

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 department or Defense Agency if the Secretary of Defense determines that the department or agency will be unable to meet such requirement by that date.

(2) The Secretary shall submit to Congress written notice of any determination made under paragraph (1) and the reasons for the determination. The Secretary shall submit such notice, if at all, not later than January 1, 2003.

(d) SECRETARY CONCERNED DEFINED.—In this section, the term “Secretary concerned” means the Secretary of each military department and the Secretary of Defense with respect to the Defense Agencies.

(Added Pub. L. 105-85, div. A, title III, §350(a), Nov. 18, 1997, 111 Stat. 1691.)

### § 2379. Requirement for determination by Secretary of Defense and notification to Congress before procurement of major weapon systems as commercial items

(a) REQUIREMENT FOR DETERMINATION AND NOTIFICATION.—A major weapon system of the Department of Defense may be treated as a commercial item, or purchased under procedures established for the procurement of commercial items, only if—

(1) the Secretary of Defense determines that—

(A) the major weapon system is a commercial item, as defined in section 103 of title 41; and

(B) such treatment is necessary to meet national security objectives;

(2) the offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of the price for such system; and

(3) the congressional defense committees are notified at least 30 days before such treatment or purchase occurs.

(b) TREATMENT OF SUBSYSTEMS AS COMMERCIAL ITEMS.—A subsystem of a major weapon system (other than a commercially available off-the-shelf item as defined in section 104 of title 41) shall be treated as a commercial item and purchased under procedures established for the procurement of commercial items only if—

(1) the subsystem is intended for a major weapon system that is being purchased, or has