

by subsection (a) [amending this section] and the revision required by subsection (b) [see note below] shall become effective on the date of publication of the interim or final rule (whichever is earlier) required by subsection (b) and shall apply to solicitations issued by Department of Defense contracting activities after that date unless the senior procurement executive of the agency concerned grants a waiver on a case-by-case basis.”

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 OF 1987 AMENDMENT

Pub. L. 100-26, §12(d)(1), Apr. 21, 1987, 101 Stat. 289, provided that: “The amendments to section 2321 of title 10, United States Code, made by section 7(a)(5) shall apply to contracts for which solicitations are issued after the end of the 210-day period beginning on October 18, 1986.”

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-500, Pub. L. 99-591, and Pub. L. 99-661 applicable to contracts for which solicitations are issued after end of 210-day period beginning Oct. 18, 1986, see section 101(c) of Pub. L. 99-500 and Pub. L. 99-591, and section 953(e) of Pub. L. 99-661, set out as a note under section 2320 of this title.

EFFECTIVE DATE

Section applicable with respect to solicitations issued after the end of the one-year period beginning Oct. 19, 1984, see section 1216(c)(2) of Pub. L. 98-525, set out as a note under section 2319 of this title.

REVISION OF THE DEFENSE FEDERAL ACQUISITION REGULATION SUPPLEMENT

Pub. L. 115-232, div. A, title VIII, §866(b), Aug. 13, 2018, 132 Stat. 1901, provided that: “Not later than 180 days after the date of the enactment of this Act [Aug. 13, 2018], the Secretary of Defense shall revise the Defense Federal Acquisition Regulation Supplement, by interim or final rule, to implement the amendments made by subsection (a) [amending this section].”

GUIDANCE ON TECHNICAL DATA RIGHT NEGOTIATION

Pub. L. 115-232, div. A, title VIII, §866(d), Aug. 13, 2018, 132 Stat. 1901, provided that: “The Secretary of Defense shall develop policies on the negotiation of technical data rights for noncommercial software that reflects the Department of Defense’s needs for technical data rights in the event of a protest or replacement of incumbent contractor to meet defense requirements in the most cost effective manner.”

§ 2322. Management of intellectual property matters within the Department of Defense

(a) POLICY REQUIRED.—The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Sustainment, shall develop policy on the acquisition or licensing of intellectual property—

(1) to enable coordination and consistency across the military departments and the Department of Defense in strategies for acquiring or licensing intellectual property and communicating with industry;

(2) to ensure that program managers are aware of the rights afforded the Federal Government and contractors in intellectual property and that program managers fully consider and use all available techniques and best practices for acquiring or licensing intellectual property early in the acquisition process; and

(3) to encourage customized intellectual property strategies for each system based on, at a minimum, the unique characteristics of the system and its components, the product support strategy for the system, the organic industrial base strategy of the military department concerned, and the commercial market.

(b) CADRE OF INTELLECTUAL PROPERTY EXPERTS.—(1) The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Sustainment, shall establish a cadre of personnel who are experts in intellectual property matters. The purpose of the cadre is to ensure a consistent, strategic, and highly knowledgeable approach to acquiring or licensing intellectual property by providing expert advice, assistance, and resources to the acquisition workforce on intellectual property matters, including acquiring or licensing intellectual property.

(2) The Under Secretary shall establish an appropriate leadership structure and office within which the cadre shall be managed, and shall determine the appropriate official to whom members of the cadre shall report.

(3) The cadre of experts shall be assigned to a program office or an acquisition command within a military department to advise, assist, and provide resources to a program manager or program executive officer on intellectual property matters at various stages of the life cycle of a system. In performing such duties, the experts shall—

(A) interpret and provide counsel on laws, regulations, and policies relating to intellectual property;

(B) advise and assist in the development of an acquisition strategy, product support strategy, and intellectual property strategy for a system;

(C) conduct or assist with financial analysis and valuation of intellectual property;

(D) assist in the drafting of a solicitation, contract, or other transaction;

(E) interact with or assist in interactions with contractors, including communications and negotiations with contractors on solicitations and awards; and

(F) conduct or assist with mediation if technical data delivered pursuant to a contract is incomplete or does not comply with the terms of agreements.

