

Commercial Item Determination (CID)

CID Support Documentation

- Small Business Focus -

v.APR_2021

RMS Compliance



Disclaimer

- ❑ *This is a high-level briefing regarding the process for determining commerciality of items or services in U.S. Government (USG) contracting.*
- ❑ *Lockheed Martin is providing this briefing as a courtesy to assist small business subcontractor understanding of the process and USG requirements for data submission and assessment.*

Briefing Focus

- ❑ What is **Commerciality** as it relates to US Government contracting?
- ❑ Resources for Commercial Item Determination questions and answers.
- ❑ What are businesses asked to provide as **support documentation** for their **commerciality claim**?
- ❑ What are businesses asked to provided as **support documentation** for the **price reasonableness analysis** that must be performed?

Process is Based in Regulation

❑ Preference for use of Commercial Items / Services is based in Regulation

- ✓ The Federal Acquisition Streamlining Act of **1994** (FASA) promoted maximum use of commercial items to meet the government's needs.
- ✓ Preference for commercial items is incorporated into FAR 1.102 and flowed down to prime Subcontractors in FAR 52.244-6(b).
- ✓ In FY2018, the USG made commercial acquisition the default approach for IT products and services above the Simplified Acquisition Threshold (SAT).
- ✓ Beginning in FY **2018**, **regulation also emphasized the need to conduct adequate market research and guidelines for adequate supporting data.**

What is Commerciality in Gov't Contracting?

❑ FAR 2.101(b) offers the definition of a Commercial Item

- ✓ Any item, customarily **used by the general public or by non-governmental entities** for purposes other than governmental purposes, and—
 - **Has been or will be sold, leased, or licensed** to the general public; or
 - **Has been offered for sale, lease, or license** to the general public;
 - **Minor modifications** (subject to certain requirements) are allowed;
 - Installation services, maintenance services, repair services, training services, and other services if **services are procured for support of a commercial item**
 - **Services sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices**
 - A non-developmental item, if the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local governments

❑ **Commercial Off The Shelf (COTS)** – unmodified item sold to the general public *(example, an HP laptop made with internal IT parts/components that are commercially used and available)*

RESOURCES – DCMA Commercial Item Group (CIG)

❑ <https://www.dcma.mil/Commercial-Item-Group/>

Sharing Information

- [FAQs](#) [PDF, 589KB]
- [Helpful Links](#) [DOC, 36KB]
- [DCMA CIG Training 2018](#) [PDF, 3MB]
- [Industry Day Slides 2020](#) [PDF, 4.4MB]
- [Industry Day Q&A](#) [PDF, 325KB]

Additional Resources

- [DAU Commercial Acquisition Workshop](#)
- [Commercial Acquisition Resource Page \(DAU\)](#)
- [Commercial Item Brochure](#) [PPT, 2.9MB]
- [DPAP Commercial Handbook](#)
- [Labor Rate Census Tool](#)

Upcoming Events



- May 6 – Monthly Office Hours
- Jun 23-25 – Serious Play Conference
- Jun 29-Jul 1 – Government Contract Pricing Summit

The General Process

- ❑ Subcontractor **asserts commerciality**
- ❑ Subcontractor **provides supporting data** for commerciality claim and to support price reasonableness of the item or service
- ❑ Prime Contractor **assesses Subcontractor claim and supporting data**
- ❑ Prime Contractor **performs independent market research** on item/service and price
- ❑ Prime Contractor **makes commercial item determination** (yay or nay)

Making that Assertion

The Subcontractor asserts that they are claiming Commerciality for the item or service, **and** –

- ✓ Provides evidence to support their assertion:
 - ❑ If the item is COTS, provide evidence, outside of the Subcontractor, where the item can be found for sale (i.e., competitor sites, Amazon, eBay, Google Shopping search, etc.).
 - ❑ If not COTS, subcontractor addresses in the assertion any differences between the item/service being procured and the similar-to item/service.
 - **Assess how differences affect form, fit, and function** of the item being procured
 - Address any requirements specific to the USG or military end-use customer, such as **paint, labeling, software / IT additions, qualification, testing, etc.**

Trust but Verify

- ☐ Review the requirements, statement of work (SOW), etc.
 - ✓ Know the specifications and **assess how they affect form, fit, and function** of the item being procured
 - ✓ Know any requirements specific to the USG or military end-use customer, such as **paint, labeling, software / IT additions, qualification, testing, etc.**
- ☐ Is the exact same item / part number advertised for sale?
 - ✓ **Google it**
 - ✓ Check specialized websites, such as military surplus and aviation parts resellers
 - ✓ Consider whether sufficient quantities are available?
 - ✓ What are the terms & conditions of the advertised sale (i.e., payment terms, warranty, liability, etc.)?
 - ✓ **Do similar items exist?**
- ☐ Check the DCMA Commercial Item Group (CIG) commercial item database and research sites such as the ones listed on their Resource page.

