

(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

(4) apply to weapon systems and subsystems that are to be supported by performance-based logistics arrangements as well as to weapons systems and subsystems that are to be supported by other sustainment approaches.

(c) PREFERENCE FOR SPECIALLY NEGOTIATED LICENSES.—

(1) The Secretary of Defense shall, to the maximum extent practicable, negotiate and enter into a contract with a contractor for a specially negotiated license for technical data to support the product support strategy of a major weapon system or subsystem of a major weapon system.

(2) In performing the assessment and developing the corresponding strategy required under subsection (a) for such a system or subsystem, a program manager shall consider the use of specially negotiated licenses to acquire customized technical data appropriate for the particular elements of the product support strategy.

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

Editorial Notes

CODIFICATION

The text of subsec. (e) of section 2320 of this title, which was transferred to this section, redesignated as subsecs. (a) and (b), and amended by Pub. L. 116–283, § 1833(e)(1)–(4), was based on Pub. L. 109–364, div. A, title VIII, § 802(a), Oct. 17, 2006, 120 Stat. 2312.

The text of subsec. (f) of section 2320 of this title, which was transferred to this section, redesignated as subsec. (c), and amended by Pub. L. 116–283, § 1833(e)(1), (5), was based on Pub. L. 115–91, div. A, title VIII, § 835(c)(2), Dec. 12, 2017, 131 Stat. 1471.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 1833(e)(1), (3)(A), (B), redesignated subsec. (e) of section 2320 of this title as subsec. (a) of this section, inserted heading, and designated first and second sentences of existing provisions as pars. (1) and (2), respectively. Third sentence of subsec. (a) designated subsec. (b).

Subsec. (a)(1). Pub. L. 116–283, § 1833(e)(3)(C), inserted dash after “major weapon systems to” and reorganized remainder of text into designated subpars. (A) and (B).

Subsec. (a)(2). Pub. L. 116–283, § 1833(e)(3)(D), inserted dash after “may include” and reorganized remainder of text into designated subpars. (A) and (B).

Subsec. (b). Pub. L. 116–283, § 1833(e)(2), (4), designated third sentence of subsec. (a) as subsec. (b), inserted heading, and substituted “developed under subsection (a) with respect to” for “developed under this section with respect to” in introductory provisions.

Subsec. (c). Pub. L. 116–283, § 1833(e)(1), (5), redesignated subsec. (f) of section 2320 of this title as subsec. (c) of this section, designated first and second sentences of existing provisions as pars. (1) and (2), respectively, and, in par. (2), substituted “subsection (a)” for “subsection (e)”.

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.

REGULATIONS

Pub. L. 109–364, div. A, title VIII, § 802(c), Oct. 17, 2006, 120 Stat. 2313, provided that: “Not later than 180 days after the date of the enactment of this Act [Oct. 17, 2006], the Secretary of Defense shall revise regulations under section 2320 of title 10, United States Code [see 10 U.S.C. 3771 et seq.], to implement subsection (e) of such section [see 10 U.S.C. 3774(a), (b)] (as added by this section), including incorporating policy changes developed under such subsection into Department of Defense Directive 5000.1 and Department of Defense Instruction 5000.2.”

GUIDANCE RELATING TO RIGHTS IN TECHNICAL DATA

Pub. L. 111–383, div. A, title VIII, § 824(a), Jan. 7, 2011, 124 Stat. 4269, provided that: “Not later than 180 days after the date of the enactment of this Act [Jan. 7, 2011], the Secretary of Defense shall review guidance issued by the military departments on the implementation of section 2320(e) of title 10, United States Code [see 10 U.S.C. 3774(a), (b)], to ensure that such guidance is consistent with the guidance issued by the Under Secretary of Defense for Acquisition, Technology, and Logistics and the requirements of this section [amending former sections 2320 and 2321 of this title]. Such guidance shall be designed to ensure that the United States—

“(1) preserves the option of competition for contracts for the production and sustainment of systems or subsystems that are developed exclusively with Federal funds as defined in accordance with the amendments made by this section; and

“(2) is not required to pay more than once for the same technical data.”

§ 3775. Definitions

(a) COVERED GOVERNMENT SUPPORT CONTRACTOR DEFINED.—In this subchapter, the term “covered Government support contractor” means a contractor under a contract the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government’s management and oversight of a program or effort (rather than to directly furnish an end item or service to accomplish a program or effort), which contractor—

(1) is not affiliated with the prime contractor or a first-tier subcontractor on the program or effort, or with any direct competitor of such prime contractor or any such first-tier subcontractor in furnishing end items or services of the type developed or produced on the program or effort; and

(2) executes a contract with the Government agreeing to and acknowledging—

(A) that proprietary or nonpublic technical data furnished will be accessed and used only for the purposes stated in that contract;

(B) that the covered Government support contractor will enter into a non-disclosure agreement with the contractor to whom the rights to the technical data belong;

(C) that the covered Government support contractor will take all reasonable steps to protect the proprietary and nonpublic nature of the technical data furnished to the covered Government support contractor during the program or effort for the period of time in which the Government is restricted from disclosing the technical data outside of the Government;

(D) that a breach of that contract by the covered Government support contractor