services in support of a contingency operation: competition and review'' in section catchline.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment made to Pub. L. 116–283 by Pub. L. 117–81, resulting in omission of this section, applicable as if included in the enactment of title XVIII of Pub. L. 116–283 as enacted, see section 1701(a)(2) of Pub. L. 117–81, set out in a note preceding section 3001 of this title and Effective Date note below.

EFFECTIVE DATE

Section 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.

§ 3172. [Reserved]

(Added Pub. L. 116–283, div. A, title XVIII, § 1810(d), Jan. 1, 2021, 134 Stat. 4164; amended Pub. L. 117–81, div. A, title XVII, § 1701(i)(2)(B), Dec. 27, 2021, 135 Stat. 2141.)

Editorial Notes

AMENDMENTS

2021—Pub. L. 117–81, § 1701(i)(2)(B), amended Pub. L. 116–283, § 1810(d), which enacted this section, by substituting ''[Reserved]'' for ''Operational contract support: chain of authority and responsibility within Department of Defense'' in section catchline.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment made to Pub. L. 116–283 by Pub. L. 117–81, resulting in omission of this section, applicable as if included in the enactment of title XVIII of Pub. L. 116–283 as enacted, see section 1701(a)(2) of Pub. L. 117–81, set out in a note preceding section 3001 of this title and Effective Date note below.

EFFECTIVE DATE

Section 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.

Subpart B—Acquisition Planning

Editorial Notes

AMENDMENTS

2018—Pub. L. 115–232, div. A, title VIII, § 801(a), Aug. 13, 2018, 132 Stat. 1827, added subpart heading.

CHAPTER 221—PLANNING AND SOLICITATION GENERALLY

Sec.

Editorial Notes

PRIOR PROVISIONS

A prior chapter 221 ''PLANNING AND SOLICITATION GENERALLY'', as added by Pub. L. 115–232, div. A, title VIII, § 801(a), Aug. 13, 2018, 132 Stat. 1827, and consisting of reserved section 3201, was repealed by Pub. L. 116–283, div. A, title XVIII, § 1811(b), Jan. 1, 2021, 134 Stat. 4164.

Statutory Notes and Related Subsidiaries

MIDDLE TIER OF ACQUISITION FOR RAPID PROTOTYPING AND RAPID FIELDING

Pub. L. 116–92, div. A, title VIII, § 837, Dec. 20, 2019, 133 Stat. 1497, provided that:

''(a) REPORT.—Not later than December 15, 2019, the Under Secretary of Defense for Acquisition and Sustainment shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report that includes the guidance required under section 804(a) of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 2302 note [now 10 U.S.C. 3201 note prec., set out below]). The Under Secretary of Defense for Acquisition and Sustainment shall ensure such guidance includes the business case elements required by an acquisition program established pursuant to such guidance and the metrics required to assess the performance of such a program.

''(b) LIMITATION.—

''(1) IN GENERAL.—Beginning on December 15, 2019, if the Under Secretary of Defense for Acquisition and Sustainment has not submitted the report required under subsection (a), not more than 75 percent of the funds specified in paragraph (2) may be obligated or expended until the date on which the report required under subsection (a) has been submitted.

''(2) FUNDS SPECIFIED.—The funds specified in this paragraph are the funds authorized to be appropriated by this Act or otherwise made available for fiscal year 2020 for the Department of Defense that remain unobligated as of December 15, 2019, for the following:

''(A) The execution of any acquisition program established pursuant to the guidance required under such section 804(a).

''(B) The operations of the Office of the Under Secretary of Defense for Research & Engineering.

''(C) The operations of the Office of the Under Secretary of Defense for Acquisition & Sustainment.

''(D) The operations of the Office of the Director of Cost Analysis and Program Evaluation.

''(E) The operations of the offices of the service acquisition executives of the military departments.''

Pub. L. 114–92, div. A, title VIII, § 804, Nov. 25, 2015, 129 Stat. 882, as amended by Pub. L. 114–328, div. A, title VIII, §§ 849(a), 864(b), 897, title X, § 1081(c)(2), Dec. 23, 2016, 130 Stat. 2293, 2304, 2327, 2419; Pub. L. 115–91, div. A, title VIII, § 866, Dec. 12, 2017, 131 Stat. 1495; Pub. L. 116–92, div. A, title IX, § 902(33), Dec. 20, 2019, 133 Stat. 1546; Pub. L. 116–283, div. A, title VIII, § 805, Jan. 1, 2021, 134 Stat. 3742, provided that:

''(a) GUIDANCE REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Nov. 25, 2015], the Under Secretary of Defense for Acquisition and Sustainment, in consultation with the Comptroller of the Department of Defense and the Vice Chairman of the Joint Chiefs of Staff, shall establish guidance for a 'middle tier' of acquisition programs that are intended to be completed in a period of two to five years.

''(b) ACQUISITION PATHWAYS.—The guidance required by subsection (a) shall cover the following two acquisition pathways:

''(1) RAPID PROTOTYPING.—The rapid prototyping pathway shall provide for the use of innovative tech-

nologies to rapidly develop fieldable prototypes to demonstrate new capabilities and meet emerging military needs. The objective of an acquisition program under this pathway shall be to field a prototype that can be demonstrated in an operational environment and provide for a residual operational capability within five years of the development of an approved requirement.

''(2) RAPID FIELDING.—The rapid fielding pathway shall provide for the use of proven technologies to field production quantities of new or upgraded systems with minimal development required. The objective of an acquisition program under this pathway shall be to begin production within six months and complete fielding within five years of the development of an approved requirement.

''(c) EXPEDITED PROCESS.—

''(1) IN GENERAL.—The guidance required by subsection (a) shall provide for a streamlined and coordinated requirements, budget, and acquisition process that results in the development of an approved requirement for each program in a period of not more than six months from the time that the process is initiated. Programs that are subject to the guidance shall not be subject to the Joint Capabilities Integration and Development System Manual and Department of Defense Directive 5000.01, except to the extent specifically provided in the guidance.

''(2) RAPID PROTOTYPING.—With respect to the rapid prototyping pathway, the guidance shall include—

''(A) a merit-based process for the consideration of innovative technologies and new capabilities to meet needs communicated by the Joint Chiefs of Staff and the combatant commanders;

''(B) a process for developing and implementing acquisition and funding strategies for the program;

''(C) a process for demonstrating and evaluating the performance of fieldable prototypes developed pursuant to the program in an operational environment; and

''(D) a process for transitioning successful prototypes to new or existing acquisition programs for production and fielding under the rapid fielding pathway or the traditional acquisition system.

''(3) RAPID FIELDING.—With respect to the rapid fielding pathway, the guidance shall include—

''(A) a merit-based process for the consideration of existing products and proven technologies to meet needs communicated by the Joint Chiefs of Staff and the combatant commanders;

''(B) a process for demonstrating performance and evaluating for current operational purposes the proposed products and technologies;

''(C) a process for developing and implementing acquisition and funding strategies for the program;

''(D) a process for considering lifecycle costs and addressing issues of logistics support and system interoperability; and

''(E) a process for identifying and exploiting opportunities to use the rapid fielding pathway to reduce total ownership costs.

''(4) STREAMLINED PROCEDURES.—The guidance for the programs may provide for any of the following streamlined procedures:

''(A) The service acquisition executive of the military department concerned shall appoint a program manager for such program from among candidates from among civilian employees or members of the Armed Forces who have significant and relevant experience managing large and complex programs.

''(B) The program manager for each program shall report with respect to such program directly, without intervening review or approval, to the service acquisition executive of the military department concerned.

''(C) The service acquisition executive of the military department concerned shall evaluate the job performance of such manager on an annual basis. In conducting an evaluation under this paragraph, a service acquisition executive shall consider the extent to which the manager has achieved the objectives of the program for which the manager is responsible, including quality, timeliness, and cost objectives.

''(D) The program manager of a defense streamlined program shall be authorized staff positions for a technical staff, including experts in business management, contracting, auditing, engineering, testing, and logistics, to enable the manager to manage the program without the technical assistance of another organizational unit of an agency to the maximum extent practicable.

''(E) The program manager of a defense streamlined program shall be authorized, in coordination with the users of the equipment and capability to be acquired and the test community, to make trade-offs among life-cycle costs, requirements, and schedules to meet the goals of the program.

''(F) The service acquisition executive, acting in coordination with the defense acquisition executive, shall serve as the milestone decision authority for the program.

''(G) The program manager of a defense streamlined program shall be provided a process to expeditiously seek a waiver from Congress from any statutory or regulatory requirement that the program manager determines adds little or no value to the management of the program.

''(d) RAPID PROTOTYPING FUNDS.—

''(1)DEPARTMENT OF DEFENSE RAPID PROTOTYPING FUND.—

''(A) IN GENERAL.—The Secretary of Defense shall establish a fund to be known as the 'Department of Defense Rapid Prototyping Fund' to provide funds, in addition to other funds that may be available, for acquisition programs under the rapid prototyping pathway established pursuant to this section and other purposes specified in law. The Fund shall be managed by a senior official of the Department of Defense designated by the Deputy Secretary of Defense. The Fund shall consist of—

''(i) amounts appropriated to the Fund;

''(ii) amounts credited to the Fund pursuant to section 828 of this Act [set out as a note preceding section 4201 of this title]; and

''(iii) any other amounts appropriated to, credited to, or transferred to the Fund.

''(B) TRANSFER AUTHORITY.—Amounts available in the Fund may be transferred to a military department for the purpose of carrying out an acquisition program under the rapid prototyping pathway established pursuant to this section. Any amount so transferred shall be credited to the account to which it is transferred. The transfer authority provided in this paragraph is in addition to any other transfer authority available to the Department of Defense.

