

Subcontractor Assertion of Commerciality

Fixed Price Goods & Services Under Government Prime Contract

RFP/Q: [Click here to enter RFP/Q.](#)

Part /Model #
or Service: [Click here to enter Part Number or Service.](#)

Description: [Click here to enter Description.](#)

Offeror: [Click here to enter Offeror name.](#)

The Federal Acquisition Regulations (FAR) and FAR Part 2.101 define Commercial Products and Commercial Services as listed below:

Offeror hereby certifies that to the best of its knowledge, products and/or services offered [Choose an item](#). Commercial as defined by FAR 2.101.

If the goods and/or services offered are not commercial do not complete the remainder of the document. Sign and date below and return to Buyer. If the goods and/or services offered are commercial, complete the remainder of the document and return the signed document along with required supporting documentation to Buyer.

Offeror hereby certifies that to the best of its knowledge, goods and/or services offered constitute a “Commercial Product or Commercial Service” as defined by FAR 2.101, and the following definition [Choose a Definition](#), identified below.

If claiming an exemption for a commercial product or commercial service, the Offeror must provide to Buyer, the data and information required in order for the Buyer to make a determination of commerciality. In the event the Offeror refuses to provide adequate supporting data or information to the Buyer, the Offeror must provide that refusal in writing with the appropriate U.S. Government Point of Contact to whom the required supporting data will be provided for assistance in determining commerciality. If goods and/or services are determined to be non-commercial, cost and pricing data, per FAR 15.403, will be required.

By signing below, the Offeror attests that the information provided is current, accurate, and complete. Further, if the commercial status of the product certified herein should change prior to any award based on this certification, the Offeror shall immediately notify, in writing, the person/office to whom this original certification was sent and submit an amended certification with any related data that may be required as a result of the change.

Signature: _____ Name: [Click here to enter name.](#)

Title: [Click here to enter title.](#)

Date: [Click here to enter a date.](#)

Commercial Products

Type 1 - Unmodified Commercial Products or Components:

- (a) Any product, 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 –
- (1) Has been sold, leased, or licensed to the general public; or
 - (2) Has been offered for sale, lease, or license to the general public.

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If claiming the Unmodified Commercial Product or Components exemption (Type 1), the following information must be provided:

- (a) Data regarding prior sales and potential sales
- (1) Sales:
- (2) Leases:
- (3) Licenses:
- (4) Offers to Sell ^{Note 1:} **Notes:** 1. that have not materialized into sales
- (5) Offers to Lease ^{Note 2:} 2. that have not materialized into leases
- (6) Offers to License ^{Note 3:} 3. that have not materialized into licenses
- (b) Documentation supporting sales data, such as invoices, contracts, or offers to sale must be provided. Has such supporting documentation been included with offeror response?
- (c) If the answer to (c) is no, provide contact information for the U. S. Government point of contact to whom the data will be provided.
- (d) What is the relevant "type" of product?
- (e) What are the types of product's uses by the general public or by non-governmental entities for other than government purposes?
- (f) What indicates that the type of product's use described above is customary?
- (g) Has the offered product itself (as opposed to the type of product) been sold or offered for sale?
- (h) Are the offered product's sales (or offers to sale) to the general public?
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Type 2 – Product Evolved from Commercial Product or Components:

- (a) Any product that evolved from a product described in Type I hereof 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.

If Claiming the Product Evolved from Commercial Products or Components exemption (Type 2), the following information must be provided:

- (a) Does the product on which the offered product is based qualify as a commercial product as defined in Type 1?
- (b) If yes, describe the relationship of the modifications to the Federal Government requirement.
- (c) What are the advances in technology or performance between the offered product and the commercial product on which it is based?
- (d) What is your support for such advances?
- (f) What is your support for availability of the product to meet requirements?

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(g) Is the claim of availability reasonable? [Click here to enter text.](#)

(h) Please provide data regarding:

a. Currently pending offers, including:

i. Unit Price(s): [\\$Click here to enter unit price\(s\).](#)

ii. Total Units: [Click here to enter total units.](#)

b. Planned Offers Including:

i. Unit Price(s): [\\$Click here to enter unit price\(s\).](#)

ii. Total Units: [Click here to enter total units.](#)

In all instances scheduled for delivery no later than the delivery requirements under the RFP/Q; and

(i) Please provide the most recent sales data in the format of Type 1 for the product from which the commercial product evolved.

