

accelerate identification of the root cause or causes of, or find solutions to, physiological episodes experienced in Navy, Marine Corps, and Air Force training and operational aircraft.

“(b) EVALUATION OF PERSONNEL.—The Secretary of Defense, or the Secretary’s designee, shall select the person or persons to conduct the competition authorized in subsection (a) and evaluate any submissions.

“(c) LIMITATION.—The Secretary of Defense may not exercise the authority under subsection (a) before the date that is 15 days after the date on which the Secretary of Defense submits to [the] congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] certification in writing that the use of the authority will not compromise classified information, proprietary information, or intellectual property.”

**[§ 2374b. Repealed. Pub. L. 112–239, div. A, title X, § 1076(g)(4), Jan. 2, 2013, 126 Stat. 1955]**

Section, added Pub. L. 107–314, div. A, title II, § 248(c)(1), Dec. 2, 2002, 116 Stat. 2502, related to prizes for achievements in promoting science, mathematics, engineering, or technology education.

**CHAPTER 140—PROCUREMENT OF COMMERCIAL ITEMS**

Sec.	
2375.	Relationship of commercial item provisions to other provisions of law.
2376.	Definitions.
2377.	Preference for acquisition of commercial items.
[2378.	Repealed.]
2379.	Requirement for determination by Secretary of Defense and notification to Congress before procurement of major weapon systems as commercial items.
2380.	Commercial item determinations by Department of Defense.
2380a. <sup>1</sup>	Treatment of certain items as commercial items.
2380B. <sup>1</sup>	Treatment of items purchased prior to release of prime contract requests for proposals as commercial items. <sup>2</sup>

**AMENDMENT OF ANALYSIS**

*Pub. L. 115–232, div. A, title VIII, § 836(d)(8)(A), (H), (h), Aug. 13, 2018, 132 Stat. 1868, 1869, 1874, provided that, effective Jan. 1, 2020, subject to a savings provision, the chapter heading is amended to read “PROCUREMENT OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES”, and the items in the analysis are amended to read as follows: 2375 “Relationship of other provisions of law to procurement of commercial products and commercial services”, 2376 “Definitions”, 2377 “Preference for commercial products and commercial services”, 2379 “Procurement of a major weapon system as a commercial product: requirement for prior determination by Secretary of Defense and notification to Congress”, 2380 “Commercial product and commercial service determinations by Department of Defense”, 2380a “Treatment of certain products and services as commercial products and commercial services”, and 2380b “Treatment of commingled items purchased by contractors as commercial products”. See 2018 Amendment note below.*

<sup>1</sup> So in original.

<sup>2</sup> So in original. Does not conform to section catchline.

**AMENDMENTS**

2018—Pub. L. 115–232, div. A, title VIII, § 836(d)(8)(A), (H), Aug. 13, 2018, 132 Stat. 1868, 1869, substituted “PROCUREMENT OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES” for “PROCUREMENT OF COMMERCIAL ITEMS” in chapter heading, and amended analysis generally, substituting items 2375 to 2380b for former items 2375 “Relationship of commercial item provisions to other provisions of law”, 2376 “Definitions”, 2377 “Preference for acquisition of commercial items”, 2379 “Requirement for determination by Secretary of Defense and notification to Congress before procurement of major weapon systems as commercial items”, 2380 “Commercial item determinations by Department of Defense”, 2380a “Treatment of certain items as commercial items”, and 2380B “Treatment of items purchased prior to release of prime contract requests for proposals as commercial items”.

2016—Pub. L. 114–328, div. A, title VIII, §§ 833(b)(3)(B), 877(b), 878(b)(2), Dec. 23, 2016, 130 Stat. 2284, 2312, added items 2380a and 2380B and struck out items 2378 “Procurement of copier paper containing specified percentages of post-consumer recycled content” and 2380A “Treatment of goods and services provided by nontraditional defense contractors as commercial items”.

2015—Pub. L. 114–92, div. A, title VIII, §§ 851(a)(2), 857(b), Nov. 25, 2015, 129 Stat. 916, 921, added items 2380 and 2380A.

2006—Pub. L. 109–163, div. A, title VIII, § 803(a)(2), Jan. 6, 2006, 119 Stat. 3371, added item 2379.

1997—Pub. L. 105–85, div. A, title III, § 350(b), Nov. 18, 1997, 111 Stat. 1692, added item 2378.

**§ 2375. Relationship of commercial item provisions to other provisions of law**

(a) **APPLICABILITY OF GOVERNMENT-WIDE STATUTES.**—(1) No contract for the procurement of a commercial item entered into by the head of an agency shall be subject to any law properly listed in the Federal Acquisition Regulation pursuant to section 1906(b) of title 41.

