

year 2017 or pursuant to the plan submitted under subsection (c) for demonstrations of the following capabilities:

- “(1) Swarming of multiple unmanned air vehicles.
 - “(2) Unmanned, modular fixed-wing aircraft that can be rapidly adapted to multiple missions and serve as a fifth generation weapons augmentation platform.
 - “(3) Vertical takeoff and landing tiltrotor aircraft.
 - “(4) Integration of a directed energy weapon on an air, sea, or ground platform.
 - “(5) Swarming of multiple unmanned underwater vehicles.
 - “(6) Commercial small synthetic aperture radar (SAR) satellites with on-board machine learning for automated, real-time feature extraction and predictive analytics.
 - “(7) Active protection system to defend against rocket-propelled grenades and anti-tank missiles.
 - “(8) Defense against hypersonic weapons, including sensors.
 - “(9) Unmanned ground logistics and unmanned air logistics capabilities enhancement.
 - “(10) Other systems as designated by the Secretary.
- “(e) DEFINITIONS.—In this section:
- “(1) NONTRADITIONAL DEFENSE CONTRACTOR.—The term ‘nontraditional defense contractor’ has the meaning given the term in section 3014 of title 10, United States Code.
 - “(2) SMALL BUSINESS CONCERN.—The term ‘small business concern’ has the meaning given the term in section 3 of the Small Business Act (15 U.S.C. 632).
 - “(f) SUNSET.—The authority under this section expires at the close of September 30, 2026.”

ORGANIZATIONAL CONFLICTS OF INTEREST IN MAJOR DEFENSE ACQUISITION PROGRAMS

Pub. L. 111-23, title II, § 207(a)–(c), May 22, 2009, 123 Stat. 1728, 1729, directed the Secretary of Defense to revise, not later than 270 days after May 22, 2009, the Defense Supplement to the Federal Acquisition Regulation to provide uniform guidance and tighten existing requirements for organizational conflicts of interest by contractors in major defense acquisition programs and directed the Panel on Contracting Integrity established pursuant to former section 813 of Pub. L. 109-364 (former 10 U.S.C. 2304 note) to present recommendations on measures to eliminate or mitigate organizational conflicts of interest in major defense acquisition programs.

§ 4292. Contracts: limitations on lead system integrators

(a) IN GENERAL.—Except as provided in subsection (b), no entity performing lead system integrator functions in the acquisition of a major system by the Department of Defense may have any direct financial interest in the development or construction of any individual system or element of any system of systems.

(b) EXCEPTION.—An entity described in subsection (a) may have a direct financial interest in the development or construction of an individual system or element of a system of systems if—

- (1) the Secretary of Defense certifies to the Committees on Armed Services of the Senate and the House of Representatives that—

(A) the entity was selected by the Department of Defense as a contractor to develop or construct the system or element concerned through the use of competitive procedures; and

(B) the Department took appropriate steps to prevent any organizational conflict of interest in the selection process; or

- (2) the entity was selected by a subcontractor to serve as a lower-tier subcontractor,

through a process over which the entity exercised no control.

(c) CONSTRUCTION.—Nothing in this section shall be construed to preclude an entity described in subsection (a) from performing work necessary to integrate two or more individual systems or elements of a system of systems with each other.

(Added Pub. L. 109-364, div. A, title VIII, § 807(a)(1), Oct. 17, 2006, 120 Stat. 2315, § 2410p; renumbered § 4292, Pub. L. 116-283, div. A, title XVIII, § 1847(f)(1), Jan. 1, 2021, 134 Stat. 4258.)

Editorial Notes

AMENDMENTS

2021—Pub. L. 116-283 renumbered section 2410p of this title as this section.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

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 a note preceding section 3001 of this title.

EFFECTIVE DATE

Pub. L. 109-364, div. A, title VIII, § 807(a)(3), Oct. 17, 2006, 120 Stat. 2316, provided that: “Section 2410p of title 10, United States Code [now 10 U.S.C. 4292], as added by paragraph (1), shall apply with respect to contracts entered into after December 31, 2006.”

