

lations (as in effect on the date of the enactment of the National Defense Authorization Act for Fiscal Year 2024); and

(ii) sold in substantial quantities in the commercial marketplace; and

(B) does not include bulk cargo, as defined in section 40102(4) of title 46, such as agricultural products and petroleum products.

(2) The term “product or material”, with respect to a project or program—

(A) means an article, material, or supply brought to the site where the project or program is being carried out for incorporation into the project or program; and

(B) includes an item brought to the site preassembled from articles, materials, or supplies.

(3) The term “United States” includes the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands.

(Added Pub. L. 118–31, div. A, title X, § 1017, Dec. 22, 2023, 137 Stat. 382.)

Editorial Notes

REFERENCES IN TEXT

The date of the enactment of the National Defense Authorization Act for Fiscal Year 2024, referred to in subsec. (d)(1)(A)(i), is the date of enactment of Pub. L. 118–31, which was approved Dec. 22, 2023.

PRIOR PROVISIONS

A prior section 2219 was renumbered section 2491c of this title.

§ 2220. Performance based management: acquisition programs

(a) ESTABLISHMENT OF GOALS.—The Secretary of Defense shall approve or define the cost, performance, and schedule goals for major defense acquisition programs of the Department of Defense and for each phase of the acquisition cycle of such programs.

(b) EVALUATION OF COST GOALS.—The Under Secretary of Defense (Comptroller) shall evaluate the cost goals proposed for each major defense acquisition program of the Department.

(c) SUNSET.—The authority under this section shall terminate on September 30, 2018.

(Added Pub. L. 103–355, title V, § 5001(a)(1), Oct. 13, 1994, 108 Stat. 3349; amended Pub. L. 104–106, div. A, title XV, § 1503(a)(20), div. D, title XLIII, § 4321(b)(1), Feb. 10, 1996, 110 Stat. 512, 671; Pub. L. 105–85, div. A, title VIII, § 841(a), Nov. 18, 1997, 111 Stat. 1843; Pub. L. 107–314, div. A, title X, § 1041(a)(8), Dec. 2, 2002, 116 Stat. 2645; Pub. L. 114–328, div. A, title VIII, § 833(a)(2), Dec. 23, 2016, 130 Stat. 2283.)

Editorial Notes

AMENDMENTS

2016—Subsec. (c). Pub. L. 114–328 added subsec. (c).

2002—Subsec. (a). Pub. L. 107–314, § 1041(a)(8)(B), (C), struck out par. (1) designation and redesignated par. (2) as subsec. (b).

Subsec. (b). Pub. L. 107–314, § 1041(a)(8)(A), (C), redesignated subsec. (a)(2) as (b) and struck out heading and

text of former subsec. (b). Text read as follows: “The Secretary of Defense shall include in the annual report submitted to Congress pursuant to section 113(c) of this title an assessment of whether major acquisition programs of the Department of Defense are achieving, on average, 90 percent of cost, performance, and schedule goals established pursuant to subsection (a) and whether the average period for converting emerging technology into operational capability has decreased by 50 percent or more from the average period required for such conversion as of October 13, 1994. The Secretary shall use data from existing management systems in making the assessment.”

Subsec. (c). Pub. L. 107–314, § 1041(a)(8)(A), struck out heading and text of subsec. (c). Text read as follows: “Whenever the Secretary of Defense, in the assessment required by subsection (b), determines that major defense acquisition programs of the Department of Defense are not achieving, on average, 90 percent of cost, performance, and schedule goals established pursuant to subsection (a), the Secretary shall ensure that there is a timely review of major defense acquisition programs and other programs as appropriate. In conducting the review, the Secretary shall—

“(1) determine whether there is a continuing need for programs that are significantly behind schedule, over budget, or not in compliance with performance or capability requirements; and

“(2) identify suitable actions to be taken, including termination, with respect to such programs.”

1997—Subsec. (b). Pub. L. 105–85 substituted “whether major acquisition programs” for “whether major and nonmajor acquisition programs”.

1996—Subsec. (a)(2). Pub. L. 104–106, § 1503(a)(20), substituted “Under Secretary of Defense (Comptroller)” for “Comptroller of the Department of Defense”.

Subsec. (b). Pub. L. 104–106, § 4321(b)(1), substituted “October 13, 1994” for “the date of the enactment of the Federal Acquisition Streamlining Act of 1994”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–106, div. D, title XLIV, § 4401, Feb. 10, 1996, 110 Stat. 678, provided that:

“(a) EFFECTIVE DATE.—Except as otherwise provided in this division [div. D (§§ 4001–4402) of Pub. L. 104–106, see Tables for classification], this division and the amendments made by this division shall take effect on the date of the enactment of this Act [Feb. 10, 1996].

“(b) APPLICABILITY OF AMENDMENTS.—

“(1) SOLICITATIONS, UNSOLICITED PROPOSALS, AND RELATED CONTRACTS.—An amendment made by this division shall apply, in the manner prescribed in the final regulations promulgated pursuant to section 4402 [110 Stat. 678] to implement such amendment, with respect to any solicitation that is issued, any unsolicited proposal that is received, and any contract entered into pursuant to such a solicitation or proposal, on or after the date described in paragraph (3).

“(2) OTHER MATTERS.—An amendment made by this division shall also apply, to the extent and in the manner prescribed in the final regulations promulgated pursuant to section 4402 to implement such amendment, with respect to any matter related to—

“(A) a contract that is in effect on the date described in paragraph (3);

“(B) an offer under consideration on the date described in paragraph (3); or

“(C) any other proceeding or action that is ongoing on the date described in paragraph (3).

