1994—Pub. L. 103–355, title I, §§1004(a)(2), 1022(a)(2), 1501(b), 1503(a)(2), (b)(2), 1506(b), title II, §§2001(i), 2201(a)(2), title IV, §§4002(b), 4203(a)(2), title VIII, §8104(b)(2), title IX, §9002(b), Oct. 13, 1994, 108 Stat. 3253, 3260, 3296–3298, 3303, 3318, 3338, 3346, 3391, 3402, struck out items 2301 ''Congressional defense procurement policy'', 2308 ''Assignment and delegation of procurement functions and responsibilities'', 2325 ''Preference for nondevelopmental items'', and 2329 ''Production special tooling and production special test equipment: contract terms and conditions'', added items 2302a to 2302c, 2304a relating to task and delivery order contracts: general authority, 2304b to 2304d, and 2306b, and substituted ''Contract financing'' for ''Advance payments'' in item 2307, ''Assignment and delegation of procurement functions and responsibilities'' for ''Delegation'' in item 2311, and ''Examination of records of contractor'' for ''Examination of books and records of contractor'' in item 2313.

1993—Pub. L. 103–160, div. A, title VIII, §§828(a)(1), 848(a)(2), Nov. 30, 1993, 107 Stat. 1713, 1725, added item 2304a and struck out item 2317 ''Encouragement of competition and cost savings''.

1992—Pub. L. 102–484, div. A, title VIII, §801(a)(2), (g)(2), title X, §1052(25)(B), div. D, title XLII, §4271(b)(2), Oct. 23, 1992, 106 Stat. 2442, 2445, 2500, 2695, struck out items 2322 ''Limitation on small business set-asides'' and 2330 ''Integrated financing policy'' and added items 2323 and 2323a.

1990—Pub. L. 101–510, div. A, title VIII, §§804(b), 834(a)(2), Nov. 5, 1990, 104 Stat. 1591, 1614, struck out item 2323 ''Commercial pricing for spare or repair parts'' and added item 2331.

1988—Pub. L. 100–456, div. A, title VIII, §801(a)(2), Sept. 29, 1988, 102 Stat. 2007, added item 2330.

1987—Pub. L. 100–180, div. A, title VIII, §810(a)(2), Dec. 4, 1987, 101 Stat. 1132, added item 2329.

Pub. L. 100–26, §7(a)(7)(B)(ii), (b)(9)(B), Apr. 21, 1987, 101 Stat. 278, 280, transferred item 2305a ''Major programs: competitive alternative sources'', to chapter 144 as item 2438 and substituted ''Release of technical data under Freedom of Information Act: recovery of costs'' for ''Release of technical data'' in item 2328.

Pub. L. 100–26, §5(4), (6), made technical amendments to directory language of sections 926(a)(2) and 954(a)(2), respectively, of Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661. See 1986 Amendment note below.

1986—Pub. L. 99–661, div. A, title XIII, §1343(a)(12), Nov. 14, 1986, 100 Stat. 3993, substituted ''competitors'' for ''competition'' in item 2319.

Pub. L. 99–500, §101(c) [title X, §§907(a)(2), 908(d)(1)(B), 926(a)(2), 951(a)(2), 952(c)(2), 954(a)(2)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–138, 1783–141, 1783–155, 1783–165, 1783–169, 1783–173, and Pub. L. 99–591, §101(c) [title X, §§907(a)(2), 908(d)(1)(B), 926(a)(2), 951(a)(2), 952(c)(2), 954(a)(2)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–138, 3341–141, 3341–155, 3341–165, 3341–169, 3341–173; Pub. L. 99–661, div. A, title IX, formerly title IV, §§907(a)(2), 908(d)(1)(B), 926(a)(2), 951(a)(2), 952(c)(2), 954(a)(2), Nov. 14, 1986, 100 Stat. 3917, 3921, 3935, 3945, 3949, 3953, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273; as amended by Pub. L. 100–26, §5(4), (6), Apr. 21, 1987, 101 Stat. 274, amended chapter analysis identically striking out '': cost or pricing data: truth in negotiations'' after ''contracts'' in item 2306, substituting ''spare or repair parts'' for ''supplies'' in item 2323, and adding items 2306a and 2325 to 2328.

1985—Pub. L. 99–145, title IX, §§911(a)(2), 912(a)(2), Nov. 8, 1985, 99 Stat. 685, 686, added items 2305a and 2324.

1984—Pub. L. 98–577, title III, §302(c)(2), Oct. 30, 1984, 98 Stat. 3077, struck out item 2303a ''Publication of proposed regulations''.

Pub. L. 98–525, title XII, §1217, Oct. 19, 1984, 98 Stat. 2599, added items 2303a and 2317 to 2323.

Pub. L. 98–369, div. B, title VII, §2727(a), July 18, 1984, 98 Stat. 1194, substituted ''Congressional defense procurement policy'' for ''Declaration of policy'' in item 2301, ''Contracts: competition requirements'' for ''Purchases and contracts: formal advertising; exceptions'' in item 2304, ''Contracts: planning, solicitation, evaluation, and award procedures'' for ''Formal advertisements for bids; time; opening; award; rejection'' in item 2305, and ''Kinds of contracts; cost or pricing data: truth in negotiation'' for ''Kinds of contracts'' in item 2306.

1982—Pub. L. 97–295, §1(26)(B), Oct. 12, 1982, 96 Stat. 1291, added item 2316.

1981—Pub. L. 97–86, title IX, §908(a)(2), Dec. 1, 1981, 95 Stat. 1118, added item 2315.

1980—Pub. L. 96–513, title V, §511(75), Dec. 12, 1980, 94 Stat. 2926, inserted ''formal'' before ''advertising'' in item 2304.

### [§ 2301. Repealed. Pub. L. 103–355, title I, § 1501(a), Oct. 13, 1994, 108 Stat. 3296]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 127; Dec. 1, 1981, Pub. L. 97–86, title IX, §909(a), 95 Stat. 1118; July 18, 1984, Pub. L. 98–369, div. B, title VII, §2721, 98 Stat. 1185; Oct. 18, 1986, Pub. L. 99–500, §101(c) [title X, §925(a)], 100 Stat. 1783–82, 1783–153, and Oct. 30, 1986, Pub. L. 99–591, §101(c) [title X, §925(a)], 100 Stat. 3341–82, 3341–153; Nov. 14, 1986, Pub. L. 99–661, div. A, title IX, formerly title IV, §925(a), 100 Stat. 3933, renumbered title IX, Apr. 21, 1987, Pub. L. 100–26, §3(5), 101 Stat. 273; Oct. 23, 1992, Pub. L. 102–484, div. A, title VIII, §808(a), 106 Stat. 2449, related to Congressional defense procurement policy.

EFFECTIVE DATE OF REPEAL

For effective date and applicability of repeal, see section 10001 of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 2302 of this title.

### § 2302. Definitions

In this chapter:

(1) The term ''head of an agency'' means the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, the Secretary of Homeland Security, and the Administrator of the National Aeronautics and Space Administration.

(2) The term ''competitive procedures'' means procedures under which the head of an agency enters into a contract pursuant to full and open competition. Such term also includes—

(A) procurement of architectural or engineering services conducted in accordance with chapter 11 of title 40;

(B) the competitive selection for award of science and technology proposals resulting from a general solicitation and the peer review or scientific review (as appropriate) of such proposals;

(C) the procedures established by the Administrator of General Services for the multiple award schedule program of the General Services Administration if—

(i) participation in the program has been open to all responsible sources; and

(ii) orders and contracts under such program result in the lowest overall cost alternative to meet the needs of the United States;

(D) procurements conducted in furtherance of section 15 of the Small Business Act (15 U.S.C. 644) as long as all responsible business concerns that are entitled to submit offers for such procurements are permitted to compete; and

(E) a competitive selection of research proposals resulting from a general solicitation

and peer review or scientific review (as appropriate) solicited pursuant to section 9 of the Small Business Act (15 U.S.C. 638).

(3) The following terms have the meanings provided such terms in chapter 1 of title 41:

(A) The term ''procurement''.
(B) The term ''procurement system''.
(C) The term ''standards''.
(D) The term ''full and open competition''.
(E) The term ''responsible source''.
(F) The term ''item''.
(G) The term ''item of supply''.
(H) The term ''supplies''.
(I) The term ''commercial item''.
(J) The term ''nondevelopmental item''.
(K) The term ''commercial component''.
(L) The term ''component''.

(4) The term ''technical data'' means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer software documentation) relating to supplies procured by an agency. Such term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration.

(5) The term ''major system'' means a combination of elements that will function together to produce the capabilities required to fulfill a mission need. The elements may include hardware, equipment, software or any combination thereof, but excludes construction or other improvements to real property. A system shall be considered a major system if (A) the conditions of section 2302d of this title are satisfied, or (B) the system is designated a ''major system'' by the head of the agency responsible for the system.

(6) The term ''Federal Acquisition Regulation'' means the Federal Acquisition Regulation issued pursuant to section 1303(a)(1) of title 41.

(7) The term ''simplified acquisition threshold'' has the meaning provided that term in section 134 of title 41, except that, in the case of any contract to be awarded and performed, or purchase to be made, outside the United States in support of a contingency operation or a humanitarian or peacekeeping operation, the term means an amount equal to two times the amount specified for that term in such section.

(8) The term ''humanitarian or peacekeeping operation'' means a military operation in support of the provision of humanitarian or foreign disaster assistance or in support of a peacekeeping operation under chapter VI or VII of the Charter of the United Nations. The term does not include routine training, force rotation, or stationing.

(9) The term ''nontraditional defense contractor'', with respect to a procurement or with respect to a transaction authorized under section 2371(a) or 2371b of this title, means an entity that is not currently performing and has not performed, for at least the one-year period preceding the solicitation of sources by the Department of Defense for the procurement or transaction, any contract or subcontract for the Department of Defense that is subject to full coverage under the cost accounting standards prescribed pursuant to section 1502 of title 41 and the regulations implementing such section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 127; Pub. L. 85–568, title III, §301(b), July 29, 1958, 72 Stat. 432; Pub. L. 85–861, §1(43A), Sept. 2, 1958, 72 Stat. 1457; Pub. L. 96–513, title V, §511(74), Dec. 12, 1980, 94 Stat. 2926; Pub. L. 98–369, div. B, title VII, §2722(a), July 18, 1984, 98 Stat. 1186; Pub. L. 98–525, title XII, §1211, Oct. 19, 1984, 98 Stat. 2589; Pub. L. 98–577, title V, §504(b)(3), Oct. 30, 1984, 98 Stat. 3087; Pub. L. 99–661, div. A, title XIII, §1343(a)(13), Nov. 14, 1986, 100 Stat. 3993; Pub. L. 100–26, §7(k)(2), Apr. 21, 1987, 101 Stat. 284; Pub. L. 101–189, div. A, title VIII, §853(b)(1), Nov. 29, 1989, 103 Stat. 1518; Pub. L. 102–25, title VII, §701(d)(1), Apr. 6, 1991, 105 Stat. 113; Pub. L. 102–190, div. A, title VIII, §805, Dec. 5, 1991, 105 Stat. 1417; Pub. L. 103–355, title I, §1502, Oct. 13, 1994, 108 Stat. 3296; Pub. L. 104–106, div. D, title XLIII, §4321(b)(3), Feb. 10, 1996, 110 Stat. 672; Pub. L. 104–201, div. A, title VIII, §§805(a)(1), 807(a), Sept. 23, 1996, 110 Stat. 2605, 2606; Pub. L. 105–85, div. A, title VIII, §803(b), Nov. 18, 1997, 111 Stat. 1832; Pub. L. 107–217, §3(b)(2), Aug. 21, 2002, 116 Stat. 1295; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 111–350, §5(b)(8), Jan. 4, 2011, 124 Stat. 3842; Pub. L. 111–383, div. A, title VIII, §866(g)(1), Jan. 7, 2011, 124 Stat. 4298; Pub. L. 113–291, div. A, title X, §1071(a)(2), Dec. 19, 2014, 128 Stat. 3504; Pub. L. 114–92, div. A, title VIII, §815(b), Nov. 25, 2015, 129 Stat. 896; Pub. L. 115–91, div. A, title II, §221, Dec. 12, 2017, 131 Stat. 1333.)

HISTORICAL AND REVISION NOTES
1956 ACT

| *Revised section* | *Source (U.S. Code)* | *Source (Statutes at Large)* |
|---|---|---|
| 2302 ..... | 41:158 (less clause (b)). | Feb. 19, 1948, ch. 65, §9 (less clause (b)), 62 Stat. 24. |

In clause (1), the words ''(if any)'' are omitted as surplusage. The words ''Secretary of the Treasury'' are substituted for the words ''Commandant, United States Coast Guard, Treasury Department'', since the functions of the Coast Guard and its officers, while operating under the Department of the Treasury, were vested in the Secretary of the Treasury by 1950 Reorganization Plan No. 26, effective July 31, 1950, 64 Stat. 1280. Under that plan the Secretary of the Treasury was authorized to delegate any of those functions to the agencies and employees of the Department of the Treasury.

Clauses (2) and (3) are inserted for clarity, and are based on the usage of those terms throughout the revised chapter.

1958 ACT

| *Revised section* | *Source (U.S. Code)* | *Source (Statutes at Large)* |
|---|---|---|
| 2302(3) ..... | [No source]. | [No source]. |

The amendments reflect section 1(44) of the bill [amending section 2305 of Title 10].

AMENDMENTS

2017—Par. (2)(B). Pub. L. 115–91 substituted ''science and technology'' for ''basic research''.

2015—Par. (9). Pub. L. 114–92 amended par. (9) generally. Prior to amendment, par. (9) read as follows: ''The

term 'nontraditional defense contractor', with respect to a procurement or with respect to a transaction authorized under section 2371(a) of this title, means an entity that is not currently performing and has not performed, for at least the one-year period preceding the solicitation of sources by the Department of Defense for the procurement or transaction, any of the following for the Department of Defense:

''(A) Any contract or subcontract that is subject to full coverage under the cost accounting standards prescribed pursuant to chapter 15 of title 41 and the regulations implementing such chapter.

''(B) Any other contract in excess of $500,000 under which the contractor is required to submit certified cost or pricing data under section 2306a of this title.''

2014—Par. (7). Pub. L. 113–291, §1071(a)(2)(A), substituted ''such section'' for ''section 4 of such Act''.

Par. (9)(A). Pub. L. 113–291, §1071(a)(2)(B), substituted ''chapter 15 of title 41'' for ''section 26 of the Office of Federal Procurement Policy Act (41 U.S.C. 422)'' and ''such chapter'' for ''such section''.

2011—Par. (3). Pub. L. 111–350, §5(b)(8)(A), substituted ''chapter 1 of title 41'' for ''section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)'' in introductory provisions.

Par. (6). Pub. L. 111–350, §5(b)(8)(B), substituted ''section 1303(a)(1) of title 41'' for ''section 25(c)(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(c)(1))''.

Par. (7). Pub. L. 111–350, §5(b)(8)(C), substituted ''section 134 of title 41'' for ''section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)''.

Par. (9). Pub. L. 111–383 added par. (9).

2002—Par. (1). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

Par. (2)(A). Pub. L. 107–217 substituted ''chapter 11 of title 40'' for ''title IX of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541 et seq.)''.

1997—Pars. (7), (8). Pub. L. 105–85 struck out ''(A)'' before ''The term 'simplified'' in par. (7), redesignated par. (7)(B) as par. (8), and substituted ''The'' for ''In subparagraph (A), the'' in that par.

1996—Par. (3)(K). Pub. L. 104–106 inserted period at end.

Par. (5). Pub. L. 104–201, §805(a)(1), substituted ''A system shall be considered a major system if (A) the conditions of section 2302d of this title are satisfied, or (B) the system is designated a 'major system' by the head of the agency responsible for the system.'' for ''A system shall be considered a major system if (A) the Department of Defense is responsible for the system and the total expenditures for research, development, test, and evaluation for the system are estimated to be more than $75,000,000 (based on fiscal year 1980 constant dollars) or the eventual total expenditure for procurement of more than $300,000,000 (based on fiscal year 1980 constant dollars); (B) a civilian agency is responsible for the system and total expenditures for the system are estimated to exceed $750,000 (based on fiscal year 1980 constant dollars) or the dollar threshold for a 'major system' established by the agency pursuant to Office of Management and Budget (OMB) Circular A–109, entitled 'Major Systems Acquisitions', whichever is greater; or (C) the system is designated a 'major system' by the head of the agency responsible for the system.''

Par. (7). Pub. L. 104–201, §807(a), designated existing provisions as subpar. (A), inserted ''or a humanitarian or peacekeeping operation'' after ''contingency operation'', and added subpar. (B).

1994—Par. (3). Pub. L. 103–355, §1502(1), added par. (3) and struck out former par. (3) which read as follows: ''The terms 'full and open competition' and 'responsible source' have the same meanings provided such terms in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).''

Par. (7). Pub. L. 103–355, §1502(2), added par. (7) and struck out former par. (7) which read as follows: ''The term 'small purchase threshold' has the meaning given that term in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)), except that, in the case of any contract to be awarded and performed, or purchase to be made, outside the United States in support of a contingency operation, the term means $100,000.''

1991—Par. (7). Pub. L. 102–190 inserted before period '', except that, in the case of any contract to be awarded and performed, or purchase to be made, outside the United States in support of a contingency operation, the term means $100,000''.

Pub. L. 102–25 added par. (7).

1989—Par. (6). Pub. L. 101–189 added par. (6).

1987—Pub. L. 100–26, §7(k)(2)(A), inserted ''The term'' after each par. designation except par. (3) and struck out uppercase letter of first word after first quotation marks in each par. and substituted lowercase letter.

1986—Par. (2)(A). Pub. L. 99–661 substituted ''(40 U.S.C.'' for ''(41 U.S.C.''.

1984—Pub. L. 98–369 amended section generally, substituting in cl. (1) ''the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force'' for ''the Secretary, the Under Secretary, or any Assistant Secretary, of the Army, Navy, or Air Force'', in cl. (2) definition of ''competitive procedures'' for a definition of ''negotiate'', and in cl. (3) definition of the terms ''full and open competition'' and ''responsible source'' for a definition of ''formal advertising''.

Cl. (2)(D), (E). Pub. L. 98–577 added subpars. (D) and (E).

Cls. (4), (5). Pub. L. 98–525 added cls. (4) and (5).

1980—Cl. (1). Pub. L. 96–513 substituted ''Secretary of Transportation'' for ''Secretary of the Treasury''.

1958—Cl. (1). Pub. L. 85–568 substituted ''Administrator of the National Aeronautics and Space Administration'' for ''Executive Secretary of the National Advisory Committee for Aeronautics'', in cl. (1).

Cl. (3). Pub. L. 85–861 substituted ''section 2305 of this title'' for ''section 2305(a) and (b) of this title''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–106, div. D, title XLIV, §4401, Feb. 10, 1996, 110 Stat. 678, provided that:

''(a) EFFECTIVE DATE.—Except as otherwise provided in this division [div. D (§§4001–4402) of Pub. L. 104–106, see Tables for classification], this division and the amendments made by this division shall take effect on the date of the enactment of this Act [Feb. 10, 1996].

''(b) APPLICABILITY OF AMENDMENTS.—

''(1) SOLICITATIONS, UNSOLICITED PROPOSALS, AND RELATED CONTRACTS.—An amendment made by this division shall apply, in the manner prescribed in the final regulations promulgated pursuant to section 4402 [110 Stat. 678] to implement such amendment, with respect to any solicitation that is issued, any unsolicited proposal that is received, and any contract entered into pursuant to such a solicitation or proposal, on or after the date described in paragraph (3).

''(2) OTHER MATTERS.—An amendment made by this division shall also apply, to the extent and in the manner prescribed in the final regulations promulgated pursuant to section 4402 to implement such amendment, with respect to any matter related to—

''(A) a contract that is in effect on the date described in paragraph (3);

''(B) an offer under consideration on the date described in paragraph (3); or

''(C) any other proceeding or action that is ongoing on the date described in paragraph (3).

''(3) DEMARCATION DATE.—The date referred to in paragraphs (1) and (2) is the date specified in such final regulations. The date so specified shall be January 1, 1997, or any earlier date that is not within 30

days after the date on which such final regulations are published.''

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103–355, title X, §10001, Oct. 13, 1994, 108 Stat. 3404, provided that:

''(a) EFFECTIVE DATE.—Except as otherwise provided in this Act, this Act [see Tables for classification] and the amendments made by this Act shall take effect on the date of the enactment of this Act [Oct. 13, 1994].

''(b) APPLICABILITY OF AMENDMENTS.—(1) An amendment made by this Act shall apply, in the manner prescribed in the final regulations promulgated pursuant to section 10002 [108 Stat. 3404, formerly set out as a Regulations note under section 251 of former Title 41, Public Contracts] to implement such amendment, with respect to any solicitation that is issued, any unsolicited proposal that is received, and any contract entered into pursuant to such a solicitation or proposal, on or after the date described in paragraph (3).

''(2) An amendment made by this Act shall also apply, to the extent and in the manner prescribed in the final regulations promulgated pursuant to section 10002 to implement such amendment, with respect to any matter related to—

''(A) a contract that is in effect on the date described in paragraph (3);

''(B) an offer under consideration on the date described in paragraph (3); or

''(C) any other proceeding or action that is ongoing on the date described in paragraph (3).

''(3) The date referred to in paragraphs (1) and (2) is the date specified in such final regulations [Oct. 1, 1995, see 60 F.R. 48231, Sept. 18, 1995]. The date so specified shall be October 1, 1995, or any earlier date that is not within 30 days after the date on which such final regulations are published.

''(c) IMMEDIATE APPLICABILITY OF CERTAIN AMENDMENTS.—Notwithstanding subsection (b), the amendments made by the following provisions of this Act apply on and after the date of the enactment of this Act [Oct. 13, 1994]: sections 1001, 1021, 1031, 1051, 1071, 1092, 1201, 1506(a), 1507, 1554, 2002(a), 2191, 3062(a), 3063, 3064, 3065(a)(1), 3065(b), 3066, 3067, 6001(a), 7101, 7103, 7205, and 7206, the provisions of subtitles A, B, and C of title III [§§3001–3025], and the provisions of title V [see Tables for classification].''

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. B, title VII, §2751, July 18, 1984, 98 Stat. 1203, provided that:

''(a) Except as provided in subsection (b), the amendments made by this title [see Tables for classification] shall apply with respect to any solicitation for bids or proposals issued after March 31, 1985.

''(b) The amendments made by section 2713 [amending section 759 of former Title 40, Public Buildings, Property, and Works, and enacting provisions set out as a note under section 759 of former Title 40] and subtitle D [enacting sections 3551 to 3556 of Title 31, Money and Finance] shall apply with respect to any protest filed after January 14, 1985.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85–568, title III, §301(e), July 29, 1958, 72 Stat. 433, provided that: ''This section [amending this section, section 2303 of this title, section 22–1 of former Title 5, and sections 511 to 513 and 515 of Title 50, War and National Defense, and enacting provisions set out as a note under section 2472 of Title 42, The Public Health and Welfare] shall take effect ninety days after the date of the enactment of this Act [July 29, 1958], or on any earlier date on which the Administrator [of the National Aeronautics and Space Administration] shall determine, and announce by proclamation published in the Federal Register, that the Administration has been organized and is prepared to discharge the duties and exercise the powers conferred upon it by this Act.''

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99–500, §101(c) [title X, §900], Oct. 18, 1986, 100 Stat. 1783–82, 1783–130, Pub. L. 99–591, §101(c) [title X, §900], Oct. 30, 1986, 100 Stat. 3341–82, 3341–130, and Pub. L. 99–661, div. A, title IX, formerly title IV, §900, Nov. 14, 1986, 100 Stat. 3910, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273, provided that: ''This title [enacting sections 133a, 2306a, 2325–2328, 2365–2367, 2397b, 2397c, 2408, 2409, 2416, and 2435–2437 of this title, amending sections 133, 134, 135, 138, 171, 1622, 2301, 2304, 2305, 2306, 2320, 2321, 2323, 2384, 2406, 2411, 2413, 2432, and 2433 of this title, sections 5314 and 5315 of Title 5, Government Organization and Employees, sections 632, 637, and 644 of Title 15, Commerce and Trade, and section 416 of Title 41, Public Contracts, renumbering section 2416 as 2417 of this title, enacting provisions set out as notes under sections 113, 1621, 2304, 2305, 2306a, 2320, 2323, 2325–2328, 2365–2367, 2384, 2397b, 2406, 2408, 2409, 2416, 2432, 2435–2437 of this title and section 632 of Title 15, amending provisions set out as a note under this section, and repealing provisions set out as notes under section 2304 and 2397a of this title] may be cited as the 'Defense Acquisition Improvement Act of 1986'.''

SHORT TITLE OF 1985 AMENDMENT

Pub. L. 99–145, title IX, §901, Nov. 8, 1985, 99 Stat. 682, provided that: ''This title [enacting sections 1621 to 1624, 2305a, 2324, 2397a, and 2406 of this title, amending sections 2304, 2313, 2320, 2323, 2397, and 2411 to 2415 of this title, section 759 of former Title 40, Public Buildings, Property, and Works, sections 253 and 418a of Title 41, Public Contracts, and former section 2168 of the former Appendix to Title 50, War and National Defense, enacting provisions set out as notes under this section and sections 139, 139c, 1622 to 1624, 2304, 2305a, 2307, 2324, 2397a, and 2411 of this title, section 287 of Title 18, Crimes and Criminal Procedure, section 3729 of Title 31, Money and Finance, and former section 2168 of the former Appendix to Title 50, and amending provisions set out as a note under section 418a of Title 41] may be cited as the 'Defense Procurement Improvement Act of 1985'.''

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98–525, title XII, §1201, Oct. 19, 1984, 98 Stat. 2588, provided that: ''This title [enacting sections 2303a, 2317 to 2323, 2384a, 2402 to 2405, and 2411 to 2416 of this title, amending sections 139a, 139b, 2302, 2305, 2311, 2384, and 2401 of this title, enacting provisions set out as notes under this section and sections 139, 139a, 2303a, 2305, 2318, 2319, 2322, 2323, 2384, 2384a, 2392, and 2402 of this title, amending provisions set out as notes under sections 2392, 2401, and 2452 of this title, and repealing provisions set out as notes under section 2304 of this title] may be cited as the 'Defense Procurement Reform Act of 1984'.''

AUTHORITY FOR EXPLOSIVE ORDNANCE DISPOSAL UNITS TO ACQUIRE NEW OR EMERGING TECHNOLOGIES AND CAPABILITIES

Pub. L. 115–91, div. A, title I, §142, Dec. 12, 2017, 131 Stat. 1320, provided that: ''The Secretary of Defense, after consultation with the head of each military service, may provide to an explosive ordnance disposal unit the authority to acquire new or emerging technologies and capabilities that are not specifically provided for in the authorized equipment allowance for the unit, as such allowance is set forth in the table of equipment and table of allowance for the unit.''

ANNUAL REPORT ON MILITARY WORKING DOGS USED BY THE DEPARTMENT OF DEFENSE

Pub. L. 115–91, div. A, title III, §334, Dec. 12, 2017, 131 Stat. 1356, provided that:

''(a) CAPACITY.—The Secretary of Defense, acting through the Executive Agent for Military Working Dogs (hereinafter in this section referred to as the 'Executive Agent'), shall—

''(1) identify the number of military working dogs required to fulfill the various missions of the Department of Defense for which such dogs are used, including force protection, facility and check point security, and explosives and drug detection;

''(2) take such steps as are practicable to ensure an adequate number of military working dog teams are available to meet and sustain the mission requirements identified in paragraph (1);

''(3) ensure that the Department's needs and performance standards with respect to military working dogs are readily available to dog breeders and trainers; and

''(4) coordinate with other Federal, State, and local agencies, nonprofit organizations, universities, and private sector entities, as appropriate, to increase the training capacity for military working dog teams.

''(b) MILITARY WORKING DOG PROCUREMENT.—The Secretary, acting through the Executive Agent, shall work to ensure that military working dogs are procured as efficiently as possible and at the best value to the Government, while maintaining the necessary level of quality and encouraging increased domestic breeding.

''(c) ANNUAL REPORT.—Not later than 90 days after the date of the enactment of this Act [Dec. 12, 2017], and annually thereafter until September 30, 2021, the Secretary, acting through the Executive Agent, shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the procurement and retirement of military working dogs for the fiscal year preceding the fiscal year during which the report is submitted. Each report under this subsection shall include the following for the fiscal year covered by the report:

''(1) The number of military working dogs procured, by source, by each military department or Defense Agency.

''(2) The cost of procuring military working dogs incurred by each military department or Defense Agency.

''(3) The number of domestically-bred and sourced military working dogs procured by each military department or Defense Agency, including a list of vendors, their location, cost, and the quantity of dogs procured from each vendor.

''(4) The number of non-domestically-bred military working dogs procured from non-domestic sources by each military department or Defense Agency, including a list of vendors, their location, cost, and the quantity of dogs procured from each vendor.

''(5) The cost of procuring pre-trained and green dogs for force protection, facility and checkpoint security, and improvised explosive device, other explosives, and drug detection.

''(6) An analysis of the procurement practices of each military department or Defense Agency that limit market access for domestic canine vendors and breeders.

''(7) The total cost of procuring domestically-bred military working dogs versus the total cost of procuring dogs from non-domestic sources.

''(8) The total number of domestically-bred dogs and the number of dogs from foreign sources procured by each military department or Defense Agency and the number and percentage of those dogs that are ultimately deployed for their intended use.

''(9) An explanation for any significant difference in the cost of procuring military working dogs from different sources.

''(10) An estimate of the number of military working dogs expected to retire annually and an identification of the primary cause of the retirement of such dogs.

''(11) An identification of the final disposition of military working dogs no longer in service.

''(d) MILITARY WORKING DOG DEFINED.—For purposes of this section, the term 'military working dog' means a dog used in any official military capacity, as defined by the Secretary of Defense.''

COST-BENEFIT ANALYSIS OF UNIFORM SPECIFICATIONS FOR AFGHAN MILITARY OR SECURITY FORCES

Pub. L. 115–91, div. A, title III, § 344, Dec. 12, 2017, 131 Stat. 1362, provided that: ''Beginning on the date of the enactment of this Act [Dec. 12, 2017], whenever the Secretary of Defense enters into a contract for the provision of uniforms for Afghan military or security forces, the Secretary shall conduct a cost-benefit analysis of the uniform specification for the Afghan military or security forces uniform. Such analysis shall determine—

''(1) whether there is a more effective alternative uniform specification, considering both operational environment and cost, available to the Afghan military or security forces;

''(2) the efficacy of the existing pattern compared to other alternatives (both proprietary and non-proprietary patterns); and

''(3) the costs and feasibility of transitioning the uniforms of the Afghan military or security forces to a pattern owned by the United States, using existing excess inventory where available, and acquiring the rights to the Spec4ce Forest pattern.''

STATEMENTS OF PURPOSE FOR DEPARTMENT OF DEFENSE ACQUISITION

Pub. L. 115–91, div. A, title VIII, § 801, Dec. 12, 2017, 131 Stat. 1449, provided that: ''Not later than 180 days after the date of the enactment of this Act [Dec. 12, 2017], the Secretary of Defense shall revise the Defense Federal Acquisition Regulation Supplement to include the following statements of purpose:

''(1) The defense acquisition system (as defined in section 2545 of title 10, United States Code) exists to manage the investments of the United States in technologies, programs, and product support necessary to achieve the national security strategy prescribed by the President pursuant to section 108 of the National Security Act of 1947 (50 U.S.C. 3043) and to support the United States Armed Forces.

''(2) The investment strategy of the Department of Defense shall be postured to support not only the current United States Armed Forces, but also future Armed Forces of the United States.

''(3) The primary objective of Department of Defense acquisition is to acquire quality products that satisfy user needs with measurable improvements to mission capability and operational support, in a timely manner, and at a fair and reasonable price.''

PROCESS FOR ENHANCED SUPPLY CHAIN SCRUTINY

Pub. L. 115–91, div. A, title VIII, § 807, Dec. 12, 2017, 131 Stat. 1456, provided that:

''(a) PROCESS.—Not later than 90 days after the date of the enactment of this Act [Dec. 12, 2017], the Secretary of Defense shall establish a process for enhancing scrutiny of acquisition decisions in order to improve the integration of supply chain risk management into the overall acquisition decision cycle.

''(b) ELEMENTS.—The process under subsection (a) shall include the following elements:

''(1) Designation of a senior official responsible for overseeing the development and implementation of the process.

''(2) Development or integration of tools to support commercial due-diligence, business intelligence, or otherwise analyze and monitor commercial activity to understand business relationships with entities determined to be threats to the United States.

''(3) Development of risk profiles of products or services based on commercial due-diligence tools and data services.

''(4) Development of education and training curricula for the acquisition workforce that supports the process.

''(5) Integration, as needed, with intelligence sources to develop threat profiles of entities determined to be threats to the United States.

''(6) Periodic review and assessment of software products and services on computer networks of the Department of Defense to remove prohibited products or services.

''(7) Synchronization of the use of current authorities for making supply chain decisions, including section 806 of Public Law 111–383 (10 U.S.C. 2304 note) or improved use of suspension and debarment officials.

''(8) Coordination with interagency, industrial, and international partners, as appropriate, to share information, develop Government-wide strategies for dealing with significant entities determined to be significant threats to the United States, and effectively use authorities in other departments and agencies to provide consistent, Government-wide approaches to supply chain threats.

''(9) Other matters as the Secretary considers necessary.

''(c) NOTIFICATION.—Not later than 90 days after establishing the process required by subsection (a), the Secretary shall provide a written notification to the Committees on Armed Services of the Senate and House of Representatives that the process has been established. The notification also shall include the following:

''(1) Identification of the official designated under subsection (b)(1).

''(2) Identification of tools and services currently available to the Department of Defense under subsection (b)(2).

''(3) Assessment of additional tools and services available under subsection (b)(2) that the Department of Defense should evaluate.

''(4) Identification of, or recommendations for, any statutory changes needed to improve the effectiveness of the process.

''(5) Projected resource needs for implementing any recommendations made by the Secretary.''

PROTOTYPE PROJECTS TO DIGITIZE DEFENSE ACQUISITION REGULATIONS, POLICIES, AND GUIDANCE, AND EMPOWER USER TAILORING OF ACQUISITION PROCESS

Pub. L. 115–91, div. A, title VIII, § 868, Dec. 12, 2017, 131 Stat. 1495, provided that:

''(a) IN GENERAL.—The Secretary of Defense, acting through the Under Secretary of Defense for Research and Engineering, shall conduct development efforts to develop prototypes to digitize defense acquisition regulations, policies, and guidance and to develop a digital decision support tool that facilitates the ability of users to tailor programs in accordance with existing laws, regulations, and guidance.

''(b) ELEMENTS.—Under the prototype projects, the Secretary shall—

''(1) convert existing acquisition policies, guides, memos, templates, and reports to an online, interactive digital format to create a dynamic, integrated, and authoritative knowledge environment for purposes of assisting program managers and the acquisition workforce of the Department of Defense to navigate the complex lifecycle for each major type of acquisition program or activity of the Department;

''(2) as part of this digital environment, create a digital decision support capability that uses decision trees and tailored acquisition models to assist users to develop strategies and facilitate coordination and approvals; and

''(3) as part of this environment, establish a foundational data layer to enable advanced data analytics on the acquisition enterprise of the Department, to include business process reengineering to improve productivity.

''(c) USE OF PROTOTYPES IN ACQUISITION ACTIVITIES.—The Under Secretary of Defense for Research and Engineering shall encourage the use of these prototypes to model, develop, and test any procedures, policies, instructions, or other forms of direction and guidance that may be required to support acquisition training, practices, and policies of the Department of Defense.

''(d) FUNDING.—The Secretary may use the authority under section 1705(e)(4)(B) of title 10, United States Code, to develop acquisition support prototypes and tools under this program.''

SOFTWARE DEVELOPMENT PILOT PROGRAM USING AGILE BEST PRACTICES

Pub. L. 115–91, div. A, title VIII, § 874, Dec. 12, 2017, 131 Stat. 1500, provided that:

''(a) IN GENERAL.—Not later than 30 days after the date of the enactment of this Act [Dec. 12, 2017], the Secretary of Defense shall identify no fewer than four and up to eight software development activities within the Department of Defense or military departments to be developed in a pilot program using agile acquisition methods.

''(b) STREAMLINED PROCESSES.—Software development activities identified under subsection (a) shall be selected for the pilot program and developed without incorporation of the following contract or transaction requirements:

''(1) Earned value management (EVM) or EVM-like reporting.

''(2) Development of integrated master schedule.

''(3) Development of integrated master plan.

''(4) Development of technical requirement document.

''(5) Development of systems requirement documents.

''(6) Use of information technology infrastructure library agreements.

''(7) Use of software development life cycle (methodology).

''(c) ROLES AND RESPONSIBILITIES.—

''(1) IN GENERAL.—Selected activities shall include the following roles and responsibilities:

''(A) A program manager that is authorized to make all programmatic decisions within the overarching activity objectives, including resources, funding, personnel, and contract or transaction termination recommendations.

''(B) A product owner that reports directly to the program manager and is responsible for the overall design of the product, prioritization of roadmap elements and interpretation of their acceptance criteria, and prioritization of the list of all features desired in the product.

''(C) An engineering lead that reports directly to the program manager and is responsible for the implementation and operation of the software.

''(D) A design lead that reports directly to the program manager and is responsible for identifying, communicating, and visualizing user needs through a human-centered design process.

''(2) QUALIFICATIONS.—The Secretary shall establish qualifications for personnel filling the positions described in paragraph (1) prior to their selection. The qualifications may not include a positive education requirement and must be based on technical expertise or experience in delivery of software products, including agile concepts.

''(3) COORDINATION PLAN FOR TESTING AND CERTIFICATION ORGANIZATIONS.—The program manager shall ensure the availability of resources for test and certification organizations support of iterative development processes.

''(d) PLAN.—The Secretary of Defense shall develop a plan for each selected activity under the pilot program. The plan shall include the following elements:

''(1) Definition of a product vision, identifying a succinct, clearly defined need the software will address.

''(2) Definition of a product road map, outlining a noncontractual plan that identifies short-term and long-term product goals and specific technology solutions to help meet those goals and adjusts to mission and user needs at the product owner's discretion.

''(3) The use of a broad agency announcement, other transaction authority, or other rapid merit-based solicitation procedure.

''(4) Identification of, and continuous engagement with, end users.

''(5) Frequent and iterative end user validation of features and usability consistent with the principles outlined in the Digital Services Playbook of the U.S. Digital Service.

''(6) Use of commercial best practices for advanced computing systems, including, where applicable—

''(A) Automated testing, integration, and deployment;

''(B) compliance with applicable commercial accessibility standards;

''(C) capability to support modern versions of multiple, common web browsers;

''(D) capability to be viewable across commonly used end user devices, including mobile devices; and

''(E) built-in application monitoring.

''(e) PROGRAM SCHEDULE.—The Secretary shall ensure that each selected activity includes—

''(1) award processes that take no longer than three months after a requirement is identified;

''(2) planned frequent and iterative end user validation of implemented features and their usability;

''(3) delivery of a functional prototype or minimally viable product in three months or less from award; and

''(4) follow-on delivery of iterative development cycles no longer than four weeks apart, including security testing and configuration management as applicable.

''(f) OVERSIGHT METRICS.—The Secretary shall ensure that the selected activities—

''(1) use a modern tracking tool to execute requirements backlog tracking; and

''(2) use agile development metrics that, at a minimum, track—

''(A) pace of work accomplishment;

''(B) completeness of scope of testing activities (such as code coverage, fault tolerance, and boundary testing);

''(C) product quality attributes (such as major and minor defects and measures of key performance attributes and quality attributes);

''(D) delivery progress relative to the current product roadmap; and

''(E) goals for each iteration.

''(g) RESTRICTIONS.—

''(1) USE OF FUNDS.—No funds made available for the selected activities may be expended on estimation or evaluation using source lines of code methodologies.

''(2) CONTRACT TYPES.—The Secretary of Defense may not use lowest price technically acceptable contracting methods or cost plus contracts to carry out selected activities under this section, and shall encourage the use of existing streamlined and flexible contracting arrangements.

''(h) REPORTS.—

''(1) SOFTWARE DEVELOPMENT ACTIVITY COMMENCEMENT.—

''(A) IN GENERAL.—Not later than 30 days before the commencement of a software development activity under the pilot program under subsection (a), the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the activity (in this subsection referred to as a 'pilot activity').

''(B) ELEMENTS.—The report on a pilot activity under this paragraph shall set forth a description of the pilot activity, including the following information:

''(i) The purpose of the pilot activity.

''(ii) The duration of the pilot activity.

''(iii) The efficiencies and benefits anticipated to accrue to the Government under the pilot program.

''(2) SOFTWARE DEVELOPMENT ACTIVITY COMPLETION.—

''(A) IN GENERAL.—Not later than 60 days after the completion of a pilot activity, the Secretary shall submit to the congressional defense committees a report on the pilot activity.

''(B) ELEMENTS.—The report on a pilot activity under this paragraph shall include the following elements:

''(i) A description of results of the pilot activity.

''(ii) Such recommendations for legislative or administrative action as the Secretary considers appropriate in light of the pilot activity.

''(i) DEFINITIONS.—In this section:

''(1) AGILE ACQUISITION.—The term 'agile acquisition' means acquisition using agile or iterative development.

''(2) AGILE OR ITERATIVE DEVELOPMENT.—The term 'agile or iterative development', with respect to software—

''(A) means acquisition pursuant to a method for delivering multiple, rapid, incremental capabilities to the user for operational use, evaluation, and feedback not exclusively linked to any single, proprietary method or process; and

''(B) involves—

''(i) the incremental development and fielding of capabilities, commonly called 'spirals', 'spins', or 'sprints', which can be measured in a few weeks or months; and

''(ii) continuous participation and collaboration by users, testers, and requirements authorities.''

### DEVELOPMENT OF PROCUREMENT ADMINISTRATIVE LEAD TIME

Pub. L. 115–91, div. A, title VIII, § 886, Dec. 12, 2017, 131 Stat. 1505, provided that:

''(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Dec. 12, 2017], the Secretary of Defense shall develop, make available for public comment, and finalize—

''(1) a definition of the term 'Procurement Administrative Lead Time' or 'PALT', to be applied Department of Defense-wide, that describes the amount of time from the date on which a solicitation is issued to the date of an initial award of a contract or task order of the Department of Defense; and

''(2) a plan for measuring and publicly reporting data on PALT for Department of Defense contracts and task orders above the simplified acquisition threshold.

