

**Office of the
Secretary of Defense
Acquisition, Technology, and Logistics
(Acquisition Initiatives)**



Commercial Item Handbook (Version 2.0)

Contents

Foreword.....	iv
Chapter 1 Introduction to Commercial Items.....	1
WHAT IS A COMMERCIAL ITEM.....	1
MAKING COMMERCIAL ITEM DETERMINATIONS.....	3
OTHER ISSUES RELATING TO COMMERCIAL ITEMS/SERVICES.....	9
Chapter 2 Describing Agency Needs And Acquisition Planning.....	11
QUESTIONS TO CONSIDER DURING REQUIREMENTS DEFINITION.....	11
STRATEGIC SOURCING.....	13
PERFORMANCE-BASED REQUIREMENTS	16
Chapter 3 Market Research	18
WHAT IS MARKET RESEARCH.....	18
SIGNIFICANCE OF MARKET RESEARCH.....	19
WHY MARKET RESEARCH MUST BE A CONTINUOUS ACTIVITY.....	24
TYPES OF MARKET RESEARCH.....	25
THE MARKET RESEARCH REPORT.....	28
MARKET RESEARCH RESOURCES.....	31
Chapter 4 Pricing Commercial Items.....	32
MARKET LEVERAGE-THE KEY TO REASONABLE PRICES AND BEST VALUE DECISIONS.....	33
SOURCES OF COMMERCIAL PRICING INFORMATION.....	34
PRICE ANALYSIS.....	37
COMPETITIVE PROCEDURES.....	40
SOLE SOURCE PROCEDURES.....	40

INNOVATIVE PRICING STRATEGIES AND INCENTIVES.....	44
CONFIGURATION CONTROL AND LOGISTICS SUPPORT.....	45
PRICING SUPPORT RESOURCES.....	48
Chapter 5 Contracting for Commercial Items.....	49
STREAMLINED SOLICITATION PROCEDURES FOR COMMERCIAL ITEMS.....	49
CONTRACT TYPE.....	49
CONTRACTING POLICIES AND PROCEDURES.....	49
COMMERCIAL ITEMS TERMS AND CONDITIONS.....	50
TAILORING PROVISIONS AND CLAUSES.....	50
WARRANTIES.....	51
TERMINATIONS.....	52
SUBCONTRACTS FOR THE ACQUISITION OF COMMERCIAL ITEMS.....	53
Chapter 6 Administering Commercial Items Contracts.....	54
INSPECTION AND ACCEPTANCE.....	54
PERFORMANCE MANAGEMENT.....	55
Chapter 7 Special Considerations.....	57
SOURCES FOR SUPPLIES AND SERVICES.....	57
FEDERAL PRISON INDUSTRIES.....	58
THE ABLITYONE PROGRAM.....	58
Section 8(a) Program.....	58
SIMPLIFIED ACQUISITIONS.....	58
PRIORITIES FOR USE OF GOVERNMENT SUPPLY/SERVICE SOURCES.....	59

Appendices

Appendix A, Commercial Acquisitions Policy Memoranda

Appendix B, Sample Commercial Item Checklist

Appendix C, Performance-Based Requirements Descriptions Resources

Appendix D, Sample Market Research Report

Appendix E, Market Research Questions—Historical Acquisition Information

Appendix F, Market Research Resources

Appendix G, Price Analysis Techniques

Appendix H, Pricing-Support Resources

Appendix I, Buying Commercial Items through Multiple-Award Task and Delivery Order Contracts and Multiple-Award Schedules

Foreword

On January 5, 2001, the Under Secretary of Defense (Acquisition and Technology) (USD (A&T)) issued a policy memorandum to provide immediate clarification on commercial acquisitions (see Appendix A). This updated Commercial Items Handbook Version 2.0 supersedes Version 1.0 dated November 2001 and is designed to assist contracting officers with the effective and efficient acquisition of commercial items. The Federal Acquisition Streamlining Act (FASA) of 1994 focused on simplifying and reforming procurement laws. The 1996 Federal Acquisition Reform Act continued the intent of FASA, creating opportunities to improve procedures, promote competition, and purchase commercial items with the ease of non-governmental agencies.

PURPOSE

The purpose of the Commercial Item Handbook is to assist acquisition personnel develop sound acquisition strategies for procuring commercial items. The Handbook focuses on how market research and cross-competency teaming can increase the Government's cost-effective use of commercial items to meet war fighter needs. The Handbook offers suggestions on questions to ask, and it points to additional sources of information, sources of training, and available tools. The Handbook is designed to be a practical reference tool for use in commercial item acquisitions.

BACKGROUND

Since the passage of the Federal Acquisition Streamlining Act of 1994 (FASA), the preference within the Federal Government has shifted from the acquisition of items developed exclusively for the Government to the acquisition of commercial items. This change was necessary to take full advantage of available and evolving technological innovations in the commercial sector. The Government's increased reliance on commercial items is essential to provide technology solutions that increase war fighter capabilities.

FASA signaled a dramatic shift in the course of acquisition policy for the Federal Government. It was the most far-reaching acquisition reform in the last fifty years. FASA promoted maximum use of commercial items to meet the government's needs and streamlined the process to acquire such items following commercial market practices. Commercial practices are overarching and affect every functional area within acquisition. All of acquisition must move to a price-based, market-driven environment from requirements development through property disposal. Source selection must be made on a "best value" not "cheapest price" basis. Agencies must evaluate their business processes, and reengineer those necessary to ensure streamlined acquisition and operating practices. This will be a never-ending process of mission identification, analysis,

planning, implementation, measurement and results. Continuous process improvement will become the norm in the Department.

The FASA preference for commercial items is incorporated into the Federal Acquisition Regulation Statement of guiding principles for the Federal Acquisition System in FAR Section 1.102. FAR 1.102(b) specifically states that the Federal Acquisition System will:

1. Satisfy the customer in terms of cost, quality, and timeliness of the delivered product or service by;
 - a. Maximizing the use of commercial products and services,
 - b. Using contractors who have a track record of successful past performance or who demonstrate a current superior ability to perform, and
 - c. Promoting competition;
 2. Minimize administrative operating costs;
 3. Conduct business with integrity, fairness, and openness; and
 4. Fulfill public policy objectives.
-

Chapter 1

Introduction to Commercial Items

Title VIII of the Federal Acquisition Streamlining Act (Public Law 103-355) established the statutory requirements for acquiring commercial items. Section 8104 of the Act specifies a preference for commercial item acquisitions. Section 8105 specifies that certain provisions of law do not apply to acquisitions of items that meet the definition of a commercial item when acquired by the Government. Further, Section 8002 limits the types of clauses that may be included in a contract for an item meeting the statutory commercial item definition and acquired under 48 CFR, Chapter 1, Part 12 (Federal Acquisition Regulation (FAR) part 12). FAR implementation of the Act provided acquisition officials with wide latitude to use judgment in deciding whether a Government need can be met by an item that meets the commercial item definition. However, neither the Act itself nor the FAR implementation specifies how this decision is to be made or at what level within an organization it is to be made. These are established in the Defense Federal Acquisition Regulation Supplement (DFARS) and the DFARS Procedures, Guidance and Information (PGI). Consistency in the use of established approaches to acquire commercial supplies and services should exist across the Department.

What is a Commercial Item?

The commercial item definition is broad. Commercial items include any item of a type customarily used by the general public, or by nongovernmental entities, for purposes other than governmental purposes that has been sold, leased, or licensed, or offered for sale, lease, or license to the general public (see FAR 2.101). Also included in the commercial item definition is any item that has evolved from a commercial item as described herein, through technical or performance advances, even if it is not yet available in the commercial marketplace, as long as it will be available in time to satisfy the Government's requirements. Commercially Available Off-the-Shelf (COTS) items are defined at FAR 2.101 and are a subset of commercial items.

Commercial items do not necessarily have to be "off-the-shelf". Items that require modifications of a type customarily available in the commercial marketplace, or require minor Government-unique modifications, can still be considered commercial items. To qualify as representing a minor modification, of a type not customarily available in the commercial marketplace made to meet Federal Government requirements, the modification must significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. The FAR provides factors and guideposts to consider when making such a determination. Additionally, the FAR commercial item definition includes many services. A service is considered a commercial item when it is provided in support of a commercial item as previously defined. A service is also considered a commercial item when it is of a type offered and sold competitively in substantial quantities in the

Introduction to Commercial Items

commercial market on the basis of established catalog or market prices for specific tasks performed under standard commercial terms and conditions. The definition also includes any combination of commercial items (except “of a type” services) that are customarily combined and sold in combination to the general public.

The commercial item definition is not limited to items acquired by the Government from prime contractors; it also extends to commercial items acquired from subcontractors at all tiers, including items transferred from a contractor’s divisions, affiliates, or subsidiaries. Acquisition professionals are responsible for developing requirements and acquisition strategies that facilitate the inclusion of commercial items in Government-unique systems. Not only must agencies acquire commercial items, but they must require prime contractors and subcontractors to incorporate them to the maximum extent practicable in components of items.

Other aspects of the commercial item definition:

Of A Type

The phrase "of a type" in the commercial item definition broadens the definition so that qualifying items do not have to be identical to those in the commercial marketplace. This takes full advantage of the opportunities for modified commercial items, both commercial and non-commercial, to be procured utilizing these procedures. As a caveat, it is noted that the item must always fall within the definition of a commercial item under the FAR; this leeway is not license to procure military unique items which are not within the scope of that definition.

Evolved Items

If a commercial item evolves through technical or performance advances and that is not yet available in the commercial marketplace, it still meets the commercial item definition, as long as it will be available in time to satisfy the Government's requirements.

Commercial items that evolve as a result of advances in technology or performance include:

- Product updates
- Model changes
- Product improvements

New versions of software programs are part of this category of commercial items. Through this aspect of the commercial item definition, the Government can access new technology quickly.

Modified Items

A commercial item does not have to be off-the-shelf to be classified as commercial.

Introduction to Commercial Items

Two types of modifications are addressed in the definition of a commercial item:

- Modifications of a type customarily available in the commercial marketplace; or
- Minor modifications of a type not customarily available in the commercial marketplace, made to meet Federal Government requirements. A minor modification means a modification that does not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process.

For minor modifications of a type not customarily available in the commercial marketplace, factors to be considered include value, size, and the comparative value and size of the final product. Dollar value and percentage may be used as guideposts, but are not conclusive evidence that a modification is minor. In any case, the source of funding for the modification does not impact its qualification as a commercial item.

Under the requirements of Public Law 108-375, the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, as amended by Section 814 of the FY 2008 National Defense Authorization Act noncommercial modifications of commercial items were specifically addressed (See 10.U.S.C.§ 2306A and 41 U.S.C. § 403(12)(c)--(I)). “Noncommercial modification,” with respect to a commercial item, means a modification that is not of a type customarily available in the commercial marketplace and is minor.

Making Commercial Item Determinations

Commercial item policies and procedures rely heavily on the education, training, and professional expertise of Government acquisition personnel. Therefore, it is imperative that Government acquisition personnel use flexibility and exercise sound business judgment in its interpretations and application of policies and procedures. This is such an important concept that it is discussed twice in the statement of guiding principles for the Federal Acquisition System, both at FAR 1.102(d) and at FAR 1.102-4. The decision to use a commercial item to meet the Government’s requirements for a specific acquisition is based on market research and an analysis of the marketplace. A sample Commercial Item Checklist is provided at Appendix B. This checklist may reduce disparities between determinations. This decision is an important step in developing the acquisition strategy and solicitation to acquire the Government’s requirements.

Contracting officers must ensure that contract files fully and adequately document the market research and rationale supporting a conclusion that the commercial item definition of FAR 2.101 has been satisfied. Considering the information available in the commercial marketplace from market research efforts, the commerciality determination should clearly identify which elements of the definition render the Government requirement to be qualified as a commercial item and, therefore eligible for FAR part 12 procedures. In accordance with DFARS 212.102, when acquiring commercial items exceeding \$1 million in value, the contracting officer shall:

Introduction to Commercial Items

- Determine in writing that the acquisition meets the commercial item definition in FAR 2.101; and
- Include the written determination in the contract file by following the procedures at Procurement, Guidance, and Instructions (PGI) 212.102.

When awarding multiple award task and delivery order contracts and multiple award schedules, contracting officers shall make the commercial items determination at the contract award level. Particular care must be taken to document determinations involving modifications of a type customarily available in the commercial marketplace, and items only offered for sale, lease, or license to the general public, but not yet actually sold, leased or licensed. In these situations, the documentation must clearly detail the particulars of the modifications and sales offers. When such items lack sufficient market pricing information, additional diligence must be given to determinations that prices are fair and reasonable as required by FAR subpart 15.4. At a minimum, the contracting officer must use price analysis to determine whether the price is fair and reasonable whenever the contracting officer acquires a commercial item. The fact that a price is included in a catalog does not, necessarily denote that it is fair and reasonable. If the contracting officer cannot determine if an offered price is fair and reasonable, even after obtaining additional information from sources other than the offeror, the contracting officer must require the offeror to submit information other than cost or pricing data to support further analysis. In accordance with DFARS PGI 215.403-1 (b) (, Even if an exception to cost or pricing data applies, the contracting officer is still required to determine price reasonableness. In order to make this determination, the contracting officer may require information other than cost or pricing data, including information related to prices and cost information that would otherwise be defined as cost or pricing data if certified.

Examples of Commercial Items

Some examples of items that could logically be presumed to be commercial are as follows:

- Items for which industry standards are used as the sole procurement document. Examples of industry standards include those published by the American Society for Testing and Materials (ASTM) and the Society of Automotive Engineers (SAE).
- Items described by commercial item descriptions (CIDs).
- Items with Acquisition Method Suffix Code (AMSC) "Z," if the contracting activity buys virtually all non-developmental items.
- Federal Supply Codes (FSC's) that can reasonably be presumed to be commercial (e.g., lumber, specified metals, subsistence, and medical).

Categories Related to Commercial Items

Introduction to Commercial Items

Commercially available off-the-shelf (COTS) items, non-developmental items (NDI), and Government Off-the-Shelf (GOTS) items are categories related to commercial items, but are not synonymous with commercial items. The fact that a supply/service to be procured does not easily fit into the NDI or GOTS categories does not mean that it is not a commercial item.

Commercial Available Off-the-Shelf Items

COTS items are commercial items that have been sold, leased, or licensed in substantial quantities in the commercial marketplace and that are offered to the Government without modification. The COTS definition does not include services or bulk cargo, such as agricultural and petroleum products. A product does not have to be COTS to meet the commercial item definition. COTS items are a subset of commercial items. The commercial item definition is much broader and embraces products other than those that are presently available off the shelf.

Non-Developmental Items

NDI's are considered commercial items only if the procuring agency determines that they were developed exclusively at private expense and sold in substantial quantities on a competitive basis to multiple State and local governments or a foreign government with which the United States has a mutual defense cooperation agreement.

Definition of NDI:

1. Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;
2. Any item described in paragraph (1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or
3. Any item of supply being produced that does not meet the requirements of paragraphs (1) or (2) solely because the item is not yet in use. (FAR 2.101).

Government Off-the-Shelf Items

Government Off-the-Shelf (GOTS) is a commonly used term for NDIs that are Government-unique items in use by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement. The words "of a type" facilitate the acceptance of a best-value GOTS/NDI offer in response to a competitive FAR part 12 solicitation when the offered GOTS/NDI items are sufficiently like similar items sold, leased, or licensed; or offered for sale, lease, or license, to the general public.

Commercial Services

There are two categories of services that are considered commercial items, services in support of a commercial item and stand alone services:

Services in support of a commercial item would be installation services, maintenance, services, repair services, training services, and other services if they are procured for support of a commercial item and the source of the services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government.

Stand alone services are services 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 under standard commercial terms and conditions. The established market price for standalone services does not have to be published or written, since the Government can use market research to collect data from independent sources to substantiate the market price. In addition, Government-unique requirements or terms and conditions can be included, as long as there are sufficient common characteristics between the commercially available service and the service being acquired.

Preference for Performance-Based Services

Performance-based acquisition is the preferred method for acquiring services (FAR 37.102(a)). When acquiring services, including those acquired under supply contracts or orders, agencies must use performance based acquisition method to the maximum extent practicable, except for:

- Architect-engineer services acquired in accordance with 40 U.S.C. §1101 et seq.
- Construction
- Utility services
- Services that are incidental to supply purchases

FAR 37.102(a) (2) establishes a preference for different contract types when purchasing performance based services. The contracting officer is to follow the order of precedence:

- A firm-fixed price performance based contract or task order.
- A performance-based contract or task order that is not a firm-fixed price.

- A contract or task order that is not performance-based.

Non-Commercial Performance-Based Services Acquired as Commercial Services

In accordance with Section 1431 of the National Defense Authorization Act for Fiscal Year 2004, special authority is granted to use commercial item acquisition procedures for the acquisition of non-commercial performance-based services. The contracting officer may use the procedures if the contract or task order:

- Is entered into on or before November 24, 2013;
- Has a value of \$27 million or less;
- Meets the definition of performance-based contracting at FAR 2.101;
- Includes a quality assurance surveillance plan which defines tasks in measurable, mission-related terms;
- Includes performance incentives where appropriate;
- Specifies a firm-fixed price for specific tasks to be performed or outcomes to be achieved; and
- Is awarded to an entity that provides similar services to the general public under terms and conditions similar to those in the contract or task order.

Procuring Major Weapon Systems as a Commercial Item

In accordance with 10 U.S.C. §2379, departments and agencies shall obtain a determination by the Secretary of Defense and shall notify the congressional defense committees at least 30 days prior to acquiring a major weapon system as a commercial item to meet national security objectives. A subsystem or component of a major weapon system that meets the definition of a commercial item shall be acquired under the procedures established for the acquisition of commercial items in FAR part 12 and is not subject to the notification. The Department of Defense policy for acquiring major weapon systems as commercial items is implemented at DFARS subpart 234.70.

Alternative Approaches to Commercial Item Determination

Introduction to Commercial Items

The following alternative approaches are intended to increase the consistency of decisions across the department or agency and can be used to streamline the item-by-item determination process currently in use:

Prior Agency or Department Determinations

If it has been previously determined that an item meets the commercial item definition and commercial item policies and procedures to acquire the item were used, repetition of a comprehensive commerciality determination in subsequent acquisitions is not usually necessary. However, contracting officers should reexamine previous determinations if market conditions have changed significantly. Any decision to overturn a previous commercial or noncommercial determination by any Government agency must be documented.

Identifying Groups of Items as Commercial

Whenever possible, logical groupings of items should be identified as commercial without conducting an individual technical review of every item. This strategy is critical for significantly accelerating the pace at which items can be identified as commercial, because the resources needed to conduct individual item reviews are being steadily reduced. The contracting officer retains authority to make a final determination on each item but would not be required to examine the recommendation unless a reason exists to question it.

Contractor Determinations

Prime contractors and subcontractors at all tiers are required by law to incorporate, to the maximum extent practicable, commercial items or nondevelopmental items as components of items supplied to agencies. Contractors make commercial item determinations in much the same way as Government acquisition personnel. Interchange between Government and industry on this topic is encouraged because it is mutually beneficial.

Contractor determinations are another source of information that acquisition personnel should consider when making their own commercial item determinations. If a contractor procured an item commercially, and the Government subsequently acquires the same item, acquisition personnel should consider the contractor's determination as part of its own market research efforts. Likewise, if the Government determines that an item is commercial, the prime contractor should consider the Government's determination as part of its own market research efforts.

Prime Contract Commercial Item Determinations

Generally, contracting officers render commercial item determinations on prime contracts and document the contract file accordingly.

Subcontract Commercial Item Determination

The prime contractor shall determine whether a particular subcontract item meets the definition of a commercial item and adequately supports its determination of a fair and reasonable subcontract price. This requirement does not affect the contracting officer's responsibility or determinations made under FAR 15.403-4 to require submission of cost or pricing data if he or she determines that an item claimed to be commercial is, in fact, not commercial and that no other exception or waiver applies. Contractors are expected to exercise reasonable business judgment in making such determinations, as with any other subcontracting-related decision.

Exceptions

In accordance with 41 U.S.C. § 428a, Special emergency procurement authority contracting officers may treat any acquisition of supplies or services that, as determined by the head of the agency, are to be used to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack, as an acquisition of commercial items.

Other Issues Relating to Commercial Items/Services, Other Transaction Authority

Additional authority to use commercial item acquisition procedures for the acquisition of non-commercial items was provided by Section 824 of the National Defense Authorization Act for Fiscal Year 2009. This authority is implemented in DFARS subpart 212.70. The authority is for use in a pilot program for transition to follow on acquisitions after use of Other Transaction Authority (OTA) in the initial contract when the contract:

- Is awarded to a nontraditional defense contractor;
- Is a follow-on contract for the production of an item or process begun as a prototype project under another transaction agreement; or as a research project carried out in accordance with 10 U.S.C. §2371.
- Does not exceed \$50,000,000;
- Is awarded on or before September 30, 2010; and
- Is either-

A firm-fixed-price contract; or

A fixed-price contract with economic price adjustment.

In accordance with DFARS 212.7001, “Other transaction” means a transaction that—

- (1) Is other than a contract, grant, or cooperative agreement;
- (2) Is not subject to the FAR or its supplements; and
- (3) Is entered into in accordance with 32 CFR Part 3.

A nontraditional defense contractor is a business unit that-

- (1) Has entered into another transaction agreement with DoD; and
- (2) Has not, for a period of at least 1 year prior to the date of the other transaction agreement, entered into or performed on-
 - (i) Any contract that is subject to full coverage under the cost accounting standards described in FAR part 30; or
 - (ii) Any other contract exceeding \$500,000 to carry out prototype projects or to perform basic, applied, or advanced research projects for a Federal agency that is subject to the FAR.

An Item Is Not Commercial Because of Who Provides the Supply or Service

An item is commercial because of the supply or service in and of itself, not because of entity that provides the item. For example, a Government source such as AbilityOne (formerly Javits-Wagner-O’Day (JWOD) Program) can be governed by a FAR part 12 contract for janitorial services even if it does not provide those services in a commercial market.

