

Pub. L. 103-35, §202(a)(18)(A), made technical amendment to directory language of Pub. L. 102-484, which enacted this section.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 202(a)(18)(A) of Pub. L. 103-35 applicable as if included in the enactment of Pub. L. 102-484, see section 202(b) of Pub. L. 103-35, set out as a note under section 155 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 4470(b) of Pub. L. 102-484 provided that: "Section 2410d of title 10, United States Code, as added by subsection (a), shall apply with respect to contracts entered into beginning 120 days after the date of the enactment of this Act [Oct. 23, 1992]."

§ 2410f. Contracts for advisory and assistance services: cost comparison studies

(a) REQUIREMENT.—(1)(A) Before the Secretary of Defense enters into a contract described in subparagraph (B), the Secretary shall determine whether Department of Defense personnel have the capability to perform the services proposed to be covered by the contract.

(B) Subparagraph (A) applies to any contract of the Department of Defense for advisory and assistance services that is expected to have a value in excess of \$100,000.

(2) If the Secretary determines that Department of Defense personnel have the capability to perform the services to be covered by the contract, the Secretary shall conduct a study comparing the cost of performing the services with Department of Defense personnel and the cost of performing the services with contractor personnel.

(b) WAIVER.—The Secretary of Defense may, pursuant to guidelines prescribed by the Secretary, waive the requirement to perform a cost comparison study under subsection (a)(2) based on factors that are not related to cost.

(Added Pub. L. 103-337, div. A, title III, §363(a)(1), Oct. 5, 1994, 108 Stat. 2733.)

EFFECTIVE DATE

Section 363(c) of Pub. L. 103-337 provided that: "Section 2410f of title 10, United States Code, as added by subsection (a), shall take effect 180 days after the date of the enactment of this Act [Oct. 5, 1994]."

PROCEDURES FOR CONDUCT OF STUDIES

Section 363(b) of Pub. L. 103-337 provided that: "The Secretary of Defense shall prescribe the following procedures:

"(1) Procedures for carrying out a cost comparison study under subsection (a)(2) of section 2410f of title 10, United States Code, as added by subsection (a), which may contain a requirement that the cost comparison study include consideration of factors that are not related to cost, including the quality of the service required to be performed, the availability of Department of Defense personnel, the duration and recurring nature of the services to be performed, and the consistency of the workload.

"(2) Procedures for reviewing contracts entered into after a waiver under subsection (b) of such section to determine whether the contract is justified and sufficiently documented."

§ 2410m. Retention of amounts collected from contractor during the pendency of contract dispute

(a) RETENTION OF FUNDS.—Notwithstanding sections 1552(a) and 3302(b) of title 31, any

amount, including interest, collected from a contractor as a result of a claim made by a military department or Defense Agency under chapter 71 of title 41, shall remain available in accordance with this section to pay—

(1) any settlement of the claim by the parties;

(2) any judgment rendered in the contractor's favor on an appeal of the decision on that claim to the Armed Services Board of Contract Appeals under section 7104(a) of title 41; or

(3) any judgment rendered in the contractor's favor in an action on that claim in a court of the United States.

(b) PERIOD OF AVAILABILITY.—(1) The period of availability of an amount under subsection (a), in connection with a claim—

(A) expires 180 days after the expiration of the period for bringing an action on that claim in the United States Court of Federal Claims under section 7104(b) of title 41 if, within that 180-day period—

(i) no appeal on the claim is commenced at the Armed Services Board of Contract Appeals under section 7 of such Act; and

(ii) no action on the claim is commenced in a court of the United States; or

(B) if not expiring under subparagraph (A), expires—

(i) in the case of a settlement of the claim, 180 days after the date of the settlement; or

(ii) in the case of a judgment rendered on the claim in an appeal to the Armed Services Board of Contract Appeals under section 7¹ of the Contract Disputes Act of 1978 or an action in a court of the United States, 180 days after the date on which the judgment becomes final and not appealable.

(2) While available under this section, an amount may be obligated or expended only for a purpose described in subsection (a).

(3) Upon the expiration of the period of availability of an amount under paragraph (1), the amount shall be covered into the Treasury as miscellaneous receipts.

(Added Pub. L. 105-85, div. A, title VIII, §831(a), Nov. 18, 1997, 111 Stat. 1841; amended Pub. L. 108-136, div. A, title X, §1031(a)(21), Nov. 24, 2003, 117 Stat. 1598; Pub. L. 111-350, §5(b)(32), Jan. 4, 2011, 124 Stat. 3845; Pub. L. 112-81, div. A, title X, §1061(15), Dec. 31, 2011, 125 Stat. 1583.)

REFERENCES IN TEXT

Section 7 of the Contract Disputes Act of 1978, referred to in subsec. (b)(1)(B)(ii), means section 7 of Pub. L. 95-563, which was classified to section 606 of former Title 41, Public Contracts, and was repealed and restated as section 7104(a) of Title 41, Public Contracts, by Pub. L. 111-350, §§3, 7(b), Jan. 4, 2011, 124 Stat. 3677, 3855. For disposition of sections of former Title 41, see Disposition Table preceding section 101 of Title 41.

AMENDMENTS

2011—Subsec. (a). Pub. L. 111-350, §5(b)(32)(A), substituted "chapter 71 of title 41" for "the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.)" in introductory provisions.

¹ See References in Text note below.