Type 3– Modified Commercial Products or Components

(a) Any product that would satisfy a criterion expressed in Type 1 or 2 hereof, but for –

- (1) Modifications of a type customarily available in the commercial marketplace; or
- (2) 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 non-governmental function or essential physical characteristics of a product 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.

If claiming the Modified Commercial Products or Components exemption (Type 3) the following information must be provided:

- (a) Does the product on which the offered product is based qualify as a commercial product as defined in Part 1 and/or Part 2? [Choose YES or NO.](#)
- (b) What are the modifications that would be made to the commercial product? [Click here to enter response.](#)
- (c) Are the modifications of a type customarily available in the commercial marketplace? [Choose YES or NO.](#)
- (d) Summarize your support for customary availability of the modification in the commercial marketplace. [Click here to enter response.](#)
- (e) If the modifications are not of a type customarily available in the commercial marketplace, are the modifications made to satisfy Federal Government requirements? [Choose YES or NO.](#)
- (f) Do the modifications alter the non-governmental function of essential physical characteristics of the product? [Choose YES or NO.](#)
- (g) If the answer to (g) is yes, what are the alterations? [Click here to enter response.](#)
- (h) Does the modified product retain a predominance of non-governmental functions or physical characteristics? [Choose YES or NO.](#)

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- (i) Summarize your support, describing the value and/or magnitude of the modifications in comparison to the value and/or magnitude of the final product.

[Click here to enter response.](#)

- (j) Based on the above, does the modification qualify as a minor modification? [Choose YES or NO.](#)

- (k) Please provide the most recent sales data in the format of Part I for completed sales of the unmodified product.
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Type 4 – Any Combination of Products

- (a) Any combination of Products meeting the requirements of Type 1, 2 or 3 that are of a type customarily combined and sold in combination to the general public.

If claiming the Any Combination of Products exemption (Type 4), provide information as requested for Type 1, 2 or 3 being combined.

Type 5 – Products, Combination of Products – Transfer Between Divisions

- (a) Any product, combination of products referred to in Type 1 through 4, notwithstanding the fact that the product or combination of products is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor.

If claiming Products or Combination of Products – Transfer Between Divisions exemption (Type 5), the following information must be provided:

- (a) Transfer price(s) of such goods/services. \$ [Click here to enter response.](#)
(b) Total units of such goods/services transferred. [Click here to enter response.](#)
(c) Provide information as requested for Types 1 through 4.
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Type 6 - Non-Developmental Item (NDI)

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

If claiming the Non-Developmental Item exemption (Type 6), the following information must be provided:

- (a) Was the product previously developed? [Choose YES or NO.](#)
(b) Was the product 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? [Choose YES or NO.](#)
(c) If the product was modified, do the modifications comply with the Type 3 guidance on modifications? [Choose YES or NO.](#)
(d) If the product is not yet in use, does it otherwise qualify as a Non-developmental item? [Choose YES or NO.](#)
(e) Was the product developed exclusively at private expense? [Choose YES or NO.](#)
(f) Is the product sold in substantial quantities, on a competitive basis, to multiple State and local governments? [Choose YES or NO.](#)

Please provide data regarding sales:

- (1) Prices: \$ [Click here to enter response.](#)

- (2) Total Units: [Click here to enter response.](#)

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- (3) Total number of customers involved in such sales: [Click here to enter response.](#)
- (g) Documentation supporting sales data, such as invoices, sales orders, or contracts must be provided. Has such supporting documentation been included with offeror response? [Choose YES or NO.](#)
- (h) If the answer to (h) is no, provide contact information for the U. S. Government point of contact to whom the data will be provided. [Click here to enter response.](#)
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Commercial Services

Type 1 – Commercial Products Support Services

- (a) Installation services, maintenance services, repair services, training services, and other services if –
- (1) Such services are procured for support of an product referred to *Commercial Product* Types 1 through 6 hereof, regardless of whether such services are provided by the same source or at the same time as the products; and
 - (2) 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.

