

2/20/20



Davis Conference Center

**ADMINISTRATIVE
ANNOUNCEMENTS**





Davis Conference Center

Guests Services

Located at the Reception Desk

(813) 828-1590

Messages

Phone number for guest messaging:

(813) 828-1590 / DSN 968-1590



Davis Conference Center

Restrooms

**Public restrooms are located
in the center of the facility
on first and second floors**

New mothers ... visit Reception Desk





Davis *Conference Center*

Water Fountains

Water fountains with bottle filling stations are located near restrooms

First & Second Floors





Davis Conference Center

Tech Center

**Phones, laptops, internet, and
cell phone charging station**

Systems are "For Official Use Only"



Davis Conference Center

Vending Machines

**Vending machines and Starbucks
coffee kiosk available on first floor**

Located next to Tech Center



Davis *Conference Center*

Designated Smoking Area

**Smoking Area is located near
Tech Center exit (Northside of Bldg)**

***No tobacco use on terrace or
walkways, nor at any entrance***





Davis Conference Center

Food & Beverage Policy

**No Food or Beverages
in Meeting Rooms**

Bottled water only in meeting rooms





Davis Conference Center

First Aid

**AED and First Aid Kit located at
Reception Desk on first floor**

Call 9-1-1 for an emergency



Fire Emergency

- **Dial 9-1-1 or pull alarm**
- **Evacuate the building**
- **Assemble in parking lot**
- **Wait for “All Clear”**

Identify if you require assistance



Davis Conference Center

Building Lockdown

- Stay inside meeting room
- Remain quiet & silence phones
- Move away from doors/windows

Remain in place until "All Clear"



Davis Conference Center

Tornado Warning

- Shelter-in-place, when directed
- Protect yourself from flying debris
- Stay away from outside windows

Stay in place until "All Clear" is given





Davis Conference Center

Active Shooter

- **Attempt to evacuate the premises**
- **If not possible, find a place to hide**
- **As a last resort, attempt to disrupt or incapacitate the active shooter**

Call 911 when it is safe to do so!





Davis *Conference Center*

Asking Questions

- **Short Q&A after each session**
 - **Help us Moderate/Stay on Schedule**
 - **Index Cards**
 - **Passed & Asked**
- **Open Q&A at the end of the day**





Davis *Conference Center*

We ask that audio or video isn't recorded

- **The briefing will be made available our public website after today**
- **Future streaming opportunities**





Davis *Conference Center*

At this time, please place all cell phones on vibrate or silence.

Thank-you!



Industry Day Agenda

Time:	Topic:	Briefer(s)
0800-0830	Registration	Ms. Lisa Artz & Ms. Lidia Cabello
0830-0845	Welcome & Introductions	Mr. Dan Hawley
0845-0945	Senior Leadership Address	Mr. Kim Herrington & Mr. Jorge Bennett
0945-1000	BREAK	
1000-1045	Contractor Purchasing System Review (CPSR) Group - CIG's Supporting Role	Mr. John Foley
1045-1130	Engineering Perspectives on Commerciality	Ms. Pam Logan & Mr. Scott Pace
1130-1300	LUNCH	
1300-1345	Streamlined Acquisition Process	Ms. Lisa Artz & Ms. Megan Steele-Holdaway
1345-1430	Challenges & Brainstorming	Mr. Ryan Connell
1430-1445	BREAK	
1445-1600	Q&A Session - CIG Leadership Panel	Mr. Dan Hawley & CIG Regional Directors

- **This brief is intended to convey information that is publicly available in Federal Acquisition Regulations and DCMA Instructions. Nothing said or presented during this brief should be construed as legal advice or a commitment by the Government.**
- **This brief is intended to collaborate and increase communication. The slides and discussion are not official Agency Policy, or policy of the Department or USG.**



DEFENSE CONTRACT MANAGEMENT AGENCY

DCMA - Commercial Item Group

Presented By:

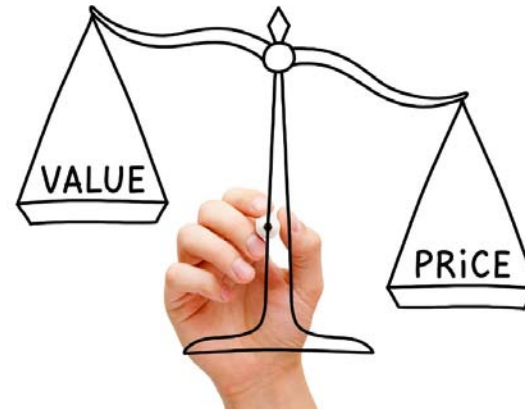
Mr. Dan Hawley

Director, Commercial Item Group

February 2020



- Who is the CIG, Why we were established
- Services Provided:
 - Commercial Item Determinations
 - Price Analysis
 - Negotiation Support
 - Strategic Market Research
 - Commercial Acquisition Training
- Key stakeholders



MISSION *"Provide acquisition insight for the integration of commercial products and services within DoD to streamline procurements and ensure warfighters receive cutting-edge technology at fair and reasonable prices."*

VISION *"To advance defense acquisition strategies by leveraging commercial technology resulting in American warfighter superiority."*

The CIG Team



CIG Staff:

Group Director & Supervisors: 6
Price/Cost Analysts: 30
Contracting Officers: 4
Engineers: 24
Administrative: 2
Military: 3

- Help streamline the acquisition process (speed of relevance)
- Leverage new innovative technology
- Increase the industrial supply base
- Increase communication with industry partners
- Identify improvements in the acquisition process
- Encourage ideas and innovative thinking
- We can't streamline acquisitions without industry
- What do you want to be communicated?



VISION FOR TOMORROW: WORKING LEVEL RELATIONSHIPS BETWEEN INDUSTRY AND CIG

- Assist DPC with standing up the DoD wide Commercial Item Database
- Provide targeted commercial acquisition training to buying commands
- Interface with Industry identifying commercial acquisition successes & challenges
- Transition away from individual commercial Memorandum of Agreements to a standardized review process
- Evaluate potential opportunities to receive/issue commercial item determinations ahead of an acquisition requirement

Today's Agenda

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DEFENSE CONTRACT MANAGEMENT AGENCY

