

(B) The limitation under subparagraph (A) does not apply to the procurement of a product or service that was previously acquired using commercial 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 product or service using such procedures.

See 2018 Amendment notes below.

AMENDMENTS

2018—Pub. L. 115-232, § 836(d)(8)(E), substituted “Commercial product and commercial service” for “Commercial item” in section catchline.

Subsec. (a). Pub. L. 115-232, § 836(d)(5)(A), substituted “commercial product and commercial service determinations” for “commercial item determinations” in pars. (1) and (2).

Subsec. (b). Pub. L. 115-232, § 836(d)(5)(B)(i)–(iii), in heading, struck out “Item” after “Commercial” and, in text, substituted “a product or service” for “an item” and struck out “item” after “using commercial” wherever appearing.

Subsec. (b)(1). Pub. L. 115-232, § 836(d)(5)(B)(iv)–(vi) substituted “prior commercial product or service determination” for “prior commercial item determination”, “such product or service” for “such item”, and “the product or service” for “the item”.

Subsec. (b)(2)(B)(ii). Pub. L. 115-232, § 836(d)(5)(B)(vi), substituted “the product or service” for “the item”.

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.”

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by 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.

§ 2380a. Treatment of certain items as commercial items

(a) **GOODS AND SERVICES PROVIDED BY NON-TRADITIONAL 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 NON-TRADITIONAL 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; Pub. L. 115-232, div. A, title VIII, § 836(d)(6), (8)(F), Aug. 13, 2018, 132 Stat. 1868, 1869.)

AMENDMENT OF SECTION

Pub. L. 115-232, div. A, title VIII, § 836(d)(6), (8)(F), (h), Aug. 13, 2018, 132 Stat. 1868, 1869, 1874, made amendments to this section, effective Jan. 1, 2020, subject to a savings provision. After Jan. 1, 2020, this section will read as follows:

§ 2380a. Treatment of certain products and services as commercial products and commercial services

(a) **GOODS AND SERVICES PROVIDED BY NON-TRADITIONAL DEFENSE CONTRACTORS.**—Notwithstanding section 2376(1) of this title, products 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 products and commercial services, respectively, for purposes of this chapter.

(b) **SERVICES PROVIDED BY CERTAIN NON-TRADITIONAL 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 services 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.

See 2018 Amendment notes below.

AMENDMENTS

2018—Pub. L. 115-232, § 836(d)(8)(F), substituted “products and services as commercial products and commercial services” for “items as commercial items” in section catchline.

Subsec. (a). Pub. L. 115-232, § 836(d)(6)(A), substituted “products and” for “items and” and “commercial products and commercial services, respectively,” for “commercial items”.

Subsec. (b). Pub. L. 115-232, § 836(d)(6)(B), substituted “commercial services” for “commercial items”.

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).

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by 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.

§ 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 purposes of this chapter.

(Added Pub. L. 114-328, div. A, title VIII, §877(a), Dec. 23, 2016, 130 Stat. 2311, §2380B; renumbered §2380b and amended Pub. L. 115-232, div. A, title VIII, §836(d)(7), (8)(G), Aug. 13, 2018, 132 Stat. 1868, 1869.)

AMENDMENT OF SECTION

Pub. L. 115-232, div. A, title VIII, § 836(d)(7), (8)(G), (h), Aug. 13, 2018, 132 Stat. 1868, 1869, 1874, made amendments to this section, effective Jan. 1, 2020, subject to a savings provision. After Jan. 1, 2020, this section will read as follows:

§ 2380b. Treatment of commingled items purchased by contractors as commercial products

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 product for purposes of this chapter.

See 2018 Amendment note below.

AMENDMENTS

2018—Pub. L. 115-232 renumbered section 2380B of this title as this section and substituted “commercial products” for “commercial items” in section catchline and “commercial product” for “commercial item” in text.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by 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.

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.

Sec.
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.
[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.

AMENDMENTS

2018—Pub. L. 115-232, div. A, title X, §1081(a)(22), Aug. 13, 2018, 132 Stat. 1984, inserted period at end of item 2410s.