shall develop and implement a plan to collect and analyze data on the use of authority under such section 873 [of Pub. L. 114–92, set out below] for the purposes of—

(1) developing and sharing best practices; and

(2) providing information to the Secretary of Defense and Congress on the use of authority under such section 873 and related policy issues.

PILOT PROGRAM FOR STREAMLINING AWARDS FOR INNOVATIVE TECHNOLOGY PROJECTS


"(a) EXCEPTION FROM CERTIFIED COST AND PRICING DATA REQUIREMENTS.—The requirements under section 2306(a) of title 10, United States Code [now 10 U.S.C. 3702], shall not apply to a contract, subcontract, or modification of a contract or subcontract valued at less than $7,500,000 awarded to a small business or nontraditional defense contractor pursuant to—

"(1) a technical, merit-based selection procedure, such as a broad agency announcement, or

"(2) the Small Business Innovation Research Program or Small Business Technology Transfer Program, unless the head of the agency determines that submission of cost and pricing data should be required based on past performance of the specific small business or nontraditional defense contractor, or based on analysis of other information specific to the award.

"(b) EXCEPTION FROM RECORDS EXAMINATION REQUIREMENTS.—The requirements under subparagraphs (A), (B), and (C) of section 2313(a)(2) of title 10, United States Code [now 10 U.S.C. 3841(b)(2)(A)–(C)], and subsection (b) of section 2313 of title 10, United States Code [now 10 U.S.C. 3841(c)], shall not apply to a contract valued at less than $7,500,000 awarded to a small business or nontraditional defense contractor pursuant to—

"(1) a technical, merit-based selection procedure, such as a broad agency announcement, or

"(2) the Small Business Innovation Research Program, unless the head of the agency determines that auditing of records should be required based on past performance of the specific small business or nontraditional defense contractor, or based on analysis of other information specific to the award, and if such performance audit is initiated within 18 months of the contract completion.

"(c) TREATMENT AS COMPETITIVE PROCEDURES.—Use of a technical, merit-based selection procedure or the Small Business Innovation Research Program or Small Business Technology Transfer Program for the pilot program under this section shall be considered to be use of competitive procedures for purposes of—

"(1) a technical, merit-based selection procedure, such as a broad agency announcement, or

"(2) the Small Business Innovation Research Program, unless the head of the agency determines that auditing of records should be required based on past performance of the specific small business or nontraditional defense contractor, or based on analysis of other information specific to the award, and if such performance audit is initiated within 18 months of the contract completion.

"(d) DISCRETION TO USE NON-CERTIFIED ACCOUNTING SYSTEMS.—In executing programs under this pilot program, the Secretary of Defense shall establish procedures under which a small business or nontraditional defense contractor may engage an independent certified public accountant for the review and certification of its accounting system for the purposes of any audits required by regulation, unless the head of the agency determines that this is not appropriate based on past performance of the specific small business or nontraditional defense contractor, or based on analysis of other information specific to the award.

"(e) GUIDANCE AND TRAINING.—The Secretary of Defense shall ensure that acquisition and auditing officials are provided guidance and training on the flexible use and tailoring of authorities under the pilot program to maximize efficiency and effectiveness.

"(f) SUNSET.—The exceptions under subsections (a) and (b) shall terminate on October 1, 2024.
(a)(2) does not apply to cost or pricing data on noncommercial modifications of a commercial product that are expected to cost, in the aggregate, more than the amount specified in section 3702(a)(1)(A) of this title, as adjusted from time to time under section 3702(g) of this title, or 5 percent of the total price of the contract (at the time of contract award), whichever is greater.

(2) In this subsection, the term “noncommercial modification”, with respect to a commercial product, means a modification of such product that is not a modification described in section 103(b)(A) of title 31.

(3) Nothing in paragraph (1) shall be construed—
(A) to limit the applicability of the exception in paragraph (1) or (3) of subsection (a) to cost or pricing data on a noncommercial modification of a commercial product; or
(B) to require the submission of cost or pricing data on any aspect of an acquisition of a commercial product other than the cost and pricing of noncommercial modifications of such product.

(d) COMMERCIAL PRODUCT OR COMMERCIAL SERVICE DETERMINATION.—(1) For purposes of applying the exception under subsection (a)(2) to the required submission of certified cost or pricing data, the contracting officer may presume that a prior commercial product or commercial service determination made by a military department, a Defense Agency, or another component of the Department of Defense shall serve as a determination for subsequent procurements of such product or service.

(2) If the contracting officer does not make the presumption described in paragraph (1) and instead chooses to proceed with a procurement of a product or service previously determined to be a commercial product or a commercial service using procedures other than the procedures authorized for the procurement of a commercial product or a commercial service, as the case may be, the contracting officer shall request a review of the commercial product or commercial service determination by the head of the contracting activity.

(3) Not later than 30 days after receiving a request for review of a determination under paragraph (2), the head of a contracting activity shall—
(A) confirm that the prior determination was appropriate and still applicable; or
(B) issue a revised determination with a written explanation of the basis for the revision.

(e) A contracting officer shall consider evidence provided by an offeror of recent purchase prices paid by the Government for the same or similar commercial products or commercial services in establishing price reasonableness on a subsequent purchase if the contracting officer is satisfied that the prices previously paid remain a valid reference for comparison after considering the totality of other relevant factors such as the time elapsed since the prior purchase and any differences in the quantities purchased or applicable terms and conditions.

(f) DETERMINATION BY PRIME CONTRACTOR.—A prime contractor required to submit certified cost or pricing data under section 3702 of this title with respect to a prime contract shall be responsible for determining whether a subcontract under such contract qualifies for an exception under subsection (a)(1) from such requirement.


