

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Parts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 37, 38, 39, 42, 43, 44, 46, 47, 49, 52, and 53

[FAC 2022–01; FAR Case 2018–018; Item I; Docket No. FAR–2018–0018, Sequence No. 1]

RIN 9000–AN76

**Federal Acquisition Regulation:
Revision of Definition of “Commercial
Item”**

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement a section of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 to change the definition of “commercial item.”

DATES: Effective December 6, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Zenaida Delgado, Procurement Analyst, at 202–969–7207 or by email at zenaida.delgado@gsa.gov, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or GSARegSec@gsa.gov. Please cite FAC 2022–01, FAR Case 2018–018.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule at 85 FR 65610 on October 15, 2020, to amend the FAR definition of “commercial item” to implement section 836 of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232). Section 836 separates the definition of “commercial item” at 41 U.S.C. 103 into the definitions of “commercial product” and “commercial service,” at 41 U.S.C. 103 and 103a.

Splitting the definition of “commercial item” into the definitions of “commercial product” and “commercial service” was a recommendation made by the independent panel created by section 809 of the NDAA for FY 2016 (Pub. L. 114–92). The panel was created to

review and improve the functioning of the defense acquisition system and eliminate any regulations found unnecessary to achieve such improvements. The panel recommended the splitting of the definition of “commercial item” to better “reflect the significant roles services and commercial services play today in the DoD procurement budget.” See recommendation on pages 29 to 30 of Volume 1 of 3 dated January 2018 of the Report of the Advisory Panel on Streamlining and Codifying Acquisition Regulations, available at https://section809panel.org/wp-content/uploads/2018/04/Sec809Panel_Vol1-Report_Jan18_REVISED_2018-03-14.pdf.

The change in this final rule resolves the issue the Section 809 Panel cites, which is that the “acquisition workforce has faced issues with inconsistent interpretations of policy, confusion over how to identify eligible commercial products and services”. Bifurcating the definition of “commercial item” into “commercial product” and “commercial service” is a way to provide clarity for the acquisition workforce, which may result in greater engagement with the commercial marketplace.

It is important to note that the amendment to separate “commercial item” into “commercial product” and “commercial service” does not expand or shrink the universe of products or services the Government may procure using FAR part 12, nor does it change the terms and conditions with which contractors must comply.

The following summarizes the changes made to the FAR:

1. Removed from FAR part 2 the definition of “commercial item” and replaced it with the definitions of “commercial product” and “commercial service” in accordance with the NDAA with only minor revisions for clarification to align with that which is currently in the FAR. The clarification in paragraph 3(ii) of the definition of “commercial product” has been in FAR part 2 since the definition of “commercial item” was incorporated by FAR case 94–790, Acquisition of Commercial Items, in 1995. Paragraphs 2(i) and 2(ii) of the definition of “commercial service” are also long standing; they stem from a FAR change published October 22, 2001, which was revised slightly in a FAR change published June 18, 2004.

2. Replaced all instances of “non-commercial” and “noncommercial” with “other than commercial” as it relates to this rule. This editorial change provides consistent language throughout the FAR.

3. Removed FAR 12.102(g), and a corresponding reference at FAR 37.601(c), as obsolete. FAR 12.102(g) only applied to contracts or orders entered into before November 23, 2013.

4. Added the definition of “established price” at FAR 16.001 to be consistent with the term as defined at the FAR clauses at FAR 52.216–2, Economic Price Adjustment—Standard Supplies, and 52.216–3, Economic Price Adjustment—Semistandard Supplies. This is an editorial change for consistency to have the definition in both the clause and the corresponding FAR part.

5. Made conforming changes to cross references, and the following Standard Forms (SF): SF 294, Subcontracting Report for Individual Contracts; SF 1443, Contractor’s Request for Progress Payment; and SF 1449, Solicitation/Contract/Order for Commercial Products and Commercial Services. Also, minor editorial changes were made as needed throughout the FAR. These revisions do not impact terms and conditions of commercial contracts or how the Government procures commercial products or commercial services.

Three respondents submitted comments on the proposed rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows:

A. Summary of Significant Changes

There are no significant changes from the proposed rule.

B. Analysis of Public Comments

Of the three responses received, none provided negative comments on the rule, although they suggested changes as described below. No changes resulted from the public comments.

Comment: A respondent expressed that paragraph (1) of the commercial product definition in the proposed rule is not consistent with the language in 41 U.S.C. 103(1). This respondent stated that while the wording for both definitions is very similar, the structure of the definition as promulgated in current law indicates it was the intent of Congress that for a product to meet the definition of a commercial product under paragraph (1), it must have been sold, leased, or licensed, or offered for sale, lease, or license, to the general public.

Response: The Councils note that the respondent's quoted definition is similar to the statutory definition, and to the definition used in the proposed rule. No change is necessary.

Comment: Two respondents suggested to explicitly include commercial services under the definition of commercial-off-the-shelf ("COTS") items to provide the Government access to the broadest range of service providers. One respondent pointed to the following benefits: increase competition and allow Government customers quicker access to required commercial services. A respondent suggested to, at least, clarify that commercial wireless telecommunications offerings constitute a "commercial product" and thus can satisfy all definitional elements of COTS items.

Response: The Councils cannot accept the suggestions because they are not consistent with the statute being implemented. Section 836 of the NDAA for FY 2019 did not modify the definition of COTS item.

C. Other Changes

Other changes made in the final rule are as follows:

- Revisions were made to account for additional instances of the term "commercial item" in the FAR after the proposed rule was published in the following sections: FAR 9.110–4(b), 9.110–5, 9.405–1, 39.205(a)(3) and (c)(3), 43.105(c), 52.209–14(d)(1), 52.229–13(c), and 52.229–14(c).

- Three changes missed in the proposed rule were added as follows: the heading of FAR subpart 12.1, the word "commercial" at FAR 15.601, and the inclusion of "commercial products" in 52.212–5(b)(36).

- Prescriptive language was relocated from the introductory text for the FAR clauses at 52.216–2, 52.216–3, and 52.216–4 to FAR 16.203–4(a)(4), (b)(6), and (c)(5), respectively, to be consistent with FAR drafting conventions.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items), or for Commercial Services

This rule does not create new solicitation provisions or contract clauses. This rule merely replaces the term "commercial item(s)" with "commercial product(s)," "commercial service(s)," "commercial product(s) or commercial service(s)," or "commercial product(s) and commercial service(s)" in the FAR including in part 52, as appropriate. This rule does not impose

any new requirements on contracts at or below the SAT or for commercial products, including COTS items, or for commercial services.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

V. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD, GSA, and NASA will send the rule and the "Submission of Federal Rules Under the Congressional Review Act" form to each House of the Congress and to the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget has determined that this is not a major rule under 5 U.S.C. 804.

VI. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601–612. The FRFA is summarized as follows:

This final rule amends the FAR to change the definition of "commercial item" by splitting it into the definitions of "commercial product" and "commercial service".

The objective is to implement section 836 of the John S. McCain NDAA for FY19 (Pub. L. 115–232). This is consistent with the recommendations by the independent panel created by section 809 of the NDAA for FY 2016 (Pub. L. 114–92). This case implements amendments to 41 U.S.C. 103 and 103a. The legal basis for this rule is 40 U.S.C. 121(c), 10 U.S.C. chapter 137, and 51 U.S.C. 20113.

There were no significant issues raised by the public comments in response to the initial regulatory flexibility analysis.

The final rule impacts all entities that do business with the Federal Government, including the over 327,458 small business registrants in the System for Award Management. However, the rule does not implement any requirements with which

small entities must comply. This rule splits the definition of "commercial item" into the definitions of "commercial product" and "commercial service".

The final rule does not include additional reporting or record keeping requirements.

There are no available alternatives to the final rule to accomplish the desired objective of the statute.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat Division. The Regulatory Secretariat Division has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

VII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501–3521) applies; however, the changes to the FAR and the updates to the information collections do not impose new information collection burden. The changes do not impose additional, or change any existing, information collection requirements to the paperwork burden previously approved under the following OMB Control Numbers: 9000–0007, Subcontracting Plans; 9000–0018, Federal Acquisition Regulation Part 3: Improper Business Practices and Personal Conflicts of Interest; 9000–0193, FAR Part 9 Responsibility Matters; 9000–0097, Federal Acquisition Regulation Part 4 Requirements; 9000–0136, Commercial Item Acquisitions; 9000–0034, Examination of Records by Comptroller General and Contract Audit; 9000–0013, Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data; 9000–0048, Authorized Negotiators and Integrity of Unit Prices; 9000–0010, Progress Payments, SF 1443; 9000–0024, Buy American, Trade Agreements, and Duty-Free Entry; 9000–0061, Transportation Requirements; 9000–0068, Economic Price Adjustment; 9000–0070, Payments; 9000–0138, Contract Financing; 9000–0188, Combating Trafficking in Persons; 9000–0197, Use of Products and Services of Kaspersky Lab; 9000–0198, Violations of Arms Control Treaties or Agreements; and 1615–0092, E-Verify Program.

List of Subjects in 48 CFR Parts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 37, 38, 39, 42, 43, 44, 46, 47, 49, 52, and 53

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 2, 3, 4, 5, 6, 7,

8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 37, 38, 39, 42, 43, 44, 46, 47, 49, 52, and 53 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 37, 38, 39, 42, 43, 44, 46, 47, 49, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.102 [Amended]

■ 2. Amend section 1.102 by removing from paragraph (b)(1)(i) the phrase “commercial products and services;” and adding the phrase “commercial products and commercial services;” in its place.

1.102–2 [Amended]

■ 3. Amend section 1.102–2 by removing from paragraph (a)(4) the phrase “commercial products and services” and adding the phrase “commercial products and commercial services” in its place.

PART 2—DEFINITIONS OF WORDS AND TERMS

- 4. Amend section 2.101 in paragraph (b)(2) by—
 - a. In the defined term “Biobased product”, removing the phrase “commercial or industrial product” and adding the phrase “commercial product or industrial product” in its place;
 - b. In the defined term “Commercial component”, removing the words “commercial item” and adding the words “commercial product” in its place;
 - c. In the defined term “Commercial computer software”, removing the words “commercial item” and adding the words “commercial product or commercial service” in its place.
 - d. Removing the defined term “Commercial item”;
 - e. Adding the defined terms “Commercial product” and “Commercial service” in alphabetical order; and
 - f. In the defined term “Commercially available off-the-shelf (COTS) item”, removing from paragraph (1)(i) “commercial item” and “definition in this section” and adding “commercial product” and “definition of “commercial product” in this section” in their places, respectively.

The additions read as follows:

2.101 Definitions.

* * * * *

(b) * * *
(2) * * *

Commercial product means—

- (1) A product, other than real property, that is of a type customarily used by the general public or by nongovernmental 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) A product that evolved from a product 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) A product that would satisfy a criterion expressed in paragraph (1) or (2) of this definition, except 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 products meeting the requirements of paragraph (1), (2), or (3) of this definition that are of a type customarily combined and sold in combination to the general public;
 - (5) A product, or combination of products, referred to in paragraphs (1) through (4) of this definition, even though the product, or combination of products, is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor; or
 - (6) A nondevelopmental 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 or to multiple foreign governments.
- Commercial service* means—
- (1) Installation services, maintenance services, repair services, training services, and other services if—

(i) Such services are procured for support of a commercial product as defined in this section, regardless of whether such services are provided by the same source or at the same time as the commercial product; 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;

(2) 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; or

(3) 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.

* * * * *

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3.104–1 [Amended]

■ 5. In section 3.104–1 amend the definition of “Contractor bid or proposal information” in paragraph (1) by removing “10 U.S.C. 2306a(h)” and adding in its place “10 U.S.C. 2306a(h)(1)” and removing “41 U.S.C. 3501(a)(2)” and adding “41 U.S.C. 3501(a)(1)” in its place.

■ 6. Amend section 3.104–9 by revising the introductory text to read as follows:

3.104–9 Contract clauses.

In solicitations and contracts that exceed the simplified acquisition threshold, other than those for commercial products or commercial services, insert the clauses at—

* * * * *

3.404 [Amended]

- 7. Amend section 3.404 by removing “commercial items” and adding “commercial products or commercial services” in its place.
- 8. Amend section 3.502–2 by revising paragraph (i) introductory text to read as follows:

3.502–2 Subcontractor kickbacks.

* * * * *

(i) Requires each contracting agency to include in each prime contract, other than for commercial products or commercial services, exceeding \$150,000, a requirement that the prime contractor shall—

* * * * *

3.502–3 [Amended]

- 9. Amend section 3.502–3 by removing “commercial items” and adding “commercial products or commercial services” in its place.

3.503–2 [Amended]

- 10. Amend section 3.503–2 by removing “commercial items” and adding “commercial products or commercial services” in its place.

3.1004 [Amended]

- 11. Amend section 3.1004 by removing from paragraph (b)(1) “commercial item” and “FAR 52.203–14” and adding “commercial product or commercial service” and “52.203–14” in their places, respectively.

PART 4—ADMINISTRATIVE AND INFORMATION MATTERS

4.203 [Amended]

- 12. Amend section 4.203 by removing from paragraph (a) the term “Commercial Items” and adding the term “Commercial Products and Commercial Services” in its place.

4.605 [Amended]

- 13. Amend section 4.605 by removing from paragraph (b) the term “Commercial Items” and adding the term “Commercial Products and Commercial Services” in its place.

4.1103 [Amended]

- 14. Amend section 4.1103 by removing from paragraph (a)(3) the term “Commercial Items” and adding the term “Commercial Products and Commercial Services” in its place.

4.1201 [Amended]

- 15. Amend section 4.1201 by removing from paragraph (d) the term “commercial items” and adding the term “commercial products or commercial services” in its place.

