Sec. 3202. [Reserved].
3203. Exclusion of particular source or restriction of solicitation to small business concerns.
3204. Use of procedures other than competitive procedures.
3205. Simplified procedures for small purchases.
3206. Planning and solicitation requirements.
3207. Assessment before contract for acquisition of supplies is entered into.
3208. Planning for future competition in contracts for major systems.

Editorial Notes
Prior Provisions

Statutory Notes and Related Subsidaries
Restriction on Procurement or Purchasing by Department of Defense of Turnout Gear for Firefighters Containing Perfluoroalkyl Substances or Polyfluoroalkyl Substances

“(a) Prohibition on Procurement and Purchasing.—
Subject to subsection (d), beginning on October 1, 2026, the Secretary of Defense may not enter into a contract for covered personal protective firefighting equipment for use by Federal or civilian firefighters if such equipment contains an intentionally added perfluoroalkyl substance or polyfluoroalkyl substance.

“(b) Implementation.—
“(1) In general.—The Secretary of Defense shall include the prohibition under subsection (a) in any contract entered into by the Department of Defense to procure covered personal protective firefighting equipment for use by Federal or civilian firefighters.

“(2) Obligation to Test.—In carrying out the prohibition under subsection (a), the Secretary shall not have an obligation to test covered personal protective firefighting equipment to confirm the absence of perfluoroalkyl substances or polyfluoroalkyl substances.

“(c) Existing Inventory.—Nothing in this section shall impact existing inventories of covered personal protective firefighting equipment.

“(d) Availability of Alternatives.—
“(1) In general.—The requirement under subsection (a) shall be subject to the availability of sufficiently protective covered personal protective firefighting equipment that does not contain intentionally added perfluoroalkyl substances or polyfluoroalkyl substances.

“(2) Extension of Effective Date.—If the Secretary of Defense determines that no sufficiently protective covered personal protective firefighting equipment that does not contain intentionally added perfluoroalkyl substances or polyfluoroalkyl substances is available, the deadline under subsection (a) shall be extended until the Secretary determines that such covered personal protective firefighting equipment is available.

“(e) Definitions.—In this section:
“(1) The term ‘covered personal protective firefighting equipment’ means—
“(A) any product that provides protection to the upper and lower torso, arms, legs, head, hands, and feet; or
“(B) any other personal protective firefighting equipment, as determined by the Secretary of Defense.

“(2) The term ‘perfluoroalkyl substance’ means a man-made chemical of which all of the carbon atoms are fully fluorinated carbon atoms.

“(3) The term ‘polyfluoroalkyl substance’ means a man-made chemical containing at least one fully fluorinated carbon atom and at least one non-finely fluorinated carbon atom.”

Middle Tier of Acquisition for Rapid Prototyping and Rapid Fielding

“(a) Report.—Not later than December 15, 2019, the Under Secretary of Defense for Acquisition and Sustainment shall submit to the congressional defense committees (Committees on Armed Services and Appropriations of the Senate and the House of Representatives) a report that includes the guidance required under section 804(a) of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–22, 10 U.S.C. 2302 note [now 10 U.S.C. 3201 note prec., set out below]). The Under Secretary of Defense for Acquisition and Sustainment shall ensure such guidance includes the business case elements required by an acquisition program established pursuant to such guidance and the metrics required to assess the performance of such a program.

“(b) Limitation.—
“(1) In general.—Beginning on December 15, 2019, if the Under Secretary of Defense for Acquisition and Sustainment has not submitted the report required under subsection (a), not more than 75 percent of the funds specified in paragraph (2) may be obligated or expended until the date on which the report required under subsection (a) has been submitted.

“(2) Funds specified.—The funds specified in this paragraph are the funds authorized to be appropriated by this Act or otherwise made available for fiscal year 2020 for the Department of Defense that remain unobligated as of December 15, 2019, for the following:

“(A) The execution of any acquisition program established pursuant to the guidance required under such section 804(a).

“(B) The operations of the Office of the Under Secretary of Defense for Research & Engineering.

“(C) The operations of the Office of the Under Secretary of Defense for Acquisition & Sustainment.

“(D) The rapid prototyping and rapid fielding of systems.

“(E) The operations of the offices of the service acquisition executives of the military departments.”


“(a) Guidance Required.—Not later than 180 days after the date of the enactment of this Act [Nov. 25, 2015], the Under Secretary of Defense for Acquisition and Sustainment, in consultation with the comptroller of the Department of Defense and the vice chairman of the Joint Chiefs of Staff, shall establish guidance for a ‘middle tier’ of acquisition programs that are intended to be completed in a period of two to five years.

