

(F) periodically review product support arrangements between the product support integrators and product support providers to ensure the arrangements are consistent with the overall product support strategy;

(G) prior to each change in the product support strategy or every five years, whichever occurs first, revalidate any business-case analysis performed in support of the product support strategy;

(H) ensure that the product support strategy maximizes small business participation at the appropriate tiers; and

(I) ensure that product support arrangements for the weapon system describe how such arrangements will ensure efficient procurement, management, and allocation of Government-owned parts inventories in order to prevent unnecessary procurements of such parts.

(c) DEFINITIONS.—In this section:

(1) PRODUCT SUPPORT.—The term “product support” means the package of support functions required to field and maintain the readiness and operational capability of major weapon systems, subsystems, and components, including all functions related to weapon system readiness.

(2) PRODUCT SUPPORT ARRANGEMENT.—The term “product support arrangement” means a contract, task order, or any type of other contractual arrangement, or any type of agreement or non-contractual arrangement within the Federal Government, for the performance of sustainment or logistics support required for major weapon systems, subsystems, or components. The term includes arrangements for any of the following:

- (A) Performance-based logistics.
- (B) Sustainment support.
- (C) Contractor logistics support.
- (D) Life-cycle product support.
- (E) Weapon systems product support.

(3) PRODUCT SUPPORT INTEGRATOR.—The term “product support integrator” means an entity within the Federal Government or outside the Federal Government charged with integrating all sources of product support, both private and public, defined within the scope of a product support arrangement.

(4) PRODUCT SUPPORT PROVIDER.—The term “product support provider” means an entity that provides product support functions. The term includes an entity within the Department of Defense, an entity within the private sector, or a partnership between such entities.

(5) MAJOR WEAPON SYSTEM.—The term “major weapon system” means a major system within the meaning of section 2302d(a) of this title.

(Added Pub. L. 112-239, div. A, title VIII, § 823(a)(1), Jan. 2, 2013, 126 Stat. 1830; amended Pub. L. 113-66, div. A, title VIII, § 823, Dec. 26, 2013, 127 Stat. 809.)

#### AMENDMENTS

2013—Subsec. (b)(2)(I). Pub. L. 113-66 added subpar. (I).

#### SIMILAR PROVISIONS

Provisions similar to this section were contained in section 805 of Pub. L. 111-84, which was set out as a

note under section 2302 of this title prior to repeal by Pub. L. 112-239, div. A, title VIII, § 823(b), Jan. 2, 2013, 126 Stat. 1832.

#### § 2337a. Assessment, management, and control of operating and support costs for major weapon systems

(a) GUIDANCE REQUIRED.—The Secretary of Defense shall issue and maintain guidance on actions to be taken to assess, manage, and control Department of Defense costs for the operation and support of major weapon systems.

(b) ELEMENTS.—The guidance required by subsection (a) shall, at a minimum—

(1) be issued in conjunction with the comprehensive guidance on life-cycle management and the development and implementation of product support strategies for major weapon systems required by section 2337 of this title;

(2) require the military departments to retain each estimate of operating and support costs that is developed at any time during the life cycle of a major weapon system, together with supporting documentation used to develop the estimate;

(3) require the military departments to update estimates of operating and support costs periodically throughout the life cycle of a major weapon system, to determine whether preliminary information and assumptions remain relevant and accurate, and identify and record reasons for variances;

(4) establish policies and procedures for the collection, organization, maintenance, and availability of standardized data on operating and support costs for major weapon systems in accordance with section 2222 of this title;

(5) establish standard requirements for the collection and reporting of data on operating and support costs for major weapon systems by contractors performing weapon system sustainment functions in an appropriate format, and develop contract clauses to ensure that contractors comply with such requirements;

(6) require the military departments—

(A) to collect and retain data from operational and developmental testing and evaluation on the reliability and maintainability of major weapon systems; and

(B) to use such data to inform system design decisions, provide insight into sustainment costs, and inform estimates of operating and support costs for such systems;

(7) require the military departments to ensure that sustainment factors are fully considered at key life-cycle management decision points and that appropriate measures are taken to reduce operating and support costs by influencing system design early in development, developing sound sustainment strategies, and addressing key drivers of costs;

(8) require the military departments to conduct an independent logistics assessment of each major weapon system prior to key acquisition decision points (including milestone decisions) to identify features that are likely to drive future operating and support costs, changes to system design that could reduce such costs, and effective strategies for managing such costs;

(9) include—

(A) reliability metrics for major weapon systems; and

(B) requirements on the use of metrics under subparagraph (A) as triggers—

- (i) to conduct further investigation and analysis into drivers of those metrics; and
- (ii) to develop strategies for improving reliability, availability, and maintainability of such systems at an affordable cost; and

(10) require the military departments to conduct periodic reviews of operating and support costs of major weapon systems after such systems achieve initial operational capability to identify and address factors resulting in growth in operating and support costs and adapt support strategies to reduce such costs.

(c) RETENTION OF DATA ON OPERATING AND SUPPORT COSTS.—

(1) IN GENERAL.—The Director of Cost Assessment and Program Evaluation shall be responsible for developing and maintaining a database on operating and support estimates, supporting documentation, and actual operating and support costs for major weapon systems.

(2) SUPPORT.—The Secretary of Defense shall ensure that the Director, in carrying out such responsibility—

(A) promptly receives the results of all cost estimates and cost analyses conducted by the military departments with regard to operating and support costs of major weapon systems;

(B) has timely access to any records and data of the military departments (including classified and proprietary information) that the Director considers necessary to carry out such responsibility; and

(C) with the concurrence of the Under Secretary of Defense for Acquisition and Sustainment, may direct the military departments to collect and retain information necessary to support the database.

(d) MAJOR WEAPON SYSTEM DEFINED.—In this section, the term “major weapon system” has the meaning given that term in section 2379(f) of this title.

(Added Pub. L. 115–91, div. A, title VIII, § 836(a)(1), Dec. 12, 2017, 131 Stat. 1472; amended Pub. L. 115–232, div. A, title X, § 1081(a)(20), Aug. 13, 2018, 132 Stat. 1984.)

#### 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”.

#### STANDARDIZED POLICY GUIDANCE FOR CALCULATING AIRCRAFT OPERATION AND SUSTAINMENT COSTS

Pub. L. 116–92, div. A, title XVII, § 1747, Dec. 20, 2019, 133 Stat. 1847, provided that: “Not later than 270 days after the date of the enactment of this Act [Dec. 20, 2019], the Under Secretary of Defense for Acquisition and Sustainment, in coordination with the Director of Cost Analysis and Program Evaluation and in consulta-

tion with the Secretary of each of the military services, shall develop and implement standardized policy guidance for calculating aircraft operation and sustainment costs for the Department of Defense. Such guidance shall provide for a standardized calculation of—

- “(1) aircraft cost per flying hour;
- “(2) aircraft cost per aircraft tail per year;
- “(3) total cost of ownership per flying hour for aircraft systems;
- “(4) average annual operation and sustainment cost per aircraft; and
- “(5) any other cost metrics the Under Secretary of Defense determines appropriate.”

#### 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 the 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. Prohibition on criminal history inquiries by contractors prior to conditional offer

(a) LIMITATION ON CRIMINAL HISTORY INQUIRIES.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the head of an agency—

(A) may not require that an individual or sole proprietor who submits a bid for a contract to disclose criminal history record information regarding that individual or sole proprietor before determining the apparent awardee; and