

Sec.

## AMENDMENTS

2006—Pub. L. 109-163, div. A, title VIII, §803(a)(2), Jan. 6, 2006, 119 Stat. 3371, added item 2379.  
 1997—Pub. L. 105-85, div. A, title III, §350(b), Nov. 18, 1997, 111 Stat. 1692, added item 2378.

**§ 2375. Relationship of commercial item provisions to other provisions of law**

(a) **APPLICABILITY OF TITLE.**—Unless otherwise specifically provided, nothing in this chapter shall be construed as providing that any other provision of this title relating to procurement is inapplicable to the procurement of commercial items.

(b) **LIST OF LAWS INAPPLICABLE TO CONTRACTS FOR THE ACQUISITION OF COMMERCIAL ITEMS.**—No contract for the procurement of a commercial item entered into by the head of an agency shall be subject to any law properly listed in the Federal Acquisition Regulation (pursuant to section 1906 of title 41).

(c) **CROSS REFERENCE TO EXCEPTION TO COST OR PRICING DATA REQUIREMENTS FOR COMMERCIAL ITEMS.**—For a provision relating to an exception for requirements for cost or pricing data for contracts for the procurement of commercial items, see section 2306a(b) of this title.

(Added Pub. L. 103-355, title VIII, §8102, Oct. 13, 1994, 108 Stat. 3390; amended Pub. L. 105-85, div. A, title X, §1073(a)(51), Nov. 18, 1997, 111 Stat. 1903; Pub. L. 107-107, div. A, title X, §1048(a)(18), Dec. 28, 2001, 115 Stat. 1223; Pub. L. 111-350, §5(b)(21), Jan. 4, 2011, 124 Stat. 3844.)

## AMENDMENTS

2011—Subsec. (b). Pub. L. 111-350 substituted “section 1906 of title 41” for “section 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 430)”.

2001—Subsec. (b). Pub. L. 107-107 inserted “(41 U.S.C. 430)” after “section 34 of the Office of Federal Procurement Policy Act”.

1997—Subsec. (c). Pub. L. 105-85 substituted “a provision relating to an exception” for “provisions relating to exceptions” and “section 2306a(b)” for “section 2306a(d)”.

## EFFECTIVE DATE

For effective date and applicability of chapter, see section 10001 of Pub. L. 103-355 set out as an Effective Date of 1994 Amendment note under section 2302 of this title.

PROVISIONS NOT AFFECTED BY TITLE VIII OF  
 PUB. L. 103-355

Pub. L. 103-355, title VIII, §8304, Oct. 13, 1994, 108 Stat. 3398, provided that: “Nothing in this title [see Tables for classification] shall be construed as modifying or superseding, or as intended to impair or restrict, authorities or responsibilities under—

“(1) section 2323 of title 10, United States Code, or section 7102 of the Federal Acquisition Streamlining Act of 1994 [Pub. L. 103-355, 15 U.S.C. 644 note];

“(2) the Brooks Automatic Data Processing Act (section 111 of the Federal Property and Administrative Services Act of 1949 ([former] 40 U.S.C. 759));

“(3) Brooks Architect-Engineers Act (title IX of the Federal Property and Administrative Services Act of 1949 ([former] 40 U.S.C. 541 et seq.) [now 40 U.S.C. 1101-1104]);

“(4) subsections (a) and (d) of section 8 of the Small Business Act (15 U.S.C. 637(a) and (d)); or

“(5) the Javits-Wagner-O’Day Act ([former] 41 U.S.C. 46-48c) [now 41 U.S.C. 8501 et seq.]”

## § 2376. Definitions

In this chapter:

(1) The terms “commercial item”, “non-developmental item”, “component”, and “commercial component” have the meanings provided in chapter 1 of title 41.

(2) The term “head of an agency” means the Secretary of Defense, the Secretary of Homeland Security, and the Administrator of the National Aeronautics and Space Administration.

(3) The term “agency” means the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration.

(Added Pub. L. 103-355, title VIII, §8103, Oct. 13, 1994, 108 Stat. 3390; amended Pub. L. 107-107, div. A, title X, §1048(a)(19), Dec. 28, 2001, 115 Stat. 1223; Pub. L. 107-296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 111-350, §5(b)(22), Jan. 4, 2011, 124 Stat. 3844.)

## AMENDMENTS

2011—Par. (1). Pub. L. 111-350 substituted “chapter 1 of title 41” for “section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)”.

2002—Par. (2). Pub. L. 107-296 substituted “of Homeland Security” for “of Transportation”.

2001—Par. (1). Pub. L. 107-107 inserted “(41 U.S.C. 403)” after “section 4 of the Office of Federal Procurement Policy Act”.

## EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107-296, set out as a note under section 101 of this title.

**§ 2377. Preference for acquisition of commercial items**

(a) **PREFERENCE.**—The head of an agency shall ensure that, to the maximum extent practicable—

(1) requirements of the agency with respect to a procurement of supplies or services are stated in terms of—

- (A) functions to be performed;
- (B) performance required; or
- (C) essential physical characteristics;

(2) such requirements are defined so that commercial items or, to the extent that commercial items suitable to meet the agency’s needs are not available, nondevelopmental items other than commercial items, may be procured to fulfill such requirements; and

(3) offerors of commercial items and nondevelopmental items other than commercial items are provided an opportunity to compete in any procurement to fill such requirements.

