

[§ 3345. Omitted]

Editorial Notes

CODIFICATION

Pub. L. 116-283, div. A, title XVIII, § 1818(c), Jan. 1, 2021, 134 Stat. 4188, initially transferred section 2302e of this title to this section, to become effective Jan. 1, 2022. Pub. L. 117-81, div. A, title XVII, § 1701(v)(1)(A), Dec. 27, 2021, 135 Stat. 2154, repealed section 1818(c) of Pub. L. 116-283, effective as if included therein, which eliminated that transfer, thereby omitting this section before it took effect. Another amendment by Pub. L. 117-81 resulted in the transfer of section 2302e to section 4004 of this title.

CHAPTER 244—UNDEFINITIZED CONTRACTUAL ACTIONS

Sec.

3371. Undefinitized contractual actions: required description of anticipated effect on military department requirements if use of undefinitized contractual action results in delay.
3372. Undefinitized contractual actions: requirements and limitations relating to definitization of contractual terms, specifications, and price.
3373. Undefinitized contractual actions: limitation on inclusion of non-urgent requirements and on modification of scope.
3374. Undefinitized contractual actions: allowable profit.
3375. Undefinitized contractual actions: time limit.
3376. [Reserved].
3377. Inapplicability to Coast Guard and National Aeronautics and Space Administration; definitions.

Statutory Notes and Related Subsidiaries

IMPLEMENTATION AND ENFORCEMENT OF REQUIREMENTS APPLICABLE TO UNDEFINITIZED CONTRACTUAL ACTIONS

Pub. L. 110-181, div. A, title VIII, § 809, Jan. 28, 2008, 122 Stat. 216, provided that:

“(a) GUIDANCE AND INSTRUCTIONS.—Not later than 180 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense shall issue guidance, with detailed implementation instructions, for the Department of Defense to ensure the implementation and enforcement of requirements applicable to undefinitized contractual actions.

“(b) ELEMENTS.—The guidance and instructions issued pursuant to subsection (a) shall address, at a minimum—

“(1) the circumstances in which it is, and is not, appropriate for Department of Defense officials to use undefinitized contractual actions;

“(2) approval requirements (including thresholds) for the use of undefinitized contractual actions;

“(3) procedures for ensuring that timelines for the definitization of undefinitized contractual actions are met;

“(4) procedures for ensuring compliance with regulatory limitations on the obligation of funds pursuant to undefinitized contractual actions;

“(5) procedures for ensuring compliance with regulatory limitations on profit or fee with respect to costs incurred before the definitization of an undefinitized contractual action; and

“(6) reporting requirements for undefinitized contractual actions that fail to meet required timelines for definitization or fail to comply with regulatory limitations on the obligation of funds or on profit or fee.

“(c) REPORTS.—

“(1) REPORT ON GUIDANCE AND INSTRUCTIONS.—Not later than 210 days after the date of the enactment of

this Act [Jan. 28, 2008], 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 setting forth the guidance and instructions issued pursuant to subsection (a).

“(2) GAO REPORT.—Not later than two years after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the congressional defense committees a report on the extent to which the guidance and instructions issued pursuant to subsection (a) have resulted in improvements to—

“(A) the level of insight that senior Department of Defense officials have into the use of undefinitized contractual actions;

“(B) the appropriate use of undefinitized contractual actions;

“(C) the timely definitization of undefinitized contractual actions; and

“(D) the negotiation of appropriate profits and fees for undefinitized contractual actions.”

§ 3371. Undefinitized contractual actions: required description of anticipated effect on military department requirements if use of undefinitized contractual action results in delay

The head of an agency may not enter into an undefinitized contractual action unless the request to the head of the agency for authorization of the contractual action includes a description of the anticipated effect on requirements of the military department concerned if a delay is incurred for purposes of determining contractual terms, specifications, and price before performance is begun under the contractual action.

(Added and amended Pub. L. 116-283, div. A, title XVIII, § 1819(a), (b), Jan. 1, 2021, 134 Stat. 4189.)

Editorial Notes

CODIFICATION

The text of subsec. (a) of section 2326 of this title, which was transferred to this section and amended by Pub. L. 116-283, § 1819(b), was based on Pub. L. 99-500, § 101(c) [title X, § 908(d)(1)(A)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-140, and Pub. L. 99-591, § 101(c) [title X, § 908(d)(1)(A)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-140; Pub. L. 99-661, div. A, title IX, formerly title IV, § 908(d)(1)(A), Nov. 14, 1986, 100 Stat. 3920, renumbered title IX, Pub. L. 100-26, § 3(5), Apr. 21, 1987, 101 Stat. 273. Pub. L. 99-500, Pub. L. 99-591, and Pub. L. 99-661 added identical subsections.

PRIOR PROVISIONS

A prior section 3371, added Pub. L. 85-861, § 1(80)(E), Sept. 2, 1958, 72 Stat. 1475, related to promotion of brigadier generals and colonels not assigned to units, prior to repeal by Pub. L. 103-337, div. A, title XVI, §§ 1629(a)(1), 1691(b)(1), Oct. 5, 1994, 108 Stat. 2963, 3026, effective Oct. 1, 1996. See section 14301 et seq. of this title.

AMENDMENTS

2021—Pub. L. 116-283, § 1819(b), transferred subsec. (a) of section 2326 of this title to this section and struck out subsec. (a) designation and heading “In General” at beginning.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section and amendment by Pub. L. 116-283 effective Jan. 1, 2022, with additional provisions for delayed im-