DCMA Cost and Pricing Overview

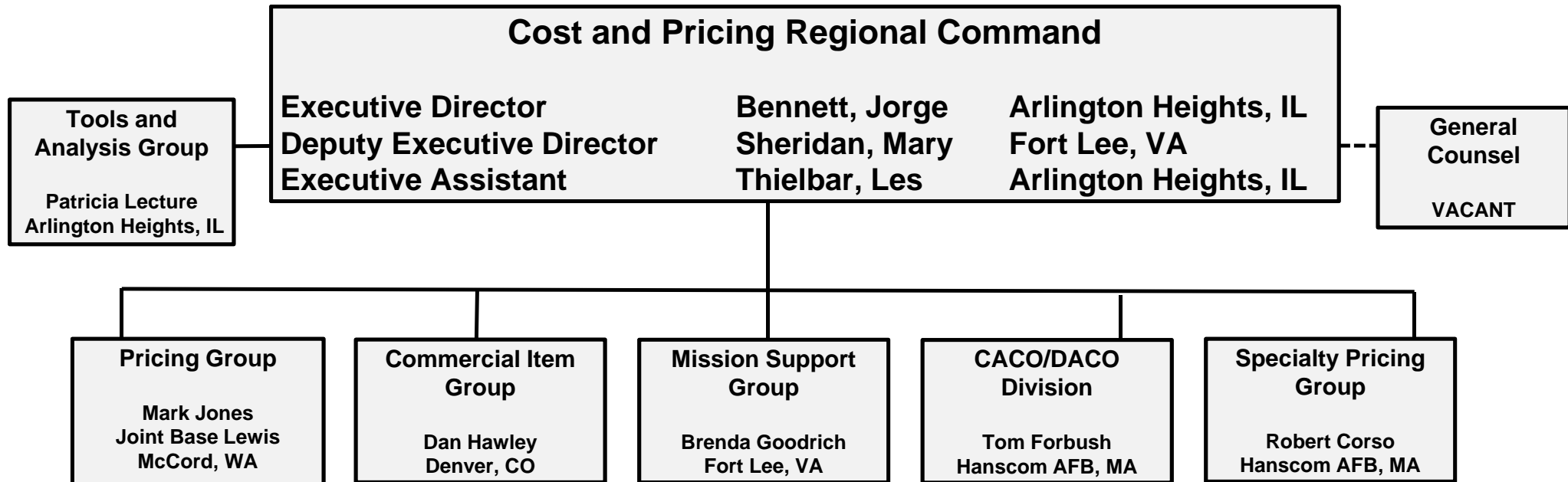
Presented By:

Mr. Jorge Bennett

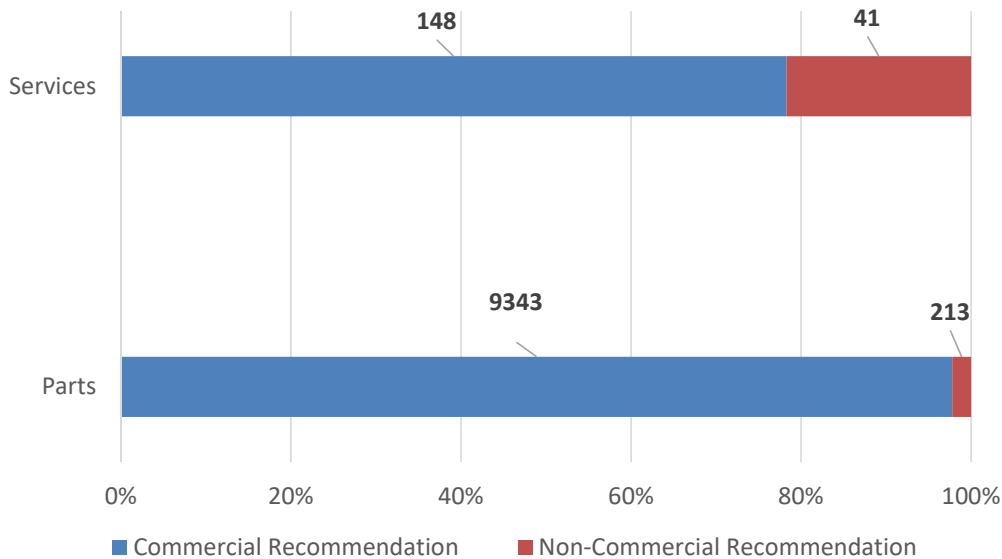
Executive Director

February 2020





Recommendations (Count of Parts & Services)

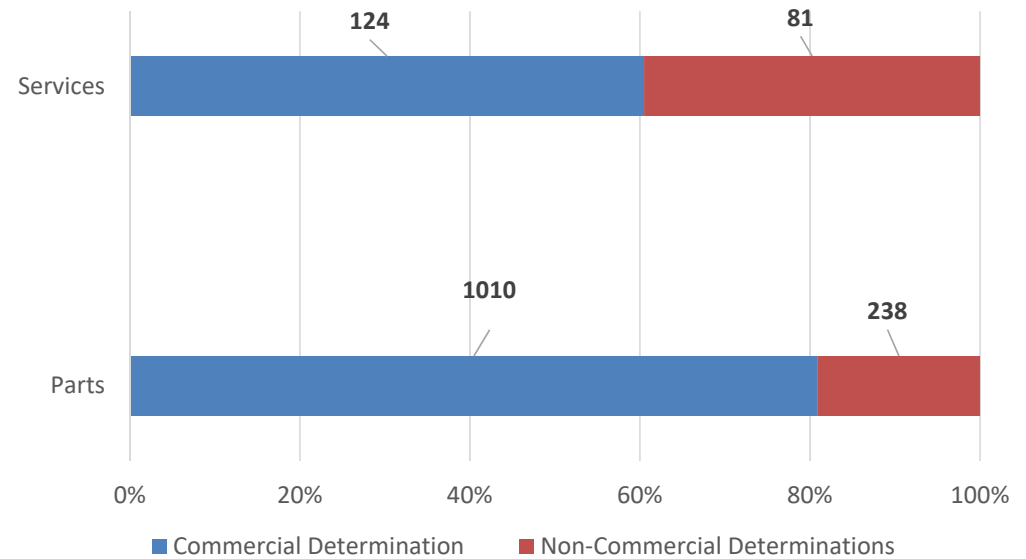


Legacy Commercial Recommendation Output

- 9,556 parts reviewed, 9343 recommended commercial (98%)
- 189 services reviewed, 148 recommended commercial (78%)

JUN 2016 – DEC 2018

Determinations (Count of Parts & Services ITD)



Legacy Commercial Determination Output

- 1248 parts reviewed, 1010 determined commercial (81%)
- 205 services reviewed, 124 determined commercial (60%)

JAN 2019 – Present

QUESTIONS?



DCMA CIG Industry Day

Mr. Kim Herrington
Acting Principal Director, Defense Pricing and Contracting
Office of the Under Secretary of Defense (Acquisition and Sustainment)

February 20, 2020





Defense Pricing and Contracting



Who

We work with...



**Military Departments /
Defense Agencies /
Combatant Commands**



Congress & Interagency



International Partners



Industry



**Educational Institutions
& Think Tanks**

Defense Pricing and Contracting

- Contract Policy
- Contracting eBusiness
- Defense Acquisition Regulations System
- Pricing and Contracting Initiatives

2020 Focus

- Innovate and improve acquisition policies
- Enhance currency and efficiency of contracting regulations
- Improve eBusiness systems
- Analyze the effectiveness of current financial methods through Contract Financing Study
- Workforce outreach

How

by innovating...

- Policy
- Regulation
 - FAR, DFARS, PGI
- Processes
- eBusiness Standards, Capabilities, and Data

Why

We do this...