Chapter 2

DESCRIBING AGENCY NEEDS AND ACQUISITION PLANNING

Mission need is the number one concern in developing requirements documents. The Government has substantial leeway to describe its needs in terms that take optimum advantage of the best industry practices available. FAR part 11, Describing Agency Needs, is the guiding principal linking adequate market research and commercial items acquisition. FAR 7.102, FAR 10.001 and FAR11.002 policy require agencies to adequately specify and identify its needs using market research in a manner designed to:

- Provide for acquisition of commercial items or, to the extent that commercial items suitable to meet the agency's needs are not available, nondevelopmental items, to the maximum extent practicable.
- Promote full and open competition (see FAR part 6), or maximum practicable competition when using simplified acquisition procedures, with due regard to the nature of the supplies or services to be acquired; and
- Only include restrictive provisions or conditions to the extent necessary to satisfy the needs of the agency or as authorized by law.

In accordance with §2377, Preference for acquisition of commercial items, to the maximum extent practicable, agencies must ensure that acquisition officials state requirements with respect to an acquisition of supplies or services in terms of (1) functions to be performed; (2) performance required; or (3) essential physical characteristics. Requirements must be defined in terms that enable and encourage offerors to supply commercial items, or, to the extent that commercial items suitable to meet the agency's needs are not available, nondevelopmental items, in response to the agency solicitations. FAR 11.002(d) refers to various statutes and executive orders identified in FAR part 23 that must be considered when developing requirements.

FAR 11.002(c) states “to the extent practicable and consistent with FAR subpart 9.5, potential offerors should be given an opportunity to comment on agency requirements or to recommend application and tailoring of requirements documents and alternative approaches. Requiring agencies should apply specifications, standards, and related documents initially for guidance only, making final decisions on the application and tailoring of these documents as a product of the design and development process. Requiring agencies should not dictate detailed design solutions prematurely (see FAR 7.101 and 7.105(a) (8))”.

Questions to Consider During Requirements Definition

Every acquisition begins with a series of steps addressing important questions such as the following:

Describing Agency Needs

- What is the requirement, and how can this requirement be defined in a performance-based manner.
- What general capabilities are available in the marketplace to satisfy the requirement?
- Can commercial items or modified commercial items satisfy the requirement?
- How can the basic requirements statement be refined to maximize the benefit of competitive market forces and the use of commercial items without increasing the potential for product failure and/or greater life cycle costs?

To promote the use of commercial items to fulfill the end users needs and encourage commercial firms to offer new and innovative products or services, state government requirements using industry standard terminology and permit the use of commercial practices.

Establishing performance-based requirements begins with the drafting of a statement of the user's need, including a number of performance features the end-user would like to have. This statement should define the operational need for the item, including the intended application, and should also define the desired support services, such as training, testing, maintenance, and repair services. Stating requirements in a performance-based manner, rather than specifying exactly how the item should be manufactured or the service performed, allows for a greater field of offerors and solutions, thereby increasing the possibility that previously unforeseen solutions available in the commercial marketplace will emerge to fulfill the mission requirements.

As the process to refine requirements continues, other factors such as supplier capabilities and logistics support that could impact the requirements should also be considered. Additionally, factors such as product availability and upgrade plans, as well as customary warranty and reliability assurances, should be considered and their impact appropriately discussed in the acquisition planning stage. Budget realities often dictate the need for price-versus-performance tradeoffs, but again, tradeoffs should not fundamentally change the essential performance characteristics. The basis for making these types of decisions and tradeoffs is established through market research.

The clear definition of hardware and software interfaces is another factor to consider in developing requirements and acquisition strategies when several sub-systems will be linked together within a single system. Periodically, software interfaces may need to be redesigned to keep up with evolving commercial technology and improve total weapon system performance. Where appropriate, the Government should develop acquisition strategies that make contractors responsible for managing software interfaces and that encourage the seamless integration of technology upgrades into existing systems. Requirements should be written to encourage the acquisition of commercial items at the sub-system or component level, where appropriate.

Government requirements should be stated in ways that promote the use of a commercial item to fulfill the end-user's needs. This is required by the Federal Acquisition Streamlining Act, and is clearly reinforced in Department of Defense Directive Number 5000.01, The Defense

Describing Agency Needs

Acquisition System, and in Department of Defense Instruction Number 5000.02, Operation of the Defense Acquisition System and in the Defense Acquisition Guidebook.

FACTORS TO CONSIDER DURING ACQUISITION STRATEGY DEVELOPMENT AND ACQUISITION PLANNING

The Federal Acquisition Regulation emphasizes the importance of acquisition planning in order to promote the acquisition of commercial items to the maximum extent practicable. As the process to define requirements continues, other factors such as those listed below should be considered; specifically their impact, on life-cycle cost. These factors should be appropriately addressed in the acquisition planning stage.

- Supplier capabilities
- Logistics support
- Product availability
- Upgrade plans
- Customary warranty
- Reliability assurances
- Data rights
- Hardware and software interfaces needed to encourage seamless integration of technology upgrades

Encouraging Innovative Solutions

In the requirements and acquisition strategy development process, the Government should not require the contractor to provide detailed design data for commercial items. This strategy encourages commercial contractors that are otherwise reluctant to do business with the Government, thereby increasing access to innovative solutions available through a larger market of opportunity.

Strategic sourcing

To provide the utmost value to both our warfighters and the taxpayers we must define more coordinated and strategic approaches to the acquisition of commercial items. The Office of Management and Budget's memorandum dated May 20, 2005, describes strategic sourcing as the "collaborative and structured process of critically analyzing an organization's spending and

Describing Agency Needs

using this information to make business decisions about acquiring commodities and services more effectively and efficiently.”

As a tenet of Supply Chain Management, Strategic Sourcing represents a shift from buying tactically, on an as-needed basis, to buying collaboratively, with well-planned service acquisitions that consider spending trends and future requirements of the entire enterprise. Strategic Sourcing is applying the *best* approach to spending money. It is aligning source selection processes and other approaches to sourcing goods and services. It is meaningful and effective competition to get the best deal for the taxpayer.

Strategic Sourcing benefits include:

- Increased collaboration and communication
- Enhanced supplier relationships and market expertise
- Improved holistic views of Defense-wide requirements
- Increased workforce skills, efficiency, and effectiveness
- Increased understanding of small business spend and markets
- Standardized business processes
- Maintained workforce balance
- Reduced number of duplicative business arrangements
- Reduced duplication of effort

Spend Analysis is the foundation for identifying Strategic Sourcing focus areas. A spend analysis assesses the breakdown of spending in terms of:

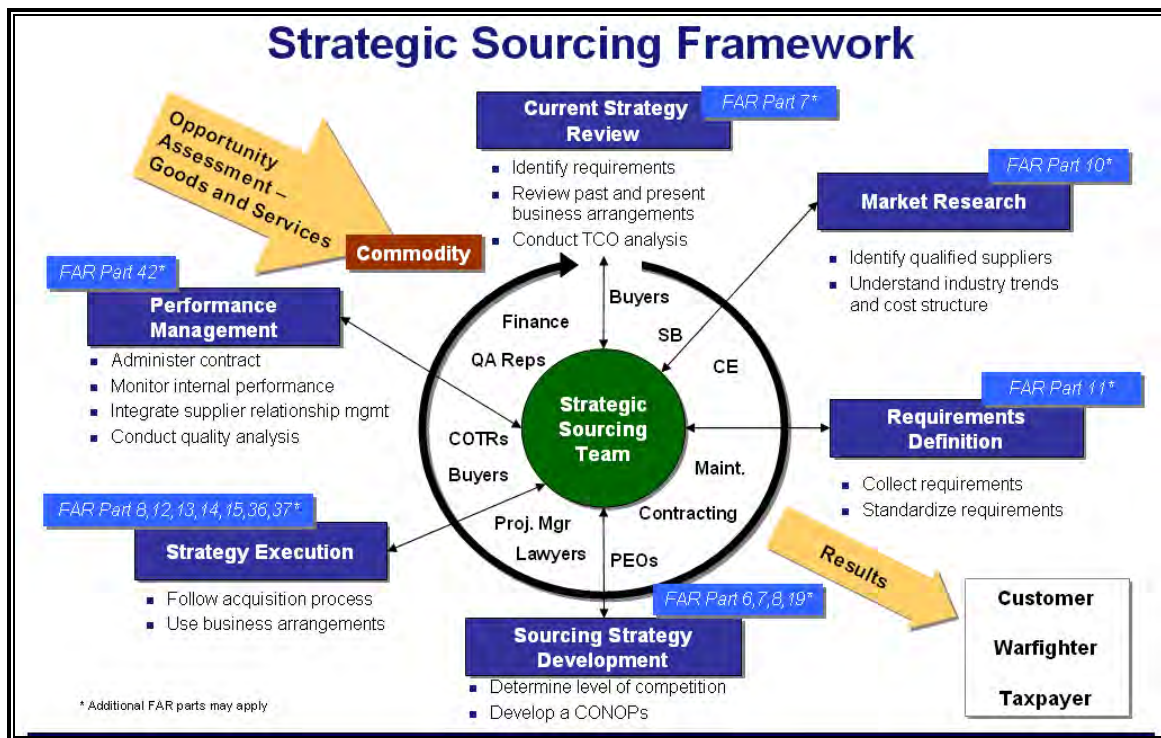
- Who did the buying? (Contracting Agency)
- Who did the spending? (Requesting Agency)
- How much was spent?
- What type of contract award was used? (Blanket Purchase Agreement, Purchase Order, Delivery Order, Definitive Contract)
- What was purchased? (Portfolio Groups/FSC/PSC)
- What was the size of the purchase? (>\$1M, <\$1M, Micro Purchase threshold, etc)

Describing Agency Needs

- What acquisition method was used? (Assisted vs. Direct)
- What type of contract was used? (Cost, Firm Fixed Price, Time & Materiel, etc)
- Who received the work? (Top 1%, Top 10, Top 100)

Strategic Sourcing must be performed continuously to understand the constant changes in organizational spend – both past and future. It not only addresses actions leading to contract award, but actions and spend taking place after contract award. Strategic Sourcing activities are accomplished early so as to shape and influence the development and approval of the individual contract acquisition strategy – especially as it relates to the sourcing decision. Strategic sourcing solutions can range from implementing supplier partnerships, to establishing centers of excellence (based on region or core competencies), to leveraging strategic business arrangements that garner results for the enterprise. By creating an environment of data transparency and instilling a culture of strategic decision-making and collaboration, the Department can provide strategically sourced goods and services that maximize procurement dollars, resources, and warfighter support. Strategic sourcing seeks to maximize enterprise-level benefits by achieving for the warfighter the right balance in terms of product/service quality and innovation, delivery time, prices, competition, contract administration costs and workload, and socio-economic goals.

The chart below provides the strategic sourcing framework promulgated by Defense Procurement and Acquisition Policy, Strategic Sourcing. To learn more about strategic sourcing see Defense Acquisition University Continuous Learning Module CLC 108 “Strategic Sourcing Overview” and CLC 110 Spend Analyses Strategies” for training.



Key Aspects of Performance-Based Requirements Descriptions

FAR 11.101 lists the order of precedence for requirements documents. . Only documents mandated for use by law take precedence over performance-oriented documents (e.g., a PWS or SOO), detailed design-oriented documents, and standards, specifications and related publications issued by the Government outside of DoD or federal series for non-repetitive acquisition of items. Requirements descriptions are considered to be performance work statements (PWS), or statements of objectives (SOO), when they include the following key aspects:

- A description of the expected output or outcomes or a statement expressing the performance characteristics,
- A description of the environment in which the work will be performed,
- Measurement criteria to compare actual versus expected performance, and
- Procedures for rework or reduction in price if the item or service does not meet the performance standards.

Drafting Performance-Based Requirements

Offerors use the SOO to develop the PWS; however, the SOO does not become part of the contract. The SOO shall, at a minimum, include;

- Purpose
- Scope or mission
- Period and place of performance
- Background
- Performance objectives, *i.e.*, required results
- Any operating constraints

A well-thought-out performance-based requirements description is essential for ensuring that the Government receives a supply or service that meets the established requirements. Performance-based requirements descriptions state the Government's required outcomes and provide criteria for measuring and verifying performance; they do not dictate the specific methods to be used to achieve those outcomes. It is essential to perform a thorough analysis so that appropriate, measurable performance standards (outputs) including appropriate quality levels, can be set forth in the solicitation. Tying contractor financial risk and compensation to successful achievement of these quality and performance standards increases the chances that the Government will receive supplies or services that fulfill its requirements.

Describing Agency Needs

Stating requirements in a performance-based manner, rather than how the product should be manufactured or the service performed, allows for a greater field of offerors and solutions. This increases the possibility that solutions available in the commercial marketplace will emerge to fulfill mission requirements. When using performance-based strategies, contract requirements shall be stated in performance terms, limiting the use of military specifications and standards to Government-unique requirements only.

Appendix C provides a list of additional resources for performance-based requirements descriptions.

Chapter 3

MARKET RESEARCH

Although acquisition personnel have historically engaged in market research, in today's environment, to ensure that high-quality defense solutions are provided to the end-user at a reasonable price, it is necessary to conduct market research in greater depth. 10 U.S.C. §2377 Preference for Acquisition of Commercial Items and 41 U.S.C. §253a Planning and Solicitation Requirements requires market research. Market research needs to be conducted before developing new specifications for procurement and before soliciting bids or proposals for a contract in excess of the simplified acquisition threshold. Additionally, acquisition personnel must create acquisition strategies and plans that facilitate the introduction or incorporation of evolving commercial items into defense systems. As part of such an integrated market research effort, the Government should also communicate early and often with the commercial sector. Appendix D provides a sample market report format.

When market research indicates that the Government's need can be met by an item of supply or a service that meets the broad definition of a commercial item, then the contracting officer must solicit and award a contract using the commercial item acquisition policies found in FAR part 12. If market research indicates that commercial items might not be available to satisfy the agency's needs, the agency should determine if the requirement can be modified to allow for the use of a commercial item.

What is Market Research

Market research is defined as collecting and analyzing information about capabilities within the market to satisfy agency needs. This is the primary means of determining the availability and suitability of commercial items.

What are the FAR Guidelines for Conducting Market Research?

Market Research Appropriate to the Circumstances

Market research is a business operation and should be conducted in a cost-effective manner. The extent of market research will vary. In discussing market research procedures, the FAR (FAR 10.002) indicated that the extent of market research will depend on such factors as:

- Urgency
- Estimated dollar value
- Complexity

Market Research

- Past experience

FAR 7.102 requires agencies to conduct market research for all acquisitions in order to promote and provide for --

(1) Acquisition of commercial items or, to the extent that commercial items suitable to meet the agency's needs are not available, nondevelopmental items, to the maximum extent practicable (10 U.S.C. §2377 and 41 U.S.C. §251, *et seq.*); and

(2) Full and open competition or, when full and open competition is not required in accordance with FAR part 6, to obtain competition to the maximum extent practicable, with due regard to the nature of the supplies or services to be acquired (10 U.S.C. §2301(a)(5) and 41 U.S.C. §253a(a)(1)).

When Commercial Items Are Not Available to Meet the Government's Needs

When market research indicates that commercial items are not available to meet the Government's needs, the first thing to be done is for the program manager, requirements developer and user to take another look at the actual needs.

FAR 10.002(d)(2) requires for proposed contract actions that are not being conducted under FAR part 12 and that require publication of a synopsis notice, the contracting officer must include a notice to prospective offerors that the Department does not intend to use FAR part 12 for the acquisition.

Significance of Market Research

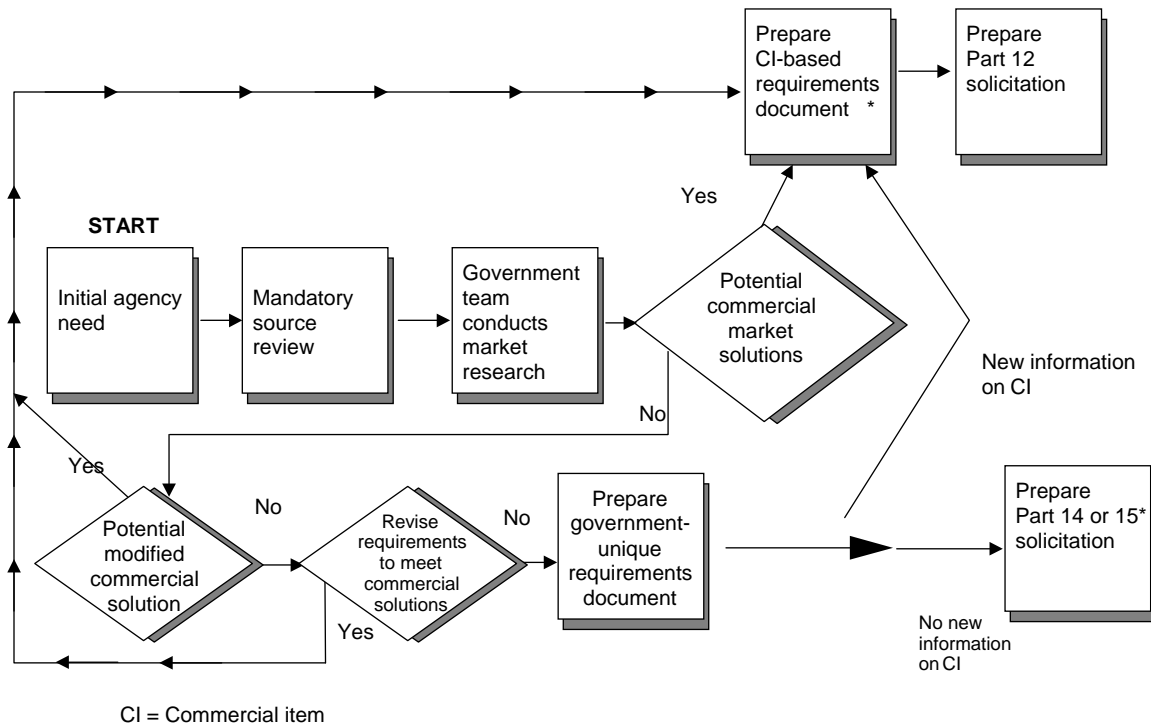
DoD conducts market research to achieve the most suitable approach to acquiring, distributing, and supporting supplies and services and to determine potential sources. Some specific benefits that may accrue from performing thorough market research include:

- Minimizing the risk of doing business, for both the Government and the contractor
- Uncovering and identifying potential problems, thereby reducing risks associated with contingencies
- Obtaining information to support price reasonableness determinations
- Creating a benchmark to track progress during contract performance
- Identifying additional sources
- Understanding the options available to satisfy the Government's requirement

Market Research

- Reduced acquisition costs and reduced cycle times

Figure 1. Market Research Drives the Preaward Process



* Prepare CI determination prior to issuance of solicitation.

Team-Driven

Representatives from all disciplines (e.g., program management, engineering, technical, and contracting, logistics, budget and small business) need to be included early in the process. Information gathered during market research should be used to refine the requirements so as to maximize the benefit of competitive market forces. To provide input to the team for the acquisition strategy/plan, procurement/contracting personnel gather information on customary contract terms and conditions for acquiring the type of item or service being procured, representative incentive provisions, customary practices of the particular industry regarding product modifications and tailoring, and expected pricing practices.

A partnership among requirements, program management, and contracting personnel and requirements personnel is especially crucial throughout the market research effort. Contracting personnel need the input, guidance, and support of requirements personnel to enable the use of commercial item acquisitions by identifying possible commercial components and technologies. Contracting personnel need to be actively engaged as part of the market research effort to help all

Market Research

members of the acquisition team find satisfactory solutions that satisfy the customer, the warfighter, in terms of cost, quality and timeliness, while staying within the bounds of regulations and preserve the integrity of the acquisition process.

(For example, requirements personnel play a vital role early in the market research process but a background role in later processes such as negotiations, evaluation, and source selection.)

The Market Research Team

DoD does not have a specific job category called "market researcher;" instead, a wide range of professionals are called upon to perform market research related to their areas of expertise. Traditionally, the program management office or the requiring activity has conducted the market research, relying heavily on inputs almost entirely from the technical community. However, in the current business environment, representatives from all disciplines need to be included early in the process, including the following:

Users/Requiring Activity

Users drive the requirements forecast and formulate the long-term sustainment and provisioning over the entire life-cycle. The Government can use this forecast information to:

- Develop favorable pricing throughout the program's life span
- Plan for modernization
- Negotiate terms for optimal management of inventory and distribution

Market research can provide insight into the total life-cycle requirements for similar systems, products, and/or processes using similar (or the same) commercial items. The information gathered from this research will permit users to conduct a comparative or parametric analyses to more accurately forecast total commercial item requirements.

Program or Project Managers

Program or Project Managers are responsible for creating:

- The Program Management Plan,
- The Market Research Plan
- The Acquisition Strategy/Plan (the overarching plan that covers every contract and procurement for the program or project),
- The Source Selection Plan, and
- The Market Research Plan.

Market Research

Program or Project Managers (PM) work with contracting officers and specialists to organize and conduct the market research. They address decisions such as who should comprise the market research team and who should conduct the actual research and who should comprise the market research team. Program or Project Managers identify how commercial items will fit into Government programs, systems or subsystems.

System/Design Engineers

Engineers make the decisions that principally drive the total cost of ownership. They select the commercial items that will become part of, or will be needed to support, a system, product, and/or process.

The engineering team designs, selects, and/or approves the use of a commercial item. Before systems engineers make this decision, they should conduct extensive market research to identify the commercial items that may meet the requirement and select an item that is available from a multitude of sources.

Furthermore, they help determine engineering differences to support price analysis. Engineers evaluate features, options, and tradeoffs. They also revise the Government requirement as necessary to allow commercial items to meet their needs.

Logistics Specialists

The Logistics Specialists assure that post-deployment support requirements are considered during the concept and design phase of a program.

Their contribution to the market research effort focuses on how effectively the proposed commercial spare parts can meet the long-term logistics requirements. Logistics Specialists research:

- The length of time the commercial spare part will be manufactured
- Product Support Packages
- Warranties
- Inventory management
- Packaging and distribution
- Unique Item Identification
- Any specialized disposal requirements.

Also, these specialists conduct reliability/price tradeoff analysis.

Market Research

Program Budget and Cost Analysts

Program Budget and Cost Analysts assist in forecasting the total cost of ownership and contribute to the market research effort to determine whether other Government agencies are already ordering or using a commercial item.

These analysts conduct cost tradeoff analysis by comparing commercial items to Government-unique items, and cost/benefit analysis by comparing commercial versus Government approaches.

Contract Specialists

Contract specialists work with Program or Project Managers on the organization and planning of the market research. The Contract Specialists work with the rest of the market research team to determine if the commercial marketplace offers products or services that satisfy the agency's essential requirements, or that could satisfy them with some trade-offs or modifications.

