

military department may use funds available to the Secretary under section 2807(a) or 18233(e) of this title to accelerate the design effort in connection with a military construction project for which the two-phase selection procedures described in subsection (c) are used to select the contractor for both the design and construction portion of the project before the project is specifically authorized by law and before funds are appropriated for the construction portion of the project. Notwithstanding the limitations contained in such sections, use of such funds for the design portion of a military construction project may continue despite the subsequent authorization of the project. The advance notice requirement of section 2807(b) of this title shall continue to apply whenever the estimated cost of the design portion of the project exceeds the amount specified in such section.

(2) Any military construction contract that provides for an accelerated design effort, as authorized by paragraph (1), shall include as a condition of the contract that the liability of the United States in a termination for convenience before funds are first made available for construction may not exceed an amount attributable to the final design of the project.

(3) For each fiscal year during which the authority provided by this subsection is in effect, the Secretary of a military department may select not more than two military construction projects to include the accelerated design effort authorized by paragraph (1) for each armed force under the jurisdiction of the Secretary. To be eligible for selection under this subsection, a request for the authorization of the project, and for the authorization of appropriations for the project, must have been included in the annual budget of the President for a fiscal year submitted to Congress under section 1105(a) of title 31.

(4) Not later than March 1, 2008, the Secretary of Defense shall submit to the congressional defense committees a report evaluating the usefulness of the authority provided by this subsection in expediting the design and construction of military construction projects. The authority provided by this subsection expires September 30, 2008, except that, if the report required by this paragraph is not submitted by March 1, 2008, the authority shall expire on that date.

(Added Pub. L. 104-106, div. D, title XLI, §4105(a)(1), Feb. 10, 1996, 110 Stat. 645; amended Pub. L. 105-85, div. A, title X, §1073(a)(44), Nov. 18, 1997, 111 Stat. 1902; Pub. L. 107-217, §3(b)(4), Aug. 21, 2002, 116 Stat. 1295; Pub. L. 108-178, §4(b)(3), Dec. 15, 2003, 117 Stat. 2641; Pub. L. 108-375, div. B, title XXVIII, §2807, Oct. 28, 2004, 118 Stat. 2123; Pub. L. 109-163, div. B, title XXVIII, §2807, Jan. 6, 2006, 119 Stat. 3508; Pub. L. 113-291, div. A, title VIII, §814, Dec. 19, 2014, 128 Stat. 3430; Pub. L. 115-91, div. A, title VIII, §823, Dec. 12, 2017, 131 Stat. 1465; Pub. L. 116-92, div. A, title XVII, §1731(a)(38), Dec. 20, 2019, 133 Stat. 1814.)

#### PRIOR PROVISIONS

A prior section 2305a was renumbered section 2438 of this title.

#### AMENDMENTS

2019—Subsec. (d)(1). Pub. L. 116-92 substituted “an indefinite” for “a indefinite”.

2017—Subsec. (d). Pub. L. 115-91 substituted “If the contract value exceeds \$4,000,000, the maximum number specified in the solicitation shall not exceed 5 unless—” and pars. (1) and (2) for “If the contract value exceeds \$4,000,000, the maximum number specified in the solicitation shall not exceed 5 unless the head of the contracting activity, delegable to a level no lower than the senior contracting official within the contracting activity, approves the contracting officer’s justification with respect to an individual solicitation that a number greater than 5 is in the Federal Government’s interest. The contracting officer shall provide written documentation of how a maximum number exceeding 5 is consistent with the purposes and objectives of the two-phase selection procedures.”

2014—Subsec. (d). Pub. L. 113-291 substituted “If the contract value exceeds \$4,000,000, the maximum number specified in the solicitation shall not exceed 5 unless the head of the contracting activity, delegable to a level no lower than the senior contracting official within the contracting activity, approves the contracting officer’s justification with respect to an individual solicitation that a number greater than 5 is in the Federal Government’s interest. The contracting officer shall provide written documentation of how a maximum number exceeding 5 is consistent with the purposes and objectives of the two-phase selection procedures.” for “The maximum number specified in the solicitation shall not exceed 5 unless the agency determines with respect to an individual solicitation that a specified number greater than 5 is in the Government’s interest and is consistent with the purposes and objectives of the two-phase selection process.”

