

§ 3456. Commercial product and commercial service 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 product and commercial service 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 product and commercial service determinations, market research, and analysis used to determine the reasonableness of price for the purposes of procurements by the Department of Defense.

(b) DETERMINATIONS REGARDING THE COMMERCIAL NATURE OF PRODUCTS OR SERVICES.—

(1) IN GENERAL.—In making a determination whether a particular product or service offered by a contractor meets the definition of a commercial product or commercial service, a contracting officer of the Department of Defense may—

(A) request support from the Director of the Defense Contract Management Agency, the Director of the Defense Contract Audit Agency, or other appropriate experts in the Department to make a determination whether a product or service is a commercial product or commercial service; and

(B) consider the views of appropriate public and private sector entities.

(2) MEMORANDUM.—Within 30 days after a contract award, the contracting officer shall, consistent with the policies and regulations of the Department, submit a written memorandum summarizing the determination referred to in paragraph (1), including a detailed justification for such determination.

(c) ITEMS PREVIOUSLY ACQUIRED USING COMMERCIAL ACQUISITION PROCEDURES.—

(1) DETERMINATIONS.—A contract for a product or service acquired using commercial acquisition procedures under part 12 of the Federal Acquisition Regulation shall serve as a prior commercial product or service determination with respect to such product or service 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 product or service using commercial 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 a product or service that was previously acquired under a contract using commercial acquisition procedures under part 12 of the Federal Acquisition Regulation.

(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 3703(d)(2) 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.

(Added Pub. L. 114-92, div. A, title VIII, §851(a)(1), Nov. 25, 2015, 129 Stat. 916, §2380; 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; Pub. L. 115-232, div. A, title VIII, §836(d)(5), (8)(E), Aug. 13, 2018, 132 Stat. 1868, 1869; renumbered §3456 and amended Pub. L. 116-283, div. A, title VIII, §816, title XVIII, §§1821(a)(2), (b)(5), 1831(j)(5), Jan. 1, 2021, 134 Stat. 3750, 4195, 4217.)

AMENDMENTS

2021—Pub. L. 116-283, §1821(a)(2), renumbered section 2380 of this title as this section.

Subsec. (b). Pub. L. 116-283, §816(2), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 116-283, §816(1), redesignated subsec. (b) as (c).

Subsec. (c)(2)(B)(i). Pub. L. 116-283, §§1821(b)(5), 1831(j)(5), made identical amendments, substituting “section 3703(d)(2)” for “section 2306a(b)(4)(B)”. Amendment by section 1831(j)(5) to section 2380(b)(2)(B)(i) of this title and by section 1821(b)(5) to subsec. (b)(2)(B)(i) of this section were both executed to reflect the probable intent of Congress and the intervening amendments made by sections 1821(a)(2) and 816(1) of Pub. L. 116-283, which had renumbered section 2380 of this title as this section and redesignated subsec. (b) as (c). See Amendment notes above.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by sections 1821(a)(2), (b)(5) and 1831(j)(5) of 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.

§ 3457. Treatment of certain products and services as commercial products and commercial services

(a) GOODS AND SERVICES PROVIDED BY NON-TRADITIONAL DEFENSE CONTRACTORS.—Notwithstanding section 3451(1) of this title, products and services provided by nontraditional defense contractors (as that term is defined in section 3014 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 3451(1) of this title, services provided by a business unit that is a nontraditional defense contractor (as that term is defined in section 3014 of this title) shall be treated as commercial serv-

ices 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.

(c) COMMINGLED ITEMS PURCHASED BY CONTRACTORS.—Notwithstanding section 3451(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.

(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; renumbered §3457 and amended Pub. L. 116-283, div. A, title XVIII, §1821(a)(2), (b)(6), (7)(A), (B), Jan. 1, 2021, 134 Stat. 4195, 4196.)

CODIFICATION

Section 1821(a)(1), (2) of Pub. L. 116-260 transferred chapter 140 of this title (§§2375 to 2380b) to this chapter and renumbered all the sections within it, except for final section 2380b. At that point, the last two sections of this chapter were this section (renumbered from section 2380a) followed by section 2380b. Section 1821(b)(7)(A) subsequently struck out “the heading of the final section of” this chapter, which was executed by incorporating the text of former section 2380b at the end of this section. The text of section 2380b of this title was based on Pub. L. 114-328, div. A, title VIII, §877(a), Dec. 23, 2016, 130 Stat. 2311; Pub. L. 115-232, div. A, title VIII, §836(d)(7), (8)(G), Aug. 13, 2018, 132 Stat. 1868, 1869; Pub. L. 116-92, div. A, title XVII, §1731(a)(47), Dec. 20, 2019, 133 Stat. 1815.

PRIOR PROVISIONS

A prior section 3491 was renumbered section 7191 of this title.

