



Report to the Chairman, Committee on
Armed Services, House of
Representatives

July 2018

DEFENSE CONTRACTS

Improved Information Sharing Could Help DOD Determine Whether Items Are Commercial and Reasonably Priced

Accessible Version

GAO Highlights

Highlights of [GAO-18-530](#), a report to the Chairman, Committee on Armed Services, House of Representatives

Why GAO Did This Study

DOD buys goods and services from the commercial market to take advantage of new innovations and save on acquisition costs. However, the department's process for determining whether an item can be purchased commercially—and, at a fair and reasonable price—can be long and challenging in certain situations.

GAO was asked to review this process. This report identifies (1) factors that influenced DOD's commercial item and price reasonableness determinations, and (2) the extent to which DOD has taken steps to make information available to facilitate these determinations.

To conduct this work, GAO examined federal regulations and guidance and selected case studies, which included a non-generalizable sample of 15 contracts awarded between fiscal years 2010 and 2018. GAO identified the case studies based on input from multiple sources that those contracts involved commercial item or price reasonableness determination challenges. GAO interviewed government and contractor officials responsible for those contracts.

What GAO Recommends

GAO recommends that DOD develop a strategy for how information related to commerciality and price reasonableness determinations should be shared across the department, including making improvements to the View [GAO-18-530](#). For more information, contact William T. Woods at (202) 512-4841 or woodsw@gao.gov.

July 2018

DEFENSE CONTRACTS

Improved Information Sharing Could Help DOD Determine Whether Items Are Commercial and Reasonably Priced

What GAO Found

The Department of Defense (DOD) has a process to determine if an item is available for purchase in the commercial marketplace at a reasonable price. Among selected case studies, GAO found four interrelated factors, each with its set of challenges that influenced how and whether DOD determines if an item is commercial and if its price is reasonable. These factors are:

- **Availability of marketplace information:** Market research is a key component that informs commercial item and price reasonableness determinations. However, GAO found that obtaining market-related information can be challenging because the products DOD requires may not be widely available in the commercial marketplace.
- **Ability to obtain contractor data:** When adequate market information is not available, DOD officials turn to the contractor for information to support the commercial item determination or data to make a price reasonableness determination. In the case studies GAO reviewed, most contractors provided relevant information, but not without delays and challenges. For example, while pricing data is key to DOD's ability to determine price reasonableness, several contracting officers reported that contractors were less willing to provide this data once an item was determined commercial.
- **Extent of modifications to an item:** When a commercial item must be modified to meet DOD's requirements, DOD officials may have to take additional steps, such as completing a comparative analysis of commercial items to the modified item. For example, in one case, a commercial navigation system had to be modified to withstand an explosion. To make the commercial item determination DOD officials had to make an on-site visit to the manufacturer to gain in-depth understanding of the services provided and to ensure they met DOD requirements.
- **Reliability of prior commercial item determinations:** Contracting officers may presume that an item is commercial if a DOD component had previously made that determination. However, GAO found that, in some cases, contracting officers reviewing a prior determination discovered that it was based on inaccurate information.

DOD has taken steps to share more information across the department to inform these determinations, but efforts are in early stages of development or informal. No comprehensive information sharing strategy exists. In 2016, DOD established the Commercial Item Group within the Defense Contract Management Agency to provide recommendations on commercial item determinations. This group created a publicly available database to centralize commercial item information across DOD. However, this effort is incomplete. Also, according to DOD officials, they have not yet established who is responsible for the funding and upkeep of the information. Additionally, GAO case studies included instances where informal information sharing resulted in better outcomes, such as a lower price. Creating more opportunities to share information internally is crucial for DOD to facilitate a timely and efficient process in making these determinations and ensuring the best financial outcome for the government.

Contents

Letter	1
Background	3
Case Studies Identified Four Interrelated Factors That Influenced Commercial Item and Price Reasonableness Determinations, but Generally Did Not Delay Awards	8
Both Formal and Informal Information Sharing Efforts Exist, but With No Comprehensive Strategy	17
Conclusions	20
Recommendation for Executive Action	21
Agency Comments	21
Appendix I: Objectives, Scope, and Methodology	23
Appendix II: DOD General Process for Making Commercial Item and Price Reasonableness Determinations	26
Appendix III: Comments from the Department of Defense	28
Appendix IV: GAO Contact and Staff Acknowledgments	33
Appendix V: Accessible Data	34
Data Table	34
Agency Comment Letter	35
Table	
Table 1: The Department of Defense's (DOD) General Process and Selected Requirements for Making Commercial Item and Price Reasonableness Determinations for More Complex Procurements	26
Figure	
Figure 1: General Overview of the Department of Defense's Process for Making Commercial Item and Price Reasonableness Determinations for More Complex Procurements	6

Accessible Data for Figure 1: General Overview of the Department
of Defense's Process for Making Commercial Item and
Price Reasonableness Determinations

34

Abbreviations

DCAA	Defense Contract Audit Agency
DCMA	Defense Contract Management Agency
DLA	Defense Logistics Agency
DFARS	Department of Defense Federal Acquisition Regulation Supplement
DOD	Department of Defense
FAR	Federal Acquisition Regulation
FPDS-NG	Federal Procurement Data System-Next Generation
GPS	Global Positioning System

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July 31, 2018

The Honorable William M. “Mac” Thornberry
Chairman
Committee on Armed Services
House of Representatives

Dear Mr. Chairman:

The Department of Defense (DOD) purchases commercial items to meet many of its requirements in fulfilling its mission. In fiscal year 2017, the department spent \$53 billion on commercial item contracts plus an unknown amount through subcontracts. Generally, items are considered commercial if they—or something similar—already exist in the marketplace or require few modifications to meet DOD’s specific needs.¹ Purchasing commercial items enables DOD to take advantage of market innovations, increase its supplier base, and reduce acquisition costs. Contractors also prefer to sell products and services as commercial items because there are fewer government-specific contractual requirements, reduced costs and risks associated with government-unique specifications, and fewer auditing requirements than for other types of procurements.

The process to purchase commercial items can be relatively straightforward when the item or service procured is clearly commercial and a robust market of competitors exists, such as when buying a computer. However, some commercial item procurements can be more involved, such as buying a computer that has a case ruggedized for use in harsh conditions. This report focuses on these more complex procurements, and the issues that arise with them. Contractors and DOD have noted that in some cases, for instance when the item must be modified for DOD’s use and is not competitively procured, the acquisition process has presented challenges. As we found in July 2017, companies that have not traditionally done business with DOD view DOD’s workforce as inexperienced in making commercial item and price reasonableness

¹The commercial item definition includes items customarily used by and sold (or offered for sale) to the general public, including products with minor modifications. For a complete definition of commercial item, see FAR § 2.101.

determinations and view this as a challenge to entering the DOD arena.² The DOD Office of Inspector General has reviewed the process of determining a fair and reasonable price on selected sole-source commercial spare parts contracts and found that on these contracts contracting officers accepted the contractors' pricing without performing a sufficient price analysis.³

You asked us to review DOD's process for acquiring commercial items. In this report we (1) identify factors that influenced DOD's process for making commercial item and price reasonableness determinations, and (2) assess the extent to which DOD has taken steps to make information available to help make these determinations.