PROHIBITION ON NEW LEAD SYSTEMS INTEGRATORS

Pub. L. 110-181, div. A, title VIII, § 802, Jan. 28, 2008, 122 Stat. 206, as amended by Pub. L. 110-417, [div. A], title I, § 112, Oct. 14, 2008, 122 Stat. 4374; Pub. L. 116-92, div. A, title IX, § 902(100), Dec. 20, 2019, 133 Stat. 1555, provided that:

“(a) PROHIBITIONS ON THE USE OF LEAD SYSTEMS INTEGRATORS.—

“(1) PROHIBITION ON NEW LEAD SYSTEMS INTEGRATORS.—Effective October 1, 2010, the Department of Defense may not award a new contract for lead systems integrator functions in the acquisition of a major system to any entity that was not performing lead systems integrator functions in the acquisition of the major system prior to the date of the enactment of this Act [Jan. 28, 2008].

“(2) PROHIBITION ON LEAD SYSTEMS INTEGRATORS BEYOND LOW-RATE INITIAL PRODUCTION.—Effective on the date of the enactment of this Act, the Department of Defense may award a new contract for lead systems integrator functions in the acquisition of a major system only if—

“(A) the major system has not yet proceeded beyond low-rate initial production; or

“(B) the Secretary of Defense determines in writing that it would not be practicable to carry out the acquisition without continuing to use a contractor to perform lead systems integrator functions and that doing so is in the best interest of the Department.

“(3) REQUIREMENTS RELATING TO DETERMINATIONS.—A determination under paragraph (2)(B)—

“(A) shall specify the reasons why it would not be practicable to carry out the acquisition without continuing to use a contractor to perform lead systems integrator functions (including a discussion of alternatives, such as the use of the Department of Defense workforce, or a system engineering and technical assistance contractor);

“(B) shall include a plan for phasing out the use of contracted lead systems integrator functions

over the shortest period of time consistent with the interest of the national defense;

“(C) may not be delegated below the level of the Under Secretary of Defense for Acquisition and Sustainment; and

“(D) shall be provided to the Committees on Armed Services of the Senate and the House of Representatives at least 45 days before the award of a contract pursuant to the determination.

“(b) ACQUISITION WORKFORCE.—

“(1) REQUIREMENT.—The Secretary of Defense shall ensure that the acquisition workforce is of the appropriate size and skill level necessary—

“(A) to accomplish inherently governmental functions related to acquisition of major systems; and

“(B) to effectuate the purpose of subsection (a) to minimize and eventually eliminate the use of contractors to perform lead systems integrator functions.

“(2) REPORT.—The Secretary shall include an update on the progress made in complying with paragraph (1) in the annual report required by section 820 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364; 120 Stat. 2330) [former 10 U.S.C. 1701 note].

“(c) EXCEPTION FOR CONTRACTS FOR OTHER MANAGEMENT SERVICES.—The Department of Defense may continue to award contracts for the procurement of services the primary purpose of which is to perform acquisition support functions with respect to the development or production of a major system, if the following conditions are met with respect to each such contract:

“(1) The contract prohibits the contractor from performing inherently governmental functions.

“(2) The Department of Defense organization responsible for the development or production of the major system ensures that Federal employees are responsible for—

“(A) determining courses of action to be taken in the best interest of the government; and

“(B) determining best technical performance for the warfighter.

“(3) The contract requires that the prime contractor for the contract may not advise or recommend the award of a contract or subcontract for the development or production of the major system to an entity owned in whole or in part by the prime contractor.

“(d) DEFINITIONS.—In this section:

“(1) LEAD SYSTEMS INTEGRATOR.—The term ‘lead systems integrator’ means—

“(A) a prime contractor for the development or production of a major system, if the prime contractor is not expected at the time of award to perform a substantial portion of the work on the system and the major subsystems; or

“(B) a prime contractor under a contract for the procurement of services the primary purpose of which is to perform acquisition functions closely associated with inherently governmental functions with respect to the development or production of a major system.

“(2) MAJOR SYSTEM.—The term ‘major system’ has the meaning given such term in section 2302d of title 10, United States Code [now 10 U.S.C. 3041].