The contract specialist must understand of the commercial item and the market environment to effectively evaluate the reasonableness of the price of the commercial item. This knowledge helps determine:

- If the price is fair and reasonable
- The offer that represents the best value
- The most appropriate terms and conditions

Also, the contract specialist serves as the principal business advisor and principal agent for the government, and is responsible for developing the solicitation, conducting the source selection process and managing the resultant contract. They also research contracts in the marketplace to identify general business practices, such as commercial terms and conditions, contract type, commercial item financing, bid schedule breakout, and the use of incentives.

Small Business Specialists

The small business specialist works with the requirements office and the contract specialist to identify sources capable of meeting the agency's needs. The small business specialist serves as an information resource for potential new businesses to facilitate small business participation as contractors, subcontractors and suppliers for the Department of Defense.

In addition, many other disciplines participate in the team-based approach to market research.

Information Gathered by Team Members During Market Research

Information gathered by team members during market research should be used to refine the requirements so as to maximize the benefit of competitive market forces. Appendix E provides a list of potential market research resources.

The team should also partner with the Competition Advocate, who is responsible for promoting the acquisition of commercial items.

The team gathers information that impacts the following areas:

Acquisition Strategy/Plan

Market research, competition and incentive strategies should be discussed in the business strategy section of any Acquisition Strategy. The Acquisition Strategy required by DoD Instruction 5000.02 is not the same as the acquisition plan required by [FAR 7.105](#) and [DFARS 207.1](#). The Acquisition Strategy is a top-level description, in sufficient detail to allow decision-makers and the milestone decision authority (MDA) to assess whether the strategy makes good business sense, effectively implements laws and policies, and reflects management's priorities. Once approved by the MDA, the Acquisition Strategy provides a basis for more detailed planning. There is no DoD-level rule that precludes the PM from preparing a single document to satisfy both requirements. [FAR 34.004](#) dealing with major systems acquisition requires that the Acquisition Strategy "qualify" as the Acquisition Plan.

Product Life-Cycle Decisions

To provide input to the team on product life-cycle decisions, logistics personnel must have insight into standard industry practices regarding reliability incentives versus warranties, product obsolescence, and spares provisions.

To obtain the greatest benefit from using commercial practices, consider all aspects of the acquisition and business strategy up front.

Why Market Research Must Be A Continuous Activity

Market research must continue throughout the entire acquisition process, not only because it is required by statute, but, more importantly, in order to gather the data needed for making smart acquisition decisions. Appendix F provides a framework for use when reviewing historical acquisition information. Information is a changing commodity, and sound business judgments depend on up-to-date details. The team actively conducts market research to develop:

Market Research

- A sound acquisition strategy
- A good understanding of customary commercial terms and conditions
- Sufficient information to enable the achievement of fair and reasonable pricing
- An awareness of any new technologies or products

The level of detail gathered may vary by stage in the acquisition process. When the initial requirements statement is being developed, a general understanding of terms and conditions and pricing may suffice for making higher-level requirements analysis judgments. However, to be sure that the market will be able to respond to the Government's needs, and to ensure that the final acquisition strategy/plan and the solicitation will fit the particular market's customary business practices, a more in-depth understanding of the types of terms and conditions being offered commercially will be required. Furthermore, firm knowledge of market pricing information is necessary for planning for contract obligations and determining price reasonableness. As the acquisition matures, the market research information will need to be increasingly precise.

Types of Market Research

Market research begins before you receive a requirement from your customer and it continues until the decision is made to dispose of the product or system at the end of its useful life, however, if you know of a forthcoming requirement, it would benefit you and your customer to start market research early. In all cases, your timing, depth, and efforts should consider the value and complexity of the procurement. The depth of such efforts will vary, depending upon the type and amount of information needed. As part of the market research effort, the Government should communicate early and often with the commercial sector. Acquisition regulation emphasizes the need for such communication to satisfy the customer in terms of cost, quality, and timeliness of the delivered product or service.

Market research has two aspects: strategic market research which serves as surveillance of the marketplace, and tactical market research which requires investigation into a specific need or requirement.

Strategic Market Research

Strategic market research is an ongoing, never-ending process. It includes all the activities that acquisition personnel must perform on a continuing basis to stay abreast of technology and product developments in their areas of expertise. This research assists you in strategic planning when conducted as an iterative, ongoing activity. It is not necessarily aimed at a specific acquisition, but at the accumulation of a knowledge base that becomes the foundation from which you can pursue a more focused market investigation. It supports decisions regarding industry capability, product availability, competitive market forces, and alternative sources of supply.

Market Research

When conducting strategic market research, you seek to understand how commercial consumers:

- Develop acquisition strategies
- Communicate requirements
- Determine evaluation criteria
- Determine contractor incentive packages
- Encourage commercial competition
- Determine their contractor assessment metrics
- Communicate source selection plans
- Communicate solicitations
- Evaluate Cost/Price
- Award contracts
- Evaluate contractor performance
- Take advantage of other commercial business practices

Tactical Market Research

Tactical market research is more focused and detailed. It is conducted in response to a specific need. It serves to provide answers to questions related to prices, quality, and delivery dates. This research is directed at a specific acquisition, and helps an organization determine whether commercial sources can satisfy their particular requirement. If commercial items exist meeting an agency's requirements, the agency is required to purchase them rather than develop new items. Commercial items may satisfy those requirements either "as is" or after modification either minor or significant. Tactical market research can also determine whether the agency's requirements could be modified, to a reasonable extent, to allow the use of commercial items. It identifies information about the following:

Available Sources:

- What & how many are available
- Market/corporate strategies
- Technical strengths and weaknesses

Market Research

- Distribution & support capabilities
- Patent and data rights

Available Supplies & Services:

- Typical commercial customizing or tailoring
- Potential cost of modifying the item to meet current needs
- Salient characteristics
- Prices
- Tradeoffs
- Reliability, history, and past performance

Industry Practices and Trends:

- Industry specifications and standards
- Customary terms and conditions, such as discounts and warranties
- Relevant laws and regulations
- Production and delivery lead-times
- Forecast product/technology changes
- Trends in market prices
- Trends in supply/demand
- Factors that affect market prices

Market Research Techniques

Some market research techniques include:

- Contacting knowledgeable individuals in Government and industry regarding market capabilities
- Reviewing results of recent market research reports covering similar items
- Publishing formal requests for information

Market Research

- Querying Internet information sources (Vendor/Industry site).
- Gathering market information on specific products and potential suppliers.
- Gathering market pricing and technical information from commercial or Government sources.
- Gathering market information on industry practices, supply and demand trends, and other relevant factors.
- Obtaining source lists from other agencies and professional associations
- Reviewing industry catalogs and product literature
- Conducting interchange meetings or holding pre-solicitation conferences and other Government-industry interchanges
- Visiting contractors, attending industry and trade shows
- Gathering information from market or trade journals and magazine

Two primary sources for market research are the General Service Administration (GSA) schedules and the Central Contractor Registration (CCR). Using GSA ensures that you are receiving GSA-negotiated prices and working with GSA-approved sources. *CCR is considered the primary market research tool for the contracting officer and contain current company profile.*

The Market Research Report

The Government should document and retain for future reference potentially useful aspects of market research in a manner appropriate to the size and complexity of the acquisition. Appendix D sets forth a sample market research report format; however, individual judgment should be used in each acquisition to determine which details to include. [Many appendices in this handbook provide useful market research information, including Appendix B, Sample Commercial Item Checklist; Appendix D, Sample Market Research Report; Appendix E, Market Research Questions—Historical Acquisition Information.]

In addition to the benefits provided to the current acquisition, future commercial item acquisitions can also benefit from the teaming and market research involved in any given commercial item acquisition—but only if market research analysis is documented to capture for future application the details of that acquisition.

Types of historical acquisition information that market research should enable assessment of:

Supply and Demand Trends

Thorough market research provides the following information related to trends in supply and demand:

- The timeframe when past acquisitions occurred
- Market conditions at the time of the past acquisition

Demand Pattern

Thorough market research provides the following information related to demand pattern:

- Quantities solicited and acquired for each acquisition
- Other systems or subsystems using the same or similar part

Sources of Supplies or Services

Thorough market research provides the following information related to sources of supplies or services:

- The quantity of sources solicited for the prior acquisition
- The specific sources solicited
- The number of sources that made offers
- The specific sources that made offers

Product Characteristics

Thorough market research provides the following information related to product characteristics:

- If there are any significant differences between the Government requirements documents for the prior contract and the current requirements
- The differences between current Government requirements and the current commercial requirements

Delivery/Performance Terms

Thorough market research provides the following information related to delivery/performance terms:

- The duration of the delivery or performance period
- The month(s) that supplies were delivered or the month(s) services were performed
- The timeliness with which a contractor meets delivery targets
- Whether the Government or the contractor will be responsible for shipping and transportation
- Any premium transportation required for timely delivery

Ownership Costs

Thorough market research provides information on the costs of ownership associated with the acquisition.

Ownership costs may be comprised of:

- Cost to research, develop, acquire, own, operate, and dispose of weapon and support systems
- Support costs
- Other cost of business operations

Acquisition Method

Thorough market research provides information on the acquisition method employed for past acquisitions.

Contract Terms and Conditions

Thorough market research provides the following information related to contract terms and conditions:

- The general terms of past contracts
- Significant differences between the terms of the last contract (e.g., packing requirements, type of contract, and the like) and those recommended for the current acquisition

PAST PERFORMANCE INFORMATION

Thorough market research provides past performance information, including information on any problems encountered during contract performance.

Market Research Resources

See Appendix F for sources that can be consulted when performing market research.

Chapter 4

PRICING COMMERCIAL ITEMS

The key to adequately pricing products and services is market research. This is particularly true of commercial items because prices can be influenced by a variety of non-cost factors. If market research is done properly, it generally produces information that a contracting officer may rely on to determine whether products can meet the Government's needs. Buying products or services in the commercial marketplace requires adopting business practices that are common in the commercial sector to determine what prices are fair and reasonable. The competitive forces of the marketplace generally yield more favorable pricing of commercial products and services.

Once the market research team identifies that a suitable commercial products or services are available in the marketplace to meet the Government's need, the price analysis process used to determine its price is fair and reasonable should be fairly simple and not overly burdensome. Having a good understanding of what is being bought and knowing how to assess its value from a customer view point is more important than determining the vendor's incurred costs for the commercial product or service.

Most of the skills used in managing our personal lifestyles, such as diligence and common-sense are equally applicable in our professional decision-making responsibilities. For example, when buying a television (TV) set for your personal use, at a minimum you would certainly want to know the comparable prices across the marketplace for this product. You normally do not request a breakdown of the costs for the components, materials, or transportation so that you can review each cost element before determining if, in your judgment, the price of the TV set is fair and reasonable. Once you have a price range in mind, you shift your focus to the non-price factors of the TV set, such as product features, performance or reliability, warranty, brand name or company reputation, and other quality considerations, in addition to price.

In determining which TV set represents the best value selection, you usually balance the non-price or quality factors with relevant pricing information you obtained in your research of other competitive brand name TV sets. You would also consider other factors, such as your personal needs and budget constraints. After having evaluated all factors, you select a particular brand-name TV set that represents the best value, given the alternatives considered, and you proceed with the purchase.

A similar decision-making process generally applies when buying commercial items for the Government. The emphasis is on performing market research to determine (1) what products or services are available to meet the Government's essential requirements; and (2) at what prices they are being offered. Price analysis, not cost analysis, is the primary method used to evaluate commercial pricing. However, some degree of cost analysis may be necessary when prices cannot be established using price analysis alone.

Pricing Commercial Items

The idea is that the competitive forces of the marketplace will generally yield more favorable pricing of commercial products and services just as it would for non-commercial items. To facilitate the identification and selection of a best-value product or service during the decision-making process, price and non-price related factors play a significant role.

Once you have made a decision that a particular Government requirement can be met by a product meeting the commercial item definition at FAR 2.101, market leverage and the exercise of good business judgment affect pricing of the Government contract for the commercial products or services.

Market Leverage—The Key to Reasonable Prices and Best Value Decisions

Each marketplace has its unique characteristics and dynamics. Understanding the marketplace thoroughly will enable you to effectively evaluate the factors that influence pricing in a particular market. Obtaining reasonable prices for commercial items and making best-value decisions depends on (1) how well you know what the Government needs in order to fulfill its essential requirement; (2) how well you know the commercial marketplace in terms of what specific industries have to offer, and (3) how well you use market leverage during the acquisition process.

Buyers and sellers enter the marketplace with different amounts of leverage. Leverage is determined by a number of factors, in addition to the traditional forces of supply and demand that make buyers and sellers attractive business partners to one another. For example, buyers increase their leverage when they purchase larger quantities, take advantage of full lines of products and services offered, use flexible terms and conditions, minimize unique requirements or specifications, commit to long-term partnerships, use existing commercial distribution systems, and so forth. The more attractive the Government can make itself as a buyer, the more likely it is that world-class sellers will enter into contracts with the Government, that the parties will negotiate favorable terms and conditions, and agree to lower prices and payments.

By understanding the requirement as well as the marketplace, the acquisition team is in a better position to match marketplace capability with customer needs. Every member of the acquisition team has a role in ensuring that the Government has maximum leverage in the marketplace. The successful acquisition team will work closely and use the collective wisdom and expertise of its various functional experts to achieve optimum results, instead of simply maximizing outcome according to the narrow perspective of a particular expert's functional area. The grouping and timing of requirements, the specifications and packaging, testing requirements, payment terms, and the like can all influence the Government's ability to get the best deal for the Government. Often, trade-offs among the various functional experts on the team are necessary.

Pricing Information Obtained from Market Research

Commercial item pricing information is generally acquired through market research efforts. The contracting officer may rely on this information to determine expected pricing in order to obtain

Pricing Commercial Items

the best value for the Government. The expectation is that the competitive forces of the marketplace generally yield more favorable pricing of commercial products and services. Accordingly, it is important to ensure requirements are structured in a way that does not limit competition.

Market research should continue throughout the entire acquisition process, up to and including the conclusion of negotiations.

Sources of Commercial Pricing Information

Market research can be used to locate many sources for pricing information. They include the following:

- Supplier catalogs
- Electronic Internet search engines (Yahoo, Google, All the Web, and Ask.com, etc.)
- Government “electronic malls”
- Data readily available from market research (comparative information regarding competitors and the competitive environment)
- Data available from Government purchasing/engineering activities (purchase history, engineering estimates, etc.)
- Analogies—comparative pricing information for similar items
- Parametric analyses (rough yardstick correlation based on thrust, range, processing speed, weight, or other technical factors or item characteristics)
- Advice from Government pricing and audit personnel
- Company historical records
- Industry association databases

Each Government market research effort will be different and specific to the procurement because of, varying market conditions, and other factors. For example, when buying a new office computer system, the Government would certainly want to know comparative prices across the marketplace for computers with the state of technology and equipment the Government anticipates buying. Furthermore, the Government needs to know the various suppliers’ warranty provisions. The Government also needs to know what the life-cycle costs would be for any given system. This includes software costs, training costs, the cost for site preparation and costs for disposal of old equipment, training costs and the costs for site preparation, for example, should also be calculated.

Price-related Questions Stemming from Market Research

The following table lists some of the factors that affect commercial pricing and which the acquisition team should consider during the planning or pre-award phase of a commercial contract. The questions in the table are not all inclusive, because others may arise for more unique or specialized acquisitions. These questions serve as the basic framework of the type of price-related questions that the acquisition team should be able to answer after completing market research.

Pre-award Pricing Factors for Consideration (Market Research)	
Research Factor	Be Able to Answer Questions Such As...
Pricing History	<p>What information is available concerning past prices paid for the service or item of supply and about changes in the supply item or service or market since then?</p> <p>Have there been historic differences between prices paid by the Government vis-à-vis other buyers? Why?</p>
Competitive Conditions	<p>How many sellers are in the market?</p> <p>How many buyers?</p> <p>Are other companies expected to enter the market?</p>
Demand Levels	<p>What is the relationship of the quantity the Government intends to buy vis-à-vis the quantities that others buy?</p> <p>Will the planned volume justify a lower-than-market price as a result of the seller's increased economies of scale?</p> <p>Will the planned volume be so large as to drive the sellers to or beyond full capacity, resulting in unanticipated inflation?</p> <p>Is the procurement for items at the leading edge of market demand (i.e., market demand is increasing), or at the back end (i.e., demand for the item is dropping)?</p>
Trends in Supply and Demand	<p>Will demand be higher or lower at the time of award than now?</p> <p>Will supply capacity keep pace with demand?</p>

Pricing Commercial Items

Pattern of Demand	<p>Is there a cyclical pattern to supply and demand?</p> <p>Would allowing delivery to be made at a later date result in lower prices than an immediate award? Or would it be better to stock up now at today's prices (if there is a bona fide need)?</p>
Other Market Forces Expected to Affect Contract Price	<p>What forces might drive up prices in the near future? Strikes? Labor shortages? Subcontractor bottlenecks? Energy shortages? Other raw material shortages? Legislative action?</p> <p>What forces might lead the Government to expect lower prices in the future? Rising unemployment? Industry downturn?</p>
Pricing Strategies & Incentives	<p>What are the pricing strategies of firms in the commercial market?</p> <p>What discounts are available for quantity buys?</p> <p>What types of incentives are used by firms in the commercial market?</p>
Sources of Supplies or Services	<p>Which firms in the market are the most likely to submit offers to a Government solicitation?</p> <p>Which are the least likely, and why?</p>
Supply or Service Characteristics	<p>What features distinguish one service or item of supply from another?</p> <p>Which commercial supplies or services match most closely the Government requirements document (as it currently reads in the purchase request)?</p> <p>What is the apparent trade-off between features and price?</p>
Delivery/ Performance Terms	<p>What are the current distribution channels?</p> <p>What are current transportation costs (if available and applicable)?</p> <p>What are the commercial lead-times?</p>
Ownership Costs	<p>What are the commercial warranty terms and conditions (if any)?</p> <p>What are the historical repair costs for each item?</p> <p>What are the historical maintenance costs for each item?</p> <p>What are the lifecycle costs (possible energy cost, costs of oil, toner, paper requirements, gasoline, electricity, etc.)?</p>

Pricing Commercial Items

Contract Terms and Conditions	What terms and conditions are used in commercial transactions for the supply item or service? What terms and conditions have been used in other Government acquisitions of the supply item or service? What type of contract is generally used in commercial transactions for the supply item or service? What type of contract is generally used in commercial transactions for the supply item or service in other Government acquisitions?
Problems	What has been the historical default rate by firms performing similar contracts? What performance problems have typically been encountered? Have similar acquisitions been characterized by claims or cost overruns?
Overall Value	What is the relationship between price and the overall value to the Government?

Price Analysis

Contracting officers must ensure that commercial items—like any other supplies or services bought for the Government—are purchased at fair and reasonable prices. Price analysis, as supported by market research, is the preferred method for determining whether prices paid for commercial items are fair and reasonable. When using price analysis, the focus is on examining and evaluating a proposed price without evaluating its separate costs elements or profit.

Price Analysis Techniques

Appendix G provides information on multiple price analysis techniques. While price analysis is generally accomplished using readily available market data, contracting officers are required to obtain data other than certified cost when there is no other means for determining a fair and reasonable price. Some of the price analysis techniques that may be used to determine if commercial prices are fair and reasonable include, but are not limited to, the following (FAR 15.404-1(B)(2)):

- Comparing proposed prices in response to a competitive solicitation. Normally, adequate price competition established price reasonableness. In circumstances where the reasonableness of a proposed price cannot be established with the data available, however, contracting officers shall obtain additional data. This may include data other

Pricing Commercial Items

than certified cost or pricing data if the contracting officer has exhausted all attempts to obtain the additional data from sources other than the offeror. Examples of circumstances where additional data may be necessary include cases where competition is limited or when offerors propose vastly different solutions that cannot easily be compared. Comparing previously proposed prices and previous Government and commercial contract prices with current proposed prices for the same or similar items, if both the validity of the comparison and the reasonableness of the previous price(s) can be established. By using past prices as a baseline, a contracting officer can evaluate the current price and look for a rational explanation for any unusual price movements. All relevant previous price history should be used, not just the most recent price. When using this technique, it is important to ensure the previous prices being used for comparison have been adjusted for inflation and variations in the quantities procured. Particular attention should be paid to prices that are several years old.

- Using parametric methods or application of rough yardsticks such as dollars per pound, per horsepower, per unit or other measurement units to highlight significant inconsistencies that warrant additional pricing inquiry. Parametric estimating methods are useful in establishing price reasonableness for sole-source items. When using this technique, however, it is important to validate the parametric model or method to ensure accuracy. Some complex parametric models require calibration before they can produce reliable estimates.
- Comparing offers to competitive published price lists, published market prices, similar indexes, and discount or rebate arrangements. A supplier's catalog is one example of a published price list. However, the fact that a price is included in a catalog does not make it fair and reasonable. It is possible that an item listed in a supplier's catalog has never been actually sold, or has only been sold for Government end-use. If the contracting officer cannot obtain adequate information from sources other than the offeror, the contracting officer shall require the contractor to submit data other than certified cost or pricing data, as defined in FAR 2.101, if that is the only means for the contracting officer to determine a fair and reasonable price ([10 U.S.C. § 2306a\(d\)\(1\)](#) and [41 U.S.C. 254b\(d\)\(1\)](#)). In this case the contracting officer must require that the data submitted by the offeror include, at minimum, appropriate data on the prices at which the same item or similar items have previously been sold for non-Government end use, adequate for determining the reasonableness of the price. The Government should obtain data concerning standard discounts and discounts for larger quantities or improved or reduced levels of services and negotiate a reasonable price accordingly.
- Comparing proposed prices with independent Government cost estimates (IGCEs). The IGCE should address how the estimate was made and include any assumptions relied on, and include a description of the tools, other information and sources used to develop the estimate. It should also indicate how previous estimates compared with prices paid. (For detailed information on independent Government estimates, see the Contract Pricing Reference Guides at http://www.acq.osd.mil/dpap/cpf/contract_pricing_reference_guides.html)

Pricing Commercial Items

- Analyzing the pricing information provided by the offer.
- Comparison of proposed prices with prices obtained through market research for the same or similar items.

The first two techniques listed above are the preferred techniques. However, if the contracting officer determines that information on competitive proposed prices or previous contract prices is not available or is insufficient to determine that the price is fair and reasonable, the contracting officer may use any of the remaining techniques as appropriate to the circumstances applicable to the acquisition. The contracting officer may also use “value analysis” (see Appendix G) which can give insight into the relative worth of a product and may use it in combination with the various price analysis techniques listed above.

