

formance 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.)

Editorial Notes

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Prior sections 3492 and 3493 were repealed by Pub.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.

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).

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.

§ 3458. Authority to acquire innovative commercial products and commercial services using general solicitation competitive procedures

(a) AUTHORITY.—The Secretary of Defense and the Secretaries of the military departments may acquire innovative commercial products and commercial services through a competitive se-

lection of proposals resulting from a general solicitation and the peer review of such proposals.

(b) **TREATMENT AS COMPETITIVE PROCEDURES.**—Use of general solicitation competitive procedures under subsection (a) shall be considered to be use of competitive procedures for purposes of chapter 221 of this title.

(c) **LIMITATIONS.**—(1) The Secretary may not enter into a contract or agreement in excess of \$100,000,000 using the authority under subsection (a) without a written determination from the Under Secretary of Defense for Acquisition and Sustainment or the relevant service acquisition executive of the efficacy of the effort to meet mission needs of the Department of Defense or the relevant military department.

(2) Contracts or agreements entered into using the authority under subsection (a) shall be fixed-price, including fixed-price incentive fee contracts.

(3) Notwithstanding section 3451(1) of this title, products and services acquired using the authority under subsection (a) shall be treated as commercial products and commercial services.

(d) **CONGRESSIONAL NOTIFICATION REQUIRED.**—(1) Not later than 45 days after the award of a contract for an amount exceeding \$100,000,000 using the authority in subsection (a), the Secretary shall notify the congressional defense committees of such award.

(2) Notice of an award under paragraph (1) shall include the following:

(A) Description of the innovative commercial product or commercial service acquired.

(B) Description of the requirement, capability gap, or potential technological advancement with respect to which the innovative commercial product or commercial service acquired provides a solution or a potential new capability.

(C) Amount of the contract awarded.

(D) Identification of the contractor awarded the contract.

(e) **INNOVATIVE DEFINED.**—In this section, the term “innovative” means—

(1) any technology, process, or method, including research and development, that is new as of the date of submission of a proposal; or

(2) any application that is new as of the date of submission of a proposal of a technology, process, or method existing as of such date.

(Added §2380c, renumbered §3458, and amended Pub. L. 117–81, div. A, title VIII, §803(a)(1), (b)(1), (3), Dec. 27, 2021, 135 Stat. 1814–1816.)

Editorial Notes

AMENDMENTS

2021—Pub. L. 117–81, §803(b)(1), renumbered section 2380c of this title as this section.

Subsec. (b). Pub. L. 117–81, §803(b)(3)(A), substituted “chapter 221” for “chapter 137”.

Subsec. (c)(3). Pub. L. 117–81, §803(b)(3)(B), substituted “section 3451(1)” for “section 2376(1)”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Pub. L. 117–81, div. A, title VIII, §803(b)(4), Dec. 27, 2021, 135 Stat. 1816, provided that: “The transfer, redesi-

gnation, and amendments made by this subsection [amending this section and repealing provisions set out as a note under section 2302 of this title] shall take [sic] as if included in title XVIII of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116–283).”

DATA COLLECTION

Pub. L. 117–81, div. A, title VIII, §803(a)(3), Dec. 27, 2021, 135 Stat. 1815, provided that:

“(A) **IN GENERAL.**—The Secretary of Defense and each Secretary of a military department shall collect and analyze data on the use of the authority under section 2380c of title 10, United States Code [now 10 U.S.C. 3458], as added by paragraph (1), for the purposes of—

“(i) developing and sharing best practices for achieving the objectives of the authority;

“(ii) gathering information on the implementation of the authority and related policy issues; and

“(iii) informing the congressional defense committees on the use of the authority.

“(B) **PLAN REQUIRED.**—The authority under section 2380c [now 3458] of title 10, United States Code, as added by paragraph (1), may not be exercised by the Secretary of Defense or any Secretary of a military department during the period beginning on October 1, 2022, and ending on the date on which the Secretary of Defense submits to the congressional defense committees a completed plan for carrying out the data collection required under paragraph (1).

“(C) **CONGRESSIONAL DEFENSE COMMITTEES; MILITARY DEPARTMENT DEFINED.**—In this paragraph, the terms ‘congressional defense committees’ and ‘military department’ have the meanings given such terms in section 101(a) of title 10, United States Code.”

REFERENCES; SAVINGS PROVISION; RULE OF CONSTRUCTION

Pub. L. 117–81, div. A, title VIII, §803(b)(5), Dec. 27, 2021, 135 Stat. 1816, provided that: “Sections 1883 through 1885 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116–283) [set out as notes preceding section 3001 of this title] shall apply with respect to the transfers, redesignations, and amendments made under this subsection [amending this section and repealing provisions set out as a note under section 2302 of this title] as if such transfers, redesignations, and amendments were made under title XVIII of such Act.”

CHAPTER 249—MULTIYEAR CONTRACTS

Subchapter		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

Editorial Notes

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

Sec.	
3501.	Multiyear contracts: acquisition of property.

Editorial Notes

AMENDMENTS

2021—Pub. L. 117–81, div. A, title XVII, §1701(k)(1)(A), Dec. 27, 2021, 135 Stat. 2143, amended Pub. L. 116–283,