

a cost estimate conducted pursuant to subsection (a)(6), but are excess to a cost analysis or target developed pursuant to paragraph (2), shall remain available for obligation in accordance with the terms of applicable authorization and appropriations Acts.

(5) Funds described in paragraph (4)—

(A) may be used—

(i) to cover any increased program costs identified by a revised cost analysis or target developed pursuant to paragraph (2);

(ii) to acquire additional end items in accordance with the requirements of section 2308 of this title; or

(iii) to cover the cost of risk reduction and process improvements; and

(B) may be reprogrammed, in accordance with established procedures, only if determined to be excess to program needs on the basis of a cost estimate developed with the concurrence of the Director of Cost Assessment and Program Evaluation.

(f) ANNUAL REPORT ON COST ASSESSMENT ACTIVITIES.—(1) The Director of Cost Assessment and Program Evaluation shall prepare an annual report summarizing the cost estimation and cost analysis activities of the Department of Defense during the previous year and assessing the progress of the Department in improving the accuracy of its cost estimates and analyses. Each report shall include, for the year covered by such report, an assessment of—

(A) the extent to which each of the military departments and Defense Agencies have complied with policies, procedures, and guidance issued by the Director with regard to the preparation of cost estimates for major defense acquisition programs and major automated information systems;

(B) the overall quality of cost estimates prepared by each of the military departments and Defense Agencies for major defense acquisition programs and major automated information system programs; and

(C) any consistent differences in methodology or approach among the cost estimates prepared by the military departments, the Defense Agencies, and the Director.

(2) Each report under this subsection shall be submitted concurrently to the Secretary of Defense, the Under Secretary of Defense for Acquisition, Technology, and Logistics, the Under Secretary of Defense (Comptroller), and the congressional defense committees not later than 10 days after the transmittal to Congress of the budget of the President for the next fiscal year (as submitted pursuant to section 1105 of title 31).

(3)(A) Each report submitted to the congressional defense committees under this subsection shall be submitted in unclassified form, but may include a classified annex.

(B) The Director shall ensure that a report submitted under this subsection does not include any information, such as proprietary or source selection sensitive information, that could undermine the integrity of the acquisition process.

(C) The unclassified version of each report submitted to the congressional defense committees

under this subsection shall be posted on an Internet website of the Department of Defense that is available to the public.

(4) The Secretary of Defense may comment on any report of the Director to the congressional defense committees under this subsection.

(g) STAFF.—The Secretary of Defense shall ensure that the Director of Cost Assessment and Program Evaluation has sufficient professional staff of military and civilian personnel to enable the Director to carry out the duties and responsibilities of the Director under this section.

(Added Pub. L. 111-23, title I, §101(b)(1), May 22, 2009, 123 Stat. 1706; amended Pub. L. 111-383, div. A, title VIII, §811, Jan. 7, 2011, 124 Stat. 4263; Pub. L. 112-81, div. A, title VIII, §833, Dec. 31, 2011, 125 Stat. 1506.)

AMENDMENTS

2011—Subsec. (d)(1). Pub. L. 111-383, §811(1)(A), substituted “paragraph (3)” for “paragraph (2)” and “and the rationale for selecting such confidence level;” for “, the rationale for selecting such confidence level, and, if such confidence level is less than 80 percent, the justification for selecting a confidence level of less than 80 percent; and”.

Subsec. (d)(2), (3). Pub. L. 111-383, §811(1)(B), (C), added par. (2) and redesignated former par. (2) as (3).

Subsec. (e). Pub. L. 111-383, §811(3), added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (e)(1). Pub. L. 112-81, §833(2)(A), (B), substituted “shall provide that” for “shall provide that—”, struck out subpar. (A) designation before “cost estimates”, and substituted period at end for “; and”.

Subsec. (e)(2). Pub. L. 112-81, §833(3), substituted “The Under Secretary of Defense for Acquisition, Technology, and Logistics shall, in consultation with the Director of Cost Assessment and Program Evaluation, develop policies, procedures, and guidance to ensure that cost analyses and targets” for “cost analyses and targets”.