MISCONCEPTIONS about Commerciality

- ❑ The products of a “commercial company” are commercial
 - ✓ *A commercial company may be able to provide a specialized non-commercial item to the USG (i.e., software development).*
- ❑ The output of a “commercial facility” is commercial
 - ✓ *Commercial manufacturing facilities are often adapted to provide non-commercial items or non-commercial modifications to items.*
- ❑ All you need to prove an item is commercial is to list it on your company website
 - ✓ *Proving an item or service is commercial requires supporting evidence via sales invoices or offers for sale, such as written quotes to potential customers, and more.*
- ❑ If the item/service is commercial, the asking price must be fair and reasonable
 - ✓ *NOT NECESSARILY TRUE! Price reasonableness in the marketplace needs to be analyzed.*
- ❑ Catalog or published price list prices are automatically fair and reasonable
 - ✓ *NOT NECESSARILY TRUE!*

Determining Commerciality

From the “*DCMA Commercial Item Determination Training (2018)*”

❑ FAR 2.101(b) offers the definition of a Commercial Item

✓ Any item, customarily **used by the general public or by non-governmental entities** for purposes other than governmental purposes, and—

- **Has been or will be sold, leased, or licensed** to the general public; or
- **Has been offered for sale, lease, or license** to the general public;
- **Minor modifications** (subject to certain requirements) are allowed;
- Installation services, maintenance services, repair services, training services, and other services if **services are procured for support of a commercial item**
- **Services sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices**
- **A non-developmental item**, if the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local governments

❑ **Commercial Off The Shelf (COTS)** – unmodified item sold to the general public *(example, an HP laptop made with internal IT parts/components that are commercially used and available)*



Is it Commercial???

Door #1 An item that is OF A TYPE customarily used by the general public or by non-government entities for non-government purposes, and has been sold, leased, licensed or offered for sale to the general public.

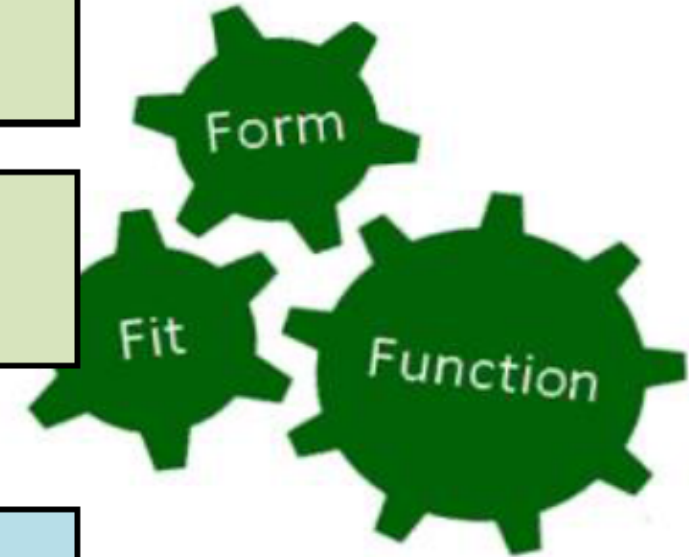
What to look for:

Invoices showing sales to nongovernment buyers. Catalogs showing the item is offered for sale to the general public. On-line ads.

Door #2 An item that would fit through Door #1 except that it hasn't hit the marketplace yet, but it will hit the marketplace by the time the government needs it.

What to look for:

Product launch planning documents. Contracts for future deliveries.



Important: The regulations have been edited to fit on this slide. See FAR 2.101 for original.

Is it Commercial???

Door #3 An item that would go through Door #1 or #2 BUT FOR
(i) Modifications that are customarily available in the commercial marketplace, or
(ii) Minor modifications to meet government requirements but do not significantly change the functional characteristics of the item

What to look for:

Documents for a comparison item showing that it is similar to the subject item in most respects and fits through Doors #1 or #2, and...

