

MULTIYEAR PROCUREMENT CONTRACTS

Pub. L. 105-56, title VIII, § 8008, Oct. 8, 1997, 111 Stat. 1221, provided that:

“(a) None of the funds provided in this Act [see Tables for classification] shall be available to initiate: (1) a multiyear contract that employs economic order quantity procurement in excess of \$20,000,000 in any one year of the contract or that includes an unfunded contingent liability in excess of \$20,000,000; or (2) a contract for advance procurement leading to a multiyear contract that employs economic order quantity procurement in excess of \$20,000,000 in any one year, unless the congressional defense committees [Committee on Armed Services and Subcommittee on National Security of the Committee on Appropriations of the House of Representatives and Committee on Armed Services and Subcommittee on Defense of the Committee on Appropriations of the Senate] have been notified at least 30 days in advance of the proposed contract award: *Provided*, That no part of any appropriation contained in this Act shall be available to initiate a multiyear contract for which the economic order quantity advance procurement is not funded at least to the limits of the Government’s liability: *Provided further*, That no part of any appropriation contained in this Act shall be available to initiate multiyear procurement contracts for any systems or component thereof if the value of the multiyear contract would exceed \$500,000,000 unless specifically provided in this Act: *Provided further*, That no multiyear procurement contract can be terminated without 10-day prior notification to the congressional defense committees: *Provided further*, That the execution of multiyear authority shall require the use of a present value analysis to determine lowest cost compared to an annual procurement.

“Funds appropriated in title III of this Act [111 Stat. 1211] may be used for multiyear procurement contracts as follows:

- “Apache Longbow radar;
- “AV-8B aircraft; and
- “Family of Medium Tactical Vehicles.

“(b) None of the funds provided in this Act and hereafter may be used to submit to Congress (or to any committee of Congress) a request for authority to enter into a contract covered by those provisions of subsection (a) that precede the first proviso of that subsection unless—

“(1) such request is made as part of the submission of the President’s Budget for the United States Government for any fiscal year and is set forth in the Appendix to that budget as part of proposed legislative language for appropriations bills for the next fiscal year; or

“(2) such request is formally submitted by the President as a budget amendment; or

“(3) the Secretary of Defense makes such request in writing to the congressional defense committees.”

Similar provisions were contained in the following appropriation acts:

Pub. L. 115-245, div. A, title VIII, § 8010, Sept. 28, 2018, 132 Stat. 3000.

Pub. L. 115-141, div. C, title VIII, § 8010, Mar. 23, 2018, 132 Stat. 464.

Pub. L. 115-31, div. C, title VIII, § 8010, May 5, 2017, 131 Stat. 247.

Pub. L. 114-113, div. C, title VIII, § 8010, Dec. 18, 2015, 129 Stat. 2352.

Pub. L. 113-235, div. C, title VIII, § 8010, Dec. 16, 2014, 128 Stat. 2253.

Pub. L. 113-76, div. C, title VIII, § 8010, Jan. 17, 2014, 128 Stat. 105.

Pub. L. 113-6, div. C, title VIII, § 8010, Mar. 26, 2013, 127 Stat. 297.

Pub. L. 112-74, div. A, title VIII, § 8010, Dec. 23, 2011, 125 Stat. 806.

Pub. L. 112-10, div. A, title VIII, § 8010, Apr. 15, 2011, 125 Stat. 57.

Pub. L. 111-118, div. A, title VIII, § 8011, Dec. 19, 2009, 123 Stat. 3428, as amended by Pub. L. 111-212, title I, § 305, July 29, 2010, 124 Stat. 2311.

Pub. L. 110-329, div. C, title VIII, § 8011, Sept. 30, 2008, 122 Stat. 3621.

Pub. L. 110-116, div. A, title VIII, § 8010, Nov. 13, 2007, 121 Stat. 1315.

Pub. L. 109-289, div. A, title VIII, § 8008, Sept. 29, 2006, 120 Stat. 1273.

Pub. L. 109-148, div. A, title VIII, § 8008, Dec. 30, 2005, 119 Stat. 2698.

Pub. L. 108-287, title VIII, § 8008, Aug. 5, 2004, 118 Stat. 970.

Pub. L. 108-87, title VIII, § 8008, Sept. 30, 2003, 117 Stat. 1072.

Pub. L. 107-248, title VIII, § 8008, Oct. 23, 2002, 116 Stat. 1537.

