

(2) A product that—

(A) evolved from a product described in paragraph (1) through advances in technology or performance; and

(B) 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 Federal Government solicitation.

(3) A product that would satisfy the criteria in paragraph (1) or (2) were it not for—

(A) modifications of a type customarily available in the commercial marketplace; or

(B) minor modifications made to meet Federal Government requirements.

(4) Any combination of products meeting the requirements of paragraph (1), (2), or (3) that are of a type customarily combined and sold in combination to the general public.

(5) A product, or combination of products, referred to in paragraphs (1) through (4), even though the product, or combination of products, is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor.

(6) A nondevelopmental item if the procuring agency determines, in accordance with conditions in the Federal Acquisition Regulation, that—

(A) the product was developed exclusively at private expense; and

(B) has been sold in substantial quantities, on a competitive basis, to multiple State and local governments or to multiple foreign governments.

(Added Pub. L. 115-232, div. A, title VIII, § 836(a)(1), Aug. 13, 2018, 132 Stat. 1859.)

Editorial Notes

PRIOR PROVISIONS

A prior section 103, Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3679; Pub. L. 115-91, div. A, title VIII, §847(a), Dec. 12, 2017, 131 Stat. 1487, defined term “commercial item”, prior to repeal by Pub. L. 115-232, div. A, title VIII, §836(a)(1), Aug. 13, 2018, 132 Stat. 1859, effective Jan. 1, 2020. See Effective Date note below.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective, and repeal of former section 103 effective, on Jan. 1, 2020, subject to a savings provision, see section 836(h) of Pub. L. 115-232, set out as an Effective Date of 2018 Amendment; Savings Provision note under section 453b of Title 6, Domestic Security.

§ 103a. Commercial service

In this subtitle, the term “commercial service” means any of the following:

(1) Installation services, maintenance services, repair services, training services, and other services if—

(A) those services are procured for support of a commercial product, regardless of whether the services are provided by the same source or at the same time as the commercial product; and

(B) the source of the services provides similar services contemporaneously to the general public under terms and conditions

similar to those offered to the Federal Government;

(2) Services of a type offered and sold competitively, in substantial quantities, in the commercial marketplace—

(A) based on established catalog or market prices;

(B) for specific tasks performed or specific outcomes to be achieved; and

(C) under standard commercial terms and conditions.

(3) A service described in paragraph (1) or (2), even though the service is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor.

(Added Pub. L. 115-232, div. A, title VIII, § 836(a)(1), Aug. 13, 2018, 132 Stat. 1860.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective Jan. 1, 2020, subject to a savings provision, see section 836(h) of Pub. L. 115-232, set out as an Effective Date of 2018 Amendment; Savings Provision note under section 453b of Title 6, Domestic Security.

§ 104. Commercially available off-the-shelf item

In this subtitle, the term “commercially available off-the-shelf item”—

(1) means an item that—

(A) is a commercial product (as described in section 103(1) of this title);

(B) is sold in substantial quantities in the commercial marketplace; and

(C) is offered to the Federal Government, without modification, in the same form in which it is sold in the commercial marketplace; but

(2) does not include bulk cargo, as defined in section 40102(4) of title 46, such as agricultural products and petroleum products.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3679; Pub. L. 115-232, div. A, title VIII, §836(a)(2)(B), Aug. 13, 2018, 132 Stat. 1860; Pub. L. 116-283, div. A, title X, §1081(d)(4)(A), Jan. 1, 2021, 134 Stat. 3874.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
104	41:431(c).	Pub. L. 93-400, §35(c), as added Pub. L. 104-106, title XLII, §4203(a), Feb. 10, 1996, 110 Stat. 655.

In paragraph (2), the words “section 40102(4) of title 46” are substituted for “section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702)” because of section 18(c) of Public Law 109-304 (46 U.S.C. note prec. 101).

Editorial Notes

AMENDMENTS

2021—Par. (1)(A). Pub. L. 116-283, §1081(d)(4)(A), made technical correction to directory language of Pub. L. 115-232, §836(a)(2)(B). See 2018 Amendment note below.

2018—Par. (1)(A). Pub. L. 115-232, as amended by Pub. L. 116-283, §1081(d)(4)(A), substituted “commercial product” for “commercial item”.