2006—Subsec. (f)(2). Pub. L. 109-163, §2807(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “Any military construction contract that provides for an accelerated design effort, as authorized by paragraph (1), shall include as a condition of the contract that the liability of the United States in a termination for convenience may not exceed the actual costs incurred as of the termination date.”

Subsec. (f)(4). Pub. L. 109-163, §2807(b), substituted “2008” for “2007” wherever appearing.

2004—Subsec. (f). Pub. L. 108-375 added subsec. (f).

2003—Subsec. (c)(1). Pub. L. 108-178 substituted “chapter 11 of title 40” for “the Brooks Architect-Engineers Act (40 U.S.C. 541 et seq.)”.

2002—Subsec. (a). Pub. L. 107-217 substituted “chapter 11 of title 40” for “the Brooks Architect-Engineers Act (40 U.S.C. 541 et seq.)”.

1997—Subsec. (a). Pub. L. 105-85 substituted “(40 U.S.C.” for “(41 U.S.C.”.

#### EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-178 effective Aug. 21, 2002, see section 5 of Pub. L. 108-178, set out as a note under section 5334 of Title 5, Government Organization and Employees.

#### EFFECTIVE DATE

For effective date and applicability of section, see section 4401 of Pub. L. 104-106, set out as an Effective Date of 1996 Amendment note under section 2302 of this title.

### § 2306. Kinds of contracts

(a) The cost-plus-a-percentage-of-cost system of contracting may not be used. Subject to the limitation in the preceding sentence, the other provisions of this section, and other applicable provisions of law, the head of an agency, in awarding contracts under this chapter after using procedures other than sealed-bid procedures, may enter into any kind of contract that he considers will promote the best interests of the United States.

(b) Each contract awarded under this chapter after using procedures other than sealed-bid pro-

cedures shall contain a warranty, determined to be suitable by the head of the agency, that the contractor has employed or retained no person or selling agency to solicit or obtain the contract under an understanding or agreement for a commission, percentage, brokerage, or contingent fee, except a bona fide employee or established commercial or selling agency maintained by him to obtain business. If a contractor breaks such a warranty the United States may annul the contract without liability or may deduct the commission, percentage, brokerage, or contingent fee from the contract price or consideration. This subsection does not apply to a contract that is for an amount not greater than the simplified acquisition threshold or to a contract for the acquisition of commercial products or commercial services.

(c) A contract entered into by the United States in connection with a military construction project or a military family housing project may not use any form of cost-plus contracting. This prohibition is in addition to the prohibition specified in subsection (a) on the use of the cost-plus-a-percentage-of-cost system of contracting and applies notwithstanding a declaration of war or the declaration by the President of a national emergency under section 201 of the National Emergencies Act (50 U.S.C. 1621) that includes the use of the armed forces.

(d) The fee for performing a cost-plus-a-fixed-fee contract for experimental, developmental, or research work may not be more than 15 percent of the estimated cost of the contract, not including the fee. The fee for performing a cost-plus-a-fixed-fee contract for architectural or engineering services for a public work or utility plus the cost of those services to the contractor may not be more than 6 percent of the estimated cost of that work or project, not including fees. The fee for performing any other cost-plus-a-fixed-fee contract may not be more than 10 percent of the estimated cost of the contract, not including the fee. Determinations under this subsection of the estimated costs of a contract or project shall be made by the head of the agency at the time the contract is made.

(e)(1) Except as provided in paragraph (2), each cost contract and each cost-plus-a-fixed-fee contract shall provide for notice to the agency by the contractor before the making, under the prime contract, of—

- (A) a cost-plus-a-fixed-fee subcontract; or
- (B) a fixed-price subcontract or purchase order involving more than the greater of (i) the simplified acquisition threshold, or (ii) 5 percent of the estimated cost of the prime contract.