To identify factors that influenced DOD's process for acquiring commercial items and to assess what DOD has done to make information available, we examined the Federal Acquisition Regulation (FAR), the Department of Defense Federal Acquisition Regulation Supplement (DFARS), and associated DOD guidance. We also reviewed a nongeneralizable sample of 15 contracts awarded between fiscal years 2010 and 2018, and interviewed government officials involved with these contracts at the Air Force, Army, Navy, and the Defense Logistics Agency (DLA) as well as contractors. These contracts represent both products and services, and were selected because they had been previously identified as contracts that involved difficulties in making commercial item determinations by one or more of the following entities: the military services, the Defense Contract Management Agency (DCMA), contractors, or through previous GAO work. We selected these contracts to gain insight into why these difficulties occurred. We interviewed officials from the DCMA Commercial Item Group and reviewed the group's publicly available database that centralizes commercial item information.

²GAO, *Military Acquisitions: DOD Is Taking Steps to Address Challenges Faced by Certain Companies*, [GAO-17-644](#) (Washington, D.C.: July 20, 2017)

³Department of Defense, Office of Inspector General, *Defense Logistics Agency Did Not Appropriately Determine Fair and Reasonable Prices for F108 Engine Sole-Source Commercial Parts*, DODIG-2016-047 (Alexandria, Va: Feb. 16, 2016); *Defense Logistics Agency Did Not Obtain Fair and Reasonable Prices From Meggitt Aircraft Braking Systems for Sole-Source Commercial Spare Parts*, DODIG-2015-120 (Alexandria, Va: May 8, 2015); and *Defense Logistics Agency Aviation Potentially Overpaid Bell Helicopter for Sole-Source Commercial Spare Parts*, DODIG-2014-088 (Alexandria, Va: July 3, 2014). The Defense Logistics Agency did not agree with all of the findings and noted that its contracting officers followed the price analysis steps in the Federal Acquisition Regulation (FAR) to determine a fair and reasonable price.

Additionally, we discussed the management and funding of the database with the Office of Defense Procurement and Acquisition Policy. See appendix I for more details on our objectives, scope, and methodology.

We conducted this performance audit from July 2017 to July 2018 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

The Federal Acquisition Streamlining Act of 1994 established a preference within the federal government to procure commercial items rather than items developed exclusively for the government.⁴ Between fiscal years 2013 and 2018, Congress passed additional legislation to address various aspects of how DOD defines and purchases commercial items, and how DOD makes commercial item and price reasonableness determinations.⁵ For example, legislation passed in 2015 included a provision stating DOD contracting officers may presume that previously established commercial item determinations shall serve as determinations

⁴Federal Acquisition Streamlining Act of 1994, Pub. L. No. 103-355, § 8104 (Oct. 13, 1994). See 10 U.S.C. § 2377. This legislation is reflected in FAR Part 12—Acquisition of Commercial Items—which implements the Federal Government’s preference for the acquisition of commercial items and prescribes the policies that apply to commercial item acquisitions. For example, contracting officers can use streamlined solicitation procedures, which can reduce the time needed to solicit offers. See FAR § 12.603.

⁵See, for example, GAO, *Defense Contracts: Recent Legislation and DOD Actions Related to Commercial Item Acquisitions*, [GAO-17-645](#) (Washington, D.C.: July 17, 2017). This report summarizes the legislative changes through fiscal year 2017. As of July 2018, not all of these legislative changes had been implemented in regulation. In 2018, DOD issued a final rule amending the DFARS to implement sections of the National Defense Authorization Acts for fiscal years 2013, 2016, and 2018 relating to commercial item acquisitions. See 83 FR 4431 (Jan. 31, 2018). See also National Defense Authorization Act for Fiscal Year 2013, Pub. L. No. 112-239, § 831 (Jan. 2, 2013); National Defense Authorization Act for Fiscal Year 2016, Pub. L. No. 114-92, §§ 851-853, 855-857 (Nov. 25, 2015); National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 115-91, § 848 (Dec. 12, 2017).

for future procurements of an item.⁶ The law further stipulated that if a prior determination is not used for an item previously determined to be commercial, the contracting officer must request a review by the head of the contracting activity to either confirm that it is still valid or issue a revised determination.

In January 2018, DOD revised its regulations and corresponding procedures, guidance, and information related to the procurement of commercial items to reflect recent legislative changes.⁷ The DFARS was updated to provide guidance to contracting officers for making price reasonableness determinations, promote consistency in making commercial item determinations (including updating guidance regarding the use of prior determinations), and expand opportunities for nontraditional defense contractors to do business with DOD. The department also updated its Guidebook for Acquiring Commercial Items, which includes information on how to define, determine, and price commercial items, to reflect the regulatory changes.⁸ Also in January 2018, a DOD advisory panel established to help streamline the defense acquisition process released a report with recommendations to revise definitions related to commercial buying and minimize government-unique terms applicable to commercial buying.⁹

DOD Process for Making Determinations When Acquiring Commercial Items

During the pre-award process for commercial procurement actions over \$1 million, two distinct determinations take place:

1. a contracting officer must determine in writing whether a product or service being procured is commercial, and

⁶See Pub. L. No. 114-92 § 851(b). See also DFARS § 212.102. The presumption applies to commercial item determinations made by a military department, a Defense Agency, or another DOD component.

⁷See 83 FR 4431 (Jan. 31, 2018) describing the regulatory implementation of sections of the National Defense Authorization Acts for fiscal years 2013, 2016, and 2018.

⁸See Department of Defense, Office of the Secretary of Defense Acquisition, Technology, and Logistics, *Department of Defense Guidebook for Acquiring Commercial Items, Part A: Commercial Item Determination* (January 2018).

⁹Section 809 Panel, *Report of the Advisory Panel on Streamlining and Codifying Acquisition Regulations Volume 1*, (Arlington, Va: Jan. 31, 2018).

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2. the contracting officer must determine if the offered price is fair and reasonable.

According to the DOD Guidebook for Acquiring Commercial Items, the government's ability to acquire affordable products and services significantly improves when contracting officers have in-depth knowledge of the market. The guidebook establishes that market research should be an ongoing effort throughout the commercial item procurement process to: (1) identify the industry and market for capabilities or technologies; (2) identify prices at which the capabilities or technologies have been sold or offered for sale; and, (3) continuously capture market information at different points to ensure the best acquisition. When determining a fair and reasonable price, market research should be conducted in order to compare the proposed price to market pricing. Figure 1 illustrates the process contracting officers generally follow to make commercial item and price reasonableness determinations for more complex procurements.

