

110–181, div. A, title VIII, § 827(a)(1), Jan. 28, 2008, 122 Stat. 228.)

AMENDMENTS

2008—Subsecs. (a), (b). Pub. L. 110–181 added subsecs. (a) and (b) and struck out former subsecs. (a) and (b) which read as follows:

“(a) MARKET RESEARCH.—Before purchasing a product listed in the latest edition of the Federal Prison Industries catalog under section 4124(d) of title 18, the Secretary of Defense shall conduct market research to determine whether the Federal Prison Industries product is comparable to products available from the private sector that best meet the Department’s needs in terms of price, quality, and time of delivery.

“(b) COMPETITION REQUIREMENT.—If the Secretary determines that a Federal Prison Industries product is not comparable in price, quality, or time of delivery to products available from the private sector that best meet the Department’s needs in terms of price, quality, and time of delivery, the Secretary shall use competitive procedures for the procurement of the product or shall make an individual purchase under a multiple award contract. In conducting such a competition or making such a purchase, the Secretary shall consider a timely offer from Federal Prison Industries.”

2006—Subsec. (b). Pub. L. 109–163 substituted “competition” for “competiton” in text.

2002—Subsec. (a). Pub. L. 107–314, § 819(a)(1)(A), substituted “Market Research” for “Market Research Before Purchase” in heading and “comparable to products available from the private sector that best meet the Department’s needs in terms of price, quality, and time of delivery” for “comparable in price, quality, and time of delivery to products available from the private sector”.

Subsec. (b). Pub. L. 107–314, § 819(a)(1)(B), added subsec. (b) and struck out heading and text of former subsec. (b). Text read as follows: “If the Secretary determines that a Federal Prison Industries product is not comparable in price, quality, and time of delivery to products available from the private sector, the Secretary shall use competitive procedures for the procurement of the product. In conducting such a competition, the Secretary shall consider a timely offer from Federal Prison Industries for award in accordance with the specifications and evaluation factors specified in the solicitation.”

Subsec. (c) to (g). Pub. L. 107–314, § 819(a)(1)(C), added subsecs. (c) to (g).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–181, div. A, title VIII, § 827(a)(2), Jan. 28, 2008, 122 Stat. 228, as amended by Pub. L. 111–383, div. A, title X, § 1075(f)(4), Jan. 7, 2011, 124 Stat. 4376, provided that: “The amendment made by paragraph (1) [amending this section] shall take effect 60 days after the date of the enactment of this Act [Jan. 28, 2008].”

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–314, div. A, title VIII, § 819(a)(2), Dec. 2, 2002, 116 Stat. 2613, provided that: “Paragraph (1) [amending this section] and the amendments made by such paragraph shall take effect as of October 1, 2001.”

EFFECTIVE DATE

Pub. L. 107–107, div. A, title VIII, § 811(b), Dec. 28, 2001, 115 Stat. 1181, provided that: “Section 2410n of title 10, United States Code (as added by subsection (a)), shall apply to purchases initiated on or after October 1, 2001.”

REGULATORY IMPLEMENTATION

Pub. L. 107–314, div. A, title VIII, § 819(b), Dec. 2, 2002, 116 Stat. 2613, provided that:

“(1) Proposed revisions to the Department of Defense Supplement to the Federal Acquisition Regulation to implement this section shall be published not later

than 90 days after the date of the enactment of this Act [Dec. 2, 2002], and not less than 60 days shall be provided for public comment on the proposed revisions.

“(2) Final regulations shall be published not later than 180 days after the date of the enactment of this Act and shall be effective on the date that is 30 days after the date of the publication.”

LIST OF PRODUCTS FOR WHICH FEDERAL PRISON INDUSTRIES HAS SIGNIFICANT MARKET SHARE

Pub. L. 110–181, div. A, title VIII, § 827(b), Jan. 28, 2008, 122 Stat. 228, provided that:

“(1) INITIAL LIST.—Not later than 60 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense shall publish a list of product categories for which Federal Prison Industries’ share of the Department of Defense market is greater than 5 percent, based on the most recent fiscal year for which data is available.

