

### **3.10.2-6 Subcontracts for Commercial Items and Commercial Components** (February 2003)

#### **I. Definition.**

(a) "Commercial item," as used in this clause, means:

(1) Any item, other than real property, that is of a type customarily used for nongovernmental purposes and that--

(i) Has been sold, leased, or licensed to the general public; or

(ii) Has been offered for sale, lease, or license to the general public;

(2) Any item that evolved from an item described in paragraph I(a)(1) of this clause through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a pending Government contract;

(3) Any item that would satisfy a criterion expressed in paragraphs I(a)(1) or (a)(2) of this clause, but for--

(i) Modifications of a type customarily available in the commercial marketplace; or

(ii) 'Minor' modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. 'Minor' modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor.

(4) Any combination of items meeting the requirements of paragraphs I(a)(1), (2), (3), or (5) of this clause that are of a type customarily combined and sold in combination to the general public;

(5) Installation services, maintenance, services, repair services, training services, and other services if such services are procured for support of an item referred to in paragraphs I(a)(1), (2), (3), or (4) of this clause, and if the source of such services--

(i) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and

(ii) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public;

(6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed, under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed;

(7) Any item, combination of items, or service referred to in subparagraphs I(a)(1) through (a)(6), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a Contractor; or

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

(b) "Subcontract," as used in this clause, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

II. To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or non-developmental items as components of items to be supplied under this contract.

III. Notwithstanding any other clause of this contract, the Contractor is not required to include any TSA Acquisition Management System provision or clause, other than those listed below to the extent they are applicable and as may be required to establish the reasonableness of prices, in a subcontract at any tier for commercial items or commercial components:

(a) Equal Opportunity (E.O. 11246);

(2) Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. 4212(a));

(b) Affirmative Action for Handicapped Workers (29 U.S.C. 793); and

(c) Preference for Privately Owned U.S.-Flagged Commercial Vessels (46 U.S.C. 1241) (flow down not required for subcontracts awarded beginning May 1, 1996).

IV. The Contractor shall include the terms of this clause, including this paragraph IV, in subcontracts awarded under this contract.

**(End of clause)**

## **PRESCRIPTION**

Should be used in RFI/RFPs and contracts for supplies or services other than commercial items.