Details on the modification (differences) to show that the modifications meet (i) or (ii).

What else to look for:

Drawings, photographs, specifications. Contract terms & conditions.

Show-stoppers:

Government-unique functions or characteristics that are NOT minor mods.



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Is it Commercial???

Door #4 A combination of items that can go through Door #1, #2, #3, or #5.

Door #5 Installation, maintenance, repair, training, and other services, IF...

Such services are procured for support of an item that goes through any of Doors 1-4; and...

...the services are available to the general public under similar terms & conditions.

What to look for:

Evidence that the item goes through any of Doors 1-4. Statements of work, contracts showing terms & conditions. Advertisements for services.



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Is it Commercial???

Door #6 Services OF A TYPE offered and sold competitively in substantial quantities based on established catalog or market prices for specific tasks or outcomes, under standard commercial terms & conditions.

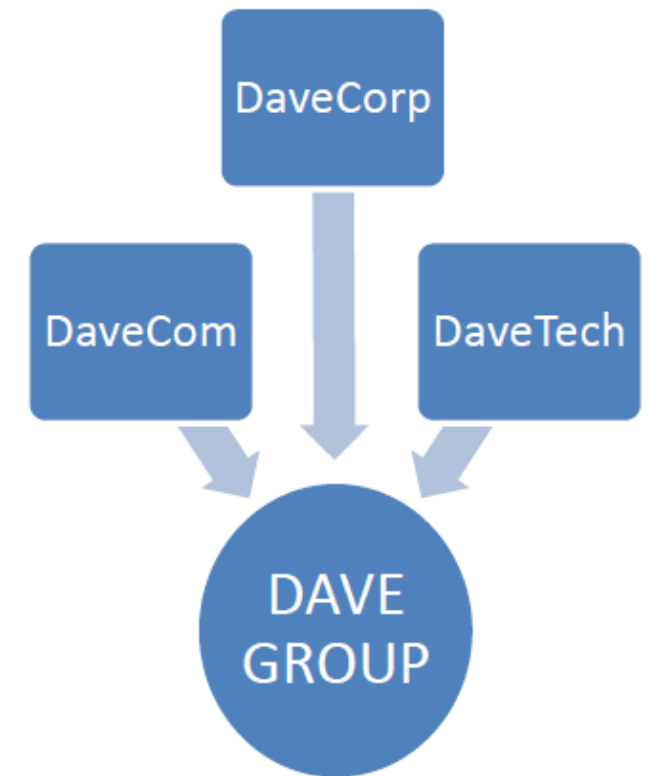
What to look for:

Statements of work. Contracts showing terms & conditions. Advertisements for services.

The FAR further defines "catalog price" and "market prices"

Door #7 Any combination of items and services that go through Doors 1-6...

...NOTWITHSTANDING the fact that items/services are transferred between separate divisions, subsidiaries, or affiliates of a contractor



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Door #8 A nondevelopmental item, if the procuring agency determines that the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local governments.

What to look for:

- Evidence of private funding for development,
- Quantities that are “substantial,”
- Evidence of market competition, and
- State/local government sales invoices



Quantifiable Data

Sales data for the same or similar items / services sold commercially under the same or similar terms in similar quantities may / should include:

- **Tabulation sheets, invoices, sales dollars, sales orders demonstrating commercial sales** (i.e., over the most recent 24 month period is general practice)
 - ✓ Identify Customers and Commercial Platforms associated with the sales data.
- **Terms and conditions** of the commercial sales, including:
 - ✓ Payment Terms and Any Discount terms.
- **Quantities** sold
 - ✓ When providing invoices, be sure to identify the entire Contract/PO quantity sold for similar quantity comparative purposes.
- **Date of sale / invoice**
 - ✓ How long has product been available to general public?

Quantifiable Data - QUANTITIES

Per FAR 15.403-1(c)(3)(ii) - When Sales data for the same or similar items / services sold commercially under the same or similar terms are not made in similar quantities, “Other than Certified Cost or Pricing Data (CCoPD)” from the Subcontractor / is required, and may include:

- ☐ Labor Costs
- ☐ Labor Hours by Classifications
- ☐ Material Costs
- ☐ Tier Subcontractor Costs
- ☐ Bill of Material Costs
- ☐ Overhead Rates
- ☐ Applicable Rates to Major Cost Types

Example – Commercial Item “Of a Type”

Pizza – Commercial “Of a Type” Determination



Pizza
Meal Ready-
to-Eat
(MRE)



Similar-To a Grocery Store Frozen Pizza

Proposed "Similar-to" Commercial Product:
Frozen pizza



Think outside the box!



