

(Added Pub. L. 103-355, title VIII, §8102, Oct. 13, 1994, 108 Stat. 3390, §2375; 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; Pub. L. 116-92, div. A, title IX, §902(57), Dec. 20, 2019, 133 Stat. 1549; renumbered §3452 and amended Pub. L. 116-283, div. A, title XVIII, §1821(a)(2), (b)(2), Jan. 1, 2021, 134 Stat. 4195.)

PRIOR PROVISIONS

A prior section 3452, added Pub. L. 85-861, §1(81)(E), Sept. 2, 1958, 72 Stat. 1480, provided that, notwithstanding any other provision of law, an officer of Medical Corps or Dental Corps may be promoted to temporary grade of captain at any time after first anniversary of date upon which he graduated from a medical, osteopathic, or dental school, prior to repeal by Pub. L. 96-513, title II, §207, title VII, §701, Dec. 12, 1980, 94 Stat. 2884, 2955, effective Sept. 15, 1981.

AMENDMENTS

2021—Pub. L. 116-283, §1821(a)(2), renumbered section 2375 of this title as this section.

Subsec. (e)(2). Pub. L. 116-283, §1821(b)(2), substituted “section 4862” for “section 2533a” and “section 4863” for “section 2533b”.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116-283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116-283, set out as a note preceding section 3001 of this title.

§ 3453. Preference for commercial products and commercial services

(a) PREFERENCE.—The head of an agency shall ensure that, to the maximum extent practicable—

(1) requirements of the agency with respect to a procurement of supplies or services are stated in terms of—

- (A) functions to be performed;
- (B) performance required; or
- (C) essential physical characteristics;

(2) such requirements are defined so that commercial services or commercial products or, to the extent that commercial products suitable to meet the agency’s needs are not available, nondevelopmental items other than commercial products, may be procured to fulfill such requirements; and

(3) offerors of commercial services, commercial products, and nondevelopmental items other than commercial products are provided an opportunity to compete in any procurement to fill such requirements.

(b) IMPLEMENTATION.—The head of an agency shall ensure that procurement officials in that agency, to the maximum extent practicable—

(1) acquire commercial services, commercial products, or nondevelopmental items other than commercial products to meet the needs of the agency;

(2) require prime contractors and subcontractors at all levels under the agency con-

tracts to incorporate commercial services, commercial products, or nondevelopmental items other than commercial products as components of items supplied to the agency;

(3) modify requirements in appropriate cases to ensure that the requirements can be met by commercial services or commercial products or, to the extent that commercial products suitable to meet the agency’s needs are not available, nondevelopmental items other than commercial products;

(4) state specifications in terms that enable and encourage bidders and offerors to supply commercial services or commercial products or, to the extent that commercial products suitable to meet the agency’s needs are not available, nondevelopmental items other than commercial products in response to the agency solicitations;

(5) revise the agency’s procurement policies, practices, and procedures not required by law to reduce any impediments in those policies, practices, and procedures to the acquisition of commercial products and commercial services; and

(6) require training of appropriate personnel in the acquisition of commercial products and commercial services.

(c) PRELIMINARY MARKET RESEARCH.—(1) The head of an agency shall conduct market research appropriate to the circumstances—

(A) before developing new specifications for a procurement by that agency;

(B) before soliciting bids or proposals for a contract in excess of the simplified acquisition threshold; and

(C) before awarding a task order or delivery order in excess of the simplified acquisition threshold.

(2) The head of an agency shall use the results of market research to determine whether there are commercial services or commercial products or, to the extent that commercial products suitable to meet the agency’s needs are not available, nondevelopmental items other than commercial products available that—

(A) meet the agency’s requirements;

(B) could be modified to meet the agency’s requirements; or

(C) could meet the agency’s requirements if those requirements were modified to a reasonable extent.

(3) In conducting market research, the head of an agency should not require potential sources to submit more than the minimum information that is necessary to make the determinations required in paragraph (2).

(4) The head of an agency shall document the results of market research in a manner appropriate to the size and complexity of the acquisition.

