



DCMA



ACQUISITION INSIGHT  GLOBAL ENGAGEMENT

Commercial Item Acquisition In Today's Environment

Brian C. Huther, CFCM



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.

CIG Teams & Locations

Denver, CO

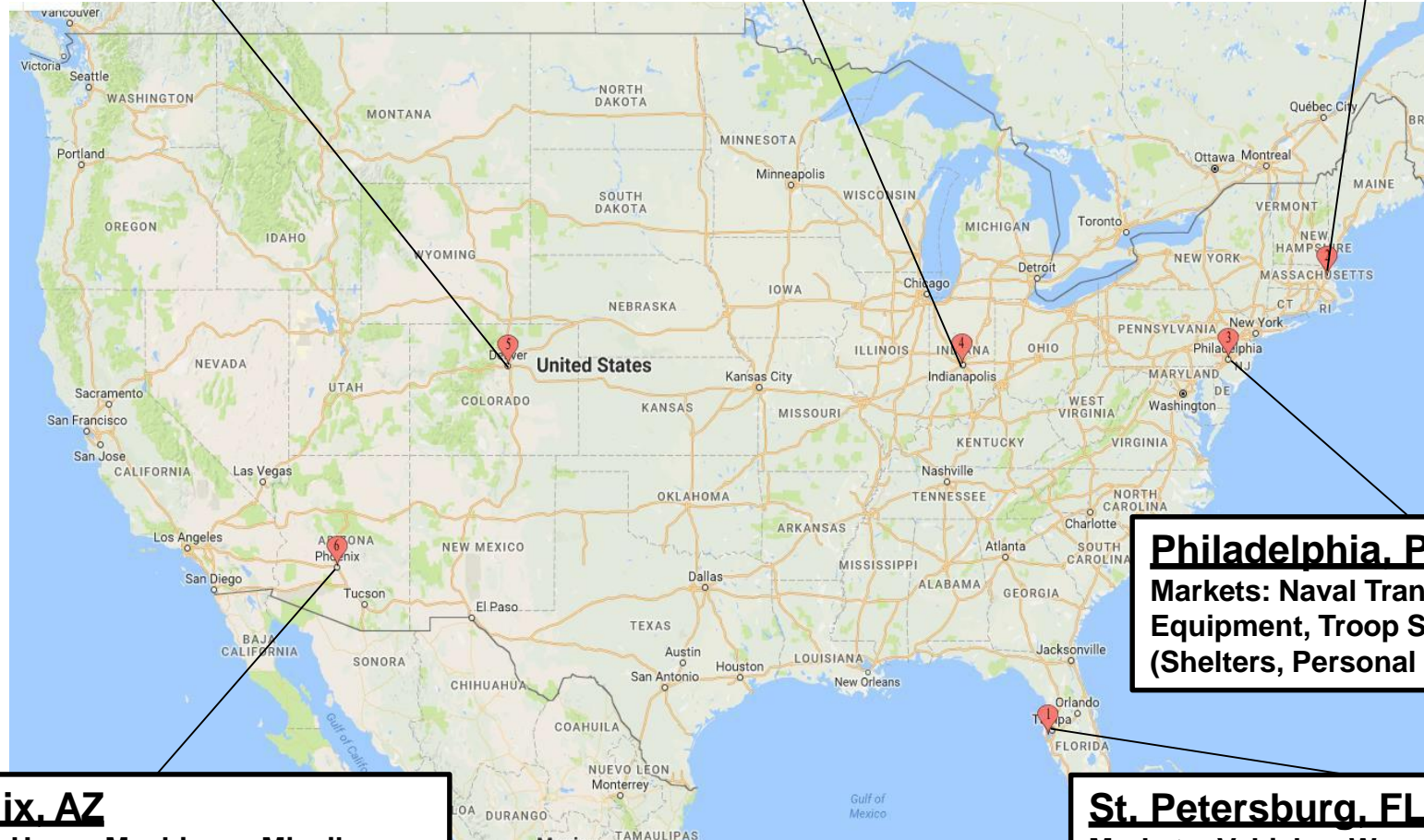
Markets: Space (Spacecraft and Lift), C4I (Systems, Cyber and Services), UAS