4.1202 [Amended]

- 16. Amend section 4.1202 by removing from paragraph (a) introductory text the terms “commercial item solicitations” and “FAR part 12” and adding the terms “solicitations for commercial products or commercial services” and “part 12” in their places, respectively.

4.1902 [Amended]

- 17. Amend section 4.1902 by removing the text “commercial items” and adding “commercial products or commercial services,” in its place.

PART 5—PUBLICIZING CONTRACT ACTIONS

5.202 [Amended]

- 18. Amend section 5.202 by removing from paragraph (a)(10) “commercial items” and adding “commercial products” in its place.

5.203 [Amended]

- 19. Amend section 5.203 by removing from paragraphs (a) introductory text, (b), and (c) the term “commercial items” and adding “commercial products or commercial services” in their places, respectively.

PART 6—COMPETITION REQUIREMENTS

6.001 [Amended]

- 20. Amend section 6.001 by removing from paragraph (a) “commercial items” and adding “commercial products or commercial services” in its place.

6.302–5 [Amended]

- 21. Amend section 6.302–5 by:
 - a. Removing from paragraph (a)(2)(ii) “commercial item” and adding “commercial product” in its place; and
 - b. Removing from paragraph (c)(3) “brand-name commercial items” and adding “brand name commercial products” in its place.
- 22. Amend section 6.502 by—
 - a. Revising paragraph (a);
 - b. Removing from paragraph (b)(1)(i) the term “commercial items” and adding “commercial products and commercial services” in its place;
 - c. Removing from paragraph (b)(1)(iv) the term “commercial items or” and adding “commercial products or commercial services or unnecessarily restricting” in its place;
 - d. Removing from paragraph (b)(2)(ii) the term “commercial items” and adding “commercial products and commercial services” in its place; and
 - e. Removing from paragraphs (b)(2)(v) and (vi) the term “commercial items”

and adding “commercial products, commercial services,” in its place.

The revision reads as follows:

6.502 Duties and responsibilities.

- (a) Agency and procuring activity advocates for competition are responsible for—
 - (1) Promoting the acquisition of commercial products and commercial services;
 - (2) Promoting full and open competition;
 - (3) Challenging requirements that are not stated in terms of functions to be performed, performance required, or essential physical characteristics;
 - (4) Challenging barriers to the acquisition of commercial products and commercial services; and
 - (5) Challenging barriers to full and open competition such as unnecessarily restrictive statements of work, unnecessarily detailed specifications, and unnecessarily burdensome contract clauses.

* * * * *

PART 7—ACQUISITION PLANNING

7.102 [Amended]

- 23. Amend section 7.102 by removing from paragraph (a)(1) the phrase “commercial items or, to the extent that commercial items suitable” and adding “commercial products or commercial services, or to the extent that commercial products suitable” in its place.

7.103 [Amended]

- 24. Amend section 7.103 by removing from paragraph (b) the phrase “commercial items, or to the extent that commercial items suitable” and adding “commercial products or commercial services, or to the extent that commercial products suitable” in its place.

7.105 [Amended]

- 25. Amend section 7.105 by removing from paragraph (b)(14)(i) the term “commercial items” and adding “commercial products or commercial services” in its place.

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.402 [Amended]

- 26. Amend section 8.402 by—
 - a. Removing from paragraph (a) the term “commercial supplies and services” and adding “commercial supplies and commercial services” in its place; and
 - b. Removing from paragraph (f)(1) the phrase “commercial items (part 12),”

and adding “commercial products or commercial services (part 12),” in its place.

PART 9—CONTRACTOR QUALIFICATIONS

9.106–1 [Amended]

■ 27. Amend section 9.106–1 by removing from paragraph (a) the term “commercial items” and adding “commercial products or commercial services” in its place.

9.109–5 [Amended]

■ 28. Amend section 9.109–5 by removing the text “commercial items” and adding “commercial products or commercial services” in its place.

9.110–4 [Amended]

■ 29. Amend section 9.110–4 by removing from paragraph (b) “commercial items” and adding “commercial products and commercial services” in its place.

9.110–5 [Amended]

■ 30. Amend section 9.110–5 by removing the term “commercial items” and adding “commercial products and commercial services” in its place.

9.405–1 [Amended]

■ 31. Amend section 9.405–1 by removing from paragraph (b) the term “commercial items” and adding “commercial products and commercial services” in its place.

9.405–2 [Amended]

■ 32. Amend section 9.405–2 in paragraph (b) introductory text, in the fourth sentence, by removing “commercial items” and adding “commercial products” in its place.

PART 10—MARKET RESEARCH

■ 33. Amend section 10.001 by—

■ a. Removing from paragraph (a)(2)(v) the phrase “for a noncommercial item” and adding “for other than a commercial product or commercial service” in its place;

■ b. Removing from paragraph (a)(3)(ii) introductory text the phrase “commercial items or, to the extent commercial items suitable” and adding “commercial products or commercial services, or, to the extent commercial products suitable” in its place;

■ c. Removing from paragraph (a)(3)(iii) the term “commercial items” and adding “commercial products” in its place;

■ d. Removing from paragraph (a)(3)(iv) the term “commercial items” and adding “commercial products or commercial services” in its place; and

■ e. Revising paragraph (d).

The revision reads as follows:

10.001 Policy.

* * * * *

(d) See 10.003 for the requirement for a prime contractor to perform market research in contracts in excess of \$6 million, other than contracts for the acquisition of commercial products or commercial services (section 826 of Pub. L. 110–181).

10.002 [Amended]

■ 34. Amend section 10.002 by—

■ a. Removing from paragraph (b) introductory text the term “commercial items” and adding “commercial products, commercial services,” in its place;

■ b. Removing from paragraph (b)(1) introductory text the word “item” and adding “product or service” in its place;

■ c. Removing from paragraphs (b)(1)(i)(A), (B), and (C) the word “Items” and adding “Products or services” in its place;

■ d. Removing from paragraph (b)(1)(ii) the word “items” and adding “products or services” in its place;

■ e. Removing from paragraph (c) the phrases “indicates commercial” and “permit commercial” and adding “indicates commercial products, commercial services,” and “permit commercial products, commercial services,” in their places, respectively; and

■ f. Removing from paragraph (d)(1) the phrases “item or” and “commercial item” and adding “product or” and “commercial product or commercial service” in their places, respectively.

■ 35. Revise section 10.003 to read as follows:

10.003 Contract clause.

The contracting officer shall insert the clause at 52.210–1, Market Research, in solicitations and contracts over \$6 million, other than solicitations and contracts for the acquisition of commercial products or commercial services.

PART 11—DESCRIBING AGENCY NEEDS

11.002 [Amended]

■ 36. Amend section 11.002 by—

■ a. Removing from paragraph (a)(2)(ii) the phrase “commercial items, or, to the extent that commercial items suitable” and adding “commercial products or commercial services or, to the extent that commercial products suitable” in its place;

■ b. Removing from paragraphs (a)(2)(iii) and (iv) the term “commercial

items” and adding “commercial products, commercial services,” in its place; and

■ c. Removing from paragraph (a)(2)(v) the terms “commercial items or,” and “commercial items suitable” and adding “commercial products or commercial services or,” and “commercial products suitable” in their places, respectively.

11.302 [Amended]

■ 37. Amend section 11.302 by—

■ a. Removing from paragraph (b)(1) the terms “acquiring other” and “commercial items” and adding “acquiring products other” and “commercial products as defined in 2.101” in their places, respectively;

■ b. Removing from paragraph (b)(2) the terms “commercial items” and “the item” and adding “commercial products” and “the product” in their places, respectively; and

■ c. Removing from paragraph (c)(1) the term “commercial items” and adding “commercial products” in its place.

11.304 [Amended]

■ 38. Amend section 11.304 by removing the text “commercial items” and adding “commercial products” in its place.

PART 12—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

■ 39. Revise the part heading to read as set forth above.

12.000 [Amended]

■ 40. Amend section 12.000 by—

■ a. In the first sentence, removing the term “commercial items” and adding “commercial products, including commercial components, and commercial services” in its place; and

■ b. In the second sentence, removing the terms “commercial items” and “commercial items and components” and adding “commercial products and commercial services” in their place.

12.001 [Amended]

■ 41. Amend section 12.001 by removing the term “commercial items” and adding “commercial products or commercial services” in its place.

■ 42. Revise the heading of subpart 12.1 to read as follows:

Subpart 12.1—Acquisition of Commercial Products and Commercial Services

12.101 [Amended]

■ 43. Amend section 12.101 by removing the term “commercial items” wherever it appears and adding

“commercial products, commercial services,” in its place.

12.102 [Amended]

- 44. Amend section 12.102 by—
- a. Removing from paragraph (a) the phrase “the definition of commercial items” and adding “the definitions of “commercial product” or “commercial service” in its place;
- b. Removing from paragraph (c) the term “commercial items” wherever it appears and adding “commercial products or commercial services” in its place;
- c. Removing from paragraph (d) the phrase “commercial item in section 2.101” and adding “commercial product” in its place;
- d. Removing from paragraphs (e) and (f)(1) the term “commercial items” and adding “commercial products or commercial services” in its place;
- e. In paragraph (f)(2) introductory text:
 - i. Removing the term “for an item” and adding “for a product” in its place; and
 - ii. Removing the term “commercial item” wherever it appears and adding “commercial product or commercial service” in its place;
- f. Removing from paragraph (f)(2)(i) “see Subpart 30.2” and adding “see subpart 30.2” in its place; and
- g. Removing paragraph (g).

12.103 [Amended]

- 45. Amend section 12.103 by removing the text “commercial items” and “12.504;” and adding “commercial products” and “12.504.” in their places, respectively.
- 46. Revise the heading of subpart 12.2 to read as follows:

Subpart 12.2—Special Requirements for the Acquisition of Commercial Products and Commercial Services

12.201 [Amended]

- 47. Amend section 12.201 by removing “commercial items” wherever it appears and adding “commercial products and commercial services” in its place.

12.202 [Amended]

- 48. Amend section 12.202 by—
- a. Removing from paragraph (a) the term “commercial items” and adding “commercial products and commercial services” in its place; and
- b. In paragraph (b):
 - i. Removing in the first sentence the terms “commercial items” and “products or services” and adding “commercial products or commercial services” and “products or commercial services” in their places, respectively; and

- ii. Removing in the second sentence the terms “commercial item” and “type of product or service” and adding “commercial product or commercial service” and “type of commercial product or commercial service” in their places, respectively.

12.203 [Amended]

- 49. Amend section 12.203 in paragraph (a) by:
 - a. In the first sentence, removing the term “commercial items” and adding in its place the phrase “commercial products and commercial services”; and
 - b. In the second and third sentences, removing the term “commercial items” wherever it appears and adding in its place the phrase “commercial products or commercial services”.
- 50. Amend section 12.204 by revising paragraph (a) to read as follows:

12.204 Solicitation/contract form.

(a)(1) The contracting officer shall use the Standard Form 1449, Solicitation/Contract/Order for Commercial Products and Commercial Services, if—

- (i) The acquisition is expected to exceed the simplified acquisition threshold;
- (ii) A paper solicitation or contract is being issued; and
- (iii) Procedures at 12.603 are not being used.

(2) Use of the SF 1449 is nonmandatory but encouraged for commercial acquisitions not exceeding the simplified acquisition threshold.

* * * * *

12.205 [Amended]

- 51. Amend section 12.205 by—
- a. In paragraph (a):
 - i. In the first sentence, removing the word “product”; and
 - ii. In the second sentence, removing the phrase “product literature from offerors of commercial items” and adding “product or service literature from offerors of commercial products or commercial services” in its place;
- b. In paragraph (b):
 - i. In the first sentence, removing the phrases “more than one product” and “commercial items” and adding “multiple offers” and “commercial products or commercial services” in their places, respectively; and
 - ii. In the second sentence, removing the phrase “product as a separate offer” and adding “offer separately” in its place; and
- c. Removing from paragraph (c) the words “commercial items” and adding “commercial products or commercial services” in their place.

12.206 [Amended]

- 52. Amend section 12.206 by removing the text “commercial items” and adding “commercial products and commercial services” in its place.

12.207 [Amended]

- 53. Amend section 12.207 by removing from paragraphs (a) and (e) the words “commercial items” and adding “commercial products or commercial services” in their places.
- 54. Revise section 12.208 to read as follows:

12.208 Contract quality assurance.

Contracts for commercial products shall rely on contractors’ existing quality assurance systems as a substitute for Government inspection and testing before tender for acceptance unless customary market practices for the commercial product being acquired include in-process inspection. Any in-process inspection by the Government shall be conducted in a manner consistent with commercial practice. The Government shall rely on the contractor to accomplish all inspection and testing needed to ensure that commercial services acquired conform to contract requirements before they are tendered to the Government.

12.209 [Amended]

- 55. Amend section 12.209 by removing the words “commercial items” and “Commercial item” and adding “commercial products and commercial services” and “Commercial product and commercial service” in their places, respectively.

12.210 [Amended]

- 56. Amend section 12.210 by removing the text “commercial items” and adding “commercial products and commercial services” in its place.

12.211 [Amended]

- 57. Amend section 12.211 by:
 - a. Removing the text “commercial item” and adding “commercial product” in its place; and
 - b. Removing the text “commercial items” wherever it appears and adding “commercial products” in its place.

12.214 [Amended]

- 58. Amend section 12.214 by—
- a. Removing from the first sentence “commercial items” and adding “commercial products or commercial services” in its place;
- b. Removing from the second sentence “See 48 CFR 30.201–1” and adding “See 30.201–1” and “commercial products or

commercial services” in their places, respectively; and

■ c. Removing from the last sentence “in 48 CFR 30.201” and adding “in 30.201” in its place.

