

(d) LIMITATION ON CERTAIN OPTIONS.—

(1) IN GENERAL.—Except as provided by paragraph (2), a covered contract shall limit the number of low-rate production lots for any production quantities procured using fixed-priced options under such covered contract to not more than one.

(2) WAIVER.—

(A) IN GENERAL.—The service acquisition executive of the military department concerned or, in the case of program that is a joint program, the Secretary of Defense may waive the limit required under paragraph (1) with respect to the number of low-rate production lots for a production quantity under a covered contract if such service acquisition executive or the Secretary of Defense, as applicable, determines that such waiver is in the best interest of the Department of Defense.

(B) DELEGATION LIMIT.—Neither a service acquisition executive nor the Secretary of Defense may delegate the authority under subparagraph (A) to waive the limit required under paragraph (1) below the level of a service acquisition executive.

(3) DEFINITIONS.—In this subsection:

(A) The term “covered contract” means a cost reimbursement contract for the development of a major system.

(B) The term “low-rate initial production” has the same meaning as in section 4231 of this title.

(C) The term “major system” has the meaning given such term in section 3041 of this title.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1817(a), (c), (e), (f), Jan. 1, 2021, 134 Stat. 4186, 4187; Pub. L. 118–159, div. A, title VIII, § 802(a), Dec. 23, 2024, 138 Stat. 1965.)

Editorial Notes

CODIFICATION

For derivation of subsec. (a) of this section, see Codification note related to subsec. (a) of section 2306 of this title set out under section 3321 of this title.

The text of subsec. (d) of section 2306 of this title, which was transferred to this section, redesignated as subsec. (b), and amended by Pub. L. 116–283, § 1817(e), (f)(2), was based on act Aug. 10, 1956, ch. 1041, 70A Stat. 131.

The text of subsec. (e) of section 2306 of this title, which was transferred to this section, redesignated as subsec. (c), and amended by Pub. L. 116–283, § 1817(e), (f)(3), was based on act Aug. 10, 1956, ch. 1041, 70A Stat. 131; Pub. L. 98–369, div. B, title VII, § 2724, July 18, 1984, 98 Stat. 1193; Pub. L. 102–25, title VII, § 701(d)(3), Apr. 6, 1991, 105 Stat. 114; Pub. L. 103–355, title IV, 4401(c), Oct. 13, 1994, 108 Stat. 3348; Pub. L. 108–136, div. A, title VIII, § 842, Nov. 24, 2003, 117 Stat. 1552.

AMENDMENTS

2024—Subsec. (d). Pub. L. 118–159 added subsec. (d).

2021—Subsec. (a). Pub. L. 116–283, § 1817(c), (f)(1), transferred first sentence of subsec. (a) of section 3321 of this title to this section, designated it as subsec. (a), and inserted heading.

Subsec. (b). Pub. L. 116–283, § 1817(e), (f)(2), redesignated subsec. (d) of section 2306 of this title as subsec. (b) of this section and inserted heading.

Subsec. (c). Pub. L. 116–283, § 1817(e), (f)(3), redesignated subsec. (e) of section 2306 of this title as subsec.

(c) of this section, inserted subsec. and par. headings, and realigned margin of par. (2).

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.

CONFORMING REGULATIONS

Pub. L. 118–159, div. A, title VIII, § 802(b), Dec. 23, 2024, 138 Stat. 1965, provided that: “Not later than 120 days after the date of the enactment of this Act [Dec. 23, 2024], the Secretary of Defense shall revise the Department of Defense Supplement to the Federal Acquisition Regulation to implement subsection (d) of section 3322 of title 10, United States Code, as added by subsection (a) of this section.”

§ 3323. Cost-plus contracting prohibited for military construction and military family housing projects

(a) PROHIBITION.—A contract entered into by the United States in connection with a military construction project or a military family housing project may not use any form of cost-plus contracting.

(b) APPLICABILITY.—The prohibition specified in subsection (a)—

(1) is in addition to the prohibition specified in section 3322(a) of this title on the use of the cost-plus-a-percentage-of-cost system of contracting; and

(2) applies notwithstanding a declaration of war or the declaration by the President of a national emergency under section 201 of the National Emergencies Act (50 U.S.C. 1621) that includes the use of the armed forces.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1817(a), (g), Jan. 1, 2021, 134 Stat. 4186, 4187; Pub. L. 118–31, div. A, title XVIII, § 1801(a)(27), Dec. 22, 2023, 137 Stat. 684.)

Editorial Notes

CODIFICATION

The text of subsec. (c) of section 2306 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1817(g), was based on Pub. L. 112–81, div. B, title XXVIII, § 2801(a), Dec. 31, 2011, 125 Stat. 1684.

AMENDMENTS

2023—Subsec. (b)(2). Pub. L. 118–31 struck out period after “notwithstanding”.

2021—Subsec. (a). Pub. L. 116–283, § 1817(g)(1), (2), redesignated subsec. (c) of section 2306 of this title as subsec. (a) of this section and inserted heading. Former second sentence of subsec. (a) designated subsec. (b).

Subsec. (b). Pub. L. 116–283, § 1817(g)(1), (3), designated second sentence of subsec. (a) as subsec. (b), inserted heading, and substituted “The prohibition specified in subsection (a)—

“(1) is in addition to the prohibition specified in section 3322(a) of this title on the use of the cost-plus-a-percentage-of-cost system of contracting; and

“(2) applies notwithstanding a declaration” for “This prohibition is in addition to the prohibition specified in subsection (a) on the use of the cost-plus-a-percentage-of-cost system of contracting and applies notwithstanding a declaration”.

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.