Indianapolis, IN

Markets: Automotive, Aeronautics, Aircraft Engines

Boston, MA

Markets: Services (MRO), Chemicals and Materials



Phoenix, AZ

Markets: Heavy Machinery, Missiles

Philadelphia, PA

Markets: Naval Transport & Equipment, Troop Supply (Shelters, Personal Equipment)

St. Petersburg, FL

Markets: Vehicles, Weapons, Ammo

CIG staff

Price/Cost Analysts: 40

Engineers: 18

Management Analysts: 1

Supervisors: 5

Directors: 1

Our services:

- **Commerciality Assessment and Recommendations**
- **Price Analysis**
- Market Research
- Negotiation Support
- Training and Assistance
- **Support for Contractor Purchasing System Reviews (CPSRs)**
- Pre-RFP support
- Mentoring



Other CI&G activities:

- Ongoing market research in key sectors
- Maintaining the **Commercial Item Database**
- Establishing a [“Common Framework”](#) with industry partners
- Training for government partners on commerciality and pricing analysis
- Industry outreach (NCMA)



CIG accepts commerciality and pricing cases for items and/or services that exceed \$1M at the prime level and \$3M at the subcontractor level.

We mainly look at the following:

1. Does the item or service fit into one of the **FAR 2.101 Commercial Item Definitions**?
2. What's a "fair and reasonable" price for the **Government to pay for this item based off pricing found in the commercial marketplace**?



Pictured: ULA Delta 4 Heavy

Overview of Commercial Acquisition

Why do it? (Mutually Beneficial)

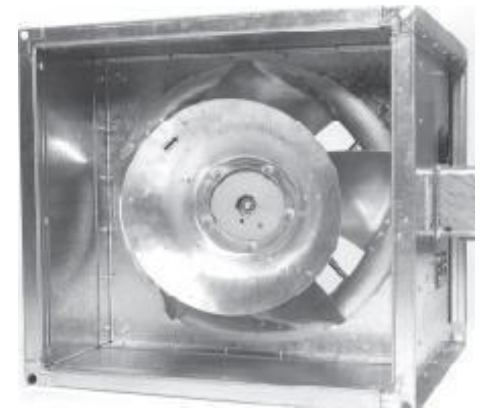
- It streamlines the acquisition process
 - Eliminates most government-unique terms and conditions
- It provides a stepping stone for companies with no prior history of government sales

(Industry Specific)

- Suppliers not required to submit **certified cost and pricing data**

(Government Specific)

- It leverages the commercial marketplace
 - **Technical innovation**
 - **Price competition**
 - **Economies of scale**





Why do it? (continued)... because the **LAW** says we must!

- The Federal Acquisition Streamlining Act of **1994** (FASA) **promoted maximum use of commercial items to meet the government's needs.**
- Preference for commercial items is incorporated into FAR 1.102 and flowed down to **prime contractors** in FAR 52.244-6(b).
- Section 800 panel and more recently Section 809 have shown the consistent mission to draw new firms to the defense market and enable firms to integrate their commercial and military production. (Section 800 panel began in 1993 – 25 years ago!)



Evolution of Commerciality per the NDAA's

- **NDAA 2013**

- Mandated the creation of a cadre of experts for commercial acquisition, led to CIG

- **NDAA 2016:**

- Restricted the PCO's ability to change a commercial decision; HCA to overturn
- Added scrutiny to convert from a FAR 12 to FAR 15 (HCA Approval)
- Required a database for recommendations and determinations of commerciality (Commercial Item Database maintained by the CIG)

Evolution of Commerciality per the NDAA's

- **NDAA 2017**

- Emphasized market research for price analysis
- Enforced/changed the build of a central database