''(b) REQUIREMENT FOR DEFINITION.—Unless the Secretary determines otherwise, the amount of time in the definition of PALT developed under subsection (a) shall—

''(1) begin on the date on which the initial solicitation is issued for a contract or task order of the Department of Defense by the Secretary of a military department or head of a Defense Agency; and

''(2) end on the date of the award of the contract or task order.

''(c) COORDINATION.—In developing the definition of PALT, the Secretary shall coordinate with—

''(1) the senior contracting official of each military department and Defense Agency to determine the variations of the definition in use across the Department of Defense and each military department and Defense Agency; and

''(2) the Administrator of the General Services Administration on modifying the existing data system of the Federal Government to determine the date on which the initial solicitation is issued.

''(d) USE OF EXISTING PROCUREMENT DATA SYSTEMS.—In developing the plan for measuring and publicly reporting data on PALT required by subsection (a), the Secretary shall, to the maximum extent practicable, rely on the information contained in the Federal procurement data system established pursuant to section

1122(a)(4) of title 41, United States Code, including any modifications to that system.''

ESTABLISHMENT OF SET OF ACTIVITIES THAT USE DATA ANALYSIS, MEASUREMENT, AND OTHER EVALUATION-RELATED METHODS TO IMPROVE ACQUISITION PROGRAM OUTCOMES

Pub. L. 115–91, div. A, title IX, §913, Dec. 12, 2017, 131 Stat. 1523, provided that:

''(a) ESTABLISHMENT REQUIRED.—Not later than one year after the date of the enactment of this Act [Dec. 12, 2017], the Secretary of Defense shall establish a set of activities that use data analysis, measurement, and other evaluation-related methods to improve the acquisition outcomes of the Department of Defense and enhance organizational learning.

''(b) TYPES OF ACTIVITIES.—The set of activities established under subsection (a) may include any or all of the following: — [sic]

''(1) Establishment of data analytics capabilities and organizations within an Armed Force.

''(2) Development of capabilities in Department of Defense laboratories, test centers, and federally funded research and development centers to provide technical support for data analytics activities that support acquisition program management and business process re-engineering activities.

''(3) Increased use of existing analytical capabilities available to acquisition programs and offices to support improved acquisition outcomes.

''(4) Funding of intramural and extramural research and development activities to develop and implement data analytics capabilities in support of improved acquisition outcomes.

''(5) Publication, to the maximum extent practicable, and in a manner that protects classified and proprietary information, of data collected by the Department of Defense related to acquisition program costs and activities for access and analyses by the general public or Department research and education organizations.

''(6) Promulgation by the Chief of Staff of the Army, the Chief of Naval Operations, the Chief of Staff of the Air Force, and the Commandant of the Marine Corps, in coordination with the Deputy Secretary of Defense, the Under Secretary of Defense for Research and Engineering, and the Under Secretary for Acquisition and Sustainment, of a consistent policy as to the role of data analytics in establishing budgets and making milestone decisions for major defense acquisition programs.

''(7) Continual assessment, in consultation with the private sector, of the efficiency of current data collection and analyses processes, so as to minimize the requirement for collection and delivery of data by, from, and to Government organizations.

''(8) Promulgation of guidance to acquisition programs and activities on the efficient use, quality, and sharing of enterprise data between programs and organizations to improve acquisition program analytics and outcomes.

''(9) Establishment of focused research and educational activities at the Defense Acquisition University, and appropriate private sector academic institutions, to support enhanced use of data management, data analytics, and other evaluation-related methods to improve acquisition outcomes.''

REQUIREMENTS RELATING TO MULTI-USE SENSITIVE COMPARTMENTED INFORMATION FACILITIES

Pub. L. 115–91, div. A, title XVI, §1628, Dec. 12, 2017, 131 Stat. 1735, provided that:

''(a) IN GENERAL.—In order to facilitate access for small business concerns and nontraditional defense contractors to affordable secure spaces, the Secretary of Defense, in consultation with the Director of National Intelligence, shall develop processes and procedures necessary to build, certify, and maintain certifications for multi-use sensitive compartmented information facilities not tied to a single contract and where multiple companies can securely work on multiple projects at different security levels.

''(b) DEFINITIONS.—In this section:

''(1) The term 'small business concern' has the meaning given that term under section 3 of the Small Business Act (15 U.S.C. 632).

''(2) The term 'nontraditional defense contractors' has the meaning given that term in section 2302 of title 10, United States Code.''

PILOT PROGRAM ON ENHANCING INFORMATION SHARING FOR SECURITY OF SUPPLY CHAIN

Pub. L. 115–91, div. A, title XVI, §1696, Dec. 12, 2017, 131 Stat. 1793, provided that:

''(a) ESTABLISHMENT.—Not later than June 1, 2019, the Secretary of Defense shall establish a pilot program to enhance information sharing with cleared defense contractors to ensure all source information is appropriately, singularly, and exclusively shared for the purpose of ensuring the security or integrity of the supply chain of covered programs.

''(b) SELECTION.—The Secretary shall select not more than 10 acquisition or sustainment programs of the Department of Defense to participate in the pilot program under subsection (a), of which—

''(1) not fewer than one program shall be related to nuclear weapons;

''(2) not fewer than one program shall be related to nuclear command, control, and communications;

''(3) not fewer than one program shall be related to continuity of government;

''(4) not fewer than one program shall be related to ballistic missile defense;

''(5) not fewer than one program shall be related to other command and control systems; and

''(6) not fewer than one program shall be related to space systems.

''(c) REPORT.—Not later than March 1, 2018, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report that includes—

''(1) details on how the Secretary will establish the pilot program under subsection (a) to ensure all source information is appropriately, singularly, and exclusively shared for the purpose of ensuring the security or integrity of the supply chain of covered programs;

''(2) details of any personnel, funding, or statutory constraints in carrying out the pilot program; and

''(3) the identification of any legislative action or administrative action required to provide the Secretary with specific additional authorities required to fully implement the pilot program.

''(d) CLEARED DEFENSE CONTRACTORS DEFINED.—In this section, the term 'cleared defense contractors' means contractors of the Department of Defense who have a security clearance, including contractor facilities that have a security clearance.''

USE OF COMMERCIAL ITEMS IN DISTRIBUTED COMMON GROUND SYSTEMS

Pub. L. 115–91, div. A, title XVI, §1698, Dec. 12, 2017, 131 Stat. 1794, provided that:

''(a) IN GENERAL.—The procurement process for each covered Distributed Common Ground System shall be carried out in accordance with section 2377 of title 10, United States Code.

''(b) CERTIFICATION.—Not later than 30 days after the date of the enactment of this Act [Dec. 12, 2017], the service acquisition executive responsible for each covered Distributed Common Ground System shall certify to the appropriate congressional committees that the procurement process for increments of the system procured after the date of the enactment of this Act will be carried out in accordance with section 2377 of title 10, United States Code.

''(c) DEFINITIONS.—In this section:

''(1) The term 'appropriate congressional committees' means—

''(A) the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives]; and

''(B) the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives.

''(2) The term 'covered Distributed Common Ground System' includes the following:

''(A) The Distributed Common Ground System of the Army.

''(B) The Distributed Common Ground System of the Navy.

''(C) The Distributed Common Ground System of the Marine Corps.

''(D) The Distributed Common Ground System of the Air Force.

''(E) The Distributed Common Ground System of the Special Operations Forces.''

STRATEGY FOR ASSURED ACCESS TO TRUSTED MICROELECTRONICS

Pub. L. 114–328, div. A, title II, § 231, Dec. 23, 2016, 130 Stat. 2059, provided that:

''(a) STRATEGY.—The Secretary of Defense shall develop a strategy to ensure that the Department of Defense has assured access to trusted microelectronics by not later than September 30, 2019.

''(b) ELEMENTS.—The strategy under subsection (a) shall include the following:

''(1) Definitions of the various levels of trust required by classes of Department of Defense systems.

''(2) Means of classifying systems of the Department of Defense based on the level of trust such systems are required to maintain with respect to microelectronics.

''(3) Means by which trust in microelectronics can be assured.

''(4) Means to increase the supplier base for assured microelectronics to ensure multiple supply pathways.

''(5) An assessment of the microelectronics needs of the Department of Defense in future years, including the need for trusted, radiation-hardened microelectronics.

''(6) An assessment of the microelectronic needs of the Department of Defense that may not be fulfilled by entities outside the Department of Defense.

''(7) The resources required to assure access to trusted microelectronics, including infrastructure, workforce, and investments in science and technology.

''(8) A research and development strategy to ensure that the Department of Defense can, to the maximum extent practicable, use state of the art commercial microelectronics capabilities or their equivalent, while satisfying the needs for trust.

''(9) Recommendations for changes in authorities, regulations, and practices, including acquisition policies, financial management, public-private partnership policies, or in any other relevant areas, that would support the achievement of the goals of the strategy.

''(c) SUBMISSION AND UPDATES.—(1) Not later than one year after the date of the enactment of this Act [Dec. 23, 2016], the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] the strategy developed under subsection (a). The strategy shall be submitted in unclassified form, but may include a classified annex.

''(2) Not later than two years after submitting the strategy under paragraph (1) and not less frequently than once every two years thereafter until September 30, 2024, the Secretary shall update the strategy as the Secretary considers appropriate to support Department of Defense missions.

''(d) DIRECTIVE REQUIRED.—Not later than September 30, 2019, the Secretary of Defense shall issue a directive for the Department of Defense describing how Department of Defense entities may access assured and trusted microelectronics supply chains for Department of Defense systems.

''(e) REPORT AND CERTIFICATION.—Not later than September 30, 2020, the Secretary of the Defense shall submit to the congressional defense committees—

''(1) a report on—

''(A) the status of the implementation of the strategy developed under subsection (a);

''(B) the actions being taken to achieve full implementation of such strategy, and a timeline for such implementation; and

''(C) the status of the implementation of the directive required by subsection (d); and

''(2) a certification of whether the Department of Defense has an assured means for accessing a sufficient supply of trusted microelectronics, as required by the strategy developed under subsection (a).

''(f) DEFINITIONS.—In this section:

''(1) The term 'assured' refers, with respect to microelectronics, to the ability of the Department of Defense to guarantee availability of microelectronics parts at the necessary volumes and with the performance characteristics required to meet the needs of the Department of Defense.

''(2) The terms 'trust' and 'trusted' refer, with respect to microelectronics, to the ability of the Department of Defense to have confidence that the microelectronics function as intended and are free of exploitable vulnerabilities, either intentionally or unintentionally designed or inserted as part of the system at any time during its life cycle.''

UTILITY DATA MANAGEMENT FOR MILITARY FACILITIES

Pub. L. 114–328, div. A, title III, § 313, Dec. 23, 2016, 130 Stat. 2073, provided that:

''(a) PILOT PROGRAM.—The Secretary of Defense, in consultation with the Secretary of Energy, may carry out a pilot program to investigate the use of utility data management services to perform utility bill aggregation, analysis, third-party payment, storage, and distribution for the Department of Defense.

''(b) USE OF FUNDS.—Of the funds authorized to be appropriated by this Act [see Tables for classification] or otherwise made available for fiscal year 2017 for operation and maintenance, Navy, for enterprise information, not more than $250,000 may be obligated or expended to carry out the pilot program under subsection (a).''

PROCUREMENT OF PERSONAL PROTECTIVE EQUIPMENT

Pub. L. 114–328, div. A, title VIII, § 814(a), Dec. 23, 2016, 130 Stat. 2271, as amended by Pub. L. 115–91, div. A, title VIII, § 882, Dec. 12, 2017, 131 Stat. 1504, provided that:

''(a) LIMITATION.—Not later than 90 days after the date of the enactment of this Act [Dec. 23, 2016], the Defense Federal Acquisition Regulation Supplement shall be revised—

''(1) to prohibit the use by the Department of Defense of reverse auctions or lowest price technically acceptable contracting methods for the procurement of personal protective equipment or an aviation critical safety item (as defined in section 2319(g) of this title [probably means section 2319(g) of title 10, United States Code]) if the level of quality or failure of the equipment or item could result in combat casualties; and

''(2) to establish a preference for the use of best value contracting methods for the procurement of such equipment or item.''

Pub. L. 114–92, div. A, title VIII, § 884, Nov. 25, 2015, 129 Stat. 948, which required the Secretary of Defense to ensure that the Secretaries of the Army, Navy, and Air Force, in procuring an item of personal protective equipment or a critical safety item, use source selection criteria that were predominately based on technical qualifications of the item and not predominately based on price to the maximum extent practicable if the level of quality or failure of the item could result

in death or severe bodily harm to the user, as determined by the Secretaries, was repealed by Pub. L. 114–328, div. A, title VIII, §814(b), Dec. 23, 2016, 130 Stat. 2271.

CONTRACT CLOSEOUT AUTHORITY

Pub. L. 114–328, div. A, title VIII, §836, Dec. 23, 2016, 130 Stat. 2285, as amended by Pub. L. 115–91, div. A, title VIII, §824, Dec. 12, 2017, 131 Stat. 1465, provided that:

''(a) AUTHORITY.—The Secretary of Defense may close out a contract or group of contracts as described in subsection (b) through the issuance of one or more modifications to such contracts without completing a reconciliation audit or other corrective action. To accomplish closeout of such contracts—

''(1) remaining contract balances may be offset with balances in other contract line items within a contract regardless of the year or type of appropriation obligated to fund each contract line item and regardless of whether the appropriation for such contract line item has closed; and

''(2) remaining contract balances may be offset with balances on other contracts regardless of the year or type of appropriation obligated to fund each contract and regardless of whether the appropriation has closed.

''(b) COVERED CONTRACTS.—This section covers any contract or group of contracts between the Department of Defense and a defense contractor, each one of which—

''(1) was entered into on a date that is at least 17 fiscal years before the current fiscal year;

''(2) has no further supplies or services deliverables due under the terms and conditions of the contract; and

''(3) is determined by the Secretary of Defense to be not otherwise reconcilable because—

''(A) the records have been destroyed or lost; or

''(B) the records are available but the Secretary of Defense has determined that the time or effort required to determine the exact amount owed to the United States Government or amount owed to the contractor is disproportionate to the amount at issue.

''(c) NEGOTIATED SETTLEMENT AUTHORITY.—Any contract or group of contracts covered by this section may be closed out through a negotiated settlement with the contractor.

''(d) WAIVER AUTHORITY.—

''(1) IN GENERAL.—The Secretary of Defense is authorized to waive any provision of acquisition law or regulation to carry out the authority under subsection (a).

''(2) NOTIFICATION REQUIREMENT.—The Secretary of Defense shall notify the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] not later than 10 days after exercising the authority under subsection (d). The notice shall include an identification of each provision of law or regulation waived.

''(e) ADJUSTMENT AND CLOSURE OF RECORDS.—After closeout of any contract described in subsection (b) using the authority under this section, the payment or accounting offices concerned may adjust and close any open finance and accounting records relating to the contract.

''(f) NO LIABILITY.—No liability shall attach to any accounting, certifying, or payment official, or any contracting officer, for any adjustments or closeout made pursuant to the authority under this section.

''(g) REGULATIONS.—The Secretary of Defense shall prescribe regulations for the administration of the authority under this section.''

KEY PERFORMANCE PARAMETER REDUCTION PILOT PROGRAM

Pub. L. 114–328, div. A, title VIII, §854, Dec. 23, 2016, 130 Stat. 2297, provided that:

''(a) IN GENERAL.—The Secretary of Defense may carry out a pilot program under which the Secretary may identify at least one acquisition program in each military department for reduction of the total number of key performance parameters established for the program, for purposes of determining whether operational and programmatic outcomes of the program are improved by such reduction.

''(b) LIMITATION ON KEY PERFORMANCE PARAMETERS.—Any acquisition program identified for the pilot program carried out under subsection (a) shall establish no more than three key performance parameters, each of which shall describe a program-specific performance attribute. Any key performance parameters for such a program that are required by statute shall be treated as key system attributes.''

DEFENSE PILOT PROGRAM FOR AUTHORITY TO ACQUIRE INNOVATIVE COMMERCIAL ITEMS, TECHNOLOGIES, AND SERVICES USING GENERAL SOLICITATION COMPETITIVE PROCEDURES

Pub. L. 114–328, div. A, title VIII, §879, Dec. 23, 2016, 130 Stat. 2312, provided that:

''(a) AUTHORITY.—The Secretary of Defense and the Secretaries of the military departments may carry out a pilot program, to be known as the 'defense commercial solutions opening pilot program', under which the Secretary may acquire innovative commercial items, technologies, and services through a competitive selection of proposals resulting from a general solicitation and the peer review of such proposals.

''(b) TREATMENT AS COMPETITIVE PROCEDURES.—Use of general solicitation competitive procedures for the pilot program under subsection (a) shall be considered to be use of competitive procedures for purposes of chapter 137 of title 10, United States Code.

''(c) LIMITATIONS.—

''(1) IN GENERAL.—The Secretary may not enter into a contract or agreement under the pilot program for an amount in excess of $100,000,000 without a written determination from the Under Secretary for Acquisition, Logistics, and Technology or the relevant service acquisition executive of the efficacy of the effort to meet mission needs of the Department of Defense or the relevant military department.

''(2) FIXED-PRICE REQUIREMENT.—Contracts or agreements entered into under the program shall be fixed-price, including fixed-price incentive fee contracts.

''(3) TREATMENT AS COMMERCIAL ITEMS.—Notwithstanding section 2376(1) of title 10, United States Code, items, technologies, and services acquired under the pilot program shall be treated as commercial items.

''(d) GUIDANCE.—Not later than six months after the date of the enactment of this Act [Dec. 23, 2016], the Secretary shall issue guidance for the implementation of the pilot program under this section within the Department of Defense. Such guidance shall be issued in consultation with the Director of the Office of Management and Budget and shall be posted for access by the public.

''(e) CONGRESSIONAL NOTIFICATION REQUIRED.—

''(1) IN GENERAL.—Not later than 45 days after the award of a contract for an amount exceeding $100,000,000 using the authority in subsection (a), the Secretary of Defense shall notify the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] of such award.

''(2) ELEMENTS.—Notice of an award under paragraph (1) shall include the following:

''(A) Description of the innovative commercial item, technology, or service acquired.

''(B) Description of the requirement, capability gap, or potential technological advancement with respect to which the innovative commercial item, technology, or service acquired provides a solution or a potential new capability.

''(C) Amount of the contract awarded.

''(D) Identification of contractor awarded the contract.

''(f) DEFINITION.—In this section, the term 'innovative' means—

''(1) any technology, process, or method, including research and development, that is new as of the date of submission of a proposal; or

''(2) any application that is new as of the date of submission of a proposal of a technology, process, or method existing as of such date.

''(g) SUNSET.—The authority to enter into contracts under the pilot program shall expire on September 30, 2022.''

PILOT PROGRAM FOR DISTRIBUTION SUPPORT AND SERVICES FOR WEAPON SYSTEMS CONTRACTORS

Pub. L. 114–328, div. A, title VIII, § 883, Dec. 23, 2016, 130 Stat. 2316, provided that:

''(a) AUTHORITY.—The Secretary of Defense may carry out a six-year pilot program under which the Secretary may make available storage and distribution services support to a contractor in support of the performance by the contractor of a contract for the production, modification, maintenance, or repair of a weapon system that is entered into by the Department of Defense.

''(b) SUPPORT CONTRACTS.—

''(1) IN GENERAL.—Any storage and distribution services to be provided under the pilot program under this section to a contractor in support of the performance of a contract described in subsection (a) shall be provided under a separate contract that is entered into by the Director of the Defense Logistics Agency with that contractor. The requirements of section 2208(h) of title 10, United States Code, and the regulations prescribed pursuant to such section shall apply to any such separate support contract between the Director of the Defense Logistics Agency and the contractor.

''(2) LIMITATION.—Not more than five support contracts between the Director and the contractor may be awarded under the pilot program.

''(c) SCOPE OF SUPPORT AND SERVICES.—The storage and distribution support services that may be provided under this section in support of the performance of a contract described in subsection (a) are storage and distribution of materiel and repair parts necessary for the performance of that contract.

''(d) REGULATIONS.—Before exercising the authority under the pilot program under this section, the Secretary of Defense shall prescribe in regulations such requirements, conditions, and restrictions as the Secretary determines appropriate to ensure that storage and distribution services are provided under the pilot program only when it is in the best interests of the United States to do so. The regulations shall include, at a minimum, the following:

''(1) A requirement for the solicitation of offers for a contract described in subsection (a), for which storage and distribution services are to be made available under the pilot program, including—

''(A) a statement that the storage and distribution services are to be made available under the authority of the pilot program under this section to any contractor awarded the contract, but only on a basis that does not require acceptance of the support and services; and

''(B) a description of the range of the storage and distribution services that are to be made available to the contractor.

''(2) A requirement for the rates charged a contractor for storage and distribution services provided to a contractor under the pilot program to reflect the full cost to the United States of the resources used in providing the support and services, including the costs of resources used, but not paid for, by the Department of Defense.

''(3) With respect to a contract described in subsection (a) that is being performed for a department or agency outside the Department of Defense, a prohibition, in accordance with applicable contracting procedures, on the imposition of any charge on that department or agency for any effort of Department of Defense personnel or the contractor to correct deficiencies in the performance of such contract.

''(4) A prohibition on the imposition of any charge on a contractor for any effort of the contractor to correct a deficiency in the performance of storage and distribution services provided to the contractor under this section.

''(5) A requirement that storage and distribution services provided under the pilot program may not interfere with the mission of the Defense Logistics Agency or of any military department involved with the pilot program.

''(6) A requirement that any support contract for storage and distribution services entered into under the pilot program shall include a clause to indemnify the Government against any failure by the contractor to perform the support contract, and to remain responsible for performance of the primary contract.

''(e) RELATIONSHIP TO TREATY OBLIGATIONS.—The Secretary shall ensure that the exercise of authority under the pilot program under this section does not conflict with any obligation of the United States under any treaty or other international agreement.

''(f) REPORTS.—

''(1) SECRETARY OF DEFENSE.—Not later than the end of the fourth year of operation of the pilot program, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report describing—

''(A) the cost effectiveness for both the Government and industry of the pilot program; and

''(B) how support contracts under the pilot program affected meeting the requirements of primary contracts.

''(2) COMPTROLLER GENERAL.—Not later than the end of the fifth year of operation of the pilot program, the Comptroller General of the United States shall review the report of the Secretary under paragraph (1) for sufficiency and provide such recommendations in a report to the Committees on Armed Services of the Senate and House of Representatives as the Comptroller General considers appropriate.

''(g) SUNSET.—The authority to enter into contracts under the pilot program shall expire six years after the date of the enactment of this Act. Any contracts entered into before such date shall continue in effect according to their terms.''

NONTRADITIONAL AND SMALL CONTRACTOR INNOVATION PROTOTYPING PROGRAM

Pub. L. 114–328, div. A, title VIII, § 884, Dec. 23, 2016, 130 Stat. 2318, as amended by Pub. L. 115–91, div. A, title VIII, § 865, Dec. 12, 2017, 131 Stat. 1495, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall conduct a pilot program for nontraditional defense contractors and small business concerns to design, develop, and demonstrate innovative prototype military platforms of significant scope for the purpose of demonstrating new capabilities that could provide alternatives to existing acquisition programs and assets. The Secretary shall establish the pilot program within the Departments of the Army, Navy, and Air Force, the Missile Defense Agency, and the United States Special Operations Command.

''(b) FUNDING.—There is authorized to be made available $250,000,000 from the Rapid Prototyping Fund established under section 804(d) of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 2302 note) to carry out the pilot program.

''(c) PLAN.—

''(1) IN GENERAL.—The Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives], concurrent with the budget for the Department of Defense for fiscal year 2018, as submitted to Congress pursuant to section 1105 of title 31, United States Code, a plan to fund and carry out the pilot program in future years.

''(2) ELEMENTS.—The plan submitted under paragraph (1) shall consider maximizing use of—

''(A) broad agency announcements or other merit-based selection procedures;

''(B) the Department of Defense Acquisition Challenge Program authorized under section 2359b of title 10, United States Code;

''(C) the foreign comparative test program;

''(D) projects carried out under the Rapid Innovation Program of the Department of Defense or pursuant to a Phase III agreement (as defined in section 9(r)(2) of the Small Business Act (15 U.S.C. 638(r)(2))); and

''(E) streamlined procedures for acquisition provided under section 804 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 2302 note) and procedures for alternative acquisition pathways established under section 805 of such Act (10 U.S.C. 2302 note).

''(d) PROGRAMS TO BE INCLUDED.—As part of the pilot program, the Secretary of Defense shall allocate up to $50,000,000 on a fixed price contractual basis for fiscal year 2017 or pursuant to the plan submitted under subsection (c) for demonstrations of the following capabilities:

''(1) Swarming of multiple unmanned air vehicles.

''(2) Unmanned, modular fixed-wing aircraft that can be rapidly adapted to multiple missions and serve as a fifth generation weapons augmentation platform.

''(3) Vertical takeoff and landing tiltrotor aircraft.

''(4) Integration of a directed energy weapon on an air, sea, or ground platform.

''(5) Swarming of multiple unmanned underwater vehicles.

''(6) Commercial small synthetic aperture radar (SAR) satellites with on-board machine learning for automated, real-time feature extraction and predictive analytics.

''(7) Active protection system to defend against rocket-propelled grenades and anti-tank missiles.

''(8) Defense against hypersonic weapons, including sensors.

''(9) Unmanned ground logistics and unmanned air logistics capabilities enhancement.

''(10) Other systems as designated by the Secretary.

''(e) DEFINITIONS.—In this section:

''(1) NONTRADITIONAL DEFENSE CONTRACTOR.—The term 'nontraditional defense contractor' has the meaning given the term in section 2302(9) of title 10, United States Code.

''(2) SMALL BUSINESS CONCERN.—The term 'small business concern' has the meaning given the term in section 3 of the Small Business Act (15 U.S.C. 632).

''(f) SUNSET.—The authority under this section expires at the close of September 30, 2026.''

ESTABLISHMENT OF PANEL ON DEPARTMENT OF DEFENSE AND ABILITYONE CONTRACTING OVERSIGHT, ACCOUNTABILITY, AND INTEGRITY; DEFENSE ACQUISITION UNIVERSITY TRAINING

Pub. L. 114–328, div. A, title VIII, §898, Dec. 23, 2016, 130 Stat. 2327, provided that:

''(a) ESTABLISHMENT OF PANEL ON DEPARTMENT OF DEFENSE AND ABILITYONE CONTRACTING OVERSIGHT, ACCOUNTABILITY, AND INTEGRITY.—

''(1) IN GENERAL.—The Secretary of Defense shall establish a panel to be known as the 'Panel on Department of Defense and AbilityOne Contracting Oversight, Accountability, and Integrity' (hereafter in this section referred to as the 'Panel'). The Panel shall be supported by the Defense Acquisition University, established under section 1746 of title 10, United States Code, and the National Defense University, including administrative support.

''(2) COMPOSITION.—The Panel shall be composed of the following:

''(A) A representative of the Under Secretary of Defense for Acquisition, Technology, and Logistics, who shall be the chairman of the Panel.

''(B) A representative from the AbilityOne Commission.

''(C) A representative of the service acquisition executive of each military department and Defense Agency (as such terms are defined, respectively, in section 101 of title 10, United States Code).

''(D) A representative of the Under Secretary of Defense (Comptroller).

''(E) A representative of the Inspector General of the Department of Defense and the AbilityOne Commission.

''(F) A representative from each of the Army Audit Agency, the Navy Audit Service, the Air Force Audit Agency, and the Defense Contract Audit Agency.

''(G) The President of the Defense Acquisition University, or a designated representative.

''(H) One or more subject matter experts on veterans employment from a veterans service organization.

''(I) A representative of the Commission Directorate of Veteran Employment of the AbilityOne Commission whose duties include maximizing opportunities to employ significantly disabled veterans in accordance with the regulations of the AbilityOne Commission.

''(J) One or more representatives from the Department of Justice who are subject matter experts on compliance with disability rights laws applicable to contracts of the Department of Defense and the AbilityOne Commission.

''(K) One or more representatives from the Department of Justice who are subject matter experts on Department of Defense contracts, Federal Prison Industries, and the requirements of the Javits-Wagner-O'Day Act [see 41 U.S.C. 8501 et seq.].

''(L) Such other representatives as may be determined appropriate by the Under Secretary of Defense for Acquisition, Technology, and Logistics.

''(b) MEETINGS.—The Panel shall meet as determined necessary by the chairman of the Panel, but not less often than once every three months.

''(c) DUTIES.—The Panel shall—

''(1) review the status of and progress relating to the implementation of the recommendations of report number DODIG–2016–097 of the Inspector General of the Department of Defense titled 'DoD Generally Provided Effective Oversight of AbilityOne Contracts', published on June 17, 2016;

''(2) recommend actions the Department of Defense and the AbilityOne Commission may take to eliminate waste, fraud, and abuse with respect to contracts of the Department of Defense and the AbilityOne Commission;

''(3) recommend actions the Department of Defense and the AbilityOne Commission may take to ensure opportunities for the employment of significantly disabled veterans and the blind and other severely disabled individuals;

''(4) recommend changes to law, regulations, and policy that the Panel determines necessary to eliminate vulnerability to waste, fraud, and abuse with respect to the performance of contracts of the Department of Defense;

''(5) recommend criteria for veterans with disabilities to be eligible for employment opportunities through the programs of the AbilityOne Commission that considers the definitions of disability used by the Secretary of Veterans Affairs and the AbilityOne Commission;

''(6) recommend ways the Department of Defense and the AbilityOne Commission may explore opportunities for competition among qualified nonprofit agencies or central nonprofit agencies and ensure an equitable selection and allocation of work to qualified nonprofit agencies;

''(7) recommend changes to business practices, information systems, and training necessary to ensure that—

''(A) the AbilityOne Commission complies with regulatory requirements related to the establishment and maintenence of the procurement list es-

tablished pursuant to section 8503 of title 41, United States Code; and

''(B) the Department of Defense complies with the statutory and regulatory requirements for use of such procurement list; and

''(8) any other duties determined necessary by the Secretary of Defense.

''(d) CONSULTATION.—To carry out the duties described in subsection (c), the Panel may consult or contract with other executive agencies and with experts from qualified nonprofit agencies or central nonprofit agencies on—

''(1) compliance with disability rights laws applicable to contracts of the Department of Defense and the AbilityOne Commission;

''(2) employment of significantly disabled veterans; and

''(3) vocational rehabilitation.

''(e) AUTHORITY.—To carry out the duties described in subsection (c), the Panel may request documentation or other information needed from the AbilityOne Commission, central nonprofit agencies, and qualified nonprofit agencies.

''(f) PANEL RECOMMENDATIONS AND MILESTONE DATES.—

''(1) MILESTONE DATES FOR IMPLEMENTING RECOMMENDATIONS.—After consulting with central nonprofit agencies and qualified nonprofit agencies, the Panel shall suggest milestone dates for the implementation of the recommendations made under subsection (c) and shall notify the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives], the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, qualified nonprofit agencies, and central nonprofit agencies of such dates.

''(2) NOTIFICATION OF IMPLEMENTATION OF RECOMMENDATIONS.—After the establishment of milestone dates under paragraph (1), the Panel may review the activities, including contracts, of the AbilityOne Commission, the central nonprofit agencies, and the relevant qualified nonprofit agencies to determine if the recommendations made under subsection (c) are being substantially implemented in good faith by the AbilityOne Commission or such agencies. If the Panel determines that the AbilityOne Commission or any such agency is not implementing the recommendations, the Panel shall notify the Secretary of Defense, the congressional defense committees, the Committee on Oversight and Government Reform of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate.

''(g) REMEDIES.—

''(1) IN GENERAL.—Upon receiving notification under subsection (f)(2) and subject to the limitation in paragraph (2), the Secretary of Defense may take one of the following actions:

''(A) With respect to a notification relating to the AbilityOne Commission, the Secretary may suspend compliance with the requirement to procure a product or service in section 8504 of title 41, United States Code, until the date on which the Secretary notifies Congress, in writing, that the AbilityOne Commission is substantially implementing the recommendations made under subsection (c).

''(B) With respect to a notification relating to a qualified nonprofit agency, the Secretary may terminate a contract with such agency that is in existence on the date of receipt of such notification, or elect to not enter into a contract with such agency after such date, until the date on which the AbilityOne Commission certifies to the Secretary that such agency is substantially implementing the recommendations made under subsection (c).

''(C) With respect to a notification relating to a central nonprofit agency, the Secretary may include a term in a contract entered into after the date of receipt of such notification with a qualified nonprofit agency that is under such central nonprofit agency that states that such qualified nonprofit agency shall not pay a fee to such central nonprofit agency until the date on which the AbilityOne Commission certifies to the Secretary that such central nonprofit agency is substantially implementing the recommendations made under subsection (c).

''(2) LIMITATION.—If the Secretary of Defense takes any of the actions described in paragraph (1), the Secretary shall coordinate with the AbilityOne Commission or the relevant central nonprofit agency, as appropriate, to fully implement the recommendations made under subsection (c). On the date on which such recommendations are fully implemented, the Secretary shall notify Congress, in writing, and the Secretary's authority under paragraph (1) shall terminate.

''(h) PROGRESS REPORTS.—

''(1) CONSULTATION ON RECOMMENDATIONS.—Before submitting the progress report required under paragraph (2), the Panel shall consult with the AbilityOne Commission on draft recommendations made pursuant to subsection (c). The Panel shall include any recommendations of the AbilityOne Commission in the progress report submitted under paragraph (2).

''(2) PROGRESS REPORT.—Not later than 180 days after the date of the enactment of this Act [Dec. 23, 2016], the Panel shall submit to the Secretary of Defense, the Chairman of the AbilityOne Commission, the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives], the Committee on Oversight and Government Reform of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate a progress report on the activities of the Panel.

''(i) ANNUAL REPORT.—

''(1) CONSULTATION ON REPORT.—Before submitting the annual report required under paragraph (2), the Panel shall consult with the AbilityOne Commission on the contents of the report. The Panel shall include any recommendations of the AbilityOne Commission in the report submitted under paragraph (2).

''(2) REPORT.—Not later than September 30, 2017, and annually thereafter for the next three years, the Panel shall submit to the Secretary of Defense, the Chairman of the AbilityOne Commission, the congressional defense committees, the Committee on Oversight and Government Reform of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate a report that includes—

''(A) a summary of findings and recommendations for the year covered by the report;

''(B) a summary of the progress of the relevant qualified nonprofit agencies or central nonprofit agencies in implementing recommendations of the previous year's report, if applicable;

''(C) an examination of the current structure of the AbilityOne Commission to eliminate waste, fraud, and abuse and to ensure contracting integrity and accountability for any violations of law or regulations;

''(D) recommendations for any changes to the acquisition and contracting practices of the Department of Defense and the AbilityOne Commission to improve the delivery of goods and services to the Department of Defense; and

''(E) recommendations for administrative safeguards to ensure the Department of Defense and the AbilityOne Commission are in compliance with the requirements of the Javits-Wagner-O'Day Act [see 41 U.S.C. 8501 et seq.], Federal civil rights law, and regulations and policy related to the performance of contracts of the Department of Defense with qualified nonprofit agencies and the contracts of the AbilityOne Commission with central nonprofit agencies.

''(j) SUNSET.—The Panel shall terminate on the date of submission of the last annual report required under subsection (i).

''(k) INAPPLICABILITY OF FACA.—The requirements of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Panel established pursuant to subsection (a).

''(*l*) DEFENSE ACQUISITION UNIVERSITY TRAINING.—

''(1) IN GENERAL.—The Secretary of Defense shall establish a training program at the Defense Acquisition University established under section 1746 of title 10, United States Code. Such training shall include—

''(A) information about—

''(i) the mission of the AbilityOne Commission;

''(ii) the employment of significantly disabled veterans through contracts from the procurement list maintained by the AbilityOne Commission;

''(iii) reasonable accommodations and accessibility requirements for the blind and other severely disabled individuals; and

''(iv) Executive orders and other subjects related to the blind and other severely disabled individuals, as determined by the Secretary of Defense; and

''(B) procurement, acquisition, program management, and other training specific to procuring goods and services for the Department of Defense pursuant to the Javits-Wagner-O'Day Act.

''(2) ACQUISITION WORKFORCE ASSIGNMENT.—Members of the acquisition workforce (as defined in section 101 of title 10, United States Code) who have participated in the training described in paragraph (1) are eligible for a detail to the AbilityOne Commission.

''(3) ABILITYONE COMMISSION ASSIGNMENT.—Career employees of the AbilityOne Commission may participate in the training program described in paragraph (1) on a non-reimbursable basis for up to three years and on a non-reimbursable or reimbursable basis thereafter.

''(4) FUNDING.—Amounts from the Department of Defense Acquisition Workforce Development Fund established under section 1705 of title 10, United States Code, are authorized for use for the detail of members of the acquisition workforce to the AbilityOne Commission.

''(m) DEFINITIONS.—In this section:

''(1) The term 'AbilityOne Commission' means the Committee for Purchase From People Who Are Blind or Severely Disabled established under section 8502 of title 41, United States Code.

''(2) The terms 'blind', 'qualified nonprofit agency for the blind', 'qualified nonprofit agency for other severely disabled', and 'severely disabled individual' have the meanings given such terms under section 8501 of such title.

''(3) The term 'central nonprofit agency' means a central nonprofit agency designated under section 8503(c) of such title.

''(4) The term 'executive agency' has the meaning given such term in section 133 of such title.

''(5) The term 'Javits-Wagner-O'Day Act' means chapter 85 of such title.

''(6) The term 'qualified nonprofit agency' means—

''(A) a qualified nonprofit agency for the blind; or

''(B) a qualified nonprofit agency for other severely disabled.

''(7) The term 'significantly disabled veteran' means a veteran (as defined in section 101 of title 38, United States Code) who is a severely disabled individual.''

ENHANCED AUTHORITY TO ACQUIRE PRODUCTS AND SERVICES PRODUCED IN AFRICA IN SUPPORT OF CERTAIN ACTIVITIES

Pub. L. 114–328, div. A, title VIII, §899A(a)–(e), Dec. 23, 2016, 130 Stat. 2336, 2337, provided that:

''(a) IN GENERAL.—Except as provided in subsection (c), in the case of a product or service to be acquired in support of covered activities in a covered African country for which the Secretary of Defense makes a determination described in subsection (b), the Secretary may conduct a procurement in which—

''(1) competition is limited to products or services from the host nation;

''(2) a preference is provided for products or services from the host nation; or

''(3) a preference is provided for products or services from a covered African country, other than the host nation.

''(b) DETERMINATION.—

''(1) IN GENERAL.—A determination described in this subsection is a determination by the Secretary of any of the following:

''(A) That the product or service concerned is to be used only in support of covered activities.

''(B) That it is in the national security interests of the United States to limit competition or provide a preference as described in subsection (a) because such limitation or preference is necessary—

''(i) to reduce overall United States transportation costs and risks in shipping products in support of operations, exercises, theater security cooperation activities, and other missions in the African region;

''(ii) to reduce delivery times in support of covered activities; or

''(iii) to promote regional security and stability in Africa.

''(C) That the product or service is of equivalent quality to a product or service that would have otherwise been acquired without such limitation or preference.

''(2) REQUIREMENT FOR EFFECTIVENESS OF ANY PARTICULAR DETERMINATION.—A determination under paragraph (1) shall not be effective for purposes of a limitation or preference under subsection (a) unless the Secretary also determines that—

''(A) the limitation or preference will not adversely affect—

''(i) United States military operations or stability operations in the African region; or

''(ii) the United States industrial base; and

''(B) in the case of air transportation, an air carrier holding a certificate under section 41102 of title 49, United States Code, is not reasonably available to provide the air transportation.

''(c) INAPPLICABILITY OF AUTHORITY TO PROCUREMENT OF ITEMS ON ABILITYONE PROCUREMENT CATALOG.—The authority under subsection (a) may not be used for the procurement of any good that is contained in the procurement list described in section 8503(a) of title 41, United States Code, if such good can be produced and delivered by a qualified non profit agency for the blind or a nonprofit agency for other severely disabled in a timely fashion to support mission requirements.

''(d) REPORT ON USE OF AUTHORITY.—Not later than December 31, 2017, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the use of the authority in subsection (a). The report shall include, but not be limited to, the following:

''(1) The number of determinations made by the Secretary pursuant to subsection (b).

''(2) A list of the countries providing products or services as a result of determinations made pursuant to subsection (b).

''(3) A description of the products and services acquired using the authority.

''(4) The extent to which the use of the authority has met the one or more of the objectives specified in clause (i), (ii), or (iii) of subsection (b)(1)(B).

''(5) Such recommendations for improvements to the authority as the Secretary considers appropriate.

''(6) Such other matters as the Secretary considers appropriate.

''(e) DEFINITIONS.—In this section:

''(1) COVERED ACTIVITIES.—The term 'covered activities' means Department of Defense activities in the African region or a regional neighbor.

''(2) COVERED AFRICAN COUNTRY.—The term 'covered African country' means a country in Africa that has signed a long-term agreement with the United States related to the basing or operational needs of the United States Armed Forces.

''(3) HOST NATION.—The term 'host nation' means a nation that allows the Armed Forces and supplies of the United States to be located on, to operate in, or to be transported through its territory.

''(4) PRODUCT OR SERVICE OF A COVERED AFRICAN COUNTRY.—The term 'product or service of a covered African country' means the following:

''(A) A product from a covered African country that is wholly grown, mined, manufactured, or produced in the covered African country.

''(B) A service from a covered African country that is performed by a person or entity that—

''(i) is properly licensed or registered by appropriate authorities of the covered African country; and

''(ii) as determined by the Chief of Mission concerned—

''(I) is operating primarily in the covered African country; or

''(II) is making a significant contribution to the economy of the covered African country through payment of taxes or use of products, materials, or labor that are primarily grown, mined, manufactured, produced, or sourced from the covered African country.''

MIDDLE TIER OF ACQUISITION FOR RAPID PROTOTYPING AND RAPID FIELDING

Pub. L. 114–92, div. A, title VIII, § 804, Nov. 25, 2015, 129 Stat. 882, as amended by Pub. L. 114–328, div. A, title VIII, §§ 849(a), 864(b), 897, title X, § 1081(c)(2), Dec. 23, 2016, 130 Stat. 2293, 2304, 2327, 2419; Pub. L. 115–91, div. A, title VIII, § 866, Dec. 12, 2017, 131 Stat. 1495, provided that:

''(a) GUIDANCE REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Nov. 25, 2015], the Under Secretary of Defense for Acquisition, Technology, and Logistics, in consultation with the Comptroller of the Department of Defense and the Vice Chairman of the Joint Chiefs of Staff, shall establish guidance for a 'middle tier' of acquisition programs that are intended to be completed in a period of two to five years.

