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

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 A, title VIII, § 801(a), Aug. 13, 2018, 132 Stat. 1827, and consisting of reserved section 3251, was repealed by Pub.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 Department 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

amended by Pub. L. 111–84, div. A, title III, § 341, Oct. 28, 2009, 123 Stat. 2260; Pub. L. 111–383, div. A, title X, § 1075(e)(6), Jan. 7, 2011, 124 Stat. 4374; Pub. L. 112–81, div. A, title III, § 349, Dec. 31, 2011, 125 Stat. 1375; Pub. L. 114–92, div. A, title X, § 1073(h), Nov. 25, 2015, 129 Stat. 996.]

STRATEGY FOR ASSURED ACCESS TO TRUSTED MICROELECTRONICS

Pub. L. 114–328, div. A, title II, § 231, Dec. 23, 2016, 130 Stat. 2059, as amended by Pub. L. 116–283, div. A, title II, § 276, Jan. 1, 2021, 134 Stat. 3504, provided that:

''(a) STRATEGY.—The Secretary of Defense shall, in collaboration with the Under Secretary of Defense for Acquisition and Sustainment, the Under Secretary for Research and Engineering, and the Director of the Defense Advanced Research Projects Agency, develop a strategy to ensure that the Department of Defense has assured access to trusted microelectronics by not later than June 1, 2021.

''(b) ELEMENTS.—The strategy under subsection (a) shall include the following:

''(1) Definitions of the various levels of trust required by classes of Department of Defense systems.

''(2) Means of classifying systems of the Department of Defense based on the level of trust such systems are required to maintain with respect to microelectronics.

''(3) Means by which trust in microelectronics can be assured.

''(4) Means to increase the supplier base for assured microelectronics to ensure multiple supply pathways.

''(5) An assessment of the microelectronics needs of the Department of Defense in future years, including the need for trusted, radiation-hardened microelectronics.

''(6) An assessment of the microelectronic needs of the Department of Defense that may not be fulfilled by entities outside the Department of Defense.

''(7) The resources required to assure access to trusted microelectronics, including infrastructure, workforce, and investments in science and technology.

''(8) A research and development strategy to ensure that the Department of Defense can, to the maximum extent practicable, use state of the art commercial microelectronics capabilities or their equivalent, while satisfying the needs for trust.

''(9) Recommendations for changes in authorities, regulations, and practices, including acquisition policies, financial management, public-private partnership policies, or in any other relevant areas, that would support the achievement of the goals of the strategy.

''(10) An approach to ensuring the continuing production of cutting-edge microelectronics for national security needs, including access to state-of-the-art node sizes through commercial manufacturing, heterogeneous integration, advantaged sensor manufacturing, boutique chip designs, and variable volume production capabilities.

''(11) An assessment of current microelectronics supply chain management best practices, including—

''(A) intellectual property controls;

''(B) international standards;

''(C) guidelines of the National Institute of Standards and Technology;

''(D) product traceability and provenance; and

''(E) location of design, manufacturing, and packaging facilities.

''(12) An assessment of existing risks to the current microelectronics supply chain.

''(13) A description of actions that may be carried out by the defense industrial base to implement best practices described in paragraph (11) and mitigate risks described in paragraph (12).

''(14) A plan for increasing commercialization of intellectual property developed by the Department of Defense for commercial microelectronics research and development.

''(15) An assessment of the feasibility, usefulness, efficacy, and cost of—

''(A) developing a national laboratory exclusively focused on the research and development of microelectronics to serve as a center for Federal Government expertise in high-performing, trusted microelectronics and as a hub for Federal Government research into breakthrough microelectronics-related technologies; and

''(B) incorporating into such national laboratory a commercial incubator to provide early-stage microelectronics startups, which face difficulties scaling due to the high costs of microelectronics design and fabrication, with access to funding resources, fabrication facilities, design tools, and shared intellectual property.

''(16) The development of multiple models of public-private partnerships to execute the strategy, including in-depth analysis of establishing a semiconductor manufacturing corporation to leverage private sector technical, managerial, and investment expertise, and private capital, that would have the authority and funds to provide grants or approve investment tax credits, or both, to implement the strategy.

''(17) Processes and criteria for competitive selection of commercial companies, including companies headquartered in countries that are allies or partners with the United States, to provide design, foundry and assembly, and packaging services and to build and operate the industrial capabilities associated with such services.

''(18) The role that other Federal agencies should play in organizing and supporting the strategy, including any required direct or indirect funding support, or legislative and regulatory actions, including restricting procurement to domestic sources, and providing antitrust and export control relief.

