

and struck out former par. (2) which read as follows: “the offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of the price for such system; and”.

Subsec. (b). Pub. L. 114-92, §852(b)(1), substituted “if either” for “only if” in introductory provisions.

Subsec. (b)(2). Pub. L. 114-92, §852(b)(2), substituted “writing that” for “writing that—”, struck out subpar. (A) designation before “the subsystem is a”, substituted “title 41.” for “title 41; and”, and struck out subpar. (B) which read as follows: “the offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of the price for such subsystem.”

Subsec. (c)(1). Pub. L. 114-92, §852(c)(1), substituted “title if either” for “title only if” in introductory provisions.

Subsec. (c)(1)(B). Pub. L. 114-92, §852(c)(2), substituted “writing that” for “writing that—”, struck out cl. (i) designation before “the component or”, substituted “title 41.” for “title 41; and”, and struck out cl. (ii) which read as follows: “the offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of the price for such component or spare part.”

Subsec. (d). Pub. L. 114-92, §852(d), amended subsec. (d) generally. Prior to amendment, text read as follows: “To the extent necessary to make a determination under subsection (a)(2), (b)(2), or (c)(1)(B), the contracting officer may request the offeror to submit—

“(1) prices paid for the same or similar commercial items under comparable terms and conditions by both government and commercial customers; and

“(2) if the contracting officer determines that the information described in paragraph (1) is not sufficient to determine the reasonableness of price, other relevant information regarding the basis for price or cost, including information on labor costs, material costs, and overhead rates.”

2014—Subsec. (a)(1)(A). Pub. L. 113-291, §1071(a)(7)(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). Pub. L. 113-291, §1071(a)(7)(B), substituted “section 104 of title 41” for “section 35(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 431(c))” in introductory provisions.

Subsec. (b)(2)(A). Pub. L. 113-291, §1071(a)(7)(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. (c)(1). Pub. L. 113-291, §1071(a)(7)(B), substituted “section 104 of title 41” for “section 35(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 431(c))” in introductory provisions.

Subsec. (c)(1)(B)(i). Pub. L. 113-291, §1071(a)(7)(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))”.

2008—Subsec. (a)(2), (3). Pub. L. 110-181, §815(a)(1)(A), added par. (2) and redesignated former par. (2) as (3).

Subsec. (b). Pub. L. 110-181, §815(a)(1)(B), added subsec. (b) and struck out former subsec. (b). Former text read as follows: “A subsystem or component of a major weapon system shall be treated as a commercial item and purchased under procedures established for the procurement of commercial items if such subsystem or component otherwise meets the requirements (other than requirements under subsection (a)) for treatment as a commercial item.”

Subsecs. (c) to (f). Pub. L. 110-181, §815(a)(1)(C), (D), added subsecs. (c) and (d) and redesignated former subsecs. (c) and (d) as (e) and (f), respectively.

EFFECTIVE DATE

Pub. L. 109-163, div. A, title VIII, §803(b), Jan. 6, 2006, 119 Stat. 3371, provided that: “The amendments made by subsection (a) [enacting this section] shall take effect on the date of the enactment of this Act [Jan. 6, 2006], and shall apply to contracts entered into on or after such date.”

§ 2380. Commercial item determinations by Department of Defense

The Secretary of Defense shall—

(1) establish and maintain a centralized capability with necessary expertise and resources to oversee the making of commercial item determinations for the purposes of procurements by the Department of Defense; and

(2) provide public access to Department of Defense commercial item determinations for the purposes of procurements by the Department of Defense.

(Added Pub. L. 114-92, div. A, title VIII, §851(a)(1), Nov. 25, 2015, 129 Stat. 916.)

§ 2380A. Treatment of goods and services provided by nontraditional defense contractors as commercial items

Notwithstanding section 2376(1) of this title, items and services provided by nontraditional defense contractors (as that term is defined in section 2302(9) of this title) may be treated by the head of an agency as commercial items for purposes of this chapter.