■ 59. Revise the heading of subpart 12.3 to read as follows:

Subpart 12.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Products and Commercial Services

12.300 [Amended]

■ 60. Amend section 12.300 by removing the text “commercial items” and adding “commercial products and commercial services” in its place.

■ 61. Amend section 12.301 by—

■ a. Revising the section heading;

■ b. Removing from paragraphs (a) introductory text and (a)(1) the text “commercial items” and adding “commercial products or commercial services” in its place;

■ c. Removing from paragraph (b) introductory text the text “commercial items” wherever it appears and adding “commercial products or commercial services” in its place;

■ d. In paragraphs (b)(1) and (2):

■ i. Removing in the headings the text “*Commercial Items*” and adding “*Commercial Products and Commercial Services*” in its place; and

■ ii. Removing the text “commercial items” and adding “commercial products or commercial services” in its place; and

■ e. Removing in the third sentence of paragraph (b)(2) the text “Subpart 1.4” and adding “subpart 1.4” in its place;

■ f. Removing from paragraph (b)(3) heading the text “*Commercial Items*” and adding “*Commercial Products and Commercial Services*” in its place;

■ g. In paragraph (b)(4):

■ i. In the heading, removing the text “*Commercial Items*” and adding “*Commercial Products and Commercial Services*” in its place;

■ ii. Removing the text “commercial items” wherever it appears and adding “commercial products or commercial services” in its place; and

■ iii. Removing the text “Part 15” and adding “part 15” in its place;

■ h. In paragraph (c)(1):

■ i. Removing the term “Commercial Items” and adding “Commercial Products and Commercial Services” in its place; and

■ ii. Removing the term “commercial items” and adding “commercial products or commercial services” in its place;

■ i. Removing from paragraph (d) introductory text the text “commercial

items” wherever it appears and adding “commercial products or commercial services” in its place; and

■ j. Removing from paragraph (f) the text “commercial items” and adding “commercial products or commercial services” in its place.

The revision reads as follows:

12.301 Solicitation provisions and contract clauses for the acquisition of commercial products and commercial services.

* * * * *

■ 62. Amend section 12.302 by—

■ a. Revising the section heading;

■ b. In paragraph (a):

■ i. Removing the text “commercial items” wherever it appears and adding “commercial products and commercial services” in its place; and

■ ii. Removing the text “Commercial Items” wherever it appears and adding “Commercial Products and Commercial Services” in its place;

■ c. In paragraph (b):

■ i. Removing the text “*Commercial Items*” and adding “*Commercial Products and Commercial Services*” in its place; and

■ ii. Removing the text “Commercial Items” and adding “Commercial Products and Commercial Services” in its place; and

■ d. Removing from paragraph (c) “commercial items” and adding “commercial products or commercial services” in its place.

The revision reads as follows:

12.302 Tailoring of provisions and clauses for the acquisition of commercial products and commercial services.

* * * * *

12.303 [Amended]

■ 63. Amend section 12.303 by—

■ a. Removing from the introductory text the term “commercial items” and adding “commercial products or commercial services” in its place;

■ b. Removing from paragraph (c)(1) the text “Commercial Items” and adding “Commercial Products and Commercial Services” in its place;

■ c. Removing from paragraph (c)(3) the text “and Executive Orders” and adding “or Executive Orders—Commercial Products and Commercial Services” in its place; and

■ d. Removing from paragraphs (e)(1), (3), and (4) the term “Commercial Items” and adding “Commercial Products and Commercial Services” in its place.

■ 64. Revise the heading for subpart 12.4 to read as follows:

Subpart 12.4—Unique Requirements Regarding Terms and Conditions for Commercial Products and Commercial Services

12.401 [Amended]

■ 65. Amend section 12.401 by—

■ a. In paragraph (a), removing the term “Commercial Items” and adding “Commercial Products and Commercial Services” in its place; and

■ b. In paragraph (b), removing the text “commercial items” and adding “commercial products or commercial services” in its place.

12.402 [Amended]

■ 66. Amend 12.402 by—

■ a. In paragraph (a):

■ i. Removing the text “commercial item” and adding “commercial product or commercial service” in its place; and

■ ii. Removing the text “commercial items” wherever it appears and adding “commercial products or commercial services” in its place;

■ b. Removing from paragraph (b) the phrase “complex commercial items or commercial items used” and adding “complex commercial products or commercial services, or commercial products or commercial services used” in its place; and

■ c. Removing from paragraph (c) “commercial items” and adding “commercial products or commercial services” in its place.

12.403 [Amended]

■ 67. Amend section 12.403 by removing from paragraphs (a), (b), and (d) the text “commercial items” wherever it appears and adding “commercial products or commercial services” in its place.

12.404 [Amended]

■ 68. Amend section 12.404 by removing from paragraph (b) introductory text the term “commercial items” and adding “commercial products” in its place.

■ 69. Revise the heading of subpart 12.5 to read as follows:

Subpart 12.5—Applicability of Certain Laws to the Acquisition of Commercial Products, Commercial Services and Commercially Available Off-the-Shelf Items

12.500 [Amended]

■ 70. Amend section 12.500 by—

■ a. Removing from paragraphs (a)(1) and (2) the term “commercial items” and adding “commercial products or commercial services” in its place;

■ b. Removing from paragraph (a)(3) the text “of COTS items” and adding “of

commercially available off-the-shelf (COTS) items” in its place; and
■ c. Removing from paragraph (b) the term “commercial items” and adding “commercial products or commercial services” in its place.

12.501 [Amended]

■ 71. Amend section 12.501 by removing from paragraphs (a) and (b) the term “commercial items” and adding “commercial products or commercial services” in its place.

12.502 [Amended]

■ 72. Amend section 12.502 by—
■ a. Removing from paragraph (a) the text “commercial items” and adding “commercial products or commercial services” in its place; and
■ b. Revising paragraph (b).

The revision reads as follows:

12.502 Procedures.

* * * * *

(b) For subcontracts for the acquisition of commercial products or commercial services, the clauses at 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Products and Commercial Services, and 52.244–6, Subcontracts for Commercial Products and Commercial Services, reflect the applicability of the laws listed in 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 products or commercial services.

* * * * *

■ 73. Amend section 12.503 by—
■ a. Revising the section heading;
■ b. Removing from paragraph (a) the text “commercial items” and adding “commercial products or commercial services” in its place;
■ c. Removing from paragraph (b) the text “commercial items” and adding “commercial products and commercial services” in its place; and
■ d. Removing from paragraph (c) the words “regards” and “commercial items” and adding “regard” and “commercial products and commercial services” in their places, respectively.

The revision reads as follows:

12.503 Applicability of certain laws to Executive agency contracts for the acquisition of commercial products and commercial services.

* * * * *

■ 74. Amend section 12.504 by—
■ a. Revising the section heading;
■ b. Removing from paragraph (a) the phrase “commercial items or commercial components” and adding

“commercial products or commercial services” in its place;

■ c. Removing from paragraph (b) the terms “Subpart 22.3” and “commercial items or commercial components” and adding “subpart 22.3” and “commercial products or commercial services” in their places, respectively; and

■ d. Removing from paragraph (c) the words “regards” and “commercial items or commercial components” and adding “regard” and “commercial products or commercial services” in their places, respectively.

The revision reads as follows:

12.504 Applicability of certain laws to subcontracts for the acquisition of commercial products and commercial services.

* * * * *

12.505 [Amended]

■ 75. Amend section 12.505 by removing from the introductory text the words “commercial items” and adding “commercial products” in its place.

■ 76. Revise the heading of subpart 12.6 to read as follows:

Subpart 12.6—Streamlined Procedures for Evaluation and Solicitation for Commercial Products and Commercial Services

■ 77. Revise section 12.601 to read as follows:

12.601 General.

(a) This subpart provides optional procedures for—

(1) Streamlined evaluation of offers for commercial products or commercial services; and

(2) Streamlined solicitation of offers for commercial products or commercial services for use where appropriate.

(b) These procedures are intended to simplify the process of preparing and issuing solicitations and evaluating offers for commercial products or commercial services consistent with customary commercial practices.

■ 78. Amend section 12.602 by—
■ a. Removing from paragraph (a):
■ i. The term “Commercial Items” and adding “Commercial Products and Commercial Services” in its place; and
■ ii. The term “commercial items” and adding “commercial products or commercial services” in its place; and
■ b. Revising paragraph (b).

The revision reads as follows:

12.602 Streamlined evaluation of offers.

* * * * *

(b) Offers shall be evaluated in accordance with the criteria contained in the solicitation. For many commercial products or commercial

services, the criteria need not be more detailed than technical (capability of the item offered to meet the agency need), price, and past performance. Technical capability may be evaluated by how well the proposed products or services meet the Government requirement instead of predetermined subfactors. Solicitations for commercial products or commercial services do not have to contain subfactors for technical capability when the solicitation adequately describes the intended use of the commercial product or commercial service. A technical evaluation would normally include examination of such things as product or service literature, product samples (if requested), technical features, and warranty provisions. Past performance shall be evaluated in accordance with the procedures in section 13.106 or subpart 15.3, as applicable. The contracting officer shall ensure the instructions provided in the provision at 52.212–1, Instructions to Offerors—Commercial Products and Commercial Services, and the evaluation criteria provided in the provision at 52.212–2, Evaluation—Commercial Products and Commercial Services, are in agreement.

* * * * *

■ 79. Amend section 12.603 by—

■ a. Revising the section heading;

■ b. Removing from paragraph (a) the term “commercial items” and adding “commercial products or commercial services” in its place;

■ c. Removing from paragraph (c)(2)(i) the terms “commercial items” and “Subpart 12.6” and adding “commercial products or commercial services” and “subpart 12.6” in their places, respectively;

■ d. Removing from paragraph (c)(2)(viii) the text “Commercial” and adding “Commercial Products and Commercial Services” in its place;

■ e. Removing from paragraphs (c)(2)(ix), (x), and (xi) the text “Commercial Items” and adding “Commercial Products and Commercial Services” in its place; and

■ f. Removing from paragraph (c)(2)(xii) the phrase “Or Executive Orders—Commercial Items” and adding “or Executive Orders—Commercial Products and Commercial Services” in its place.

The revision reads as follows:

12.603 Streamlined solicitation for commercial products or commercial services.

* * * * *

PART 13—SIMPLIFIED ACQUISITION PROCEDURES**13.000 [Amended]**

- 80. Amend section 13.000 by:
 - i. Removing the text “and commercial items” and adding “commercial products, and commercial services”; and
 - ii. Removing the text “of commercial items” wherever it appears and adding “of commercial products and commercial services” in its place.

13.003 [Amended]

- 81. Amend section 13.003 by—
 - a. Removing from paragraph (c)(1)(ii) the phrase “commercial items using Subpart” and adding “commercial products or commercial services using subpart” in its place;
 - b. Removing from paragraph (c)(2) introductory text the phrase “commercial items, the threshold in Subpart” and adding “commercial products and commercial services, the threshold in subpart” in its place;
 - c. Removing from paragraph (g)(1) the phrase “threshold for other than commercial items” and adding “threshold when acquiring other than commercial products or commercial services” in its place; and
 - d. Removing from paragraph (g)(2) the text “commercial items” and “in Parts” and adding “commercial products or commercial services” and “in parts” in their places, respectively.
- 82. Amend section 13.005 by revising paragraph (b) to read as follows:

13.005 List of laws inapplicable to contracts and subcontracts at or below the simplified acquisition threshold.

* * * * *

(b) The Federal Acquisition Regulatory Council (FAR Council) will include any law enacted after October 13, 1994, that sets forth policies, procedures, requirements, or restrictions for the acquisition of property or services, on the list set forth in paragraph (a) of this section. The FAR Council may make exceptions when it determines in writing that it is in the best interest of the Government that the enactment should apply to contracts or subcontracts not greater than the simplified acquisition threshold.

* * * * *

13.105 [Amended]

- 83. Amend section 13.105 by removing from paragraph (b) the words “commercial items” and adding “commercial products or commercial services,” in its place.

13.106–1 [Amended]

- 84. Amend section 13.106–1 by removing from paragraph (b)(2) the term “commercial items” and adding “commercial products and commercial services” in its place.

13.302–1 [Amended]

- 85. Amend section 13.302–1 by removing from paragraph (a) the term “commercial items” and adding “commercial products and commercial services” in its place.

13.302–4 [Amended]

- 86. Amend section 13.302–4 by—
 - a. Removing from paragraph (a)(1) “commercial items” and adding “commercial products and commercial services” in its place; and
 - b. Removing from paragraph (a)(2) “commercial items” and adding “commercial products or commercial services” in its place.

13.302–5 [Amended]

- 87. Amend section 13.302–5 by removing from paragraph (d)(1) the text “Commercial Items” and “commercial items” and adding “Commercial Products and Commercial Services” and “commercial products or commercial services” in their places, respectively.

13.303–5 [Amended]

- 88. Amend section 13.303–5 by removing from paragraph (b)(2) the terms “commercial item” and “Subpart 13.5” and adding “commercial product and commercial service” and “subpart 13.5” in their places, respectively.

13.303–8 [Amended]

- 89. Amend section 13.303–8 by removing “Commercial Items” and adding “Commercial Products and Commercial Services” in its place.

13.307 [Amended]

- 90. Amend section 13.307 by—
 - a. In paragraph (a):
 - i. In the paragraph heading, removing “*Commercial items*” and adding “*Commercial products and commercial services*” in its place; and
 - ii. Removing the text “Commercial Items” and adding “Commercial Products and Commercial Services” in its place; and
 - b. In paragraphs (b) and (c), removing the text “*commercial items*” and adding “*commercial products and commercial services*” in its place.
- 91. Revise the heading for subpart 13.5 to read as follows:

Subpart 13.5—Simplified Procedures for Certain Commercial Products and Commercial Services**13.500 [Amended]**

- 92. Amend section 13.500 by—
 - a. In paragraph (a), removing the terms “commercial items” and “commercial item acquisitions” and adding the terms “commercial products or commercial services” and “commercial acquisitions” in their places, respectively;
 - b. In paragraph (b), removing the text “commercial items” and adding “commercial products or commercial services” in its place; and
 - c. In paragraphs (c)(1) and (2), removing the term “commercial items” and adding in its place the term “commercial products or commercial services”.