''(19) All potential funding sources and mechanisms for initial and sustaining investments in microelectronics.

''(20) Such other matters as the Secretary of Defense determines to be relevant.

''(c) SUBMISSION AND UPDATES.—(1) Not later than one year after the date of the enactment of this Act [Dec. 23, 2016], the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] the strategy developed under subsection (a). The strategy shall be submitted in unclassified form, but may include a classified annex.

''(2) Not later than two years after submitting the strategy under paragraph (1) and not less frequently than once every two years thereafter until September 30, 2024, the Secretary shall update the strategy as the Secretary considers appropriate to support Department of Defense missions.

''(d) DIRECTIVE REQUIRED.—Not later than June 1, 2021, the Secretary of Defense shall issue a directive for the Department of Defense describing how Department of Defense entities may access assured and trusted microelectronics supply chains for Department of Defense systems.

''(e) REPORT AND CERTIFICATION.—Not later than June 1, 2021, the Secretary of the Defense shall submit to the congressional defense committees—

''(1) a report on—

''(A) the status of the implementation of the strategy developed under subsection (a);

''(B) the actions being taken to achieve full implementation of such strategy, and a timeline for such implementation; and

''(C) the status of the implementation of the directive required by subsection (d); and

''(2) a certification of whether the Department of Defense has an assured means for accessing a sufficient supply of trusted microelectronics, as required by the strategy developed under subsection (a).

''(f) SUBMISSION.—Not later than June 1, 2021, the Secretary of Defense shall submit the strategy required in subsection (a), along with any views and recommenda-

tions and an estimated budget to implement the strategy, to the President, the National Security Council, and the National Economic Council.

''(g) DEFINITIONS.—In this section:

''(1) The term 'assured' refers, with respect to microelectronics, to the ability of the Department of Defense to guarantee availability of microelectronics parts at the necessary volumes and with the performance characteristics required to meet the needs of the Department of Defense.

''(2) The terms 'trust' and 'trusted' refer, with respect to microelectronics, to the ability of the Department of Defense to have confidence that the microelectronics function as intended and are free of exploitable vulnerabilities, either intentionally or unintentionally designed or inserted as part of the system at any time during its life cycle.''

USE OF LOWEST PRICE TECHNICALLY ACCEPTABLE SOURCE SELECTION PROCESS

Pub. L. 114–328, div. A, title VIII, §813, Dec. 23, 2016, 130 Stat. 2270, as amended by Pub. L. 115–91, div. A, title VIII, §822(a), (b)(1), Dec. 12, 2017, 131 Stat. 1465; Pub. L. 116–92, div. A, title VIII, §806(a)(1), Dec. 20, 2019, 133 Stat. 1485, provided that:

''(a) STATEMENT OF POLICY.—It shall be the policy of the Department of Defense to avoid using lowest price technically acceptable source selection criteria in circumstances that would deny the Department the benefits of cost and technical tradeoffs in the source selection process.

''(b) REVISION OF DEFENSE FEDERAL ACQUISITION REGULATION SUPPLEMENT.—Not later than 120 days after the date of the enactment of this Act [Dec. 23, 2016], the Secretary of Defense shall revise the Defense Federal Acquisition Regulation Supplement to require that, for solicitations issued on or after the date that is 120 days after the date of the enactment of this Act, lowest price technically acceptable source selection criteria are used only in situations in which—

''(1) the Department of Defense is able to comprehensively and clearly describe the minimum requirements expressed in terms of performance objectives, measures, and standards that will be used to determine acceptability of offers;

''(2) the Department of Defense would realize no, or minimal, value from a contract proposal exceeding the minimum technical or performance requirements set forth in the request for proposal;

''(3) the proposed technical approaches will require no, or minimal, subjective judgment by the source selection authority as to the desirability of one offeror's proposal versus a competing proposal;

''(4) the source selection authority has a high degree of confidence that a review of technical proposals of offerors other than the lowest bidder would not result in the identification of factors that could provide value or benefit to the Department;

''(5) the contracting officer has included a justification for the use of a lowest price technically acceptable evaluation methodology in the contract file;

''(6) the Department of Defense has determined that the lowest price reflects full life-cycle costs, including for operations and support;

''(7) the Department of Defense would realize no, or minimal, additional innovation or future technological advantage by using a different methodology; and

''(8) with respect to a contract for procurement of goods, the goods procured are predominantly expendable in nature, nontechnical, or have a short life expectancy or short shelf life.

