

vided by a contractor pursuant to this section may be considered in determining whether or not a contractor has a sound system of internal controls, but shall not be the sole basis for such a determination.

“(d) COMPTROLLER GENERAL REVIEW.—Not later than one year after the date of the enactment of this Act, the Comptroller General of the United States shall initiate a review of the documentation required by subsection (a). Not later than 90 days after completion of the review, the Comptroller General shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the results of the review, with findings and recommendations for improving the audit processes of the Defense Contract Audit Agency.”

ADDITIONAL ACCESS TO CONTRACTOR AND SUBCONTRACTOR RECORDS IN THE UNITED STATES CENTRAL COMMAND THEATER OF OPERATIONS

Pub. L. 112-81, div. A, title VIII, § 842, Dec. 31, 2011, 125 Stat. 1513, as amended by Pub. L. 113-291, div. A, title VIII, § 842(c)(2), Dec. 19, 2014, 128 Stat. 3456, provided that:

“(a) DEPARTMENT OF DEFENSE CONTRACTS, GRANTS, AND COOPERATIVE AGREEMENTS.—

“(1) IN GENERAL.—Not later than 30 days after the date of the enactment of this Act [Dec. 31, 2011], the Secretary of Defense shall revise the Department of Defense Supplement to the Federal Acquisition Regulation to require that—

“(A) the clause described in paragraph (2) shall be included in each covered contract, grant, and cooperative agreement of the Department of Defense that is awarded on or after the date of the enactment of this Act; and

“(B) to the maximum extent practicable, each covered contract, grant, and cooperative agreement of the Department that is awarded before the date of the enactment of this Act shall be modified to include the clause described in paragraph (2).

“(2) CLAUSE.—The clause described in this paragraph is a clause authorizing the Secretary, upon a written determination pursuant to paragraph (3), to examine any records of the contractor, the recipient of a grant or cooperative agreement, or any subcontractor or subgrantee under such contract, grant, or cooperative agreement to the extent necessary to ensure that funds available under the contract, grant, or cooperative agreement—

“(A) are not subject to extortion or corruption; and

“(B) are not provided directly or indirectly to persons or entities that are actively supporting an insurgency or otherwise actively opposing United States or coalition forces in a contingency operation.

“(3) WRITTEN DETERMINATION.—The authority to examine records pursuant to the contract clause described in paragraph (2) may be exercised only upon a written determination by the contracting officer or comparable official responsible for a grant or cooperative agreement, upon a finding by the Commander of the United States Central Command, that there is reason to believe that funds available under the contract, grant, or cooperative agreement concerned may have been subject to extortion or corruption or may have been provided directly or indirectly to persons or entities that are actively supporting an insurgency or otherwise actively opposing United States or coalition forces in a contingency operation.

“(4) FLOWDOWN.—A clause described in paragraph (2) shall also be required in any subcontract or subgrant under a covered contract, grant, or cooperative agreement if the subcontract or subgrant has an estimated value in excess of \$100,000.

“(b) REPORTS.—Not later than March 1 of each of 2013, 2014, and 2015, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the

House of Representatives] a report on the use of the authority provided by this section in the preceding calendar year. Each report shall identify, for the calendar year covered by such report, each instance in which the Department of Defense exercised the authority provided under this section to examine records, explain the basis for the action taken, and summarize the results of any examination of records so undertaken.[.] Any report under this subsection may be submitted in classified form.

“(c) DEFINITIONS.—In this section:

“(1) The term ‘contingency operation’ has the meaning given that term in section 101(a)(13) of title 10, United States Code.

“(2) The term ‘covered contract, grant, or cooperative agreement’ means a contract, grant, or cooperative agreement with an estimated value in excess of \$100,000 that will be performed in the United States Central Command theater of operations in support of a contingency operation.

“(d) SUNSET.—

“(1) IN GENERAL.—The clause described by subsection (a)(2) shall not be required in any contract, grant, or cooperative agreement that is awarded after the date that is three years after the date of the enactment of the Carl Levin and Howard P. ‘Buck’ McKeon National Defense Authorization Act for Fiscal Year 2015 [Dec. 19, 2014].

“(2) CONTINUING EFFECT OF CLAUSES INCLUDED BEFORE SUNSET.—Any clause described by subsection (a)(2) that is included in a contract, grant, or cooperative agreement pursuant to this section before the date specified in paragraph (1) shall remain in effect in accordance with its terms.”

EXEMPTION OF FUNCTIONS

Functions with respect to purchases authorized to be made outside limits of United States or District of Columbia under Foreign Assistance Act of 1961, as amended, as exempt, see Ex. Ord. No. 11223, May 12, 1965, 30 F.R. 6635, set out as a note under section 2393 of Title 22, Foreign Relations and Intercourse.

FOREIGN CONTRACTORS

Secretaries of Defense, Army, Navy, or Air Force, or their designees, to determine, prior to exercising authority provided in amendment of this section by Pub. L. 89-607 to exempt certain contracts with foreign contractors from requirement of an examination-of-records clause, that all reasonable efforts have been made to include such examination-of-records clause, as required by par. (11) of Part I of Ex. Ord. No. 10789, and that alternate sources of supply are not reasonably available, see par. (11) of Part I of Ex. Ord. No. 10789, Nov. 14, 1958, 23 F.R. 8897, as amended, set out as a note under section 1431 of Title 50, War and National Defense.

