

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

Pub. L. 103-337, div. A, title III, §363(c), Oct. 5, 1994, 108 Stat. 2734, provided that: “Section 2410l 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

Pub. L. 103-337, div. A, title III, §363(b), Oct. 5, 1994, 108 Stat. 2734, 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 2410l 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 7<sup>1</sup> 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.

Subsec. (a)(2). Pub. L. 111-350, §5(b)(32)(B), substituted “section 7104(a) of title 41” for “section 7 of such Act (41 U.S.C. 606)”.

Subsec. (b)(1)(A). Pub. L. 111-350, §5(b)(32)(C), substituted “section 7104(b) of title 41” for “section 10(a) of the Contract Disputes Act of 1978 (41 U.S.C. 609(a))” in introductory provisions.

Subsec. (c). Pub. L. 112-81 struck out subsec. (c), which required submission of annual report on amounts available for obligation.

2003—Subsec. (c). Pub. L. 108-136, §1031(a)(21)(A), substituted “Annual Report” for “Reporting Requirement” in heading and “Not later than 60 days after the end of each fiscal year” for “Each year” in introductory provisions.

Subsec. (c)(1). Pub. L. 108-136, §1031(a)(21)(B), inserted “at the end of such fiscal year” before period at end.

Subsec. (c)(2). Pub. L. 108-136, §1031(a)(21)(C), substituted “under this section during that fiscal year” for “during the year preceding the year in which the report is submitted”.

Subsec. (c)(3). Pub. L. 108-136, §1031(a)(21)(D), substituted “under this section during that fiscal year” for “in such preceding year”.

Subsec. (c)(4). Pub. L. 108-136, §1031(a)(21)(E), substituted “under this section during that fiscal year” for “in such preceding year”.

### § 2410n. Products of Federal Prison Industries: procedural requirements

(a) **PRODUCTS FOR WHICH FEDERAL PRISON INDUSTRIES DOES NOT HAVE SIGNIFICANT MARKET**

<sup>1</sup> See References in Text note below.

SHARE.—(1) Before purchasing a product listed in the latest edition of the Federal Prison Industries catalog under section 4124(d) of title 18 for which Federal Prison Industries does not have a significant market share, the Secretary of Defense shall conduct market research to determine whether the product is comparable to products available from the private sector that best meet the needs of the Department in terms of price, quality, and time of delivery.

(2) If the Secretary determines that a Federal Prison Industries product described in paragraph (1) is not comparable in price, quality, or time of delivery to products of the private sector that best meets the needs of the Department in terms of price, quality, and time of delivery, the Secretary shall use competitive procedures for the procurement of the product, or shall make an individual purchase under a multiple award contract in accordance with the competition requirements applicable to such contract. In conducting such a competition, the Secretary shall consider a timely offer from Federal Prison Industries.

(b) PRODUCTS FOR WHICH FEDERAL PRISON INDUSTRIES HAS SIGNIFICANT MARKET SHARE.—(1) The Secretary of Defense may purchase a product listed in the latest edition of the Federal Prison Industries catalog for which Federal Prison Industries has a significant market share only if the Secretary uses competitive procedures for the procurement of the product or makes an individual purchase under a multiple award contract in accordance with the competition requirements applicable to such contract. In conducting such a competition, the Secretary shall consider a timely offer from Federal Prison Industries.

(2) For purposes of this subsection, Federal Prison Industries shall be treated as having a significant share of the market for a product if the Secretary, in consultation with the Administrator of Federal Procurement Policy, determines that the Federal Prison Industries share of the Department of Defense market for the category of products including such product is greater than 5 percent.

(c) IMPLEMENTATION BY SECRETARY OF DEFENSE.—The Secretary of Defense shall ensure that—

(1) the Department of Defense does not purchase a Federal Prison Industries product or service unless a contracting officer of the Department determines that the product or service is comparable to products or services available from the private sector that best meet the Department's needs in terms of price, quality, and time of delivery; and

(2) Federal Prison Industries performs its contractual obligations to the same extent as any other contractor for the Department of Defense.

