

list of Regular Army, prior to repeal by Pub. L. 96-513, title II, § 202, title VII, § 701, Dec. 12, 1980, 94 Stat. 2878, 2955, effective Sept. 15, 1981.

AMENDMENTS

2021—Pub. L. 116-283, § 1811(e)(2), transferred subsec. (a) of section 2305 of this title to this section and redesignated pars. (2) to (5) thereof as subsecs. (b) to (e), respectively.

Subsec. (a). Pub. L. 116-283, § 1811(e)(3)(A), (E)(i), inserted heading and redesignated subpars. (A) to (C) of par. (1) as pars. (1) to (3), respectively.

Subsec. (a)(1). Pub. L. 116-283, § 1811(e)(3)(E), redesignated par. (1)(A) as (1), inserted heading, redesignated cls. (i) to (iii) as subpars. (A) to (C), respectively, and realigned margins. Amendment directing redesignation of cls. “(i), (ii), and (iii)” as subpars. (A) to (C) was executed as if it had read “(i), (ii), and (iii)”, to reflect the probable intent of Congress.

Subsec. (a)(2). Pub. L. 116-283, § 1811(e)(3)(A), (B), (D), redesignated par. (1)(B) as (2), inserted heading, and realigned margin, redesignated cls. (i) and (ii) as subpars. (A) and (B), respectively, and substituted “chapter 137 legacy provisions” for “this chapter” in introductory provisions and in subpar. (A). Former par. (2) redesignated subsec. (b).

Subsec. (a)(3). Pub. L. 116-283, § 1811(e)(3)(A), (C), (D), redesignated par. (1)(C) as (3), inserted heading, and realigned margin and redesignated cls. (i) to (iii) as subpars. (A) to (C), respectively. Amendment directing redesignation of cls. “(i), (ii), and (iii)” as subpars. (A) to (C) was executed as if it had read “(i), (ii), and (iii)”, to reflect the probable intent of Congress. Former par. (3) redesignated subsec. (c).

Subsec. (b). Pub. L. 116-283, § 1811(e)(2), (4), redesignated subsec. (a)(2) as (b), inserted heading, and substituted “subsection (a)” for “paragraph (1)” in introductory provisions, redesignated subpar. (A) and its cls. (i) and (ii) as par. (1) and subpars. (A) and (B), respectively, and redesignated subpar. (B), its cls. (i) and (ii), and each of their subcls. (I) and (II) as par. (2), subpars. (A) and (B), and cls. (i) and (ii), respectively.

Subsec. (c). Pub. L. 116-283, § 1811(e)(2), (5)(A), (B), redesignated subsec. (a)(3) as (c), inserted heading, redesignated subpars. (A) to (E) as pars. (1) to (5), respectively, and realigned margins.

Subsec. (c)(1). Pub. L. 116-283, § 1811(e)(5)(A), (C), inserted heading, substituted “paragraph (3)” for “subparagraph (C)” in two places, redesignated cls. (i) to (iii) as subpars. (A) to (C), respectively, and, in subpar. (C) as redesignated, redesignated subcls. (I) to (III) as cls. (i) to (iii), respectively.

Subsec. (c)(2). Pub. L. 116-283, § 1811(e)(5)(B), (D), redesignated par. (3)(B) as (2), inserted heading, and substituted “paragraph (1)(C)” for “clause (iii) of subparagraph (A)”.

Subsec. (c)(3). Pub. L. 116-283, § 1811(e)(5)(B), (E), redesignated par. (3)(C) as (3), inserted heading, and substituted “section 3403(d)(1)(B)” for “section 2304a(d)(1)(B)” in introductory provisions; redesignated cl. (i) as subpar. (A) and substituted “paragraph (1)(B)” for “clause (ii) of subparagraph (A)”; and redesignated cl. (ii) and its subcls. (I) and (II) as subpar. (B) and cls. (i) and (ii), respectively, and substituted “subparagraph (A)” for “clause (i)” in introductory provisions, “paragraph (1)(C)” for “clause (iii) of subparagraph (A)” in cl. (i), and “section 3406(c)” for “section 2304c(b)” in cl. (ii).

