

taining a quantifiable baseline that is to be the basis upon which a savings share ratio is established that governs the amount of payment a contractor is to receive under the contract. Before commencement of performance of such a contract, the senior procurement executive of the agency shall determine in writing that the terms of the provision are quantifiable and will likely yield value to the Government.

(5)(A) The head of the agency may retain savings realized through the use of a share-in-savings contract under this section that are in excess of the total amount of savings paid to the contractor under the contract, but may not retain any portion of such savings that is attributable to a decrease in the number of civilian employees of the Federal Government performing the function. Except as provided in subparagraph (B), savings shall be credited to the appropriation or fund against which charges were made to carry out the contract and shall be used for information technology.

(B) Amounts retained by the agency under this subsection shall—

(i) without further appropriation, remain available until expended; and

(ii) be applied first to fund any contingent liabilities associated with share-in-savings procurements that are not fully funded.

(b) CANCELLATION AND TERMINATION.—(1) If funds are not made available for the continuation of a share-in-savings contract entered into under this section in a subsequent fiscal year, the contract shall be canceled or terminated. The costs of cancellation or termination may be paid out of—

(A) appropriations available for the performance of the contract;

(B) appropriations available for acquisition of the information technology procured under the contract, and not otherwise obligated; or

(C) funds subsequently appropriated for payments of costs of cancellation or termination, subject to the limitations in paragraph (3).

(2) The amount payable in the event of cancellation or termination of a share-in-savings contract shall be negotiated with the contractor at the time the contract is entered into.

(3)(A) Subject to subparagraph (B), the head of an agency may enter into share-in-savings contracts under this section in any given fiscal year even if funds are not made specifically available for the full costs of cancellation or termination of the contract if funds are available and sufficient to make payments with respect to the first fiscal year of the contract and the following conditions are met regarding the funding of cancellation and termination liability:

(i) The amount of unfunded contingent liability for the contract does not exceed the lesser of—

(I) 25 percent of the estimated costs of a cancellation or termination; or

(II) \$5,000,000.

(ii) Unfunded contingent liability in excess of \$1,000,000 has been approved by the Director of the Office of Management and Budget or the Director's designee.

(B) The aggregate number of share-in-savings contracts that may be entered into under sub-

paragraph (A) by all agencies to which this chapter applies in a fiscal year may not exceed 5 in each of fiscal years 2003, 2004, and 2005.

(c) DEFINITIONS.—In this section:

(1) The term “contractor” means a private entity that enters into a contract with an agency.

(2) The term “savings” means—

(A) monetary savings to an agency; or

(B) savings in time or other benefits realized by the agency, including enhanced revenues (other than enhanced revenues from the collection of fees, taxes, debts, claims, or other amounts owed the Federal Government).

(3) The term “share-in-savings contract” means a contract under which—

(A) a contractor provides solutions for—

(i) improving the agency's mission-related or administrative processes; or

(ii) accelerating the achievement of agency missions; and

(B) the head of the agency pays the contractor an amount equal to a portion of the savings derived by the agency from—

(i) any improvements in mission-related or administrative processes that result from implementation of the solution; or

(ii) acceleration of achievement of agency missions.

(d) TERMINATION.—No share-in-savings contracts may be entered into under this section after September 30, 2005.

(Added Pub. L. 107-347, title II, § 210(a)(1), Dec. 17, 2002, 116 Stat. 2932.)

EFFECTIVE DATE

Section effective 120 days after Dec. 17, 2002, see section 402(a) of Pub. L. 107-347, set out as a note under section 3601 of Title 44, Public Printing and Documents.

§ 2333. Joint policies on requirements definition, contingency program management, and contingency contracting

(a) JOINT POLICY REQUIREMENT.—The Secretary of Defense, in consultation with the Chairman of the Joint Chiefs of Staff, shall develop joint policies for requirements definition, contingency program management, and contingency contracting during combat operations and post-conflict operations.

(b) REQUIREMENTS DEFINITION MATTERS COVERED.—The joint policy for requirements definition required by subsection (a) shall, at a minimum, provide for the following:

(1) The assignment of a senior commissioned officer or civilian member of the senior executive service, with appropriate experience and qualifications related to the definition of requirements to be satisfied through acquisition contracts (such as for delivery of products or services, performance of work, or accomplishment of a project), to act as head of requirements definition and coordination during combat operations, post-conflict operations, and contingency operations, if required, including leading a requirements review board involving all organizations concerned.