“(2) MODIFICATION.—The Secretary may modify the list published under paragraph (1) at any time if the Secretary determines that new data require adding a product category to the list or omitting a product category from the list.

“(3) CONSULTATION.—The Secretary shall carry out this subsection in consultation with the Administrator for Federal Procurement Policy.”

§ 2410o. Multiyear procurement authority: purchase of dinitrogen tetroxide, hydrazine, and hydrazine-related products

(a) TEN-YEAR CONTRACT PERIOD.—The Secretary of Defense may enter into a contract for a period of up to 10 years for the purchase of dinitrogen tetroxide, hydrazine, and hydrazine-related products for the support of a United States national security program or a United States space program.

(b) EXTENSIONS.—A contract entered into for more than one year under the authority of subsection (a) may be extended for a total of not more than 10 years pursuant to any option or options set forth in the contract.

(Added Pub. L. 107–314, div. A, title VIII, § 826(a), Dec. 2, 2002, 116 Stat. 2617.)

§ 2410p. Contracts: limitations on lead system integrators

(a) IN GENERAL.—Except as provided in subsection (b), no entity performing lead system integrator functions in the acquisition of a major system by the Department of Defense may have any direct financial interest in the development or construction of any individual system or element of any system of systems.

(b) EXCEPTION.—An entity described in subsection (a) may have a direct financial interest in the development or construction of an individual system or element of a system of systems if—

(1) the Secretary of Defense certifies to the Committees on Armed Services of the Senate and the House of Representatives that—

(A) the entity was selected by the Department of Defense as a contractor to develop or construct the system or element concerned through the use of competitive procedures; and

(B) the Department took appropriate steps to prevent any organizational conflict of interest in the selection process; or

(2) the entity was selected by a subcontractor to serve as a lower-tier subcontractor,

through a process over which the entity exercised no control.

(c) CONSTRUCTION.—Nothing in this section shall be construed to preclude an entity described in subsection (a) from performing work necessary to integrate two or more individual systems or elements of a system of systems with each other.

(Added Pub. L. 109-364, div. A, title VIII, § 807(a)(1), Oct. 17, 2006, 120 Stat. 2315.)

EFFECTIVE DATE

Pub. L. 109-364, div. A, title VIII, § 807(a)(3), Oct. 17, 2006, 120 Stat. 2316, provided that: “Section 2410p of title 10, United States Code, as added by paragraph (1), shall apply with respect to contracts entered into after December 31, 2006.”

UPDATE OF REGULATIONS ON LEAD SYSTEM INTEGRATORS

Pub. L. 109-364, div. A, title VIII, § 807(b), Oct. 17, 2006, 120 Stat. 2316, which required the Secretary of Defense to update acquisition regulations regarding lead system integrators, was repealed by Pub. L. 115-232, div. A, title VIII, § 812(b)(35), Aug. 13, 2018, 132 Stat. 1849.

PROHIBITION ON NEW LEAD SYSTEMS INTEGRATORS

Pub. L. 110-181, div. A, title VIII, § 802, Jan. 28, 2008, 122 Stat. 206, as amended by Pub. L. 110-417, [div. A], title I, § 112, Oct. 14, 2008, 122 Stat. 4374; Pub. L. 116-92, div. A, title IX, § 902(100), Dec. 20, 2019, 133 Stat. 1555, provided that:

“(a) PROHIBITIONS ON THE USE OF LEAD SYSTEMS INTEGRATORS.—

“(1) PROHIBITION ON NEW LEAD SYSTEMS INTEGRATORS.—Effective October 1, 2010, the Department of Defense may not award a new contract for lead systems integrator functions in the acquisition of a major system to any entity that was not performing lead systems integrator functions in the acquisition of the major system prior to the date of the enactment of this Act [Jan. 28, 2008].

