

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-330, §1, Dec. 22, 2010, 124 Stat. 3569, provided that the amendment made by section 1(4) is effective with the enactment of Pub. L. 111-281.

§ 1107. Extension of major acquisition program contracts

(a) **IN GENERAL.**—Notwithstanding section 1105(a)(2) of this title and section 2304¹ of title 10, and subject to subsections (b) and (c) of this section, the Secretary may acquire additional units procured under a Coast Guard major acquisition program contract, by extension of such contract without competition, if the Director of the Cost Analysis Division of the Department of Homeland Security determines that the costs that would be saved through award of a new contract in accordance with such sections would not exceed the costs of such an award.

(b) **LIMITATION ON NUMBER OF ADDITIONAL UNITS.**—The number of additional units acquired under a contract extension under this section may not exceed the number of additional units for which such determination is made.

(c) **DETERMINATION OF COSTS UPON REQUEST.**—The Director of the Cost Analysis Division of the Department of Homeland Security shall, at the request of the Secretary, determine for purposes of this section—

(1) the costs that would be saved through award of a new major acquisition program contract in accordance with section 1105(a)(2) for the acquisition of a number of additional units specified by the Secretary; and

(2) the costs of such award, including the costs that would be incurred due to acquisition schedule delays and asset design changes associated with such award.

(d) **NUMBER OF EXTENSIONS.**—A contract may be extended under this section more than once.

(Added Pub. L. 114-328, div. A, title VIII, §899(b)(1)(E), Dec. 23, 2016, 130 Stat. 2334, §579; renumbered §1107 and amended Pub. L. 115-282, title I, §§108(b), 123(b)(2), Dec. 4, 2018, 132 Stat. 4208, 4240.)

Editorial Notes

REFERENCES IN TEXT

Section 2304 of this title, referred to in subsec. (a), was repealed by Pub. L. 116-283, div. A, title XVIII, §§1801(d), 1881(a), Jan. 1, 2021, 134 Stat. 4151, 4293, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law. Subsecs. (a) to (l) of section 2304 were transferred to various provisions in chapter 221 of this title, with the same effective date and conditions, by Pub. L. 116-283, div. A, title XVIII, §1811(c)(2)-(5), (d)(2)-(9), Jan. 1, 2021, 134 Stat. 4165-4170.

AMENDMENTS

2018—Pub. L. 115-282, §108(b), renumbered section 579 of this title as this section.

Subsecs. (a), (c)(1). Pub. L. 115-282, §123(b)(2), substituted “section 1105(a)(2)” for “section 564(a)(2)”.

§ 1108. Department of Defense consultation

(a) **IN GENERAL.**—The Commandant shall make arrangements as appropriate with the Secretary

¹ See References in Text note below.

of Defense for support in contracting and management of Coast Guard acquisition programs. The Commandant shall also seek opportunities to make use of Department of Defense contracts, and contracts of other appropriate agencies, to obtain the best possible price for assets acquired for the Coast Guard.

(b) **INTERSERVICE TECHNICAL ASSISTANCE.**—The Commandant shall seek to maintain a memorandum of understanding or a memorandum of agreement with the Secretary of the Navy to obtain the assistance of the Office of the Assistant Secretary of the Navy for Research, Development, and Acquisition, including the Navy Systems Command, with the oversight of Coast Guard major acquisition programs. The memorandum of understanding or memorandum of agreement shall, at a minimum, provide for—

(1) the exchange of technical assistance and support that the Assistant Commandants for Acquisition, Human Resources, Engineering, and Information technology may identify;

(2) the use, as appropriate, of Navy technical expertise; and

(3) the temporary assignment or exchange of personnel between the Coast Guard and the Office of the Assistant Secretary of the Navy for Research, Development, and Acquisition, including Naval Systems Command, to facilitate the development of organic capabilities in the Coast Guard.

(c) **TECHNICAL REQUIREMENT APPROVAL PROCEDURES.**—The Chief Acquisition Officer shall adopt, to the extent practicable, procedures modeled after those used by the Navy Senior Acquisition Official to approve all technical requirements.

(Added Pub. L. 111-281, title IV, §402(a), Oct. 15, 2010, 124 Stat. 2937, §566; amended Pub. L. 111-330, §1(4), Dec. 22, 2010, 124 Stat. 3569; Pub. L. 115-232, div. C, title XXXV, §3534, Aug. 13, 2018, 132 Stat. 2322; renumbered §1108, Pub. L. 115-282, title I, §108(b), Dec. 4, 2018, 132 Stat. 4208.)

Editorial Notes

AMENDMENTS

2018—Pub. L. 115-282 renumbered section 566 of this title as this section.

Subsec. (b). Pub. L. 115-232, §3534(1), substituted “maintain” for “enter into” in introductory provisions.

Subsec. (d). Pub. L. 115-232, §3534(2), struck out subsec. (d) which related to report on assessment of Coast Guard acquisition and management capabilities.