Figure 1: General Overview of the Department of Defense's Process for Making Commercial Item and Price Reasonableness Determinations for More Complex Procurements



Source: GAO analysis of Defense Contract Management Agency Commercial Item Brochure and the Department of Defense Guidebook for Acquiring Commercial Items. | GAO-18-530

The contracting officer is ultimately responsible for making these determinations, but, as appropriate, he or she may seek the assistance of the Defense Contract Audit Agency (DCAA), military service

organizations such as the Navy Price Fighters or the Air Force Pricing Center of Excellence, or the DCMA Commercial Item Group.¹⁰

The DCMA Commercial Item Group, which became operational in 2016, provides recommendations on commercial item determinations within DOD. It has created six Commercial Item Centers of Excellence, each of which has its own area of market expertise, to assist contracting officers in making timely and consistent commercial item determinations. These centers are staffed with engineers and price/cost analysts who advise and make recommendations on commerciality based on market analysis, commercial item reviews and determinations, and commercial pricing analysis. Additionally, the centers provide training and assistance to the DOD acquisition community on various techniques and tools used to evaluate commercial items and commercial item pricing.

In order to make a commerciality determination, contracting officers may need information specifying whether the items have been sold or offered for sale to the general public. And, as noted above, the contracting officer must determine that the government is getting a fair and reasonable price. Some of this information may be acquired through market research; however, as appropriate, the contracting officer may require or request that the contractors submit information, such as price lists and sales invoices, with their offers or during the evaluation. For more details on the information and data required for commercial item and price reasonableness determinations at different times in the procurement process, see appendix II.

¹⁰Separately, contractors assert the commerciality and price reasonableness for subcontractor items. Although the contractor's assertion is labeled as a "determination" under the applicable regulations, for the purposes of this report, we refer to it as an "assertion" in order to distinguish these actions from the contracting officer's determination. See DFARS §§ 244.303(a), 244.402(a). Contractors may reach out to the contracting officer for assistance if they have difficulty obtaining subcontractor data.

Case Studies Identified Four Interrelated Factors That Influenced Commercial Item and Price Reasonableness Determinations, but Generally Did Not Delay Awards

In the case studies we examined, we found four interrelated factors that influenced how DOD determines if an item is commercial and whether the price is fair and reasonable, and that each factor had its own set of challenges:

- Availability of marketplace information
- Ability to obtain contractor data
- Extent of modifications to an item needed to satisfy DOD requirements
- Reliability of prior commercial item determinations

Despite these challenges, contract award was not typically delayed. In other cases where DOD was not able to obtain the information or data it needed to make a determination, the department's options, such as not awarding the contract or exploring other suppliers, were often not feasible because DOD was working in a sole-source environment and not procuring the item was not an option.

Limited Market Information Can Complicate Contracting Officers' Commercial Item and Price Reasonableness Determinations

When there is a healthy marketplace of items and services that the government wants to buy, contracting officers can more readily support their commerciality and price reasonableness determinations. However, in our review, we identified cases in which limited market information made such determinations more involved. For example, the Army was working with a contractor to acquire repair and upgrade services for navigation systems. The contractor said the services were commercial, but when the contracting officer conducted market research to determine the commerciality of the services, she found no similar services available in the commercial market. According to a contracting official, the Army's particular units had to be nuclear hardened to withstand an explosion and needed some functional interfaces added, which made finding a similar

commercial service difficult. In the end, the DCMA's Commercial Item Group officials completed an on-site review of the manufacturing process to gain an in-depth understanding of the services provided. Using this additional information, the contracting officer deemed the services commercial.

In contrast, for a previous report on commercial item acquisitions, we reviewed selected Air Force contracts for information technology services and video teleconferencing design and installation.¹¹ Because these items and services are available in the commercial marketplace, the availability of information helped the contracting officers efficiently determine that the items were commercial and that the prices were fair and reasonable.

Obtaining Information from Contractors and Subcontractors Can Be Challenging

Contracting officials from our case studies had difficulty obtaining information from contractors after they could not find adequate information in the marketplace. This difficulty occurred for a number of reasons, including the contractor's own challenges in obtaining information from their subcontractors. While several of the contracts we reviewed showed that either the prime contractor or subcontractor eventually provided sufficient information, obtaining this information was not without difficulties. For example:

- In a \$1.7 billion Army sole-source contract for helicopter engines, the prime contractor asserted that two small engine parts—provided by a subcontractor—were commercial, but did not provide any documents to support its assertion. After several requests for information on commercial sales data, the prime contractor provided invoices for a commercial engine that contained similar engine parts. The prime contractor representative told us the reason it took so long to provide the requested information was because the subcontractor would not provide commercial sales data. As a result, the prime contractor needed to research commercial engines that used similar parts in order to support the commerciality assertion.
- In an \$873 million Air Force sole-source contract for aircraft engines, the contracting officer had difficulty obtaining commercial sales data through market research for engine castings. The prime contractor did

¹¹ [GAO-17-645](#).

not initially provide support for its assertion that the castings were commercial, stating that it had difficulty obtaining supporting information from its subcontractor. Air Force officials visited the subcontractor's facility to determine that the item was a modified version of a commercial item and was therefore commercial.

- In a \$53 million Navy sole-source contract for KC-130J aircraft propeller engineering and sustainment services, the contracting officer told us she had difficulty determining if the proposed prices for these commercial services were fair and reasonable because the contractor provided invoices with the prices redacted. After several months of back and forth, the contractor provided unredacted invoices for similar services, which the contracting officer used to determine price reasonableness. A contractor representative told us that the contractor initially provided the redacted invoices in order to quickly respond to the Navy's request for information, but that additional time was needed to evaluate if releasing the unredacted price information would violate a contractual agreement the contractor had with its suppliers.

In other cases, the contractor provided information or data that the contracting officer considered insufficient to support a commercial item or price reasonableness determination.¹² For example:

- In an F-15 aircraft production contract, Air Force contracting officials had difficulty determining whether the prices of oil bypass valves were fair and reasonable due to redactions in data the subcontractor provided. The subcontractor's proposed price was four times more than it had previously charged the government for the same item, according to contracting officials. To support its prices, the subcontractor provided a commercial price list and customer invoices with redacted customer information, which the subcontractor considered to be proprietary. According to contracting officials, the redacted invoices did not provide enough detail to confirm whether non-governmental end users were paying a price similar to the proposed price in the Air Force contract. The subcontractor subsequently provided a customer list associated with the redacted invoices. Also, while the subcontractor showed that its proposed price was lower than its commercial price list, contracting officers did not consider subcontractor-provided support sufficient to explain why the proposed price was higher than what the government had previously

¹²Ultimately, the contracting officer was able to make commercial item and price reasonableness determinations in these cases.

paid. According to contracting officials, the prime contractor absorbed the price difference between the subcontractor's proposed price and what the Air Force paid for the valves.

- On a \$2 million Army task order for navigation software upgrades on Global Positioning System (GPS) units used in missiles, the DCMA Commercial Item Group obtained redacted invoices and quotes from a subcontractor to determine commerciality. But this information did not provide enough detail to substantiate the commerciality determination. A subcontractor representative told us that the company provided redacted information to the government because contractual agreements with its customers required them to not reveal the customer name. After evaluating multiple factors, the DCMA Commercial Item Group concluded that the GPS units did not match the form, fit, or function of the commercial ones, and recommended that this service and item were not commercial.