(2) No subcontract under a contract for the procurement of a commercial item entered into by the head of an agency shall be subject to any law properly listed in the Federal Acquisition Regulation pursuant to section 1906(c) of title 41.

(3) No contract for the procurement of a commercially available off-the-shelf item entered into by the head of an agency shall be subject to any law properly listed in the Federal Acquisition Regulation pursuant to section 1907 of title 41.

(b) **APPLICABILITY OF DEFENSE-UNIQUE STATUTES TO CONTRACTS FOR COMMERCIAL ITEMS.**—(1) The Defense Federal Acquisition Regulation Supplement shall include a list of defense-unique provisions of law and of contract clause requirements based on government-wide acquisition regulations, policies, or executive orders not expressly authorized in law that are inapplicable to contracts for the procurement of commercial items. A provision of law or contract clause requirement properly included on the list pursuant to paragraph (2) does not apply to purchases of commercial items by the Department of Defense. This section does not render a provision of law or contract clause requirement not included on the list inapplicable to contracts for the procurement of commercial items.

(2) A provision of law or contract clause requirement described in subsection (e) that is enacted after October 13, 1994, shall be included on the list of inapplicable provisions of law and contract clause requirements required by para-

graph (1) unless the Under Secretary of Defense for Acquisition, Technology, and Logistics makes a written determination that it would not be in the best interest of the Department of Defense to exempt contracts for the procurement of commercial items from the applicability of the provision or contract clause requirement.

(c) APPLICABILITY OF DEFENSE-UNIQUE STATUTES TO SUBCONTRACTS FOR COMMERCIAL ITEMS.—

(1) The Defense Federal Acquisition Regulation Supplement shall include a list of provisions of law and of contract clause requirements based on government-wide acquisition regulations, policies, or executive orders not expressly authorized in law that are inapplicable to subcontracts under a Department of Defense contract or subcontract for the procurement of commercial items. A provision of law or contract clause requirement properly included on the list pursuant to paragraph (2) does not apply to those subcontracts. This section does not render a provision of law or contract clause requirement not included on the list inapplicable to subcontracts under a contract for the procurement of commercial items.

(2) A provision of law or contract clause requirement described in subsection (e) shall be included on the list of inapplicable provisions of law and contract clause requirements required by paragraph (1) unless the Under Secretary of Defense for Acquisition, Technology, and Logistics makes a written determination that it would not be in the best interest of the Department of Defense to exempt subcontracts under a contract for the procurement of commercial items from the applicability of the provision or contract clause requirement.

(3) In this subsection, the term “subcontract” includes a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or subcontractor. The term does not include agreements entered into by a contractor for the supply of commodities that are intended for use in the performance of multiple contracts with the Department of Defense and other parties and are not identifiable to any particular contract.

(4) This subsection does not authorize the waiver of the applicability of any provision of law or contract clause requirement with respect to any first-tier subcontract under a contract with a prime contractor reselling or distributing commercial items of another contractor without adding value.

(d) APPLICABILITY OF DEFENSE-UNIQUE STATUTES TO CONTRACTS FOR COMMERCIALLY AVAILABLE, OFF-THE-SHELF ITEMS.—(1) The Defense Federal Acquisition Regulation Supplement shall include a list of provisions of law and of contract clause requirements based on government-wide acquisition regulations, policies, or executive orders not expressly authorized in law that are inapplicable to contracts for the procurement of commercially available off-the-shelf items. A provision of law or contract clause requirement properly included on the list pursuant to paragraph (2) does not apply to Department of Defense contracts for the procurement of commercially available off-the-shelf items. This section does not render a provision of law or contract clause requirement not in-

cluded on the list inapplicable to contracts for the procurement of commercially available off-the-shelf items.

(2) A provision of law or contract clause requirement described in subsection (e) shall be included on the list of inapplicable provisions of law and contract clause requirements required by paragraph (1) unless the Under Secretary of Defense for Acquisition, Technology, and Logistics makes a written determination that it would not be in the best interest of the Department of Defense to exempt contracts for the procurement of commercially available off-the-shelf items from the applicability of the provision or contract clause requirement.

