

§ 3458. Authority to acquire innovative commercial products and commercial services using general solicitation competitive procedures

(a) **AUTHORITY.**—The Secretary of Defense and the Secretaries of the military departments may acquire innovative commercial products and commercial services through a competitive selection of proposals resulting from a general solicitation and the peer review of such proposals.

(b) **TREATMENT AS COMPETITIVE PROCEDURES.**—Use of general solicitation competitive procedures under subsection (a) shall be considered to be use of competitive procedures for purposes of chapter 221 of this title.

(c) **LIMITATIONS.**—(1) The Secretary may not enter into a contract or agreement in excess of \$100,000,000 using the authority under subsection (a) without a written determination from the Under Secretary of Defense for Acquisition and Sustainment or the relevant service acquisition executive of the efficacy of the effort to meet mission needs of the Department of Defense or the relevant military department.

(2) Contracts or agreements entered into using the authority under subsection (a) shall be fixed-price, including fixed-price incentive contracts.

(3) Notwithstanding section 3451(1) of this title, products and services acquired using the authority under subsection (a) shall be treated as commercial products and commercial services.

(d) **CONGRESSIONAL NOTIFICATION REQUIRED.**—(1) Not later than 45 days after the award of a contract for an amount exceeding \$100,000,000 using the authority in subsection (a), the Secretary shall notify the congressional defense committees of such award.

(2) Notice of an award under paragraph (1) shall include the following:

(A) Description of the innovative commercial product or commercial service acquired.

(B) Description of the requirement, capability gap, or potential technological advancement with respect to which the innovative commercial product or commercial service acquired provides a solution or a potential new capability.

(C) Amount of the contract awarded.

(D) Identification of the contractor awarded the contract.

(e) **INNOVATIVE DEFINED.**—In this section, the term “innovative” means—

(1) any technology, process, or method, including research and development, that is new as of the date of submission of a proposal; or

(2) any application that is new as of the date of submission of a proposal of a technology, process, or method existing as of such date.

(Added § 2380c, renumbered § 3458, and amended Pub. L. 117–81, div. A, title VIII, § 803(a)(1), (b)(1), (3), Dec. 27, 2021, 135 Stat. 1814–1816; Pub. L. 117–263, div. A, title VIII, § 814(a), Dec. 23, 2022, 136 Stat. 2707.)

Editorial Notes

AMENDMENTS

2022—Subsec. (c)(2). Pub. L. 117–263 substituted “fixed-price incentive contracts” for “fixed-price incentive fee contracts”.

2021—Pub. L. 117–81, § 803(b)(1), renumbered section 2380c of this title as this section.

Subsec. (b). Pub. L. 117–81, § 803(b)(3)(A), substituted “chapter 221” for “chapter 137”.

Subsec. (c)(3). Pub. L. 117–81, § 803(b)(3)(B), substituted “section 3451(1)” for “section 2376(1)”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Pub. L. 117–81, div. A, title VIII, § 803(b)(4), Dec. 27, 2021, 135 Stat. 1816, provided that: “The transfer, redesignation, and amendments made by this subsection [amending this section and repealing provisions set out as a note under section 2302 of this title] shall take [sic] as if included in title XVIII of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116–283).”

FOCUSED COMMERCIAL SOLUTIONS OPENINGS OPPORTUNITIES

Pub. L. 118–31, div. A, title VIII, § 813, Dec. 22, 2023, 137 Stat. 325, provided that:

“(a) **REQUIREMENT.**—During each fiscal year beginning after the date of the enactment of this Act [Dec. 22, 2023], the Secretary of Defense, in coordination with the service acquisition executives of each military department, shall exercise the authority under section 3458 of title 10, United States Code, not less than four times to acquire goods or services addressing the mission needs of a geographic combatant command.

“(b) **EXECUTION.**—With respect to acquisition carried out under section 3458 of title 10, United States Code, pursuant to subsection (a), the Secretary of Defense shall—

“(1) assign the responsibility for carrying out such acquisition to a program executive officer and a head of a science and technology reinvention laboratory from the same military department, who shall co-lead such acquisition; and

“(2) ensure that the program executive officer and the head of a science and technology reinvention laboratory assigned as co-leads under paragraph (1) have similar existing requirements and funding for transitioning technologies to acquisition programs within the area of focus for such acquisition.

“(c) **SUNSET.**—Subsection (a) shall expire on September 30, 2027.

“(d) **DEFINITIONS.**—In this section:

“(1) The terms ‘military department’ and ‘services acquisition executive’ have the meanings given such terms in section 101(a) of title 10, United States Code.

“(2) The term ‘program executive officer’ has the meaning given such term in section 1737(a) of title 10, United States Code.

“(3) The term ‘science and technology reinvention laboratory’ means a science and technology reinvention laboratory designated under section 4121(b) of title 10, United States Code.”

DATA COLLECTION

Pub. L. 117–81, div. A, title VIII, § 803(a)(3), Dec. 27, 2021, 135 Stat. 1815, provided that:

“(A) **IN GENERAL.**—The Secretary of Defense and each Secretary of a military department shall collect and analyze data on the use of the authority under section 2380c of title 10, United States Code [now 10 U.S.C. 3458], as added by paragraph (1), for the purposes of—

“(i) developing and sharing best practices for achieving the objectives of the authority;

“(ii) gathering information on the implementation of the authority and related policy issues; and

“(iii) informing the congressional defense committees on the use of the authority.

