

Stat. 376; Pub. L. 90-130, §1(9)(C), (D), Nov. 8, 1967, 81 Stat. 375, prescribed authorized strength of Army Medical Specialist Corps in commissioned officers on active list of Regular Army, prior to repeal by Pub. L. 96-513, title II, §202, title VII, §701, Dec. 12, 1980, 94 Stat. 2878, 2955, effective Sept. 15, 1981.

#### AMENDMENTS

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

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Section and amendment by Pub. L. 116-283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116-283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

##### PROCESS FOR ENHANCED SUPPLY CHAIN SCRUTINY

Pub. L. 115-91, div. A, title VIII, §807, Dec. 12, 2017, 131 Stat. 1456, provided that:

“(a) PROCESS.—Not later than 90 days after the date of the enactment of this Act [Dec. 12, 2017], the Secretary of Defense shall establish a process for enhancing scrutiny of acquisition decisions in order to improve the integration of supply chain risk management into the overall acquisition decision cycle.

“(b) ELEMENTS.—The process under subsection (a) shall include the following elements:

“(1) Designation of a senior official responsible for overseeing the development and implementation of the process.

“(2) Development or integration of tools to support commercial due-diligence, business intelligence, or otherwise analyze and monitor commercial activity to understand business relationships with entities determined to be threats to the United States.

“(3) Development of risk profiles of products or services based on commercial due-diligence tools and data services.

“(4) Development of education and training curricula for the acquisition workforce that supports the process.

“(5) Integration, as needed, with intelligence sources to develop threat profiles of entities determined to be threats to the United States.

“(6) Periodic review and assessment of software products and services on computer networks of the Department of Defense to remove prohibited products or services.

“(7) Synchronization of the use of current authorities for making supply chain decisions, including section 806 of Public Law 111-383 (10 U.S.C. 2304 note) or improved use of suspension and debarment officials.

“(8) Coordination with interagency, industrial, and international partners, as appropriate, to share information, develop Government-wide strategies for dealing with significant entities determined to be significant threats to the United States, and effectively use authorities in other departments and agencies to provide consistent, Government-wide approaches to supply chain threats.

“(9) Other matters as the Secretary considers necessary.

“(c) NOTIFICATION.—Not later than 90 days after establishing the process required by subsection (a), the Secretary shall provide a written notification to the Committees on Armed Services of the Senate and House of Representatives that the process has been established. The notification also shall include the following:

“(1) Identification of the official designated under subsection (b)(1).

“(2) Identification of tools and services currently available to the Department of Defense under subsection (b)(2).

“(3) Assessment of additional tools and services available under subsection (b)(2) that the Department of Defense should evaluate.

“(4) Identification of, or recommendations for, any statutory changes needed to improve the effectiveness of the process.

“(5) Projected resource needs for implementing any recommendations made by the Secretary.”

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

##### (a) DEVELOPMENT CONTRACT.—

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

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

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

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

##### (b) PRODUCTION CONTRACT.—

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

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

(A) Proposals to provide to the United States the right to use technical data to be

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

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

(c) **CONSIDERATION OF FACTORS AS OBJECTIVES IN NEGOTIATIONS.**—If the head of an agency is making a noncompetitive award of a development contract or a production contract for a major system, the factors specified in subsections (a) and (b) to be considered in evaluating an offer for a contract may be considered as objectives in negotiating the contract to be awarded. Such objectives may not impair the rights of prospective contractors or subcontractors otherwise provided by law.

(d) **ITEMS DEVELOPED EXCLUSIVELY AT PRIVATE EXPENSE.**—

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

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

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

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

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

### Editorial Notes

#### CODIFICATION

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

#### PRIOR PROVISIONS

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

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

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

A prior section 3212, acts Aug. 10, 1956, ch. 1041, 70A Stat. 175; Sept. 2, 1958, Pub. L. 85-861, §1(68), 72 Stat. 1463; June 30, 1960, Pub. L. 86-559, §1(6), 74 Stat. 265; Nov. 8, 1967, Pub. L. 90-130, §1(9)(G), 81 Stat. 375; Dec. 12, 1980, Pub. L. 96-513, title V, §502(6), 94 Stat. 2909, related to temporary increases in authorized strength in grades of Army Reserve and Army National Guard of United States, prior to repeal by Pub. L. 103-337, div. A, title XVI, §§1662(a)(3), 1691, Oct. 5, 1994, 108 Stat. 2988, 3026, effective Dec. 1, 1994. See section 12009 of this title.

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

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

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

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

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

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

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

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

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

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

#### AMENDMENTS

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

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

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

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

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

**Statutory Notes and Related Subsidiaries**

**EFFECTIVE DATE**

Section and amendment by Pub. L. 116-283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116-283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

**CHAPTER 222—INDEPENDENT COST ESTIMATION AND COST ANALYSIS**

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

**§ 3221. Director of Cost Assessment and Program Evaluation**

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

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

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

(2) with respect to cost estimation in the Department of Defense in general and with respect to specific cost estimates and cost analyses to be conducted in connection with a

major defense acquisition program or major subprogram under chapters 321, 324, and 325, subchapter I of chapter 322, and sections 3042, 4232, 4273, 4293, 4321, 4323, and 4328 of this title, provide guidance to and consult with—

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

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

(4) issue guidance relating to full consideration of life-cycle management and sustainability costs in major defense acquisition programs and major subprograms;

(5) review all cost estimates and cost analyses conducted in connection with major defense acquisition programs and major subprograms;

(6) conduct or approve independent cost estimates and cost analyses for all major defense acquisition programs and major subprograms—

- (A) in advance of—
  - (i) any decision to grant milestone approval pursuant to section 4251 or 4252 of this title;
  - (ii) any decision to enter into low-rate initial production or full-rate production;
  - (iii) any certification under section 4376 of this title; and
  - (iv) any report under section 2445c(f)<sup>1</sup> of this title; and

(B) at any other time considered appropriate by the Director, upon the request of the Under Secretary of Defense for Acquisition and Sustainment, or upon the request of the milestone decision authority;

(7) periodically assess and update the cost indexes used by the Department to ensure that such indexes have a sound basis and meet the Department’s needs for realistic cost estimation; and

(8) annually review the cost and associated information required to be included, by section 4351(c)(1) of this title, in the Selected Acquisition Reports required by that section.

(c) **STAFF.**—The Secretary of Defense shall ensure that the Director of Cost Assessment and Program Evaluation has sufficient professional staff of military and civilian personnel to enable the Director to carry out the duties and responsibilities of the Director under this chapter.

(Added and amended Pub. L. 116-283, div. A, title XVIII, §1812(a), (b), Jan. 1, 2021, 134 Stat. 4174; Pub. L. 117-81, div. A, title XVII, §1701(c)(1), (d)(5), (o)(6)(A)(i), Dec. 27, 2021, 135 Stat. 2135, 2136, 2147.)

<sup>1</sup> Editorially supplied.

<sup>1</sup> See References in Text note below.