(d) MARKET RESEARCH DETERMINATION NOT SUBJECT TO REVIEW.—A determination by a contracting officer regarding whether a product or service offered by Federal Prison Industries is comparable to products or services available from the private sector that best meet the Department's needs in terms of price, quality, and time of delivery shall not be subject to review pursuant to section 4124(b) of title 18.

(e) PERFORMANCE AS A SUBCONTRACTOR.—(1) A contractor or potential contractor of the Department of Defense may not be required to use Federal Prison Industries as a subcontractor or supplier of products or provider of services for the performance of a Department of Defense contract by any means, including means such as—

(A) a contract solicitation provision requiring a contractor to offer to make use of products or services of Federal Prison Industries in the performance of the contract;

(B) a contract specification requiring the contractor to use specific products or services (or classes of products or services) offered by Federal Prison Industries in the performance of the contract; or

(C) any contract modification directing the use of products or services of Federal Prison Industries in the performance of the contract.

(2) In this subsection, the term “contractor”, with respect to a contract, includes a subcontractor at any tier under the contract.

(f) PROTECTION OF CLASSIFIED AND SENSITIVE INFORMATION.—The Secretary of Defense may not enter into any contract with Federal Prison Industries under which an inmate worker would have access to—

(1) any data that is classified;

(2) any geographic data regarding the location of—

(A) surface and subsurface infrastructure providing communications or water or electrical power distribution;

(B) pipelines for the distribution of natural gas, bulk petroleum products, or other commodities; or

(C) other utilities; or

(3) any personal or financial information about any individual private citizen, including information relating to such person's real property however described, without the prior consent of the individual.

(g) DEFINITIONS.—In this section:

(1) The term “competitive procedures” has the meaning given such term in section 2302(2) of this title.

(2) The term “market research” means obtaining specific information about the price, quality, and time of delivery of products available in the private sector through a variety of means, which may include—

(A) contacting knowledgeable individuals in government and industry;

(B) interactive communication among industry, acquisition personnel, and customers; and

(C) interchange meetings or pre-solicitation conferences with potential offerors.

(Added Pub. L. 107-107, div. A, title VIII, §811(a)(1), Dec. 28, 2001, 115 Stat. 1180; amended Pub. L. 107-314, div. A, title VIII, §819(a)(1), Dec. 2, 2002, 116 Stat. 2612; Pub. L. 109-163, div. A, title X, §1056(c)(4), Jan. 6, 2006, 119 Stat. 3439; Pub. L. 110-181, div. A, title VIII, §827(a)(1), Jan. 28, 2008, 122 Stat. 228.)

#### AMENDMENTS

2008—Subsecs. (a), (b). Pub. L. 110-181 added subsecs. (a) and (b) and struck out former subsecs. (a) and (b) which read as follows:

“(a) MARKET RESEARCH.—Before purchasing a product listed in the latest edition of the Federal Prison Industries catalog under section 4124(d) of title 18, the Secretary of Defense shall conduct market research to determine whether the Federal Prison Industries product is comparable to products available from the private sector that best meet the Department’s needs in terms of price, quality, and time of delivery.

“(b) COMPETITION REQUIREMENT.—If the Secretary determines that a Federal Prison Industries product is not comparable in price, quality, or time of delivery to products available from the private sector that best meet the Department’s needs in terms of price, quality, and time of delivery, the Secretary shall use competitive procedures for the procurement of the product or shall make an individual purchase under a multiple award contract. In conducting such a competition or making such a purchase, the Secretary shall consider a timely offer from Federal Prison Industries.”

2006—Subsec. (b). Pub. L. 109-163 substituted “competition” for “competiton” in text.

2002—Subsec. (a). Pub. L. 107-314, § 819(a)(1)(A), substituted “Market Research” for “Market Research Before Purchase” in heading and “comparable to products available from the private sector that best meet the Department’s needs in terms of price, quality, and time of delivery” for “comparable in price, quality, and time of delivery to products available from the private sector”.

Subsec. (b). Pub. L. 107-314, § 819(a)(1)(B), added subsec. (b) and struck out heading and text of former subsec. (b). Text read as follows: “If the Secretary determines that a Federal Prison Industries product is not comparable in price, quality, and time of delivery to products available from the private sector, the Secretary shall use competitive procedures for the procurement of the product. In conducting such a competition, the Secretary shall consider a timely offer from Federal Prison Industries for award in accordance with the specifications and evaluation factors specified in the solicitation.”