''(C) CONGRESSIONAL NOTICE.—The senior official designated to manage the Fund shall notify the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] of all transfers under paragraph (2) within 5 business days after such transfer. Each notification shall specify the amount transferred, the purpose of the transfer, and the total projected cost and estimated cost to complete the acquisition program to which the funds were transferred.''

''(2) RAPID PROTOTYPING FUNDS FOR THE MILITARY DEPARTMENTS.—The Secretary of each military department may establish a military department-specific fund (and, in the case of the Secretary of the Navy, including the Marine Corps) to provide funds, in addition to other funds that may be available to the military department concerned, for acquisition programs under the rapid fielding and prototyping pathways established pursuant to this section. Each military department-specific fund shall consist of amounts appropriated or credited to the fund.

''(e) REPORT.—Not later than 30 days after the date of termination of an acquisition program commenced using the authority under this section, the Secretary of Defense shall submit to Congress a notification of such termination. Such notice shall include—

''(1) the initial amount of a contract awarded under such acquisition program;

''(2) the aggregate amount of funds awarded under such contract; and

''(3) written documentation of the reason for termination of such acquisition program.''

[Pub. L. 114–328, div. A, title X, § 1081(c), Dec. 23, 2016, 130 Stat. 2419, provided that the amendment made by section 1081(c)(2) to section 804 of Pub. L. 114–92, set out above, is effective as of Nov. 25, 2015, and as if included in Pub. L. 114–92 as enacted.]

USE OF ALTERNATIVE ACQUISITION PATHS TO ACQUIRE CRITICAL NATIONAL SECURITY CAPABILITIES

Pub. L. 114–92, div. A, title VIII, § 805, Nov. 25, 2015, 129 Stat. 885, as amended by Pub. L. 114–328, div. A, title VIII, § 849(b), Dec. 23, 2016, 130 Stat. 2293, provided that: ''Not later than 180 days after the date of the enactment of this Act [Nov. 25, 2015], the Secretary of Defense shall establish procedures for alternative acquisition pathways to acquire capital assets and services that meet critical national security needs. The procedures shall—

''(1) be separate from existing acquisition procedures;

''(2) be supported by streamlined contracting, budgeting, life-cycle cost management, and requirements processes;

''(3) establish alternative acquisition paths based on the capabilities being bought and the time needed to deploy these capabilities; and

''(4) maximize the use of flexible authorities in existing law and regulation.''

RAPID ACQUISITION AND DEPLOYMENT PROCEDURES FOR UNITED STATES SPECIAL OPERATIONS COMMAND

Pub. L. 113–291, div. A, title VIII, § 851, Dec. 19, 2014, 128 Stat. 3457, provided that:

''(a) AUTHORITY TO ESTABLISH PROCEDURES.—The Secretary may prescribe procedures for the rapid acquisition and deployment of items for the United States Special Operations Command that are currently under development by the Department of Defense or available from the commercial sector and are—

''(1) urgently needed to react to an enemy threat or to respond to significant and urgent safety situations;

''(2) needed to avoid significant risk of loss of life or mission failure; or

''(3) needed to avoid collateral damage risk where the absence of collateral damage is a requirement for mission success.

''(b) ISSUES TO BE ADDRESSED.—The procedures prescribed under subsection (a) shall include the following:

''(1) A process for streamlined communication between the Commander of the United States Special Operations Command and the acquisition and research and development communities, including—

''(A) a process for the Commander to communicate needs to the acquisition community and the research and development community; and

''(B) a process for the acquisition community and the research and development community to propose items that meet the needs communicated by the Commander.

''(2) Procedures for demonstrating, rapidly acquiring, and deploying items proposed pursuant to paragraph (1)(B), including—

''(A) a process for demonstrating performance and evaluating for current operational purposes the existing capability of an item;

''(B) a process for developing an acquisition and funding strategy for the deployment of an item; and

''(C) a process for making deployment determinations based on information obtained pursuant to subparagraphs (A) and (B).

''(c) TESTING REQUIREMENT.—

''(1) IN GENERAL.—The process for demonstrating performance and evaluating for current operational purposes the existing capability of an item prescribed under subsection (b)(2)(A) shall include—

''(A) an operational assessment in accordance with expedited procedures prescribed by the Director of Operational Testing and Evaluation; and

''(B) a requirement to provide information to the deployment decision-making authority about any deficiency of the item in meeting the original requirements for the item (as stated in an operational requirements document or similar document).

''(2) DEFICIENCY NOT A DETERMINING FACTOR.—The process may not include a requirement for any deficiency of an item to be the determining factor in deciding whether to deploy the item.

''(3) ADDITIONAL REQUIREMENT IN CASE OF DEFICIENCY.—In the case of any deficiency of an item, a decision to deploy the item may be made only if the Commander of the United States Special Operations Command determines that, for reasons of national security, the deficiency of the item is acceptable.

''(d) LIMITATION.—The quantity of items of a system procured using the procedures prescribed pursuant to this section may not exceed the number established for low-rate initial production for the system. Any such items shall be counted for purposes of the number of items of the system that may be procured through low-rate initial production.

''(e) ANNUAL FUNDING LIMITATION.—Of the funds available to the Commander of the United States Special Operations Command in any given fiscal year, not more than $50,000,000 may be used to procure items under this section.

''(f) RELATIONSHIP TO OTHER RAPID ACQUISITION AUTHORITY.—The Commander of the United States Special Operations Command may not use the authority under this section at the same time the Commander uses the authority under section 806 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107–314; 10 U.S.C. 2302 note [now 10 U.S.C. 3201 note prec., set out below]).

''(g) CONGRESSIONAL NOTIFICATIONS.—

''(1) NOTIFICATION BEFORE PROCEDURES GO INTO EFFECT.—The Secretary of Defense shall notify the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] at least 30 days before the procedures prescribed pursuant to this section are made effective.

''(2) NOTIFICATION AFTER USE OF PROCEDURES.—The Secretary of Defense shall notify the congressional defense committees not later than 48 hours after each use of the procedures prescribed pursuant to this section.''

REVIEW AND JUSTIFICATION OF PASS-THROUGH CONTRACTS

Pub. L. 112–239, div. A, title VIII, § 802, Jan. 2, 2013, 126 Stat. 1824, provided that: ''Not later than 180 days after the date of the enactment of this Act [Jan. 2, 2013], the Secretary of Defense, the Secretary of State, and the Administrator of the United States Agency for International Development shall issue such guidance and regulations as may be necessary to ensure that in any case in which an offeror for a contract or a task or delivery order informs the agency pursuant to section 52.215-22 of the Federal Acquisition Regulation that the offeror intends to award subcontracts for more than 70 percent of the total cost of work to be performed under the contract, task order, or delivery order, the contracting officer for the contract is required to—

''(1) consider the availability of alternative contract vehicles and the feasibility of contracting directly with a subcontractor or subcontractors that will perform the bulk of the work;

''(2) make a written determination that the contracting approach selected is in the best interest of the Government; and

''(3) document the basis for such determination.''

REVIEW OF ACQUISITION PROCESS FOR RAPID FIELDING OF CAPABILITIES IN RESPONSE TO URGENT OPERATIONAL NEEDS

Pub. L. 111–383, div. A, title VIII, § 804, Jan. 7, 2011, 124 Stat. 4256, provided that:

''(a) REVIEW OF RAPID ACQUISITION PROCESS REQUIRED.—

''(1) IN GENERAL.—Not later than one year after the date of the enactment of this Act [Jan. 7, 2011], the Secretary of Defense shall complete a review of the process for the fielding of capabilities in response to urgent operational needs and submit a report on the review to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives].

''(2) REVIEW AND REPORT REQUIREMENTS.—The review pursuant to this section shall include consideration of various improvements to the acquisition process for rapid fielding of capabilities in response to urgent operational needs. For each improvement, the report on the review shall discuss—

''(A) the Department's review of the improvement;

''(B) if the improvement is being implemented by the Department, a schedule for implementing the improvement; and

''(C) if the improvement is not being implemented by the Department, an explanation of why the improvement is not being implemented.

''(3) IMPROVEMENTS TO BE CONSIDERED.—The improvements that shall be considered during the review are the following:

''(A) Providing a streamlined, expedited, and tightly integrated iterative approach to—

''(i) the identification and validation of urgent operational needs;

''(ii) the analysis of alternatives and identification of preferred solutions;

''(iii) the development and approval of appropriate requirements and acquisition documents;

''(iv) the identification and minimization of development, integration, and manufacturing risks;

''(v) the consideration of operation and sustainment costs;

''(vi) the allocation of appropriate funding; and

''(vii) the rapid production and delivery of required capabilities.

''(B) Clearly defining the roles and responsibilities of the Office of the Secretary of Defense, the Joint Chiefs of Staff, the military departments, and other components of the Department of Defense for carrying out all phases of the process.

''(C) Designating a senior official within the Office of the Secretary of Defense with primary responsibility for making recommendations to the Secretary on the use of the authority provided by subsections (c) and (d) of section 806 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 [Pub. L. 107–314] (10 U.S.C. 2302 note [now 10 U.S.C. 3201 note prec., set out below]), as amended by section 803 of this Act, in appropriate circumstances.

''(D) Establishing a target date for the fielding of a capability pursuant to each validated urgent operational need.

''(E) Implementing a system for—

''(i) documenting key process milestones, such as funding, acquisition, fielding, and assessment decisions and actions; and

''(ii) tracking the cost, schedule, and performance of acquisitions conducted pursuant to the process.