Contractor representatives cited multiple reasons why they were unable to provide data (see text box).

Examples of Reasons Contractors Cited for Not Providing Data:

- One prime contractor told us that some subcontractors are unwilling to provide information, such as unredacted invoices, to them and therefore prime contractors cannot provide this information to the government.
- Some subcontractors we interviewed explained that certain information, such as customer names and prices paid in invoices, is considered proprietary data.
- One subcontractor representative said that while the company cannot provide unredacted invoices to a prime contractor, it is willing to provide this information directly to the government, such as the DCMA Commercial Item Group, which can verify the content of the invoices at the contractors' facilities.

Source: GAO-18-530

Additionally, one contractor representative told us that when a previously determined commercial item is later determined noncommercial, specific cost or pricing data can be difficult to gather for companies that operate primarily in the commercial market. This is because these companies were not previously required to collect and provide this cost or pricing data to the government. For example, the subcontractor that produces an item for the Army told us that this item had been previously purchased by the government on a commercial basis under an agreement that was later canceled in 2014. When the government later determined this item was

noncommercial, the subcontractor had difficulty providing detailed cost data for the government's units because they are procured on the same manufacturing line as their commercial units. According to contractor officials, the costs for subcomponents and labor hours for engineers that work on these units are pooled together with cost for the commercial business.

A contracting officer's ability to obtain data is further affected once an item has been deemed commercial. Several contracting officers told us that once an item is determined commercial, contractors are less willing to provide any pricing data. While certified cost and pricing data cannot be required, the government can request uncertified data if needed to make a price reasonableness determination. As previously noted, we found cases in which contractor-provided information included redacted invoices as evidence that an item was commercial. When the government later requested uncertified cost and pricing data to determine price reasonableness—after exhausting government and public market research resources—the contractors were not willing or able to provide the data.¹³ In most cases contractors eventually provided data after multiple requests.

Modified Items Require Additional Steps

Our case studies showed that determining commerciality and price reasonableness for items that are modified from the commercial variant can be difficult, in part, because what can be deemed 'a minor modification' is subject to interpretation.¹⁴ The commercial item definition includes some types of commercial items that have minor modifications not customarily available in the commercial marketplace, but that are made to meet federal government requirements. For our case studies, when prime contractors or subcontractors claimed a modified item was

¹³We found similar instances of subcontractors not providing requested information to prime contractors to make both commercial item determinations and price reasonableness determinations.

¹⁴FAR § 2.101. The definition of "commercial item" in the FAR defines "minor modifications" as those that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. In determining whether a modification is minor, contracting officers should consider the value and size of the modification in comparison to the final product. Further, the FAR allows contracting officers to use dollar values and percentages as guideposts, but not as conclusive evidence that a modification is minor.

commercial, contracting officers had to take extra steps to determine whether the commerciality assertions appropriately met the commercial item definition, such as completing a comparative analysis of commercial items to the modified item.¹⁵ However, determinations in our case studies were challenging to make because the items were generally acquired through sole-source procurements and had no identified commercial market. This made it more difficult for the contracting officer to make a determination based on market research.

- In one of our case studies, there was a difference of opinion within DOD as to whether a modified item was commercial. The prime contractor for an Army sole-source contract procuring modified fuel systems to meet military safety, crashworthiness, and ballistic tolerance requirements for Blackhawk helicopters claimed that its modified fuel system was a commercial item. However the contracting officer found no commercial market existed for this item so the contracting officer had to take additional steps. To make a commerciality determination, the contracting officer sought assistance from the DCMA Commercial Item Group, which recommended that the fuel system was not commercial. The contracting officer submitted a request to waive the requirement for certified cost or pricing data. The DOD official reviewing the waiver request discovered that the fuel system had previously been determined commercial for another helicopter program and the Director of Defense Pricing concurred with that commerciality determination.

Contracting Officers Found Prior Commercial Item Determinations Not Always Accurate

Some of our case studies exhibited challenges related to prior commercial item determinations:

- The Navy contracted for a radio used in a variety of aircraft throughout DOD. The contracting officer stated that the radio had been considered commercial for 20 years. However, for the most recent follow-on contract the contracting officer, who was new to the program, reviewed the prior determination and found it to be in error.

¹⁵Prime contractors make a commercial item assertion on whether subcontractor commerciality claims meet the commercial item definition, but this does not affect the contracting officers' responsibilities or determinations made under FAR § 15.403-1(c) (3). See DFARS § 244.402(a).

In the prior determination the radio was compared to another radio considered noncommercial. As part of his review for the new determination, the contracting officer consulted with Air Force officials because they procure the same radio for some of their aircraft programs. The contracting officer ultimately determined that the radio was, in fact, commercial by comparing it—at the suggestion of the Air Force—to a different radio with similar features that is sold commercially to the public. According to the contracting officer, the Navy also benefited because the radio they had purchased for 20 years was also cheaper and more capable than the one that was sold commercially, to which it was compared.

- For a \$2.5 billion Air Force sole-source contract, the prime contractor asserted that a cargo part, called a winch—which had previously been sold to the government as a commercial item—was commercial. However the contracting officer reviewed the support for the prior commercial item determination and found it was based on sales to a holding company for a foreign government.¹⁶ Additional information requested and received included catalog prices and the invoice to the foreign holding company. The contracting officer determined this support was not sufficient for determining commerciality because sales to foreign governments were not considered commercial sales. Additionally, market research did not yield any commercial sales or evidence that the part was sold in the commercial marketplace. The part was determined noncommercial.

The National Defense Authorization Act for Fiscal Year 2016 states contracting officers may presume a prior commercial item determination made by a DOD component shall serve as a determination for subsequent procurements of an item.¹⁷ In fact, if a previous determination is not used, a contracting officer must request that the head of the

¹⁶At the time this Air Force contract was awarded, sales to foreign governments did not constitute commercial sales. Section 847 of the fiscal year 2018 NDAA modified the definition of “nondevelopmental item” under “commercial item” to include sales “to multiple foreign governments.” See Pub. L. No. 115-91, § 847; 41 U.S.C. § 103(8). As of July 2018, this change has not been implemented in the FAR. See FAR § 2.101.

¹⁷See Pub. L. No. 114-92, § 851. See also 10 U.S.C. § 2306a(b)(4). Section 848 of the fiscal year 2018 NDAA further states that the DOD’s acquisition of an item through commercial item procedures, FAR Part 12, is required to serve as a prior commercial item determination unless the senior procurement executive of the military department or DOD, as designated, determine in writing that acquiring the item using commercial item acquisition procedures is no longer appropriate. See Pub. L. No. 115-91, § 848; 10 U.S.C. § 2380. As of July 2018, this section has not been implemented in DOD’s regulations. See DFARS Case No. 2018-D016.

contracting activity review the prior determination and either confirm its validity or issue a revised determination. Most contracting officers with whom we spoke indicated that prior determinations should be reviewed to determine if they were made under similar terms and conditions and whether circumstances have changed since the determinations were made. We found diverse opinions among contracting officers on whether they would elevate concerns about a previous determination to the head of the contracting activity. Some contracting officers said they would elevate the determination if they had supporting data while others would be hesitant under most circumstances due to the extensive process involved.

