

AMENDMENTS

2010—Pub. L. 111-330 amended Pub. L. 111-281, § 402(a), which enacted this section.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-330, § 1, Dec. 22, 2010, 124 Stat. 3569, provided that the amendment made by section 1(4) is effective with the enactment of Pub. L. 111-281.

§ 566. Department of Defense consultation

(a) **IN GENERAL.**—The Commandant shall make arrangements as appropriate with the Secretary of Defense for support in contracting and management of Coast Guard acquisition programs. The Commandant shall also seek opportunities to make use of Department of Defense contracts, and contracts of other appropriate agencies, to obtain the best possible price for assets acquired for the Coast Guard.

(b) **INTERSERVICE TECHNICAL ASSISTANCE.**—The Commandant shall seek to enter into a memorandum of understanding or a memorandum of agreement with the Secretary of the Navy to obtain the assistance of the Office of the Assistant Secretary of the Navy for Research, Development, and Acquisition, including the Navy Systems Command, with the oversight of Coast Guard major acquisition programs. The memorandum of understanding or memorandum of agreement shall, at a minimum, provide for—

(1) the exchange of technical assistance and support that the Assistant Commandants for Acquisition, Human Resources, Engineering, and Information technology may identify;

(2) the use, as appropriate, of Navy technical expertise; and

(3) the temporary assignment or exchange of personnel between the Coast Guard and the Office of the Assistant Secretary of the Navy for Research, Development, and Acquisition, including Naval Systems Command, to facilitate the development of organic capabilities in the Coast Guard.

(c) **TECHNICAL REQUIREMENT APPROVAL PROCEDURES.**—The Chief Acquisition Officer shall adopt, to the extent practicable, procedures modeled after those used by the Navy Senior Acquisition Official to approve all technical requirements.

(d) **ASSESSMENT.**—Within 180 days after the date of enactment of the Coast Guard Authorization Act of 2010, the Comptroller General of the United States shall transmit a report to the appropriate congressional committees that—

(1) contains an assessment of current Coast Guard acquisition and management capabilities to manage Level 1 and Level 2 acquisitions;

(2) includes recommendations as to how the Coast Guard can improve its acquisition management, either through internal reforms or by seeking acquisition expertise from the Department of Defense; and

(3) addresses specifically the question of whether the Coast Guard can better leverage Department of Defense or other agencies' contracts that would meet the needs of Level 1 or Level 2 acquisitions in order to obtain the best possible price.

(Added Pub. L. 111-281, title IV, § 402(a), Oct. 15, 2010, 124 Stat. 2937; amended Pub. L. 111-330, § 1(4), Dec. 22, 2010, 124 Stat. 3569.)

REFERENCES IN TEXT

The date of enactment of the Coast Guard Authorization Act of 2010, referred to in subsec. (d), is the date of enactment of Pub. L. 111-281, which was approved Oct. 15, 2010.

PRIOR PROVISIONS

A prior section 566, act Aug. 4, 1949, ch. 393, 63 Stat. 541, related to reviewing authorities, prior to repeal by act May 5, 1950, ch. 169, §§ 5, 14(v), 64 Stat. 145, 148, effective May 31, 1951.

AMENDMENTS

2010—Subsec. (d). Pub. L. 111-330, which directed the amendment of Pub. L. 111-281, § 402(a), which enacted this section, by substituting “Coast Guard Authorization Act of 2010” for “Coast Guard Authorization Act for Fiscal Years 2010 and 2011” wherever appearing, was executed in subsec. (d) of this section as added by section 402(a) by making the substitution for text which read “Coast Guard Authorization Act for fiscal years 2010 and 2011”, to reflect the probable intent of Congress.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-330, § 1, Dec. 22, 2010, 124 Stat. 3569, provided that the amendment made by section 1(4) is effective with the enactment of Pub. L. 111-281.

§ 567. Undefined contractual actions

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

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

(1) **DEADLINE FOR AGREEMENT ON TERMS, SPECIFICATIONS, AND PRICE.**—A contracting officer of the Coast Guard may not enter into an undefined 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 undefined 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 qualify-

ing 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) 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.)

REFERENCES IN TEXT

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.

PRIOR PROVISIONS

A prior section 567, act Aug. 4, 1949, ch. 393, 63 Stat. 541, related to jurisdiction of offenses, prior to repeal by act May 5, 1950, ch. 169, §§ 5, 14(v), 64 Stat. 145, 148, effective May 31, 1951.

§ 568. Guidance on excessive pass-through charges

(a) **IN GENERAL.**—Not later than 180 days after the date of enactment of the Coast Guard Authorization Act of 2010, the Commandant shall issue guidance to ensure that pass-through charges on contracts, subcontracts, delivery orders, and task orders that are entered into with a private entity acting as a lead systems integrator by or on behalf of the Coast Guard are not excessive in relation to the cost of work performed by the relevant contractor or subcontractor. The guidance shall, at a minimum—

(1) set forth clear standards for determining when no, or negligible, value has been added to a contract by a contractor or subcontractor;

(2) set forth procedures for preventing the payment by the Government of excessive pass-through charges; and

(3) identify any exceptions determined by the Commandant to be in the best interest of the Government.

(b) **EXCESSIVE PASS-THROUGH CHARGE DEFINED.**—In this section the term “excessive pass-through charge”, with respect to a contractor or subcontractor that adds no, or negligible, value to a contract or subcontract, means a charge to the Government by the contractor or subcontractor that is for overhead or profit on work performed by a lower tier contractor or subcontractor, other than reasonable charges for the direct costs of managing lower tier contractors and subcontracts and overhead and profit based on such direct costs.

(c) **APPLICATION OF GUIDANCE.**—The guidance under this subsection shall apply to contracts