''(b) ACQUISITION PATHWAYS.—The guidance required by subsection (a) shall cover the following two acquisition pathways:

''(1) RAPID PROTOTYPING.—The rapid prototyping pathway shall provide for the use of innovative technologies to rapidly develop fieldable prototypes to demonstrate new capabilities and meet emerging military needs. The objective of an acquisition program under this pathway shall be to field a prototype that can be demonstrated in an operational environment and provide for a residual operational capability within five years of the development of an approved requirement.

''(2) RAPID FIELDING.—The rapid fielding pathway shall provide for the use of proven technologies to field production quantities of new or upgraded systems with minimal development required. The objective of an acquisition program under this pathway shall be to begin production within six months and complete fielding within five years of the development of an approved requirement.

''(c) EXPEDITED PROCESS.—

''(1) IN GENERAL.—The guidance required by subsection (a) shall provide for a streamlined and coordinated requirements, budget, and acquisition process that results in the development of an approved requirement for each program in a period of not more than six months from the time that the process is initiated. Programs that are subject to the guidance shall not be subject to the Joint Capabilities Integration and Development System Manual and Department of Defense Directive 5000.01, except to the extent specifically provided in the guidance.

''(2) RAPID PROTOTYPING.—With respect to the rapid prototyping pathway, the guidance shall include—

''(A) a merit-based process for the consideration of innovative technologies and new capabilities to meet needs communicated by the Joint Chiefs of Staff and the combatant commanders;

''(B) a process for developing and implementing acquisition and funding strategies for the program;

''(C) a process for demonstrating and evaluating the performance of fieldable prototypes developed pursuant to the program in an operational environment; and

''(D) a process for transitioning successful prototypes to new or existing acquisition programs for production and fielding under the rapid fielding pathway or the traditional acquisition system.

''(3) RAPID FIELDING.—With respect to the rapid fielding pathway, the guidance shall include—

''(A) a merit-based process for the consideration of existing products and proven technologies to meet needs communicated by the Joint Chiefs of Staff and the combatant commanders;

''(B) a process for demonstrating performance and evaluating for current operational purposes the proposed products and technologies;

''(C) a process for developing and implementing acquisition and funding strategies for the program;

''(D) a process for considering lifecycle costs and addressing issues of logistics support and system interoperability; and

''(E) a process for identifying and exploiting opportunities to use the rapid fielding pathway to reduce total ownership costs.

''(4) STREAMLINED PROCEDURES.—The guidance for the programs may provide for any of the following streamlined procedures:

''(A) The service acquisition executive of the military department concerned shall appoint a program manager for such program from among candidates from among civilian employees or members of the Armed Forces who have significant and relevant experience managing large and complex programs.

''(B) The program manager for each program shall report with respect to such program directly, without intervening review or approval, to the service acquisition executive of the military department concerned.

''(C) The service acquisition executive of the military department concerned shall evaluate the job performance of such manager on an annual basis. In conducting an evaluation under this paragraph, a service acquisition executive shall consider the extent to which the manager has achieved the objectives of the program for which the manager is responsible, including quality, timeliness, and cost objectives.

''(D) The program manager of a defense streamlined program shall be authorized staff positions for a technical staff, including experts in business management, contracting, auditing, engineering, testing, and logistics, to enable the manager to manage the program without the technical assistance of another organizational unit of an agency to the maximum extent practicable.

''(E) The program manager of a defense streamlined program shall be authorized, in coordination with the users of the equipment and capability to be acquired and the test community, to make trade-offs among life-cycle costs, requirements, and schedules to meet the goals of the program.

''(F) The service acquisition executive, acting in coordination with the defense acquisition executive, shall serve as the milestone decision authority for the program.

''(G) The program manager of a defense streamlined program shall be provided a process to expeditiously seek a waiver from Congress from any statutory or regulatory requirement that the program manager determines adds little or no value to the management of the program.

''(d) RAPID PROTOTYPING FUNDS.—

''(1)DEPARTMENT OF DEFENSE RAPID PROTOTYPING FUND.—

''(A) IN GENERAL.—The Secretary of Defense shall establish a fund to be known as the 'Department of Defense Rapid Prototyping Fund' to provide funds, in addition to other funds that may be available, for acquisition programs under the rapid prototyping pathway established pursuant to this section and other purposes specified in law. The Fund shall be managed by a senior official of the Department of Defense designated by the Under Secretary of Defense for Acquisition, Technology, and Logistics. The Fund shall consist of—

''(i) amounts appropriated to the Fund;

''(ii) amounts credited to the Fund pursuant to section 828 of this Act [set out as a note under section 2430 of this title]; and

''(iii) any other amounts appropriated to, credited to, or transferred to the Fund.

''(B) TRANSFER AUTHORITY.—Amounts available in the Fund may be transferred to a military department for the purpose of carrying out an acquisition program under the rapid prototyping pathway established pursuant to this section. Any amount so transferred shall be credited to the account to which it is transferred. The transfer authority provided in this paragraph is in addition to any other transfer authority available to the Department of Defense.

''(C) CONGRESSIONAL NOTICE.—The senior official designated to manage the Fund shall notify the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] of all transfers under paragraph (2) within 5 business days after such transfer. Each notification shall specify the amount transferred, the purpose of the transfer, and the total projected cost and estimated cost to complete the acquisition program to which the funds were transferred.''

''(2) RAPID PROTOTYPING FUNDS FOR THE MILITARY DEPARTMENTS.—The Secretary of each military department may establish a military department-specific fund (and, in the case of the Secretary of the Navy, including the Marine Corps) to provide funds, in addition to other funds that may be available to the military department concerned, for acquisition programs under the rapid fielding and prototyping pathways established pursuant to this section. Each military department-specific fund shall consist of amounts appropriated or credited to the fund.

[Pub. L. 114–328, div. A, title X, §1081(c), Dec. 23, 2016, 130 Stat. 2419, provided that the amendment made by section 1081(c)(2) to section 804 of Pub. L. 114–92, set out above, is effective as of Nov. 25, 2015, and as if included in Pub. L. 114–92 as enacted.]

USE OF ALTERNATIVE ACQUISITION PATHS TO ACQUIRE CRITICAL NATIONAL SECURITY CAPABILITIES

Pub. L. 114–92, div. A, title VIII, §805, Nov. 25, 2015, 129 Stat. 885, as amended by Pub. L. 114–328, div. A, title VIII, §849(b), Dec. 23, 2016, 130 Stat. 2293, provided that: ''Not later than 180 days after the date of the enactment of this Act [Nov. 25, 2015], the Secretary of Defense shall establish procedures for alternative acquisition pathways to acquire capital assets and services that meet critical national security needs. The procedures shall—

''(1) be separate from existing acquisition procedures;

''(2) be supported by streamlined contracting, budgeting, life-cycle cost management, and requirements processes;

''(3) establish alternative acquisition paths based on the capabilities being bought and the time needed to deploy these capabilities; and

''(4) maximize the use of flexible authorities in existing law and regulation.''

SECRETARY OF DEFENSE WAIVER OF ACQUISITION LAWS TO ACQUIRE VITAL NATIONAL SECURITY CAPABILITIES

Pub. L. 114–92, div. A, title VIII, §806, Nov. 25, 2015, 129 Stat. 885, as amended by Pub. L. 114–328, div. A, title VIII, §819, Dec. 23, 2016, 130 Stat. 2273, provided that:

''(a) WAIVER AUTHORITY.—The Secretary of Defense is authorized to waive any provision of acquisition law or regulation described in subsection (c) for the purpose of acquiring a capability that would not otherwise be available to the Armed Forces of the United States, upon a determination that—

''(1) the acquisition of the capability is in the vital national security interest of the United States;

''(2) the application of the law or regulation to be waived would impede the acquisition of the capability in a manner that would undermine the national security of the United States; and

''(3) the underlying purpose of the law or regulation to be waived can be addressed in a different manner or at a different time.

''(b) DESIGNATION OF RESPONSIBLE OFFICIAL.—Whenever the Secretary of Defense makes a determination under subsection (a)(1) that the acquisition of a capability is in the vital national security interest of the United States, the Secretary shall designate a senior official of the Department of Defense who shall be personally responsible and accountable for the rapid and effective acquisition and deployment of the needed capability. The Secretary shall provide the designated official such authority as the Secretary determines necessary to achieve this objective, and may use the waiver authority in subsection (a) for this purpose.

''(c) ACQUISITION LAWS AND REGULATIONS.—

''(1) IN GENERAL.—Upon a determination described in subsection (a), the Secretary of Defense is authorized to waive any provision of law or regulation addressing—

''(A) the establishment of a requirement or specification for the capability to be acquired;

''(B) research, development, test, and evaluation of the capability to be acquired;

''(C) production, fielding, and sustainment of the capability to be acquired; or

''(D) solicitation, selection of sources, and award of contracts for the capability to be acquired.

''(2) LIMITATIONS.—Nothing in this subsection authorizes the waiver of—

''(A) the requirements of this section;

''(B) any provision of law imposing civil or criminal penalties; or

''(C) any provision of law governing the proper expenditure of appropriated funds.

''(d) NOTIFICATION REQUIREMENT.—Not later than 10 days after exercising the waiver authority under subsection (a), the Secretary of Defense shall provide a written notification to Congress providing the details of the waiver and the expected benefits it provides to the Department of Defense.

''(e) NONDELEGATION.—The authority of the Secretary to waive provisions of laws and regulations under subsection (a) is nondelegable.''

CONSIDERATION OF POTENTIAL PROGRAM COST INCREASES AND SCHEDULE DELAYS RESULTING FROM OVERSIGHT OF DEFENSE ACQUISITION PROGRAMS

Pub. L. 114–92, div. A, title VIII, §881, Nov. 25, 2015, 129 Stat. 942, provided that:

''(a) AVOIDANCE OF UNNECESSARY COST INCREASES AND SCHEDULE DELAYS.—The Director of Operational Test and Evaluation, the Deputy Chief Management Officer, the Director of the Defense Contract Management Agency, the Director of the Defense Contract Audit Agency, the Inspector General of the Department of Defense, and the heads of other defense audit, testing, acquisition, and management agencies shall ensure that policies, procedures, and activities implemented by their offices and agencies in connection with defense acquisition program oversight do not result in unnecessary increases in program costs or cost estimates or delays in schedule or schedule estimates.

''(b) CONSIDERATION OF PRIVATE SECTOR BEST PRACTICES.—In considering potential cost increases and schedule delays as a result of oversight efforts pursuant to subsection (a), the officials described in such subsection shall consider private sector best practices with respect to oversight implementation.''

PROHIBITION ON CONTRACTING WITH THE ENEMY

Pub. L. 113–291, div. A, title VIII, subtitle E, Dec. 19, 2014, 128 Stat. 3450, provided that:

''SEC. 841. PROHIBITION ON PROVIDING FUNDS TO THE ENEMY.

''(a) IDENTIFICATION OF PERSONS AND ENTITIES.—The Secretary of Defense shall, in conjunction with the Director of National Intelligence and in consultation with the Secretary of State, establish in each covered combatant command a program to identify persons and entities within the area of responsibility of such command that—

''(1) provide funds, including goods and services, received under a covered contract, grant, or cooperative agreement of an executive agency directly or indirectly to a covered person or entity; or

''(2) fail to exercise due diligence to ensure that none of the funds, including goods and services, received under a covered contract, grant, or cooperative agreement of an executive agency are provided directly or indirectly to a covered person or entity.

''(b) NOTICE OF IDENTIFIED PERSONS AND ENTITIES.—

''(1) NOTICE.—Upon the identification of a person or entity as being described by subsection (a), the head of the executive agency concerned (or the designee of such head) and the commander of the covered combatant command concerned (or the specified deputies of the commander) shall be notified, in writing, of such identification of the person or entity.

''(2) RESPONSIVE ACTIONS.—Upon receipt of a notice under paragraph (1), the head of the executive agency concerned (or the designee of such head) and the commander of the covered combatant command concerned (or the specified deputies of the commander) may notify the heads of contracting activities, or other appropriate officials of the agency or command, in writing of such identification.

''(3) MAKING OF NOTIFICATIONS.—Any written notification pursuant to this subsection shall be made in accordance with procedures established to implement the revisions of regulations required by this section.

''(c) AUTHORITY TO TERMINATE OR VOID CONTRACTS, GRANTS, AND COOPERATIVE AGREEMENTS AND TO RESTRICT FUTURE AWARD.—Not later than 270 days after the date of the enactment of this Act [Dec. 19, 2014], the Federal Acquisition Regulation, the Defense Federal Acquisition Regulation Supplement, and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall be revised to provide that, upon notice from the head of an executive agency (or the designee of such head) or the commander of a covered combatant command (or the specified deputies of the commander) pursuant to subsection (b), the head of contracting activity of an executive agency, or other appropriate official, may do the following:

''(1) Restrict the award of contracts, grants, or cooperative agreements of the executive agency concerned upon a written determination by the head of contracting activity or other appropriate official that the contract, grant, or cooperative agreement would provide funds received under such contract, grant, or cooperative agreement directly or indirectly to a covered person or entity.

''(2) Terminate for default any contract, grant, or cooperative agreement of the executive agency concerned upon a written determination by the head of contracting activity or other appropriate official that the contractor, or the recipient of the grant or cooperative agreement, has failed to exercise due diligence to ensure that none of the funds received under the contract, grant, or cooperative agreement are provided directly or indirectly to a covered person or entity.

''(3) Void in whole or in part any contract, grant, or cooperative agreement of the executive agency concerned upon a written determination by the head of contracting activity or other appropriate official that the contract, grant, or cooperative agreement provides funds directly or indirectly to a covered person or entity.

''(d) CLAUSE.—

''(1) IN GENERAL.—Not later than 270 days after the date of the enactment of this Act, the Federal Acquisition Regulation, the Defense Federal Acquisition Regulation Supplement, and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall be revised to require that—

''(A) the clause described in paragraph (2) shall be included in each covered contract, grant, and cooperative agreement of an executive agency that is awarded on or after the date that is 270 days after the date of the enactment of this Act; and

''(B) to the maximum extent practicable, each covered contract, grant, and cooperative agreement of an executive agency that is awarded before the date of the enactment of this Act shall be modified to include the clause described in paragraph (2).

''(2) CLAUSE DESCRIBED.—The clause described in this paragraph is a clause that—

''(A) requires the contractor, or the recipient of the grant or cooperative agreement, to exercise due diligence to ensure that none of the funds, including goods and services, received under the contract, grant, or cooperative agreement are provided directly or indirectly to a covered person or entity; and

''(B) notifies the contractor, or the recipient of the grant or cooperative agreement, of the authority of the head of contracting activity, or other appropriate official, to terminate or void the contract, grant, or cooperative agreement, in whole or in part, as provided in subsection (c).

''(3) TREATMENT AS VOID.—For purposes of this section:

''(A) A contract, grant, or cooperative agreement that is void is unenforceable as contrary to public policy.

''(B) A contract, grant, or cooperative agreement that is void in part is unenforceable as contrary to public policy with regard to a segregable task or effort under the contract, grant, or cooperative agreement.

''(4) PUBLIC COMMENT.—The President shall ensure that the process for revising regulations required by paragraph (1) shall include an opportunity for public comment, including an opportunity for comment on standards of due diligence required by this section.

''(e) REQUIREMENTS FOLLOWING CONTRACT ACTIONS.—Not later than 270 days after the date of the enactment of this Act, the Federal Acquisition Regulation, the Defense Federal Acquisition Regulation Supplement, and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall be revised as follows:

''(1) To require that any head of contracting activity, or other appropriate official, taking an action under subsection (c) to terminate, void, or restrict a contract, grant, or cooperative agreement notify in writing the contractor or recipient of the grant or cooperative agreement, as applicable, of the action.

''(2) To permit the contractor or recipient of a grant or cooperative agreement subject to an action taken under subsection (c) to terminate or void the contract, grant, or cooperative agreement, as the case may be, an opportunity to challenge the action by requesting an administrative review of the action under the procedures of the executive agency concerned not later than 30 days after receipt of notice of the action.

''(f) ANNUAL REVIEW; PROTECTION OF CLASSIFIED INFORMATION.—

''(1) ANNUAL REVIEW.—The Secretary of Defense, in conjunction with the Director of National Intelligence and in consultation with the Secretary of State shall, on an annual basis, review the lists of persons and entities previously covered by a notice under subsection (b) as having been identified as described by subsection (a) in order to determine whether or not such persons and entities continue to warrant identification as described by subsection (a). If a determination is made pursuant to such a review that a person or entity no longer warrants identification as described by subsection (a), the Secretary of Defense shall notify the head of the executive agency concerned (or the designee of such head) and the commander of the covered combatant command concerned (or the specified deputies of the commander) in writing of such determination.

''(2) PROTECTION OF CLASSIFIED INFORMATION.—Classified information relied upon to make an identification in accordance with subsection (a) may not be disclosed to a contractor or a recipient of a grant or cooperative agreement with respect to which an action is taken pursuant to the authority provided in subsection (c), or to their representatives, in the absence of a protective order issued by a court of competent jurisdiction established under Article I or Article III of the Constitution of the United States that specifically addresses the conditions upon which such classified information may be so disclosed.

''(g) DELEGATION OF CERTAIN RESPONSIBILITIES.—

''(1) COMBATANT COMMAND RESPONSIBILITIES.—The commander of a covered combatant command may delegate the responsibilities in this section to any deputies of the commander specified by the commander for purposes of this section. Any delegation of responsibilities under this paragraph shall be made in writing.

''(2) NONDELEGATION OF RESPONSIBILITY FOR CERTAIN ACTIONS.—The authority provided by subsection (c) to terminate, void, or restrict contracts, grants, and cooperative agreements, in whole or in part, may not be delegated below the level of head of contracting activity, or equivalent official for purposes of grants or cooperative agreements.

''(h) ADDITIONAL RESPONSIBILITIES OF EXECUTIVE AGENCIES.—

''(1) SHARING OF INFORMATION ON SUPPORTERS OF THE ENEMY.—The Secretary of Defense shall, in consultation with the Director of the Office of Management and Budget, carry out a program through which agency components may provide information to heads of executive agencies (or the designees of such heads) and the commanders of the covered combatant commands (or the specified deputies of the commanders) relating to persons or entities who may be providing funds, including goods and services, received under contracts, grants, or cooperative agreements of the executive agencies directly or indirectly to a covered person or entity. The program shall be designed to facilitate and encourage the sharing of risk and threat information between executive agencies and the covered combatant commands.

''(2) INCLUSION OF INFORMATION ON CONTRACT ACTIONS IN FAPIIS AND OTHER SYSTEMS.—Upon the termination, voiding, or restriction of a contract, grant, or cooperative agreement of an executive agency under subsection (c), the head of contracting activity of the executive agency shall provide for the inclusion in the Federal Awardee Performance and Integrity Information System (FAPIIS), or other formal system of records on contractors or entities, of appropriate information on the termination, voiding, or restriction, as the case may be, of the contract, grant, or cooperative agreement.

''(3) REPORTS.—The head of contracting activity that receives a notice pursuant to subsection (b) shall submit to the head of the executive agency concerned (or the designee of such head) and the commander of the covered combatant command concerned (or specified deputies) a report on the action, if any, taken by the head of contracting activity pursuant to subsection (c), including a determination not to terminate, void, or restrict the contract, grant, or cooperative agreement as otherwise authorized by subsection (c).

''(i) REPORTS.—

''(1) IN GENERAL.—Not later than March 1 of 2016, 2017, and 2018, the Director of the Office of Management and Budget shall submit to the appropriate committees of Congress a report on the use of the authorities in this section in the preceding calendar year, including the following:

''(A) For each instance in which an executive agency exercised the authority to terminate, void, or restrict a contract, grant, and cooperative agreement pursuant to subsection (c), based on a notification under subsection (b), the following:

''(i) The executive agency taking such action.

''(ii) An explanation of the basis for the action taken.

''(iii) The value of the contract, grant, or cooperative agreement voided or terminated.

''(iv) The value of all contracts, grants, or cooperative agreements of the executive agency in force with the person or entity concerned at the time the contract, grant, or cooperative agreement was terminated or voided.

''(B) For each instance in which an executive agency did not exercise the authority to terminate, void, or restrict a contract, grant, and cooperative agreement pursuant to subsection (c), based on a notification under subsection (b), the following:

''(i) The executive agency concerned.

''(ii) An explanation of the basis for not taking the action.

''(2) FORM.—Any report under this subsection may, at the election of the Director—

''(A) be submitted in unclassified form, but with a classified annex; or

''(B) be submitted in classified form.

''(j) INAPPLICABILITY TO CERTAIN CONTRACTS, GRANTS, AND COOPERATIVE AGREEMENTS.—The provisions of this section do not apply to contracts, grants, and cooperative agreements that are performed entirely inside the United States.

''(k) NATIONAL SECURITY EXCEPTION.—Nothing in this section shall apply to the authorized intelligence or law enforcement activities of the United States Government.

''(*l*) CONSTRUCTION WITH OTHER AUTHORITIES.—Except as provided in subsection (m), the authorities in this section shall be in addition to, and not to the exclusion of, any other authorities available to executive agencies to implement policies and purposes similar to those set forth in this section.

''(m) COORDINATION WITH CURRENT AUTHORITIES.—

''(1) REPEAL OF SUPERSEDED AUTHORITY RELATED TO CENTCOM.—[Repealed section 841 of Pub. L. 112–81, effective 270 days after Dec. 19, 2014. See below.]

''(2) REPEAL OF SUPERSEDED AUTHORITY RELATED TO DEPARTMENT OF DEFENSE.—[Repealed section 831 of Pub. L. 113–66, effective 270 days after Dec. 19, 2014. See below.]

''(3) USE OF SUPERSEDED AUTHORITIES IN IMPLEMENTATION OF REQUIREMENTS.—In providing for the implementation of the requirements of this section by the Department of Defense, the Secretary of Defense may use and modify for that purpose the regulations and procedures established for purposes of the implementation of the requirements of section 841 of the National Defense Authorization Act for Fiscal Year 2012 [Pub. L. 112–81] and section 831 of the National Defense Authorization Act for Fiscal Year 2014 [Pub. L. 113–66].

''(n) SUNSET.—The provisions of this section shall cease to be effective on December 31, 2019.

''SEC. 842. ADDITIONAL ACCESS TO RECORDS.

''(a) CONTRACTS, GRANTS, AND COOPERATIVE AGREEMENTS.—

''(1) IN GENERAL.—Not later than 270 days after the date of the enactment of this Act [Dec. 19, 2014], applicable regulations shall be revised to provide that, except as provided under subsection (c)(1), the clause described in paragraph (2) may, as appropriate, be included in each covered contract, grant, and cooperative agreement of an executive agency that is awarded on or after the date of the enactment of this Act.

''(2) CLAUSE.—The clause described in this paragraph is a clause authorizing the head of the executive agency concerned, upon a written determination pursuant to paragraph (3), to examine any records of the contractor, the recipient of a grant or cooperative agreement, or any subcontractor or subgrantee under such contract, grant, or cooperative agreement to the extent necessary to ensure that funds, including goods and services, available under the contract, grant, or cooperative agreement are not provided directly or indirectly to a covered person or entity.

''(3) WRITTEN DETERMINATION.—The authority to examine records pursuant to the contract clause described in paragraph (2) may be exercised only upon a written determination by the contracting officer, or comparable official responsible for a grant or cooperative agreement, upon a finding by the commander of a covered combatant command (or the specified deputies of the commander) or the head of an executive agency (or the designee of such head) that there is reason to believe that funds, including goods and services, available under the contract, grant, or cooperative agreement concerned may have been provided directly or indirectly to a covered person or entity.

''(4) FLOWDOWN.—A clause described in paragraph (2) may also be included in any subcontract or subgrant under a covered contract, grant, or cooperative agreement if the subcontract or subgrant has an estimated value in excess of $50,000.

''(b) REPORTS.—

''(1) IN GENERAL.—Not later than March 1 of 2016, 2017, and 2018, the Director of the Office of Management and Budget shall submit to the appropriate committees of Congress a report on the use of the authority provided by this section in the preceding calendar year.

''(2) ELEMENTS.—Each report under this subsection shall identify, for the calendar year covered by such report, each instance in which an executive agency exercised the authority provided under this section to examine records, explain the basis for the action taken, and summarize the results of any examination of records so undertaken.

''(3) FORM.—Any report under this subsection may be submitted in classified form.

''(c) RELATIONSHIP TO EXISTING AUTHORITIES APPLICABLE TO CENTCOM.—

''(1) APPLICABILITY.—This section shall not apply to contracts, grants, or cooperative agreements covered under section 842 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81; 125 Stat. 1513; 10 U.S.C. 2313 note).

''(2) EXTENSION OF CURRENT AUTHORITIES APPLICABLE TO CENTCOM.—[Amended section 842(d)(1) of Pub. L. 112–81, set out as a note under section 2313 of this title.]

''SEC. 843. DEFINITIONS.

''In this subtitle:

''(1) APPROPRIATE COMMITTEES OF CONGRESS.—The term 'appropriate committees of Congress' means—

''(A) the Committee on Armed Services, the Committee on Homeland Security and Governmental Affairs, the Committee on Foreign Relations, and the Committee on Appropriations of the Senate; and

''(B) the Committee on Armed Services, the Committee on Oversight and Government Reform, the Committee on Foreign Affairs, and the Committee on Appropriations of the House of Representatives.

''(2) CONTINGENCY OPERATION.—The term 'contingency operation' has the meaning given that term in section 101(a)(13) of title 10, United States Code.

''(3) CONTRACT.—The term 'contract' includes a contract for commercial items but is not limited to a contract for commercial items.

''(4) COVERED COMBATANT COMMAND.—The term 'covered combatant command' means the following:

''(A) The United States Africa Command.

''(B) The United States Central Command.

''(C) The United States European Command.

''(D) The United States Pacific Command.

''(E) The United States Southern Command.

''(F) The United States Transportation Command.

''(5) COVERED CONTRACT, GRANT, OR COOPERATIVE AGREEMENT DEFINED.—The term 'covered contract, grant, or cooperative agreement' means a contract, grant, or cooperative agreement with an estimated value in excess of $50,000 that is performed outside the United States, including its possessions and territories, in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

''(6) COVERED PERSON OR ENTITY.—The term 'covered person or entity' means a person or entity that is actively opposing United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

''(7) EXECUTIVE AGENCY.—The term 'executive agency' has the meaning given that term in section 133 of title 41, United States Code.

''(8) HEAD OF CONTRACTING ACTIVITY.—The term 'head of contracting activity' has the meaning described in section 1.601 of the Federal Acquisition Regulation.

''(9) UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS.—The term 'Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards' means the guidance issued by the Office of Management and Budget in part 200 of chapter II of title 2 of the Code of Federal Regulations.''

Pub. L. 113–66, div. A, title VIII, § 831, Dec. 26, 2013, 127 Stat. 810, related to prohibition on contracting with the enemy, prior to repeal by Pub. L. 113–291, div. A, title VIII, § 841(m)(2), Dec. 19, 2014, 128 Stat. 3454, effective 270 days after Dec. 19, 2014.

Pub. L. 112–81, div. A, title VIII, § 841, Dec. 31, 2011, 125 Stat. 1510, related to prohibition on contracting with the enemy in the United States Central Command theater of operations, prior to repeal by Pub. L. 113–291, div. A, title VIII, § 841(m)(1), Dec. 19, 2014, 128 Stat. 3454, effective 270 days after Dec. 19, 2014.

RAPID ACQUISITION AND DEPLOYMENT PROCEDURES FOR UNITED STATES SPECIAL OPERATIONS COMMAND

Pub. L. 113–291, div. A, title VIII, § 851, Dec. 19, 2014, 128 Stat. 3457, provided that:

''(a) AUTHORITY TO ESTABLISH PROCEDURES.—The Secretary may prescribe procedures for the rapid acquisition and deployment of items for the United States Special Operations Command that are currently under development by the Department of Defense or available from the commercial sector and are—

''(1) urgently needed to react to an enemy threat or to respond to significant and urgent safety situations;

''(2) needed to avoid significant risk of loss of life or mission failure; or

''(3) needed to avoid collateral damage risk where the absence of collateral damage is a requirement for mission success.

''(b) ISSUES TO BE ADDRESSED.—The procedures prescribed under subsection (a) shall include the following:

''(1) A process for streamlined communication between the Commander of the United States Special Operations Command and the acquisition and research and development communities, including—

''(A) a process for the Commander to communicate needs to the acquisition community and the research and development community; and

''(B) a process for the acquisition community and the research and development community to pro-

pose items that meet the needs communicated by the Commander.

''(2) Procedures for demonstrating, rapidly acquiring, and deploying items proposed pursuant to paragraph (1)(B), including—

''(A) a process for demonstrating performance and evaluating for current operational purposes the existing capability of an item;

''(B) a process for developing an acquisition and funding strategy for the deployment of an item; and

''(C) a process for making deployment determinations based on information obtained pursuant to subparagraphs (A) and (B).

''(c) Testing Requirement.—

''(1) In general.—The process for demonstrating performance and evaluating for current operational purposes the existing capability of an item prescribed under subsection (b)(2)(A) shall include—

''(A) an operational assessment in accordance with expedited procedures prescribed by the Director of Operational Testing and Evaluation; and

''(B) a requirement to provide information to the deployment decision-making authority about any deficiency of the item in meeting the original requirements for the item (as stated in an operational requirements document or similar document).

''(2) Deficiency not a determining factor.—The process may not include a requirement for any deficiency of an item to be the determining factor in deciding whether to deploy the item.

''(3) Additional requirement in case of deficiency.—In the case of any deficiency of an item, a decision to deploy the item may be made only if the Commander of the United States Special Operations Command determines that, for reasons of national security, the deficiency of the item is acceptable.

''(d) Limitation.—The quantity of items of a system procured using the procedures prescribed pursuant to this section may not exceed the number established for low-rate initial production for the system. Any such items shall be counted for purposes of the number of items of the system that may be procured through low-rate initial production.

''(e) Annual Funding Limitation.—Of the funds available to the Commander of the United States Special Operations Command in any given fiscal year, not more than $50,000,000 may be used to procure items under this section.

''(f) Relationship to Other Rapid Acquisition Authority.—The Commander of the United States Special Operations Command may not use the authority under this section at the same time the Commander uses the authority under section 806 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107–314; 10 U.S.C. 2302 note).

''(g) Congressional Notifications.—

''(1) Notification before procedures go into effect.—The Secretary of Defense shall notify the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] at least 30 days before the procedures prescribed pursuant to this section are made effective.

''(2) Notification after use of procedures.—The Secretary of Defense shall notify the congressional defense committees not later than 48 hours after each use of the procedures prescribed pursuant to this section.''

### Consideration of Corrosion Control in Preliminary Design Review

Pub. L. 113–291, div. A, title VIII, §852, Dec. 19, 2014, 128 Stat. 3458, provided that: ''The Under Secretary of Defense for Acquisition, Technology, and Logistics shall ensure that Department of Defense Instruction 5000.02 and other applicable guidance require full consideration, during preliminary design review for a product, of metals, materials, and technologies that effectively prevent or control corrosion over the life cycle of the product.''

### Equipment Disposal

Pub. L. 113–66, div. A, title XV, §1531(d), Dec. 26, 2013, 127 Stat. 938, as amended by Pub. L. 113–291, div. A, title XV, §1532(d), Dec. 19, 2014, 128 Stat. 3614, provided that:

''(1) Acceptance of certain equipment.—The Secretary of Defense may accept equipment procured using funds authorized under this Act [see Tables for classification] or prior Acts that was transferred to the security forces of Afghanistan and returned by such forces to the United States if the Secretary provides written notification to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] of the Secretary's intention to accept such equipment.

''(2) Treatment as department of defense stocks.—The equipment described in paragraph (1), and equipment not yet transferred to the security forces of Afghanistan that is determined by the Commander, Combined Security Transition Command-Afghanistan (or the Commander's designee) to no longer be required for transfer to such forces, may be treated as stocks of the Department of Defense upon notification to the congressional defense committees of such treatment.''

### Department of Defense Policy on Contractor Profits

Pub. L. 112–239, div. A, title VIII, §804, Jan. 2, 2013, 126 Stat. 1826, provided that:

''(a) Review of Guidelines on Profits.—The Secretary of Defense shall review the profit guidelines in the Department of Defense Supplement to the Federal Acquisition Regulation in order to identify any modifications to such guidelines that are necessary to ensure an appropriate link between contractor profit and contractor performance. In conducting the review, the Secretary shall obtain the views of experts and interested parties in Government and the private sector.

''(b) Matters To Be Considered.—In conducting the review required by subsection (a), the Secretary shall consider, at a minimum, the following:

''(1) Appropriate levels of profit needed to sustain competition in the defense industry, taking into account contractor investment and cash flow.

''(2) Appropriate adjustments to address contract and performance risk assumed by the contractor, taking into account the extent to which such risk is passed on to subcontractors.

''(3) Appropriate incentives for superior performance in delivering quality products and services in a timely and cost-effective manner, taking into account such factors as prime contractor cost reduction, control of overhead costs, subcontractor cost reduction, subcontractor management, and effective competition (including the use of small business) at the subcontract level.

''(c) Modification of Guidelines.—Not later than 180 days after the date of the enactment of this Act [Jan. 2, 2013], the Secretary shall modify the profit guidelines described in subsection (a) to make such changes as the Secretary determines to be appropriate based on the review conducted pursuant to that subsection.''

### Extension of Contractor Conflict of Interest Limitations

Pub. L. 112–239, div. A, title VIII, §829, Jan. 2, 2013, 126 Stat. 1841, provided that:

''(a) Assessment of Extension of Limitations to Certain Additional Functions and Contracts.—Not later than 180 days after the date of the enactment of this Act [Jan. 2, 2013], the Secretary of Defense shall review the guidance on personal conflicts of interest for contractor employees issued pursuant to section 841(a) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417; 122 Stat. 4537) [see 41 U.S.C. 2303(b)] in order to determine whether it would be in the best interest of the Department of Defense and the taxpayers to extend such guidance to personal conflicts of interest by contractor personnel performing any of the following:

''(1) Functions other than acquisition functions that are closely associated with inherently governmental functions (as that term is defined in section 2383(b)(3) of title 10, United States Code).

''(2) Personal services contracts (as that term is defined in section 2330a(g)(5) [now 2330a(h)(4)] of title 10, United States Code).

''(3) Contracts for staff augmentation services (as that term is defined in section 808(d)(3) of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81; 125 Stat. 1490)).

''(b) EXTENSION OF LIMITATIONS.—If the Secretary determines pursuant to the review under subsection (a) that the guidance on personal conflicts of interest should be extended, the Secretary shall revise the Defense Supplement to the Federal Acquisition Regulation to the extent necessary to achieve such extension.

''(c) RESULTS OF REVIEW.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall document in writing the results of the review conducted under subsection (a), including, at a minimum—

''(1) the findings and recommendations of the review; and

''(2) the basis for such findings and recommendations.''

RESPONSIBILITY WITHIN DEPARTMENT OF DEFENSE FOR OPERATIONAL CONTRACT SUPPORT

Pub. L. 112–239, div. A, title VIII, § 843, Jan. 2, 2013, 126 Stat. 1845, provided that:

''(a) GUIDANCE REQUIRED.—Not later than one year after the date of the enactment of this Act [Jan. 2, 2013], the Secretary of Defense shall develop and issue guidance establishing the chain of authority and responsibility within the Department of Defense for policy, planning, and execution of operational contract support.

''(b) ELEMENTS.—The guidance under subsection (a) shall, at a minimum—

''(1) specify the officials, offices, and components of the Department within the chain of authority and responsibility described in subsection (a);

''(2) identify for each official, office, and component specified under paragraph (1)—

''(A) requirements for policy, planning, and execution of contract support for operational contract support, including, at a minimum, requirements in connection with—

''(i) coordination of functions, authorities, and responsibilities related to operational contract support, including coordination with relevant Federal agencies;

''(ii) assessments of total force data in support of Department force planning scenarios, including the appropriateness of and necessity for the use of contractors for identified functions;

''(iii) determinations of capability requirements for nonacquisition community operational contract support, and identification of resources required for planning, training, and execution to meet such requirements; and

''(iv) determinations of policy regarding the use of contractors by function, and identification of the training exercises that will be required for operational contract support (including an assessment [of] whether or not such exercises will include contractors); and

''(B) roles, authorities, responsibilities, and lines of supervision for the achievement of the requirements identified under subparagraph (A); and

''(3) ensure that the chain of authority and responsibility described in subsection (a) is appropriately aligned with, and appropriately integrated into, the structure of the Department for the conduct of overseas contingency operations, including the military departments, the Joint Staff, and the commanders of the unified combatant commands.''

DATA COLLECTION ON CONTRACT SUPPORT FOR FUTURE OVERSEAS CONTINGENCY OPERATIONS INVOLVING COMBAT OPERATIONS

Pub. L. 112–239, div. A, title VIII, § 844, Jan. 2, 2013, 126 Stat. 1846, provided that:

''(a) IN GENERAL.—Not later than one year after the date of the enactment of this Act [Jan. 2, 2013], the Secretary of Defense, the Secretary of State, and the Administrator of the United States Agency for International Development shall each issue guidance regarding data collection on contract support for future contingency operations outside the United States that involve combat operations.

''(b) ELEMENTS.—The guidance required by subsection (a) shall ensure that the Department of Defense, the Department of State, and the United States Agency for International Development take the steps necessary to ensure that each agency has the capability to collect and report, at a minimum, the following data regarding such contract support:

''(1) The total number of contracts entered into as of the date of any report.

''(2) The total number of such contracts that are active as of such date.

''(3) The total value of contracts entered into as of such date.

''(4) The total value of such contracts that are active as of such date.

''(5) An identification of the extent to which the contracts entered into as of such date were entered into using competitive procedures.

''(6) The total number of contractor personnel working under contracts entered into as of the end of each calendar quarter during the one-year period ending on such date.

''(7) The total number of contractor personnel performing security functions under contracts entered into as of the end of each calendar quarter during the one-year period ending on such date.

''(8) The total number of contractor personnel killed or wounded under any contracts entered into.

''(c) COMPTROLLER GENERAL REVIEW AND REPORT.—

''(1) REVIEW.—The Comptroller General of the United States shall review the data system or systems established to track contractor data pursuant to subsections (a) and (b). The review shall, with respect to each such data system, at a minimum—

''(A) identify each such data system and assess the resources needed to sustain such system;

''(B) determine if all such data systems are interoperable, use compatible data standards, and meet the requirements of section 2222 of title 10, United States Code; and

''(C) make recommendations on the steps that the Department of Defense, the Department of State, and the United States Agency for International Development should take to ensure that all such data systems—

''(i) meet the requirements of the guidance issued pursuant to subsections (a) and (b);

''(ii) are interoperable, use compatible data standards, and meet the requirements of section 2222 of such title; and

''(iii) are supported by appropriate business processes and rules to ensure the timeliness and reliability of data.

''(2) REPORT.—Not later than two years after the date of the enactment of this Act, the Comptroller General shall submit a report on the review required by paragraph (1) to the following committees:

''(A) The congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives].

''(B) The Committee on Foreign Relations and the Committee on Homeland Security and Governmental Affairs of the Senate.

''(C) The Committee on Foreign Affairs and the Committee on Oversight and Government Reform of the House of Representatives.''

REQUIREMENTS FOR RISK ASSESSMENTS RELATED TO CONTRACTOR PERFORMANCE

Pub. L. 112–239, div. A, title VIII, § 846, Jan. 2, 2013, 126 Stat. 1848, provided that:

''(a) RISK ASSESSMENTS FOR CONTRACTOR PERFORMANCE IN OPERATIONAL OR CONTINGENCY PLANS.—The Secretary of Defense shall require that a risk assessment on reliance on contractors be included in operational or contingency plans developed by a commander of a combatant command in executing the responsibilities prescribed in section 164 of title 10, United States Code. Such risk assessments shall address, at a minimum, the potential risks listed in subsection (c).

''(b) COMPREHENSIVE RISK ASSESSMENTS AND MITIGATION PLANS FOR CONTRACTOR PERFORMANCE IN SUPPORT OF OVERSEAS CONTINGENCY OPERATIONS.—

''(1) IN GENERAL.—Subject to paragraphs (2) and (3), not later than six months after the commencement or designation of a contingency operation outside the United States that includes or is expected to include combat operations, the head of each covered agency shall perform a comprehensive risk assessment and develop a risk mitigation plan for operational and political risks associated with contractor performance of critical functions in support of the operation for such covered agency.

''(2) EXCEPTIONS.—Except as provided in paragraph (3), a risk assessment and risk mitigation plan shall not be required under paragraph (1) for an overseas contingency operation if—

''(A) the operation is not expected to continue for more than one year; and

''(B) the total amount of obligations for contracts for support of the operation for the covered agency is not expected to exceed $250,000,000.

''(3) TERMINATION OF EXCEPTIONS.—Notwithstanding paragraph (2), the head of a covered agency shall perform a risk assessment and develop a risk mitigation plan under paragraph (1) for an overseas contingency operation with regard to which a risk assessment and risk mitigation plan has not previously been performed under paragraph (1) not later than 60 days after the date on which—

''(A) the operation has continued for more than one year; or

''(B) the total amount of obligations for contracts for support of the operation for the covered agency exceeds $250,000,000.

''(c) COMPREHENSIVE RISK ASSESSMENTS.—A comprehensive risk assessment under subsection (b) shall consider, at a minimum, risks relating to the following:

''(1) The goals and objectives of the operation (such as risks from contractor behavior or performance that may injure innocent members of the local population or offend their sensibilities).

''(2) The continuity of the operation (such as risks from contractors refusing to perform or being unable to perform when there may be no timely replacements available).

''(3) The safety of military and civilian personnel of the United States if the presence or performance of contractor personnel creates unsafe conditions or invites attack.

''(4) The safety of contractor personnel employed by the covered agency.

''(5) The managerial control of the Government over the operation (such as risks from over-reliance on contractors to monitor other contractors or inadequate means for Government personnel to monitor contractor performance).

''(6) The critical organic or core capabilities of the Government, including critical knowledge or institutional memory of key operations areas and subject-matter expertise.

''(7) The ability of the Government to control costs, avoid organizational or personal conflicts of interest, and minimize waste, fraud, and abuse.

''(d) RISK MITIGATION PLANS.—A risk mitigation plan under subsection (b) shall include, at a minimum, the following:

''(1) For each high-risk area identified in the comprehensive risk assessment for the operation performed under subsection (b)—

''(A) specific actions to mitigate or reduce such risk, including the development of alternative capabilities to reduce reliance on contractor performance of critical functions;

''(B) measurable milestones for the implementation of planned risk mitigation or risk reduction measures; and

''(C) a process for monitoring, measuring, and documenting progress in mitigating or reducing risk.

''(2) A continuing process for identifying and addressing new and changed risks arising in the course of the operation, including the periodic reassessment of risks and the development of appropriate risk mitigation or reduction plans for any new or changed high-risk area identified.

