

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 1812(c)(1), (2)(A), (D), redesignated subsec. (b) of section 2334 of this title as subsec. (a) of this section, substituted “Requirement” for “Independent Cost Estimate Required Before Approval” in heading, struck out par. (1) designation before “A milestone”, and redesignated subpars. (A) and (B) as pars. (1) and (2), respectively.

Subsec. (b). Pub. L. 116–283, § 1812(c)(2)(B)–(D), redesignated subsec. (a)(2) as (b), inserted heading, substituted “section 3221 of this title” for “subsection (a)” in introductory provisions, and redesignated subpars. (A) and (B) as pars. (1) and (2), respectively.

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.

§ 3223. Director: review of cost estimates, cost analyses, and records of the military departments and Defense Agencies

The Secretary of Defense shall ensure that the Director of Cost Assessment and Program Evaluation—

(1) promptly receives the results of all cost estimates and cost analyses conducted by the military departments and Defense Agencies, and all studies conducted by the military departments and Defense Agencies in connection with such cost estimates and cost analyses, for major defense acquisition programs and major subprograms of the military departments and Defense Agencies; and

(2) has timely access to any records and data in the Department of Defense (including the records and data of each military department and Defense Agency and including classified and proprietary information) that the Director considers necessary to review in order to carry out any duties under this chapter.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1812(a), (d), Jan. 1, 2021, 134 Stat. 4174, 4175; Pub. L. 117–81, div. A, title XVII, § 1701(c)(2), Dec. 27, 2021, 135 Stat. 2136.)

Editorial Notes

CODIFICATION

The text of subsec. (c) of section 2334 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1812(d), was based on Pub. L. 111–23, title I, § 101(b)(1), May 22, 2009, 123 Stat. 1706; Pub. L. 114–328, div. A, title VIII, § 842(a)(3), (b)(2), Dec. 23, 2016, 130 Stat. 2288, 2289.

PRIOR PROVISIONS

A prior section 3223, act Aug. 10, 1956, ch. 1041, 70A Stat. 176, related to authorized strength of Army Reserve in warrant officers, 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 12008 of this title.

AMENDMENTS

2021—Pub. L. 116–283, § 1812(d), transferred subsec. (c) of section 2334 of this title to this section and struck out subsec. (c) designation and heading “Review of Cost Estimates, Cost Analyses, and Records of the Military Departments and Defense Agencies” at beginning.

Par. (2). Pub. L. 117–81 substituted “under this chapter” for “under this section”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 117–81 to take effect immediately after the amendments made by title XVIII of Pub. L. 116–283 have taken effect, see section 1701(a)(3) of Pub. L. 117–81, set out in a note preceding section 3001 of this title and Effective Date note below.

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.

§ 3224. Director: participation, concurrence, and approval in cost estimation

The Director of Cost Assessment and Program Evaluation may—

(1) participate in the discussion of any discrepancies between an independent cost estimate and the cost estimate of a military department or Defense Agency for a major defense acquisition program or major subprogram of the Department of Defense;

(2) comment on deficiencies in the methodology or execution of any cost estimate or cost analysis developed by a military department or Defense Agency for a major defense acquisition program or major subprogram;

(3) concur in the choice of a cost estimate within the baseline description or any other cost estimate (including the discussion of risk for any such cost estimate) for use at any event specified in section 3221(b)(6) of this title; and

(4) participate in the consideration of any decision to request authorization of a multiyear procurement contract for a major defense acquisition program or major subprogram.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1812(a), (e), Jan. 1, 2021, 134 Stat. 4174, 4175.)

Editorial Notes

CODIFICATION

The text of subsec. (d) of section 2334 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1812(e), was based on Pub. L. 111–23, title I, § 101(b)(1), May 22, 2009, 123 Stat. 1706; Pub. L. 114–328, div. A, title VIII, § 842(a)(3), (5), (b)(3), (4), Dec. 23, 2016, 130 Stat. 2288–2290.

PRIOR PROVISIONS

A prior section 3224, act Aug. 10, 1956, ch. 1041, 70A Stat. 177, related to authorized strength of 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 12001 of this title.

AMENDMENTS

2021—Pub. L. 116–283, § 1812(e)(1), (2)(A), transferred subsec. (d) of section 2334 of this title to this section and struck out subsec. (d) designation and heading “Participation, Concurrence, and Approval in Cost Estimation” at beginning.

Par. (3). Pub. L. 116-283, §1812(e)(2)(B), substituted “section 3221(b)(6) of this title” for “subsection (a)(6)”.

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.