- Meet National Defense Strategy (NDS) objectives
- Support & provide guidance to DoD's 30,000 contracting professionals who obligate over \$300 billion annually to bring world-class capability to the warfighter

OUSD (A&S) Priority #1.

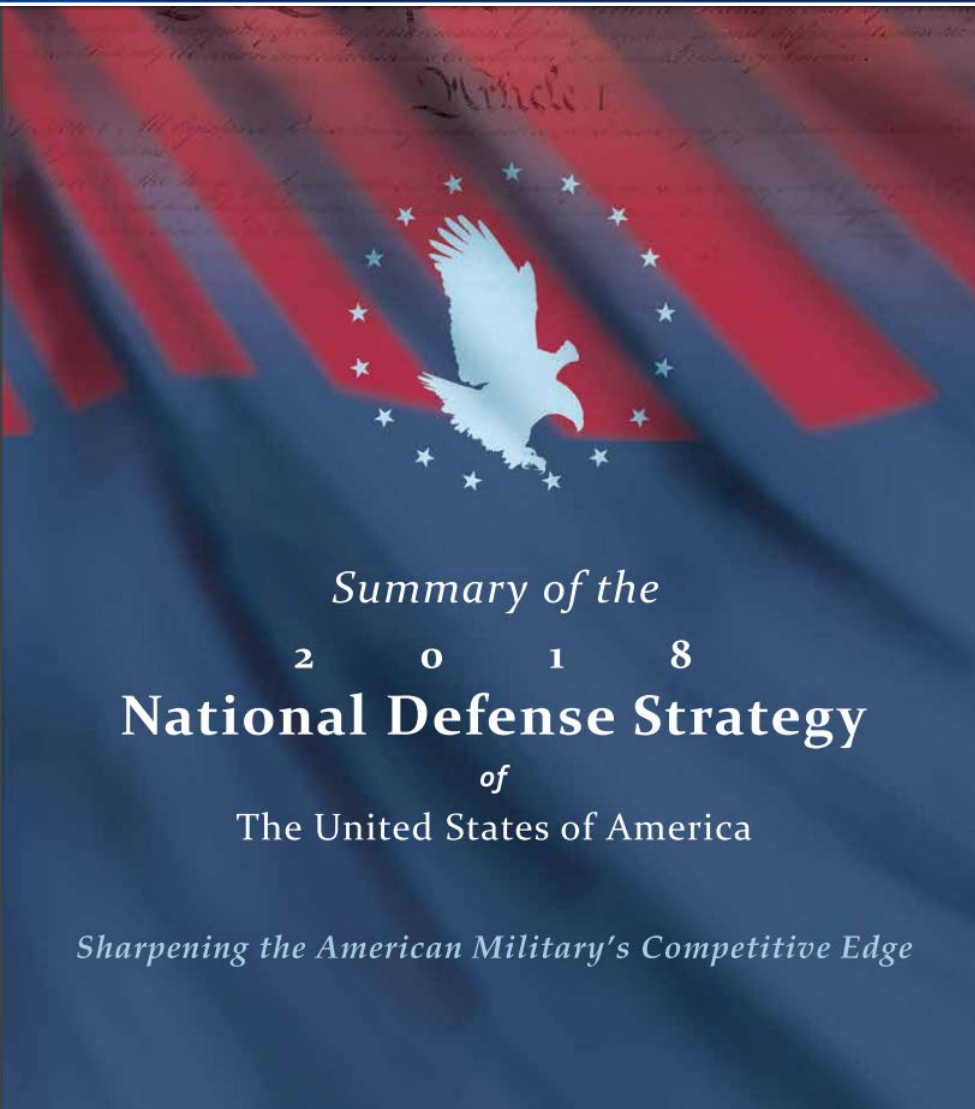
Enable innovative acquisition approaches that deliver warfighting capability *at the speed of relevance*:

- Translate statute into streamlined acquisition policy and business processes that keep pace with technology
 - Access emerging technology through Other Transactions
- Enable contracting at the *speed of relevance*
 - Efficient contracting for all contracting lanes and major programs

<https://www.acq.osd.mil/dpap/>



The Need for Speed and Innovation



- ◆ Speed of relevance
- ◆ Unresponsive processes
- ◆ Overly risk averse thinking
- ◆ Business innovation





Definition of Insanity – Corollary

“

**WE CANNOT SOLVE OUR
PROBLEMS WITH THE SAME
THINKING WE USED WHEN
WE CREATED THEM**

”



Albert Einstein





Go faster but not at the expense of a good deal





A caution regarding commerciality

FOR OFFICIAL USE ONLY

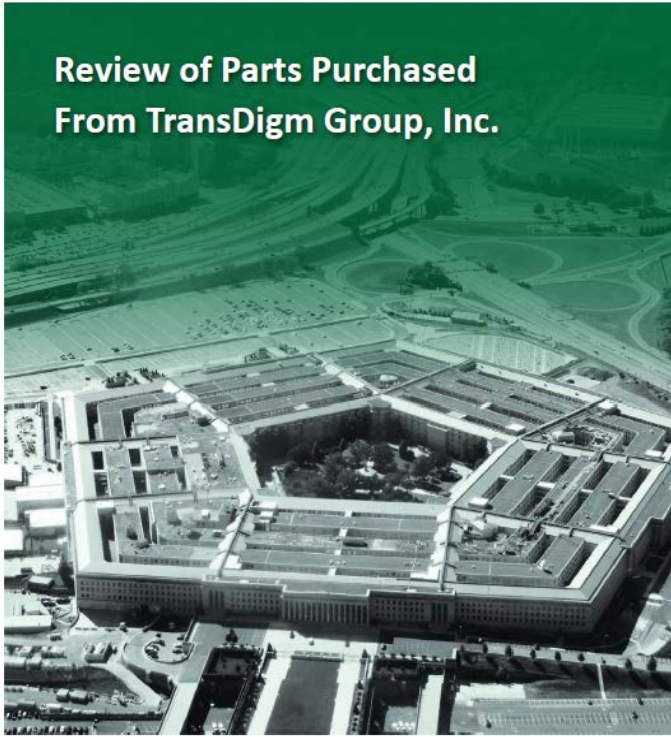
Report No. DODIG-2019-060

INSPECTOR GENERAL

U.S. Department of Defense

FEBRUARY 25, 2019

**Review of Parts Purchased
From TransDigm Group, Inc.**



INTEGRITY ★ INDEPENDENCE ★ EXCELLENCE

- ◆ **Congressional reaction**
- ◆ **Company interaction**
- ◆ **Cadre of pricing experts**
- ◆ **Supplier pricing focus**





FY20 NDAA provisions

- ◆ **Sec 803 – Failure to provide other than certified cost or pricing data**
 - » **Contracting officers should not determine price reasonableness solely based on historical prices paid by the government**
 - » **If an offeror fails to make a good faith effort to comply with reasonable supporting data requests to determine price reasonableness they are ineligible for award unless the HCA determines it to be in the best interest of the government to make the award**
 - » **HCA determinations to be reported to DPC**
 - » **DPC to produce an annual report identifying offerors who have denied multiple requests to provide data/information**





FY20 NDAA provisions

- ◆ **Sec 804 – Comptroller General report on price reasonableness**
 - » **GAO to provide a report NLT March 2021 that:**
 - » **Examines certified cost or pricing data waivers for sole source spare parts**
 - » **Examines exceptions (commerciality) to CCPD for the same**
 - » **Examines contracts awarded where companies denied providing data to support price reasonableness**
 - » **Actions taken by DoD regarding data not being provided**





Industry Questions

- ◆ **What are your best practices for evaluating supplier cost/prices? (Larger and smaller items)**
- ◆ **How do you work with Government teams on this issue?**
- ◆ **How do you mine purchase order history to support these efforts?**
- ◆ **Given “big data” efforts, what is being done to evaluate spare part price changes, supplier pricing changes, etc.**





Q&A

Questions?





