG to review an industry CID before it was submitted to the customer, then we would perform or review the CID. The CIG is currently exploring possible opportunities to review Industry's commercial assertion/determination packages outside an active Government requirement with the intent to issue a CID ahead of need (outside an active Government solicitation). The CIG will be keeping Industry apprised on the outcome of this evaluation.

**Question:** Please comment on the following statement: The DOD or agency Memorandums of Agreement (MOAs) with suppliers regarding commerciality on certain parts are not a commerciality determination that may be relied on by prime contractors procuring the same or similar parts. We have been advised the contractor is required to determine commerciality. However, suppliers have produced this document and stated that is all that is required.

**Response:** The Agency MOAs with Industry have been abrogated effective 19 March 2020. DFARS 212.102 states only DoD Contracting Officer CIDs are to be used for future procurements. Prime or subcontractors commercial assertions/determinations do not constitute a formal Commercial Item Determination as this may only be issued by a warranted DoD Contracting Officer. DCMA recommends that prime and subcontractors continue submitting the required supporting documentation justifying their proposed commercial position.

**Question:** If the CIG agrees to begin accepting CID requests directly from industry, then when might that policy change take effect?

**Response:** Historically, we have only accepted requests for our services directly from Government customers, however, as of March 2020, we have begun a limited pilot program to begin receiving requests directly from non-traditional defense contractors in addition to requests from our Government customers. As we assess the pilot we will continue to identify potential pathways to receive requests directly from traditional defense contractors. We will communicate updates made to our policy/process regarding receiving requests directly from Industry.

**Question:** Can you clarify what is meant by "absent an active Government acquisition" in question eight (8) of the CIG's Industry Days survey?

**Response:** The intent of the CIG potentially reviewing contractor CIDs in the future is focused on companies that offer commercial items/services directly to the government. The CIG does not assist prime contractors when auditing their subcontractors.

**Question:** How can I qualify my defense products or services as a commercial item, even though it has been sold as a non-commercial item in the past?

**Response:** Items/services may be asserted as commercial even if they were previously sold as non-commercial in the past. The contractor should construct a commercial item justification package that demonstrates and supports the item/service meets the FAR 2.101 definition of commercial item. This package should be submitted to the DoD Contracting Officer (or the prime contractor if you are a subcontractor). Once submitted, your item/service will be reviewed to validate that the FAR 2.101 definition of commercial item is met. A CID will be made if the DoD Contracting Officer determines your item/service meets the definition. If the DoD Contracting Officer determines the item/service does not meet the definition, then the item will not be determined commercial or will be determined to be non-commercial.

**Question:** If the CIG does offer their services to conduct CIDs for industry – will there be a cost associated and what is the estimated turn-around time?

**Response:** Historically, we have only accepted requests for our services directly from Government customers, however, as of March 2020, we have begun a limited pilot program to begin receiving requests directly from non-traditional defense contractors in addition to requests from our Government customers. As we assess the pilot we will continue to identify potential pathways to receive requests directly from traditional defense contractors. At this time, the CIG is not able to estimate a cost (or if there will be a cost associated) or identify the turn-around time to produce a CID directly to industry. We will communicate updates made to our policy/process regarding receiving requests directly from Industry as we continue to evaluate this pilot program.

**Question:** Would there be a cut-off threshold based on anticipated value of award?

**Response:** The CIG operates to thresholds published on our public website (<https://www.dcmam.commercial-item-group/>): “DFARS requires a commercial item determination be made on FAR12 acquisitions exceeding \$1M. Currently, the CIG threshold for Prime FAR12 commercial determinations is \$1M. For price reasonableness and subcontractor Commercial requests the CIG threshold is \$2M or TINA.

For cases under our thresholds, we can assist you in asking the right questions and provide DCMA recommendations. We encourage everyone to check the CIG website for the most up to date information regarding thresholds and current events.

**Question:** What does the CIG consider COTS?

**Response:** The commercial item definition in FAR 2.101 (1) includes the use of the part to the general public. In order to be considered COTS, the item must be sold in substantial quantities and without modification. So, there are three criteria needed to pass this test. The product or service must be used by the general public, sold in substantial quantities, and the contracts with the government cannot have been modified from the original function for which it was sold in the commercial marketplace.

Lumber is a good example. There are multiple products made from trees and sold at wholesalers and retailers. These items are sold in substantial quantities. Some are even traded as commodities on market exchanges. The price is dictated by supply and demand. There are many competitors offering different prices for their value proposition and barriers to entry are relatively small.

**Question:** Are contractors required to conduct and document a CID for COTS items and services? - If not, do we have to provide evidence that an item or service is truly COTS? If so, what type of documentation is required?

**Response:** 1) If the proposed product or service is asserted as commercial and incorporated into a FAR Part 15 proposal, the prime contractor is required to:

- a. Determine whether a particular subcontract item meets the definition of a commercial item. (DFARS 244.402(a)).
- b. Conduct appropriate cost or price analyses to establish the reasonableness of proposed subcontract prices, and include the results of these analyses in the proposal. (FAR 15.404-3(b)).

FAR 12.103 states that unless indicated otherwise, all of the policies that apply to commercial items also apply to COTS items. Therefore, the FAR/DFARS references provided apply to COTS items as well as other items that meet the definition of a commercial item.