Editorial Notes

CODIFICATION


AMENDMENTS

2021—Pub. L. 116–283, §1831(d)(1), transferred subsec. (b) of section 2306a of this title to this section, struck out subsec. (b) designation and heading “Exceptions” at beginning, and redesignated pars. (1) to (6) as subsecs. (a) to (f), respectively, and realigned margins.

Subsec. (a). Pub. L. 116–283, §1831(d)(2)(A), (B), (C), after redesignation of section 2306a(b)(1) of this title as subsec. (a) of this section, substituted “under section 3702 of this title” for “under subsection (a)” in introductory provisions, redesignated subparagraph (A) and its cls. (i) and (ii) as par. (1) and subparagraphs (A) and (B), respectively, redesignated subparagraphs (B) and (C) as pars. (2) and (3), respectively, and redesignated subparagraph (D) and its cls. (i) and (ii) as par. (4) and subparagraphs (A) and (B), respectively.

Subsec. (a)(3). Pub. L. 116–283, §1831(d)(2)(D), substituted “this chapter” for “this section”.

Subsec. (b). Pub. L. 116–283, §1831(d)(3)(A), (B), after redesignation of section 2306a(b)(2) of this title as subsec. (b) of this section, in introductory provisions, substituted “paragraph (1) or (2) of subsection (a)” for “paragraph (1)(A) or (1)(B)” and “under section 3702 of this title” for “under subsection (a)” and redesignated subparagraphs (A) and (B) as pars. (1) and (2), respectively.

Subsec. (b)(1). Pub. L. 116–283, §1831(d)(3)(C), substituted “paragraph (1) or (2) of subsection (a)” for “paragraph (1)(A) or (1)(B)”.

Subsec. (c). Pub. L. 116–283, §1831(d)(4)(A), (D)(i), after redesignation of section 2306a(b)(3) of this title as subsec. (c) of this section, redesignated subparagraphs (A), (B), and (C) and its cls. (i) and (ii) as pars. (1), (2), (3) and subparagraphs (A) and (B), respectively.


Subsec. (c)(2). Pub. L. 116–283, §1831(d)(4)(C), substituted “this subsection” for “this paragraph”.

§3703
§ 3704.

Cost or pricing data on below-threshold contracts

(a) AUTHORITY TO REQUIRE SUBMISSION.—Subject to subsection (b), when certified cost or pricing data are not required to be submitted by section 3702 of this title for a contract, subcontract, or modification of a contract or subcontract, such data may nevertheless be required to be submitted by the head of the procuring activity, but only if the head of the procuring activity determines that such data are necessary for the evaluation by the head of the procuring activity that such data are necessary for the evaluation by the head of the procuring activity

(b) EXCEPTION.—The head of the procuring activity may not require certified cost or pricing data to be submitted under this subsection for a contract, subcontract, or modification of a contract or subcontract, covered by the exceptions in paragraph (1) or (2) of section 3703(a) of this title.

(c) DELEGATION OF AUTHORITY PROHIBITED.—The head of a procuring activity may not delegate functions under this subsection.


Editorial Notes

CODIFICATION

The text of subsec. (c) of section 2306a of this title, which was transferred to this section and amended by Pub. L. 116–283, §1831(e), was based on Pub. L. 99–500, §101(c) [title X, §952(a)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–166, and Pub. L. 99–591, §101(c) [title X, §952(a)].

Subsec. (c)(3), Pub. L. 116–283, §1831(d)(4)(D)(ii), (i) [(iii)], substituted “paragraph (1)” for “subparagraph (A)” in introductory provisions and “paragraph (1) or (2) of subsection (a)” for “paragraph (A) or (C) of paragraph (1)” in subpars. (A).

Subsec. (d). Pub. L. 116–283, §1831(d)(5)(A), (D)(i), after redesignation of section 2306a(b)(4) of this title as subsec. (d) of this section, redesignated subpars. (A), (B), and (C) and its cls. (i) and (ii) as pars. (1), (2), and (3) and subpars. (A) and (B), respectively.

Subsec. (d)(1). Pub. L. 116–283, §1831(d)(5)(B), substituted “subsection (c)” for “paragraph (1)”.

Subsec. (d)(2). Pub. L. 116–283, §1831(d)(5)(C), substituted “paragraph (1)” for “subparagraph (A)”.


Subsec. (f). Pub. L. 116–283, §1831(d)(6), after redesignation of section 2306a(b)(6) of this title as subsec. (f) of this section, substituted “section 3702 of this title” for “subsection (a)” and “subsection (a)(1)” for “paragraph (1)(A)”.

Statutory Notes and Related Subsidiaries

Effective Date

Section and 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 an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3705.

Submission of other information

(a) AUTHORITY TO REQUIRE SUBMISSION.—When certified cost or pricing data are not required to be submitted under this chapter for a contract, subcontract, or modification of a contract or subcontract, the offeror shall be required to submit to the contracting officer data other than the certified cost or pricing data (if requested by the contracting officer), to the extent necessary to determine the reasonableness of the price of the contract, subcontract, or modification of the contract or subcontract. Except in the case of a contract or subcontract covered by the exceptions in section 3703(a)(1) of this title, the contracting officer shall require that the data submitted include, at a minimum, appropriate information on the prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price for the procurement. If the contracting officer determines that the offeror does not have access to and cannot provide sufficient information on prices for the same or similar items to determine the reasonableness of price, the contracting officer shall require the submission of information on prices for similar levels of work or effort on related products or services, prices for alternative solutions or approaches, and other information that is relevant to the determination of a fair and reasonable price. Contracting officers shall not determine the price of