

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

(a) IN GENERAL.—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.

(b) ITEMS PREVIOUSLY ACQUIRED USING COMMERCIAL ITEM ACQUISITION PROCEDURES.—

(1) DETERMINATIONS.—A contract for an item acquired using commercial item acquisition procedures under part 12 of the Federal Acquisition Regulation shall serve as a prior commercial item determination with respect to such item for purposes of this chapter unless the senior procurement executive of the military department or the Department of Defense as designated for purposes of section 1702(c) of title 41 determines in writing that it is no longer appropriate to acquire the item using commercial item acquisition procedures.

(2) LIMITATION.—(A) Except as provided under subparagraph (B), funds appropriated or otherwise made available to the Department

of Defense may not be used for the procurement under part 15 of the Federal Acquisition Regulation of an item that was previously acquired under a contract using commercial item acquisition procedures under part 12 of the Federal Acquisition Regulation.

(B) The limitation under subparagraph (A) does not apply to the procurement of an item that was previously acquired using commercial item acquisition procedures under part 12 of the Federal Acquisition Regulation following—

(i) a written determination by the head of contracting activity pursuant to section 2306a(b)(4)(B) of this title that the use of such procedures was improper; or

(ii) a written determination by the senior procurement executive of the military department or the Department of Defense as designated for purposes of section 1702(c) of title 41 that it is no longer appropriate to acquire the item using such procedures.

(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; Pub. L. 115–91, div. A, title VIII, § 848, Dec. 12, 2017, 131 Stat. 1487.)

AMENDMENTS

2017—Pub. L. 115–91 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

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.
2386.	Copyrights, patents, designs, etc.; acquisition.
[2387.	Repealed.]
[2388.	Renumbered.]
2389.	Ensuring safety regarding insensitive munitions.
2390.	Prohibition on the sale of certain defense articles from the stocks of the Department of Defense.
2391.	Military base reuse studies and community planning assistance.
2392.	Prohibition on use of funds to relieve economic dislocations.
2393.	Prohibition against doing business with certain offerors or contractors.
[2394, 2394a.	Renumbered.]
2395.	Availability of appropriations for procurement of technical military equipment and supplies.
2396.	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.
[2397 to 2398a.	Repealed or Renumbered.]
2399.	Operational test and evaluation of defense acquisition programs.
2400.	Low-rate initial production of new systems.
2401.	Requirement for authorization by law of certain contracts relating to vessels, aircraft, and combat vehicles.
2401a.	Lease of vehicles, equipment, vessels, and aircraft.
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.

Sec.	
[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.
2410r.	Contract working dogs: requirement to transfer animals to 341st Training Squadron after service life.
2410s.	Security clearances for facilities of certain companies ¹

AMENDMENTS

2017—Pub. L. 115-91, div. A, title XVI, §1621(b), Dec. 12, 2017, 131 Stat. 1732, added item 2410s.

2016—Pub. L. 114-328, div. A, title III, §342(a)(2), title VIII, §833(b)(4)(B), Dec. 23, 2016, 130 Stat. 2082, 2285, added item 2410r and struck out item 2387 “Procurement of table and kitchen equipment for officers’ quarters: limitation on”.

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 ves-

¹ So in original. Probably should be followed by a period.