(2) Paragraph (1) shall not apply to a prime contract with a contractor that maintains a purchasing system approved by the contracting officer for the contract.

(f) So-called “truth-in-negotiations” provisions relating to cost or pricing data to be submitted by certain contractors and subcontractors are provided in section 2306a of this title.

(g) Multiyear contracting authority for the acquisition of services is provided in section 2306c of this title.

(h) Multiyear contracting authority for the purchase of property is provided in section 2306b of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 130; Pub. L. 87-653, §1(d), (e), Sept. 10, 1962, 76 Stat. 528; Pub. L. 90-378, §1, July 5, 1968, 82 Stat. 289; Pub. L. 90-512, Sept. 25, 1968, 82 Stat. 863; Pub. L. 96-513, title V, §511(77), Dec. 12, 1980, 94 Stat. 2926; Pub. L. 97-86, title IX, §§907(b), 909(b), Dec. 1, 1981, 95 Stat. 1117, 1118; Pub. L. 98-369, div. B, title VII, §2724, July 18, 1984, 98 Stat. 1192; Pub. L. 99-145, title XIII, §1303(a)(15), Nov. 8, 1985, 99 Stat. 739; Pub. L. 99-500, §101(c) [title X, §952(b)(1), (c)(1)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-169, and Pub. L. 99-591, §101(c) [title X, §952(b)(1), (c)(1)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-169; Pub. L. 99-661, div. A, title IX, formerly title IV, §952(b)(1), (c)(1), Nov. 14, 1986, 100 Stat. 3949, renumbered title IX, Pub. L. 100-26, §3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 101-189, div. A, title VIII, §805(a), Nov. 29, 1989, 103 Stat. 1488; Pub. L. 101-510, div. A, title VIII, §808, Nov. 5, 1990, 104 Stat. 1593; Pub. L. 102-25, title VII, §701(d)(3), Apr. 6, 1991, 105 Stat. 114; Pub. L. 103-355, title I, §§1021, 1022(b), title IV, §§4102(b), 4401(c), title VIII, §8105(a), Oct. 13, 1994, 108 Stat. 3257, 3260, 3340, 3348, 3392; Pub. L. 105-85, div. A, title X, §1073(a)(45), Nov. 18, 1997, 111 Stat. 1902; Pub. L. 106-398, §1 [[div. A], title VIII, §802(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A-205; Pub. L. 108-136, div. A, title VIII, §842, Nov. 24, 2003, 117 Stat. 1552; Pub. L. 112-81, div. B, title XXVIII, §2801(a), Dec. 31, 2011, 125 Stat. 1684; Pub. L. 115-232, div. A, title VIII, §836(c)(4), Aug. 13, 2018, 132 Stat. 1865.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2306(a) .....	41:153(a) (1st sentence). 41:153(b) (1st 14 words of 1st sentence).	Feb. 19, 1948, ch. 65, §4 (less words after semicolon of last sentence of (b), and less (c)), 62 Stat. 23.
2306(b) .....	41:153(a) (less 1st sentence).	
2306(c) .....	41:153(b) (2d sentence).	
2306(d) .....	41:153(b) (1st sentence, less 1st 14 words).	
2306(e) .....	41:153(b) (less 1st and 2d sentences; and less words after semicolon of last sentence).	

In subsection (a), the words “subject to subsections (b)–(e)” are substituted for the words “Except as provided in subsection (b) of this section”. The words “United States” are substituted for the word “Government”.

In subsection (b), the words “under section 2304 of this title” are substituted for the words “pursuant to section 151(c) of this title”. The words “full amount of such” and “violation” are omitted as surplusage.

In subsection (c), the words “under section 2304 of this title” are inserted for clarity.

CODIFICATION

Pub. L. 99-591 is a corrected version of Pub. L. 99-500.