(2) An organizational approach to requirements definition and coordination during com-

bat operations, post-conflict operations, and contingency operations that is designed to ensure that requirements are defined in a way that effectively implements United States Government and Department of Defense objectives, policies, and decisions regarding the allocation of resources, coordination of interagency efforts in the theater of operations, and alignment of requirements with the proper use of funds.

(c) CONTINGENCY PROGRAM MANAGEMENT MATTERS COVERED.—The joint policy for contingency program management required by subsection (a) shall, at a minimum, provide for the following:

(1) The assignment of a senior commissioned officer or civilian member of the senior executive service, with appropriate program management experience and qualifications, to act as head of program management during combat operations, post-conflict operations, and contingency operations, including stabilization and reconstruction operations involving multiple United States Government agencies and international organizations, if required.

(2) A preplanned organizational approach to program management during combat operations, post-conflict operations, and contingency operations that is designed to ensure that the Department of Defense is prepared to conduct such program management.

(3) Identification of a deployable cadre of experts, with the appropriate tools and authority, and trained in processes under paragraph (6).

(4) Utilization of the hiring and appointment authorities necessary for the rapid deployment of personnel to ensure the availability of key personnel for sufficient lengths of time to provide for continuing program and project management.

(5) A requirement to provide training (including training under a program to be created by the Defense Acquisition University) to program management personnel in—

(A) the use of laws, regulations, policies, and directives related to program management in combat or contingency environments;

(B) the integration of cost, schedule, and performance objectives into practical acquisition strategies aligned with available resources and subject to effective oversight; and

(C) procedures of the Department of Defense related to funding mechanisms and contingency contract management.

(6) Appropriate steps to ensure that training is maintained for such personnel even when they are not deployed in a contingency operation.

(7) Such steps as may be needed to ensure jointness and cross-service coordination in the area of program management during contingency operations.

(d) CONTINGENCY CONTRACTING MATTERS COVERED.—(1) The joint policy for contingency contracting required by subsection (a) shall, at a minimum, provide for the following:

(A) The designation of a senior commissioned officer or civilian member of the senior

executive service in each military department with the responsibility for administering the policy.

(B) The assignment of a senior commissioned officer with appropriate acquisition experience and qualifications to act as head of contingency contracting during combat operations, post-conflict operations, and contingency operations, who shall report directly to the commander of the combatant command in whose area of responsibility the operations occur.

(C) A sourcing approach to contingency contracting that is designed to ensure that each military department is prepared to conduct contingency contracting during combat operations, post-conflict operations, and contingency operations, including stabilization and reconstruction operations involving interagency organizations, if required.

(D) A requirement to provide training (including training under a program to be created by the Defense Acquisition University) to contingency contracting personnel in—

(i) the use of law, regulations, policies, and directives related to contingency contracting operations;

(ii) the appropriate use of rapid acquisition methods, including the use of exceptions to competition requirements under section 2304 of this title, sealed bidding, letter contracts, indefinite delivery-indefinite quantity task orders, set asides under section 8(a) of the Small Business Act (15 U.S.C. 637(a)), undefinitized contract actions, and other tools available to expedite the delivery of goods and services during combat operations or post-conflict operations;

(iii) the appropriate use of rapid acquisition authority, commanders' emergency response program funds, and other tools unique to contingency contracting; and

(iv) instruction on the necessity for the prompt transition from the use of rapid acquisition authority to the use of full and open competition and other methods of contracting that maximize transparency in the acquisition process.

(E) Appropriate steps to ensure that training is maintained for such personnel even when they are not deployed in a contingency operation.

(F) Such steps as may be needed to ensure jointness and cross-service coordination in the area of contingency contracting.

(2) To the extent practicable, the joint policy for contingency contracting required by subsection (a) should be taken into account in the development of interagency plans for stabilization and reconstruction operations, consistent with the report submitted by the President under section 1035 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364; 120 Stat. 2388) on interagency operating procedures for the planning and conduct of stabilization and reconstruction operations.

(e) TRAINING FOR PERSONNEL OUTSIDE ACQUISITION WORKFORCE.—(1) The joint policy for requirements definition, contingency program

management, and contingency contracting required by subsection (a) shall provide for training of military personnel outside the acquisition workforce (including operational field commanders and officers performing key staff functions for operational field commanders) who are expected to have acquisition responsibility, including oversight duties associated with contracts or contractors, during combat operations, post-conflict operations, and contingency operations.

(2) Training under paragraph (1) shall be sufficient to ensure that the military personnel referred to in that paragraph understand the scope and scale of contractor support they will experience in contingency operations and are prepared for their roles and responsibilities with regard to requirements definition, program management (including contractor oversight), and contingency contracting.

