

or developed under the authority of this section through engagement with the user community and through user feedback, in order to continuously define and update priorities for such requirements;

(2) early identification of the warfighter or user needs including the rationale for how software and covered hardware to be acquired or developed under the authority of this section will be tailored to address such needs;

(3) initial contract requirements and format, including the use of summary-level lists of problems in existing software and desired features or capabilities of new or upgraded software;

(4) continuous refinement and prioritization of contract requirements, informed by continuous engagement with users throughout the period of development and implementation of software and covered hardware to be acquired or developed under this section;

(5) continuous consideration of issues related to lifecycle costs, technical data rights, and systems interoperability;

(6) planning for support of capabilities of software to be acquired or developed under this section if the software developer stops supporting the software;

(7) rapid contracting procedures, including expedited timeframes for making awards, selecting contract types, defining teaming arrangements, and defining options;

(8) program execution processes, including supporting development and test infrastructure, automation and tools, digital engineering, data collection and sharing with Department of Defense stakeholders and with Congress, the role of developmental and operational testing activities, key decision-making and oversight events, and supporting processes and activities (such as independent costing activity, operational demonstration, and performance metrics);

(9) assurances that cybersecurity metrics of the software to be acquired or developed, such as metrics relating to the density of vulnerabilities within the code of such software, the time from vulnerability identification to patch availability, the existence of common weaknesses within such code, and other cybersecurity metrics based on widely-recognized standards and industry best practices, are generated and made available to the Department of Defense and the congressional defense committees;

(10) administrative procedures, including procedures relating to who may initiate and approve an acquisition under this authority, the roles and responsibilities of persons implementing or supporting the use of authority under this section, team selection and staffing process, governance and oversight roles and responsibilities, and appropriate independent technology assessments, testing, and cost estimation (including relevant thresholds or designation criteria);

(11) mechanisms and waivers designed to ensure flexibility in the implementation of a pathway under this section, including the use of other transaction authority, broad agency announcements, and other procedures; and

(12) mechanisms the Secretary will use for appropriate reporting to Congress on the use of the authority under this section, including notice of initiation of the use of a pathway and data regarding individual programs or acquisition activities, how acquisition activities are reflected in budget justification materials or requests to reprogram appropriated funds, and compliance with other reporting requirements.

(i) DEFINITIONS.—In this section:

(1) The term “covered hardware” means hardware—

(A) that is a commercial product (as defined in section 103 of title 41) or a non-developmental item; and

(B) in which software acquired under this section is embedded.

(2) The term “nondevelopmental item” has the meaning given in section 110 of title 41.

(Added Pub. L. 118-159, div. A, title VIII, § 805(a), Dec. 23, 2024, 138 Stat. 1969.)

Editorial Notes

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 116-92, div. A, title VIII, § 800, Dec. 20, 2019, 133 Stat. 1478, which was set out in a note under section 4571 of this title, prior to repeal by Pub. L. 118-159, div. A, title VIII, § 805(c)(1), Dec. 23, 2024, 138 Stat. 1972.

Statutory Notes and Related Subsidiaries

GUIDANCE REQUIRED

Pub. L. 118-159, div. A, title VIII, § 805(b), Dec. 23, 2024, 138 Stat. 1972, provided that: “Not later than 90 days after the date of the enactment of this Act [Dec. 23, 2024], the Secretary of Defense shall issue or modify guidance to implement the requirements of this section.”

§ 3604. Program to accelerate the procurement and fielding of innovative technologies

(a) PROGRAM.—Subject to availability of appropriations, the Secretary of Defense shall establish a competitive, merit-based program to accelerate the procurement and fielding of innovative technologies by, with respect to such technologies—

- (1) reducing acquisition or life-cycle costs;
- (2) addressing technical risks;
- (3) improving the timeliness and thoroughness of test and evaluation outcomes; and
- (4) rapidly implementing such technologies to directly support defense missions.

(b) GUIDELINES.—

(1) IN GENERAL.—The Secretary shall issue guidelines for the operation of the program established under this section.

(2) CONTENTS.—At a minimum, the guidelines for the operation of the program established under this section required under paragraph (1) shall provide for the following:

(A) The issuance of one or more solicitations for proposals by the Department of Defense in support of the program, with a priority established for technologies developed by small business concerns (as defined under

section 3 of the Small Business Act (15 U.S.C. 632)) or nontraditional defense contractors (as defined under section 3014 of this title).

(B) The issuance of not more than two solicitations for proposals by the Department of Defense in support of the program each fiscal year for innovative technologies from entities that, during the one-year period preceding the issuance of the solicitation, have not performed on contracts and subcontracts for the Department under which the aggregate obligations of the Department to such entity for such period exceeds \$400,000,000.