PRIOR PROVISIONS

Provisions similar to those in subsec. (h)(11) of this section were contained in Pub. L. 100-526, title I, §104(a), Oct. 24, 1988, 102 Stat. 2624, which was set out below, prior to repeal by Pub. L. 101-189, §805(b).

AMENDMENTS

2018—Subsec. (b). Pub. L. 115-232 substituted “commercial products or commercial services” for “commercial items”.

2011—Subsec. (c). Pub. L. 112-81 added subsec. (c).

2003—Subsec. (e). Pub. L. 108-136 substituted “(1) Except as provided in paragraph (2), each” for “Each”, re-

designated former pars. (1) and (2) as subpars. (A) and (B) of par. (1), respectively, redesignated cls. (A) and (B) of former par. (2) as cls. (i) and (ii) of subpar. (B) of par. (1), respectively, and added par. (2).

2000—Subsec. (g). Pub. L. 106-398 amended subsec. (g) generally. Prior to amendment, subsec. (g) consisted of pars. (1) to (3) authorizing the head of an agency to enter into contracts for periods of not more than five years for certain types of services.

1997—Subsec. (h). Pub. L. 105-85 inserted “for the purchase of property” after “Multiyear contracting authority”.

1994—Subsec. (b). Pub. L. 103-355, §§ 4102(b), 8105(a), inserted at end “This subsection does not apply to a contract that is for an amount not greater than the simplified acquisition threshold or to a contract for the acquisition of commercial items.”

Subsec. (c). Pub. L. 103-355, § 1021, struck out subsec. (c) which read as follows: “No cost contract, cost-plus-a-fixed-fee contract, or incentive contract may be made under this chapter unless the head of the agency determines that such a contract is likely to be less costly to the United States than any other kind of contract or that it is impracticable to obtain property or services of the kind or quality required except under such a contract.”

Subsec. (e)(2)(A). Pub. L. 103-355, § 4401(c), substituted “simplified acquisition threshold” for “small purchase threshold”.

Subsec. (h). Pub. L. 103-355, § 1022(b), amended subsec. (h) generally. Prior to amendment, subsec. (h) related to requirements for multiyear contracts for purchase of property, including weapon systems and items and services associated with weapons systems.

1991—Subsec. (e)(2)(A). Pub. L. 102-25 substituted “the small purchase threshold” for “the small purchase amount under section 2304(g) of this title”.

1990—Subsec. (h)(1). Pub. L. 101-510, § 808(a), struck out “(other than contracts described in paragraph (6))” after “multiyear contracts” in introductory provisions and substituted “substantial savings of the total anticipated costs of carrying out the program through annual contracts” for “reduced total costs under the contract” in subpar. (A).

Subsec. (h)(6). Pub. L. 101-510, § 808(b), struck out “contracts for the construction, alteration, or major repair of improvements to real property or” after “not apply to”.

Subsec. (h)(9). Pub. L. 101-510, § 808(c)(1), inserted “for a defense acquisition program that has been specifically authorized by law to be carried out using multiyear contract authority” after “under this subsection” in introductory provisions.

Subsec. (h)(9)(C). Pub. L. 101-510, § 808(c)(2), struck out subpar. (C) which read as follows: “The proposed multiyear contract—

“(i) achieves a 10 percent savings as compared to the cost of current negotiated contracts, adjusted for changes in quantity and for inflation; or

“(ii) achieves a 10 percent savings as compared to annual contracts if no recent contract experience exists.”

1989—Subsec. (h)(9) to (11). Pub. L. 101-189 added pars. (9) to (11).

1986—Pub. L. 99-500 and Pub. L. 99-591, § 101(c) [§ 952(c)(1)], Pub. L. 99-661, § 952(c)(1), amended section identically, striking out “: cost or pricing data: truth in negotiation” after “contracts” in section catchline.

Subsec. (f). Pub. L. 99-500 and Pub. L. 99-591, § 101(c) [§ 952(b)(1)], Pub. L. 99-661, § 952(b)(1), amended generally subsec. (f) identically, substituting provision that “truth-in-negotiations” provisions relating to cost and pricing data for contractors and subcontractors are provided in section 2306a of this title for provision relating to certification by contractors and subcontractors on cost and pricing data, circumstances under which such certification will be required, circumstances under which such certification, although not required, may be requested, and evaluation of the accuracy of the data submitted.