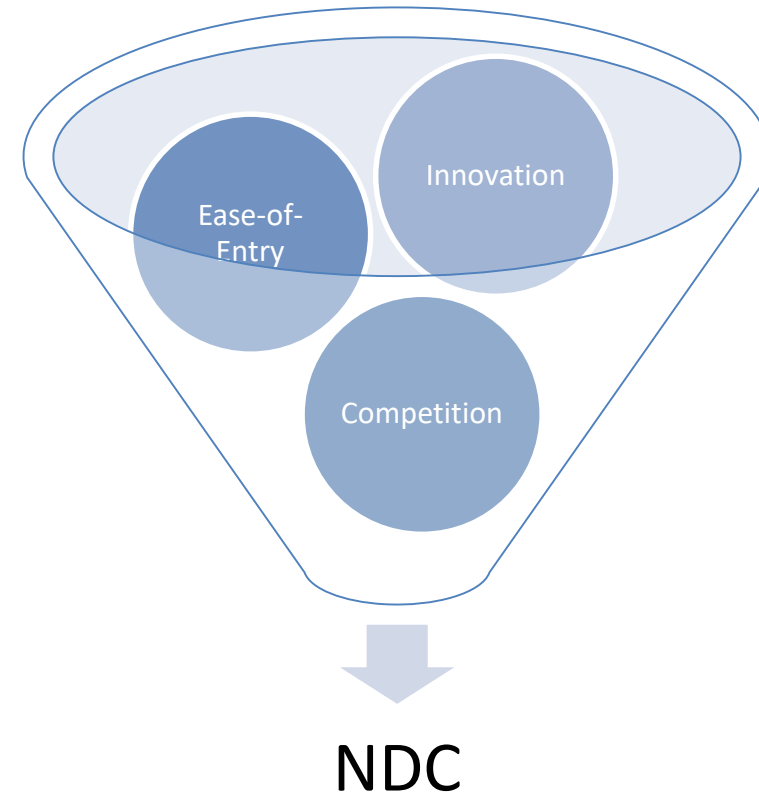
- **NDAA 2018**

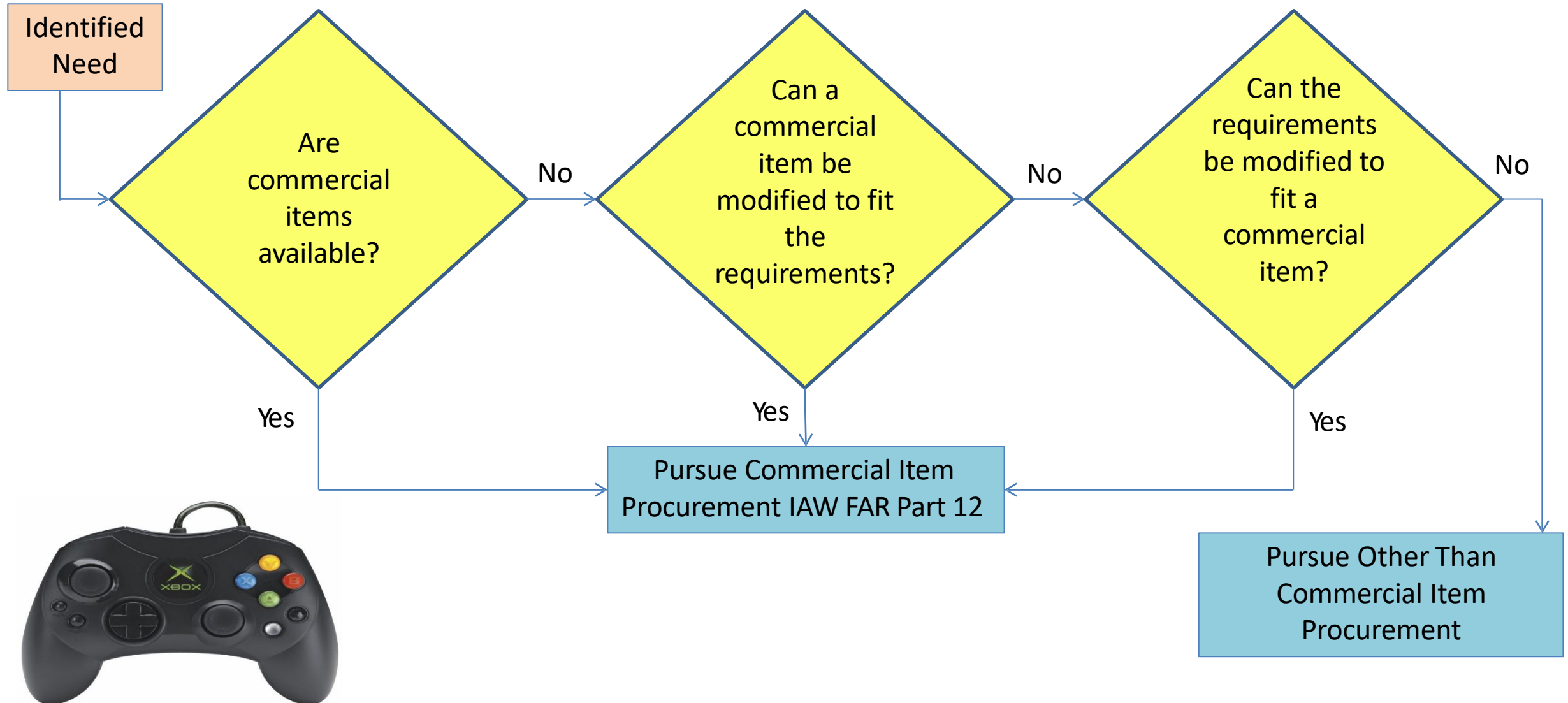
- Allowance of use of FAR 12 contracts for Non-Traditional Defense Contractors (NDC)
- Established the existence of prior FAR 12 buys as a basis for commerciality