If claiming the Commercial Product Support Services exemption (Type 1), the following information must be provided:

- (a) Are the services procured for the support of a commercial product, which qualifies under a preceding Type? [Choose YES or NO.](#)
- (b) Describe the nature and services and how they support the commercial product.
[Click here to enter response.](#)
- (c) Are the services provided at the same time to the general public and the Federal Government? [Choose YES or NO.](#)
- (d) Are the terms and conditions for the services similar to those offered to the general public? [Choose YES or NO.](#)
- (e) Please provide data regarding:
- (1) Open and complete contracts for such services, including:
 - (i) Prices: \$ [Click here to enter response.](#)
 - (ii) Total Units: [Click here to enter response.](#)
 - (2) Pending offers for such services including:
 - (i) Prices: \$ [Click here to enter response.](#)
 - (ii) Total Units: [Click here to enter response.](#)
-

Type 2 - Other Commercial Services

- (a) 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 under standard commercial terms and conditions. For purposes of these services –
- (1) “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

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customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and

- (2) “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.

If claiming the Other Commercial Services exemption (Type 2), the following information must be provided:

- (a) Are the services sold competitively in substantial quantities in the commercial marketplace? [Choose YES or NO.](#)
- (b) If the answer to (a) is no, are the services of a type sold in substantial quantities in the commercial marketplace? [Choose YES or NO.](#)
- (c) If the answer to (b) is yes, describe the “type” of service and summarize your support below: [Click here to enter response.](#)
- (d) Are the prices quoted for specific tasks performed or specific outcome to be achieved? [Choose YES or NO.](#)
- (e) Are the services offered consistent with your standard terms and conditions? [Choose YES or NO.](#)
- (f) Are the services of a type sold at catalog or market prices? [Choose YES or NO.](#)
- (g) If sold at catalog price, is the price included in a catalog or its equivalent published or otherwise available for inspection by customers? [Choose YES or NO.](#) Include a copy of the catalog or provide online location.
- (h) If sold at catalog price, are the listed prices those at which sales are currently, or were last, made to a significant number of buyers in the general public? [Choose YES or NO.](#)
- (i) If the answer to (h) is YES, please provide data regarding:
- (1) Open and complete contracts for such services, including:
- i. Prices: \$ [Click here to enter response.](#)
- ii. Total Units: [Click here to enter response.](#)
- (2) Pending offers for such services including:
- i. Prices: \$ [Click here to enter response.](#)
- ii. Total Units: [Click here to enter response.](#)
- (j) If sold at market price, can the price be substantiated through competition or from source independent of the offeror? [Choose YES or NO.](#)
- Summarize your support below:
[Click here to enter response.](#)
-

Type 3 – Commercial Services – Transfer Between Divisions

- (a) A service referred to in paragraph (1) or (2) of this definition, even though the service is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor.

If claiming Commercial Services – Transfer Between Divisions exemption (Type 3), the following information must be provided:

- (a) Transfer price(s) of such services. \$ [Click here to enter response.](#)
- (b) Total units of such services transferred. [Click here to enter response.](#)
- (c) Provide information as requested for Types 1 and 2.
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Commercially Available Off-The-Shelf (COTS) Item

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

- (1) Means any item of supply (including construction material) that is—
 - (i) A commercial product (as defined in paragraph (1) of the definition of “commercial product” 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.

[This acquisition meets the COTS definition of FAR Part 2.101 in that it is a FAR 2.101 Commercial Product (Definition 1), actually sold in substantial quantities in the commercial marketplace and offered to the Government/SNC without modification and in the exact same form as sold in the commercial marketplace. Describe how/why the commercial product meets this definition. Describe the evidence attached.]

General Inquiries

- (a) Has the product or service previously been determined to be commercial by an agency of the U. S. Government or Contracting Officer?
- (b) If the answer to (a) is yes, please provide the contact information for the U.S. Government Agency or Contracting Officer making the prior determination.
- (c) Provide written evidence of the prior determination of commerciality by a U.S. Government Agency or Contracting Officer.

Other Information

- (a) Is there any other information of which you are aware that would supplement the information provided and would help substantiate whether the product or service is commercial?
- (b) Have you provided such information?
- (c) List such information.