

(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

with regard to a third party's ownership or rights in such technical data may subject the covered Government support contractor—

(i) to criminal, civil, administrative, and contractual actions in law and equity for penalties, damages, and other appropriate remedies by the United States; and

(ii) to civil actions for damages and other appropriate remedies by the contractor or subcontractor whose technical data is affected by the breach; and

(E) that such technical data provided to the covered Government support contractor under the authority of this section shall not be used by the covered Government support contractor to compete against the third party for Government or non-Government contracts.

(b) **ADDITIONAL DEFINITIONS.**—In this subchapter, the terms “major system component”, “modular system interface”, and “modular open system approach” have the meanings provided in section 4401 of this title.

(Added and amended Pub. L. 116–283, div. A, title XVIII, §1833(a)(1), (f), Jan. 1, 2021, 134 Stat. 4226, 4230.)

#### Editorial Notes

##### CODIFICATION

The text of subsec. (g) of section 2320 of this title, which was transferred to this section, redesignated as subsec. (a), and amended by Pub. L. 116–283, §1833(f)(1), (2)(A), was based on Pub. L. 111–84, div. A, title VIII, §821(b), Oct. 28, 2009, 123 Stat. 2411; Pub. L. 114–328, div. A, title VIII, §809(d)(1), Dec. 23, 2016, 130 Stat. 2267; Pub. L. 115–91, div. A, title VIII, §835(c)(1), Dec. 12, 2017, 131 Stat. 1471.

The text of subsec. (h) of section 2320 of this title, which was transferred to this section, redesignated as subsec. (b), and amended by Pub. L. 116–283, §1833(f), was based on Pub. L. 114–328, div. A, title VIII, §809(d)(2), Dec. 23, 2016, 130 Stat. 2267; Pub. L. 115–91, div. A, title VIII, §835(c)(1), Dec. 12, 2017, 131 Stat. 1471; Pub. L. 116–283, div. A, title VIII, §804(b)(2)(A)(ii), Jan. 1, 2021, 134 Stat. 3739.

##### AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, §1833(f)(1), (2)(A), redesignated subsec. (g) of section 2320 of this title as subsec. (a) of this section and substituted “In this subchapter,” for “In this section,” in introductory provisions.

Subsec. (b). Pub. L. 116–283, §1833(f), redesignated subsec. (h) of section 2320 of this title as subsec. (b) of this section and substituted “In this subchapter,” for “In this section,” and “section 4401” for “section 2446a”.

#### 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.

#### SUBCHAPTER II—VALIDATION OF PROPRIETARY DATA RESTRICTIONS

Sec. 3781. Technical data: contractor justification for restrictions; review of restrictions.

Sec. 3782. Technical data: challenges to contractor restrictions.

3783. Technical data: time for contractors to submit justifications.

3784. Technical data under contracts for commercial items: presumption of development exclusively at private expense.

3785. Technical data: decision by contracting officer; claims; rights and liability upon final disposition.

3786. Use or release restriction: definition.

#### § 3781. Technical data: contractor justification for restrictions; review of restrictions

(a) **CONTRACTS COVERED BY SUBCHAPTER.**—This subchapter applies to any contract for supplies or services entered into by the Department of Defense that includes provisions for the delivery of technical data.

(b) **CONTRACTOR JUSTIFICATION FOR RESTRICTIONS.**—A contract subject to this subchapter shall provide that a contractor under the contract and any subcontractor under the contract at any tier shall be prepared to furnish to the contracting officer a written justification for any use or release restriction (as defined in section 3786 of this title) asserted by the contractor or subcontractor.

(c) **REVIEW OF RESTRICTIONS.**—

(1) The Secretary of Defense shall ensure that there is a thorough review of the appropriateness of any use or release restriction asserted with respect to technical data by a contractor or subcontractor at any tier under a contract subject to this subchapter.

(2) The review of an asserted use or release restriction under paragraph (1) shall be conducted before the end of the three-year period beginning on the later of—

(A) the date on which final payment is made on the contract under which the technical data is required to be delivered; or

(B) the date on which the technical data is delivered under the contract.

(Added and amended Pub. L. 116–283, div. A, title XVIII, §1833(g), (h), Jan. 1, 2021, 134 Stat. 4231.)

#### Editorial Notes

##### CODIFICATION

The text of subsecs. (a), (b), and (c) of section 2321 of this title, which were transferred to this section and amended by Pub. L. 116–283, §1833(h), was based on Pub. L. 100–26, §7(a)(5)(A)(ii), Apr. 21, 1987, 101 Stat. 276.

##### PRIOR PROVISIONS

A prior section 3781, act Aug. 10, 1956, ch. 1041, 70A Stat. 218; Pub. L. 86–616, §2(a), July 12, 1960, 74 Stat. 386, authorized Secretary of the Army to convene at any time a board of officers to review record of any commissioned officer on active list of Regular Army to determine whether he should be required, because of substandard performance of duty, to show cause for his retention on active list, prior to repeal by Pub. L. 96–513, title II, §213, title VII, §701, Dec. 12, 1980, 94 Stat. 2885, 2955, effective Sept. 15, 1981. See section 1181(a) of this title.

##### AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, §1833(h)(1), (2), transferred subsec. (a) of section 2321 of this title to this section and substituted “by Subchapter” for “by Section” in heading and “This subchapter” for “This section” in text.