Pub. L. 107-117, div. A, title VIII, § 8008, Jan. 10, 2002, 115 Stat. 2248.

Pub. L. 106-259, title VIII, § 8008, Aug. 9, 2000, 114 Stat. 675.

Pub. L. 106-79, title VIII, § 8008, Oct. 25, 1999, 113 Stat. 1232.

Pub. L. 105-262, title VIII, § 8008, Oct. 17, 1998, 112 Stat. 2298.

Pub. L. 104-208, div. A, title I, § 101(b) [title VIII, § 8009], Sept. 30, 1996, 110 Stat. 3009-71, 3009-89.

Pub. L. 104-61, title VIII, § 8010, Dec. 1, 1995, 109 Stat. 653.

Pub. L. 103-335, title VIII, § 8010, Sept. 30, 1994, 108 Stat. 2618.

Pub. L. 103-139, title VIII, § 8011, Nov. 11, 1993, 107 Stat. 1439.

Pub. L. 102-396, title IX, § 9013, Oct. 6, 1992, 106 Stat. 1903.

Pub. L. 102-172, title VIII, § 8013, Nov. 26, 1991, 105 Stat. 1173.

Pub. L. 101-511, title VIII, § 8014, Nov. 5, 1990, 104 Stat. 1877.

Pub. L. 101-165, title IX, § 9021, Nov. 21, 1989, 103 Stat. 1133.

§ 2306c. Multiyear contracts: acquisition of services

(a) **AUTHORITY.**—Subject to subsections (d) and (e), the head of an agency may enter into contracts for periods of not more than five years for services described in subsection (b), and for items of supply related to such services, for which funds would otherwise be available for obligation only within the fiscal year for which appropriated whenever the head of the agency finds that—

(1) there will be a continuing requirement for the services consonant with current plans for the proposed contract period;

(2) the furnishing of such services will require a substantial initial investment in plant or equipment, or the incurrence of substantial contingent liabilities for the assembly, training, or transportation of a specialized work force; and

(3) the use of such a contract will promote the best interests of the United States by encouraging effective competition and promoting economies in operation.

(b) **COVERED SERVICES.**—The authority under subsection (a) applies to the following types of services:

(1) Operation, maintenance, and support of facilities and installations.

(2) Maintenance or modification of aircraft, ships, vehicles, and other highly complex military equipment.

(3) Specialized training necessitating high quality instructor skills (for example, pilot and air crew members; foreign language training).

(4) Base services (for example, ground maintenance; in-plane refueling; bus transportation; refuse collection and disposal).

(5) Environmental remediation services for—

- (A) an active military installation;
- (B) a military installation being closed or realigned under a base closure law; or
- (C) a site formerly used by the Department of Defense.

(c) **APPLICABLE PRINCIPLES.**—In entering into multiyear contracts for services under the authority of this section, the head of the agency shall be guided by the following principles:

(1) The portion of the cost of any plant or equipment amortized as a cost of contract performance should not exceed the ratio between the period of contract performance and the anticipated useful commercial life of such plant or equipment. Useful commercial life, for this purpose, means the commercial utility of the facilities rather than the physical life thereof, with due consideration given to such factors as location of facilities, specialized nature thereof, and obsolescence.

(2) Consideration shall be given to the desirability of obtaining an option to renew the contract for a reasonable period not to exceed three years, at prices not to include charges for plant, equipment and other nonrecurring costs, already amortized.

(3) Consideration shall be given to the desirability of reserving in the agency the right, upon payment of the unamortized portion of the cost of the plant or equipment, to take title thereto under appropriate circumstances.

(d) **RESTRICTIONS APPLICABLE GENERALLY.**—(1) The head of an agency may not initiate under this section a contract for services that includes an unfunded contingent liability in excess of \$20,000,000 unless the congressional defense committees are notified of the proposed contract at least 30 days in advance of the award of the proposed contract.

(2) The head of an agency may not initiate a multiyear contract for services under this section if the value of the multiyear contract would exceed \$500,000,000 unless authority for the contract is specifically provided by law.

(3) The head of an agency may not terminate a multiyear procurement contract for services until 10 days after the date on which notice of the proposed termination is provided to the congressional defense committees.