(b) **IMPLEMENTATION.**—The head of an agency shall ensure that procurement officials in that agency, to the maximum extent practicable—

(1) acquire commercial items or nondevelopmental items other than commercial items to meet the needs of the agency;

(2) require prime contractors and subcontractors at all levels under the agency contracts to incorporate commercial items or nondevelopmental items other than commercial items as components of items supplied to the agency;

(3) modify requirements in appropriate cases to ensure that the requirements can be met by commercial items or, to the extent that commercial items suitable to meet the agency's needs are not available, nondevelopmental items other than commercial items;

(4) state specifications in terms that enable and encourage bidders and offerors to supply commercial items or, to the extent that commercial items suitable to meet the agency's needs are not available, nondevelopmental items other than commercial items in response to the agency solicitations;

(5) revise the agency's procurement policies, practices, and procedures not required by law to reduce any impediments in those policies, practices, and procedures to the acquisition of commercial items; and

(6) require training of appropriate personnel in the acquisition of commercial items.

(c) PRELIMINARY MARKET RESEARCH.—(1) The head of an agency shall conduct market research appropriate to the circumstances—

(A) before developing new specifications for a procurement by that agency;

(B) before soliciting bids or proposals for a contract in excess of the simplified acquisition threshold; and

(C) before awarding a task order or delivery order in excess of the simplified acquisition threshold.

(2) The head of an agency shall use the results of market research to determine whether there are commercial items or, to the extent that commercial items suitable to meet the agency's needs are not available, nondevelopmental items other than commercial items available that—

(A) meet the agency's requirements;

(B) could be modified to meet the agency's requirements; or

(C) could meet the agency's requirements if those requirements were modified to a reasonable extent.

(3) In conducting market research, the head of an agency should not require potential sources to submit more than the minimum information that is necessary to make the determinations required in paragraph (2).

(4) The head of an agency shall take appropriate steps to ensure that any prime contractor of a contract (or task order or delivery order) in an amount in excess of \$5,000,000 for the procurement of items other than commercial items engages in such market research as may be necessary to carry out the requirements of subsection (b)(2) before making purchases for or on behalf of the Department of Defense.

(Added Pub. L. 103-355, title VIII, § 8104(a), Oct. 13, 1994, 108 Stat. 3390; Pub. L. 110-181, div. A, title VIII, § 826(a), Jan. 28, 2008, 122 Stat. 227.)

#### AMENDMENTS

2008—Subsec. (c)(1)(C). Pub. L. 110-181, § 826(a)(1), added subpar. (C).

Subsec. (c)(4). Pub. L. 110-181, § 826(a)(2), added par. (4).

#### COMMERCIAL SOFTWARE REUSE PREFERENCE

Pub. L. 110-417, [div. A], title VIII, § 803, Oct. 14, 2008, 122 Stat. 4519, provided that:

“(a) IN GENERAL.—The Secretary of Defense shall ensure that contracting officials identify and evaluate, at all stages of the acquisition process (including concept refinement, concept decision, and technology development), opportunities for the use of commercial computer software and other non-developmental software.

“(b) REPORT.—Not later than 270 days after the date of enactment of this Act [Oct. 14, 2008], the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on actions taken to implement subsection (a), including a description of any relevant regulations and policy guidance.”

#### REQUIREMENT TO DEVELOP TRAINING AND TOOLS

Pub. L. 110-181, div. A, title VIII, § 826(b), Jan. 28, 2008, 122 Stat. 228, provided that: “The Secretary of Defense shall develop training to assist contracting officers, and market research tools to assist such officers and prime contractors, in performing appropriate market research as required by subsection (c) of section 2377 of title 10, United States Code, as amended by this section.”

#### § 2378. Procurement of copier paper containing specified percentages of post-consumer recycled content

(a) PROCUREMENT REQUIREMENT.—(1) Except as provided in subsections (b) and (c), a department or agency of the Department of Defense may not procure copying machine paper after the applicable date specified in paragraph (2) unless the percentage of post-consumer recycled content of the paper meets the percentage then in effect under such paragraph.

(2) The percentage of post-consumer recycled content of paper required under paragraph (1) is as follows:

(A) 20 percent as of January 1, 1998.

(B) 30 percent as of January 1, 1999.

(C) 50 percent as of January 1, 2004.

(b) EXCEPTIONS.—A department or agency of the Department of Defense is not required to procure copying machine paper containing a percentage of post-consumer recycled content that meets the applicable requirement in subsection (a) if the Secretary concerned determines that one or more of the following circumstances apply with respect to that procurement:

(1) The cost of procuring copying machine paper satisfying the applicable requirement significantly exceeds the cost of procuring copying machine paper containing a percentage of post-consumer recycled content that does not meet such requirement. The Secretary concerned shall establish the cost differential to be applied under this paragraph.

(2) Copying machine paper containing a percentage of post-consumer recycled content meeting such requirement is not reasonably available within a reasonable period of time.

(3) Copying machine paper containing a percentage of post-consumer recycled content meeting such requirement does not meet performance standards of the department or agency for copying machine paper.

(c) EFFECT OF INABILITY TO MEET GOAL IN 2004.—(1) In the case of the requirement that will take effect on January 1, 2004, pursuant to subsection (a)(2)(C), the requirement shall not take effect with respect to a military depart-