PART 14—SEALED BIDDING**14.201–1 [Amended]**

- 93. Amend section 14.201–1 by removing from paragraph (c) the phrase “(see 4.1202(b)) or for acquisitions of commercial items” and adding “(see 4.1202(b)), or for acquisitions of commercial products and commercial services” in its place.

PART 15—CONTRACTING BY NEGOTIATION**15.204–1 [Amended]**

- 94. Amend section 15.204–1 by removing from paragraph (b) the text “commercial items” and adding “commercial products and commercial services” in its place.

15.209 [Amended]

- 95. Amend section 15.209 by removing from paragraph (b)(1)(iii) the term “commercial items” and adding “commercial products or commercial services” in its place.
- 96. Amend section 15.306 by revising paragraph (e)(2) to read as follows:

15.306 Exchanges with offerors after receipt of proposals.

* * * * *

(e) * * *

(2) Reveals an offeror’s technical solution, including—

- (i) Unique technology;
- (ii) Innovative and unique uses of commercial products or commercial services; or
- (iii) Any information that would compromise an offeror’s intellectual property to another offeror;

* * * * *

15.401 [Amended]

■ 97. Amend section 15.401 in the definition of "Subcontract" by removing the terms "commercial items" and "41 U.S.C. 3501(a)(3)" and adding "commercial products or commercial services" and "41 U.S.C. 3501(a)(2)" in their places, respectively.

■ 98. Amend section 15.403-1 by—

■ a. In paragraph (b)(3), removing the terms "commercial item" and "subsection" and adding "commercial product or commercial service" and "section" in their places, respectively;

■ b. In paragraph (b)(5), removing the terms "commercial items" and "subsection" and adding "commercial products or commercial services" and "section" in their places, respectively;

■ c. Revising the heading of paragraph (c)(3) and revising paragraph (c)(3)(i);

■ d. Removing from paragraphs (c)(3)(ii)(A) and (B) the term "commercial items" and adding "commercial services" in their places, respectively;

■ e. Revising paragraph (c)(3)(iii) introductory text;

■ f. Removing from paragraphs (c)(3)(iii)(A), (B), and (C) the text "commercial item" and adding "commercial product" in their places, respectively; and

■ g. Removing from paragraph (c)(3)(iv) the phrase "for noncommercial supplies or services treated as commercial items" and adding "for other than commercial products or services treated as commercial products or commercial services" in its place.

The revisions read as follows:

15.403-1 Prohibition on obtaining certified cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. chapter 35).

* * * * *

(c) * * *

(3) Commercial products and commercial services. (i) Any acquisition that the contracting officer determines meets the commercial product or commercial service definition in 2.101, or any modification, as defined in paragraph (3)(i) of the commercial product definition, that does not change a commercial product to other than commercial, is exempt from the requirement for certified cost or pricing data. If the contracting officer determines that a product or service claimed to be commercial is not, and that no other exception or waiver applies (e.g., the acquisition is not based on adequate price competition; the acquisition is not based on prices set by law or regulation; and the acquisition exceeds the threshold for the submission of certified cost or pricing data at 15.403-4(a)(1)), the contracting

officer shall require submission of certified cost or pricing data.

* * * * *

(iii) The following requirements apply to minor modifications defined in paragraph (3)(ii) of the definition of a commercial product at 2.101 that do not change the commercial product to other than commercial:

* * * * *

15.403-3 [Amended]

■ 99. Amend section 15.403-3 by—

■ a. Revising the heading of paragraph (c);

■ b. Removing from paragraph (c)(1) the term "commercial item" and adding "commercial product or commercial service" in its place;

■ c. Removing from the heading of paragraph (c)(2) the term "commercial products or commercial services" and adding "commercial" in its place; and

■ d. Removing from paragraphs (c)(2)(i), (ii), and (iii) the term "commercial items" and adding "commercial products or commercial services" in its place.

The revision reads as follows:

15.403-3 Requiring data other than certified cost or pricing data.

* * * * *

(c) Commercial products and commercial services. * * *

* * * * *

■ 100. Amend section 15.404-1 by—

■ a. Removing from paragraph (a)(4) the phrase "for commercial or non-commercial items";

■ b. Revising the heading of paragraph (b);

■ c. Removing from the last sentence in paragraph (b)(1) the word "item";

■ d. Removing from paragraph (b)(2)(ii) introductory text the phrase "commercial items including those "of a type" or requiring minor modifications" and adding "commercial products or commercial services including those "of a type" or when requiring minor modifications for commercial products" in its place;

■ e. Removing from paragraphs (b)(2)(ii)(C) and (e)(3) the phrase "commercial items that are "of a type" or requiring minor modifications" and adding "commercial products or commercial services that are "of a type", or requiring minor modifications for commercial products" in its place; and

■ f. Removing from paragraph (f)(2) the term "commercial items" and adding "commercial products" in its place.

The revision reads as follows:

15.404-1 Proposal analysis techniques.

* * * * *

(b) Price analysis. * * *

* * * * *

15.404-2 [Amended]

■ 101. Amend section 15.404-2 in paragraph (a)(2)(iii)(E) by removing the term "for an item" and adding its place the term "for a product or service" and removing the term "commercial item" and adding in its place the phrase "commercial product or commercial service".

15.407-2 [Amended]

■ 102. Amend section 15.407-2 by removing from paragraph (e)(1) the text "commercial items" and adding "commercial products, commercial services" in its place.

15.408 [Amended]

■ 103. Amend section 15.408 by—

■ a. Removing from paragraph (f)(1)(v) the text "commercial items" and adding "commercial products and commercial services" in its place;

■ b. Removing from paragraphs (n)(2)(i)(B)(2)(iii), (iv), and (vi) the term "commercial item" and adding "commercial product or commercial service" in its place; and

■ c. In table 15-2:

■ i. Revising the section I heading;

■ ii. Revising the section II heading;

■ iii. In paragraph (II)(A)(2), in the second sentence, removing the term "commercial items" and adding "commercial products or commercial services" in its place;

■ iv. In paragraph (II)(A)(2), in the ninth sentence, removing the term "commercial items" and adding "commercial products" in its place; and

■ v. Revising the section III heading.

The revisions read as follows:

15.408 Solicitation provisions and contract clauses.

* * * * *

Table 15-2—Instructions for Submitting Cost/Price Proposals When Certified Cost or Pricing Data Are Required

* * * * *

I. General Instructions

* * * * *

II. Cost Elements

* * * * *

III. Formats for Submission of Line Item Summaries

* * * * *

15.506 [Amended]

■ 104. Amend section 15.506 by removing from paragraph (d)(5) the phrase "commercial items, the make

and model of the item” and adding “commercial products, the make and model of the product” in its place.

■ 105. Amend section 15.601 by revising the definition of “Commercial item offer” to read as follows:

15.601 Definitions.

* * * * *

Commercial product or commercial service offer means an offer of a commercial product or commercial service that the vendor wishes to see introduced in the Government’s supply system as an alternate or a replacement for an existing supply item. This term does not include innovative or unique configurations or uses of commercial products or commercial services that are being offered for further development and that may be submitted as an unsolicited proposal.

* * * * *

15.603 [Amended]

■ 106. Amend section 15.603 by removing from paragraph (b) the term “commercial item” and adding “commercial product or commercial service” in its place.

PART 16—TYPES OF CONTRACTS

■ 107. Amend section 16.001 by adding in alphabetical order the definition of “Established price” to read as follows:

16.001 Definitions.

* * * * *

Established price means a price that—

(1) Is an established catalog or market price for a commercial product sold in substantial quantities to the general public; and

(2) Is the net price after applying any standard trade discounts offered by the contractor.

* * * * *

16.201 [Amended]

■ 108. Amend section 16.201 by removing from paragraph (a) the term “commercial items” and adding “commercial products and commercial services” in its place.

16.202–2 [Amended]

■ 109. Amend section 16.202–2 by removing from the introductory text the term “commercial items” and adding “commercial products or commercial services” in its place.

■ 110. Amend section 16.203–4 by adding paragraphs (a)(4), (b)(6), and (c)(5) to read as follows:

16.203–4 Contract clauses.

(a) * * *

(4) The contracting officer may modify the clause by increasing the 10 percent limit on aggregate increases specified in 52.216–2(c)(1), upon approval by the chief of the contracting office.

(b) * * *

(6) The contracting officer may modify the clause by increasing the 10 percent limit on aggregate increases specified in 52.216–3(c)(1), upon approval by the chief of the contracting office.

(c) * * *

(5) The contracting officer may modify the clause by increasing the 10 percent limit on aggregate increases specified in 52.216–4(c)(4), upon approval by the chief of the contracting office.

* * * * *

16.301–3 [Amended]

■ 111. Amend section 16.301–3 by removing from paragraph (b) the term “commercial items” and adding “commercial products and commercial services” in its place.

16.307 [Amended]

■ 112. Amend section 16.307 by removing from paragraph (a)(1) the term “commercial item” and adding “commercial product or commercial service” in its place.

16.506 [Amended]

■ 113. Amend section 16.506 by removing from paragraph (h) the words “See” and “commercial items” and adding “See” and “commercial products or commercial services” in their places, respectively.

■ 114. Amend section 16.601 by—

■ a. Removing from paragraph (c)(2)(ii) the term “noncommercial items” and adding “other than commercial products or commercial services” in its place;

■ b. Removing from paragraph (c)(2)(iv) the phrase “the definition of commercial item at 2.101” and adding “the definition of “commercial service”” in its place;

■ c. Removing from paragraph (d)(2) the term “commercial items” and adding “commercial products and commercial services” in its place; and

■ d. Revising the first sentence of paragraph (f)(1) and revising paragraphs (f)(2) and (3).

The revisions read as follows:

16.601 Time-and-materials contracts.

* * * * *

(f) * * * (1) The contracting officer shall insert the provision at 52.216–29, Time-and-Materials/Labor-Hour

Proposal Requirements—Other Than Commercial Acquisition With Adequate Price Competition, in solicitations contemplating use of a time-and-materials or labor-hour type of contract for the acquisition of other than commercial products or commercial services, if the price is expected to be based on adequate price competition.

* * *

(2) The contracting officer shall insert the provision at 52.216–30, Time-and-Materials/Labor-Hour Proposal Requirements—Other Than Commercial Acquisition Without Adequate Price Competition, in solicitations for the acquisition of other than commercial products or commercial services contemplating use of a time-and-materials or labor-hour type of contract if the price is not expected to be based on adequate price competition.

(3) The contracting officer shall insert the provision at 52.216–31, Time-and-Materials/Labor-Hour Proposal Requirements—Commercial Acquisition, in solicitations contemplating use of a commercial time-and-materials or labor-hour contract.

PART 18—EMERGENCY ACQUISITIONS

18.201 [Amended]

■ 115. Amend section 18.201 by removing from paragraph (e) the term “commercial items” and adding “commercial products and commercial services” in its place.

■ 116. Amend section 18.202 by—

■ a. Revising the heading for paragraph (c);

■ b. Removing from paragraph (c) the term “commercial items” and adding “commercial products or commercial services” in its place; and

■ c. Removing from paragraph (d) the term “commercial items” and adding “commercial products and commercial services” in its place.

The revision reads as follows:

18.202 Defense or recovery from certain events.

* * * * *

(c) *Commercial product or commercial service treatment.* * * *

* * * * *

PART 19—SMALL BUSINESS PROGRAMS

19.304 [Amended]

■ 117. Amend section 19.304 by removing from paragraph (b) the term “Certifications—Commercial Items” and adding “Certifications—Commercial

Products and Commercial Services” in its place.

19.701 [Amended]

■ 118. Amend section 19.701 by removing from the definition of “Commercial plan” the term “commercial items” and adding “commercial products and performance of commercial services” in its place.

19.704 [Amended]

■ 119. Amend section 19.704 by removing from paragraph (d) the terms “commercial items” and “commercial item” and adding “commercial products and commercial services” and “commercial product or commercial service” in their places, respectively.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.305 [Amended]

■ 120. Amend section 22.305 by removing from paragraph (b) the term “commercial items” and adding “commercial products and commercial services” in its place.

22.604–1 [Amended]

■ 121. Amend section 22.604–1 by removing from paragraph (a) the term “commercial items” and adding “commercial products and commercial services” in its place.

22.1302 [Amended]

■ 122. Amend section 22.1302 by removing from paragraph (b) the term “commercial items” and adding “commercial products or commercial services,” in its place.

22.1310 [Amended]

■ 123. Amend section 22.1310 by removing from paragraph (c) the term “commercial items” and adding “commercial products or commercial services” in its place.

22.1505 [Amended]

■ 124. Amend section 22.1505 by removing from paragraph (a) the terms “commercial items” and “Certifications—Commercial Items” and adding “commercial products or commercial services” and “Certifications—Commercial Products and Commercial Services” in their places, respectively.

22.1605 [Amended]

■ 125. Amend section 22.1605 by removing from paragraph (a) “commercial items” and adding “commercial products, commercial services,” in its place.

22.1801 [Amended]

■ 126. Amend section 22.1801 in the definition of “Commercially available off-the-shelf (COTS) item” by removing in paragraph (1)(i) the phrase “commercial item (as defined in paragraph (1) of the definition at 2.101” and adding “commercial product (as defined in paragraph (1) of the definition of “commercial product” at 2.101” in its place.

22.1802 [Amended]

■ 127. Amend section 22.1802 by removing from paragraph (b)(4)(i) the term “Commercial or noncommercial services” and adding “Services” in its place.