“(b) Acquisition Pathways.—The guidance required by subsection (a) shall cover the following two acquisition pathways:

“(1) Rapid Prototyping.—The rapid prototyping pathway shall provide for the use of innovative technologies to rapidly develop fieldable prototypes to demonstrate new capabilities and meet emerging military needs. The objective of an acquisition program under this pathway shall be to field a prototype that can be demonstrated in an operational environ-
ment and provide for a residual operational capability within five years of the development of an approved requirement.

"(E) RAPID FIELDING.—The rapid fielding pathway shall provide for the use of proven technologies to field production quantities of new or upgraded systems with minimal development required. The objective of an acquisition program under this pathway shall be to begin production within six months and complete fielding within five years of the development of an approved requirement.

"(F) Rapid Prototyping.—With respect to the rapid prototyping pathway, the guidance shall include—

"(1) a merit-based process for the consideration of innovative technologies and new capabilities to meet needs communicated by the Joint Chiefs of Staff and the combatant commanders;

"(2) a process for developing and implementing acquisition and funding strategies for the program;

"(3) a process for demonstrating and evaluating the performance of fieldable prototypes developed pursuant to the program in an operational environment; and

"(4) a process for transitioning successful prototypes to new or existing acquisition programs for production and fielding under the rapid fielding pathway or the traditional acquisition system.

"(2) RAPID PROTOTYPING.—With respect to the rapid prototyping pathway, the guidance shall include—

"(A) a merit-based process for the consideration of existing products and proven technologies to meet needs communicated by the Joint Chiefs of Staff and the combatant commanders;

"(B) a process for developing and implementing acquisition and funding strategies for the program;

"(C) a process for demonstrating performance and evaluating for current operational purposes the proposed products and technologies;

"(D) a process for identifying and exploiting opportunities to use the rapid fielding pathway to reduce total ownership costs.

"(3) STREAMLINED PROCEDURES.—The guidance for the programs may provide for any of the following streamlined procedures:

"(A) The service acquisition executive of the military department concerned shall appoint a program manager for such program from among candidates from among civilian employees or members of the Armed Forces who have significant and relevant experience managing large and complex programs.

"(B) The program manager for each program shall report with respect to such program directly, without intervening review or approval, to the service acquisition executive of the military department concerned.

"(C) The service acquisition executive of the military department concerned shall evaluate the job performance of such manager on an annual basis. In conducting an evaluation under this paragraph, a service acquisition executive shall consider the extent to which the manager has achieved the objectives of the program for which the manager is responsible, including quality, timeliness, and cost objectives.

"(D) The program manager of a defense streamlined program shall be authorized staff positions for a technical staff, including experts in business management, contract administration, auditing, engineering, testing, and logistics, to enable the manager to manage the program without the technical assistance of another organizational unit of an agency to the maximum extent practicable.

"(E) The program manager of a defense streamlined program shall be authorized, in coordination with the users of the equipment and capability to be acquired and the test community, to make trade-offs among life-cycle costs, requirements, and schedules to meet the goals of the program.

"(F) The service acquisition executive, acting in coordination with the defense acquisition executive, shall serve as the milestone decision authority for the program.

"(G) The program manager of a defense streamlined program shall be provided a process to expediently seek a waiver from Congress for any statutory or regulatory requirement that the program manager determines adds little or no value to the management of the program.

"(1) DEPARTMENT OF DEFENSE RAPID PROTOTYPING FUND.—

"(A) IN GENERAL.—The Secretary of Defense shall establish a fund to be known as the ‘Department of Defense Rapid Prototyping Fund’ to provide funds, in addition to other funds that may be available, for acquisition programs under the rapid prototyping pathway established pursuant to this section and other purposes specified in law. The Fund shall be managed by a senior official of the Department of Defense designated by the Deputy Secretary of Defense. The Fund shall consist of—

"(1) amounts appropriated to the Fund; and

"(ii) any other amounts appropriated to, credited to, or transferred to the Fund.

"(B) TRANSFER AUTHORITY.—Amounts available in the Fund may be transferred to a military department for the purpose of carrying out an acquisition program under the rapid prototyping pathway established pursuant to this section. Any amount so transferred shall be credited to the account to which it is transferred. The transfer authority provided in this paragraph is in addition to any other transfer authority available to the Department of Defense.

"(C) CONGRESSIONAL NOTICE.—The senior official designated to manage the Fund shall notify the congressional defense committees (Committees on Armed Services and Appropriations of the Senate and the House of Representatives) all amounts transferred under paragraph (2) within 5 business days after such transfer. Each notification shall specify the amount transferred, the purpose of the transfer, and the total projected cost and estimated cost to complete the acquisition program to which the funds were transferred.