The documentation required will vary from case to case depending on the circumstances. If the proposed item is available to the general public through numerous commercial vendors and market research can validate commerciality and price reasonableness, submitting market research based documentation may be sufficient; e.g. an electrical connector that is available through multiple retail outlets and part number, description, units available, quantity discounts, etc. are publicly available. If the item is readily available, it may be easier to solicit competitive quotes and base the proposed price on adequate price competition.

2) For a product or service asserted as commercial being acquired by the Government under FAR Part 12, it is the contracting officer's responsibility to determine commerciality and evaluate proposed prices for price reasonableness.

As with a FAR Part 15 proposal, the documentation required will vary from case to case, so good business judgement should be exercised when initially submitting information in support of commerciality assertions and price reasonableness for proposed items. If the contractor's assertions are adequately supported, the acquisition process will go much more quickly and smoothly.

While it is difficult to identify specific information applicable to all proposal submissions, it is in the best interest of contractors to provide a level of information that will adequately support commerciality and price reasonableness. As stated in FAR 15.403-3, the contracting officer always has the right to request whatever uncertified data is necessary to support their analysis.



**Question:** Does the Government have a list of parts/services they consider COTS & do not require a CID? Would this also include modified COTS? Are CIDs completed by the CIG available for Industry use (and searchable by Part number/service type)?

**Response:** “Modified COTS” is not part of the definitions in FAR 2.101. The COTS definition in FAR 2.101 specifically states “without modification” which rules out COTS if there is a modification made to an item. You may be referring to the Commercial Item definition under FAR 2.101 (3)(ii) – Minor modification.

The Commercial Item Database will list any COTS items that have been determined commercial by the CIG and items for which CIDs have been submitted by contracting officers. Currently, this database is only be available to the Government. DCMA recommends contacting your Procuring Contracting Officer to see if a prior determination has been made and is on file in the database.

Industry may contact the CIG to identify if a particular part has been determined commercial, or may request their Government Contracting Officer coordinate with the CIG to identify if a particular part/service has been determined commercial.

**Question:** If we are able to prove that a supplier offers their products or services for sale to the public on their website, their products/services clearly qualify as Commercial. Can the CID conclude at this point, or are we required to document further alternate supporting evidence. If so, why?

**Response:** Placing a product or service on the website for sale does not confirm it is commercial. Unless there is clear indication that the supplier is selling their product or service to the public, evidence needs to be provided that the item or service is actually available for purchase to the general public. The more supporting evidence, such as invoices on the product that is submitted, the better the likelihood of a determination being made as commercial. Ultimately, it is the Contracting Officer’s decision as to whether or not the information available on the website or provided by the contractor supports commerciality.

### **CATEGORY: PROCESS**

**Question:** What is the process for issuance of CID’s, and who provides the recommendation to the contractors, the CIG or the PCO’s?

**Response:** The DCMA CIG CIDs are created and signed by the DCMA CIG warranted Contracting Officers. The CIDs written by the CIG are provided directly to the Government customer who requested our support. PCOs are still able to write their own CIDs if they so choose, however, the CIG is always willing to help as requested by Government customers.

**Question:** What is the escalation path should a contractor disagree with a DCMA CIG Contracting Officer's non-commercial determination?

**Response:** The CIG requests that the contractor work directly with the Government customer to resolve any disagreements with the DCMA CIG Contracting Officer's non-commercial determination. We understand that there will inevitably be disagreements, however, the CIG only works for our Government customer when there is an active Government acquisition/requirement being worked. Upon full coordination with our Government customer, the CIG is willing to participate in discussions with contractors to address any questions/concerns regarding the contractor's disagreement with the CIG position.

**Question:** The audit standards and requirements currently being imposed on Prime contractors to prove and defend commerciality are having the opposite effect on the Government's stated goals and objectives to increase the use of commercial products and adopt commercial buying practices. Because of the additional administrative burden, it has now become easier and less costly to place orders under FAR Part 15 than FAR Part 12. In order to avoid a contractor or subcontractor claiming an exemption to a regulation they are not otherwise entitled to, why not implement specific thresholds at which a CID would be required? Currently, a CID is required for all purchases regardless of value.

**Response:** The language in DFARs 244 does not provide a threshold; it requires only a determination as whether a particular subcontract item/service meets the definition of a commercial item. The CIG believes the amount of research and documentation should be commensurate with the dollar value and risk of the purchase. However, the DCMA CIG is working with the CPSR team to create a reasonable threshold in which CIDs will be reviewed during the CPSR process.

**Question:** There needs to be a consistent set of commercial product determination approaches. The variations and lack of communication (e.g. deny commerciality with no or little explanation) is undercutting the use of commercial products and services to meet military requirements.

**Response:** The CIG is committed to bringing consistency to commercial item determinations. We recognize the need for open lines of communication and are willing to provide explanation for a decision with the permission of our Government customer.

**Question:** What is the CIG's process to review and approve assertions and coordinate with buying commands and the contractor?

**Response:** The DCMA CIG receives requests from Government customers through the inbox posted on our public facing website (<https://www.dema.mil/commercial-item-group/>). The request is vetted by our leads for information to start the case, and the case is assigned to an engineer for commerciality and a price/cost analyst if pricing is requested.

The assigned engineer and/or price/cost analyst review the information provided by the customer, work with the requestor to gather any additional information/history, set the scope of work and the due date.