''(F) Establishing a formal feedback mechanism for the commanders of the combatant commands to provide information to the Joint Chiefs of Staff and senior acquisition officials on how well fielded solutions are meeting urgent operational needs.

''(G) Establishing a dedicated source of funding for the rapid fielding of capabilities in response to urgent operational needs.

''(H) Issuing guidance to provide for the appropriate transition of capabilities acquired through rapid fielding into the traditional budget, requirements, and acquisition process for purposes of contracts for follow-on production, sustainment, and logistics support.

''(I) Such other improvements as the Secretary considers appropriate.

''(b) DISCRIMINATING URGENT OPERATIONAL NEEDS FROM TRADITIONAL REQUIREMENTS.—

''(1) EXPEDITED REVIEW PROCESS.—Not later than 270 days after the date of the enactment of this Act, the Secretary shall develop and implement an expedited review process to determine whether capabilities proposed as urgent operational needs are appropriate for fielding through the process for the rapid fielding of capabilities or should be fielded through the traditional acquisition process.

''(2) ELEMENTS.—The review process developed and implemented pursuant to paragraph (1) shall—

''(A) apply to the rapid fielding of capabilities in response to joint urgent operational need statements and to other urgent operational needs statements generated by the military departments and the combatant commands;

''(B) identify officials responsible for making determinations described in paragraph (1);

''(C) establish appropriate time periods for making such determinations;

''(D) set forth standards and criteria for making such determinations based on considerations of urgency, risk, and life-cycle management;

''(E) establish appropriate thresholds for the applicability of the review process, or of elements of the review process; and

''(F) authorize appropriate officials to make exceptions from standards and criteria established under subparagraph (D) in exceptional circumstances.

''(3) COVERED CAPABILITIES.—The review process developed and implemented pursuant to paragraph (1) shall provide that, subject to such exceptions as the Secretary considers appropriate for purposes of this section, the acquisition process for rapid fielding of capabilities in response to urgent operational needs is appropriate only for capabilities that—

''(A) can be fielded within a period of two to 24 months;

''(B) do not require substantial development effort;

''(C) are based on technologies that are proven and available; and

''(D) can appropriately be acquired under fixed price contracts.

''(4) INCLUSION IN REPORT.—The Secretary shall include a description of the expedited review process implemented pursuant to paragraph (1) in the report required by subsection (a).''

INTERNAL CONTROLS FOR PROCUREMENTS ON BEHALF OF THE DEPARTMENT OF DEFENSE

Pub. L. 110–417, [div. A], title VIII, § 804(a)–(c), Oct. 14, 2008, 122 Stat. 4519, provided that:

''(a) INCLUSION OF ADDITIONAL NON-DEFENSE AGENCIES IN REVIEW.—The covered non-defense agencies specified in subsection (c) of this section shall be considered covered non-defense agencies as defined in subsection (i) of section 817 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364; 120 Stat. 2326) [set out below] for purposes of such section.

''(b) DEADLINES AND APPLICABILITY FOR ADDITIONAL NON-DEFENSE AGENCIES.—For each covered non-defense agency specified in subsection (c) of this section, section 817 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364; 120 Stat. 2326) shall apply to such agency as follows:

''(1) The review and determination required by subsection (a)(1) of such section shall be completed by not later than March 15, 2009.

''(2) The review and determination required by subsection (a)(2) of such section, if necessary, shall be completed by not later than June 15, 2010, and such review and determination shall be a review and determination of such agency's procurement of property and services on behalf of the Department of Defense in fiscal year 2009.

''(3) The memorandum of understanding required by subsection (c)(1) of such section shall be entered into by not later than 60 days after the date of the enactment of this Act [Oct. 14, 2008].

''(4) The limitation specified in subsection (d)(1) of such section shall apply after March 15, 2009, and before June 16, 2010.

''(5) The limitation specified in subsection (d)(2) of such section shall apply after June 15, 2010.

''(6) The limitation required by subsection (d)(3) of such section shall commence, if necessary, on the date that is 60 days after the date of the enactment of this Act.

''(c) DEFINITION OF COVERED NON-DEFENSE AGENCY.—In this section, the term 'covered non-defense agency' means each of the following:

''(1) The Department of Commerce.

''(2) The Department of Energy.''

Pub. L. 110–181, div. A, title VIII, § 801, Jan. 28, 2008, 122 Stat. 202, as amended by Pub. L. 110–417, [div. A], title VIII, § 804(d), Oct. 14, 2008, 122 Stat. 4519; Pub. L. 111–84, div. A, title VIII, § 806, Oct. 28, 2009, 123 Stat. 2404; Pub. L. 112–81, div. A, title VIII, § 817, Dec. 31, 2011, 125 Stat. 1493; Pub. L. 112–239, div. A, title VIII, §§ 801, 805, Jan. 2, 2013, 126 Stat. 1824, 1826; Pub. L. 113–291, div. A, title X, § 1071(d)(1)(B), Dec. 19, 2014, 128 Stat. 3509; Pub. L. 116–92, div. A, title IX, § 902(42), Dec. 20, 2019, 133 Stat. 1547; Pub. L. 116–283, div. A, title XVIII, § 1806(e)(5), Jan. 1, 2021, 134 Stat. 4156, provided that:

''(a) INSPECTORS GENERAL REVIEWS AND DETERMINATIONS.—

''(1) IN GENERAL.—For each covered non-defense agency, the Inspector General of the Department of Defense and the Inspector General of such covered non-defense agency may jointly—

''(A) review—

''(i) the procurement policies, procedures, and internal controls of such covered non-defense agency that are applicable to the procurement of property and services on behalf of the Department by such covered non-defense agency; and

''(ii) the administration of such policies, procedures, and internal controls; and

''(B) determine in writing whether such covered non-defense agency is or is not compliant with applicable procurement requirements.

''(2) SEPARATE REVIEWS AND DETERMINATIONS.—The Inspector General of the Department of Defense and the Inspector General of a covered non-defense agency may by joint agreement conduct separate reviews of the procurement of property and services on behalf of the Department of Defense that are conducted by separate business units, or under separate government-wide acquisition contracts, of the covered non-defense agency. If such separate reviews are conducted, the Inspectors General shall make a separate determination under paragraph (1)(B) with respect to each such separate review.

''(3) MEMORANDA OF UNDERSTANDING FOR REVIEWS AND DETERMINATIONS.—Not later than one year before a review and determination is to be performed under this subsection with respect to a covered non-defense agency, the Inspector General of the Department of Defense and the Inspector General of the covered non-defense agency may enter into a memorandum of understanding with each other to carry out such review and determination.

''(4) TERMINATION OF NON-COMPLIANCE DETERMINATION.—If the Inspector General of the Department of Defense and the Inspector General of a covered non-defense agency determine, pursuant to paragraph (1)(B), that a covered non-defense agency is not compliant with applicable procurement requirements, the Inspectors General may terminate such a determination effective on the date on which the Inspectors General jointly—

''(A) determine that the non-defense agency is compliant with applicable procurement requirements; and

''(B) notify the Secretary of Defense of that determination.

''(5) RESOLUTION OF DISAGREEMENTS.—If the Inspector General of the Department of Defense and the Inspector General of a covered non-defense agency are unable to agree on a joint determination under this subsection, a determination by the Inspector General of the Department of Defense under this subsection shall be conclusive for the purposes of this section.

''(b) LIMITATION ON PROCUREMENTS ON BEHALF OF DEPARTMENT OF DEFENSE.—

''(1) Except as provided in paragraph (2), an acquisition official of the Department of Defense may place an order, make a purchase, or otherwise procure property or services for the Department of Defense in excess of the simplified acquisition threshold through a non-defense agency only if—

''(A) in the case of a procurement by any non-defense agency in any fiscal year, the head of the non-defense agency has certified that the non-defense agency will comply with applicable procurement requirements for the fiscal year;

''(B) in the case of—

''(i) a procurement by a covered non-defense agency in a fiscal year for which a memorandum of understanding is to be entered into under subsection (a)(3), the Inspector General of the Department of Defense and the Inspector General of the covered non-defense agency have entered into such a memorandum of understanding; or

''(ii) a procurement by a covered non-defense agency in a fiscal year following the Inspectors General review and determination provided for under subsection (a), the Inspectors General have determined that a covered non-defense agency is compliant with applicable procurement requirements or have terminated a prior determination of non-compliance in accordance with subsection (a)(4); and

''(C) the procurement is not otherwise prohibited by section 817 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364) or section 811 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163) [see notes below].

''(2) EXCEPTION FOR PROCUREMENTS OF NECESSARY PROPERTY AND SERVICES.—

''(A) IN GENERAL.—The limitation in paragraph (1) shall not apply to the procurement of property and services on behalf of the Department of Defense by a non-defense agency during any fiscal year for which there is in effect a written determination of the Under Secretary of Defense for Acquisition and Sustainment that it is necessary in the interest of the Department of Defense to procure property and services through the non-defense agency during such fiscal year.

''(B) SCOPE OF PARTICULAR EXCEPTION.—A written determination with respect to a non-defense agency under subparagraph (A) shall apply to any category of procurements through the non-defense agency that is specified in the determination.

''(3) TREATMENT OF PROCUREMENTS UNDER JOINT PROGRAMS WITH INTELLIGENCE COMMUNITY.—For purposes of this subsection, a contract entered into by a non-defense agency that is an element of the intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 3003(4))) for the performance of a joint program conducted to meet the needs of the Department of Defense and the non-defense agency shall not be considered a procurement of property or services for the Department of Defense through a non-defense agency.