- **NDAA 2019**

- Eliminates the statutory term “commercial item” which encompassed both products and services and now separates them into two defined terms: “commercial product” and “commercial service”.

- Supplies and services provided by NDC may be treated as commercial items (10 U.S.C. 2380A).
- This permissive authority is intended to enhance defense innovation and create incentives for cutting-edge firms to do business with DoD





- What is Market Research?
 - “Market research” means collecting and analyzing information about capabilities within the market to satisfy agency needs (FAR 2.101)
- Do I have to do market research on pricing?
 - Yes, NDAA 2017 **requires** market research for price reasonableness
- Who should do market research?
 - **EVERYONE – both Government and Industry!**
- Exception: market research *not* required for procurements under the Simplified Acquisition Threshold (\$150k) unless “adequate information is not available and the circumstances justify its cost.”
- How about for Commerciality? 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**. (DFARS 244.402)



- **Make sure you understand the requirements!**
 - ✓ Know the specifications for form, fit, and function
- **Is the exact same item (part number) advertised for sale?**
 - ✓ Google it (you may be surprised at what you find and how much time it saves you)
 - ✓ Check specialized websites such as military surplus & aviation parts resellers
- **Are you comparing apples to apples? (Quantities, T&C's, etc.)**
- **Do similar items exist which may assist you with the item you're looking at?**
 - ✓ Check the commercial item database
 - ✓ Use research sites such as the ones on CIG resource page





Let me call
a buddy of
mine...

Talk to suppliers
and other subject
matter experts



DISTRIBUTION STATEMENT A – Approved for Public Release. Distribution is unlimited.



The Tree of Knowledge

- There is no single website, person, or tool that has all the answers
- There is no checklist or template, since each part or service has its own unique circumstances
- **Be creative**, use sound business sense
- Take all the data points derived in market research to come to a **justifiable common sense conclusion** and then ...

...document it!

- Data Requests
 - When is enough, enough?
 - Disclosing commercial proprietary data
 - Contractor not providing timely data to Gov't requests
- Improper linkage with commerciality and price reasonableness
- Services in support of commercial items being determined non-commercial
 - Similar Terms & Conditions





Commercially available Off-The-Shelf Items

- Identical items (unmodified)
- Sold in substantial quantities to the General Public