''(e) CRITICAL FUNCTIONS.—For purposes of this section, critical functions include, at a minimum, the following:

''(1) Private security functions, as that term is defined in section 864(a)(6) of the National Defense Authorization Act for Fiscal Year 2008 [Pub. L. 110–181] (10 U.S.C. 2302 note).

''(2) Training and advising Government personnel, including military and security personnel, of a host nation.

''(3) Conducting intelligence or information operations.

''(4) Any other functions that are closely associated with inherently governmental functions, including the functions set forth in section 7.503(d) of the Federal Acquisition Regulation.

''(5) Any other functions that are deemed critical to the success of the operation.

''(f) COVERED AGENCY.—In this section, the term 'covered agency' means the Department of Defense, the Department of State, and the United States Agency for International Development.''

REQUIREMENT FOR FOCUS ON URGENT OPERATIONAL NEEDS AND RAPID ACQUISITION

Pub. L. 112–239, div. A, title IX, § 902, Jan. 2, 2013, 126 Stat. 1865, provided that:

''(a) DESIGNATION OF SENIOR OFFICIAL RESPONSIBLE FOR FOCUS ON URGENT OPERATIONAL NEEDS AND RAPID ACQUISITION.—

''(1) IN GENERAL.—The Secretary of Defense, after consultation with the Secretaries of the military departments, shall designate a senior official in the Office of the Secretary of Defense as the principal official of the Department of Defense responsible for leading the Department's actions on urgent operational needs and rapid acquisition, in accordance with this section.

''(2) STAFF AND RESOURCES.—The Secretary shall assign to the senior official designated under paragraph (1) appropriate staff and resources necessary to carry out the official's functions under this section.

''(b) RESPONSIBILITIES.—The senior official designated under subsection (a) shall be responsible for the following:

''(1) Acting as an advocate within the Department of Defense for issues related to the Department's ability to rapidly respond to urgent operational needs, including programs funded and carried out by the military departments.

''(2) Improving visibility of urgent operational needs throughout the Department, including across the military departments, the Defense Agencies, and all other entities and processes in the Department that address urgent operational needs.

''(3) Ensuring that tools and mechanisms are used to track, monitor, and manage the status of urgent operational needs within the Department, from validation through procurement and fielding, including a formal feedback mechanism for the Armed Forces to provide information on how well fielded solutions are meeting urgent operational needs.

''(c) URGENT OPERATIONAL NEEDS DEFINED.—In this section, the term 'urgent operational needs' means capabilities that are determined by the Secretary of Defense, pursuant to the review process required by section 804(b) of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 [Pub. L. 111–383] (10 U.S.C. 2302 note), to be suitable for rapid fielding in response to urgent operational needs.''

PROCUREMENT OF TENTS OR OTHER TEMPORARY STRUCTURES

Pub. L. 112–81, div. A, title III, § 368, Dec. 31, 2011, 125 Stat. 1381, provided that:

''(a) IN GENERAL.—In procuring tents or other temporary structures for use by the Armed Forces, and in establishing or maintaining an alternative source for such tents and structures, the Secretary of Defense shall award contracts that provide the best value to the United States. In determining the best value to the United States under this section, the Secretary shall consider the total life-cycle costs of such tents or structures, including the costs associated with any equipment or fuel needed to heat or cool such tents or structures.

''(b) INTERAGENCY PROCUREMENT.—The requirements of this section shall apply to any agency or department of the United States that procures tents or other temporary structures on behalf of the Department of Defense.''

INCLUSION OF DATA ON CONTRACTOR PERFORMANCE IN PAST PERFORMANCE DATABASES FOR SOURCE SELECTION DECISIONS

Pub. L. 112–81, div. A, title VIII, § 806, Dec. 31, 2011, 125 Stat. 1487, as amended by Pub. L. 112–239, div. A, title X, § 1076(a)(11), Jan. 2, 2013, 126 Stat. 1948, provided that:

''(a) STRATEGY ON INCLUSION REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Dec. 31, 2011], the Under Secretary of Defense for Acquisition, Technology, and Logistics shall develop a strategy for ensuring that timely, accurate, and complete information on contractor performance is included in past performance databases used for making source selection decisions.

''(b) ELEMENTS.—The strategy required by subsection (a) shall, at a minimum—

''(1) establish standards for the timeliness and completeness of past performance submissions for purposes of databases described in subsection (a);

''(2) assign responsibility and management accountability for the completeness of past performance submissions for such purposes; and

''(3) ensure that past performance submissions for such purposes are consistent with award fee evaluations in cases where such evaluations have been conducted.

''(c) CONTRACTOR COMMENTS.—Not later than 180 days after the date of the enactment of this Act [Dec. 31, 2011], the Under Secretary of Defense for Acquisition, Technology, and Logistics shall revise the Defense Supplement to the Federal Acquisition Regulation to require the following:

''(1) That affected contractors are provided, in a timely manner, information on contractor performance to be included in past performance databases in accordance with subsection (a).

''(2) That such contractors are afforded up to 14 calendar days, from the date of delivery of the information provided in accordance with paragraph (1), to submit comments, rebuttals, or additional information pertaining to past performance for inclusion in such databases.

''(3) That agency evaluations of contractor past performance, including any information submitted under paragraph (2), are included in the relevant past performance database not later than the date that is 14 days after the date of delivery of the information provided in accordance with paragraph (1).

''(d) CONSTRUCTION.—Nothing in this section shall be construed to prohibit a contractor from submitting comments, rebuttals, or additional information pertaining to past performance after the period described in subsection (c)(2) has elapsed or to prohibit a contractor from challenging a past performance evaluation in accordance with applicable laws, regulations, or procedures.

''(e) COMPTROLLER GENERAL REPORT.—Not later than 18 months after the date of the enactment of this Act [Dec. 31, 2011], the Comptroller General of the United States shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the actions taken by the Under Secretary of Defense for Acquisition, Technology, and Logistics pursuant to this section, including an assessment of the extent to which such actions have achieved the objectives of this section.''

DETECTION AND AVOIDANCE OF COUNTERFEIT ELECTRONIC PARTS

Pub. L. 112–81, div. A, title VIII, § 818(a)–(g), Dec. 31, 2011, 125 Stat. 1493–1496, as amended by Pub. L. 112–239, div. A, title VIII, § 833, Jan. 2, 2013, 126 Stat. 1844; Pub. L. 113–291, div. A, title VIII, § 817, Dec. 19, 2014, 128 Stat. 3432; Pub. L. 114–92, div. A, title VIII, § 885, Nov. 25, 2015, 129 Stat. 948; Pub. L. 114–328, div. A, title VIII, § 815, Dec. 23, 2016, 130 Stat. 2271, provided that:

''(a) ASSESSMENT OF DEPARTMENT OF DEFENSE POLICIES AND SYSTEMS.—The Secretary of Defense shall conduct an assessment of Department of Defense acquisition policies and systems for the detection and avoidance of counterfeit electronic parts.

''(b) ACTIONS FOLLOWING ASSESSMENT.—Not later than 180 days after the date of the enactment of the [probably should be ''this''] Act [Dec. 31, 2011], the Secretary shall, based on the results of the assessment required by subsection (a)—

''(1) establish Department-wide definitions of the terms 'counterfeit electronic part' and 'suspect counterfeit electronic part', which definitions shall include previously used parts represented as new;

''(2) issue or revise guidance applicable to Department components engaged in the purchase of electronic parts to implement a risk-based approach to minimize the impact of counterfeit electronic parts or suspect counterfeit electronic parts on the Department, which guidance shall address requirements for training personnel, making sourcing decisions, ensuring traceability of parts, inspecting and testing parts, reporting and quarantining counterfeit electronic parts and suspect counterfeit electronic parts, and taking corrective actions (including actions to recover costs as described in subsection (c)(2));

''(3) issue or revise guidance applicable to the Department on remedial actions to be taken in the case of a supplier who has repeatedly failed to detect and avoid counterfeit electronic parts or otherwise failed to exercise due diligence in the detection and avoidance of such parts, including consideration of whether to suspend or debar a supplier until such time as the supplier has effectively addressed the issues that led to such failures;

''(4) establish processes for ensuring that Department personnel who become aware of, or have reason to suspect, that any end item, component, part, or material contained in supplies purchased by or for the Department contains counterfeit electronic parts or suspect counterfeit electronic parts provide a report in writing within 60 days to appropriate Government authorities and to the Government-Industry Data Exchange Program (or a similar program designated by the Secretary); and

''(5) establish a process for analyzing, assessing, and acting on reports of counterfeit electronic parts and suspect counterfeit electronic parts that are submitted in accordance with the processes under paragraph (4).

''(c) REGULATIONS.—

''(1) IN GENERAL.—Not later than 270 days after the date of the enactment of this Act [Dec. 31, 2011], the

Secretary shall revise the Department of Defense Supplement to the Federal Acquisition Regulation to address the detection and avoidance of counterfeit electronic parts.

''(2) CONTRACTOR RESPONSIBILITIES.—The revised regulations issued pursuant to paragraph (1) shall provide that—

''(A) covered contractors who supply electronic parts or products that include electronic parts are responsible for detecting and avoiding the use or inclusion of counterfeit electronic parts or suspect counterfeit electronic parts in such products and for any rework or corrective action that may be required to remedy the use or inclusion of such parts; and

''(B) the cost of counterfeit electronic parts and suspect counterfeit electronic parts and the cost of rework or corrective action that may be required to remedy the use or inclusion of such parts are not allowable costs under Department contracts, unless—

''(i) the covered contractor has an operational system to detect and avoid counterfeit electronic parts and suspect counterfeit electronic parts that has been reviewed and approved by the Department of Defense pursuant to subsection (e)(2)(B);

''(ii) the counterfeit electronic parts or suspect counterfeit electronic parts were provided to the covered contractor as Government property in accordance with part 45 of the Federal Acquisition Regulation or were obtained by the covered contractor in accordance with regulations described in paragraph (3); and

''(iii) the covered contractor discovers the counterfeit electronic parts or suspect counterfeit electronic parts and provides timely notice to the Government pursuant to paragraph (4).

''(3) SUPPLIERS MEETING ANTICOUNTERFEITING REQUIREMENTS.—The revised regulations issued pursuant to paragraph (1) shall—

''(A) require that the Department and Department contractors and subcontractors at all tiers—

''(i) obtain electronic parts that are in production or currently available in stock from the original manufacturers of the parts or their authorized dealers, or from suppliers identified as suppliers that meet anticounterfeiting requirements in accordance with regulations issued pursuant to subparagraph (C) or (D) and that obtain such parts exclusively from the original manufacturers of the parts or their authorized dealers;

''(ii) obtain electronic parts that are not in production or currently available in stock from suppliers identified as suppliers that meet anticounterfeiting requirements in accordance with regulations issued pursuant to subparagraph (C) or (D); and

''(iii) obtain electronic parts from alternate suppliers if such parts are not available from original manufacturers, their authorized dealers, or suppliers identified as suppliers that meet anticounterfeiting requirements in accordance with regulations prescribed pursuant to subparagraph (C) or (D);

''(B) establish requirements for notification of the Department, and for inspection, testing, and authentication of electronic parts that the Department or a Department contractor or subcontractor obtains from any source other than a source described in clause (i) or (ii) of subparagraph (A), if obtaining the electronic parts in accordance with such clauses is not possible;

''(C) establish qualification requirements, consistent with the requirements of section 2319 of title 10, United States Code, pursuant to which the Department may identify suppliers that have appropriate policies and procedures in place to detect and avoid counterfeit electronic parts and suspect counterfeit electronic parts; and

''(D) authorize Department contractors and subcontractors to identify and use additional suppliers that meet anticounterfeiting requirements, provided that—

''(i) the standards and processes for identifying such suppliers comply with established industry standards;

''(ii) the contractor or subcontractor assumes responsibility for the authenticity of parts provided by such suppliers as provided in paragraph (2); and

''(iii) the selection of such suppliers is subject to review, audit, and approval by appropriate Department officials.

''(4) REPORTING REQUIREMENT.—The revised regulations issued pursuant to paragraph (1) shall require that any Department contractor or subcontractor who becomes aware, or has reason to suspect, that any end item, component, part, or material contained in supplies purchased by the Department, or purchased by a contractor or subcontractor for delivery to, or on behalf of, the Department, contains counterfeit electronic parts or suspect counterfeit electronic parts report in writing within 60 days to appropriate Government authorities and the Government-Industry Data Exchange Program (or a similar program designated by the Secretary).

''(5) CONSTRUCTION OF COMPLIANCE WITH REPORTING REQUIREMENT.—A Department contractor or subcontractor that provides a written report required under this subsection shall not be subject to civil liability on the basis of such reporting, provided the contractor or subcontractor made a reasonable effort to determine that the end item, component, part, or material concerned contained counterfeit electronic parts or suspect counterfeit electronic parts.

''(d) INSPECTION PROGRAM.—The Secretary of Homeland Security shall establish and implement a risk-based methodology for the enhanced targeting of electronic parts imported from any country, after consultation with the Secretary of Defense as to sources of counterfeit electronic parts and suspect counterfeit electronic parts in the supply chain for products purchased by the Department of Defense.

''(e) IMPROVEMENT OF CONTRACTOR SYSTEMS FOR DETECTION AND AVOIDANCE OF COUNTERFEIT ELECTRONIC PARTS.—

''(1) IN GENERAL.—Not later than 270 days after the date of the enactment of this Act [Dec. 31, 2011], the Secretary of Defense shall implement a program to enhance contractor detection and avoidance of counterfeit electronic parts.

''(2) ELEMENTS.—The program implemented pursuant to paragraph (1) shall—

''(A) require covered contractors that supply electronic parts or systems that contain electronic parts to establish policies and procedures to eliminate counterfeit electronic parts from the defense supply chain, which policies and procedures shall address—

''(i) the training of personnel;

''(ii) the inspection and testing of electronic parts;

''(iii) processes to abolish counterfeit parts proliferation;

''(iv) mechanisms to enable traceability of parts;

''(v) the use of suppliers that meet applicable anticounterfeiting requirements;

''(vi) the reporting and quarantining of counterfeit electronic parts and suspect counterfeit electronic parts;

''(vii) methodologies to identify suspect counterfeit parts and to rapidly determine if a suspect counterfeit part is, in fact, counterfeit;

''(viii) the design, operation, and maintenance of systems to detect and avoid counterfeit electronic parts and suspect counterfeit electronic parts; and

''(ix) the flow down of counterfeit avoidance and detection requirements to subcontractors; and

''(B) establish processes for the review and approval of contractor systems for the detection and avoidance of counterfeit electronic parts and suspect counterfeit electronic parts, which processes shall be comparable to the processes established for contractor business systems under section 893 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111–383; 124 Stat. 4311; 10 U.S.C. 2302 note).

''(f) DEFINITIONS.—In subsections (a) through (e) of this section:

''(1) The term 'covered contractor' has the meaning given that term in section 893(f)(2) of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011.

''(2) The term 'electronic part' means an integrated circuit, a discrete electronic component (including, but not limited to, a transistor, capacitor, resistor, or diode), or a circuit assembly.

''(g) INFORMATION SHARING.—

''(1) IN GENERAL.—If United States Customs and Border Protection suspects a product of being imported in violation of section 42 of the Lanham Act [15 U.S.C. 1124], and subject to any applicable bonding requirements, the Secretary of the Treasury may share information appearing on, and unredacted samples of, products and their packaging and labels, or photographs of such products, packaging, and labels, with the rightholders of the trademarks suspected of being copied or simulated for purposes of determining whether the products are prohibited from importation pursuant to such section.

''(2) SUNSET.—This subsection shall expire on the date of the enactment of the Customs Facilitation and Trade Enforcement Reauthorization Act of 2012.

''(3) LANHAM ACT DEFINED.—In this subsection, the term 'Lanham Act' means the Act entitled 'An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes', approved July 5, 1946 (commonly referred to as the 'Trademark Act of 1946' or the 'Lanham Act') [15 U.S.C. 1051 et seq.].''

[Pub. L. 114–125, title III, §302(b), Feb. 24, 2016, 130 Stat. 150, provided that: ''Notwithstanding paragraph (2) of section 818(g) of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81; 125 Stat. 1496; 10 U.S.C. 2302 note) [set out above], paragraph (1) of that section shall have no force or effect on or after the date of the enactment of this Act [Feb. 24, 2016].'']

REACH-BACK CONTRACTING AUTHORITY FOR OPERATION ENDURING FREEDOM AND OPERATION NEW DAWN

Pub. L. 112–81, div. A, title VIII, §843, Dec. 31, 2011, 125 Stat. 1514, provided that:

''(a) AUTHORITY TO DESIGNATE LEAD CONTRACTING ACTIVITY.—The Under Secretary of Defense for Acquisition, Technology, and Logistics may designate a single contracting activity inside the United States to act as the lead contracting activity with authority for use of domestic capabilities in support of overseas contracting for Operation Enduring Freedom and Operation New Dawn. The contracting activity so designated shall be known as the 'lead reach-back contracting authority' for such operations.

''(b) LIMITED AUTHORITY FOR USE OF OUTSIDE-THE-UNITED-STATES-THRESHOLDS.—The head of the contracting authority designated pursuant to subsection (a) may, when awarding a contract inside the United States for performance in the theater of operations for Operation Enduring Freedom or Operation New Dawn, use the overseas increased micro-purchase threshold and the overseas increased simplified acquisition threshold in the same manner and to the same extent as if the contract were to be awarded and performed outside the United States.

''(c) DEFINITIONS.—In this section:

''(1) The term 'overseas increased micro-purchase threshold' means the amount specified in paragraph (1)(B) of section 1903(b) of title 41, United States Code.

''(2) The term 'overseas increased simplified acquisition threshold' means the amount specified in paragraph (2)(B) of section 1903(b) of title 41, United States Code.''

COMPETITION AND REVIEW OF CONTRACTS FOR PROPERTY OR SERVICES IN SUPPORT OF A CONTINGENCY OPERATION

Pub. L. 112–81, div. A, title VIII, §844(a), (b), Dec. 31, 2011, 125 Stat. 1515, provided that:

''(a) CONTRACTING GOALS.—Not later than 90 days after the date of the enactment of this Act [Dec. 31, 2011], the Secretary of Defense shall—

''(1) establish goals for competition in contracts awarded by the Secretary of Defense for the procurement of property or services to be used outside the United States in support of a contingency operation; and

''(2) develop processes by which to measure and monitor such competition, including in task-order categories for services, construction, and supplies.

''(b) ANNUAL REVIEW OF CERTAIN CONTRACTS.—For each year the Logistics Civil Augmentation Program contract, or other similar omnibus contract awarded by the Secretary of Defense for the procurement of property or services to be used outside the United States in support of a contingency operation, is in force, the Secretary shall require a competition advocate of the Department of Defense to conduct an annual review of each such contract.''

CONTRACTS FOR COMMERCIAL IMAGING SATELLITE CAPACITIES

Pub. L. 111–383, div. A, title I, §127, Jan. 7, 2011, 124 Stat. 4161, provided that:

''(a) TELESCOPE REQUIREMENTS UNDER CONTRACTS AFTER 2010.—Except as provided in subsection (b), any contract for additional commercial imaging satellite capability or capacity entered into by the Department of Defense after December 31, 2010, shall require that the imaging telescope providing such capability or capacity under such contract has an aperture of not less than 1.5 meters.

''(b) WAIVER.—The Secretary of Defense may waive the limitation in subsection (a) if—

''(1) the Secretary submits to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] written certification that the waiver is in the national security interests of the United States; and

''(2) a period of 30 days has elapsed following the date on which the certification under paragraph (1) is submitted.

''(c) CONTINUATION OF CURRENT CONTRACTS.—The limitation in subsection (a) may not be construed to prohibit or prevent the Secretary of Defense from continuing or maintaining current commercial imaging satellite capability or capacity in orbit or under contract by December 31, 2010.''

REVIEW OF ACQUISITION PROCESS FOR RAPID FIELDING OF CAPABILITIES IN RESPONSE TO URGENT OPERATIONAL NEEDS

Pub. L. 111–383, div. A, title VIII, §804, Jan. 7, 2011, 124 Stat. 4256, provided that:

''(a) REVIEW OF RAPID ACQUISITION PROCESS REQUIRED.—

''(1) IN GENERAL.—Not later than one year after the date of the enactment of this Act [Jan. 7, 2011], the Secretary of Defense shall complete a review of the process for the fielding of capabilities in response to urgent operational needs and submit a report on the review to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives].

''(2) REVIEW AND REPORT REQUIREMENTS.—The review pursuant to this section shall include consideration of various improvements to the acquisition

process for rapid fielding of capabilities in response to urgent operational needs. For each improvement, the report on the review shall discuss—

''(A) the Department's review of the improvement;

''(B) if the improvement is being implemented by the Department, a schedule for implementing the improvement; and

''(C) if the improvement is not being implemented by the Department, an explanation of why the improvement is not being implemented.

''(3) IMPROVEMENTS TO BE CONSIDERED.—The improvements that shall be considered during the review are the following:

''(A) Providing a streamlined, expedited, and tightly integrated iterative approach to—

''(i) the identification and validation of urgent operational needs;

''(ii) the analysis of alternatives and identification of preferred solutions;

''(iii) the development and approval of appropriate requirements and acquisition documents;

''(iv) the identification and minimization of development, integration, and manufacturing risks;

''(v) the consideration of operation and sustainment costs;

''(vi) the allocation of appropriate funding; and

''(vii) the rapid production and delivery of required capabilities.

''(B) Clearly defining the roles and responsibilities of the Office of the Secretary of Defense, the Joint Chiefs of Staff, the military departments, and other components of the Department of Defense for carrying out all phases of the process.

''(C) Designating a senior official within the Office of the Secretary of Defense with primary responsibility for making recommendations to the Secretary on the use of the authority provided by subsections (c) and (d) of section 806 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 [Pub. L. 107–314] (10 U.S.C. 2302 note), as amended by section 803 of this Act, in appropriate circumstances.

''(D) Establishing a target date for the fielding of a capability pursuant to each validated urgent operational need.

''(E) Implementing a system for—

''(i) documenting key process milestones, such as funding, acquisition, fielding, and assessment decisions and actions; and

''(ii) tracking the cost, schedule, and performance of acquisitions conducted pursuant to the process.

''(F) Establishing a formal feedback mechanism for the commanders of the combatant commands to provide information to the Joint Chiefs of Staff and senior acquisition officials on how well fielded solutions are meeting urgent operational needs.

''(G) Establishing a dedicated source of funding for the rapid fielding of capabilities in response to urgent operational needs.

''(H) Issuing guidance to provide for the appropriate transition of capabilities acquired through rapid fielding into the traditional budget, requirements, and acquisition process for purposes of contracts for follow-on production, sustainment, and logistics support.

''(I) Such other improvements as the Secretary considers appropriate.

''(b) DISCRIMINATING URGENT OPERATIONAL NEEDS FROM TRADITIONAL REQUIREMENTS.—

''(1) EXPEDITED REVIEW PROCESS.—Not later than 270 days after the date of the enactment of this Act, the Secretary shall develop and implement an expedited review process to determine whether capabilities proposed as urgent operational needs are appropriate for fielding through the process for the rapid fielding of capabilities or should be fielded through the traditional acquisition process.

''(2) ELEMENTS.—The review process developed and implemented pursuant to paragraph (1) shall—

''(A) apply to the rapid fielding of capabilities in response to joint urgent operational need statements and to other urgent operational needs statements generated by the military departments and the combatant commands;

''(B) identify officials responsible for making determinations described in paragraph (1);

''(C) establish appropriate time periods for making such determinations;

''(D) set forth standards and criteria for making such determinations based on considerations of urgency, risk, and life-cycle management;

''(E) establish appropriate thresholds for the applicability of the review process, or of elements of the review process; and

''(F) authorize appropriate officials to make exceptions from standards and criteria established under subparagraph (D) in exceptional circumstances.

''(3) COVERED CAPABILITIES.—The review process developed and implemented pursuant to paragraph (1) shall provide that, subject to such exceptions as the Secretary considers appropriate for purposes of this section, the acquisition process for rapid fielding of capabilities in response to urgent operational needs is appropriate only for capabilities that—

''(A) can be fielded within a period of two to 24 months;

''(B) do not require substantial development effort;

''(C) are based on technologies that are proven and available; and

''(D) can appropriately be acquired under fixed price contracts.

''(4) INCLUSION IN REPORT.—The Secretary shall include a description of the expedited review process implemented pursuant to paragraph (1) in the report required by subsection (a).''

STANDARDS AND CERTIFICATION FOR PRIVATE SECURITY CONTRACTORS

Pub. L. 111–383, div. A, title VIII, § 833, Jan. 7, 2011, 124 Stat. 4276, provided that:

''(a) REVIEW OF THIRD-PARTY STANDARDS AND CERTIFICATION PROCESSES.—Not later than 90 days after the date of the enactment of this Act [Jan. 7, 2011], the Secretary of Defense shall—

''(1) determine whether the private sector has developed—

''(A) operational and business practice standards applicable to private security contractors; and

''(B) third-party certification processes for determining whether private security contractors adhere to standards described in subparagraph (A); and

''(2) review any standards and processes identified pursuant to paragraph (1) to determine whether the application of such standards and processes will make a substantial contribution to the successful performance of private security functions in areas of combat operations or other significant military operations.

''(b) REVISED REGULATIONS.—Not later than 270 days after the date of the enactment of this Act, the Secretary of Defense shall revise the regulations promulgated under section 862 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 10 U.S.C. 2302 note) to ensure that such regulations—

''(1) establish criteria for defining standard practices for the performance of private security functions, which shall reflect input from industry representatives as well as the Inspector General of the Department of Defense; and

''(2) establish criteria for weapons training programs for contractors performing private security functions, including minimum requirements for weapons training programs of instruction and minimum qualifications for instructors for such programs.

''(c) INCLUSION OF THIRD-PARTY STANDARDS AND CERTIFICATIONS IN REVISED REGULATIONS.—

''(1) STANDARDS.—If the Secretary determines that the application of operational and business practice

standards identified pursuant to subsection (a)(1)(A) will make a substantial contribution to the successful performance of private security functions in areas of combat operations or other significant military operations, the revised regulations promulgated pursuant to subsection (b) shall incorporate a requirement to comply with such standards, subject to such exceptions as the Secretary may determine to be necessary.

''(2) CERTIFICATIONS.—If the Secretary determines that the application of a third-party certification process identified pursuant to subsection (a)(1)(B) will make a substantial contribution to the successful performance of private security functions in areas of combat operations or other significant military operations, the revised regulations promulgated pursuant to subsection (b) may provide for the consideration of such certifications as a factor in the evaluation of proposals for award of a covered contract for the provision of private security functions, subject to such exceptions as the Secretary may determine to be necessary.

''(d) DEFINITIONS.—In this section:

''(1) COVERED CONTRACT.—The term 'covered contract' means—

''(A) a contract of the Department of Defense for the performance of services;

''(B) a subcontract at any tier under such a contract; or

''(C) a task order or delivery order issued under such a contract or subcontract.

''(2) CONTRACTOR.—The term 'contractor' means, with respect to a covered contract, the contractor or subcontractor carrying out the covered contract.

''(3) PRIVATE SECURITY FUNCTIONS.—The term 'private security functions' means activities engaged in by a contractor under a covered contract as follows:

''(A) Guarding of personnel, facilities, or property of a Federal agency, the contractor or subcontractor, or a third party.

''(B) Any other activity for which personnel are required to carry weapons in the performance of their duties.

''(e) EXCEPTION.—The requirements of this section shall not apply to contracts entered into by elements of the intelligence community in support of intelligence activities.''

PILOT PROGRAM ON ACQUISITION OF MILITARY PURPOSE NONDEVELOPMENTAL ITEMS

Pub. L. 111–383, div. A, title VIII, § 866(a)–(f), Jan. 7, 2011, 124 Stat. 4296–4298, as amended by Pub. L. 113–66, div. A, title VIII, § 814, Dec. 26, 2013, 127 Stat. 808; Pub. L. 113–291, div. A, title X, § 1071(b)(1)(B), Dec. 19, 2014, 128 Stat. 3505; Pub. L. 114–92, div. A, title VIII, § 892, Nov. 25, 2015, 129 Stat. 952; Pub. L. 115–91, div. A, title X, § 1051(p)(3), Dec. 12, 2017, 131 Stat. 1564, provided that:

''(a) PILOT PROGRAM AUTHORIZED.—

''(1) IN GENERAL.—The Secretary of Defense may carry out a pilot program to assess the feasability [sic] and advisability of acquiring military purpose nondevelopmental items in accordance with this section.

''(2) SCOPE OF PROGRAM.—Under the pilot program, the Secretary may enter into contracts for the acquisition of military purpose nondevelopmental items in accordance with the requirements set forth in subsection (b).

''(b) CONTRACT REQUIREMENTS.—Each contract entered into under the pilot program—

''(1) shall be a firm, fixed price contract, or a firm, fixed price contract with an economic price adjustment clause;

''(2) shall be in an amount not in excess of $100,000,000, including all options;

''(3) shall provide—

''(A) for the delivery of an initial lot of production quantities of completed items not later than nine months after the date of the award of such contract; and

''(B) that failure to make delivery as provided for under subparagraph (A) may result in the termination of such contract for default; and

''(4) shall be—

''(A) exempt from the requirement to submit certified cost or pricing data under section 2306a of title 10, United States Code, and the cost accounting standards under chapter 15 of title 41, United States Code; and

''(B) subject to the requirement to provide data other than certified cost or pricing data for the purpose of price reasonableness determinations, as provided in section 2306a(d) of title 10, United States Code.

''(c) REGULATIONS.—If the Secretary establishes the pilot program authorized under subsection (a), the Secretary shall prescribe regulations governing such pilot program. Such regulations shall be included in regulations of the Department of Defense prescribed as part of the Federal Acquisition Regulation and shall include the contract clauses and procedures necessary to implement such program.

''(d) PROGRAM ASSESSMENT.—If the Secretary establishes the pilot program authorized under subsection (a), not later than four years after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the congressional defense committees a report setting forth the assessment of the Comptroller General of the extent to which the pilot program—

''(1) enabled the Department to acquire items that otherwise might not have been available to the Department;

''(2) assisted the Department in the rapid acquisition and fielding of capabilities needed to meet urgent operational needs; and

''(3) protected the interests of the United States in paying fair and reasonable prices for the item or items acquired.

''(e) DEFINITIONS.—In this section:

''(1) The term 'military purpose nondevelopmental item' means a nondevelopmental item that meets a validated military requirement, as determined in writing by the responsible program manager, and has been developed exclusively at private expense. For purposes of this paragraph, an item shall not be considered to be developed exclusively at private expense if development of the item was paid for in whole or in part through—

''(A) independent research and development costs or bid and proposal costs that have been reimbursed directly or indirectly by a Federal agency or have been submitted to a Federal agency for reimbursement; or

''(B) foreign government funding.

''(2) The term 'nondevelopmental item'—

''(A) has the meaning given that term in section 110 of title 41, United States Code; and

''(B) also includes previously developed items of supply that require modifications other than those customarily available in the commercial marketplace if such modifications are consistent with the requirement in subsection (b)(3)(A).

''(3) The term 'nontraditional defense contractor' has the meaning given that term in section 2302(9) of title 10, United States Code (as added by subsection (g)).

''(4) The terms 'independent research and developments costs' and 'bid and proposal costs' have the meaning given such terms in section 31.205–18 of the Federal Acquisition Regulation.

''(f) SUNSET.—

''(1) IN GENERAL.—The authority to carry out the pilot program shall expire on December 31, 2019.

''(2) CONTINUATION OF CURRENT CONTRACTS.—The expiration under paragraph (1) of the authority to carry out the pilot program shall not affect the validity of any contract awarded under the pilot program before the date of the expiration of the pilot program under that paragraph.''

CONTRACTOR BUSINESS SYSTEMS

Pub. L. 111–383, div. A, title VIII, §893, Jan. 7, 2011, 124 Stat. 4311, as amended by Pub. L. 112–81, div. A, title VIII, §816, Dec. 31, 2011, 125 Stat. 1493; Pub. L. 113–291, div. A, title X, §1071(b)(1)(C), Dec. 19, 2014, 128 Stat. 3505; Pub. L. 114–328, div. A, title VIII, §893, Dec. 23, 2016, 130 Stat. 2324; Pub. L. 115–91, div. A, title X, §1081(d)(8), Dec. 12, 2017, 131 Stat. 1600, provided that:

''(a) IMPROVEMENT PROGRAM.—The Secretary of Defense shall develop and initiate a program for the improvement of contractor business systems to ensure that such systems provide timely, reliable information for the management of Department of Defense programs by the contractor and by the Department.

''(b) APPROVAL OR DISAPPROVAL OF BUSINESS SYSTEMS.—The program developed pursuant to subsection (a) shall—

''(1) include clear and specific business system requirements that are identified and made publicly available for each type of contractor business system covered by the program;

''(2) establish a process for reviewing contractor business systems and identifying significant deficiencies in such systems;

''(3) identify officials of the Department of Defense who are responsible for the approval or disapproval of contractor business systems;

''(4) provide for the approval of any contractor business system that does not have a significant deficiency; and

''(5) provide for—

''(A) the disapproval of any contractor business system that has a significant deficiency; and

''(B) reduced reliance on, and enhanced scrutiny of, data provided by a contractor business system that has been disapproved.

''(c) REVIEW BY THIRD-PARTY INDEPENDENT AUDITORS.—The review process for contractor business systems pursuant to subsection (b)(2) shall—

''(1) if a registered public accounting firm attests to the internal control assessment of a contractor, pursuant to section 404(b) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7262(b)), allow the contractor, subject to paragraph (3), to submit certified documentation from such registered public accounting firm that the contractor business systems of the contractor meet the business system requirements referred to in subsection (b)(1) and to thereby eliminate the need for further review of the contractor business systems by the Secretary of Defense;

''(2) limit the review, subject to paragraph (3), of the contractor business systems of a contractor that is not a covered contractor to confirming that the contractor uses the same contractor business system for its Government and commercial work and that the outputs of the contractor business system based on statistical sampling are reasonable; and

''(3) allow a milestone decision authority to require a review of a contractor business system of a contractor that submits documentation pursuant to paragraph (1) or that is not a covered contractor after determining in writing that such a review is necessary to appropriately manage contractual risk.

''(d) REMEDIAL ACTIONS.—The program developed pursuant to subsection (a) shall provide the following:

''(1) In the event a contractor business system is disapproved pursuant to subsection (b)(5), appropriate officials of the Department of Defense will be available to work with the contractor to develop a corrective action plan defining specific actions to be taken to address the significant deficiencies identified in the system and a schedule for the implementation of such actions.

''(2) An appropriate official of the Department of Defense may withhold up to 10 percent of progress payments, performance-based payments, and interim payments under covered contracts from a covered contractor, as needed to protect the interests of the Department and ensure compliance, if one or more of the contractor business systems of the contractor has been disapproved pursuant to subsection (b)(5) and has not subsequently received approval.

''(3) The amount of funds to be withheld under paragraph (2) shall be reduced if a contractor adopts an effective corrective action plan pursuant to paragraph (1) and is effectively implementing such plan.

''(e) GUIDANCE AND TRAINING.—The program developed pursuant to subsection (a) shall provide guidance and training to appropriate government officials on the data that is produced by contractor business systems and the manner in which such data should be used to effectively manage Department of Defense programs.

''(f) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to prohibit an official of the Department of Defense from reviewing, approving, or disapproving a contractor business system pursuant to any applicable law or regulation in force as of the date of the enactment of this Act during the period between the date of the enactment of this Act and the date on which the Secretary implements the requirements of this section with respect to such system.

''(g) DEFINITIONS.—In this section:

''(1) The term 'contractor business system' means an accounting system, estimating system, purchasing system, earned value management system, material management and accounting system, or property management system of a contractor.

''(2) The term 'covered contractor' means a contractor that has covered contracts with the United States Government accounting for greater than 1 percent of its total gross revenue, except that the term does not include any contractor that is exempt, under section 1502 of title 41, United States Code, or regulations implementing that section, from using full cost accounting standards established in that section.

''(3) The term 'covered contract' means a contract that is subject to the cost accounting standards promulgated pursuant to section 1502 of title 41, United States Code, that could be affected if the data produced by a contractor business system has a significant deficiency.

''(4) The term 'significant deficiency', in the case of a contractor business system, means a shortcoming in the system that materially affects the ability of officials of the Department of Defense and the contractor to rely upon information produced by the system that is needed for management purposes.

''(h) DEFENSE CONTRACT AUDIT AGENCY LEGAL RESOURCES AND EXPERTISE.—

''(1) REQUIREMENT.—The Secretary of Defense shall ensure that—

''(A) the Defense Contract Audit Agency has sufficient legal resources and expertise to conduct its work in compliance with applicable Department of Defense policies and procedures; and

''(B) such resources and expertise are provided in a manner that is consistent with the audit independence of the Defense Contract Audit Agency.

''(2) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the steps taken to comply with the requirements of this subsection.''

[Pub. L. 115–91, div. A, title X, §1081(d), Dec. 12, 2017, 131 Stat. 1599, provided that the amendment made by section 1081(d)(8) to section 893(c) of Pub. L. 114–328 (which amended section 893 of Pub. L. 111–383, set out above) is effective as of Dec. 23, 2016, and as if included in Pub. L. 114–328 as enacted.]

LIFE-CYCLE MANAGEMENT AND PRODUCT SUPPORT

Pub. L. 111–84, div. A, title VIII, §805, Oct. 28, 2009, 123 Stat. 2403, which directed the Secretary of Defense to issue comprehensive guidance on life-cycle management and the development and implementation of product support strategies for major weapon systems and required each major weapon system to be supported by a product support manager, was repealed by Pub. L.

112–239, div. A, title VIII, § 823(b), Jan. 2, 2013, 126 Stat. 1832.

CONTRACT AUTHORITY FOR ADVANCED COMPONENT DEVELOPMENT OR PROTOTYPE UNITS

Pub. L. 111–84, div. A, title VIII, § 819, Oct. 28, 2009, 123 Stat. 2409, as amended by Pub. L. 113–291, div. A, title VIII, § 811, Dec. 19, 2014, 128 Stat. 3428, which authorized certain contracts for advanced component development or prototype units, was repealed by Pub. L. 115–91, div. A, title VIII, § 861(b), Dec. 12, 2017, 131 Stat. 1494.

CONGRESSIONAL EARMARKS

Pub. L. 111–84, div. A, title X, § 1062, Oct. 28, 2009, 123 Stat. 2468, provided that:

''(a) REPORT ON RECURRING EARMARKS.—

''(1) REPORT REQUIRED.—Not later than 90 days after the date of the enactment of this Act [Oct. 28, 2009], the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report regarding covered earmarks.

''(2) ELEMENTS.—The report required by paragraph (1) shall include the following:

''(A) An identification of each covered earmark that has been included in a national defense authorization Act for three or more consecutive fiscal years as of the date of the enactment of this Act.

''(B) A description of the extent to which competitive or merit-based procedures were used to award funding, or to enter into a contract, grant, or other agreement, pursuant to each covered earmark.

''(C) An identification of the specific contracting vehicle used for each covered earmark.

''(D) In the case of any covered earmark for which competitive or merit-based procedures were not used to award funding, or to enter into the contract, grant, or other agreement, a statement of the reasons competitive or merit-based procedures were not used.

''(b) DOD INSPECTOR GENERAL AUDIT OF CONGRESSIONAL EARMARKS.—The Inspector General of the Department of Defense shall conduct an audit of contracts, grants, or other agreements pursuant to congressional earmarks of Department of Defense funds to determine whether or not the recipients of such earmarks are complying with requirements of Federal law on the use of appropriated funds to influence, whether directly or indirectly, congressional action on any legislation or appropriation matter pending before Congress.

''(c) DEFINITIONS.—In this section:

''(1) The term 'congressional earmark' means any congressionally directed spending item (Senate) or congressional earmark (House of Representatives) on a list published in compliance with rule XLIV of the Standing Rules of the Senate or rule XXI of the Rules of the House of Representatives.

''(2) The term 'covered earmark' means any congressional earmark identified in the joint explanatory statement to accompany the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417) that was printed in the Congressional Record on September 23, 2008.

''(3) The term 'national defense authorization Act' means an Act authorizing funds for a fiscal year for the military activities of the Department of Defense, and for other purposes.''

CONSIDERATION OF TRADE-OFFS AMONG COST, SCHEDULE, AND PERFORMANCE OBJECTIVES IN DEPARTMENT OF DEFENSE ACQUISITION PROGRAMS

Pub. L. 111–23, title II, § 201(a), May 22, 2009, 123 Stat. 1719, provided that:

''(1) IN GENERAL.—The Secretary of Defense shall ensure that mechanisms are developed and implemented to require consideration of trade-offs among cost, schedule, and performance objectives as part of the process for developing requirements for Department of Defense acquisition programs.

''(2) ELEMENTS.—The mechanisms required under this subsection shall ensure, at a minimum, that—

''(A) Department of Defense officials responsible for acquisition, budget, and cost estimating functions are provided an appropriate opportunity to develop estimates and raise cost and schedule matters before performance objectives are established for capabilities for which the Chairman of the Joint Requirements Oversight Council is the validation authority; and

''(B) the process for developing requirements is structured to enable incremental, evolutionary, or spiral acquisition approaches, including the deferral of technologies that are not yet mature and capabilities that are likely to significantly increase costs or delay production until later increments or spirals.''

AWARDS FOR DEPARTMENT OF DEFENSE PERSONNEL FOR EXCELLENCE IN THE ACQUISITION OF PRODUCTS AND SERVICES

Pub. L. 111–23, title III, § 301, May 22, 2009, 123 Stat. 1730, provided that:

''(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [May 22, 2009], the Secretary of Defense shall commence carrying out a program to recognize excellent performance by individuals and teams of members of the Armed Forces and civilian personnel of the Department of Defense in the acquisition of products and services for the Department of Defense.

''(b) ELEMENTS.—The program required by subsection (a) shall include the following:

''(1) Procedures for the nomination by the personnel of the military departments and the Defense Agencies of individuals and teams of members of the Armed Forces and civilian personnel of the Department of Defense for eligibility for recognition under the program.

''(2) Procedures for the evaluation of nominations for recognition under the program by one or more panels of individuals from the Government, academia, and the private sector who have such expertise, and are appointed in such manner, as the Secretary shall establish for purposes of the program.

''(c) AWARD OF CASH BONUSES.—As part of the program required by subsection (a), the Secretary may award to any individual recognized pursuant to the program a cash bonus authorized by any other provision of law to the extent that the performance of such individual so recognized warrants the award of such bonus under such provision of law.''