22.1803 [Amended]

■ 128. Amend section 22.1803 by removing from paragraph (c)(2) the phrase “definition of “commercial item” at 2.101” and adding “definition of “commercial product” at 2.101” in its place.

PART 23—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

23.501 [Amended]

■ 129. Amend section 23.501 by removing from paragraph (b) the term “commercial items” and adding “commercial products and commercial services” in its place.

PART 25—FOREIGN ACQUISITION

25.103 [Amended]

■ 130. Amend section 25.103 by removing from paragraph (e) the terms “*commercial item*”, “commercial item”, and “Section” and adding “*commercial product*”, “commercial product”, and “section” in their places, respectively.

25.202 [Amended]

■ 131. Amend section 25.202 by removing from paragraph (a)(4) the terms “*commercial item*”, “commercial item”, and “Section” and adding “*commercial product*”, “commercial product”, and “section” in their places, respectively.

25.703–2 [Amended]

■ 132. Amend section 25.703–2 by—
 ■ a. Removing from paragraph (b) introductory text the phrase “of this subsection” and adding “of this section” in its place; and
 ■ b. Removing from paragraph (b)(1) the term “commercial items” and adding

“commercial products and commercial services” in its place.

25.1001 [Amended]

■ 133. Amend section 25.1001 by removing from paragraph (a) the text “Executive Orders—Commercial Items” and adding “Executive Orders—Commercial Products and Commercial Services” in its place.

25.1101 [Amended]

■ 134. Amend section 25.1101 by—
 ■ a. In paragraph (a)(1)(i), removing the word “Subpart” and adding “subpart” in its place;
 ■ b. In paragraph (a)(1)(ii), removing the term “commercial item” and adding “commercial product” in its place; and
 ■ c. In paragraph (b)(1)(i)(B), removing the term “commercial item” and adding “commercial product” in its place.
 ■ 135. Amend section 25.1103 by revising paragraph (d) to read as follows:

25.1103 Other provisions and clauses.

* * * * *

(d) The contracting officer shall include in each solicitation for the acquisition of other than commercial products or commercial services the provision at 52.225–20, Prohibition on Conducting Restricted Business Operations in Sudan—Certification.

* * * * *

PART 26—OTHER SOCIOECONOMIC PROGRAMS

26.206 [Amended]

■ 136. Amend section 26.206 by removing from paragraph (a) the term “commercial items” and adding “commercial products and commercial services” in its place.

PART 27—PATENTS, DATA, AND COPYRIGHTS

27.102 [Amended]

■ 137. Amend section 27.102 by removing from paragraph (c) the term “commercial items” and adding “commercial products and commercial services” in its place.

27.201–1 [Amended]

■ 138. Amend section 27.201–1 by removing from paragraph (d) the term “commercial items” and adding “commercial products or commercial services” in its place, and by removing “FAR”.

27.201–2 [Amended]

■ 139. Amend section 27.201–2 by—
 ■ a. Removing from paragraph (c)(1) the term “commercial items” and adding

“commercial products or the provision of commercial services” in its place; and

■ b. Removing from paragraph (c)(2)(i) the term “commercial items” and adding “commercial products or the provision of services that are not commercial services” in its place.

PART 28—BONDS AND INSURANCE

28.106–4 [Amended]

■ 140. Amend section 28.106–4 by removing from paragraph (b) the words “Section”, “Pub. L.” wherever it appears, “Sections”, and “commercial items as defined in Subpart” and adding “section”, “Public Law”, “sections”, and “commercial products or commercial services as defined in subpart” in their places, respectively.

28.106–6 [Amended]

■ 141. Amend section 28.106–6 in paragraph (d) introductory text by:

■ a. Removing the term “Pub. L.” wherever it appears and adding in its place “Public Law”;

■ b. Removing the word “Sections” and adding in its place “sections”; and

■ c. Removing the phrase “commercial items as defined in Subpart” and adding in its place “commercial products or commercial services as defined in subpart”.

PART 29—TAXES

29.402–3 [Amended]

■ 142. Amend section 29.402–3 by removing from paragraph (a) introductory text the terms “FAR part 12” and “commercial items” and adding “part 12” and “commercial products and commercial services” in their places, respectively.

PART 30—COST ACCOUNTING STANDARDS ADMINISTRATION

30.201–5 [Amended]

■ 143. Amend section 30.201–5 by:

■ a. In paragraph (b)(1) introductory text, removing the text “\$15,000,000” and adding “\$15 million” in its place; and

■ b. In paragraph (b)(1)(i), removing the term “commercial items” and adding in its place “commercial products or commercial services”.

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

31.205–26 [Amended]

■ 144. Amend section 31.205–26 by removing from paragraph (f) introductory text the phrases “commercial item” and “subsection is transferred” and adding “commercial

product or commercial service” and “section is sold or transferred” in their places, respectively.

PART 32—CONTRACT FINANCING

32.000 [Amended]

■ 145. Amend section 32.000 by removing from paragraph (g) the term “commercial items” and adding “commercial products and commercial services” in its place.

32.002 [Amended]

■ 146. Amend section 32.002 by—

■ a. Removing from paragraph (b) the terms “Commercial Item” and “commercial items” and adding “Commercial Product and Commercial Service” and “commercial products and commercial services” in their places, respectively;

■ b. Removing from paragraph (c)(1) the term “Non-Commercial Item Purchase Financing” and adding “Financing for Other Than a Commercial Purchase” in its place; and

■ c. Removing from paragraph (c)(2) the words “For Non-Commercial Items” and adding “for Other Than Commercial Acquisitions” in its place.

32.005 [Amended]

■ 147. Amend section 32.005 by removing from paragraph (c) the term “for Non-Commercial Items” and adding “for Other Than Commercial Acquisitions” in its place.

■ 148. Revise the heading of subpart 32.1 to read as follows:

Subpart 32.1 Financing for Other Than a Commercial Purchase

32.100 [Amended]

■ 149. Amend section 32.100 by removing the text “commercial items” and adding “commercial products or commercial services” in its place.

32.110 [Amended]

■ 150. Amend section 32.110 by removing from paragraph (a) the term “commercial item” and adding “commercial product or commercial service” in its place.

32.112 [Amended]

■ 151. Amend section 32.112 by revising the section heading to read as follows:

32.112 Nonpayment of subcontractors under contracts other than for commercial products and commercial services.

* * * * *

■ 152. Amend section 32.112–2 by revising paragraph (a) introductory text to read as follows:

32.112–2 Subcontractor requests for information.

(a) In accordance with section 806(a)(1) of Public Law 102–190, as amended by sections 2091 and 8105 of Public Law 103–355 (10 U.S.C. 2302 note), upon the request of a subcontractor or supplier under a Federal contract other than for a commercial product or commercial service, the contracting officer shall promptly advise the subcontractor or supplier as to—

* * * * *

■ 153. Revise the heading of subpart 32.2 to read as follows:

Subpart 32.2 Commercial Product and Commercial Service Purchase Financing

32.201 [Amended]

■ 154. Amend section 32.201 by removing the text “commercial items” and adding “commercial products or commercial services” in its place.

32.202–1 [Amended]

■ 155. Amend section 32.202–1 by—

■ a. Removing from paragraph (a) the term “commercial items” and adding “commercial products or commercial services” in its place; and

■ b. In paragraph (c):

■ i. Removing the term “non-commercial” and adding “other than commercial” in its place; and

■ ii. Removing the term “non-commercial” wherever it appears and adding “other than commercial” in its place.

32.202–2 [Amended]

■ 156. Amend section 32.202–2 by—

■ a. Revising the section heading; and

■ b. Removing from the definition of “Commercial advance payment” the word “subsection” and the term “for Non-Commercial Items” and adding “section” and “for Other Than Commercial Acquisitions” in their places, respectively.

The revision reads as follows:

32.202–2 Types of payments for commercial product and commercial service purchases.

* * * * *

32.202–4 [Amended]

■ 157. Amend section 32.202–4 by removing from paragraph (a)(2) the term “Commercial Items” and adding “Commercial Products and Commercial Services” in its place.

32.206 [Amended]

■ 158. Amend section 32.206 by—

■ a. Removing the term “Commercial Items” wherever it appears and adding

“Commercial Products and Commercial Services” in its place;

■ b. Removing from paragraph (f) “non-commercial” and adding “other than commercial” in its place; and

■ c. Removing from paragraph (g) heading “*commercial items*” and adding “*commercial products and commercial services*” in its place.

■ 159. Revise the heading of subpart 32.4 to read as follows:

Subpart 32.4 Advance Payments for Other Than Commercial Acquisitions

32.504 [Amended]

■ 160. Amend section 32.504 by removing from paragraphs (a), (b), and (g) the term “commercial item” and adding “commercial product or commercial service” in its place.

32.601 [Amended]

■ 161. Amend section 32.601 by removing from paragraphs (b)(3) and (10) the term “commercial item financing” and adding “financing of commercial products or commercial services” in its place.

32.904 [Amended]

■ 162. Amend section 32.904 by removing from paragraph (b)(1)(ii)(B)(4) the phrase “commercial item, including a brand-name commercial item for” and adding “commercial product or commercial service, including a brand-name commercial product for” in its place.

32.908 [Amended]

■ 163. Amend section 32.908 by—
 ■ a. Removing from paragraph (c) introductory text the term “Commercial Items” and adding “Commercial Products and Commercial Services” in its place; and

■ b. Removing from paragraph (c)(1) the terms “commercial item” and “commercial item for” and adding “commercial product or commercial service” and “commercial product for” in their places, respectively.

PART 37—SERVICE CONTRACTING

37.601 [Amended]

■ 164. Amend section 37.601 by removing paragraph (c).

PART 38—FEDERAL SUPPLY SCHEDULE CONTRACTING

38.101 [Amended]

■ 165. Amend section 38.101 by removing from paragraph (a) the phrase “commercial supplies and services” and adding “commercial supplies and commercial services” in its place.

PART 39—ACQUISITION OF INFORMATION TECHNOLOGY

■ 166. Amend section 39.203 by revising paragraph (d) to read as follows:

39.203 Applicability.

* * * * *

(d) *Commercial products and commercial services.* When acquiring commercial products and commercial services, an agency must comply with those ICT accessibility standards that can be met with supplies or services that are available in the commercial marketplace and that best address the agency’s needs, but see 39.205(a)(3).

* * * * *

■ 167. Amend section 39.205 by revising paragraphs (a)(3) and (c)(3) introductory text to read as follows:

39.205 Exemptions.

(a) * * *

(3) *Nonavailability of conforming commercial products and commercial services.* Where there are no commercial products and commercial services that fully conform to the ICT accessibility standards, the agency shall procure the supplies or service available in the commercial marketplace that best meets the ICT accessibility standards consistent with the agency’s needs.

* * * * *

(c) * * *

(3) *Nonavailability of conforming commercial products and commercial services.* A determination of commercial products and commercial services nonavailability shall include—

* * * * *

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

42.709–1 [Amended]

■ 168. Amend section 42.709–1 by removing from paragraph (b) the term “commercial items” and adding “commercial products or commercial services” in its place.

42.709–7 [Amended]

■ 169. Amend section 42.709–7 by removing the text “commercial items” and adding “commercial products or commercial services” in its place.

42.1305 [Amended]

■ 170. Amend section 42.1305 by removing from paragraph (c) the text “modified-commercial items” wherever it appears and adding “modified-commercial products” in its place.

PART 43—CONTRACT MODIFICATIONS

43.105 [Amended]

■ 171. Amend section 43.105 by removing from paragraph (c) the phrase “commercial items, including commercially available off-the-shelf items” and adding “commercial products, including commercially available off-the-shelf items, and commercial services” in its place.

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

44.000 [Amended]

■ 172. Amend section 44.000 by removing from paragraph (b) the term “commercial items” and adding “commercial products or commercial services” in its place.

44.302 [Amended]

■ 173. Amend section 44.302 by removing from paragraph (a) the terms “commercial items” and “Part 12” and adding “commercial products and commercial services” and “part 12” in their places, respectively.

44.303 [Amended]

■ 174. Amend section 44.303 by removing from the introductory text the term “commercial items” and adding “commercial products and commercial services” in its place.

■ 175. Revise the heading for subpart 44.4 to read as follows:

Subpart 44.4 Subcontracts for Commercial Products and Commercial Services

44.400 [Amended]

■ 176. Amend section 44.400 by removing the text “commercial items or commercial components” and adding “commercial products, including commercial components, or commercial services” in its place.

44.402 [Amended]

■ 177. Amend section 44.402 by—
 ■ a. Removing from paragraph (a)(1) the words “commercial items” and adding “commercial products, commercial services,” in its place;

■ b. Removing from paragraph (a)(2) introductory text the phrase “commercial items or commercial components” and adding “commercial products or commercial services” in its place;

■ c. Removing from paragraph (a)(2)(i) the phrase “executive orders applicable to subcontractors furnishing commercial items or commercial components” and adding “Executive orders applicable to

subcontractors furnishing commercial products or commercial services” in its place;

■ d. Removing from paragraph (b) the terms “Commercial Items” and “commercial items or commercial components” and adding “Commercial Products and Commercial Services” and “commercial products or commercial services” in their places, respectively; and

■ e. Removing from paragraph (c) the words “commercial items” and adding “commercial products and commercial services” in its place.

44.403 [Amended]

■ 178. Amend section 44.403 by removing the terms “Commercial Items” and “commercial items” and adding “Commercial Products and Commercial Services” and “commercial products or commercial services” in their places, respectively.

PART 46—QUALITY ASSURANCE

46.102 [Amended]

■ 179. Amend section 46.102 by—

■ a. Removing from paragraph (b) the phrase “services tendered” and adding “services (including commercial services) tendered” in its place; and

■ b. Removing from paragraph (f) the phrases “commercial items shall” and “commercial item” and adding “commercial products” and “commercial product” in their places, respectively.

