

EFFECTIVE DATE OF 2016 AMENDMENT

Pub. L. 114-328, div. A, title VIII, §846, Dec. 23, 2016, 130 Stat. 2292, provided that the amendment made by section 846(3) is effective Sept. 30, 2017.

§ 2335. Prohibition on collection of political information

(a) PROHIBITION ON REQUIRING SUBMISSION OF POLITICAL INFORMATION.—The head of an agency may not require a contractor to submit political information related to the contractor or a sub-contractor at any tier, or any partner, officer, director, or employee of the contractor or sub-contractor—

(1) as part of a solicitation, request for bid, request for proposal, or any other form of communication designed to solicit offers in connection with the award of a contract for procurement of property or services; or

(2) during the course of contract performance as part of the process associated with modifying a contract or exercising a contract option.

(b) SCOPE.—The prohibition under this section applies to the procurement of commercial products and commercial services, the procurement of commercial-off-the-shelf-items, and the non-commercial procurement of supplies, property, services, and manufactured items, irrespective of contract vehicle, including contracts, purchase orders, task or deliver orders under indefinite delivery/indefinite quantity contracts, blanket purchase agreements, and basic ordering agreements.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as—

(1) waiving, superseding, restricting, or limiting the application of the Federal Election Campaign Act of 1971 (52 U.S.C. 30101 et seq.) or preventing Federal regulatory or law enforcement agencies from collecting or receiving information authorized by law; or

(2) precluding the Defense Contract Audit Agency from accessing and reviewing certain information, including political information, for the purpose of identifying unallowable costs and administering cost principles established pursuant to section 2324 of this title.

(d) DEFINITIONS.—In this section:

(1) CONTRACTOR.—The term “contractor” includes contractors, bidders, and offerors, and individuals and legal entities who would reasonably be expected to submit offers or bids for Federal Government contracts.

(2) POLITICAL INFORMATION.—The term “political information” means information relating to political spending, including any payment consisting of a contribution, expenditure, independent expenditure, or disbursement for an electioneering communication that is made by the contractor, any of its partners, officers, directors or employees, or any of its affiliates or subsidiaries to a candidate or on behalf of a candidate for election for Federal office, to a political committee, to a political party, to a third party entity with the intention or reasonable expectation that it would use the payment to make independent expenditures or electioneering communications, or that is otherwise made with respect

to any election for Federal office, party affiliation, and voting history.

(3) OTHER TERMS.—Each of the terms “contribution”, “expenditure”, “independent expenditure”, “candidate”, “election”, “electioneering communication”, and “Federal office” has the meaning given that term in the Federal Election Campaign Act of 1971 (52 U.S.C. 30101 et seq.).

(Added Pub. L. 112-81, div. A, title VIII, §823(a), Dec. 31, 2011, 125 Stat. 1502; amended Pub. L. 113-291, div. A, title X, §1071(f)(17), Dec. 19, 2014, 128 Stat. 3511; Pub. L. 115-91, div. A, title X, §1081(a)(32), Dec. 12, 2017, 131 Stat. 1596; Pub. L. 115-232, div. A, title VIII, §836(c)(10), Aug. 13, 2018, 132 Stat. 1866.)

TRANSFER OF SECTION

Pub. L. 116-283, div. A, title XVIII, §§1801(d), 1862(b), Jan. 1, 2021, 134 Stat. 4151, 4277, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 363 of this title, as amended by section 1862(a) of Pub. L. 116-283, inserted after section 4659, and redesignated as section 4660 of this title. See Effective Date of 2021 Amendment note below.

REFERENCES IN TEXT

The Federal Election Campaign Act of 1971, referred to in subsecs. (c)(1) and (d)(3), is Pub. L. 92-225, Feb. 7, 1972, 86 Stat. 3, which is classified principally to chapter 301 (§30101 et seq.) of Title 52, Voting and Elections. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

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

2017—Subsecs. (c)(1), (d)(3). Pub. L. 115-91 substituted “(52 U.S.C. 30101 et seq.)” for “(2 U.S.C. 431 et seq.)”.

2014—Subsec. (d)(2). Pub. L. 113-291, §1071(f)(17)(A), redesignated last sentence as par. (3).

Subsec. (d)(3). Pub. L. 113-291, §1071(f)(17)(B)(ii), (iii), substituted “that term” for “the term” and “Federal Election Campaign” for “Federal Campaign”.

Pub. L. 113-291, §1071(f)(17)(B)(i), which directed amendment of par. (3) by inserting “OTHER TERMS.—” before “each of”, was executed by making the insertion before “Each of” to reflect the probable intent of Congress.

Pub. L. 113-291, §1071(f)(17)(A), redesignated last sentence of par. (2) as (3).

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 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.