Contractor Purchasing System Review (CPSR) Group

Unclassified//For Official Use Only

Presented By:

John C. Foley

CPSR Group Director

February 20, 2020



Mission

Ensure that suppliers' have purchasing systems in place that contribute to effective subcontract management. Effective subcontract management includes development of, as well as performance to, internal policy and procedures, public laws and adequacy of price analysis performed on subcontractors.

Personnel

Four regional hub locations in Boston, Atlanta, Dallas, and Phoenix. 9- 10 Analysts per team.
CPSR conducts on average 125 reviews a year.

Functions

- Evaluation of efficiency and effectiveness with which the contractor spends Government funds and complies with Government policy when subcontracting
- Complete evaluation of a contractor's purchasing of material from services, subcontracting, and subcontract management from development of the requirement through completion of the subcontract performance
- Report findings to Contracting Officer providing a basis for granting, withholding, or withdrawing approval of the purchasing system
- Review corrective action plan for effectiveness and validate implementation

- The CPSR Group provides functional specialist support to the DCMA Contract Management Office in the form of a contractor purchasing system review and subsequent written report which, under the direction of FAR 42.302 and FAR 44.301, provides the ACO a basis for granting, withholding, or withdrawing approval of the contractor's purchasing system
 - FAR part 44 – Subcontracting Policies & Procedures
 - FAR 52.244-2 (Alternate I when applicable) – Subcontracts
 - DFARS part 244 – Subcontracting Policies & Procedures
 - DFARS 252.244-7001 - Contractor Purchasing System
 - DFARS 252.242-7005 - Contractor Business Systems (Withholds)

- FAR 44.302(a) - The CO shall determine the need for a CPSR based on, but not limited to, the past performance of the contractor, and the volume, complexity and dollar value of subcontracts
- If a contractor's sales to the Government (excluding competitively awarded firm-fixed-price and competitively awarded fixed-price with economic price adjustment contracts and sales of commercial items pursuant to FAR Part 12) are expected to exceed \$50 million during the next 12 months, the CO shall perform a review to determine if a CPSR is needed
- Sales include those represented by government prime contracts, subcontracts under government prime contracts, and modifications

- The Commercial Item Group (CIG) and CPSR working together
 - The mandate for the use of commercial items in Government procurements to the maximum extent is included in FAR 1.102(b)(1)(i). Contractors incorporating commercial items and/or services in FAR part 15 acquisitions should have sound acquisition strategies for determining if a Government requirement can be satisfied commercially and document the commerciality of the subcontract items and/or services
 - The objective of a commercial item determination is to ensure that the item and/or service meets the definition in FAR 2.101. The contractor's completion of commercial item determinations is prescribed in DFARS 244.402(a), and purchasing system reviews are required to determine the adequacy of commercial item rationale by DFARS 244.303(a)
 - Prime contracts that include FAR 52.244-6, Subcontracts for Commercial Items, require contractors to incorporate, and to require subcontractors at all tiers to incorporate, commercial items to the maximum extent practicable and to include the clauses and terms in FAR 52.244-6(c) and (d) in subcontracts. The clause at DFARS 252.244-7000, Subcontracts for Commercial Items, requires the contractor to include this clause, and the terms of this clause, in subcontracts

- Entrance briefing with contractor and government personnel
- Physical review based on the 30 CPSR report elements
- CPSR Analysts conduct daily briefs to keep the contractor and ACO informed of arising concerns or issues
- Analyst questions are formally submitted to the contractor in writing and tracked on a question log which is provided at end of review
- Pre- Exit briefing conducted to present contractor with preliminary findings (compilation of the daily briefs)
- Formal Exit briefing conducted to provide the contractor and ACO with preliminary findings

- Analyze data and develop statistics
- Prepare a report addressing the contractor's policy and practice for each of the review elements
- Report released to ACO within 30 days of exit briefing
- When non-material deficiencies are identified, the procurement analyst issues a Level II CAR and follows through to closure
- When material deficiencies are identified, the procurement analyst prepares a draft level III CAR and the contractor provides a response to the ACO

CPSR REPORT MATRIX (Elements 1-15)	DFARS 252.244-7001 Criteria
1. Policies and Procedures Manual	(c) (1), (17), (19), (22) and (24)
2. Truthful Cost or Pricing Data (Truth-In-Negotiations Act (TINA))	(c) (10), (16) and (22)
3. Cost Accounting Standards (CAS)	(c) (2) and (19)
4. Prior Consent and Advance Notification	(c) (1)
5. Small Business Subcontracting Plans	(c) (2) and (19)
6. Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment	(c) (7)
7. Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions (Anti-Lobbying)	(c) (2) and (19)
8. Defense Priorities and Allocation System (DPAS) Rating	(c) (1)
9. Federal Funding Accountability and Transparency Act (FFATA) of 2006	(c) (2) and (19)
10. Quality Management and Counterfeit Parts Detection and Avoidance Systems	(c) (19) and (21)
11. Price Analysis	(c) (8), (9), (10), (16) and (22)
12. Source Selection	(c) (4), (5), (7), (8), (9), (10), (20), and (21)
13. Negotiations	(c) (11) and (12)
14. Make-or-Buy Program	(c) (6)
15. Limitations on Pass-through Charges	(c) (24)

CCPSR Report PSR REPORT MATRIX (Elements 16-30)	DFARS 252.244-7001 Criteria
16. Documentation	(c) (4), (5), and (15)
17. Training	(c) (17) and (18)
18. Internal Review/Self-Audit	(c) (17) and (18)
19. Mandatory FAR/DFARS Flow Down Requirements/Terms and Conditions	(c) (2), (16) and (19)
20. Purchase Requisition Process	(c) (4)
21. Commercial Item Determination	(c) (5)
22. Subcontract Types	(c) (13) and (23)
23. Procurement Authority	(c) (3) and (20)
24. Supply Chain Management Process	(c) (12), (14), (20) and (21)
25. Buy American and Berry Amendment	(c) (1)
26. Restrictions on the Acquisition of Specialty Metals/Articles containing Specialty Metals	(c) (19)
27. Subcontractor/Vendor Closeout Process	(c) (4)
28. Long Term Purchasing Arrangements	(c) (23)
29. Handling Change Orders and Modifications	(c) (15)
30. Intra/Inter-Company, Affiliate, or Subsidiary Transactions	(c) (5)