■ 180. Revise section 46.202–1 to read as follows:

46.202–1 Contracts for commercial products and commercial services.

When acquiring commercial products (see part 12), the Government shall rely on contractors’ existing quality assurance systems as a substitute for Government inspection and testing before tender for acceptance unless customary market practices for the commercial product being acquired include in-process inspection. Any in-process inspection by the Government shall be conducted in a manner consistent with commercial practice. The Government shall rely on the contractor to accomplish all inspection and testing needed to ensure that commercial services acquired conform to contract requirements before they are tendered to the Government.

46.317 [Amended]

■ 181. Amend section 46.317 by removing from paragraph (b)(1) the term “Commercial items” and adding “Commercial products and commercial services” in its place.

■ 182. Amend section 46.706 by—

■ a. Removing from paragraph (b)(1)(iii) the term “commercial items” and adding “commercial products and commercial services” in its place; and

■ b. Revising paragraph (b)(5).

The revision reads as follows:

46.706 Warranty terms and conditions.

* * * * *

(b) * * *

(5) *Markings.* (i) The packaging and preservation requirements of the contract shall require the contractor to stamp or mark the supplies delivered or otherwise furnish notice with the supplies of the existence of the warranty. The purpose of the markings or notice is to inform Government personnel who store, stock, or use the supplies that the supplies are under warranty. Markings may be brief but should include—

(A) A brief statement that a warranty exists;

(B) The substance of the warranty;

(C) Its duration; and

(D) Who to notify if the supplies are found to be defective.

(ii) For commercial products (see 46.709), the contractor’s trade practice in warranty marking is acceptable if sufficient information is presented for supply personnel and users to identify warranted supplies.

* * * * *

■ 183. Amend section 46.709 by:

■ a. Revising the section heading; and

■ b. Removing the term “commercial items” and adding “commercial products and commercial services” in its place.

The revision reads as follows:

46.709 Warranties of commercial products and commercial services.

* * * * *

46.710 [Amended]

■ 184. Amend section 46.710 by removing from the introductory text the term “commercial items” and adding “commercial products and commercial services” in its place.

■ 185. Amend section 46.801 by revising paragraph (a) to read as follows:

46.801 Applicability.

(a) This subpart does not apply to commercial products and commercial services. This subpart applies to contracts other than those for—

(1) Information technology, including telecommunications;

(2) Construction;

(3) Architect-engineer services; and

(4) Maintenance and rehabilitation of real property.

* * * * *

PART 47—TRANSPORTATION

47.405 [Amended]

■ 186. Amend section 47.405 by removing the quote marks in the first sentence, and by removing in the second sentence “commercial items” and adding “commercial products” in its place.

47.504 [Amended]

■ 187. Amend section 47.504 by:

■ a. In paragraph (d) introductory text, removing the phrase “commercial items or commercial components” and adding “commercial products, including commercial components, or commercial services” in its place; and

■ b. In paragraph (d)(4) introductory text, removing the term “commercial items” and adding “commercial products” in its place.

47.507 [Amended]

■ 188. Amend section 47.507 by removing from paragraph (a)(3) the terms “*Alternate I*” and “commercial items” and adding “*Alternate II*” and “commercial products” in their places, respectively.

PART 49—TERMINATION OF CONTRACTS

49.002 [Amended]

■ 189. Amend section 49.002 in paragraph (a)(2) by:

■ a. Removing the term “commercial item” and adding in its place “commercial product and commercial service”;

■ b. Removing the term “commercial items” wherever it appears and adding in its place “commercial products and commercial services”; and

■ c. Removing the term “Commercial Items” and adding “Commercial Products and Commercial Services” in its place.

49.501 [Amended]

■ 190. Amend section 49.501 by removing the text “Commercial Items” and adding “Commercial Products and Commercial Services” in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 191. Amend section 52.203–6 by:

■ a. Revising the date of *Alternate I*; and

■ b. Removing from paragraph (b) of *Alternate I* the terms “commercial items” and “commercial item(s)” and adding “commercial products or commercial services” and “commercial product(s) and commercial service(s)” in their places, respectively.

The revision reads as follows:

52.203–6 Restrictions on Subcontractor Sales to the Government.

* * * * *
Alternate I (NOV 2021). * * *
* * * * *

- 192. Amend section 52.203–13 by:
■ a. Revising the date of the clause; and
■ b. Removing from paragraph (c) the term “commercial item” and adding “commercial product or commercial service” in its place.

The revision reads as follows:

52.203–13 Contractor Code of Business Ethics and Conduct.

* * * * *

Contractor Code of Business Ethics and Conduct (NOV 2021)

* * * * *

- 193. Amend section 52.203–14 by:
■ a. Revising the date of the clause; and
■ b. Removing from paragraph (d)(1) the term “commercial item” and adding “commercial product or commercial service” in its place.

The revision reads as follows:

52.203–14 Display of Hotline Poster(s).

* * * * *

Display of Hotline Poster(s) (NOV 2021)

* * * * *

- 194. Amend section 52.204–8 by:
■ a. Revising the date of the provision; and
■ b. Removing from paragraph (c)(1)(xvi) the term “commercial items” and adding “commercial products or commercial services” in its place.

The revision reads as follows:

52.204–8 Annual Representations and Certifications.

* * * * *

Annual Representations and Certifications (NOV 2021)

* * * * *

- 195. Amend section 52.204–21 by:
■ a. Revising the date of the clause; and
■ b. Removing from paragraph (c) the term “commercial items” and adding “commercial products or commercial services” in its place.

The revision reads as follows:

52.204–21 Basic Safeguarding of Covered Contractor Information Systems.

* * * * *

Basic Safeguarding of Covered Contractor Information Systems (NOV 2021)

* * * * *

- 196. Amend section 52.204–23 by:
■ a. Revising the date of the clause; and
■ b. Removing from paragraph (d) the phrases “in all subcontracts,” and

“commercial items” and adding “in all subcontracts” and “commercial products or commercial services” in their places, respectively.

The revision reads as follows:

52.204–23 Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities.

* * * * *

Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (NOV 2021)

* * * * *

- 197. Amend section 52.204–24 by:
■ a. Revising the date of the clause; and
■ b. Removing from the introductory paragraph the term “Commercial Items” and adding “Commercial Products and Commercial Services” in its place.

The revision reads as follows:

52.204–24 Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment.

* * * * *

Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment (NOV 2021)

* * * * *

- 198. Amend section 52.204–25 by:
■ a. Revising the date of the clause; and
■ b. Removing from paragraph (e) the term “commercial items” and adding “commercial products or commercial services” in its place.

The revision reads as follows:

52.204–25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

* * * * *

Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (NOV 2021)

* * * * *

- 199. Amend section 52.209–6 by—
■ a. Revising the date of the clause;
■ b. Removing from paragraph (a) introductory text the word “item” and adding “item” in its place;
■ c. Removing from paragraph (a)(1)(i) the phrase “commercial item (as defined in paragraph (1) of the definition in” and adding “commercial product (as defined in paragraph (1) of the definition of “commercial product” in” in its place; and
■ d. Removing from paragraph (e) the term “commercial items” and adding “commercial products or commercial services” in its place.

The revision reads as follows:

52.209–6 Protecting the Government’s Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment.

* * * * *

Protecting the Government’s Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment (NOV 2021)

* * * * *

- 200. Amend section 52.209–13 by:
■ a. Revising the date of the provision; and
■ b. Removing from paragraph (a) the phrase “commercial items as defined at FAR 2.101” and adding “commercial products and commercial services as defined in Federal Acquisition Regulation 2.101” in its place.

The revision reads as follows:

52.209–13 Violation of Arms Control Treaties or Agreements—Certification.

* * * * *

Violation of Arms Control Treaties or Agreements—Certification (NOV 2021)

* * * * *

- 201. Amend section 52.209–14 by:
■ a. Revising the date of the clause; and
■ b. Removing from paragraph (d)(1) the term “commercial items” and adding “commercial products and commercial services” in its place.

The revision reads as follows:

52.209–14 Reserve Officer Training Corps and Military Recruiting on Campus.

* * * * *

Reserve Officer Training Corps and Military Recruiting on Campus (NOV 2021)

* * * * *

- 202. Amend section 52.210–1 by—
■ a. Revising the date of the clause;
■ b. Revising paragraph (a);
■ c. Revising the introductory text of paragraph (b);
■ d. Removing from the introductory text of paragraph (b)(1) the phrase “commercial items or, to the extent commercial items” and adding “commercial products, commercial services, or, to the extent commercial products” in its place; and
■ e. Removing from paragraph (b)(2) the term “commercial items” and adding “commercial products, commercial services,” in its place.

The revisions read as follows:

52.210–1 Market Research.

* * * * *

Market Research (NOV 2021)

(a) *Definition.* As used in this clause—

Commercial product, commercial service, and nondevelopmental item have the meaning contained in Federal Acquisition Regulation (FAR) 2.101.

(b) Before awarding subcontracts for other than commercial acquisitions, where the subcontracts are over the simplified acquisition threshold, as defined in FAR 2.101 on the date of subcontract award, the Contractor shall conduct market research to—

* * * * *

- 203. Amend section 52.212–1 by—
 - a. Revising the section heading;
 - b. Revising the heading and date of the provision;
 - c. Removing from paragraph (b)(8) the term “FAR 52.212–3” and adding “Federal Acquisition Regulation (FAR) 52.212–3” in its place;
 - d. Removing from paragraph (e) the phrase “subpart 4.10 of the Federal Acquisition Regulation” and “commercial items” and adding “FAR subpart 4.10” and “commercial products or commercial services” in their places, respectively; and
 - e. Removing from paragraph (l)(5) the phrase “commercial items, the make and model of the item” and adding “commercial products, the make and model of the product” in its place.

The revisions read as follows:

52.212–1 Instructions to Offerors—Commercial Products and Commercial Services.

* * * * *

Instructions to Offerors—Commercial Products and Commercial Services (NOV 2021)

* * * * *

- 204. Amend section 52.212–2 by revising the section heading and the heading and date of the provision to read as follows:

52.212–2 Evaluation—Commercial Products and Commercial Services.

* * * * *

Evaluation—Commercial Products and Commercial Services (NOV 2021)

* * * * *

- 205. Amend section 52.212–3 by—
 - a. Revising the section heading;
 - b. Revising the heading and date of the provision; and
 - c. Removing from paragraph (b)(2) the term “Commercial Items” and adding “Commercial Products and Commercial Services” in its place.

The revisions read as follows:

52.212–3 Offeror Representations and Certifications—Commercial Products and Commercial Services.

* * * * *

Offeror Representations and Certifications—Commercial Products and Commercial Services (NOV 2021)

* * * * *

- 206. Amend section 52.212–4 by—
 - a. Revising the section heading;
 - b. Revising the heading and date of the clause;
 - c. Removing from paragraph (d) the term “FAR” and adding “Federal Acquisition Regulation (FAR)” in its place;
 - d. Removing from paragraph (i)(6)(vii) the phrase “32.608–2 of the Federal Acquisition Regulation” and adding “FAR 32.608–2” in its place;
 - e. Revising the date of Alternate I;
 - f. Removing from the introductory text of paragraph (i)(1)(ii)(A) of Alternate I the words “commercial item at” and adding “commercial product at FAR” in its place; and
 - g. Removing from paragraph (i)(6)(vii) of Alternate I the phrase “32.608–2 of the Federal Acquisition Regulation” and adding “FAR 32.608–2” in its place.

The revisions read as follows:

52.212–4 Contract Terms and Conditions—Commercial Products and Commercial Services.

* * * * *

Contract Terms and Conditions—Commercial Products and Commercial Services (NOV 2021)

* * * * *

Alternate I (NOV 2021). * * *

* * * * *

- 207. Amend section 52.212–5 by—
 - a. Revising the section heading;
 - b. Revising the heading and date of the clause;
 - c. Removing from paragraph (a) introductory text the term “commercial items” and adding “commercial products and commercial services” in its place;
 - d. Removing from paragraph (a)(2) the date “(JUL 2018)” and adding “(NOV 2021)” in its place;
 - e. Removing from paragraph (a)(3) the date “(AUG 2020)” and adding “(NOV 2021)” in its place;
 - f. In paragraph (b) introductory text:
 - i. Removing the term “commercial items” and adding “commercial products and commercial services” in its place; and
 - ii. Removing the phrase “[Contracting Officer check as appropriate.]” and adding in its place “[Contracting Officer check as appropriate.]”;
 - g. Removing from paragraph (b)(1) the date “(OCT 1995)” and adding “(NOV 2021)” in its place;
 - h. Removing from paragraph (b)(2) the date “(JUN 2020)” and adding “(NOV 2021)” in its place;