''(c) GUIDANCE ON INTERAGENCY CONTRACTING.—

''(1) REQUIREMENT.—Not later than 180 days after the date of enactment of this Act [Jan. 28, 2008], the Secretary of Defense shall issue guidance on the use of interagency contracting by the Department of Defense.

''(2) MATTERS COVERED.—The guidance required by paragraph (1) shall address the circumstances in which it is appropriate for Department of Defense acquisition officials to procure goods or services through a contract entered into by an agency outside the Department of Defense. At a minimum, the guidance shall address—

''(A) the circumstances in which it is appropriate for such acquisition officials to use direct acquisitions;

''(B) the circumstances in which it is appropriate for such acquisition officials to use assisted acquisitions;

''(C) the circumstances in which it is appropriate for such acquisition officials to use interagency contracting to acquire items unique to the Department of Defense and the procedures for approving such interagency contracting;

''(D) the circumstances in which it is appropriate for such acquisition officials to use interagency contracting to acquire items that are already being provided under a contract awarded by the Department of Defense;

''(E) tools that should be used by such acquisition officials to determine whether items are already being provided under a contract awarded by the Department of Defense; and

''(F) procedures for ensuring that applicable procurement requirements are identified and communicated to outside agencies involved in interagency contracting.

''(d) COMPLIANCE WITH APPLICABLE PROCUREMENT REQUIREMENTS.—

''(1) Except as provided in paragraph (2), for the purposes of this section, a non-defense agency is compliant with applicable procurement requirements if the procurement policies, procedures, and internal controls of the non-defense agency applicable to the procurement of products and services on behalf of the Department of Defense, and the manner in which they are administered, are adequate to ensure the compliance of the non-defense agency with the following:

''(A) The Federal Acquisition Regulation and other laws and regulations that apply to procurements of property and services by Federal agencies.

''(B) Laws and regulations (including applicable Department of Defense financial management regulations) that apply to procurements of property and services made by the Department of Defense through other Federal agencies.

''(2) In the case of the procurement of property or services on behalf of the Department of Defense through the Work for Others program of the Department of Energy, the laws and regulations applicable under paragraph (1)(B) are the Department of Energy Acquisition Regulations, pertinent interagency agreements, and Department of Defense and Department of Energy policies related to the Work for Others program.

''(e) TREATMENT OF PROCUREMENTS FOR FISCAL YEAR PURPOSES.—For the purposes of this section, a procurement shall be treated as being made during a particular fiscal year to the extent that funds are obligated by the Department of Defense for the procurement in that fiscal year.

''(f) DEFINITIONS.—In this section:

''(1) NON-DEFENSE AGENCY.—The term 'non-defense agency' means any department or agency of the Federal Government other than the Department of Defense. Such term includes a covered non-defense agency.

''(2) COVERED NON-DEFENSE AGENCY.—The term 'covered non-defense agency' means each of the following:

''(A) The General Services Administration.

''(B) The Department of the Interior.

''(C) The Department of Veterans Affairs.

''(D) The National Institutes of Health.

''(E) The Department of Commerce.

''(F) The Department of Energy.

''(3) GOVERNMENT-WIDE ACQUISITION CONTRACT.—The term 'government-wide acquisition contract' means a task or delivery order contract that—

''(A) is entered into by a non-defense agency; and

''(B) may be used as the contract under which property or services are procured for one or more other departments or agencies of the Federal Government.

''(4) SIMPLIFIED ACQUISITION THRESHOLD.—The term 'simplified acquisition threshold' has the meaning provided by section 3015(a) of title 10, United States Code.

''(5) INTERAGENCY CONTRACTING.—The term 'interagency contracting' means the exercise of the authority under section 1535 of title 31, United States Code, or other statutory authority, for Federal agencies to purchase goods and services under contracts entered into or administered by other agencies.

''(6) ACQUISITION OFFICIAL.—The term 'acquisition official', with respect to the Department of Defense, means—

''(A) a contracting officer of the Department of Defense; or

''(B) any other Department of Defense official authorized to approve a direct acquisition or an assisted acquisition on behalf of the Department of Defense.

''(7) DIRECT ACQUISITION.—The term 'direct acquisition', with respect to the Department of Defense, means the type of interagency contracting through which the Department of Defense orders an item or service from a government-wide acquisition contract maintained by a non-defense agency.

''(8) ASSISTED ACQUISITION.—The term 'assisted acquisition', with respect to the Department of Defense, means the type of interagency contracting through which acquisition officials of a non-defense agency award a contract or task or delivery order for the procurement of goods or services on behalf of the Department of Defense.''

Pub. L. 109–364, div. A, title VIII, §817, Oct. 17, 2006, 120 Stat. 2326, as amended by Pub. L. 116–92, div. A, title IX, §902(43), Dec. 20, 2019, 133 Stat. 1547, provided that:

''(a) INSPECTOR GENERAL REVIEWS AND DETERMINATIONS.—

''(1) IN GENERAL.—For each covered non-defense agency, the Inspector General of the Department of Defense and the Inspector General of such non-defense agency shall, not later than March 15, 2007, jointly—

''(A) review—

''(i) the procurement policies, procedures, and internal controls of such non-defense agency that are applicable to the procurement of property and services on behalf of the Department by such non-defense agency; and

''(ii) the administration of those policies, procedures, and internal controls; and

''(B) determine in writing whether—

''(i) such non-defense agency is compliant with defense procurement requirements;

''(ii) such non-defense agency is not compliant with defense procurement requirements, but has a program or initiative to significantly improve compliance with defense procurement requirements;

''(iii) neither of the conclusions stated in clauses (i) and (ii) is correct in the case of such non-defense agency; or

''(iv) such non-defense agency is not compliant with defense procurement requirements to such an extent that the interests of the Department of Defense are at risk in procurements conducted by such non-defense agency.

''(2) ACTIONS FOLLOWING CERTAIN DETERMINATIONS.—If the Inspectors General determine under paragraph

(1) that a conclusion stated in clause (ii), (iii), or (iv) of subparagraph (B) of that paragraph is correct in the case of a covered non-defense agency, such Inspectors General shall, not later than June 15, 2008, jointly—

''(A) conduct a second review, as described in subparagraph (A) of that paragraph, regarding such non-defense agency's procurement of property or services on behalf of the Department of Defense in fiscal year 2007; and

''(B) determine in writing whether such non-defense agency is or is not compliant with defense procurement requirements.

''(b) COMPLIANCE WITH DEFENSE PROCUREMENT REQUIREMENTS.—For the purposes of this section, a covered non-defense agency is compliant with defense procurement requirements if such non-defense agency's procurement policies, procedures, and internal controls applicable to the procurement of products and services on behalf of the Department of Defense, and the manner in which they are administered, are adequate to ensure such non-defense agency's compliance with the requirements of laws and regulations that apply to procurements of property and services made directly by the Department of Defense.

''(c) MEMORANDA OF UNDERSTANDING BETWEEN INSPECTORS GENERAL.—

''(1) IN GENERAL.—Not later than 60 days after the date of the enactment of this Act [Oct. 17, 2006], the Inspector General of the Department of Defense and the Inspector General of each covered non-defense agency shall enter into a memorandum of understanding with each other to carry out the reviews and make the determinations required by this section.

''(2) SCOPE OF MEMORANDA.—The Inspector General of the Department of Defense and the Inspector General of a covered non-defense agency may by mutual agreement conduct separate reviews of the procurement of property and services on behalf of the Department of Defense that are conducted by separate business units, or under separate governmentwide acquisition contracts, of such non-defense agency. In any case where such separate reviews are conducted, the Inspectors General shall make separate determinations under paragraph (1) or (2) of subsection (a), as applicable, with respect to each such separate review.

''(d) LIMITATIONS ON PROCUREMENTS ON BEHALF OF DEPARTMENT OF DEFENSE.—

''(1) LIMITATION DURING REVIEW PERIOD.—After March 15, 2007, and before June 16, 2008, no official of the Department of Defense may, except as provided in subsection (e) or (f), order, purchase, or otherwise procure property or services in an amount in excess of $100,000 through a covered non-defense agency for which a determination described in clause (iii) or (iv) of paragraph (1)(B) of subsection (a) has been made under subsection (a).

''(2) LIMITATION AFTER REVIEW PERIOD.—After June 15, 2008, no official of the Department of Defense may, except as provided in subsection (e) or (f), order, purchase, or otherwise procure property or services in an amount in excess of $100,000 through a covered non-defense agency that, having been subject to review under this section, has not been determined under this section as being compliant with defense procurement requirements.

''(3) LIMITATION FOLLOWING FAILURE TO REACH MOU.—Commencing on the date that is 60 days after the date of the enactment of this Act [Oct. 17, 2006], if a memorandum of understanding between the Inspector General of the Department of Defense and the Inspector General of a covered non-defense agency cannot be attained causing the review required by this section to not be performed, no official of the Department of Defense, except as provided in subsection (e) or (f), may order, purchase or otherwise procure property or services in an amount in excess of $100,000 through such non-defense agency.

''(e) EXCEPTION FROM APPLICABILITY OF LIMITATIONS.—

''(1) EXCEPTION.—No limitation applies under subsection (d) with respect to the procurement of property and services on behalf of the Department of Defense by a covered non-defense agency during any period that there is in effect a determination of the Under Secretary of Defense for Acquisition and Sustainment, made in writing, that it is necessary in the interest of the Department of Defense to continue to procure property and services through such non-defense agency.

''(2) APPLICABILITY OF DETERMINATION.—A written determination with respect to a covered non-defense agency under paragraph (1) is in effect for the period, not in excess of one year, that the Under Secretary shall specify in the written determination. The Under Secretary may extend from time to time, for up to one year at a time, the period for which the written determination remains in effect.

