

Subsec. (e)(1)(B). Pub. L. 114-328, § 835(a), substituted “\$25,000,000” for “\$10,000,000”.

2013—Subsec. (e)(3). Pub. L. 112-239 struck out par. (3) which read as follows: “Paragraph (1)(B) and paragraph (2) of this subsection shall not be in effect after September 30, 2016.”

2011—Subsec. (a)(1). Pub. L. 111-350 substituted “section 1708 of title 41” for “section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416)”.

Subsec. (e). Pub. L. 111-383, § 1075(f)(5)(A), made technical correction to directory language of Pub. L. 110-181, § 843(a)(2)(C). See 2008 Amendment note below.

Subsec. (e)(3). Pub. L. 111-383, § 825, amended par. (3) generally. Prior to amendment, par. (3) read as follows: “This subsection shall be in effect for three years, beginning on the date that is 120 days after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2008.”

2008—Subsec. (d). Pub. L. 110-181, § 843(a)(2), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 110-181, § 843(a)(2)(C), as amended by Pub. L. 111-383, § 1075(f)(5)(A), added subsec. (e) and struck out former subsec. (e). Former text read as follows: “A protest is not authorized in connection with the issuance or proposed issuance of a task or delivery order except for a protest on the ground that the order increases the scope, period, or maximum value of the contract under which the order is issued.”

Pub. L. 110-181, § 843(a)(2)(A), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsecs. (f), (g). Pub. L. 110-181, § 843(a)(2)(A), redesignated subsecs. (e) and (f) as (f) and (g), respectively.

#### Statutory Notes and Related Subsidiaries

##### 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.

##### EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-181, div. A, title VIII, § 843(a)(3)(B), Jan. 28, 2008, 122 Stat. 238, provided that: “The amendments made by paragraph (2) [amending this section] shall take effect on the date that is 120 days after the date of the enactment of this Act [Jan. 28, 2008], and shall apply with respect to any task or delivery order awarded on or after such date.”

##### EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103-355, set out as an Effective Date of 1994 Amendment note under section 8752 of this title.

##### PROVISIONS NOT AFFECTED BY PUB. L. 103-355

This section not to be construed as modifying or superseding, or as intended to impair or restrict, authorities or responsibilities under former 40 U.S.C. 759 or chapter 11 of Title 40, Public Buildings, Property, and Works, see section 1004(d) of Pub. L. 103-355, set out as a note preceding section 3401 of this title.

### CHAPTER 247—PROCUREMENT OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

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3451.	Definitions.
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#### Editorial Notes

##### PRIOR PROVISIONS

A prior chapter 247 “ACQUISITION OF COMMERCIAL ITEMS”, as added by Pub. L. 115-232, div. A, title VIII, § 801(a), Aug. 13, 2018, 132 Stat. 1827, and consisting of reserved section 3451, was repealed by Pub. L. 116-283, div. A, title XVIII, § 1821(a)(1), Jan. 1, 2021, 134 Stat. 4194.

##### AMENDMENTS

2021—Pub. L. 117-81, div. A, title VIII, § 803(b)(2), Dec. 27, 2021, 135 Stat. 1816, added item 3458.

Pub. L. 116-283, div. A, title XVIII, § 1821(a)(1), (3), (b)(1)(B), (7)(C), Jan. 1, 2021, 134 Stat. 4194-4196, transferred chapter 140 of this title to this chapter, renumbered items 2375, 2376, 2377, 2379, 2380, and 2380a as 3452, 3451, 3453, 3455, 3456, and 3457, respectively, moved item 3451 so as to precede item 3452, and struck out item 2380b “Treatment of commingled items purchased by contractors as commercial products”.

#### Statutory Notes and Related Subsidiaries

##### PROCUREMENT OF COMMERCIAL SERVICES

Pub. L. 110-181, div. A, title VIII, § 805, Jan. 28, 2008, 122 Stat. 212, as amended by Pub. L. 110-417, [div. A], title X, § 1061(b)(4), Oct. 14, 2008, 122 Stat. 4613; Pub. L. 113-291, div. A, title X, § 1071(b)(2)(A), Dec. 19, 2014, 128 Stat. 3506; Pub. L. 115-232, div. A, title VIII, § 836(f)(6), Aug. 13, 2018, 132 Stat. 1871, provided that:

“(a) REGULATIONS REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense shall modify the regulations of the Department of Defense for the procurement of commercial services for or on behalf of the Department of Defense.

“(b) APPLICABILITY OF COMMERCIAL PROCEDURES.—

“(1) SERVICES OF A TYPE SOLD IN MARKETPLACE.—The regulations modified pursuant to subsection (a) shall ensure that services that are not offered and sold competitively in substantial quantities in the commercial marketplace, but are of a type offered and sold competitively in substantial quantities in the commercial marketplace, may be treated as commercial services for purposes of section 2306a of title 10, United States Code [see 10 U.S.C. 3701 et seq.] (relating to truth in negotiations), only if the contracting officer determines in writing that the offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of the price for such services.