“(B) **PLAN REQUIRED.**—The authority under section 2380c [now 3458] of title 10, United States Code, as added by paragraph (1), may not be exercised by the Secretary of Defense or any Secretary of a military department during the period beginning on October 1, 2022, and end-

ing on the date on which the Secretary of Defense submits to the congressional defense committees a completed plan for carrying out the data collection required under paragraph (1).

“(C) CONGRESSIONAL DEFENSE COMMITTEES; MILITARY DEPARTMENT DEFINED.—In this paragraph, the terms ‘congressional defense committees’ and ‘military department’ have the meanings given such terms in section 101(a) of title 10, United States Code.”

REFERENCES; SAVINGS PROVISION; RULE OF CONSTRUCTION

Pub. L. 117–81, div. A, title VIII, §803(b)(5), Dec. 27, 2021, 135 Stat. 1816, provided that: “Sections 1883 through 1885 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116–283) [set out as notes preceding section 3001 of this title] shall apply with respect to the transfers, redesignations, and amendments made under this subsection [amending this section and repealing provisions set out as a note under section 2302 of this title] as if such transfers, redesignations, and amendments were made under title XVIII of such Act.”

CHAPTER 249—MULTIYEAR CONTRACTS

Subchapter I. Multiyear Contracts for Acquisition of Property 3501
II. Multiyear Contracts for Acquisition of Services 3531
III. Other Authorities Relating to Multiyear Contracts 3551

Editorial Notes

PRIOR PROVISIONS

A prior chapter 249 “MULTIYEAR 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 3501, was repealed by Pub. L. 116–283, div. A, title XVIII, §1822(a), Jan. 1, 2021, 134 Stat. 4196.

SUBCHAPTER I—MULTIYEAR CONTRACTS FOR ACQUISITION OF PROPERTY

Sec. 3501. Multiyear contracts: acquisition of property.

Editorial Notes

AMENDMENTS

2021—Pub. L. 117–81, div. A, title XVII, §1701(k)(1)(A), Dec. 27, 2021, 135 Stat. 2143, amended Pub. L. 116–283, div. A, title XVIII, §1822(a), Jan. 1, 2021, 134 Stat. 4196, which added this analysis, by adding item 3501 and striking out what would have been items 3501 to 3511.

§ 3501. Multiyear contracts: acquisition of property

(a) IN GENERAL.—To the extent that funds are otherwise available for obligation, the head of an agency may enter into multiyear contracts for the purchase of property whenever the head of that agency finds each of the following:

(1) That the use of such a contract will result in—

(A) significant savings of the total anticipated costs of carrying out the program through annual contracts; or

(B) necessary defense industrial base stability not otherwise achievable through annual contracts.

(2) That the minimum need for the property to be purchased is expected to remain substantially unchanged during the contemplated

contract period in terms of production rate, procurement rate, and total quantities.

(3) That there is a reasonable expectation that throughout the contemplated contract period the head of the agency will request funding for the contract at the level required to avoid contract cancellation.

(4) That there is a stable design for the property to be acquired and that the technical risks associated with such property are not excessive.

(5) That the estimates of both the cost of the contract and the anticipated cost avoidance through the use of a multiyear contract are realistic.

(6) In the case of a purchase by the Department of Defense, that the use of such a contract will promote the national security of the United States.

(7) In the case of a contract in an amount equal to or greater than \$500,000,000, that the conditions required by subparagraphs (C) through (F) of subsection (i)(3) will be met, in accordance with the Secretary’s certification and determination under such subsection, by such contract.

(b) REGULATIONS.—(1) Each official named in paragraph (2) shall prescribe acquisition regulations for the agency or agencies under the jurisdiction of such official to promote the use of multiyear contracting as authorized by subsection (a) in a manner that will allow the most efficient use of multiyear contracting.

(2)(A) The Secretary of Defense shall prescribe the regulations applicable to the Department of Defense.

(B) The Secretary of Homeland Security shall prescribe the regulations applicable to the Coast Guard, except that the regulations prescribed by the Secretary of Defense shall apply to the Coast Guard when it is operating as a service in the Navy.

(C) The Administrator of the National Aeronautics and Space Administration shall prescribe the regulations applicable to the National Aeronautics and Space Administration.

(c) CONTRACT CANCELLATIONS.—The regulations may provide for cancellation provisions in multiyear contracts to the extent that such provisions are necessary and in the best interests of the United States. The cancellation provisions may include consideration of both recurring and nonrecurring costs of the contractor associated with the production of the items to be delivered under the contract.

(d) PARTICIPATION BY SUBCONTRACTORS, VENDORS, AND SUPPLIERS.—In order to broaden the defense industrial base, the regulations shall provide that, to the extent practicable—

(1) multiyear contracting under subsection (a) shall be used in such a manner as to seek, retain, and promote the use under such contracts of companies that are subcontractors, vendors, or suppliers; and

(2) upon accrual of any payment or other benefit under such a multiyear contract to any subcontractor, vendor, or supplier company participating in such contract, such payment or benefit shall be delivered to such company in the most expeditious manner practicable.