- Makes 12 10-inch pizzas
- Includes 100% real mozzarella cheese
- Easy to prepare, just add water and bake
- Contained in a 4-gallon watertight pail with handle
- Perfect for long term food storage, emergency preparedness and survival food
- Enjoy as an everyday meal solution
- 25-30-year shelf life*

Requirements – the Discriminators

Shelf life:

- 18 months if kept frozen (0°C)

Energy: approx. 280
Calories per
standard serving

Steps to Prepare:

Unwrap pizza. Place
on baking sheet.
Bake 13-15 minutes
at 400°F



Shelf life:

- 3.5 years at 27°C or below
- 9 months at 38°C

Energy:

1200 Calories per
package, including
sides

Steps to Prepare:

Cut open polybag
containing flameless
heater, add pizza
pouch & water, wait
12-15 min.

There would have to be modifications to the “similar-to” frozen pizza product in order to meet these USG-specific requirements.

Are the modifications major, or are they minor?

How much do those modifications cost?

Composition and Packaging

Composition:

- Pepperoni
- Flour-based crust
- Tomatoes
- Cheese

Packaging: shrink film wrapping inside a chipboard box



Composition:

- Pepperoni
- Flour-based crust
- Tomatoes
- Cheese

Packaging: Must be able to withstand parachute drops from 380 meters and non-parachute drops of 30 meters

Is there additional testing that would need to be done to test the “similar-to” frozen pizza and its ability to withstand this requirement?

Is that testing an extra cost? If so, how much?

Market Factors

Market factors:

- Strong competition among producers
- Large volume – more than \$3 billion in sales in 2017

**MATURE
MARKETPLACE = low
price**



Market factors:

- In development – no product satisfying the government's requirements yet exists

**IMMATURE
MARKETPLACE =
high price**

Even if comparing to the emergency / survival rations available in the commercial market, the market is still immature and specialized. And there would need to be product modifications or additional testing required to meet the USG requirements.

Price Reasonableness

Steps to Determining Commercial Price Reasonableness

Supporting Price Reasonableness in the Commercial Marketplace

- ❑ Reasonable knowledge of the market and competitive market conditions
- ❑ Who makes similar products / services?
- ❑ Who buys the item or service besides the USG?
- ❑ What has the USG paid in the past? What have we paid? What do others pay?
- ❑ **Supplier responsibility is to provide data that can support their assertion of commerciality and price reasonableness.**
- ❑ **Prime Contractor responsibility is to collect data and compile it in order to make an informed price reasonableness determination.**

Supporting Price Reasonableness in the Commercial Marketplace

☐ Subcontractor provides pricing data:

- ✓ Advertisements for the same or similar items
- ✓ Catalogs / Price Lists
- ✓ Quotes for potential sales
- ✓ Sales / Invoices of the item or similar items
- ✓ Describe the differences between procured item and similar-to item
- ✓ Cost of starting or re-starting production

☐ May adjust pricing data for:

- ✓ Changes in market conditions (supply and demand, raw material price fluctuations, etc.)
- ✓ Quantity
- ✓ Escalation
- ✓ Delivery schedule, warranty, other contract terms & conditions

Example

Example: Buying a Valve

- ❑ Subcontractor makes custom valves for various military and commercial applications.
- ❑ Subcontractor provides data showing various part numbers and technical specifications, including price for each valve they make.
- ❑ Subcontractor never made this specific valve before, but they have sold similar valves commercially.
- ❑ Prime Contractor needs to compare the Form, Fit and Function of the commercially sold valves, to the one we are buying to see if it fits into the commercial item “of a type” definition.

Support Data for Commerciality Determination

- ❑ Our Subcontractor (KTR Corp.) provided sales history of commercial sales (invoices) and a price list, and we performed independent market research and found other similar valves for sale by a competitor, MKT, Inc.
- ❑ The Government requirements are:
 - ✓ 2.25" diameter
 - ✓ Stainless Steel (SS)
 - ✓ 2,000 PSI
 - ✓ Max Temp 2,000 degrees
 - ✓ 10" long
- ❑ Is the valve commercial?
 - ✓ Based on data provided, opinion is yes, this fits into the "of a type" scope, that is not offered for sale.

