

“(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 provide assistance to the military departments and Defense Agencies in making commercial item determinations, conducting market research, and performing analysis of price reasonableness for the purposes of procurements by the Department of Defense; and

(2) provide to officials of the Department of Defense access to previous Department of Defense commercial item determinations, market research, and analysis used to determine the reasonableness of price 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; amended Pub. L. 114–328, div. A, title VIII, § 873, Dec. 23, 2016, 130 Stat. 2307.)

#### AMENDMENTS

2016—Pars. (1), (2). Pub. L. 114–328 amended pars. (1) and (2) generally. Prior to amendment, pars. (1) and (2) read as follows:

“(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.”

### § 2380a. Treatment of certain items as commercial items

(a) GOODS AND SERVICES PROVIDED BY NONTRADITIONAL DEFENSE CONTRACTORS.—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.

(b) SERVICES PROVIDED BY CERTAIN NONTRADITIONAL CONTRACTORS.—Notwithstanding section 2376(1) of this title, services provided by a business unit that is a nontraditional defense contractor (as that term is defined in section 2302(9) of this title) shall be treated as commercial items for purposes of this chapter, to the extent that such services use the same pool of employees as used for commercial customers and are priced using methodology similar to methodology used for commercial pricing.

(Added Pub. L. 114–92, div. A, title VIII, § 857(a), Nov. 25, 2015, 129 Stat. 921, § 2380A; renumbered § 2380a and amended Pub. L. 114–328, div. A, title VIII, § 878(a), (b)(1), Dec. 23, 2016, 130 Stat. 2312.)

#### AMENDMENTS

2016—Pub. L. 114–328, § 878(b)(1), which directed amendment of “Section 2380A of title 10” by striking out the section catchline and inserting “§ 2380a. Treatment of certain items as commercial items”, was executed by redesignating this section as section 2380a and substituting “Treatment of certain items as commercial items” for “Treatment of goods and services provided by nontraditional defense contractors as commercial items” in section catchline, to reflect the probable intent of Congress.

Pub. L. 114–328, § 878(a), designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

### § 2380B. Treatment of commingled items purchased by contractors as commercial items

Notwithstanding 2376(1) of this title, items valued at less than \$10,000 that are purchased by a contractor for use in the performance of multiple contracts with the Department of Defense and other parties and are not identifiable to any particular contract shall be treated as a commercial item for purposed of this chapter.

(Added Pub. L. 114–328, div. A, title VIII, § 877(a), Dec. 23, 2016, 130 Stat. 2311.)

## CHAPTER 141—MISCELLANEOUS PROCUREMENT PROVISIONS

Sec.	
2381.	Contracts: regulations for bids.
[2382.]	Repealed.]
2383.	Contractor performance of acquisition functions closely associated with inherently governmental functions.
2384.	Supplies: identification of supplier and sources.
2384a.	Supplies: economic order quantities.
2385.	Arms and ammunition: immunity from taxation.