

“(c) TIME-AND-MATERIALS CONTRACTS.—

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