

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

Sec.	
3451.	Definitions.
3452.	Relationship of other provisions of law to procurement of commercial products and commercial services.
3453.	Preference for commercial products and commercial services.
3455.	Procurement of a major weapon system as a commercial product: requirement for prior determination by Secretary of Defense and notification to Congress.

Sec.	
3456.	Commercial product and commercial service determinations by Department of Defense.
3457.	Treatment of certain products and services as commercial products and commercial services.
3458.	Authority to acquire innovative commercial products and commercial services using general solicitation competitive procedures.

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-