

“(1) the development of cost-effective intellectual property strategies;

“(2) the assessment and management of the value and acquisition costs of intellectual property during acquisition and sustainment activities (including source selection evaluation factors) throughout the acquisition lifecycle for any acquisition program selected by such Secretary; and

“(3) the use of a commercial product (as defined in section 103 of title 41, United States Code, as in effect on January 1, 2020), commercial service (as defined in section 103a of title 41, United States Code, as in effect on January 1, 2020), or nondevelopmental item (as defined in section 110 of title 41, United States Code) as an alternative to a product or service to be specifically developed for a selected acquisition program, including evaluation of the benefits of reduced risk regarding cost, schedule, and performance associated with commercial products, commercial services, and nondevelopmental items.

“(b) ACTIVITIES.—Activities carried out under the pilot program may include the following:

“(1) Establishment of a team of Department of Defense and private sector subject matter experts (which may include the cadre of intellectual property experts established under section 2322(b) of title 10, United States Code) to—

“(A) recommend acquisition programs to be selected for the pilot program established under subsection (a);

“(B) recommend criteria for the consideration of types of commercial products, commercial services, or nondevelopmental items that can be used as an alternative to a product or service to be specifically developed for a selected acquisition program; or

“(C) identify, to the maximum extent practicable at each milestone established for each selected acquisition program, intellectual property evaluation techniques to obtain quantitative and qualitative analysis of intellectual property during the procurement, production and deployment, and operations and support phases for the each selected acquisition program.

“(2) Assessment of commercial valuation techniques for intellectual property for use by the Department of Defense.

“(3) Assessment of the feasibility of agency-level oversight to standardize intellectual property evaluation practices and procedures.

“(4) Assessment of contracting mechanisms to speed delivery of intellectual property to the Armed Forces or reduce sustainment costs.

“(5) Assessment of agency acquisition planning to ensure procurement of appropriate intellectual property deliverables and intellectual property rights necessary for Government-planned sustainment activities.

“(6) Engagement with the private sector to—

“(A) support the development of strategies and program requirements to aid in acquisition planning for intellectual property;

“(B) support the development and improvement of intellectual property strategies as part of life-cycle sustainment plans; and

“(C) propose and implement alternative and innovative methods of intellectual property valuation, prioritization, and evaluation techniques for intellectual property.

“(7) Recommendations to the relevant program manager of an acquisition program selected under subsection (a), including evaluation techniques and contracting mechanisms for acquisition and sustainment activities.

“(c) REPORT.—Not later than November 1, 2020, and annually thereafter through November 1, 2023, the Secretary of Defense, in coordination with the Secretaries concerned, shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a joint report on the pilot program conducted

under this section. The report shall, at a minimum, include—

“(1) a description of the acquisition programs selected by the Secretary concerned;

“(2) a description of the specific activities in subsection (c) that were performed under each program;

“(3) an assessment of the effectiveness of the activities;

“(4) an assessment of improvements to acquisition or sustainment activities related to the pilot program; and

“(5) an assessment of the results related to the pilot program, including any cost savings and improvement to mission success during the operations and support phase of the selected acquisition program.”

**§ 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**

(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

(2) 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 the performance of such contract or subcontract is undertaken as a joint venture that meets the requirements of paragraph (2) of that subsection.

(b) ELIGIBLE WORK.—(1) Work performed on Indian lands meets the requirements of this paragraph if—

(A) not less than 40 percent of the workers directly engaged in the performance of the work are Indians; or

(B) the contractor or subcontractor has an agreement with the tribal government having jurisdiction over such Indian lands that provides goals for training and development of the Indian workforce and Indian management.

(2) A joint venture undertaking to perform a contract or subcontract meets the requirements of this paragraph if—

(A) an Indian tribe or tribally owned corporation owns at least 50 percent of the joint venture;

(B) the activities of the joint venture under the contract or subcontract provide employ-

ment opportunities for Indians either directly or through the purchase of products or services for the performance of such contract or subcontract; and

(C) the Indian tribe or tribally owned corporation manages the performance of such contract or subcontract.

(c) EXTENT OF CREDIT.—The amount of the credit given toward the attainment of any subcontracting goal under subsection (a) shall be—

(1) in the case of work performed as described in subsection (a)(1), the value of the work performed; and

(2) in the case of a contract or subcontract undertaken to be performed by a joint venture as described in subsection (a)(2), an amount equal to the amount of the contract or subcontract multiplied by the percentage of the tribe's or tribally owned corporation's ownership interest in the joint venture.

(d) REGULATIONS.—The Secretary of Defense shall prescribe regulations for the implementation of this section.

(e) DEFINITIONS.—In this section:

(1) The term “Indian lands” has the meaning given that term by section 4(4) of the Indian Gaming Regulatory Act (25 U.S.C. 2703(4)).

(2) The term “Indian” has the meaning given that term by section 4(d) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304(d)).

(3) The term “Indian tribe” has the meaning given that term by section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304(e)).

(4) The term “tribally owned corporation” means a corporation owned entirely by an Indian tribe.

(Added Pub. L. 102–484, div. A, title VIII, § 801(g)(1), Oct. 23, 1992, 106 Stat. 2445; amended Pub. L. 104–201, div. A, title X, § 1074(a)(13), Sept. 23, 1996, 110 Stat. 2659; Pub. L. 115–232, div. A, title VIII, § 812(a)(2)(C)(vii), Aug. 13, 2018, 132 Stat. 1847; Pub. L. 116–92, div. A, title XVII, § 1731(a)(39)(B), Dec. 20, 2019, 133 Stat. 1814.)

CODIFICATION

Section, as added by Pub. L. 102–484, consists of text of Pub. L. 101–189, div. A, title VIII, § 832, Nov. 29, 1989, 103 Stat. 1508, revised by Pub. L. 102–484 by substituting “section 2323 of this title” for “section 1207 of the National Defense Authorization Act for Fiscal Year 1987 (10 U.S.C. 2301 note)” in subsec. (a). Section 832 of Pub. L. 101–189, which was formerly set out as a note under section 2301 of this title, was repealed by Pub. L. 102–484, div. A, title VIII, § 801(h)(5), Oct. 23, 1992, 106 Stat. 2445.

AMENDMENTS

2019—Pub. L. 116–92, § 1731(a)(39)(B)(i), struck out “and certain institutions of higher education” after “businesses” in section catchline.

Subsec. (e)(1). Pub. L. 116–92, § 1731(a)(39)(B)(ii)(I), struck out “102 Stat. 2468;” before “25 U.S.C. 2703(4).”

Subsec. (e)(2). Pub. L. 116–92, § 1731(a)(39)(B)(ii)(II), substituted “(25 U.S.C. 5304(d))” for “(25 U.S.C. 450b(d))”.

Subsec. (e)(3). Pub. L. 116–92, § 1731(a)(39)(B)(ii)(III), substituted “(25 U.S.C. 5304(e))” for “(25 U.S.C. 450b(e))”.

2018—Subsec. (a). Pub. L. 115–232 struck out “section 2323 of this title and” after “implementation of”.