§ 2313a. Defense Contract Audit Agency: annual report

(a) REQUIRED REPORT.—The Director of the Defense Contract Audit Agency shall prepare an annual report of the activities of the Agency during the previous fiscal year. The report shall include, at a minimum—

(1) a description of significant problems, abuses, and deficiencies encountered during the conduct of contractor audits;

(2) statistical tables showing—

(A) the total number and dollar value of audit reports completed and pending, set forth separately by type of audit;

(B) the priority given to each type of audit;

(C) the length of time taken for each type of audit, both from the date of receipt of a qualified incurred cost submission and from the date the audit begins;

(D) the sustained questioned costs, set forth separately by type of audit, both as a total value and as a percentage of the total questioned costs for the audit;

(E) the total number and dollar value of incurred cost audits completed, and the method by which such incurred cost audits were completed;

(F) the aggregate cost of performing audits, set forth separately by type of audit;

(G) the ratio of sustained questioned costs to the aggregate costs of performing audits, set forth separately by type of audit; and

(H) the total number and dollar value of audits that are pending for a period longer than one year as of the end of the fiscal year covered by the report, and the fiscal year in which the qualified submission was received, set forth separately by type of audit;

(3) a summary of any recommendations of actions or resources needed to improve the audit process;

(4) a summary, set forth separately by dollar amount and percentage, of indirect costs for independent research and development incurred by contractors in the previous fiscal year;

(5) a summary, set forth separately by dollar amount and percentage, of indirect costs for bid and proposal costs incurred by contractors in the previous fiscal year;

(6) a description of outreach actions toward industry to promote more effective use of audit resources; and

(7) any other matters the Director considers appropriate.

(b) SUBMISSION OF ANNUAL REPORT.—Not later than March 30 of each year, the Director shall submit to the congressional defense committees the report required by subsection (a).

(c) PUBLIC AVAILABILITY.—Not later than 60 days after the submission of an annual report to the congressional defense committees under subsection (b), the Director shall make the report available on the publicly available website of the Agency or such other publicly available website as the Director considers appropriate.

(d) DEFINITIONS.—

(1) The terms “incurred cost audit” and “qualified incurred cost submission” have the meaning given those terms in section 2313b of this title.

(2) The term “sustained questioned costs” means questioned costs that were recovered by the Federal Government as a result of contract negotiations related to such questioned costs.

(Added Pub. L. 112–81, div. A, title VIII, § 805(a), Dec. 31, 2011, 125 Stat. 1486; amended Pub. L. 114–92, div. A, title VIII, § 893(b), Nov. 25, 2015, 129 Stat. 952; Pub. L. 114–328, div. A, title VIII, § 824(d)(1), Dec. 23, 2016, 130 Stat. 2279; Pub. L. 115–91, div. A, title VIII, § 811(d)(1), title X, § 1081(d)(5), Dec. 12, 2017, 131 Stat. 1460, 1600.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1835(c), Jan. 1, 2021, 134 Stat. 4151, 4240, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation

and applicability of existing law, this section is transferred to chapter 279 of this title, as added by section 1835(a) of Pub. L. 116–283, inserted after section 3845, and redesignated as section 3847 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

2017—Subsec. (a)(2)(A). Pub. L. 115–91, § 811(d)(1)(A)(i), inserted “and dollar value” after “number” and “”, set forth separately by type of audit” after “pending”.

Subsec. (a)(2)(C). Pub. L. 115–91, § 811(d)(1)(A)(ii), inserted “”, both from the date of receipt of a qualified incurred cost submission and from the date the audit begins” after “audit”.

Subsec. (a)(2)(D). Pub. L. 115–91, § 811(d)(1)(A)(iii), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: “the total costs of sustained or recovered costs both as a total number and as a percentage of questioned costs; and”.

Subsec. (a)(2)(E) to (H). Pub. L. 115–91, § 811(d)(1)(A)(iv), (v), added subpars. (E) to (H) and struck out former subpar. (E) which read as follows: “an assessment of the number and types of audits pending for a period longer than allowed pursuant to guidance of the Defense Contract Audit Agency;”.

Subsec. (a)(4), (5). Pub. L. 115–91, § 1081(d)(5), amended Pub. L. 114–328, § 824(d)(1)(B). See 2016 Amendment note below.

Subsec. (d). Pub. L. 115–91, § 811(d)(1)(B), added subsec. (d).

2016—Subsec. (a)(4), (5). Pub. L. 114–328, § 824(d)(1)(B), as amended by Pub. L. 115–91, § 1081(d)(5), added pars. (4) and (5). Former pars. (4) and (5) redesignated (6) and (7), respectively.

Subsec. (a)(6), (7). Pub. L. 114–328, § 824(d)(1)(A), redesignated pars. (4) and (5) as (6) and (7), respectively.

2015—Subsec. (a)(2)(D). Pub. L. 114–92, § 893(b)(1), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: “the total dollar value of questioned costs (including a separate category for the dollar value of unsupported costs); and”.

Subsec. (a)(4), (5). Pub. L. 114–92, § 893(b)(2)–(4), added par. (4) and redesignated former par. (4) as (5).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–91, div. A, title X, § 1081(d), Dec. 12, 2017, 131 Stat. 1599, provided that the amendment made by section 1081(d)(5) is effective as of Dec. 23, 2016, and as if included in Pub. L. 114–328 as enacted.

EFFECTIVE DATE OF 2016 AMENDMENT

Pub. L. 114–328, div. A, title VIII, § 824(d)(2), Dec. 23, 2016, 130 Stat. 2279, provided that: “The amendments made by this subsection [amending this section] shall take effect on October 1, 2018.”

§ 2313b. Performance of incurred cost audits

(a) COMPLIANCE WITH STANDARDS OF RISK AND MATERIALITY.—Not later than October 1, 2020, the Secretary of Defense shall comply with commercially accepted standards of risk and materiality in the performance of each incurred cost audit of costs associated with a contract of the Department of Defense.

(b) CONDITIONS FOR THE USE OF QUALIFIED AUDITORS TO PERFORM INCURRED COST AUDITS.—

(1) To support the need of the Department of Defense for timely and effective incurred cost au-