(Added Pub. L. 114-92, div. A, title VIII, §857(a), Nov. 25, 2015, 129 Stat. 921.)

CHAPTER 141—MISCELLANEOUS PROCUREMENT PROVISIONS

<p>Sec. 2381. [2382. 2383. 2384. 2384a. 2385. 2386. 2387. [2388. 2389. 2390. 2391. 2392. 2393. [2394, 2394a. Renumbered.] 2395. 2396. [2397 to 2398a. Repealed or Renumbered.] 2399. 2400. 2401. 2401a.</p>	<p>Contracts: regulations for bids. Repealed.] Contractor performance of acquisition functions closely associated with inherently governmental functions. Supplies: identification of supplier and sources. Supplies: economic order quantities. Arms and ammunition: immunity from taxation. Copyrights, patents, designs, etc.; acquisition. Procurement of table and kitchen equipment for officers' quarters: limitation on. Renumbered.] Ensuring safety regarding insensitive munitions. Prohibition on the sale of certain defense articles from the stocks of the Department of Defense. Military base reuse studies and community planning assistance. Prohibition on use of funds to relieve economic dislocations. Prohibition against doing business with certain offerors or contractors. Availability of appropriations for procurement of technical military equipment and supplies. Advances for payments for compliance with foreign laws, rent in foreign countries, tuition, public utility services, and pay and supplies of armed forces of friendly foreign countries. Operational test and evaluation of defense acquisition programs. Low-rate initial production of new systems. Requirement for authorization by law of certain contracts relating to vessels, aircraft, and combat vehicles. Lease of vehicles, equipment, vessels, and aircraft.</p>
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- Sec.
2402. Prohibition of contractors limiting subcontractor sales directly to the United States.
- [2403 to 2407. Repealed or Renumbered.]
2408. Prohibition on persons convicted of defense-contract related felonies and related criminal penalty on defense contractors.
2409. Contractor employees: protection from reprisal for disclosure of certain information.
- [2409a. Repealed.]
2410. Requests for equitable adjustment or other relief: certification.
- 2410a. Contracts for periods crossing fiscal years: severable service contracts; leases of real or personal property.
- 2410b. Contractor inventory accounting systems: standards.
- [2410c. Renumbered.]
- 2410d. Subcontracting plans: credit for certain purchases.
- [2410e. Repealed.]
- 2410f. Debarment of persons convicted of fraudulent use of “Made in America” labels.
- 2410g. Advance notification of contract performance outside the United States.
- [2410h. Renumbered.]
- 2410i. Prohibition on contracting with entities that comply with the secondary Arab boycott of Israel.
- 2410j. Displaced contractor employees: assistance to obtain certification and employment as teachers or employment as teachers’ aides.
- 2410k. Defense contractors: listing of suitable employment openings with local employment service office.
- 2410l. Contracts for advisory and assistance services: cost comparison studies.
- 2410m. Retention of amounts collected from contractor during the pendency of contract dispute.
- 2410n. Products of Federal Prison Industries: procedural requirements.
- 2410o. Multiyear procurement authority: purchase of dinitrogen tetroxide, hydrazine, and hydrazine-related products.
- 2410p. Contracts: limitations on lead system integrators.
- 2410q. Multiyear contracts: purchase of electricity from renewable energy sources.

AMENDMENTS

2013—Pub. L. 112-239, div. A, title XVI, §1671(c)(1), Jan. 2, 2013, 126 Stat. 2084, struck out item 2382 “Consolidation of contract requirements: policy and restrictions”.

2008—Pub. L. 110-181, div. A, title VIII, §828(b), title X, §1063(a)(11), Jan. 28, 2008, 122 Stat. 229, 322, inserted period at end of item 2410p and added item 2410q.