Requiring Data Other Than Certified Cost or Pricing Data

Data other than certified cost or pricing data should only be requested if, after obtaining additional data from sources other than the offeror, the contracting officer cannot determine whether an offered price is fair and reasonable. If data other than certified cost or pricing data is required to perform further price analysis, the scope of the request should be limited to data that are in the form regularly maintained by the offeror as part of its commercial operations. Examples of data other than certified cost or pricing data include history of sales to non-governmental and governmental entities, cost data, or any other information the contracting officer requires to determine the price is fair and reasonable. Such data may include the identical types of data as certified cost or pricing data, consistent with Table 15-2 – “Instructions for Submitting Cost/Price Proposals When Cost or Pricing Data Are Required” in accordance with FAR15.408, but without the certification.

When determining whether additional data other than certified cost or pricing data is needed, contracting officers should generally adhere to the following order of preference:

- Price information obtained from within the Government.
- Price information obtained from sources other than the offeror (e.g., sources of market information discussed in this Handbook).
- Data other than cost or pricing data FAR 2.101(b)(2) (i.e., information that does not meet the definition of cost or pricing data) obtained from the offeror.

Requests for data other than certified cost or pricing data should clearly specify the type data needed to adequately support the reasonableness of proposed prices. At a minimum, the request must require the contractor to provide data on the prices at which the same or similar items have been previously sold.

Appendix H provides information on pricing-support resources including the Contract Pricing Reference Guides which provide an in-depth discussion of the pricing techniques described in this Handbook.

Competitive Procedures

Contracting officers shall promote and provide for full and open competition in soliciting offers and awarding Government contracts for the acquisition of commercial items to the maximum extent possible. Normally competition establishes price reasonableness, but this is not always the case. When the anticipated contract award will result in a firm-fixed-price or fixed-price with economic price adjustment, a comparison of the proposed prices will usually satisfy the requirement to perform a price analysis. A “price analysis” will be the usual procedure followed in a competitive situation and in situations where items are being procured which are sold in the commercial marketplace to the general public. A “price analysis” is an evaluation of the offeror’s price relative to the prices being offered by other vendors and being paid by the general public for the same or similar items. The essential factors, which must be present in order to make a “price analysis,” are as follows:

- The product must be a “commercial product” (i.e., one for which there is a basis of comparison in the commercial marketplace). Price analysis would not be suitable, for example, for research and development items, or for one of kind items for which there was no basis of comparison.
- The contracting officer must be able to compare the products’ capabilities and their respective price differences in light of those varying capabilities, but it is not necessary that competing products be exactly identifiable to the product being offered. By such comparisons one is able to make value judgments that a particular product’s performance capabilities warrant a higher or lower price than a competing product.

Sole Source Procedures

Contracting officers and requirements personnel should work together to avoid sole-source situations. The best way to stimulate competition is to broadly state requirements in terms of performance outcomes. Even with our best efforts, however, a sole-source situation cannot always be avoided, which presents pricing challenges. Although sole source procurements present pricing challenges, the procedures and techniques set forth for market research and price analysis will provide the best opportunity to acquire items at a fair and reasonable price. Opportunities to obtain any form of market leverage in these situations may be limited.

Even with the aid of data other than certified cost or pricing data, , a contracting officer may be unable to conclude that the price for a sole-source item is fair and reasonable. (This also could be true even in traditional procurements using certified cost or pricing data and cost analysis). When a reasonable price cannot be negotiated, the contracting officer should work with the requiring activity and other members of the acquisition team to identify market alternatives that would effectively meet the agency’s needs. After all efforts to obtain a fair and reasonable price have been exhausted, the contracting officer should consider any suitable noncommercial items. If there are none, the contracting officer should escalate negotiations in accordance with agency procedures.

Pricing Commercial Items

It is important to note that the National Defense Authorization Act for Fiscal Year 2008 provided some clarity to the procurement of commercial items by requiring the offeror to submit “sufficient information to evaluate, through price analysis, the reasonableness of the price.” If the contracting officer cannot identify an alternate solution, and the price still cannot be determined to be fair and reasonable, the item ordinarily should not be acquired utilizing commercial items procedures under FAR part 12. If, however, it is not in the Government’s best interest to forgo or delay the procurement, then it is essential that the contracting officer document in the price negotiation memorandum (PNM) the extent to which he or she went in negotiating a price that was fair and reasonable in a sole source situation. When this occurs, the HCA must determine that the award is in the best interest of the government prior to contract award (FAR 15.403-3(a)(4)). Careful file documentation will enable subsequent contracting officers, contract specialist, and auditors to fully understand the circumstances surrounding the prices paid, should there be a need for future acquisitions of the same item. If the requirement is likely to recur, it is imperative that the acquisition team take any steps necessary to enhance the Government’s market leverage and negotiating position prior to the next procurement including the use of the authority at FAR 6.202 to establish alternative sources.

A variety of techniques may be useful in achieving fair and reasonable prices when the Government has only a minimum of market leverage. The absence of market leverage can make the task more difficult regardless of whether an item is commercial or not.

Price Reasonableness Difficulties

When having difficulty achieving price reasonableness in a sole-source environment, consider using the following techniques:

- Revise the negotiation to consider innovative solutions (e.g., win-win, “change the size of the pie”).
- Escalate the negotiation (the first escalation should be to a level above the person doing the actual negotiation, although it may eventually go to the procurement executive, then, if necessary, to the head of the agency). Consideration should also be given to intercession by the Program Manager, and his or her chain of authority.
- Buy minimum quantities and qualify alternative solutions or suppliers.
- Work with requirements personnel to restate the need in order to expand available solutions.
- Requiring activities should adapt to and leverage the commercial marketplace, rather than expecting the commercial marketplace to adapt to the DoD environment.
- Suppliers striving to preserve their commercial practices should not be considered unreasonable solely on that basis.

Negotiating Fair and Reasonable Prices

Developing an effective bargaining position is important in any acquisition. Armed with the results of their market research and other information, contracting officers and contract specialists should be able and willing to challenge offered prices—especially those that appear unreasonable.

Both the buyer and the seller have an equal right to engage in hard bargaining. At the same time, the ultimate success in acquisition situation reinvention depends upon two-way cooperation and a desire by both parties to establish and maintain a mutually advantageous business relationship. If a seller is unwilling to negotiate, this behavior should be documented as part of historical acquisition data and considered in future source selections.

Determining Fair and Reasonable Prices

The contracting officer must obtain the data necessary to negotiate a fair and reasonable price. Price reasonableness determinations need to be adequately documented. In addition to documenting pre-negotiation objectives, adequate substantiation would include sufficient detail regarding the pricing method used or the analyses performed to establish the negotiation objectives. Be specific and avoid general, boiler-plate statements. Documentation should also explain the results (outcome) of the negotiations in comparison to the stated pre-negotiation objectives. Adequate documentation will clearly establish how the negotiated amounts were determined to be fair and reasonable.

If, after market research has been conducted and the appropriate price analysis techniques have been applied, the offeror's price for a sole-source commercial item cannot be determined to be fair and reasonable, then the contracting officer may require the offeror to submit data other than certified cost or pricing data other than cost or pricing data to support further analysis. Contracting officers should not require more data than necessary to make the price reasonableness determination. Contracting officers may not require contractors to certify any supporting cost information.

The Commercial Item Exception to the Requirement for Certified Cost or Pricing Data

Contractors are not required to submit Certified Cost or Pricing Data to support the prices of commercial items. (10 U.S.C. § 2306a) (b)(1) provides: "In general.—Submission of certified cost or pricing data shall not be required under subsection (a) in the case of a contract, a subcontract, or modification of a contract or subcontract... (B) for the actions of a commercial item".." Accordingly, contractors are exempt from the requirement to submit certified cost or pricing data for contract actions involving:

- Any acquisition for an item that meets the FAR definition of a commercial item or

Pricing Commercial Items

- Any contract modification that does not change the item from a commercial item to a noncommercial item.

Commercial items may be offered in response to solicitations which call for the submission of certified cost or pricing data. Where an item which qualifies as commercial is offered, the contracting officer is not to require the submission of cost or pricing data in support of the commercial item determination.

Authority to Require Contractors to Submit Data Other Than Certified Cost or Pricing Data

Data other than certified cost or pricing data may be requested to support the price of a commercial item under the circumstances described in Chapter 4 under the heading Determining Fair and Reasonable Prices, and as described in FAR 15.403-3.

When such information is requested, the Contractor will not be required to adhere to Cost Accounting Standards (CAS) and the information may be supplied from the contractor's existing records and systems.

For catalog items, the firm should include:

- 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.
- A copy or description of current discount policies and price lists (published or unpublished) (e.g., wholesale, original equipment manufacturer, or reseller).
- An explanation of 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.

For market-priced items, the firm should include:

- The source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts.
- A description of the nature of the market.

For items included on an active Federal Supply Service Multiple-Award Schedule contract, the firm should include proof that an exception has been granted for the schedule item.

APPROPRIATE LEVEL OF EFFORT

The level of effort expended to determine price reasonableness should be commensurate with the circumstances of the acquisition. The total dollar value of the procurement and the urgency of the requirement are two factors to consider when making that determination. For example, it would be inappropriate to unreasonably delay an award for repair parts for a piece of equipment if greater costs are being incurred because the equipment is out of service. Likewise, it would not be appropriate to incur reverse engineering expenses unless it is likely that savings on future procurements will offset the cost of doing so. In contrast, it might be appropriate to delay contract award for a non-urgent item for which the contractor refuses to provide adequate data to support price reasonableness. In any event, the level of effort expended should enable a determination that a price is fair and reasonable.

Cost Accounting Standards

The applicability of Cost Accounting Standards (CAS) is an important consideration in pricing many acquisitions. However, by law, CAS rules do not apply to contracts and subcontracts for the acquisition of commercial items.

Innovative Pricing Strategies and Incentives

Contracting officers can also use innovative acquisition strategies and pricing incentives to encourage fair pricing and favorable business practices. These strategies should promote favorable outcomes, such as cost reductions, improved support services, enhanced performance levels, and better delivery schedules. The following strategy and incentive is encouraged:

Award Term Contracting

Under award term contracting, the Government establishes objective performance parameters in the underlying contract and announces up front that it intends to shorten or lengthen the period of performance (minimum and maximum) on the basis of the contractor's performance against those parameters. This tool is most effective when a single-award, performance-based contract is anticipated. It helps the Government establish long term business relationships and rewards excellence.

The award term incentive is modeled after the award fee incentive described in the FAR at 16.405-2, but instead of rewarding a contractor for excellent performance with additional fee, it rewards the contractor by extending the contract period of performance without a new competition. However, although the contract types authorized in FAR subpart 12.2 may be used in conjunction with award fee and performance or delivery incentives, the award fee and performance or delivery incentives must be based solely on factors other than cost. Under an award term incentive the Government monitors and evaluates the contractor's performance as excellent, then the contractor earns an extension. The extension must also be conditioned upon the Government's continuing need for the service and availability of funds.

Pricing Commercial Items

A true award term incentive rewards the contractor with a legal entitlement to a contract extension, not an additional option. An option is a unilateral right of the Government; a contractor is not entitled to the exercise of an option. Many contracts have included incentives that have been labeled “award term,” but that should be identified as “award option” or “incentive option,” because the contractor’s reward is not an actual extension, but an option to extend, which entitles the contractor to nothing.

Configuration Control and Logistics Support

An important aspect of pricing is the consideration of life-cycle costs, including configuration control and logistics support. COTS software or hardware provide an excellent opportunity to adhere to program cost, schedule, and performance requirements by leveraging industry’s research, development and support investment. The opportunities and challenges that COTS offers must be considered in the development and execution of the program’s logistics support and configuration control efforts.

In selecting COTS it is critically important that COTS items be shown to be operationally suitable for their intended use and capable of meeting their allocated Reliability, Availability, and Maintainability (RAM) including, if appropriate, built-in-test (BIT) requirements. User capability needs must be translated into performance requirements. To that end, quantitative RAM, including BIT performance requirements should be translated into appropriate design requirements along with supporting design analysis and tests for all commercial items contracts to ensure any COTS selected will meet the operational requirements.

However, this selection process is not a onetime activity which must be considered in estimating the costs. Unanticipated changes and the natural evolution of commercial items may drive reconsideration of engineering decisions throughout the life cycle. In addition, the program must consider the logistics implications of supporting commercial items in a military environment. Finally, because COTS items can have a relatively short manufacturing life when compared to the life cycle of DoD systems, a proactive diminishing manufacturing sources and material shortages / obsolescence approach must also be considered. Consequently, care must be taken to assess the long term sustainability of COTS options and to avoid or minimize single source options.

In implementing COTS, system managers need to design and plan for the appropriate level of configuration control tied to the long-term support strategy. The degrees of contractor configuration control and logistics support should relate to total cost, performance, and risk. This is critical since Government does not control the COTS configuration which, if changed, could adversely impact the systems with which it interfaces. The management structure, including the costs of managing change (both the design aspects as well as potentially supporting multiple configurations) must be considered.

The support concept (e.g., contractor support versus organic support, and at what levels) has to address the hardware and any associated software. It must include planning for technology refreshment and maintaining any associated software after production. This includes how changes (for obsolescence/ technology refreshment and maintaining the software) will be

Pricing Commercial Items

budgeted and executed along with the necessary technical data required to sustain the system throughout the life cycle.

DoD shall acquire only the technical data customarily provided to the public with a commercial item or process, except technical data that—

- (1) Are form, fit, or function data;
- (2) Are required for repair or maintenance of commercial items or processes, or for the proper installation, operating, or handling of a commercial item, either as a standalone unit or as a part of a military system, when such data are not customarily provided to commercial users or the data provided to commercial users is not sufficient for military purposes; or
- (3) Describe the modifications made at Government expense to a commercial item or process in order to meet the requirements of a Government solicitation.

Commercial computer software and commercial computer software documentation --

- (1) Shall be acquired under the licenses customarily provided to the public unless such licenses are inconsistent with Federal procurement law or do not otherwise satisfy user needs.
- (2) Shall be obtained competitively, to the maximum extent practicable, using firm-fixed-price contracts or firm-fixed-priced orders under available pricing schedules.
- (3) Offerors and contractors shall not be required to—
 - (a) Furnish technical information related to commercial computer software or commercial computer software documentation that is not customarily provided to the public except for information documenting the specific modifications made at Government expense to such software or documentation to meet the requirements of a Government solicitation; or
 - (b) Relinquish to, or otherwise provide, the Government rights to use, modify, reproduce, release, perform, display, or disclose commercial computer software or commercial computer software documentation except for a transfer of rights mutually agreed upon.

The use of Performance Based Logistics (PBL) contracts to provide weapon system product support, has provided contractors configuration control at higher and higher levels of the “system” to both manage logistics functions and insert advanced technologies faster and at lower cost.

Pricing Commercial Items

In the past, the Government maintained a large infrastructure to support organic supply and maintenance. Through PBL, contractors can provide all logistics support for equipment and systems. This arrangement not only shifts these activities to the competitive private sector, if properly structured, it can also enable technology insertion that enhances capability. Over a typical weapon system life cycle, maintaining and supporting original technology can cost much more than inserting new technology in an evolutionary manner. It is important that the cost comprise all life-cycle costs, including Government overhead costs as well as direct program costs, to ensure a cost effective approach is being implemented.

In general, the Government should not stock spares in excess of those adequate for reasonable response times, but rather embrace new concepts of supply chain management, including just-in-time inventories, direct supplier delivery, and contractor-held inventories. Instead of managing supplies, Government managers should be managing suppliers and measure the quality of their performance at specified times across the life of the contract.

The issue of Diminishing Manufacturing Sources & Material Shortages (DMSMS) is of critical importance to the DoD. The risk of DMSMS can be addressed via a well structured PBL contract or mitigated by a proactive DMSMS management strategy that focuses on predicting the end of life (EOL) of a part by forecasting for obsolescence in the out years. However, COTS solutions require additional considerations when addressing DMSMS issues. Typically this is done by requiring delivery of an updated Bill of Material (BOM) to the piece part level on a periodic basis, and assessing it against commercial data bases and the parts technology roadmap to identify items that are nearing EOL before the item is unavailable. This leaves the program several less costly options than redesign or refresh such as bridge buys, life of type buys, parts substitution, etc. In a COTS program the data required may not be available and the costs required to acquire it need to be included in the program costs. PBL contracts can be an effective tool to handle these issues, but even when using them, a robust exit clause should be used to require that a system or subsystem has no DMSMS or EOL issues at the end of the PBL period of performance. Regardless of the contracting approach (traditional or PBL), the program office should be involved in the management of DMSMS.

Program managers must act early in the product life cycle to mitigate source-of-supply risks. These risks include business dissolution, product line elimination, and quality degradation. (Again, in a COTS program, traditional actions that can reduce these risks including placing design drawings in escrow with a third party in case a supplier discontinues production, negotiating contract terms that require the provision of design drawings to the Government if the business dissolves, and negotiating contract terms that require prior notice and provide options for product life buyout if production of an item ends may not be available and must be addressed in the original COTS selection process.) Since lifetime buys are very expensive, they should not necessarily be made for the program's duration, but rather should be employed as an interim measure until a technology insertion strategy unfolds.

If all of these approaches are inadequate and sources of supply are threatened, DoD has programs for managing diminishing manufacturing sources of supply such as the Defense Micro Electronics Agency (DMEA) Generalized Emulation of Micro Circuits (GEM) and Advanced Micro Circuit Emulations (AME) programs. Additionally, DoD has programs to exchange

Pricing Commercial Items

information and identify alternatives for those faced with supply-base problems. The DMSMS Knowledge Sharing Portal (<http://www.dmsms.org>) web site is aimed at providing value added assistance to DoD programs to implement and continually improve DMSMS strategies. Also, the Government–Industry Data Exchange Program (GIDEP) (<http://www.gidep.org/>) supports this communication process.

Pricing Support Resources

The sources listed in Appendix H are available to provide pricing support.

Chapter 5

CONTRACTING FOR COMMERCIAL ITEMS

Streamlined Solicitation Procedures for Commercial Items

When a written solicitation will be issued, the contracting officer may use streamlined procedures (FAR subpart 12.6) to reduce the time required to solicit and award contracts for the acquisition of commercial items. This procedure combines the synopsis required by FAR 5.203 and the issuance of the solicitation into a single document. When using the combined synopsis/solicitation procedure, the Standard Form 1449 is not used for issuing the solicitation. The contracting officer shall prepare the synopsis as described at FAR 5.207. The synopsis and solicitation are contained in a single document; therefore, it is not necessary to publicize a separate synopsis 15 days before the issuance of the solicitation. When using the combined synopsis and solicitation, contracting officers must establish a response time in accordance with FAR 5.203(b) (but see 5.203(h)). Publicize amendments to solicitations in the same manner as the initial synopsis and solicitation.

Contract Type

Except as provided in FAR 12.207(b) Contract Type, agencies shall use firm-fixed-price contracts or fixed-price contracts with economic price adjustment for the acquisition of commercial items. These contract types may be used in conjunction with an award-fee incentive and performance or delivery incentives when the award fee or incentive is based solely on factors other than cost. Use of any contract type other than those authorized by FAR 12.207 to acquire commercial items is prohibited.

A time-and-materials contract or labor-hour contracts may be used under limited circumstances for the acquisition of commercial services in accordance with FAR 12.207 (b). However, Public Law 110-182 Section 805, Procurement of Commercial Services further restricts the use of time-and-materials contract or labor-hour contracts for the Department of Defense (DFARS 212.207).

Contracting Policies and Procedures

FAR part 12 prescribes policies and procedures unique to the acquisition of commercial items, but it is not a “stand alone” part. FAR part 12 policies must be used in conjunction with the policies and procedures for solicitation, evaluation, and award of contracts and orders set forth in either FAR part 13, Simplified Acquisition Procedures, FAR part 14, Sealed Bidding, or FAR part 15, Contracting by Negotiation, as appropriate for the particular acquisition. When a policy or procedure in another part of the FAR is inconsistent with FAR part 12, FAR part 12 shall take precedence for the acquisition of a commercial item FAR subpart 13.5 authorizes a Test Program for Certain Commercial Items that allows issuance of solicitations under simplified acquisition

procedures when procuring supplies and services in amounts greater than the simplified acquisition threshold but not exceeding \$6.5 million (\$12 million for acquisitions as described in FAR 13.500(e)), including options. Currently, the authority to issue solicitations under this authority will expire on January 1, 2012, although contracts can still be awarded for solicitations issued prior to that date. The test program allows FAR part 13 procedures to be used if the contracting officer reasonably expects—on the basis of the nature of the supplies or services sought and market research—that offers will include only commercial items. Under this test program, contracting officers may use any simplified acquisition procedure in FAR part 13, subject to the specific dollar limitation applicable to that particular procedure. The test program's purpose is to vest contracting officers with additional procedural discretion and flexibility, so that commercial item acquisitions in this dollar range may be solicited, offered, evaluated, and awarded in a simplified manner that maximizes efficiency and economy and minimizes the burden and administrative costs for both the Government and industry.

Commercial Item Terms and Conditions

Contracts for procuring commercial items must, to the maximum extent practicable, include only those contract clauses required to implement provisions of law or executive orders applicable to the acquisition of commercial items or determined to be consistent with customary commercial practice. The FAR has limited solicitation provisions and contract clauses specifically developed for commercial items. Notwithstanding the prescriptions for provisions and clauses contained throughout the rest of the FAR, the only provisions and clauses the contracting officer is required to use are those which are prescribed in FAR part 12. This fact greatly eases the process of preparing solicitations and contracts for commercial items, and it should prevent the inclusion of provisions and clauses not appropriate for commercial items from creeping into these acquisitions.

While the contracting officer should limit use of solicitation provisions other than those prescribed in FAR part 12, the contracting officer does have the flexibility to use other FAR provisions and clauses, but only when: their use is consistent with customary commercial practices and the contractor agrees to their use; or a waiver to use terms and conditions inconsistent with customary commercial practice is obtained in accordance with FAR 12.302(c) and agency procedures. In acquiring commercial items, agencies can supplement the FAR part 12 provisions and clauses, but only if necessary to reflect agency-unique statutes, or approved by the agency senior procurement executive or the agency's representative to the FAR Council. This approval authority cannot be delegated. FAR 12.301 Solicitation provisions and contract clauses for the acquisition of commercial items, as supplemented by DFARS 212.301, provides a comprehensive list of clauses applicable to commercial acquisitions.

