The FAR was recently revised, via a **final rule** , to implement **Section 836** of the FY 2019 NDAA. Essentially, the final rule splits the current definition of "commercial item" (found at FAR 2.101) into two definitions: "commercial product" and "commercial service."

Before we get to deep into the weeds, let's note that the FY 2019 NDAA directed that the new definitions become effective 01 January 2020. The fact that it took the FAR Council an additional nineteen months beyond the statutory requirement is evidence that the FAR rule-making process is broken. But you already knew that, so let's move on.

As the promulgating comments noted

… the amendment to separate 'commercial item' into 'commercial product' and 'commercial service' does not expand or shrink the universe of products or services the Government may procure using FAR part 12, nor does it change the terms and conditions with which contractors must comply. … This rule does not create new solicitation provisions or contract clauses. This rule merely replaces the term 'commercial item(s)' with 'commercial product(s),' 'commercial service(s),' 'commercial product(s) or commercial service(s),' or 'commercial product(s) and commercial service(s)' in the FAR including in part 52, as appropriate. This rule does not impose any new requirements on contracts at or below the SAT or for commercial products, including COTS items, or for commercial services.

Essentially, then, the revision is about semantics only. A commercial product is still defined by one of six definitions—the same definitions that were always in FAR 2.101. A commercial service is still defined by one of two definitions—the same definitions that were always in FAR 2.101. Nothing has really changed, except for "bifurcating" the definition into two separate definitions.

If nothing changed, then why did it take so long to promulgate the final rule? That's a question that only the FAR Council can answer.

If nothing changed, then why did Congress, the Section 809 Panel, and the FAR Council decide to make the change? Well, according to the public law and the promulgating comments:

… 'acquisition workforce has faced issues with inconsistent interpretations of policy, confusion

over how to identify eligible commercial products and services'. [*Sic.*] Bifurcating the definition of 'commercial item" into 'commercial product' and 'commercial service' is a way to provide clarity for the acquisition workforce, which may result in greater engagement with the commercial marketplace.

Thus: no amount of training could help the Federal acquisition workforce with understanding the difference(s) between products and services. It literally took an Act of Congress to create two definitions where only one had existed before. The Act of Congress was necessary because contracting officers didn't understand the FAR. What this says about the acquisition workforce, and the training thereof, we'll leave to the imaginations of our readership.

While this in an important change—because the definition of commercial item (or commercial product and commercial service) is critical—it is not any kind of substantive change. Kind of like when TINA became whatever it's called now (Truthful Cost or Pricing Data). Nobody calls it what it's called now: everybody calls it TINA. Why? Because we're trying to communicate with each other.

Similarly, no matter what you'll be calling it going forward, it will always be "commercial item" to the people who've been dealing with it for years. For example, we don't see DCMA's "Commercial Item Group" (CIG) changing its name to "Commercial Products and Commercial Services Group" (CPACSG) … but who knows? Maybe they'll surprise us and make the change.