



February 6, 2026

Mr. John Tenaglia
Principal Director, Defense Pricing, Contracting, and Acquisition Policy (DPCAP)
Office of the Undersecretary of War for Acquisition and Sustainment
3060 Defense Pentagon
Washington, DC 20301-3060

Subject: Recommendations on Implementation of Commercial-First Procurement

Dear Mr. Tenaglia,

On behalf of the Aerospace Industries Association (AIA), representing the nation's leading aerospace and defense companies, we applaud this Administration's actions to improve usage of commercial products and services, noting in particular President Trump's Executive Order on commerciality¹ and Secretary Hegseth's directive to implement an enhanced presumption of commerciality.² AIA recognizes the significant progress that has already been made to advance commerciality, including in the Revolutionary Federal Acquisition Regulation (FAR) Overhaul,³ as a means to make government acquisitions more efficient and cost-effective while leveraging existing solutions.

Pursuant to Secretary Hegseth's call to issue guidance within 90 days to address "[c]ommercial products and offerings, in whole or in part, as the preferred acquisition approach, with enhanced presumption of commerciality to expand qualifying vendors," this letter provides specific recommendations to help implement commercial-first procurement. This letter builds upon AIA's previous correspondence requesting enhanced commercial procurement processes.⁴

Below are specific recommendations from AIA to help ensure this Administration's vision of commercial-first acquisition is realized at all levels of the industrial base supply chain.

Commercial Determinations with Approved Contractor Purchasing Systems

An approved contractor purchasing system generally indicates that a contractor or subcontractor has sufficient processes in place to be entrusted with subcontracting authority without contracting officer approval. The objective of a contractor purchasing system review is to evaluate the efficiency and effectiveness with which the contractor spends government funds and complies with government policy when subcontracting.⁵ Hence, these contractors and subcontractors have enhanced responsibility and trust emplaced in them to conduct efficient, effective, and compliant

¹ Executive Order 14271, "Ensuring Commercial, Cost-Effective Solutions in Federal Contract," Apr 16, 2025.

² Sec. Hegseth Letter to Senior Pentagon Leadership, "Transforming the Defense Acquisition System into the Warfighting Acquisition System to Accelerate Fielding of Urgently Needed Capabilities to Our Warriors," Nov 7, 2025.

³ See FAR Overhaul 12.101, Preference.

⁴ AIA Letter to Dr. Kevin Rhodes, "Opportunities for Additional Reforms to Maximize the Effectiveness of the Revolutionary Federal Acquisition Regulation Overhaul," Dec 2, 2025.

⁵ FAR 44.301, [Part 44 - Subcontracting Policies and Procedures | Acquisition.GOV.](#)

subcontracts. This should include trust that they can make compliant commerciality determinations. As pointed out by the revised Defense Federal Acquisition Regulation Supplement (DFARS) Subpart 244.470, “[c]ontractors are required to determine if subcontract items are commercial products or commercial services, using reasonable business judgement and following FAR Part 10 market research guidance.”⁶ However, in practice, contractors and subcontractors with approved purchasing systems frequently have their determinations overturned by contracting officers or the Defense Contract Management Agency (DCMA) Commercial Item Group (CIG). This is done despite the due diligence required by the contractor’s determination and, in many cases, years of successful performance subcontracting commercially. The process to reach resolution on commerciality determinations often extends for months or even over a year, valuable time that cannot be recovered.

For these reasons, AIA requests that DPCAP direct contracting officers to rely on commercial determinations made by contractors or subcontractors with approved purchasing systems. The approval of purchasing systems by the government entails the due diligence required to entrust commerciality determinations to approved contractors. Documentation demonstrating an approved purchasing system should be sufficient to rely on such commercial determinations. Implementing such an approach would remove an impediment to streamlined, commercial acquisitions.

Communications Prior to Noncommercial Determinations

Acknowledging the importance of transparency, 10 United States Code (USC) § 3456 requires that copies of commercial determinations must be provided to contractors upon request.⁷ These determinations provide important insight into the decision to classify an item as commercial, although it is only after the decision has been made and only upon request. While 10 USC § 3456 indicates contracting officers, prior to making a determination, may “consider the views of appropriate public and private sector entities,” such communication prior to the decision being made is not currently required. Noncommercial (also referred to as “other than commercial”) determinations have significant implications, with noncommercial procurements using the more deliberative processes identified in FAR Part 15, including certified cost or pricing data, noncommercial terms and conditions, and a significantly lengthier acquisition lead-time. However, despite the critical impact of a decision of noncommerciality, the government often does not disclose to contractors until after the decision has been made. This lack of communication prevents contractors from providing additional context or information that would serve to ensure the commercial nature of the goods or services is fully understood by the contracting officer.

