

§ 1109. Undefined contractual actions

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

(b) **REQUESTS FOR UNDEFINITIZED CONTRACTUAL ACTIONS.**—Any request to the Head of Contracting Activity for approval of an undefinitized 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 UNDEFINITIZED CONTRACTUAL ACTIONS.**—

(1) **DEADLINE FOR AGREEMENT ON TERMS, SPECIFICATIONS, AND PRICE.**—A contracting officer of the Coast Guard may not enter into an undefinitized 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 undefinitized 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 undefinitized 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 undefinitized 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 undefinitized 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 undefinitized 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 undefinitized 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) **UNDEFINITIZED CONTRACTUAL ACTION.**—

(A) **IN GENERAL.**—Except as provided in subparagraph (B), the term “undefinitized 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 “undefinitized 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.

Editorial Notes

REFERENCES IN TEXT

Section 70101(6) of title 46, referred to in subsec. (c)(3)(B), was redesignated section 70101(7) of title 46 by Pub. L. 115-254, div. J, §1805(b)(1), Oct. 5, 2018, 132 Stat. 3534.

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsec. (c)(3)(D), is Pub. L. 93-288, May 22, 1974, 88 Stat. 143, which is classified principally to chapter 68 (§5121 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of Title 42 and Tables.

AMENDMENTS

2018—Pub. L. 115-282 renumbered section 567 of this title as this section.

§ 1110. Elevation of disputes to the Chief Acquisition Officer

If, after 90 days following the elevation to the Chief Acquisition Officer of any design or other dispute regarding level 1 or level 2 acquisition, the dispute remains unresolved, the Commandant shall provide to the appropriate congressional committees a detailed description of the issue and the rationale underlying the decision taken by the Chief Acquisition Officer to resolve the issue.

(Added Pub. L. 116-283, div. G, title LVXXXV [LXXXV], §8501(a)(5), Jan. 1, 2021, 134 Stat. 4745.)

Editorial Notes

PRIOR PROVISIONS

A prior section 1110 was renumbered section 5110 of this title.

§ 1111. Acquisition workforce authorities

(a) EXPEDITED HIRING AUTHORITY.—

(1) IN GENERAL.—For the purposes of section 3304 of title 5, the Commandant may—

(A) designate any category of acquisition positions within the Coast Guard as shortage category positions; and

(B) use the authorities in such section to recruit and appoint highly qualified persons directly to positions so designated.

(2) REPORTS.—The Commandant shall include in reports under section 1102 information described in such section regarding positions designated under this subsection.

(b) REEMPLOYMENT AUTHORITY.—

(1) IN GENERAL.—Except as provided in paragraph (2), if an annuitant receiving an annuity from the Civil Service Retirement and Disability Fund becomes employed in any category of acquisition positions designated by the Commandant under subsection (a), the annuity of the annuitant so employed shall continue. The annuitant so reemployed shall not be considered an employee for purposes of subchapter III of chapter 83 or chapter 84 of title 5.

(2)(A) ELECTION.—An annuitant retired under section 8336(d)(1) or 8414(b)(1)(A) of title 5, receiving an annuity from the Civil Service Retirement and Disability Fund, who becomes employed in any category of acquisition positions designated by the Commandant under

subsection (a) after the date of the enactment of the Elijah E. Cummings Coast Guard Authorization Act of 2020, may elect to be subject to section 8344 or 8468 of such title (as the case may be).

(i) DEADLINE.—An election for coverage under this subsection shall be filed not later than 90 days after the Commandant takes reasonable actions to notify an employee who may file an election.

(ii) COVERAGE.—If an employee files an election under this subsection, coverage shall be effective beginning on the first day of the first applicable pay period beginning on or after the date of the filing of the election.

(B) APPLICATION.—Paragraph (1) shall apply to an individual who is eligible to file an election under subparagraph (A) and does not file a timely election under clause (i) of such subparagraph.

(Added Pub. L. 116-283, div. G, title LVXXXII [LXXXII], §8219(a), Jan. 1, 2021, 134 Stat. 4655.)

Editorial Notes

REFERENCES IN TEXT

The date of the enactment of the Elijah E. Cummings Coast Guard Authorization Act of 2020, referred to in subsec. (b)(2)(A), is the date of enactment of div. G of Pub. L. 116-283, which was approved Jan. 1, 2021.

SUBCHAPTER II—IMPROVED ACQUISITION PROCESS AND PROCEDURES**Editorial Notes**

AMENDMENTS

2018—Pub. L. 115-282, title I, §108(c)(3), Dec. 4, 2018, 132 Stat. 4210, inserted subchapter II designation and heading.

§ 1131. Identification of major system acquisitions

(a) IN GENERAL.—

(1) SUPPORT MECHANISMS.—The Commandant shall develop and implement mechanisms to support the establishment of mature and stable operational requirements for all acquisitions.

(2) MISSION ANALYSIS; AFFORDABILITY ASSESSMENT.—The Commandant may not initiate a Level 1 or Level 2 acquisition project or program until the Commandant—

(A) completes a mission analysis that—

(i) identifies the specific capability gaps to be addressed by the project or program; and

(ii) develops a clear mission need to be addressed by the project or program; and

(B) prepares a preliminary affordability assessment for the project or program.

(b) ELEMENTS.—

(1) REQUIREMENTS.—The mechanisms required by subsection (a) shall ensure the implementation of a formal process for the development of a mission-needs statement, concept-of-operations document, capability development plan, and resource proposal for the initial project or program funding, and shall en-