The engineer and price/cost analyst work together performing market research with the preference to use Government resources and secondary resources before going to the contractor for information. The assigned individuals will coordinate with the Government customer prior to contacting the prime contractor. The prime contractor is always contacted by the CIG and customer to gain concurrence before contacting any subcontractors. The analysis is sent to a CIG contracting officer to make a determination on commerciality. The CID is provided to the customer for their use. The CIG recommends that the customer shares the CID with the applicable contractors, but ultimately, this is the customer's decision. The CIG is willing to provide an explanation to the appropriate contractors, however, the contractor will need to work with the buying command for approval prior to the CIG engaging with the contractor to provide this debrief.

**Question:** Is there a cost for determinations for government procurements, and what is the average turnaround time for decisions? Is there a way to expedite some decisions?

**Response:** The CIG services are free to DoD Agencies with the exception of Foreign Military Sales (FMS) cases. FMS efforts are billed directly through the appropriate FMS charging code. Currently, the CIG completes cases in an average of 45 business days to date; however, we continue to strive to improve turn-around timelines. There are instances where a customer request is submitted at the last minute and requires an expedited analysis. The CIG works with the customer to determine if we can provide mentoring/other support for the customer to write their own CID in lieu of performing a full review.

**Question:** Does the CIG anticipate engaging below the prime and working directly with subcontractors? If so, how might that work?

**Response:** The CIG is interested in working with both prime and subcontractors to improve the use of commercial acquisitions in the DoD. Engaging at the prime and subcontractor levels are viewed as equally important. The CIG coordinates with the customer before working with the prime or subcontractors directly.

**Question:** Describe the DCMA CIG process for reviewing the commerciality of a subcontractor to a prime. Does the CIG work with the prime first or communicate directly with the subcontractor without notifying the prime?

**Response:** The CIGs process is to coordinate with the customer before we engage with the prime or subcontractors. The customer and the CIG will work with the prime contractor to explain the information that is lacking, which historically has surrounded assertions of subcontractor proprietary information. The CIG will not contact the subcontractor directly without the prime contractor's permission. Note: denying the CIG access to the prime does not alleviate the prime contractor's responsibility to provide sufficient documentation to support its commerciality position.

**Question:** Provide an overview of the request process. When due dates are known, at what point RFIs are typically sent out to contractors / subcontractors, and how much time does it take to complete reports.

**Response:** The CIG receives requests from Government customers through the commercial item group inbox. Specific information regarding this process can be found on our public facing website at <https://www.dema.mil/commercial-item-group/>. Requests for support are vetted by our team leads who review the scope of the request and validate that there is sufficient documentation/information to accept and begin working the case. The case is then assigned to an analyst or engineer for commerciality and a price/cost analyst if pricing is requested. The assigned engineer and/or price/cost analyst will review the information provided by the customer, work with the requestor to gather any additional information/history on the acquisition, confirm the scope of work and the due date. The suspense date to deliver the requested work product varies for every case, scope/complexity and customer need.

The engineer and price/cost analyst work together performing market research with the preference to use Government resources and secondary resources before going to the contractor for information. The assigned individuals will coordinate with the Government customer prior to contacting the prime contractor. The prime contractor is always contacted by the CIG and customer to gain concurrence prior to contacting any subcontractors.

Currently, the CIG is averaging ~45 days to complete a commerciality review and issue a CID. We continue to look for ways to reduce our case review timelines and speed up the acquisition cycle (to include utilization of the DoD's centralized CID database searching for an existing CID on file for the exact item, or leverage another CID that may be on file for a similar to (of-a-type) item). Note: this timeline frequently changes based on the CIGs total workload, scope of request and complexity of requested work.

**Question:** How are requests assigned to contracting officers within the DCMA CIG?

**Response:** The CIG currently has 4 Warranted Contracting Officers. Workload distribution is assigned based on contracting officer bandwidth and includes a discussion surrounding background/expertise/knowledge of the proposed item/service.

**Question:** How many contracting officers are in the DCMA CIG?

**Response:** The CIG currently has four contracting officers with limited warrants to write CIDs for the DoD.

**Question:** Why are CID's required every year or two? A Commercial Item does not change over time.

**Response:** The CIG recognizes that many products are unchanged after a year or two, however, the DFARS requires a Prime contractor CID to be submitted with every proposal, unless there is a current Government contracting officer CID on file. The CIG hopes that the Departments CID database will help compile all Government contracting officer CIDs to ease this burden and streamline future acquisitions.

**Question:** Is a commercial determination always commercial or do we need to do periodic market research to confirm it remains commercial? Is it always commercial only when a DoD or military service deem it commercial or can prime contractors make that same determination? If we need to validate commerciality that has already been determined, at what frequency does that need to be done?

**Response:** You do not need to provide periodic market research for any CID made by a **DoD contracting officer, so long as that DoD CID has not been overturned by a DoD HCA.** DFARS 212.102(A) states a CID made by a DoD contracting officer shall serve as a determination for subsequent procurements. There is a difference between Prime CIDs and CIDs written by DoD contracting officers. The current regulation requires prime contractors to write their own CIDs, and the regulation does not recognize a prime contractors CID the same way for future procurements as it does a DoD Contracting Officers CID. Contractors are required to provide updated market research every 18 months (FAR 10.0002 - (b)(1)) for CIDs they write, unless there is a current/valid DoD Contracting Officer CID on file. Updated market research may be a simple memo explaining that the part/service is unchanged from the last submission.