To inculcate a truly commercial-first culture, AIA requests the DPCAP require communication with contractors prior to issuing a noncommercial determination. This communication would come from the contracting officer and include any DCMA CIG personnel who participated in the planned decision. This would be akin to a “brief explanation,” explaining the data supporting the contracting officer’s planned decision, and provide the opportunity for the contractor to provide additional data or context to factor into the decision. This communication could be either oral or written and would provide the contractor with an opportunity to provide additional information to support a commercial

⁶ DFARS FAR Overhaul Class Deviations, Subpart 244.470, https://www.acq.osd.mil/dpap/dars/dfars_far_overhaul_class_deviations.html.

⁷ 10 USC § 3456: [Commercial product and commercial service determinations by Department of Defense.](#)

determination. Although this additional process may add some time in the short term, the benefit would be the significant time savings when commercial is determined to be the correct method and the streamlined FAR Part 12 procedures are able to be used.

Products Previously Deemed Commercial

Department leadership has historically⁸ understood the importance of not overturning prior commerciality determinations. Adhering to previous determinations streamlines future acquisitions for the same or similar items and prevents inconsistent opinions on whether a product or service is commercial. Nonetheless, it remains common for products or services that were previously classified as commercial to have subsequent generations inappropriately reclassified as noncommercial, often due to changes in part numbers or minor modifications used as justification despite functionality remaining the same. This can be extremely disruptive to the affected contractor, its supply chain, and subcontractors. While each contracting officer brings his or her own perspective, revisiting or overturning prior determinations, when part numbers have changed but the functionality is the same, causes significant disruption to a contractor's acquisition approach, the cost of doing business with the government, and the time it takes to award a contract.

Section 814 of the National Defense Authorization Act (NDAA) for Fiscal Year 2025 (FY25) attempts to address this issue, stating a "contract or subcontract for a product (including a product without a part number or a product with a prior part number that has the same functionality as the product had with the prior part number) or service acquired using commercial acquisition procedures under part 12 of the Federal Acquisition Regulation shall serve as a prior commercial product or commercial service determination ... including when subject to minor modifications." In line with statutory intent, and to take advantage of the streamlining that occurs in leveraging prior determinations, AIA requests DPCAP issue a class deviation to implement Section 814 of the FY25 NDAA language. A minimal, written explanation from a contractor or subcontractor explaining the nature of the modification or new generation capabilities should be sufficient documentation to proceed with the procurement. This deviation will be a significant step towards commercial-first acquisition.

Components or Spare Parts Previously Deemed Commercial

A separate but related concern involves contracting officers conducting an increasing number of commerciality reviews of individual components of products that have already been deemed commercial. A July 2019 revision to Department guidance⁹ inserted a statement that reads: "subcomponents and spare parts of items determined to be commercial must be considered independently." This guidance has resulted in subcomponents and parts of previously determined commercial products to be noncommercial. This incorrect interpretation is disruptive to supply chains and subcontractors who had previously operated under the understanding their part was commercial, delays fielding of solutions, adds costs to the acquisition cycle, and exacerbates supply chain issues. Deeming components or spare parts of commercial products as noncommercial is not supported by the statutory definition of a commercial

⁸ Defense Procurement and Acquisition Policy [Memorandum](#), "Guidance on Commercial Item Determinations and the Determination of Price Reasonableness for Commercial Items," Sept 2, 2016, stating "contracting officers should adopt the practice of recognizing prior known determinations."

⁹ Department of Defense Guidebook for Acquiring Commercial Items Part A: Commercial Item Determination, Jul 2019.

product or the FAR and is causing significant additional work for both government and industry.

AIA requests DPCAP issue guidance to contracting officers that components or parts for commercial products are to be presumed commercial, and documentation of the commerciality for the product is sufficient for commercial procurement of the component or spare part as a FAR Part 12 commercial acquisition. If such a presumption is not made, AIA recommends requiring a justification for head of contracting activity approval, to include consideration of evidence of commerciality provided by the offeror. As the Guidebook for Acquiring Commercial Items, Parts A & B (revised July 2019 and January 2018, respectively) has increased roadblocks to findings of commerciality, and presented other challenges, AIA recommends rewriting or rescinding the Guidebook to encourage commercial-first buying.

