

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.”

2023—Subsec. (b)(2). Pub. L. 118-31 substituted “why the product or service was determined to be commercial or noncommercial” for “for such determination” and inserted at end “Upon the request of the contractor or subcontractor offering the product or service for which such determination is summarized in such memorandum, the contracting officer shall provide to such contractor or subcontractor a copy of such memorandum.”

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. (b)(2)(B)(i). Pub. L. 116-283, §1831(j)(5), which directed amendment of subsec. (b)(2)(B)(i) of section 2380 of this title (now subsec. (c)(2)(B)(i) of this section) by substituting “section 3703(d)(2)” for “section 2306a(b)(4)(B)”, was repealed by Pub. L. 117-81, §1701(b)(10)(I)(ii). Identical amendment was made to subsec. (c)(2)(B)(i) of this section by Pub. L. 116-283, §1821(b)(5), see below.

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), as amended by Pub. L. 117-81, §1701(b)(9), substituted “section 3703(d)(2)” for “section 2306a(b)(4)(B)”.

2018—Pub. L. 115-232, §836(d)(8)(E), substituted “Commercial product and commercial service” for “Commercial item” in section catchline.

Subsec. (a). Pub. L. 115-232, §836(d)(5)(A), substituted “commercial product and commercial service determinations” for “commercial item determinations” in pars. (1) and (2).

Subsec. (b). Pub. L. 115-232, §836(d)(5)(B)(i)–(iii), in heading, struck out “Item” after “Commercial” and, in text, substituted “a product or service” for “an item” and struck out “item” after “using commercial” whenever appearing.

Subsec. (b)(1). Pub. L. 115-232, §836(d)(5)(B)(iv)–(vi) substituted “prior commercial product or service determination” for “prior commercial item determination”, “such product or service” for “such item”, and “the product or service” for “the item”.

Subsec. (b)(2)(B)(ii). Pub. L. 115-232, §836(d)(5)(B)(vi), substituted “the product or service” for “the item”.

2017—Pub. L. 115-91 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

2016—Pars. (1), (2). Pub. L. 114-328 amended pars. (1) and (2) generally. Prior to amendment, pars. (1) and (2) read as follows:

“(1) establish and maintain a centralized capability with necessary expertise and resources to oversee the making of commercial item determinations for the purposes of procurements by the Department of Defense; and

“(2) provide public access to Department of Defense commercial item determinations for the purposes of procurements by the Department of Defense.”

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 117-81 applicable as if included in the enactment of title XVIII of Pub. L. 116-283 as enacted, see section 1701(a)(2) of Pub. L. 117-81, set out in a note preceding section 3001 of this title and note below.

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.

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.

REGULATIONS

Pub. L. 114-92, div. A, title VIII, §851(d), Nov. 25, 2015, 129 Stat. 917, provided that: “Not later than 180 days after the date of the enactment of this Act [Nov. 25, 2015], the Defense Federal Acquisition Regulation Supplement shall be updated to reflect the requirements of this section [enacting this section, amending section 2306a of this title, and enacting provisions set out as notes under section 2306a of this title] and the amendments made by this section.”

CONSTRUCTION

Pub. L. 114-92, div. A, title VIII, §851(e), Nov. 25, 2015, 129 Stat. 917, provided that: “Nothing in this section [enacting this section, amending section 2306a of this title, and enacting provisions set out as notes under section 2306a of this title] or the amendments made by this section shall be construed to preclude the contracting officer for the procurement of a commercial item from requiring the contractor to supply information that is sufficient to determine the reasonableness of price, regardless of whether or not the contractor was required to provide such information in connection with any earlier procurement.”

DEFINITION OF COMMERCIAL ITEM

Pub. L. 114-92, div. A, title VIII, §851(c), Nov. 25, 2015, 129 Stat. 917, provided that: “Nothing in this section [enacting section 2380 of this title, amending section 2306a of this title, and enacting provisions set out as notes under section 2306a of this title] or the amendments made by this section shall affect the meaning of the term ‘commercial item’ under subsection (a)(5) of section 2464 of title 10, United States Code, or any requirement under subsection (a)(3) or subsection (c) of such section.” [Pub. L. 115-232 amended subssecs. (a)(3), (5) and (c) of section 2464 of title 10 by substituting references to “commercial products or commercial services” for references to “commercial items”. See 2018 Amendment notes set out under that section.]

§ 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 NONTRADITIONAL 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 services 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.)

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 selection 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 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; Pub. L. 117-263, div. A, title VIII, § 814(a), Dec. 23, 2022, 136 Stat. 2707.)

Editorial Notes

AMENDMENTS

2022—Subsec. (c)(2). Pub. L. 117-263 substituted “fixed-price incentive contracts” for “fixed-price incentive fee contracts”.

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, redesignation, 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).”

FOCUSED COMMERCIAL SOLUTIONS OPENINGS OPPORTUNITIES

Pub. L. 118-31, div. A, title VIII, § 813, Dec. 22, 2023, 137 Stat. 325, provided that:

“(a) REQUIREMENT.—During each fiscal year beginning after the date of the enactment of this Act [Dec. 22, 2023], the Secretary of Defense, in coordination with the service acquisition executives of each military department, shall exercise the authority under section 3458 of title 10, United States Code, not less than four times to acquire goods or services addressing the mission needs of a geographic combatant command.

“(b) EXECUTION.—With respect to acquisition carried out under section 3458 of title 10, United States Code, pursuant to subsection (a), the Secretary of Defense shall—

“(1) assign the responsibility for carrying out such acquisition to a program executive officer and a head of a science and technology reinvention laboratory from the same military department, who shall co-lead such acquisition; and

“(2) ensure that the program executive officer and the head of a science and technology reinvention laboratory assigned as co-leads under paragraph (1) have similar existing requirements and funding for transitioning technologies to acquisition programs within the area of focus for such acquisition.

“(c) SUNSET.—Subsection (a) shall expire on September 30, 2027.

“(d) DEFINITIONS.—In this section:

“(1) The terms ‘military department’ and ‘services acquisition executive’ have the meanings given such terms in section 101(a) of title 10, United States Code.

“(2) The term ‘program executive officer’ has the meaning given such term in section 1737(a) of title 10, United States Code.

“(3) The term ‘science and technology reinvention laboratory’ means a science and technology reinvention laboratory designated under section 4121(b) of title 10, United States Code.”

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 end-