

DEADLINE FOR DEVELOPMENT OF JOINT POLICIES

Pub. L. 109-364, div. A, title VIII, §854(b), Oct. 17, 2006, 120 Stat. 2346, provided that: "The Secretary of Defense shall develop the joint policies required under section 2333 of title 10, United States Code, as added by subsection (a), not later than 18 months after the date of enactment of this Act [Oct. 17, 2006]."

§ 2334. Independent cost estimation and cost analysis

(a) IN GENERAL.—The Director of Cost Assessment and Program Evaluation shall ensure that the cost estimation and cost analysis processes of the Department of Defense provide accurate information and realistic estimates of cost for the acquisition programs of the Department of Defense. In carrying out that responsibility, the Director shall—

(1) prescribe, by authority of the Secretary of Defense, policies and procedures for the conduct of cost estimation and cost analysis for the acquisition programs of the Department of Defense;

(2) provide guidance to and consult with the Secretary of Defense, the Under Secretary of Defense for Acquisition, Technology, and Logistics, the Under Secretary of Defense (Comptroller), the Secretaries of the military departments, and the heads of the Defense Agencies with respect to cost estimation in the Department of Defense in general and with respect to specific cost estimates and cost analyses to be conducted in connection with a major defense acquisition program or major subprogram under chapter 144 of this title;

(3) issue guidance relating to the proper discussion of risk in cost estimates generally, and specifically, for the proper discussion of risk in cost estimates for major defense acquisition programs and major subprograms;

(4) issue guidance relating to full consideration of life-cycle management and sustainability costs in major defense acquisition programs and major subprograms;

(5) review all cost estimates and cost analyses conducted in connection with major defense acquisition programs and major subprograms;

(6) conduct or approve independent cost estimates and cost analyses for all major defense acquisition programs and major subprograms—

(A) in advance of—

(i) any decision to grant milestone approval pursuant to section 2366a or 2366b of this title;

(ii) any decision to enter into low-rate initial production or full-rate production;

(iii) any certification under section 2433a of this title; and

(iv) any report under section 2445c(f) of this title; and

(B) at any other time considered appropriate by the Director, upon the request of the Under Secretary of Defense for Acquisition, Technology, and Logistics, or upon the request of the milestone decision authority;

(7) periodically assess and update the cost indexes used by the Department to ensure that such indexes have a sound basis and meet the

Department's needs for realistic cost estimation; and

(8) annually review the cost and associated information required to be included, by section 2432(c)(1) of this title, in the Selected Acquisition Reports required by that section.

(b) INDEPENDENT COST ESTIMATE REQUIRED BEFORE APPROVAL.—(1) A milestone decision authority may not approve entering a milestone phase of a major defense acquisition program or major subprogram unless an independent cost estimate has been conducted or approved by the Director of Cost Assessment and Program Evaluation and considered by the milestone decision authority that—

(A) for the technology maturation and risk reduction phase, includes the identification and sensitivity analysis of key cost drivers that may affect life-cycle costs of the program or subprogram; and

(B) for the engineering and manufacturing development phase, or production and deployment phase, includes a cost estimate of the full life-cycle cost of the program or subprogram.

(2) The regulations governing the content and submission of independent cost estimates required by subsection (a) shall require that the independent cost estimate of the full life-cycle cost of a program or subprogram include—

(A) all costs of development, procurement, military construction, operations and support, and trained manpower to operate, maintain, and support the program or subprogram upon full operational deployment, without regard to funding source or management control; and

(B) an analysis to support decisionmaking that identifies and evaluates alternative courses of action that may reduce cost and risk, and result in more affordable programs and less costly systems.

(c) REVIEW OF COST ESTIMATES, COST ANALYSES, AND RECORDS OF THE MILITARY DEPARTMENTS AND DEFENSE AGENCIES.—The Secretary of Defense shall ensure that the Director of Cost Assessment and Program Evaluation—

(1) promptly receives the results of all cost estimates and cost analyses conducted by the military departments and Defense Agencies, and all studies conducted by the military departments and Defense Agencies in connection with such cost estimates and cost analyses, for major defense acquisition programs and major subprograms of the military departments and Defense Agencies; and

(2) has timely access to any records and data in the Department of Defense (including the records and data of each military department and Defense Agency and including classified and proprietary information) that the Director considers necessary to review in order to carry out any duties under this section.

