

identified under paragraph (3) within a reasonable period of time.”

Subsec. (f) to (h). Pub. L. 112–81, § 936(c), added subsec. (f) and redesignated former subsecs. (f) and (g) as (g) and (h), respectively.

2009—Subsec. (e)(4). Pub. L. 111–84 inserted “, including an enforcement mechanism and approval process;” after “plan”.

2008—Subsecs. (c) to (g). Pub. L. 110–181, § 807(a)(1), (2), added subsecs. (c) to (f), redesignated former subsec. (d) as (g), and struck out heading and text of former subsec. (c). Former text read as follows: “To the maximum extent practicable, a single data collection system shall be used to collect data under this section and information under section 2225 of this title.”

Subsec. (g)(3) to (5). Pub. L. 110–181, § 807(a)(3), added pars. (3) to (5).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1701(b)(19)(B) of Pub. L. 117–81 applicable as if included in the enactment of title XVIII of Pub. L. 116–283 as enacted, see section 1701(a)(2) of Pub. L. 117–81, set out in a note preceding section 3001 of this title and note below.

Amendment by section 1701(d)(13) of Pub. L. 117–81 to take effect immediately after the amendments made by title XVIII of Pub. L. 116–283 have taken effect, see section 1701(a)(3) of Pub. L. 117–81, set out in a note preceding section 3001 of this title and note below.

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 OF 2017 AMENDMENT

Pub. L. 115–91, div. A, title X, § 1081(d), Dec. 12, 2017, 131 Stat. 1599, provided that the amendment made by section 1081(d)(6)(A) is effective as of Dec. 23, 2016, and as if included in Pub. L. 114–328 as enacted.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–181, div. A, title VIII, § 807(b), Jan. 28, 2008, 122 Stat. 215, provided that:

“(1) The amendments made by subsection (a) [amending this section] shall be effective upon the date of the enactment of this Act [Jan. 28, 2008].

“(2) The first inventory required by section 2330a(c) of title 10, United States Code [now 10 U.S.C. 4505(c)], as added by subsection (a), shall be submitted not later than the end of the third quarter of fiscal year 2008.”

§ 4506. Procurement of services: data analysis and requirements validation

(a) IN GENERAL.—The Secretary of Defense, acting through the Under Secretary of Defense (Comptroller) and Director of Cost Assessment and Program Evaluation, shall ensure that—

(1) appropriate and sufficiently detailed data are collected and analyzed to support the validation of requirements for services contracts and inform the planning, programming, budgeting, and execution process of the Department of Defense;

(2) requirements for services contracts are evaluated appropriately and in a timely manner to inform decisions regarding the procurement of services; and

(3) decisions regarding the procurement of services consider available resources and total force management policies and procedures.

(b) SPECIFICATION OF AMOUNTS REQUESTED IN BUDGET.—Effective February 1, 2023, the Sec-

retary of Defense, acting through the Under Secretary of Defense (Comptroller) and Director of Cost Assessment and Program Evaluation, shall annually submit to Congress information on services contracts that clearly and separately identifies the amount requested for each category of services to be procured for each Defense Agency, Department of Defense Field Activity, command, or military installation. Such information shall—

(1) be submitted at or before the time of the budget submission by the President under section 1105(a) of title 31 or on the date on which the future-years defense program is submitted to Congress under section 221 of this title;

(2) cover the fiscal year covered by such budget submission by the President;

(3) be consistent with total amounts of estimated expenditures and proposed appropriations necessary to support the programs, projects, and activities of the Department of Defense included in such budget submission by the President for that fiscal year;

(4) be informed by the review of the inventory required by section 4505(c) using standard guidelines developed under subsection (d); and

(5) clearly and separately identify the amount requested and projected for the procurement of contract services for each Defense Agency, Department of Defense Field Activity, command, or military installation for the budget year and the subsequent four fiscal years in the future-years defense program submitted to Congress under section 221.

(c) DATA ANALYSIS.—(1) Each Secretary of a military department shall regularly analyze past spending patterns and anticipated future requirements with respect to the procurement of services within such military department.