(e) COVERED PROVISION OF LAW OR CONTRACT CLAUSE REQUIREMENT.—A provision of law or contract clause requirement referred to in subsections (b)(2), (c)(2), and (d)(2) is a provision of law or contract clause requirement that the Under Secretary of Defense for Acquisition, Technology, and Logistics determines sets forth policies, procedures, requirements, or restrictions for the procurement of property or services by the Federal Government, except for a provision of law or contract clause requirement that—

(1) provides for criminal or civil penalties;

(2) requires that certain articles be bought from American sources pursuant to section 2533a of this title, or requires that strategic materials critical to national security be bought from American sources pursuant to section 2533b of this title; or

(3) specifically refers to this section and provides that, notwithstanding this section, it shall be applicable to contracts for the procurement of commercial items.

(Added Pub. L. 103-355, title VIII, § 8102, Oct. 13, 1994, 108 Stat. 3390; amended Pub. L. 105-85, div. A, title X, § 1073(a)(51), Nov. 18, 1997, 111 Stat. 1903; Pub. L. 107-107, div. A, title X, § 1048(a)(18), Dec. 28, 2001, 115 Stat. 1223; Pub. L. 111-350, § 5(b)(21), Jan. 4, 2011, 124 Stat. 3844; Pub. L. 114-328, div. A, title VIII, § 874(a), Dec. 23, 2016, 130 Stat. 2308; Pub. L. 115-232, div. A, title VIII, §§ 836(d)(1), (8)(B), 837(a), Aug. 13, 2018, 132 Stat. 1866, 1868, 1875.)

#### AMENDMENT OF SECTION

*Pub. L. 115-232, div. A, title VIII, § 836(d)(1), (8)(B), (h), Aug. 13, 2018, 132 Stat. 1866, 1868, 1874, provided that, effective Jan. 1, 2020, subject to a savings provision, this section is amended as follows:*

(1) *by amending section catchline to read “Relationship of other provisions of law to procurement of commercial products and commercial services”;*

(2) *in subsection (a)(1), (2), by striking “commercial item” and inserting “commercial product or commercial service”;*

(3) *in subsections (b) and (c)—*

(A) *in heading, by striking “Commercial Items” and inserting “Commercial Products and Commercial Services”;* and

(B) *by striking “commercial items” each place it appears and inserting “commercial products and commercial services”;* and

(4) *in subsection (e)(3), by striking “commercial items” and inserting “commercial products and commercial services”.*

## AMENDMENTS

2018—Pub. L. 115-232, § 836(d)(8)(B), substituted “Relationship of other provisions of law to procurement of commercial products and commercial services” for “Relationship of commercial item provisions to other provisions of law” in section catchline.

Subsec. (a)(1), (2). Pub. L. 115-232, § 836(d)(1)(A), substituted “commercial product or commercial service” for “commercial item”.

Subsec. (b). Pub. L. 115-232, § 836(d)(1)(B), in heading, substituted “Commercial Products and Commercial Services” for “Commercial Items” and, in text, substituted “commercial products and commercial services” for “commercial items” wherever appearing.

Subsec. (b)(2). Pub. L. 115-232, § 837(a), substituted “October 13, 1994” for “January 1, 2015”.

Subsec. (c). Pub. L. 115-232, § 836(d)(1)(B), in heading, substituted “Commercial Products and Commercial Services” for “Commercial Items” and, in text, substituted “commercial products and commercial services” for “commercial items” wherever appearing.

Subsec. (e)(3). Pub. L. 115-232, § 836(d)(1)(C), substituted “commercial products and commercial services” for “commercial items”.

2016—Pub. L. 114-328 amended section generally. Prior to amendment, text read as follows:

“(a) APPLICABILITY OF TITLE.—Unless otherwise specifically provided, nothing in this chapter shall be construed as providing that any other provision of this title relating to procurement is inapplicable to the procurement of commercial items.

“(b) LIST OF LAWS INAPPLICABLE TO CONTRACTS FOR THE ACQUISITION OF COMMERCIAL ITEMS.—No contract for the procurement of a commercial item entered into by the head of an agency shall be subject to any law properly listed in the Federal Acquisition Regulation (pursuant to section 1906 of title 41).

“(c) CROSS REFERENCE TO EXCEPTION TO COST OR PRICING DATA REQUIREMENTS FOR COMMERCIAL ITEMS.—For a provision relating to an exception for requirements for cost or pricing data for contracts for the procurement of commercial items, see section 2306a(b) of this title.”

2011—Subsec. (b). Pub. L. 111-350 substituted “section 1906 of title 41” for “section 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 430)”.

2001—Subsec. (b). Pub. L. 107-107 inserted “(41 U.S.C. 430)” after “section 34 of the Office of Federal Procurement Policy Act”.