Subsec. (c)(4). Pub. L. 116-283, § 1811(e)(5)(B), (F), redesignated par. (3)(D) as (4), inserted heading, substituted “paragraph (3)” for “subparagraph (C)” in introductory provisions, and redesignated cls. (i) to (iii) as subpars. (A) to (C), respectively.

Subsec. (c)(5). Pub. L. 116-283, § 1811(e)(5)(B), (G), redesignated par. (3)(E) as (5), inserted heading, and substituted “Paragraph (3)” for “Subparagraph (C)”.

Subsec. (d). Pub. L. 116-283, § 1811(e)(2), (6), redesignated subsec. (a)(4) as (d), inserted heading, substituted “this section” for “this subsection” in introductory provisions, and redesignated subpars. (A) and (B) as pars. (1) and (2), respectively.

Subsec. (e). Pub. L. 116-283, § 1811(e)(2), (7), redesignated subsec. (a)(5) as (e) and inserted heading.

EFFECTIVE DATE

Section and 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 an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3207. Assessment before contract for acquisition of supplies is entered into

The Secretary of Defense shall ensure that before a contract for the delivery of supplies to the Department of Defense is entered into—

(1) when the appropriate officials of the Department are making an assessment of the most advantageous source for acquisition of the supplies (considering quality, price, delivery, and other factors), there is a review of the availability and cost of each item of supply—

(A) through the supply system of the Department of Defense; and

(B) under standard Government supply contracts, if the item is in a category of supplies defined under regulations of the Secretary of Defense as being potentially available under a standard Government supply contract; and

(2) there is a review of both the procurement history of the item and a description of the item, including, when necessary for an adequate description of the item, a picture, drawing, diagram, or other graphic representation of the item.

(Added and amended Pub. L. 116-283, div. A, title XVIII, § 1811(f), Jan. 1, 2021, 134 Stat. 4173.)

CODIFICATION

The text of subsec. (c) of section 2305 of this title, which was transferred to this section and amended by Pub. L. 116-283, § 1811(f)(2), was based on Pub. L. 98-525, title XII, § 1213(a), Oct. 19, 1984, 98 Stat. 2591.

PRIOR PROVISIONS

A prior section 3207, act Aug. 10, 1956, ch. 1041, 70A Stat. 173; Pub. L. 85-155, title I, § 101(5), Aug. 21, 1957, 71 Stat. 376; Pub. L. 90-130, § 1(9)(C), (D), Nov. 8, 1967, 81 Stat. 375, prescribed authorized strength of Army Medical Specialist Corps in commissioned officers on active list of Regular Army, prior to repeal by Pub. L. 96-513, title II, § 202, title VII, § 701, Dec. 12, 1980, 94 Stat. 2878, 2955, effective Sept. 15, 1981.

AMENDMENTS

2021—Pub. L. 116-283, § 1811(f)(2), transferred subsec. (c) of section 2305 of this title to this section and struck out subsec. (c) designation at beginning.

EFFECTIVE DATE

Section and 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 an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3208. Planning for future competition in contracts for major systems

(a) DEVELOPMENT CONTRACT.—

(1) DETERMINING WHETHER PROPOSALS ARE NECESSARY.—The Secretary of Defense shall

ensure that, in preparing a solicitation for the award of a development contract for a major system, the head of an agency consider requiring in the solicitation that an offeror include in its offer proposals described in paragraph (2). In determining whether to require such proposals, the head of the agency shall give due consideration to the purposes for which the system is being procured and the technology necessary to meet the system's required capabilities. If such proposals are required, the head of the agency shall consider them in evaluating the offeror's price.

(2) CONTENTS OF PROPOSALS.—Proposals referred to in the first sentence of paragraph (1) are the following:

(A) Proposals to incorporate in the design of the major system items which are currently available within the supply system of the Federal agency responsible for the major system, available elsewhere in the national supply system, or commercially available from more than one source.

(B) With respect to items that are likely to be required in substantial quantities during the system's service life, proposals to incorporate in the design of the major system items which the United States will be able to acquire competitively in the future.