Challenges in Making Commercial Item and Price Reasonableness Determinations Did Not Typically Delay Contract Award

Despite the different factors involved, for most of our case studies, challenges in making the commercial item and price reasonableness determinations did not ultimately affect the government's ability to award the contract as planned. The time it took for the contractor to provide information to the government and the government to make a determination ranged from a few days to over a year. In most of our case studies, contracting officials said that this time did not solely affect the contract award because other factors, such as staff changes or awarding multiple contracts at the same time, also delayed the process.

However, in two of our 15 cases, contracting officers told us they were delayed in awarding contracts when the contractor did not provide the requested information in the anticipated timeframe. In one example, an Army contracting official told us that a contract award was delayed when a subcontractor did not provide information to the contractor to support its commerciality assertion. The contracting officer noted that this delay also placed the program at risk of a funding loss because the service reallocated funding to another program that it viewed as less risky.

Finally, contractors told us that they have taken steps to improve how they assert the commerciality of their items. For example, several contractors now use standardized forms to make commercial item assertions and keep prior assertions in a centralized place. Several contractor representatives we spoke with also told us that they have an internal panel of experts review commercial item and price reasonableness assertions to ensure consistency and that the assertions

meet federal regulations. The contractors' hope is that these forms and processes will help reduce the back and forth in requesting information among the government, prime contractor, and subcontractors. In addition, some contractor representatives told us that they work with the DCMA Commercial Item Group to better understand what information contracting officers are requesting and to obtain assistance with subcontractors that are unwilling to provide information to the prime contractor.

When Information Needed to Make Commercial Item and Price Reasonableness Determinations Is Not Readily Available, Contracting Officers' Options Are Limited

Some contracting officials told us that they have few options at their disposal when they have difficulty obtaining information from the contractor to make a commercial item or price reasonableness determination in a sole-source environment. For example:

- For a \$2 million Army task order for engineering services to upgrade navigation software and several GPS units with these upgrades, the contracting officer stated that procuring from an alternative source was not an option because this GPS was unique to the program and qualifying a different GPS would cost an estimated \$50 million.
- In a nearly \$2 million sole-source delivery order for Blackhawk helicopter fuel tanks, the Army contracting official told us that the program needed this fuel tank because the tank's configuration was specific to the helicopter. As a result, the contracting official said they could not walk away from the contractor. The contracting official further noted that certifying an item from a second source would be cost and time prohibitive for the government.¹⁸

Although in most of our sole-source case studies other options (e.g., contracting with a different vendor) were not viewed as being feasible, we did have one case where DOD made the choice to not award a contract, when the government and contractor could not agree on a reasonable price. DLA wanted to negotiate a long-term contract for night vision goggles, but after the contracting officer made repeated attempts to obtain data from the contractor, they could not agree on a fair and

¹⁸Ultimately, the contracting officers in both cases were able to make commercial item and price reasonableness determinations and award the contracts based on additional information.

reasonable price. The prices were over 45 percent higher than prices that DLA had previously paid for the same item. As a result, the acquisition was canceled, and according to the contracting officer, the government plans to buy quantities as needed through an existing vehicle.

Another option is to elevate issues to DOD management, which can make a determination on whether an item is commercial and is being offered at a fair and reasonable price.¹⁹

- One example from our case studies includes a \$1.7 billion Army sole source contract for helicopter engines. The contractor asserted commerciality for the engines, which had historically been procured as a noncommercial item. After extensive market research, the contracting officer asked for information from the contractor to support its commerciality assertion, but had difficulty obtaining it. According to the contracting officer, the Army discussed the possibility of not awarding this contract, but this was not considered feasible since the engine is used in multiple aircraft. After months of back and forth between the contracting officer and contractor, this commerciality issue was elevated to the Director of Defense Pricing, who agreed with the contracting officer's assessment that the engines were not commercial and procured them on that basis.

Both Formal and Informal Information Sharing Efforts Exist, but With No Comprehensive Strategy

DOD has taken steps to share more information across the department to inform commercial item and price reasonableness determinations, but efforts to date are in early stages of development or happening informally across the department. Despite these efforts, contracting officers still face challenges in obtaining adequate information to make informed commercial item and price reasonableness determinations, in part because no comprehensive information sharing strategy exists to outline responsibilities and funding of these efforts. DOD officials told us they plan to explore other options for the sharing of commercial item

¹⁹In this case, DOD management refers to the Director Defense Pricing and not the head of the contracting activity.

information, such as communities of practice, but have not made any formal plans.

One information sharing effort still in its early stages is the DCMA Commercial Item Group's publicly available database, created in 2017 to centralize commercial item information across DOD. The database, however, has not been fully established as an effective tool. In its current form it consists of a spreadsheet primarily listing items that contracting officers have determined to be commercial. According to DCMA Commercial Item Group officials, the database contains fewer items than expected because not all DOD contracting officers have submitted their commercial item determinations. The Office of Defense Procurement and Acquisition Policy updated its Guidebook for Acquiring Commercial Items in January 2018 to state that a commercial item determination is not complete until the contracting officer submits it to the DCMA Commercial Item Group along with a summary of pricing information. These submissions are meant to improve consistency and efficiency in making commercial item determinations. On February 22, 2018, the Air Force Deputy Assistant Secretary for Contracting issued a memorandum that reminded its contracting officers of this responsibility.

We found that the database has limitations. For example, it includes only a list of items evaluated and not the results of recommendations made on commerciality by the DCMA Commercial Item Group. These recommendations can be obtained by contacting the office directly.²⁰ DCMA officials stated results of their recommendations are specifically not included in the public database because of concerns that a prime contractor may prefer a subcontractor with a commercial item determination over another without one.

Most commercial item determinations included in the database go back only to 2016, since this is when the DCMA Commercial Item Group began

²⁰In 6 of our 15 case studies, the DCMA Commercial Item Group or DCMA provided recommendations regarding commerciality and/or price reasonableness. Of these cases, the DCMA Commercial Item Group or DCMA recommended that an item was commercial in three cases. Other agencies, such as DCAA, also assisted contracting officers in assessing whether an item was commercial and being offered at a fair and reasonable price. We previously reported that the DCMA Commercial Item Group recommended that contracting officers make a determination that an item was commercial in 94 percent of the cases it reviewed from June 2016 to May 2017. Thus far through February 2018, this group has recommended that an item be deemed commercial in 99 percent of cases it reviewed.

collecting them. Additionally, DCMA Commercial Item Group officials said they have no funding to support the database. Officials plan to meet with DOD's Office of Defense Procurement and Acquisition Policy to discuss funding and other potential systems to maintain the information as well as provide DOD officials with direct access to copies of previous determinations and related information. Defense Procurement and Acquisition Policy and DCMA officials acknowledged that DOD has not yet determined who is responsible for the funding and upkeep of this information. Internal control standards promote assigning responsibility and delegating authority to key roles to achieve an organization's objectives.²¹ Without appropriate funding and clearly defined roles and responsibilities for management and upkeep of the database, its effectiveness as a tool to provide contracting officers with information to help make commercial item determinations will continue to be limited.

