14 September 2022

SUBJECT: Choose an item for the Choose an item, PROGRAM (Program), PRIME (Prime contractor), SUB (Subcontractor)

# EXECUTIVE SUMMARY OF COMMERCIAL Choose an item. DETERMINATION

The DCMA CIG Contracting Officer determines, as implemented by the Defense Federal Acquisition Regulation Supplement (DFARS) 212.102(a)(iii)(A), that Choose an item. in the Federal Acquisition Regulation (FAR) 2.101 according to the Choose an item.

Choose an item. Summary:

*Table 1:*

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Prime Contractor P/N** | **Subcontractor P/N** | **NSN** | **Nomenclature** | **Supplier** | **DCMA CIG Contracting Officer’s Determination** |
|
|  |  |  |  |  | Choose Para... |
|  |  |  |  |  | Choose Para... |
|  |  |  |  |  | Choose Para... |
|  |  |  |  |  | Choose Para... |

This determination is based on observations and recommendations documented in Ref. 1, Commercial Technical Analysis Report (CTAR), dated XXX2022. See the COMMERCIALITY ASSESSMENT section of this memorandum for details.

**DESCRIPTION OF PRODUCT(s) AND/OR SERVICE(s)**

< summarize from the CTAR. Include no proprietary info. > Ref. 1 includes additional details.

**REFERENCE(s)**

# CUI – Commercial Technical Analysis Report (CTAR), DCMA CIG Case No. SXXXXXXXXXXXX, dated XXX 2022

**COMMERCIALITY ASSESSMENT**

Contractor’s assertion (i.e. Para) DCMA CIG’s analysis and market research reveals the following:

* XXXXXXX
* XXXXXXX
* XXXXXXX
* XXXXXXX
* XXXXXXX
* XXXXXXX

Based on these considerations, the Choose an item. the requirements of Para. (1)(i) of the definition, which reads as follows:

*(1) A product, other than real property, that is of a type customarily used by the general public or by nongovernmental entities for purposes 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;*

Based on these considerations, the Choose an item. the requirements of Para. (1)(ii) of the definition, which reads as follows:

*(1) A product, other than real property, that is of a type customarily used by the general public or by nongovernmental entities for purposes 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;*

Based on these considerations, Choose an item. the requirements of Para. (2) of the definition, which reads as follows:

*(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;*

Based on these considerations, the Choose an item. the requirements of Para. (3)(i) of the definition, which reads as follows:

*(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;*

Based on these considerations, the Choose an item. the requirements of Para. (3)(ii) of the definition, which reads as follows:

*(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.*

*Note*: The following requirements apply to minor modifications defined in paragraph (3)(ii) of the definition of a commercial product at 2.101 that do not change the commercial product to other than commercial:

FAR 15.403-1 (c)(3)(iii)(C) – For acquisitions funded by DoD, NASA, or Coast Guard such modifications of a commercial product 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.

Based on these considerations, the Choose an item. the requirements of Para. (4) of the definition, which reads as follows:

*(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;*

Based on these considerations, the Choose an item. listed in the table above meet the requirements of Para. (5) of the definition, which reads as follows:

*(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*

Based on these considerations, the Choose an item. listed in the table above meet the requirements of Para. (6) of the definition, which reads as follows:

*(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.*

Based on these considerations, the Choose an item. the requirements of Para. (1) of the definition, which reads as follows:

*(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;*

Based on these considerations, the Choose an item. the requirements of Para. (2) of the definition, which reads as follows:

*(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;*

*Note*: The following requirement applies to services defined in Para. (2) of the commercial service definition.

15.403-1(c)(3)(ii)(A) – When purchasing services that are not offered and sold competitively in substantial quantities in the commercial marketplace, but are of a type offered and sold competitively in substantial quantities in the commercial marketplace, they may be considered commercial services (thus meeting the purpose of 41 U.S.C.chapter 35 and 10 U.S.C. 2306a for truth in negotiations) 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.

Based on these considerations, the Choose an item. the requirements of Para. (3) of the definition, which reads as follows:

*(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.*

Ref. 1 is available to Government personnel upon request. Such requests should be emailed to the following address; please make sure to specify that you are requesting: “CTAR, DCMA CIG Case No. SXXXXXXXXXXXX, dated XXX 2022”.

dcma.boston-ma.eastern-rc.mbx.Commercial@mail.mil

**DETERMINATION**

Based upon the findings above, I determine Choose an item.

Choose KO...

Commercial Determination Administrative Contracting Officer

Choose reviewer...

Choose an item.