

Secretary of Defense for Acquisition and Sustainment under subsection (b).

(d) AVAILABILITY OF EXCESS FUNDS.—

(1) Funds that are made available for a major defense acquisition program or major subprogram in accordance with a cost estimate conducted pursuant to section 3221(b)(6) of this title, but are excess to a cost analysis or target developed pursuant to subsection (b), shall remain available for obligation in accordance with the terms of applicable authorization and appropriations Acts.

(2) Funds described in paragraph (1)—

(A) may be used—

(i) to cover any increased program costs identified by a revised cost analysis or target developed pursuant to subsection (b);

(ii) to acquire additional end items in accordance with the requirements of section 3069 of this title; or

(iii) to cover the cost of risk reduction and process improvements; and

(B) may be reprogrammed, in accordance with established procedures, only if determined to be excess to program needs on the basis of a cost estimate developed with the concurrence of the Director of Cost Assessment and Program Evaluation.

(Added and amended Pub. L. 116-283, div. A, title XVIII, §1812(a), (g), Jan. 1, 2021, 134 Stat. 4174, 4176.)

Editorial Notes

CODIFICATION

The text of subsec. (f) of section 2334 of this title, which was transferred to this section and amended by Pub. L. 116-283, §1812(g), was based on Pub. L. 111-383, div. A, title VIII, §811(3), Jan. 7, 2011, 124 Stat. 4263; Pub. L. 112-81, div. A, title VIII, §833, Dec. 31, 2011, 125 Stat. 1506; Pub. L. 114-328, div. A, title VIII, §842(a)(3), (b)(3), (6), Dec. 23, 2016, 130 Stat. 2288-2290; Pub. L. 116-92, div. A, title IX, §902(53), Dec. 20, 2019, 133 Stat. 1549.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116-283, §1812(g)(1), (2)(A), (B), redesignated subsec. (f) of section 2334 of this title as subsec. (a) of this section, substituted “Cost Estimates Developed for Specified Purposes Not to Be Used for Contract Negotiations or Obligation of Funds” for “Estimates for Program Baseline and Analyses and Targets for Contract Negotiation Purposes” in heading, struck out par. (1) designation before “The policies,” and substituted “section 3221 of this title” for “subsection (a)” and “subsection (b)(6) of such section” for “subsection (a)(6)”. Pars. (2), (3), (4), and (5) of subsec. (a) redesignated subsecs. (b), (c), (d)(1), and (d)(2), respectively.

Subsec. (b). Pub. L. 116-283, §1812(g)(2)(C), redesignated subsec. (a)(2) as (b) and inserted heading.

Subsec. (c). Pub. L. 116-283, §1812(g)(2)(D), redesignated subsec. (a)(3) as (c), inserted heading, and substituted “The program manager” for “The Program Manager”, “subsection (a)” for “paragraph (1)”, and “subsection (b)” for “paragraph (2)”.

Subsec. (d). Pub. L. 116-283, §1812(g)(2)(E)(i), (iii), redesignated subsec. (a)(4) and (5) as (d)(1) and (2), respectively, inserted subsec. heading, and realigned margin of par. (2).

Subsec. (d)(1). Pub. L. 116-283, §1812(g)(2)(E)(ii), substituted “section 3221(b)(6) of this title” for “subsection (a)(6)” and “subsection (b)” for “paragraph (2)”.

Subsec. (d)(2). Pub. L. 116-283, §1812(g)(2)(E)(iv), substituted “paragraph (1)” for “paragraph (4)” in intro-

ductory provisions, “subsection (b)” for “paragraph (2)” in subpar. (A)(i), and “section 3069” for “section 2308” in subpar. (A)(ii).

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.

§ 3227. Guidelines and collection method for acquisition of cost data

(a) DIRECTOR OF CAPE TO DEVELOP GUIDELINES AND COLLECTION METHOD.—The Director of Cost Assessment and Program Evaluation shall, in consultation with the Under Secretary of Defense for Acquisition and Sustainment, develop policies, procedures, guidance, and a collection method to ensure that quality acquisition cost data are collected to facilitate cost estimation and comparison across acquisition programs.