1997—Subsec. (c). Pub. L. 105-85 substituted “a provision relating to an exception” for “provisions relating to exceptions” and “section 2306a(b)” for “section 2306a(d)”.

## EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by section 836(d)(1), (8)(B) of Pub. L. 115-232 effective Jan. 1, 2020, subject to a savings provision, see section 836(h) of Pub. L. 115-232, set out as an Effective Date of 2018 Amendment; Savings Provision note under section 453b of Title 6, Domestic Security.

## EFFECTIVE DATE

For effective date and applicability of chapter, see section 10001 of Pub. L. 103-355 set out as an Effective Date of 1994 Amendment note under section 2302 of this title.

## CHANGES TO DEFENSE FEDERAL ACQUISITION REGULATION SUPPLEMENT

Pub. L. 114-328, div. A, title VIII, § 874(b), Dec. 23, 2016, 130 Stat. 2310, provided that:

“(1) IN GENERAL.—To the maximum extent practicable, the Under Secretary of Defense for Acquisition, Technology, and Logistics shall ensure that—

“(A) the Defense Federal Acquisition Regulation Supplement does not require the inclusion of contract clauses in contracts for the procurement of commercial items or contracts for the procurement of commercially available off-the-shelf items, unless such clauses are—

“(i) required to implement provisions of law or executive orders applicable to such contracts; or

“(ii) determined to be consistent with standard commercial practice; and

“(B) the flow-down of contract clauses to subcontracts under contracts for the procurement of commercial items or commercially available off-the-shelf items is prohibited unless such flow-down is required to implement provisions of law or executive orders applicable to such subcontracts.

“(2) SUBCONTRACTS.—In this subsection, the term ‘subcontract’ includes a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or subcontractor. The term does not include agreements entered into by a contractor for the supply of commodities that are intended for use in the performance of multiple contracts with the Department of Defense and other parties and are not identifiable to any particular contract.”

## PROVISIONS NOT AFFECTED BY TITLE VIII OF PUB. L. 103-355

Pub. L. 103-355, title VIII, § 8304, Oct. 13, 1994, 108 Stat. 3398, as amended by Pub. L. 115-232, div. A, title VIII, § 812(a)(2)(C)(iii), Aug. 13, 2018, 132 Stat. 1847, provided that: “Nothing in this title [see Tables for classification] shall be construed as modifying or superseding, or as intended to impair or restrict, authorities or responsibilities under—

“(1) section 7102 of the Federal Acquisition Streamlining Act of 1994 [Pub. L. 103-355, 15 U.S.C. 644 note];

“(2) the Brooks Automatic Data Processing Act (section 111 of the Federal Property and Administrative Services Act of 1949 [former] 40 U.S.C. 759);

“(3) Brooks Architect-Engineers Act (title IX of the Federal Property and Administrative Services Act of 1949 [former] 40 U.S.C. 541 et seq.) [now 40 U.S.C. 1101-1104];

“(4) subsections (a) and (d) of section 8 of the Small Business Act (15 U.S.C. 637(a) and (d)); or

“(5) the Javits-Wagner-O’Day Act [former] 41 U.S.C. 46-48c [now 41 U.S.C. 8501 et seq.]”

## § 2376. Definitions

In this chapter:

(1) The terms “commercial item”, “non-developmental item”, “component”, and “commercial component” have the meanings provided in chapter 1 of title 41.

(2) The term “head of an agency” means the Secretary of Defense, the Secretary of Homeland Security, and the Administrator of the National Aeronautics and Space Administration.

(3) The term “agency” means the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration.

(Added Pub. L. 103-355, title VIII, § 8103, Oct. 13, 1994, 108 Stat. 3390; amended Pub. L. 107-107, div. A, title X, § 1048(a)(19), Dec. 28, 2001, 115 Stat. 1223; Pub. L. 107-296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 111-350, § 5(b)(22), Jan. 4, 2011, 124 Stat. 3844; Pub. L. 115-232, div. A, title VIII, § 836(d)(2), Aug. 13, 2018, 132 Stat. 1866.)

## AMENDMENT OF PARAGRAPH (1)

*Pub. L. 115-232, div. A, title VIII, § 836(d)(2), (h), Aug. 13, 2018, 132 Stat. 1866, 1874, provided that, effective Jan. 1, 2020, subject to a savings provision, paragraph (1) of this section is amended by striking “terms ‘commercial item’,” and inserting “terms ‘commercial product’, ‘commercial service’,” and by striking “chapter 1 of title 41” and inserting “sections 103, 103a, 110, 105, and 102, respectively, of title 41”.*