

“(2) CONTENTS.—Each report required by paragraph (1) shall include the following:

“(A) A list of items produced through reverse engineering or re-engineering, disaggregated by element of the Department of Defense described in section 111(b) of title 10, United States Code that used the process established under subsection (a).

“(B) Representative case studies of items listed under subparagraph (A), including a description of the use case of each item, the efforts used to acquire the technical data or technical data rights needed to manufacture the item, and the estimated cost or time savings obtained, the estimated cost or time savings obtained over an estimated time horizon of ten years of acquisition requirements, including the identification of recurring and non-recurring costs.

“(C) Recommendations and lessons learned that may inform contracting guidance and procedures, especially regarding the creation of technical data packages and technical data rights through reverse engineering or re-engineering.”

§ 3772. Rights in technical data: provisions required in contracts

(a) CONTRACT PROVISIONS RELATING TO TECHNICAL DATA.—Regulations prescribed under section 3771 of this title shall require that, whenever practicable, a contract for supplies or services entered into by an agency named in section 3063 of this title contain appropriate provisions relating to technical data, including provisions—

(1) defining the respective rights of the United States and the contractor or subcontractor (at any tier) regarding any technical data to be delivered under the contract and providing that, in the case of a contract for a commercial product, the product shall be presumed to be developed at private expense unless shown otherwise in accordance with section 3784;

(2) specifying the technical data, if any, to be delivered under the contract and delivery schedules for such delivery;

(3) establishing or referencing procedures for determining the acceptability of technical data to be delivered under the contract;

(4) establishing separate contract line items for the technical data, if any, to be delivered under the contract;

(5) to the maximum practicable extent, identifying, in advance of delivery, technical data which is to be delivered with restrictions on the right of the United States to use such data;

(6) requiring the contractor—

(A) to revise any technical data delivered under the contract to reflect engineering design changes made during the performance of the contract and affecting the form, fit, and function of the items specified in the contract; and

(B) to deliver such revised technical data to an agency within a time specified in the contract;

(7) establishing remedies to be available to the United States when technical data required to be delivered or made available under the contract is found—

(A) to be incomplete or inadequate; or

(B) to not satisfy the requirements of the contract concerning technical data;

(8) authorizing the head of the agency to withhold payments under the contract (or exercise such other remedies as the head of the agency considers appropriate) during any period if the contractor does not meet the requirements of the contract pertaining to the delivery of technical data;

(9) providing that, in addition to technical data that is already subject to a contract delivery requirement, the United States may require, until the date occurring six years after acceptance of the last item (other than technical data) under a contract or the date of contract termination, whichever is later, the delivery of technical data that has been generated in the performance of the contract, and compensate the contractor only for reasonable costs incurred for having converted and delivered the data in the required form, upon a termination that—

(A) the technical data is needed for the purpose of procurement, sustainment, modification, or upgrade (including through competitive means) of a major system or subsystem thereof, a weapon system or subsystem thereof, or any noncommercial product or process; and

(B) the technical data—

(i) pertains to an item or process developed in whole or in part with Federal funds; or

(ii) is described in paragraphs (4)(A)(ii), (6), and (7) of section 3771(b) of this title; and

(10) providing that the United States is not foreclosed from requiring the delivery of the technical data by a failure to challenge, in accordance with the requirements of section 3782 of this title, the contractor's assertion of a use or release restriction on the technical data.

(b) Nothing in this subchapter or in section 3208 of this title prohibits the Secretary of Defense from—

(1) prescribing standards for determining whether a contract entered into by the Department of Defense shall provide for a time to be specified in the contract after which the United States shall have the right to use (or have used) for any purpose of the United States all technical data required to be delivered to the United States under the contract or providing for such a period of time (not to exceed 7 years) as a negotiation objective;

(2) notwithstanding any limitation upon the license rights conveyed under section 3771 of this title, allowing a covered Government support contractor access to and use of any technical data delivered under a contract for the sole purpose of furnishing independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of the program or effort to which such technical data relates; or

(3) prescribing reasonable and flexible guidelines, including negotiation objectives, for the conduct of negotiations regarding the respective rights in technical data of the United States and the contractor.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1833(a)(1), (c), Jan. 1, 2021, 134 Stat. 4226, 4228.)

Editorial Notes

CODIFICATION

The text of subsec. (b) of section 2320 of this title, which was transferred to this section, redesignated as subsec. (a), and amended by Pub. L. 116–283, § 1833(c)(1), (2), was based on Pub. L. 98–525, title XII, § 1216(a), Oct. 19, 1984, 98 Stat. 2596; Pub. L. 103–355, title VIII, § 8106(a), Oct. 13, 1994, 108 Stat. 3393; Pub. L. 108–136, div. A, title VIII, § 844, Nov. 24, 2003, 117 Stat. 1553; Pub. L. 112–81, div. A, title VIII, 815(a), Dec. 31, 2011, 125 Stat. 1492; Pub. L. 114–328, div. A, title VIII, § 809(c), Dec. 23, 2016, 130 Stat. 2267; Pub. L. 115–232, div. A, title VIII, § 836(c)(7), Aug. 13, 2018, 132 Stat. 1866.