Contractor Proposed Part



IDENTICAL

Commercial Marketplace

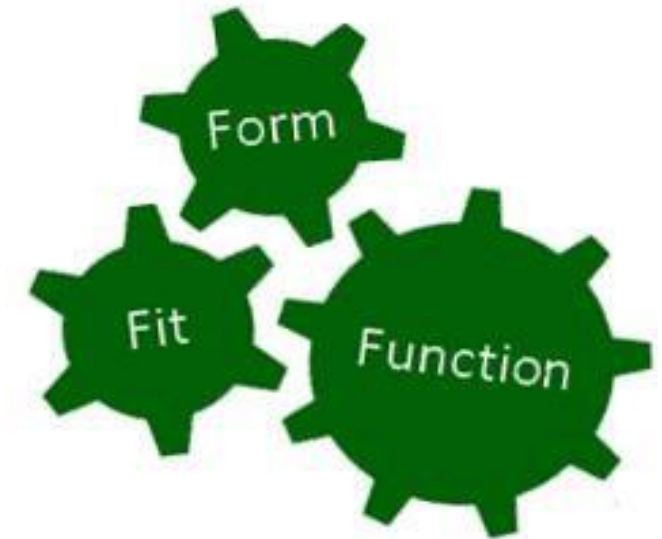


Important: The regulations have been edited to fit on this slide. See FAR 2.101 for original.

FAR 2.101 Paragraph #1 Any item that is OF A TYPE customarily used by the general public or by non-government entities for non-government purposes, has been sold, leased, licensed or offered for sale to the general public.

What to look for:

- Purpose/Functionality of item
- Similar to item
- Technical differences between similar to and of a type
- Drawings, specifications, photographs
- Sales Data/Invoices - nongovernment end-users
- Catalogs
- No mention of substantial quantities



Important: The regulations have been edited to fit on this slide. See FAR 2.101 for original.

FAR 2.101 Paragraph #2 An item that evolved from an item in paragraph (1) through advances in technology or performance.

Not yet available in the commercial marketplace

But will be available in commercial marketplace in time to satisfy delivery under a Government solicitation

What to look for:

- Similar to item
- Advances in Technology
- Timing of availability in the commercial market
- Planned delivery date under Government solicitation

Important: The regulations have been edited to fit on this slide. See FAR 2.101 for original.

FAR 2.101 Paragraph #3 An item that meets Paragraph (1) BUT FOR

- (i) Modifications that are customarily available in the commercial marketplace, or
- (ii) Minor modifications to meet government requirements but do not significantly change the functional characteristics of the item

What to look for:

- Base Item
- Details on Modifications to the base item
- Customarily available to the general public
- Minor modifications to meet government requirements

Government-unique functions or characteristics that are NOT minor modifications or significantly modify non-government function don't meet the definition.



Important: The regulations have been edited to fit on this slide. See FAR 2.101 for original.

FAR 2.101 Paragraph #4 A combination of items that meet Paragraphs #1, #2, #3, or #5.

What to look for:

- Understanding of the product and components.
- Statements of work and terms & conditions.
- Similar combination of items sold to the general public.



Important: The regulations have been edited to fit on this slide. See FAR 2.101 for original.

FAR 2.101 Paragraph #5 Installation, maintenance, repair, training, and other services, IF...

Such services are procured for support of an item from Paragraph 1 - 4; **AND...**

...the source of such services provides similar services to the general public under similar terms & conditions.

What to look for:
Evidence that the item is commercial based on Paragraphs 1-4
Statements of work, similar services provided to general public
Similar terms & conditions (government and commercial).



Important: The regulations have been edited to fit on this slide. See FAR 2.101 for original.

FAR 2.101 Paragraph #6 Services OF A TYPE offered and sold competitively in substantial quantities based on established catalog or market prices for specific tasks or outcomes, under standard commercial terms & conditions.

What to look for:
Statements of work. Government and commercial terms & conditions.
Sold competitively in substantial quantities