**Question:** Who earns revenue with your organization, what companies' do you compete with for contracts and are there limitations to development? If so, in what field?

**Response:** The DCMA CIG is part of the Department of Defense and does not earn revenue for the taxpayer. We do not compete for contracts.

## **CATEGORY: BEST PRACTICES BY INDUSTRY**

**Question:** How can industry improve proposals to better support CIG assessments?

**Response:** Industry can improve their proposals by providing as much information as possible up front at the time of proposal submittal. You know your products better than the CIG or anyone else. Please explain any and all technical differences and price differences to the greatest extent possible. Additionally, the CIG highlighted information about how we review commerciality and price analysis during our inaugural Industry Day presentations. This information is available on our public facing page (<https://www.dcms.mil/commercial-item-group/>). Additionally, the CIG collaborated with DAU to provide the Commercial Acquisition Resources document (<https://www.dau.edu/tools/t/Commercial-Acquisition-Resources>) which provides examples and references.

**Question:** How can industry help support the CIG's assessment/determination process?

**Response:** Same as response above

**Question:** What are best practices for streamlining CID utilization and review?

**Response:** Providing a fully supported/value-added prime contractor CID with part comparisons, detailed explanations, and a complete story at the time of proposal submittal helps the CIG tremendously. The CIG prefers to operate with all of the information provided by the Prime contractor at the time of proposal submittal to perform our analysis. The most time-consuming part of our review is conducting extensive independent market research and tracking down information from contractors. A complete (supportable) package at the time of proposal submittal greatly reduces the number of RFIs and required fact finding, thereby, significantly streamlining the review and acquisition cycle.

**Question:** How can we make it easier for subcontractors to sell into the defense industry? Prime contractors often misinterpret or redefine the definition of commercial item to avoid any risk.

**Response:** The CIG has information regarding Commercial Item acquisition available on our public facing website (<https://www.dcms.mil/commercial-item-group/>). Please refer to the OSD website for how to do business with the DoD ([https://www.acq.osd.mil/dpap/cpic/cp/doing\\_business\\_with\\_the\\_department\\_of\\_defense\\_dod\\_us.html](https://www.acq.osd.mil/dpap/cpic/cp/doing_business_with_the_department_of_defense_dod_us.html)).

**Question:** I would like to understand the thought process behind making the commercial item determination, and how I can better help my organization gather the necessary information to smooth the process for everyone.

**Response:** Please refer to the Industry Day Slides 2020 slides posted to our publicly facing website. Additionally, you can familiarize yourself with the CIG's work products by reviewing the Technical Report Template and CID Template, which are posted to our website (<https://www.dcms.mil/commercial-item-group/>).

**Question:** We have many questions we would like to ask and would encourage an ongoing open dialogue between the Government and industry to improve the acquisition process for commercial items for both Government and industry.

**Response:** The CIG is open to continuing the dialog with Industry. Our plan is to host periodic Industry Days in the future. More to come.

**Question:** What can we provide to you in an assertion package that will make the process faster/easier?

**Response:** Assertion packages and CIDs with complete information at the time of proposal submittal significantly help streamline our review process. The CIG relies on the information in the prime CID and subcontractor assertion as the starting point for all cases. You know your products/services better than anyone. The CIG analysis are not the experts of your product/service. Incomplete packages take additional time and resources to research. Contractors can help connect the dots and tell the story in their commercial item assertion/determination package. The CIG recommends that contractors provide as much supporting detailed information for the specific product or service, explicitly assert which FAR2.101commercial item definition applies, explain differences between the parts in your assertion/determination, provide evidence of commercial sales, and demonstrate evidence of market research.

**Question:** How can we interact more with the CIG to stay on top of matters regarding the sale of COTS products to our customers who are Primes and upper level sub-tier contractors, and what can we do to increase our knowledge and understanding to make the purchase by our customers for our COTS products easier? We see our customers struggling with the process of purchasing COTS products for their FAR 13, 14, and 15 contracts.

**Response:** Please familiarize yourself with the commercially available Off-The-Shelf (COTS) item definition listed in FAR 2.101.

“Commercially available off-the-shelf (COTS) item—”

- (1) Means any item of supply (including construction material) that is—
  - (i) A commercial item (as defined in paragraph (1) of the definition in this section);
  - (ii) Sold in substantial quantities in the commercial marketplace; and
  - (iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
- (2) Does not include bulk cargo, as defined in [46 U.S.C. 40102\(4\)](#), such as agricultural products and petroleum products.

FAR 12.102 requires all policies related to Commercial Items also applies to COTS items, therefore, a CID is required for all commercial items and COTS items. The CIG hopes to help customers that are struggling with the process of purchasing COTS items once we start accepting requests directly from industry (in the future).

**Question:** We're a little bit of a different animal in that we're a startup accelerator that is attempting to change acquisition regulations on the DoD side to adapt to commercial practices, not teach startup companies how to be defense contractors.

**Response:** The CIG would love to work with you. Please send us an email so we can have a conversation ([dcma.boston-ma.eastern-rc.mbx.Commercial@mail.mil](mailto:dcma.boston-ma.eastern-rc.mbx.Commercial@mail.mil)).