(5) The head of an agency shall take appropriate steps to ensure that any prime contractor of a contract (or task order or delivery order) in an amount in excess of \$5,000,000 for the procurement of products other than commercial products or services other than commercial services engages in such market research as may be necessary to carry out the requirements of subsection (b)(2) before making purchases for or on behalf of the Department of Defense.

(d) MARKET RESEARCH FOR PRICE ANALYSIS.—The Secretary of Defense shall ensure that procurement officials in the Department of Defense conduct or obtain market research to support the determination of the reasonableness of price for commercial products or commercial services contained in any bid or offer submitted in response to an agency solicitation. To the extent necessary to support such market research, the procurement official for the solicitation—

(1) in the case of products or services acquired under section 3455 of this title, shall use information submitted under subsection (d) of that section; and

(2) in the case of other products or services, may require the offeror to submit relevant information.

(e) MARKET RESEARCH TRAINING REQUIRED.—The Secretary of Defense shall provide mandatory training for members of the armed forces and employees of the Department of Defense responsible for the conduct of market research required under subsections (c) and (d). Such mandatory training shall, at a minimum—

(1) provide comprehensive information on the subject of market research and the function of market research in the acquisition of commercial products and commercial services;

(2) teach best practices for conducting and documenting market research; and

(3) provide methodologies for establishing standard processes and reports for collecting and sharing market research across the Department.

(Added Pub. L. 103-355, title VIII, §8104(a), Oct. 13, 1994, 108 Stat. 3390, §2377; amended Pub. L. 110-181, div. A, title VIII, §826(a), Jan. 28, 2008, 122 Stat. 227; Pub. L. 114-92, div. A, title VIII, §844(a), Nov. 25, 2015, 129 Stat. 915; Pub. L. 114-328, div. A, title VIII, §871, Dec. 23, 2016, 130 Stat. 2307; Pub. L. 115-232, div. A, title VIII, §836(d)(3), (8)(C), Aug. 13, 2018, 132 Stat. 1866, 1868; Pub. L. 116-92, div. A, title VIII, §818(a), Dec. 20, 2019, 133 Stat. 1488; renumbered §3453 and amended Pub. L. 116-283, div. A, title XVIII, §1821(a)(2), (b)(3), Jan. 1, 2021, 134 Stat. 4195.)

AMENDMENTS

2021—Pub. L. 116-283, §1821(a)(2), renumbered section 2377 of this title as this section.

Subsec. (d)(1). Pub. L. 116-283, §1821(b)(3), substituted “section 3455” for “section 2379”.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116-283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116-283, set out as a note preceding section 3001 of this title.

§ 3455. Procurement of a major weapon system as a commercial product: requirement for prior determination by Secretary of Defense and notification to Congress

(a) REQUIREMENT FOR DETERMINATION AND NOTIFICATION.—A major weapon system of the Department of Defense may be treated as a commercial product, or purchased under procedures established for the procurement of commercial products, only if—

(1) the Secretary of Defense determines that—

(A) the major weapon system is a commercial product; 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 PRODUCTS.—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 product and purchased under procedures established for the procurement of commercial products 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 products in accordance with the requirements of subsection (a); or

(2) the contracting officer determines in writing that the subsystem is a commercial product.

(c) TREATMENT OF COMPONENTS AND SPARE PARTS AS COMMERCIAL PRODUCTS.—(1) A component or spare part for a major weapon system (other than a commercially available off-the-shelf item as defined in section 104 of title 41) may be treated as a commercial product for the purposes of chapter 271 of this title if either—

(A) the component or spare part is intended for—

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

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

(B) the contracting officer determines in writing that the component or spare part is a commercial product.

(2) This subsection shall apply only to components and spare parts that are acquired by the Department of Defense through a prime contract or a modification to a prime contract (or through a subcontract under a prime contract or modification to a prime contract on which the prime contractor adds no, or negligible, value).

(d) INFORMATION SUBMITTED.—(1) To the extent necessary to determine the reasonableness of the price for items acquired under this section, the contracting officer shall require the offeror to submit—

(A) prices paid for the same or similar commercial products under comparable terms and conditions by both Government and commercial customers;

(B) if the contracting officer determines that the offeror does not have access to and cannot provide sufficient information described in subparagraph (A) to determine the reasonableness of price, information on—

(i) prices for the same or similar items sold under different terms and conditions;