While the database serves as a means to formally share information to help contracting officers make commercial item and price reasonableness determinations, contracting officers in our case studies noted instances where informal sharing of information between programs and services led to improved outcomes, such as a lower price. For example,

- In a \$257 million sole source MQ-9 aircraft contract, the Air Force contracting team questioned whether a modified commercial engine being provided by a subcontractor was offered at a fair and reasonable price. While the Air Force contracting team relied on uncertified cost and pricing data provided by the subcontractor, a contracting official told us that the team also relied on information shared by Air Force officials in other programs that were procuring similar commercial items at the same time. The contracting team discovered that another contracting official obtained a lower price for a similar commercial item, and as a result, used this information to negotiate a lower price.
- In the procurement for radios used in a variety of aircraft, as discussed earlier, Navy contracting officials used informal information sharing to make a commercial item determination. The Navy obtained information from the Air Force, which was procuring the same radio and which had performed a review in January 2017 that it shared with the Navy. The review noted that other similar commercial radios existed and that a comparison of this radio to these other commercial

²¹GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 2014).

radios could help determine that the radio is commercial. Navy contracting officials, using the Air Force's review as well as their own technical analysis, determined the radios were a modified commercial item.

Despite the creation of the database and the informal information sharing that occurs, contracting officers still face challenges in obtaining adequate information to make informed commercial item and price reasonableness determinations. Specifically, DOD lacks a strategy for improving the sharing of commercial item and price reasonableness information across the department, such as efforts like the DCMA Commercial Item Group's database. Internal control standards promote effective sharing of information to ensure managers have the information they need to make informed decisions.²² In addition, internal control standards state that management should communicate information internally and assign responsibilities for key roles while also considering the cost necessary to communicate the information. In an environment where information is difficult to obtain from the contractor, as we have outlined in this report, the ability for contracting officers to have easy access to all necessary commerciality and pricing information within DOD is critical. If DOD does not have such information easily available, contracting officers will continue to struggle with obtaining all the information they need to make informed and efficient commercial item and price reasonableness determinations.

Conclusions

When dealing with a limited marketplace and price data, determining commerciality and price reasonableness can be challenging for DOD's contracting staff. Ultimately, the effectiveness of determining commerciality and fair and reasonable prices will depend on what meaningful information the government successfully obtains to conduct its analysis. Therefore, information sharing within the department is critical in helping DOD's contracting officers determine commerciality and reasonable prices on DOD's acquisitions. As our findings show, DOD has made some efforts to facilitate the sharing of information, such as establishing the DCMA Commercial Item Group. This group, in turn, set up a database to increase the accessibility and utility of commercial and pricing data. But the database is not yet robust enough to eliminate the

²²[GAO-14-704G](#).

need for more sharing of information—formal or informal—across the department. Enhancing information sharing efforts could address some of the challenges we identified. Further, clearly defining the roles and responsibilities for management of the database and identifying viable funding sources to support the upkeep of the database will help ensure it becomes a useful resource for contracting officials.

Recommendation for Executive Action

We are making the following recommendation to DOD:

The Director of Defense Procurement and Acquisition Policy should work with the Defense Contract Management Agency to develop a strategy for sharing information related to commerciality and price reasonableness determinations across DOD, including

- a plan to increase the information available in the Commercial Item Group database;
- alternative mechanisms to share information, either formal or informal; and
- assignments of roles and responsibilities with regard to sharing commercial item information, including how the database should be funded, supported, and maintained.

Agency Comments

We provided a draft of this report to DOD for review and comment. In its written comments, reproduced in appendix III, DOD concurred with our recommendation, stating that it plans to issue a policy memo requiring all commercial item determinations made after September 30, 2018 to be included in the existing commercial item database. DOD further stated that it will update its commercial item determination form to enhance informal information sharing. In addition, DOD stated that the Director of Defense Pricing within the Defense Procurement and Acquisition Policy office and the Director of DCMA will enter into a memorandum of agreement specifying roles and responsibilities in determining commercial item policy and funding the commercial item database.

DOD also provided technical comments, which were incorporated as appropriate.

We are sending copies of this report to the appropriate congressional committee, the Secretary of Defense, and the Director of Defense Procurement and Acquisition Policy. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-4841 or woodsw@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix IV.

Sincerely yours,

A handwritten signature in black ink that reads "William T. Woods". The signature is written in a cursive, flowing style.

William T. Woods
Director, Contracting and National Security Acquisitions

Appendix I: Objectives, Scope, and Methodology

Our objectives were to: (1) identify the factors that influenced the Department of Defense's (DOD) commercial item and price reasonableness determinations and (2) assess the extent to which DOD has taken steps to make information available to help make these determinations.

To identify factors that influence the process and what DOD has done to address them, we reviewed relevant sections of the Federal Acquisition Regulation (FAR); Department of Defense Federal Acquisition Regulation Supplement; DOD memorandums; policy, guidance, and instructions related to the acquisition of commercial items, including the Guidebook for Acquiring Commercial Items Part A: Commercial Item Determination and Part B: Price Reasonableness Determination; and service-specific guidance regarding commercial items.

To assess challenges in making commercial item and price reasonableness determinations, we identified a non-generalizable sample of contracts which were reported by DOD officials and contractors as a contract where it was difficult to make commercial item determinations, price reasonableness determinations, or both, from a variety of sources. Due to limitations of the Federal Procurement Data System-Next Generation (FPDS-NG) we could not identify all DOD commercial item acquisitions in the data system, specifically contracts that had been coded as having used procedures other than FAR Part 12, Acquisition of Commercial Items. Additionally, contracts which had issues in making commercial item or price reasonableness determinations would not be identifiable in FPDS-NG. Due to these limitations, we requested that three DOD services – Air Force, Army, and Navy – and the Defense Logistics Agency (DLA) each provide us with five contracts that had points of contention with the commercial item determination or the price reasonableness determination, either at the prime contract or subcontract level. We also identified contracts by asking officials at the Defense Contract Management Agency (DCMA) Commercial Item Group and the Navy Price Fighters for contracts as well as identified contracts through previous GAO work. Additionally, we asked contractors to identify contracts they believed had issues in determining commerciality and/or

price reasonableness. One contractor identified two contracts, which we reviewed, but did not find to have any issues concerning commerciality or price reasonableness. From these requests we collected a non-generalizable sample of 56 contracts for commercial items.