1. Price Analysis (44/119) (55/103)*
2. Sole Source Selection Justification (30/119) (40/103)
3. FFATA (29/119) (42/103)
4. Debarment (17/119) (44/103)
5. DPAS Rating (17/119) (37/103)
6. Limitation on use of Appropriated Funds (13/119) (31/103)
7. Commercial Item Determination (12/119) (31/103)
8. Negotiations (10/119) (15/103)
9. Truthful Cost and Pricing Data (TINA) (9/119) (18/103)
10. Policy & Procedure Manual (7/119) (14/103)

* Red signifies FY18 Stats

- Outlines the whole CPSR process
- Job Aids provide an explanation of all report elements
- Addresses both policy and practice
- Updated by “Champions” as requirements change
- Reviewed by the Agency’s Policy and Legal Groups
- Found at <https://www.dcmamilitary.com/> under the **Customer & Industry Access** section

Questions?



DEFENSE CONTRACT MANAGEMENT AGENCY

Engineering Perspectives on Commerciality

Presented By:

Scott Pace & Pam Logan

20 February 2020



Commercial Item Packages

- DCMA CIG supports commercial acquisition ...and so do the CIG engineers!
- The commercial item package is the foundation of a CID case
- It's important to get it right the first time



So... what does a good commercial item package look like?

Great Question! A good commercial item package:

- Connects the dots
- Tells the whole story
- Educates the government



More specifically, a good commercial item package:

- Provides a description of the proposed item's or service's function
- Provides technical information for the specific proposed item or service
- Provides a clear comparison of the differences between a proposed item and an "of a type" item



Commerciality is defined in terms of items and services, not product families, production lines or facilities.

A good commercial item package:

- Defines the marketplace of the proposed item/service
- Provides evidence of commercial sales of the proposed item, or draws a comparison between the proposed item and one or more items sold commercially



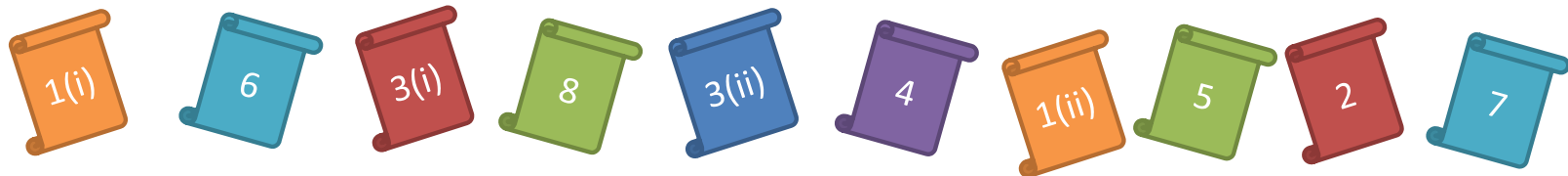
Recommendations for Industry:

- Get technical input when building a commercial item package
- Familiarize yourself with the DCMA CIG work products such as the Commercial and Technical Analysis Report (CTAR), Commercial Price Report (CPR), and Commercial Item Determination (CID):
- Commercial and Technical Analysis Report (CTAR) contents:
 - Executive Summary
 - Case Information
 - References
 - Contractor's Commercial Item Assertion Package
 - Statement of Adequacy of Contractor's Submission (Proposal Adequacy Checklist)
 - DCMA Technical Analysis
 - Market Research
 - Commercial Item Recommendation

Templates viewable at: <https://www.dcms.mil/Commercial-Item-Group/> under "Additional Resources

Familiarize yourself with DFARS 252.215-7009 Proposal Adequacy Checklist, items 18 a – c

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



b. For modified commercial items... did the offeror classify the modification(s) as either—

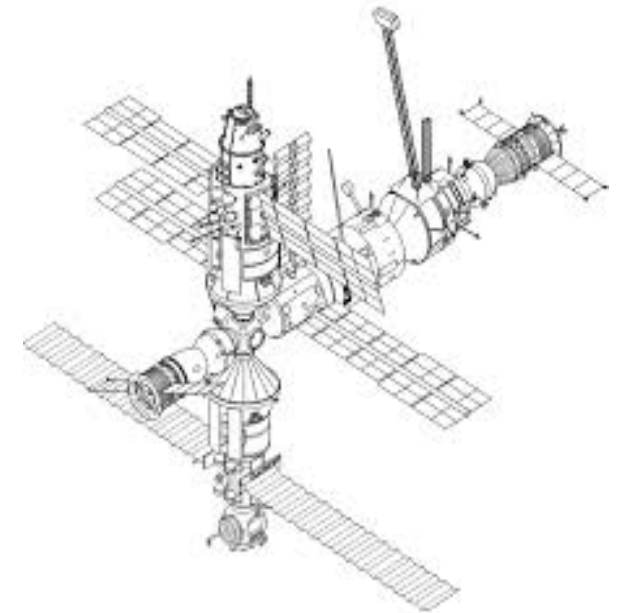
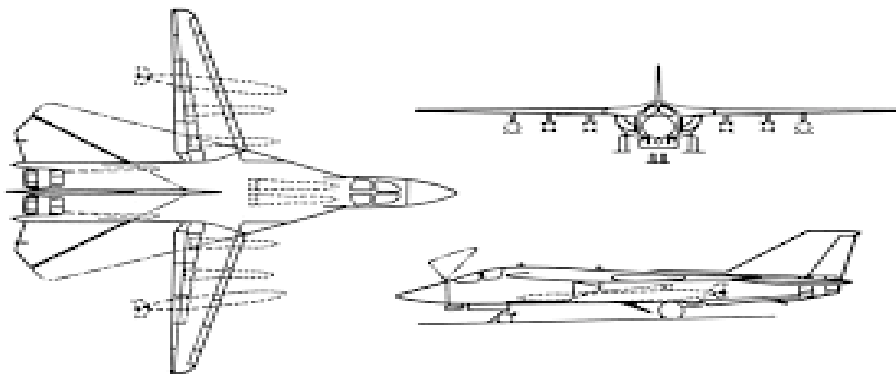
- i. A modification of a type customarily available in the commercial marketplace; or
- ii. A minor modification of a type not customarily available in the commercial marketplace made to meet Federal Government requirements

c. For proposed commercial items “of a type,” did the contractor provide a technical description of the differences between the proposed item and the comparison item(s)?