### **CATEGORY: DOCUMENTATION**

**Question:** Process and documentation requirements

**Response:** Please visit our website (<https://www.dcma.mil/commercial-item-group/>) where you will find a document called “Standardized Review Process for Commercial Items.”

**Question:** Would the CIG be willing to coordinate the verification audits of redacted invoices received from the sub-tier supplier?

**Response:** A review of redacted invoices is sometimes performed by the DCMA Contract Management office. However, if the DCMA CIG receives a redacted invoice, we try to see if the supplier will provide the Government an un-redacted invoice or allow us to visit the supplier and perform an over the shoulder review. While redacted supplier information cannot be shared with the prime, without supplier approval, DCMA CIG should be able to share whether the end user is government or non-government with the prime.

### **CATEGORY: CPSR**

**Question:** How can we better educate the DCMA CPSR teams? How can we get a uniform interpretation of definitions?

**Response:** DCMA CIG does not attend all CPSR reviews, only those reviews that are deemed significant or are determined higher risk when performing augmented commerciality reviews in support of the overall CPSR. In addition, DCMA CIG provides reach back support so that the CPSR team can contact a CIG analyst with questions on purchase order files or policies and procedures. We continue to work with the CPSR team to develop guidance that will streamline and improve application of commercial item reviews tied to the overarching CPSR review.



**Question:** We have experienced DCMA CPSR people that have the following views: - A CID signed only by the prime, and in some cases a supplier, does not meet the intent of the guidebook. When we are buying on behalf of the Government under a contract, I have never seen it expected that the Government has to sign our CIDs for purchases we make. - The guidebook (Commercial Item Handbook) references to once commercial always commercial refers to the official commercial determination made by the Government and NOT prime contractors. We do not believe either of these are proper interpretations or applications of the regulations or the Commercial Item Handbook. If we are incorrect, the Guidebook and regulations need to be clarified. If the CPSR teams are wrong, they need training.

**Response:** DFARS 244.402 requires the contractor to make a determination on its subcontracts. While some subcontractors provide a detailed assertion or complete a commercial item justification (CIJ) on the prime's CIJ form, the prime still has to make a "determination" based on the subcontractor's assertion. Some primes just sign the subcontractor's assertion without any write-up or supporting rationale. Sometimes there is a write-up by the prime agreeing with the assertion and adding additional information as to why it meets the definition (then a prime signature), sometimes this information is provided but does not contain the prime signature. The FAR does not require the government to make a CID on a proposed commercial subcontract under a prime FAR 15 proposal, however, the Contracting Officer can take exception to a prime's CID on a subcontract (FAR 15.403-1 (c)(3)). There was a statement about once commercial always commercial. This relates to a Contracting Officer determination (PCO or DCMA Contracting Officer) not a prime CID. However, if a PCO believes an item that was determined commercial by a Contracting Officer, is no longer commercial, they can overturn the prior determination by taking it to the Head of the Contracting Activity.

**Question:** What will your role be in contractor CPSR's?

**Response:** The DCMA CIG's role is to provide assistance and support to the DCMA CPSR team conducting the CPSR. We review and coordinate the sample selection with the CPSR team, determine if contractor's commercial policies and procedures comply with FAR/DFARS, and review purchase order files to ensure the contractor is complying with its policies and procedures relative to the commercial determination documentation and price analysis in commercial purchase/subcontract files.

## **CATEGORY: ADEQUATE/INADEQUATE PRICE ANALYSIS**

**Question: (Government Sales)** Why does the Government not consider their own purchase history an adequate source of fair pricing, even when the FAR suggests using purchase history?

**Response:** FAR 15.404-1(b) addresses the various price analysis techniques utilized to reach a fair and reasonable price. One of these analytical techniques is the comparison of proposed prices to historical prices. FAR 15.404-1(b) also lists the comparison of proposed prices with prices obtained through market research for the same or similar items. Many of the proposed commercial of a type items are sole source where the contractor owns the drawings, therefore, the parts are not competed. DFARs 215.404-1(b) states in absence of adequate price competition, pricing based on market prices is the preferred method to establish a fair and reasonable price. If market research is insufficient, there are other methods mentioned including prices paid for the same or similar item. However, in order for a proposed item to be commercial, there should be a similar item customarily use by the general public. Market research can be performed if the similar to item is identified and compared to the proposed item with differences documented.

**Question:** Clarify various DFARs statements and their validity – for example does selling to other Govt. Agencies (foreign and state/local) meet CID qualifications?

**Response:** FAR 2.101 Commercial definition one (1) defines a commercial item as – any item that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes. A foreign government does not fall within the definition one (1). However, Commercial definition eight (8) allows for sales of the item (sold in substantial quantities on a competitive basis) to multiple state and local governments or to multiple foreign governments. Note: foreign governments was recently added to this definition in 2019.

**Question:** Why are international sales not counted as non-public (USG)?

**Response:** DCMA CIG performs reviews using the criteria in the FAR 2.101 definition. International sales are not considered except under definition 8. FAR 2.101 Commercial Item definition one (1) specifically address of a type customarily used by the general public or by non-governmental entities. FAR 2.101 commercial definition eight (8) allows sales to foreign governments.

