

during emergency periods”, 2406 “Availability of cost and pricing records”, 2409a “Communicating with Government officials: defense contractor requirement to prohibit retaliatory personnel actions”, and 2410e “Contract claims: certification regulations”, and substituted in item 2410 “Requests for equitable adjustment or other relief: certification” for “Contract claims: certification”.

Pub. L. 103-337, div. A, title III, §363(a)(2), Oct. 5, 1994, 108 Stat. 2734, added item 2410f.

1993—Pub. L. 103-160, div. A, title VIII, §828(a)(3), (c)(3), (4), Nov. 30, 1993, 107 Stat. 1713, 1714, substituted “Liquid fuels and natural gas: contracts for storage, handling, or distribution” for “Liquid fuels: contracts for storage, handling, and distribution” in item 2388, struck out item 2389 “Contracts for the procurement of milk: price adjustments; purchases from the Commodity Credit Corporation”, and inserted “and natural gas” and “; acquisition by exchange; sales authority” in item 2404.

Pub. L. 103-35, title II, §202(a)(18)(B), May 31, 1993, 107 Stat. 102, made technical amendment to directory language of Pub. L. 102-484, §4470(a)(2). See 1992 Amendment note below.

Pub. L. 103-35, title II, §201(b)(1)(B), May 31, 1993, 107 Stat. 97, renumbered item 2410c relating to displaced contractor employees as item 2410j and item 2410d relating to defense contractors as item 2410k.

1992—Pub. L. 102-484, div. D, title XLIV, §4470(a)(2), Oct. 23, 1992, 106 Stat. 2753, as amended by Pub. L. 103-35, title II, §202(a)(18)(B), May 31, 1993, 107 Stat. 102, added item 2410d relating to defense contractors.

Pub. L. 102-484, div. D, title XLIV, §4443(b), Oct. 23, 1992, 106 Stat. 2735, 2753, added item 2410c relating to displaced contractor employees.

Pub. L. 102-484, div. A, title III, §384(a)(1)(B), title VIII, §§808(b)(2), 813(a)(2), 834(a)(2), 840(a)(2), 841(b), title XIII, §1332(b), Oct. 23, 1992, 106 Stat. 2393, 2450, 2453, 2461, 2467, 2468, 2555, added items 2410c to 2410i.

1990—Pub. L. 101-510, div. A, title VIII, §837(a)(2), title XIV, §1484(i)(8), Nov. 5, 1990, 104 Stat. 1619, 1718, struck out item 2407 “Acquisition of defense equipment under cooperative projects” and added item 2409a.

1989—Pub. L. 101-189, div. A, title VIII, §§802(a)(2), 803(b), title IX, §933(e), title XVI, §1622(b)(2), Nov. 29, 1989, 103 Stat. 1486, 1488, 1538, 1604, added items 2390, 2399, and 2400 and struck out item 2401a “Procurement of communications support and related supplies and services”.

1988—Pub. L. 100-456, div. A, title VIII, §§805(a)(2), 834(a)(2), Sept. 29, 1988, 102 Stat. 2010, 2025, added items 2383 and 2410b.

Pub. L. 100-370, §§1(h)(3), 3(b)(2), July 19, 1988, 102 Stat. 848, 855, in item 2389 substituted “milk: price adjustments; purchases from the Commodity Credit Corporation” for “milk; price adjustment”, struck out items 2399 “Limitation on availability of appropriations to reimburse a contractor for cost of commercial insurance”, and 2400 “Miscellaneous procurement limitations”, and added items 2410 and 2410a.

1987—Pub. L. 100-180, div. A, title I, §124(b)(2), Dec. 4, 1987, 101 Stat. 1043, substituted “Miscellaneous procurement limitations” for “Limitation on procurement of buses” in item 2400.

1986—Pub. L. 99-661, div. A, title XI, §1103(b)(2)(B), Nov. 14, 1986, 100 Stat. 3963, struck out “North Atlantic Treaty Organization” before “cooperative projects” in item 2407.