(4) Before any contract described in subsection (a) that contains a clause setting forth a cancellation ceiling in excess of \$100,000,000 may be awarded, the head of the agency concerned shall give written notification of the proposed contract and of the proposed cancellation ceiling for that contract to the congressional defense committees, and such contract may not then be awarded until the end of a period of 30 days beginning on the date of such notification.

(5) In the case of a contract described in subsection (a) with a cancellation ceiling described in paragraph (4), if the budget for the contract does not include proposed funding for the costs of contract cancellation up to the cancellation ceiling established in the contract, the head of the agency concerned shall give written notification

to the congressional defense committees of—

(A) the cancellation ceiling amounts planned for each program year in the proposed multiyear procurement contract, together with the reasons for the amounts planned;

(B) the extent to which costs of contract cancellation are not included in the budget for the contract; and

(C) a financial risk assessment of not including budgeting for costs of contract cancellation.

(e) **CANCELLATION OR TERMINATION FOR INSUFFICIENT FUNDING AFTER FIRST YEAR.**—In the event that funds are not made available for the continuation of a multiyear contract for services into a subsequent fiscal year, the contract shall be canceled or terminated, and the costs of cancellation or termination may be paid from—

(1) appropriations originally available for the performance of the contract concerned;

(2) appropriations currently available for procurement of the type of services concerned, and not otherwise obligated; or

(3) funds appropriated for those payments.

(f) **MULTIYEAR CONTRACT DEFINED.**—For the purposes of this section, a multiyear contract is a contract for the purchase of services for more than one, but not more than five, program years. Such a contract may provide that performance under the contract during the second and subsequent years of the contract is contingent upon the appropriation of funds and (if it does so provide) may provide for a cancellation payment to be made to the contractor if such appropriations are not made.

[(g) Repealed. Pub. L. 108–136, div. A, title VIII, § 843(a), Nov. 24, 2003, 117 Stat. 1553.]

(h) **MILITARY INSTALLATION DEFINED.**—In this section, the term “military installation” has the meaning given such term in section 2801(c)(4) of this title.

(Added Pub. L. 106–398, § 1 [[div. A], title VIII, § 802(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–203; amended Pub. L. 107–314, div. A, title VIII, §§ 811(a), 827, Dec. 2, 2002, 116 Stat. 2608, 2617; Pub. L. 108–136, div. A, title VIII, § 843(a), title X, § 1043(c)(1), Nov. 24, 2003, 117 Stat. 1553, 1611; Pub. L. 108–375, div. A, title VIII, § 814(b), Oct. 28, 2004, 118 Stat. 2014; Pub. L. 111–84, div. A, title X, § 1073(a)(22), Oct. 28, 2009, 123 Stat. 2473.)

AMENDMENTS

2009—Subsec. (h). Pub. L. 111–84 substituted “section 2801(c)(4)” for “section 2801(c)(2)”.

2004—Subsec. (d)(1), (3), (4). Pub. L. 108–375, § 814(b)(1), substituted “congressional defense committees” for “committees of Congress named in paragraph (5)”.

Subsec. (d)(5). Pub. L. 108–375, § 814(b)(2), amended par. (5) generally. Prior to amendment, par. (5) read as follows: “The committees of Congress referred to in paragraphs (1), (3), and (4) are as follows:

“(A) The Committee on Armed Services and the Committee on Appropriations of the Senate.

“(B) The Committee on Armed Services and the Committee on Appropriations of the House of Representatives.”

2003—Subsec. (g). Pub. L. 108–136, § 843(a), struck out heading and text of subsec. (g). Text read as follows:

“(1) The authority and restrictions of this section, including the authority to enter into contracts for periods of not more than five years, shall apply with re-

spect to task order and delivery order contracts entered into under the authority of section 2304a, 2304b, or 2304c of this title.

“(2) The regulations implementing this subsection shall establish a preference that, to the maximum extent practicable, multi-year requirements for task order and delivery order contracts be met with separate awards to two or more sources under the authority of section 2304a(d)(1)(B) of this title.”

Subsec. (h). Pub. L. 108–136, §1043(c)(1), substituted “MILITARY INSTALLATION DEFINED.—In this section, the term” for “ADDITIONAL DEFINITIONS.—In this section:

“(1) The term ‘base closure law’ has the meaning given such term in section 2667(h)(2) of this title.

“(2) The term”.

2002—Subsec. (b)(5). Pub. L. 107–314, §827(a), added par. (5).

Subsec. (g). Pub. L. 107–314, §811(a), added subsec. (g).