Tailoring Provisions and Clauses

The provisions and clauses established in FAR 12.302 are intended to address, to the maximum extent practicable, commercial market practices for a wide range of potential Government acquisitions of commercial items. However, because of the broad range of commercial items acquired by the Government, variations in commercial practices, and the relative volume of the

Contracting for Commercial Items

Government's acquisitions in the specific market, contracting officers may, within the limitations of FAR 12.302, and after conducting appropriate market research, tailor the provision at FAR 52.212-1, Instructions to Offerors—Commercial Items, and the clause at FAR 52.212-4, Contract Terms and Conditions—Commercial Items, to adapt to the market conditions for each acquisition.

As discussed above, the contracting officer shall not tailor any clause or otherwise include any additional terms or conditions in a solicitation or contract for commercial items in a manner that is inconsistent with customary commercial practice for the item being acquired unless a waiver is approved in accordance with agency procedures. The request for waiver must describe the customary commercial practice found in the marketplace, support the need to include a term or condition that is inconsistent with that practice and include a determination that use of the customary commercial practice is inconsistent with the needs of the Government. A waiver may be requested for an individual or class of contracts for that specific item. The head of the contracting activity is the approval authority within the DoD for waivers under FAR 12.302(c).

Section 821 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181), directed the Under Secretary of Defense for Acquisition, Technology and Logistics to develop and implement a plan to minimize the number of Government-unique contract clauses used in commercial contracts by restricting the clauses to those (1) Government-unique clauses authorized by law or regulation, or (2) any additional clauses that are relevant and necessary to a specific contract. See DPAP Plan for Restricting Government-Unique Contract Clauses on Commercial Contracts, MAR 17, 2008, in Appendix A.

Warranties

FAR 12.404 addresses the two types of warranties applicable to Commercial Item contracts, implied warranties and express warranties. The warranties covered in FAR 52.212-4 are the implied warranty of merchantability and the implied warranty of fitness for particular purpose.

The implied warranty of merchantability provides that an item is reasonably fit for the ordinary purposes for which such items are used. The items must be of at least average, fair or medium-grade quality and must be comparable in quality to those that will pass without objection in the trade or market for items of the same description.

The implied warranty of fitness for a particular purpose provides that an item is fit for use for the particular purpose for which the Government will use the items. The Government can rely upon an implied warranty of fitness for particular purpose when the seller knows the particular purpose for which the Government intends to use the item; and the Government relied upon the contractor's skill and judgment that the item would be appropriate for that particular purpose.

Contracting officers should consult with legal counsel prior to asserting any claim for a breach of an implied warranty.

Contracting for Commercial Items

The Federal Acquisition Streamlining Act of 1994 (41 U.S.C. 264) requires contracting officers to take advantage of commercial warranties. To the maximum extent practicable, solicitations for commercial items shall require offerors to offer the Government at least the same warranty terms, including offers of extended warranties, offered to the general public in customary commercial practice. Solicitations may specify minimum warranty terms, such as minimum duration, appropriate for the Government's intended use of the item. In accordance with FAR 12.404 (b) any express warranty the Government intends to rely upon must meet the needs of the Government. The contracting officer should analyze any commercial warranty to determine if the warranty is adequate to protect the needs of the Government, *e.g.*, items covered by the warranty and length of warranty; the terms allow the Government effective post award administration of the warranty to include the identification of warranted items, procedures for the return of warranted items to the contractor for repair or replacement, and collection of product performance information; and the warranty is cost-effective. FAR 12.404(b)(3) requires express warranties be included in the contract by addendum.

In some markets, it may be customary commercial practice for contractors to exclude or limit the implied warranties contained in FAR 52.212-4 in the provisions of an express warranty. In such cases, the contracting officer shall ensure that the express warranty provides for the repair or replacement of defective items discovered within a reasonable period of time after acceptance.

Terminations

The clause at FAR 52.212-4 permits the Government to terminate a contract for commercial items either for the convenience of the Government or for cause. However, the paragraphs in FAR 52.212-4 entitled "Termination for the Government's Convenience" and "Termination for Cause" contain concepts which differ from those contained in the termination clauses prescribed in FAR part 49. Consequently, the requirements of FAR part 49 do not apply when terminating contracts for commercial items and contracting officers shall follow the procedures at FAR 12.403, as supplemented by DoD requirements at DFARS/PGI subpart 212.4, Unique requirements regarding terms and conditions for commercial items. Contracting officers may continue to use FAR part 49 as guidance to the extent that FAR part 49 does not conflict with this section and the language of the termination paragraphs in FAR 52.212-4.

Termination Notification

No later than 10 calendar days after issuing any notice of termination for cause or default, regardless of contract dollar value, the contracting officer shall report the termination through agency channels to the Director, Defense Procurement, Acquisition Policy and Strategic Sourcing (see DPAP Memo Termination Notification, dated July 13, 2009 at Appendix A). The information will be available on the Past Performance Information Retrieval System (PPIRS) via login with password.

Subcontracts For The Acquisition Of Commercial Items

The Federal Acquisition Streamlining Act of 1994 (FASA) encourages, to the maximum extent practicable, the acquisition of commercial items at the subcontractor level. To extend the benefits of commercial item acquisitions to the subcontractor level, Government contracts contain limitations on the applicability of certain laws to the acquisition of commercial items at the subcontractor level, including a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or subcontractor. For subcontracts for the acquisition of commercial items or commercial components, the clauses at FAR 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, and FAR 52.244-6, Subcontracts for Commercial Items and Commercial Components, reflect the applicability of the laws listed in FAR 12.504 by identifying the only provisions and clauses that are required to be included in a subcontract at any tier for the acquisition of commercial items or commercial components.

These clauses offer significant incentives to encourage the expanded use of commercial items at all tiers, and are the only required clauses for prime contractors to flow down to subcontractors. The prime contractor can flow down other provisions and clauses, including FAR provisions and clauses, as necessary to meet its obligations under the prime contract.

Chapter 6

ADMINISTERING COMMERCIAL ITEMS CONTRACTS

Contract Administration involves those activities performed by Government officials after a contract has been awarded to determine how well the Government and the contractor performed to meet the requirements of the contract. It encompasses all dealings between the Government and the contractor from the time the contract is awarded until the work has been completed and accepted or the contract terminated, payment has been made, and disputes have been resolved and the contract is closed out. As such, contract administration constitutes that primary part of the procurement process that assures the Government gets what it paid for.

The Government performs contract administration to ensure that the contractor meets its contractual obligations so that the end-user obtains necessary and suitable goods and services at the time they are needed. Some of the functions performed in the contract administration phase include technical surveillance, inspection and acceptance, changes, order and claim administration, and financial and negotiation services.

Contract administration practices vary considerably between commercial and Government acquisitions, so the contract administration duties as identified in FAR part 42 generally do not apply to contracts for commercial items. However, some fashion of contract administration is still needed. Contracting officers may negotiate agreements with the appropriate contract administration office covering the delegation of certain functions normally associated with FAR part 42, but should only include those functions that are appropriate for the commercial item being purchased. Agreements documenting the delegation of authority to the Defense Contract Management Agency should clearly state the ways in which commercial practices will affect the administration mechanisms and procedures that historically have been used. Contracting officers should ensure that the functions identified in the delegations are consistent with industry practices.

DoD should focus on value-added contract administration activities in order to streamline its contract administration and audit services, realize cost reductions—for both the Department and its contractors—and further the aims of civil/military integration.

Inspection and Acceptance

To the maximum extent practicable, the Government must rely on commercial item contractors' existing quality control systems as a substitute for Government inspection and testing before tender for acceptance, unless customary commercial market practice for the item being acquired includes buyer-conducted in-process inspection. This implements the FASA preference for reliance on the contractor's existing quality control system, which is intended to relieve contractors from having to comply with unnecessary Government-unique testing and inspection.

Performance Management

Performance management is a critical element of successful performance-based services acquisitions, including those for commercial items. Performance-based approaches rely upon industry for quality assurance and control. Performance-based approaches also provide incentives as motivation, with the Government periodically assessing performance. To foster successful performance management and improve process capability, DoD and industry should jointly use tools for continuous improvement and process redesign (e.g., internal measurement systems, customer and supplier input, training).

The key to performance management is developing an acquisition strategy that mitigates risk and states contract requirements in performance terms. The performance assessment plan should outline the roles and responsibilities of the parties involved to guarantee that service delivery proceeds in accordance with the performance standards designated in the performance-based statement of work. In effect, the performance assessment plan is a roadmap to ensure that the Government receives high-quality services as specified in the contract, pays only for services rendered at or above the acceptable level, and motivates contractors to attain those levels. A well-developed performance assessment plan also includes an assessment schedule and the assessment methods to be used, along with a description of the actions to be taken if performance standards are not met. This is consistent with the transition from oversight to insight, since it focuses contract administration resources on contractor processes that influence contract performance.

Plans should also address performance assessment and allocate agency resources to monitoring the essential aspects of service delivery. Because contractor remuneration is tied to performance, it is crucial to take considerable care in developing the performance assessment plan. Important elements to consider include (but are not limited to) task criticality, performance requirements and standards, assessment methods, and availability and appropriateness of personnel assigned to carry out performance assessment. Resource constraints are such that assessment activities need to be commensurate with cost and risk.

Common assessment methods (which should be identified in the performance assessment plan) include commercial quality methods (e.g., contract metrics), sampling, and customer surveys. Surveys are useful performance measurement tools because they can provide a balanced means for assessing stakeholder views. The four primary groups to survey are customers, suppliers, employees, and managers. To achieve balance, the survey elicits the stakeholders' opinions on the parameters of service delivery, including quality, timeliness, and efficiency. The customer should use the survey's results in the feedback process to ensure that the service provider's performance is satisfactory—or, if necessary, improves—before milestone payments are made. (Note that the same concept applies to supplies. That is, a performance assessment plan is also necessary for performance-based supplies acquisitions. In the case of an item of supply that is a commercial item, the performance assessment plan may be very short and only establish times for evaluation upon delivery and before payment.)

The service provider may also be involved in developing and implementing the performance assessment process. As a stakeholder whose pay is tied to acceptable performance, the

Administering Commercial Items Contracts

contractor needs to understand, accept, and agree to the terms of the assessment. Obtaining contractor participation early in the process ensures that the contractor's own quality assurance and control plan dovetails with the Government's.

Appropriate Government monitoring of contractor performance is essentially important when using time and materials (T&M) and labor hour (LH) contracts because these contract types do not provide incentives to the contractor for cost control or labor efficiency. Government surveillance of contractor performance is necessary to ensure efficiency and cost effectiveness. The Department requires all contracts for services, including T&M and LH, include Quality Assurance Surveillance Plans (QASP) to facilitate assessment of contractor performance. These plans must be prepared in conjunction with the preparation of the PWS or SOO and should be tailored to address the performance risks inherent in the specific contract type and the work effort addressed by the contracts.

DoD's Guidebook for Performance-Based Services Acquisition (PBSA) includes details of contractor performance management.

CHAPTER 7

SPECIAL CONSIDERATIONS

As has been noted, contracts for acquiring commercial items are subject not only to the policies of FAR part 12, but also to other parts of the FAR (however, when a conflict between parts exists, FAR part 12 policy governs). This chapter highlights several of the special considerations that commonly arise—such as those involving the use of Government supply sources (addressed in FAR part 8) and 8(a) contractors (addressed in FAR part 19).

Sources for Supplies and Services

A variety of Government supply sources are available to satisfy the Government’s needs, including those for commercial items, including commercial services. Some supply sources are available on a non-mandatory basis, such as the Federal Supply Schedules—also known as the Multiple-Award Schedules (MAS), Government wide acquisition contracts (GWACs), multi-agency contracts (MACs), and Federal Prison Industries, Inc. (FPI or UNICOR which is the trade name for Federal Prison Industries). The use of certain other supply sources is mandatory, such as the AbilityOne Program and its participating nonprofit agencies operating pursuant to the Javits-Wagner-O’Day Act, employing people who are blind or have other severe disabilities.

FAR part 8 addresses use of these sources (with the exception of GWACs and multi-agency contracts), including the priorities for the use of sources, which differ for supplies. The application of FAR part 12 varies, depending upon the source from which the purchase is to be made. As described below, commercial item policies and procedures apply to the acquisition of commercial items through MAS, GWACs, and (MACS). Application to AbilityOne purchases is at the discretion of the contracting activity.

Multiple-Award Schedules, Multiple-Award Task and Delivery Order Contracts, Government-Wide Acquisition Contracts, and Multi-Agency Contracts

The General Services Administration (GSA) and the Veterans Administration (VA)—which manages certain schedules for medical supplies pursuant to a delegation from GSA—have designed the MAS program so that purchases for commercial items made under it comport with the commercial item policies of FAR part 12. FAR subpart 8.4 addresses purchases through the MAS. Users of GWACs and multi-agency contract vehicles will follow FAR part 12 when buying commercial items. GWACs and multi-agency contracts are typically structured as multiple-award task and delivery order contracts, whose use is addressed in FAR subpart 16.5. Contracts established pursuant to FAR subpart 16.5 are required to be consistent with the policies of FAR part 12 where acquisitions of commercial items are involved.

Special Considerations

Order placement under multiple-award task and delivery order contracts, GWACs, and multi-agency contracts is covered in FAR subpart 16.5. GWACs and multi-agency contracts, while not addressed in FAR part 8, are generally designed (like those used with other Government supply sources) to provide broad agency access to goods and services.

For additional discussion regarding use of the MAS and multiple-award task and delivery order contracts (including GWACs and multi-agency contracts) for the acquisition of commercial items, see Appendix I.

Federal Prison Industries, Inc., Program

Federal Prison Industries (FPI or UNICOR) is a wholly owned Government corporation and not a commercial entity. FPI acquisition procedures are covered in FAR subpart 8.6, Acquisition from Federal Prison Industries, Inc.

The AbilityOne Program

The AbilityOne Program participating nonprofit agencies are not commercial entities; however the supplies and services they provide are most often commercial. As such, they may be acquired using the commercial item acquisition policies and procedures. The decision whether to conduct AbilityOne acquisitions using commercial item acquisition policies and procedures can be based on cost-effectiveness, such as automated systems capabilities or other administrative considerations. Regardless of whether commercial item acquisition policies and procedures are used, AbilityOne Procurement List items are required sources of supplies and services and are conducted in accordance with FAR subpart 8.7, Acquisition from Nonprofit Agencies Employing People Who Are Blind or Severely Disabled.

Section 8(a) Program

The Section 8(a) Program rules apply to acquisitions of commercial items, whether the contract is placed with the Small Business Administration or directly with the 8(a) contractor (see FAR subpart 19.8). If commercial items will be procured under the 8(a) Program, FAR part 12 terms and conditions apply.

Simplified Acquisitions

The question of how the policies for acquiring commercial items fit with the other acquisition policies comes up often, particularly with regard to the use of simplified acquisition procedures in FAR part 13. When acquiring any commercial item, contracting officers use not only FAR part 12, but also the existing FAR procedures in parts 13, 14, or 15. These procedures include oral solicitations, requests for quotations, purchase orders, invitations for bids, and requests for proposals, as appropriate, but the terms and conditions should be tailored to reflect the policies governing the acquisition of commercial items. When a policy or procedure in another part of the FAR is inconsistent with FAR part 12, FAR part 12 shall take precedence for the acquisition of commercial items.

Special Considerations

The Government purchase card is appropriate for most simplified acquisitions less than or equal to the micropurchase threshold; however, when a purchase order or blanket purchase agreement is awarded, use commercial item policies and procedures.

Priorities for use of Government Supply/Service Sources

Except as required by FAR 8.003, Use of other Government supply sources, or as otherwise provided by law, agencies shall satisfy requirements for supplies and services from or through the sources and publications listed below in descending order of priority:

Supplies

- Agency inventories
- Excess from other agencies
- Federal Prison Industries, Inc.
- Supplies which are on the Procurement List maintained by the Committee for Purchase From People Who Are Blind or Severely Disabled
- Wholesale supply sources, such as stock programs of the General Services Administration (GSA) (see 41 CFR 101-26.3), the Defense Logistics Agency (see 41 CFR 101-26.6), the Department of Veterans Affairs (see 41 CFR 101-26.704) and military inventory control points
- Mandatory Federal Supply Schedules
- Optional use Federal Supply Schedules
- Commercial sources (including educational and nonprofit institutions)

Services

- Services which are on the Procurement List maintained by the Committee for Purchase From People Who Are Blind or Severely Disabled
- Mandatory Federal Supply Schedules
- Optional use Federal Supply Schedules
- Federal Prison Industries, Inc. (see FAR subpart 8.6), or commercial sources (including educational and nonprofit institutions)

Special Considerations

Sources other than those listed above may be used as prescribed in 41 CFR 101-26.301, which deals with requisitioning GSA stock items, and in an unusual and compelling urgency as prescribed in FAR 6.302-2 and in 41 CFR 101-25.101-5 Supply through local purchase.

The statutory obligation for Government agencies to satisfy their requirements for supplies or services available from the Committee for Purchase From People Who Are Blind or Severely Disabled also applies when contractors purchase the supplies or services for Government use.

Appendix A

Commercial Acquisitions Policy Memorandum



THE UNDER SECRETARY OF DEFENSE

3010 DEFENSE PENTAGON
WASHINGTON, DC 20301-3010

JAN 5 2001

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
DIRECTOR, DEFENSE CONTRACT MANAGEMENT AGENCY
DIRECTOR, DEFENSE LOGISTICS AGENCY

SUBJECT: Commercial Acquisitions

Defense acquisitions should emphasize performance-based requirements, include provisions that enable commercial practices, and encourage the participation of nontraditional commercial entities. The efforts of all members of the acquisition team are crucial to achieving increased use of commercial acquisitions, but the input of requirements personnel and program managers is particularly essential, since they impart knowledge of available technology to the team. To the maximum extent possible, commercial acquisitions should be conducted using Federal Acquisition Regulation (FAR) Part 12. The use of FAR Part 12 is designed to provide the Department of Defense (DoD) with greater access to commercial markets with increased competition, better prices, and new market entrants and/or technologies.

In March 1999, I directed the Deputy Under Secretary of Defense (Acquisition Reform) (DUSD (AR)) and the Director of Defense Procurement to charter an Integrated Process Team (IPT) to review DoD commercial item determinations and evaluate whether additional guidance, tools, or training were necessary. The IPT found that, while some progress has been made, many obstacles to accessing commercial items remain. These obstacles include inconsistent commercial item determinations, weak market research, and confusion concerning pricing of commercial items. Additionally, lessons learned as to the applicability of FAR Part 12 determinations are not being shared across DoD buying offices. These factors unnecessarily increase workload and acquisition cycle time.

To help overcome these barriers to accessing commercial items, I am taking the following actions:

- ◆ Providing clarification on FAR Part 12 use to yield appropriate consistency across DoD;
- ◆ Establishing goals that DUSD(AR) will track to ensure the Department continues to make necessary progress;
- ◆ Requesting each Service and Defense Agency to provide me, within 90 days of the date of this memorandum, an implementation plan outlining its methodology to ensure we meet our commercial item acquisition goals; and
- ◆ Requesting that the IPT determine the feasibility of establishing a pilot program so that the Services and Agencies may collect market research and Commercial Item Determinations in a central database, or developing tools to assist in ensuring commercial item determinations are reasonably consistent. I request that the recommendation regarding this action be presented to DUSD (AR) within 90 days of the date of this memorandum.



Appendix A

The attachment provides some immediate clarification. In addition, DUSD (AR) and the components are developing a Commercial Item Handbook to provide further guidance on sound business strategies for acquiring commercial items. This guidebook is scheduled for release in February 2001.

To effectively provide our warfighters with the technological advantage to win future conflicts, we must uniformly look first to the commercial marketplace before developing new systems; upgrading legacy systems; or procuring spare parts and support services.



J. S. Gansler

Attachment:
As stated

CLARIFICATION OF FAR PART 12 FOR CONSISTENCY

In implementing the guidance of FAR Part 12, misinterpretations and/or inconsistent applications have occurred with regard to the following definitions and issues: commercial-off-the-shelf; modified commercial items; of a type; Government-off-the-shelf; market versus catalog price; requirements definition; conduct of market research; use of Commerce Business Daily (CBD) Note 26; and, sole-source situations. The following clarifications are offered to create consistency across the Department.

Commercial Off-the-Shelf (COTS): A product does not have to be commercial-off-the-shelf (COTS) to meet the "commercial item" definition. COTS items are a subset of commercial items. The commercial item definition is much broader than products that are presently available off-the-shelf. It includes items that have only been "offered" for sale, lease, or license to the general public, as well as those that have evolved from a commercial item and are offered for sale, even if not yet available in the commercial marketplace. However, evolved items must be available in the commercial marketplace in time to satisfy solicitation delivery requirements. In addition, all other elements of the commercial item definition at FAR 2.101 must also be met.

Modified Commercial Items: When items available in the commercial market cannot meet the Department's need, DoD must determine whether market items can be or have been modified so that FAR Part 12 can be used. Two types of modifications are available: (1) modifications of a type available in the commercial marketplace; and, (2) minor modifications of a type not customarily available in the commercial marketplace made to Federal Government requirements. For modifications of a type available in the commercial marketplace, the size or extent of modifications is unimportant. For minor modifications, the item must retain a predominance of nongovernmental functions or physical characteristics.

"Of a Type": The phrase "of a type" is not intended to allow the use of FAR Part 12 to acquire sole-source, military unique items that are not closely related to items already in the marketplace. Instead, "of a type" broadens the commercial item definition so that qualifying items do not have to be identical to those in the commercial marketplace. The best value offer in a competitive Part 12 solicitation can be an item that has previously satisfied the Government's need but has not been sold, leased, licensed, nor offered for sale, lease or license to the general public (a nondevelopmental item as defined in 10 USC 403 (13)). In this scenario, the phrase "of a type" allows the best value offer to qualify for a Part 12 contract as long as it is sufficiently like similar items that meet the government's requirement and are sold, leased, licensed, or offered for sale, lease or license to the general public. In such instances, "of a type" broadens the statutory commercial item definition to allow Part 12 acquisition of a government-unique item that can compete with commercial items that meet the government's requirement. This avoids the undesirable result of shutting out otherwise price-competitive preexisting suppliers of government-unique items from Part 12 solicitations.

Government Off-the-Shelf (GOTS): GOTS is a commonly used term for nondevelopmental items (NDI) (as defined in 10 USC 403 (13)) that are Government-unique items in use by a Federal Agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement. The words "of a type" facilitate the acceptance of a best-value GOTS/NDI offer in response to a competitive FAR Part 12 solicitation when the offered GOTS/NDI items are sufficiently like similar items sold, leased, licensed, or offered for sale, lease or license to the general public.