**Question: (Market Research)** The DFARS now requires validation of market pricing for commercial items. How often does that pricing need to be revalidated?

**Response:** A prime contractor should ensure all prices submitted to the government are fair and reasonable. DFARS 215.401 defines Market Prices as the “*current prices that are established in the course of ordinary trade between buyers and sellers ...*” FAR does not provide any details on the age of data. DFARS 215.404-1(b)(v)(B)(1) states: “*Whether data is too old to be relevant depends on the industry (e.g., rapidly evolving technologies), product maturity (e.g., stable), economic factors (e.g., new sellers in the marketplace), and various other considerations.*” If a contractor is relying on a price analysis from a prior contract, they must still validate that the information is fair and reasonable.

**Question:** Single source procurements can be significantly more challenging to review than competitive solicitations. How does the CIG address single source requirements when market research does not result in adequate information?

**Response:** Most commercial parts we review are single or sole source. For any part that is commercial of a type, there should be a similar part that is customarily used by the general public. We also engage the DCMA CIG engineers to assist in finding a similar item to compare to. This approach is in line with FAR 15.404-1(e)(3) which indicates using technical assistance in evaluating pricing related to items that are similar to, of a type or require minor modifications to determine the magnitude of changes and price the changes.

**Question:** What advice do you have for overcoming suppliers' reluctance to provide the back-up documentation the DFARS requires for market pricing?

**Response:** It is a subcontractor’s prerogative on what data they will release to the prime. A subcontractor may not provide its market pricing (e.g. sales data) to a prime contractor due to their determination of proprietary data. Usually there are redacted invoices that can be validated by a government agency at the subcontractor. However, DFARS 244.402(a) states: “*Contractors shall determine whether a particular subcontract item meets the definition of a commercial item. This requirement does not affect the contracting officer’s responsibilities or determinations made under FAR 15.403-1(c)(3). Contractors are expected to exercise reasonable business judgment in making such determinations, consistent with the guidelines for conducting market research in FAR Part 10.*” The prime may know the subcontractor’s competitors or the subcontractor may provide a list of competitors. The prime through market research and technical analysis, as part of their CID process, should determine if there are similar parts in the marketplace.

**Question:** Walk through the market research the DCMA CIG performs - what tools / resources are used prior to engaging with a contractor / subcontractor and asking for data?

**Response:** The most important information DCMA CIG needs to begin any market research is the part number, description, functionality and end user of the item. It is very important to understand these elements. In some cases the prime or subcontractor provides the similar to item (of a type item) so we have a baseline for market research. In order for an item to be commercial of a type, there should be a similar commercial item customarily used by the general public. If the contractor doesn't provide that information, the DCMA CIG performs independent market research looking for a "similar to" item. We will consider market research by the government and contractor if available. We look for suppliers offering comparable items, sometimes the prime or subcontractor provide these alternate suppliers.

**Question: (Pricing)** Describe the CIG's involvement with price analysis.

**Response:** One of the primary requirements under 10 U.S. Code § 2380 is to perform analysis of price reasonableness for the purposes of procurements by the Department of Defense. As the DoD's centralized cadre of experts, we frequently receive requests for support from Government contracting offices and DCAA to provide price analysis absent certified cost and pricing data. Currently, the DCMA CIG threshold to perform price analysis is \$2M at the request of a DoD Contracting Officer.

**Question:** Walk through the DCMA CIG's approach / methodology of price analysis.

**Response:** DCMA performs a price analysis once they have an understanding of the part number, description and function of the item. We review all information furnished by the contractor (both prime and sub) at the beginning of the evaluation. The review may include (but is not limited to) the following: the prime contractor's price analysis, subcontract sales data, purchase order history, historical pricing, market research of the same or similar part, or evaluation of a similar provided by the contractor. We will also perform our own independent market research to seek alternate data points pursuant to the proposed item/service. The CIG Contract Price/Cost Analysts will work with our Engineering team when applicable to assist in reviewing the technical differences between the similar to item and the proposed item and the pricing impacts associated with the differences. After performing market research and reviewing history and contractor data, we evaluate the pricing to determine a fair and reasonable recommendation or fair and reasonable price range.

**Question:** What is the timeframe for recent sales history?

**Response:** This will vary from case to case depending on the specific circumstances. We generally request sales data for about a two-year period. However, there are many factors to consider when determining recent sales history. We gather as much data as possible based on the available information (i.e., years, volume of sales data each year, number of different customers, etc.).

Technological effects on products will also drive the amount of required data (e.g. TV's are cheaper now than four years ago) to evaluate, therefore, it is critical that the contractor provide sufficient (a reasonable population/universe) sales data history information.

**Question:** The government sometimes uses products longer than commercial customers. If a product or service initially started out as commercial, how can a supplier justify its current price is reasonable if the government is now the only customer?

**Response:** The prime contractor is responsible for performing a price analysis on its subcontract. There are generally similar items to compare in the market place even if the government is the only buyer for the specific proposed part number.

**Question:** How is non-recurring engineering costs being used in commercial product or service determinations?

**Response:** Non-recurring engineering costs is too general a term. DCMA CIG would review the proposed non-recurring engineering costs (makeup, definition of the NRE, etc.) in conjunction with the rest of the proposal (parts or services), including the contractor's assertion, justification or determination. Non-recurring engineering can encompass a variety of different items.

