

plies with respect to procurements for which solicitations are issued after the date occurring 180 days after the date of the enactment of this Act [Nov. 24, 2003].”

#### DATA REVIEW

Pub. L. 108-136, div. A, title VIII, §801(b), Nov. 24, 2003, 117 Stat. 1540, provided that:

“(1) The Secretary of Defense shall revise the data collection systems of the Department of Defense to ensure that such systems are capable of identifying each procurement that involves a consolidation of contract requirements within the department with a total value in excess of \$5,000,000.

“(2) The Secretary shall ensure that appropriate officials of the Department of Defense periodically review the information collected pursuant to paragraph (1) in cooperation with the Small Business Administration—

“(A) to determine the extent of the consolidation of contract requirements in the Department of Defense; and

“(B) to assess the impact of the consolidation of contract requirements on the availability of opportunities for small business concerns to participate in Department of Defense procurements, both as prime contractors and as subcontractors.

“(3) In this subsection:

“(A) The term ‘consolidation of contract requirements’ has the meaning given that term in section 2382(c)(1) of title 10, United States Code, as added by subsection (a).

“(B) The term ‘small business concern’ means a business concern that is determined by the Administrator of the Small Business Administration to be a small-business concern by application of the standards prescribed under section 3(a) of the Small Business Act (15 U.S.C. 632(a)).”

### § 2383. Contractor performance of acquisition functions closely associated with inherently governmental functions

(a) LIMITATION.—The head of an agency may enter into a contract for the performance of acquisition functions closely associated with inherently governmental functions only if the contracting officer for the contract ensures that—

(1) appropriate military or civilian personnel of the Department of Defense cannot reasonably be made available to perform the functions;

(2) appropriate military or civilian personnel of the Department of Defense are—

(A) to supervise contractor performance of the contract; and

(B) to perform all inherently governmental functions associated with the functions to be performed under the contract; and

(3) the agency addresses any potential organizational conflict of interest of the contractor in the performance of the functions under the contract, consistent with subpart 9.5 of part 9 of the Federal Acquisition Regulation and the best interests of the Department of Defense.

(b) DEFINITIONS.—In this section:

(1) The term “head of an agency” has the meaning given such term in section 2302(1) of this title, except that such term does not include the Secretary of Homeland Security or the Administrator of the National Oceanic and Atmospheric Administration.

(2) The term “inherently governmental functions” has the meaning given such term in subpart 7.5 of part 7 of the Federal Acquisition Regulation.

(3) The term “functions closely associated with inherently governmental functions” means the functions described in section 7.503(d) of the Federal Acquisition Regulation.

(4) The term “organizational conflict of interest” has the meaning given such term in subpart 9.5 of part 9 of the Federal Acquisition Regulation.

(Added Pub. L. 108-375, div. A, title VIII, §804(a)(1), Oct. 28, 2004, 118 Stat. 2007.)

#### PRIOR PROVISIONS

A prior section 2383, added Pub. L. 100-456, div. A, title VIII, §805(a)(1), Sept. 29, 1988, 102 Stat. 2010; amended Pub. L. 102-190, div. A, title X, §1061(a)(13), Dec. 5, 1991, 105 Stat. 1473; Pub. L. 103-355, title II, §2401, Oct. 13, 1994, 108 Stat. 3324, related to quality control in procurement of critical aircraft and ship spare or repair parts, prior to repeal by Pub. L. 104-106, div. A, title VIII, §803(a), Feb. 10, 1996, 110 Stat. 390.

Another prior section 2383, act Aug. 10, 1956, ch. 1041, 70A Stat. 137, permitted Secretary of a military department to make emergency purchases of war material abroad, and provided that such material may be admitted free of duty, prior to repeal by Pub. L. 87-456, title III, §303(c), May 24, 1962, 76 Stat. 78.

#### EFFECTIVE DATE

Pub. L. 108-375, div. A, title VIII, §804(b), Oct. 28, 2004, 118 Stat. 2008, provided that: “Section 2383 of title 10, United States Code (as added by subsection (a)), shall apply to contracts entered into on or after the date of the enactment of this Act [Oct. 28, 2004].”

### § 2384. Supplies: identification of supplier and sources

(a) The Secretary of Defense shall require that the contractor under a contract with the Department of Defense for the furnishing of supplies to the United States shall mark or otherwise identify supplies furnished under the contract with the identity of the contractor, the national stock number for the supplies furnished (if there is such a number), and the contractor’s identification number for the supplies.

(b)(1) The Secretary of Defense shall prescribe regulations requiring that, whenever practicable, each contract requiring the delivery of supplies (other than a contract described in paragraph (2)) shall require that the contractor identify—

(A) the actual manufacturer or producer of the item or of all sources of supply of the contractor for that item;

(B) the national stock number of the item (if there is such a number) and the identification number of the actual manufacturer or producer of the item or of each source of supply of the contractor for the item; and

(C) the source of any technical data delivered under the contract.

(2) The regulations prescribed pursuant to paragraph (1) do not apply to a contract that requires the delivery of supplies that are commercial items (as defined in section 103 of title 41).

(3) The regulations prescribed pursuant to paragraph (1) do not apply to a contract for an amount not greater than the simplified acquisition threshold (as defined in section 134 of title 41).