- i. Removing from paragraph (b)(8) the date “(JUN 2020)” and adding “(NOV 2021)” in its place;
- j. Removing from paragraph (b)(17)(i) the date “(SEP 2021)” and adding “(NOV 2021)” in its place;
- k. Removing from paragraph (b)(35)(i) the date “(OCT 2020)” and adding “(NOV 2021)” in its place;
- l. In paragraph (b)(36):
 - i. Removing the date “(OCT 2015)”, and adding (NOV 2021) in its place; and
 - ii. Removing the terms “commercial items” and “22.1803” and adding “commercial products or commercial services” and “FAR 22.1803” in their places, respectively;
- m. Removing from paragraph (b)(48) the date “(JAN 2021)” and adding “(NOV 2021)” in its place;
- n. Removing from paragraph (b)(49)(i) the date “(JAN 2021)” and adding “(NOV 2021)” in its place;
- o. Removing from paragraph (b)(56) the term “Commercial Items” and date “(FEB 2002)” and adding “Commercial Products and Commercial Services” and “(NOV 2021)” in their places, respectively;
- p. Removing from paragraph (b)(57) the term “Commercial Items” and date “(JAN 2017)” and adding “Commercial Products and Commercial Services” and “(NOV 2021)” in their places, respectively;
- q. Removing from paragraph (b)(63)(i) the date “(FEB 2006)” and adding “(NOV 2021)” in its place;
- r. Removing from paragraph (b)(63)(iii) the date “(FEB 2006)” and adding “(NOV 2021)” in its place;
- s. Removing from paragraph (c) introductory text the term “commercial items” and phrase “[Contracting Officer check as appropriate.]” and adding “commercial products and commercial services” and “[Contracting Officer check as appropriate.]” in their places, respectively;
- t. Removing from paragraph (e)(1) introductory text the term “commercial items” and adding “commercial products or commercial services” in its place;
- u. Removing from paragraph (e)(1)(i) the date “(JUN 2020)” and adding “(NOV 2021)” in its place;
- v. Removing from paragraph (e)(1)(iii) the date “(JUL 2018)” and adding “(NOV 2021)” in its place;
- w. Removing from paragraph (e)(1)(iv) the date “(AUG 2020)” and adding “(NOV 2021)” in its place;
- x. Removing from paragraph (e)(1)(xiii)(A) the date “(OCT 2020)” and adding “(NOV 2021)” in its place;
- y. Removing from paragraph (e)(1)(xvi) the date “(OCT 2015)” and adding “(NOV 2021)” in its place;

- z. Removing from paragraph (e)(1)(xxii) the date “(FEB 2006)” and adding “(NOV 2021)” in its place;
- aa. Removing from paragraph (e)(2) the phrase “May include in its subcontracts for commercial items” and adding “may include in its subcontracts for commercial products and commercial services” in its place;
- bb. Revising the date of Alternate II;
- cc. Removing from the introductory text of paragraph (e)(1) of Alternate II the term “commercial items” and adding “commercial products or commercial services” in its place;
- dd. Removing from paragraph (e)(1)(ii)(A) of Alternate II the date “(JUN 2020)” and adding “(NOV 2021)” in its place;
- ee. Removing from paragraph (e)(1)(ii)(C) of Alternate II the date “(JUL 2018)” and adding “(NOV 2021)” in its place;
- ff. Removing from paragraph (e)(1)(ii)(D) of Alternate II the date “(AUG 2020)” and adding “(NOV 2021)” in its place;
- gg. Removing from paragraph (e)(1)(ii)(L)(1) of Alternate II the date “(OCT 2020)” and adding “(NOV 2021)” in its place;
- hh. Removing from paragraph (e)(1)(ii)(O) of Alternate II the date “(OCT 2015)” and adding “(NOV 2021)” in its place; and
- ii. Removing from paragraph (e)(1)(ii)(U) of Alternate II the date “(FEB 2006)” and adding “(NOV 2021)” in its place.

The revisions read as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services (NOV 2021)

* * * * *
Alternate II (NOV 2021) * * *
* * * * *

- 208. Amend section 52.213–4 by—
- a. Revising the section heading;
- b. Revising the heading and date of the clause;
- c. Removing from paragraph (a)(1)(ii) the date “(JUL 2018)” and adding in its place “(NOV 2021)”;
- d. Removing from paragraph (a)(1)(iii) the date “(AUG 2020)” and adding in its place “(NOV 2021)”;
- e. Removing from paragraph (a)(2)(vi) the date “(DEC 2013)” and adding in its place “(NOV 2021)”;
- f. In paragraph (a)(2)(viii):

- i. Removing the term “Commercial Items” and adding in its place “Commercial Products and Commercial Services”; and
- ii. Removing the date “(JUL 2021)” and adding “(NOV 2021)” in its place;
- g. Removing from paragraph (b)(1)(viii)(A) the date “(OCT 2020)” and adding in its place “(NOV 2021)”;
- h. Removing from paragraph (b)(1)(xvii) the date “(JAN 2021)” and adding in its place “(NOV 2021)”;
- i. Removing from paragraph (b)(1)(xxi) the date “(FEB 2006)” and adding in its place “(NOV 2021)”;
- j. In paragraph (b)(2)(i):
- i. Removing the date “(JUN 2016)” and adding in its place “(NOV 2021)”;
- and
- ii. Removing the phrase “its information system.” and adding “its information system.” in its place; and
- k. Removing from paragraph (b)(2)(ii) the date “(JUN 2020)” and adding in its place “(NOV 2021)”.

The revisions read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services) (NOV 2021)

* * * * *

- 209. Amend section 52.215–1 by—
- a. Revising the heading and date of the provision; and
- b. Removing from paragraph (f)(11)(v) “commercial items, the make and model of the item” and adding “commercial products, the make and model of the product” in its place.

The revisions read as follows:

52.215–1 Instructions to Offerors—Competitive Acquisition.

* * * * *

Instructions to Offerors—Competitive Acquisition (NOV 2021)

* * * * *

- 210. Amend section 52.215–14 by—
- a. Revising the date of the clause; and
- b. Removing from paragraph (c) the term “commercial items” and adding “commercial products and commercial services” in its place.

The revision reads as follows:

52.215–14 Integrity of Unit Prices.

* * * * *

Integrity of Unit Prices (NOV 2021)

* * * * *

- 211. Amend section 52.215–20 by—

- a. Revising the date of the provision; and
- b. Removing from paragraph (a)(1)(ii) the terms “Commercial item” and “commercial item” and adding “Commercial product and commercial service” and “commercial product and commercial service” in their places, respectively.

The revision reads as follows:

52.215–20 Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data.

* * * * *

Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data (NOV 2021)

* * * * *

- 212. Amend section 52.215–21 by—
- a. Revising the date of the clause;
- b. Removing from the introductory text of paragraph (a)(1)(ii) the term “commercial items” and adding “commercial products or commercial services” in its place;
- c. Removing from paragraph (a)(1)(ii)(A)(1) the term “commercial item” and adding “commercial product or commercial service” in its place;
- d. Removing from paragraph (a)(1)(ii)(A)(2) the phrase “commercial item to a contract or subcontract for the acquisition of an item other than a commercial item” and adding “commercial product or commercial service, to a contract or subcontract for the acquisition of other than a commercial product or commercial service” in its place;
- e. Redesignating paragraph (a)(1)(ii)(B) as paragraph (a)(1)(ii)(B); and
- f. Removing from newly redesignated paragraph (a)(1)(ii)(B) the term “commercial item” and adding “commercial product and commercial service” in its place.

The revision reads as follows:

52.215–21 Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—Modifications.

* * * * *

Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—Modifications (NOV 2021)

* * * * *

- 213. Amend section 52.216–2 by—
- a. Revising the introductory text;
- b. Revising the date of the clause; and
- c. Removing from paragraph (a) the term “commercial item” and adding “commercial product” in its place.

The revisions read as follows:

52.216-2 Economic Price Adjustment—Standard Supplies.

As prescribed in 16.203-4(a), insert the following clause:

* * * * *

Economic Price Adjustment—Standard Supplies (NOV 2021)

* * * * *

- 214. Amend section 52.216-3 by—
- a. Revising the introductory text;
- b. Revising the date of the clause; and
- c. Removing from paragraph (a) the term “commercial item” and adding “commercial product” in its place.

The revisions read as follows:

52.216-3 Economic Price Adjustment—Semistandard Supplies.

As prescribed in 16.203-4(b), insert the following clause:

* * * * *

Economic Price Adjustment—Semistandard Supplies (NOV 2021)

* * * * *

- 215. Amend section 52.216-4 by revising the introductory text to read as follows:

52.216-4 Economic Price Adjustment—Labor and Material.

As prescribed in 16.203-4(c), insert the following clause:

* * * * *

- 216. Amend section 52.216-29 by revising the section heading and the heading and date of the provision to read as follows:

52.216-29 Time-and-Materials/Labor-Hour Proposal Requirements—Other Than Commercial Acquisition With Adequate Price Competition.

* * * * *

Time-and-Materials/Labor-Hour Proposal Requirements—Other Than Commercial Acquisition With Adequate Price Competition (NOV 2021)

* * * * *

- 217. Amend section 52.216-30 by—
- a. Revising the section heading;
- b. Revising the heading and date of the provision; and
- c. Removing from paragraph (d) the phrase “commercial item at 2.101” and adding ““commercial service” at Federal Acquisition Regulation 2.101” in its place.

The revisions read as follows:

52.216-30 Time-and-Materials/Labor-Hour Proposal Requirements—Other Than Commercial Acquisition Without Adequate Price Competition.

* * * * *

Time-and-Materials/Labor-Hour Proposal Requirements—Other Than Commercial Acquisition Without Adequate Price Competition (NOV 2021)

* * * * *

- 218. Amend section 52.216-31 by revising the section heading and the heading and date of the provision to read as follows:

52.216-31 Time-and-Materials/Labor-Hour Proposal Requirements—Commercial Acquisition.

* * * * *

Time-and-Materials/Labor-Hour Proposal Requirements—Commercial Acquisition (NOV 2021)

* * * * *

- 219. Amend section 52.219-9 by—
- a. Revising the date of the clause;
- b. Removing from paragraph (b) the definition of “Commercial item”;
- c. Removing from the definition of “Commercial plan” the term “commercial items” and adding “commercial products and commercial services” in its place;
- d. Adding, in alphabetical order, the definitions “Commercial product” and “Commercial service”;
- e. Removing from paragraph (g) the terms “commercial items” and “commercial item” and adding “commercial products and commercial services” and “commercial product or commercial service” in their places, respectively; and
- f. In paragraph (j):
- i. Removing the term “52.212-5” and adding in its place “FAR 52.212-5”;
- ii. Removing the term “Commercial Items” wherever it appears and adding in its place “Commercial Products and Commercial Services”;
- iii. Removing the term “commercial item” and adding in its place “commercial product or commercial service”; and
- iv. Removing the term “52.244-6” and adding “FAR 52.244-6” in its place.

The additions and revisions read as follows:

52.219-9 Small Business Subcontracting Plan.

* * * * *

Small Business Subcontracting Plan (NOV 2021)

* * * * *

(b) * * *

Commercial product means a product that satisfies the definition of “commercial product” in Federal Acquisition Regulation (FAR) 2.101.

Commercial service means a service that satisfies the definition of “commercial service” in FAR 2.101.

* * * * *

- 220. Amend section 52.222-50 by—
- a. Revising the date of the clause; and
- b. In paragraph (a), in the definition of “Commercially available off-the-shelf (COTS) item”:
- i. Removing the word “means” in the introductory text; and
- ii. Revising paragraph (1) introductory text and (1)(i).

The revisions read as follows:

52.222-50 Combating Trafficking in Persons.

* * * * *

Combating Trafficking in Persons (NOV 2021)

* * * * *

(a) * * *

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” at Federal Acquisition Regulation (FAR) 2.101;

* * * * *

- 221. Amend section 52.222-54 by—
- a. Revising the date of the clause;
- b. In paragraph (a), in the definition of “Commercially available off-the-shelf (COTS) item”, revising paragraph (1)(i); and
- c. Removing from paragraph (e)(1)(i) the term “Commercial or noncommercial services” and adding “Services” in its place.

The revisions read as follows:

52.222-54 Employment Eligibility Verification.

* * * * *

Employment Eligibility Verification (NOV 2021)

* * * * *

(a) * * *

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

(1) * * *

(i) A commercial product (as defined in paragraph (1) of the definition of “commercial product” at Federal Acquisition Regulation (FAR) 2.101;

* * * * *

- 222. Amend section 52.225-1 by—
- a. Revising the date of the clause; and
- b. In paragraph (a), in the definition of “Commercially available off-the-shelf (COTS) item”, revising paragraph (1)(i).

The revisions read as follows:

52.225-1 Buy American—Supplies.

* * * * *

Buy American—Supplies (NOV 2021)
* * * *

(a) * * *
Commercially available off-the-shelf (COTS) item—(1) * * *

(i) A commercial product (as defined in paragraph (1) of the definition of “commercial product” at Federal Acquisition Regulation (FAR) 2.101;

- 223. Amend section 52.225–3 by—
■ a. Revising the date of the clause; and
■ b. In paragraph (a), in the definition of “Commercially available off-the-shelf (COTS) item”, revising paragraph (1)(i).
The revisions read as follows:

52.225–3 Buy American—Free Trade Agreements—Israeli Trade Act.
* * * *

Buy American—Free Trade Agreements—Israeli Trade Act (NOV 2021)
* * * *

(a) * * *
Commercially available off-the-shelf (COTS) item—(1) * * *

(i) A commercial product (as defined in paragraph (1) of the definition of “commercial product” at Federal Acquisition Regulation (FAR) 2.101;

- 224. Amend section 52.225–9 by—
■ a. Revising the date of the clause;
■ b. In paragraph (a), in the definition of “Commercially available off-the-shelf (COTS) item”, revising paragraph (1)(i); and
■ c. Removing from paragraph (b)(2) the term “commercial item” and adding “commercial product” in its place.
The revisions read as follows:

52.225–9 Buy American—Construction Materials.