Commerciality vs. Pricing

The definition of commercial products and services are clearly spelled out in statute¹⁰ and in FAR Subpart 2.101. Nevertheless, contracting officers often apply non-statutory and non-regulatory reviews that go above and beyond what is required. Specifically, contracting officers have used price reasonableness determinations—the process by which the Department ensures it is receiving fair and reasonable prices—to justify noncommercial determinations. With regards to commercial products, price analysis or reasonableness has no bearing on commerciality; these are important but separate issues. Moreover, commerciality determinations should be made prior to conducting price reasonableness and should inform which analysis method should be used. Using pricing to make commercial determinations deviates from statute and the FAR, is a noncommercial practice, and significantly delays commerciality determinations and contract awards.

AIA requests DPCAP issue guidance to the contracting workforce to separate the commercial determination from the price reasonableness determination and negotiation processes. The use of price to determine commerciality is a significant impediment in the broader adoption of commercial acquisitions. Again, the Guidebook for Acquiring Commercial Items Parts A & B should be revised to provide clear guidance regarding the distinction between — and appropriate sequence of — commerciality determinations and price reasonableness determinations.

Contracting Officer Authority to Make Determinations

The revised DFARS Subpart 212.001-70(c) requires the contracting officer to decide in writing whether a product or service is commercial. Contracting officer accountability is clear and connects to the overall responsibility for contract award. At times, and as provided by statute, contracting officers consult the DCMA CIG for counsel and advice regarding commerciality determinations.¹¹ However, the CIG's findings of noncommerciality have been sometimes contrary to substantial, factual evidence provided by industry to the contracting officer, and further, the CIG does not always provide industry an opportunity to substantiate commerciality. While the purpose behind the CIG is to provide an expert resource, the decision on commerciality ultimately should remain with the contracting officer, in line with statute and regulation.

¹⁰ 41 USC § 103: Commercial product; 41 U.S. Code § 103a: Commercial service

¹¹ 10 USC § 3456: Commercial product and commercial service determinations by Department of Defense

In alignment with Section 1822 of the FY26 NDAA, AIA recommends DPCAP expressly withdraw previous guidance¹² stating “DCMA Contracting Officers will serve as determining officials for all commercial item review requests submitted to DCMA.” This direction has been interpreted by some contracting officers to indicate they must engage with the DCMA CIG on all contract and subcontract commercial decisions, revoking their own responsibility. Additionally, AIA requests new commerciality guidance be issued, reasserting¹³ the authority to make commercial determinations rest with the contracting officer and outlining the new focus of the CIG, per Section 1822. To accelerate commerciality procurement within the Department, AIA recommends that DPCAP advise contracting officers to only consult the CIG for assistance with performing market research and the determination regarding the non-availability of commercial products or commercial services, and other analysis, used to determine the reasonableness of price for the purposes of procurements by the Department. If a contracting officer deems a product or service commercial, there should be no need for second-guessing by the DCMA CIG. Clarifying that final decision authority regarding commercial item determinations resides with the contracting officer – with the CIG providing meaningful expertise in certain situations – will promote the advancement and support for commerciality in defense acquisitions at all levels of the industrial base supply chain.

Commercial Services for Commercial Products

Commercial products typically have services that allow for upkeep, maintenance, or repairs that allow the product to remain operational. If a product is deemed commercial, it stands to reason that the work done upon that product would also be commercial. This common-sense understanding is incorporated in the FAR definition of commercial services, which provides that services procured in support of commercial products are also commercial. However, industry has frequently experienced instances where contracting officers deem services on commercial products as noncommercial, at times using nuanced interpretations of the FAR definition of commercial services, such as “contemporaneously” or what would constitute “terms and conditions similar to...”. This overly restrictive interpretation goes against the spirit of the law, recent executive orders, and Secretary of War directives prioritizing commercial buying. AIA requests DPCAP direct the presumption that services for commercial products are themselves commercial, absent substantive evidence to the contrary.

