

(Added Pub. L. 111-383, div. A, title VIII, §861(a), Jan. 7, 2011, 124 Stat. 4288, §2546; amended Pub. L. 116-92, div. A, title IX, §902(78), Dec. 20, 2019, 133 Stat. 1552; renumbered §3103, Pub. L. 116-283, div. A, title XVIII, §1808(a)(2), Jan. 1, 2021, 134 Stat. 4159.)

AMENDMENTS

2021—Pub. L. 116-283 renumbered section 2546 of this title as this section.

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.

**§ 3104. Acquisition-related functions of chiefs of the armed forces**

(a) PERFORMANCE OF CERTAIN ACQUISITION-RELATED FUNCTIONS.—The Secretary of Defense shall ensure that the Chief of Staff of the Army, the Chief of Naval Operations, the Chief of Staff of the Air Force, the Commandant of the Marine Corps, and the Chief of Space Operations assist the Secretary of the military department concerned in the performance of the following acquisition-related functions of such department:

(1) The development of requirements for equipping the armed force concerned (subject, where appropriate, to validation by the Joint Requirements Oversight Council pursuant to section 181 of this title).

(2) Decisions regarding the balancing of resources and priorities, and associated trade-offs among cost, schedule, technical feasibility, and performance on major defense acquisition programs.

(3) The coordination of measures to control requirements creep in the defense acquisition system.

(4) The recommendation of trade-offs among life-cycle cost, schedule, and performance objectives, and procurement quantity objectives, to ensure acquisition programs deliver best value in meeting the approved military requirements.

(5) Termination of development or procurement programs for which life-cycle cost, schedule, and performance expectations are no longer consistent with approved military requirements and levels of priority, or which no longer have approved military requirements.

(6) The development and management of career paths in acquisition for military personnel (as required by section 1722a of this title).

(7) The assignment and training of contracting officer representatives when such representatives are required to be members of the armed forces because of the nature of the contract concerned.

(b) ADHERENCE TO REQUIREMENTS IN MAJOR DEFENSE ACQUISITION PROGRAMS.—(1) The Secretary of the military department concerned shall ensure that the program capability document supporting a Milestone B or subsequent decision for a major defense acquisition program may not be approved until the chief of the armed force concerned determines in writing

that the requirements in the document are necessary and realistic in relation to the program cost and fielding targets established under section 4271(a) of this title.

(2) Consistent with the performance of duties under subsection (a), the Chief of the armed force concerned, or in the case of a joint program the chiefs of the armed forces concerned, with respect to major defense acquisition programs, shall—

(A) concur with the need for a materiel solution as identified in the Materiel Development Decision Review prior to entry into the Materiel Solution Analysis Phase under Department of Defense Instruction 5000.02;

(B) concur with the cost, schedule, technical feasibility, and performance trade-offs that have been made with regard to the program before Milestone A approval is granted under section 4251 of this title;

(C) concur that appropriate trade-offs among cost, schedule, technical feasibility, and performance objectives have been made to ensure that the program is affordable when considering the per unit cost and the total life-cycle cost before Milestone B approval is granted under section 4252 of this title; and

(D) concur that the requirements in the program capability document are necessary and realistic in relation to program cost and fielding targets as required by paragraph (1) before Milestone C approval is granted.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to affect the assignment of functions under section 7014(c)(1)(A), section 8014(c)(1)(A), or section 9014(c)(1)(A) of this title, except as explicitly provided in this section.

(d) DEFINITIONS.—In this section:

(1) The term “requirements creep” means the addition of new technical or operational specifications after a requirements document is approved by the appropriate validation authority for the requirements document.

(2) The term “requirements document” means a document produced in the requirements process that is provided for an acquisition program to guide the subsequent development, production, and testing of the program and that—

(A) justifies the need for a materiel approach, or an approach that is a combination of materiel and non-materiel, to satisfy one or more specific capability gaps;

(B) details the information necessary to develop an increment of militarily useful, logistically supportable, and technically mature capability, including key performance parameters; or

(C) identifies production attributes required for a single increment of a program.

(3) The term “program capability document” has the meaning provided in section 4401(b)(5) of this title.

(Added Pub. L. 111-383, div. A, title VIII, §861(a), Jan. 7, 2011, 124 Stat. 4289, §2547; amended Pub. L. 112-239, div. A, title IX, §951(c), Jan. 2, 2013, 126 Stat. 1891; Pub. L. 114-92, div. A, title VIII, §802(b), Nov. 25, 2015, 129 Stat. 879; Pub. L. 114-328, div. A, title VIII, §807(c), Dec. 23, 2016,

130 Stat. 2261; Pub. L. 115–91, div. A, title VIII, § 833, Dec. 12, 2017, 131 Stat. 1468; Pub. L. 115–232, div. A, title VIII, § 809(a), Aug. 13, 2018, 132 Stat. 1840; Pub. L. 116–92, div. A, title XVII, § 1731(a)(52), Dec. 20, 2019, 133 Stat. 1815; renumbered § 3104 and amended Pub. L. 116–283, div. A, title IX, § 924(b)(32), title XVIII, § 1808(a)(2), (b)(2), Jan. 1, 2021, 134 Stat. 3825, 4159, 4160.)