§ 3324. [Reserved]

(Added Pub. L. 116-283, div. A, title XVIII, §1817(a), Jan. 1, 2021, 134 Stat. 4186; amended Pub. L. 117-81, div. A, title XVII, §1701(i)(4)(B), Dec. 27, 2021, 135 Stat. 2141.)

Editorial Notes**AMENDMENTS**

2021—Pub. L. 117-81, §1701(i)(4)(B), amended Pub. L. 116-283, §1817(a), which enacted this section, by adding section 3324 designation and heading “[Reserved]” and striking out former section 3324 heading and catchline “Preference for fixed-price contracts”.

Statutory Notes and Related Subsidiaries**EFFECTIVE DATE OF 2021 AMENDMENT**

Amendment made to Pub. L. 116-283 by Pub. L. 117-81, resulting in omission of this section, applicable as if included in the enactment of title XVIII of Pub. L. 116-283 as enacted, see section 1701(a)(2) of Pub. L. 117-81, set out in a note preceding section 3001 of this title and Effective Date note below.

EFFECTIVE DATE

Section 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.

CHAPTER 243—OTHER MATTERS RELATING TO AWARDING OF CONTRACTS

Sec.	
3341.	[Reserved].
3342.	[Reserved].
3343.	[Reserved].
3344.	Disclosure of identity of contractor.
[3345.	Omitted.]

Editorial Notes**PRIOR PROVISIONS**

A prior chapter 243 “SPECIFIC TYPES OF CONTRACTS”, as added by Pub. L. 115-232, div. A, title VIII, §801(a), Aug. 13, 2018, 132 Stat. 1827, and consisting of reserved section 3351, was repealed by Pub. L. 116-283, div. A, title XVIII, §1816(b), Jan. 1, 2021, 134 Stat. 4182.

AMENDMENTS

2021—Pub. L. 117-81, div. A, title XVII, §1701(v)(1)(B), Dec. 27, 2021, 135 Stat. 2154, amended Pub. L. 116-283, div. A, title XVIII, §1818(a), Jan. 1, 2021, 134 Stat. 4188, which added this analysis, by striking out item 3345 “Contract authority for advanced development of initial or additional prototype units”.

Statutory Notes and Related Subsidiaries**ASSURING INTEGRITY OF OVERSEAS FUEL SUPPLIES**

Pub. L. 117-81, div. A, title VIII, §843, Dec. 27, 2021, 135 Stat. 1840, provided that:

“(a) IN GENERAL.—Before awarding a contract to an offeror for the supply of fuel for any overseas contingency operation, the Secretary of Defense shall—

“(1) ensure, to the maximum extent practicable, that no otherwise responsible offeror is disqualified for such award on the basis of an unsupported denial of access to a facility or equipment by the host nation government; and

“(2) require assurances that the offeror will comply with the requirements of subsections (b) and (c).

“(b) REQUIREMENT.—An offeror for the supply of fuel for any overseas contingency operation shall—

“(1) certify that the provided fuel, in whole or in part, or derivatives of such fuel, is not sourced from a nation or region prohibited from selling petroleum to the United States; and

“(2) furnish such records as are necessary to verify compliance with such anticorruption statutes and regulations as the Secretary determines necessary, including—

“(A) the Foreign Corrupt Practices Act [of 1977] ([see] 15 U.S.C. 78dd-1 et seq.);

“(B) the regulations contained in parts 120 through 130 of title 22, Code of Federal Regulations, or successor regulations (commonly known as the ‘International Traffic in Arms Regulations’);

“(C) the regulations contained in parts 730 through 774 of title 15, Code of Federal Regulations, or successor regulations (commonly known as the ‘Export Administration Regulations’); and

“(D) such regulations as may be promulgated by the Office of Foreign Assets Control of the Department of the Treasury.

“(c) APPLICABILITY.—Subsections (a) and (b) of this section shall apply with respect to contracts entered into on or after the date of the enactment of this Act [Dec. 27, 2021].

“(d) CONSIDERATION OF TRADEOFF PROCESSES.—If the Secretary of Defense awards a contract for fuel procurement for an overseas contingency operation, the contracting officer for such contract shall consider tradeoff processes (as described in subpart 15 of the Federal Acquisition Regulation, or any successor regulation), including consideration of past performance evaluation, cost, anticorruption training, and compliance. With respect to any such contract awarded for which the contracting officer does not consider tradeoff processes, the contracting officer shall, before issuing a solicitation for such contract, submit to the Secretary a written justification for not considering tradeoff processes in awarding such contract.”

GUIDANCE, TRAINING, AND REPORT ON PLACE OF PERFORMANCE CONTRACT REQUIREMENTS

Pub. L. 117-81, div. A, title VIII, §875, Dec. 27, 2021, 135 Stat. 1865, provided that:

“(a) GUIDANCE AND TRAINING.—Not later than July 1, 2022, the Secretary of Defense shall—

“(1) issue guidance on covered contracts to ensure that, to the maximum extent practicable, the terms of such covered contract avoid specifying an unnecessarily restrictive place of performance for such covered contract; and

“(2) implement any necessary training for appropriate individuals relating to the guidance required under paragraph (1).

“(b) REPORT.—

“(1) IN GENERAL.—Not later than July 1, 2022, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on covered contracts.

“(2) ELEMENTS.—The report required under paragraph (1) shall include the following elements:

“(A) A description of the criteria that is considered when the Secretary specifies a particular place of performance in a covered contract.

“(B) The number of covered contracts awarded during each of fiscal years 2016 through 2020.

“(C) An assessment of the extent to which revisions to guidance or regulations related to the use of covered contracts could improve the effective-