Pub. L. 99-500, §101(c) [title X, §§931(a)(2), 941(a)(2), 942(a)(2), 943(a)(2)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-160, 1783-162, 1783-164, and Pub. L. 99-591, §101(c) [title X, §§931(a)(2), 941(a)(2), 942(a)(2), 943(a)(2)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-160, 3341-162, 3341-164; Pub. L. 99-661, div. A, title IX, formerly title IV, §§931(a)(2), 941(a)(2), 942(a)(2), 943(a)(2), Nov. 14, 1986, 100 Stat. 3939, 3941-3943, 3963, renumbered title IX, Pub. L. 100-26, §3(5), Apr. 21, 1987, 101 Stat. 273, amended analysis identically, substituting “Availability of cost and pricing records” for “Cost and price management” in item 2406 and adding items 2397b, 2397c, 2408, and 2409.

1985—Pub. L. 99-145, title IX, §§917(b), 923(a)(2), title XI, §1102(b)(2), Nov. 8, 1985, 99 Stat. 690, 697, 712, added items 2397a, 2406, and 2407.

1984—Pub. L. 98-525, title X, §1005(b), title XII, §1235(1), (2), Oct. 19, 1984, 98 Stat. 2579, 2604, substituted in item 2384 “identification of supplier and sources” for “marking with name of contractor” and added items 2401a, 2384a, and 2402 to 2405.

1983—Pub. L. 98-94, title XII, §§1202(a)(2), 1259(b), Sept. 24, 1983, 97 Stat. 681, 703, struck out item 2390 “Suggestions for improving procurement policies”, and added item 2401.

1982—Pub. L. 97-321, title VIII, §801(a)(2), Oct. 15, 1982, 96 Stat. 1570, added item 2394a.

Pub. L. 97-295, §1(29)(B), Oct. 12, 1982, 96 Stat. 1294, struck out item 2394 “Availability of appropriations for procurement of technical military equipment and supplies and the construction of military public works”, added item 2395 “Availability of appropriations for procurement of technical military equipment and supplies”, redesignated former item 2395 as 2396, and added items 2397, 2398, 2399, and 2400.

Pub. L. 97-258, §2(b)(4)(A), Sept. 13, 1982, 96 Stat. 1052, added items 2394 and 2395.

Pub. L. 97-214, §6(a)(2), July 12, 1982, 96 Stat. 172, added item 2394.

1981—Pub. L. 97-86, title IX, §§911(a)(2), 912(a)(2), 913(a)(2), 914(b), Dec. 1, 1981, 95 Stat. 1122, 1123, 1125, substituted “Contract profit controls during emergency periods” for “Aircraft: contract requirements” in item 2382 and added items 2391, 2392, and 2393.

1980—Pub. L. 96-513, title V, §511(79), Dec. 12, 1980, 94 Stat. 2927, struck out item 2383 “Emergency purchases: war material abroad”.

1977—Pub. L. 95-79, title VIII, §815(b), July 30, 1977, 91 Stat. 338, added item 2390.

1966—Pub. L. 89-696, §1(2), Oct. 19, 1966, 80 Stat. 1057, added item 2389.

1958—Pub. L. 85-861, §1(47), Sept. 2, 1958, 72 Stat. 1458, added items 2387 and 2388.

### § 2381. Contracts: regulations for bids

(a) The Secretary of Defense may—

(1) prescribe regulations for the preparation, submission, and opening of bids for contracts; and

(2) require that a bid be accompanied by a written guaranty, signed by one or more responsible persons, undertaking that the bidder, if his bid is accepted, will, within the time prescribed by the Secretary or other officer authorized to make the contract, make a contract and furnish a bond with good and sufficient sureties for the performance of the contract.

(b) If a bidder, after being notified of the acceptance of his bid, fails within the time prescribed under subsection (a)(2) to enter into a contract and furnish the prescribed bond, the Secretary concerned or other authorized officer shall—

(1) contract with another person; and

(2) charge against the defaulting bidder and his guarantors the difference between the amount specified by the bidder in his bid and the amount for which a contract is made with the other person, this difference being immediately recoverable by the United States for the use of the military department concerned in an action against the bidder and his guarantors, jointly or severally.

(c) Proceedings under this section are subject to regulations under section 121 of title 40, unless exempted therefrom under section 501(a)(2) of title 40.

(Aug. 10, 1956, ch. 1041, 70A Stat. 136; Pub. L. 98-525, title XIV, §1405(35), Oct. 19, 1984, 98 Stat. 2624; Pub. L. 103-355, title I, §1507, Oct. 13, 1994, 108 Stat. 3298; Pub. L. 107-217, §3(b)(6), Aug. 21, 2002, 116 Stat. 1295.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2381(a) .....	5:218 (1st sentence, less 1st 16 words; and 2d sentence).	Apr. 10, 1878, ch. 58, 20 Stat. 36; Mar. 3, 1883, ch. 120, 22 Stat. 487; Oct. 31, 1951, ch. 654, §2(4), 65 Stat. 706.
2381(b) .....	5:218 (less 1st and 2d sentences).	Feb. 19, 1948, ch. 65, §12 (1st sentence), 62 Stat. 26.
2381(c) .....	5:218 (1st 16 words of 1st sentence) [applicability of 5:218 extended to Navy by 5:412b and 4:161 (1st sentence)].	

In subsection (a)(1), the word “may” is substituted for the words “is authorized to”. The words “rules and \* \* \* to be observed” are omitted as surplusage.

In subsection (a)(2), the word “undertaking” is substituted for the words “to the effect that he or they undertake”. The words “make a contract” are inserted for clarity. The words “in the premises” are omitted as surplusage. The words “for the performance of the contract” are substituted for the words “to furnish the supplies proposed or to perform the service required”.

In subsection (b), the word “duly” is omitted as surplusage. The words “with good and sufficient security for the proper fulfillment of its terms” are omitted as covered by subsection (a)(2). The words “the prescribed” are inserted before the word “bond”.

Subsection (b)(1) is substituted for the words “proceed to contract with some other person to furnish the supplies or perform the services required”.

In subsection (b)(2) the word “charge” is substituted for the words “forthwith cause \* \* \* to be charged”. The words “a contract is made with the other person” are substituted for the words “he may have contracted with another party to furnish the supplies or perform the service for the whole period of the proposal”. The words “guarantor or” are omitted as surplusage. The words “this difference being” are substituted for the words “and the sum may be”. The words “of debt” are omitted, since that action no longer exists. The words “the bidder and his guarantors, jointly or severally” are substituted for the words “either or all of such persons”.

In subsection (c), the words “Proceedings under this section are” are inserted for clarity. The words “unless exempted therefrom under section 481(a) of that title” are inserted to preserve the possibility of exemption of proceedings under the revised section from the provisions of the Federal Property and Administrative Services Act of 1949, as amended.

AMENDMENTS

2002—Subsec. (c). Pub. L. 107-217 substituted “section 121 of title 40” for “section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486)” and “section 501(a)(2) of title 40” for “section 201(a) of that Act (40 U.S.C. 481(a))”.

1994—Subsec. (a). Pub. L. 103-355 substituted “The Secretary of Defense may—

“(1) prescribe regulations for the preparation, submission, and opening of bids for contracts; and” for “The Secretary of a military department may—

“(1) prescribe regulations for the preparation, submission, and opening of bids for contracts with that department; and”.

1984—Subsec. (c). Pub. L. 98-525 substituted “section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486)” for “section 486 of title 40” and “section 201(a) of that Act (40 U.S.C. 481(a))” for “section 481(a) of this title”.

**[§ 2382. Repealed. Pub. L. 112-239, div. A, title XVI, § 1671(c)(1), Jan. 2, 2013, 126 Stat. 2084]**

Section, added Pub. L. 108-136, div. A, title VIII, §801(a)(1), Nov. 24, 2003, 117 Stat. 1538; amended Pub. L. 109-364, div. A, title X, §1071(a)(2), Oct. 17, 2006, 120 Stat. 2398; Pub. L. 111-240, title I, §1313(b), Sept. 27, 2010, 124 Stat. 2539; Pub. L. 112-239, div. A, title X, §1076(d)(3), Jan. 2, 2013, 126 Stat. 1951, related to policy and restrictions regarding consolidation of contract requirements.

A prior section 2382, acts Aug. 10, 1956, ch. 1041, 70A Stat. 136; Dec. 1, 1981, Pub. L. 97-86, title IX, §911(a)(1), 95 Stat. 1120; Nov. 5, 1990, Pub. L. 101-510, div. A, title XIV, §1484(b)(3), (f)(2), (g)(2), (h)(3), 104 Stat. 1716, 1717; Oct. 29, 1992, Pub. L. 102-572, title IX, §902(b)(1), 106 Stat. 4516, authorized the President, upon declaration of war by Congress or declaration of national emergency by the President or by Congress, to prescribe regulations to control excessive profits on defense contracts during period of such war or national emergency, prior to repeal by Pub. L. 103-355, title II, §2102(a), Oct. 13, 1994, 108 Stat. 3309.

**§ 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.)