Be explicit with the assertion! Identify the FAR 2.101 commercial item definition and sub-definition

DCMA engineering top challenges with submitted Commercial Item Packages

1. Not providing information for the specific item or service
2. Not providing an explicit assertion
3. Not explaining modifications
4. Not providing evidence of commercial sales
5. Not demonstrating market research



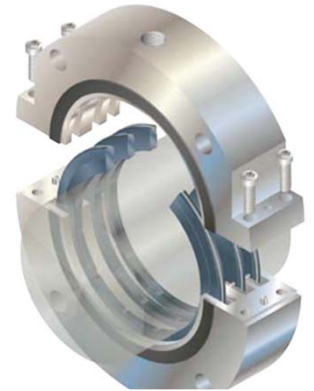
What's Commercial (and Why)

Segmented Circumferential Seal case facts:

- Commercial Item Package included:
 - Explicit commercial item assertion
 - Prime and Sub P/N
 - Description of the part function
 - Product line brochure, listing commercially available modifications
 - Specific part drawing, and drawing for the “of a type” comparison item
 - Description of the modifications (size, housing material and ring quantity)
 - Commercial invoices for the comparable commercial item
 - Commercial Catalog listing for the “of a type”
 - Marketplace information

Is this Item commercial?

Yes, per FAR 2.101 3(i) – modifications of a type customarily available in the commercial marketplace



Electric Pallet Truck case facts:

- Commercial Item Package included:
 - Explicit commercial item assertion
 - Prime P/N
 - Product line brochure
 - Description of the modifications (color, label)

Is this Item commercial?

Yes, per FAR 2.101 3(ii) – minor modifications of a type not customarily available in the commercial marketplace



Flight Data Recorder installation case facts:

- Commercial Item Package included:
 - Explicit commercial item assertion
 - Prime P/N, Sub P/N, NSN
 - The previously issued CID
 - Description of the services
 - Commercial invoices and description for a similar service

Is this Service commercial?

Yes, per FAR 2.101 5 – Installation services in support of an item referred to in paragraphs 1, 2, 3 or 4





DEFENSE CONTRACT MANAGEMENT AGENCY

Your Perfect Commercial Item Package

**A primer for primes acquiring products and
services from suppliers**



Strong package

Engineer's report concurs with prime determination

Risk to government is low

KO accepts risk

KO issues CID

Contracting Officer (KO)



Weak package

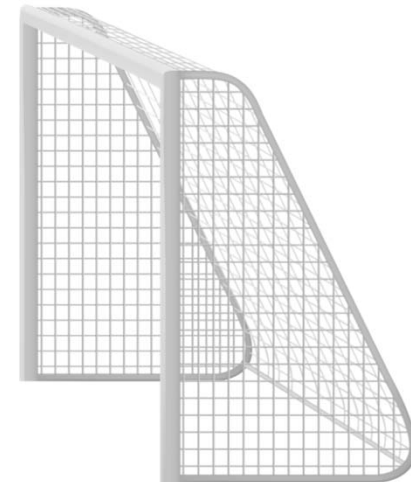
Engineer must do extensive independent research

Engineer's report non-concurs with prime assertion or has major caveats

KO unwilling to accept risk

KO does not issue CID

FIVE WAYS TO STRENGTHEN YOUR SUBMITTAL



(Assuming that the product or service really is commercial)

1. Provide information for the specific product or service

PRODUCTS

Required: State the entire part number, and enough technical information about the product to show that it meets the requirements of the solicitation.

Not required, but helpful: drawings, photos, detailed specifications

SERVICES

Required: Provide a statement of scope of the services and all applicable terms & conditions

Not required, but helpful: Provide an example of a supplier contract for similar/same services sold to a non-government customer, and make a side-by-side comparison



2. Explicitly assert which FAR 2.101 “commercial item” definition applies

Required: Choose a definition, and state it.

Note that “Definition 1” is not enough, you need to assert 1(i) or 1(ii)

Same for “Definition 3”: you need to assert 3(i) or 3(ii).



FAR Definition 1 language	How to support
<i>of a type...</i>	What functions or characteristics define this “type”?
<i>customarily used by the general public or by non-governmental entities...</i>	Identify some typical non-government users of this product type
<i>for purposes other than governmental purposes</i>	Identify the end use
<i>(i) Has been sold, leased, or licensed...</i>	Actual invoices, leases, or licenses
<i>...to the general public</i>	State the identify of the buyer, or state the source of their funds, or both
<i>(ii) Has been offered for sale, lease, or license</i>	Actual offer consistent with the definition in FAR 2.101.

“Offer” means a response to a solicitation that, if accepted, would bind the offeror to perform the resultant contract. (FAR 2.101)

Related terms: “bids,” “sealed bids,” “proposals”

NOT AN OFFER:


- Brochure
- Website advertisement
- Catalog, especially if it lacks prices or is marked “proprietary”



However, some KO’s will take the above into consideration if risk is otherwise low



3. Show and explain differences

Example: Ruggedized Hard Drive



	SUBJECT HARD DRIVE, PN XX-1B	COMPARISON COMMERCIAL HARD DRIVE, PN XX-1A	
			
Capacity	4 terabyte	1 terabyte	Different
Ruggedization	Protected shell, stabilized interior using epoxy	Protected shell, stabilized interior using epoxy	Same
Drive Speed	10,000 RPM	10,000 RPM	Same
Interface	USB 2.0	USB 2.0	Same
Processor	3rd Generation Intel® Core™ i7	9th generation Intel® Core™ i7	Different
Cache Memory	2GB DDR3 SDRAM with ECC	4GB DDR3L SDRAM	Different

Useful facts to point out:

Ruggedized hard drives are commonly used construction and oil & gas industries, and are not unique to the government.

For compatibility with software already in use, the government requires:

- **3rd Gen. Intel Core i7**
- **2GB DDR3 SDRAM with ECC**



Not an actual case

Market research found:

- No 4 TB **ruggedized** drives offered for sale to the general public, but
- Many 4 TB **non-ruggedized** drives are offered.

Takeaways: 4 TB size is **customarily available in the commercial marketplace**.
Supplier can assert **Definition 3(i)** for this product.

- The required technology -- 2 GB cache and 3rd Generation Intel Core i7 -- is 10 years old, but
- The older components are still stocked and sold to the general public.

Takeaways: Processor and memory are **minor modifications** to meet government requirements.
Supplier can assert **Definition 3(ii)** for this product.

Note that Definitions 3(i) and 3(ii) *both* apply here.

4. Provide evidence of commercial sales

Invoices are stronger if they're not redacted.

“Follow the money” is a good way to think about who is the general public and who is not.

The “commercial” box you checked in your electronic sales record does *not* prove that the sale was commercial.

The best evidence: identify the product's end use.



5. Demonstrate evidence of market research

MARKET RESEARCH is used to show, for example:

- Who buys this type of item, and what they do with it;
- The prices offered and paid by non-government buyers;
- Is competition strong enough to put downward pressure on prices?
- Are manufacturing advances making production cheaper?

The essence of a commercial item is that its price is set by competition in a healthy marketplace in which buyers have many choices.



Connect the Dots

A strong commercial item package shows a clear link between the product and its proposed price.

Someone who reads your package and learns about

- the product, and
- the marketplace

should be able to say,

“Yes, I think the proposed price is reasonable.”

If the dots don't connect, then something is missing.