**Question:** If pricing is determined by market forces, and all development work is paid for by the supplier (NDA), then it should meet commercial item criteria, but there is no category for this.

**Response:** If pricing is determined by market forces, there should be competition or a similar-to item (of a type). If an item is competed, a commercial item determination is not a requirement, but can be made if requested. If an item has an of a type item with pricing in the market, we would review the item and the of a type item to validate that they are similar-to one another, if requested. Under these circumstances, it may meet FAR 2.101 Commercial Item definition one (1), if the proposed item is of a type customarily used by the general public.

**Question:** Is price an element of commercial item determinations?

**Response:** There are three areas where the DCMA Contracting Officer considers pricing as an element of a CID.

- 1) When a contractor submits an item under definition FAR 2.101 Commercial Item Definition 3 (ii) minor modifications for the federal government, then the DCMA CIG CID will generally contain price information relative to the minor modification. FAR 15.403-1(c)(3)(iii)(C) identifies modifications of a commercial item are not exempt from the requirement for submission of certified cost or pricing data on the basis of the exemption provided for at 15.403-1(c)(3) if the total price of all such modifications under a particular contract action exceeds the greater of the threshold for obtaining certified cost or pricing data in 15.403-4, or 5 percent of the total price of the contract at the time of contract award. The CID may contain rationale as to how the modification was minor.
- 2) The CIG considers pricing when an item is asserted “of a type” and there is a similar item available in the marketplace. For example, if the proposed item is \$500K and the “of a type” item is \$200K, that it may drive a red flag to identify whether the two items are really similar and what is driving the significant price difference.
- 3) The third area is for consideration is tied to FAR 2.101, definition six (6). This is due to FAR 15.403-1(c)(3)(ii)(A) which requires that when services are “of a type”, they may be considered commercial items “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.”

**Question:** What is included in terms and conditions with regard to commercial services determination?

**Response:** If the determination is associated with a pre-solicitation request from the customer, the DCMA CIG is unable to review the terms and conditions for the anticipated contract. A caveat is included in the determination that the determination for the services is dependent upon the services terms and conditions being similar to those offered to the general public. If the determination is in response to a proposal, the determination includes a statement that even if the services stay the same from one acquisition to the next, the terms and conditions may change. The use of the determination for the services is dependent upon the services remaining the same and the terms and conditions being similar to those offered to the general public.

**Question:** Any general comments on use of escalation indices?

**Response:** Escalation is considered on a case-by-case basis. If a particular commodity is decreasing in price (e.g. specific electronics parts), we may not recommend escalation. DCMA considers the contractor's proposed escalation, reviews escalation by commodity or uses the primes/subcontractor's primary NAICS code to determine reasonable escalation, if any.

**Question:** How does the CIG evaluate proposed commercial item pricing from a value-to-the-government perspective (i.e., the offered price does not have comparable sales data for the same or similar product from the offeror, but the price is (1) favorable relative to current government alternatives and/or (2) significantly less expensive than government-funded development of an item with similar/same capabilities?

**Response:** If this is a subcontract, the prime should still prepare a price analysis. As part of the price analysis, the prime can provide information relative to value to the government. The DCMA CIG would have to evaluate the data in the price analysis and the data mentioned above demonstrating favorable pricing relative to government alternatives provided by the contractor and/or government funded development of an item with similar to items that may be offered at a significantly less price. The prime contractor retains the responsibility to support/justify a value analysis approach vs. another analytical methodology to arrive at fair and reasonable pricing. Note: Value analysis should not be utilized as the sole analytical technique to support fair and reasonable pricing.

**Question:** Comparable sales data quantity, please elaborate on what is considered comparable and if use of other-than-comparable quantities can be used in certain circumstances.

**Response:** The DCMA CIG reviews all sales data provided by the contractor. How the data is used, is on a case-by-case basis. If the contractor has identified comparable quantity sales data over the last couple of years, then this is considered in making our recommendation, along with any other information provided. We will adjust for anomalies on a case by case basis. If there are recent sales (last several years) but not comparable quantity, we may use this sales data and apply a quantity curve adjustment. This could be used as a recommendation or as a data point along with other market pricing available.

**Question:** Why do DCMA and CAPA groups from industry mix commercial Item determination and price reasonableness.

**Response:** FAR 15.4 and DFARs 244.402 require a prime contractor proposal to include a commercial item determination and a price analysis. Whether a commercial item determination and price analysis are submitted on one form or two separate documents is irrelevant as both requirements should be included in a prime proposal. Commerciality and pricing is not a 2-step process, where the CID is provided and then after a commerciality determination is made the price analysis is submitted.

As part of an adequate proposal, the prime should be providing a commercial item determination and price analysis in its proposal.

Pricing may be considered when evaluating the proposed item for commerciality under FAR 2.101. For example, if an item is submitted under FAR 2.101 Commercial Item Definition 3 (ii) minor modifications for the federal government, then the DCMA CIG CID will generally evaluate price information relative to the minor modification. We also consider pricing when an item is asserted “of a type” and there is a similar item offered in the marketplace. For example, if the proposed item is \$500K and the “of a type” item is \$200K that may indicate whether the two items are really similar or what is driving the significant price difference. Pricing is also considered in FAR 2.101 Commercial Item definition 6. This is due to the FAR 15.403-1(c) (3) (ii)(A) which requires that when services are “of a type”, they may be considered commercial items “only if the contracting officer determines in writing that the offer or has submitted sufficient information to evaluate, through price analysis, the reasonableness of the price of such services.”

