(B) a new short-term contract awarded on a sole-source basis to avoid a lapse in service caused by a delay in awarding a subsequent contract.

(2) The term “requirements owner” means a member of the armed forces (other than the Coast Guard) or a civilian employee of the Department of Defense responsible for a requirement for a service to be performed through a services contract.

(3) The term “Services Requirements Review Board” has the meaning given in Department of Defense Instruction 5000.74, titled “Defense Acquisition of Services” and dated January 10, 2020, or a successor instruction.

(4) The term “acquisition decision authority” means the designated decision authority for each designated special interest services acquisition category, described in such Department of Defense Instruction.


Editorial Notes

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (c)(3)(C), is the date of enactment of Pub. L. 115–91, which was approved Dec. 12, 2017.

PRIOR PROVISIONS


AMENDMENTS

2021—Pub. L. 116–283, § 818(g), renumbered section 2329 of this title as this section.


Subsec. (b)(4). Pub. L. 116–283, § 818(b)(2), substituted “section 4505(c)” for “section 2320(c)”.

Pub. L. 117–81, § 815(a)(1)(B), added par. (4) and struck out former par. (4) which read as follows: “be organized using a common enterprise data structure developed under section 2222 of this title; and”.

Subsec. (b)(5). Pub. L. 117–81, § 815(a)(1)(B), added par. (5) and struck out former par. (5) which read as follows: “be included in the future-years defense program submitted to Congress under section 221 of this title.”

Subsec. (d). Pub. L. 117–81, § 815(a)(2), amended subsec. (d) generally. Prior to amendment, text read as follows: “Each Services Requirements Review Board shall evaluate each requirement for a services contract, taking into consideration total force management policies and procedures, available resources, the analyses conducted under subsection (c), and contracting efficacy and efficiency. An evaluation of a services contract for compliance with contracting policies and procedures may not be considered to be an evaluation of a requirement for such services contract.”

Subsec. (f). Pub. L. 117–81, § 815(a)(3), redesignated subsec. (g) as (f) and struck out former subsec. (f).

Prior to amendment, text of subsec. (f) read as follows: “Except with respect to the analyses required under subsection (c), this section shall not apply to—

(1) services contracts in support of contingency operations, humanitarian assistance, or disaster relief;

(2) services contracts in support of a national security emergency declared with respect to a named operation; or

(3) services contracts entered into pursuant to an international agreement.”


Subsec. (g). Pub. L. 117–81, § 815(a)(3), redesignated subsec. (g) as (f).

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 1831(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4507. Procurement of services: contracts for professional and technical services

(a) IN GENERAL.—The Secretary of Defense shall prescribe regulations to ensure, to the maximum extent practicable, that professional and technical services are acquired on the basis of the task to be performed rather than on the basis of the number of hours of services provided.

(b) CONTENT OF REGULATIONS.—With respect to contracts to acquire services on the basis of the number of hours of services provided, the regulations described in subsection (a) shall—

(1) include standards and approval procedures to minimize the use of such contracts;

(2) establish criteria to ensure that proposals for contracts for technical and professional services are evaluated on a basis which does not encourage contractors to propose uncompensated overtime;

(3) ensure appropriate emphasis on technical and quality factors in the source selection process;
(4) require identification of any hours in excess of 40-hour weeks included in a proposal;
(5) ensure that offerors are notified that proposals which include unrealistically low labor rates or which do not otherwise demonstrate cost realism will be considered in a risk assessment and evaluated appropriately; and
(6) provide guidance to contracting officers to ensure that any use of uncompensated overtime will not degrade the level of technical expertise required to perform the contract.


Editorial Notes

Prior Provisions


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 1994 Amendment

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 3001 of this title.

Repeal of subsec. (c) of this section by Pub. L. 103–355 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.

§4508. Contractor performance of acquisition functions closely associated with inherently governmental functions

(a) LIMITATION.—The head of an agency may enter into a contract for the performance of acquisition functions closely associated with inherently governmental functions only if the contracting officer for the contract ensures that—

(1) appropriate military or civilian personnel of the Department of Defense cannot reasonably be made available to perform the functions;

(2) appropriate military or civilian personnel of the Department of Defense are—

(A) to supervise contractor performance of the contract; and

(B) to perform all inherently governmental functions associated with the functions to be performed under the contract; and

(3) the agency addresses any potential organizational conflict of interest of the contractor in the performance of the functions under the contract, consistent with subpart 9.5 of part 9 of the Federal Acquisition Regulation and the best interests of the Department of Defense.

(b) DEFINITIONS.—In this section:

(1) the term “head of an agency” does not include the Secretary of Homeland Security or the Administrator of the National Oceanic and Atmospheric Administration.

(2) The term “inherently governmental functions” means the functions described in section 7.503(d) of the Federal Acquisition Regulation.

(3) The term “functions closely associated with inherently governmental functions” means the functions described in section 7.503(d) of the Federal Acquisition Regulation.

(4) The term “organizational conflict of interest” means the conflict of interest as described in section 7.503(d) of the Federal Acquisition Regulation.


Editorial Notes

Prior Provisions