''(c) AVOIDANCE OF USE OF LOWEST PRICE TECHNICALLY ACCEPTABLE SOURCE SELECTION CRITERIA IN CERTAIN PROCUREMENTS.—To the maximum extent practicable, the use of lowest price technically acceptable source selection criteria shall be avoided in the case of a procurement that is predominately for the acquisition of—

''(1) information technology services, cybersecurity services, systems engineering and technical assistance services, advanced electronic testing, audit or audit readiness services, or other knowledge-based professional services;

''(2) personal protective equipment; or

''(3) knowledge-based training or logistics services in contingency operations or other operations outside the United States, including in Afghanistan or Iraq.''

[Pub. L. 115–91, div. A, title VIII, §822(b)(2), Dec. 12, 2017, 131 Stat. 1465, provided that: ''The amendment made by this subsection [amending section 813 of Pub. L. 114–328, set out above] shall apply with respect to the second, third, and fourth reports submitted under [former] subsection (d) of section 813 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 130 Stat 2271; 10 U.S.C. 2305 note).''']

USE OF COMMERCIAL OR NON-GOVERNMENT STANDARDS IN LIEU OF MILITARY SPECIFICATIONS AND STANDARDS

Pub. L. 114–328, div. A, title VIII, §875, Dec. 23, 2016, 130 Stat. 2310, as amended by Pub. L. 116–92, div. A, title IX, §902(45), Dec. 20, 2019, 133 Stat. 1548, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall ensure that the Department of Defense uses commercial or non-Government specifications and standards in lieu of military specifications and standards, including for procuring new systems, major modifications, upgrades to current systems, non-developmental and commercial items, and programs in all acquisition categories, unless no practical alternative exists to meet user needs. If it is not practicable to use a commercial or non-Government standard, a Government-unique specification may be used.

''(b) LIMITED USE OF MILITARY SPECIFICATIONS.—

''(1) IN GENERAL.—Military specifications shall be used in procurements only to define an exact design solution when there is no acceptable commercial or non-Government standard or when the use of a commercial or non-Government standard is not cost effective.

''(2) WAIVER.—A waiver for the use of military specifications in accordance with paragraph (1) shall be approved by either the appropriate milestone decision authority, the appropriate service acquisition executive, or the Under Secretary of Defense for Acquisition and Sustainment.

''(c) REVISION TO DFARS.—Not later than 180 days after the date of the enactment of this Act [Dec. 23, 2016], the Under Secretary of Defense for Acquisition and Sustainment shall revise the Defense Federal Acquisition Regulation Supplement to encourage contractors to propose commercial or non-Government standards and industry-wide practices that meet the intent of the military specifications and standards.

''(d) DEVELOPMENT OF NON-GOVERNMENT STANDARDS.—The Under Secretary of Defense for Research and Engineering shall form partnerships with appropriate industry associations to develop commercial or non-Government standards for replacement of military specifications and standards where practicable.

''(e) EDUCATION, TRAINING, AND GUIDANCE.—The Under Secretary of Defense for Acquisition and Sustainment shall ensure that training, education, and guidance programs throughout the Department are revised to incorporate specifications and standards reform.

''(f) LICENSES.—The Under Secretary of Defense for Acquisition and Sustainment shall negotiate licenses for standards to be used across the Department of Defense and shall maintain an inventory of such licenses that is accessible to other Department of Defense organizations.''

REQUIREMENT AND REVIEW RELATING TO USE OF BRAND NAMES OR BRAND-NAME OR EQUIVALENT DESCRIPTIONS IN SOLICITATIONS

Pub. L. 114–328, div. A, title VIII, §888, Dec. 23, 2016, 130 Stat. 2322, as amended by Pub. L. 116–92, div. A, title IX, §902(46), Dec. 20, 2019, 133 Stat. 1548, provided that:

''(a) REQUIREMENT.—The Secretary of Defense shall ensure that competition in Department of Defense con-

tracts is not limited through the use of specifying brand names or brand-name or equivalent descriptions, or proprietary specifications or standards, in solicitations unless a justification for such specification is provided and approved in accordance with section 2304(f) of title 10, United States Code [now 10 U.S.C. 3204(e)].

''(b) REVIEW OF ANTI-COMPETITIVE SPECIFICATIONS IN INFORMATION TECHNOLOGY ACQUISITIONS.—

''(1) REVIEW REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Dec. 23, 2016], the Under Secretary of Defense for Acquisition and Sustainment shall conduct a review of the policy, guidance, regulations, and training related to specifications included in information technology acquisitions to ensure current policies eliminate the unjustified use of potentially anti-competitive specifications. In conducting the review, the Under Secretary shall examine the use of brand names or proprietary specifications or standards in solicitations for procurements of goods and services, as well as the current acquisition training curriculum related to those areas.