The text of subsec. (c) of section 2320 of this title, which was transferred to this section, redesignated as subsec. (b), and amended by Pub. L. 116–283, § 1833(c)(1), (3), was based on Pub. L. 98–525, title XII, § 1216(a), Oct. 19, 1984, 98 Stat. 2596; Pub. L. 100–180, div. A, title VIII, § 808(b), Dec. 4, 1987, 101 Stat. 1130; Pub. L. 111–84, div. A, title VIII, § 821(a), Oct. 28, 2009, 123 Stat. 2411; Pub. L. 111–383, div. A, title VIII, § 801(a)(1), Jan. 7, 2011, 124 Stat. 4253; Pub. L. 112–81, div. A, title VIII, § 802(b)(1), Dec. 31, 2011, 125 Stat. 1485.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 1833(c)(1), (2)(A)–(C), redesignated subsec. (b) of section 2320 of this title as subsec. (a) of this section, inserted heading, and substituted “section 3771 of this title” for “subsection (a)” and “section 3063” for “section 2303” in introductory provisions.

Subsec. (a)(1). Pub. L. 116–283, § 1833(c)(2)(D), substituted “section 3784” for “section 2321(f)”.

Subsec. (a)(6). Pub. L. 116–283, § 1833(c)(2)(E), inserted dash after “the contractor” and reorganized remainder of text into designated subpars. (A) and (B).

Subsec. (a)(7). Pub. L. 116–283, § 1833(c)(2)(F), inserted dash after “is found” and reorganized remainder of text into designated subpars. (A) and (B).

Subsec. (a)(9)(B)(ii). Pub. L. 116–283, § 1833(c)(2)(G), substituted “paragraphs (4)(A)(ii), (6), and (7) of section 3771(b) of this title” for “subparagraphs (D)(i)(II), (F), and (G) of subsection (a)(2)”.

Subsec. (a)(10). Pub. L. 116–283, § 1833(c)(2)(H), substituted “section 3782” for “section 2321(d)”.

Subsec. (b). Pub. L. 116–283, § 1833(c)(3)(A), which directed substitution of “in this subchapter or in section 3208” for “in this section or in section 2305(a)”, was executed by making the substitution for “in this section or in section 2305(d)” in introductory provisions to reflect the probable intent of Congress.

Pub. L. 116–283, § 1833(c)(1) redesignated subsec. (c) of section 2320 of this title as subsec. (b) of this section.

Subsec. (b)(2). Pub. L. 116–283, § 1833(c)(3)(B), substituted “section 3771 of this title” for “subsection (a)”.

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.

§ 3773. Domestic business concerns: programs for replenishment parts

The Secretary of Defense shall by regulation establish programs which provide domestic business concerns an opportunity to purchase or bor-

row replenishment parts from the United States for the purpose of design replication or modification, to be used by such concerns in the submission of subsequent offers to sell the same or like parts to the United States. Nothing in this section limits the authority of the head of an agency to impose restrictions on such a program related to national security considerations, inventory needs of the United States, the improbability of future purchases of the same or like parts, or any additional restriction otherwise required by law.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1833(a)(1), (d), Jan. 1, 2021, 134 Stat. 4226, 4229.)

Editorial Notes

CODIFICATION

The text of subsec. (d) of section 2320 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1833(d), was based on Pub. L. 98–525, title XII, § 1216(a), Oct. 19, 1984, 98 Stat. 2597.

AMENDMENTS

2021—Pub. L. 116–283, § 1833(d), transferred subsec. (d) of section 2320 of this title to this section, struck out subsec. (d) designation at beginning, and substituted “this section” for “this subsection”.

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.

§ 3774. Major weapon systems and subsystems: long-term technical data needs

(a) ASSESSMENTS AND ACQUISITIONS STRATEGIES.—

(1) The Secretary of Defense shall require program managers for major weapon systems and subsystems of major weapon systems to—
 (A) assess the long-term technical data needs of such systems and subsystems; and
 (B) establish corresponding acquisition strategies that provide for technical data rights needed to sustain such systems and subsystems over their life cycle.

(2) Such strategies may include—

(A) the development of maintenance capabilities within the Department of Defense; or
 (B) competition for contracts for sustainment of such systems or subsystems.

(b) REQUIREMENTS RELATING TO ASSESSMENTS AND ACQUISITION STRATEGIES.—Assessments and corresponding acquisition strategies developed under subsection (a) with respect to a weapon system or subsystem shall—

(1) be developed before issuance of a contract solicitation for the weapon system or subsystem;

(2) address the merits of including a priced contract option for the future delivery of technical data that were not acquired upon initial contract award;

(3) address the potential for changes in the sustainment plan over the life cycle of the weapon system or subsystem; and