“(2) INFORMATION SUBMITTED.—To the extent necessary to make a determination under paragraph (1), the contracting officer may request the offeror to submit—

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

“(B) if the contracting officer determines that the information described in subparagraph (A) is not sufficient to determine the reasonableness of price, other relevant information regarding the basis for price or cost, including information on labor costs, material costs, and overhead rates.

“(c) TIME-AND-MATERIALS CONTRACTS.—

“(1) COMMERCIAL SERVICES ACQUISITIONS.—The regulations modified pursuant to subsection (a) shall en-

sure that procedures applicable to time-and-materials contracts and labor-hour contracts for commercial service acquisitions may be used only for the following:

“(A) Services procured for support of a service, as described in section 103a(1) of title 41, United States Code.

“(B) Emergency repair services.

“(C) Any other commercial services only to the extent that the head of the agency concerned approves a determination in writing by the contracting officer that—

“(i) the services to be acquired are commercial services as defined in section 103a(2) of title 41, United States Code;

“(ii) if the services to be acquired are subject to subsection (b), the offeror of the services has submitted sufficient information in accordance with that subsection;

“(iii) such services are commonly sold to the general public through use of time-and-materials or labor-hour contracts; and

“(iv) the use of a time-and-materials or labor-hour contract type is in the best interest of the Government.

“(2) NON-COMMERCIAL SERVICES ACQUISITIONS.—Nothing in this subsection shall be construed to preclude the use of procedures applicable to time-and-materials contracts and labor-hour contracts for non-commercial service acquisitions for the acquisition of any category of services.”

#### PLAN FOR RESTRICTING GOVERNMENT-UNIQUE CONTRACT CLAUSES ON COMMERCIAL CONTRACTS

Pub. L. 110-181, div. A, title VIII, §821, Jan. 28, 2008, 122 Stat. 226, as amended by Pub. L. 113-291, div. A, title X, §1071(b)(2)(B), Dec. 19, 2014, 128 Stat. 3506; Pub. L. 115-232, div. A, title VIII, §836(f)(3), Aug. 13, 2018, 132 Stat. 1871; Pub. L. 116-92, div. A, title IX, §902(41), Dec. 20, 2019, 133 Stat. 1547, provided that:

“(a) PLAN.—The Under Secretary of Defense for Acquisition and Sustainment shall develop and implement a plan to minimize the number of government-unique contract clauses used in commercial contracts by restricting the clauses to the following:

“(1) Government-unique clauses authorized by law or regulation.

“(2) Any additional clauses that are relevant and necessary to a specific contract.

“(b) COMMERCIAL CONTRACT.—In this section:

“(1) The term ‘commercial contract’ means a contract awarded by the Federal Government for the procurement of a commercial product or a commercial service.

“(2) The term ‘commercial product’ has the meaning provided by section 103 of title 41, United States Code.

“(3) The term ‘commercial service’ has the meaning provided by section 103a of title 41, United States Code.”

#### § 3451. Definitions

In this chapter:

(1) The terms “commercial product”, “commercial service”, “nondevelopmental item”, “component”, and “commercial component” have the meanings provided in sections 103, 103a, 110, 105, and 102, respectively, 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, §2376; 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; renumbered §3451 and amended Pub. L. 116-283, div. A, title XVIII, §1821(a)(2), (b)(1)(A), Jan. 1, 2021, 134 Stat. 4195.)

#### Editorial Notes

##### PRIOR PROVISIONS

A prior section 3451, act Aug. 10, 1956, ch. 1041, 70A Stat. 197, provided that an officer who is promoted to a temporary grade is considered to have accepted his promotion on the date of the order announcing it, unless he expressly declines the promotion, 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(b)(1)(A), transferred this section so as to precede section 3452 and appear at the beginning of this chapter.

Pub. L. 116-283, §1821(a)(2), renumbered section 2376 of this title as this section.

2018—Par. (1). Pub. L. 115-232 substituted “terms ‘commercial product’, ‘commercial service,’” for “terms ‘commercial item,’” and “sections 103, 103a, 110, 105, and 102, respectively, of title 41” for “chapter 1 of title 41”.

2011—Par. (1). Pub. L. 111-350 substituted “chapter 1 of title 41” for “section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)”.

2002—Par. (2). Pub. L. 107-296 substituted “of Homeland Security” for “of Transportation”.

2001—Par. (1). Pub. L. 107-107 inserted “(41 U.S.C. 403)” after “section 4 of the Office of Federal Procurement Policy Act”.

#### Statutory Notes and Related Subsidiaries

##### 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.

##### 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 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107-296, set out as a note under section 101 of this title.

#### § 3452. Relationship of other provisions of law to procurement of commercial products and commercial services

(a) APPLICABILITY OF GOVERNMENT-WIDE STATUTES.—(1) No contract for the procurement of a commercial product or commercial service 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 product or commercial service entered into by the head of an