**For use in preparing the Commercial Item Status, F 335**

**Commercial Items -- Requirements, Guidance, and Determination**

The F335 is used in determining whether an item qualifies as a commercial item under the definition of FAR 2.101. This guide identifies the various ways in which an item can qualify as a commercial item, provides guidance on applying the regulatory definition and identifies information relevant to the buyer's determination. The F335 facilitates the summarization of the offeror's support for, or disqualification of, identification of the item as a commercial item. The FAR definitions of commercial item and non-developmental item are at the end of this document.

Note that the supplier must provide the data required in the Commercial Item Justification Summary (dollars, timeframe, etc.) in order for the buyer to make a final determination of commerciality. In the event the supplier refuses to provide adequate supporting data, provide that refusal in writing and the buyer will request a DCMA/Customer assist audit. The assist audit will be used in determining commerciality.

**Commercial Item Justification Summary (required for any claim)**

This information is the supporting documentation to confirm the commerciality of any part or service.

**I. Unmodified Commercial Items**

**Requirement:** The item must be of a type customarily used by the general public, or by non-governmental entities for purposes other than governmental purposes and have been sold, leased, or licensed (or so offered) to the general public.

**Guidance:** Use the following guidance concerning the terms in the requirement.

**Of a Type** --

The use of the phrase "of a type" means that the exact item offered need not have customary uses by the general public if other items of the same type have the required general public uses. The key is determining what the relevant "type of item" is.

A "type of item" that is too broad would make the commercial-item definition meaningless. For example, if an F-16 is judged to be a commercial item because it is a "type" of airplane, and airplanes customarily have uses by the general public, it would be difficult to find any item that could not be put into a "type" broad enough to qualify as a commercial item. The type also cannot be so broad that it sweeps in items that should instead be considered as "modifications" to commercial items, which are addressed separately in the regulations and in this guidance. The "type" being considered must be focused on the buyer's requirements, and should not sweep in a great number of additional items beyond the one offered. The buyer must ask, "Can my current requirements be satisfied by a type of item that is available in the commercial marketplace?"

Buyers should ask whether there are differences in normal use, function, configuration, or performance between the offered item and the "types" of items on which the offeror relies for the commercial-item qualification. The greater the number or magnitude of differences, the more likely it will be that the items are not of the same type. Similarly, if a substantial number of items of the same "type" as the offered item would not satisfy the buyer's requirements, the buyer should examine closely whether the "type of item" has been defined too broadly.

Notwithstanding the above conditions, the government made it clear that the offered item itself need not have customarily been used by the general public. For example, an offeror could rely on general public uses of a competitor's product to justify its own product as a commercial item, if the offered item and the competitor's item are of the same type.

**Customarily** – “Customarily” means commonly and more than occasionally.

**Purposes other than governmental purposes** – These purposes are those that are not unique to a government. This means other than for the unique purposes of the U. S. federal government, any U. S. State or local government, or any foreign government. Offerors may suggest that foreign government uses are sales for other than governmental purposes, because they are not for U.S. Government purposes. That view was considered and rejected by the regulators in drafting the December 2001 changes to the definition.

**General Public** – The offered item must have been sold or offered for sale to the general public. Sales to the general public exclude sales to or for governments (U.S. federal, state or local, or foreign) and "sales" to affiliates or subsidiaries of the offeror. Sales that are for government end-use are not sales to the general public. Although sales to affiliates and subsidiaries are not sales to the general public and cannot be used in determining whether an item has been sold or offered for sale to the general public, if an item qualifies as a commercial item without considering such sales, a sale of the item to an affiliate or subsidiary can use commercial-item procurement procedures.

Is it enough that a similar item (i.e., an item “of a type”) has been sold to the general public, or does the item offered to Lockheed Martin have to have been sold to the general public? Lockheed Martin requires that the item being offered must have been sold or offered for sale to the general public.

**II. Item Evolved from Commercial Items**

**Requirement:**

Any item that evolved from an item described in the Commercial Item Justification Summaryof this definition through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a United States Government solicitation.

**Guidance:** This commercial item qualification allows the buyer to take advantage of areas in which rapid technology changes occur, but the changes typically become available in the commercial marketplace. It is intended to ensure that new generations of commercial products incorporating technology advances are included in the definition, while providing some yardstick in the commercial marketplace against which to measure price and product quality. A common example is the computer industry, where new processors, components and peripherals are rapidly introduced and almost always become available in the commercial marketplace. This qualification would allow a buyer to procure as a commercial item a planned new model that is not yet "for sale" but which will be available at the time of the buyer's delivery requirement. To qualify as an evolved item, the offered item must be based on an item that qualifies under part I of this guidance. Part I should be completed for the item on which the offered item is based. If the underlying item is a commercial item under Part I, then evaluate whether the offered item is an evolved item using the key inquiries in the checklist.