(d) PARTICIPATION, CONCURRENCE, AND APPROVAL IN COST ESTIMATION.—The Director of Cost Assessment and Program Evaluation may—

(1) participate in the discussion of any discrepancies between an independent cost estimate and the cost estimate of a military department or Defense Agency for a major defense acquisition program or major subprogram of the Department of Defense;

(2) comment on deficiencies in the methodology or execution of any cost estimate or analysis developed by a military department or Defense Agency for a major defense acquisition program or major subprogram;

(3) concur in the choice of a cost estimate within the baseline description or any other cost estimate (including the discussion of risk for any such cost estimate) for use at any event specified in subsection (a)(6); and

(4) participate in the consideration of any decision to request authorization of a multi-year procurement contract for a major defense acquisition program or major subprogram.

(e) DISCUSSION OF RISK IN COST ESTIMATES.—The Director of Cost Assessment and Program Evaluation, and the Secretary of the military department concerned or the head of the Defense Agency concerned (as applicable), shall each—

(1) issue guidance requiring a discussion of risk, the potential impacts of risk on program costs, and approaches to mitigate risk in cost estimates for major defense acquisition programs and major subprograms;

(2) ensure that cost estimates are developed, to the extent practicable, based on historical actual cost information that is based on demonstrated contractor and Government performance and that such estimates provide a high degree of confidence that the program or subprogram can be completed without the need for significant adjustment to program budgets; and

(3) include the information required in the guidance under paragraph (1)—

(A) in any decision documentation approving a cost estimate within the baseline description or any other cost estimate for use at any event specified in subsection (a)(6); and

(B) in the next Selected Acquisition Report pursuant to section 2432 of this title in the case of a major defense acquisition program or major subprogram, or the next quarterly report pursuant to section 2445c of this title in the case of a major automated information system program.

(f) ESTIMATES FOR PROGRAM BASELINE AND ANALYSES AND TARGETS FOR CONTRACT NEGOTIATION PURPOSES.—(1) The policies, procedures, and guidance issued by the Director of Cost Assessment and Program Evaluation in accordance with the requirements of subsection (a) shall provide that cost estimates developed for baseline descriptions and other program purposes conducted pursuant to subsection (a)(6) are not to be used for the purpose of contract negotiations or the obligation of funds.

(2) The Under Secretary of Defense for Acquisition, Technology, and Logistics shall, in consultation with the Director of Cost Assessment and Program Evaluation, develop policies, procedures, and guidance to ensure that cost analyses and targets developed for the purpose of contract negotiations and the obligation of funds are based on the Government's reasonable expectation of successful contractor performance in accordance with the contractor's proposal and previous experience.

(3) The Program Manager and contracting officer for each major defense acquisition program and major subprogram shall ensure that cost analyses and targets developed for the purpose of contract negotiations and the obligation of funds are carried out in accordance with the requirements of paragraph (1) and the policies, procedures, and guidance issued by the Under Secretary of Defense for Acquisition, Technology, and Logistics under paragraph (2).

(4) Funds that are made available for a major defense acquisition program or major subprogram in accordance with a cost estimate conducted pursuant to subsection (a)(6), but are excess to a cost analysis or target developed pursuant to paragraph (2), shall remain available for obligation in accordance with the terms of applicable authorization and appropriations Acts.

(5) Funds described in paragraph (4)—

(A) may be used—

(i) to cover any increased program costs identified by a revised cost analysis or target developed pursuant to paragraph (2);

(ii) to acquire additional end items in accordance with the requirements of section 2308 of this title; or

(iii) to cover the cost of risk reduction and process improvements; and

(B) may be reprogrammed, in accordance with established procedures, only if determined to be excess to program needs on the basis of a cost estimate developed with the concurrence of the Director of Cost Assessment and Program Evaluation.

(g) GUIDELINES AND COLLECTION OF COST DATA.—(1) The Director of Cost Assessment and Program Evaluation shall, in consultation with the Under Secretary of Defense for Acquisition, Technology, and Logistics, develop policies, procedures, guidance, and a collection method to ensure that quality acquisition cost data are collected to facilitate cost estimation and comparison across acquisition programs.

(2) The program manager and contracting officer for each acquisition program in an amount greater than \$100,000,000, in consultation with the cost estimating component of the relevant military department or Defense Agency, shall ensure that cost data are collected in accordance with the requirements of paragraph (1).

(3) The requirement under paragraph (1) may be waived only by the Director of Cost Assessment and Program Evaluation.

(h) STAFF.—The Secretary of Defense shall ensure that the Director of Cost Assessment and Program Evaluation has sufficient professional staff of military and civilian personnel to enable the Director to carry out the duties and responsibilities of the Director under this section.