1985—Subsec. (a). Pub. L. 99-145, § 1303(a)(15)(A), inserted a period at end.

Subsec. (b). Pub. L. 99-145, § 1303(a)(15)(B), struck out “of this title” before “shall contain”.

1984—Pub. L. 98-369, § 2724(f), substituted “Kinds of contracts; cost or pricing data: truth in negotiation” for “Kinds of contracts” in section catchline.

Subsec. (a). Pub. L. 98-369, § 2724(a), substituted “the limitation in the preceding sentence, the other provisions of this section, and other applicable provisions of law, the head of an agency, in awarding contracts under this chapter after using procedures other than sealed-bid procedures, may enter into” for “this limitation and subject to subsections (b)-(f), the head of any agency may, in negotiating contracts under section 2304 of this title, make”.

Subsec. (b). Pub. L. 98-369, § 2724(b), substituted “awarded under this chapter after using procedures other than sealed-bid procedures” for “negotiated under section 2304”.

Subsec. (c). Pub. L. 98-369, § 2724(c), substituted “this chapter” for “section 2304 of this title”.

Subsec. (e)(2). Pub. L. 98-369, § 2724(d), substituted “the greater of (A) the small purchase amount under section 2304(g) of this title, or (B)” for “\$25,000 or”.

Subsec. (f)(1). Pub. L. 98-369, § 2724(e)(A)(i), (ii), substituted “such contractor’s or subcontractor’s” for “his” and struck out “he” before “submitted was accurate” in provisions preceding subpar. (A).

Subsec. (f)(1)(A). Pub. L. 98-369, § 2724(3)(A)(iii), (vi), (vii), substituted “prime contract under this chapter entered into after using procedures other than sealed-bid procedures, if” for “negotiated prime contract under this title where”, “\$100,000” for “\$500,000”, and “before” for “prior to”.

Subsec. (f)(1)(B). Pub. L. 98-369, § 2724(e)(A)(iv), (vi), (vii), substituted “if” for “for which”, “\$100,000” for “\$500,000”, and “before” for “prior to”.

Subsec. (f)(1)(C). Pub. L. 98-369, § 2724(e)(A)(v)-(vii), substituted “when” for “where”, “\$100,000” for “\$500,000”, and “before” for “prior to”.

Subsec. (f)(1)(D). Pub. L. 98-369, § 2724(e)(A)(iv), (vi), (vii), substituted “if” for “for which”, “\$100,000” for “\$500,000”, and “before” for “prior to”.

Subsec. (f)(2). Pub. L. 98-369, § 2724(e)(B), (D), (E), struck out “negotiated” before “price as is practicable” and before “is based on adequate price competition”, redesignated as par. (3) the proviso formerly set out in this par., and as part of the redesignation substituted a period for “: *Provided, That*” after “or noncurrent”.

Subsec. (f)(3). Pub. L. 98-369, § 2724(e)(E), designated as par. (3) the proviso formerly set out in par. (2). Former par. (3) redesignated (5).

Subsec. (f)(4). Pub. L. 98-369, § 2724(e)(F), added par. (4).

Subsec. (f)(5). Pub. L. 98-369, § 2724(e)(C), redesignated former par. (3) as (5) and substituted “proposal for the contract, the discussions conducted on the proposal” for “negotiation”.

1981—Subsec. (f)(1). Pub. L. 97-86, § 907(b), substituted “\$500,000” for “\$100,000” in subpars. (A) to (D).

Subsec. (g)(1). Pub. L. 97-86, § 909(b)(1), struck out “to be performed outside the forty-eight contiguous States and the District of Columbia” after “(and items of supply related to such services)” in provisions preceding subpar. (A).

Subsec. (h). Pub. L. 97-86, § 909(b)(2), added subsec. (h).