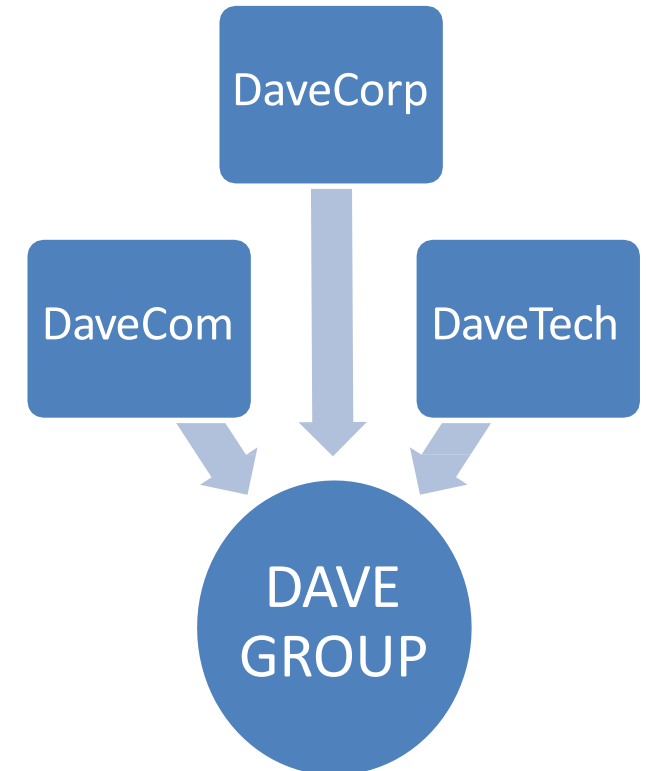
The FAR further defines “catalog price” and “market prices”



Important: The regulations have been edited to fit on this slide. See FAR 2.101 for original.

FAR 2.101 Paragraph #7 Any combination of items and services that meets Paragraphs 1-6...

...NOTWITHSTANDING the fact that items/services are transferred between separate divisions, subsidiaries, or affiliates of a contractor



Important: The regulations have been edited to fit on this slide. See FAR 2.101 for original.

FAR 2.101 Paragraph #8 A nondevelopmental item, if the procuring agency determines that the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local governments.

What to look for:

- Evidence of private funding for development,
- Quantities that are “substantial,”
- Evidence of market competition, and
- State/local government sales invoices



FAR 15 Prime Proposals with Commercial Subcontracts DFARS 252.215-7009 Proposal Adequacy Checklist #18

Has the offeror submitted an exception to the submission of certified cost or pricing data for commercial items proposed either at the prime or subcontractor level, in accordance with provision 52.215-20?

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?



DFARS 252.215-7009 Proposal Adequacy Checklist #18

b. For modified commercial items (FAR 2.101 commercial item definition paragraph (3)); did the offeror classify the modification(s) as either—

i. A modification of a type customarily available in the commercial marketplace (paragraph (3)(i)); or

ii. A minor modification (paragraph (3)(ii)) of a type not customarily available in the commercial marketplace made to meet Federal Government requirements not exceeding the thresholds in FAR 15.403-1(c)(3)(iii)(B)?



DFARS 252.215-7009 Proposal Adequacy Checklist #18

c. For proposed commercial items “of a type”, or “evolved” or modified (FAR 2.101 commercial item definition paragraphs (1) through (3)), did the contractor provide a technical description of the differences between the proposed item and the comparison item(s)?



FAR 52.215-20

(ii) *Commercial item exception.* For a commercial item exception, the offeror shall submit, at a minimum, information on **prices at which the same item or similar items have previously been sold in the commercial market** that is adequate for evaluating the reasonableness of the price for this acquisition. Such information may include --

(A) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), *e.g.*, wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the **proposed price relates to the price of recent sales** in quantities similar to the proposed quantities;



Misconceptions about Commerciality

- The products of a “commercial company” are certainly commercial
- The output of a “commercial facility” is certainly commercial
- Non-developmental items are always commercial
- If an item is developed at private expense, it must be commercial
- An item that has no commercial sales cannot be commercial
- All you need to prove an item is commercial is to list it on your company website
- Invoices can be “too old” for consideration in commerciality
- If it’s ITAR-restricted, it cannot be commercial
- If it’s commercial, the asking price must be fair and reasonable
- Catalog prices are automatically fair and reasonable
- GSA catalog makes it commercial and fair and reasonable



Commerciality Example - Is it “Of a Type”?



Pizza
Meal Ready-
to-Eat
(MRE)



Proposed “Similar-to” Commercial Product: Frozen pizza



Commerciality Example - Is it “Of a Type”?

Composition:

- Pepperoni
- Flour-based crust
- Tomatoes
- Cheese

Packaging: shrink film wrapping inside a chipboard box



Composition:

- Pepperoni
- Flour-based crust
- Tomatoes
- Cheese

Packaging:
Must be able to withstand parachute drops from 380 meters and non-parachute drops of 30 meters

Commerciality Example - Is it “Of a Type”?