(Added Pub. L. 111-23, title I, §101(b)(1), May 22, 2009, 123 Stat. 1706; amended Pub. L. 111-383, div. A, title VIII, §811, Jan. 7, 2011, 124 Stat. 4263; Pub. L. 112-81, div. A, title VIII, §833, Dec. 31, 2011, 125 Stat. 1506; Pub. L. 113-66, div. A, title VIII, §812(c), Dec. 26, 2013, 127 Stat. 808; Pub. L. 114-92, div. A, title VIII, §824(b), title X, §1077(a), Nov. 25, 2015, 129 Stat. 907, 998; Pub. L. 114-328, div. A, title VIII, §§842(a), (b), 846(3), Dec. 23, 2016, 130 Stat. 2288, 2289, 2292; Pub. L. 115-91, div.

A, title X, §1081(a)(31), Dec. 12, 2017, 131 Stat. 1596.)

AMENDMENTS

2017—Subsec. (a)(6)(B). Pub. L. 115-91 inserted semicolon at end.

2016—Subsec. (a)(2). Pub. L. 114-328, §846(3), which directed striking out “or a major automated information system under chapter 144A of this title”, was executed by striking out “or a major automated information system program under chapter 144A of this title” before semicolon at end, to reflect the probable intent of Congress.

Pub. L. 114-328, §842(b)(1), inserted “or major subprogram” before “under chapter 144”.

Subsec. (a)(3). Pub. L. 114-328, §842(a)(1), (b)(2), substituted “discussion of risk” for “selection of confidence levels” in two places and “major defense acquisition programs and major subprograms” for “major defense acquisition programs and major automated information system programs”.

Subsec. (a)(4), (5). Pub. L. 114-328, §842(b)(2), substituted “major defense acquisition programs and major subprograms” for “major defense acquisition programs and major automated information system programs”.

Subsec. (a)(6). Pub. L. 114-328, §842(a)(2)(A), (B), in introductory provisions, inserted “or approve” after “conduct” and substituted “all major defense acquisition programs and major subprograms—” for “major defense acquisition programs and major automated information system programs for which the Under Secretary of Defense for Acquisition, Technology, and Logistics is the Milestone Decision Authority—”.

Subsec. (a)(6)(B). Pub. L. 114-328, §842(a)(2)(C), substituted “, upon the request of the Under Secretary of Defense for Acquisition, Technology, and Logistics, or upon the request of the milestone decision authority” for “or upon the request of the Under Secretary of Defense for Acquisition, Technology, and Logistics;”.

Subsec. (b). Pub. L. 114-328, §842(a)(4), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 114-328, §842(a)(3), redesignated subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (c)(1). Pub. L. 114-328, §842(b)(2), substituted “major defense acquisition programs and major subprograms” for “major defense acquisition programs and major automated information system programs”.

Subsec. (d). Pub. L. 114-328, §842(a)(3), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (d)(1), (2). Pub. L. 114-328, §842(b)(3), substituted “major defense acquisition program or major subprogram” for “major defense acquisition program or major automated information system program”.

Subsec. (d)(3). Pub. L. 114-328, §842(a)(5), substituted “discussion of risk” for “confidence level”.

Subsec. (d)(4). Pub. L. 114-328, §842(b)(4), inserted “or major subprogram” before period at end.

Subsec. (e). Pub. L. 114-328, §842(a)(3), (6)(A), redesignated subsec. (d) as (e) and substituted “Discussion of Risk in Cost Estimates” for “Disclosure of Confidence Levels for Baseline Estimates of Major Defense Acquisition Programs” in heading. Former subsec. (e) redesignated (f).

Subsec. (e)(1). Pub. L. 114-328, §842(a)(6)(B), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “disclose in accordance with paragraph (3) the confidence level used in establishing a cost estimate for a major defense acquisition program or major automated information system program and the rationale for selecting such confidence level;”.

Subsec. (e)(2). Pub. L. 114-328, §842(a)(6)(C), substituted “cost estimates are developed, to the extent practicable, based on historical actual cost information that is based on demonstrated contractor and Government performance and that such estimates provide” for “such confidence level provides” and inserted “or subprogram” after “the program”.

Subsec. (e)(3). Pub. L. 114-328, §842(a)(6)(D), substituted “information required in the guidance under

paragraph (1)” for “disclosure required by paragraph (1)” in introductory provisions.

Subsec. (e)(3)(B). Pub. L. 114-328, §842(b)(5), inserted “or major subprogram” after “major defense acquisition program”.

