

AMENDMENTS

2002—Subsec. (c). Pub. L. 107-217 substituted “section 121 of title 40” for “section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486)” and “section 501(a)(2) of title 40” for “section 201(a) of that Act (40 U.S.C. 481(a))”.

1994—Subsec. (a). Pub. L. 103-355 substituted “The Secretary of Defense may—

“(1) prescribe regulations for the preparation, submission, and opening of bids for contracts; and” for “The Secretary of a military department may—

“(1) prescribe regulations for the preparation, submission, and opening of bids for contracts with that department; and”.

1984—Subsec. (c). Pub. L. 98-525 substituted “section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486)” for “section 486 of title 40” and “section 201(a) of that Act (40 U.S.C. 481(a))” for “section 481(a) of this title”.

[§ 2382. Repealed. Pub. L. 112-239, div. A, title XVI, § 1671(c)(1), Jan. 2, 2013, 126 Stat. 2084]

Section, added Pub. L. 108-136, div. A, title VIII, § 801(a)(1), Nov. 24, 2003, 117 Stat. 1538; amended Pub. L. 109-364, div. A, title X, § 1071(a)(2), Oct. 17, 2006, 120 Stat. 2398; Pub. L. 111-240, title I, § 1313(b), Sept. 27, 2010, 124 Stat. 2539; Pub. L. 112-239, div. A, title X, § 1076(d)(3), Jan. 2, 2013, 126 Stat. 1951, related to policy and restrictions regarding consolidation of contract requirements.

A prior section 2382, acts Aug. 10, 1956, ch. 1041, 70A Stat. 136; Dec. 1, 1981, Pub. L. 97-86, title IX, § 911(a)(1), 95 Stat. 1120; Nov. 5, 1990, Pub. L. 101-510, div. A, title XIV, § 1484(b)(3), (f)(2), (g)(2), (h)(3), 104 Stat. 1716, 1717; Oct. 29, 1992, Pub. L. 102-572, title IX, § 902(b)(1), 106 Stat. 4516, authorized the President, upon declaration of war by Congress or declaration of national emergency by the President or by Congress, to prescribe regulations to control excessive profits on defense contracts during period of such war or national emergency, prior to repeal by Pub. L. 103-355, title II, § 2102(a), Oct. 13, 1994, 108 Stat. 3309.

§ 2383. Contractor performance of acquisition functions closely associated with inherently governmental functions

(a) LIMITATION.—The head of an agency may enter into a contract for the performance of acquisition functions closely associated with inherently governmental functions only if the contracting officer for the contract ensures that—

(1) appropriate military or civilian personnel of the Department of Defense cannot reasonably be made available to perform the functions;

(2) appropriate military or civilian personnel of the Department of Defense are—

(A) to supervise contractor performance of the contract; and

(B) to perform all inherently governmental functions associated with the functions to be performed under the contract; and

(3) the agency addresses any potential organizational conflict of interest of the contractor in the performance of the functions under the contract, consistent with subpart 9.5 of part 9 of the Federal Acquisition Regulation and the best interests of the Department of Defense.

(b) DEFINITIONS.—In this section:

(1) The term “head of an agency” has the meaning given such term in section 2302(1) of this title, except that such term does not in-

clude the Secretary of Homeland Security or the Administrator of the National Oceanic and Atmospheric Administration.

(2) The term “inherently governmental functions” has the meaning given such term in subpart 7.5 of part 7 of the Federal Acquisition Regulation.

(3) The term “functions closely associated with inherently governmental functions” means the functions described in section 7.503(d) of the Federal Acquisition Regulation.

(4) The term “organizational conflict of interest” has the meaning given such term in subpart 9.5 of part 9 of the Federal Acquisition Regulation.

(Added Pub. L. 108-375, div. A, title VIII, § 804(a)(1), Oct. 28, 2004, 118 Stat. 2007.)

PRIOR PROVISIONS

A prior section 2383, added Pub. L. 100-456, div. A, title VIII, § 805(a)(1), Sept. 29, 1988, 102 Stat. 2010; amended Pub. L. 102-190, div. A, title X, § 1061(a)(13), Dec. 5, 1991, 105 Stat. 1473; Pub. L. 103-355, title II, § 2401, Oct. 13, 1994, 108 Stat. 3324, related to quality control in procurement of critical aircraft and ship spare or repair parts, prior to repeal by Pub. L. 104-106, div. A, title VIII, § 803(a), Feb. 10, 1996, 110 Stat. 390.

Another prior section 2383, act Aug. 10, 1956, ch. 1041, 70A Stat. 137, permitted Secretary of a military department to make emergency purchases of war material abroad, and provided that such material may be admitted free of duty, prior to repeal by Pub. L. 87-456, title III, § 303(c), May 24, 1962, 76 Stat. 78.

EFFECTIVE DATE

Pub. L. 108-375, div. A, title VIII, § 804(b), Oct. 28, 2004, 118 Stat. 2008, provided that: “Section 2383 of title 10, United States Code (as added by subsection (a)), shall apply to contracts entered into on or after the date of the enactment of this Act [Oct. 28, 2004].”

§ 2384. Supplies: identification of supplier and sources

(a) The Secretary of Defense shall require that the contractor under a contract with the Department of Defense for the furnishing of supplies to the United States shall mark or otherwise identify supplies furnished under the contract with the identity of the contractor, the national stock number for the supplies furnished (if there is such a number), and the contractor’s identification number for the supplies.

(b)(1) The Secretary of Defense shall prescribe regulations requiring that, whenever practicable, each contract requiring the delivery of supplies (other than a contract described in paragraph (2)) shall require that the contractor identify—

(A) the actual manufacturer or producer of the item or of all sources of supply of the contractor for that item;

(B) the national stock number of the item (if there is such a number) and the identification number of the actual manufacturer or producer of the item or of each source of supply of the contractor for the item; and

(C) the source of any technical data delivered under the contract.