Market Price versus Catalog Price for Services: The commercial item definition includes services of two general types: services in support of a commercial item; and, stand-alone services. In order to meet the commercial item definition, stand-alone services must be "based on established catalog or market prices." The price for the services must be based on either catalog prices or market prices.

"Catalog Prices" mean 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.

"Market Prices" mean 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.

The established market price for stand-alone services does not have to be published or written. Market research enables the Government to collect data from independent sources in order to substantiate the market price.

Requirements Definition: It is imperative that all members of the acquisition team are cognizant of available or emerging technology and that requirement statements reflect any available commercial solutions. Requirements personnel and contracting officers should work together to ensure that commercial items can be -- and are -- used. Contracting officers need the input, guidance, and support of requirements personnel (e.g., adopting more open system architectures, identifying possible commercial components and technologies) to enable the use of commercial item acquisitions. The key to this process is robust market research.

Market Research: Market research -- and the teaming it relies upon -- must be an ongoing activity throughout an acquisition, in order to gather the robust data needed to make smart acquisition decisions. Market research is not limited to locating commercial items, although that is one purpose of its conduct. At a minimum, market research should be used to define requirements, locate commercial best practices, and assist in determining price reasonableness.

Full Use of CBD Note 26: If market research establishes that the Government's need cannot be met by a commercial item, FAR Part 12 shall not be used. For proposed contract actions that require publication in the Commerce Business Daily (CBD), the contracting officer must include a notice to prospective offerors that the Department does not intend to use FAR Part 12 for the acquisition. For the Defense Department, this notification is accomplished through use of CBD Numbered Note 26. The Department must make full use of CBD Numbered Note 26, which reads as follows:

Based upon market research, the Government is not using the policies contained in Part 12, Acquisition of Commercial Items, in its solicitation for the described supplies or services. However, interested persons may identify to the contracting officer their interest and capability to satisfy the Government's requirement with a commercial item within 15 days of this notice.

Sole-Source Situations: Contracting officers and requirements personnel should work together to avoid sole-source situations. Competition is enabled when needs are broadly stated

Appendix A

in terms of performance outcomes. However, a sole-source situation may be unavoidable, presenting pricing challenges. Tools and techniques are available for assisting in the price reasonableness determination for sole-source commercial item procurements. Sometimes, sole-source suppliers may attempt to exploit the lack of competitive markets and demand unreasonable prices. In such circumstances, the team should consider revising negotiation strategies to consider innovative solutions (e.g., strategic supplier alliances); buying the bare minimum quantities and working to restate the need to expand possible solutions and qualify alternate suppliers; and ultimately upgrading systems to current, commercial technology. In some cases, it may be necessary to escalate negotiations. The first escalation should be to the Procurement Executive, then, if necessary, to the Head of the Agency.



ACQUISITION
TECHNOLOGY
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE
3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

JUL 23 2008

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION
COMMAND (ATTN: ACQUISITION EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY
(POLICY AND PROCUREMENT, ASA (ALT))
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(ACQUISITION AND LOGISTICS MANAGEMENT), ASN
(RDA)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING), SAF/AQC
DIRECTORS, DEFENSE AGENCIES
DIRECTORS, DOD FIELD ACTIVITIES

SUBJECT: Termination Notification

Recent events have highlighted the need for the Department of Defense to have a centralized knowledge of all contracts that have been terminated for cause in accordance with FAR Subpart 12.4 or terminated for default in accordance with FAR Subpart 49.4. Therefore, I have implemented changes to the Procedures, Guidance and Information (PGI) of the Department of Defense FAR Supplement sections 212.4 and 249.470 effective immediately.

No later than 10 calendar days after issuing any notice of termination for cause or default, regardless of contract dollar value, the contracting officer shall report the termination through agency channels to the Director, Defense Procurement, Acquisition Policy and Strategic Sourcing, ATTN: OUSD(AT&L)DPAP(CPIC), 3060 Defense Pentagon, Washington, DC 20301-3060.

Information to be submitted shall include the following: contractor name, contractor Data Universal Numbering System (DUNS) number, contractor Commercial and Government Entity (CAGE) code, contractor address, contract number, general description of supply or service, Federal Supply Classification (FSC) code, reason for termination, estimated dollar value of contract, estimated dollar value of termination, contracting officer name, contracting officer address, contracting officer e-mail address, contracting officer phone number, and any other information that the contracting officer determines is relevant.

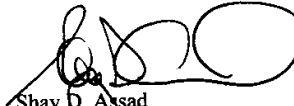


Appendix A

If the status of the termination changes, for example from a termination for cause or default to a termination for convenience, the status and information must be revised and submitted to the above address within 10 calendar days after the change. This revised information can be provided by either the contracting officer or the termination contracting officer.

The information will be available on the Past Performance Information Retrieval System (PPIRS) via login with password. This termination information is just one reference for source selection officials to use to determine contractor responsibility.

My point of contact for this memorandum is Ms Sandra K. Ross. She can be reached at 703-695-9774 or email sandra.ross@osd.mil.



Shay D. Assad
Director, Defense Procurement,
Acquisition Policy and
Strategic Sourcing



ACQUISITION,
TECHNOLOGY
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE
3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

MAR 20 2008

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION
COMMAND (ATTN: ACQUISITION EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY
(POLICY AND PROCUREMENT), ASA (ALT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(ACQUISITION & LOGISTICS MANAGEMENT),
ASN (RDA)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING), SAF/AQC
DIRECTORS, DEFENSE AGENCIES
DIRECTORS, DOD FIELD ACTIVITIES

SUBJECT: Proper Use of Time-and-Materials Contract Types

Over the past several years, the Department's reliance on time-and-materials (T&M) contracts has continued to increase, particularly for professional, administrative, management support, information technology, and communication services. While T&M contracts are the least preferred contract type, some contracting activities are using T&M contracts to acquire as much as 60 percent of their annual requirement for services.

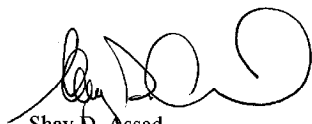
As specified in FAR 16.601, T&M contracts are only authorized when it is not possible at the time of placing the contract to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence. However, the General Accountability Office (GAO) recently found that DoD is using T&M contracts because T&M contracts can be awarded quickly and adjusted easily when contract requirements are unclear or funding is uncertain (see GAO report 07-273, Defense Contracting: Improved Insight and Control's Needed over DoD's Time-and-Materials Contracts, dated June 2007).

These trends and findings are a major concern. To help ensure T&M contracts are only used when authorized, military departments and defense agencies must establish procedures for analyzing whether T&M contracts and orders under indefinite-delivery contracts are being used when other contract types are suitable. These procedures must include an assessment of the appropriate use of T&M contracts by the head of the contracting activity of any contracting activity that obligated more than 10 percent of its total fiscal year 2007 services' spend using T&M contracts or orders. The report should include the actions that will be taken to reduce the use of T&M contracts whenever possible.



Appendix A

In addition, the military departments and defense agencies must provide a summary of that assessment to the Deputy Director for Strategic Sourcing, Mr. Stuart Hazlett by June 4, 2008.

A handwritten signature in black ink, appearing to read 'Shay D. Assad', with a large, stylized flourish at the end.

Shay D. Assad
Director, Defense Procurement,
Acquisition Policy, and
Strategic Sourcing



ACQUISITION,
TECHNOLOGY
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE
3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

MAR 17 2008

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS
COMMAND (SENIOR PROCUREMENT EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION
COMMAND (SENIOR PROCUREMENT EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY
(POLICY AND PROCUREMENT), ASA (ALT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(ACQUISITION & LOGISTICS MANAGEMENT),
ASN (RDA)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING), SAF/AQC
DIRECTORS, DEFENSE AGENCIES
DIRECTORS, DOD FIELD ACTIVITIES

SUBJECT: Plan for Restricting Government-Unique Contract Clauses on Commercial
Contracts

Section 821 of the National Defense Authorization Act (NDAA) for Fiscal Year 2008 (Public Law 110-181), directs the Under Secretary of Defense for Acquisition, Technology and Logistics to develop and implement a plan to minimize the number of government-unique contract clauses used in commercial contracts by restricting the clauses to those (1) Government-unique clauses authorized by law or regulation, or (2) any additional clauses that are relevant and necessary to a specific contract. Commercial contracts are defined as those contracts awarded by the federal government for procurement of a commercial item as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)).

In addition, FAR 12.301(a), requires, to the maximum extent practicable, only those clauses that are (1) required to implement provisions of law or executive orders applicable to the acquisition of commercial items, or (2) determined to be consistent with customary commercial practice may be included in contracts for commercial items.

It is the Department's policy to limit the number of contract clauses consistent with the stated statutory and regulatory requirements. Unique clauses or instructions incorporated into solicitations and contracts for commercial items by contracting activities in addition to those prescribed in the FAR and DFARS shall not be used, unless

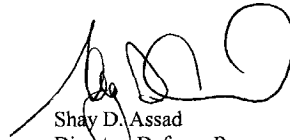


the contracting activity can demonstrate that inclusion of such instruction or clause is essential.

Not later than 120 calendar days from the date of this memorandum, please survey contracting activities under your cognizance and provide the following information:

1. Have contracting activities under your cognizance issued commercial contracts during FY'07 or FY'08? If so:
 - a. Have these activities issued commercial contracts that have included FAR/DFARS clauses that would typically be inconsistent with customary commercial practice, commercial items acquisition procedures, or that are otherwise not specifically essential? If so, please provide supporting rationale for inclusion of these clauses.
 - b. Have these activities issued commercial contracts that have included supplemental, local, or additional instruction or guidance other than that specifically promulgated in the FAR/DFARS? If so, please provide supporting rationale for inclusion of this additional information.
2. A specific plan of action to restrict the number of unique clauses that may be included in contracts for commercial items. Also, please identify specific procedures that will be put in place to ensure appropriate oversight, and senior level approval for the inclusion of any unique clauses in contracts for commercial items.

My point of contact for this subject is Mr. Anthony E. Cicala at (703)693-7062, or email: anthony.cicala@osd.mil.



Shay D. Assad
Director, Defense Procurement,
Acquisition Policy, and
Strategic Sourcing



OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

MAR 08 2007

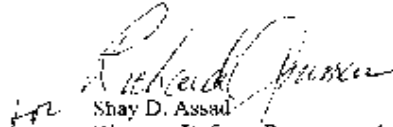
MEMORANDUM FOR DIRECTORS OF DEFENSE AGENCIES
ASSISTANT SECRETARY OF THE ARMY
(ACQUISITION, LOGISTICS AND TECHNOLOGY)
ASSISTANT SECRETARY OF THE NAVY
(RESEARCH, DEVELOPMENT AND ACQUISITION)
ASSISTANT SECRETARY OF THE AIR FORCE
(ACQUISITION)

SUBJECT: Commercial Item Determinations

Included in the DoD Inspector General Report, Project D-2006-115 "Commercial Contracting for the Acquisition of Defense Systems", was a recommendation that when commercial item determinations are made, these determinations should be in writing and included in the contracting file. This office concurred with that recommendation. Effective immediately, Contracting Officers shall document in writing their determinations that the commercial item definition has been met for all acquisitions using FAR Part 12 that exceeds \$1 million.

Contracting Officers must ensure that contract files fully and adequately document the market research and rationale supporting a conclusion that the commercial item definition of FAR 2.101 has been satisfied. Particular care must be taken to document determinations involving modifications of a type customarily available in the commercial marketplace, and items only offered for sale, lease, or license to the general public, but not yet actually sold, leased or licensed. In these situations, the documentation must clearly detail the particulars of the modifications and sales offers. When such items lack sufficient market pricing histories, additional diligence must be given to determinations that prices are fair and reasonable as required by FAR Subpart 15.4.

If you have any questions regarding commercial item determinations, please contact Mr. Andrew Obermeyer, at (703) 697-6710 or andrew.obermeyer@osd.mil.


Shay D. Assad
Director, Defense Procurement
and Acquisition Policy



Appendix B

Sample Commercial Item Checklist

Commercial Item Checklist (Part 1: Items, Part 2: Services)

Item: _____

Part 1: Acquisition of Items

Can the Government's requirements (which should be performance based) be satisfied by—

1. An item that is *of a type* customarily used by the general public or by nongovernmental entities for purposes other than Government purposes and that has been sold, leased, or licensed to the general public or that has been offered for sale, lease, or license to the general public?
 - A. If Yes, designate the item as commercial and annotate evidence of actual sale, lease, or license to the general public (or offer for the same), as appropriate:

 - B. If No, proceed.
2. An item that has evolved from an item described in 1 above through advances in technology or performance and that is not yet available in the commercial marketplace but will be available in time to satisfy the Government's delivery requirements?
 - A. If Yes, designate the item as commercial and annotate evidence that the item will be available in time to satisfy the Government's requirements.

 - B. If No, proceed.
3. An item that would meet 1 or 2 above but requires modifications of a type customarily available in the commercial marketplace or minor modifications of a type not customarily available in the commercial marketplace, made to meet Federal Government requirements?

Appendix B

- A. If Yes, designate the item as commercial and annotate either evidence of the customary availability of modification in the commercial marketplace or the technical relationship between the modified item and the item that meets 1 or 2. (For the latter, attach drawings or comparison of the characteristics of the commercial item and the modified item, as appropriate).

- B. If No, proceed.

- 4. Any combination of items meeting 1, 2, or 3 above that are of a type customarily combined and sold in combination to the general public?

- A. If Yes, designate the combination as commercial and annotate evidence of the customary combination being sold to the general public.

- B. If No, proceed.

- 5. Any item or combination of items that would meet 1, 2, 3, or 4 above and is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor?

- A. If Yes, designate the item as commercial and annotate how the item would meet 1, 2, 3, or 4.

- B. If No, proceed.

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

- A. If Yes, designate the nondevelopmental item as commercial and annotate evidence that it was 1) developed exclusively at private expense, and 2) sold competitively in substantial quantities to multiple state and local governments.

- B. If No, recommend that the agency's requirements be revised to permit commercial solutions. If they cannot, recommend that noncommercial acquisition be considered (include an appropriate notice in the synopsis).

Part 2: Acquisition of Services

Can the Government's requirements be satisfied by—

1. Installation services, maintenance services, repair services, training services, and other services?

A. If Yes, proceed to 2 below.

B. If No, proceed to 4 below.

2. Services in 1 above in support of an item that has been, or could be, designated a commercial item in Part 1 above, regardless of whether such services are provided by the same source or at the same time as the item?

A. If Yes, proceed to 3 below.

B. If No, proceed to 4 below.

3. Services in 2 above from a source that provides similar services contemporaneously to the general public and the Government under similar terms and conditions, similar to those offered to the Federal Government?

A. If Yes, designate the services as commercial and annotate information concerning their source, as appropriate.

B. If No, proceed to 4 below.

4. 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?

A. If Yes, proceed to 5 below.

B. If No, proceed to 6 below.

5. Services in 4 above that are offered under standard commercial terms and conditions?

Appendix B

- A. If Yes, designate the services as commercial and annotate pricing information, as appropriate.

- B. If No, proceed to 6 below.

- 6. Any combination of services that would meet 3 or 5 above, is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor?

- A. If Yes, designate the combination as commercial and annotate how the services would meet 3 or 5 above.

- B. If No, recommend that the agency's requirements be revised to permit commercial solutions. If they cannot, recommend that noncommercial acquisition be considered (include an appropriate notice in the synopsis).

Appendix C

Performance-Based Requirements Descriptions Resources

The following sources are available to provide information on performance-based statements of work:

- ◆ The Office of the Director, Defense Acquisition Initiatives offers the following information on its site at www.acq.osd.mil/dpap/Docs/pbsaguide010201.pdf:
 - Guidebook for Performance-Based Services Acquisition (PBSA) in the Department of Defense, December 2000
- ◆ OFPP - A Guide to Best Practices for Performance-Based Service Contracting, Final Edition October 1998 (Note: Document rescinded –Posted for information purposes only) http://www.whitehouse.gov/omb/procurement_guide_pbsc.html
- ◆ Seven Steps to Performance Based Acquisition, An Interagency - Industry Partnership in Performance: <https://www.acquisition.gov/sevensteps/home.html>
- ◆ Performance-Based Service Acquisition, Contracting for the Future, Interagency Task Force on Performance Based Service Acquisition, July 2003, www.whitehouse.gov/omb/asset.aspx?AssetId=551
- ◆ Office of Federal Procurement Policy Memorandum, Increasing the Use of Performance-Based Service Acquisition, September 7, 2004 http://www.whitehouse.gov/omb/procurement_index_pbsa.
- ◆ Acquisition Center of Excellence (ACE) for Services, <https://acc.dau.mil/ace>.

Appendix D

SAMPLE MARKET RESEARCH REPORT

Sample Market Research Report Format

1. Purchase Request (PR) # _____
2. Title: _____
3. North American Industry Classification System (NAICS) Code: _____
4. Federal Product or Service Code _____
5. Estimated Contract Value (including options): \$ _____
6. In accordance with Federal Acquisition Regulation (FAR) part 10, market research has been conducted for this acquisition. The following techniques were used (check all that apply):
 - ____ Historical acquisition information (review of recent market research results for similar or identical supplies/services). (See Appendix E for more detail).
 - ____ Personal knowledge in procuring supplies/services of this type.
 - ____ Contact with the requester and/or other knowledgeable people in Government and industry regarding the commercial nature of this requirement and standard industry practices in this area of supply/service.
 - ____ Publication of a formal request for information on the Internet.
 - ____ Publication of a formal request for information through the Government-wide point of entry (i.e., **FedBizOpps at <https://www.fbo.gov/>**)
 - ____ Publication in appropriate technical journals.
 - ____ Review of appropriate technical journals and trade publications.
 - ____ Review of Government and/or commercial databases for relevant information.
 - ____ Use of source lists for identical or similar items obtained from Government, professional, and/or industry sources.

Appendix D

____ Review of catalogs and other generally available product literature (online and/or in hard copy).

____ Interchange meetings or presolicitation conferences with potential offerors.

____ Other: _____

6. On the basis of the results of the above research and on completion of the Commercial Item Checklist in Appendix B) it is determined that this requirement:

____ *Can* be met by commercial items, commercial items with customary or minor modifications, or nondevelopmental items.

OR

____ *Cannot* be met by commercial items, commercial items with modifications, or nondevelopmental items. Further, a reevaluation has been made in accordance with FAR 10.002(c), and the Government requirement cannot be modified in a way that will allow a commercial item to satisfy the need. *Note:* Any presolicitation synopsis of this requirement must include an appropriate notice.

OR

____ Other:

(Example: Market research may reveal that a combination of commercial/noncommercial items can meet the Government's needs.)

7. Annotate the reasons for the determination in 6:

Appendix D

Address numbers 8 through 11 below if the requirement can be met (either in whole or in part) by commercial items, commercial items with modifications, or nondevelopmental items.

Continue on additional sheets if necessary.

8. Pricing factors (e.g., pricing history, competitive conditions, overall level of demand, trends in supply and demand, pattern of demand, other impacting market forces, pricing strategies, sources of supplies): (See Chapter 4 for more information.)

9. Standard industry terms and conditions (e.g., warranty, maintenance, discounts, buyer financing, freight, delivery, inspection) under which commercial sales of the required supplies/services are made:

10. Laws or regulations unique to the required supplies/services:

11. On the basis of the above information, the basic clauses and provisions prescribed in FAR part 12:

____ Are sufficient for use in this acquisition and do not require any substantial tailoring to be consistent with customary commercial practice.

OR

____ Require tailoring to be consistent with customary commercial practices. All such tailoring will be included in the solicitation issued for the required supplies/services.

Appendix D

OR

____ Require tailoring inconsistent with customary commercial practice. (Waiver required in accordance with FAR 12.302(c).)

OR

Require tailoring to implement provisions of law or executive orders applicable to the acquisition of commercial items in accordance with FAR 12.301 (a) (1) and DFARS 12.302(f).

OR

Discretionary use of FAR provisions and clauses consistent with FAR 12.301(e).

Signed: _____ (Contracting Officer)

Date: _____

Signed: _____ (Program Manager or User)

Date: _____

Appendix E

Market Research Questions—Historical Acquisition Information

The table presented below sets forth research elements the Government should consider when market research is completed. Not all of the questions in this table will be valid for every acquisition. For some acquisitions, many specialized questions not covered in the table will need to be answered. However, the topics identified and the related questions provide a good framework for use when reviewing historical acquisition information.

Historical Acquisition Information	
Research Element	Be Able to Answer Questions Such As...
Trends in Supply and Demand	<ul style="list-style-type: none"> • When did past acquisitions take place? • Is there any indication of prevailing market conditions at that time?
Pattern of Demand	<ul style="list-style-type: none"> • What quantities were solicited for each acquisition? • What quantities were acquired?
Sources of Supplies or Services	<ul style="list-style-type: none"> • How many sources were available (i.e., extent of commercial base)? • How many sources were solicited for the prior acquisition? • What specific sources were solicited? • How many sources made offers? • What specific sources made offers?
Product Characteristics	<ul style="list-style-type: none"> • Are there any significant differences between the Government requirements for the prior contract and the current requirements?
Delivery/ Performance Terms	<ul style="list-style-type: none"> • What was the delivery or performance period in days, weeks, months, or years? • In what month(s) were the supplies to be delivered or the services to be performed? • Did the contractor meet the delivery targets? • What was the free on board (f.o.b.) point? • Was premium transportation required for timely delivery?
Ownership Costs	<ul style="list-style-type: none"> • What costs of ownership were associated with the acquisition?
Acquisition Method	<ul style="list-style-type: none"> • What acquisition method was employed for past acquisitions?
Contract Terms and Conditions	<ul style="list-style-type: none"> • What were the general terms of past contracts? • Are there any significant differences between the terms of the last contract (e.g., packing requirements, type of contract, and the like) and those recommended for this acquisition?
Problems	<ul style="list-style-type: none"> • What problems (if any) were encountered during contract performance?

Appendix F

Market Research Resources

The following sources are available to assist with market research efforts. Many other sources of market information pertaining to particular industries and products are available.