Part Numbers	Diameter	Material	Pressure Rating (psi)	Length (")	Temperature	Average Price
KTR Part No 001	2.25"	Steel	250	8"	750	\$ 56,550
KTR Part No 002	4.4"	SS	125	14"	4000	\$ 16,964
KTR Part No 003	2.25"	Steel	125	8"	750	\$ 30,476
KTR Part No 004	2.25"	Steel	125	8"	2000	\$ 26,469
KTR Part No 005	2.25"	SS	125	8"	1250	\$ 26,670
KTR Part No 006	2.25"	S			750	\$ 25,846
KTR Part No 007	2.25"	S			750	\$ 36,725
KTR Part No 008	7.6"	S			2000	\$ 63,603
KTR Part No 009	2.25"	S			750	\$ 21,123
KTR Part No 010	2.25"	S			450	\$ 15,669
KTR Part No 011	2.25"	S			750	\$ 21,603
KTR Part No 012	2.25"	S			750	\$ 10,754
KTR Part No 013	1.25"				450	\$ 15,269
KTR Part No 014	1.25"				750	\$ 17,607
MKT Part No 001	1.25"				1250	\$ 21,426
MKT Part No 002	1.25"				2000	\$ 25,263
MKT Part No 003	2.25"				750	\$ 28,043
MKT Part No 004	2.25"				750	\$ 23,980
MKT Part No 005	2.25"				1250	\$ 27,723
MKT Part No 006	2.25"				1250	\$ 20,806
MKT Part No 007	2.25"	SS	150	8"	750	\$ 22,007
MKT Part No 008	4.4"	Steel	125	14"	1250	\$ 14,786
MKT Part No 009	4.4"	SS	200	14"	4000	\$ 44,631
MKT Part No 010	4.4"	SS	150	14"	7500	\$ 23,356



Pricing Comparison

- ❑ Subcontractor KTR Corp. proposed \$50,000 per unit price
- ❑ Compared to KTR Corp. Sales Catalog prices:
 - ✓ Some are higher, some are lower
- ❑ **Because the exact USG specifications are not met in any one similar item, we need to compare differences in technical specs and how they may contribute or translate to price differences.**

Part Numbers	Diameter	Material	Pressure Rating (psi)	Length (")	Temperature	Average Price
KTR Part No 001	2.25"	Steel	250	8"	750	\$ 56,550
KTR Part No 002	4.4"	SS	125	14"	4000	\$ 16,964
KTR Part No 003	2.25"	Steel	125	8"	750	\$ 30,476
KTR Part No 004	2.25"	Steel	125	8"	2000	\$ 26,469
KTR Part No 005	2.25"	SS	125	8"	1250	\$ 26,670
KTR Part No 006	2.25"	Steel	125	8"	750	\$ 25,846
KTR Part No 007	2.25"	Steel	125	8"	750	\$ 36,725
KTR Part No 008	7.6"	Steel	125	24"	2000	\$ 63,603
KTR Part No 009	2.25"	Steel	150	8"	750	\$ 21,123
KTR Part No 010	2.25"	Steel	125	8"	450	\$ 15,669
KTR Part No 011	2.25"	SS	125	8"	750	\$ 21,603
KTR Part No 012	2.25"	Steel	125	8"	750	\$ 10,754
KTR Part No 013	1.25"	SS	3000	4.5"	450	\$ 15,269
KTR Part No 014	1.25"	SS	3000	4.5"	750	\$ 17,607

What Supporting Pricing Data is Needed?