### **CATEGORY: TECHNICAL ANALYSIS**

**Question: (Definitions - General)** Walk through each definition of a commercial item and outline the criteria the DCMA CIG uses in determining whether something is commercial or not. What are "must haves" and what are "nice to haves?"

**Response:** See the [Industry Day Slides 2020](#) presentation, [DCMA CIG Training 2018](#) (slide 18) and the [Commercial Acquisition Resource Page \(DAU\)](#) document posted to the CIG public website: <https://www.dcmamil.commercial-item-group/>. There is also a list of recommended documentation to provide to the CIG to allow for a more efficient processing of the commerciality review.

**Question:** Commercial Determinations: What methods are employed to ensure the CIG engineers are able to perform impartial technical assessments of commerciality without influence of the requestor, contracting officer, and / or pricing / cost analysis for price reasonableness (definitions 1(i), 1(ii), 2, 3(i), 3(ii), 4, 5, 6, 7, 8)?

**Response:** The CIG Engineers follow the evidence – we bounce the assertion and evidence provided in the proposal and found through independent market research against the various portions of the commercial definitions. There are peer reviews and a senior engineer review to ensure the quality and impartiality of the review.



**Question: Of a Type”** - What are examples and details of when “of a type” is an acceptable form of validation for CID?

**Response:** See the Industry Day slide presentation and the Commercial Acquisition Resource document posted to the CIG public website: <https://www.dema.mil/commercial-item-group/>. “Of-a-type” plays a part in definitions 1-7 of the Commercial Item Definitions (Definition 8 pertains only to the exact item offered). The offeror must show how the proposed item is similar to the “of-a-type” or, comparable items.

**Question:** How can we get a uniform interpretation of definitions regarding "Service of a type offered and sold competitively in substantial quantities in the commercial marketplace"? Does the comparison commercial service need to be shown to be won as a result of competition?

**Response:** FAR 2.101 definition 6 (referred to in this question) has multiple parts that need to be satisfied:

- 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

Each of the above bullets must be met (evidence shown). The comparison “of-a-type” service needs to be shown as being competitive with at least one other comparable service, but not “as a result of a competition.” For example, janitorial services may be competitive but not necessarily as the result of a commercial competition. The major point is that it takes place in the Commercial marketplace.

**Question:** Why does the CIG not use the “of a type” part of the definition to expand the view of commercial items? The minor modifications does not cover the broad range of commercial products.

**Response:** The CIG follows DoD guidance in regards to the Commercial Item Definition, which is written by Congress.

**Question:** DCMA and CAPA groups do not understand "of a type".

**Response:** This is a broad statement. Please reach out to us to address specific questions, concerns surrounding the above statement, we would be happy to discuss this concern with you. Please submit your inquiry to the following inbox link: [dema.boston-ma.eastern-rc.mbx.Commercial@mail.mil](mailto:dema.boston-ma.eastern-rc.mbx.Commercial@mail.mil)

**Question: “Minor Mod”** - What are examples and details of when “minor modification” is acceptable for of CID?

**Response:** Minor modifications are considered under FAR 2.101, definition 3ii, which states: *“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.”* So, a minor paint job, an encrypted hard drive, or a knob controller in lieu of a flip-switch, may all be considered minor modifications.

If the modifications are available to the general public, then 3i would be more appropriate and the modification would not need to be minor.

**Question:** Our concerns relate to modifying commercial items for Government purposes do to the environmental conditions the equipment needs to operate in or for interfacing to other unique Government systems. This gets into both commerciality and price justification issues.

**Response:** This is a specific concern that would require a further discussion to figure out particular concerns and solutions. Environmental conditions are a common reason that commercial items are modified for DoD use. The contractor CID or CIJ needs to explain why the modification is still reasonably commercial and also justify how the modification justifies the price difference.

### **CATEGORY: RELATED COMPONENTS (PARTS OF A PART)**

**Question:** Can components within an ITAR upper assembly be considered FAR 12?

**Response:** Yes, subcomponents could be; however, there are many factors to consider.

Possible add an example for consideration

### **CATEGORY: SERVICES**

**Question:** If you are a service provider, can you still show an "of a type" if the end product of the service provided is different as it has been customized for the Government, but a similar service is provided to commercial customers?

**Response:** Depends on the situation. You might be able to show that there is still an “of-a-type” comparison available in the marketplace.

**Question:** Proprietary processes, software and services are also challenging. How does the CIG address the proprietary claim?

**Response:** If the contractor can show that a service meets the “of-a-type” comparison or another definition under FAR 2.101, the CIG will evaluate to see if the service meets all requirements of the definition.

**Question:** The view of ancillary services is inconsistent with the commercial philosophy. If a commercial company is selling products as commercial items, why don't the services to support these products be deemed as commercial as well?

**Response:** It depends on the services in question. The CIG must follow the Commercial Item Definition under FAR 2.101 and the services in question must meet the various parts of the definition. We continue to work with OSD and we welcome industry input in trying to improve the definitions or explore opportunities to improve the definitions to help streamline the regulations.