

## SIMILAR PROVISIONS

Provisions similar to this section were contained in section 832 of Pub. L. 112-81, which was set out as a note under section 2430 of this title, prior to repeal by Pub. L. 115-91, div. A, title VIII, § 836(b)(1), Dec. 12, 2017, 131 Stat. 1473.

## AMENDMENTS

2018—Subsec. (d). Pub. L. 115-232 substituted “this title” for “title 10, United States Code”.

## SHOULD-COST MANAGEMENT

Pub. L. 115-91, div. A, title VIII, § 837, Dec. 12, 2017, 131 Stat. 1474, provided that:

“(a) REQUIREMENT FOR REGULATIONS.—Not later than 180 days after the date of the enactment of this Act [Dec. 12, 2017], the Secretary of Defense shall amend the Defense Supplement to the Federal Acquisition Regulation to provide for the appropriate use of the should-cost review process of a major weapon system in a manner that is transparent, objective, and provides for the efficiency of the systems acquisition process in the Department of the Defense.

“(b) REQUIRED ELEMENTS.—The regulations required under subsection (a) shall incorporate, at a minimum, the following elements:

“(1) A description of the features of the should-cost review process.

“(2) Establishment of a process for communicating with the prime contractor on the program elements of a proposed should-cost review.

“(3) A method for ensuring that identified should-cost savings opportunities are based on accurate, complete, and current information and can be quantified and tracked.

“(4) A description of the training, skills, and experience that Department of Defense and contractor officials carrying out a should-cost review in subsection (a) should possess.

“(5) A method for ensuring appropriate collaboration with the contractor throughout the review process.

“(6) Establishment of review process requirements that provide for sufficient analysis and minimize any impact on program schedule.”

**§ 2338. Micro-purchase threshold**

The micro-purchase threshold for the Department of Defense is \$10,000.

(Added Pub. L. 114-328, div. A, title VIII, § 821(a), Dec. 23, 2016, 130 Stat. 2276; amended Pub. L. 115-232, div. A, title VIII, § 821(a), Aug. 13, 2018, 132 Stat. 1853.)

## AMENDMENTS

2018—Pub. L. 115-232 substituted “The micro-purchase threshold for the Department of Defense is \$10,000” for “Notwithstanding subsection (a) of section 1902 of title 41, the micro-purchase threshold for the Department of Defense for purposes of such section is \$5,000”.

**[§ 2339. Repealed. Pub. L. 115-232, div. A, title VIII, § 821(c)(1), Aug. 13, 2018, 132 Stat. 1853]**

Section, added Pub. L. 114-328, div. A, title II, § 217(a)(1), Dec. 23, 2016, 130 Stat. 2051, set the micro-purchase threshold for basic research programs and activities of the Department of Defense science and technology reinvention laboratories.

**§ 2339a. Requirements for information relating to supply chain risk**

(a) AUTHORITY.—Subject to subsection (b), the head of a covered agency may—

(1) carry out a covered procurement action; and

(2) limit, notwithstanding any other provision of law, in whole or in part, the disclosure of information relating to the basis for carrying out a covered procurement action.

(b) DETERMINATION AND NOTIFICATION.—The head of a covered agency may exercise the authority provided in subsection (a) only after—

(1) obtaining a joint recommendation by the Under Secretary of Defense for Acquisition and Sustainment and the Chief Information Officer of the Department of Defense, on the basis of a risk assessment by the Under Secretary of Defense for Intelligence, that there is a significant supply chain risk to a covered system;

(2) making a determination in writing, in unclassified or classified form, with the concurrence of the Under Secretary of Defense for Acquisition and Sustainment, that—

(A) use of the authority in subsection (a)(1) is necessary to protect national security by reducing supply chain risk;

(B) less intrusive measures are not reasonably available to reduce such supply chain risk; and

(C) in a case where the head of the covered agency plans to limit disclosure of information under subsection (a)(2), the risk to national security due to the disclosure of such information outweighs the risk due to not disclosing such information; and

(3) providing a classified or unclassified notice of the determination made under paragraph (2) to the appropriate congressional committees, which notice shall include—

(A) the information required by section 2304(f)(3) of this title;

(B) the joint recommendation by the Under Secretary of Defense for Acquisition and Sustainment and the Chief Information Officer of the Department of Defense as specified in paragraph (1);

(C) a summary of the risk assessment by the Under Secretary of Defense for Intelligence that serves as the basis for the joint recommendation specified in paragraph (1); and

(D) a summary of the basis for the determination, including a discussion of less intrusive measures that were considered and why they were not reasonably available to reduce supply chain risk.

(c) DELEGATION.—The head of a covered agency may not delegate the authority provided in subsection (a) or the responsibility to make a determination under subsection (b) to an official below the level of the service acquisition executive for the agency concerned.

(d) LIMITATION ON DISCLOSURE.—If the head of a covered agency has exercised the authority provided in subsection (a)(2) to limit disclosure of information—

(1) no action undertaken by the agency head under such authority shall be subject to review in a bid protest before the Government Accountability Office or in any Federal court; and

(2) the agency head shall—

(A) notify appropriate parties of a covered procurement action and the basis for such