(c) Identification of supplies and technical data under this section shall be made in the

manner and with respect to the supplies prescribed by the Secretary of Defense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 137; Pub. L. 98-525, title XII, §1231(a), Oct. 19, 1984, 98 Stat. 2599; Pub. L. 99-500, §101(c) [title X, §928(a)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-156, and Pub. L. 99-591, §101(c) [title X, §928(a)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-156; Pub. L. 99-661, div. A, title IX, formerly title IV, §928(a), Nov. 14, 1986, 100 Stat. 3936, renumbered title IX, Pub. L. 100-26, §3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 103-355, title IV, §4102(d), title VIII, §8105(b), Oct. 13, 1994, 108 Stat. 3340, 3392; Pub. L. 104-106, div. D, title XLIII, §4321(b)(12), Feb. 10, 1996, 110 Stat. 672; Pub. L. 111-350, §5(b)(23), Jan. 4, 2011, 124 Stat. 3844.)

#### HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2384 .....	10:1207. 34:583.	R.S. 3731.

The words “Each contractor” are substituted for the words “Every person”. The word “his” is substituted for the words “the name of the contractor furnishing such supplies”. The words “of any kind” and “and distinguish [distinguished]” are omitted as surplusage. The word “may” is substituted for the word “shall”.

#### CODIFICATION

Pub. L. 99-591 is a corrected version of Pub. L. 99-500.

#### AMENDMENTS

2011—Subsec. (b)(2). Pub. L. 111-350, §5(b)(23)(A), substituted “section 103 of title 41” for “section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))”.

Subsec. (b)(3). Pub. L. 111-350, §5(b)(23)(B), substituted “section 134 of title 41” for “section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))”.

1996—Subsec. (b)(2). Pub. L. 104-106, §4321(b)(12)(A), substituted “items (as)” for “items, as” and inserted a closing parenthesis after “403(12)”.

Subsec. (b)(3). Pub. L. 104-106, §4321(b)(12)(B), inserted a closing parenthesis after “403(11)”.

1994—Subsec. (b)(2). Pub. L. 103-355, §8105(b), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “Paragraph (1) does not apply to a contract that requires the delivery of supplies that are commercial items sold in substantial quantities to the general public if the contract—

“(A) provides for the acquisition of such supplies by the Department of Defense at established catalog or market prices; or

“(B) is awarded through the use of competitive procedures.”

Subsec. (b)(3). Pub. L. 103-355, §4102(d), added par. (3). 1986—Subsec. (b). Pub. L. 99-500, Pub. L. 99-591, and Pub. L. 99-661, amended subsec. (b) identically, designating existing provision as par. (1), redesignating former pars. (1) to (3) as subpars. (A) to (C), respectively, and inserting in provision preceding subpar. (A) “(other than a contract described in paragraph (2))”, and adding par. (2).

1984—Pub. L. 98-525 amended section generally, substituting “identification of supplier and sources” for “marking with name of contractor” in section catchline, and, in text, substituting provisions designated subsec. (a) and relating to the marking of supplies, providing the national stock number for the supplies furnished, and the contractor’s identification number for requirement that each contractor furnishing supplies to a military department mark the supplies with his name in the manner directed by the Secretary of the Department and prohibition of receipt of supplies unless so marked and adding subsecs. (b) and (c).

#### EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104-106, see section 4401 of Pub. L. 104-106, set out as a note under section 2302 of this title.

#### EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103-355, see section 10001 of Pub. L. 103-355, set out as a note under section 2302 of this title.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Section 101(c) [title X, §928(b)] of Pub. L. 99-500 and Pub. L. 99-591, and section 928(b) of title IX, formerly title IV, of Pub. L. 99-661, renumbered title IX, Pub. L. 100-26, §3(5), Apr. 21, 1987, 101 Stat. 273, provided that: “The amendments made by subsection (a) [amending this section] shall apply with respect to contracts entered into after the end of the 180-day period beginning on the date of the enactment of this Act [Oct. 18, 1986].”

#### EFFECTIVE DATE OF 1984 AMENDMENT

Section 1231(b) of Pub. L. 98-525 provided that: “The amendment made by subsection (a) [amending this section] shall take effect at the end of the one-year period beginning on the date of the enactment of this Act [Oct. 19, 1984].”

### § 2384a. Supplies: economic order quantities

(a)(1) An agency referred to in section 2303(a) of this title shall procure supplies in such quantity as (A) will result in the total cost and unit cost most advantageous to the United States, where practicable, and (B) does not exceed the quantity reasonably expected to be required by the agency.

(2) The Secretary of Defense shall take paragraph (1) into account in approving rates of obligation of appropriations under section 2204 of this title.

(b) Each solicitation for a contract for supplies shall, if practicable, include a provision inviting each offeror responding to the solicitation to state an opinion on whether the quantity of the supplies proposed to be procured is economically advantageous to the United States and, if applicable, to recommend a quantity or quantities which would be more economically advantageous to the United States. Each such recommendation shall include a quotation of the total price and the unit price for supplies procured in each recommended quantity.

(Added Pub. L. 98-525, title XII, §1233(a), Oct. 19, 1984, 98 Stat. 2600.)

#### EFFECTIVE DATE

Section 1233(b) of Pub. L. 98-525 provided that: “The amendment made by subsection (a) [enacting this section] shall take effect at the end of the 180-day period beginning on the date of the enactment of this Act [Oct. 19, 1984].”

### § 2385. Arms and ammunition: immunity from taxation

No tax on the sale or transfer of firearms, pistols, revolvers, shells, or cartridges may be imposed on such articles when bought with funds appropriated for a military department.

(Aug. 10, 1956, ch. 1041, 70A Stat. 137.)