PRODUCT



PRICE

COMING SOON
to
Defense Acquisition University



www.DAU.edu

Commercial Acquisition Toolbox



Example Commercial Item Determinations

Justification

Gov't & Ktr
Responsibilities

DCMA CIG
Support

DCMA CIG
CPSR Support

FAR Provisions
& Clauses

DFARS Provisions
& Clauses

Questions?



DEFENSE CONTRACT MANAGEMENT AGENCY

Go Commercial

– Streamline the Acquisition Process

Presented By:

Lisa Artz & Megan Steele-Holdaway

20 February 2020





"We need to move faster!"
Dr. Griffin, USD(R&E)



"Speed is our focus"
Dr. Roper, USAF SAE



"It's all about velocity"
Ms. Lord, USD(A&S)



"Focus on speed-to-field"
Mr. Shaffer, DUSD(A&S)

Conflicting Priorities



Speed/Price

- Commercial acquisitions means a streamlined acquisition process
- Lessens the administrative burden for all parties
- Typically expect increased competition, expand supplier base, decrease sole source supplier use
- Utilize standard commercial T&C's
- Reliance on companies inspection practices

Risk

- Exemption from submitting certified cost or pricing data -- No defective pricing liability
- Primarily rely only on price analysis to ascertain a fair and reasonable price
- Working with "new" suppliers, with minimal Government contracting experience
- Limits the Government to commercial standard T&C's – no special treatment
- Government may waive inspection rights

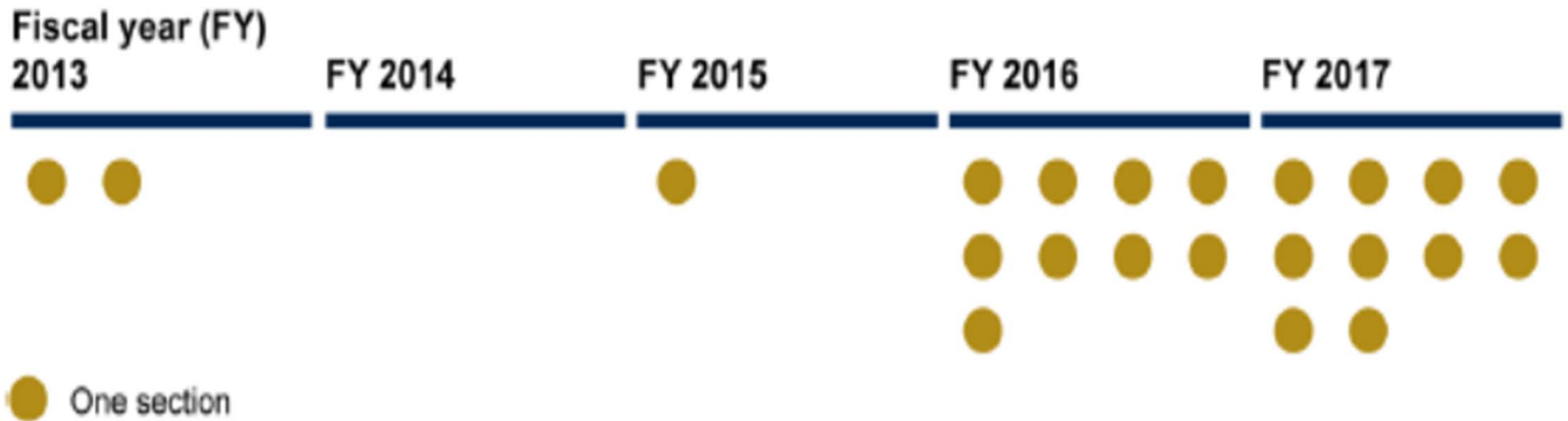


- Speed of Relevance
- Reform & Promote Affordability
- *Get out of our own way*



- SAP for commercial, \$7M
- Non Traditional Defense Contractors
- FAR39 IT - modular

Figure 3: Distribution of National Defense Authorization Act Sections Related to DOD's Acquisition of Commercial Items for Fiscal Years 2013 through 2017



Source: GAO analysis of National Defense Authorization Acts for fiscal years 2013 to 2017. | GAO-17-645

TODAY

- **Warranted Contract Officers**
- **Current CIG Thresholds**
 - Commercial Only Cases: \$1 M
 - Commercial and Pricing Cases: \$1 M
 - Commercial and Pricing Subcontractor Cases: \$2M
 - Pricing Only Cases: \$2 M
 - CMOs can perform price analysis requests under \$2M

TOMORROW

- **809 Panel**
- **Price Capability**
 - Should Cost/Should Price
 - Non-Traditional Defense Contractors
 - OTAs
- **Industry Requests**
- **Risk-Based Intake Approach**

- **GAO-18-530: Improved Information Sharing Could Help DOD Determine Whether Items Are Commercial and Reasonably Priced**
 - Availability of marketplace information
 - Ability to obtain contractor data
 - Extent of modifications to an item
 - Reliability of prior commercial determinations



- **Price Analysis**
 - The process of examining and evaluating a price without evaluating its separate cost elements and profit
- **Commercial Marketplace**
 - The **most effective method** of establishing price reasonableness for commercial items is price analysis based on established market prices
- **Price Analysis Challenges**



- **Price Adjustments**

- May be needed to address material differences – differences that impact determination of price reasonableness
- Between “of a type” items and “similar” items
 - Understand technical differences
- Examples:
 - Terms and conditions
 - Quantities
 - Place of performance
 - Delivery schedule – expedited delivery
 - Packaging requirements
 - Testing



- **Prices Obtained Through Market Research**
 - Market Price Analysis – obtain quotes for same or similar items, same or similar quantities
 - Published Price Analysis - lists or catalogue prices
 - Sales Data Analysis - for same or similar



Example – Relevant Sales Data

Material P/N or NSN	Description	Sales Doc.	P.O.	Delivery Date	Order Quantity	Unit of measure	Unit Price	Document Date	End Use	Sales Doc. Type	Net value
DOD1234	Widget	1-A	6784	11/30/2018	25	EA	\$ 18.38	11/2/2018	Commercial	Sale	\$ 459.50
DOD1234	Widget	1-A	6784	12/10/2018	22	EA	\$ (18.38)	12/10/2018	Commercial	Return	\$ (404.36)
DOD1234	Widget	Commercial of a type modified			280	EA	\$ 18.38	12/15/2018	Commercial	Sale	\$ 5,116.40
DOD1234-1	Widget	1-C	6786	2/19/2019	10	EA	\$ 26.17	1/7/2019	Govt	Sale	\$ 261.70
DOD1234	Widget	1-D	6787	3/9/2019	400	EA	\$ 18.38	1/26/2019	Commercial	Sale	\$ 7,352.00
DOD1234	Widget	1-D	6788	3/9/2019	1	EA	\$ -	1/26/2019	Commercial	Warranty	\$ -
DOD1234	Widget	1-E	6789	6/1/2019	2,000	EA	\$ 21.15	2/14/2019	Commercial	Sale	\$42,300.00
DOD1234	Widget	1-F	6790	6/15/2019	500	EA	\$ 24.52	2/21/2019	Commercial	Sale	\$12,260.00
DOD1234	Widget	Commercial of a type modified			50	EA	\$ (21.15)	3/3/2019	Commercial	Return	\$ (1,057.50)
DOD1234-2	Widget	1-G	6791	6/19/2019	100	EA	\$ 28.65	3/9/2019	FMS	Sale	\$ 2,865.00
DOD1234	Widget	1-H	6792	5/6/2019	20	EA	\$ 21.15	3/20/2019	Commercial	Sale	\$ 423.00

* Terms and Conditions should be standard for government or commercial if for the same part?

