

Acquisition Regulation for Federal agencies to conduct appropriate market research before developing new requirements.

“(c) MARKET RESEARCH DEFINED.—For the purposes of this section, the term ‘market research’ means a review of existing systems, subsystems, capabilities, and technologies that are available or could be made available to meet the needs of the Department of Defense in whole or in part. The review may include any of the techniques for conducting market research provided in section 10.002(b)(2) of the Federal Acquisition Regulation and shall include, at a minimum, contacting knowledgeable individuals in Government and industry regarding existing market capabilities.”

LIMITATION ON CONVERSION OF PROCUREMENTS FROM
COMMERCIAL ACQUISITION PROCEDURES

Pub. L. 114-92, div. A, title VIII, § 856, Nov. 25, 2015, 129 Stat. 920, provided that:

“(a) LIMITATION.—

“(1) IN GENERAL.—Except as provided in paragraph (2), prior to converting the procurement of commercial items or services valued at more than \$1,000,000 from commercial acquisition procedures under part 12 of the Federal Acquisition Regulation to non-commercial acquisition procedures under part 15 of the Federal Acquisition Regulation, the contracting officer for the procurement shall determine in writing that—

“(A) the earlier use of commercial acquisition procedures under part 12 of the Federal Acquisition Regulation was in error or based on inadequate information; and

“(B) the Department of Defense will realize a cost savings compared to the cost of procuring a similar quantity or level of such item or service using commercial acquisition procedures.

“(2) REQUIREMENT FOR APPROVAL OF DETERMINATION BY HEAD OF CONTRACTING ACTIVITY.—In the case of a procurement valued at more than \$100,000,000, a contract may not be awarded pursuant to a conversion of the procurement described in paragraph (1) until—

“(A) the head of the contracting activity approves the determination made under paragraph (1); and

“(B) a copy of the determination so approved is provided to the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics.

“(b) FACTORS TO BE CONSIDERED.—In making a determination under paragraph (1), the determining official shall, at a minimum, consider the following factors:

“(1) The estimated cost of research and development to be performed by the existing contractor to improve future products or services.

“(2) The transaction costs for the Department of Defense and the contractor in assessing and responding to data requests to support a conversion to non-commercial acquisition procedures.

“(3) Changes in purchase quantities.

“(4) Costs associated with potential procurement delays resulting from the conversion.

“(c) PROCEDURES.—Not later than 180 days after the date of the enactment of this Act [Nov. 25, 2015], the Secretary of Defense shall develop procedures to track conversions of future contracts and subcontracts for improved analysis and reporting and shall revise the Defense Federal Acquisition Regulation Supplement to reflect the requirement in subsection (a).

“(d) REPORTING REQUIREMENT.—Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the implementation of subsection (a), including any procurements converted as described in that subsection.

“(e) SUNSET.—The requirements of this section shall terminate 5 years after the date of the enactment of this Act [Nov. 25, 2015].”

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. Repealed. Pub. L. 114-328, div. A, title VIII, § 833(b)(3)(A), Dec. 23, 2016, 130 Stat. 2284]

Section, added Pub. L. 105-85, div. A, title III, § 350(a), Nov. 18, 1997, 111 Stat. 1691, related to procurement of copier paper containing specified percentages of post-consumer recycled content.

§ 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; and

(2) 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 if either—

(1) the subsystem is intended for a major weapon system that is being purchased, or has been purchased, under procedures established for the procurement of commercial items in accordance with the requirements of subsection (a); or

(2) the contracting officer determines in writing that the subsystem is a commercial item, as defined in section 103 of title 41.