

December 14, 2020

General Services Administration

Regulatory Secretariat Division

1800 F Street NW, 2nd Floor

Washington, DC 20405

RE: FAR Case 2018-018 Revision of Definition of “Commercial Item”

The Computing Technology Industry Association (“CompTIA”), the leading association for the global information technology (“IT”) industry, respectfully submits these comments in response to FAR Case 2018-018 Revision of Definition of “Commercial Item”.

As required by section 836 of the NDAA for FY 2019, DoD, GSA, and NASA are proposing to replace instances of commercial item(s) with commercial product(s), commercial service(s), or both commercial product(s) and commercial service(s).

Commercial Services Should be Considered Commercial off the shelf (“COTS”)

The FAR Council Should Make Clear that COTS Includes Commercial Services

The FAR currently defines a COTS item as any “item of supply . . . that is (i) a commercial item [as defined by the FAR]; (ii) Sold in substantial quantities in the commercial marketplace; and (iii) [o]ffered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace.”¹

The FAR Council’s new proposed rule implements a recent statutory change that splits the definition of “commercial item” into two separate subcategories: (1) “commercial products” and (2) “commercial services.”

Although the proposed rule substitutes the broader term “commercial item” with the narrower term “commercial product,” and further states that the separation of “commercial item” to “commercial products,” the use of many “commercial products” will require “commercial services” to function and receive software updates. By neglecting to explicitly include “commercial services” within the definition of COTS, ambiguity exists regarding whether such services qualify as COTS. This ambiguity has limited the ability

¹ FAR 2.101.

of Federal agencies to quickly and effectively procure commercial services that otherwise meet the definition of COTS. The FAR Council should take this opportunity to revise the proposed rule to clarify that “commercial services” are included within the definition of COTS.² This would give the government access to a much broader range of service providers, increase competition by minimizing barriers to participation of commercial service providers, and allow for procurements for commercial services to move significantly faster – thus, getting the required services more quickly to government customers.

Commercial services, which are sold in substantial quantities in the commercial marketplace and offered to the government without any modification, are often bundled with, and essential to the proper function of commercial products, such as the Internet of Things (“IoT”) or Information & Communication Technology (“ICT”) devices. If commercial services that otherwise meet the definition of COTS are not considered COTS, commercial IoT or ICT technology companies with a minor focus on government procurement contracts are unlikely to compete for government work or offer their technologies to the government due to the effort and costs related to winning and performing non-COTS contracts. Even where companies do elect to take on those costs to enter the federal market, those costs would unnecessarily be pushed down to federal government and commercial end users.

Including commercial services under the definition of commercial-off-the-shelf (“COTS”) items would also align FAR terminology with that used by the DOD in its Cybersecurity Maturity Model Certification (CMMC) interim rule and streamline the process by which DOD customers have access to commercial services. According to the interim rule requiring that contractors perform NIST SP 800-171 assessments and comply with the CMMC regime, procurements “solely” for the acquisition of COTS are exempt from CMMC requirements.³ The change proposed by CompTIA would ensure that what was previously included in the definition of “commercial items” remain included, after the enactment of the FAR modifications proposed in this rule, in the exemption granted to COTS items in the CMMC interim rule.

CONCLUSION

CompTIA recommends that the FAR Council explicitly include commercial services under the definition of commercial-off-the-shelf (“COTS”) items as this would provide the government access to the broadest range of service providers, increase competition, and allow government customers quicker access to required commercial services.

² 85 FR 65610, 65610

³ DFARS Case 2019-D041

Sincerely,

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