Buy American—Construction Materials (NOV 2021)

(a) * * *
Commercially available off-the-shelf (COTS) item—(1) * * *

(i) A commercial product (as defined in paragraph (1) of the definition of “commercial product” at Federal Acquisition Regulation (FAR) 2.101;

- 225. Amend section 52.225–11 by—
■ a. Revising the date of the clause;
■ b. In paragraph (a), in the definition of “Commercially available off-the-shelf (COTS) item”, revising paragraph (1)(i); and
■ c. Removing from paragraph (b)(3) the term “commercial item” and adding “commercial product” in its place.
The revisions read as follows:

52.225–11 Buy American—Construction Materials Under Trade Agreements.
* * * *

Buy American—Construction Materials Under Trade Agreements (NOV 2021)
* * * *

(a) * * *
Commercially available off-the-shelf (COTS) item—(1) * * *

(i) A commercial product (as defined in paragraph (1) of the definition of “commercial product” at Federal Acquisition Regulation (FAR) 2.101;

- 226. Amend section 52.229–13 by:
■ a. Revising the date of the clause; and
■ b. Removing from paragraph (c) the phrases “in all subcontracts,” and “commercial items” and adding “in all subcontracts” and “commercial products or commercial services” in their places, respectively.
The revision reads as follows:

52.229–13 Taxes—Foreign Contracts in Afghanistan.
* * * *

Taxes—Foreign Contracts in Afghanistan (NOV 2021)
* * * *

- 227. Amend section 52.229–14 by:
■ a. Revising the date of the clause; and
■ b. Removing from paragraph (c) the phrases “in all subcontracts” and “commercial items” and adding “in all subcontracts” and “commercial products or commercial services” in their places, respectively.
The revision reads as follows:

52.229–14 Taxes—Foreign Contracts in Afghanistan (North Atlantic Treaty Organization Status of Forces Agreement).
* * * *

Taxes—Foreign Contracts in Afghanistan (North Atlantic Treaty Organization Status of Forces Agreement) (NOV 2021)
* * * *

- 228. Amend section 52.232–7 by—
■ a. Revising the date of the clause;
■ b. Removing from paragraph (b)(2) the phrase “commercial item at 2.101” and adding “commercial product or commercial service in Federal Acquisition Regulation (FAR) 2.101” in its place; and
■ c. Removing from paragraph (b)(4) the phrase “Subpart 31.2 of the Federal Acquisition Regulation (FAR)” and adding “FAR subpart 31.2” in its place.
The revision reads as follows:

52.232–7 Payments under Time-and-Materials and Labor-Hour Contracts.
* * * *

Payments under Time-and-Materials and Labor-Hour Contracts (NOV 2021)
* * * *

- 229. Amend section 52.232–16 by—
■ a. Revising the date of the clause;
■ b. Removing from paragraph (j)(5) introductory text the term “commercial item” and adding “commercial product or commercial service” in its place; and
■ c. Removing from paragraph (j)(5)(i) the phrase “commercial item purchase that meets the definition and standards for acquisition of commercial items in FAR Parts” and adding “commercial product or commercial service purchase that meets the definition and standards for acquisition of commercial products and commercial services in FAR parts” in its place.

The revision reads as follows:

52.232–16 Progress Payments.
* * * *

Progress Payments (NOV 2021)
* * * *

- 230. Amend section 52.232–29 by—
■ a. Revising the section heading;
■ b. Revising the heading and date of the clause;
■ c. Removing from paragraph (b) the phrase “52.212–4, Contract Terms and Conditions—Commercial Items” and adding “Federal Acquisition Regulation (FAR) 52.212–4, Contract Terms and Conditions—Commercial Products and Commercial Services” in its place; and
■ d. Removing from paragraph (h) the term “52.232–31” and adding “FAR 52.232–31” in its place.
The revisions read as follows:

52.232–29 Terms for Financing of Purchases of Commercial Products and Commercial Services.
* * * *

Terms for Financing of Purchases of Commercial Products and Commercial Services (NOV 2021)
* * * *

- 231. Amend section 52.232–30 by—
■ a. Revising the section heading;
■ b. Revising the heading and date of the clause; and
■ c. Removing from paragraph (g) the phrase “52.212–4, Contract Terms and Conditions—Commercial Items” and adding “Federal Acquisition Regulation 52.212–4, Contract Terms and Conditions—Commercial Products and Commercial Services” in its place.
The revisions read as follows:

52.232–30 Installment Payments for Commercial Products and Commercial Services.
* * * *

Installment Payments for Commercial Products and Commercial Services (NOV 2021)
* * * *

- 232. Amend section 52.232–31 by—
- a. Revising the date of the provision;
- b. Removing from paragraph (a) the phrase “Commercial Items, at 52.232–29” and adding “Commercial Products and Commercial Services, at Federal Acquisition Regulation (FAR) 52.232–29” in its place; and
- c. Removing from paragraph (b) the phrase “52.232–29, Terms for Financing of Purchases of Commercial Items, the terms of the clause at 52.232–29 shall govern” and adding “FAR 52.232–29, Terms for Financing of Purchases of Commercial Products and Commercial Services, the terms of the clause at FAR 52.232–29 shall govern” in its place.

The revision reads as follows:

52.232–31 Invitation To Propose Financing Terms.

* * * * *

Invitation To Propose Financing Terms (NOV 2021)

* * * * *

- 233. Amend section 52.232–40 by—
- a. Revising the date of the clause; and
- b. Removing from paragraph (c) the term “commercial items” and adding “commercial products or commercial services” in its place.

The revision reads as follows:

52.232–40 Providing Accelerated Payments to Small Business Subcontractors.

* * * * *

Providing Accelerated Payments to Small Business Subcontractors (NOV 2021)

* * * * *

- 234. Amend section 52.242–17 by revising the introductory text to read as follows:

52.242–17 Government Delay of Work.

As prescribed in 42.1305(c), insert the following clause:

* * * * *

- 235. Amend section 52.244–6 by—
- a. Revising the section heading;
- b. Revising the heading and date of the clause;
- c. Revising paragraph (a);
- d. Removing from paragraph (b) the term “commercial items” and adding “commercial products, commercial services,” in its place;
- e. Removing from the paragraph (c)(1) introductory text the term “commercial items” and adding “commercial products or commercial services” in its place;
- f. Removing from paragraph (c)(1)(i) the date “(Jun 2020)” and adding “(NOV 2021)” in its place;

- g. Removing from paragraph (c)(1)(iv) the date “(JUN 2016)” and adding “(NOV 2021)” in its place;
- h. Removing from paragraph (c)(1)(v) the date “(JUL 2018)” and adding “(NOV 2021)” in its place;
- i. Removing from paragraph (c)(1)(vi) the date “(AUG 2020)” and adding “(NOV 2021)” in its place;
- j. Removing from paragraph (c)(1)(xiv)(A) the date “(OCT 2020)” and adding “(NOV 2021)” in its place;
- k. Removing from paragraph (c)(1)(xix) the date “(DEC 2013)” and adding “(NOV 2021)” in its place;
- l. Removing from paragraph (c)(1)(xx) the date “(FEB 2006)” and adding “(NOV 2021)” in its place; and
- m. Removing from paragraph (c)(2) the term “commercial items” and adding “commercial products or commercial services” in its place.

The revisions read as follows:

52.244–6 Subcontracts for Commercial Products and Commercial Services.

* * * * *

Subcontracts for Commercial Products and Commercial Services (NOV 2021)

(a) *Definitions.* As used in this clause—

Commercial product, commercial service, and commercially available off-the-shelf item have the meanings contained in Federal Acquisition Regulation (FAR) 2.101.

Subcontract includes a transfer of commercial products or commercial services between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

* * * * *

- 236. Amend section 52.246–26 by—
- a. Revising the date of the clause;
- b. Removing from paragraph (g)(1)(i) the term “FAR” and adding “Federal Acquisition Regulation (FAR)” in its place; and
- c. Removing from paragraph (g)(2)(i) the words “Commercial items” and adding “Commercial products and commercial services” in its place.

The revision reads as follows:

52.246–26 Reporting Nonconforming Items.

* * * * *

Reporting Nonconforming Items (NOV 2021)

* * * * *

- 237. Amend section 52.247–64 by—
- a. Revising the date of clause;
- b. Removing from paragraph (e)(4) introductory text the term “commercial items” and adding “commercial products or commercial services” in its place;

- c. Revising the date of Alternate II;
- d. Removing from paragraph (e)(4) introductory text of Alternate II the term “commercial items” and adding “commercial products or commercial services” in its place; and
- e. Removing from paragraph (e)(4)(ii)(C) of Alternate II the term “commercial items” and adding “commercial products” in its place.

The revisions read as follows:

52.247–64 Preference for Privately Owned U.S.-Flag Commercial Vessels.

* * * * *

Preference for Privately Owned U.S.-Flag Commercial Vessels (NOV 2021)

* * * * *

Alternate II (NOV 2021)

* * * * *

PART 53—FORMS

53.212 [Amended]

- 238. Amend section 53.212 by—
- a. Revising the section heading;
- b. Removing the term “(Rev.2/2012)” and adding “(Rev. NOV 2021)” in its place; and
- c. Removing the terms “*Commercial Items*” and “commercial items” and adding “Commercial Products and Commercial Services” and “commercial products and commercial services” in their places, respectively.

The revision reads as follows:

53.212 Acquisition of commercial products and commercial services.

* * * * *

53.213 [Amended]

- 239. Amend section 53.213 by—
- a. In paragraph (a):
- i. Removing the date “(Rev. 2/2012)” and adding in its place “(Rev. NOV 2021)”;
- ii. Removing the words “*Commercial Items*” and adding “*Commercial Products and Commercial Services*” in their place; and
- b. In paragraph (f):
- i. Removing the date “(Rev. 2/2012)” and adding “(Rev. NOV 2021)” in its place; and
- ii. Removing the words “*Commercial Items*” and adding “*Commercial Products and Commercial Services*” in their place.

53.219 [Amended]

- 240. Amend section 53.219 by removing the date “(Rev. OCT 2020)” and adding “(Rev. NOV 2021)” in its place.

53.232 [Amended]

■ 241. Amend section 53.232 by removing the text “(Jul 2009)” and adding “(NOV 2021)” in its place.

■ 242. Amend section 53.300 in paragraph (a) by revising the entry for “SF 1449” to read as follows:

53.300 Listing of Standard, Optional, and Agency forms.

* * * * *
(a) * * *

TABLE 53–1—FORMS IN THE GSA FORMS LIBRARY

Form No.	Form title
SF 1449	Solicitation/Contract/Order for Commercial Products and Commercial Services.

[FR Doc. 2021–22144 Filed 11–3–21; 8:45 am]
BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 5 and 7

[FAC 2022–01; FAR Case 2019–003; Item II; Docket No. 2019–0029; Sequence No. 1]
RIN 9000–AN86

Federal Acquisition Regulation: Consolidation and Substantial Bundling

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement a section of the National Defense Authorization Act for Fiscal Year 2016 that requires providing public notices of determinations for substantial bundling and consolidation of contract requirements.

DATES: Effective December 6, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Dana Bowman, Procurement Analyst, at 202–803–3188, or by email at dana.bowman@gsa.gov. For information pertaining to status or publication schedules, contact the Regulatory

Secretariat Division at 202–501–4755. Please cite FAC 2022–01, FAR Case 2019–003.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule at 85 FR 23299 on April 27, 2020, to implement section 863 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2016 (Pub. L. 114–92, codified at 15 U.S.C. 644(e)(3) and 15 U.S.C. 657q(c)(2)) and the Small Business Administration (SBA) implementing regulations. SBA published a final rule to implement section 863 on November 29, 2019, at 84 FR 65647.

Section 863 requires public notification of an agency’s determination to substantially bundle or consolidate contract requirements. Specifically, publication of a notice is required when the head of a contracting agency determines that an acquisition plan for a procurement involves substantial bundling of contract requirements. The head of the contracting agency must publish a notice on a public website that such determination has been made not later than 7 days after making the determination. Any solicitation for a procurement related to the acquisition plan may not be published earlier than 7 days after such notice is published. A justification for the determination must be published with the solicitation. The justification must address the specific benefits anticipated, any alternative approaches, impediments to participation by small business concerns as prime contractors, and actions designed to maximize participation of small business concerns as subcontractors (see 15 U.S.C. 644(e)(3)(A) through (C)).

Section 863 also requires publication of a notice when the senior procurement executive (SPE) or chief acquisition officer (CAO) makes a determination that an acquisition strategy involving consolidation of contract requirements is necessary and justified under 15 U.S.C. 657q(c)(2)(A). The SPE or CAO must publish a notice on a public website that such determination has been made not later than 7 days after making the determination. Any solicitation for a procurement related to the acquisition strategy may not be published earlier than 7 days after such notice is published. A justification for the determination must be published with the solicitation. The justification must include the information in 15 U.S.C. 657q(c)(1)(A) through (E).

As a result, this final rule amends FAR 7.107–5, Notifications, to require

the publication on the Governmentwide Point of Entry of a notice of substantial bundling or of a notice of consolidation, as required in the SBA final rule. This section also contains references to the required content of the consolidation determination (at FAR 7.107–2) and the substantial bundling determination (at FAR 7.107–4).

Four respondents submitted public comments in response to the proposed rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the development of the final rule. A discussion of the comments received and any changes made to the rule as a result of the public comments are provided as follows:

A. Summary of Significant Changes From the Proposed Rule

There are no significant changes made to the final rule.

B. Analysis of Public Comments

1. Support for the Rule

Comment: One respondent expressed support for the rule.

Response: The Councils acknowledge the respondent’s support for the rule.

2. More Time Between Publication of Notice and Solicitation Issuance

Comment: Two respondents expressed concern about the 7-day notification period, stating that it is not enough time for small businesses to plan and strategize. The respondents requested the notification posting period be extended for a longer time, at least 2 weeks.

Response: This FAR rule uses the same time period set forth in SBA’s implementation of section 863 after SBA considered the length of the notification period.

3. Location of Notices

Comment: One respondent suggested that the existing requirement to publish the notification on a “public site” is too vague and that compliance could be satisfied by posting on an agency’s social media platform. The respondent recommends that all notifications should be posted on *beta.sam* via the Governmentwide point of entry (GPE).

Response: This rule implements section 863 of the NDAA for FY 2016 (Pub. L. 114–92) and the SBA implementing regulations (13 CFR 125), which requires agencies to provide public notices on the GPE of determinations for substantial bundling