“(2) PROHIBITION ON LEAD SYSTEMS INTEGRATORS BEYOND LOW-RATE INITIAL PRODUCTION.—Effective on the date of the enactment of this Act, the Department of Defense may award a new contract for lead systems integrator functions in the acquisition of a major system only if—

“(A) the major system has not yet proceeded beyond low-rate initial production; or

“(B) the Secretary of Defense determines in writing that it would not be practicable to carry out the acquisition without continuing to use a contractor to perform lead systems integrator functions and that doing so is in the best interest of the Department.

“(3) REQUIREMENTS RELATING TO DETERMINATIONS.—A determination under paragraph (2)(B)—

“(A) shall specify the reasons why it would not be practicable to carry out the acquisition without continuing to use a contractor to perform lead systems integrator functions (including a discussion of alternatives, such as the use of the Department of Defense workforce, or a system engineering and technical assistance contractor);

“(B) shall include a plan for phasing out the use of contracted lead systems integrator functions over the shortest period of time consistent with the interest of the national defense;

“(C) may not be delegated below the level of the Under Secretary of Defense for Acquisition and Sustainment; and

“(D) shall be provided to the Committees on Armed Services of the Senate and the House of Representatives at least 45 days before the award of a contract pursuant to the determination.

“(b) ACQUISITION WORKFORCE.—

“(1) REQUIREMENT.—The Secretary of Defense shall ensure that the acquisition workforce is of the appropriate size and skill level necessary—

“(A) to accomplish inherently governmental functions related to acquisition of major systems; and

“(B) to effectuate the purpose of subsection (a) to minimize and eventually eliminate the use of contractors to perform lead systems integrator functions.

“(2) REPORT.—The Secretary shall include an update on the progress made in complying with paragraph (1) in the annual report required by section 820 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364; 120 Stat. 2330) [10 U.S.C. 1701 note].

“(c) EXCEPTION FOR CONTRACTS FOR OTHER MANAGEMENT SERVICES.—The Department of Defense may continue to award contracts for the procurement of services the primary purpose of which is to perform acquisition support functions with respect to the development or production of a major system, if the following conditions are met with respect to each such contract:

“(1) The contract prohibits the contractor from performing inherently governmental functions.

“(2) The Department of Defense organization responsible for the development or production of the major system ensures that Federal employees are responsible for—

“(A) determining courses of action to be taken in the best interest of the government; and

“(B) determining best technical performance for the warfighter.

“(3) The contract requires that the prime contractor for the contract may not advise or recommend the award of a contract or subcontract for the development or production of the major system to an entity owned in whole or in part by the prime contractor.

“(d) DEFINITIONS.—In this section:

“(1) LEAD SYSTEMS INTEGRATOR.—The term ‘lead systems integrator’ means—

“(A) a prime contractor for the development or production of a major system, if the prime contractor is not expected at the time of award to perform a substantial portion of the work on the system and the major subsystems; or

“(B) a prime contractor under a contract for the procurement of services the primary purpose of which is to perform acquisition functions closely associated with inherently governmental functions with respect to the development or production of a major system.

“(2) MAJOR SYSTEM.—The term ‘major system’ has the meaning given such term in section 2302d of title 10, United States Code.

“(3) LOW-RATE INITIAL PRODUCTION.—The term ‘low-rate initial production’ has the meaning given such term in section 2400 of title 10, United States Code.

“(e) STATUS OF FUTURE COMBAT SYSTEMS PROGRAM LEAD SYSTEM INTEGRATOR.—

“(1) LEAD SYSTEMS INTEGRATOR.—In the case of the Future Combat Systems program, the prime contractor of the program shall be considered to be a lead systems integrator until 45 days after the Secretary of the Army certifies in writing to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] that such contractor is no longer serving as the lead systems integrator.

“(2) NEW CONTRACTS.—In applying subsection (a)(1) or (a)(2), any modification to the existing contract for the Future Combat Systems program, for the purpose of entering into full-rate production of major systems or subsystems, shall be considered a new contract.”

§ 2410q. Multiyear contracts: purchase of electricity from renewable energy sources

(a) MULTIYEAR CONTRACTS AUTHORIZED.—Subject to subsection (b), the Secretary of Defense