Subsec. (c) to (g). Pub. L. 107-314, § 819(a)(1)(C), added subsecs. (c) to (g).

#### EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-181, div. A, title VIII, § 827(a)(2), Jan. 28, 2008, 122 Stat. 228, as amended by Pub. L. 111-383, div. A, title X, § 1075(f)(4), Jan. 7, 2011, 124 Stat. 4376, provided that: “The amendment made by paragraph (1) [amending this section] shall take effect 60 days after the date of the enactment of this Act [Jan. 28, 2008].”

#### EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-314, div. A, title VIII, § 819(a)(2), Dec. 2, 2002, 116 Stat. 2613, provided that: “Paragraph (1) [amending this section] and the amendments made by such paragraph shall take effect as of October 1, 2001.”

#### EFFECTIVE DATE

Pub. L. 107-107, div. A, title VIII, § 811(b), Dec. 28, 2001, 115 Stat. 1181, provided that: “Section 2410n of title 10, United States Code (as added by subsection (a)), shall apply to purchases initiated on or after October 1, 2001.”

#### REGULATORY IMPLEMENTATION

Pub. L. 107-314, div. A, title VIII, § 819(b), Dec. 2, 2002, 116 Stat. 2613, provided that:

“(1) Proposed revisions to the Department of Defense Supplement to the Federal Acquisition Regulation to implement this section shall be published not later than 90 days after the date of the enactment of this Act [Dec. 2, 2002], and not less than 60 days shall be provided for public comment on the proposed revisions.

“(2) Final regulations shall be published not later than 180 days after the date of the enactment of this Act and shall be effective on the date that is 30 days after the date of the publication.”

#### LIST OF PRODUCTS FOR WHICH FEDERAL PRISON INDUSTRIES HAS SIGNIFICANT MARKET SHARE

Pub. L. 110-181, div. A, title VIII, § 827(b), Jan. 28, 2008, 122 Stat. 228, provided that:

“(1) INITIAL LIST.—Not later than 60 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense shall publish a list of product categories for which Federal Prison Industries’ share of the Department of Defense market is greater than 5 percent, based on the most recent fiscal year for which data is available.

“(2) MODIFICATION.—The Secretary may modify the list published under paragraph (1) at any time if the Secretary determines that new data require adding a product category to the list or omitting a product category from the list.

“(3) CONSULTATION.—The Secretary shall carry out this subsection in consultation with the Administrator for Federal Procurement Policy.”

#### § 2410o. Multiyear procurement authority: purchase of dinitrogen tetroxide, hydrazine, and hydrazine-related products

(a) TEN-YEAR CONTRACT PERIOD.—The Secretary of Defense may enter into a contract for a period of up to 10 years for the purchase of dinitrogen tetroxide, hydrazine, and hydrazine-related products for the support of a United States national security program or a United States space program.

(b) EXTENSIONS.—A contract entered into for more than one year under the authority of subsection (a) may be extended for a total of not more than 10 years pursuant to any option or options set forth in the contract.

(Added Pub. L. 107-314, div. A, title VIII, § 826(a), Dec. 2, 2002, 116 Stat. 2617.)

#### § 2410p. Contracts: limitations on lead system integrators

(a) IN GENERAL.—Except as provided in subsection (b), no entity performing lead system integrator functions in the acquisition of a major system by the Department of Defense may have any direct financial interest in the development or construction of any individual system or element of any system of systems.

(b) EXCEPTION.—An entity described in subsection (a) may have a direct financial interest in the development or construction of an individual system or element of a system of systems if—

(1) the Secretary of Defense certifies to the Committees on Armed Services of the Senate and the House of Representatives that—

(A) the entity was selected by the Department of Defense as a contractor to develop or construct the system or element concerned through the use of competitive procedures; and

(B) the Department took appropriate steps to prevent any organizational conflict of interest in the selection process; or

(2) the entity was selected by a subcontractor to serve as a lower-tier subcontractor, through a process over which the entity exercised no control.

(c) CONSTRUCTION.—Nothing in this section shall be construed to preclude an entity described in subsection (a) from performing work necessary to integrate two or more individual