(b) PRODUCTION CONTRACT.—

(1) DETERMINING WHETHER PROPOSALS ARE NECESSARY.—The Secretary of Defense shall ensure that, in preparing a solicitation for the award of a production contract for a major system, the head of an agency consider requiring in the solicitation that an offeror include in its offer proposals described in paragraph (2). In determining whether to require such proposals, the head of the agency shall give due consideration to the purposes for which the system is being procured and the technology necessary to meet the system's required capabilities. If such proposals are required, the head of the agency shall consider them in evaluating the offeror's price.

(2) CONTENTS OF PROPOSALS.—Proposals referred to in the first sentence of paragraph (1) are proposals identifying opportunities to ensure that the United States will be able to obtain on a competitive basis items procured in connection with the system that are likely to be reprocurd in substantial quantities during the service life of the system. Proposals submitted in response to such requirement may include the following:

(A) Proposals to provide to the United States the right to use technical data to be provided under the contract for competitive procurement of the item, together with the cost to the United States, if any, of acquiring such technical data and the right to use such data.

(B) Proposals for the qualification or development of multiple sources of supply for the item.

(c) CONSIDERATION OF FACTORS AS OBJECTIVES IN NEGOTIATIONS.—If the head of an agency is making a noncompetitive award of a development contract or a production contract for a major system, the factors specified in sub-

sections (a) and (b) to be considered in evaluating an offer for a contract may be considered as objectives in negotiating the contract to be awarded. Such objectives may not impair the rights of prospective contractors or subcontractors otherwise provided by law.

(d) ITEMS DEVELOPED EXCLUSIVELY AT PRIVATE EXPENSE.—

(1) LIMITATION.—Whenever the head of an agency requires that proposals described in subsection (a)(2) or (b)(2) be submitted by an offeror in its offer, the offeror shall not be required to provide a proposal that enables the United States to acquire competitively in the future an identical item if the item was developed exclusively at private expense unless the head of the agency determines that—

(A) the original supplier of such item will be unable to satisfy program schedule or delivery requirements; or

(B) proposals by the original supplier of such item to meet the mobilization requirements are insufficient to meet the agency's mobilization needs.

(2) EVALUATION.—In considering offers in response to a solicitation requiring proposals described in subsection (a)(2) or (b)(2), the head of an agency shall base any evaluation of items developed exclusively at private expense on an analysis of the total value, in terms of innovative design, life-cycle costs, and other pertinent factors, of incorporating such items in the system.

(Added and amended Pub. L. 116-283, div. A, title XVIII, § 1811(g), Jan. 1, 2021, 134 Stat. 4173.)

CODIFICATION

The text of subsec. (d) of section 2305 of this title, which was transferred to this section and amended by Pub. L. 116-283, § 1811(g)(2)-(6) was based on Pub. L. 98-525, title XII, § 1213(a), Oct. 19, 1984, 98 Stat. 2591; Pub. L. 100-456, div. A, title VIII, § 806, Sept. 29, 1988, 102 Stat. 2010.

PRIOR PROVISIONS

A prior section 3209, act Aug. 10, 1956, ch. 1041, 70A Stat. 174; Pub. L. 85-861, § 1(60), Sept. 2, 1958, 72 Stat. 1462; Pub. L. 90-130, § 1(9)(E), Nov. 8, 1967, 81 Stat. 375; Pub. L. 95-485, title VIII, § 820(c)(1), (2), Oct. 20, 1978, 92 Stat. 1627, prescribed, with exception of Army Nurse Corps and Army Medical Specialist Corps, the authorized strength of each branch in commissioned officers on active list of Regular Army, prior to repeal by Pub. L. 96-513, title II, § 202, title VII, § 701, Dec. 12, 1980, 94 Stat. 2878, 2955, effective Sept. 15, 1981.

A prior section 3210 was renumbered section 7110 of this title.

A prior section 3211, acts Aug. 10, 1956, ch. 1041, 70A Stat. 175; Sept. 2, 1958, Pub. L. 85-861, § 1(67), 72 Stat. 1463; Nov. 8, 1967, Pub. L. 90-130, § 1(9)(F), 81 Stat. 375, prescribed authorized strength of Regular Army in officers in each regular grade on promotion lists set forth in section 3296 of this title, prior to repeal by Pub. L. 96-513, title II, § 202, title VII, § 701, Dec. 12, 1980, 94 Stat. 2878, 2955, effective Sept. 15, 1981. See section 521 et seq. of this title.

A prior section 3212, acts Aug. 10, 1956, ch. 1041, 70A Stat. 175; Sept. 2, 1958, Pub. L. 85-861, § 1(68), 72 Stat. 1463; June 30, 1960, Pub. L. 86-559, § 1(6), 74 Stat. 265; Nov. 8, 1967, Pub. L. 90-130, § 1(9)(G), 81 Stat. 375; Dec. 12, 1980, Pub. L. 96-513, title V, § 502(6), 94 Stat. 2909, related to temporary increases in authorized strength in grades of Army Reserve and Army National Guard of United States, prior to repeal by Pub. L. 103-337, div. A, title

XVI, §§1662(a)(3), 1691, Oct. 5, 1994, 108 Stat. 2988, 3026, effective Dec. 1, 1994. See section 12009 of this title.

Prior sections 3213 and 3214 were repealed by Pub. L. 96-513, title II, § 202, title VII, § 701, Dec. 12, 1980, 94 Stat. 2878, 2955, effective Sept. 15, 1981.

Section 3213, act Aug. 10, 1956, ch. 1041, 70A Stat. 176, prescribed authorized strength of Regular Army in warrant officers on active list.

Section 3214, acts Aug. 10, 1956, ch. 1041, 70A Stat. 176; Sept. 2, 1958, Pub. L. 85-861, §1(64), 72 Stat. 1463, prescribed authorized strength of Regular Army in enlisted members on active duty, exclusive of officer candidates.

A prior section 3215, acts Aug. 10, 1956, ch. 1041, 70A Stat. 176; Nov. 8, 1967, Pub. L. 90-130, §1(9)(H), 81 Stat. 375, authorized strength of Women's Army Corps of Regular Army in warrant officers on active list and in enlisted members on active duty to be prescribed by Secretary, prior to repeal by Pub. L. 95-485, title VIII, § 820(c)(3), Oct. 20, 1978, 92 Stat. 1627.

A prior section 3216, act Aug. 10, 1956, ch. 1041, 70A Stat. 176, prescribed authorized strength of Corps of Engineers in enlisted members on active duty, prior to repeal by Pub. L. 96-513, title II, § 202, title VII, § 701, Dec. 12, 1980, 94 Stat. 2878, 2955, effective Sept. 15, 1981.

Prior sections 3217 to 3220 were repealed by Pub. L. 103-337, div. A, title XVI, §§1662(a)(3), 1691, Oct. 5, 1994, 108 Stat. 2988, 3026, effective Dec. 1, 1994.

Section 3217, added Pub. L. 85-861, §1(69)(A), Sept. 2, 1958, 72 Stat. 1463, related to authorized strength of Army in reserve commissioned officers in active status. See section 12003 of this title.

Section 3218, added Pub. L. 85-861, §1(69)(A), Sept. 2, 1958, 72 Stat. 1463; amended Pub. L. 96-107, title III, § 302(a), Nov. 9, 1979, 93 Stat. 806; Pub. L. 100-456, div. A, title XII, § 1234(a)(1), Sept. 29, 1988, 102 Stat. 2059; Pub. L. 102-190, div. A, title X, § 1061(a)(20)(B), Dec. 5, 1991, 105 Stat. 1473, related to authorized strength of Army in reserve general officers in active status. See section 12004 of this title.

Section 3219, added Pub. L. 85-861, §1(69)(A), Sept. 2, 1958, 72 Stat. 1464, related to authorized strength of Army in reserve commissioned officers in active status in grades below brigadier general. See section 12005(a) of this title.

Section 3220, added Pub. L. 85-861, §1(69)(A), Sept. 2, 1958, 72 Stat. 1464; amended Pub. L. 95-485, title VIII, § 820(c)(4), Oct. 20, 1978, 92 Stat. 1627, related to distribution of reserve commissioned officers by Secretary of the Army. See section 12007 of this title.

AMENDMENTS

2021—Pub. L. 116-283, §1811(g)(2), redesignated subsec. (d) of section 2305 of this title as subsec. (a) of this section and redesignated pars. (2) to (4) thereof as subsecs. (b) to (d), respectively.