Subsec. (f). Pub. L. 114-328, §842(a)(3), redesignated subsec. (e) as (f). Former subsec. (f) redesignated (h).

Subsec. (f)(3). Pub. L. 114-328, §842(b)(6), substituted “major defense acquisition program and major subprogram” for “major defense acquisition program and major automated information system program”.

Subsec. (f)(4). Pub. L. 114-328, §842(b)(3), substituted “major defense acquisition program or major subprogram” for “major defense acquisition program or major automated information system program”.

Subsec. (g). Pub. L. 114-328, §842(a)(7), added subsec. (g).

Subsec. (h). Pub. L. 114-328, §842(a)(3), redesignated subsec. (f) as (h).

2015—Subsec. (a)(6)(A)(i). Pub. L. 114-92, §824(b), substituted “any decision to grant milestone approval pursuant to” for “any certification under”.

Subsecs. (f), (g). Pub. L. 114-92, §1077(a), redesignated subsec. (g) as (f) and struck out former subsec. (f) which related to annual report on cost assessment activities.

2013—Subsec. (a)(8). Pub. L. 113-66, §812(c)(1), added par. (8).

Subsec. (f)(1). Pub. L. 113-66, §812(c)(2)(A), substituted “report—” for “report, an assessment of—” in introductory provisions.

Subsec. (f)(1)(A) to (C). Pub. L. 113-66, §812(c)(2)(B), inserted “an assessment of” at beginning of subpars. (A) to (C).

Subsec. (f)(1)(D). Pub. L. 113-66, §812(c)(2)(C)–(E), added subpar. (D).

2011—Subsec. (d)(1). Pub. L. 111-383, §811(1)(A), substituted “paragraph (3)” for “paragraph (2)” and “and the rationale for selecting such confidence level;” for “, the rationale for selecting such confidence level, and, if such confidence level is less than 80 percent, the justification for selecting a confidence level of less than 80 percent; and”.

Subsec. (d)(2), (3). Pub. L. 111-383, §811(1)(B), (C), added par. (2) and redesignated former par. (2) as (3).

Subsec. (e). Pub. L. 111-383, §811(3), added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (e)(1). Pub. L. 112-81, §833(2)(A), (B), substituted “shall provide that” for “shall provide that—”, struck out subpar. (A) designation before “cost estimates”, and substituted period at end for “; and”.

Subsec. (e)(2). Pub. L. 112-81, §833(3), substituted “The Under Secretary of Defense for Acquisition, Technology, and Logistics shall, in consultation with the Director of Cost Assessment and Program Evaluation, develop policies, procedures, and guidance to ensure that cost analyses and targets” for “cost analyses and targets”.

Pub. L. 112-81, §833(2)(C), redesignated par. (1)(B) as (2) and realigned margin. Former par. (2) redesignated (3).

Subsec. (e)(3). Pub. L. 112-81, §833(4), substituted “issued by the Under Secretary of Defense for Acquisition, Technology, and Logistics under paragraph (2)” for “issued by the Director of Cost Assessment and Program Evaluation”.

Pub. L. 112-81, §833(1), redesignated par. (2) as (3). Former par. (3) redesignated (4).

Subsec. (e)(4). Pub. L. 112-81, §833(1), redesignated par. (3) as (4). Former par. (4) redesignated (5).

Subsec. (e)(5). Pub. L. 112-81, §833(5), substituted “paragraph (4)” for “paragraph (3)” in introductory provisions.

Pub. L. 112-81, §833(1), redesignated par. (4) as (5).

Subsecs. (f), (g). Pub. L. 111-383, §811(2), redesignated subsecs. (e) and (f) as (f) and (g), respectively.

EFFECTIVE DATE OF 2016 AMENDMENT

Pub. L. 114-328, div. A, title VIII, §846, Dec. 23, 2016, 130 Stat. 2292, provided that the amendment made by section 846(3) is effective Sept. 30, 2017.

§ 2335. Prohibition on collection of political information

(a) PROHIBITION ON REQUIRING SUBMISSION OF POLITICAL INFORMATION.—The head of an agency may not require a contractor to submit political information related to the contractor or a subcontractor at any tier, or any partner, officer, director, or employee of the contractor or subcontractor—

(1) as part of a solicitation, request for bid, request for proposal, or any other form of communication designed to solicit offers in connection with the award of a contract for procurement of property or services; or

(2) during the course of contract performance as part of the process associated with modifying a contract or exercising a contract option.

(b) SCOPE.—The prohibition under this section applies to the procurement of commercial items, the procurement of commercial-off-the-shelf-items, and the non-commercial procurement of supplies, property, services, and manufactured items, irrespective of contract vehicle, including contracts, purchase orders, task or deliver orders under indefinite delivery/indefinite quantity contracts, blanket purchase agreements, and basic ordering agreements.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as—

(1) waiving, superseding, restricting, or limiting the application of the Federal Election Campaign Act of 1971 (52 U.S.C. 30101 et seq.) or preventing Federal regulatory or law enforcement agencies from collecting or receiving information authorized by law; or

(2) precluding the Defense Contract Audit Agency from accessing and reviewing certain information, including political information, for the purpose of identifying unallowable costs and administering cost principles established pursuant to section 2324 of this title.

(d) DEFINITIONS.—In this section:

(1) CONTRACTOR.—The term “contractor” includes contractors, bidders, and offerors, and individuals and legal entities who would reasonably be expected to submit offers or bids for Federal Government contracts.

(2) POLITICAL INFORMATION.—The term “political information” means information relating to political spending, including any payment consisting of a contribution, expenditure, independent expenditure, or disbursement for an electioneering communication that is made by the contractor, any of its partners, officers, directors or employees, or any of its affiliates or subsidiaries to a candidate or on behalf of a candidate for election for Federal office, to a political committee, to a political party, to a third party entity with the intention or reasonable expectation that it would use the payment to make independent expenditures or electioneering communications, or that is otherwise made with respect to any election for Federal office, party affiliation, and voting history.

(3) OTHER TERMS.—Each of the terms “contribution”, “expenditure”, “independent expenditure”, “candidate”, “election”, “electioneering communication”, and “Federal of-

ice” has the meaning given that term in the Federal Election Campaign Act of 1971 (52 U.S.C. 30101 et seq.).

(Added Pub. L. 112–81, div. A, title VIII, § 823(a), Dec. 31, 2011, 125 Stat. 1502; amended Pub. L. 113–291, div. A, title X, § 1071(f)(17), Dec. 19, 2014, 128 Stat. 3511; Pub. L. 115–91, div. A, title X, § 1081(a)(32), Dec. 12, 2017, 131 Stat. 1596.)

REFERENCES IN TEXT

The Federal Election Campaign Act of 1971, referred to in subsecs. (c)(1) and (d)(3), is Pub. L. 92–225, Feb. 7, 1972, 86 Stat. 3, which is classified principally to chapter 301 (§ 30101 et seq.) of Title 52, Voting and Elections. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2017—Subsecs. (c)(1), (d)(3). Pub. L. 115–91 substituted “(52 U.S.C. 30101 et seq.)” for “(2 U.S.C. 431 et seq.)”.

2014—Subsec. (d)(2). Pub. L. 113–291, § 1071(f)(17)(A), redesignated last sentence as par. (3).

Subsec. (d)(3). Pub. L. 113–291, § 1071(f)(17)(B)(ii), (iii), substituted “that term” for “the term” and “Federal Election Campaign” for “Federal Campaign”.

Pub. L. 113–291, § 1071(f)(17)(B)(i), which directed amendment of par. (3) by inserting “OTHER TERMS.—” before “each of”, was executed by making the insertion before “Each of” to reflect the probable intent of Congress.

Pub. L. 113–291, § 1071(f)(17)(A), redesignated last sentence of par. (2) as (3).

[§ 2336. Renumbered § 2679]

§ 2337. Life-cycle management and product support

(a) GUIDANCE ON LIFE-CYCLE MANAGEMENT.—The Secretary of Defense shall issue and maintain comprehensive guidance on life-cycle management and the development and implementation of product support strategies for major weapon systems. The guidance issued pursuant to this subsection shall—

(1) maximize competition and make the best possible use of available Department of Defense and industry resources at the system, subsystem, and component levels; and

(2) maximize value to the Department of Defense by providing the best possible product support outcomes at the lowest operations and support cost.

(b) PRODUCT SUPPORT MANAGERS.—

(1) REQUIREMENT.—The Secretary of Defense shall require that each major weapon system be supported by a product support manager in accordance with this subsection.

(2) RESPONSIBILITIES.—A product support manager for a major weapon system shall—

(A) develop and implement a comprehensive product support strategy for the weapon system;

(B) use appropriate predictive analysis and modeling tools that can improve material availability and reliability, increase operational availability rates, and reduce operation and sustainment costs;

(C) conduct appropriate cost analyses to validate the product support strategy, including cost-benefit analyses as outlined in Office of Management and Budget Circular A–94;