

Supplier Assertion of Commerciality

Suppliers: Please complete and return pages 3 and 4 and 5 if applicable . This form is not for COTS items.

In accordance to FAR 2.101 Definitions: **“Commercial item” means**

(1) Any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, and-

- (i) Has been sold, leased, or licensed to the general public; or
- (ii) Has been offered for sale, lease, or license to the general public;

(2) Any item that evolved from an item described in paragraph (1) of this definition through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;

(3) Any item that would satisfy a criterion expressed in paragraphs (1) or (2) of this definition, but for-

- (i) Modifications of a type customarily available in the commercial marketplace; or
- (ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. Minor modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;

(4) Any combination of items meeting the requirements of paragraphs(1), (2), (3), or (5) of this definition that are of a type customarily combined and sold in combination to the general public;

(5) Installation services, maintenance services, repair services, training services, and other services if-

- (i) Such services are procured for support of an item referred to in paragraph (1), (2), (3), or
- (ii) Of this definition, regardless of whether such services are provided by the same source or at the same time as the item; and
- (ii) The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government;

(6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed or specific outcomes to be achieved and under standard commercial terms and conditions. For purposes of these services-

(i) "Catalog price" means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and

(ii) "Market prices" means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors.

(7) Any item, combination of items, or service referred to in paragraphs(1) through (6) of this definition, notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor; or

(8) A non-developmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local governments or to multiple foreign governments.

"Commercially available off-the-shelf (COTS) item—"

(1) Means any item of supply (including construction material) that is—

(i) A commercial item (as defined in paragraph (1) of the definition in this section);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in [46 U.S.C. 40102\(4\)](#), such as agricultural products and petroleum products.

Supplier Assertion of Commerciality

Offeror: It is the US Government's preference to procure Commercial Items and/or services whenever possible. Completion of this form is required to support your assertion that the items and/or services listed below meet the definition of Commercial Items as described in FAR 2.101.

A. Items
Offeror: List items for which you are asserting commerciality, use page 5 if needed.

Manufacturer P/N or Service	Item Description

B. Subcontractor Assertions
Offeror: Check all that apply

- 1) Any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, and –
 - (i) Has been sold, leased, or licensed to the general public; or
 - (ii) Has been offered for sale, lease, or license to the general public.

- 2) Any item that evolved from an item described in paragraph (1) of this definition through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation.

- 3) Any item that would satisfy a criterion expressed in paragraphs (1) or (2) of this definition, but for –
 - (i) Modifications of a type customarily available in the commercial marketplace; or
 - (ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. Minor modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor.

- 4) Any combination of items meeting the requirements of paragraphs (1), (2), (3), or (5) of this definition that are of a type customarily combined and sold in combination to the general public.

- 5) Installation services, maintenance services, repair services, training services, and other services if-
 - (i) Such services are procured for support of an item referred to in paragraph (1), (2), (3), or (4) of this definition, regardless of whether such services are provided by the same source or at the same time as the item; and
 - (ii) The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government;

- 6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed or specific outcomes to be achieved and under standard commercial terms and conditions. For purposes of these services-
 - (i) "Catalog price" means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and
 - (ii) "Market prices" means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors.

Seller Assertion of Commerciality

- 7) Any item, combination of items, or service referred to in paragraphs (1) through (6) of this definition, notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor.
- 8) A non-developmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local governments.
- 9) The item(s) and/or services are available on the GSA schedule?
(Per FAR 8.402(a), GSA schedules provide for a simplified process for obtaining commercial items, therefore items listed on GSA Schedule will be considered to be Commercial Items.)
 Yes No

GSA Contract Number: _____

GSA Contract Part Number: _____

C. Authorized Signature and Certification of Offeror

Offeror: Provide the information noted below. By signing this document you certify that the information provided on this form is correct. Provide a detailed explanation in the text box describing how the items you supply meet the criteria selected. Provide/attach relevant documentation supporting your assertion(s).

Signature – Authorized Representative of Offeror

Printed Name

Title

Date:

Company Name

Address

City, State, Zip Code, Country

D. Authorized Signature and Certification of the Buyer/Subcontract Administrator (Buyer/SCA)

Buyer/SCA:Based on my full reliance upon information provided herein, pursuant to DFARS 244.402, I determine that the item(s) and/or services described in Section A of this document are Commercial Items under FAR 2.101. Provide a detailed explanation in the text box above the signature describing your rationale for your determination.

Signature – Buyer/SCA

Printed Name

Title

Date:

