

§ 2402. Prohibition of contractors limiting subcontractor sales directly to the United States

(a) Each contract for the purchase of supplies or services made by the Department of Defense shall provide that the contractor will not—

(1) enter into any agreement with a subcontractor under the contract that has the effect of unreasonably restricting sales by the subcontractor directly to the United States of any item or process (including computer software) made or furnished by the subcontractor under the contract (or any follow-on production contract); or

(2) otherwise act to restrict unreasonably the ability of a subcontractor to make sales to the United States described in clause (1).

(b) This section does not prohibit a contractor from asserting rights it otherwise has under law.

(c) This section does not apply to a contract that is for an amount not greater than the simplified acquisition threshold (as defined in section 134 of title 41).

(d)(1) An agreement between the contractor in a contract for the acquisition of commercial items and a subcontractor under such contract that restricts sales by such subcontractor directly to persons other than the contractor may not be considered to unreasonably restrict sales by that subcontractor to the United States in violation of the provision included in such contract pursuant to subsection (a) if the agreement does not result in the United States being treated differently with regard to the restriction than any other prospective purchaser of such commercial items from that subcontractor.

(2) In paragraph (1), the term “commercial item” has the meaning given such term in section 103 of title 41.

(Added Pub. L. 98-525, title XII, §1234(a), Oct. 19, 1984, 98 Stat. 2601; amended Pub. L. 103-355, title IV, §4102(f), title VIII, §8105(g), Oct. 13, 1994, 108 Stat. 3340, 3392; Pub. L. 111-350, §5(b)(25), Jan. 4, 2011, 124 Stat. 3844.)

AMENDMENTS

2011—Subsec. (c). Pub. L. 111-350, §5(b)(25)(A), substituted “section 134 of title 41” for “section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))”.

Subsec. (d)(2). Pub. L. 111-350, §5(b)(25)(B), substituted “section 103 of title 41” for “section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))”.

1994—Subsecs. (c), (d). Pub. L. 103-355 added subsecs. (c) and (d).

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103-355, see section 10001 of Pub. L. 103-355, set out as a note under section 2302 of this title.

EFFECTIVE DATE

Pub. L. 98-525, title XII, §1234(c), Oct. 19, 1984, 98 Stat. 2604, provided that: “Section 2402 of title 10, United States Code (as added by subsection (a)), shall take effect at the end of the 180-day period beginning on the date of the enactment of this Act [Oct. 19, 1984].”

[§ 2403. Repealed. Pub. L. 105-85, div. A, title VIII, § 847(a), Nov. 18, 1997, 111 Stat. 1845]

Section, added Pub. L. 98-525, title XII, §1234(a), Oct. 19, 1984, 98 Stat. 2601; amended Pub. L. 99-433, title I,

§110(g)(5), Oct. 1, 1986, 100 Stat. 1004; Pub. L. 100-26, §7(k)(2), Apr. 21, 1987, 101 Stat. 284; Pub. L. 103-355, title II, § 2402, Oct. 13, 1994, 108 Stat. 3324; Pub. L. 104-106, div. A, title XV, §1502(a)(21), Feb. 10, 1996, 110 Stat. 505, related to major weapon systems and contractor guarantees.

[§ 2404. Renumbered § 2922e]

[§ 2405. Repealed. Pub. L. 105-85, div. A, title VIII, § 810(a)(1), Nov. 18, 1997, 111 Stat. 1839]

Section, added Pub. L. 98-525, title XII, §1234(a), Oct. 19, 1984, 98 Stat. 2604; amended Pub. L. 102-484, div. A, title VIII, §813(c), Oct. 23, 1992, 106 Stat. 2453; Pub. L. 103-355, title II, §2302(a), (b), Oct. 13, 1994, 108 Stat. 3321; Pub. L. 104-106, div. D, title XLIII, §4321(b)(14), Feb. 10, 1996, 110 Stat. 673, related to limitation on adjustment of shipbuilding contracts.

EFFECTIVE DATE OF REPEAL

Pub. L. 105-85, div. A, title VIII, §810(b), Nov. 18, 1997, 111 Stat. 1839, provided that:

“(1) Except as provided in paragraph (2), the repeal made by subsection (a) [repealing this section] shall be effective with respect to claims, requests for equitable adjustment, and demands for payment under shipbuilding contracts that have been or are submitted before, on, or after the date of the enactment of this Act [Nov. 18, 1997].

“(2) Section 2405 of title 10, United States Code, as in effect immediately before the date of the enactment of this Act, shall continue to apply to a contractor’s claim, request for equitable adjustment, or demand for payment under a shipbuilding contract that was submitted before such date if—

“(A) a contracting officer denied the claim, request, or demand, and the period for appealing the decision to a court or board under the Contract Disputes Act of 1978 [see 41 U.S.C. 7101 et seq.] expired before such date;

“(B) a court or board of contract appeals considering the claim, request, or demand (including any appeal of a decision of a contracting officer to deny the claim, request, or demand) denied or dismissed the claim, request, or demand (or the appeal), and the action of the court or board became final and unappealable before such date; or

“(C) the contractor released or releases the claim, request, or demand.”

[§ 2406. Repealed. Pub. L. 103-355, title II, § 2201(b)(1), Oct. 13, 1994, 108 Stat. 3318]

Section, added Pub. L. 99-145, title IX, §917(a), Nov. 8, 1985, 99 Stat. 689; amended Pub. L. 99-500, §101(c) [title X, §943(a)(1)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-162, and Pub. L. 99-591, §101(c) [title X, §943(a)(1)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-162; Pub. L. 99-661, div. A, title IX, formerly title IV, §943(a)(1), Nov. 14, 1986, 100 Stat. 3942, renumbered title IX, Pub. L. 100-26, §3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100-180, div. A, title XII, §1231(13), Dec. 4, 1987, 101 Stat. 1160, required contractor under covered contract with an agency to make cost and pricing data available to agency in timely manner.

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.

[§ 2407. Renumbered § 2350b]

NATO COOPERATIVE LOGISTIC SUPPORT AGREEMENTS

Pub. L. 99-661, div. A, title XI, §1102, Nov. 14, 1986, 100 Stat. 3961, which authorized Secretary of Defense to enter Weapon System Partnership Agreements with