(4)(A) In order to achieve the purpose set forth in paragraph (1), the Under Secretary shall ensure the cadre has the appropriate number of staff and such staff possesses the necessary skills, knowledge, and experience to carry out the duties under paragraph (2), including in relevant areas of law, contracting, acquisition, logistics, engineering, financial analysis, and valuation. The Under Secretary, in coordination with the Defense Acquisition University and in consultation with academia and industry, shall develop a career path, including development opportunities, exchanges, talent management programs, and training, for the cadre. The Under Secretary may use existing authorities to staff the cadre, including those in subparagraphs (B), (C), (D), and (F).

(B) Civilian personnel from within the Office of the Secretary of Defense, Joint Staff, military departments, Defense Agencies, and combatant commands may be assigned to serve as members of the cadre, upon request of the Director.

(C) The Under Secretary may use the authorities for highly qualified experts under section 9903 of title 5, to hire experts as members of the cadre who are skilled professionals in intellectual property and related matters.

(D) The Under Secretary may enter into a contract with a private-sector entity for specialized expertise to support the cadre. Such entity may be considered a covered Government support contractor, as defined in section 2320 of this title.

(E) In establishing the cadre, the Under Secretary shall give preference to civilian employees of the Department of Defense, rather than members of the armed forces, to maintain continuity in the cadre.

(F) The Under Secretary is authorized to use amounts in the Defense Acquisition Workforce Development Fund for the purpose of recruitment, training, and retention of the cadre, including paying salaries of newly hired members of the cadre for up to three years.

(Added Pub. L. 115-91, div. A, title VIII, § 802(a)(1), Dec. 12, 2017, 131 Stat. 1450.)

PRIOR PROVISIONS

A prior section 2322, added Pub. L. 98-525, title XII, § 1216(a), Oct. 19, 1984, 98 Stat. 2598; amended Pub. L. 100-26, § 7(a)(6), Apr. 21, 1987, 101 Stat. 278; Pub. L. 100-180, div. A, title XII, § 1231(7), Dec. 4, 1987, 101 Stat. 1160, limited small business set-asides under the Foreign Military Sales Program and provided that the section expired Jan. 17, 1987, prior to repeal by Pub. L. 102-484, div. A, title X, § 1052(25)(A), Oct. 23, 1992, 106 Stat. 2500.

Another prior section 2322 was contained in chapter 138 and was renumbered section 2342 of this title.

§ 2322a. Requirement for consideration of certain matters during acquisition of noncommercial computer software

(a) CONSIDERATION REQUIRED.—As part of any negotiation for the acquisition of noncommercial computer software, the Secretary of Defense shall ensure that such negotiations consider, to the maximum extent practicable, acquisition, at the appropriate time in the life cycle of the noncommercial computer software, of all software and related materials necessary—

(1) to reproduce, build, or recompile the software from original source code and required libraries;

(2) to conduct required computer software testing; and

(3) to deploy working computer software system binary files on relevant system hardware.

(b) DELIVERY OF SOFTWARE AND RELATED MATERIALS.—Any noncommercial computer software or related materials required to be delivered as a result of considerations in subsection (a) shall, to the extent appropriate as determined by the Secretary—

(1) include computer software delivered in a useable, digital format;

(2) not rely on external or additional software code or data, unless such software code

or data is included in the items to be delivered; and

(3) in the case of negotiated terms that do not allow for the inclusion of dependent software code or data, sufficient documentation to support maintenance and understanding of interfaces and software revision history.

(Added Pub. L. 115-91, div. A, title VIII, § 871(a)(1), Dec. 12, 2017, 131 Stat. 1496.)