TRUSTED DEFENSE SYSTEMS

Pub. L. 110–417, [div. A], title II, § 254, Oct. 14, 2008, 122 Stat. 4402, provided that:

''(a) VULNERABILITY ASSESSMENT REQUIRED.—The Secretary of Defense shall conduct an assessment of selected covered acquisition programs to identify vulnerabilities in the supply chain of each program's electronics and information processing systems that potentially compromise the level of trust in the systems. Such assessment shall—

''(1) identify vulnerabilities at multiple levels of the electronics and information processing systems of the selected programs, including microcircuits, software, and firmware;

''(2) prioritize the potential vulnerabilities and effects of the various elements and stages of the system supply chain to identify the most effective balance of investments to minimize the effects of compromise;

''(3) provide recommendations regarding ways of managing supply chain risk for covered acquisition programs; and

''(4) identify the appropriate lead person, and supporting elements, within the Department of Defense for the development of an integrated strategy for

managing risk in the supply chain for covered acquisition programs.

''(b) ASSESSMENT OF METHODS FOR VERIFYING THE TRUST OF SEMICONDUCTORS PROCURED FROM COMMERCIAL SOURCES.—The Under Secretary of Defense for Acquisition, Technology, and Logistics, in consultation with appropriate elements of the Department of Defense, the intelligence community, private industry, and academia, shall conduct an assessment of various methods of verifying the trust of semiconductors procured by the Department of Defense from commercial sources for use in mission-critical components of potentially vulnerable defense systems. The assessment shall include the following:

''(1) An identification of various methods of verifying the trust of semiconductors, including methods under development at the Defense Agencies, government laboratories, institutions of higher education, and in the private sector.

''(2) A determination of the methods identified under paragraph (1) that are most suitable for the Department of Defense.

''(3) An assessment of the additional research and technology development needed to develop methods of verifying the trust of semiconductors that meet the needs of the Department of Defense.

''(4) Any other matters that the Under Secretary considers appropriate.

''(c) STRATEGY REQUIRED.—

''(1) IN GENERAL.—The lead person identified under subsection (a)(4), in cooperation with the supporting elements also identified under such subsection, shall develop an integrated strategy—

''(A) for managing risk—

''(i) in the supply chain of electronics and information processing systems for covered acquisition programs; and

''(ii) in the procurement of semiconductors; and

''(B) that ensures dependable, continuous, long-term access and trust for all mission-critical semiconductors procured from both foreign and domestic sources.

''(2) REQUIREMENTS.—At a minimum, the strategy shall—

''(A) address the vulnerabilities identified by the assessment under subsection (a);

''(B) reflect the priorities identified by such assessment;

''(C) provide guidance for the planning, programming, budgeting, and execution process in order to ensure that covered acquisition programs have the necessary resources to implement all appropriate elements of the strategy;

''(D) promote the use of verification tools, as appropriate, for ensuring trust of commercially acquired systems;

''(E) increase use of trusted foundry services, as appropriate; and

''(F) ensure sufficient oversight in implementation of the plan.

''(d) POLICIES AND ACTIONS FOR ASSURING TRUST IN INTEGRATED CIRCUITS.—Not later than 180 days after the date of the enactment of this Act [Oct. 14, 2008], the Secretary of Defense shall—

''(1) develop policy requiring that trust assurance be a high priority for covered acquisition programs in all phases of the electronic component supply chain and integrated circuit development and production process, including design and design tools, fabrication of the semiconductors, packaging, final assembly, and test;

''(2) develop policy requiring that programs whose electronics and information systems are determined to be vital to operational readiness or mission effectiveness are to employ trusted foundry services to fabricate their custom designed integrated circuits, unless the Secretary specifically authorizes otherwise;

''(3) incorporate the strategies and policies of the Department of Defense regarding development and use of trusted integrated circuits into all relevant Department directives and instructions related to the acquisition of integrated circuits and programs that use such circuits; and

''(4) take actions to promote the use and development of tools that verify the trust in all phases of the integrated circuit development and production process of mission-critical parts acquired from non-trusted sources.

''(e) SUBMISSION TO CONGRESS.—Not later than 12 months after the date of the enactment of this Act [Oct. 14, 2008], the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives]—

''(1) the assessments required by subsections (a) and (b);

''(2) the strategy required by subsection (c); and

''(3) a description of the policies developed and actions taken under subsection (d).

''(f) DEFINITIONS.—In this section:

''(1) The term 'covered acquisition programs' means an acquisition program of the Department of Defense that is a major system for purposes of section 2302(5) of title 10, United States Code.

''(2) The terms 'trust' and 'trusted' refer, with respect to electronic and information processing systems, to the ability of the Department of Defense to have confidence that the systems function as intended and are free of exploitable vulnerabilities, either intentionally or unintentionally designed or inserted as part of the system at any time during its life cycle.

''(3) The term 'trusted foundry services' means the program of the National Security Agency and the Department of Defense, or any similar program approved by the Secretary of Defense, for the development and manufacture of integrated circuits for critical defense systems in secure industrial environments.''

INCREASE OF DOMESTIC BREEDING OF MILITARY WORKING DOGS USED BY THE DEPARTMENT OF DEFENSE

Pub. L. 110–417, [div. A], title III, §358, Oct. 14, 2008, 122 Stat. 4427, as amended by Pub. L. 111–84, div. A, title III, §341, Oct. 28, 2009, 123 Stat. 2260; Pub. L. 111–383, div. A, title X, §1075(e)(6), Jan. 7, 2011, 124 Stat. 4374; Pub. L. 112–81, div. A, title III, §349, Dec. 31, 2011, 125 Stat. 1375; Pub. L. 114–92, div. A, title X, §1073(h), Nov. 25, 2015, 129 Stat. 996, provided that:

''(a) INCREASED CAPACITY.—The Secretary of Defense, acting through the Executive Agent for Military Working Dogs (hereinafter in this section referred to as the 'Executive Agent'), shall—

''(1) identify the number of military working dogs required to fulfill the various missions of the Department of Defense for which such dogs are used, including force protection, facility and check point security, and explosives and drug detection;

''(2) take such steps as are practicable to ensure an adequate number of military working dog teams are available to meet and sustain the mission requirements identified in paragraph (1);

''(3) ensure that the Department's needs and performance standards with respect to military working dogs are readily available to dog breeders and trainers; and

''(4) coordinate with other Federal, State, or local agencies, nonprofit organizations, universities, or private sector entities, as appropriate, to increase the training capacity for military working dog teams.

''(b) MILITARY WORKING DOG PROCUREMENT.—The Secretary, acting through the Executive Agent, shall work to ensure that military working dogs are procured as efficiently as possible and at the best value to the Government, while maintaining the necessary level of quality and encouraging increased domestic breeding.

''(c) MILITARY WORKING DOG DEFINED.—For purposes of this section, the term 'military working dog' means

a dog used in any official military capacity, as defined by the Secretary of Defense.''

COMPREHENSIVE AUDIT OF SPARE PARTS PURCHASES AND DEPOT OVERHAUL AND MAINTENANCE OF EQUIPMENT FOR OPERATIONS IN IRAQ AND AFGHANISTAN

Pub. L. 110–417, [div. A], title VIII, § 852, Oct. 14, 2008, 122 Stat. 4543, provided that:

''(a) AUDITS REQUIRED.—The Army Audit Agency, the Navy Audit Service, and the Air Force Audit Agency shall each conduct thorough audits to identify potential waste, fraud, and abuse in the performance of the following:

''(1) Department of Defense contracts, subcontracts, and task and delivery orders for—

''(A) depot overhaul and maintenance of equipment for the military in Iraq and Afghanistan; and

''(B) spare parts for military equipment used in Iraq and Afghanistan; and

''(2) Department of Defense in-house overhaul and maintenance of military equipment used in Iraq and Afghanistan.

''(b) COMPREHENSIVE AUDIT PLAN.—

''(1) PLANS.—The Army Audit Agency, the Navy Audit Service, and the Air Force Audit Agency shall, in coordination with the Inspector General of the Department of Defense, develop a comprehensive plan for a series of audits to discharge the requirements of subsection (a).

''(2) INCORPORATION INTO REQUIRED AUDIT PLAN.—The plan developed under paragraph (1) shall be submitted to the Inspector General of the Department of Defense for incorporation into the audit plan required by section 842(b)(1) of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 122 Stat. 234; 10 U.S.C. 2302 note).

''(c) INDEPENDENT CONDUCT OF AUDIT FUNCTIONS.—All audit functions performed under this section, including audit planning and coordination, shall be performed in an independent manner.

''(d) AVAILABILITY OF RESULTS.—All audit reports resulting from audits under this section shall be made available to the Commission on Wartime Contracting in Iraq and Afghanistan established pursuant to section 841 of the National Defense Authorization Act for Fiscal Year 2008 [Pub. L. 110–181] (122 Stat. 230).

''(e) CONSTRUCTION.—Nothing in this section shall be construed to require any agency of the Federal Government to duplicate audit work that an agency of the Federal Government has already performed.''

MOTOR CARRIER FUEL SURCHARGES

Pub. L. 110–417, [div. A], title VIII, § 884, Oct. 14, 2008, 122 Stat. 4560, provided that:

''(a) PASS THROUGH TO COST BEARER.—The Secretary of Defense shall take appropriate actions to ensure that, to the maximum extent practicable, in all carriage contracts in which a fuel-related adjustment is provided for, any fuel-related adjustment is passed through to the person who bears the cost of the fuel that the adjustment relates to.

''(b) USE OF CONTRACT CLAUSE.—The actions taken by the Secretary under subsection (a) shall include the insertion of a contract clause, with appropriate flowdown requirements, into all contracts with motor carriers, brokers, or freight forwarders providing or arranging truck transportation or services in which a fuel-related adjustment is provided for.

''(c) DISCLOSURE.—The Secretary shall publicly disclose any decision by the Department of Defense to pay fuel-related adjustments under contracts (or a category of contracts) covered by this section.

''(d) REPORT.—Not later than 270 days after the date of the enactment of this Act [Oct. 14, 2008], the Secretary shall submit to the committees on Armed Services of the Senate and the House of Representatives a report on the actions taken in accordance with the requirements of subsection (a).''

SALES OF COMMERCIAL ITEMS TO NONGOVERNMENTAL ENTITIES

Pub. L. 110–181, div. A, title VIII, § 815(b), Jan. 28, 2008, 122 Stat. 223, provided that: ''Not later than 180 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense shall modify the regulations of the Department of Defense on the procurement of commercial items in order to clarify that the terms 'general public' and 'nongovernmental entities' in such regulations do not include the Federal Government or a State, local, or foreign government.''

INVESTIGATION OF WASTE, FRAUD, AND ABUSE IN WARTIME CONTRACTS AND CONTRACTING PROCESSES IN IRAQ AND AFGHANISTAN

Pub. L. 110–181, div. A, title VIII, § 842, Jan. 28, 2008, 122 Stat. 234, provided that:

''(a) AUDITS REQUIRED.—Thorough audits shall be performed in accordance with this section to identify potential waste, fraud, and abuse in the performance of—

''(1) Department of Defense contracts, subcontracts, and task and delivery orders for the logistical support of coalition forces in Iraq and Afghanistan; and

''(2) Federal agency contracts, subcontracts, and task and delivery orders for the performance of security and reconstruction functions in Iraq and Afghanistan.

''(b) AUDIT PLANS.—

''(1) The Department of Defense Inspector General shall develop a comprehensive plan for a series of audits of contracts, subcontracts, and task and delivery orders covered by subsection (a)(1), consistent with the requirements of subsection (g), in consultation with other Inspectors General specified in subsection (c) with regard to any contracts, subcontracts, or task or delivery orders over which such Inspectors General have jurisdiction.

''(2) The Special Inspector General for Iraq Reconstruction shall develop a comprehensive plan for a series of audits of contracts, subcontracts, and task and delivery orders covered by subsection (a)(2) relating to Iraq, consistent with the requirements of subsection (h), in consultation with other Inspectors General specified in subsection (c) with regard to any contracts, subcontracts, or task or delivery orders over which such Inspectors General have jurisdiction.

''(3) The Special Inspector General for Afghanistan Reconstruction shall develop a comprehensive plan for a series of audits of contracts, subcontracts, and task and delivery orders covered by subsection (a)(2) relating to Afghanistan, consistent with the requirements of subsection (h), in consultation with other Inspectors General specified in subsection (c) with regard to any contracts, subcontracts, or task or delivery orders over which such Inspectors General have jurisdiction.

''(c) PERFORMANCE OF AUDITS BY CERTAIN INSPECTORS GENERAL.—The Special Inspector General for Iraq Reconstruction, during such period as such office exists, the Special Inspector General for Afghanistan Reconstruction, during such period as such office exists, the Inspector General of the Department of Defense, the Inspector General of the Department of State, and the Inspector General of the United States Agency for International Development shall perform such audits as required by subsection (a) and identified in the audit plans developed pursuant to subsection (b) as fall within the respective scope of their duties as specified in law.

''(d) COORDINATION OF AUDITS.—The Inspectors General specified in subsection (c) shall work to coordinate the performance of the audits required by subsection (a) and identified in the audit plans developed under subsection (b) including through councils and working groups composed of such Inspectors General.

''(e) JOINT AUDITS.—If one or more audits required by subsection (a) and identified in an audit plan developed under subsection (b) falls within the scope of the duties of more than one of the Inspectors General specified in

subsection (c), and such Inspectors General agree that such audit or audits are best pursued jointly, such Inspectors General shall enter into a memorandum of understanding relating to the performance of such audit or audits.

''(f) SEPARATE AUDITS.—If one or more audits required by subsection (a) and identified in an audit plan developed under subsection (b) falls within the scope of the duties of more than one of the Inspectors General specified in subsection (c), and such Inspectors General do not agree that such audit or audits are best pursued jointly, such audit or audits shall be separately performed by one or more of the Inspectors General concerned.

''(g) SCOPE OF AUDITS OF CONTRACTS.—Audits conducted pursuant to subsection (a)(1) shall examine, at a minimum, one or more of the following issues:

''(1) The manner in which contract requirements were developed.

''(2) The procedures under which contracts or task or delivery orders were awarded.

''(3) The terms and conditions of contracts or task or delivery orders.

''(4) The staffing and method of performance of contractors, including cost controls.

''(5) The efficacy of Department of Defense management and oversight, including the adequacy of staffing and training of officials responsible for such management and oversight.

''(6) The flow of information from contractors to officials responsible for contract management and oversight.

''(h) SCOPE OF AUDITS OF OTHER CONTRACTS.—Audits conducted pursuant to subsection (a)(2) shall examine, at a minimum, one or more of the following issues:

''(1) The manner in which contract requirements were developed and contracts or task and delivery orders were awarded.

''(2) The manner in which the Federal agency exercised control over the performance of contractors.

''(3) The extent to which operational field commanders were able to coordinate or direct the performance of contractors in an area of combat operations.

''(4) The degree to which contractor employees were properly screened, selected, trained, and equipped for the functions to be performed.

''(5) The nature and extent of any incidents of misconduct or unlawful activity by contractor employees.

''(6) The nature and extent of any activity by contractor employees that was inconsistent with the objectives of operational field commanders.

''(7) The extent to which any incidents of misconduct or unlawful activity were reported, documented, investigated, and (where appropriate) prosecuted.

''(i) INDEPENDENT CONDUCT OF AUDIT FUNCTIONS.—All audit functions under this section, including audit planning and coordination, shall be performed by the relevant Inspectors General in an independent manner, without consultation with the Commission established pursuant to section 841 of this Act [122 Stat. 230]. All audit reports resulting from such audits shall be available to the Commission.''

CONTRACTS IN IRAQ AND AFGHANISTAN AND PRIVATE SECURITY CONTRACTS IN AREAS OF OTHER SIGNIFICANT MILITARY OPERATIONS

Pub. L. 111–383, div. A, title VIII, § 831(b), Jan. 7, 2011, 124 Stat. 4274, provided that:

''(1) DEADLINE FOR REGULATIONS.—Not later than 60 days after the date of the enactment of this Act [Jan. 7, 2011], the Secretary of Defense shall revise the regulations prescribed pursuant to section 862 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 10 U.S.C. 2302 note) to incorporate the requirements of the amendments made by subsection (a).

''(2) COMMENCEMENT OF APPLICABILITY OF REVISIONS.—The revision of regulations under paragraph (1) shall apply to the following:

''(A) Any contract that is awarded on or after the date that is 120 days after the date of the enactment of this Act.

''(B) Any task or delivery order that is issued on or after the date that is 120 days after the date of the enactment of this Act pursuant to a contract that is awarded before, on, or after the date that is 120 days after the date of the enactment of this Act.

''(3) COMMENCEMENT OF INCLUSION OF CONTRACT CLAUSE.—A contract clause that reflects the revision of regulations required by the amendments made by subsection (a) shall be inserted, as required by such section 862, into the following:

''(A) Any contract described in paragraph (2)(A).

''(B) Any task or delivery order described in paragraph (2)(B).''

Pub. L. 111–383, div. A, title VIII, § 832(b), Jan. 7, 2011, 124 Stat. 4275, provided that:

''(1) DETERMINATION REQUIRED FOR CERTAIN AREAS.—Not later than 150 days after the date of the enactment of this Act [Jan. 7, 2011], the Secretary of Defense shall make a written determination for each of the following areas regarding whether or not the area constitutes an area of combat operations or an area of other significant military operations for purposes of designation as such an area under section 862 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 10 U.S.C. 2302 note), as amended by this section:

''(A) The Horn of Africa region.

''(B) Yemen.

''(C) The Philippines.

''(2) SUBMISSION TO CONGRESS.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a copy of each written determination under paragraph (1), together with an explanation of the basis for such determination.''

Pub. L. 110–417, [div. A], title VIII, § 854(b), Oct. 14, 2008, 122 Stat. 4545, provided that:

''(1) THROUGH MEMORANDUM OF UNDERSTANDING.—The memorandum of understanding required by section 861(a) of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 122 Stat. 253; 10 U.S.C. 2302 note) shall be modified to address the requirements under the amendment made by subsection (a) [amending Pub. L. 110–181, § 861(b), set out below] not later than 120 days after the date of the enactment of this Act [Oct. 14, 2008].

''(2) AS CONDITION OF CURRENT AND FUTURE CONTRACTS.—The requirements under the amendment made by subsection (a) shall be included in each contract in Iraq or Afghanistan (as defined in section 864(a)(2) of Public Law 110–181; [10 U.S.C.] 2302 note) awarded on or after the date that is 180 days after the date of the enactment of this Act [Oct. 14, 2008]. Federal agencies shall make best efforts to provide for the inclusion of such requirements in covered contracts awarded before such date.''

Pub. L. 110–417, [div. A], title VIII, § 854(c), Oct. 14, 2008, 122 Stat. 4545, provided that: ''Beginning not later than 270 days after the date of the enactment of this Act [Oct. 14, 2008], the Secretary of Defense shall make publicly available a numerical accounting of alleged offenses described in section 861(b)(6) of Public Law 110–181 [set out below] that have been reported under that section that occurred after the date of the enactment of this Act. The information shall be updated no less frequently than semi-annually.''

Pub. L. 110–181, div. A, title VIII, subtitle F, Jan. 28, 2008, 122 Stat. 253, as amended by Pub. L. 110–417, [div. A], title VIII, §§ 853, 854(a), (d), Oct. 14, 2008, 122 Stat. 4544, 4545; Pub. L. 111–84, div. A, title VIII, § 813(a)–(c), Oct. 28, 2009, 123 Stat. 2406, 2407; Pub. L. 111–383, div. A, title VIII, §§ 831(a), 832(a), (c), 835, title X, § 1075(d)(9), Jan. 7, 2011, 124 Stat. 4273, 4275, 4276, 4279, 4373; Pub. L. 112–81, div. A, title VIII, § 844(c), Dec. 31, 2011, 125 Stat. 1515; Pub. L. 112–239, div. A, title VIII, § 847, Jan. 2, 2013, 126 Stat. 1850; Pub. L. 113–291, div. A, title X, § 1071(b)(2)(D), Dec. 19, 2014, 128 Stat. 3506, provided that:

''SEC. 861. MEMORANDUM OF UNDERSTANDING ON MATTERS RELATING TO CONTRACTING.

''(a) MEMORANDUM OF UNDERSTANDING REQUIRED.—The Secretary of Defense, the Secretary of State, and the Administrator of the United States Agency for International Development shall, not later than July 1, 2008, enter into a memorandum of understanding regarding matters relating to contracting for contracts in Iraq or Afghanistan.

''(b) MATTERS COVERED.—The memorandum of understanding required by subsection (a) shall address, at a minimum, the following:

''(1) Identification of the major categories of contracts in Iraq or Afghanistan being awarded by the Department of Defense, the Department of State, or the United States Agency for International Development.

''(2) Identification of the roles and responsibilities of each department or agency for matters relating to contracting for contracts in Iraq or Afghanistan.

''(3) Responsibility for establishing procedures for, and the coordination of, movement of contractor personnel in Iraq or Afghanistan.

''(4) Identification of common databases that will serve as repositories of information on contracts in Iraq or Afghanistan and contractor personnel in Iraq or Afghanistan, including agreement on the elements to be included in the databases, including, at a minimum—

''(A) with respect to each contract—

''(i) a brief description of the contract (to the extent consistent with security considerations);

''(ii) the total value of the contract; and

''(iii) whether the contract was awarded competitively; and

''(B) with respect to contractor personnel—

''(i) the total number of personnel employed on contracts in Iraq or Afghanistan;

''(ii) the total number of personnel performing security functions under contracts in Iraq or Afghanistan; and

''(iii) the total number of personnel working under contracts in Iraq or Afghanistan who have been killed or wounded.

''(5) Responsibility for maintaining and updating information in the common databases identified under paragraph (4).

''(6) Responsibility for the collection and referral to the appropriate Government agency of any information relating to offenses under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice) or chapter 212 of title 18, United States Code (commonly referred to as the Military Extraterritorial Jurisdiction Act), including a clarification of responsibilities under section 802(a)(10) of title 10, United States Code (article 2(a) of the Uniform Code of Military Justice), as amended by section 552 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364).

''(7) Mechanisms for ensuring that contractors are required to report offenses described in paragraph (6) that are alleged to have been committed by or against contractor personnel to appropriate investigative authorities.

''(8) Responsibility for providing victim and witness protection and assistance to contractor personnel in connection with alleged offenses described in paragraph (6).

''(9) Development of a requirement that a contractor shall provide to all contractor personnel who will perform work on a contract in Iraq or Afghanistan, before beginning such work, information on the following:

''(A) How and where to report an alleged offense described in paragraph (6).

''(B) Where to seek the assistance required by paragraph (8).

''(c) IMPLEMENTATION OF MEMORANDUM OF UNDERSTANDING.—Not later than 120 days after the memorandum of understanding required by subsection (a) is signed, the Secretary of Defense, the Secretary of State, and the Administrator of the United States Agency for International Development shall issue such policies or guidance and prescribe such regulations as are necessary to implement the memorandum of understanding for the relevant matters pertaining to their respective agencies.

''(d) COPIES PROVIDED TO CONGRESS.—

''(1) MEMORANDUM OF UNDERSTANDING.—Copies of the memorandum of understanding required by subsection (a) shall be provided to the relevant committees of Congress within 30 days after the memorandum is signed.

''(2) REPORT ON IMPLEMENTATION.—Not later than 180 days after the memorandum of understanding required by subsection (a) is signed, the Secretary of Defense, the Secretary of State, and the Administrator of the United States Agency for International Development shall each provide a report to the relevant committees of Congress on the implementation of the memorandum of understanding.

''(3) DATABASES.—The Secretary of Defense, the Secretary of State, or the Administrator of the United States Agency for International Development shall provide access to the common databases identified under subsection (b)(4) to the relevant committees of Congress.

''(4) CONTRACTS.—Effective on the date of the enactment of this Act [Jan. 28, 2008], copies of any contracts in Iraq or Afghanistan awarded after December 1, 2007, shall be provided to any of the relevant committees of Congress within 15 days after the submission of a request for such contract or contracts from such committee to the department or agency managing the contract.

''SEC. 862. CONTRACTORS PERFORMING PRIVATE SECURITY FUNCTIONS IN AREAS OF COMBAT OPERATIONS OR OTHER SIGNIFICANT MILITARY OPERATIONS.

''(a) REGULATIONS ON CONTRACTORS PERFORMING PRIVATE SECURITY FUNCTIONS.—

''(1) IN GENERAL.—Not later than 120 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense, in coordination with the Secretary of State, shall prescribe regulations on the selection, training, equipping, and conduct of personnel performing private security functions under a covered contract in an area of combat operations or other significant military operations.

''(2) ELEMENTS.—The regulations prescribed under subsection (a) shall, at a minimum, establish—

''(A) a process for registering, processing, accounting for, and keeping appropriate records of personnel performing private security functions in an area of combat operations or other significant military operations;

''(B) a process for authorizing and accounting for weapons to be carried by, or available to be used by, personnel performing private security functions in an area of combat operations or other significant military operations;

''(C) a process for the registration and identification of armored vehicles, helicopters, and other military vehicles operated by contractors performing private security functions in an area of combat operations or other significant military operations;

''(D) a process under which contractors are required to report all incidents, and persons other than contractors are permitted to report incidents, in which—

''(i) a weapon is discharged by personnel performing private security functions in an area of combat operations or other significant military operations;

''(ii) personnel performing private security functions in an area of combat operations or other significant military operations are killed or injured;

''(iii) persons are killed or injured, or property is destroyed, as a result of conduct by contractor personnel;

''(iv) a weapon is discharged against personnel performing private security functions in an area of combat operations or other significant military operations or personnel performing such functions believe a weapon was so discharged; or

''(v) active, non-lethal countermeasures (other than the discharge of a weapon) are employed by the personnel performing private security functions in an area of combat operations or other significant military operations in response to a perceived immediate threat to such personnel;

''(E) a process for the independent review and, if practicable, investigation of—

''(i) incidents reported pursuant to subparagraph (D); and

''(ii) incidents of alleged misconduct by personnel performing private security functions in an area of combat operations or other significant military operations;

''(F) requirements for qualification, training, screening (including, if practicable, through background checks), and security for personnel performing private security functions in an area of combat operations or other significant military operations;

''(G) guidance to the commanders of the combatant commands on the issuance of—

''(i) orders, directives, and instructions to contractors performing private security functions relating to equipment, force protection, security, health, safety, or relations and interaction with locals;

''(ii) predeployment training requirements for personnel performing private security functions in an area of combat operations or other significant military operations, addressing the requirements of this section, resources and assistance available to contractor personnel, country information and cultural training, and guidance on working with host country nationals and military; and

''(iii) rules on the use of force for personnel performing private security functions in an area of combat operations or other significant military operations;

''(H) a process by which a commander of a combatant command may request an action described in subsection (b)(3); and

''(I) a process by which the training requirements referred to in subparagraph (G)(ii) shall be implemented.

''(3) AVAILABILITY OF ORDERS, DIRECTIVES, AND INSTRUCTIONS.—The regulations prescribed under subsection (a) shall include mechanisms to ensure the provision and availability of the orders, directives, and instructions referred to in paragraph (2)(G)(i) to contractors referred to in that paragraph, including through the maintenance of a single location (including an Internet website, to the extent consistent with security considerations) at or through which such contractors may access such orders, directives, and instructions.

''(b) CONTRACT CLAUSE ON CONTRACTORS PERFORMING PRIVATE SECURITY FUNCTIONS.—

''(1) REQUIREMENT UNDER FAR.—Not later than 180 days after the date of the enactment of this Act [Jan. 28, 2008], the Federal Acquisition Regulation issued in accordance with section 1303 of title 41, United States Code[,] shall be revised to require the insertion into each covered contract (or, in the case of a task order, the contract under which the task order is issued) of a contract clause addressing the selection, training, equipping, and conduct of personnel performing private security functions under such contract.

''(2) CLAUSE REQUIREMENT.—The contract clause required by paragraph (1) shall require, at a minimum, that the contractor concerned shall—

''(A) ensure that the contractor and all employees of the contractor or any subcontractor who are responsible for performing private security functions under such contract comply with regulations prescribed under subsection (a), including any revisions or updates to such regulations, and follow the procedures established in such regulations for—

''(i) registering, processing, accounting for, and keeping appropriate records of personnel performing private security functions in an area of combat operations or other significant military operations;

''(ii) authorizing and accounting of weapons to be carried by, or available to be used by, personnel performing private security functions in an area of combat operations or other significant military operations;

''(iii) registration and identification of armored vehicles, helicopters, and other military vehicles operated by contractors and subcontractors performing private security functions in an area of combat operations or other significant military operations; and

''(iv) the reporting of incidents in which—

''(I) a weapon is discharged by personnel performing private security functions in an area of combat operations or other significant military operations;

''(II) personnel performing private security functions in an area of combat operations or other significant military operations are killed or injured; or

''(III) persons are killed or injured, or property is destroyed, as a result of conduct by contractor personnel;

''(B) ensure that the contractor and all employees of the contractor or any subcontractor who are responsible for performing private security functions under such contract comply with—

''(i) qualification, training, screening (including, if practicable, through background checks), and security requirements established by the Secretary of Defense for personnel performing private security functions in an area of combat operations or other significant military operations;

''(ii) applicable laws and regulations of the United States and the host country, and applicable treaties and international agreements, regarding the performance of the functions of the contractor;

''(iii) orders, directives, and instructions issued by the applicable commander of a combatant command relating to equipment, force protection, security, health, safety, or relations and interaction with locals; and

''(iv) rules on the use of force issued by the applicable commander of a combatant command for personnel performing private security functions in an area of combat operations or other significant military operations;

''(C) cooperate with any investigation conducted by the Department of Defense pursuant to subsection (a)(2)(E) by providing access to employees of the contractor and relevant information in the possession of the contractor regarding the incident concerned; and

''(D) ensure that the contract clause is included in subcontracts awarded to any subcontractor at any tier who is responsible for performing private security functions under the contract.

''(3) NONCOMPLIANCE OF PERSONNEL WITH CLAUSE.—The contracting officer for a covered contract may direct the contractor, at its own expense, to remove or replace any personnel performing private security functions in an area of combat operations or other significant military operations who violate or fail to comply with applicable requirements of the clause required by this subsection. If the violation or failure to comply is a gross violation or failure or is repeated, the contract may be terminated for default.

''(4) APPLICABILITY.—The contract clause required by this subsection shall be included in all covered contracts awarded on or after the date that is 180 days after the date of the enactment of this Act [Jan.

28, 2008]. Federal agencies shall make best efforts to provide for the inclusion of the contract clause required by this subsection in covered contracts awarded before such date.

''(5) INSPECTOR GENERAL REPORT ON PILOT PROGRAM ON IMPOSITION OF FINES FOR NONCOMPLIANCE OF PERSONNEL WITH CLAUSE.—Not later than March 30, 2008, the Inspector General of the Department of Defense shall submit to Congress a report assessing the feasibility and advisability of carrying out a pilot program for the imposition of fines on contractors for personnel who violate or fail to comply with applicable requirements of the clause required by this section as a mechanism for enhancing the compliance of such personnel with the clause. The report shall include—

''(A) an assessment of the feasibility and advisability of carrying out the pilot program; and

''(B) if the Inspector General determines that carrying out the pilot program is feasible and advisable—

''(i) recommendations on the range of contracts and subcontracts to which the pilot program should apply; and

''(ii) a schedule of fines to be imposed under the pilot program for various types of personnel actions or failures.

''(c) OVERSIGHT.—It shall be the responsibility of the head of the contracting activity responsible for each covered contract to ensure that the contracting activity takes appropriate steps to assign sufficient oversight personnel to the contract to—

''(1) ensure that the contractor responsible for performing private security functions under such contract comply with the regulatory requirements prescribed pursuant to subsection (a) and the contract requirements established pursuant to subsection (b); and

''(2) make the determinations required by subsection (d).

''(d) REMEDIES.—The failure of a contractor under a covered contract to comply with the requirements of the regulations prescribed under subsection (a) or the contract clause inserted in a covered contract pursuant to subsection (b), as determined by the contracting officer for the covered contract—

''(1) shall be included in appropriate databases of past performance and considered in any responsibility determination or evaluation of the past performance of the contractor for the purpose of a contract award decision, as provided in section 1126 of title 41, United States Code;

''(2) in the case of an award fee contract—

''(A) shall be considered in any evaluation of contract performance by the contractor for the relevant award fee period; and

''(B) may be a basis for reducing or denying award fees for such period, or for recovering all or part of award fees previously paid for such period; and

''(3) in the case of a failure to comply that is severe, prolonged, or repeated—

''(A) shall be referred to the suspension or debarment official for the appropriate agency; and

''(B) may be a basis for suspension or debarment of the contractor.

''(e) RULE OF CONSTRUCTION.—The duty of a contractor under a covered contract to comply with the requirements of the regulations prescribed under subsection (a) and the contract clause inserted into a covered contract pursuant to subsection (b), and the availability of the remedies provided in subsection (d), shall not be reduced or diminished by the failure of a higher or lower tier contractor under such contract to comply with such requirements, or by a failure of the contracting activity to provide the oversight required by subsection (c).

''(f) AREAS OF COMBAT OPERATIONS OR OTHER SIGNIFICANT MILITARY OPERATIONS.—

''(1) DESIGNATION.—The Secretary of Defense shall designate the areas constituting either an area of combat operations or other significant military operations for purposes of this section by not later than 120 days after the date of the enactment of this Act [Jan. 28, 2008]. In making designations under this paragraph, the Secretary shall ensure that an area is not designated in whole or part as both an area of combat operations and an area of other significant military operations.

''(2) OTHER SIGNIFICANT MILITARY OPERATIONS.—For purposes of this section, the term 'other significant military operations' means activities, other than combat operations, as part of an overseas contingency operation that are carried out by United States Armed Forces in an uncontrolled or unpredictable high-threat environment where personnel performing security functions may be called upon to use deadly force.

''(3) PARTICULAR AREAS.—Iraq and Afghanistan shall be included in the areas designated as an area of combat operations or other significant military operations under paragraph (1).

''(4) ADDITIONAL AREAS.—The Secretary may designate any additional area as an area constituting an area of combat operations or other significant military operations for purposes of this section if the Secretary determines that the presence or potential of combat operations or other significant military operations in such area warrants designation of such area as an area of combat operations or other significant military operations for purposes of this section.

''(5) MODIFICATION OR ELIMINATION OF DESIGNATION.—The Secretary may modify or cease the designation of an area under this subsection as an area of combat operations or other significant military operations if the Secretary determines that combat operations or other significant military operations are no longer ongoing in such area.

''(g) LIMITATION.—With respect to an area of other significant military operations, the requirements of this section shall apply only upon agreement of the Secretary of Defense and the Secretary of State. An agreement of the Secretaries under this subsection may be made only on an area-by-area basis. With respect to an area of combat operations, the requirements of this section shall always apply.

''(h) EXCEPTIONS.—

''(1) INTELLIGENCE ACTIVITIES.—The requirements of this section shall not apply to contracts entered into by elements of the intelligence community in support of intelligence activities.

''(2) NONGOVERNMENTAL ORGANIZATIONS.—The requirements of this section shall not apply to a nonprofit nongovernmental organization receiving grants or cooperative agreements for activities conducted within an area of other significant military operations if the Secretary of Defense and the Secretary of State agree that such organization may be exempted. An exemption may be granted by the agreement of the Secretaries under this paragraph on an organization-by-organization or area-by-area basis. Such an exemption may not be granted with respect to an area of combat operations.

''SEC. 863. ANNUAL JOINT REPORT ON CONTRACTING IN IRAQ AND AFGHANISTAN.

''(a) IN GENERAL.—Except as provided in subsection (f), every 12 months, the Secretary of Defense, the Secretary of State, and the Administrator of the United States Agency for International Development shall submit to the relevant committees of Congress a joint report on contracts in Iraq or Afghanistan.

''(b) PRIMARY MATTERS COVERED.—A report under this section shall, at a minimum, cover the following with respect to contracts in Iraq and Afghanistan during the reporting period:

''(1) Total number of contracts awarded.

''(2) Total number of active contracts.

''(3) Total value of all contracts awarded.

''(4) Total value of active contracts.

''(5) The extent to which such contracts have used competitive procedures.

''(6) Percentage of contracts awarded on a competitive basis as compared to established goals for competition in contingency contracting actions.

''(7) Total number of contractor personnel working on contracts at the end of each quarter of the reporting period.

''(8) Total number of contractor personnel who are performing security functions at the end of each quarter of the reporting period.

''(9) Total number of contractor personnel killed or wounded.

''(c) ADDITIONAL MATTERS COVERED.—A report under this section shall also cover the following:

''(1) The sources of information and data used to compile the information required under subsection (b).

''(2) A description of any known limitations of the data reported under subsection (b), including known limitations of the methodology and data sources used to compile the report.

''(3) Any plans for strengthening collection, coordination, and sharing of information on contracts in Iraq and Afghanistan through improvements to the common databases identified under section 861(b)(4).

''(d) REPORTING PERIOD.—A report under this section shall cover a period of not less than 12 months.

''(e) SUBMISSION OF REPORTS.—The Secretaries and the Administrator shall submit an initial report under this section not later than February 1, 2011, and shall submit an updated report by February 1 of every year thereafter until February 1, 2015.

''(f) EXCEPTION.—If the total annual amount of obligations for contracts in Iraq and Afghanistan combined is less than $250,000,000 for the reporting period, for all three agencies combined, the Secretaries and the Administrator may submit, in lieu of a report, a letter stating the applicability of this subsection, with such documentation as the Secretaries and the Administrator consider appropriate.

''(g) ESTIMATES.—In determining the total number of contractor personnel working on contracts under subsection (b)(6), the Secretaries and the Administrator may use estimates for any category of contractor personnel for which they determine it is not feasible to provide an actual count. The report shall fully disclose the extent to which estimates are used in lieu of an actual count.

''SEC. 864. DEFINITIONS AND OTHER GENERAL PROVISIONS.

''(a) DEFINITIONS.—In this subtitle:

''(1) MATTERS RELATING TO CONTRACTING.—The term 'matters relating to contracting', with respect to contracts in Iraq and Afghanistan, means all matters relating to awarding, funding, managing, tracking, monitoring, and providing oversight to contracts and contractor personnel.

''(2) CONTRACT IN IRAQ OR AFGHANISTAN.—The term 'contract in Iraq or Afghanistan' means a contract with the Department of Defense, the Department of State, or the United States Agency for International Development, a subcontract at any tier issued under such a contract, a task order or delivery order at any tier issued under such a contract, a grant, or a cooperative agreement (including a contract, subcontract, task order, delivery order, grant, or cooperative agreement issued by another Government agency for the Department of Defense, the Department of State, or the United States Agency for International Development), if the contract, subcontract, task order, delivery order, grant, or cooperative agreement involves worked [sic] performed in Iraq or Afghanistan for a period longer than 30 days.

''(3) COVERED CONTRACT.—The term 'covered contract' means—

''(A) a contract of a Federal agency for the performance of services in an area of combat operations, as designated by the Secretary of Defense under subsection (c) of section 862;

''(B) a subcontract at any tier under such a contract;

''(C) a task order or delivery order issued under such a contract or subcontract;

''(D) a grant for the performance of services in an area of combat operations, as designated by the Secretary of Defense under subsection (c) of section 862; or

''(E) a cooperative agreement for the performance of services in such an area of combat operations.

''(4) CONTRACTOR.—The term 'contractor', with respect to a covered contract, means—

''(A) in the case of a covered contract that is a contract, subcontract, task order, or delivery order, the contractor or subcontractor carrying out the covered contract;

''(B) in the case of a covered contract that is a grant, the grantee; and

''(C) in the case of a covered contract that is a cooperative agreement, the recipient.

''(5) CONTRACTOR PERSONNEL.—The term 'contractor personnel' means any person performing work under contract for the Department of Defense, the Department of State, or the United States Agency for International Development, in Iraq or Afghanistan, including individuals and subcontractors at any tier.

''(6) PRIVATE SECURITY FUNCTIONS.—The term 'private security functions' means activities engaged in by a contractor under a covered contract as follows:

''(A) Guarding of personnel, facilities, or property of a Federal agency, the contractor or subcontractor, or a third party.

''(B) Any other activity for which personnel are required to carry weapons in the performance of their duties.

''(7) RELEVANT COMMITTEES OF CONGRESS.—The term 'relevant committees of Congress' means each of the following committees:

''(A) The Committees on Armed Services of the Senate and the House of Representatives.

''(B) The Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives.

''(C) The Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives.

''(D) For purposes of contracts relating to the National Foreign Intelligence Program, the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives.

''(b) CLASSIFIED INFORMATION.—Nothing in this subtitle shall be interpreted to require the handling of classified information or information relating to intelligence sources and methods in a manner inconsistent with any law, regulation, executive order, or rule of the House of Representatives or of the Senate relating to the handling or protection of such information.''

ENHANCED AUTHORITY TO ACQUIRE PRODUCTS AND SERVICES PRODUCED IN AFGHANISTAN

Pub. L. 110–181, div. A, title VIII, §886, Jan. 28, 2008, 122 Stat. 266, as amended by Pub. L. 112–239, div. A, title VIII, §842, Jan. 2, 2013, 126 Stat. 1845; Pub. L. 114–92, div. A, title VIII, §886(a), Nov. 25, 2015, 129 Stat. 949, provided that:

''(a) IN GENERAL.—In the case of a product or service to be acquired in support of military operations or stability operations in Afghanistan (including security, transition, reconstruction, and humanitarian relief activities) for which the Secretary of Defense makes a determination described in subsection (b), and except as provided in subsection (d), the Secretary may conduct a procurement in which—

''(1) competition is limited to products or services that are from Afghanistan;

''(2) procedures other than competitive procedures are used to award a contract to a particular source or sources from Afghanistan; or

''(3) a preference is provided for products or services that are from Afghanistan.

''(b) DETERMINATION.—A determination described in this subsection is a determination by the Secretary that—

''(1) the product or service concerned is to be used only by the military forces, police, or other security personnel of Afghanistan; or

''(2) it is in the national security interest of the United States to limit competition, use procedures other than competitive procedures, or provide a preference as described in subsection (a) because—

''(A) such limitation, procedure, or preference is necessary to provide a stable source of jobs in Afghanistan; and

''(B) such limitation, procedure, or preference will not adversely affect—

''(i) military operations or stability operations in Afghanistan; or

''(ii) the United States industrial base.

''(c) PRODUCTS, SERVICES, AND SOURCES FROM AFGHANISTAN.—For the purposes of this section:

''(1) A product is from Afghanistan if it is mined, produced, or manufactured in Afghanistan.

''(2) A service is from Afghanistan if it is performed in Afghanistan by citizens or permanent resident aliens of Afghanistan.

''(3) A source is from Afghanistan if it—

''(A) is located in Afghanistan; and

''(B) offers products or services that are from Afghanistan.

''(d) EXCLUSION OF ITEMS ON THE ABILITYONE PROCUREMENT CATALOG.—The authority under subsection (a) shall not be available for the procurement of any good that is contained in the procurement catalog described in section 8503(a) of title 41, United States Code, in Afghanistan if such good can be produced and delivered by a qualified nonprofit agency for the blind or a nonprofit agency for other severely disabled [sic] in a timely fashion to support mission requirements.''

[Pub. L. 112–239, div. A, title VIII, § 842(1), Jan. 2, 2013, 126 Stat. 1845, which directed amendment of section 886 of Pub. L. 110–181, set out above, by striking ''Iraq or'' in section heading, was executed by striking ''Iraq and'', to reflect the probable intent of Congress.]

### PREVENTION OF EXPORT CONTROL VIOLATIONS

Pub. L. 110–181, div. A, title VIII, § 890, Jan. 28, 2008, 122 Stat. 269, as amended by Pub. L. 110–417, [div. A], title X, § 1061(b)(6), Oct. 14, 2008, 122 Stat. 4613; Pub. L. 111–383, div. A, title X, § 1075(f)(6), Jan. 7, 2011, 124 Stat. 4376, provided that:

''(a) PREVENTION OF EXPORT CONTROL VIOLATIONS.—Not later than 180 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense shall prescribe regulations requiring any contractor under a contract with the Department of Defense to provide goods or technology that is subject to export controls under the Arms Export Control Act [22 U.S.C. 2751 et seq.] or the Export Administration Act of 1979 [50 U.S.C. App. 2401 et seq.] (as continued in effect under the International Emergency Economic Powers Act [50 U.S.C. 1701 et seq.]) to comply with those Acts and applicable regulations with respect to such goods and technology, including the International Traffic in Arms Regulations and the Export Administration Regulations. Regulations prescribed under this subsection shall include a contract clause enforcing such requirement.

''(b) TRAINING ON EXPORT CONTROLS.—The Secretary of Defense shall ensure that any contractor under a contract with the Department of Defense to provide goods or technology that is subject to export controls under the Arms Export Control Act or the Export Administration Act of 1979 (as continued in effect under the International Emergency Economic Powers Act) is made aware of any relevant resources made available by the Department of State and the Department of Commerce to assist in compliance with the requirement established by subsection (a) and the need for a corporate compliance plan and periodic internal audits of corporate performance under such plan.

''(c) REPORT.—Not later than 180 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report assessing the utility of—

''(1) requiring defense contractors (or subcontractors at any tier) to periodically report on measures taken to ensure compliance with the International Traffic in Arms Regulations and the Export Administration Regulations;

''(2) requiring periodic audits of defense contractors (or subcontractors at any tier) to ensure compliance with all provisions of the International Traffic in Arms Regulations and the Export Administration Regulations;

''(3) requiring defense contractors to maintain a corporate training plan to disseminate information to appropriate contractor personnel regarding the applicability of the Arms Export Control Act and the Export Administration Act of 1979; and

''(4) requiring a designated corporate liaison, available for training provided by the United States Government, whose primary responsibility would be contractor compliance with the Arms Export Control Act and the Export Administration Act of 1979.

''(d) DEFINITIONS.—In this section:

''(1) EXPORT ADMINISTRATION REGULATIONS.—The term 'Export Administration Regulations' means those regulations contained in parts 730 through 774 of title 15, Code of Federal Regulations (or successor regulations).

''(2) INTERNATIONAL TRAFFIC IN ARMS REGULATIONS.—The term 'International Traffic in Arms Regulations' means those regulations contained in parts 120 through 130 of title 22, Code of Federal Regulations (or successor regulations).''

### QUALITY CONTROL IN PROCUREMENT OF SHIP CRITICAL SAFETY ITEMS AND RELATED SERVICES

Pub. L. 109–364, div. A, title I, § 130(a)–(c), Oct. 17, 2006, 120 Stat. 2110, provided that:

''(a) QUALITY CONTROL POLICY.—The Secretary of Defense shall prescribe in regulations a quality control policy for the procurement of the following:

''(1) Ship critical safety items.

''(2) Modifications, repair, and overhaul of ship critical safety items.

''(b) ELEMENTS.—The policy required under subsection (a) shall include requirements as follows:

''(1) That the head of the design control activity for ship critical safety items establish processes to identify and manage the procurement, modification, repair, and overhaul of such items.

''(2) That the head of the contracting activity for a ship critical safety item enter into a contract for the procurement, modification, repair, or overhaul of such item only with a source on a qualified manufacturers list or a source approved by the design control activity in accordance with section 2319 of title 10, United States Code (as amended by subsection (d)).

''(3) That the ship critical safety items delivered, and the services performed with respect to such items, meet all technical and quality requirements specified by the design control activity.

''(c) DEFINITIONS.—In this section, the terms 'ship critical safety item' and 'design control activity' have the meanings given such terms in subsection (g) of section 2319 of title 10, United States Code (as so amended).''

### PILOT PROGRAM ON TIME-CERTAIN DEVELOPMENT IN ACQUISITION OF MAJOR WEAPON SYSTEMS

Pub. L. 109–364, div. A, title VIII, § 812, Oct. 17, 2006, 120 Stat. 2317, as amended by Pub. L. 110–417, [div. A], title VIII, § 813(d)(3), Oct. 14, 2008, 122 Stat. 4527; Pub. L. 111–84, div. A, title X, § 1073(c)(5), Oct. 28, 2009, 123 Stat. 2474, provided that:

''(a) PILOT PROGRAM AUTHORIZED.—The Secretary of Defense may carry out a pilot program on the use of

time-certain development in the acquisition of major weapon systems.

''(b) PURPOSE OF PILOT PROGRAM.—The purpose of the pilot program authorized by subsection (a) is to assess the feasibility and advisability of utilizing time-certain development in the acquisition of major weapon systems in order to deliver new capabilities to the warfighter more rapidly through—

''(1) disciplined decision-making;

''(2) emphasis on technological maturity; and

''(3) appropriate trade-offs between—

''(A) cost and system performance; and

''(B) program schedule.

''(c) INCLUSION OF SYSTEMS IN PILOT PROGRAM.—

''(1) IN GENERAL.—The Secretary of Defense may include a major weapon system in the pilot program only if—

''(A) the major weapon system meets the criteria under paragraph (2) in accordance with that paragraph; and

''(B) the Milestone Decision Authority nominates such program to the Secretary of Defense for inclusion in the program.

''(2) CRITERIA.—For purposes of paragraph (1) a major weapon system meets the criteria under this paragraph only if the Milestone Decision Authority determines, in consultation with the service acquisition executive for the military department carrying out the acquisition program for the system and one or more combatant commanders responsible for fielding the system, that—

''(A) the certification requirements of section 2366b of title 10, United States Code (as amended by section 805 of this Act), have been met, and no waivers have been granted from such requirements;

''(B) a preliminary design has been reviewed using systems engineering, and the system, as so designed, will meet battlefield needs identified by the relevant combatant commanders after appropriate requirements analysis;

''(C) a representative model or prototype of the system, or key subsystems, has been demonstrated in a relevant environment, such as a well-simulated operational environment;

''(D) an independent cost estimate has been conducted and used as the basis for funding requirements for the acquisition program for the system;

''(E) the budget of the military department responsible for carrying out the acquisition program for the system provides the funding necessary to execute the product development and production plan consistent with the requirements identified pursuant to subparagraph (D);

''(F) an appropriately qualified program manager has entered into a performance agreement with the Milestone Decision Authority that establishes expected parameters for the cost, schedule, and performance of the acquisition program for the system, consistent with a business case for such acquisition program;

''(G) the service acquisition executive and the program manager have developed a strategy to ensure stability in program management until, at a minimum, the delivery of the initial operational capability under the acquisition program for the system has occurred;

''(H) the service acquisition executive, the relevant combatant commanders, and the program manager have agreed that no additional requirements that would be inconsistent with the agreed-upon program schedule will be added during the development phase of the acquisition program for the system; and

''(I) a planned initial operational capability will be delivered to the relevant combatant commanders within a defined period of time as prescribed in regulations by the Secretary of Defense.

''(3) TIMING OF DECISION.—The decision whether to include a major weapon system in the pilot program shall be made at the time of milestone approval for the acquisition program for the system.

''(d) LIMITATION ON NUMBER OF WEAPONS SYSTEMS IN PILOT PROGRAM.—The number of major weapon systems included in the pilot program at any time may not exceed six major weapon systems.

''(e) LIMITATION ON COST OF WEAPONS SYSTEMS IN PILOT PROGRAM.—The Secretary of Defense may include a major weapon system in the pilot program only if, at the time a major weapon system is proposed for inclusion, the total cost for system design and development of the weapon system, as set forth in the cost estimate referred to in subsection (c)(2)(D), does not exceed $1,000,000,000 during the period covered by the current future-years defense program.

''(f) SPECIAL FUNDING AUTHORITY.—

''(1) AUTHORITY FOR RESERVE ACCOUNT.—Notwithstanding any other provision of law, the Secretary of Defense may establish a special reserve account utilizing funds made available for the major weapon systems included in the pilot program.

''(2) ELEMENTS.—The special reserve account may include—

''(A) funds made available for any major weapon system included in the pilot program to cover termination liability;

''(B) funds made available for any major weapon system included in the pilot program for award fees that may be earned by contractors; and

''(C) funds appropriated to the special reserve account.

''(3) AVAILABILITY OF FUNDS.—Funds in the special reserve account may be used, in accordance with guidance issued by the Secretary for purposes of this section, for the following purposes:

''(A) To cover termination liability for any major weapon system included in the pilot program.

''(B) To pay award fees that are earned by any contractor for a major weapon system included in the pilot program.

''(C) To address unforeseen contingencies that could prevent a major weapon system included in the pilot program from meeting critical schedule or performance requirements.

''(4) REPORTS ON USE OF FUNDS.—Not later than 30 days after the use of funds in the special reserve account for the purpose specified in paragraph (3)(C), the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the use of funds in the account for such purpose. The report shall set forth the purposes for which the funds were used and the reasons for the use of the funds for such purposes.

''(5) RELATIONSHIP TO APPROPRIATIONS.—Nothing in this subsection may be construed as extending any period of time for which appropriated funds are made available.

''(g) ADMINISTRATION OF PILOT PROGRAM.—The Secretary of Defense shall prescribe policies and procedures on the administration of the pilot program. Such policies and procedures shall—

''(1) provide for the use of program status reports based on earned value data to track progress on a major weapon system under the pilot program against baseline estimates applicable to such system at each systems engineering technical review point; and

''(2) grant authority, to the maximum extent practicable, to the program manager for the acquisition program for a major weapon system to make key program decisions and trade-offs, subject to management reviews only if cost or schedule deviations exceed the baselines for such acquisition program by 10 percent or more.

''(h) REMOVAL OF WEAPONS SYSTEMS FROM PILOT PROGRAM.—The Secretary of Defense shall remove a major weapon system from the pilot program if—

''(1) the weapon system receives Milestone C approval; or

''(2) the Secretary determines that the weapon system is no longer in substantial compliance with the

criteria in subsection (c)(2) or is otherwise no longer appropriate for inclusion in the pilot program.

''(i) EXPIRATION OF AUTHORITY TO INCLUDE ADDITIONAL SYSTEMS IN PILOT PROGRAM.—

''(1) EXPIRATION.—A major weapon system may not be included in the pilot program after September 30, 2012.

''(2) RETENTION OF SYSTEMS.—A major weapon system included in the pilot program before the date specified in paragraph (1) in accordance with the requirements of this section may remain in the pilot program after that date.

''(j) ANNUAL REPORT.—

''(1) IN GENERAL.—Not later than one year after including the first major weapon system in the pilot program, and annually thereafter, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the pilot program, and the major weapon systems included in the pilot program, during the one-year period ending on the date of such report.

''(2) ELEMENTS.—Each report under this subsection shall include—

''(A) a description of progress under the pilot program, and on each major weapon system included in the pilot program, during the period covered by such report;

''(B) a description of the use of all funds in the special reserve account established under subsection (f); and

''(C) such other matters as the Secretary considers appropriate.

''(k) MAJOR WEAPON SYSTEM DEFINED.—In this section, the term 'major weapon system' means a weapon system that is treatable as a major system under section 2302(5) of title 10, United States Code.''

[Pub. L. 111–84, div. A, title X, § 1073(c), Oct. 28, 2009, 123 Stat. 2474, provided that the amendment made by section 1073(c)(5) to section 813(d)(3) of Pub. L. 110–417, set out above, is effective as of Oct. 14, 2008, and as if included in Pub. L. 110–417 as enacted.]

### LINKING OF AWARD AND INCENTIVE FEES TO ACQUISITION OUTCOMES

Pub. L. 111–84, div. A, title VIII, § 823, Oct. 28, 2009, 123 Stat. 2412, as amended by Pub. L. 111–383, div. A, title VIII, § 834(a)–(c), Jan. 7, 2011, 124 Stat. 4278, 4279, provided that:

''(a) AUTHORITY TO REDUCE OR DENY AWARD FEES.—Not later than 180 days after the date of the enactment of this Act [Oct. 28, 2009], the Secretary of Defense shall revise the guidance issued pursuant to section 814 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364; 129 [120] Stat. 2321) [set out below] to ensure that all covered contracts using award fees—

''(1) provide for the consideration of any incident described in subsection (b) in evaluations of contractor performance for the relevant award fee period; and

''(2) authorize the Secretary to reduce or deny award fees for the relevant award fee period, or to recover all or part of award fees previously paid for such period, on the basis of the negative impact of such incident on contractor performance.

''(b) COVERED INCIDENTS.—An incident referred to in subsection (a) is any incident in which the contractor—

''(1) has been determined, through a criminal, civil, or administrative proceeding that results in a disposition listed in subsection (c), in the performance of a covered contract to have caused serious bodily injury or death to any civilian or military personnel of the Government through gross negligence or with reckless disregard for the safety of such personnel; or

''(2) has been determined, through a criminal, civil, or administrative proceeding that results in a disposition listed in subsection (c), to be liable for actions of a subcontractor of the contractor that caused serious bodily injury or death to any civilian or military personnel of the Government, through gross negligence or with reckless disregard for the safety of such personnel.

''(c) LIST OF DISPOSITIONS IN CRIMINAL, CIVIL, OR ADMINISTRATIVE PROCEEDINGS.—For purposes of subsection (b), the dispositions listed in this subsection are as follows:

''(1) In a criminal proceeding, a conviction.

''(2) In a civil proceeding, a finding of fault and liability that results in the payment of a monetary fine, penalty, reimbursement, restitution, or damages of $5,000 or more.

''(3) In an administrative proceeding, a finding of fault and liability that results in—

''(A) the payment of a monetary fine or penalty of $5,000 or more; or

''(B) the payment of a reimbursement, restitution, or damages in excess of $100,000.

''(4) To the maximum extent practicable and consistent with applicable laws and regulations, in a criminal, civil, or administrative proceeding, a disposition of the matter by consent or compromise with an acknowledgment of fault by the person if the proceeding could have led to any of the outcomes specified in paragraph (1), (2), or (3).

''(5) In an administrative proceeding, a final determination of contractor fault by the Secretary of Defense pursuant to subsection (d).

''(d) DETERMINATIONS OF CONTRACTOR FAULT BY SECRETARY OF DEFENSE.—

''(1) IN GENERAL.—In any case described by paragraph (2), the Secretary of Defense shall—

''(A) provide for an expeditious independent investigation of the causes of the serious bodily injury or death alleged to have been caused by the contractor as described in that paragraph; and

''(B) make a final determination, pursuant to procedures established by the Secretary for purposes of this subsection, whether the contractor, in the performance of a covered contract, caused such serious bodily injury or death through gross negligence or with reckless disregard for the safety of civilian or military personnel of the Government.

''(2) COVERED CASES.—A case described in this paragraph is any case in which the Secretary has reason to believe that—

''(A) a contractor, in the performance of a covered contract, may have caused the serious bodily injury or death of any civilian or military personnel of the Government; and

''(B) such contractor is not subject to the jurisdiction of United States courts.

''(3) CONSTRUCTION OF DETERMINATION.—A final determination under this subsection may be used only for the purpose of evaluating contractor performance, and shall not be determinative of fault for any other purpose.

''(e) DEFINITIONS.—In this section:

''(1) The term 'contractor' means a company awarded a covered contract and a subcontractor at any tier under such contract.

''(2) The term 'covered contract' means a contract awarded by the Department of Defense for the procurement of goods or services.

''(3) The term 'serious bodily injury' means a grievous physical harm that results in a permanent disability.

''(f) EFFECTIVE DATE.—This section shall apply with respect to contracts entered into after the date occurring 180 days after the date of the enactment of this Act [Oct. 28, 2009].''

[Pub. L. 111–383, div. A, title VIII, § 834(e), Jan. 7, 2011, 124 Stat. 4279, provided that: ''The requirements of section 823 of the National Defense Authorization Act for Fiscal Year 2010 [Pub. L. 111–84, set out above], as amended by subsections (a) through (c), shall apply with respect to the following:

[''(1) Any contract entered into on or after the date of the enactment of this Act [Jan. 7, 2011].

[''(2) Any task order or delivery order issued on or after the date of the enactment of this Act under a contract entered into before, on, or after that date.'']

Pub. L. 110–329, div. C, title VIII, §8105, Sept. 30, 2008, 122 Stat. 3644, provided that: ''During the current fiscal year and hereafter, none of the funds appropriated or otherwise available to the Department of Defense may be obligated or expended to provide award fees to any defense contractor contrary to the provisions of section 814 of the National Defense Authorization Act, Fiscal Year 2007 (Public Law 109–364) [set out below].''

Pub. L. 109–364, div. A, title VIII, §814, Oct. 17, 2006, 120 Stat. 2321, provided that:

''(a) GUIDANCE ON LINKING OF AWARD AND INCENTIVE FEES TO ACQUISITION OUTCOMES.—Not later than 180 days after the date of the enactment of this Act [Oct. 17, 2006], the Secretary of Defense shall issue guidance, with detailed implementation instructions (including definitions), for the Department of Defense on the appropriate use of award and incentive fees in Department of Defense acquisition programs.

''(b) ELEMENTS.—The guidance under subsection (a) shall—

''(1) ensure that all new contracts using award fees link such fees to acquisition outcomes (which shall be defined in terms of program cost, schedule, and performance);

''(2) establish standards for identifying the appropriate level of officials authorized to approve the use of award and incentive fees in new contracts;

''(3) provide guidance on the circumstances in which contractor performance may be judged to be 'excellent' or 'superior' and the percentage of the available award fee which contractors should be paid for such performance;

''(4) establish standards for determining the percentage of the available award fee, if any, which contractors should be paid for performance that is judged to be 'acceptable', 'average', 'expected', 'good', or 'satisfactory';

''(5) ensure that no award fee may be paid for contractor performance that is judged to be below satisfactory performance or performance that does not meet the basic requirements of the contract;

''(6) provide specific direction on the circumstances, if any, in which it may be appropriate to roll over award fees that are not earned in one award fee period to a subsequent award fee period or periods;

''(7) ensure consistent use of guidelines and definitions relating to award and incentive fees across the military departments and Defense Agencies;

''(8) ensure that the Department of Defense—

''(A) collects relevant data on award and incentive fees paid to contractors; and

''(B) has mechanisms in place to evaluate such data on a regular basis;

''(9) include performance measures to evaluate the effectiveness of award and incentive fees as a tool for improving contractor performance and achieving desired program outcomes; and

''(10) provide mechanisms for sharing proven incentive strategies for the acquisition of different types of products and services among contracting and program management officials.

''(c) ASSESSMENT OF INDEPENDENT EVALUATION MECHANISMS.—

''(1) IN GENERAL.—The Secretary of Defense shall select a federally funded research and development center to assess various mechanisms that could be used to ensure an independent evaluation of contractor performance for the purpose of making determinations applicable to the judging and payment of award fees.

''(2) CONSIDERATIONS.—The assessment conducted pursuant to paragraph (1) shall include consideration of the advantages and disadvantages of a system in which award fees are—

''(A) held in a separate fund or funds of the Department of Defense; and

''(B) allocated to a specific program only upon a determination by an independent board, charged with comparing contractor performance across programs, that such fees have been earned by the contractor for such program.

''(3) REPORT.—The Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the assessment conducted pursuant to paragraph (1) not later than one year after the date of the enactment of this Act [Oct. 17, 2006].''

LIMITATION ON CONTRACTS FOR THE ACQUISITION OF CERTAIN SERVICES

Pub. L. 109–364, div. A, title VIII, §832, Oct. 17, 2006, 120 Stat. 2331, as amended by Pub. L. 110–181, div. A, title VIII, §883, Jan. 28, 2008, 122 Stat. 264; Pub. L. 110–417, [div. A], title X, §1061(b)(5), Oct. 14, 2008, 122 Stat. 4613; Pub. L. 113–291, div. A, title X, §1071(b)(3)(A), Dec. 19, 2014, 128 Stat. 3506, provided that:

''(a) LIMITATION.—Except as provided in subsection (b), the Secretary of Defense may not enter into a service contract to acquire a military flight simulator.

''(b) WAIVER.—The Secretary of Defense may waive subsection (a) with respect to a contract if the Secretary—

''(1) determines that a waiver is in the national interest; and

''(2) provides to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] an economic analysis as described in subsection (c) at least 30 days before the waiver takes effect.

''(c) ECONOMIC ANALYSIS.—The economic analysis provided under subsection (b) shall include, at a minimum, the following:

''(1) A clear explanation of the need for the contract.

''(2) An examination of at least two alternatives for fulfilling the requirements that the contract is meant to fulfill, including the following with respect to each alternative:

''(A) A rationale for including the alternative.

''(B) A cost estimate of the alternative and an analysis of the quality of each cost estimate.

''(C) A discussion of the benefits to be realized from the alternative.

''(D) A best value determination of each alternative and a detailed explanation of the life-cycle cost calculations used in the determination.

''(d) DEFINITIONS.—In this section:

''(1) The term 'military flight simulator' means any major system to simulate the form, fit, and function of a military aircraft that has no commonly available commercial variant.

''(2) The term 'service contract' means any contract entered into by the Department of Defense the principal purpose of which is to furnish services in the United States through the use of service employees.

''(3) The term 'service employees' has the meaning provided in section 6701(3) of title 41, United States Code.

''(e) EFFECT ON EXISTING CONTRACTS.—The limitation in subsection (a) does not apply to any service contract of a military department to acquire a military flight simulator, or to any renewal or extension of, or follow-on contract to, such a contract, if—

''(1) the contract was in effect as of October 17, 2006;

''(2) the number of flight simulators to be acquired under the contract (or renewal, extension, or follow-on) will not result in the total number of flight simulators acquired by the military department concerned through service contracts to exceed the total number of flight simulators to be acquired under all service contracts of such department for such simulators in effect as of October 17, 2006; and

''(3) in the case of a renewal or extension of, or follow-on contract to, the contract, the Secretary of the military department concerned provides to the congressional defense committees a written notice of the decision to exercise an option to renew or extend the contract, or to issue a solicitation for bids or proposals using competitive procedures for a follow-on contract, and an economic analysis as described in sub-

section (c) supporting the decision, at least 30 days before carrying out such decision.''

CONGRESSIONAL NOTIFICATION OF CANCELLATION OF MAJOR AUTOMATED INFORMATION SYSTEMS

Pub. L. 109–163, div. A, title VIII, § 806, Jan. 6, 2006, 119 Stat. 3373, provided that:

''(a) REPORT REQUIRED.—The Secretary of Defense shall notify the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] not less than 60 days before cancelling a major automated information system program that has been fielded or approved to be fielded, or making a change that will significantly reduce the scope of such a program, of the proposed cancellation or change.

''(b) CONTENT.—Each notification submitted under subsection (a) with respect to a proposed cancellation or change shall include—

''(1) the specific justification for the proposed cancellation or change;

''(2) a description of the impact of the proposed cancellation or change on the ability of the Department to achieve the objectives of the program proposed for cancellation or change;

''(3) a description of the steps that the Department plans to take to achieve those objectives; and

''(4) other information relevant to the change in acquisition strategy.

''(c) DEFINITIONS.—In this section:

''(1) The term 'major automated information system' has the meaning given that term in Department of Defense directive 5000.1.

''(2) The term 'approved to be fielded' means having received Milestone C approval.''

JOINT POLICY ON CONTINGENCY CONTRACTING

Pub. L. 109–163, div. A, title VIII, § 817, Jan. 6, 2006, 119 Stat. 3382, provided that:

''(a) JOINT POLICY.—

''(1) REQUIREMENT.—Not later than one year after the date of the enactment of this Act [Jan. 6, 2006], the Secretary of Defense, in consultation with the Chairman of the Joint Chiefs of Staff, shall develop a joint policy for contingency contracting during combat operations and post-conflict operations.

''(2) MATTERS COVERED.—The joint policy for contingency contracting required by paragraph (1) shall, at a minimum, provide for—

''(A) the designation of a senior commissioned officer in each military department with the responsibility for administering the policy;

''(B) the assignment of a senior commissioned officer with appropriate acquisition experience and qualifications to act as head of contingency contracting during combat operations, post-conflict operations, and contingency operations, who shall report directly to the commander of the combatant command in whose area of responsibility the operations occur;

''(C) an organizational approach to contingency contracting that is designed to ensure that each military department is prepared to conduct contingency contracting during combat operations and post-conflict operations;

''(D) a requirement to provide training (including training under a program to be created by the Defense Acquisition University) to contingency contracting personnel in—

''(i) the use of law, regulations, policies, and directives related to contingency contracting operations;

''(ii) the appropriate use of rapid acquisition methods, including the use of exceptions to competition requirements under section 2304 of title 10, United States Code, sealed bidding, letter contracts, indefinite delivery indefinite quantity task orders, set asides under section 8(a) of the Small Business Act (15 U.S.C. 637(a)), undefinitized contract actions, and other tools available to expedite the delivery of goods and services during combat operations or post-conflict operations;

''(iii) the appropriate use of rapid acquisition authority, commanders' emergency response program funds, and other tools unique to contingency contracting; and

''(iv) instruction on the necessity for the prompt transition from the use of rapid acquisition authority to the use of full and open competition and other methods of contracting that maximize transparency in the acquisition process;

''(E) appropriate steps to ensure that training is maintained for such personnel even when they are not deployed in a contingency operation; and

''(F) such steps as may be needed to ensure jointness and cross-service coordination in the area of contingency contracting.

''(b) REPORTS.—

''(1) INTERIM REPORT.—

''(A) REQUIREMENT.—Not later than 270 days after the date of the enactment of this Act [Jan. 6, 2006], the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives an interim report on contingency contracting.

''(B) MATTERS COVERED.—The report shall include discussions of the following:

''(i) Progress in the development of the joint policy under subsection (a).

''(ii) The ability of the Armed Forces to support contingency contracting.

''(iii) The ability of commanders of combatant commands to request contingency contracting support and the ability of the military departments and the acquisition support agencies to respond to such requests and provide such support, including the availability of rapid acquisition personnel for such support.

''(iv) The ability of the current civilian and military acquisition workforce to deploy to combat theaters of operations and to conduct contracting activities during combat and during post-conflict, reconstruction, or other contingency operations.

''(v) The effect of different periods of deployment on continuity in the acquisition process.

''(2) FINAL REPORT.—Not later than 18 months after the date of the enactment of this Act [Jan. 6, 2006], the Secretary of Defense shall submit to the committees listed in paragraph (1)(A) a final report on contingency contracting, containing a discussion of the implementation of the joint policy developed under subsection (a), including updated discussions of the matters covered in the interim report.

''(c) DEFINITIONS.—In this section:

''(1) CONTINGENCY CONTRACTING PERSONNEL.—The term 'contingency contracting personnel' means members of the Armed Forces and civilian employees of the Department of Defense who are members of the defense acquisition workforce and, as part of their duties, are assigned to provide support to contingency operations (whether deployed or not).

''(2) CONTINGENCY CONTRACTING.—The term 'contingency contracting' means all stages of the process of acquiring property or services by the Department of Defense during a contingency operation.

''(3) CONTINGENCY OPERATION.—The term 'contingency operation' has the meaning provided in section 101(13) of title 10, United States Code.

''(4) ACQUISITION SUPPORT AGENCIES.—The term 'acquisition support agencies' means Defense Agencies and Department of Defense Field Activities that carry out and provide support for acquisition-related activities.''

PROHIBITION ON PROCUREMENTS FROM COMMUNIST CHINESE MILITARY COMPANIES

Pub. L. 109–163, div. A, title XII, § 1211, Jan. 6, 2006, 119 Stat. 3461, as amended by Pub. L. 112–81, div. A, title

XII, §1243(a), (b), Dec. 31, 2011, 125 Stat. 1645; Pub. L. 114–328, div. A, title XII, §1296, Dec. 23, 2016, 130 Stat. 2562, provided that:

''(a) PROHIBITION.—The Secretary of Defense may not procure goods or services described in subsection (b), through a contract or any subcontract (at any tier) under a contract, from any Communist Chinese military company.

''(b) GOODS AND SERVICES COVERED.—For purposes of subsection (a), the goods and services described in this subsection are goods and services on the munitions list of the International Traffic in Arms Regulations or in the 600 series of the control list of the Export Administration Regulations, other than goods or services procured—

''(1) in connection with a visit by a vessel or an aircraft of the United States Armed Forces to the People's Republic of China;

''(2) for testing purposes; or

''(3) for purposes of gathering intelligence.

''(c) WAIVER AUTHORIZED.—The Secretary of Defense may waive the prohibition in subsection (a) if the Secretary determines that such a waiver is necessary for national security purposes and the Secretary submits to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report described in subsection (d) not less than 15 days before issuing the waiver under this subsection.

''(d) REPORT.—The report referred to in subsection (c) is a report that identifies the specific reasons for the waiver issued under subsection (c) and includes recommendations as to what actions may be taken to develop alternative sourcing capabilities in the future.

''(e) DEFINITIONS.—In this section:

''(1) The term 'Communist Chinese military company' has the meaning provided that term by section 1237(b)(4) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 [Pub. L. 105–261] (50 U.S.C. 1701 note).

''(2) The term 'munitions list of the International Traffic in Arms Regulations' means the United States Munitions List contained in part 121 of subchapter M of title 22 of the Code of Federal Regulations.

''(3) The term '600 series of the control list of the Export Administration Regulations' means the 600 series of the Commerce Control List contained in Supplement No. 1 to part 774 of subtitle B of title 15 of the Code of Federal Regulations.''

[Pub. L. 112–81, div. A, title XII, §1243(c), Dec. 31, 2011, 125 Stat. 1646, provided that: ''The amendments made by this section [amending section 1211 of Pub. L. 109–163, set out above] take effect on the date of the enactment of this Act [Dec. 31, 2011] and apply with respect to contracts and subcontracts of the Department of Defense entered into on or after the date of the enactment of this Act.'']

DEVELOPMENT OF DEPLOYABLE SYSTEMS TO INCLUDE CONSIDERATION OF FORCE PROTECTION IN ASYMMETRIC THREAT ENVIRONMENTS

Pub. L. 108–375, div. A, title I, §141, Oct. 28, 2004, 118 Stat. 1829, provided that:

''(a) REQUIREMENT FOR SYSTEMS DEVELOPMENT.—The Secretary of Defense shall require that the Department of Defense regulations, directives, and guidance governing the acquisition of covered systems be revised to require that—

''(1) an assessment of warfighter survivability and of system suitability against asymmetric threats shall be performed as part of the development of system requirements for any such system; and

''(2) requirements for key performance parameters for force protection and survivability shall be included as part of the documentation of system requirements for any such system.

''(b) COVERED SYSTEMS.—In this section, the term 'covered system' means any of the following systems that is expected to be deployed in an asymmetric threat environment:

''(1) Any manned system.

''(2) Any equipment intended to enhance personnel survivability.

''(c) INAPPLICABILITY OF DEVELOPMENT REQUIREMENT TO SYSTEMS ALREADY THROUGH DEVELOPMENT.—The revisions pursuant subsection (a) to Department of Defense regulations, directives, and guidance shall not apply to a system that entered low-rate initial production before the date of the enactment of this Act [Oct. 28, 2004].

''(d) DEADLINE FOR POLICY REVISIONS.—The revisions required by subsection (a) to Department of Defense regulations, directives, and guidance shall be made not later than 120 days after the date of the enactment of this Act [Oct. 28, 2004].''

INTERNAL CONTROLS FOR DEPARTMENT OF DEFENSE PROCUREMENTS THROUGH GSA CLIENT SUPPORT CENTERS

Pub. L. 108–375, div. A, title VIII, §802, Oct. 28, 2004, 118 Stat. 2004, as amended by Pub. L. 109–313, §2(c)(2), Oct. 6, 2006, 120 Stat. 1735, provided that:

''(a) INITIAL INSPECTOR GENERAL REVIEW AND DETERMINATION.—(1) Not later than March 15, 2005, the Inspector General of the Department of Defense and the Inspector General of the General Services Administration shall jointly—

''(A) review—

''(i) the policies, procedures, and internal controls of each GSA Client Support Center; and

''(ii) the administration of those policies, procedures, and internal controls; and

''(B) for each such Center, determine in writing whether—

''(i) the Center is compliant with defense procurement requirements;

''(ii) the Center is not compliant with defense procurement requirements, but the Center made significant progress during 2004 toward becoming compliant with defense procurement requirements; or

''(iii) neither of the conclusions stated in clauses (i) and (ii) is correct.

''(2) If the Inspectors General determine under paragraph (1) that the conclusion stated in clause (ii) or (iii) of subparagraph (B) of such paragraph is correct in the case of a GSA Client Support Center, those Inspectors General shall, not later than March 15, 2006, jointly—

''(A) conduct a second review regarding that GSA Client Support Center as described in paragraph (1)(A); and

''(B) determine in writing whether that GSA Client Support Center is or is not compliant with defense procurement requirements.

''(b) COMPLIANCE WITH DEFENSE PROCUREMENT REQUIREMENTS.—For the purposes of this section, a GSA Client Support Center is compliant with defense procurement requirements if the GSA Client Support Center's policies, procedures, and internal controls, and the manner in which they are administered, are adequate to ensure compliance of that Center with the requirements of laws and regulations that apply to procurements of property and services made directly by the Department of Defense.

''(c) LIMITATIONS ON PROCUREMENTS THROUGH GSA CLIENT SUPPORT CENTERS.—(1) After March 15, 2005, and before March 16, 2006, no official of the Department of Defense may, except as provided in subsection (d) or (e), order, purchase, or otherwise procure property or services in an amount in excess of $100,000 through any GSA Client Support Center for which a determination described in paragraph (1)(B)(iii) of subsection (a) has been made under that subsection.

''(2) After March 15, 2006, no official of the Department of Defense may, except as provided in subsection (d) or (e), order, purchase, or otherwise procure property or services in an amount in excess of $100,000 through any GSA Client Support Center that has not been determined under this section as being compliant with defense procurement requirements.

''(d) EXCEPTION FROM APPLICABILITY OF LIMITATIONS.—(1) No limitation applies under subsection (c) with respect to the procurement of property and services from a particular GSA Client Support Center during any period that there is in effect a determination of the Under Secretary of Defense for Acquisition, Technology, and Logistics, made in writing, that it is necessary in the interest of the Department of Defense to continue to procure property and services through that GSA Client Support Center.

''(2) A written determination with respect to a GSA Client Support Center under paragraph (1) is in effect for the period, not in excess of one year, that the Under Secretary of Defense for Acquisition, Technology, and Logistics shall specify in the written determination. The Under Secretary may extend from time to time, for up to one year at a time, the period for which the written determination remains in effect.

''(e) TERMINATION OF APPLICABILITY OF LIMITATIONS.—Subsection (c) shall cease to apply to a GSA Client Support Center on the date on which the Inspector General of the Department of Defense and the Inspector General of the General Services Administration jointly determine that such Center is compliant with defense procurement requirements and notify the Secretary of Defense of that determination.

''(f) GSA CLIENT SUPPORT CENTER DEFINED.—In this section, the term 'GSA Client Support Center' means a Client Support Center of the Federal Acquisition Service of the General Services Administration.''

### DATA REVIEW

Pub. L. 108–136, div. A, title VIII, § 801(b), Nov. 24, 2003, 117 Stat. 1540, provided that:

''(1) The Secretary of Defense shall revise the data collection systems of the Department of Defense to ensure that such systems are capable of identifying each procurement that involves a consolidation of contract requirements within the department with a total value in excess of $5,000,000.

''(2) The Secretary shall ensure that appropriate officials of the Department of Defense periodically review the information collected pursuant to paragraph (1) in cooperation with the Small Business Administration—

''(A) to determine the extent of the consolidation of contract requirements in the Department of Defense; and

''(B) to assess the impact of the consolidation of contract requirements on the availability of opportunities for small business concerns to participate in Department of Defense procurements, both as prime contractors and as subcontractors.

''(3) In this subsection:

''(A) The term 'consolidation of contract requirements' has the meaning given that term in [former] section 2382(c)(1) of title 10, United States Code, as added by subsection (a).

''(B) The term 'small business concern' means a business concern that is determined by the Administrator of the Small Business Administration to be a small-business concern by application of the standards prescribed under section 3(a) of the Small Business Act (15 U.S.C. 632(a)).''

### QUALITY CONTROL IN PROCUREMENT OF AVIATION CRITICAL SAFETY ITEMS AND RELATED SERVICES

Pub. L. 108–136, div. A, title VIII, § 802(a)–(c), Nov. 24, 2003, 117 Stat. 1540, provided that:

''(a) QUALITY CONTROL POLICY.—The Secretary of Defense shall prescribe in regulations a quality control policy for the procurement of aviation critical safety items and the procurement of modifications, repair, and overhaul of such items.

''(b) CONTENT OF REGULATIONS.—The policy set forth in the regulations shall include the following requirements:

''(1) That the head of the design control activity for aviation critical safety items establish processes to identify and manage the procurement, modification, repair, and overhaul of aviation critical safety items.

''(2) That the head of the contracting activity for an aviation critical safety item enter into a contract for the procurement, modification, repair, or overhaul of such item only with a source approved by the design control activity in accordance with section 2319 of title 10, United States Code.

''(3) That the aviation critical safety items delivered, and the services performed with respect to aviation critical safety items, meet all technical and quality requirements specified by the design control activity.

''(c) DEFINITIONS.—In this section, the terms 'aviation critical safety item' and 'design control activity' have the meanings given such terms in section 2319(g) of title 10, United States Code, as amended by subsection (d).''

### COMPETITIVE AWARD OF CONTRACTS FOR RECONSTRUCTION ACTIVITIES IN IRAQ

Pub. L. 108–136, div. A, title VIII, § 805(a), Nov. 24, 2003, 117 Stat. 1542, provided that: ''The Department of Defense shall fully comply with chapter 137 of title 10, United States Code, and other applicable procurement laws and regulations for any contract awarded for reconstruction activities in Iraq, and shall conduct a full and open competition for performing work needed for the reconstruction of the Iraqi oil industry.''

### DEMONSTRATION PROJECT FOR CONTRACTORS EMPLOYING PERSONS WITH DISABILITIES

Pub. L. 108–136, div. A, title VIII, § 853, Nov. 24, 2003, 117 Stat. 1557, as amended by Pub. L. 108–199, div. H, § 110, Jan. 23, 2004, 118 Stat. 438, provided that:

''(a) AUTHORITY.—The Secretary of Defense may carry out a demonstration project by entering into one or more contracts with an eligible contractor for the purpose of providing defense contracting opportunities for severely disabled individuals.

''(b) EVALUATION FACTOR.—In evaluating an offer for a contract under the demonstration program, the percentage of the total workforce of the offeror consisting of severely disabled individuals employed by the offeror shall be one of the evaluation factors.

''(c) CREDIT TOWARD CERTAIN SMALL BUSINESS CONTRACTING GOALS.—Department of Defense contracts entered into with eligible contractors under the demonstration project under this section, and subcontracts entered into with eligible contractors under such contracts, shall be credited toward the attainment of goals established under section 2323 of title 10, United States Code, and section 15(g)(1) of the Small Business Act (15 U.S.C. 644(g)(1)) regarding the extent of the participation of disadvantaged small business concerns in contracts of the Department of Defense and subcontracts under such contracts.

''(d) DEFINITIONS.—In this section:

''(1) ELIGIBLE CONTRACTOR.—The term 'eligible contractor' means a business entity operated on a for-profit or nonprofit basis that—

''(A) employs severely disabled individuals at a rate that averages not less than 33 percent of its total workforce over a period prescribed by the Secretary;

''(B) pays not less than the minimum wage prescribed pursuant to section 6 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206) to the employees who are severely disabled individuals; and

''(C) provides for its employees health insurance and a retirement plan comparable to those provided for employees by business entities of similar size in its industrial sector or geographic region.

''(2) SEVERELY DISABLED INDIVIDUAL.—The term 'severely disabled individual' means an individual with a disability (as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102)) who has a severe physical or mental impairment that seriously limits one or more functional capacities.''

### PROCUREMENT OF DEFENSE BIOMEDICAL COUNTERMEASURES

Pub. L. 108–136, div. A, title XVI, § 1602, Nov. 24, 2003, 117 Stat. 1682, as amended by Pub. L. 110–181, div. A,

title X, §1063(g)(3), Jan. 28, 2008, 122 Stat. 324, provided that:

''(a) DETERMINATION OF MATERIAL THREATS.—(1) The Secretary of Defense (in this section referred to as the 'Secretary') shall on an ongoing basis—

''(A) assess current and emerging threats of use of biological, chemical, radiological, and nuclear agents; and

''(B) identify, on the basis of such assessment, those agents that present a material risk of use against the Armed Forces.

''(2) The Secretary shall on an ongoing basis—

''(A) assess the potential consequences to the health of members of the Armed Forces of use against the Armed Forces of the agents identified under paragraph (1)(B); and

''(B) identify, on the basis of such assessment, those agents for which countermeasures are necessary to protect the health of members of the Armed Forces.

''(b) ASSESSMENT OF AVAILABILITY AND APPROPRIATENESS OF COUNTERMEASURES.—The Secretary shall on an ongoing basis assess the availability and appropriateness of specific countermeasures to address specific threats identified under subsection (a).

''(c) SECRETARY'S DETERMINATION OF COUNTERMEASURES APPROPRIATE FOR PROCUREMENT.—(1) The Secretary, in accordance with paragraph (2), shall on an ongoing basis identify specific countermeasures that the Secretary determines to be appropriate for procurement for the Department of Defense stockpile of biomedical countermeasures.

''(2) The Secretary may not identify a specific countermeasure under paragraph (1) unless the Secretary determines that—

''(A) the countermeasure is a qualified countermeasure; and

''(B) it is reasonable to expect that producing and delivering, within 5 years, the quantity of that countermeasure required to meet the needs of the Department (as determined by the Secretary) is feasible.