TUTORIALS AND GUIDES

- ◆ The National Aeronautics and Space Administration, Office of Procurement, offers a *Market Research Guide* at <http://www.hq.nasa.gov/office/procurement/market.html>.
- ◆ The Institute for Supply Management offers several products and seminars at <http://www.ism.ws>.
- ◆ The National Contract Management Association offers several publications and seminars at <http://www.ncmahq.org/>.
- ◆ The Defense Acquisition University offers two Market Research classes (see below). These classes are offered as continuous learning classes, and are available at <http://www.dau.mil> *clc*.
 - *Market Research (CLC 004)*: This course offers a general overview of market research for everyone, including contracting officers, Contract Specialists, program managers, system engineers, logistics personnel, functional leaders, and DoD contractors.
 - *Market Research for Engineering and Technical Personnel (CLE028)*: This module will provide optional training for DoD engineering and technical personnel on how to conduct market research that leads to the acquisition of commercial items or services.
- ◆ The Defense Standardization Program Office (DSPO) has the standardization document, SD 5, Market Research Gathering Information About Commercial Products and Services at <http://www.dsp.dla.mil>.

PRODUCT AND INDUSTRY DATA SOURCES

- ◆ Commercial procurement information services. Several subscription services provide procurement and logistics information via the Internet. The type of information offered includes specifications and standards, technical descriptions, and procurement

- history (e.g., contract numbers, date procured, unit prices). Since these services contain procurement information from the Army, Navy, Air Force, and other procurement organizations, subscribers can obtain a wider range of information than would normally be available from in-house databases. In addition to providing a single point of entry for querying various Government databases, these services also include nongovernmental information (e.g., supplier catalogs).
- ◆ Thomas Register. Thomas Register (which is published both in print and on the Internet at <http://www.thomasnet.com>) consists of an alphabetical listing of American and Canadian companies, addresses, and phone numbers, as well as a product listing, product description, and product manufacturers. The Thomas Register can be searched by company name, product or service, or brand name, and the search can be modified to limit it to a specific geographical area. For example, searching under the product “nails” will yield a list of “Product Headings” to help narrow down the type of nails, such as “nails: collated,” “nails: galvanized,” or “nails: drywall.” Searches can also be performed by the name of a company that distributes nails, such as Hahn Systems, Inc. Alternatively, a search for nails can be done by citing a particular manufacturer (i.e., brand name), such as Powers Rawl. Thomas Register’s TREND® Online. This site (<http://www.thomasnet.com>) provides buyers and drafters of specifications with over 400,000 industrial and commercial suppliers, organized under more than 4,500 product and service categories.
 - ◆ Consumer Price Index. The Consumer Price Index (CPI) is published monthly by the U.S. Department of Labor’s Bureau of Labor Statistics, with internet-based information found at <http://www.bls.gov/cpi>.
 - ◆ The CPI represents changes in prices of all goods and services purchased for consumption by urban households. It measures price change from the perspective of the buyer, in contrast to the Producer Price Index (PPI), which measures price change from the seller’s perspective. A primary use of the CPI is to adjust income and expenditure streams for changes in the cost of living. The CPI is used as a price adjustment factor in some areas of procurement (leasing, in particular) and as a general gauge for inflation. However, the PPI is usually a better source of data on price trends for the Government, since the Government is usually a “wholesale” buyer.
 - ◆ Producer Price Index. The PPI is a family of indexes published by the U.S. Department of Labor’s Bureau of Labor Statistics, with internet-based information found at <http://www.bls.gov/ppi> . It tracks changes in prices that producers receive from the initial commercial purchasers of their products. The Index reflects selling prices of selected manufacturers or the prices quoted on organized exchanges such as the Chicago Board of Trade. Prices are generally free on board (f.o.b.) origin for immediate delivery. A primary use of the PPI is to deflate revenue streams in order to measure real growth in output. The PPI measures price change from the perspective of the seller, in contrast to other measures (such as the CPI), that measure price change from the purchaser’s perspective. Sellers’ and purchasers’ prices may

Appendix E

differ as a result of Government subsidies, sales and excise taxes, and distribution costs. The individual indexes of the PPI, which are helpful for conducting price analysis, are used in the following ways, among others:

- As an economic indicator.
- As a deflator of other economic series.
- As the basis for contract escalation.
- ◆ Acquisition Central (formerly Acquisition Reform Net), <http://www.acquisition.gov/> or <http://www.arnet.gov>.
- ◆ BizWeb, <http://www.bizweb.com>.
- ◆ STAT-USA®/Internet™, Department of Commerce, <http://www.stat-usa.gov/>.
- ◆ Department of Defense EMALL, <https://dod-email.dla.mil/acct/>
- ◆ Dow Jones Business Information Services, <http://www.dowjones.com/>
- ◆ General Services Administration (GSA) *Advantage!*, <https://www.gsaadvantage.gov>
- ◆ ITEC Direct offers U. S. Navy standard compliant Information Technology (IT) products and services from several GSA Federal Supply Schedule contractors, <http://www.itec-direct.navy.mil/index.shtml>.
- ◆ AbilityOne, <http://abilityone.com/>
- ◆ Institute For Supply Management, <http://www.ism.ws>
- ◆ National Contract Management Association, <http://www.ncmahq.org>.
- ◆ Product: Aircraft
 - Spec2000, <http://www.spec2000.com>.
- ◆ Product: Apparel, Fiber, Textiles
 - Garment Industry Development Corporation, <http://www.gidc.org/>.
- ◆ Product: Computers and Electronics
 - Price Watch, <http://www.pricewatch.com>.
- ◆ Small Business Administration, <http://www.sba.gov>.

Appendix E

- ◆ Yellow Pages: Superpages <http://www.bigyellow.com> and Switchboard, <http://www.switchboard.com>.

APPENDIX G

PRICE ANALYSIS TECHNIQUES

At a minimum, the contracting officer must use price analysis to determine whether the price is fair and reasonable whenever the contracting officer acquires a commercial item (see FAR 15.404-1(b)). The fact that a price is included in a catalog does not, in and of itself, make it fair and reasonable (See FAR 15.403-3(c).) The following discussion encompasses the seven price analysis techniques discussed in the Federal Acquisition Regulation. For a more thorough explanation, see the Contract Pricing Reference Guides at the following website: http://www.acq.osd.mil/dpap/cpf/contract_pricing_reference_guides.html

Comparison of Proposed Prices

The best and preferred method for price analysis is comparison of proposed prices received in response to the solicitation. Adequate price competition may be used as the basis for a price reasonableness determination. An outcome of adequate competition is comparison of proposed prices received in response to the solicitation. After soliciting a requirement on the Government-wide Point of Entry (GPE)), <http://www.fedbizopps.gov>, and two or more technically acceptable offers are received, the contracting officer has competition. A price is based on adequate price competition if two or more responsible offerors, competing independently, submit priced offers that satisfy the Government's expressed requirement and award will be made to the offeror whose proposal represents the best value where price is a substantial factor in source selection and there is no finding that the price of the otherwise successful offeror is unreasonable. Any finding that the price is unreasonable must be supported by a statement of the facts and approved at a level above the contracting officer.

Full and Open Competition

In the example below, five offerors submitted quotes and all are deemed technically acceptable. In evaluating simply on price, the contracting officer can make award to Offeror 1. In this example, competition has driven down the price and all offerors satisfy the Government's requirement.

OFFEROR	PRICE	MEETS GOVERNMENT'S REQUIREMENT?
OFFEROR 1	\$120,000	YES
OFFEROR 2	\$145,000	YES

Appendix G

OFFEROR 3	\$135,000	YES
OFFEROR 4	\$155,000	YES
OFFEROR 5	\$125,000	YES

When conducting source selections in competitive negotiated acquisitions (FAR part 15), contracting officers may evaluate offers using any combination of approaches along the best value continuum, from lowest price technically acceptable to tradeoff. Under the tradeoff process, price and non-price factors are evaluated, and the contract is awarded to the offeror proposing the combination of factors that represents the overall best value based on the evaluation criteria and rating scale as defined in the solicitation. Best value is based on factors such as price, quality, past performance, and other technical or managerial areas. It is a statutory requirement that price or costs to the Government shall be evaluated in every source selection. Normally, competition establishes price reasonableness. An alternative evaluation process is lowest price technically acceptable. This method is appropriate when best value is expected to result from selection of the technically acceptable offer with the lowest evaluated price. When using this method, offers are evaluated for acceptability, but not ranked using the non-price factors. Evaluation factors and significant sub-factors that establish the requirements of acceptability are set forth in the solicitation.

Tradeoff Process

Tradeoff is appropriate when it is in the best interest of the Government to consider award to other than lowest priced Offeror or other than the highest technically rated Offeror. This process permits tradeoffs among cost/price and non-cost/price factors and allows the Government to accept other than the lowest priced proposal. The perceived benefits of the higher priced proposal shall merit the additional cost, and the rationale for tradeoffs must be documented in the file (FAR 15.101-1).

OFFEROR	PRICE	ADJECTIVAL RATING
OFFEROR 1	\$120,000	UNSATISFACTORY
OFFEROR 2	\$170,000	EXCELLENT
OFFEROR 3	\$175,000	VERY GOOD

Appendix G

OFFEROR 4	\$172,000	GOOD
OFFEROR 5	\$125,000	MARGINAL

In the example below, the two lowest price offerors, Offerors 1 and 5 received either unsatisfactory or marginal ratings respectively, after evaluation of final proposal revisions. It is in the contracting officer's best interest to award to Offeror 2. Although higher, priced Offeror 2 received an excellent rating which, after a thorough tradeoff process analysis, was determined to be well worth the additional cost. Since the offered prices vary significantly, it could mean that Offerors 1 and 5 do not understand the requirements.

Lowest Price Technically Acceptable (LPTA)

The lowest price technically acceptable source selection process is appropriate when best value is expected to result from selection of the technically acceptable proposal with the lowest evaluated price (FAR 15.101-2).

In the below example, Offerors 1 and 5 are not deemed technically acceptable. Although they offered the lowest prices, the contracting officer should not make an award to either of them, since their product/service does not meet the Government's requirements+ needs and or standards. In this case, the contracting officer should award to the lowest priced offeror that is technically acceptable, which is Offeror 2.

OFFEROR	PRICE	TECHNICALLY ACCEPTABLE
OFFEROR 1	\$120,000	NO
OFFEROR 2	\$170,000	YES
OFFEROR 3	\$175,000	YES
OFFEROR 4	\$172,000	YES
OFFEROR 5	\$125,000	NO

Cases where Competition is Inadequate or Limited

When only one offer is received or price competition is otherwise determined inadequate, the contracting officer must use other price analysis techniques. However, if there was a reasonable expectation, based on market research or other assessment, that two or more responsible offerors, competing independently, would submit priced offers in response to the solicitation's expressed requirement, even though only one offer is received from a responsible offeror and if based on

Appendix G

the offer received, the contracting officer can reasonably conclude that the offer was submitted with the expectation of competition (e.g., circumstances indicate the offeror believed that at least one other offeror was capable of submitting a meaningful offer, the offeror had no reason to believe that other potential offerors did not intend to submit an offer the contracting officer may be able to determine the offered price is fair and reasonable.

Special caution should be exercised in cases where market research indicates two or more responsible offerors can reasonably be expected, but only one offer is received. If market research indicates there are many potential offerors for an item or service, the solicitation may have been written in a way that inadvertently restricts competition. Although a thorough market analysis may support the proposed price(s), the contracting officer should consider re-soliciting in such cases (if the acquisition situation permits). The chance of overpaying is riskier in markets where few suppliers are available and prices cannot be readily established through market research. When this occurs, and all other attempts to determine price reasonableness have failed, the contracting officer must obtain data other than certified cost or pricing data.

Differing Technical Solutions

It is not uncommon to receive multiple technical solutions from multiple offerors. This situation can present unique challenges in both best value procurements and lowest price, technically acceptable competitions. Although the technical evaluation assumes a greater weight in such situations, proposed prices must still be consistent with the proposed technical approach. When no comparable technical solutions are proposed, the contracting officer must be careful to ensure an offer is not overpriced or underpriced. Accordingly, additional analysis may be necessary to establish price reasonableness when differing technical solutions are proposed.

Comparison of Previously Proposed Prices

Closely related to comparison of proposed prices is comparison of previously proposed prices and previous Government and commercial contract prices with current proposed prices for the same or similar items. If both the validity of the comparison and the reasonableness of the previous price(s) can be established, the contracting officer can determine the offered price to be fair and reasonable.

According to the FAR, comparison of proposed prices and comparison of previously proposed prices are the two preferred price analysis techniques for a contracting officer's use in determining whether a price is fair and reasonable.

When comparing proposed prices to previously proposed prices or previous contract prices, it is important to ensure the pricing conditions are comparable. If necessary, previous prices may have to be adjusted for variations in quantity, inflation, or the numerous other factors that can influence price. Ideally, the previous prices used for comparison will be recent prices for the same, or similar quantities, with all other factors being the same. Since this rarely occurs, special

Appendix G

care must be taken to adjust the historical prices being used for comparison. The reliability of such comparisons generally diminishes as more adjustments are made to the historical data.

A key consideration is whether the prior purchase price used was determined in writing to be fair and reasonable, taking into consideration the competitive environment that shaped the previous price (e.g., purchase quantity, delivery time, transportation charges, and special packaging). For example, a contracting officer is purchasing crane leasing services and these same services were purchased the previous year. The same quantity and delivery time is needed again; therefore, a comparison with the prior year's purchase is valid. However, it is only valid if the prior year's purchase was determined fair and reasonable.

A price previously paid or quoted cannot be used to determine price reasonableness unless the contracting officer knows that the prior purchase was fair and reasonable. It is also important to note that items can come down in price based on technological advances or be driven up by scarcity of parts. Therefore, the contracting officer should assess the previous price before using it as a basis for comparison with a proposed price for a product or service. For example, flat screen television sets have come down in price since they were first introduced on the market. Accordingly, comparing current prices with previous prices is not accurate and the contracting officer simply cannot compare prior contracts without making adjustments to the previous price. In cases like these, contracting officers should conduct market research and determine how the market is fluctuating and adjust the previous price accordingly.

- The contracting officer should select the most recent prior purchases to ensure the greatest reliability of the price comparison. For example, a contracting officer is purchasing parts for a ship and only one source can provide them. The contracting officer has purchased these parts in years past, but instead of comparing the current price with contracts from five years ago, the contracting officer should compare prices with contracts from one year ago, if they exist. If the last contract was awarded three years ago, then the contracting officer should compare the current prices with those from three years ago rather than compare the prices from five years ago.
- The contracting officer should select previous buys that had identical or similar quantities. When variations exist between quantities being compared, the contracting officer should explain how prices are comparable. For example, if the contracting officer is purchasing multiple ship parts when one was purchased previously, the contracting officer should perhaps ask for a quantity discount. Contracting officers should note any differences with detailed explanation as to why the historical price is still relevant.

The key to using this technique is to use the most recent prices available and adjust those prices, if necessary, for variations in quantity, inflation, and other factors.

Use of parametric estimating methods/application of rough yardsticks.

This technique involves cost estimating relationships (CER) and “rules of thumb” based on historical data and nature of estimates. As stated in the Contract Pricing Reference Guide, a CER is a --

“technique used to estimate a particular cost or price by using an established relationship with an independent variable. If you can identify an independent variable (driver) that demonstrates a measurable relationship with contract cost or price, you can develop a CER. That CER may be mathematically simple in nature (e.g., a simple ratio) or it may involve a complex equation.”

We use CERs in our everyday life. For example, construction prices of . . . Additionally, when using CERs, the contracting officer must ask three questions:

- Has the CER been widely accepted in the marketplace (i.e., by both buyers and sellers)?
- Does the CER produce reasonable results? (The user has the burden of proving that the rough yardstick produces reasonable estimates.)
- How accurate is the CER? (The contracting officer should validate using known product data and prices.)

Comparison with Competitive Published Price Lists, Published Market Prices of Commodities, Similar Indexes, and Discount or Rebate Arrangements

Another way to analyze prices is through the use of price lists and other publicly available market data. The prices of commercial products and services can easily be compared to commercial item price lists maintained by the Government or other competitors. When using competitive price lists, published market prices for commodities, price indices, and other data sources, it is important to understand the terms and conditions for the items being used for comparison and make adjustments, as necessary, to account for any differences. For example, there may be differences in warranty provisions, quantity discounts, rebate arrangements and other factors that may influence the contracting officer’s buying decision (refer to the Contract Pricing Reference Guides).

Another consideration is the possibility that the online catalog, or hard copy price list, being used for comparison, is outdated or incorrect. Accordingly, contracting offices must ensure any price lists, market data, and other published data are up-to-date and are published by a reliable source such as the original equipment manufacturer, industry association, or other widely recognized organization.

Appendix G

The following are examples of published price lists:

- GSA Supply Schedules (NOTE: GSA Supply Schedules should not be relied upon when the requirement exceeds the maximum dollar of the supply schedule.) On-line price lists published on company websites. Examples of company price lists include:

<http://www.altenergy.com>

http://www.dkgroup.com/downloads/Wide.Format_PriceList.pdf

- When buying commodities, contracting officers may reference one of the many websites that publishes commodity prices such as <http://money.cnn.com/data/commodities/>.
- In the event companies are unable to publish their catalogs or price lists on the internet due to regular price fluctuations, contracting officers can request hard-copy published catalogs or price lists. Companies can then either fax or email a copy of their most recent catalogs or price lists.
- Web sites, catalogs, and price lists may be used for references but should not necessarily be the sole factor in making a fair and reasonable determination. A price analysis based on published price lists, market pricing, or other sources is only as reliable as the data being used for comparison. Accordingly, it is important to ensure the data being used to analyze proposed prices is current, accurate, and complete. The key to using this pricing technique is to ensure the terms, conditions, and other relevant factors for the items being used for comparison are comparable to the product or service being procured. Failure to do so increase the risk of the Government paying a price that is not fair and reasonable.

Prices Set By Law Or Regulation

If the price quoted is set by law or regulation, the offeror is required to identify the regulated price. The contracting officer must ensure that the offeror is the entity being regulated. Some suppliers sell mostly to regulated industries; the federal Government may not be subject to the same laws and regulations. If Government sales are not controlled by such legally established prices, the contracting officer should use other price analysis techniques to determine price reasonableness. The first step in this comparison technique is to obtain a copy of the rate schedule set by the applicable law or regulation. The contracting officer must verify that the Government is being charged the correct price and that the vendor falls under the regulation.

As an example, prices for public utilities such as electricity, natural gas, water or sewage are also determined in part by regulations. Due to the infrastructure for many public utilities, local Governments regulate how utilities are billed to its customers and the federal Government is subject to these regulations.

Historical comparison

Comparison of previously proposed prices and previous Government and commercial contract prices with current proposed prices for the same or similar items, if both the validity of the comparison and the reasonableness of the previous price(s) can be established in the second of the two preferred pricing techniques. The prior purchase price used was determined in writing to be fair and reasonable, taking into consideration the competitive environment that shaped the previous price (e.g., purchase quantity, delivery time, transportation charges, and special packaging). For example, a contracting officer is purchasing crane leasing services and these same services were purchased the previous year. The same quantity and delivery time is needed again; therefore, a comparison with the prior year's purchase is valid. However, it is only valid if the prior year's purchase was determined fair and reasonable. A price previously paid or quoted cannot be used to determine price reasonableness unless the contracting officer knows that the prior purchase was fair and reasonable. It is also important to note that items can come down in price based on technological advances or be driven up by scarcity of parts; therefore, a prior contract may not be an accurate assessment of a fair and reasonable price. For example, flat screen television sets have come down in price since they were first introduced on the market. Therefore, comparing current prices with previous prices is not accurate and the contracting officer simply cannot compare prior contracts. In cases like these, contracting officers should conduct market research and determine how the market is fluctuating.

- The contracting officer should select the most recent prior purchases to ensure the greatest reliability of the price comparison. For example, a contracting officer is purchasing parts for a ship and only one source can provide them. The contracting officer has purchased these parts in years past, but instead of comparing the current price with contracts from five years ago, the contracting officer should compare prices with contracts from one year ago, if they exist. If the last contract was awarded three years ago, then the contracting officer should compare the current prices with those from three years ago rather than compare the prices from five years ago.
- The contracting officer should select previous buys that had identical or similar quantities. When variations exist between quantities being compared, the contracting officer should explain how prices are comparable. For example, if the contracting officer is purchasing multiple ship parts when one was purchased previously, the contracting officer should perhaps ask for a quantity discount. Contracting officers should note any differences with detailed explanation as to why the historical price is still relevant.

Comparison to Independent Government Estimates (IGE)

A proposed price may be compared with a reliable, supported, and documented Government estimate. The contracting officer must evaluate the supporting documentation provided by the customer to determine how the IGE was derived. The documentation should include a validation of the amount of labor effort required, the type of materials, and any travel or other direct costs. Additionally, the IGE must include validation of rates/costs developed by the customer or expert, and at a minimum should include material, labor hours, and labor rates. The contracting officer should have a complete understanding of how the IGE was developed and all assumptions made.

Appendix G

An example of an IGE is the Purchase Request. The Purchase Request estimate can be a valid standard for comparison, if the estimate's origin can be determined and the originator used a reasonable past purchase price. The customer can also perform a technical analysis of the item being purchased as a basis to establish price reasonableness. Supporting documentation that explains the basis of analysis should be included. One should not assume that, because a price is the same or less than the IGE, the price is reasonable. In some cases, the customer obtains an "informal quote" from the supplier before submitting the Purchase Request to the contracting officer. Contracting officers should investigate the basis of the estimate.

An IGE based on cost generally does not account for the market forces that influence commercial prices, but is, nonetheless, a useful tool for establishing a reasonable cost to produce an item. The key to using this technique is to ensure the IGE is based on current, accurate, and reliable data. An IGE based on five year old data for a similar item is clearly less accurate than current quotes for the same product or service being procured. Accordingly, the contracting officer must ensure the IGE is well documented and supported.

Comparison of Proposed Prices with Prices Obtained Through Market Research for the Same or Similar Items.

The importance of market research cannot be overstated. Thorough market research prior to solicitation will produce a substantial amount of information that can be used to analyze proposed prices. Market research will reveal the potential number of suppliers and buyers, demand for the product or service, availability of the product or service, and a host of other factors that influence price. As a result, the amount of time and effort devoted to market research in the pre-solicitation phase will pay dividends when offers are received. If a thorough market research has been performed, the contracting officer will have a reliable basis for comparing market prices to proposed prices. Accordingly, it is important to be familiar with the market research techniques described in Chapter 3 of this Handbook.

Analysis of Data Other Than Certified Cost or Pricing Data (as defined at FAR 2.101) Provided by the Offeror.

