



DEFENSE CONTRACT MANAGEMENT AGENCY

Commercial Definitions Change

FAR Case 2018-018

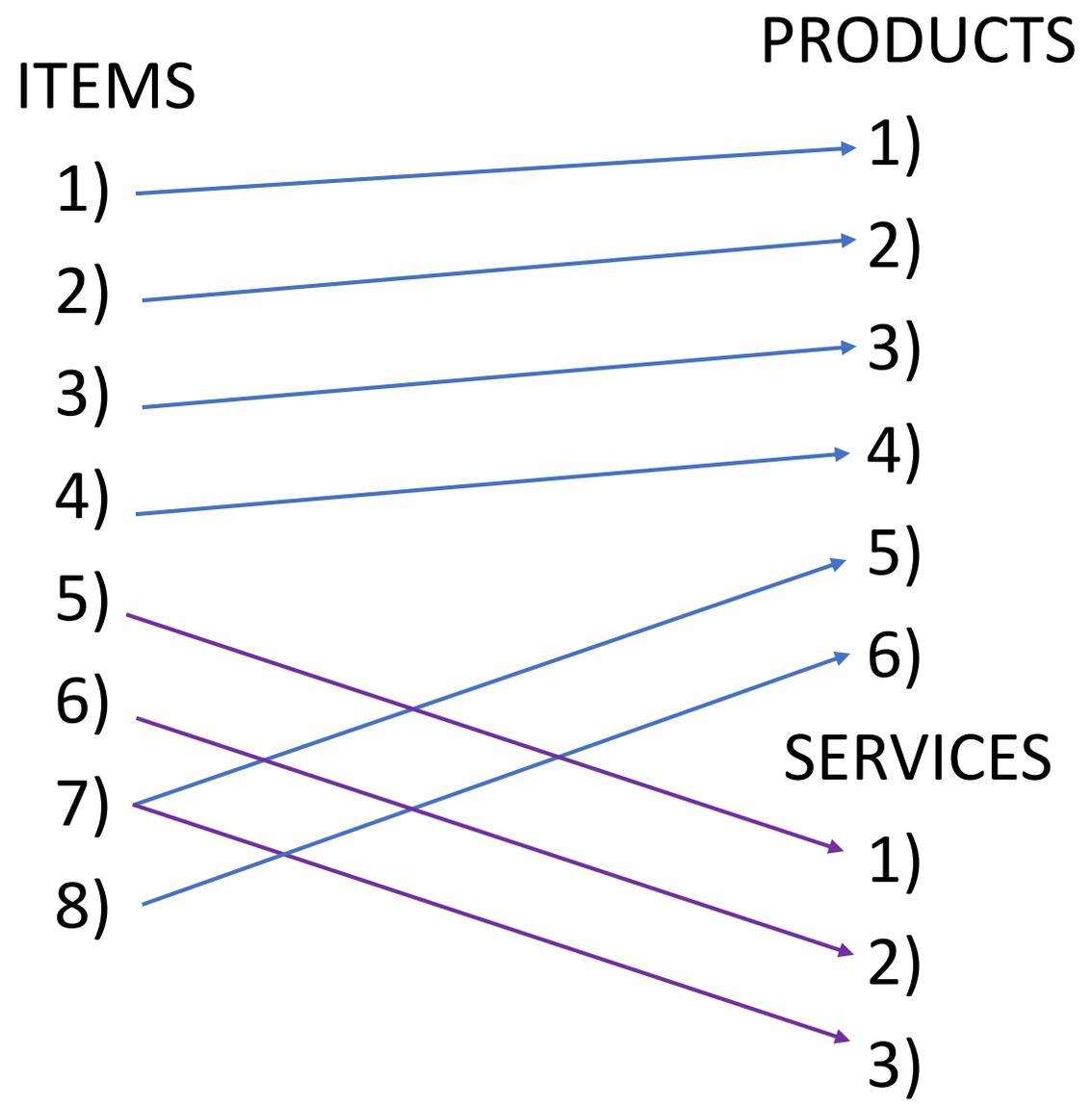
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Rules and Regulations

FAR 2.101: “Commercially available off-the-shelf (COTS) item” means –

- 1) Means any item of supply (including construction material) that is—
 - (i) A commercial product (as defined in paragraph (1) of the definition of commercial product 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 item, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.



FAR 2.101: “Commercial Product” means --

- 1) A product, other than real property, that is of a type customarily used by the general public or by nongovernmental entities for purpose other than governmental purposes, and—
 - (i) Has been sold, leased, or licensed to the general public; or
 - (ii) Has been offered for sale, lease, or license to the general public;

[Used to be: definition (1)]

FAR 2.101: “Commercial Product” means --

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

[Used to be: definition (2)]

FAR 2.101: “Commercial Product” means --

- 3) A product that would satisfy a criterion expressed in paragraph (1) or (2) of this definition, except for—
 - (i) Modifications of a type customarily available in the commercial marketplace; or
 - (ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. “Minor modifications” means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;

[Used to be: definition (3)]

FAR 2.101: “Commercial Product” means --

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

[Used to be: definition (4)]

FAR 2.101: “Commercial Product” means --

- 5) A product, or combination of products, referred to in paragraphs (1) through (4) of this definition, even though the product, or combination of products, is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor; or

[Used to be: definition (7)]

FAR 2.101: “Commercial Product” means --

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

[Used to be: definition (8)]

FAR 2.101: “Commercial Service” means --

- 1) Installation services, maintenance services, repair services, training services, and other services if—
 - (i) Such services are procured for support of a commercial product as defined in this section, regardless of whether such services are provided by the same source or at the same time as the commercial product; and
 - (ii) The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government;

[Used to be: definition (5)]

FAR 2.101: “Commercial Service” means --

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

(i) *Catalog price* means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and

(ii) *Market prices* means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors; or

[Used to be: definition (6)]

FAR 2.101: “Commercial Service” means –

- 3) A service referred to in paragraph (1) or (2) of this definition, even though the service is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor.

[Used to be: definition (7)]