''(d) INTERAGENCY COOPERATION.—(1) Activities of the Secretary under this section shall be carried out in regular, structured, and close consultation and coordination with the Secretaries of Homeland Security and Health and Human Services, including the activities described in subsections (a), (b), and (c) and those activities with respect to interagency agreements described in paragraph (2).

''(2) The Secretary may enter into an interagency agreement with the Secretaries of Homeland Security and Health and Human Services to provide for acquisition by the Secretary of Defense for use by the Armed Forces of biomedical countermeasures procured for the Strategic National Stockpile by the Secretary of Health and Human Services. The Secretary may transfer such funds to the Secretary of Health and Human Services as are necessary to carry out such agreements (including administrative costs of the Secretary of Health and Human Services), and the Secretary of Health and Human Services may expend any such transferred funds to procure such countermeasures for use by the Armed Forces, or to replenish the stockpile. The Secretaries are authorized to establish such terms and conditions for such agreements as the Secretaries determine to be in the public interest. The transfer authority provided under this paragraph is in addition to any other transfer authority available to the Secretary.

''(e) DEFINITIONS.—In this section:

''(1) The term 'qualified countermeasure' means a biomedical countermeasure—

''(A) that is approved under section 505(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) or licensed under section 351 of the Public Health Service Act (42 U.S.C. 262), or that is approved under section 515 or cleared under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e and 360) for use as such a countermeasure to a biological, chemical, radiological, or nuclear agent identified as a material threat under subsection (a); or

''(B) with respect to which the Secretary of Health and Human Services makes a determination that sufficient and satisfactory clinical experience or research data (including data, if available, from preclinical and clinical trials) exists to support a reasonable conclusion that the product will qualify for such approval or licensing for use as such a countermeasure.

''(2) The term 'biomedical countermeasure' means a drug (as defined in section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(g)(1))), device (as defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h))), or biological product (as defined in section 351(i) of the Public Health Service Act (42 U.S.C. 262(i))) that is—

''(A) used to treat, identify, or prevent harm from any biological, chemical, radiological, or nuclear agent that may cause a military health emergency affecting the Armed Forces; or

''(B) used to treat, identify, or prevent harm from a condition that may result in adverse health consequences or death and may be caused by administering a drug or biological product that is used as described in subparagraph (A).

''(3) The term 'Strategic National Stockpile' means the stockpile established under section 121(a) of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (42 U.S.C. 300hh–12(a)).

''(f) FUNDING.—Of the amount authorized to be appropriated for the Department of Defense and available within the transfer authority established under section 1001 of this Act [117 Stat. 1582] for fiscal year 2004 and for each fiscal year thereafter, such sums are authorized as may be necessary for the costs incurred by the Secretary in the procurement of countermeasures under this section.''

ENCOURAGEMENT OF SMALL BUSINESSES AND NONTRADITIONAL DEFENSE CONTRACTORS TO SUBMIT PROPOSALS POTENTIALLY BENEFICIAL FOR COMBATING TERRORISM

Pub. L. 107–314, div. A, title II, §244, Dec. 2, 2002, 116 Stat. 2498, provided that during fiscal years 2003, 2004, and 2005, the Secretary of Defense, acting through the Under Secretary of Defense for Acquisition, Technology, and Logistics, was to carry out a program of outreach to small businesses and nontraditional defense contractors with the purpose of providing a process for reviewing and evaluating research activities of, and new technologies being developed by, small businesses and nontraditional defense contractors that had the potential for meeting a defense requirement or technology development goal of the Department of Defense that related to the mission of the Department of Defense to combat terrorism.

PROCUREMENT OF ENVIRONMENTALLY PREFERABLE PROCUREMENT ITEMS

Pub. L. 107–314, div. A, title III, §314, Dec. 2, 2002, 116 Stat. 2508, as amended by Pub. L. 109–163, div. A, title X, §1056(e)(1), Jan. 6, 2006, 119 Stat. 3440, provided that:

''(a) TRACKING SYSTEM.—The Secretary of Defense shall develop and implement an effective and efficient tracking system to identify the extent to which the Defense Logistics Agency procures environmentally preferable procurement items or procurement items made with recovered material. The system shall provide for the separate tracking, to the maximum extent practicable, of the procurement of each category of procurement items that, as of the date of the enactment of this Act [Dec. 2, 2002], has been determined to be environmentally preferable or made with recovered material.

''(b) ASSESSMENT OF TRAINING AND EDUCATION.—The Secretary of Defense shall assess the need to establish a program, or enhance existing programs, for training and educating Department of Defense procurement officials to ensure that they are aware of any Department requirements, preferences, or goals for the procurement

of environmentally preferable procurement items or procurement items made with recovered material.

''(c) REPORTING REQUIREMENT.—Not later than March 1, 2004, and each March 1 thereafter through 2007, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report detailing the results obtained from the tracking system developed under subsection (a).

''(d) RELATION TO OTHER LAWS.—Nothing in this section shall be construed to alter the requirements of the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

''(e) DEFINITIONS.—In this section:

''(1) The term 'environmentally preferable', in the case of a procurement item, means that the item has a lesser or reduced effect on human health and the environment when compared with competing products that serve the same purpose. The comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product.

''(2) The terms 'procurement item' and 'recovered material' have the meanings given such terms in section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903).''

POLICY REGARDING ACQUISITION OF INFORMATION ASSURANCE AND INFORMATION ASSURANCE-ENABLED INFORMATION TECHNOLOGY PRODUCTS

Pub. L. 107–314, div. A, title III, § 352, Dec. 2, 2002, 116 Stat. 2518, provided that:

''(a) ESTABLISHMENT OF POLICY.—The Secretary of Defense shall establish a policy to limit the acquisition of information assurance and information assurance-enabled information technology products to those products that have been evaluated and validated in accordance with appropriate criteria, schemes, or programs.

''(b) WAIVER.—As part of the policy, the Secretary of Defense shall authorize specified officials of the Department of Defense to waive the limitations of the policy upon a determination in writing that application of the limitations to the acquisition of a particular information assurance or information assurance-enabled information technology product would not be in the national security interest of the United States.

''(c) IMPLEMENTATION.—The Secretary of Defense shall ensure that the policy is uniformly implemented throughout the Department of Defense.''

LOGISTICS SUPPORT AND SERVICES FOR WEAPON SYSTEMS CONTRACTORS

Pub. L. 107–314, div. A, title III, § 365, Dec. 2, 2002, 116 Stat. 2520, as amended by Pub. L. 109–163, div. A, title III, § 331, Jan. 6, 2006, 119 Stat. 3195, authorized the Secretary of Defense to make certain logistics support and services available to weapon systems contractors and provided for the expiration of such authority on Sept. 30, 2010.

IMPROVEMENT OF SOFTWARE ACQUISITION PROCESSES

Pub. L. 107–314, div. A, title VIII, § 804, Dec. 2, 2002, 116 Stat. 2604, provided that:

''(a) ESTABLISHMENT OF PROGRAMS.—(1) The Secretary of each military department shall establish a program to improve the software acquisition processes of that military department.

''(2) The head of each Defense Agency that manages a major defense acquisition program with a substantial software component shall establish a program to improve the software acquisition processes of that Defense Agency.

''(3) The programs required by this subsection shall be established not later than 120 days after the date of the enactment of this Act [Dec. 2, 2002].

''(b) PROGRAM REQUIREMENTS.—A program to improve software acquisition processes under this section shall, at a minimum, include the following:

''(1) A documented process for software acquisition planning, requirements development and management, project management and oversight, and risk management.

''(2) Efforts to develop appropriate metrics for performance measurement and continual process improvement.

''(3) A process to ensure that key program personnel have an appropriate level of experience or training in software acquisition.

''(4) A process to ensure that each military department and Defense Agency implements and adheres to established processes and requirements relating to the acquisition of software.

''(c) DEPARTMENT OF DEFENSE GUIDANCE.—The Assistant Secretary of Defense for Command, Control, Communications, and Intelligence, in consultation with the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall—

''(1) prescribe uniformly applicable guidance for the administration of all of the programs established under subsection (a) and take such actions as are necessary to ensure that the military departments and Defense Agencies comply with the guidance; and

''(2) assist the Secretaries of the military departments and the heads of the Defense Agencies to carry out such programs effectively by—

''(A) ensuring that the criteria applicable to the selection of sources provides added emphasis on past performance of potential sources, as well as on the maturity of the software products offered by the potential sources; and

''(B) identifying, and serving as a clearinghouse for information regarding, best practices in software development and acquisition in both the public and private sectors.

''(d) DEFINITIONS.—In this section:

''(1) The term 'Defense Agency' has the meaning given the term in section 101(a)(11) of title 10, United States Code.

''(2) The term 'major defense acquisition program' has the meaning given such term in section 139(a)(2)(B) of title 10, United States Code.''

RAPID ACQUISITION AND DEPLOYMENT PROCEDURES

Pub. L. 107–314, div. A, title VIII, § 806, Dec. 2, 2002, 116 Stat. 2607, as amended by Pub. L. 108–136, div. A, title VIII, § 845, Nov. 24, 2003, 117 Stat. 1553; Pub. L. 108–375, div. A, title VIII, § 811, Oct. 28, 2004, 118 Stat. 2012; Pub. L. 109–364, div. A, title X, § 1071(h), Oct. 17, 2006, 120 Stat. 2403; Pub. L. 111–383, div. A, title VIII, § 803, Jan. 7, 2011, 124 Stat. 4255; Pub. L. 112–81, div. A, title VIII, § 845(a), (b), Dec. 31, 2011, 125 Stat. 1515; Pub. L. 114–92, div. A, title VIII, § 803, Nov. 25, 2015, 129 Stat. 880; Pub. L. 114–328, div. A, title VIII, § 801, Dec. 23, 2016, 130 Stat. 2247, provided that:

''(a) REQUIREMENT TO ESTABLISH PROCEDURES.—Not later than 180 days after the date of the enactment of this Act [Dec. 2, 2002], the Secretary of Defense shall prescribe procedures for the rapid acquisition and deployment of supplies and associated support services that are—

''(1)(A) currently under development by the Department of Defense or available from the commercial sector;

''(B) require only minor modifications to supplies described in subparagraph (A); or

''(C) developed or procured under the rapid fielding or rapid prototyping acquisition pathways under section 804 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 2302 note); and

''(2) urgently needed to react to an enemy threat or to respond to significant and urgent safety situations.

''(b) ISSUES TO BE ADDRESSED.—The procedures prescribed under subsection (a) shall include the following:

''(1) A process for streamlined communications between the Chairman of the Joint Chiefs of Staff, the acquisition community, and the research and development community, including—

''(A) a process for the commanders of the combatant commands and the Joint Chiefs of Staff to com-

municate their needs to the acquisition community and the research and development community; and

''(B) a process for the acquisition community and the research and development community to propose supplies and associated support services that meet the needs communicated by the combatant commands and the Joint Chiefs of Staff.

''(2) Procedures for demonstrating, rapidly acquiring, and deploying supplies and associated support services proposed pursuant to paragraph (1)(B), including—

''(A) a process for demonstrating performance and evaluating for current operational purposes the existing capability of the supplies and associated support services;

''(B) a process for developing an acquisition and funding strategy for the deployment of the supplies and associated support services; and

''(C) a process for making deployment and utilization determinations based on information obtained pursuant to subparagraphs (A) and (B).

''(3) Specific procedures in accordance with the guidance developed under section 804(a) of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 2302 note).

''(c) RESPONSE TO COMBAT EMERGENCIES AND CERTAIN URGENT OPERATIONAL NEEDS.—

''(1) DETERMINATION OF NEED FOR RAPID ACQUISITION AND DEPLOYMENT.—(A) In the case of any supplies and associated support services that, as determined in writing by the Secretary of Defense, are urgently needed to eliminate a documented deficiency that has resulted in combat casualties, or is likely to result in combat casualties, the Secretary may use the procedures developed under this section in order to accomplish the rapid acquisition and deployment of the needed supplies and associated support services.

''(B) In the case of any supplies and associated support services that, as determined in writing by the Secretary of Defense, are urgently needed to eliminate a documented deficiency that impacts an ongoing or anticipated contingency operation and that, if left unfulfilled, could potentially result in loss of life or critical mission failure, the Secretary may use the procedures developed under this section in order to accomplish the rapid acquisition and deployment of the needed supplies and associated support services.

''(C)(i) In the case of any supplies and associated support services that, as determined in writing by the Secretary of Defense without delegation, are urgently needed to eliminate a deficiency that as the result of a cyber attack has resulted in critical mission failure, the loss of life, property destruction, or economic effects, or if left unfilled is likely to result in critical mission failure, the loss of life, property destruction, or economic effects, the Secretary may use the procedures developed under this section in order to accomplish the rapid acquisition and deployment of the needed offensive or defensive cyber capabilities, supplies, and associated support services.

''(ii) In this subparagraph, the term 'cyber attack' means a deliberate action to alter, disrupt, deceive, degrade, or destroy computer systems or networks or the information or programs resident in or transiting these systems or networks.

''(2) DESIGNATION OF SENIOR OFFICIAL RESPONSIBLE.—(A)(i) Except as provided under clause (ii), whenever the Secretary makes a determination under subparagraph (A), (B), or (C) of paragraph (1) that certain supplies and associated support services are urgently needed to eliminate a deficiency described in that subparagraph, the Secretary shall designate a senior official of the Department of Defense to ensure that the needed supplies and associated support services are acquired and deployed as quickly as possible, with a goal of awarding a contract for the acquisition of the supplies and associated support services within 15 days.

''(ii) Clause (i) does not apply to acquisitions initiated in the case of a determination by the Secretary that funds are necessary to immediately initiate a project under the rapid fielding or rapid prototyping acquisition pathways under section 804 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 2302 note) if the designated official for acquisitions using such pathways is the service acquisition executive.

''(B) Upon designation of a senior official under subparagraph (A), the Secretary shall authorize that official to waive any provision of law, policy, directive, or regulation described in subsection (d) that such official determines in writing would unnecessarily impede the rapid acquisition and deployment of the needed supplies and associated support services. In a case in which the needed supplies and associated support services cannot be acquired without an extensive delay, the senior official shall require that an interim solution be implemented and deployed using the procedures developed under this section to minimize adverse consequences resulting from the urgent need.

''(3) USE OF FUNDS.—(A) In any fiscal year in which the Secretary makes a determination described in subparagraph (A), (B), or (C) of paragraph (1), or upon the Secretary making a determination that funds are necessary to immediately initiate a project under the rapid fielding or rapid prototyping acquisition pathways under section 804 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 2302 note) based on a compelling national security need, the Secretary may use any funds available to the Department of Defense for acquisitions of supplies and associated support services if the determination includes a written finding that the use of such funds is necessary to address the deficiency in a timely manner.

''(B) Except as provided under subparagraph (C), the authority of this section may only be used to acquire supplies and associated support services—

''(i) in the case of determinations by the Secretary under paragraph (1)(A), in an amount aggregating not more than $200,000,000 during any fiscal year;

''(ii) in the case of determinations by the Secretary under paragraph (1)(B), in an amount aggregating not more than $200,000,000 during any fiscal year;

''(iii) in the case of determinations by the Secretary under paragraph (1)(C), in an amount aggregating not more than $200,000,000 during any fiscal year; and

''(iv) in the case of a determination by the Secretary that funds are necessary to immediately initiate a project under the rapid fielding or rapid prototyping acquisition pathways under section 804 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 2302 note), in an amount not more than $200,000,000 during any fiscal year.

''(C) For each of fiscal years 2017 and 2018, the limits set forth in clauses (i) and (ii) of subparagraph (B) do not apply to the exercise of authority under such clauses provided that the total amount of supplies and associated support services acquired as provided under such subparagraph does not exceed $800,000,000 during such fiscal year.

''(4) NOTIFICATION TO CONGRESSIONAL DEFENSE COMMITTEES.—(A) In the case of a determination by the Secretary under paragraph (1)(A), the Secretary shall notify the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] of the determination within 15 days after the date of the determination.

''(B) In the case of a determination by the Secretary under paragraph (1)(B) the Secretary shall notify the congressional defense committees of the determination at least 10 days before the date on which the determination is effective.

''(C) In the case of a determination by the Secretary under paragraph (3)(A) that funds are nec-

essary to immediately initiate a project under the rapid fielding or rapid prototyping acquisition pathways under section 804 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 2302 note), the Secretary shall notify the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] of the determination within 10 days after the date of the use of such funds.

''(D) A notice under this paragraph shall include the following:

''(i) The supplies and associated support services to be acquired.

''(ii) The amount anticipated to be expended for the acquisition.

''(iii) The source of funds for the acquisition.

''(E) A notice under this paragraph shall be sufficient to fulfill any requirement to provide notification to Congress for a new start program.

''(F) A notice under this paragraph shall be provided in consultation with the Director of the Office of Management and Budget.

''(5) TIME FOR TRANSITIONING TO NORMAL ACQUISITION SYSTEM.—(A) Any acquisition initiated under this subsection shall transition to the normal acquisition system not later than two years after the date on which the Secretary makes the determination described in paragraph (1) with respect to the supplies and associated support services concerned.

''(B) Subparagraph (A) does not apply to acquisitions initiated in the case of a determination by the Secretary that funds are necessary to immediately initiate a project under the rapid fielding or rapid prototyping acquisition pathways under section 804 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 2302 note).

''(6) LIMITATION ON OFFICERS WITH AUTHORITY TO MAKE A DETERMINATION.—The authority to make a determination under subparagraph (A), (B), or (C) of paragraph (1) may be exercised only by the Secretary or Deputy Secretary of Defense.

''(d) WAIVER OF CERTAIN STATUTES AND REGULATIONS.—(1) Upon a determination described in subsection (c)(1), the senior official designated in accordance with subsection (c)(2) with respect to that designation is authorized to waive any provision of law, policy, directive or regulation addressing—

''(A) the establishment of the requirement for the supplies and associated support services;

''(B) the research, development, test, and evaluation of the supplies and associated support services; or

''(C) the solicitation and selection of sources, and the award of the contract, for procurement of the supplies and associated support services.

''(2) Nothing in this subsection authorizes the waiver of—

''(A) the requirements of this section or the regulations implementing this section; or

''(B) any provision of law imposing civil or criminal penalties.

''(e) TESTING REQUIREMENT.—(1) The process for demonstrating performance and evaluating for current operational purposes the existing capability of the supplies and associated support services prescribed under subsection (b)(2)(A) shall include—

''(A) an operational assessment in accordance with procedures prescribed by the Director of Operational Test and Evaluation; and

''(B) a requirement to provide information about any deficiency of the supplies and associated support services in meeting the original requirements for the supplies and associated support services (as stated in a statement of the urgent operational need or similar document) to the deployment decisionmaking authority.

''(2) The process may not include a requirement for any deficiency of supplies and associated support services to be the determining factor in deciding whether to deploy the supplies and associated support services.

''(3) If supplies and associated support services are deployed under the rapid acquisition and deployment procedures prescribed pursuant to this section, or under any other authority, before the completion of operational test and evaluation of the supplies and associated support services, the Director of Operational Test and Evaluation shall have access to operational records and data relevant to such supplies and associated support services in accordance with section 139(e)(3) of title 10, United States Code, for the purpose of completing operational test and evaluation of the supplies and associated support services. The access to the operational records and data shall be provided in a time and manner determined by the Secretary of Defense consistent with requirements of operational security and other relevant operational requirements.

''(f) LIMITATION.—In the case of supplies that are part of a major system for which a low-rate initial production quantity determination has been made pursuant to section 2400 of title 10, United States Code, the quantity of such supplies acquired using the procedures prescribed pursuant to this section may not exceed an amount consistent with complying with limitations on the quantity of articles approved for low-rate initial production for such system. Any such supplies shall be included in any relevant calculation of quantities for low-rate initial production for the system concerned.

''(g) ASSOCIATED SUPPORT SERVICES DEFINED.—In this section, the term 'associated support services' means training, operation, maintenance, and support services needed in connection with the deployment of supplies to be acquired pursuant to the authority of this section. The term does not include functions that are inherently governmental or otherwise exempted from private sector performance.''

[Pub. L. 112–81, div. A, title VIII, § 845(c), Dec. 31, 2011, 125 Stat. 1515, provided that: ''The authority to acquire associated support services pursuant to section 806 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 [Pub. L. 107–314, set out above], as amended by this section, shall not take effect until the Secretary of Defense certifies to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] that the Secretary has developed and implemented an expedited review process in compliance with the requirements of section 804 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111–383; 124 Stat. 4256; 10 U.S.C. 2302 note).'']

### PROCUREMENT OF ALTERNATIVE FUELED AND HYBRID LIGHT DUTY TRUCKS

Pub. L. 107–107, div. A, title III, § 318, Dec. 28, 2001, 115 Stat. 1055, provided that:

''(a) DEFENSE FLEETS NOT COVERED BY REQUIREMENT IN ENERGY POLICY ACT OF 1992.—(1) The Secretary of Defense shall coordinate with the Administrator of General Services to ensure that only hybrid vehicles are procured by the Administrator for the Department of Defense fleet of light duty trucks that is not in a fleet of vehicles to which section 303 of the Energy Policy Act of 1992 (42 U.S.C. 13212) applies.

''(2) The Secretary, in consultation with the Administrator, may waive the policy regarding the procurement of hybrid vehicles in paragraph (1) to the extent that the Secretary determines necessary—

''(A) in the case of trucks that are exempt from the requirements of section 303 of the Energy Policy Act of 1992 for national security reasons under subsection (b)(3)(E) of such section, to meet specific requirements of the Department of Defense for capabilities of light duty trucks;

''(B) to procure vehicles consistent with the standards applicable to the procurement of fleet vehicles for the Federal Government; or

''(C) to adjust to limitations on the commercial availability of light duty trucks that are hybrid vehicles.

''(3) This subsection applies with respect to procurements of light duty trucks in fiscal year 2005 and subsequent fiscal years.

''(b) REQUIREMENT TO EXCEED REQUIREMENT IN ENERGY POLICY ACT OF 1992.—(1) The Secretary of Defense shall coordinate with the Administrator of General Services to ensure that, of the light duty trucks procured in fiscal years after fiscal year 2004 for the fleets of light duty vehicles of the Department of Defense to which section 303 of the Energy Policy Act of 1992 [42 U.S.C. 13212] applies—

''(A) five percent of the total number of such trucks that are procured in each of fiscal years 2005 and 2006 are alternative fueled vehicles or hybrid vehicles; and

''(B) ten percent of the total number of such trucks that are procured in each fiscal year after fiscal year 2006 are alternative fueled vehicles or hybrid vehicles.

''(2) Light duty trucks acquired for the Department of Defense that are counted to comply with section 303 of the Energy Policy Act of 1992 for a fiscal year shall be counted to determine the total number of light duty trucks procured for the Department of Defense for that fiscal year for the purposes of paragraph (1), but shall not be counted to satisfy the requirement in that paragraph.

''(c) REPORT ON PLANS FOR IMPLEMENTATION.—At the same time that the President submits the budget for fiscal year 2003 to Congress under section 1105(a) of title 31, United States Code, the Secretary shall submit to Congress a report summarizing the plans for carrying out subsections (a) and (b).

''(d) DEFINITIONS.—In this section:

''(1) The term 'hybrid vehicle' means a motor vehicle that draws propulsion energy from onboard sources of stored energy that are both—

''(A) an internal combustion or heat engine using combustible fuel; and

''(B) a rechargeable energy storage system.

''(2) The term 'alternative fueled vehicle' has the meaning given that term in section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211).''

TEMPORARY EMERGENCY PROCUREMENT AUTHORITY TO FACILITATE THE DEFENSE AGAINST TERRORISM OR BIOLOGICAL OR CHEMICAL ATTACK

Pub. L. 107–107, div. A, title VIII, §836, Dec. 28, 2001, 115 Stat. 1192, provided special authorities relating to increased flexibility for use of streamlined procedures and commercial item treatment for procurements of biotechnology to facilitate the defense against terrorism or biological or chemical attack which would be applicable to procurements for which funds had been obligated during fiscal years 2002 and 2003, directed the Secretary of Defense to submit to committees of Congress, not later than Mar. 1, 2002, a report containing the Secretary's recommendations for additional emergency procurement authority that the Secretary had determined necessary to support operations carried out to combat terrorism, and provided that no contract could be entered into pursuant to such authority after Sept. 30, 2003.

IMPROVEMENTS IN PROCUREMENTS OF SERVICES

Pub. L. 106–398, §1 [[div. A], title VIII, §821], Oct. 30, 2000, 114 Stat. 1654, 1654A–217, as amended by Pub. L. 108–136, div. A, title XIV, §1431(c), Nov. 24, 2003, 117 Stat. 1672, provided that:

''(a) PREFERENCE FOR PERFORMANCE-BASED SERVICE CONTRACTING.—Not later than 180 days after the date of the enactment of this Act [Oct. 30, 2000], the Federal Acquisition Regulation issued in accordance with sections 6 and 25 of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 405 and 421) [see 41 U.S.C. 1121 and 1303] shall be revised to establish a preference for use of contracts and task orders for the purchase of services in the following order of precedence:

''(1) A performance-based contract or performance-based task order that contains firm fixed prices for the specific tasks to be performed.

''(2) Any other performance-based contract or performance-based task order.

''(3) Any contract or task order that is not a performance-based contract or a performance-based task order.

''[(b) Repealed. Pub. L. 108–136, div. A, title XIV, §1431(c), Nov. 24, 2003, 117 Stat. 1672.]

''(c) CENTERS OF EXCELLENCE IN SERVICE CONTRACTING.—Not later than 180 days after the date of the enactment of this Act [Oct. 30, 2000], the Secretary of each military department shall establish at least one center of excellence in contracting for services. Each center of excellence shall assist the acquisition community by identifying, and serving as a clearinghouse for, best practices in contracting for services in the public and private sectors.

''(d) ENHANCED TRAINING IN SERVICE CONTRACTING.—(1) The Secretary of Defense shall ensure that classes focusing specifically on contracting for services are offered by the Defense Acquisition University and the Defense Systems Management College and are otherwise available to contracting personnel throughout the Department of Defense.

''(2) The Secretary of each military department and the head of each Defense Agency shall ensure that the personnel of the department or agency, as the case may be, who are responsible for the awarding and management of contracts for services receive appropriate training that is focused specifically on contracting for services.

''(e) DEFINITIONS.—In this section:

''(1) The term 'performance-based', with respect to a contract, a task order, or contracting, means that the contract, task order, or contracting, respectively, includes the use of performance work statements that set forth contract requirements in clear, specific, and objective terms with measurable outcomes.

''(2) The term 'commercial item' has the meaning given the term in section 4(12) of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 403(12)) [see 41 U.S.C. 103].

''(3) The term 'Defense Agency' has the meaning given the term in section 101(a)(11) of title 10, United States Code.''

PROGRAM TO INCREASE BUSINESS INNOVATION IN DEFENSE ACQUISITION PROGRAMS

Pub. L. 106–65, div. A, title VIII, §812(a)–(c), (e), Oct. 5, 1999, 113 Stat. 709, 710, provided that:

''(a) REQUIREMENT TO DEVELOP PLAN.—Not later than March 1, 2000, the Secretary of Defense shall publish in the Federal Register for public comment a plan to provide for increased innovative technology for acquisition programs of the Department of Defense from commercial private sector entities, including small-business concerns.

''(b) IMPLEMENTATION OF PLAN.—Not later than March 1, 2001, the Secretary of Defense shall implement the plan required by subsection (a), subject to any modifications the Secretary may choose to make in response to comments received.

''(c) ELEMENTS OF PLAN.—The plan required by subsection (a) shall include, at a minimum, the following elements:

''(1) Procedures through which commercial private sector entities, including small-business concerns, may submit proposals recommending cost-saving and innovative ideas to acquisition program managers.

''(2) A review process designed to make recommendations on the merit and viability of the proposals submitted under paragraph (1) at appropriate times during the acquisition cycle.

''(3) Measures to limit potential disruptions to existing contracts and programs from proposals accepted and incorporated into acquisition programs of the Department of Defense.

''(4) Measures to ensure that research and development efforts of small-business concerns are considered as early as possible in a program's acquisition planning process to accommodate potential technology insertion without disruption to existing contracts and programs.

''(e) SMALL-BUSINESS CONCERN DEFINED.—In this section, the term 'small-business concern' has the same meaning as the meaning of such term as used in the Small Business Act (15 U.S.C. 631 et seq.).''

YEAR 2000 SOFTWARE CONVERSION

Pub. L. 104–201, div. A, title VIII, § 831, Sept. 23, 1996, 110 Stat. 2615, directed the Secretary of Defense to ensure that all information technology acquired by the Department of Defense pursuant to contracts entered into after Sept. 30, 1996, would have the capabilities to process date and date-related data in 2000, and directed the Secretary to assess all information technology within the Department to determine the extent to which such technology would have the capabilities to operate effectively, and to submit to Congress a detailed plan for eliminating any deficiencies not later than Jan. 1, 1997.

DEFENSE FACILITY-WIDE PILOT PROGRAM

Pub. L. 104–106, div. A, title VIII, § 822, Feb. 10, 1996, 110 Stat. 396, as amended by Pub. L. 106–65, div. A, title X, § 1067(6), Oct. 5, 1999, 113 Stat. 774, provided that:

''(a) AUTHORITY TO CONDUCT DEFENSE FACILITY-WIDE PILOT PROGRAM.—The Secretary of Defense may conduct a pilot program, to be known as the 'defense facility-wide pilot program', for the purpose of determining the potential for increasing the efficiency and effectiveness of the acquisition process in facilities by using commercial practices on a facility-wide basis.

''(b) DESIGNATION OF PARTICIPATING FACILITIES.—(1) Subject to paragraph (2), the Secretary may designate up to two facilities as participants in the defense facility-wide pilot program.

''(2) The Secretary may designate for participation in the pilot program only those facilities that are authorized to be so designated in a law authorizing appropriations for national defense programs that is enacted after the date of the enactment of this Act [Feb. 10, 1996].

''(c) SCOPE OF PROGRAM.—At a facility designated as a participant in the pilot program, the pilot program shall consist of the following:

''(1) All contracts and subcontracts for defense supplies and services that are performed at the facility.

''(2) All Department of Defense contracts and all subcontracts under Department of Defense contracts performed elsewhere that the Secretary determines are directly and substantially related to the production of defense supplies and services at the facility and are necessary for the pilot program.

''(d) CRITERIA FOR DESIGNATION OF PARTICIPATING FACILITIES.—The Secretary shall establish criteria for selecting a facility for designation as a participant in the pilot program. In developing such criteria, the Secretary shall consider the following:

''(1) The number of existing and anticipated contracts and subcontracts performed at the facility—

''(A) for which contractors are required to provide certified cost or pricing data pursuant to section 2306a of title 10, United States Code; and

''(B) which are administered with the application of cost accounting standards under section 26(f) of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 422(f)) [now 41 U.S.C. 1502(a), (b)].

''(2) The relationship of the facility to other organizations and facilities performing under contracts with the Department of Defense and subcontracts under such contracts.

''(3) The impact that the participation of the facility under the pilot program would have on competing domestic manufacturers.

''(4) Such other factors as the Secretary considers appropriate.

''(e) NOTIFICATION.—(1) The Secretary shall transmit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a written notification of each facility proposed to be designated by the Secretary for participation in the pilot program.

''(2) The Secretary shall include in the notification regarding a facility designated for participation in the program a management plan addressing the following:

''(A) The proposed treatment of research and development contracts or subcontracts to be performed at the facility during the pilot program.

''(B) The proposed treatment of the cost impact of the use of commercial practices on the award and administration of contracts and subcontracts performed at the facility.

''(C) The proposed method for reimbursing the contractor for existing and new contracts.

''(D) The proposed method for measuring the performance of the facility for meeting the management goals of the Secretary.

''(E) Estimates of the annual amount and the total amount of the contracts and subcontracts covered under the pilot program.

''(3)(A) The Secretary shall ensure that the management plan for a facility provides for attainment of the following objectives:

''(i) A significant reduction of the cost to the Government for programs carried out at the facility.

''(ii) A reduction of the schedule associated with programs carried out at the facility.

''(iii) An increased use of commercial practices and procedures for programs carried out at the facility.

''(iv) Protection of a domestic manufacturer competing for contracts at such facility from being placed at a significant competitive disadvantage by the participation of the facility in the pilot program.

''(B) The management plan for a facility shall also require that all or substantially all of the contracts to be awarded and performed at the facility after the designation of that facility under subsection (b), and all or substantially all of the subcontracts to be awarded under those contracts and performed at the facility after the designation, be—

''(i) for the production of supplies or services on a firm-fixed price basis;

''(ii) awarded without requiring the contractors or subcontractors to provide certified cost or pricing data pursuant to section 2306a of title 10, United States Code; and

''(iii) awarded and administered without the application of cost accounting standards under section 26(f) of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 422(f)) [now 41 U.S.C. 1502(a), (b)].

''(f) EXEMPTION FROM CERTAIN REQUIREMENTS.—In the case of a contract or subcontract that is to be performed at a facility designated for participation in the defense facility-wide pilot program and that is subject to section 2306a of title 10, United States Code, or section 26(f) of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 422(f)) [now 41 U.S.C. 1502(a), (b)], the Secretary of Defense may exempt such contract or subcontract from the requirement to obtain certified cost or pricing data under such section 2306a or the requirement to apply mandatory cost accounting standards under such section 26(f) [now 41 U.S.C. 1502(a), (b)] if the Secretary determines that the contract or subcontract—

''(1) is within the scope of the pilot program (as described in subsection (c)); and

''(2) is fairly and reasonably priced based on information other than certified cost and pricing data.

''(g) SPECIAL AUTHORITY.—The authority provided under subsection (a) includes authority for the Secretary of Defense—

''(1) to apply any amendment or repeal of a provision of law made in this Act [see Tables for classification] to the pilot program before the effective date of such amendment or repeal; and

''(2) to apply to a procurement of items other than commercial items under such program—

''(A) the authority provided in section 34 of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 430) [now 41 U.S.C. 1906] to waive a provision of law in the case of commercial items, and

''(B) any exception applicable under this Act or the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355) [see Tables for classification] (or an amendment made by a provision of either Act) in the case of commercial items,

before the effective date of such provision (or amendment) to the extent that the Secretary determines

necessary to test the application of such waiver or exception to procurements of items other than commercial items.

''(h) APPLICABILITY.—(1) Subsections (f) and (g) apply to the following contracts, if such contracts are within the scope of the pilot program at a facility designated for the pilot program under subsection (b):

''(A) A contract that is awarded or modified during the period described in paragraph (2).

''(B) A contract that is awarded before the beginning of such period, that is to be performed (or may be performed), in whole or in part, during such period, and that may be modified as appropriate at no cost to the Government.

''(2) The period referred to in paragraph (1), with respect to a facility designated under subsection (b), is the period that—

''(A) begins 45 days after the date of the enactment of the Act authorizing the designation of that facility in accordance with paragraph (2) of such subsection; and

''(B) ends on September 30, 2000.

''(i) COMMERCIAL PRACTICES ENCOURAGED.—With respect to contracts and subcontracts within the scope of the defense facility-wide pilot program, the Secretary of Defense may, to the extent the Secretary determines appropriate and in accordance with applicable law, adopt commercial practices in the administration of contracts and subcontracts. Such commercial practices may include the following:

''(1) Substitution of commercial oversight and inspection procedures for Government audit and access to records.

''(2) Incorporation of commercial oversight, inspection, and acceptance procedures.

''(3) Use of alternative dispute resolution techniques (including arbitration).

''(4) Elimination of contract provisions authorizing the Government to make unilateral changes to contracts.''

ELIMINATION OF USE OF CLASS I OZONE-DEPLETING SUBSTANCES IN CERTAIN MILITARY PROCUREMENT CONTRACTS

Pub. L. 102–484, div. A, title III, § 326, Oct. 23, 1992, 106 Stat. 2368, as amended by Pub. L. 104–106, div. A, title XV, §§ 1502(c)(2)(A), 1504(c)(1), Feb. 10, 1996, 110 Stat. 506, 514; Pub. L. 106–65, div. A, title X, § 1067(8), Oct. 5, 1999, 113 Stat. 774; Pub. L. 113–291, div. A, title X, § 1071(b)(14), Dec. 19, 2014, 128 Stat. 3508, provided that:

''(a) ELIMINATION OF USE OF CLASS I OZONE-DEPLETING SUBSTANCES.—(1) No Department of Defense contract awarded after June 1, 1993, may include a specification or standard that requires the use of a class I ozone-depleting substance or that can be met only through the use of such a substance unless the inclusion of the specification or standard in the contract is approved by the senior acquisition official for the procurement covered by the contract. The senior acquisition official may grant the approval only if the senior acquisition official determines (based upon the certification of an appropriate technical representative of the official) that a suitable substitute for the class I ozone-depleting substance is not currently available.

''(2)(A)(i) Not later than 60 days after the completion of the first modification, amendment, or extension after June 1, 1993, of a contract referred to in clause (ii), the senior acquisition official (or the designee of that official) shall carry out an evaluation of the contract in order to determine—

''(I) whether the contract includes a specification or standard that requires the use of a class I ozone-depleting substance or can be met only through the use of such a substance; and

''(II) in the event of a determination that the contract includes such a specification or standard, whether the contract can be carried out through the use of an economically feasible substitute for the ozone-depleting substance or through the use of an economically feasible alternative technology for a technology involving the use of the ozone-depleting substance.

''(ii) A contract referred to in clause (i) is any contract in an amount in excess of $10,000,000 that—

''(I) was awarded before June 1, 1993; and

''(II) as a result of the modification, amendment, or extension described in clause (i), will expire more than 1 year after the effective date of the modification, amendment, or extension.

''(iii) A contract under evaluation under clause (i) may not be further modified, amended, or extended until the evaluation described in that clause is complete.

''(B) If the acquisition official (or designee) determines that an economically feasible substitute substance or alternative technology is available for use in a contract under evaluation, the appropriate contracting officer shall enter into negotiations to modify the contract to require the use of the substitute substance or alternative technology.

''(C) A determination that a substitute substance or technology is not available for use in a contract under evaluation shall be made in writing by the senior acquisition official (or designee).

''(D) The Secretary of Defense may, consistent with the Federal Acquisition Regulation, adjust the price of a contract modified under subparagraph (B) to take into account the use by the contractor of a substitute substance or alternative technology in the modified contract.

''(3) The senior acquisition official authorized to grant an approval under paragraph (1) and the senior acquisition official and designees authorized to carry out an evaluation and make a determination under paragraph (2) shall be determined under regulations prescribed by the Secretary of Defense. A senior acquisition official may not delegate the authority provided in paragraph (1).

''(4) Each official who grants an approval authorized under paragraph (1) or makes a determination under paragraph (2)(B) shall submit to the Secretary of Defense a report on that approval or determination, as the case may be, as follows:

''(A) Beginning on October 1, 1993, and continuing for 8 calendar quarters thereafter, by submitting a report on the approvals granted or determinations made under such authority during the preceding quarter not later than 30 days after the end of such quarter.

''(B) Beginning on January 1, 1997, and continuing for 4 years thereafter, by submitting a report on the approvals granted or determinations made under such authority during the preceding year not later than 30 days after the end of such year.

''(5) The Secretary shall promptly transmit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives each report submitted to the Secretary under paragraph (4). The Secretary shall transmit the report in classified and unclassified forms.

''(b) COST RECOVERY.—In any case in which a Department of Defense contract is modified or a specification or standard for such a contract is waived at the request of a contractor in order to permit the contractor to use in the performance of the contract a substitute for a class I ozone-depleting substance or an alternative technology for a technology involving the use of a class I ozone-depleting substance, the Secretary of Defense may adjust the price of the contract in a manner consistent with the Federal Acquisition Regulation.

''(c) DEFINITIONS.—In this section:

''(1) The term 'class I ozone-depleting substance' means any substance listed under section 602(a) of the Clean Air Act (42 U.S.C. 7671a(a)).

''(2) The term 'Federal Acquisition Regulation' means the single Government-wide procurement regulation issued under section 1303(a) of title 41, United States Code.''

PAYMENT PROTECTIONS FOR SUBCONTRACTORS AND SUPPLIERS

Pub. L. 102–190, div. A, title VIII, § 806, Dec. 5, 1991, 105 Stat. 1417, as amended by Pub. L. 102–484, div. A, title X, § 1053(5), Oct. 23, 1992, 106 Stat. 2502; Pub. L. 103–355, title II, § 2091, title VIII, § 8105(k), Oct. 13, 1994, 108 Stat. 3306, 3393; Pub. L. 113–291, div. A, title X, § 1071(b)(15), Dec. 19, 2014, 128 Stat. 3508, provided that:

''(a) REGULATIONS.—The Secretary of Defense shall prescribe in regulations the following requirements:

''(1) INFORMATION PROVIDED BY DEPARTMENT OF DEFENSE RELATING TO PAYMENT.—(A) Subject to section 552(b)(1) of title 5, United States Code, upon the request of a subcontractor or supplier of a contractor performing a Department of Defense contract, the Department of Defense shall promptly make available to such subcontractor or supplier the following information:

''(i) Whether requests for progress payments or other payments have been submitted by the contractor to the Department of Defense in connection with that contract.

''(ii) Whether final payment to the contractor has been made by the Department of Defense in connection with that contract.

''(B) This paragraph shall apply with respect to any Department of Defense contract that is in effect on the date which is 270 days after the date of enactment of this Act [Dec. 5, 1991] or that is awarded after such date.

''(2) INFORMATION PROVIDED BY DEPARTMENT OF DEFENSE RELATING TO PAYMENT BONDS.—(A) Upon the request of a subcontractor or supplier described in subparagraph (B), the Department of Defense shall promptly make available to such subcontractor or supplier any of the following:

''(i) The name and address of the surety or sureties on the payment bond.

''(ii) The penal amount of the payment bond.

''(iii) A copy of the payment bond.

''(B) Subparagraph (A) applies to—

''(i) a subcontractor or supplier having a subcontract, purchase order, or other agreement to furnish labor or material for the performance of a Department of Defense contract with respect to which a payment bond has been furnished to the United States pursuant to the Miller Act; and

''(ii) a prospective subcontractor or supplier offering to furnish labor or material for the performance of such a Department of Defense contract.

''(C) With respect to the information referred to in subparagraphs (A)(i) and (A)(ii), the regulations shall include authority for such information to be provided verbally to the subcontractor or supplier.

''(D) With respect to the information referred to in subparagraph (A)(iii), the regulations may impose reasonable fees to cover the cost of copying and providing requested bonds.

''(E) This paragraph shall apply with respect to any Department of Defense contract covered by the Miller Act that is in effect on the date which is 270 days after the date of enactment of this Act [Dec. 5, 1991] or that is awarded after such date.

''(3) INFORMATION PROVIDED BY CONTRACTORS RELATING TO PAYMENT BONDS.—(A) Upon the request of a prospective subcontractor or supplier offering to furnish labor or material for the performance of a Department of Defense contract with respect to which a payment bond has been furnished to the United States pursuant to the Miller Act, the contractor shall promptly make available to such prospective subcontractor or supplier a copy of the payment bond.