(2)(A) The Secretary of Defense, acting through the Under Secretary of Defense (Comptroller) and Director of Cost Assessment and Program Evaluation, shall regularly analyze past spending patterns and anticipated future requirements with respect to the procurement of services—

(i) within each Defense Agency and Department of Defense Field Activity; and

(ii) across military departments, Defense Agencies, and Department of Defense Field Activities.

(B) The Secretaries of the military departments shall make data on services contracts available to the Secretary of Defense for purposes of conducting the analysis required under subparagraph (A).

(3) The analyses conducted under this subsection shall—

(A) identify contracts for similar services that are procured for three or more consecutive years at each Defense Agency, Department of Defense Field Activity, command, or military installation;

(B) evaluate patterns in the procurement of services, to the extent practicable, at each Defense Agency, Department of Defense Field Activity, command, or military installation and by category of services procured;

(C) be used to validate requirements for services contracts entered into after the date of the enactment of this subsection; and

(D) be used to inform decisions on the award of and funding for such services contracts.

(d) REQUIREMENTS EVALUATION.—(1) Each Services Requirements Review Board shall evaluate each requirement for a services contract, taking into consideration total force management policies and procedures, available resources, the analyses conducted under subsection (c), and contracting efficacy and efficiency. An evaluation of a services contract for compliance with contracting policies and procedures may not be considered to be an evaluation of a requirement for such services contract.

(2) The Secretary of Defense shall establish and issue standard guidelines within the Department of Defense for the evaluation of requirements for services contracts. Any such guidelines issued—

(A) shall be consistent with the “Handbook of Contract Function Checklists for Services Acquisition” issued by the Department of Defense in May 2018, or a successor or other appropriate policy; and

(B) shall be updated as necessary to incorporate applicable statutory changes to total force management policies and procedures and any other guidelines or procedures relating to the use of Department of Defense civilian employees to perform new functions and functions that are performed by contractors.

(3) The acquisition decision authority for each services contract shall certify—

(A) that a task order or statement of work being submitted to a contracting office is in compliance with the standard guidelines;

(B) that all appropriate statutory risk mitigation efforts have been made; and

(C) that such task order or statement of work does not include requirements formerly performed by Department of Defense civilian employees.

(4) The Inspector General of the Department of Defense may conduct annual audits to ensure compliance with this subsection.

(e) TIMELY PLANNING TO AVOID BRIDGE CONTRACTS.—(1) Effective October 1, 2018, the Secretary of Defense shall ensure that a requirements owner shall, to the extent practicable, plan appropriately before the date of need of a service at a Defense Agency, Department of Defense Field Activity, command, or military installation to avoid the use of a bridge contract to provide for continuation of a service to be performed through a services contract. Such planning shall include allowing time for a requirement to be validated, a services contract to be entered into, and funding for the services contract to be secured.

(2)(A) Upon the first use, due to inadequate planning (as determined by the Secretary of Defense), of a bridge contract to provide for continuation of a service to be performed through a services contract, the requirements owner, along with the contracting officer or a designee of the contracting officer for the contract, shall—

(i) for a services contract in an amount less than \$10,000,000, provide an update on the status of the bridge contract (including the rationale for using the bridge contract) to the

commander or the senior civilian official of the Defense Agency concerned, Department of Defense Field Activity concerned, command concerned, or military installation concerned, as applicable; or

(ii) for a services contract in an amount equal to or greater than \$10,000,000, provide an update on the status of the bridge contract (including the rationale for using the bridge contract) to the service acquisition executive for the military department concerned, the head of the Defense Agency concerned, the combatant commander concerned, or the Under Secretary of Defense for Acquisition and Sustainment, as applicable.

(B) Upon the second use, due to inadequate planning (as determined by the Secretary of Defense), of a bridge contract to provide for continuation of a service to be performed through a services contract in an amount less than \$10,000,000, the commander or senior civilian official referred to in subparagraph (A)(i) shall provide notification of such second use to the Vice Chief of Staff of the armed force concerned and the service acquisition executive of the military department concerned, the head of the Defense Agency concerned, the combatant commander concerned, or the Under Secretary of Defense for Acquisition and Sustainment, as applicable.