Further, guidance should expressly state that services performed on a noncommercial product should also be presumed commercial services, absent contradictory evidence indicating otherwise. For example, the service to change tires or perform an oil change on a noncommercial vehicle should be presumed to be a commercial service. AIA requests any noncommercial determinations for services on commercial products be subject to head of contracting activity approval. To streamline documentation, the prior commercial determination for the product should be sufficient to procure the associated services as commercial services. The commerciality of the services should be source-agnostic, and interpretations should not be overly restrictive to embed commerciality across the spectrum of Department services.

¹² Defense Pricing and Contracting [Memorandum](#), “Defense Contract Management Agency Commercial Item Determination Authority,” Dec 20, 2018.

¹³ Defense Procurement and Acquisition Policy [Memorandum](#), “Guidance on Commercial Item Determinations and the Determination of Price Reasonableness for Commercial Items,” Sept 2, 2016.

Additionally, the definition of “commercial services” has changed under the FAR Overhaul Subpart 2.101, from the source providing “similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government” to providing “similar services at the same time to the general public under terms and conditions similar to those offered to the Government.” This revised definition is ambiguous as the term “at the same time” is not defined. To ensure clarity, AIA recommends a definition of “at the same time” be clarified to include requirements creation, solicitation, award and contract performance, in keeping with commercial-first procurement practices and statutory intent. The statutory definition of “of a type” commercial services does not require comparison between government and commercial performance requirements, but only of terms and conditions. AIA requests guidance that standard commercial terms and conditions are by default similar to the government’s terms and conditions, absent significant contradictory evidence.

Lastly, AIA requests the Pentagon provide guidance to increase findings of commercial services. For example, industry customizes services offered in support of its products for commercial customers daily. Such customization does not alter the commercial nature of the service but has resulted in findings of noncommerciality. Also, services provided in support of commercial items are being determined noncommercial on the basis of Non-Recurring Engineering (NRE) charges to meet the government’s program requirements. NRE covers a wide variety of adaptations as needed by the customer and occurs frequently in commercial performance. As NRE is a widespread commercial service, there should be a default of commerciality for NRE services, unless there is significant contradictory evidence indicating otherwise.

Commercial Of a Type

The Pentagon continues to face persistent challenges in making “commercial of a type” determinations, driven largely by inconsistent interpretations and a risk-averse culture around what qualifies as commercial. Although the FAR allows products that are similar to those sold commercially — but modified for government use — to be considered “commercial of a type,” program offices and contracting officials often default to treating any military-specific modification as disqualifying. This trend reflects concerns about price reasonableness, data rights, and auditability, but it ultimately narrows access to innovative commercial technologies and drives higher costs by forcing programs into noncommercial contracting pathways. The result is a systemic reluctance to leverage the full flexibility Congress intended, creating friction for companies seeking to enter the defense market and slowing the Pentagon’s ability to adopt rapidly evolving commercial capabilities. AIA recommends that the Pentagon should apply the statutory definition more flexibly, consistent with FAR Subpart 2.101’s allowance for commercial items with minor modifications. These recommendations aim to preserve commercial pathways, reduce unnecessary cost-based contracting burdens, and ensure the Pentagon can access fast-moving commercial technology. As stated previously, the Guidebook for Acquiring Commercial Items Parts A & B should be revised to help the acquisition workforce more consistently — and confidently — apply a broader interpretation of “commercial of a type.”

While there have been significant strides towards “commercial-first” acquisition, outdated processes and cultural reservations on deeming products and services commercial remain. The DPCAP stands at a unique position of being able to revolutionize the Department’s processes to bring Secretary Hegseth’s vision of commercial-first to fruition. However, without removing the barriers described above, AIA is concerned the

advantages of commerciality will not be fully realized, and the status quo will remain intact. Tapping into the power of the commercial marketplace by increasing use of commercial procurement processes will promote greater efficiency, resilience, and innovation across the acquisition system. It will enable the government to benefit from the full capabilities of the dynamic industrial base, while fulfilling statutory preference for the acquisition of commercial products and services at all levels of the supply chain. AIA and its member companies stand ready to partner with the Pentagon to achieve these important goals. We look forward to the opportunity to continue this dialogue.

Thank you in advance for considering these recommendations. Please direct any questions to Patrick Walsh, AIA's Senior Director for Procurement Policy, at patrick.walsh@aia-aerospace.org or 703-358-1049.

Sincerely,

A handwritten signature in black ink that reads "Margaret Boatner". The signature is written in a cursive style with a large, prominent initial "M".

Margaret Boatner
Vice President, National Security Policy