(3) The joint policy shall also provide for the incorporation of contractors and contract operations in mission readiness exercises for operations that will include contracting and contractor support.

(f) DEFINITIONS.—In this section:

(1) CONTINGENCY CONTRACTING PERSONNEL.—The term “contingency contracting personnel” means members of the armed forces and civilian employees of the Department of Defense who are members of the defense acquisition workforce and, as part of their duties, are assigned to provide support to contingency operations (whether deployed or not).

(2) CONTINGENCY CONTRACTING.—The term “contingency contracting” means all stages of the process of acquiring property or services by the Department of Defense during a contingency operation.

(3) CONTINGENCY OPERATION.—The term “contingency operation” has the meaning provided in section 101(a)(13) of this title.

(4) ACQUISITION SUPPORT AGENCIES.—The term “acquisition support agencies” means Defense Agencies and Department of Defense Field Activities that carry out and provide support for acquisition-related activities.

(5) CONTINGENCY PROGRAM MANAGEMENT.—The term “contingency program management” means the process of planning, organizing, staffing, controlling, and leading the combined efforts of participating civilian and military personnel and organizations for the management of a specific defense acquisition program or programs during combat operations, post-conflict operations, and contingency operations.

(6) REQUIREMENTS DEFINITION.—The term “requirements definition” means the process of translating policy objectives and mission needs into specific requirements, the description of which will be the basis for awarding acquisition contracts for projects to be accomplished, work to be performed, or products to be delivered.

(Added Pub. L. 109-364, div. A, title VIII, § 854(a)(1), Oct. 17, 2006, 120 Stat. 2343; amended Pub. L. 110-181, div. A, title VIII, § 849(a), Jan. 28, 2008, 122 Stat. 245; Pub. L. 111-84, div. A, title X, § 1073(a)(23), Oct. 28, 2009, 123 Stat. 2473.)

REFERENCES IN TEXT

Section 1035 of the John Warner National Defense Authorization Act for Fiscal Year 2007, referred to in subsection (d)(2), is section 1035 of Pub. L. 109-364, div. A, title X, Oct. 17, 2006, 120 Stat. 2388, which is not classified to the Code.

AMENDMENTS

2009—Subsec. (d)(1)(D)(ii). Pub. L. 111-84, § 1073(a)(23)(A), substituted “indefinite delivery-indefinite quantity” for “indefinite delivery indefinite quantity”.

Subsec. (d)(2). Pub. L. 111-84, § 1073(a)(23)(B), substituted “the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364; 120 Stat. 2388)” for “this Act”.

Subsec. (f)(3). Pub. L. 111-84, § 1073(a)(23)(C), substituted “section 101(a)(13)” for “section 101(13)”.

2008—Subsecs. (e), (f). Pub. L. 110-181 added subsec. (e) and redesignated former subsec. (e) as (f).

DEADLINE FOR DEVELOPMENT OF JOINT POLICIES

Pub. L. 109-364, div. A, title VIII, § 854(b), Oct. 17, 2006, 120 Stat. 2346, provided that: “The Secretary of Defense shall develop the joint policies required under section 2333 of title 10, United States Code, as added by subsection (a), not later than 18 months after the date of enactment of this Act [Oct. 17, 2006].”

§ 2334. Independent cost estimation and cost analysis

(a) IN GENERAL.—The Director of Cost Assessment and Program Evaluation shall ensure that the cost estimation and cost analysis processes of the Department of Defense provide accurate information and realistic estimates of cost for the acquisition programs of the Department of Defense. In carrying out that responsibility, the Director shall—

(1) prescribe, by authority of the Secretary of Defense, policies and procedures for the conduct of cost estimation and cost analysis for the acquisition programs of the Department of Defense;

(2) provide guidance to and consult with the Secretary of Defense, the Under Secretary of Defense for Acquisition, Technology, and Logistics, the Under Secretary of Defense (Comptroller), the Secretaries of the military departments, and the heads of the Defense Agencies with respect to cost estimation in the Department of Defense in general and with respect to specific cost estimates and cost analyses to be conducted in connection with a major defense acquisition program under chapter 144 of this title or a major automated information system program under chapter 144A of this title;

(3) issue guidance relating to the proper selection of confidence levels in cost estimates generally, and specifically, for the proper selection of confidence levels in cost estimates for major defense acquisition programs and major automated information system programs;

(4) issue guidance relating to full consideration of life-cycle management and sustainability costs in major defense acquisition programs and major automated information system programs;

(5) review all cost estimates and cost analyses conducted in connection with major defense acquisition programs and major automated information system programs;