(C) A process for—

(i) the review of proposals received in response to a solicitation issued under subparagraph (A) by the Secretary of Defense and by each Secretary of a military department;

(ii) the merit-based selection of the most promising cost-effective proposals; and

(iii) the procurement of goods or services offered by such a proposal through contracts, cooperative agreements, other transaction authority, or by another appropriate process.

(c) **MAXIMUM AMOUNT.**—The total amount of funding provided for any proposal selected for an award under the program established under this section shall not exceed \$50,000,000, unless the Secretary (or designee of the Secretary) approves a greater amount of funding.

(d) **DATA COLLECTION.**—

(1) **PLAN REQUIRED BEFORE IMPLEMENTATION.**—The Secretary of Defense may not provide funding under this section until the date on which the Secretary—

(A) completes a plan for carrying out the data collection required under paragraph (2); and

(B) submits the plan to the congressional defense committees.

(2) **DATA COLLECTION REQUIRED.**—The Secretary of Defense shall collect and analyze data on the program established under this section for the purposes of—

(A) developing and sharing best practices for achieving the objectives of the program;

(B) providing information on the implementation of the program and related policy issues; and

(C) reporting to the congressional defense committees as required under subsection (e).

(e) **BIANNUAL REPORT.**—Not later than March 1 and September 1 of each year beginning after the date of the enactment of this section, the Secretary of Defense shall submit to the congressional defense committees a report on the program established under this section.

(f) **CONGRESSIONAL NOTIFICATION.**—The Secretary of Defense shall notify the congressional defense committees within 30 days after funding has been provided for a proposal selected for an award under the program established under this section.

(Added Pub. L. 118-159, div. A, title VIII, §861(a), Dec. 23, 2024, 138 Stat. 1999.)

Editorial Notes

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (e), is the date of enactment of Pub. L. 118-159, which was approved Dec. 23, 2024.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 117-81, div. A, title VIII, §834, Dec. 27, 2021, 135 Stat. 1835, as amended by Pub. L. 117-263, div. A, title VIII, §845, Dec. 23, 2022, 136 Stat. 2720, which was set out in a note under section 4061 of this title, prior to repeal by Pub. L. 118-159, div. A, title VIII, §861(b), Dec. 23, 2024, 138 Stat. 2000.

CHAPTER 255—CONTRACTING WITH OR THROUGH OTHER AGENCIES

Editorial Notes

AMENDMENTS

2018—Pub. L. 115-232, div. A, title VIII, §801(a), Aug. 13, 2018, 132 Stat. 1828, added chapter heading.

Statutory Notes and Related Subsidiaries

DEFENSE PROCUREMENTS MADE THROUGH CONTRACTS OF OTHER AGENCIES

Pub. L. 108-375, div. A, title VIII, §854, Oct. 28, 2004, 118 Stat. 2022, provided that:

“(a) **LIMITATION.**—The head of an agency may not procure goods or services (under section 1535 of title 31, United States Code, pursuant to a designation under section 11302(e) of title 40, United States Code, or otherwise) through a contract entered into by an agency outside the Department of Defense for an amount greater than the simplified acquisition threshold referred to in section 2304(g) of title 10, United States Code [now 10 U.S.C. 3205], unless the procurement is done in accordance with procedures prescribed by that head of an agency for reviewing and approving the use of such contracts.

“(b) **EFFECTIVE DATE.**—The limitation in subsection (a) shall apply only with respect to orders for goods or services that are issued by the head of an agency to an agency outside the Department of Defense on or after the date that is 180 days after the date of the enactment of this Act [Oct. 28, 2004].

“(c) **INAPPLICABILITY TO CONTRACTS FOR CERTAIN SERVICES.**—This section does not apply to procurements of the following services:

“(1) Printing, binding, or blank-book work to which section 502 of title 44, United States Code, applies.

“(2) Services available under programs pursuant to section 103 of the Library of Congress Fiscal Operations Improvement Act of 2000 (Public Law 106-481; 114 Stat. 2187; 2 U.S.C. 182c).

“(d) **ANNUAL REPORT.**—(1) For each of fiscal years 2005 and 2006, each head of an agency shall submit to the Secretary of Defense a report on the service charges imposed on purchases made for an amount greater than the simplified acquisition threshold during such fiscal year through a contract entered into by an agency outside the Department of Defense.

“(2) In the case of procurements made on orders issued by the head of a Defense Agency, Department of Defense Field Activity, or any other organization within the Department of Defense (other than a military department) under the authority of the Secretary of Defense as the head of an agency, the report under paragraph (1) shall be submitted by the head of that Defense Agency, Department of Defense Field Activity, or other organization, respectively.

“(3) The report for a fiscal year under this subsection shall be submitted not later than December 31 of the calendar year in which such fiscal year ends.

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