''(B) This paragraph shall apply with respect to any Department of Defense contract covered by the Miller Act for which a solicitation is issued after the expiration of the 60-day period beginning on the effective date of the regulations promulgated under this subsection.

''(4) PROCEDURES RELATING TO COMPLIANCE WITH PAYMENT TERMS.—(A) Under procedures established in the regulations, upon the assertion by a subcontractor or supplier of a contractor performing a Department of Defense contract that the subcontractor or supplier has not been paid by the prime contractor in accordance with the payment terms of the subcontract, purchase order, or other agreement with the prime contractor, the contracting officer may determine the following:

''(i) With respect to a construction contract, whether the contractor has made progress payments to the subcontractor or supplier in compliance with chapter 39 of title 31, United States Code.

''(ii) With respect to a contract other than a construction contract, whether the contractor has made progress or other payments to the subcontractor or supplier in compliance with the terms of the subcontract, purchase order, or other agreement with the prime contractor.

''(iii) With respect to either a construction contract or a contract other than a construction contract, whether the contractor has made final payment to the subcontractor or supplier in compliance with the terms of the subcontract, purchase order, or other agreement with the prime contractor.

''(iv) With respect to either a construction contract or a contract other than a construction contract, whether any certification of payment of the subcontractor or supplier accompanying the contractor's payment request to the Government is accurate.

''(B) If the contracting officer determines that the prime contractor is not in compliance with any matter referred to in clause (i), (ii), or (iii) of subparagraph (A), the contracting officer may, under procedures established in the regulations—

''(i) encourage the prime contractor to make timely payment to the subcontractor or supplier; or

''(ii) reduce or suspend progress payments with respect to amounts due to the prime contractor.

''(C) If the contracting officer determines that a certification referred to in clause (iv) of subparagraph (A) is inaccurate in any material respect, the contracting officer shall, under procedures established in the regulations, initiate appropriate administrative or other remedial action.

''(D) This paragraph shall apply with respect to any Department of Defense contract that is in effect on the date of promulgation of the regulations under this subsection or that is awarded after such date.

''(b) INAPPLICABILITY TO CERTAIN CONTRACTS.—Regulations prescribed under this section shall not apply to a contract for the acquisition of commercial items (as defined in section 103 of title 41, United States Code).

''(c) GOVERNMENT-WIDE APPLICABILITY.—The Federal Acquisition Regulatory Council (established by section 1302(a) of title 41, United States Code) shall modify the Federal Acquisition Regulation (issued pursuant to section 1303(a)(1) of such title 41[)] to apply Government-wide the requirements that the Secretary is required under subsection (a) to prescribe in regulations applicable with respect to the Department of Defense contracts.

''(d) ASSISTANCE TO SMALL BUSINESS CONCERNS.—[Amended section 15(k)(5) of the Small Business Act (15 U.S.C. 644(k)(5)).]

''(e) GAO REPORT.—(1) The Comptroller General of the United States shall conduct an assessment of the matters described in paragraph (2) and submit a report pursuant to paragraph (3).

''(2) In addition to such other related matters as the Comptroller General considers appropriate, the matters to be assessed pursuant to paragraph (1) are the following:

''(A) Timely payment of progress or other periodic payments to subcontractors and suppliers by prime contractors on Federal contracts by—

''(i) identifying all existing statutory and regulatory provisions, categorized by types of contracts covered by such provisions;

''(ii) evaluating the feasibility and desirability of requiring that a prime contractor (other than a construction prime contractor subject to the provisions of sections 3903(b) and 3905 of title 31, United States Code) be required to—

''(I) include in its subcontracts a payment term requiring payment within 7 days (or some other fixed term) after receiving payment from the Government; and

''(II) submit with its payment request to the Government a certification that it has timely paid its subcontractors in accordance with their subcontracts from funds previously received as progress payments and will timely make required payments to such subcontractors from the proceeds of the progress payment covered by the certification;

''(iii) evaluating the feasibility and desirability of requiring that all prime contractors (other than a construction prime contractor subject to the provisions of sections 3903(b) and 3905 of title 31, United States Code) furnish with its payment request to the Government proof of payment of the amounts included in such payment request for payments made to subcontractors and suppliers;

''(iv) evaluating the feasibility and desirability of requiring a prime contractor to establish an escrow account at a federally insured financial institution and requiring direct disbursements to subcontractors and suppliers of amounts certified by the prime contractor in its payment request to the Government as being payable to such subcontractors and suppliers in accordance with their subcontracts; and

''(v) evaluating the feasibility and desirability of requiring direct disbursement of amounts certified by a prime contractor as being payable to its subcontractors and suppliers in accordance with their subcontracts (using techniques such as joint payee checks, escrow accounts, or direct payment by the Government), if the contracting officer has determined that the prime contractor is failing to make timely payments to its subcontractors and suppliers.

''(B) Payment protection of subcontractors and suppliers through the use of payment bonds or alternatives methods by—

''(i) evaluating the effectiveness of the modifications to part 28.2 of the Federal Acquisition Regulation Part 28.2 (48 C.F.R. 28.200) relating to the use of individual sureties, which became effective February 26, 1990;

''(ii) evaluating the effectiveness of requiring payment bonds pursuant to the Miller Act as a means of affording protection to construction subcontractors and suppliers relating to receiving—

''(I) timely payment of progress payments due in accordance with their subcontracts; and

''(II) ultimate payment of such amounts due;

''(iii) evaluating the feasibility and desirability of increasing the payment bond amounts required under the Miller Act from the current maximum amounts to an amount equal to 100 percent of the amount of the contract;

''(iv) evaluating the feasibility and desirability of requiring payment bonds for supply and services contracts (other than construction), and, if feasible and desirable, the amounts of such bonds; and

''(v) evaluating the feasibility and desirability of using letters of credit issued by federally insured financial institutions (or other alternatives) as substitutes for payment bonds in providing payment protection to subcontractors and suppliers on construction contracts (and other contracts).

''(C) Any evaluation of feasibility and desirability carried out pursuant to subparagraph (A) or (B) shall include the appropriateness of—

''(i) any differential treatment of, or impact on, small business concerns as opposed to concerns other than small business concerns;

''(ii) any differential treatment of subcontracts relating to commercial products entered into by the contractor in furtherance of its non-Government business, especially those subcontracts entered into prior to the award of a contract by the Government; and

''(iii) extending the protections regarding payment to all tiers of subcontractors or restricting them to first-tier subcontractors and direct suppliers.

''(3) The report required by paragraph (1) shall include a description of the results of the assessment carried out pursuant to paragraph (2) and may include recommendations pertaining to any of the following:

''(A) Statutory and regulatory changes providing payment protections for subcontractors and suppliers (other than a construction prime contractor subject to the provisions of sections 3903(b) and 3905 of title 31, United States Code) that the Comptroller General believes to be desirable and feasible.

''(B) Proposals to assess the desirability and utility of a specific payment protection on a test basis.

''(C) Such other recommendations as the Comptroller General considers appropriate in light of the matters assessed pursuant to paragraph (2).

''(4) The report required by paragraph (1) shall be submitted not later than by February 1, 1993, to the Committees on Armed Services and on Small Business [now the Committee on Small Business and Entrepreneurship of the Senate] of the Senate and House of Representatives.

''(f) INSPECTOR GENERAL REPORT.—(1) The Inspector General of the Department of Defense shall submit to the Secretary of Defense a report on payment protections for subcontractors and suppliers under contracts entered into with the Department of Defense. The report shall include an assessment of the extent to which available judicial and administrative remedies, as well as suspension and debarment procedures, have been used (or recommended for use) by officials of the Department to deter false statements relating to (A) payment bonds provided by individuals pursuant to the Miller Act, and (B) certifications pertaining to payment requests by construction contractors pursuant to section 3903(b) of title 31, United States Code. The assessment shall cover actions taken during the period beginning on October 1, 1989, and ending on September 30, 1992.

''(2) The report required by paragraph (1) shall be submitted to the Secretary of Defense not later than March 1, 1993. The report may include recommendations by the Inspector General on ways to improve the effectiveness of existing methods of preventing false statements.

''(g) MILLER ACT DEFINED.—For purposes of this section, the term 'Miller Act' means the Act of August 24, 1935 (40 U.S.C. 270a–270d) [now 40 U.S.C. 3131, 3133].''

### ADVISORY PANEL ON STREAMLINING AND CODIFYING ACQUISITION LAWS

Pub. L. 101–510, div. A, title VIII, §800, Nov. 5, 1990, 104 Stat. 1587, as amended by Pub. L. 103–160, div. A, title IX, §904(f), Nov. 30, 1993, 107 Stat. 1729, directed Under Secretary of Defense for Acquisition and Technology, not later than Jan. 15, 1991, to establish under sponsorship of Defense Systems Management College an advisory panel on streamlining and codifying acquisition laws, to review the acquisition laws applicable to Department of Defense with a view toward streamlining the defense acquisition process, to make any recommendations for repeal or amendment of such laws that the panel considers necessary, as a result of such review, and to prepare a proposed code of relevant acquisition laws, directed the advisory panel, not later than Dec. 15, 1992, to transmit a final report on the actions of the panel to the Under Secretary of Defense for Acquisition and Technology, and directed the Secretary of Defense, not later than Jan. 15, 1993, to transmit the final report, together with such comments as he deems appropriate, to Congress.

MENTOR-PROTEGE PILOT PROGRAM

Pub. L. 114–92, div. A, title VIII, § 861(b), Nov. 25, 2015, 129 Stat. 925, provided that:

''(1) IN GENERAL.—The amendments made by subsection (a) [amending section 831 of Pub. L. 101–510, set out below] shall apply to a mentor-protege agreement made pursuant to section 831 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 104 Stat. 1607; 10 U.S.C. 2302 note) entered into after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2016 [Nov. 25, 2015].

''(2) RETROACTIVITY OF REPORT AND REVIEW REQUIREMENTS.—The amendments made by subsection (a)(10) [amending section 831 of Pub. L. 101–510, set out below, by adding subsecs. (*l*) and (m)] shall apply to a mentor-protege agreement made pursuant to section 831 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 104 Stat. 1607; 10 U.S.C. 2302 note) entered into before, on, or after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2016 [Nov. 25, 2015].''

Pub. L. 106–65, div. A, title VIII, § 811(d)(2), (3), Oct. 5, 1999, 113 Stat. 708, 709, as amended by Pub. L. 107–107, div. A, title X, § 1048(g)(5), Dec. 28, 2001, 115 Stat. 1228, directed the Secretary of Defense to conduct a review of the Mentor-Protege Program established in Pub. L. 101–510, § 831, set out below, to assess the feasibility of transitioning such program to operation without a specific appropriation or authority to provide reimbursement to a mentor firm and to assess additional incentives that could be extended to mentor firms to ensure adequate support and participation in the Program, directed the Secretary to submit to committees of Congress a report on the results of the review and recommendations not later than Sept. 30, 2000, and directed the Comptroller General to conduct a study on the implementation of the Program and the extent to which the Program was achieving its purposes in a cost-effective manner and to submit to committees of Congress a report on the results of the study not later than Jan. 1, 2002.

Pub. L. 102–484, div. A, title VIII, § 807(a), Oct. 23, 1992, 106 Stat. 2448, directed the Secretary of Defense, within 15 days after Oct. 23, 1992, to publish in the Department of Defense Supplement to the Federal Acquisition Regulation the Department of Defense policy for the pilot Mentor-Protege Program and the regulations, directives, and administrative guidance pertaining to such program as such policy, regulations, directives, and administrative guidance had existed on Dec. 6, 1991, and directed that proposed modifications to that policy and any amendments proposed in order to implement any of the amendments made by this section, amending Pub. L. 101–510, § 831, set out below, were to be published in final form within 120 days after Oct. 23, 1992.

Pub. L. 101–510, div. A, title VIII, § 831, Nov. 5, 1990, 104 Stat. 1607, as amended by Pub. L. 102–25, title VII, § 704(c), Apr. 6, 1991, 105 Stat. 119; Pub. L. 102–172, title VIII, § 8064A, Nov. 26, 1991, 105 Stat. 1186; Pub. L. 102–190, div. A, title VIII, § 814(b), Dec. 5, 1991, 105 Stat. 1425; Pub. L. 102–484, div. A, title VIII, §§ 801(h)(4), 807(b)(1), title X, § 1054(d), Oct. 23, 1992, 106 Stat. 2445, 2448, 2503; Pub. L. 103–160, div. A, title VIII, § 813(b)(1), (c), Nov. 30, 1993, 107 Stat. 1703; Pub. L. 104–106, div. A, title VIII, § 824, Feb. 10, 1996, 110 Stat. 399; Pub. L. 104–201, div. A, title VIII, § 802, Sept. 23, 1996, 110 Stat. 2604; Pub. L. 105–85, div. A, title VIII, § 821(a), title X, § 1073(c)(6), Nov. 18, 1997, 111 Stat. 1840, 1904; Pub. L. 106–65, div. A, title VIII, § 811(a)–(d)(1), (e), Oct. 5, 1999, 113 Stat. 706, 707, 709; Pub. L. 106–398, § 1 [[div. A], title VIII, § 807], Oct. 30, 2000, 114 Stat. 1654, 1654A–208; Pub. L. 107–107, div. A, title VIII, § 812, Dec. 28, 2001, 115 Stat. 1181; Pub. L. 108–375, div. A, title VIII, §§ 841(a), (b), 842, Oct. 28, 2004, 118 Stat. 2018, 2019; Pub. L. 112–10, div. A, title VIII, § 8016, Apr. 15, 2011, 125 Stat. 60; Pub. L. 112–81, div. A, title VIII, § 867, title X, § 1062(n), Dec. 31, 2011, 125 Stat. 1526, 1586; Pub. L. 112–239, div. A, title X, § 1076(a)(17), Jan. 2, 2013, 126 Stat. 1948; Pub. L. 113–291, div. A, title X, § 1071(b)(16), Dec. 19, 2014, 128 Stat. 3508; Pub. L. 114–92, div. A, title VIII, § 861(a), Nov. 25, 2015, 129 Stat. 921; Pub. L. 114–328, div. A, title XVIII, §§ 1813(b), 1823, Dec. 23, 2016, 130 Stat. 2652, 2656; Pub. L. 115–91, div. A, title XVII, § 1701(a)(4)(A), Dec. 12, 2017, 131 Stat. 1796, provided that:

''(a) ESTABLISHMENT OF PILOT PROGRAM.—The Secretary of Defense shall establish a pilot program to be known as the 'Mentor-Protege Program'.

''(b) PURPOSE.—The purpose of the program is to provide incentives for major Department of Defense contractors to furnish disadvantaged small business concerns with assistance designed to—

''(1) enhance the capabilities of disadvantaged small business concerns to perform as subcontractors and suppliers under Department of Defense contracts and other contracts and subcontracts; and

''(2) increase the participation of such business concerns as subcontractors and suppliers under Department of Defense contracts, other Federal Government contracts, and commercial contracts.

''(c) PROGRAM PARTICIPANTS.—(1) A business concern meeting the eligibility requirements set out in subsection (d) may enter into agreements under subsection (e) and furnish assistance to disadvantaged small business concerns upon making application to the Secretary of Defense and being approved for participation in the pilot program by the Secretary. A business concern participating in the pilot program pursuant to such an approval shall be known, for the purposes of the program, as a 'mentor firm'.

''(2) A disadvantaged small business concern eligible for the award of Federal contracts may obtain assistance from a mentor firm upon entering into an agreement with the mentor firm as provided in subsection (e). A disadvantaged small business concern may not be a party to more than one agreement concurrently, and the authority to enter into agreements under subsection (e) shall only be available to such concern during the 5-year period beginning on the date such concern enters into the first such agreement. A disadvantaged small business concern receiving such assistance shall be known, for the purposes of the program, as a 'protege firm'.

''(3) In entering into an agreement pursuant to subsection (e), a mentor firm may rely in good faith on a written representation of a business concern that such business concern is a disadvantaged small business concern. The Small Business Administration shall determine the status of such business concern as a disadvantaged small business concern in the event of a protest regarding the status of such business concern. If at any time the business concern is determined by the Small Business Administration not to be a disadvantaged small business concern, assistance furnished such business concern by the mentor firm after the date of the determination may not be considered assistance furnished under the program.

''(d) MENTOR FIRM ELIGIBILITY.—

''(1) Subject to subsection (c)(1), a mentor firm may enter into an agreement with one or more protege firms under subsection (e) and provide assistance under the program pursuant to that agreement if the mentor firm—

''(A) is eligible for award of Federal contracts; and

''(B) demonstrates that it—

''(i) is qualified to provide assistance that will contribute to the purpose of the program;

''(ii) is of good financial health and character and does not appear on a Federal list of debarred or suspended contractors; and

''(iii) can impart value to a protege firm because of experience gained as a Department of Defense contractor or through knowledge of general business operations and government contracting, as demonstrated by evidence that—

''(I) during the fiscal year preceding the fiscal year in which the mentor firm enters into the agreement, the total amount of the Department of Defense contracts awarded such mentor firm

and the subcontracts awarded such mentor firm under Department of Defense contracts was equal to or greater than $100,000,000; or

''(II) the mentor firm demonstrates the capability to assist in the development of protege firms, and is approved by the Secretary of Defense pursuant to criteria specified in the regulations prescribed pursuant to subsection (k).

''(2) A mentor firm may not enter into an agreement with a protege firm if the Administrator of the Small Business Administration has made a determination finding affiliation between the mentor firm and the protege firm.

''(3) If the Administrator of the Small Business Administration has not made such a determination and if the Secretary has reason to believe (based on the regulations promulgated by the Administrator regarding affiliation) that the mentor firm is affiliated with the protege firm, the Secretary shall request a determination regarding affiliation from the Administrator of the Small Business Administration.

''(e) MENTOR-PROTEGE AGREEMENT.—Before providing assistance to a protege firm under the program, a mentor firm shall enter into a mentor-protege agreement with the protege firm regarding the assistance to be provided by the mentor firm. The agreement shall include the following:

''(1) A developmental program for the protege firm, in such detail as may be reasonable, including—

''(A) factors to assess the protege firm's developmental progress under the program;

''(B) a description of the quantitative and qualitative benefits to the Department of Defense from the agreement, if applicable;

''(C) goals for additional awards that [the] protege firm can compete for outside the Mentor-Protege Program; and

''(D) the assistance the mentor firm will provide to the protege firm in understanding contract regulations of the Federal Government and the Department of Defense (including the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement) after award of a subcontract under this section, if applicable.

''(2) A program participation term for any period of not more than three years, except that the term may be a period of up to five years if the Secretary of Defense determines in writing that unusual circumstances justify a program participation term in excess of three years.

''(3) Procedures for the protege firm to terminate the agreement voluntarily and for the mentor firm to terminate the agreement for cause.

''(f) FORMS OF ASSISTANCE.—A mentor firm may provide a protege firm the following:

''(1) Assistance, by using mentor firm personnel, in—

''(A) general business management, including organizational management, financial management, and personnel management, marketing, and overall business planning;

''(B) engineering and technical matters such as production, inventory control, and quality assurance; and

''(C) any other assistance designed to develop the capabilities of the protege firm under the developmental program referred to in subsection (e).

''(2) Award of subcontracts on a noncompetitive basis to the protege firm under the Department of Defense or other contracts.

''(3) Payment of progress payments for performance of the protege firm under such a subcontract in amounts as provided for in the subcontract, but in no event may any such progress payment exceed 100 percent of the costs incurred by the protege firm for the performance.

''(4) Advance payments under such subcontracts.

''(5) Loans.

''(6) Assistance obtained by the mentor firm for the protege firm from one or more of the following—

''(A) small business development centers established pursuant to section 21 of the Small Business Act (15 U.S.C. 648);

''(B) entities providing procurement technical assistance pursuant to chapter 142 of title 10, United States Code;

''(C) a historically Black college or university or a minority institution of higher education; or

''(D) women's business centers described in section 29 of the Small Business Act (15 U.S.C. 656).

''(g) INCENTIVES FOR MENTOR FIRMS.—(1) The Secretary of Defense may provide to a mentor firm reimbursement for the total amount of any progress payment or advance payment made under the program by the mentor firm to a protege firm in connection with a Department of Defense contract awarded the mentor firm.

''(2)(A) The Secretary of Defense may provide to a mentor firm reimbursement for the costs of the assistance furnished to a protege firm pursuant to paragraphs (1) and (6) of subsection (f) (except as provided in subparagraph (D)) as provided for in a line item in a Department of Defense contract under which the mentor firm is furnishing products or services to the Department, subject to a maximum amount of reimbursement specified in such contract, except that this sentence does not apply in a case in which the Secretary of Defense determines in writing that unusual circumstances justify reimbursement using a separate contract.

''(B) The determinations made in annual performance reviews of a mentor firm's mentor-protege agreement shall be a major factor in the determinations of amounts of reimbursement, if any, that the mentor firm is eligible to receive in the remaining years of the program participation term under the agreement.

''(C) The total amount reimbursed under this paragraph to a mentor firm for costs of assistance furnished in a fiscal year to a protege firm may not exceed $1,000,000, except in a case in which the Secretary of Defense determines in writing that unusual circumstances justify a reimbursement of a higher amount.

''(D) The Secretary may not reimburse any fee assessed by the mentor firm for services provided to the protege firm pursuant to subsection (f)(6) or for business development expenses incurred by the mentor firm under a contract awarded to the mentor firm while participating in a joint venture with the protege firm.

''(3)(A) Costs incurred by a mentor firm in providing assistance to a protege firm that are not reimbursed pursuant to paragraph (2) shall be recognized as credit in lieu of subcontract awards for purposes of determining whether the mentor firm attains a subcontracting participation goal applicable to such mentor firm under a Department of Defense contract, under a contract with another executive agency, or under a divisional or company-wide subcontracting plan negotiated with the Department of Defense or another executive agency.

''(B) The amount of the credit given a mentor firm for any such unreimbursed costs shall be equal to—

''(i) four times the total amount of such costs attributable to assistance provided by entities described in subsection (f)(6);

''(ii) three times the total amount of such costs attributable to assistance furnished by the mentor firm's employees; and

''(iii) two times the total amount of any other such costs.

''(C) Under regulations prescribed pursuant to subsection (k), the Secretary of Defense shall adjust the amount of credit given a mentor firm pursuant to subparagraphs (A) and (B) if the Secretary determines that the firm's performance regarding the award of subcontracts to disadvantaged small business concerns has declined without justifiable cause.

''(4) A mentor firm shall receive credit toward the attainment of a subcontracting participation goal applicable to such mentor firm for each subcontract for a product or service awarded under such contract by a

mentor firm to a business concern that, except for its size, would be a small business concern owned and controlled by socially and economically disadvantaged individuals, but only if—

''(A) the size of such business concern is not more than two times the maximum size specified by the Administrator of the Small Business Administration for purposes of determining whether a business concern furnishing such product or service is a small business concern; and

''(B) the business concern formerly had a mentor-protege agreement with such mentor firm that was not terminated for cause.

''(h) RELATIONSHIP TO SMALL BUSINESS ACT.—(1) For purposes of the Small Business Act (15 U.S.C. 631 et seq.), no determination of affiliation or control (either direct or indirect) may be found between a protege firm and its mentor firm on the basis that the mentor firm has agreed to furnish (or has furnished) to its protege firm pursuant to a mentor-protege agreement any form of developmental assistance described in subsection (f).

''(2) Notwithstanding section 8 of the Small Business Act (15 U.S.C. 637), the Small Business Administration may not determine a disadvantaged small business concern to be ineligible to receive any assistance authorized under the Small Business Act on the basis that such business concern has participated in the Mentor-Protege Program or has received assistance pursuant to any developmental assistance agreement authorized under such program.

''(3) The Small Business Administration may not require a firm that is entering into, or has entered into, an agreement under subsection (e) as a protege firm to submit the agreement, or any other document required by the Secretary of Defense in the administration of the Mentor-Protege Program, to the Small Business Administration for review, approval, or any other purpose.

''(i) PARTICIPATION IN MENTOR-PROTEGE PROGRAM NOT TO BE A CONDITION FOR AWARD OF A CONTRACT OR SUBCONTRACT.—A mentor firm may not require a business concern to enter into an agreement with the mentor firm pursuant to subsection (e) as a condition for being awarded a contract by the mentor firm, including a subcontract under a contract awarded to the mentor firm.

''(j) EXPIRATION OF AUTHORITY.—(1) No mentor-protege agreement may be entered into under subsection (e) after September 30, 2018.

''(2) No reimbursement may be paid, and no credit toward the attainment of a subcontracting goal may be granted, under subsection (g) for any cost incurred after September 30, 2021.

''(k) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out the pilot Mentor-Protege Program. Such regulations shall include the requirements set forth in section 8(d) of the Small Business Act (15 U.S.C. 637(d)) and shall prescribe procedures by which mentor firms may terminate participation in the program. The Secretary shall publish the proposed regulations not later than the date 180 days after the date of the enactment of this Act [Nov. 5, 1990]. The Secretary shall promulgate the final regulations not later than the date 270 days after the date of the enactment of this Act. The Department of Defense policy regarding the pilot Mentor-Protege Program shall be published and maintained as an appendix to the Department of Defense Supplement to the Federal Acquisition Regulation.

''(*l*) REPORT BY MENTOR FIRMS.—To comply with section 8(d)(7) of the Small Business Act (15 U.S.C. 637(d)(7)), each mentor firm shall submit a report to the Secretary not less than once each fiscal year that includes, for the preceding fiscal year—

''(1) all technical or management assistance provided by mentor firm personnel for the purposes described in subsection (f)(1);

''(2) any new awards of subcontracts on a competitive or noncompetitive basis to the protege firm under Department of Defense contracts or other contracts, including the value of such subcontracts;

''(3) any extensions, increases in the scope of work, or additional payments not previously reported for prior awards of subcontracts on a competitive or noncompetitive basis to the protege firm under Department of Defense contracts or other contracts, including the value of such subcontracts;

''(4) the amount of any payment of progress payments or advance payments made to the protege firm for performance under any subcontract made under the Mentor-Protege Program;

''(5) any loans made by [the] mentor firm to the protege firm;

''(6) all Federal contracts awarded to the mentor firm and the protege firm as a joint venture, designating whether the award was a restricted competition or a full and open competition;

''(7) any assistance obtained by the mentor firm for the protege firm from one or more—

''(A) small business development centers established pursuant to section 21 of the Small Business Act (15 U.S.C. 648);

''(B) entities providing procurement technical assistance pursuant to chapter 142 of title 10, United States Code; or

''(C) historically Black colleges or universities or minority institutions of higher education;

''(8) whether there have been any changes to the terms of the mentor-protege agreement; and

''(9) a narrative describing the success assistance provided under subsection (f) has had in addressing the developmental needs of the protege firm, the impact on Department of Defense contracts, and addressing any problems encountered.

''(m) REVIEW OF REPORT BY THE OFFICE OF SMALL BUSINESS PROGRAMS.—The Office of Small Business Programs of the Department of Defense shall review the report required by subsection (*l*) and, if the Office finds that the mentor-protege agreement is not furthering the purpose of the Mentor-Protege Program, decide not to approve any continuation of the agreement.

''(n) DEFINITIONS.—In this section:

''(1) The term 'small business concern' has the meaning given such term under section 3 of the Small Business Act (15 U.S.C. 632).

''(2) The term 'disadvantaged small business concern' means a firm that has less than half the size standard corresponding to its primary North American Industry Classification System code, is not owned or managed by individuals or entities that directly or indirectly have stock options or convertible securities in the mentor firm, and is—

''(A) a small business concern owned and controlled by socially and economically disadvantaged individuals;

''(B) a business entity owned and controlled by an Indian tribe as defined by section 8(a)(13) of the Small Business Act (15 U.S.C. 637(a)(13));

''(C) a business entity owned and controlled by a Native Hawaiian Organization as defined by section 8(a)(15) of the Small Business Act (15 U.S.C. 637(a)(15));

''(D) a qualified organization employing severely disabled individuals;

''(E) a small business concern owned and controlled by women, as defined in section 8(d)(3)(D) of the Small Business Act (15 U.S.C. 637(d)(3)(D));

''(F) a small business concern owned and controlled by service–disabled veterans (as defined in section 8(d)(3) of the Small Business Act [15 U.S.C. 637(d)(3)]); and [sic]

''(G) a qualified HUBZone small business concern (as defined in section 3(p) of the Small Business Act (15 U.S.C. 632(p))); or

''(H) a small business concern that—

''(i) is a nontraditional defense contractor, as such term is defined in section 2302 of title 10, United States Code; or

''(ii) currently provides goods or services in the private sector that are critical to enhancing the capabilities of the defense supplier base and fulfilling key Department of Defense needs.

''(3) The term 'small business concern owned and controlled by socially and economically disadvantaged individuals' has the meaning given such term in section 8(d)(3)(C) of the Small Business Act (15 U.S.C. 637(d)(3)(C)).

''(4) The term 'historically Black college and university' means any of the historically Black colleges and universities referred to in section 2323 of title 10, United States Code.

''(5) The term 'minority institution of higher education' means an institution of higher education with a student body that reflects the composition specified in section 312(b)(3), (4), and (5) of the Higher Education Act of 1965 (20 U.S.C. 1058(b)(3), (4), and (5)).

''(6) The term 'subcontracting participation goal', with respect to a Department of Defense contract, means a goal for the extent of the participation by disadvantaged small business concerns in the subcontracts awarded under such contract, as established pursuant to section 2323 of title 10, United States Code, and section 8(d) of the Small Business Act (15 U.S.C. 637(d)).

''(7) The term 'qualified organization employing the severely disabled' means a business entity operated on a for-profit or nonprofit basis that—

''(A) uses rehabilitative engineering to provide employment opportunities for severely disabled individuals and integrates severely disabled individuals into its workforce;

''(B) employs severely disabled individuals at a rate that averages not less than 20 percent of its total workforce;

''(C) employs each severely disabled individual in its workforce generally on the basis of 40 hours per week; and

''(D) pays not less than the minimum wage prescribed pursuant to section 6 of the Fair Labor Standards Act (29 U.S.C. 206) to those employees who are severely disabled individuals.

''(8) The term 'severely disabled individual' means an individual who is blind (as defined in section 8501 of title 41, United States Code) or a severely disabled individual (as defined in such section).

''(9) The term 'affiliation', with respect to a relationship between a mentor firm and a protege firm, means a relationship described under section 121.103 of title 13, Code of Federal Regulations (or any successor regulation).''

*[Pub. L. 115–91, div. A, title XVII, §1701(a)(4)(A), (j), Dec. 12, 2017, 131 Stat. 1796, 1803, provided that, effective Jan. 1, 2020, section 831(n)(2)(G) of Pub. L. 101–510, set out above, is amended by striking ''section 3(p) of the Small Business Act (15 U.S.C. 632(p))'' and inserting ''section 31(b) of the Small Business Act''.]*

[Pub. L. 114–92, §861(a)(11)(B)(iii), which directed amendment of section 831(n)(2)(G) of Pub. L. 101–510, set out above, by substituting ''Small Business Act (15 U.S.C. 632(p)); or'' for ''Small Business Act.'', was executed by substituting ''Small Business Act (15 U.S.C. 632(p))); or'' for ''Small Business Act).'' to reflect the probable intent of Congress.]

[Pub. L. 106–65, div. A, title VIII, §811(f), Oct. 5, 1999, 113 Stat. 709, provided that:

[''(1) The amendments made by this section [amending section 831 of Pub. L. 101–510, set out above] shall take effect on October 1, 1999, and shall apply with respect to mentor-protege agreements that are entered into under section 831(e) of the National Defense Authorization Act for Fiscal Year 1991 [Pub. L. 101–510, set out above] on or after that date.

[''(2) Section 831 of the National Defense Authorization Act for Fiscal Year 1991, as in effect on September 30, 1999, shall continue to apply with respect to mentor-protege agreements entered into before October 1, 1999.'']

[Section 807(b)(2) of Pub. L. 102–484 provided that: ''The amendment made by this subsection [amending section 831 of Pub. L. 101–510, set out above] shall take effect as of November 5, 1990.'']

CREDIT FOR INDIAN CONTRACTING IN MEETING CERTAIN MINORITY SUBCONTRACTING GOALS

Pub. L. 101–189, div. A, title VIII, §832, Nov. 29, 1989, 103 Stat. 1508, which provided credit for Indian contracting in meeting certain minority contracting goals, was repealed and restated in section 2323a of this title by Pub. L. 102–484, §801(g)(1)(B), (h)(5).

EQUITABLE PARTICIPATION OF AMERICAN SMALL AND MINORITY-OWNED BUSINESS IN FURNISHING OF COMMODITIES AND SERVICES

Pub. L. 101–165, title IX, §9004, Nov. 21, 1989, 103 Stat. 1129, provided that: ''During the current fiscal year and hereafter, the Secretary of Defense and each purchasing and contracting agency of the Department of Defense shall assist American small and minority-owned business to participate equitably in the furnishing of commodities and services financed with funds appropriated under this Act [see Tables for classification] by increasing, to an optimum level, the resources and number of personnel jointly assigned to promoting both small and minority business involvement in purchases financed with funds appropriated herein, and by making available or causing to be made available to such businesses, information, as far in advance as possible, with respect to purchases proposed to be financed with funds appropriated under this Act, and by assisting small and minority business concerns to participate equitably as subcontractors on contracts financed with funds appropriated herein, and by otherwise advocating and providing small and minority business opportunities to participate in the furnishing of commodities and services financed with funds appropriated by this Act.''

REQUIREMENT FOR SUBSTANTIAL PROGRESS ON MINORITY AND SMALL BUSINESS CONTRACT AWARDS

Pub. L. 100–180, div. A, title VIII, §806(a)–(c), Dec. 4, 1987, 101 Stat. 1126, 1127, directed Secretary of Defense to issue regulations to ensure that substantial progress was made in increasing awards of Department of Defense contracts to small business concerns, historically Black colleges and universities, and minority institutions described in section 1207(a) of Pub. L. 99–661 [formerly set out below], prior to repeal by Pub. L. 102–484, div. A, title VIII, §801(h)(7), Oct. 23, 1992, 106 Stat. 2446.

DEFINITIONS; RULE OF CONSTRUCTION FOR DUPLICATE AUTHORIZATION AND APPROPRIATION PROVISIONS OF PUBLIC LAWS 99–500, 99–591, AND 99–661

Pub. L. 100–26, §§2, 6, Apr. 21, 1987, 101 Stat. 273, 274, provided that:

''SEC. 2. REFERENCES TO 99TH CONGRESS LAWS

''For purposes of this Act [Pub. L. 100–26, see Short Title of 1987 Amendment note set out under section 101 of this title]:

''(1) The term 'Defense Authorization Act' means the Department of Defense Authorization Act, 1987 (division A of Public Law 99–661; 100 Stat. 3816 et seq.).

''(2) The term 'Defense Appropriations Act' means the Department of Defense Appropriations Act, 1987 (as contained in identical form in section 101(c) of Public Law 99–500 (100 Stat. 1783–82 et seq.) and section 101(c) of Public Law 99–591 (100 Stat. 3341–82 et seq.)).

''(3) The term 'Defense Acquisition Improvement Act' means title X of the Defense Appropriations Act [100 Stat. 1783–130, 3341–130] and title IX of the Defense Authorization Act [100 Stat. 3910] (as designated by the amendment made by section 3(5) [section 3(5) of Pub. L. 100–26]). Any reference in this Act to the Defense Acquisition Improvement Act shall be considered to be a reference to each such title.''

''SEC. 6. CONSTRUCTION OF DUPLICATE AUTHORIZATION AND APPROPRIATION PROVISIONS

''(a) RULE FOR CONSTRUCTION OF DUPLICATE PROVISIONS.—(1) In applying the provisions of Public Laws 99–500, 99–591, and 99–661 described in paragraph (2)—

''(A) the identical provisions of those public laws referred to in such paragraph shall be treated as having been enacted only once, and

''(B) in executing to the United States Code and other statutes of the United States the amendments made by such identical provisions, such amendments shall be executed so as to appear only once in the law as amended.

''(2) Paragraph (1) applies with respect to the provisions of the Defense Appropriations Act and the Defense Authorization Act (as amended by sections 3, 4, 5, and 10(a)) referred to across from each other in the following table:

| ''Section 101(c) of Public Law 99–500 | Section 101(c) of Public Law 99–591 | Division A of Public Law 99–661 |
|---|---|---|
| ''Title X | Title X | Title IX |
| ''Sec. 9122 | Sec. 9122 | Sec. 522 |
| ''Sec. 9036(b) | Sec. 9036(b) | Sec. 1203 |
| ''Sec. 9115 | Sec. 9115 | Sec. 1311 |

''(b) RULE FOR DATE OF ENACTMENT.—(1) The date of the enactment of the provisions of law listed in the middle column, and in the right-hand column, of the table in subsection (a)(2) shall be deemed to be October 18, 1986 (the date of the enactment of Public Law 99–500).

''(2) Any reference in a provision of law referred to in paragraph (1) to 'the date of the enactment of this Act' shall be treated as a reference to October 18, 1986.''

[For classification of provisions listed in the table, see Tables.]

CONTRACT GOAL FOR MINORITIES

Pub. L. 99–661, div. A, title XII, § 1207, Nov. 14, 1986, 100 Stat. 3973, as amended by Pub. L. 100–180, div. A, title VIII, § 806(d), 101 Stat. 1127; Pub. L. 100–456, div. A, title VIII, § 844, Sept. 29, 1988, 102 Stat. 2027; Pub. L. 101–189, div. A, title VIII, § 831, Nov. 29, 1989, 103 Stat. 1507; Pub. L. 101–510, div. A, title VIII, §§ 811, 832, title XIII, §§ 1302(d), 1312(b), Nov. 5, 1990, 104 Stat. 1596, 1612, 1669, 1670; Pub. L. 102–25, title VII, §§ 704(a)(6), 705(e), Apr. 6, 1991, 105 Stat. 118, 120, which set contract goals for small disadvantaged businesses and certain institutions of higher education, was repealed and restated in section 2323 of this title by Pub. L. 102–484, § 801(a)(1)(B), (h)(1).

MINIMUM PERCENTAGE OF COMPETITIVE PROCUREMENTS

Pub. L. 99–145, title IX, § 913, Nov. 8, 1985, 99 Stat. 687, as amended by Pub. L. 101–510, div. A, title XIII, § 1322(d)(1), Nov. 5, 1990, 104 Stat. 1672, provided that:

''(a) ANNUAL GOAL.—The Secretary of Defense shall establish for each fiscal year a goal for the percentage of defense procurements to be made during that year (expressed in total dollar value of contracts entered into) that are to be competitive procurements.

''(b) DEFINITION.—For the purposes of this section, the term 'competitive procurements' means procurements made by the Department of Defense through the use of competitive procedures, as defined in section 2304 of title 10, United States Code.''

DEFENSE PROCUREMENT REFORM: CONGRESSIONAL FINDINGS AND POLICY

Pub. L. 98–525, title XII, § 1202, Oct. 19, 1984, 98 Stat. 2588, as amended by Pub. L. 99–500, § 101(c) [title X, § 953(c)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–172, and Pub. L. 99–591, § 101(c) [title X, § 953(c)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–172; Pub. L. 99–661, div. A, title IX, formerly title IV, § 953(c), Nov. 14, 1986, 100 Stat. 3952, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, provided that: ''The Congress finds that recent disclosures of excessive payments by the Department of Defense for replenishment parts have undermined confidence by the public and Congress in the defense procurement system. The Secretary of Defense should make every effort to reform procurement practices relating to replenishment parts. Such efforts should, among other matters, be directed to the elimination of excessive pricing of replenishment spare parts and the recovery of unjustified payments. Specifically, the Secretary should—

''(1) direct that officials in the Department of Defense refuse to enter into contracts unless the proposed prices are fair and reasonable;

''(2) continue and accelerate ongoing efforts to improve defense contracting procedures in order to encourage effective competition and assure fair and reasonable prices;

''(3) direct that replenishment parts be acquired in economic order quantities and on a multiyear basis whenever feasible, practicable, and cost effective;

''(4) direct that standard or commercial parts be used whenever such use is technically acceptable and cost effective; and

''(5) vigorously continue reexamination of policies relating to acquisition, pricing, and management of replenishment parts and of technical data related to such parts.''

MODIFICATION OF REGULATIONS AND DIRECTIVES TO ACCOMMODATE A POLICY OF MULTIYEAR PROCUREMENT

Pub. L. 97–86, title IX, § 909(d), Dec. 1, 1981, 95 Stat. 1120, directed Secretary of Defense, not later than the end of the 90-day period beginning Dec. 1, 1981, to issue such modifications to existing regulations governing defense acquisitions as might be necessary to implement the amendments made by subsections (a), (b), and (c) [amending sections 139, 2301, and 2306 of this title] and directed Director of the Office of Management and Budget to issue such modifications to existing Office of Management and Budget directives as might be necessary to take into account the amendments made by subsections (a) and (b) [amending sections 2301 and 2306 of this title].

PROCUREMENT REQUIREMENTS FOR GOODS WHICH ARE NOT AMERICAN GOODS

Pub. L. 93–365, title VII, § 707, Aug. 5, 1974, 88 Stat. 406, which prohibited contracts by the Department of Defense for other than American goods after Aug. 5, 1974, unless adequate consideration was first given to bids of firms in labor surplus areas of the United States, of small business firms, and of all other United States firms which had offered to furnish American goods, balance of payments, cost of shipping other than American goods, and any duty, tariff, or surcharge on such goods, was repealed and restated in section 2501 of this title by Pub. L. 100–370, § 3(a), (c). Section 2501 of this title was renumbered section 2506 by Pub. L. 100–456, § 821(b)(1)(A). Section 2506 of this title was renumbered section 2533 by Pub. L. 102–484, § 4202(a).

## § 2302a. Simplified acquisition threshold

(a) SIMPLIFIED ACQUISITION THRESHOLD.—For purposes of acquisitions by agencies named in section 2303 of this title, the simplified acquisition threshold is as specified in section 134 of title 41.

(b) INAPPLICABLE LAWS.—No law properly listed in the Federal Acquisition Regulation pursuant to section 1905 of title 41 shall apply to or with respect to a contract or subcontract that is not greater than the simplified acquisition threshold.

(Added and amended Pub. L. 103–355, title IV, §§ 4002(a), 4102(a), Oct. 13, 1994, 108 Stat. 3338, 3340; Pub. L. 111–350, § 5(b)(9), Jan. 4, 2011, 124 Stat. 3843.)

AMENDMENTS

2011—Subsec. (a). Pub. L. 111–350, § 5(b)(9)(A), substituted ''section 134 of title 41'' for ''section 4(11) of the Office of Federal Procurement Policy Act''.