(b) APPLICABILITY TO ACQUISITION PROGRAMS IN AMOUNT GREATER THAN SPECIFIED THRESHOLD.—The program manager and contracting officer for each acquisition program in an amount greater than \$100,000,000, in consultation with the cost estimating component of the relevant military department or Defense Agency, shall ensure that cost data are collected in accordance with the requirements of subsection (a).

(c) LIMITATION ON WAIVER AUTHORITY.—The requirement under subsection (a) may be waived only by the Director of Cost Assessment and Program Evaluation.

(Added and amended Pub. L. 116-283, div. A, title XVIII, §1812(a), (h), Jan. 1, 2021, 134 Stat. 4174, 4177.)

Editorial Notes

CODIFICATION

The text of subsec. (g) of section 2334 of this title, which was transferred to this section and amended by Pub. L. 116-283, §1812(h), was based on Pub. L. 114-328, div. A, title VIII, §842(a)(7), Dec. 23, 2016, 130 Stat. 2289; Pub. L. 116-92, div. A, title IX, §902(53), Dec. 20, 2019, 133 Stat. 1549.

PRIOR PROVISIONS

A prior section 3230, added Pub. L. 85-861, §1(69)(B), Sept. 2, 1958, 72 Stat. 1464, provided that members of Army who are detailed for duty with agencies of United States outside Department of Defense on a reimbursable basis not be counted in computing strengths under any law, 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—Subsec. (a). Pub. L. 116-283, §1812(h)(1), (2)(A), redesignated subsec. (g) of section 2334 of this title as subsec. (a) of this section, substituted “DIRECTOR OF CAPE TO DEVELOP GUIDELINES AND COLLECTION METHOD” for “GUIDELINES AND COLLECTION OF COST DATA” in heading, and struck out par. (1) designation before “The Director”. Amendment striking heading was executed to reflect the probable intent of Congress notwithstanding error in formatting of text. Pars. (2) and (3) of subsec. (a) redesignated subsecs. (b) and (c), respectively.

Subsec. (b). Pub. L. 116-283, §1812(h)(2)(B), redesignated subsec. (a)(2) as (b), inserted heading, and substituted “subsection (a)” for “paragraph (1)”.

Subsec. (c). Pub. L. 116-283, §1812(h)(2)(C), redesignated subsec. (a)(3) as (c), inserted heading, and substituted “subsection (a)” for “paragraph (1)”.

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 223—OTHER PROVISIONS RELATING TO PLANNING AND SOLICITATION GENERALLY

Sec.

- 3241. Design-build selection procedures.
- 3242. Supplies: economic order quantities.
- 3243. Encouragement of new competitors: qualification requirement.
- 3244. [Reserved].
- 3245. [Reserved].
- 3246. [Reserved].
- 3247. Contracts: regulations for bids.
- 3248. [Reserved].
- 3249. Advocates for competition.
- 3250. [Reserved].
- 3251. [Reserved].
- 3252. Requirements for information relating to supply chain risk.

Editorial Notes

PRIOR PROVISIONS

A prior chapter 223 “PLANNING AND SOLICITATION RELATING TO PARTICULAR ITEMS OR SERVICES”, as added by Pub. L. 115-232, div. A, title VIII, §801(a), Aug. 13, 2018, 132 Stat. 1827, and consisting of reserved section 3251, was repealed by Pub. L. 116-283, div. A, title XVIII, §1811(b), Jan. 1, 2021, 134 Stat. 4164.

AMENDMENTS

2021—Pub. L. 117-81, div. A, title XVII, §1701(f)(4), Dec. 27, 2021, 135 Stat. 2139, added “[Reserved]” for item 3248 and struck out former item 3248 “Matters relating to reverse auctions”.