❑ Government requirements are:

- ✓ 2.25" diameter - sell this diameter
- ✓ Stainless Steel (SS) - sell valves in this material
- ✓ 2,000 PSI - sell with similar PSI rating
- ✓ 10" long - do not sell this length
- ✓ Max Temp 2,000° - sell with similar temp

Part Numbers	Diameter	Material	Pressure Rating (psi)	Length (")	Temperature	Average Price
KTR Part No 001	2.25"	Steel	250	8"	750	\$ 56,550
KTR Part No 002	4.4"	SS	125	14"	4000	\$ 16,964
KTR Part No 003	2.25"	Steel	125	8"	750	\$ 30,476
KTR Part No 004	2.25"	Steel	125	8"	2000	\$ 26,469
KTR Part No 005	2.25"	SS	125	8"	1250	\$ 26,670
KTR Part No 006	2.25"	Steel	125	8"	750	\$ 25,846
KTR Part No 007	2.25"	Steel	125	8"	750	\$ 36,725
KTR Part No 008	7.6"	Steel	125	24"	2000	\$ 63,603
KTR Part No 009	2.25"	Steel	150	8"	750	\$ 21,123
KTR Part No 010	2.25"	Steel	125	8"	450	\$ 15,669
KTR Part No 011	2.25"	SS	125	8"	750	\$ 21,603
KTR Part No 012	2.25"	Steel	125	8"	750	\$ 10,754
KTR Part No 013	1.25"	SS	3000	4.5"	450	\$ 15,269
KTR Part No 014	1.25"	SS	3000	4.5"	750	\$ 17,607

❑ KTR Part No. 005 specs are:

- ✓ 2.25" diameter - yes
- ✓ Stainless Steel (SS) - yes
- ✓ 125 PSI - how much to upgrade from 125 PSI to 2,000 PSI?
- ✓ 8" long - how much to upgrade from 8" length to 10" length?
- ✓ Max Temp 1,250° - how much to upgrade from 1,250° to 2,000°?

❑ Subcontractor needs to provide supporting pricing data for the above.

Support Data and Analysis

- ❑ Subcontractor support data for a \$50,000 per unit price:
 - ✓ costs to upgrade from 125 PSI to 2,000 PSI? - Subcontractor asserts an add'l \$350/unit
 - ✓ costs to upgrade from 8" length to 10" length? - Subcontractor asserts an add'l \$776/unit
 - ✓ costs to upgrade from 1,250° to 2,000°? - Subcontractor asserts an add'l \$1,234/unit

- ❑ Subcontractor also asserts that the USG requirement needs additional testing, that Subcontractor does not do commercially (testing is offered/performed commercially, USG requirement testing frequency is different):
 - ✓ Subcontractor estimated the additional testing costs \$2,500/unit

- ❑ Starting with the KTR Corp. catalog price of \$26,670/unit as the closest “of a type” item, we adjust it accordingly for the product increase and testing costs above, and our general **price reasonableness analysis indicates an estimated price of \$31,530 per unit**

- ❑ **Is the proposed \$50,000/unit price fair and reasonable? – No, not based off the information provided in this example.**

In Closing...

More Than Just Checking the Box...

- ❑ USG contracting requires specific data.
- ❑ Data submissions need to be clear and useful so that analysis of the data can be performed.
- ❑ The supporting data submission **may not be considered adequate if the Subcontractor redacts required information**, often on the basis that it is company proprietary information.
- ❑ Subcontractors have indicated that they would make supporting price information available to the USG without redactions. This independent audit of the Subcontractor's records by the USG may be requested by the prime contractor.

Safeguarding Proprietary Information!

- ❑ It is important that all proprietary and sensitive information be safeguarded.
- ❑ Proprietary Information Agreements (PIAs) or Nondisclosure Agreements (NDAs) between Prime Contractors and their Subcontractors ensure that safeguarding procedures are in place and understood.
- ❑ **All Subcontractors are encouraged to request that PIAs/NDAs be put in place before the exchange of any data that is considered proprietary or sensitive!**

Take-Aways - Sometimes Pizza isn't Pizza

- ☐ Address technical differences to the item or service being procured when comparing to a similar product.
- ☐ Translate those technical differences to prices.
- ☐ Think outside the box!

Take-Aways

- ❑ Subcontractor assertion of commerciality and price reasonableness must be supported by documented evidence in the form of commercial sales, quotes, and other verifiable data.
- ❑ Supporting data must clearly demonstrate that the price data is of like kinds and quantities sold to commercial customers. Invoices, quotes, or sales data need to show:
 - ✓ **Quantity** sold
 - ✓ **Part Number** and **Descriptions/Services** for the same/similar sales comparison
 - ✓ **“Sold to”** customer to ensure sale for end-use commercial purposes (i.e., not to Lockheed Martin or other defense entities)
 - ✓ **Unit Price** for price reasonableness comparison in the commercial marketplace

Adequate supporting data
is critical to a smooth
process and
determination!

