

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

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 4310, act Aug. 10, 1956, ch. 1041, 70A Stat. 236, permitted President and Secretary of the Army to detail members of Army as rifle instructors for civilians.

Section 4311, acts Aug. 10, 1956, ch. 1041, 70A Stat. 237; Nov. 5, 1990, Pub. L. 101-510, div. A, title III, §328(f), 104 Stat. 1534, permitted Secretary of the Army to provide for issue of military rifles and sale of ammunition for use in rifle instruction for civilians.

Prior sections 4312 and 4313 were repealed by Pub. L. 105-225, §6(b), Aug. 12, 1998, 112 Stat. 1499.

Section 4312, act Aug. 10, 1956, ch. 1041, 70A Stat. 237, related to National rifle and pistol matches and small-arms firing school.

Section 4313, act Aug. 10, 1956, ch. 1041, 70A Stat. 237; Pub. L. 99-145, title XIII, §1301(b)(3)(B), Nov. 8, 1985, 99 Stat. 735; Pub. L. 99-661, div. A, title III, §318(b), Nov. 14, 1986, 100 Stat. 3855; Pub. L. 101-510, div. A, title III, §328(a), Nov. 5, 1990, 104 Stat. 1533; Pub. L. 102-484, div. A, title III, §380(c)(1), Oct. 23, 1992, 106 Stat. 2391; Pub. L. 103-35, title II, §201(g)(10)(A), May 31, 1993, 107 Stat. 100; Pub. L. 104-106, div. A, title XVI, §1624(b)(1), Feb. 10, 1996, 110 Stat. 522, related to expenses of National Matches and small-arms school.

Prior sections 4314 and 4315 were renumbered sections 7414 and 7415 of this title, respectively.

A prior section 4316, added Pub. L. 102-484, div. A, title III, §380(d)(1), Oct. 23, 1992, 106 Stat. 2391; amended Pub. L. 104-106, div. A, title XVI, §1624(b)(2), Feb. 10, 1996, 110 Stat. 522, related to reporting requirements of the Secretary of the Army, prior to repeal by Pub. L. 115-91, div. A, title X, §1051(a)(27)(A), Dec. 12, 2017, 131 Stat. 1562.

Prior sections 4317 to 4320 were renumbered sections 7417 to 7420 of this title, respectively.

AMENDMENTS

2021—Pub. L. 116-283 renumbered section 2436 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. 108-136, div. A, title VIII, §822(c), Nov. 24, 2003, 117 Stat. 1547, provided that: “Section 2436 of title 10, United States Code [now 10 U.S.C. 4293], as added by subsection (a), shall apply with respect to contracts entered into after the expiration of the 18-month period beginning on the date of the enactment of this Act [Nov. 24, 2003].”

REGULATIONS

Pub. L. 108-136, div. A, title VIII, §822(b), Nov. 24, 2003, 117 Stat. 1547, provided that:

“(1) The Secretary of Defense shall prescribe regulations as necessary to carry out section 2436 of title 10, United States Code [now 10 U.S.C. 4293], as added by this section.

“(2) The Secretary may prescribe interim regulations as necessary to carry out such section. For this purpose, the Secretary is excepted from compliance with the notice and comment requirements of section 553 of title 5, United States Code. All interim rules prescribed under the authority of this paragraph that are not earlier superseded by final rules shall expire no later than 270 days after the effective date of section 2436 of title 10, United States Code [now 10 U.S.C. 4293] [see Effective Date note above], as added by this section.”

CHAPTER 323—LIFE-CYCLE AND SUSTAINMENT

Sec.	
4321.	Development of major defense acquisition programs: sustainment of system to be replaced.
4322.	[Reserved].
4323.	Sustainment reviews.
4324.	Life-cycle management and product support.
4325.	Major weapon systems: assessment, management, and control of operating and support costs.
4326.	[Reserved].
4327.	[Reserved].
4328.	Weapon system design: sustainment factors.

Editorial Notes

PRIOR PROVISIONS

A prior chapter 323 “INNOVATION”, consisting of renumbered section 4301, was repealed by Pub. L. 116-283, div. A, title XVIII, §1841(a)(1)(A), Jan. 1, 2021, 134 Stat. 4242.

AMENDMENTS

2021—Pub. L. 117-81, div. A, title XVII, §1701(f)(9), Dec. 27, 2021, 135 Stat. 2140, added item 4324 and struck out former item 4324 “Major systems: life-cycle management and product support”.

Statutory Notes and Related Subsidiaries

STANDARDIZED POLICY GUIDANCE FOR CALCULATING AIRCRAFT OPERATION AND SUSTAINMENT COSTS

Pub. L. 116-92, div. A, title XVII, §1747, Dec. 20, 2019, 133 Stat. 1847, provided that: “Not later than 270 days after the date of the enactment of this Act [Dec. 20, 2019], the Under Secretary of Defense for Acquisition and Sustainment, in coordination with the Director of Cost Analysis and Program Evaluation and in consultation with the Secretary of each of the military services, shall develop and implement standardized policy guidance for calculating aircraft operation and sustainment costs for the Department of Defense. Such guidance shall provide for a standardized calculation of—

- “(1) aircraft cost per flying hour;
- “(2) aircraft cost per aircraft tail per year;
- “(3) total cost of ownership per flying hour for aircraft systems;
- “(4) average annual operation and sustainment cost per aircraft; and
- “(5) any other cost metrics the Under Secretary of Defense determines appropriate.”

REQUIREMENTS PRIOR TO LOW-RATE INITIAL PRODUCTION

Pub. L. 112-81, div. A, title VIII, §801(c), Dec. 31, 2011, 125 Stat. 1483, as amended by Pub. L. 112-239, div. A, title III, §322(e)(3), Jan. 2, 2013, 126 Stat. 1695, provided that: “Prior to entering into a contract for low-rate initial production of a major defense acquisition program, the Secretary of Defense shall ensure that the detailed requirements for core logistics capabilities and the associated sustaining workloads required to support such requirements, have been defined.”

ACQUISITION STRATEGIES TO ENSURE COMPETITION THROUGHOUT THE LIFECYCLE OF MAJOR DEFENSE ACQUISITION PROGRAMS

Pub. L. 111-23, title II, §202, May 22, 2009, 123 Stat. 1720, as amended by Pub. L. 112-81, div. A, title VIII, §837, Dec. 31, 2011, 125 Stat. 1509; Pub. L. 112-239, div. A, title VIII, §825, Jan. 2, 2013, 126 Stat. 1833, provided that:

“(a) ACQUISITION STRATEGIES TO ENSURE COMPETITION.—The Secretary of Defense shall ensure that the acquisition strategy for each major defense acquisition program includes—