§ 3225. Discussion of risk in cost estimates

The Director of Cost Assessment and Program Evaluation, and the Secretary of the military department concerned or the head of the Defense Agency concerned (as applicable), shall each—

(1) issue guidance requiring a discussion of risk, the potential impacts of risk on program costs, and approaches to mitigate risk in cost estimates for major defense acquisition programs and major subprograms;

(2) ensure that cost estimates are developed, to the extent practicable, based on historical actual cost information that is based on demonstrated contractor and Government performance and that such estimates provide a high degree of confidence that the program or subprogram can be completed without the need for significant adjustment to program budgets; and

(3) include the information required in the guidance under paragraph (1)—

(A) in any decision documentation approving a cost estimate within the baseline description or any other cost estimate for use at any event specified in section 3221(b)(6) of this title; and

(B) in the next Selected Acquisition Report pursuant to section 4351 of this title in the case of a major defense acquisition program or major subprogram, or the next quarterly report pursuant to section 2445c¹ of this title in the case of a major automated information system program.

(Added and amended Pub. L. 116-283, div. A, title XVIII, §1812(a), (f), Jan. 1, 2021, 134 Stat. 4174, 4176; Pub. L. 117-81, div. A, title XVII, §1701(o)(6)(A)(ii), Dec. 27, 2021, 135 Stat. 2147.)

Editorial Notes

REFERENCES IN TEXT

Section 2445c of this title, referred to in par. (3)(B), was repealed by Pub. L. 114-328, div. A, title VIII, §846(1), Dec. 23, 2016, 130 Stat. 2292.

CODIFICATION

The text of subsec. (e) of section 2334 of this title, which was transferred to this section and amended by Pub. L. 116-283, §1812(f), was based on Pub. L. 111-23, title I, §101(b)(1), May 22, 2009, 123 Stat. 1706; Pub. L. 111-383, div. A, title VIII, §811(1), Jan. 7, 2011, 124 Stat. 4263; Pub. L. 114-328, div. A, title VIII, §842(a)(3), (6), (b)(5), Dec. 23, 2016, 130 Stat. 2288-2290.

PRIOR PROVISIONS

A prior section 3225, act Aug. 10, 1956, ch. 1041, 70A Stat. 177; Pub. L. 96-513, title V, §502(7), Dec. 12, 1980, 94

Stat. 2909; Pub. L. 100-456, div. A, title XII, §1234(a)(1), Sept. 29, 1988, 102 Stat. 2059, related to authorized strength of Army National Guard and Army National Guard of United States, exclusive of members on active duty, 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 12002 of this title.

AMENDMENTS

2021—Pub. L. 116-283, §1812(f)(1), (2)(A), transferred subsec. (e) of section 2334 of this title to this section and struck out subsec. (e) designation and heading “Discussion of Risk in Cost Estimates” at beginning.

Par. (3)(A). Pub. L. 116-283, §1812(f)(2)(B), substituted “section 3221(b)(6) of this title” for “subsection (a)(6)”.

Par. (3)(B). Pub. L. 116-283, §1812(f)(2)(C), as amended by Pub. L. 117-81, §1701(o)(6)(A)(ii), substituted “section 4351” for “section 2432”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 117-81 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 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.

§ 3226. Estimates for program baseline and analyses and targets for contract negotiation purposes

(a) COST ESTIMATES DEVELOPED FOR SPECIFIED PURPOSES NOT TO BE USED FOR CONTRACT NEGOTIATIONS OR OBLIGATION OF FUNDS.—The policies, procedures, and guidance issued by the Director of Cost Assessment and Program Evaluation in accordance with the requirements of section 3221 of this title shall provide that cost estimates developed for baseline descriptions and other program purposes conducted pursuant to subsection (b)(6) of such section are not to be used for the purpose of contract negotiations or the obligation of funds.

(b) COST ESTIMATES DEVELOPED FOR SPECIFIED PURPOSES NOT TO BE USED FOR CONTRACT NEGOTIATIONS OR OBLIGATION OF FUNDS.—The Under Secretary of Defense for Acquisition and Sustainment shall, in consultation with the Director of Cost Assessment and Program Evaluation, develop policies, procedures, and guidance to ensure that cost analyses and targets developed for the purpose of contract negotiations and the obligation of funds are based on the Government’s reasonable expectation of successful contractor performance in accordance with the contractor’s proposal and previous experience.

(c) PROGRAM MANAGER AND CONTRACTING OFFICER.—The program manager and contracting officer for each major defense acquisition program and major subprogram shall ensure that cost analyses and targets developed for the purpose of contract negotiations and the obligation of funds are carried out in accordance with the requirements of subsection (a) and the policies, procedures, and guidance issued by the Under

¹ See References in Text note below.