Shelf life:

- 18 months if kept frozen (0°C)

Energy: approx. 280
Calories per
standard serving

Steps to Prepare:
Unwrap pizza. Place
on baking sheet.
Bake 13-15 minutes
at 400°F



Shelf life:

- 3.5 years at 27°C or below
- 9 months at 38°C

Energy:
1200 Calories per
package

Steps to Prepare:
Cut open polybag
containing flameless
heater, add pizza
pouch & water, wait
12-15 min.

Commerciality Example - Is it “Of a Type”?

Market factors:

- Strong competition among producers
- Large volume – more than \$3 billion in sales in 2017

**MATURE
MARKETPLACE = low
price**



Market factors:

- No product satisfying the government’s requirements yet exists

**IMMATURE
MARKETPLACE =
high price**



How can we determine a fair and reasonable price? What is Price analysis vs Cost analysis?

DISTRIBUTION STATEMENT A – Approved for Public Release. Distribution is unlimited.

- Evaluate price, not cost
 - Cost plus a certain profit is not the preferred method for determining F&R pricing for a commercial item
- Be a prudent business person
- Understand the competitive market conditions
 - Direct competition, if commercial, why isn't it being competed?
 - Who makes products/services similar? Who buys besides USG?
- Reasonable knowledge of the market
 - What has the Government paid, what do others pay? Why the delta?
 - What is the value of the item/service? (Value Based)
- Collecting & compiling data as well as documenting it to make informed and defensible recommendation

Commercial Item Pricing

- Price Analysis Techniques
 - Comparison to other prices paid for similar **commercial** items
 - Comparison to prices paid for this same item in the **commercial** marketplace
 - Comparison to historical Government prices paid for this particular item or similar item
 - Government cost estimates (IGCE)
 - Data other than certified cost or pricing data supplied by contractor
 - Value based pricing (NDAA 2017 – allowable)
 - Parametric estimating methods
- What we do (CIG)
 - Combination of as many techniques as possible





- Tastes great
- Convenient location
- Fair trade sourcing
- Costs \$5 to make 12 oz. cup
- Customer price is \$6
- 20% markup on the sale



- Tastes great
- Convenient location
- Fair trade sourcing
- Costs \$2.50 to make 12 oz. cup
- Customer price is \$5
- 100% markup on the sale