GUIDANCE

Pub. L. 115-91, div. A, title VIII, § 871(b), Dec. 12, 2017, 131 Stat. 1497, provided that: “Not later than 180 days after the date of the enactment of this Act [Dec. 12, 2017], the Secretary of Defense shall issue updated guidance to implement section 2322a of title 10, United States Code, as added by subsection (a).”

§ 2323. Repealed. Pub. L. 115-232, div. A, title VIII, § 812(a)(2)(A), Aug. 13, 2018, 132 Stat. 1846]

Section, added and amended Pub. L. 102-484, div. A, title VIII, §§ 801(a)(1), (b)-(f), 802, Oct. 23, 1992, 106 Stat. 2442-2444, 2446; Pub. L. 103-35, title II, § 202(a)(6), May 31, 1993, 107 Stat. 101; Pub. L. 103-160, div. A, title VIII, § 811(a)-(c), (e), Nov. 30, 1993, 107 Stat. 1702; Pub. L. 103-355, title VII, § 7105, Oct. 13, 1994, 108 Stat. 3369; Pub. L. 104-106, div. D, title XLIII, § 4321(b)(8), Feb. 10, 1996, 110 Stat. 672; Pub. L. 105-135, title VI, § 604(a), Dec. 2, 1997, 111 Stat. 2632; Pub. L. 105-261, div. A, title VIII, § 801, Oct. 17, 1998, 112 Stat. 2080; Pub. L. 106-65, div. A, title VIII, § 808, Oct. 5, 1999, 113 Stat. 705; Pub. L. 107-107, div. A, title X, § 1048(a)(17), Dec. 28, 2001, 115 Stat. 1223; Pub. L. 107-296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 107-314, div. A, title VIII, § 816, Dec. 2, 2002, 116 Stat. 2610; Pub. L. 108-136, div. A, title X, § 1031(a)(15), Nov. 24, 2003, 117 Stat. 1597; Pub. L. 109-163, div. A, title VIII, § 842, Jan. 6, 2006, 119 Stat. 3389; Pub. L. 109-364, div. A, title VIII, § 858, Oct. 17, 2006, 120 Stat. 2349; Pub. L. 110-181, div. A, title VIII, § 891, Jan. 28, 2008, 122 Stat. 270; Pub. L. 111-383, div. A, title X, § 1075(b)(31), Jan. 7, 2011, 124 Stat. 4370; Pub. L. 115-91, div. A, title XVII, § 1701(a)(4)(B), Dec. 12, 2017, 131 Stat. 1796, related to contract goals for small disadvantaged businesses and certain institutions of higher education.

A prior section 2323, added Pub. L. 98-525, title XII, § 1216(a), Oct. 19, 1984, 98 Stat. 2598; amended Pub. L. 99-500, § 101(c) [title X, § 926(a)(1)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-153, and Pub. L. 99-591, § 101(c) [title X, § 926(a)(1)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-153; Pub. L. 99-661, div. A, title IX, formerly title IV, § 926(a)(1), Nov. 14, 1986, 100 Stat. 3933, renumbered title IX, Pub. L. 100-26, § 3(5), Apr. 21, 1987, 101 Stat. 273, related to commercial pricing for spare or repair parts, prior to repeal by Pub. L. 101-510, div. A, title VIII, § 804(a), Nov. 5, 1990, 104 Stat. 1591.

§ 2323a. Credit for Indian contracting in meeting certain subcontracting goals for small disadvantaged businesses and certain institutions of higher education

(a) REGULATIONS.—Subject to subsections (b) and (c), in any case in which a subcontracting goal is specified in a Department of Defense contract in the implementation of section 8(d) of the Small Business Act (15 U.S.C. 637(d)), credit toward meeting that subcontracting goal shall be given for—

(1) work performed in connection with that Department of Defense contract, and work performed in connection with any subcontract awarded under that Department of Defense contract, if such work is performed on any Indian lands and meets the requirements of paragraph (1) of subsection (b); or