Statutory Notes and Related Subsidiaries

AUTHORITY FOR EXPLOSIVE ORDNANCE DISPOSAL UNITS TO ACQUIRE NEW OR EMERGING TECHNOLOGIES AND CAPABILITIES

Pub. L. 115-91, div. A, title I, §142, Dec. 12, 2017, 131 Stat. 1320, provided that: “The Secretary of Defense, after consultation with the head of each military service, may provide to an explosive ordnance disposal unit the authority to acquire new or emerging technologies and capabilities that are not specifically provided for in the authorized equipment allowance for the unit, as such allowance is set forth in the table of equipment and table of allowance for the unit.”

ANNUAL REPORT ON MILITARY WORKING DOGS USED BY THE DEPARTMENT OF DEFENSE

Pub. L. 115-91, div. A, title III, §334, Dec. 12, 2017, 131 Stat. 1356, provided that:

“(a) CAPACITY.—The Secretary of Defense, acting through the Executive Agent for Military Working Dogs (hereinafter in this section referred to as the ‘Executive Agent’), shall—

“(1) identify the number of military working dogs required to fulfill the various missions of the Depart-

ment of Defense for which such dogs are used, including force protection, facility and check point security, and explosives and drug detection;

“(2) take such steps as are practicable to ensure an adequate number of military working dog teams are available to meet and sustain the mission requirements identified in paragraph (1);

“(3) ensure that the Department’s needs and performance standards with respect to military working dogs are readily available to dog breeders and trainers; and

“(4) coordinate with other Federal, State, and local agencies, nonprofit organizations, universities, and private sector entities, as appropriate, to increase the training capacity for military working dog teams.

“(b) MILITARY WORKING DOG PROCUREMENT.—The Secretary, acting through the Executive Agent, shall work to ensure that military working dogs are procured as efficiently as possible and at the best value to the Government, while maintaining the necessary level of quality and encouraging increased domestic breeding.

“(c) ANNUAL REPORT.—Not later than 90 days after the date of the enactment of this Act [Dec. 12, 2017], and annually thereafter until September 30, 2021, the Secretary, acting through the Executive Agent, shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the procurement and retirement of military working dogs for the fiscal year preceding the fiscal year during which the report is submitted. Each report under this subsection shall include the following for the fiscal year covered by the report:

“(1) The number of military working dogs procured, by source, by each military department or Defense Agency.

“(2) The cost of procuring military working dogs incurred by each military department or Defense Agency.

“(3) The number of domestically-bred and sourced military working dogs procured by each military department or Defense Agency, including a list of vendors, their location, cost, and the quantity of dogs procured from each vendor.

“(4) The number of non-domestically-bred military working dogs procured from non-domestic sources by each military department or Defense Agency, including a list of vendors, their location, cost, and the quantity of dogs procured from each vendor.

“(5) The cost of procuring pre-trained and green dogs for force protection, facility and checkpoint security, and improvised explosive device, other explosives, and drug detection.

“(6) An analysis of the procurement practices of each military department or Defense Agency that limit market access for domestic canine vendors and breeders.

“(7) The total cost of procuring domestically-bred military working dogs versus the total cost of procuring dogs from non-domestic sources.

“(8) The total number of domestically-bred dogs and the number of dogs from foreign sources procured by each military department or Defense Agency and the number and percentage of those dogs that are ultimately deployed for their intended use.

“(9) An explanation for any significant difference in the cost of procuring military working dogs from different sources.

“(10) An estimate of the number of military working dogs expected to retire annually and an identification of the primary cause of the retirement of such dogs.

“(11) An identification of the final disposition of military working dogs no longer in service.

“(d) MILITARY WORKING DOG DEFINED.—For purposes of this section, the term ‘military working dog’ means a dog used in any official military capacity, as defined by the Secretary of Defense.”

[Similar provisions were contained in Pub. L. 110-417, [div. A], title III, §358, Oct. 14, 2008, 122 Stat. 4427, as