''(f) TERMINATION OF APPLICABILITY OF LIMITATIONS.—Subsection (d) shall cease to apply to a covered non-defense agency on the date on which the Inspector General of the Department of Defense and the Inspector General of such non-defense agency jointly—

''(1) determine that such non-defense agency is compliant with defense procurement requirements; and

''(2) notify the Secretary of Defense of that determination.

''(g) IDENTIFICATION OF PROCUREMENTS MADE DURING A PARTICULAR FISCAL YEAR.—For the purposes of subsection (a), a procurement shall be treated as being made during a particular fiscal year to the extent that funds are obligated by the Department of Defense for that procurement in that fiscal year.

''(h) RESOLUTION OF DISAGREEMENTS.—If the Inspector General of the Department of Defense and the Inspector General of a covered non-defense agency are unable to agree on a joint determination under subsection (a) or (f), a determination by the Inspector General of the Department of Defense under such subsection shall be conclusive for the purposes of this section.

''(i) DEFINITIONS.—In this section:

''(1) The term 'covered non-defense agency' means each of the following:

''(A) The Department of Veterans Affairs.

''(B) The National Institutes of Health.

''(2) The term 'governmentwide acquisition contract', with respect to a covered non-defense agency, means a task or delivery order contract that—

''(A) is entered into by the non-defense agency; and

''(B) may be used as the contract under which property or services are procured for one or more other departments or agencies of the Federal Government.''

Pub. L. 109–163, div. A, title VIII, § 811, Jan. 6, 2006, 119 Stat. 3374, as amended by Pub. L. 116–92, div. A, title IX, § 902(44), Dec. 20, 2019, 133 Stat. 1547, provided that:

''(a) INSPECTOR GENERAL REVIEWS AND DETERMINATIONS.—

''(1) IN GENERAL.—For each covered non-defense agency, the Inspector General of the Department of Defense and the Inspector General of such non-defense agency shall, not later than March 15, 2006, jointly—

''(A) review—

''(i) the procurement policies, procedures, and internal controls of such non-defense agency that are applicable to the procurement of property and services on behalf of the Department by such non-defense agency; and

''(ii) the administration of those policies, procedures, and internal controls; and

''(B) determine in writing whether—

''(i) such non-defense agency is compliant with defense procurement requirements;

''(ii) such non-defense agency is not compliant with defense procurement requirements, but has a program or initiative to significantly improve compliance with defense procurement requirements; or

''(iii) neither of the conclusions stated in clauses (i) and (ii) is correct in the case of such non-defense agency.

''(2) ACTIONS FOLLOWING CERTAIN DETERMINATIONS.—If the Inspectors General determine under paragraph (1) that the conclusion stated in clause (ii) or (iii) of subparagraph (B) of that paragraph is correct in the case of a covered non-defense agency, such Inspectors General shall, not later than June 15, 2007, jointly—

''(A) conduct a second review, as described in subparagraph (A) of that paragraph, regarding such non-defense agency's procurement of property or services on behalf of the Department of Defense in fiscal year 2006; and

''(B) determine in writing whether such non-defense agency is or is not compliant with defense procurement requirements.

''(b) COMPLIANCE WITH DEFENSE PROCUREMENT REQUIREMENTS.—For the purposes of this section, a covered non-defense agency is compliant with defense procurement requirements if such non-defense agency's procurement policies, procedures, and internal controls applicable to the procurement of products and services on behalf of the Department of Defense, and the manner in which they are administered, are adequate to ensure such non-defense agency's compliance with the requirements of laws and regulations that apply to procurements of property and services made directly by the Department of Defense.

''(c) MEMORANDA OF UNDERSTANDING BETWEEN INSPECTORS GENERAL.—

''(1) IN GENERAL.—Not later than 60 days after the date of the enactment of this Act [Jan. 6, 2006], the Inspector General of the Department of Defense and the Inspector General of each covered non-defense agency shall enter into a memorandum of understanding with each other to carry out the reviews and make the determinations required by this section.

''(2) SCOPE OF MEMORANDA.—The Inspector General of the Department of Defense and the Inspector General of a covered non-defense agency may by mutual agreement conduct separate reviews of the procurement of property and services on behalf of the Department of Defense that are conducted by separate business units, or under separate governmentwide acquisition contracts, of such non-defense agency. In any case where such separate reviews are conducted, the Inspectors General shall make separate determinations under paragraph (1) or (2) of subsection (a), as applicable, with respect to each such separate review.

''(d) LIMITATIONS ON PROCUREMENTS ON BEHALF OF DEPARTMENT OF DEFENSE.—

''(1) LIMITATION DURING REVIEW PERIOD.—After March 15, 2006, and before June 16, 2007, no official of the Department of Defense may, except as provided in subsection (e) or (f), order, purchase, or otherwise procure property or services in an amount in excess of $100,000 through a covered non-defense agency for which a determination described in paragraph (1)(B)(iii) of subsection (a) has been made under that subsection.

''(2) LIMITATION AFTER REVIEW PERIOD.—After June 15, 2007, no official of the Department of Defense may, except as provided in subsection (e) or (f), order, purchase, or otherwise procure property or services in an amount in excess of $100,000 through a covered non-defense agency that, having been subject to review under this section, has not been determined under this section as being compliant with defense procurement requirements.

''(3) LIMITATION FOLLOWING FAILURE TO REACH MOU.—Commencing on the date that is 60 days after the date of the enactment of this Act [Jan. 6, 2006], if a memorandum of understanding between the Inspector General of the Department of Defense and the Inspector General of a covered non-defense agency cannot be attained causing the review required by this section to not be performed, no official of the Department of Defense, except as provided in subsection (e) or (f), may order, purchase or otherwise procure property or services in an amount in excess of $100,000 through such non-defense agency.

''(e) EXCEPTION FROM APPLICABILITY OF LIMITATIONS.—

''(1) EXCEPTION.—No limitation applies under subsection (d) with respect to the procurement of property and services on behalf of the Department of Defense by a covered non-defense agency during any period that there is in effect a determination of the Under Secretary of Defense for Acquisition and Sustainment, made in writing, that it is necessary in the interest of the Department of Defense to continue to procure property and services through such non-defense agency.

''(2) APPLICABILITY OF DETERMINATION.—A written determination with respect to a covered non-defense agency under paragraph (1) is in effect for the period, not in excess of one year, that the Under Secretary shall specify in the written determination. The Under Secretary may extend from time to time, for up to one year at a time, the period for which the written determination remains in effect.

''(f) TERMINATION OF APPLICABILITY OF LIMITATIONS.—Subsection (d) shall cease to apply to a covered non-defense agency on the date on which the Inspector General of the Department of Defense and the Inspector General of such non-defense agency jointly—

''(1) determine that such non-defense agency is compliant with defense procurement requirements; and

''(2) notify the Secretary of Defense of that determination.

''(g) IDENTIFICATION OF PROCUREMENTS MADE DURING A PARTICULAR FISCAL YEAR.—For the purposes of subsection (a), a procurement shall be treated as being made during a particular fiscal year to the extent that funds are obligated by the Department of Defense for that procurement in that fiscal year.

''(h) DEFINITIONS.—In this section:

''(1) The term 'covered non-defense agency' means each of the following:

''(A) The Department of the Treasury.

''(B) The Department of the Interior.

''(C) The National Aeronautics and Space Administration.

''(2) The term 'governmentwide acquisition contract', with respect to a covered non-defense agency, means a task or delivery order contract that—

''(A) is entered into by the non-defense agency; and

''(B) may be used as the contract under which property or services are procured for 1 or more other departments or agencies of the Federal Government.''

EMPLOYMENT OF STATE RESIDENTS IN STATES HAVING UNEMPLOYMENT RATE IN EXCESS OF NATIONAL AVERAGE

Pub. L. 109–289, div. A, title VIII, § 8048, Sept. 29, 2006, 120 Stat. 1284, provided that: ''Notwithstanding any other provision of law, each contract awarded by the Department of Defense during the current fiscal year and hereafter for construction or service performed in whole or in part in a State (as defined in section 381(d) [now 281(d)] of title 10, United States Code) which is not contiguous with another State and has an unemployment rate in excess of the national average rate of unemployment as determined by the Secretary of Labor, shall include a provision requiring the contractor to employ, for the purpose of performing that portion of the contract in such State that is not contiguous with another State, individuals who are residents of such State and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills: *Provided*, That the Secretary of Defense may waive the requirements of this section, on a case-by-case basis, in the interest of national security.''

RAPID ACQUISITION AND DEPLOYMENT PROCEDURES

Pub. L. 107–314, div. A, title VIII, § 806, Dec. 2, 2002, 116 Stat. 2607, as amended by Pub. L. 108–136, div. A, title

VIII, § 845, Nov. 24, 2003, 117 Stat. 1553; Pub. L. 108–375, div. A, title VIII, § 811, Oct. 28, 2004, 118 Stat. 2012; Pub. L. 109–364, div. A, title X, § 1071(h), Oct. 17, 2006, 120 Stat. 2403; Pub. L. 111–383, div. A, title VIII, § 803, Jan. 7, 2011, 124 Stat. 4255; Pub. L. 112–81, div. A, title VIII, § 845(a), (b), Dec. 31, 2011, 125 Stat. 1515; Pub. L. 114–92, div. A, title VIII, § 803, Nov. 25, 2015, 129 Stat. 880; Pub. L. 114–328, div. A, title VIII, § 801, Dec. 23, 2016, 130 Stat. 2247, provided that:

''(a) REQUIREMENT TO ESTABLISH PROCEDURES.—Not later than 180 days after the date of the enactment of this Act [Dec. 2, 2002], the Secretary of Defense shall prescribe procedures for the rapid acquisition and deployment of supplies and associated support services that are—

''(1)(A) currently under development by the Department of Defense or available from the commercial sector;

''(B) require only minor modifications to supplies described in subparagraph (A); or

''(C) developed or procured under the rapid fielding or rapid prototyping acquisition pathways under section 804 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 2302 note [now 10 U.S.C. 3201 note prec., set out above]); and

''(2) urgently needed to react to an enemy threat or to respond to significant and urgent safety situations.

''(b) ISSUES TO BE ADDRESSED.—The procedures prescribed under subsection (a) shall include the following:

''(1) A process for streamlined communications between the Chairman of the Joint Chiefs of Staff, the acquisition community, and the research and development community, including—

''(A) a process for the commanders of the combatant commands and the Joint Chiefs of Staff to communicate their needs to the acquisition community and the research and development community; and

''(B) a process for the acquisition community and the research and development community to propose supplies and associated support services that meet the needs communicated by the combatant commands and the Joint Chiefs of Staff.

''(2) Procedures for demonstrating, rapidly acquiring, and deploying supplies and associated support services proposed pursuant to paragraph (1)(B), including—

''(A) a process for demonstrating performance and evaluating for current operational purposes the existing capability of the supplies and associated support services;

''(B) a process for developing an acquisition and funding strategy for the deployment of the supplies and associated support services; and

''(C) a process for making deployment and utilization determinations based on information obtained pursuant to subparagraphs (A) and (B).

''(3) Specific procedures in accordance with the guidance developed under section 804(a) of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 2302 note [now 3201 note prec.]).

''(c) RESPONSE TO COMBAT EMERGENCIES AND CERTAIN URGENT OPERATIONAL NEEDS.—

''(1) DETERMINATION OF NEED FOR RAPID ACQUISITION AND DEPLOYMENT.—(A) In the case of any supplies and associated support services that, as determined in writing by the Secretary of Defense, are urgently needed to eliminate a documented deficiency that has resulted in combat casualties, or is likely to result in combat casualties, the Secretary may use the procedures developed under this section in order to accomplish the rapid acquisition and deployment of the needed supplies and associated support services.

''(B) In the case of any supplies and associated support services that, as determined in writing by the Secretary of Defense, are urgently needed to eliminate a documented deficiency that impacts an ongoing or anticipated contingency operation and that, if left unfulfilled, could potentially result in loss of life or critical mission failure, the Secretary may use the procedures developed under this section in order to accomplish the rapid acquisition and deployment of the needed supplies and associated support services.

''(C)(i) In the case of any supplies and associated support services that, as determined in writing by the Secretary of Defense without delegation, are urgently needed to eliminate a deficiency that as the result of a cyber attack has resulted in critical mission failure, the loss of life, property destruction, or economic effects, or if left unfilled is likely to result in critical mission failure, the loss of life, property destruction, or economic effects, the Secretary may use the procedures developed under this section in order to accomplish the rapid acquisition and deployment of the needed offensive or defensive cyber capabilities, supplies, and associated support services.

''(ii) In this subparagraph, the term 'cyber attack' means a deliberate action to alter, disrupt, deceive, degrade, or destroy computer systems or networks or the information or programs resident in or transiting these systems or networks.

''(2) DESIGNATION OF SENIOR OFFICIAL RESPONSIBLE.—(A)(i) Except as provided under clause (ii), whenever the Secretary makes a determination under subparagraph (A), (B), or (C) of paragraph (1) that certain supplies and associated support services are urgently needed to eliminate a deficiency described in that subparagraph, the Secretary shall designate a senior official of the Department of Defense to ensure that the needed supplies and associated support services are acquired and deployed as quickly as possible, with a goal of awarding a contract for the acquisition of the supplies and associated support services within 15 days.

''(ii) Clause (i) does not apply to acquisitions initiated in the case of a determination by the Secretary that funds are necessary to immediately initiate a project under the rapid fielding or rapid prototyping acquisition pathways under section 804 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 2302 note [now 3201 note prec.]) if the designated official for acquisitions using such pathways is the service acquisition executive.

''(B) Upon designation of a senior official under subparagraph (A), the Secretary shall authorize that official to waive any provision of law, policy, directive, or regulation described in subsection (d) that such official determines in writing would unnecessarily impede the rapid acquisition and deployment of the needed supplies and associated support services. In a case in which the needed supplies and associated support services cannot be acquired without an extensive delay, the senior official shall require that an interim solution be implemented and deployed using the procedures developed under this section to minimize adverse consequences resulting from the urgent need.

''(3) USE OF FUNDS.—(A) In any fiscal year in which the Secretary makes a determination described in subparagraph (A), (B), or (C) of paragraph (1), or upon the Secretary making a determination that funds are necessary to immediately initiate a project under the rapid fielding or rapid prototyping acquisition pathways under section 804 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 2302 note [now 3201 note prec.]) based on a compelling national security need, the Secretary may use any funds available to the Department of Defense for acquisitions of supplies and associated support services if the determination includes a written finding that the use of such funds is necessary to address the deficiency in a timely manner.

''(B) Except as provided under subparagraph (C), the authority of this section may only be used to acquire supplies and associated support services—

''(i) in the case of determinations by the Secretary under paragraph (1)(A), in an amount aggregating not more than $200,000,000 during any fiscal year;

''(ii) in the case of determinations by the Secretary under paragraph (1)(B), in an amount aggregating not more than $200,000,000 during any fiscal year;

''(iii) in the case of determinations by the Secretary under paragraph (1)(C), in an amount aggregating not more than $200,000,000 during any fiscal year; and

''(iv) in the case of a determination by the Secretary that funds are necessary to immediately initiate a project under the rapid fielding or rapid prototyping acquisition pathways under section 804 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 2302 note [now 3201 note prec.]), in an amount not more than $200,000,000 during any fiscal year.

''(C) For each of fiscal years 2017 and 2018, the limits set forth in clauses (i) and (ii) of subparagraph (B) do not apply to the exercise of authority under such clauses provided that the total amount of supplies and associated support services acquired as provided under such subparagraph does not exceed $800,000,000 during such fiscal year.

''(4) NOTIFICATION TO CONGRESSIONAL DEFENSE COMMITTEES.—(A) In the case of a determination by the Secretary under paragraph (1)(A), the Secretary shall notify the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] of the determination within 15 days after the date of the determination.

''(B) In the case of a determination by the Secretary under paragraph (1)(B) the Secretary shall notify the congressional defense committees of the determination at least 10 days before the date on which the determination is effective.

''(C) In the case of a determination by the Secretary under paragraph (3)(A) that funds are necessary to immediately initiate a project under the rapid fielding or rapid prototyping acquisition pathways under section 804 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 2302 note [now 3201 note prec.]), the Secretary shall notify the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] of the determination within 10 days after the date of the use of such funds.

''(D) A notice under this paragraph shall include the following:

''(i) The supplies and associated support services to be acquired.

''(ii) The amount anticipated to be expended for the acquisition.

''(iii) The source of funds for the acquisition.

''(E) A notice under this paragraph shall be sufficient to fulfill any requirement to provide notification to Congress for a new start program.

''(F) A notice under this paragraph shall be provided in consultation with the Director of the Office of Management and Budget.

''(5) TIME FOR TRANSITIONING TO NORMAL ACQUISITION SYSTEM.—(A) Any acquisition initiated under this subsection shall transition to the normal acquisition system not later than two years after the date on which the Secretary makes the determination described in paragraph (1) with respect to the supplies and associated support services concerned.

''(B) Subparagraph (A) does not apply to acquisitions initiated in the case of a determination by the Secretary that funds are necessary to immediately initiate a project under the rapid fielding or rapid prototyping acquisition pathways under section 804 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 2302 note [now 3201 note prec.]).

''(6) LIMITATION ON OFFICERS WITH AUTHORITY TO MAKE A DETERMINATION.—The authority to make a determination under subparagraph (A), (B), or (C) of paragraph (1) may be exercised only by the Secretary or Deputy Secretary of Defense.

''(d) WAIVER OF CERTAIN STATUTES AND REGULATIONS.—(1) Upon a determination described in subsection (c)(1), the senior official designated in accordance with subsection (c)(2) with respect to that designation is authorized to waive any provision of law, policy, directive or regulation addressing—

''(A) the establishment of the requirement for the supplies and associated support services;

''(B) the research, development, test, and evaluation of the supplies and associated support services; or

''(C) the solicitation and selection of sources, and the award of the contract, for procurement of the supplies and associated support services.

''(2) Nothing in this subsection authorizes the waiver of—

''(A) the requirements of this section or the regulations implementing this section; or

''(B) any provision of law imposing civil or criminal penalties.

''(e) TESTING REQUIREMENT.—(1) The process for demonstrating performance and evaluating for current operational purposes the existing capability of the supplies and associated support services prescribed under subsection (b)(2)(A) shall include—

''(A) an operational assessment in accordance with procedures prescribed by the Director of Operational Test and Evaluation; and

''(B) a requirement to provide information about any deficiency of the supplies and associated support services in meeting the original requirements for the supplies and associated support services (as stated in a statement of the urgent operational need or similar document) to the deployment decisionmaking authority.

''(2) The process may not include a requirement for any deficiency of supplies and associated support services to be the determining factor in deciding whether to deploy the supplies and associated support services.

''(3) If supplies and associated support services are deployed under the rapid acquisition and deployment procedures prescribed pursuant to this section, or under any other authority, before the completion of operational test and evaluation of the supplies and associated support services, the Director of Operational Test and Evaluation shall have access to operational records and data relevant to such supplies and associated support services in accordance with section 139(e)(3) of title 10, United States Code, for the purpose of completing operational test and evaluation of the supplies and associated support services. The access to the operational records and data shall be provided in a time and manner determined by the Secretary of Defense consistent with requirements of operational security and other relevant operational requirements.

''(f) LIMITATION.—In the case of supplies that are part of a major system for which a low-rate initial production quantity determination has been made pursuant to section 2400 of title 10, United States Code [now 10 U.S.C. 4231], the quantity of such supplies acquired using the procedures prescribed pursuant to this section may not exceed an amount consistent with complying with limitations on the quantity of articles approved for low-rate initial production for such system. Any such supplies shall be included in any relevant calculation of quantities for low-rate initial production for the system concerned.

''(g) ASSOCIATED SUPPORT SERVICES DEFINED.—In this section, the term 'associated support services' means training, operation, maintenance, and support services needed in connection with the deployment of supplies to be acquired pursuant to the authority of this section. The term does not include functions that are inherently governmental or otherwise exempted from private sector performance.''

[Pub. L. 116–260, div. C, title VIII, § 8071, Dec. 27, 2020, 134 Stat. 1322, provided that: ''Any notice that is required to be submitted to the Committees on Appropriations of the House of Representatives and the Senate under section 806(c)(4) of the Bob Stump National

Defense Authorization Act for Fiscal Year 2003 [Pub. L. 107–314, set out above] (10 U.S.C. 2302 note [now 10 U.S.C. 3201 note prec.]) after the date of the enactment of this Act [div. C of Pub. L. 116–260, approved Dec. 27, 2020] shall be submitted pursuant to that requirement concurrently to the Subcommittees on Defense of the Committees on Appropriations of the House of Representatives and the Senate.'']

[Similar provisions were contained in the following prior appropriation acts:

[Pub. L. 116–93, div. A, title VIII, § 8071, Dec. 20, 2019, 133 Stat. 2353.

[Pub. L. 115–245, div. A, title VIII, § 8069, Sept. 28, 2018, 132 Stat. 3017.

[Pub. L. 115–141, div. C, title VIII, § 8070, Mar. 23, 2018, 132 Stat. 480.]

REQUIREMENTS RELATING TO MICRO-PURCHASES

Pub. L. 105–85, div. A, title VIII, § 848, Nov. 18, 1997, 111 Stat. 1846, as amended by Pub. L. 113–291, div. A, title X, § 1071(b)(10), Dec. 19, 2014, 128 Stat. 3507, provided that:

''(a) REQUIREMENT.—(1) Not later than October 1, 1998, at least 60 percent of all eligible purchases made by the Department of Defense for an amount less than the micro-purchase threshold shall be made through streamlined micro-purchase procedures.

''(2) Not later than October 1, 2000, at least 90 percent of all eligible purchases made by the Department of Defense for an amount less than the micro-purchase threshold shall be made through streamlined micro-purchase procedures.

''(b) ELIGIBLE PURCHASES.—The Secretary of Defense shall establish which purchases are eligible for purposes of subsection (a). In establishing which purchases are eligible, the Secretary may exclude those categories of purchases determined not to be appropriate or practicable for streamlined micro-purchase procedures.

''(c) PLAN.—Not later than March 1, 1998, the Secretary of Defense shall provide to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives a plan to implement this section.

''(d) REPORT.—Not later than March 1 in each of the years 1999, 2000, and 2001, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of Senate and House of Representatives] a report on the implementation of this section. Each report shall include—

''(A) the total dollar amount of all Department of Defense purchases for an amount less than the micro-purchase threshold in the fiscal year preceding the year in which the report is submitted;

''(B) the total dollar amount of such purchases that were considered to be eligible purchases;

''(C) the total amount of such eligible purchases that were made through a streamlined micro-purchase method; and

''(D) a description of the categories of purchases excluded from the definition of eligible purchases established under subsection (b).

''(e) DEFINITIONS.—In this section:

''(1) The term 'micro-purchase threshold' has the meaning provided in section 1902 of title 41, United States Code.

''(2) The term 'streamlined micro-purchase procedures' means procedures providing for the use of the Government-wide commercial purchase card or any other method for carrying out micro-purchases that the Secretary of Defense prescribes in the regulations implementing this subsection.''

DEFENSE FACILITY-WIDE PILOT PROGRAM

Pub. L. 104–106, div. A, title VIII, § 822, Feb. 10, 1996, 110 Stat. 396, as amended by Pub. L. 106–65, div. A, title X, § 1067(6), Oct. 5, 1999, 113 Stat. 774, provided that:

''(a) AUTHORITY TO CONDUCT DEFENSE FACILITY-WIDE PILOT PROGRAM.—The Secretary of Defense may conduct a pilot program, to be known as the 'defense facility-wide pilot program', for the purpose of determining the potential for increasing the efficiency and effectiveness of the acquisition process in facilities by using commercial practices on a facility-wide basis.

''(b) DESIGNATION OF PARTICIPATING FACILITIES.—(1) Subject to paragraph (2), the Secretary may designate up to two facilities as participants in the defense facility-wide pilot program.

''(2) The Secretary may designate for participation in the pilot program only those facilities that are authorized to be so designated in a law authorizing appropriations for national defense programs that is enacted after the date of the enactment of this Act [Feb. 10, 1996].

''(c) SCOPE OF PROGRAM.—At a facility designated as a participant in the pilot program, the pilot program shall consist of the following:

''(1) All contracts and subcontracts for defense supplies and services that are performed at the facility.

''(2) All Department of Defense contracts and all subcontracts under Department of Defense contracts performed elsewhere that the Secretary determines are directly and substantially related to the production of defense supplies and services at the facility and are necessary for the pilot program.

''(d) CRITERIA FOR DESIGNATION OF PARTICIPATING FACILITIES.—The Secretary shall establish criteria for selecting a facility for designation as a participant in the pilot program. In developing such criteria, the Secretary shall consider the following:

''(1) The number of existing and anticipated contracts and subcontracts performed at the facility—

''(A) for which contractors are required to provide certified cost or pricing data pursuant to [former] section 2306a of title 10, United States Code [see 10 U.S.C. 3701 et seq.]; and

''(B) which are administered with the application of cost accounting standards under section 26(f) of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 422(f)) [now 41 U.S.C. 1502(a), (b)].

''(2) The relationship of the facility to other organizations and facilities performing under contracts with the Department of Defense and subcontracts under such contracts.

''(3) The impact that the participation of the facility under the pilot program would have on competing domestic manufacturers.

''(4) Such other factors as the Secretary considers appropriate.

''(e) NOTIFICATION.—(1) The Secretary shall transmit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a written notification of each facility proposed to be designated by the Secretary for participation in the pilot program.

''(2) The Secretary shall include in the notification regarding a facility designated for participation in the program a management plan addressing the following:

''(A) The proposed treatment of research and development contracts or subcontracts to be performed at the facility during the pilot program.

''(B) The proposed treatment of the cost impact of the use of commercial practices on the award and administration of contracts and subcontracts performed at the facility.

''(C) The proposed method for reimbursing the contractor for existing and new contracts.

''(D) The proposed method for measuring the performance of the facility for meeting the management goals of the Secretary.

''(E) Estimates of the annual amount and the total amount of the contracts and subcontracts covered under the pilot program.

''(3)(A) The Secretary shall ensure that the management plan for a facility provides for attainment of the following objectives:

''(i) A significant reduction of the cost to the Government for programs carried out at the facility.

''(ii) A reduction of the schedule associated with programs carried out at the facility.

''(iii) An increased use of commercial practices and procedures for programs carried out at the facility.

''(iv) Protection of a domestic manufacturer competing for contracts at such facility from being placed at a significant competitive disadvantage by the participation of the facility in the pilot program.

''(B) The management plan for a facility shall also require that all or substantially all of the contracts to be awarded and performed at the facility after the designation of that facility under subsection (b), and all or substantially all of the subcontracts to be awarded under those contracts and performed at the facility after the designation, be—

''(i) for the production of supplies or services on a firm-fixed price basis;

''(ii) awarded without requiring the contractors or subcontractors to provide certified cost or pricing data pursuant to [former] section 2306a of title 10, United States Code [see 10 U.S.C. 3701 et seq.]; and

''(iii) awarded and administered without the application of cost accounting standards under section 26(f) of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 422(f)) [now 41 U.S.C. 1502(a), (b)].

''(f) EXEMPTION FROM CERTAIN REQUIREMENTS.—In the case of a contract or subcontract that is to be performed at a facility designated for participation in the defense facility-wide pilot program and that is subject to [former] section 2306a of title 10, United States Code [see 10 U.S.C. 3701 et seq.], or section 26(f) of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 422(f)) [now 41 U.S.C. 1502(a), (b)], the Secretary of Defense may exempt such contract or subcontract from the requirement to obtain certified cost or pricing data under such [former] section 2306a [see 10 U.S.C. 3701 et seq.] or the requirement to apply mandatory cost accounting standards under such section 26(f) [now 41 U.S.C. 1502(a), (b)] if the Secretary determines that the contract or subcontract—

''(1) is within the scope of the pilot program (as described in subsection (c)); and

''(2) is fairly and reasonably priced based on information other than certified cost and pricing data.

''(g) SPECIAL AUTHORITY.—The authority provided under subsection (a) includes authority for the Secretary of Defense—

''(1) to apply any amendment or repeal of a provision of law made in this Act [see Tables for classification] to the pilot program before the effective date of such amendment or repeal; and

''(2) to apply to a procurement of items other than commercial items under such program—

''(A) the authority provided in section 34 of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 430) [now 41 U.S.C. 1906] to waive a provision of law in the case of commercial items, and

''(B) any exception applicable under this Act or the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355) [see Tables for classification] (or an amendment made by a provision of either Act) in the case of commercial items,

before the effective date of such provision (or amendment) to the extent that the Secretary determines necessary to test the application of such waiver or exception to procurements of items other than commercial items.

''(h) APPLICABILITY.—(1) Subsections (f) and (g) apply to the following contracts, if such contracts are within the scope of the pilot program at a facility designated for the pilot program under subsection (b):

''(A) A contract that is awarded or modified during the period described in paragraph (2).

''(B) A contract that is awarded before the beginning of such period, that is to be performed (or may be performed), in whole or in part, during such period, and that may be modified as appropriate at no cost to the Government.

''(2) The period referred to in paragraph (1), with respect to a facility designated under subsection (b), is the period that—

''(A) begins 45 days after the date of the enactment of the Act authorizing the designation of that facility in accordance with paragraph (2) of such subsection; and

''(B) ends on September 30, 2000.

''(i) COMMERCIAL PRACTICES ENCOURAGED.—With respect to contracts and subcontracts within the scope of the defense facility-wide pilot program, the Secretary of Defense may, to the extent the Secretary determines appropriate and in accordance with applicable law, adopt commercial practices in the administration of contracts and subcontracts. Such commercial practices may include the following:

''(1) Substitution of commercial oversight and inspection procedures for Government audit and access to records.

''(2) Incorporation of commercial oversight, inspection, and acceptance procedures.

''(3) Use of alternative dispute resolution techniques (including arbitration).

''(4) Elimination of contract provisions authorizing the Government to make unilateral changes to contracts.''

ELIMINATION OF USE OF CLASS I OZONE-DEPLETING SUBSTANCES IN CERTAIN MILITARY PROCUREMENT CONTRACTS

Pub. L. 102–484, div. A, title III, § 326, Oct. 23, 1992, 106 Stat. 2368, as amended by Pub. L. 104–106, div. A, title XV, §§ 1502(c)(2)(A), 1504(c)(1), Feb. 10, 1996, 110 Stat. 506, 514; Pub. L. 106–65, div. A, title X, § 1067(8), Oct. 5, 1999, 113 Stat. 774; Pub. L. 113–291, div. A, title X, § 1071(b)(14), Dec. 19, 2014, 128 Stat. 3508, provided that:

''(a) ELIMINATION OF USE OF CLASS I OZONE-DEPLETING SUBSTANCES.—(1) No Department of Defense contract awarded after June 1, 1993, may include a specification or standard that requires the use of a class I ozone-depleting substance or that can be met only through the use of such a substance unless the inclusion of the specification or standard in the contract is approved by the senior acquisition official for the procurement covered by the contract. The senior acquisition official may grant the approval only if the senior acquisition official determines (based upon the certification of an appropriate technical representative of the official) that a suitable substitute for the class I ozone-depleting substance is not currently available.

''(2)(A)(i) Not later than 60 days after the completion of the first modification, amendment, or extension after June 1, 1993, of a contract referred to in clause (ii), the senior acquisition official (or the designee of that official) shall carry out an evaluation of the contract in order to determine—

''(I) whether the contract includes a specification or standard that requires the use of a class I ozone-depleting substance or can be met only through the use of such a substance; and

''(II) in the event of a determination that the contract includes such a specification or standard, whether the contract can be carried out through the use of an economically feasible substitute for the ozone-depleting substance or through the use of an economically feasible alternative technology for a technology involving the use of the ozone-depleting substance.

''(ii) A contract referred to in clause (i) is any contract in an amount in excess of $10,000,000 that—

''(I) was awarded before June 1, 1993; and

''(II) as a result of the modification, amendment, or extension described in clause (i), will expire more than 1 year after the effective date of the modification, amendment, or extension.

''(iii) A contract under evaluation under clause (i) may not be further modified, amended, or extended until the evaluation described in that clause is complete.

''(B) If the acquisition official (or designee) determines that an economically feasible substitute substance or alternative technology is available for use in a contract under evaluation, the appropriate contracting officer shall enter into negotiations to modify the contract to require the use of the substitute substance or alternative technology.

''(C) A determination that a substitute substance or technology is not available for use in a contract under evaluation shall be made in writing by the senior acquisition official (or designee).

''(D) The Secretary of Defense may, consistent with the Federal Acquisition Regulation, adjust the price of a contract modified under subparagraph (B) to take into account the use by the contractor of a substitute substance or alternative technology in the modified contract.

''(3) The senior acquisition official authorized to grant an approval under paragraph (1) and the senior acquisition official and designees authorized to carry out an evaluation and make a determination under paragraph (2) shall be determined under regulations prescribed by the Secretary of Defense. A senior acquisition official may not delegate the authority provided in paragraph (1).

''(4) Each official who grants an approval authorized under paragraph (1) or makes a determination under paragraph (2)(B) shall submit to the Secretary of Defense a report on that approval or determination, as the case may be, as follows:

''(A) Beginning on October 1, 1993, and continuing for 8 calendar quarters thereafter, by submitting a report on the approvals granted or determinations made under such authority during the preceding quarter not later than 30 days after the end of such quarter.

''(B) Beginning on January 1, 1997, and continuing for 4 years thereafter, by submitting a report on the approvals granted or determinations made under such authority during the preceding year not later than 30 days after the end of such year.

''(5) The Secretary shall promptly transmit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives each report submitted to the Secretary under paragraph (4). The Secretary shall transmit the report in classified and unclassified forms.

''(b) COST RECOVERY.—In any case in which a Department of Defense contract is modified or a specification or standard for such a contract is waived at the request of a contractor in order to permit the contractor to use in the performance of the contract a substitute for a class I ozone-depleting substance or an alternative technology for a technology involving the use of a class I ozone-depleting substance, the Secretary of Defense may adjust the price of the contract in a manner consistent with the Federal Acquisition Regulation.

''(c) DEFINITIONS.—In this section:

''(1) The term 'class I ozone-depleting substance' means any substance listed under section 602(a) of the Clean Air Act (42 U.S.C. 7671a(a)).

''(2) The term 'Federal Acquisition Regulation' means the single Government-wide procurement regulation issued under section 1303(a) of title 41, United States Code.''

MINIMUM PERCENTAGE OF COMPETITIVE PROCUREMENTS

Pub. L. 99–145, title IX, § 913, Nov. 8, 1985, 99 Stat. 687, as amended by Pub. L. 101–510, div. A, title XIII, § 1322(d)(1), Nov. 5, 1990, 104 Stat. 1672, provided that:

''(a) ANNUAL GOAL.—The Secretary of Defense shall establish for each fiscal year a goal for the percentage of defense procurements to be made during that year (expressed in total dollar value of contracts entered into) that are to be competitive procurements.

''(b) DEFINITION.—For the purposes of this section, the term 'competitive procurements' means procurements made by the Department of Defense through the use of competitive procedures, as defined in [former] section 2304 of title 10, United States Code [see 10 U.S.C. 3201 et seq.].''

§ 3201. Full and open competition

(a) IN GENERAL.—Except as provided in sections 3203, 3204(a), and 3205 of this title and except in the case of procurement procedures otherwise expressly authorized by statute, the head of an agency in conducting a procurement for property or services—

(1) shall obtain full and open competition through the use of competitive procedures in accordance with the requirements of this section and sections 3069, 3203, 3204, 3205, 3403, 3405, 3406, 3901, 4501, and 4502 of this title and the Federal Acquisition Regulation; and

(2) shall use the competitive procedure or combination of competitive procedures that is best suited under the circumstances of the procurement.

(b) DETERMINATION OF APPROPRIATE COMPETITIVE PROCEDURES.—In determining the competitive procedure appropriate under the circumstances, the head of an agency—

(1) shall solicit sealed bids if—

(A) time permits the solicitation, submission, and evaluation of sealed bids;

(B) the award will be made on the basis of price and other price-related factors;

(C) it is not necessary to conduct discussions with the responding sources about their bids; and

(D) there is a reasonable expectation of receiving more than one sealed bid; and

(2) shall request competitive proposals if sealed bids are not appropriate under paragraph (1).

(c) EFFICIENT FULFILLMENT OF GOVERNMENT REQUIREMENTS.—The Federal Acquisition Regulation shall ensure that the requirement to obtain full and open competition is implemented in a manner that is consistent with the need to efficiently fulfill the Government's requirements.

(d) CERTAIN PURCHASES OR CONTRACTS TO BE TREATED AS IF MADE WITH SEALED-BID PROCEDURES.—For the purposes of the following, purchases or contracts awarded after using procedures other than sealed-bid procedures shall be treated as if they were made with sealed-bid procedures:

(1) Chapter 65 of title 41.

(2) Sections 3141–3144, 3146, and 3147 of title 40.

(e) NEW CONTRACTS AND MERIT-BASED SELECTION PROCEDURES.—

(1) CONGRESSIONAL POLICY.—It is the policy of Congress that an agency named in section 3063 of this title should not be required by legislation to award a new contract to a specific non-Federal Government entity. It is further the policy of Congress that any program, project, or technology identified in legislation be procured through merit-based selection procedures.

(2) NEW CONTRACT DESCRIBED.—For purposes of this subsection, a contract is a new contract unless the work provided for in the contract is a continuation of the work performed by the specified entity under a preceding contract.

(3) PROVISION OF LAW DESCRIBED.—A provision of law may not be construed as requiring a new contract to be awarded to a specified non-Federal Government entity unless that provision of law—

(A) specifically refers to this subsection;