(f) DEFINITIONS.—In this section:

(1) The term “bridge contract” means—

(A) an extension to an existing contract beyond the period of performance to avoid a lapse in service caused by a delay in awarding a subsequent contract; or

(B) a new short-term contract awarded on a sole-source basis to avoid a lapse in service caused by a delay in awarding a subsequent contract.

(2) The term “requirements owner” means a member of the armed forces (other than the Coast Guard) or a civilian employee of the Department of Defense responsible for a requirement for a service to be performed through a services contract.

(3) The term “Services Requirements Review Board” has the meaning given in Department of Defense Instruction 5000.74, titled “Defense Acquisition of Services” and dated January 10, 2020, or a successor instruction.

(4) The term “acquisition decision authority” means the designated decision authority for each designated special interest services acquisition category, described in such Department of Defense Instruction.

(Added Pub. L. 115–91, div. A, title VIII, §851(a)(1), Dec. 12, 2017, 131 Stat. 1489, §2329; amended Pub. L. 115–232, div. A, title VIII, §818(a), Aug. 13, 2018, 132 Stat. 1852; Pub. L. 116–92, div. A, title VIII, §817(a), title XVII, §1731(a)(42), Dec. 20, 2019, 133 Stat. 1488, 1814; renumbered §4506 and amended Pub. L. 116–283, div. A, title XVIII, §§1856(g), 1883(b)(2), Jan. 1, 2021, 134 Stat. 4275, 4294; Pub. L. 117–81, div. A, title VIII, §815(a), Dec. 27, 2021, 135 Stat. 1824.)

Editorial Notes

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (c)(3)(C), is the date of enactment of Pub. L. 115-91, which was approved Dec. 12, 2017.

PRIOR PROVISIONS

A prior section 4506, act Aug. 10, 1956, ch. 1041, 70A Stat. 253, which related to sale, loan, or gift of samples, drawings, and information to contractors, was repealed by Pub. L. 103-160, div. A, title VIII, § 822(b)(3), Nov. 30, 1993, 107 Stat. 1706.

AMENDMENTS

2021—Pub. L. 116-283, § 1856(g), renumbered section 2329 of this title as this section.

Subsec. (b). Pub. L. 117-81, § 815(a)(1)(A), substituted “February 1, 2023” for “October 1, 2021” in introductory provisions.

Subsec. (b)(4). Pub. L. 116-283, § 1883(b)(2), substituted “section 4505(c)” for “section 2330a(c)”.

Pub. L. 117-81, § 815(a)(1)(B), added par. (4) and struck out former par. (4) which read as follows: “be organized using a common enterprise data structure developed under section 2222 of this title; and”.

Subsec. (b)(5). Pub. L. 117-81, § 815(a)(1)(B), added par. (5) and struck out former par. (5) which read as follows: “be included in the future-years defense program submitted to Congress under section 221 of this title.”

Subsec. (d). Pub. L. 117-81, § 815(a)(2), amended subsec. (d) generally. Prior to amendment, text read as follows: “Each Services Requirements Review Board shall evaluate each requirement for a services contract, taking into consideration total force management policies and procedures, available resources, the analyses conducted under subsection (c), and contracting efficacy and efficiency. An evaluation of a services contract for compliance with contracting policies and procedures may not be considered to be an evaluation of a requirement for such services contract.”

Subsec. (f). Pub. L. 117-81, § 815(a)(3), redesignated subsec. (g) as (f) and struck out former subsec. (f). Prior to amendment, text of subsec. (f) read as follows: “Except with respect to the analyses required under subsection (c), this section shall not apply to—

“(1) services contracts in support of contingency operations, humanitarian assistance, or disaster relief;

“(2) services contracts in support of a national security emergency declared with respect to a named operation; or

“(3) services contracts entered into pursuant to an international agreement.”