“(3) LOW-RATE INITIAL PRODUCTION.—The term ‘low-rate initial production’ has the meaning given such term in section 2400 of title 10, United States Code [now 10 U.S.C. 4231].

“(e) STATUS OF FUTURE COMBAT SYSTEMS PROGRAM LEAD SYSTEM INTEGRATOR.—

“(1) LEAD SYSTEMS INTEGRATOR.—In the case of the Future Combat Systems program, the prime contractor of the program shall be considered to be a lead systems integrator until 45 days after the Secretary of the Army certifies in writing to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] that such contractor is no longer serving as the lead systems integrator.

“(2) NEW CONTRACTS.—In applying subsection (a)(1) or (a)(2), any modification to the existing contract for the Future Combat Systems program, for the purpose of entering into full-rate production of major systems or subsystems, shall be considered a new contract.”

§ 4293. Major defense acquisition programs: incentive program for contractors to purchase capital assets manufactured in United States

(a) ESTABLISHMENT OF INCENTIVE PROGRAM.—The Secretary of Defense shall plan and establish an incentive program in accordance with this section for contractors to purchase capital assets manufactured in the United States in part with funds available to the Department of Defense.

(b) DEFENSE INDUSTRIAL CAPABILITIES FUND MAY BE USED.—The Secretary of Defense may use the Defense Industrial Capabilities Fund, established under section 814 of the National Defense Authorization Act for Fiscal Year 2004, for incentive payments under the program established under this section.

(c) APPLICABILITY TO MAJOR DEFENSE ACQUISITION PROGRAM CONTRACTS.—The incentive program shall apply to contracts for the procurement of a major defense acquisition program.

(d) CONSIDERATION.—The Secretary of Defense shall provide consideration in source selection in any request for proposals for a major defense acquisition program for offerors with eligible capital assets.

(Added Pub. L. 108-136, div. A, title VIII, § 822(a)(1), Nov. 24, 2003, 117 Stat. 1546, § 2436; renumbered § 4293, Pub. L. 116-283, div. A, title XVIII, § 1847(f)(2), Jan. 1, 2021, 134 Stat. 4258.)

Editorial Notes

REFERENCES IN TEXT

Section 814 of the National Defense Authorization Act for Fiscal Year 2004, referred to in subsec. (b), is section 814 of Pub. L. 108-136, which is set out in a note under section 4811 of this title.

PRIOR PROVISIONS

Prior sections 4301 to 4303 and 4306 were renumbered sections 7401 to 7403 and 7406 of this title, respectively.

Prior sections 4307 and 4308 were repealed by Pub. L. 104-106, div. A, title XVI, § 1624(a)(1), (c) Feb. 10, 1996, 110 Stat. 522, effective on the earlier of the date on which the Secretary of the Army submits a certification in accordance with section 5523 of former Title 36, Patriotic Societies and Observances, or Oct. 1, 1996.

Section 4307, act Aug. 10, 1956, ch. 1041, 70A Stat. 235, permitted President to detail commissioned officer of the Army or of the Marine Corps as director of civilian marksmanship.

Section 4308, acts Aug. 10, 1956, ch. 1041, 70A Stat. 236; Nov. 14, 1986, Pub. L. 99-661, div. A, title III, § 318(a), 100 Stat. 3855; Nov. 5, 1990, Pub. L. 101-510, div. A, title III, § 328(b)-(d), (g)(1), 104 Stat. 1533, 1534; Oct. 23, 1992, Pub. L. 102-484, div. A, title III, § 380(a)(1), 106 Stat. 2389; Nov. 30, 1993, Pub. L. 103-160, div. A, title III, § 372, 107 Stat. 1635, related to authority of Secretary of the Army to promote civilian marksmanship. See section 40701 et seq. of Title 36, Patriotic and National Observances, Ceremonies, and Organizations.

A prior section 4309 was renumbered section 7409 of this title.

Prior sections 4310 and 4311 were repealed by Pub. L. 104-106, div. A, title XVI, § 1624(a)(1), (c), Feb. 10, 1996, 110 Stat. 522, effective on the earlier of the date on