"(2) RAPID PROTOTYPING FUNDS FOR THE MILITARY DEPARTMENTS.—The Secretary of each military department may establish a military department-specific fund (and, in the case of the Secretary of the Navy, including the Marine Corps) to provide funds, in addition to other funds that may be available to the military department concerned, for acquisition programs under the rapid fielding and prototyping pathways established pursuant to this section. Each military department-specific fund shall consist of amounts appropriated or credited to the fund.

"(e) REPORT.—Not later than 30 days after the date of termination of an acquisition program commenced using the authority under this section, the Secretary of Defense shall submit to Congress a notification of such termination. Such notice shall include—
"(1) the initial amount of a contract awarded under such acquisition program;

"(2) the aggregate amount of funds awarded under such contract; and

"(3) written documentation of the reason for termination of such acquisition program.


"Not later than 180 days after the contract, task order, or delivery order, the con-

tracting officer for the contract is required to—

"(1) be separate from existing acquisition procedures;

"(2) be supported by streamlined contracting, budget-

ting, life-cycle cost management, and requirements processes;

"(3) establish alternative acquisition pathways based on the capabilities being bought and the time needed to deploy these capabilities; and

"(4) maximize the use of flexible authorities in exist-

ing law and regulation.

"REVIEW AND JUSTIFICATION OF PASS-THROUGH

CONTRACTS


"Not later than 180 days after the date of the enactment of this Act [Jan. 2, 2013], the Secretary of Defense shall establish procedures for alternative acquisition pathways to acquire capital assets and services that meet critical national security needs. The procedures shall—

"(1) consider the availability of alternative contract vehicles and the feasibility of contracting directly with a subcontractor or subcontractors that will perform the bulk of the work;

"(2) make a written determination that the contracting approach selected is in the best interest of the Government; and

"(3) document the basis for such determination.

"REVIEW OF ACQUISITION PROCESS FOR RAPID FIELDING OF CAPABILITIES IN RESPONSE TO URGENT OPERATIONAL NEEDS


"(1) The review and determination required under subsection (a)(1) of such section shall be completed by not later than March 15, 2015.

"(2) The review and determination required by subsection (a)(2) of such section, if necessary, shall be completed by not later than June 15, 2015, and such review and determination shall be a review and determination of such agency’s procurement of property and services on behalf of the Department of Defense in fiscal year 2015.

"(3) The memorandum of understanding required by subsection (a)(2) of such section shall apply after June 15, 2015.

"(4) The limitation specified in subsection (d)(1) of such section shall apply after March 15, 2009, and before June 16, 2010.

"(5) The limitation specified in subsection (d)(2) of such section shall apply after June 15, 2010.

"(6) The limitation required by subsection (d)(3) of such section shall commence, if necessary, on the date that is 60 days after the date of the enactment of this Act.

"(c) DEFINITION OF COVERED NON-DEFENSE AGENCY.—

In this section, the term ‘covered non-defense agency’ means each of the following:

"(1) The Department of Commerce.

"(2) The Department of Energy.

"(3) The Department of Transportation.

"(4) The Department of Housing and Urban Development.

"(5) The Department of Health and Human Services.

"(6) The limitation required by subsection (d)(3) of such Act.

"(c) INSPECTORS GENERAL REVIEWS AND DETERMINATIONS.—

"(1) IN GENERAL.—For each covered non-defense agency, the Inspector General of the Department of Defense and the Inspector General of such covered non-defense agency may jointly—

"(A) review—

"(i) the procurement policies, procedures, and internal controls of such covered non-defense agency that are applicable to the procurement of property and services on behalf of the Department by such covered non-defense agency; and

"(ii) the administration of such policies, procedures, and internal controls; and

"(B) determine in writing whether such covered non-defense agency is or is not compliant with applicable procurement requirements.

"(2) SEPARATE REVIEWS AND DETERMINATIONS.—The Inspector General of the Department of Defense and the Inspector General of a covered non-defense agency may by joint agreement conduct separate reviews of the procurement of property and services on behalf of the Department of Defense that are conducted by separate business units, or under separate government-wide acquisition contracts, of the covered non-defense agency. If such separate reviews are conducted, the Inspectors General shall make a separate determination under paragraph (1)(B) with respect to each such separate review.

"(3) MEMORANDA OF UNDERSTANDING FOR REVIEWS AND DETERMINATIONS.—Not later than one year before a review and determination is to be performed under this subsection with respect to a covered non-defense agency that is applicable to the procurement of property and services on behalf of the Department by such covered non-defense agency.