1980—Subsec. (f). Pub. L. 96-513, § 511(77)(A), designated existing provisions as pars. (1) to (3) and in par. (1), as so designated, substituted “(A)” to “(D)” for “(1)” to “(4)”, respectively, “prior” for “Prior” wherever appearing, and “clause (C)” for “(3) above”.

Subsec. (g). Pub. L. 96-513, § 511(77)(B), in par. (1) substituted “that—” for “that:”, in par. (2) substituted “(A) The” for “(A) the”, “(B) Consideration” for “(B) consideration”, and “(C) Consideration” for “(C) consideration”, and in par. (3) substituted “from—” for “from:”.

1968—Subsec. (f). Pub. L. 90-512 inserted last par.

Subsec. (g). Pub. L. 90-378 added subsec. (g).  
 1962—Subsec. (a). Pub. L. 87-653, §1(d), substituted  
 “subsections (b)–(f)” for “subsections (b)–(e)”.

Subsec. (f). Pub. L. 87-653, §1(e), added subsec. (f).

#### EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115-232 effective Jan. 1, 2020, subject to a savings provision, see section 836(h) of Pub. L. 115-232, set out as an Effective Date of 2018 Amendment; Savings Provision note under section 453b of Title 6, Domestic Security.

#### EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112-81, div. B, title XXVIII, §2801(b), Dec. 31, 2011, 125 Stat. 1684, provided that: “Subsection (c) of section 2306 of title 10, United States Code, as added by subsection (a), shall apply with respect to any contract entered into by the United States in connection with a military construction project or a military family housing project after the date of the enactment of this Act [Dec. 31, 2011].”

#### 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 1986 AMENDMENT

Amendment by section 101(c) [title X, §952(b)(1)] of Pub. L. 99-500 and Pub. L. 99-591, and section 952(b)(1) of Pub. L. 99-661 applicable with respect to contracts or modifications on contracts entered into after end of 120-day period beginning Oct. 18, 1986, see section 101(c) of Pub. L. 99-500 and Pub. L. 99-591, and section 952(d) of Pub. L. 99-661, set out as a note under section 2306a of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable with respect to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98-369, set out as a note under section 2302 of this title.

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96-513, set out as a note under section 101 of this title.

#### EFFECTIVE DATE OF 1962 AMENDMENT

For effective date of amendment by Pub. L. 87-653 see section 1(h) of Pub. L. 87-653, set out as a note under section 2304 of this title.

#### TRANSITION PROVISION

Pub. L. 101-189, div. A, title VIII, §805(c), Nov. 29, 1989, 103 Stat. 1489, provided that: “Subparagraph (C) of paragraph (9) of section 2306(h) of title 10, United States Code, as added by subsection (a), does not apply to programs that are under a multiyear contract on the date of the enactment of this Act [Nov. 29, 1989].”

#### PREFERENCE FOR FIXED-PRICE CONTRACTS

Pub. L. 114-328, div. A, title VIII, §829, Dec. 23, 2016, 130 Stat. 2281, as amended by Pub. L. 116-92, div. A, title IX, §902(47), Dec. 20, 2019, 133 Stat. 1548, provided that:

“(a) ESTABLISHMENT OF PREFERENCE.—Not later than 180 days after the date of the enactment of this Act [Dec. 23, 2016], the Defense Federal Acquisition Regulation Supplement shall be revised to establish a preference for fixed-price contracts, including fixed-price incentive fee contracts, in the determination of contract type.

“(b) APPROVAL REQUIREMENT FOR CERTAIN COST-TYPE CONTRACTS.—

“(1) IN GENERAL.—A contracting officer of the Department of Defense may not enter into a cost-type contract described in paragraph (2) unless the contract is approved by the service acquisition executive

of the military department concerned, the head of the Defense Agency concerned, the commander of the combatant command concerned, or the Under Secretary of Defense for Acquisition and Sustainment (as applicable).