2006—Pub. L. 109-364, div. A, title VIII, §807(a)(2), div. B, title XXVIII, §2851(c)(2), Oct. 17, 2006, 120 Stat. 2315, 2495, added item 2410p and struck out items 2388 “Liquid fuels and natural gas: contracts for storage, handling, or distribution”, 2394 “Contracts for energy or fuel for military installations”, 2394a “Procurement of energy systems using renewable forms of energy”, 2398 “Procurement of gasohol as motor vehicle fuel”, 2398a “Procurement of fuel derived from coal, oil shale, and tar sands”, 2404 “Acquisition of certain fuel sources: authority to waive contract procedures; acquisition by exchange; sales authority”, and 2410c “Preference for energy efficient electric equipment”.

Pub. L. 109-163, div. A, title VIII, §815(d)(2), Jan. 6, 2006, 119 Stat. 3382, substituted “Requirement for authorization by law of certain contracts relating to vessels, aircraft, and combat vehicles” for “Requirement for authorization by law of certain contracts relating to vessels and aircraft” in item 2401.

2005—Pub. L. 109-58, title III, §369(q)(2), Aug. 8, 2005, 119 Stat. 733, added item 2398a.

2004—Pub. L. 108-375, div. A, title VIII, §804(a)(2), Oct. 28, 2004, 118 Stat. 2008, added item 2383.

2003—Pub. L. 108-136, div. A, title VIII, §801(a)(2), title X, §1005(b)(2), Nov. 24, 2003, 117 Stat. 1540, 1585, added item 2382 and substituted “Contracts for periods crossing fiscal years: severable service contracts; leases of real or personal property” for “Severable service contracts for periods crossing fiscal years” in item 2410a.

2002—Pub. L. 107-314, div. A, title VIII, §826(b), title X, §1062(a)(10)(B), Dec. 2, 2002, 116 Stat. 2617, 2650, transferred item 2410h “Acquisition fellowship program” to subchapter IV of chapter 87 as item 1747 and added item 2410o.

2001—Pub. L. 107-107, div. A, title VIII, §§811(a)(2), 834(a)(2), Dec. 28, 2001, 115 Stat. 1181, 1191, added items 2389 and 2410n.

1999—Pub. L. 106-65, div. A, title VIII, §803(b)(2), Oct. 5, 1999, 113 Stat. 704, substituted “Acquisition of certain fuel sources” for “Acquisition of petroleum and natural gas” in item 2404.

1997—Pub. L. 105-85, div. A, title VIII, §§801(b), 810(a)(2), 831(b), 847(b)(1), title X, §1014(b)(2), Nov. 18, 1997, 111 Stat. 1831, 1839, 1842, 1845, 1875, inserted “public utility services,” after “tuition,” in item 2396, struck out items 2403 “Major weapon systems: contractor guarantees” and 2405 “Limitation on adjustment of shipbuilding contracts”, substituted “Severable service contracts for periods crossing fiscal years” for “Appropriated funds: availability for certain contracts for 12 months” in item 2410a, and added item 2410m.

1996—Pub. L. 104-106, div. A, title VIII, §§803(b), 807(a)(2), div. D, title XLIII, §4304(c)(1), Feb. 10, 1996, 110 Stat. 390, 392, 664, struck out items 2383 “Procurement of critical aircraft and ship spare parts: quality control”, 2397 “Employees or former employees of defense contractors: reports”, 2397a “Requirements relating to private employment contacts between certain Department of Defense procurement officials and defense contractors”, 2397b “Certain former Department of Defense procurement officials: limitations on employment by contractors”, and 2397c “Defense contractors: requirements concerning former Department of Defense officials” and substituted “Lease of vehicles, equipment, vessels, and aircraft” for “Lease of vessels, aircraft, and vehicles” in item 2401a.

1994—Pub. L. 103-355, title II, §§2102(b), 2201(b)(2), 2301(c), title III, §3065(a)(2), title VI, §6005(b)(2), Oct. 13, 1994, 108 Stat. 3309, 3318, 3321, 3337, 3365, added item 2401a, struck out items 2382 “Contract profit controls 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 2410l.

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.