Subsec. (a). Pub. L. 116-283, §1811(g)(3), inserted subsec. heading, redesignated par. (1)(A) as (1), inserted par. heading, and substituted “paragraph (2)” for “subparagraph (B)”, and redesignated par. (1)(B) and its cls. (i) and (ii) as par. (2) and subpars. (A) and (B), respectively, inserted par. heading, and substituted “paragraph (1)” for “subparagraph (A)” in introductory provisions.

Subsec. (b). Pub. L. 116-283, §1811(g)(2), (4), redesignated subsec. (a)(2) as (b), inserted subsec. heading, redesignated subpar. (A) as par. (1), inserted par. heading, and substituted “paragraph (2)” for “subparagraph (B)”, and redesignated subpar. (B) and its cls. (i) and (ii) as par. (2) and subpars. (A) and (B), respectively, inserted par. heading, and substituted “paragraph (1)” for “subparagraph (A)” in introductory provisions.

Subsec. (c). Pub. L. 116-283, §1811(g)(2), (5), redesignated subsec. (a)(3) as (c), inserted heading, and substituted “subsections (a) and (b)” for “paragraphs (1) and (2)”.

Subsec. (d). Pub. L. 116-283, §1811(g)(2), (6), redesignated subsec. (a)(4) as (d), inserted subsec. heading, and substituted “subsection (a)(2) or (b)(2)” for “paragraph (1)(B) or (2)(B)” in introductory provisions; redesignated subpar. (A) and its cls. (i) and (ii) as par. (1) and subpars. (A) and (B), respectively, inserted par. heading, and realigned margins; and redesignated subpar. (B) as par. (2), inserted heading, realigned margin, and substituted “subsection (a)(2) or (b)(2)” for “paragraph (1)(B) or (2)(B)”.

ated subpar. (A) and its cls. (i) and (ii) as par. (1) and subpars. (A) and (B), respectively, inserted par. heading, and realigned margins; and redesignated subpar. (B) as par. (2), inserted heading, realigned margin, and substituted “subsection (a)(2) or (b)(2)” for “paragraph (1)(B) or (2)(B)”.

EFFECTIVE DATE

Section and 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 an Effective Date of 2021 Amendment note preceding section 3001 of this title.

CHAPTER 222—INDEPENDENT COST ESTIMATION AND COST ANALYSIS

Sec. ¹	
3221.	Director of Cost Assessment and Program Evaluation.
3222.	Independent cost estimate required before approval.
3223.	Director: review of cost estimates, cost analyses, and records of the military departments and Defense Agencies.
3224.	Director: participation, concurrence, and approval in cost estimation.
3225.	Discussion of risk in cost estimates.
3226.	Estimates for program baseline and analyses and targets for contract negotiation purposes.
3227.	Guidelines and collection method for acquisition of cost data.

§ 3221. Director of Cost Assessment and Program Evaluation

(a) IN GENERAL.—The Director of Cost Assessment and Program Evaluation shall ensure that the cost estimation and cost analysis processes of the Department of Defense provide accurate information and realistic estimates of cost for the acquisition programs of the Department of Defense.

(b) FUNCTIONS.—In carrying out the responsibility of the Director under subsection (a), the Director shall—

(1) prescribe, by authority of the Secretary of Defense, policies and procedures for the conduct of cost estimation and cost analysis for the acquisition programs of the Department of Defense;

(2) with respect to cost estimation in the Department of Defense in general and with respect to specific cost estimates and cost analyses to be conducted in connection with a major defense acquisition program or major subprogram under chapter 144 of this title, provide guidance to and consult with—

- (A) the Secretary of Defense;
- (B) the Under Secretary of Defense for Acquisition and Sustainment;
- (C) the Under Secretary of Defense (Comptroller);
- (D) the Secretaries of the military departments; and
- (E) the heads of the Defense Agencies;

(3) issue guidance relating to the proper discussion of risk in cost estimates generally, and specifically, for the proper discussion of risk in cost estimates for major defense acquisition programs and major subprograms;

¹ Editorially supplied.