Prior sections 3492 and 3493 were repealed by Pub. L. 90-235, §1(a)(2), (b), Jan. 2, 1968, 81 Stat. 753.

Section 3492, act Aug. 10, 1956, ch. 1041, 70A Stat. 198, provided for extension of active service of Army members during war. See section 671a of this title.

Section 3493, act Aug. 10, 1956, ch. 1041, 70A Stat. 198, empowered the President to order commissioned officers of the Army Reserve to active duty with the Corps of Engineers.

A prior section 3494, added Pub. L. 85-861, §1(82)(A), Sept. 2, 1958, 72 Stat. 1481; amended Pub. L. 86-559, §1(20), June 30, 1960, 74 Stat. 271, provided that a reserve commissioned officer who is ordered to active duty be ordered to that duty in his reserve grade unless the Secretary of the Army orders him to active duty, other than for training, in a higher temporary grade and authorized a reserve commissioned officer who is selected for participation in a program under which he will be ordered to active duty for at least one academic year at a civilian school or college to be ordered, upon his request, to that duty in a temporary grade that is lower than his reserve grade, without affecting his reserve grade, prior to repeal by Pub. L. 96-513, title II, §209(a), title VII, §701, Dec. 12, 1980, 94 Stat. 2884, 2955, effective Sept. 15, 1981. See section 12320 of this title.

Prior sections 3495 to 3500 were repealed by Pub. L. 103-337, div. A, title XVI, §§1662(f)(2), 1691, Oct. 5, 1994, 108 Stat. 2994, 3026, effective Dec. 1, 1994.

Section 3495, act Aug. 10, 1956, ch. 1041, 70A Stat. 198, provided that members of Army National Guard of United States were not in active Federal service except when ordered thereto under law. See section 12401 of this title.

Section 3496, act Aug. 10, 1956, ch. 1041, 70A Stat. 198, authorized President to order commissioned officers of Army National Guard of United States to active duty in National Guard Bureau. See section 12402(a), (b)(1) of this title.

Section 3497, act Aug. 10, 1956, ch. 1041, 70A Stat. 199, provided that members of Army National Guard of United States ordered to active duty were to be ordered to duty as Reserves of Army. See section 12403 of this title.

Section 3498, act Aug. 10, 1956, ch. 1041, 70A Stat. 199, related to organization during initial mobilization of units of Army National Guard of United States ordered into active Federal service. See section 12404 of this title.

Section 3499, act Aug. 10, 1956, ch. 1041, 70A Stat. 199, related to application of laws governing Army to members of Army National Guard called into Federal service. See section 12405 of this title.

Section 3500, acts Aug. 10, 1956, ch. 1041, 70A Stat. 199; Sept. 29, 1988, Pub. L. 100-456, div. A, title XII, §1234(a)(1), (3), 102 Stat. 2059, authorized President to call Army National Guard units and members into Federal service. See section 12406 of this title.

AMENDMENTS

2021—Pub. L. 116-283, §1821(a)(2), renumbered section 2380a of this title as this section.

Subsecs. (a), (b). Pub. L. 116-283, §1821(b)(6), substituted “section 3451(1)” for “section 2376(1)” and “section 3014” for “section 2302(9)”.

Subsec. (c). Pub. L. 116-283, §1821(b)(7)(A), (B), transferred section 2380b of this title to this section and struck out section designation and catchline, designated text as subsec. (c) and inserted heading, and substituted “Notwithstanding section 3451(1)” for “Notwithstanding section 2376(1)”. See Codification note above.

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.

CHAPTER 249—MULTIYEAR CONTRACTS

Table with 2 columns: Subchapter and Sec. I. Multiyear Contracts for Acquisition of Property 3501 II. Multiyear Contracts for Acquisition of Services 3531 III. Other Authorities Relating to Multiyear Contracts 3551

PRIOR PROVISIONS

A prior chapter 249 “MULTIYEAR CONTRACTS”, as added by Pub. L. 115-232, div. A, title VIII, §801(a), Aug. 13, 2018, 132 Stat. 1827, and consisting of reserved section 3501, was repealed by Pub. L. 116-283, div. A, title XVIII, §1822(a), Jan. 1, 2021, 134 Stat. 4196.

SUBCHAPTER I—MULTIYEAR CONTRACTS FOR ACQUISITION OF PROPERTY

Table with 2 columns: Sec. and description. 3501. Multiyear contracts for acquisition of property: authority; definitions. 3502. Multiyear contracts for acquisition of property: regulations. 3503. Multiyear contracts for acquisition of property: contract cancellation or termination. 3504. Multiyear contracts for acquisition of property: participation by subcontractors, vendors, and suppliers. 3505. Multiyear contracts for acquisition of property: protection of existing authority. 3506. Department of Defense contracts: acquisition of weapon systems.