“(3) DEMARCATION DATE.—The date referred to in paragraphs (1) and (2) is the date specified in such final regulations. The date so specified shall be January 1, 1997, or any earlier date that is not within 30

days after the date on which such final regulations are published.”

PILOT PROGRAMS FOR TESTING PROGRAM MANAGER PERFORMANCE OF PRODUCT SUPPORT OVERSIGHT RESPONSIBILITIES FOR LIFE CYCLE OF ACQUISITION PROGRAMS

Pub. L. 105-261, div. A, title VIII, §816, Oct. 17, 1998, 112 Stat. 2088, authorized the Secretary of Defense to designate 10 acquisition programs of the military departments as pilot programs on program manager responsibility for product support and required report to Congress by Feb. 1, 1999.

ENHANCED SYSTEM OF PERFORMANCE INCENTIVES

Pub. L. 103-355, title V, §5001(b), Oct. 13, 1994, 108 Stat. 3350, provided that, within one year after Oct. 13, 1994, the Secretary of Defense should review the incentives and personnel actions available for encouraging excellence in the management of defense acquisition programs and provide an enhanced system of incentives, including pay for performance, to facilitate the achievement of goals approved or defined pursuant to subsec. (a) of this section.

RECOMMENDED LEGISLATION

Pub. L. 103-355, title V, §5001(c), Oct. 13, 1994, 108 Stat. 3350, directed the Secretary of Defense, not later than one year after Oct 13, 1994, to submit to Congress any recommended legislation that the Secretary considered necessary to carry out this section and otherwise to facilitate and enhance management of Department of Defense acquisition programs on the basis of performance.

[§ 2221. Repealed. Pub. L. 105-261, div. A, title IX, § 906(f)(1), Oct. 17, 1998, 112 Stat. 2096]

Section, added Pub. L. 104-106, div. A, title IX, §914(a)(1), Feb. 10, 1996, 110 Stat. 412; amended Pub. L. 104-201, div. A, title X, §1008(a), Sept. 23, 1996, 110 Stat. 2633; Pub. L. 105-85, div. A, title X, §1006(a), Nov. 18, 1997, 111 Stat. 1869; Pub. L. 105-261, div. A, title X, §1069(b)(2), Oct. 17, 1998, 112 Stat. 2136, related to Fisher House trust funds. See section 2493 of this title.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF REPEAL

Repeal effective 90 days after Oct. 17, 1998, see section 906(f)(3) of Pub. L. 105-261, set out as an Effective Date of 1998 Amendment note under section 1321 of Title 31, Money and Finance.

§ 2222. Defense business systems: business process reengineering; enterprise architecture; management

(a) **DEFENSE BUSINESS PROCESSES GENERALLY.**—The Secretary of Defense shall ensure that defense business processes are reviewed, and as appropriate revised, through business process reengineering to match best commercial practices, to the maximum extent practicable, so as to minimize customization of commercial business systems.

(b) **DEFENSE BUSINESS SYSTEMS GENERALLY.**—The Secretary of Defense shall ensure that each covered defense business system developed, deployed, and operated by the Department of Defense—

- (1) supports efficient business processes that have been reviewed, and as appropriate revised, through business process reengineering;
- (2) is integrated into a comprehensive defense business enterprise architecture;
- (3) is managed in a manner that provides visibility into, and traceability of, expenditures for the system; and

(4) uses an acquisition and sustainment strategy that prioritizes the use of commercial software and business practices.

(c) **ISSUANCE OF GUIDANCE.**—

(1) **SECRETARY OF DEFENSE GUIDANCE.**—The Secretary shall issue guidance to provide for the coordination of, and decision making for, the planning, programming, and control of investments in covered defense business systems.

(2) **SUPPORTING GUIDANCE.**—The Secretary shall direct the Chief Information Officer of the Department of Defense, the Under Secretary of Defense for Acquisition and Sustainment, and the Chief Information Officer of each of the military departments to issue and maintain supporting guidance, as appropriate and within their respective areas of responsibility, for the guidance of the Secretary issued under paragraph (1).

(d) **GUIDANCE ELEMENTS.**—The guidance issued under subsection (c) shall include the following elements:

(1) Policy to ensure that the business processes of the Department of Defense are continuously reviewed and revised—

(A) to implement the most streamlined and efficient business processes practicable; and

(B) to eliminate or reduce the need to tailor commercial off-the-shelf systems to meet or incorporate requirements or interfaces that are unique to the Department of Defense.

(2) A process to establish requirements for covered defense business systems.

(3) Mechanisms for the planning and control of investments in covered defense business systems, including a process for the collection and review of programming and budgeting information for covered defense business systems.

(4) Policy requiring the periodic review of covered defense business systems that have been fully deployed, by portfolio, to ensure that investments in such portfolios are appropriate.

(5) Policy to ensure full consideration of sustainability and technological refreshment requirements, and the appropriate use of open architectures.

(6) Policy to ensure that best acquisition and systems engineering practices are used in the procurement and deployment of commercial systems, modified commercial systems, and defense-unique systems to meet Department of Defense missions.

(7) Policy to ensure a covered defense business system is in compliance with the Department's auditability requirements.

(8) Policy to ensure approvals required for the development of a covered defense business system.

(e) **DEFENSE BUSINESS ENTERPRISE ARCHITECTURE.**—

(1) **BLUEPRINT.**—The Secretary, working through the Chief Information Officer of the Department of Defense, shall develop and maintain a blueprint to guide the development