

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-181, div. A, title VIII, §807(b), Jan. 28, 2008, 122 Stat. 215, provided that:

“(1) The amendments made by subsection (a) [amending this section] shall be effective upon the date of the enactment of this Act [Jan. 28, 2008].

“(2) The first inventory required by section 2330a(c) of title 10, United States Code, as added by subsection (a), shall be submitted not later than the end of the third quarter of fiscal year 2008.”

DEVELOPMENT OF GUIDANCE ON PERSONAL SERVICES CONTRACTS

Pub. L. 110-417, [div. A], title VIII, §831, Oct. 14, 2008, 122 Stat. 4534, which required the Secretary of Defense to develop certain guidance related to personal services contracts, was repealed by Pub. L. 115-232, div. A, title VIII, §812(b)(27), Aug. 13, 2018, 132 Stat. 1849.

§ 2331. Procurement of services: contracts for professional and technical services

(a) IN GENERAL.—The Secretary of Defense shall prescribe regulations to ensure, to the maximum extent practicable, that professional and technical services are acquired on the basis of the task to be performed rather than on the basis of the number of hours of services provided.

(b) CONTENT OF REGULATIONS.—With respect to contracts to acquire services on the basis of the number of hours of services provided, the regulations described in subsection (a) shall—

(1) include standards and approval procedures to minimize the use of such contracts;

(2) establish criteria to ensure that proposals for contracts for technical and professional services are evaluated on a basis which does not encourage contractors to propose uncompensated overtime;

(3) ensure appropriate emphasis on technical and quality factors in the source selection process;

(4) require identification of any hours in excess of 40-hour weeks included in a proposal;

(5) ensure that offerors are notified that proposals which include unrealistically low labor rates or which do not otherwise demonstrate cost realism will be considered in a risk assessment and evaluated appropriately; and

(6) provide guidance to contracting officers to ensure that any use of uncompensated overtime will not degrade the level of technical expertise required to perform the contract.

(Added Pub. L. 101-510, div. A, title VIII, §834(a)(1), Nov. 5, 1990, 104 Stat. 1613; amended Pub. L. 102-25, title VII, §701(a), Apr. 6, 1991, 105 Stat. 113; Pub. L. 103-355, title I, §1004(c), Oct. 13, 1994, 108 Stat. 3253; Pub. L. 107-107, div. A, title VIII, §801(g)(1), Dec. 28, 2001, 115 Stat. 1177.)

PRIOR PROVISIONS

A prior section 2331 was renumbered section 2350 of this title.

AMENDMENTS

2001—Pub. L. 107-107 substituted “Procurement of services: contracts” for “Contracts” in section catchline.

1994—Subsec. (c). Pub. L. 103-355 struck out text and heading of subsec. (c). Text read as follows:

“(1) The Secretary of Defense may waive the limitation in section 2304(j)(4) of this title on the total value of task orders for specific contracting activities to the

extent the Secretary considers the use of master agreements necessary in order to further the policy set forth in subsection (a).

“(2) During any fiscal year, such a waiver may not increase the total value of task orders under master agreements of a contracting activity by more than 20 percent of the value of all contracts for advisory and assistance services awarded by that contracting activity during fiscal year 1989.

“(3) Such a waiver shall not become effective until 60 days after the Secretary of Defense has published notice thereof in the Federal Register.”

1991—Subsec. (c)(1). Pub. L. 102-25 struck out “on a case-by-case basis” after “value of task orders”, substituted “considers the use of master agreements necessary” for “considers necessary the use of master agreements”, and struck out “of this section” before period at end.

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.

REGULATIONS

Pub. L. 101-510, div. A, title VIII, §834(b), Nov. 5, 1990, 104 Stat. 1614, provided that: “Not later than 180 days after the date of the enactment of this Act [Nov. 5, 1990], the Secretary of Defense shall publish for public comment new regulations to carry out the requirements in this section [enacting this section]. The Secretary shall promulgate final regulations to carry out such requirements not later than 270 days after the date of the enactment of this Act.”

SELECTION OF SERVICE PROVIDERS FOR AUDITING SERVICES AND AUDIT READINESS SERVICES

Pub. L. 114-328, div. A, title VIII, §892, Dec. 23, 2016, 130 Stat. 2324, which required that the Department of Defense select service providers for auditing services and audit readiness services based on the best value to the Department, was repealed by Pub. L. 115-91, div. A, title X, §1002(g)(3), Dec. 12, 2017, 131 Stat. 1542. See section 240f of this title.

PROVISIONS NOT AFFECTED BY PUB. L. 103-355

Repeal of subsec. (c) of this section by Pub. L. 103-355 not to be construed as modifying or superseding, or as intended to impair or restrict, authorities or responsibilities under former 40 U.S.C. 759 or chapter 11 of Title 40, Public Buildings, Property, and Works, see section 1004(d) of Pub. L. 103-355, set out as a note under section 2304a of this title.

[§ 2332. Repealed. Pub. L. 115-232, div. A, title VIII, §812(a)(3)(A), Aug. 13, 2018, 132 Stat. 1847]

Section, added Pub. L. 107-347, title II, §210(a)(1), Dec. 17, 2002, 116 Stat. 2932, related to the authority of a agency head to enter into share-in-savings contracts for information technology.

§ 2333. Joint policies on requirements definition, contingency program management, and contingency contracting

(a) JOINT POLICY REQUIREMENT.—The Secretary of Defense, in consultation with the Chairman of the Joint Chiefs of Staff, shall develop joint policies for requirements definition, contingency program management, and contingency contracting during combat operations and post-conflict operations.

(b) REQUIREMENTS DEFINITION MATTERS COVERED.—The joint policy for requirements definition required by subsection (a) shall, at a minimum, provide for the following: