

tractual 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 awarded to a private entity acting as a lead systems integrator by or on behalf of the Coast Guard on or after the date that is 360 days after the date of enactment of the Coast Guard Authorization Act of 2010.

(Added Pub. L. 111-281, title IV, §402(a), Oct. 15, 2010, 124 Stat. 2940; 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 subsecs. (a) and (c), is the date of enactment of Pub. L. 111-281, which was approved Oct. 15, 2010.

PRIOR PROVISIONS

A prior section 568, act Aug. 4, 1949, ch. 393, 63 Stat. 542, related to time limitations between offense and prosecution, prior to repeal by act May 5, 1950, ch. 169, §§5, 14(v), 64 Stat. 145, 148, effective May 31, 1951.

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.

§ 569. Mission need statement

(a) **IN GENERAL.**—On the date on which the President submits to Congress a budget for fis-