“(2) COVERED CONTRACTS.—A contract described in this paragraph is—

“(A) a cost-type contract in excess of \$50,000,000, in the case of a contract entered into on or after October 1, 2018, and before October 1, 2019; and

“(B) a cost-type contract in excess of \$25,000,000, in the case of a contract entered into on or after October 1, 2019.”

#### DETERMINATION OF CONTRACT TYPE FOR DEVELOPMENT PROGRAMS

Pub. L. 109-364, div. A, title VIII, §818(b)–(e), Oct. 17, 2006, 120 Stat. 2329, 2330, provided that:

“(b) MODIFICATION OF REGULATIONS.—Not later than 120 days after the date of the enactment of this Act [Oct. 17, 2006], the Secretary of Defense shall modify the regulations of the Department of Defense regarding the determination of contract type for development programs.

“(c) ELEMENTS.—As modified under subsection (b), the regulations shall require the Milestone Decision Authority for a major defense acquisition program to select the contract type for a development program at the time of a decision on Milestone B approval (or Key Decision Point B approval in the case of a space program) that is consistent with the level of program risk for the program. The Milestone Decision Authority may select—

“(1) a fixed-price type contract (including a fixed price incentive contract); or

“(2) a cost type contract.

“(d) CONDITIONS WITH RESPECT TO AUTHORIZATION OF COST TYPE CONTRACT.—As modified under subsection (b), the regulations shall provide that the Milestone Decision Authority may authorize the use of a cost type contract under subsection (c) for a development program only upon a written determination that—

“(1) the program is so complex and technically challenging that it would not be practicable to reduce program risk to a level that would permit the use of a fixed-price type contract; and

“(2) the complexity and technical challenge of the program is not the result of a failure to meet the requirements established in section 2366a of title 10, United States Code.

“(e) JUSTIFICATION FOR SELECTION OF CONTRACT TYPE.—As modified under subsection (b), the regulations shall require the Milestone Decision Authority to document the basis for the contract type selected for a program. The documentation shall include an explanation of the level of program risk for the program and, if the Milestone Decision Authority determines that the level of program risk is high, the steps that have been taken to reduce program risk and reasons for proceeding with Milestone B approval despite the high level of program risk.”

#### MULTIYEAR PROCUREMENT AUTHORITY; REQUESTS FOR RELIEF

Pub. L. 100-526, title I, §104(a), Oct. 24, 1988, 102 Stat. 2624, which provided that if for any fiscal year a multiyear contract was to be entered into under 10 U.S.C. 2306(h) was authorized by law for a particular procurement program and that authorization was subject to certain conditions established by law (including a condition as to cost savings to be achieved under the multiyear contract in comparison to specified other contracts) and if it appeared (after negotiations with contractors) that such savings could not be achieved, but that substantial savings could nevertheless be achieved through the use of a multiyear contract rather than specified other contracts, the President was to submit to Congress a request for relief from the specified cost savings that was to be achieved through

multiyear contracting for that program and that any such request by the President was to include details about the request for a multiyear contract, including details about the negotiated contract terms and conditions, was repealed and restated as subsec. (h)(11) of this section by Pub. L. 101-189, §805(b), (c).

TECHNICAL DATA AND COMPUTER SOFTWARE PACKAGES; PROCUREMENT; CONTRACTING PERIOD; DEFERRED ORDERING CLAUSE; EXEMPTIONS; REPORT TO CONGRESSIONAL COMMITTEES; DEFINITIONS

Pub. L. 94-361, title VIII, §805, July 14, 1976, 90 Stat. 932, required that military contracts entered into during Oct. 1, 1976 to Sept. 30, 1978 for development or procurement of a major system include a deferred ordering clause with an option to purchase from the contractor technical data and computer software packages relating to the system, directed that such clause require such packages to be sufficiently detailed so as to enable procurement of such system or subsystem from another contractor, authorized that a particular contract may be exempted from the deferred ordering clause if the procuring authority reports to the House and Senate Committees on Armed Services his intent to so contract with an explanation for the exemption, and set out definitions for “major system”, “deferred ordering”, and “technical data”.