Subsec. (h). Pub. L. 107–314, §827(b), added subsec. (h).

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–314, div. A, title VIII, §811(b), Dec. 2, 2002, 116 Stat. 2608, as amended by Pub. L. 108–11, title I, §1315, Apr. 16, 2003, 117 Stat. 570, provided that: “Subsection (g) of section 2306c of title 10, United States Code, as added by subsection (a), shall apply to all task order and delivery order contracts entered into on or after January 1, 2004.”

EFFECTIVE DATE

Pub. L. 106–398, §1 [[div. A], title VIII, §802(d)], Oct. 30, 2000, 114 Stat. 1654, 1654A–205, provided that: “Section 2306c of title 10, United States Code (as added by subsection (a)), shall apply with respect to contracts for which solicitations of offers are issued after the date of the enactment of this Act [Oct. 30, 2000].”

PILOT PROGRAM FOR LONGER TERM MULTIYEAR SERVICE CONTRACTS

Pub. L. 115–91, div. A, title VIII, §854, Dec. 12, 2017, 131 Stat. 1492, provided that:

“(a) ESTABLISHMENT.—The Secretary of Defense shall carry out a pilot program under which the Secretary may use the authority under subsection (a) of section 2306c of title 10, United States Code, to enter into up to five contracts for periods of not more than 10 years for services described in subsection (b) of such section. Each contract entered into pursuant to this subsection may be extended for up to five additional one-year terms.

“(b) STUDY.—

“(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act [Dec. 12, 2017], the Secretary of Defense shall enter into an agreement with an independent organization with relevant expertise to study best practices and lessons learned from using services contracts for periods longer than five years by commercial companies, foreign governments, and State governments, as well as service contracts for periods longer than five years used by the Federal Government, such as energy savings performance contracts (as defined in section [sic] 804(3) of the National Energy Conservation Policy Act (42 U.S.C. 8287c(3)).

“(2) REPORT.—Not later than one year 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 report on the study conducted under paragraph (1).

“(c) COMPTROLLER GENERAL REPORT.—Not later than five 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 on the pilot program carried out under this section.”

§ 2307. Contract financing

(a) PAYMENT AUTHORITY.—(1) The head of any agency may¹

(A) make advance, partial, progress, or other payments under contracts for property or services made by the agency; and

(B) insert in solicitations for procurement of property or services a provision limiting to small business concerns advance or progress payments.

(2)(A) For a prime contractor (as defined in section 8701 of title 41) that is a small business concern (as defined in section 3 of the Small Business Act (15 U.S.C. 632)), the Secretary of Defense shall, to the fullest extent permitted by law, establish an accelerated payment date with a goal of 15 days after receipt of a proper invoice for the amount due if a specific payment date is not established by contract.

(B) For a prime contractor that subcontracts with a small business concern, the Secretary of Defense shall, to the fullest extent permitted by law, establish an accelerated payment date with a goal of 15 days after receipt of a proper invoice for the amount due if—

(i) a specific payment date is not established by contract; and

(ii) the prime contractor agrees to make payments to the subcontractor in accordance with the accelerated payment date, to the maximum extent practicable, without any further consideration from or fees charged to the subcontractor.

(b) PREFERENCE FOR PERFORMANCE-BASED PAYMENTS.—(1) Whenever practicable, payments under subsection (a) shall be made using performance-based payments on any of the following bases:

(A) Performance measured by objective, quantifiable methods such as delivery of acceptable items, work measurement, or statistical process controls.

(B) Accomplishment of events defined in the program management plan.

(C) Other quantifiable measures of results.

(2) Performance-based payments shall not be conditioned upon costs incurred in contract performance but on the achievement of performance outcomes listed in paragraph (1).

(3) The Secretary of Defense shall ensure that nontraditional defense contractors and other private sector companies are eligible for performance-based payments, consistent with best commercial practices.

(4)(A) In order to receive performance-based payments, a contractor’s accounting system shall be in compliance with Generally Accepted Accounting Principles, and there shall be no requirement for a contractor to develop Government-unique accounting systems or practices as a prerequisite for agreeing to receive performance-based payments.

(B) Nothing in this section shall be construed to grant the Defense Contract Audit Agency the authority to audit compliance with Generally Accepted Accounting Principles.

(c) PAYMENT AMOUNT.—Payments made under subsection (a) may not exceed the unpaid contract price.

¹ So in original.