**III. Modified Commercial Items**

**Requirement:** The offered item is a commercial item under Part I or II, but modified with either: (a) modifications of a type customarily available in the commercial marketplace; or (b) minor modifications not customarily available in the commercial market place but made to satisfy federal government requirements.

**Guidance:** This qualification allows for certain modifications to be made to a commercial item without changing the item into a noncommercial item. To qualify, the offered item must be based on an item that qualifies under Part I or Part II of this guidance. Part I or Parts I and II should be completed, as appropriate, for the item on which the offered item is based. If the underlying item is a commercial item under Part I or II, then evaluate whether the offered item's modifications comply with the requirements using the key inquiries below. In addition to the guidance on terms in Part I, also consider the following guidance:

**Modifications** -- Any type of modification is acceptable if it is "of a type" customarily available in the commercial marketplace. For example, a modification to strengthen aircraft flooring and aircraft body structural supports to enable mounting of a military radome on top of a commercial aircraft could be considered "of a type" customarily available in the commercial marketplace because aircraft undergo structural modifications of the same general type for use as commercial freighter aircraft. (On the other hand, the construction of the military radome itself would not be a commercial modification, because items "of the type" are not built for commercial use.)

**Minor modifications** -- Minor modifications means modifications that do not significantly alter the non-governmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is or is not minor. For example, a government-specified modification to a commercial aircraft to install a notch on the aircraft aileron to accommodate a long trailing wire antenna may appear to be expensive if considered in isolation, but could be a minor modification when the cost of the modification is compared to the overall value and size of the final product, and where appropriate consideration is given to the extent of the change made to the function and essential physical characteristics of the final product.

Minor modification that exceed the thresholds in FAR 15.403-1(c)(3)(iii)(B) are subject to the Certified Cost or Pricing Data requirements and must be proposed as described by FAR 15.408, Table 15-2. Refer to LMAP [2.910.](https://eo-sharepoint-restricted.external.lmco.com/sites/CorpPolicy/lmaps/2-910.docx)

**IV. Services for Commercial Items**

**Requirement:** Services are commercial if they are procured in support of a commercial item, the services are offered to the general public and federal government contemporaneously and under similar terms and conditions, and are provided with the same work force for the general public and the federal government.

**Guidance:** Installation, maintenance, repair, and training are examples of services that may qualify under this definition. (Other support services would also qualify.) The services must be tied to the support of a commercial item, which has qualified under one of the previous parts. The terms and conditions under which the services are offered must be similar, but need not be identical, to those used with the general public.

**V. Any Combination of Items**

**Requirement**: Combination from Parts I, II, III or IV above.

**Guidance**: See Guidance in Parts I, II, III or IV above and ensure the same items are addressed.

**VI. Other Commercial Services**

**Requirement**: Services which are of a type offered and sold competitively in substantial quantities in the commercial marketplace based on catalog or market prices for specific tasks performed under standard commercial terms and conditions.

**Guidance**: Services that are sold without a catalog or market price for specifictasks performed or specific outcomes to be achieved do not qualify under this part. Services must be those for which competition exists in the commercial marketplace. Note that “market pricing’ can be established if Lockheed Martin’s procurement is competitive.

**VII. Any transferred item, combination of items, or services**

**Requirement**: Combination from Parts I, II, III IV, V or VI above.

**Guidance**: See Guidance in Parts I, II, III or IV above and ensure the same items are addressed, as well as the additional information on transfer prices of such goods and total units of such goods.

**VIII. Non-developmental Items**

**Requirement**: The item is a non-developmental item developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple state and local governments.

**Guidance:** This qualification permits procurement of items that have not been developed for the federal government, but also have as their market principally state and local governments rather than nongovernmental entities. Items such as fire-fighting vehicles and snow removal equipment are examples of items that could fall within this category. In addition to the guidance on terms in previous parts, consider the FAR definition of non-developmental item stated below.

**IX. General Inquiries**

Determine whether the item or service previously has been determined to be commercial and, if so, by whom. In accordance with section 851 of the 2016 National Defense Authorization Act, the government’s determination of commercial items can be used as a part of Lockheed Martin’s determination. The determinations made by non-government entities may not be used as part of the determination.

**X. Other Information**

Is there other information, available to supplement the information provided which would help determine whether the item or service is commercial.

**XI. Supplier Determination**

Ensure the supplier is identified and that the Offeror has signed, dated and provided his/her title.

See [FAR 2.101](http://farsite.hill.af.mil/reghtml/regs/far2afmcfars/fardfars/far/02.htm#P10_603) for Commercial Item definitions.