[§ 2336. Renumbered § 2679]

§ 2337. Life-cycle management and product support

(a) GUIDANCE ON LIFE-CYCLE MANAGEMENT.—The Secretary of Defense shall issue and main-

tain comprehensive guidance on life-cycle management and the development and implementation of product support strategies for covered systems. The guidance issued pursuant to this subsection shall—

(1) maximize competition and make the best possible use of available Department of Defense and industry resources at the system, subsystem, and component levels; and

(2) maximize value to the Department of Defense by providing the best possible product support outcomes at the lowest operations and support cost.

(b) **LIFE CYCLE SUSTAINMENT PLAN.**—Before granting Milestone B approval (or the equivalent), the milestone decision authority shall ensure that each covered system has an approved life cycle sustainment plan. The life cycle sustainment plan shall include—

(1) a comprehensive product support strategy;

(2) performance goals, including key performance parameters for sustainment, key system attributes of the covered system, and other appropriate metrics;

(3) an approved life-cycle cost estimate for the covered system;

(4) affordability constraints and key cost factors that could affect the operating and support costs of the covered system;

(5) sustainment risks and proposed mitigation plans for such risks;

(6) engineering and design considerations that support cost-effective sustainment of the covered system;

(7) a technical data and intellectual property management plan for product support; and

(8) major maintenance and overhaul requirements that will be required during the life cycle of the covered system.

(c) **PRODUCT SUPPORT MANAGERS.**—

(1) **REQUIREMENT.**—The Secretary of Defense shall require that each covered system be supported by a product support manager in accordance with this subsection.

(2) **RESPONSIBILITIES.**—A product support manager for a covered system shall—

(A) develop, update, and implement a life cycle sustainment plan described in subsection (b);

(B) ensure the life cycle sustainment plan is informed by appropriate predictive analysis and modeling tools that can improve material availability and reliability, increase operational availability rates, and reduce operation and sustainment costs;

(C) conduct appropriate cost analyses to validate the product support strategy and life cycle sustainment plan, including cost-benefit analyses as outlined in Office of Management and Budget Circular A-94;

(D) ensure achievement of desired product support outcomes through development and implementation of appropriate product support arrangements;

(E) adjust performance requirements and resource allocations across product support integrators and product support providers as necessary to optimize implementation of the product support strategy;

(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 covered 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.

(d) **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 covered systems, subsystems, and components, including all functions related to covered 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 covered 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) **COVERED SYSTEM.**—The term “covered system” means—

(A) a major defense acquisition program as defined in section 2430 of this title; or

(B) an acquisition program or project that is carried out using the rapid fielding or rapid prototyping acquisition pathway under section 804 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92; 10 U.S.C. 2302 note) that is estimated by the Secretary of Defense to require an eventual total expenditure described in section 2430(a)(1)(B).

(6) MILESTONE B APPROVAL.—The term “Milestone B approval” has the meaning given that term in section 2366(e)(7) of this title.

(7) MILESTONE DECISION AUTHORITY.—The term “milestone decision authority” has the meaning given in section 2431a(e)(5) 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; Pub. L. 116-283, div. A, title VIII, § 802(a), Jan. 1, 2021, 134 Stat. 3731.)

TRANSFER OF SECTION

Pub. L. 116-283, div. A, title XVIII, §§ 1801(d), 1848(d)(1), Jan. 1, 2021, 134 Stat. 4151, 4258, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 323 of this title, as added by section 1848(a) of Pub. L. 116-283, inserted after section 4323, and redesignated as section 4324 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

2021—Pub. L. 116-283, § 802(a)(1)–(3), substituted “covered system” for “major weapon system” in subsec. (c)(1) and introductory provisions of subsec. (c)(2) and for “weapon system” in subsecs. (c)(2)(I) and (d)(1) and substituted “covered systems” for “major weapon systems” wherever appearing.

Subsec. (b). Pub. L. 116-283, § 802(a)(5), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 116-283, § 802(a)(4), redesignated subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (c)(2)(A). Pub. L. 116-283, § 802(a)(6)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “develop and implement a comprehensive product support strategy for the weapon system;”.

Subsec. (c)(2)(B). Pub. L. 116-283, § 802(a)(6)(B), substituted “ensure the life cycle sustainment plan is informed by” for “use”.

Subsec. (c)(2)(C). Pub. L. 116-283, § 802(a)(6)(C), inserted “and life cycle sustainment plan” after “product support strategy”.

Subsec. (d). Pub. L. 116-283, § 802(a)(4), redesignated subsec. (c) as (d).

Subsec. (d)(5). Pub. L. 116-283, § 802(a)(7)(A), amended par. (5) generally. Prior to amendment, par. (5) defined “major weapon system”.

Subsec. (d)(6), (7). Pub. L. 116-283, § 802(a)(7)(B), added pars. (6) and (7).

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

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1848(d)(1) of 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.

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 ac-

tions 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 maintain-