

## [§ 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 A, title XVII, §1701(v)(1)(A), Dec. 27, 2021, 135 Stat. 2154, repealed section 1818(c) of Pub.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-

plementation 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.

**§ 3372. Unfinalized contractual actions: requirements and limitations relating to finalization of contractual terms, specifications, and price**

(a) CONTRACTUAL ACTION TO PROVIDE TIME FOR FINALIZATION OF CONTRACTUAL TERMS, SPECIFICATIONS, AND PRICE; LIMITATIONS ON OBLIGATION OF FUNDS.—

(1) TERMS FOR TIME FOR FINALIZATION TO BE INCLUDED IN CONTRACTUAL ACTION.—A contracting officer of the Department of Defense may not enter into an unfinalized contractual action unless the contractual action provides for agreement upon contractual terms, specifications, and price by the earlier of—

(A) the end of the 180-day period beginning on the date on which the contractor submits a qualifying proposal to finalize the contractual terms, specifications, and price; or

(B) the date on which the amount of funds obligated under the contractual action is equal to more than 50 percent of the negotiated overall ceiling price for the contractual action.

(2) LIMITATION ON OBLIGATION OF FUNDS BEFORE FINALIZATION.—

(A) 50 PERCENT LIMITATION.—Except as provided in subparagraph (B), the contracting officer for an unfinalized contractual action may not obligate with respect to such contractual action an amount that is equal to more than 50 percent of the negotiated overall ceiling price until the contractual terms, specifications, and price are finalized for such contractual action.

(B) 75 PERCENT LIMITATION WHEN CONTRACTOR SUBMITS QUALIFYING PROPOSAL.—If a contractor submits a qualifying proposal (as defined in section 3377(b) of this title) to finalize an unfinalized contractual action before an amount equal to more than 50 percent of the negotiated overall ceiling price is obligated on such action, the contracting officer for such action may not obligate with respect to such contractual action an amount that is equal to more than 75 percent of the negotiated overall ceiling price until the contractual terms, specifications, and price are finalized for such contractual action.

(3) WAIVER AUTHORITY.—The head of an agency may waive the provisions of this subsection with respect to a contract of that agency if that head of an agency determines that the waiver is necessary in order to support any of the following operations:

(A) A contingency operation.

(B) A humanitarian or peacekeeping operation.

(4) INAPPLICABILITY WITH RESPECT TO PURCHASE OF INITIAL SPARES.—This subsection does not apply to an unfinalized contractual action for the purchase of initial spares.

(b) LIMITATION ON UNILATERAL FINALIZATION BY CONTRACTING OFFICER.—

(1) IN GENERAL.—With respect to any unfinalized contractual action with a value greater than \$50,000,000, if agreement is not reached on contractual terms, specifications, and price within the period or by the date provided in subsection (a)(1), the contracting officer may not unilaterally finalize those terms, specifications, or price over the objection of the contractor until—

(A) the service acquisition executive for the military department that awarded the contract, or the Under Secretary of Defense for Acquisition and Sustainment if the contract was awarded by a Defense Agency or other component of the Department of Defense, approves the finalization in writing;

(B) the contracting officer provides a copy of the written approval to the contractor; and

(C) a period of 30 calendar days has elapsed after the written approval is provided to the contractor.

(2) TREATMENT OF UNILATERAL FINALIZATION OF A CONTRACT AS A FINAL DECISION.—A unilateral finalization by a contracting officer shall be considered a final decision under chapter 71 of title 41, and a contractor may appeal this decision to the Armed Services Board of Contract Appeals or the United States Court of Federal Claims.

(c) FOREIGN MILITARY CONTRACTS.—

(1) 180-DAY REQUIREMENT.—Except as provided in paragraph (2), a contracting officer of the Department of Defense may not enter into an unfinalized contractual action for a foreign military sale unless the contractual action provides for agreement upon contractual terms, specifications, and price by the end of the 180-day period described in subsection (a)(1)(A).

(2) WAIVER AUTHORITY.—The requirement under paragraph (1) may be waived in accordance with subsection (a)(3).

(Added and amended Pub. L. 116-283, div. A, title XVIII, §1819(a), (c), Jan. 1, 2021, 134 Stat. 4189; Pub. L. 118-159, div. A, title VIII, §803, Dec. 23, 2024, 138 Stat. 1965.)

**Editorial Notes**

**CODIFICATION**

The text of subsec. (b) of section 2326 of this title, which was transferred to this section, redesignated as subsec. (a), and amended by Pub. L. 116-283, §1819(c)(1), (2), 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. 103-355, title I, §1505(a), (b), Oct. 13, 1994, 108 Stat. 3298; Pub. L. 105-85, div. A, title VIII, §803(a), Nov. 18, 1997, 111 Stat. 1831; Pub. L. 115-91, div. A, title VIII, §815(b), Dec. 12, 2017, 131 Stat. 1462. Pub. L. 99-500, Pub. L. 99-591, and Pub. L. 99-661 added identical subsections.

The text of subsec. (c) of section 2326 of this title, which was transferred to this section, redesignated as subsec. (b), and amended by Pub. L. 116-283, §1819(c)(1), (3), was based on Pub. L. 115-91, div. A, title VIII, §815(a)(2), Dec. 12, 2017, 131 Stat. 1462.

The text of subsec. (h) of section 2326 of this title, which was transferred to this section, redesignated as