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

**Commercial Product or Service – Requirements, Guidance, and Determination**

The F335 is used in determining whether a product or service qualifies as a commercial product or service under the definition of FAR 2.101. This guide identifies the various ways in which a product or service can qualify as a commercial product or service, 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 product or service as a commercial product or service.

See [FAR 2.101](https://www.acquisition.gov/far/part-2#FAR_2_101) for the definitions of “commercial product” and “commercial service.”

Note that the supplier must provide the data required in the Commerciality 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, the supplier must provide that refusal in writing. In addition, a supplier’s refusal can result in a request for Certified Cost or Pricing Data (CCoPD) and/or a determination that goods and/or services offered do not constitute a “commercial” product or service.

**Commerciality Justification Summary (Required for Every Claim)**

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

**Concerning Type of Commercial Product (Sections I – VI)**

**I. Unmodified or “Of a Type” Commercial Product (Commercial Product, Definition 1)**

**Requirement:** As per the FAR 2.101 definition of “commercial product”, definition 1– the product must be a 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 (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.

**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 product offered need not have customary uses by the general public if other products of the same type have the required general public uses. The key is determining what the relevant "type of product” it is.

A "type of product” that is too broad would make the commercial product definition meaningless. For example, if an F-16 is judged to be a commercial product because it is a "type" of airplane, and airplanes customarily have uses by the general public, it would be difficult to find any product that could not be put into a "type" broad enough to qualify as a commercial product. The type also cannot be so broad that it sweeps in products that should instead be considered as "modifications" to commercial products, 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 products beyond the one offered. The buyer must ask, *“Can my current requirements be satisfied by a type of product that is available in the commercial marketplace?”*

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

Notwithstanding the above conditions, the government made it clear that the offered product 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 product, if the offered product and the competitor's product 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. Please note that offerors may NOT suggest that foreign government uses are sales for other than governmental purposes just because they are not for U.S. Government purposes.

**General Public** – The offered product 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 a product has been sold or offered for sale to the general public, if a product qualifies as a commercial product without considering such sales, a sale of the product to an affiliate or subsidiary can use commercial product procurement procedures.

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

**II. Evolved Commercial Product (Commercial Product, Definition 2)**

**Requirement:** As per the FAR 2.101 definition of “commercial product”, definition 2 – a product that evolved from a product described in Section 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 Government solicitation.

**Guidance:** This commercial product 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 product 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 Commercial Product, the offered product must be based on a product that qualifies under Section I of this guidance. Section I should be completed for the product on which the offered product is based. If the underlying product is a commercial product under Section I, then evaluate whether the offered product is an “evolved” product using the key inquiries in the checklist.

**III. Modified Commercial Product (Commercial Product, Definition 3)**

**Requirement:** As per the FAR 2.101 definition of “commercial product”, definition 3 – the offered product is a commercial product under Section 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 marketplace but made to satisfy federal government requirements.

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

**Modifications “of a type”** – 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 products "of the type" are not built for commercial use.)

**Minor modifications** – While “minor modifications” are made to satisfy federal government requirements, these modifications should 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 modifications 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. Combination of Commercial Products (Commercial Product, Definition 4)**

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

**Guidance: The “of a type” products are also customarily combined and sold in combination to the general public. See Guidance in Sections I, II, and/or III above and ensure the same items are addressed.**

**V. Transferred Commercial Product (Commercial Product, Definition 5)**

**Requirement**: Combination from Sections I, II, III and/or IV above.

**Guidance**: See Guidance in Sections I, II, III and/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.

**VI. Nondevelopmental Commercial Product (Commercial Product, Definition 6)**

**Requirement**: The product is a nondevelopmental item if the procuring agency determines the product was (i) developed exclusively at private expense, (ii) sold in substantial quantities, (iii) sold on a competitive basis, and (iv) sold to multiple State and local governments or to multiple foreign governments. All four requirements (i-iv) must be met to satisfy this definition of commercial product.

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

*Nondevelopmental item means—*

 *(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.*

**Concerning Type of Commercial Service (Sections VII-IX)**

**VII. Commercial Service for a Commercial Product (Commercial Service, Definition 1)**

**Requirement:** Services are commercial if they are procured in support of a commercial product, 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 product, which has qualified under one of the previous Sections (I-VI) above. 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.

**VIII. Commercial Service Of a Type (Commercial Service, Definition 2)**

**Requirement**: Services which are 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.

**Guidance**: Security services are an example of a service that may qualify under this definition. 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.

**IX. Transferred Commercial Service (Commercial Service, Definition 3)**

**Requirement**: Combination from Sections VII or VIII above.

**Guidance**: See Guidance in Sections VII and VIII above and ensure the same items are addressed, as well as the additional information on transfer prices of such services and total value of such services.

**X. General Inquiries**

Determine whether the product 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 U.S. Government’s determination of commercial products or services 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.

**XI. Other Information**

Is there other information available, to supplement the information provided, which would help determine whether the product or service is commercial? If so, please provide as part of your supporting data package.

**XII. Supplier Representation**

Ensure the supplier is identified and that the Offeror has signed, dated and provided a title.