The least preferred technique for analyzing proposed prices is to require the offeror to provide data other than certified cost or pricing data. This technique should only be used when all other attempts to establish the reasonableness of a proposed price have failed. However, the law allows the contracting officer to use this technique if it is necessary to obtain a fair and reasonable price.

When data other than certified cost or pricing data is required, the contracting officer should only request the data necessary to establish that a proposed price is fair and reasonable. Data other than certified cost or pricing data ranges from sales data up to, and including, the same data that would be obtained under the Truth and Negotiations Act (except that no certification is required).

Data other than certified cost or pricing data should be obtained in accordance with Agency policy.

Analysis of Data Other than Certified Cost or Pricing Data Provided by the Offeror

A price breakdown is pricing information provided by the offeror. It includes, for example, sales history to other customers, proposal history, and information other than cost or pricing data. For service contracts, the contracting officer should attach a pricing sheet with a breakdown of labor costs to substantiate burdened labor rates. Contracting officers must:

- Purchase supplies and services from responsible sources at fair and reasonable prices. In establishing the reasonableness of the offered prices, the contracting officer must not obtain more information than is necessary. To the extent that cost or pricing data are not required, the contracting officer must generally obtain information related to prices (*e.g.*, established catalog or market prices or previous contract prices), relying first on information available within the Government; second, on information obtained from sources other than the offeror; and, if necessary, on information obtained from the offeror. When obtaining information from the offeror is necessary, unless an exception under FAR [15.403-1\(b\)](#) (1) or (2) applies, such information submitted by the offeror shall include, at minimum, appropriate information on the prices at which the same or similar items have been sold previously, adequate for evaluating the reasonableness of the price.

- If the contracting officer cannot determine whether an offered price is fair and reasonable, even after obtaining additional information from sources other than the offeror, then the contracting officer must require the offeror to submit information other than cost or pricing data to support further analysis

Limitations relating to commercial items (10 U.S.C. §2306a(d)(2) and 41 U.S.C. 254b(d)).

- (i) The contracting officer must limit requests for sales data relating to commercial items to data for the same or similar items during a relevant time period.

 - (ii) The contracting officer must, to the maximum extent practicable, limit the scope of the request for information relating to commercial items to include only information that is in the form regularly maintained by the offeror as part of its commercial operations.

 - (iii) The Government must not disclose outside the Government information obtained relating to commercial items that is exempt from disclosure under Section [24.202\(a\)](#) of the Freedom of Information Act (5 U.S.C. §552(b)).
- 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 items (thus meeting the purpose of 41 U.S.C. §254b and 10 U.S.C. §2306a for truth in negotiations) only if the contracting officer determines in writing that the

Appendix G

offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of the price of such services.

- In order to make this determination, the contracting officer may request the offeror to submit prices paid for the same or similar commercial items under comparable terms and conditions by both Government and commercial customers; and
- If the contracting officer determines that the information is not sufficient to determine the reasonableness of price, other relevant information regarding the basis for price or cost, including information on labor costs, material costs and overhead rates may be requested.

Auxiliary Methods

The following are examples of Auxiliary Methods. When both primary and secondary techniques are insufficient to determine fair and reasonable pricing, the following methods may be used to support the determination in conjunction with one of the other.

Value Analysis

Value analysis attempts give insight to develop the intrinsic worth of a product or service, and the Government may use it in conjunction with the price analysis techniques discussed above. It is used to compare similar products found through market research. Contracting officers can contact commercial entities and obtain pricing based on current pricing with capabilities to perform under same or similar conditions stipulated in the proposal received.

Value analysis is used for items available from commercial sources but that must be purchased from mandatory sources of supply. This analysis may help a contracting officer justify the price of a sole-source offer or explain differences between past buys and present quotes. To use value analysis, the contracting officer will need to obtain additional information from the customer and/or the contractor (e.g., intended use, any special manufacturing processes or treatments that would support a higher price, cost of the end item that is inoperable because of a missing part). With the assistance of the customer and contractor, the contracting officer must carefully review the Government's requirement and answer the following questions where applicable:

- What does the product have to do?
- What does it cost now?
- What prices did the Government pay previously?
- What does it cost to operate and maintain?

Appendix G

- What other ways can the functioned be performed?
 - What will these alternatives cost?
 - Is it part of a larger system or product?
 - What is the cost of the system or product?
 - What is the affect on mission accomplishment without the availability?
-

Appendix H

Pricing-Support Resources

The following sources are available to provide pricing support:

- ◆ The Army's report entitled *Constructing Successful Business Relationships: Innovation in Contractual Incentives* is available at <https://www.acquisition.gov/sevensteps/library/DOAconstructing.pdf> Armed Services Pricing Manual (ASPM) Vol. 1. DoD, 1986, <http://www.dau.mil/library>
- ◆ Armed Services Pricing Manual (ASPM) Vol. 2. DoD, 1987, <http://www.dau.mil/library>
- ◆ Commercial Pricing Information Guide, Volume 1, <https://dap.dau.mil/policy/Documents/Policy/030EVDDOC.doc>.
- ◆ Department of the Air Force Award-Fee Guide, March 2002, <https://dap.dau.mil/policy/Documents/policy/award.fee%5B1%5D.pdf>
- ◆ The Department of the Navy offers Navy/Marine Corps Award Fee Guide, dated July 2004 can be found at <http://acquisition.navy.mil/content/view/full/3679>
- ◆ The DPAP website offers *The Contract Pricing Reference Guides* at http://www.acq.osd.mil/dpap/cpf/contract_pricing_reference_fuides.html
- ◆ The Defense Contract Management Agency offers guidance at <http://www.dcma.mil/ITCSOCBT/Pricing/how2use.htm>
- ◆ Defense Acquisition University Pricing and Negotiation website, <https://acc.dau.mil/CommunityBrowser.aspx?id=134461&lang=en-US>.
- ◆ Defense Acquisition University Award and Incentive Fees Community of Practice (CoP), <https://acc.dau.mil/CommunityBrowser.aspx?id=105550&lang=en-US>,
- ◆ The U.S. Navy Price Fighters is a specialized organization that exists to provide negotiation support. Price Fighters Dept. Code 078 and can be reached by calling 1-800-NAV-CHAL (1-800-628-2425). Their website is located at: https://www.navsup.navy.mil/navsup/ourteam/navicp/prod_serv/ships_submarines/pfd
- ◆ NASA offers a *Parametric Cost Estimating Handbook*, which can be found at <http://cost.jsc.nasa.gov/pcehg.html>
- ◆ The General Accounting Office report GAO/NSIAD-99-90, *DoD Pricing of Commercial Items Needs Continued Emphasis* June 1999 can be viewed at <http://www.gao.gov/archive/1999/ns99090.pdf>

Appendix H

- ◆ The Defense Acquisition University offers a Market Research class and as well as Commercial Item Determination training. These classes are offered as continuous learning classes, and are available at <http://www.dau.mil/clc/>
 - *Market Research (CLC 004)*: This course offers a general overview of market research for everyone, including contracting officers, Contract Specialists, program managers, system engineers, logistics personnel, functional leaders, and DoD contractors.
 - *Commercial Item Determination (CLC 020)*: This course is intended to aid acquisition personnel in developing sound business strategies for procuring commercial items by gaining a clear understanding of the guidance and tools contained in this handbook.
 - *Commercial Item Determination: Executive Overview (CLC 023)*: This course is a self-paced module comprised of three lessons that presents an executive overview to the Commercial Item Determination Module.
 - *Commercial Item Pricing (CLC 131)*: This course includes an overview of the new Procedures, Guidance, and Information (PGI) concerning sole-source commercial items and elaboration on the requirements of FAR subpart 15.4. It includes links to relevant FAR, PGI, and Contract Pricing Reference Guide sections and includes examples of applications of the material. The overall learning objective of the module is to identify the various pricing methodologies that can be used to determine fair and reasonable prices for a commercial acquisition.
 - *COTS Acquisition for Program Managers (CLM025)*: This module is intended for program managers who are responsible for the acquisition and sustainment of a single program. Members of integrated product teams and contractors that support the program manager may also find value in this module. This module is designed to assist managers as they acquire and support COTS products. It provides an overview of the fundamental challenges that organizations face when they integrate commercial items to form a system. It then addresses the issue involved in buying from the commercial marketplace, summarizes lessons learned from programs that have made extensive use of commercial items, and offers suggestions.
 - *Improved Statement of Work (CLM031)*: The goal of the Improved Statement of Work Continuous Learning (CL) Module is to improve the Statements of Objectives (SOOs), Statements of Work (SOWs), and Performance Work Statements (PWSs) that are developed and evaluated by all functions including: SPRDE, Production Quality Management, Life Cycle Logistics, Program Management, and Test and Evaluation, SOW purpose, preparation, evaluation and “lessons learned” are presented so students understand and appreciate the critical role of requirements development in the acquisition process.

Appendix H

- *Market Research for Engineering and Technical Personnel (CLE028)*: This module provides optional training for DoD engineering and technical personnel on how to conduct market research that leads to the acquisition of commercial items or services.
- The Defense Acquisition University (DAU) has three courses from the Contracting Curriculum to address pricing issues. Information about Defense Acquisition University courses can be found at <http://www.dau.mil>.

Appendix I

Buying Commercial Items through Multiple-Award Task and Delivery Order Contracts and Multiple-Award Schedules

Multiple-award task and delivery-order contracts and the multiple award schedules (MAS) have become increasingly popular procurement vehicles for satisfying agency needs. These vehicles were designed as a means for efficiently applying competitive forces to a small number of capable contractors before placing orders. If used effectively, these vehicles can facilitate the timely acquisition of commercial items, including the latest innovations offered in the marketplace.

Multiple-Award Task and Delivery Order Contracts

The Federal Acquisition Streamlining Act of 1994 (FASA) clarified agencies' authority to award multiple task and delivery order contracts covering the same scope of services or products and to award orders for specific work after giving each contract holder a fair opportunity to be considered. Public Law 110-181, Section 843 prohibits the award of task or delivery order contracts exceeding \$100 million to a single contractor unless the agency head determines that one or more of the following applies: (1) the task or delivery orders are so integrally related that only one contractor can perform the work; (2) the contract provides only for firm, fixed price task orders or delivery orders for products for which unit prices are established in the contract or services which prices are established in the contract for specific tasks; (3) only one source is qualified and capable of performing the work at a reasonable price; or (4) due to exceptional circumstances, it is necessary to award the contract to a single source, for which congressional notification is required within 30 days of a determination.

For task or delivery orders that exceed \$5 million, a fair opportunity to compete must include: (1) a clear statement of the agency's requirements; (2) a reasonable period of time to provide a proposal in response to the notice; (3) disclosure of significant factors and subfactors, including cost or price, that the agency expects to consider in evaluating such proposals, and their relative importance; (4) in the case of a best value award, a statement documenting the basis for the award and the relative importance of quality and price or cost factors; and (5) an opportunity for a post-award debriefing.

An offeror may protest the award of any task or delivery order valued over \$10 million exclusively at GAO.

Appendix I

A variety of agencies have made their multiple-award task and delivery order contracts available for ordering by other agencies, especially those offering information technology (IT) products and services. Interagency multiple-award task and delivery order contracts for IT are referred to either as Government-wide acquisition contracts (GWACs) or multi-agency contracts depending on the statutory basis for creation of the contract. GWACs are structured for use by agencies Government-wide and are operated by the Office of Management and Budget (OMB) designated executive agents or under a delegation of procurement authority issued by the General Services Administration (GSA). Multi-agency contracts may, but need not, be structured to support Government-wide use and are operated by agencies pursuant to the Economy Act. Also, the scope of a multi-agency contract need not be limited to IT.

Multiple-Award Schedules

The MAS listings of multiple contractors, each which has been awarded a contract by the General Services Administration (GSA) or by the Department of Veterans Affairs (VA) for pharmaceuticals and other medical supplies for use by all Federal agencies. The MAS are structured to provide buyer access to a wide range of commonly used commercial supplies and services through a large cadre of qualified suppliers so that agencies have considerable flexibility in fulfilling their broad-ranging requirements. Processes for using the MAS are highly streamlined and simplified. Access to additional information, ordering, and payment is facilitated through the Web site of the Federal Supply Schedules (and GSA Advantage!® an electronic catalog of the items in the GSA supply system. When acquiring services through the schedules, refer to GSA's "special ordering procedures."

Key Considerations

1. What should an agency consider in deciding when an existing multiple-award task and delivery order contract (or GWAC or multi-agency contract) or MAS will serve as an effective means for satisfying its needs for commercial items?

While conducting market research and acquisition planning, agencies should consider the potentially beneficial terms and conditions and competitive pricing (as well as administrative savings) of multiple-award task and delivery order contracts and MAS. In doing so, agencies are responsible for determining, as they identify and gain an understanding of marketplace capabilities, whether the focus and terms and conditions of an existing contract will result in an optimal fit between agency needs and commercial solutions. The MAS program, for example, offers an array of commonly used commercial products and services. Use of the MAS, therefore, may be less effective when more tailored commercial solutions better suit the agency requirement. A multiple-award task and delivery order contract provides the opportunity to encourage a set of contractors to compete for buys in a particular category or by a particular set of users. If a customer is likely to have significant recurring needs for supplies or services that fall within the scope of existing multiple-award task and delivery order contracts, but are not the main focus of those contracts, the customer may be able to achieve better prices and terms and conditions by establishing a new task and delivery order contract or other appropriate contract type.

Appendix I

The successful use of multiple-award task and delivery order contracts and MAS, like the successful use of any other acquisition tool, requires the commitment and cooperation of all agency disciplines responsible for the agency's mission. Thus, it is important to secure the cross-functional cooperation of contracting, program, finance, and legal offices in taking responsibility for the effective planning and execution of orders using these vehicles.

2. What should an agency consider in setting up a multiple-award task and delivery order contract?¹

Multiple-award task and delivery order contracts are effective only when they are structured, managed, and administered to consistently take full advantage of the fair opportunity process. While awardees need not be equally capable in all areas, contracting officers need to avoid situations in which awardees specialize exclusively in one or a few areas within the statement of work, since this practice will increase the likelihood that orders in these areas will be awarded on a sole-source basis.

The presence of multiple qualified sources to which the Government has efficient access is key to sustaining access to the competitive pressures of the marketplace. In determining the number of contracts to be awarded under a multiple-award task and delivery order contract, the contracting officer should consider (1) the scope and complexity of the contract requirement, (2) the expected duration and frequency of task or delivery orders, (3) the mix of resources a contractor possesses to meet the expected task or delivery order requirements, and (4) the ability to maintain competition among the awardees throughout the contracts' periods of performance.

The initial contract should include provisions that reflect the Government's buying power (e.g., caps on prices for defined tasks, and capped hourly rates). If a multiple-award task and delivery order contract is to provide access to products or services that fall both within and outside FAR part 12, the contract must include the FAR part 12 clauses for commercial buys.

3. How can an agency take full advantage of the benefits offered by established multiple-award task and delivery order contracts and MAS in buying commercial items?

The potential of multiple-award task and delivery order contracts and MAS to deliver good overall deals for the taxpayer too often goes unrealized. Optimizing results on multiple-award task and delivery order contracts and MAS requires that (1) orders be effectively structured, (2) competitive pressures be applied in order placement, and (3) the division of responsibilities between the servicing agency and the customer be well understood.

STRUCTURING ORDERS

Customers of multiple-award task and delivery order contracts and MAS should structure orders to facilitate effective mission attainment. In particular, they should do the following:

¹ GSA (and VA through a delegation from GSA for certain medical products) is statutorily responsible for establishing schedules for Government-wide use. The creation of new schedules is based on, among other things, the level of demand for a product or service line.

- **Make task orders for services performance-based.** As generally is the case when describing agency needs (see Chapter 2), customers are responsible for focusing on desired mission-related outcomes instead of emphasizing how the work is to be performed, and tie payment to the contractor's successes in achieving those outcomes. Doing so will motivate improved performance and reduce contract prices.
- **Think modular.** Multiple-award task and delivery order contracts and MAS are well suited to help customers manage risk. By providing ready access to a cadre of qualified contractors, these vehicles enable customers to pursue projects in manageable segments (typically narrow in scope and brief in duration) that can independently deliver mission benefits with the confidence that additional segments may be acquired in a timely fashion. If a longer-term order is appropriate, the customer should incorporate effective "off ramps" to minimize dependence on one contractor. Unnecessarily large and inadequately defined orders will make it difficult to apply competitive pressures and need to be avoided.

ORDER PLACEMENT

To make the most of multiple-award task and delivery order contracts and MAS, it is imperative for customers to capitalize on the competition made possible under these contracts and to take price into consideration before placing an order.

Taking Advantage of Competitive Pressures

Multiple-Award Contracts

Multiple-award task and delivery order contracts generate sustained competitive pressure within the vehicle through a process whereby contract holders are given a fair opportunity to be considered for specific requirements through streamlined ordering procedures. Thus, to reap these benefits of these contracts, customers are responsible for doing the following:

- **Providing each awardee a fair opportunity to be considered for each order over \$3,000.** Methods that would not result in giving fair consideration to each awardee, such as allocation or designation of a preferred awardee, must not be used. Four exceptions to the fair opportunity process are recognized in law and regulation. If the ordering office intends to use an exception to the fair opportunity process, it might consider announcing this intention. Another contract holder may express an interest that may prove worthy of consideration.

Submission requirements should be kept to a minimum, with emphasis on streamlined procedures, such as oral presentations. For product buys, it may be unnecessary to require each awardee to develop a separate proposal, and it may be unnecessary to conduct negotiations with each awardee prior to awarding a delivery order. A streamlined approach is warranted if the contracting officer or customer can compare the

various prices and products being offered under these contracts, consider each awardee, and make an award in the best interest of the Government.

It is important that ordering decisions be properly and adequately documented. The contracting officer is responsible for documenting in the contract file the rationale for placement and price of each order, including the basis for award and the rationale for any tradeoffs among cost or price and non-cost considerations in making the award decision. This documentation need not quantify the tradeoffs that led to the decision. The contract file needs to identify the basis for using an exception to the fair opportunity process. If the agency uses the logical follow-on exception, it is important that the rationale describe why the relationship between the initial order and the follow-on is logical (e.g., in terms of scope, period of performance, or value).

- **Fostering effective communication.** Effective communication between Government customers and contract holders is essential for ensuring the routine receipt of more than one viable business solution and for maximizing situations where the customer is choosing between competing offers. This communication is especially important where the ordering office lacks information to define a solution in performance-based terms and proposal development is resource-intensive. In acquiring systems and services in particular, dialogue will typically be necessary to ensure that requirements and risks are well understood. This understanding is needed so that contract holders can develop and propose realistic, well-defined solutions that best match Government needs with commercially available marketplace capabilities and enable the Government to award performance-based orders.

Accordingly, customers should take steps to ensure that contract holders are able to make effective business decisions in deciding whether and how to propose. Among other things, sufficient time should be provided for contract holders to review requirements for orders. In addition, techniques should be considered that facilitate effective information exchange and contractor investigation, such as through the distribution of draft statements of work.

Multiple-Award Schedules

The MAS, with its wide range of products and services and its large cadre of qualified contractors, provides customers with broad access to the commercial marketplace for commonly used commercial items. As is the case with ordering under multiple-award task and delivery order contracts, the effective use of competitive pressures, including good communications with contractors, and the appropriate documentation of activities, are important for MAS purchases. While the fair opportunity process applicable to multiple-award task and delivery order contracts also applies to MAS ordering, FAR subpart 8.4 envisions the application of competitive pressures through the consideration of multiple MAS contractors on orders above \$2,500.

Appendix I

Supplies

For orders for supplies over \$3,000 up to the maximum order (MO) threshold, agencies are expected to review information through GSA Advantage!® or price lists/catalogs of at least three schedule contractors.

Services

For services, GSA's special ordering procedures require customers to request quotations from three schedule contractors if the order is over \$2,500 and under the MO threshold. The procedures envision customers preparing performance-based statements of work and placing firm-fixed-price orders based on the prices in the schedule and with consideration of the mix of labor categories and level of effort required to perform the services described in the statement of work. The customer is required to make a determination that the total price of a particular order is fair and reasonable.

The MO threshold is included to serve as a marker above which customers need to consider additional contractors (beyond the three otherwise considered) and generally seek price reductions.

Pursuant to FAR 8.405-3, customers should consider setting up single or multiple blanket purchase agreements (BPAs) with schedule contractors to satisfy recurring needs. BPAs are designed to further reduce the administrative burden associated with order placement and invoicing while permitting agencies to secure additional discounts for repetitive or higher volume purchasing.

Considering Price

In order to obtain best value, orders need to take price into consideration. It is important that individual orders clearly describe all services to be performed or supplies to be delivered so the full cost or price for performance of the work can be established when the order is placed. Orders must be priced consistent with FAR part 12 guidance on contract types. Fixed prices will provide an incentive for contractors to control costs and perform efficiently.

GSA negotiates prices for the MAS. However, as noted above, if a purchase is likely to exceed the MO threshold, agencies are expected to generally ask for better pricing. According to GSA's special ordering procedures, applicable to the acquisition of services, the ordering office is expected to determine that the total firm fixed price it negotiates—after considering rates identified in the GSA schedules—is fair and reasonable.

Considerations other than price also play an important role. Considering past performance in the comparative evaluation of contract holders will enable agencies to better predict the quality of, and customer satisfaction with, future work and is instrumental in making best-value selections. Moreover, evaluating proposals that contain different technical approaches will likely require tradeoffs between solutions and different risks and benefits. Customers are expected to use good business judgment to determine appropriate methods for considering risk management, cost

control, quality differences, and other considerations relevant to order placement. As noted above, adequately documenting ordering decisions is important.

Understanding Responsibilities

As acquisitions under MAS and many acquisitions under multiple-award task and delivery order contracts are inter-agency, it is important that customers clearly understand what they are expected to do (especially since the division of responsibilities may vary between vehicles). For example, there should be a clear understanding of who is responsible for program quality and control to measure contract performance and ensure successful completion of tasks.

When engaging in interagency acquisitions, even when the Economy Act does not apply (such as to MAS and GWACs), customers still must comply with the FAR, DFARS/PGI, and applicable statutes, Executive Orders, and guidance (e.g., relevant to acquisition planning, development of an information technology strategy, and obligation of appropriations) (see 31 U.S.C. 1501(a) (1)). In addition, DoD customers are required (pursuant to 10 U.S.C. 2225(b) (5) (B)) to identify the reasons for making a purchase through an agency other than the Department of Defense.