Subsec. (f)(3). Pub. L. 117-81, § 815(a)(4)(A), substituted “January 10, 2020” for “January 5, 2016”.

Subsec. (f)(4). Pub. L. 117-81, § 815(a)(4)(B), added par. (4).

Subsec. (g). Pub. L. 117-81, § 815(a)(3), redesignated subsec. (g) as (f).

2019—Subsec. (a). Pub. L. 116-92, § 817(a)(1), inserted “, acting through the Under Secretary of Defense (Comptroller) and Director of Cost Assessment and Program Evaluation,” after “Secretary of Defense” in introductory provisions.

Subsec. (b). Pub. L. 116-92, § 817(a)(2), inserted “, acting through the Under Secretary of Defense (Comptroller) and Director of Cost Assessment and Program Evaluation,” after “Secretary of Defense” in introductory provisions.

Subsec. (c)(2)(A). Pub. L. 116-92, § 817(a)(3), inserted “, acting through the Under Secretary of Defense (Comptroller) and Director of Cost Assessment and Program Evaluation,” after “Secretary of Defense” in introductory provisions.

Subsec. (g)(1). Pub. L. 116-92, § 1731(a)(42), substituted “term ‘bridge contract’” for “term ‘bridge contact’” in introductory provisions.

2018—Subsec. (b). Pub. L. 115-232, § 818(a)(1), substituted “October 1, 2021” for “October 1, 2022” in introductory provisions.

Subsec. (b)(1). Pub. L. 115-232, § 818(a)(2), substituted “‘at or before’” for “‘at or about’” and inserted “‘or on the date on which the future-years defense program is submitted to Congress under section 221 of this title’” after “‘title 31’”.

Subsec. (b)(5). Pub. L. 115-232, § 818(a)(3)–(5), added par. (5).

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.

§ 4507. Procurement of services: contracts for professional and technical services

(a) IN GENERAL.—The Secretary of Defense shall prescribe regulations to ensure, to the maximum extent practicable, that professional and technical services are acquired on the basis of the task to be performed rather than on the basis of the number of hours of services provided.

(b) CONTENT OF REGULATIONS.—With respect to contracts to acquire services on the basis of the number of hours of services provided, the regulations described in subsection (a) shall—

(1) include standards and approval procedures to minimize the use of such contracts;

(2) establish criteria to ensure that proposals for contracts for technical and professional services are evaluated on a basis which does not encourage contractors to propose uncompensated overtime;

(3) ensure appropriate emphasis on technical and quality factors in the source selection process;

(4) require identification of any hours in excess of 40-hour weeks included in a proposal;

(5) ensure that offerors are notified that proposals which include unrealistically low labor rates or which do not otherwise demonstrate cost realism will be considered in a risk assessment and evaluated appropriately; and

(6) provide guidance to contracting officers to ensure that any use of uncompensated overtime will not degrade the level of technical expertise required to perform the contract.

(Added Pub. L. 101-510, div. A, title VIII, § 834(a)(1), Nov. 5, 1990, 104 Stat. 1613, § 2331; amended Pub. L. 102-25, title VII, § 701(a), Apr. 6, 1991, 105 Stat. 113; Pub. L. 103-355, title I, § 1004(c), Oct. 13, 1994, 108 Stat. 3253; Pub. L. 107-107, div. A, title VIII, § 801(g)(1), Dec. 28, 2001, 115 Stat. 1177; renumbered § 4507, Pub. L. 116-283, div. A, title XVIII, § 1856(g), Jan. 1, 2021, 134 Stat. 4275.)

Editorial Notes

PRIOR PROVISIONS

A prior section 4507, act Aug. 10, 1956, ch. 1041, 70A Stat. 253, which related to sale of ordnance and ordnance stores to designers, was repealed by Pub. L. 103-160, div. A, title VIII, § 822(b)(3), Nov. 30, 1993, 107 Stat. 1706.

AMENDMENTS

2021—Pub. L. 116-283 renumbered section 2331 of this title as this section.