AMENDMENT TO RULES COMMITTEE PRINT 116–57

OFFERED BY MR. BYRNE OF ALABAMA

Add at the end of subtitle B of title VIII the following new section:

SEC. 8. DOCUMENTATION PERTAINING TO COMMERCIAL ITEM DETERMINATIONS.

Section 2380 of title 10, United States Code, is amended by—

(1) redesignating subsection (b) as subsection (c); and

(2) inserting after subsection (a) the following new subsection:

“(b) DETERMINATIONS REGARDING THE COMMERCIAL NATURE OF PRODUCTS OR SERVICES.—

“(1) IN GENERAL.—A contracting officer of the Department of Defense shall make a binding determination whether a particular product or service offered by a contractor meets the definition of a commercial product or commercial service. The contracting officer may seek the advice of the cadre of experts established pursuant to section 831(b)(2) of the National Defense Authorization Act for Fiscal
Year 2013 (Public Law 112–239; 126 Stat. 1842; 10 U.S.C. 2306a note), or request the cadre of experts to make a determination that a product or service is a commercial product or commercial service.

“(2) MEMORANDUM.—Within 30 days after making a determination that a product or service is a commercial product or commercial service, the contracting officer shall submit a written memorandum summarizing the determination, consistent with the template in Appendix B of the Department of Defense Guidebook for Acquiring Commercial Items (issued January 2018 and revised July 2019), to—

“(A) the Director of the Defense Contract Management Agency for inclusion in any database established to fulfill the requirements of subsection (a)(2); and

“(B) the contractor asserting the commercial nature of the product or service.”.