#### CODIFICATION

In addition to being transferred to this section as part of section 2547 of this title, subsec. (b) of section 2547 of this title was also transferred to section 4274 of this title and redesignated as subsec. (a) of such section 4274 by Pub. L. 116–283, div. A, title XVIII, § 1847(e)(4)(B), Jan. 1, 2021, 134 Stat. 4257.

#### AMENDMENTS

2021—Pub. L. 116–283, § 1808(a)(2), renumbered section 2547 of this title as this section.

Subsec. (a). Pub. L. 116–283, § 924(b)(32), substituted “the Commandant of the Marine Corps, and the Chief of Space Operations” for “and the Commandant of the Marine Corps”.

Subsec. (b)(1). Pub. L. 116–283, § 1808(b)(2)(A), substituted “section 4271(a)” for “section 2448a(a)”.

Subsec. (b)(2)(B). Pub. L. 116–283, § 1808(b)(2)(B), substituted “section 4251” for “section 2366a”.

Subsec. (b)(2)(C). Pub. L. 116–283, § 1808(b)(2)(C), substituted “section 4252” for “section 2366b”.

Subsec. (d)(3). Pub. L. 116–283, § 1808(b)(2)(D), substituted “section 4401(b)(5)” for “section 2446a(b)(5)”.

#### EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1808(a)(2), (b)(2) 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.

### § 3105. Elements of the defense acquisition system: performance assessments

(a) PERFORMANCE ASSESSMENTS REQUIRED.—The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Sustainment, the Director of Procurement and Acquisition Policy, and the Director of the Office of Performance Assessment and Root Cause Analysis, shall issue guidance, with detailed implementation instructions, for the Department of Defense to provide for periodic independent performance assessments of elements of the defense acquisition system for the purpose of—

(1) determining the extent to which such elements of the defense acquisition system deliver value to the Department of Defense, taking into consideration the performance elements identified in subsection (b);

(2) assisting senior officials of the Department of Defense in identifying and developing lessons learned from best practices and shortcomings in the performance of such elements of the defense acquisition system; and

(3) assisting senior officials of the Department of Defense in developing acquisition workforce excellence under section 1701a of this title.

(b) AREAS CONSIDERED IN PERFORMANCE ASSESSMENTS.—(1) Each performance assessment conducted pursuant to subsection (a) shall consider, at a minimum—

(A) the extent to which acquisitions conducted by the element of the defense acquisition

system under review meet applicable cost, schedule, and performance objectives; and

(B) the staffing and quality of the acquisition workforce and the effectiveness of the management of the acquisition workforce, including workforce incentives and career paths.

(2) The Secretary of Defense shall ensure that the performance assessments required by this section are appropriately tailored to reflect the diverse nature of the work performed by each element of the defense acquisition system. In addition to the mandatory areas under paragraph (1), a performance assessment may consider, as appropriate, specific areas of acquisition concern, such as—

(A) the selection of contractors, including—

(i) the extent of competition and the use of exceptions to competition requirements;

(ii) compliance with Department of Defense policies regarding the participation of small business concerns and various categories of small business concerns, including the use of contract bundling and the availability of non-bundled contract vehicles;

(iii) the quality of market research;

(iv) the effective consideration of contractor past performance; and

(v) the number of bid protests, the extent to which such bid protests have been successful, and the reasons for such success;

(B) the negotiation of contracts, including—

(i) the appropriate application of sections 3701 through 3708 of this title (relating to truth in negotiations);

(ii) the appropriate use of contract types appropriate to specific procurements;

(iii) the appropriate use of performance requirements;

(iv) the appropriate acquisition of technical data and other rights and assets necessary to support long-term sustainment and follow-on procurement; and

(v) the timely definitization of any undefinitized contract actions; and

(C) the management of contractor performance, including—

(i) the assignment of appropriately qualified contracting officer representatives and other contract management personnel;

(ii) the extent of contract disputes, the reasons for such disputes, and the extent to which they have been successfully addressed;

(iii) the appropriate consideration of long-term sustainment and energy efficiency objectives; and

(iv) the appropriate use of integrated testing.

(c) CONTENTS OF GUIDANCE.—The guidance issued pursuant to subsection (a) shall ensure that each element of the defense acquisition system is subject to a performance assessment under this section not less often than once every four years, and shall address, at a minimum—

(1) the designation of elements of the defense acquisition system that are subject to performance assessment at an organizational level that ensures such assessments can be performed in an efficient and integrated manner;