** Does the Government get the same warranty terms?

- **Historical Price Analysis**
- **Parametric Estimating Methods**
- **Value Analysis**



Questions?

Let's Make a Difference



DEFENSE CONTRACT MANAGEMENT AGENCY

Commerciality Challenges

Presented By:

Ryan Connell

20 February 2020

*This brief is not DCMA/DoD or USG guidance, or policy
This brief is not soliciting formal input on USG/DoD Policy or regulation
This brief is only for discussion points, information to promote dialogue*



- **Primes are not able to apply once commercial-always commercial logic to their subcontractor/purchases**
 - Discussion:
 - Compliance
 - The Prime can rely on prior CIDs made by DoD (as worded in DFARS)
 - Can primes re-use the exact package?

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 DoD shall serve as a determination for subsequent procurements of such item.

The Notion of “Once Commercial Always Commercial”

- Relying on prior contracts awarded using FAR part 12 commercial item procedures, in addition to prior CIDs, allows for broader application of ‘once commercial always commercial’ even when documentation is not available or missing
 - On November 27, the Department of Defense (DoD) published a proposed rule that adds this language:

(iii) *Prior commercial item determination or other use of FAR part 12 procedures.* (A)(1) Pursuant to 10 U.S.C. 2306a(b)(4)(A), the contracting officer may presume that a prior commercial item determination made by a military department, a defense agency, or another component of DoD shall serve as a determination for subsequent procurements of such item.

(2) Pursuant to 10 U.S.C. 2380(b), except as provided in paragraph (a)(iii)(B)(2) of this section, a contract for an item acquired using commercial item acquisition procedures under FAR part 12 shall serve as a prior commercial item determination, unless the item was acquired pursuant to paragraph (a)(i)(B) of this section.

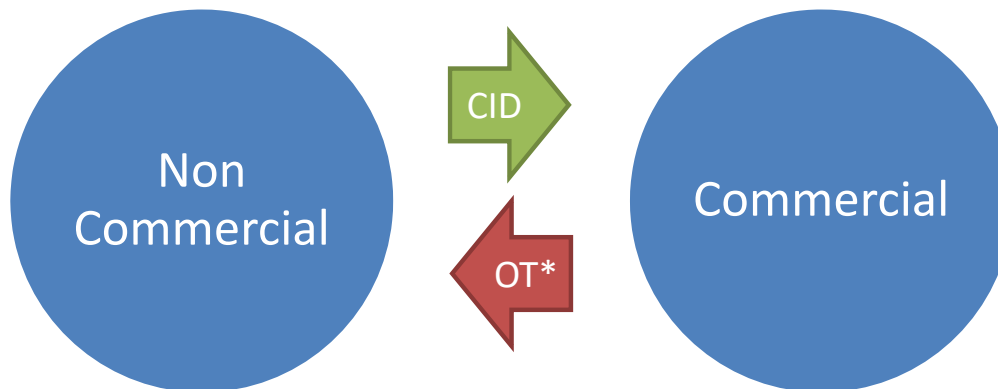
- Discussion: what does this mean?
 - Does this mean Primes can rely on prior contracts with subs?
 - Does it mean the Government is required to rely on prior Prime/Sub decisions?
 - Are Prime/Sub contracts considered “FAR part 12”

- **CIG has requirements which limit transparency in the decision making process**
 - Commercial Item Database
 - DoD Officials Only (Industry won't have visibility)
 - NDAA Language
 - CIG Determinations
 - In Support of Buying Activity
 - Industry is only notified of “non-commercial” without understanding why
- Discussion: Ideas to be more transparent given the requirements

- **Commercial Acquisition is faster for the Government, but there is no data available to show it is faster or easier for Primes**
 - FPDS-NG data links FAR part 12 commercial procedures to faster PALT timelines
 - Discussion: What about commercial subcontractors
 - Is it Better/Faster/Smarter?
 - If not, what can we do to solve it?

“Buying commercial items is not hard, but documenting them has become so burdensome and fraught with risk, it discourages contractors from buying commercial items or treating commercial items as such. There has to be a better approach.”
-Email sent to commercial inbox

- **Relying on historic Commerciality Decisions is a 1-way Street**
 - Non Commercial Determination
 - Overturning?
 - Discussion: Should the language go both ways?



OT* Overturning Process outlined in DFARS 212.102

- **Nontraditional Defense Contractor language limits nontraditional subcontracto**
 - DFARS 212.102 - Contracting officers may treat supplies and services provided by nontraditional defense contractors as commercial items.
 - DFARS-2016-0028 – Public Comment
 - Would Primes want that responsibility?
 - Do you think this is the correct interpretation?
 - Do you think this is in the best interest of DOD?
 - Discussion: Is this helping?

21. Nontraditional defense contractors.

Comment: One respondent recommended elimination of the permissive nature of this authority. The respondent further recommended deletion of the language stating that the use of commercial item procedures under this authority does not mean the item is commercial, stating that this additional direction adds uncertainty for nontraditional contractors for renewal contracts and could adversely impact their initial decision to sell to DoD.

Additionally, two respondents recommended clarifying that “subcontractors” be added to the definition of nontraditional defense contractors so that items provided by a subcontractor that meet the definition of a “nontraditional defense contractor” may be treated as commercial items.

Response: Section 857 amended [10 U.S.C 2380a](#) to provide DoD with the permissive authority to treat items and services provided by nontraditional defense contractors as commercial items. This authority was neither mandatory nor was it extended to prime contractor commercial item determinations for subcontracted items and services.

- **Value & prioritization of CIDs without being requested by a procuring agency- outside of an acquisition**
 - Strategic CIDs – SCIDs
 - Exploring the idea of making SCIDs outside of the acquisition cycle
 - Discussion: How do we manage which technologies, parts, companies to issue CIDs for?
 - “New Tech” vs “Legacy Parts”

- **Proposed rule helps reduce burden of CIDs & associated compliance for low value items**
 - On November 27, the Department of Defense (DoD) published a proposed rule that adds this language:

252.244-7000 Subcontracts for Commercial Items.

* * * * *

(c) The Contractor shall treat as commercial items any items valued at less than \$10,000 per item that were purchased by the Contractor for use in the performance of multiple contracts with the Department of Defense and other parties and are not identifiable to any particular contract when purchased. The Contractor shall ensure that any such items to be used in performance of this contract meet all terms and conditions of this contract that are applicable to commercial items.

- Discussion: How often is this the case? Value add?