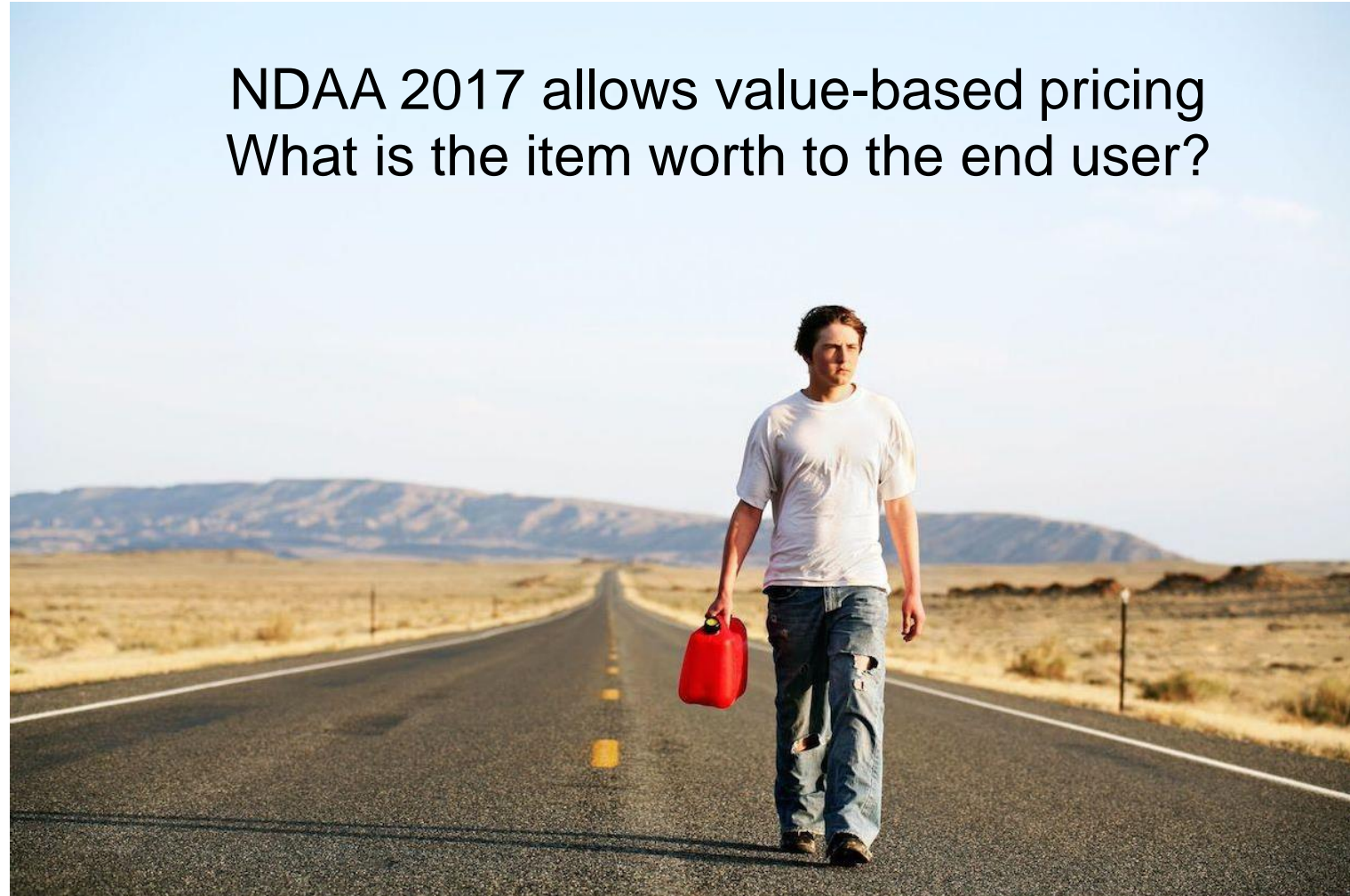
Gather data:

- Advertisements for the same or similar items
- Competitor quotes
- Invoices from past procurements

Adjust for:

- Changes in market conditions (supply, demand)
- Cost of starting or re-starting production
- Quantity
- Escalation
- Delivery schedule, warranty, other contract terms & conditions

NDAA 2017 allows value-based pricing
What is the item worth to the end user?



- Currently maintained in Excel format
- Tens-of-thousands of parts – and growing
- Not all-inclusive (but we're working on that)
- Sources of data:
 - Commercial Item **Determinations** by Procuring Contracting Officers
 - Commercial Item **Recommendations** (*Commercial and Non-Commercial*) by CIG personnel
 - Others
- Need information? Contact commercial@dcma.mil

622-0788-003	Receiver-Transmitter	A
622-0789-001	PA / Coupler Mount -	A
622-0791-001	R/T Mount - Hard	A
622-4408-013	Control	A
622-6376-015	Receiver, FM Immune	A
622-6376-020	Receiver, FM Immune	A
622-6380-001	Mount	A
622-6812-102	Rcvr (Replaces -002)	A
622-6820-001	Antenna, White	A
622-6820-003	Antenna, Black	A
622-7210-001	Mount	A
622-2612-002	Autopilot Panel, APP-	A
622-2614-100	Autopilot Computer,	A
622-2954-001	Mode Select Panel, MSP-	A
597-2147-001	ANT-430 DF Antenna	D
597-2172-101	Mount for LPT-125G /	D
597-2377-001	DF-500 Receiver and	D
597-2147-101	ANT-430 DF Antenna	D
622-2506-013	DATA AND VOICE	

The DCMA Commercial Item Group is available to:

- Provide expert assistance to DoD buying commands
- Support DCMA offices in performance of CPSRs
- Provide training
- Work with contractors to streamline the buying process

Commercial@dcma.mil

www.dcma.mil/commercial-item-group

DISTRIBUTION STATEMENT A – Approved for Public Release. Distribution is unlimited.