

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ch. 1041, 70A Stat. 253, which related to sale, loan, or gift of samples, drawings, and information to contractors, was repealed by Pub.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.

2001—Pub. L. 107-107 substituted “Procurement of services: contracts” for “Contracts” in section catchline.

1994—Subsec. (c). Pub. L. 103-355 struck out text and heading of subsec. (c). Text read as follows:

“(1) The Secretary of Defense may waive the limitation in section 2304(j)(4) of this title on the total value of task orders for specific contracting activities to the extent the Secretary considers the use of master agreements necessary in order to further the policy set forth in subsection (a).

“(2) During any fiscal year, such a waiver may not increase the total value of task orders under master agreements of a contracting activity by more than 20 percent of the value of all contracts for advisory and assistance services awarded by that contracting activity during fiscal year 1989.

“(3) Such a waiver shall not become effective until 60 days after the Secretary of Defense has published notice thereof in the Federal Register.”

1991—Subsec. (c)(1). Pub. L. 102-25 struck out “on a case-by-case basis” after “value of task orders”, substituted “considers the use of master agreements necessary” for “considers necessary the use of master agreements”, and struck out “of this section” before period at end.

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 OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103-355, see section 10001 of Pub. L. 103-355, set out as a note under section 8752 of this title.

REGULATIONS

Pub. L. 101-510, div. A, title VIII, §834(b), Nov. 5, 1990, 104 Stat. 1614, provided that: “Not later than 180 days after the date of the enactment of this Act [Nov. 5, 1990], the Secretary of Defense shall publish for public comment new regulations to carry out the requirements in this section [enacting this section]. The Secretary shall promulgate final regulations to carry out such requirements not later than 270 days after the date of the enactment of this Act.”

PROVISIONS NOT AFFECTED BY PUB. L. 103-355

Repeal of subsec. (c) of this section by Pub. L. 103-355 not to be construed as modifying or superseding, or as intended to impair or restrict, authorities or responsibilities under former 40 U.S.C. 759 or chapter 11 of Title 40, Public Buildings, Property, and Works, see section 1004(d) of Pub. L. 103-355, set out as a note preceding section 3401 of this title.

§ 4508. Contractor performance of acquisition functions closely associated with inherently governmental functions

(a) LIMITATION.—The head of an agency may enter into a contract for the performance of acquisition functions closely associated with inherently governmental functions only if the contracting officer for the contract ensures that—

(1) appropriate military or civilian personnel of the Department of Defense cannot reasonably be made available to perform the functions;

(2) appropriate military or civilian personnel of the Department of Defense are—

(A) to supervise contractor performance of the contract; and

(B) to perform all inherently governmental functions associated with the functions to be performed under the contract; and

(3) the agency addresses any potential organizational conflict of interest of the contractor in the performance of the functions under the contract, consistent with subpart 9.5 of part 9 of the Federal Acquisition Regulation and the best interests of the Department of Defense.

(b) DEFINITIONS.—In this section:

(1) The term “head of an agency” does not include the Secretary of Homeland Security or the Administrator of the National Oceanic and Atmospheric Administration.

(2) The term “inherently governmental functions” has the meaning given such term in subpart 7.5 of part 7 of the Federal Acquisition Regulation.

(3) The term “functions closely associated with inherently governmental functions” means the functions described in section 7.503(d) of the Federal Acquisition Regulation.

(4) The term “organizational conflict of interest” has the meaning given such term in subpart 9.5 of part 9 of the Federal Acquisition Regulation.

(Added Pub. L. 108-375, div. A, title VIII, §804(a)(1), Oct. 28, 2004, 118 Stat. 2007, §2383; renumbered §4508 and amended Pub. L. 116-283, div. A, title XVIII, §1856(g), (i), Jan. 1, 2021, 134 Stat. 4275.)

Editorial Notes

PRIOR PROVISIONS

A prior section 4508, acts Aug. 10, 1956, ch. 1041, 70A Stat. 253; Nov. 2, 1966, Pub. L. 89-718, §27, 80 Stat. 1119, which related tests of iron, steel, and other materials, 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 2383 of this title as this section.

Subsec. (b)(1). Pub. L. 116-283, §1856(i), which directed striking out “has the meaning given in section 2302(1) of this title, except that such term”, was executed by striking out “has the meaning given such term in section 2302(1) of this title, except that such term” before “does not include”, to reflect the probable intent of Congress.

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. 108-375, div. A, title VIII, §804(b), Oct. 28, 2004, 118 Stat. 2008, provided that: “Section 2383 of title 10, United States Code [now 10 U.S.C. 4508] (as added by subsection (a)), shall apply to contracts entered into on or after the date of the enactment of this Act [Oct. 28, 2004].”