2010—Subsec. (d). Pub. L. 111-330, which directed the amendment of Pub. L. 111-281, §402(a), which enacted this section, by substituting “Coast Guard Authorization Act of 2010” for “Coast Guard Authorization Act for Fiscal Years 2010 and 2011” wherever appearing, was executed in subsec. (d) of this section as added by section 402(a) by making the substitution for text which read “Coast Guard Authorization Act for fiscal years 2010 and 2011”, to reflect the probable intent of Congress.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-330, §1, Dec. 22, 2010, 124 Stat. 3569, provided that the amendment made by section 1(4) is effective with the enactment of Pub. L. 111-281.

§ 1109. Undefined contractual actions

(a) **IN GENERAL.**—The Coast Guard may not enter into an undefined contractual action unless such action is directly approved by the Head of Contracting Activity of the Coast Guard.

(b) **REQUESTS FOR UNDEFINITEZED CONTRACTUAL ACTIONS.**—Any request to the Head of Contracting Activity for approval of an undefined contractual action shall include a description of the anticipated effect on requirements of the Coast Guard if a delay is incurred for the purposes of determining contractual terms, specifications, and price before performance is begun under the contractual action.

(c) **REQUIREMENTS FOR UNDEFINITEZED CONTRACTUAL ACTIONS.**—

(1) **DEADLINE FOR AGREEMENT ON TERMS, SPECIFICATIONS, AND PRICE.**—A contracting officer of the Coast Guard may not enter into an undefined contractual action unless the contractual action provides for agreement upon contractual terms, specification, and price by the earlier of—

(A) the end of the 180-day period beginning on the date on which the contractor submits a qualifying proposal to definitize the contractual terms, specifications, and price; or

(B) the date on which the amount of funds obligated under the contractual action is equal to more than 50 percent of the negotiated overall ceiling price for the contractual action.

(2) **LIMITATION ON OBLIGATIONS.**—

(A) **IN GENERAL.**—Except as provided in subparagraph (B), the contracting officer for an undefined contractual action may not obligate under such contractual action an amount that exceeds 50 percent of the negotiated overall ceiling price until the contractual terms, specifications, and price are definitized for such contractual action.

(B) **EXCEPTION.**—Notwithstanding subparagraph (A), if a contractor submits a qualifying proposal to definitize an undefined contractual action before an amount that exceeds 50 percent of the negotiated overall ceiling price is obligated on such action, the contracting officer for such action may not obligate with respect to such contractual action an amount that exceeds 75 percent of the negotiated overall ceiling price until the contractual terms, specifications, and price are definitized for such contractual action.

(3) **WAIVER.**—The Commandant may waive the application of this subsection with respect to a contract if the Commandant determines that the waiver is necessary to support—

(A) a contingency operation (as that term is defined in section 101(a)(13) of title 10);

(B) operations to prevent or respond to a transportation security incident (as defined in section 70101(6)¹ of title 46);

(C) an operation in response to an emergency that poses an unacceptable threat to human health or safety or to the marine environment; or

(D) an operation in response to a natural disaster or major disaster or emergency designated by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

(4) **LIMITATION ON APPLICATION.**—This subsection does not apply to an undefined contractual action for the purchase of initial spares.

(d) **INCLUSION OF NONURGENT REQUIREMENTS.**—Requirements for spare parts and support equipment that are not needed on an urgent basis may not be included in an undefined contractual action by the Coast Guard for spare parts and support equipment that are needed on an urgent basis unless the Commandant approves such inclusion as being—

(1) good business practice; and

(2) in the best interests of the United States.

(e) **MODIFICATION OF SCOPE.**—The scope of an undefined contractual action under which performance has begun may not be modified unless the Commandant approves such modification as being—

(1) good business practice; and

(2) in the best interests of the United States.

(f) **ALLOWABLE PROFIT.**—The Commandant shall ensure that the profit allowed on an undefined contractual action for which the final price is negotiated after a substantial portion of the performance required is completed reflects—

(1) the possible reduced cost risk of the contractor with respect to costs incurred during performance of the contract before the final price is negotiated; and

(2) the reduced cost risk of the contractor with respect to costs incurred during performance of the remaining portion of the contract.

(g) **DEFINITIONS.**—In this section:

(1) **UNDEFINITEZED CONTRACTUAL ACTION.**—

(A) **IN GENERAL.**—Except as provided in subparagraph (B), the term “undefined contractual action” means a new procurement action entered into by the Coast Guard for which the contractual terms, specifications, or price are not agreed upon before performance is begun under the action.

(B) **EXCLUSION.**—The term “undefined contractual action” does not include contractual actions with respect to—

(i) foreign military sales;

(ii) purchases in an amount not in excess of the amount of the simplified acquisition threshold; or

(iii) special access programs.

(2) **QUALIFYING PROPOSAL.**—The term “qualifying proposal” means a proposal that contains sufficient information to enable complete and meaningful audits of the information contained in the proposal as determined by the contracting officer.

(Added Pub. L. 111-281, title IV, § 402(a), Oct. 15, 2010, 124 Stat. 2938, § 567; renumbered § 1109, Pub. L. 115-282, title I, § 108(b), Dec. 4, 2018, 132 Stat. 4208.)

¹ See References in Text note below.