Pub. L. 112-81, §833(2)(C), redesignated par. (1)(B) as (2) and realigned margin. Former par. (2) redesignated (3).

Subsec. (e)(3). Pub. L. 112-81, §833(4), substituted “issued by the Under Secretary of Defense for Acquisition, Technology, and Logistics under paragraph (2)” for “issued by the Director of Cost Assessment and Program Evaluation”.

Pub. L. 112-81, §833(1), redesignated par. (2) as (3). Former par. (3) redesignated (4).

Subsec. (e)(4). Pub. L. 112-81, §833(1), redesignated par. (3) as (4). Former par. (4) redesignated (5).

Subsec. (e)(5). Pub. L. 112-81, §833(5), substituted “paragraph (4)” for “paragraph (3)” in introductory provisions.

Pub. L. 112-81, §833(1), redesignated par. (4) as (5).

Subsecs. (f), (g). Pub. L. 111-383, §811(2), redesignated subsecs. (e) and (f) as (f) and (g), respectively.

§ 2335. Prohibition on collection of political information

(a) PROHIBITION ON REQUIRING SUBMISSION OF POLITICAL INFORMATION.—The head of an agency may not require a contractor to submit political information related to the contractor or a subcontractor at any tier, or any partner, officer, director, or employee of the contractor or subcontractor—

(1) as part of a solicitation, request for bid, request for proposal, or any other form of communication designed to solicit offers in connection with the award of a contract for procurement of property or services; or

(2) during the course of contract performance as part of the process associated with

modifying a contract or exercising a contract option.

(b) SCOPE.—The prohibition under this section applies to the procurement of commercial items, the procurement of commercial-off-the-shelf-items, and the non-commercial procurement of supplies, property, services, and manufactured items, irrespective of contract vehicle, including contracts, purchase orders, task or deliver orders under indefinite delivery/indefinite quantity contracts, blanket purchase agreements, and basic ordering agreements.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as—

(1) waiving, superseding, restricting, or limiting the application of the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.) or preventing Federal regulatory or law enforcement agencies from collecting or receiving information authorized by law; or

(2) precluding the Defense Contract Audit Agency from accessing and reviewing certain information, including political information, for the purpose of identifying unallowable costs and administering cost principles established pursuant to section 2324 of this title.

(d) DEFINITIONS.—In this section:

(1) CONTRACTOR.—The term “contractor” includes contractors, bidders, and offerors, and individuals and legal entities who would reasonably be expected to submit offers or bids for Federal Government contracts.

(2) POLITICAL INFORMATION.—The term “political information” means information relating to political spending, including any payment consisting of a contribution, expenditure, independent expenditure, or disbursement for an electioneering communication that is made by the contractor, any of its partners, officers, directors or employees, or any of its affiliates or subsidiaries to a candidate or on behalf of a candidate for election for Federal office, to a political committee, to a political party, to a third party entity with the intention or reasonable expectation that it would use the payment to make independent expenditures or electioneering communications, or that is otherwise made with respect to any election for Federal office, party affiliation, and voting history. Each of the terms “contribution”, “expenditure”, “independent expenditure”, “candidate”, “election”, “electioneering communication”, and “Federal office” has the meaning given the term in the Federal Campaign¹ Act of 1971 (2 U.S.C. 431 et seq.).

(Added Pub. L. 112-81, div. A, title VIII, §823(a), Dec. 31, 2011, 125 Stat. 1502.)

REFERENCES IN TEXT

The Federal Election Campaign Act of 1971, referred to in subsecs. (c)(1) and (d)(2), is Pub. L. 92-225, Feb. 7, 1972, 86 Stat. 3, which is classified principally to chapter 14 (§431 et seq.) of Title 2, The Congress. For complete classification of this Act to the Code, see Short Title note set out under section 431 of Title 2 and Tables.

¹ So in original. Probably should be preceded by “Election”.