**§ 2306a. Cost or pricing data: truth in negotiations**

(a) REQUIRED COST OR PRICING DATA AND CERTIFICATION.—(1) The head of an agency shall require offerors, contractors, and subcontractors to make cost or pricing data available as follows:

(A) An offeror for a prime contract under this chapter to be entered into using procedures other than sealed-bid procedures that is only expected to receive one bid shall be required to submit cost or pricing data before the award of a contract if—

(i) in the case of a prime contract entered into after June 30, 2018, the price of the contract to the United States is expected to exceed \$2,000,000; and

(ii) in the case of a prime contract entered into on or before June 30, 2018, the price of the contract to the United States is expected to exceed \$750,000.

(B) The contractor for a prime contract under this chapter shall be required to submit cost or pricing data before the pricing of a change or modification to the contract if—

(i) in the case of a change or modification made to a prime contract referred to in subparagraph (A)(i), the price adjustment is expected to exceed \$2,000,000;

(ii) in the case of a change or modification made after July 1, 2018, to a prime contract that was entered into on or before June 30, 2018, and that has been modified pursuant to paragraph (6), the price adjustment is expected to exceed \$750,000; and

(iii) in the case of a change or modification not covered by clause (i) or (ii), the price adjustment is expected to exceed \$750,000.

(C) An offeror for a subcontract (at any tier) of a contract under this chapter shall be required to submit cost or pricing data before the award of the subcontract if the prime contractor and each higher-tier subcontractor have been required to make available cost or pricing data under this section and—

(i) in the case of a subcontract under a prime contract referred to in subparagraph (A)(i), the price of the subcontract is expected to exceed \$2,000,000;

(ii) in the case of a subcontract entered into after July 1, 2018, under a prime contract that was entered into on or before June 30, 2018, and that has been modified pursuant to paragraph (6), the price of the subcontract is expected to exceed \$2,000,000; and

(iii) in the case of a subcontract not covered by clause (i) or (ii), the price of the subcontract is expected to exceed \$750,000.

(D) The subcontractor for a subcontract covered by subparagraph (C) shall be required to submit cost or pricing data before the pricing of a change or modification to the subcontract if—

(i) in the case of a change or modification to a subcontract referred to in subparagraph (C)(i) or (C)(ii), the price adjustment is expected to exceed \$2,000,000; and

(ii) in the case of a change or modification to a subcontract referred to in subparagraph (C)(iii), the price adjustment is expected to exceed \$750,000.

(2) A person required, as an offeror, contractor, or subcontractor, to submit cost or pricing data under paragraph (1) (or required by the head of the agency concerned to submit such data under subsection (c)) shall be required to certify that, to the best of the person’s knowledge and belief, the cost or pricing data submitted are accurate, complete, and current.

(3) Cost or pricing data required to be submitted under paragraph (1) (or under subsection (c)), and a certification required to be submitted under paragraph (2), shall be submitted—

(A) in the case of a submission by a prime contractor (or an offeror for a prime contract), to the contracting officer for the contract (or to a designated representative of the contracting officer); or

(B) in the case of a submission by a subcontractor (or an offeror for a subcontract), to the prime contractor.

(4) Except as provided under subsection (b), this section applies to contracts entered into by the head of an agency on behalf of a foreign government.

(5) A waiver of requirements for submission of certified cost or pricing data that is granted under subsection (b)(1)(C) in the case of a contract or subcontract does not waive the requirement under paragraph (1)(C) for submission of cost or pricing data in the case of subcontracts under that contract or subcontract unless the head of the procuring activity granting the waiver determines that the requirement under that paragraph should be waived in the case of such subcontracts and justifies in writing the reasons for the determination.

(6) Upon the request of a contractor that was required to submit cost or pricing data under paragraph (1) in connection with a prime contract entered into on or before June 30, 2018, the head of the agency that entered into such contract shall modify the contract to reflect subparagraphs (B)(ii) and (C)(ii) of paragraph (1).