From the non-generalizable sample of 56 contracts, we selected 15 contracts awarded between 2010 and 2018 that met various criteria as case studies. We selected 4 case studies from the Air Force, 4 from the Army, 5 from the Navy, and 2 from DLA. The 15 case studies were selected to represent: (1) multiple services; (2) a variety of issues with commercial item or price reasonableness determinations, (3) reoccurring prime contractors or subcontractors, and (4) a mix of product and services acquired. We conducted an in-depth review of these contracts and selected related orders to assess what challenges occurred when the contracting officer was determining whether an item was commercial and whether the price was fair and reasonable, and why these challenges occurred.

To assess challenges in making commercial item and price reasonableness determinations, we reviewed the contract file documentation for the 15 case studies, and interviewed contracting and pricing officials. We reviewed documentation including commercial item determinations, price negotiation memorandums, market research, and DCMA Commercial Item Group and Defense Contract Audit Agency reports. We also interviewed contracting officials and contractors to obtain perspectives on how an item was determined to be commercial and then subsequently, determined to be offered at a fair and reasonable price. We interviewed contracting officers to obtain their views on the effect the new Guidebook for Acquiring Commercial Items and recently passed legislation would have on these challenges, and how they might affect contracts in the future. We interviewed officials from the DCMA Commercial Item Group to understand how they assist contracting officers in making determinations, and about the publicly available database that centralizes commercial item information. We also reviewed this database to understand what types of information it contained. Additionally, we discussed the management and funding of the database with the Office of Defense Procurement and Acquisition Policy. We interviewed contractors to discuss commercial item and price reasonableness issues on the selected contracts, discuss general areas of concern with regard to commercial item and price reasonableness determinations, and identify other contentious contracts.

We conducted this performance audit from July 2017 to July 2018 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on audit objectives.

Appendix II: DOD General Process for Making Commercial Item and Price Reasonableness Determinations

Table 1: The Department of Defense’s (DOD) General Process and Selected Requirements for Making Commercial Item and Price Reasonableness Determinations for More Complex Procurements

Time frame	DOD contracting officer	Offeror
Solicitation	Commercial Item Determination: A contracting officer conducts market research, which can include marketplace or government sources, to determine whether an item is commercial.	Commercial Item Determination: The offeror has an incentive to provide enough information to the contracting officer to ensure that the item meets the definition of a commercial item in order to be considered exempt from the requirement to submit certified cost and pricing data. The offeror is required to exercise reasonable business judgment to assess whether an item provided by a subcontractor meets the definition of a commercial item. However, this does not remove the contracting officer’s responsibility to make a commercial item determination.
	Price Reasonableness Determination: The contracting officer may conduct market research to assess market pricing for a commercial item.	Price reasonableness Determination: The offeror may be required to submit information in its initial offer to the government that, at a minimum, is adequate for determining price reasonableness, including prices for the same or similar items that have been sold in the commercial market. ^a As appropriate, this information can also include past DOD contracts, catalog, or commercial sales data among other information. The offeror may be required to obtain the minimum information necessary from any subcontractors to support a determination of price reasonableness.
Evaluation of offer	Commercial Item Determination: A contracting officer is required to determine whether an item meets the definition of a commercial item. If a contracting officer does not have enough information to make this determination, he or she may request information from the offeror to support the commercial item determination.	Commercial Item Determination: The contractor may work with the contracting officer to submit revised support that documents its rationale for why the proposed item satisfies the definition of a commercial item.

**Appendix II: DOD General Process for Making
Commercial Item and Price Reasonableness
Determinations**

Time frame	DOD contracting officer	Offeror
	<p>Price Reasonableness Determination: If price reasonableness is based on adequate price competition, generally no additional data are necessary. If, even after obtaining information from sources other than the offeror, the contracting officer still cannot make the determination that the offeror's price for a commercial item is fair and reasonable, then the contracting officer is required to request the offeror submit additional data to support further analysis.^b</p> <p>The contracting officer should make it clear what data is required and why it is needed to determine fair and reasonable prices, and should be flexible in requesting data in existing formats from the offeror.</p>	<p>Price Reasonableness Determination: After a request for more information from the contracting officer, the offeror is required to either provide the information or provide a written explanation for why it cannot comply with the request to the contracting officer. Any offeror who does not comply with the request would be ineligible for award unless the head of the contracting activity determines it is in the best interest of the government to make the award to that offeror.</p>

Source: GAO analysis of Federal Acquisition Regulation, Defense Federal Acquisition Regulation Supplement, and the Department of Defense Guidebook for Acquiring Commercial Items. | GAO-18-530

Note: Some of the requirements listed in the table are from the updated Defense Federal Acquisition Regulations Supplement (DFARS) as of January 31, 2018. These DFARS changes would not be applicable to most of the contracts in our case studies because all but one of the contracts were awarded before the DFARS changes were implemented. Furthermore, where the Federal Acquisition Regulation (FAR) and DFARS differed in terminology (e.g., the FAR noted a requirement for "data" to determine price reasonableness but the DFARS noted a requirement for "information"), the table and report use the DFARS terminology.

^aSee FAR § 15.404-1(b)(2)(i) (citing FAR § 15.403-1(c)(1)(i), describing adequate price competition); DFARS § 215.404-1(b)(i).

^bSee FAR § 15.403-3(c)(1). Price analysis is the preferred way to determine fair and reasonable prices of commercial items. Price analysis focuses on evaluating a proposed price without consideration of its separate cost elements or profit. If using price analysis cannot determine a fair and reasonable price, a contracting officer may use cost analysis to evaluate the separate cost elements, or a combination of price and cost analyses. Appropriate price analysis techniques include, for example, comparing proposed prices in response to a competitive solicitation. See FAR § 15.404-1(b)(2)(i).

Appendix III: Comments from the Department of Defense



ACQUISITION
AND SUSTAINMENT

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

JUL 18 2018

Mr. William T. Woods
Director, Contracting and National Security Acquisitions
U.S. Government Accountability Office
441 G Street, N.W.
Washington, DC 20548

Dear Mr. Woods:

This is the Department of Defense (DoD) response to the Government Accountability Office (GAO) Draft Report, GAO-18-530, "DEFENSE CONTRACTS: Improved Information Sharing Could Help DOD Determine Whether Items Are Commercial and Reasonably Priced" dated June 12, 2018 (GAO Code 102194). Detailed comments on the report recommendations are enclosed.

The Defense Contract Management Agency (DCMA), in addition to devoting a significant amount of resources to support the commercial item initiatives, processes, and rule changes, has established a dynamic website with a wealth of topical information on "Commercial." For example, included are web pages to request support from commercial item determination (CID) experts, by commodity/region, which includes contact information. Also included is an especially useful FAQ link (<http://www.dcmamil.commercial-item-group>) and a suggested format for CID submittals to the DCMA CID database. Other important resources include DCMA CIG Training 2018, topical brochures, links to the recent DoD Handbook and notices of upcoming related events.

Sincerely,

A handwritten signature in blue ink, appearing to read "Shay D. Assad", is written over a circular blue stamp.

Shay D. Assad
Director, Defense Pricing
and Contracting

Enclosure:
As stated

GAO DRAFT REPORT DATED JUNE 12, 2018
GAO-18-530 (GAO CODE 102194)

**“DEFENSE CONTRACTS: IMPROVED INFORMATION SHARING COULD HELP
DOD DETERMINE WHETHER ITEMS ARE COMMERCIAL AND REASONABLY
PRICED”**

**DEPARTMENT OF DEFENSE COMMENTS
TO THE GAO RECOMMENDATION**

RECOMMENDATION: The GAO recommends that the Director of Defense Procurement and Acquisition Policy work with the Defense Contract Management Agency to develop a strategy for sharing information related to commerciality and price reasonableness determinations across DOD, including:

- a plan to increase the information available in the Commercial Item Group database;
- alternative mechanisms to share information, either formal or informal; and
- assignments of roles and responsibilities with regard to sharing commercial item information, including how the database should be funded, supported, and maintained.

DoD RESPONSE: Concur:

- The Department plans to supplement the information in the existing commercial item database with all commercial item determinations (CID) executed by every Department of Defense (DoD) component after 30 September, 2018. The database will be overseen by DCMA’s Commercial Item Group (CIG). A policy memo will be issued requiring that all CIDs made after 30 September 2018 be forwarded to the CIG for inclusion in the Department’s commercial item database. PGI 212.1 – “Acquisition of Commercial Items – General” will be amended accordingly.
- Since informal sharing of information is most effectively accomplished through direct communication, DoD will ensure that each CID form will include standard information, including the determining organization’s POC to serve as the component’s focal point for informal sharing of information with other DoD components.
- The Director, DPAP/Defense Pricing, and the Director, DCMA will enter into a Memorandum of Agreement (MoA) to delineate and clearly define their roles and responsibilities with regard to commercial item policy and regulation, commercial item determinations, including information capture, retention, and sharing. Additionally, the MoA will document the Department’s plans for funding the commercial item database, both short and long term. The Department expects to execute the MOA by 1 September, 2018.

PGI 212.1—ACQUISITION OF COMMERCIAL ITEMS - GENERAL

(See DFARS [212.1](#), [DFARS/PGI view](#))

PGI 212.102—Applicability.

(a)(i) *Commercial item determination.*

(1) Contracting officers shall ensure that contract files fully and adequately document the market research and rationale supporting a conclusion that the commercial item definition in FAR 2.101 has been satisfied. Particular care must be taken to document determinations involving "modifications of a type customarily available in the marketplace," and items only "offered for sale, lease, or license to the general public," but not yet actually sold, leased, or licensed. In these situations, the documentation must clearly detail the particulars of the modifications and sales offers. When such items lack sufficient market pricing histories, additional diligence must be given to determinations that prices are fair and reasonable as required by FAR Subpart 15.4.

Data Base Requirements:

Within one month of making a commercial item determination (CID) the corresponding DoD Component must forward the CID to the DCMA CIG for inclusion in the Department's commercial item database. The DCMA CIG contact information is contained in paragraph (2).

(2) See the Department of Defense Guidebook for Acquiring Commercial Items, [Part A: Commercial Item Determination](#), for detailed guidance and practical examples on improving the consistency and timeliness of commercial item determinations to include a template for new commercial item determinations and information about how to obtain advisory assistance from the DoD cadre of experts in the Defense Contract Management Agency (DCMA) Commercial Item Group (CIG) via email at commercial@dcma.mil or at <http://www.dcma.mil/commercial-item-group/>.

(ii) *Prior commercial item determination.* Contracting officers may presume for consistency sake that a prior commercial item determination by a military department, defense agency, or another component of DoD shall serve as a determination for subsequent procurements of such item. Similarly, a contracting officer should carefully consider items that are now offered as commercial items that have historically been

3

acquired as military-unique, noncommercial items. Before rendering a new commercial item determination for such items, contracting officers should engage their leadership chain of command, the DCMA CIG, and the primary DoD buying activity for that item.

Appendix IV: GAO Contact and Staff Acknowledgments

GAO Contact

William T. Woods, (202) 512-4841 or woodsw@gao.gov

Staff Acknowledgments

In addition to the contact named above, Tatiana Winger (Assistant Director), Emily Bond, Jared Dmello, Lorraine Ettaro, Julie Hadley, Julia Kennon, Timothy Moss, Miranda Riemer, Raffaele (Ralph) Roffo, and Carmen Yeung made key contributions to this report.

Appendix V: Accessible Data

Data Table

Accessible Data for Figure 1: General Overview of the Department of Defense’s Process for Making Commercial Item and Price Reasonableness Determinations

Category	Category description
Market analysis	<p>The decision to fulfill a specific government requirement using a commercial item is based on market research—which should include an analysis of the marketplace.</p> <p>Steps include:</p> <ul style="list-style-type: none">• Identify suppliers, buyers, and trends• Identify available products and services in the marketplace
Commercial item determination	<p>The commercial item definition includes items customarily used by and sold (or offered) to the general public, including with minor modifications of a type not customarily available in the commercial marketplace made to meet federal government requirements, or services of a type offered and sold competitively in substantial quantities in the commercial marketplace.</p> <p>Steps include:</p> <ul style="list-style-type: none">• Update market research to identify similar commercial items• Review the Federal Acquisition Regulation commercial item definition• Review previous commercial item determinations• Review commerciality assertion provided by the contractor and supporting documentation, if provided

Category	Category description
Price reasonableness determination	At a minimum the contracting officer must use some type of price analysis to determine whether the price is fair and reasonable. Contracting officers should not require more data than necessary to make the price reasonableness determination and they may not require contractors to certify any supporting cost information. Steps include: <ul style="list-style-type: none"> • Update market research • Complete price analysis • Review invoices, catalog prices, sales data
Contract award	
Source: GAO analysis of Defense Contract Management Agency Commercial Item Brochure and the Department of Defense Guidebook for Acquiring Commercial Items. I GAO-18-530	

Agency Comment Letter

Accessible Text for Appendix III: Comments from the Department of Defense

Page 1

JUL 18 2018

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Director, Contracting and National Security Acquisitions

U.S. Government Accountability Office

441 G Street, N.W.

Washington, DC 20548

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Sincerely,

Shay D. Assad

Director, Defense Pricing and Contracting

Enclosure:

As stated

Page 2

GAO DRAFT REPORT DATED JUNE 12, 2018 GAO-18-530 (GAO CODE 102194)

"DEFENSE CONTRACTS: IMPROVED INFORMATION SHARING COULD HELP DOD DETERMINE WHETHER ITEMS ARE COMMERCIAL AND REASONABLY PRICED"

DEPARTMENT OF DEFENSE COMMENTS TO THE GAO RECOMMENDATION

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Page 3

PGI 212.1-ACQUISITION OF COMMERCIAL ITEMS - GENERAL

(See DFARS 212.1, DFARS/PGI view)

PGI 212.102-Applicability.

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Page 4

acquired as military-unique, noncommercial items. Before rendering a new commercial item determination for such items, contracting officers should engage their leadership chain of command, the DCMA CIG, and the primary DoD buying activity for that item.

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Strategic Planning and External Liaison

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