CHAPTER 138—COOPERATIVE AGREEMENTS WITH NATO ALLIES AND OTHER COUNTRIES

Subchapter I. Acquisition and Cross-Servicing Agreements 2341
II. Other Cooperative Agreements 2350a

AMENDMENTS

1990—Pub. L. 101-510, div. A, title XIV, §1484(i)(7), Nov. 5, 1990, 104 Stat. 1718, inserted “Sec.” above “2341”.
1989—Pub. L. 101-189, div. A, title IX, §931(a)(1), Nov. 29, 1989, 103 Stat. 1531, substituted “COOPERATIVE AGREEMENTS WITH NATO ALLIES AND OTHER COUNTRIES” for “ACQUISITION AND CROSS-SERVICING AGREEMENTS WITH NATO ALLIES AND OTHER COUNTRIES” in chapter heading, and added subchapter analysis, consisting of subchapters I and II.
1987—Pub. L. 100-26, §7(a)(8), Apr. 21, 1987, 101 Stat. 278, substituted “ACQUISITION AND CROSS-SERVICING AGREEMENTS WITH NATO ALLIES AND OTHER COUNTRIES” for “NORTH ATLANTIC TREATY ORGANIZATION ACQUISITION AND CROSS-SERVICING AGREEMENTS” in chapter heading.

PRIOR PROVISIONS

Chapter 138 was originally comprised of sections 2321 to 2331. Sections 2321 to 2328, 2330, and 2331, were renumbered sections 2341 to 2348, 2349, and 2350, respectively, of this title, by Pub. L. 99-145, title XIII, §1304(a)(1), (3), Nov. 8, 1985, 99 Stat. 741.

Section 2329, added Pub. L. 96-323, §2(a), Aug. 4, 1980, 94 Stat. 1018, required the Secretary of Defense to prescribe regulations to implement this chapter, prior to repeal by Pub. L. 99-145, title XIII, §1304(a)(2), Nov. 8, 1985, 99 Stat. 741.

SUBCHAPTER I—ACQUISITION AND CROSS-SERVICING AGREEMENTS

Sec. 2341. Authority to acquire logistic support, supplies, and services for elements of the armed forces deployed outside the United States.
2342. Cross-servicing agreements.
2343. Waiver of applicability of certain laws.
2344. Methods of payment for acquisitions and transfers by the United States.
2345. Liquidation of accrued credits and liabilities.
2346. Crediting of receipts.
2347. Limitation on amounts that may be obligated or accrued by the United States.
2348. Inventories of supplies not to be increased.
2349. Overseas Workload Program.
2349a. Annual report on non-NATO agreements.
2350. Definitions.

AMENDMENTS

1994—Pub. L. 103-337, div. A, title XIII, §1317(c)(2)(B), (i)(2), Oct. 5, 1994, 108 Stat. 2900, 2902, substituted “Waiver of applicability of certain laws” for “Law applicable to acquisition and cross-servicing agreements” in item 2343 and added item 2349a.

1993—Pub. L. 103-160, div. A, title XIV, §1431(a)(2), Nov. 30, 1993, 107 Stat. 1833, added item 2349.

1990—Pub. L. 101-510, div. A, title XIII, §1331(3), Nov. 5, 1990, 104 Stat. 1673, struck out item 2349 “Annual reports”.

1989—Pub. L. 101-189, div. A, title IX, §931(a)(1), Nov. 29, 1989, 103 Stat. 1531, added subchapter heading.

1986—Pub. L. 99-661, div. A, title XI, §1104(g), Nov. 14, 1986, 100 Stat. 3965, substituted “elements of the armed forces deployed outside the United States” for “United States armed forces in Europe” in item 2341.

1985—Pub. L. 99-145, title XIII, §1304(a)(6), Nov. 8, 1985, 99 Stat. 742, renumbered items 2321 to 2328 as 2341 to 2348, respectively, and items 2330 and 2331 as 2349 and 2350, respectively, and struck out item 2329 “Regulations”.