

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 Repealed.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

action only to the extent necessary to effectuate the covered procurement action;

(B) notify other Department of Defense components or other Federal agencies responsible for procurements that may be subject to the same or similar supply chain risk, in a manner and to the extent consistent with the requirements of national security; and

(C) ensure the confidentiality of any such notifications.

(e) DEFINITIONS.—In this section:

(1) HEAD OF A COVERED AGENCY.—The term “head of a covered agency” means each of the following:

- (A) The Secretary of Defense.
- (B) The Secretary of the Army.
- (C) The Secretary of the Navy.
- (D) The Secretary of the Air Force.

(2) COVERED PROCUREMENT ACTION.—The term “covered procurement action” means any of the following actions, if the action takes place in the course of conducting a covered procurement:

(A) The exclusion of a source that fails to meet qualification standards established in accordance with the requirements of section 2319 of this title for the purpose of reducing supply chain risk in the acquisition of covered systems.

(B) The exclusion of a source that fails to achieve an acceptable rating with regard to an evaluation factor providing for the consideration of supply chain risk in the evaluation of proposals for the award of a contract or the issuance of a task or delivery order.

(C) The decision to withhold consent for a contractor to subcontract with a particular source or to direct a contractor for a covered system to exclude a particular source from consideration for a subcontract under the contract.

(3) COVERED PROCUREMENT.—The term “covered procurement” means—

(A) a source selection for a covered system or a covered item of supply involving either a performance specification, as provided in section 2305(a)(1)(C)(ii) of this title, or an evaluation factor, as provided in section 2305(a)(2)(A) of this title, relating to supply chain risk;

(B) the consideration of proposals for and issuance of a task or delivery order for a covered system or a covered item of supply, as provided in section 2304c(d)(3) of this title, where the task or delivery order contract concerned includes a contract clause establishing a requirement relating to supply chain risk; or

(C) any contract action involving a contract for a covered system or a covered item of supply where such contract includes a clause establishing requirements relating to supply chain risk.

(4) SUPPLY CHAIN RISK.—The term “supply chain risk” means the risk that an adversary may sabotage, maliciously introduce unwanted function, or otherwise subvert the design, integrity, manufacturing, production,

distribution, installation, operation, or maintenance of a covered system so as to surveil, deny, disrupt, or otherwise degrade the function, use, or operation of such system.

(5) COVERED SYSTEM.—The term “covered system” means a national security system, as that term is defined in section 3542(b)¹ of title 44.

(6) COVERED ITEM OF SUPPLY.—The term “covered item of supply” means an item of information technology (as that term is defined in section 11101 of title 40) that is purchased for inclusion in a covered system, and the loss of integrity of which could result in a supply chain risk for a covered system.

(7) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term “appropriate congressional committees” means—

(A) in the case of a covered system included in the National Intelligence Program or the Military Intelligence Program, the Select Committee on Intelligence of the Senate, the Permanent Select Committee on Intelligence of the House of Representatives, and the congressional defense committees; and

(B) in the case of a covered system not otherwise included in subparagraph (A), the congressional defense committees.

(Added Pub. L. 115-232, div. A, title VIII, § 881(a)(1), Aug. 13, 2018, 132 Stat. 1910.)

CHAPTER 138—COOPERATIVE AGREEMENTS WITH NATO ALLIES AND OTHER COUNTRIES

Subchapter	Sec.
I. Acquisition and Cross-Servicing Agreements	2341
II. Other Cooperative Agreements	2350a

AMENDMENTS

1990—Pub. L. 101-510, div. A, title XIV, §1484(i)(7), Nov. 5, 1990, 104 Stat. 1718, inserted “Sec.” above “2341”.

1989—Pub. L. 101-189, div. A, title IX, §931(a)(1), Nov. 29, 1989, 103 Stat. 1531, substituted “COOPERATIVE AGREEMENTS WITH NATO ALLIES AND OTHER COUNTRIES” for “ACQUISITION AND CROSS-SERVICING AGREEMENTS WITH NATO ALLIES AND OTHER COUNTRIES” in chapter heading, and added subchapter analysis, consisting of subchapters I and II.

1987—Pub. L. 100-26, §7(a)(8), Apr. 21, 1987, 101 Stat. 278, substituted “ACQUISITION AND CROSS-SERVICING AGREEMENTS WITH NATO ALLIES AND OTHER COUNTRIES” for “NORTH ATLANTIC TREATY ORGANIZATION ACQUISITION AND CROSS-SERVICING AGREEMENTS” in chapter heading.

PRIOR PROVISIONS

Chapter 138 was originally comprised of sections 2321 to 2331. Sections 2321 to 2328, 2330, and 2331, were renumbered sections 2341 to 2348, 2349, and 2350, respectively, of this title, by Pub. L. 99-145, title XIII, §1304(a)(1), (3), Nov. 8, 1985, 99 Stat. 741.

Section 2329, added Pub. L. 96-323, §2(a), Aug. 4, 1980, 94 Stat. 1018, required the Secretary of Defense to prescribe regulations to implement this chapter, prior to repeal by Pub. L. 99-145, title XIII, §1304(a)(2), Nov. 8, 1985, 99 Stat. 741.

¹ So in original. Probably should be “section 3552(b)”.