

“(b) RESPONSIBILITIES.—The clearinghouse established pursuant to subsection (a) shall be responsible for the following:

“(1) Developing a process to rapidly assess and set priorities and needs for significant information technology needs of the Department of Defense that could be met by commercial technologies, including a process for—

“(A) aligning priorities and needs with the requirements of the commanders of the combatant command; and

“(B) proposing recommendations to the commanders of the combatant command of feasible technical solutions for further evaluation.

“(2) Identifying and assessing emerging commercial technologies (including commercial off-the-shelf technologies) that could support the warfighting mission of the Department of Defense, including the priorities and needs identified pursuant to paragraph (1).

“(3) Disseminating information about commercial technologies identified pursuant to paragraph (2) to commanders of combatant commands and other potential users of such technologies.

“(4) Identifying gaps in commercial technologies and working to stimulate investment in research and development in the public and private sectors to address those gaps.

“(5) Enhancing internal data and communications systems of the Department of Defense for sharing and retaining information regarding commercial technology priorities and needs, technologies available to meet such priorities and needs, and ongoing research and development directed toward gaps in such technologies.

“(6) Developing mechanisms, including web-based mechanisms, to facilitate communications with industry regarding the priorities and needs of the Department of Defense identified pursuant to paragraph (1) and commercial technologies available to address such priorities and needs.

“(7) Assisting in the development of guides to help small information technology companies with promising technologies to understand and navigate the funding and acquisition processes of the Department of Defense.

“(8) Developing methods to measure how well processes developed by the clearinghouse are being utilized and to collect data on an ongoing basis to assess the benefits of commercial technologies that are procured on the recommendation of the clearinghouse.

“(c) PERSONNEL.—The Secretary of Defense, acting through the Assistant Secretary of Defense for Networks and Information Integration, shall provide for the hiring and support of employees (including detailees from other components of the Department of Defense and from other Federal departments or agencies) to assist in identifying, assessing, and disseminating information regarding commercial technologies under this section.

“(d) REPORT TO CONGRESS.—Not later than one year after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the implementation of this section.”

IMPROVEMENT OF SOFTWARE ACQUISITION PROCESSES

Pub. L. 107-314, div. A, title VIII, § 804, Dec. 2, 2002, 116 Stat. 2604, provided that:

“(a) ESTABLISHMENT OF PROGRAMS.—(1) The Secretary of each military department shall establish a program to improve the software acquisition processes of that military department.

“(2) The head of each Defense Agency that manages a major defense acquisition program with a substantial software component shall establish a program to improve the software acquisition processes of that Defense Agency.

“(3) The programs required by this subsection shall be established not later than 120 days after the date of the enactment of this Act [Dec. 2, 2002].

“(b) PROGRAM REQUIREMENTS.—A program to improve software acquisition processes under this section shall, at a minimum, include the following:

“(1) A documented process for software acquisition planning, requirements development and management, project management and oversight, and risk management.

“(2) Efforts to develop appropriate metrics for performance measurement and continual process improvement.

“(3) A process to ensure that key program personnel have an appropriate level of experience or training in software acquisition.

“(4) A process to ensure that each military department and Defense Agency implements and adheres to established processes and requirements relating to the acquisition of software.

“(c) DEPARTMENT OF DEFENSE GUIDANCE.—The Assistant Secretary of Defense for Command, Control, Communications, and Intelligence, in consultation with the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall—

“(1) prescribe uniformly applicable guidance for the administration of all of the programs established under subsection (a) and take such actions as are necessary to ensure that the military departments and Defense Agencies comply with the guidance; and

“(2) assist the Secretaries of the military departments and the heads of the Defense Agencies to carry out such programs effectively by—

“(A) ensuring that the criteria applicable to the selection of sources provides added emphasis on past performance of potential sources, as well as on the maturity of the software products offered by the potential sources; and

“(B) identifying, and serving as a clearinghouse for information regarding, best practices in software development and acquisition in both the public and private sectors.

“(d) DEFINITIONS.—In this section:

“(1) The term ‘Defense Agency’ has the meaning given the term in section 101(a)(11) of title 10, United States Code.

“(2) The term ‘major defense acquisition program’ has the meaning given such term in section 139(a)(2)(B) of title 10, United States Code.”

§ 4576. Requirement for consideration of certain matters during acquisition of noncommercial computer software

(a) CONSIDERATION REQUIRED.—As part of any negotiation for the acquisition of noncommercial computer software, the Secretary of Defense shall ensure that such negotiations consider, to the maximum extent practicable, acquisition, at the appropriate time in the life cycle of the noncommercial computer software, of all software and related materials necessary—

(1) to reproduce, build, or recompile the software from original source code and required libraries;

(2) to conduct required computer software testing; and

(3) to deploy working computer software system binary files on relevant system hardware.

(b) DELIVERY OF SOFTWARE AND RELATED MATERIALS.—Any noncommercial computer software or related materials required to be delivered as a result of considerations in subsection (a) shall, to the extent appropriate as determined by the Secretary—

(1) include computer software delivered in a useable, digital format;

(2) not rely on external or additional software code or data, unless such software code

or data is included in the items to be delivered; and

(3) in the case of negotiated terms that do not allow for the inclusion of dependent software code or data, sufficient documentation to support maintenance and understanding of interfaces and software revision history.

(Added Pub. L. 115–91, div. A, title VIII, §871(a)(1), Dec. 12, 2017, 131 Stat. 1496, §2322a; renumbered §4576, Pub. L. 116–283, div. A, title XVIII, §1857(c), Jan. 1, 2021, 134 Stat. 4276.)

Editorial Notes

PRIOR PROVISIONS

Prior sections 4591 to 4595 were renumbered sections 7591 to 7595 of this title, respectively.

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2322a 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.

GUIDANCE

Pub. L. 115–91, div. A, title VIII, §871(b), Dec. 12, 2017, 131 Stat. 1497, provided that: “Not later than 180 days after the date of the enactment of this Act [Dec. 12, 2017], the Secretary of Defense shall issue updated guidance to implement section 2322a of title 10, United States Code [now 10 U.S.C. 4576], as added by subsection (a).”

Subpart H—Contract Management

Editorial Notes

AMENDMENTS

2018—Pub. L. 115–232, div. A, title VIII, §801(a), Aug. 13, 2018, 132 Stat. 1830, added subpart heading.

CHAPTER 361—CONTRACT ADMINISTRATION

Sec.

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| 4601. | Electronic submission and processing of claims for contract payments. |
| 4602. | Contracted property and services: prompt payment of vouchers. |
| 4603. | Advance notification of contract performance outside the United States. |

Editorial Notes

PRIOR PROVISIONS

A prior chapter 361 “CONTRACT ADMINISTRATION”, consisting of reserved section 4601, was repealed by Pub. L. 116–283, div. A, title XVIII, §1861(a), Jan. 1, 2021, 134 Stat. 4277.

Another prior chapter 361, consisting of sections 3811 to 3820 relating to separation for various reasons, some of which had previously been repealed, was repealed in its entirety by Pub. L. 103–337, div. A, title XVI, §§1629(a)(2), 1691(b)(1), Oct. 5, 1994, 108 Stat. 2963, 3026, effective Oct. 1, 1996.

Statutory Notes and Related Subsidiaries

PROMULGATE GUIDANCE RELATING TO CERTAIN DEPARTMENT OF DEFENSE CONTRACTS

Pub. L. 118–159, div. A, title VIII, §867, Dec. 23, 2024, 138 Stat. 2006, provided that: “Not later than January

31, 2025, the Secretary of Defense shall issue guidance on the governance and oversight of the contracts of the Department of Defense that support or enable sensitive activities.”

MODIFICATION OF CONTRACTS AND OPTIONS TO PROVIDE ECONOMIC PRICE ADJUSTMENTS

Pub. L. 118–31, div. A, title VIII, §826, Dec. 22, 2023, 137 Stat. 335, provided that:

“(a) AUTHORITY.—Amounts authorized to be appropriated by this Act [see Tables for classification] for the Department of Defense may be used to modify the terms and conditions of a contract or option to provide an economic price adjustment consistent with sections 16.203–1 and 16.203–2 of the Federal Acquisition Regulation during the relevant period of performance for that contract or option and as specified in section 16.203–3 of the Federal Acquisition Regulation, to the extent and in such amounts as specifically provided in advance in appropriations Acts for the purposes of this section.

“(b) GUIDANCE.—Not later than 30 days after the date of the enactment of this Act [Dec. 22, 2023], the Under Secretary of Defense for Acquisition and Sustainment shall issue guidance implementing the authority under this section.”

MODIFICATIONS TO EARNED VALUE MANAGEMENT SYSTEM REQUIREMENTS

Pub. L. 118–31, div. A, title VIII, §827, Dec. 22, 2023, 137 Stat. 335, as amended by Pub. L. 118–159, div. A, title VIII, §820, Dec. 23, 2024, 138 Stat. 1982, provided that:

“(a) IN GENERAL.—Not later than 180 days after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2025 [Dec. 23, 2024], the Department of Defense Supplement to the Federal Acquisition Regulation shall be revised to—

“(1) exempt all software contracts and subcontracts of the Department of Defense from earned value management system requirements;

“(2) increase the contract value threshold associated with earned value management system requirements for cost contracts or incentive contracts from \$20,000,000 to \$50,000,000; and

“(3) increase the contract value threshold associated requiring a defense contractor to use an approved earned value management system from \$50,000,000 to \$100,000,000.

“(b) IMPLEMENTATION.—If the Department of Defense Supplement to the Federal Acquisition Regulation is not revised as described in subsection (a) before the deadline specified in such subsection, the Under Secretary of Defense for Acquisition and Sustainment shall provide to the Committees on Armed Services of the Senate and the House of Representatives a briefing on the timeline for such revisions.”

CONTRACT CLOSEOUT AUTHORITY

Pub. L. 114–328, div. A, title VIII, §836, Dec. 23, 2016, 130 Stat. 2285, as amended by Pub. L. 115–91, div. A, title VIII, §824, Dec. 12, 2017, 131 Stat. 1465; Pub. L. 116–283, div. A, title VIII, §820, Jan. 1, 2021, 134 Stat. 3752, provided that:

“(a) AUTHORITY.—The Secretary of Defense may close out a contract or group of contracts as described in subsection (b) through the issuance of one or more modifications to such contracts without completing a reconciliation audit or other corrective action. To accomplish closeout of such contracts—

“(1) remaining contract balances may be offset with balances in other contract line items within a contract regardless of the year or type of appropriation obligated to fund each contract line item and regardless of whether the appropriation for such contract line item has closed; and

“(2) remaining contract balances may be offset with balances on other contracts regardless of the year or type of appropriation obligated to fund each contract and regardless of whether the appropriation has closed.