(2) The regulations prescribed pursuant to paragraph (1) do not apply to a contract that requires the delivery of supplies that are commercial items (as defined in section 103 of title 41).

(3) The regulations prescribed pursuant to paragraph (1) do not apply to a contract for an amount not greater than the simplified acquisition threshold (as defined in section 134 of title 41).

(c) Identification of supplies and technical data under this section shall be made in the manner and with respect to the supplies prescribed by the Secretary of Defense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 137; Pub. L. 98-525, title XII, §1231(a), Oct. 19, 1984, 98 Stat. 2599; Pub. L. 99-500, §101(c) [title X, §928(a)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-156, and Pub. L. 99-591, §101(c) [title X, §928(a)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-156; Pub. L. 99-661, div. A, title IX, formerly title IV, §928(a), Nov. 14, 1986, 100 Stat. 3936, renumbered title IX, Pub. L. 100-26, §3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 103-355, title IV, §4102(d), title VIII, §8105(b), Oct. 13, 1994, 108 Stat. 3340, 3392; Pub. L. 104-106, div. D, title XLIII, §4321(b)(12), Feb. 10, 1996, 110 Stat. 672; Pub. L. 111-350, §5(b)(23), Jan. 4, 2011, 124 Stat. 3844; Pub. L. 115-232, div. A, title VIII, §836(e)(2), Aug. 13, 2018, 132 Stat. 1869.)

AMENDMENT OF SUBSECTION (b)(2)

Pub. L. 115-232, div. A, title VIII, §836(e)(2), (h), Aug. 13, 2018, 132 Stat. 1869, 1874, provided that, effective Jan. 1, 2020, subject to a savings provision, subsection (b)(2) of this section is amended by striking “commercial items” and inserting “commercial products”. See 2018 Amendment note below.

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2384	10:1207. 34:583.	R.S. 3731.

The words “Each contractor” are substituted for the words “Every person”. The word “his” is substituted for the words “the name of the contractor furnishing such supplies”. The words “of any kind” and “and distinguish [distinguished]” are omitted as surplusage. The word “may” is substituted for the word “shall”.

CODIFICATION

Pub. L. 99-591 is a corrected version of Pub. L. 99-500.

AMENDMENTS

2018—Subsec. (b)(2). Pub. L. 115-232 substituted “commercial products” for “commercial items”.

2011—Subsec. (b)(2). Pub. L. 111-350, §5(b)(23)(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)(3). Pub. L. 111-350, §5(b)(23)(B), substituted “section 134 of title 41” for “section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))”.

1996—Subsec. (b)(2). Pub. L. 104-106, §4321(b)(12)(A), substituted “items as” for “items, as” and inserted a closing parenthesis after “403(12)”.

Subsec. (b)(3). Pub. L. 104-106, §4321(b)(12)(B), inserted a closing parenthesis after “403(11)”.

1994—Subsec. (b)(2). Pub. L. 103-355, §8105(b), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “Paragraph (1) does not apply to a contract that requires the delivery of supplies that are commercial items sold in substantial quantities to the general public if the contract—

“(A) provides for the acquisition of such supplies by the Department of Defense at established catalog or market prices; or

“(B) is awarded through the use of competitive procedures.”

Subsec. (b)(3). Pub. L. 103-355, §4102(d), added par. (3). 1986—Subsec. (b). Pub. L. 99-500, Pub. L. 99-591, and Pub. L. 99-661, amended subsec. (b) identically, designating existing provision as par. (1), redesignating former pars. (1) to (3) as subpars. (A) to (C), respectively, and inserting in provision preceding subpar. (A) “(other than a contract described in paragraph (2))”, and adding par. (2).

1984—Pub. L. 98-525 amended section generally, substituting “identification of supplier and sources” for “marking with name of contractor” in section catchline, and, in text, substituting provisions designated subsec. (a) and relating to the marking of supplies, providing the national stock number for the supplies furnished, and the contractor’s identification number for requirement that each contractor furnishing supplies to a military department mark the supplies with his name in the manner directed by the Secretary of the Department and prohibition of receipt of supplies unless so marked and adding subsecs. (b) and (c).

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.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104-106, see section 4401 of Pub. L. 104-106, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103-355, see section 10001 of Pub. L. 103-355, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-500, §101(c) [title X, §928(b)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-156, Pub. L. 99-591, §101(c) [title X, §928(b)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-156, and Pub. L. 99-661, Pub. L. 99-661, div. A, title IX, formerly title IV, §928(b), Nov. 14, 1986, 100 Stat. 3936, renumbered title IX, Pub. L. 100-26, §3(5), Apr. 21, 1987, 101 Stat. 273, provided that: “The amendments made by subsection (a) [amending this section] shall apply with respect to contracts entered into after the end of the 180-day period beginning on the date of the enactment of this Act [Oct. 18, 1986].”

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-525, title XII, §1231(b), Oct. 19, 1984, 98 Stat. 2600, provided that: “The amendment made by subsection (a) [amending this section] shall take effect at the end of the one-year period beginning on the date of the enactment of this Act [Oct. 19, 1984].”

§ 2384a. Supplies: economic order quantities

(a)(1) An agency referred to in section 2303(a) of this title shall procure supplies in such quantity as (A) will result in the total cost and unit cost most advantageous to the United States, where practicable, and (B) does not exceed the quantity reasonably expected to be required by the agency.

(2) The Secretary of Defense shall take paragraph (1) into account in approving rates of obligation of appropriations under section 2204 of this title.

(b) Each solicitation for a contract for supplies shall, if practicable, include a provision inviting each offeror responding to the solicitation to state an opinion on whether the quantity