''(2) BRIEFING REQUIRED.—Not later than 270 days after the date of the enactment of this Act, the Under Secretary shall provide a briefing to the Committees on Armed Services of the Senate and House of Representatives on the results of the review required by paragraph (1).

''(3) ADDITIONAL GUIDANCE.—Not later than one year after the date of the enactment of this Act, the Under Secretary shall revise policies, guidance, and training to incorporate such recommendations as the Under Secretary considers appropriate from the review required by paragraph (1).''

MATTERS RELATING TO REVERSE AUCTIONS

Pub. L. 113–291, div. A, title VIII, §824, Dec. 19, 2014, 128 Stat. 3436, provided that:

''(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Dec. 19, 2014], the Secretary of Defense shall clarify regulations on reverse auctions, as necessary, to ensure that—

''(1) single bid contracts may not be entered into resulting from reverse auctions unless compliant with existing Federal regulations and Department of Defense memoranda providing guidance on single bid offers;

''(2) all reverse auctions provide offerors with the ability to submit revised bids throughout the course of the auction;

''(3) if a reverse auction is conducted by a third party—

''(A) inherently governmental functions are not performed by private contractors, including by the third party; and

''(B) past performance or financial responsibility information created by the third party is made available to offerors; and

''(4) reverse auctions resulting in design-build military construction contracts specifically authorized in law are prohibited.

''(b) TRAINING.—Not later than 180 days after the date of the enactment of this Act, the President of the Defense Acquisition University shall establish comprehensive training available for contract specialists in the Department of Defense on the use of reverse auctions.

''(c) DESIGN-BUILD DEFINED.—In this section, the term 'design-build' means procedures used for the selection of a contractor on the basis of price and other evaluation criteria to perform, in accordance with the provisions of a firm fixed-price contract, both the design and construction of a facility using performance specifications supplied by the Secretary of Defense.''

CONSIDERATION OF CORROSION CONTROL IN PRELIMINARY DESIGN REVIEW

Pub. L. 113–291, div. A, title VIII, §852, Dec. 19, 2014, 128 Stat. 3458, as amended by Pub. L. 116–92, div. A, title IX, §902(34), Dec. 20, 2019, 133 Stat. 1546, provided that: ''The Under Secretary of Defense for Acquisition and Sustainment shall ensure that Department of Defense Instruction 5000.02 and other applicable guidance require full consideration, during preliminary design review for a product, of metals, materials, and technologies that effectively prevent or control corrosion over the life cycle of the product.''

DETECTION AND AVOIDANCE OF COUNTERFEIT ELECTRONIC PARTS

Pub. L. 112–81, div. A, title VIII, §818(a)–(g), Dec. 31, 2011, 125 Stat. 1493–1496, as amended by Pub. L. 112–239, div. A, title VIII, §833, Jan. 2, 2013, 126 Stat. 1844; Pub. L. 113–291, div. A, title VIII, §817, Dec. 19, 2014, 128 Stat. 3432; Pub. L. 114–92, div. A, title VIII, §885, Nov. 25, 2015, 129 Stat. 948; Pub. L. 114–328, div. A, title VIII, §815, Dec. 23, 2016, 130 Stat. 2271; Pub. L. 115–232, div. A, title VIII, §812(b)(5), Aug. 13, 2018, 132 Stat. 1848, provided that:

''(a) ASSESSMENT OF DEPARTMENT OF DEFENSE POLICIES AND SYSTEMS.—The Secretary of Defense shall conduct an assessment of Department of Defense acquisition policies and systems for the detection and avoidance of counterfeit electronic parts.

''(b) ACTIONS FOLLOWING ASSESSMENT.—Not later than 180 days after the date of the enactment of the [probably should be ''this''] Act [Dec. 31, 2011], the Secretary shall, based on the results of the assessment required by subsection (a)—

''(1) establish Department-wide definitions of the terms 'counterfeit electronic part' and 'suspect counterfeit electronic part', which definitions shall include previously used parts represented as new;

''(2) issue or revise guidance applicable to Department components engaged in the purchase of electronic parts to implement a risk-based approach to minimize the impact of counterfeit electronic parts or suspect counterfeit electronic parts on the Department, which guidance shall address requirements for training personnel, making sourcing decisions, ensuring traceability of parts, inspecting and testing parts, reporting and quarantining counterfeit electronic parts and suspect counterfeit electronic parts, and taking corrective actions (including actions to recover costs as described in subsection (c)(2));

''(3) issue or revise guidance applicable to the Department on remedial actions to be taken in the case of a supplier who has repeatedly failed to detect and avoid counterfeit electronic parts or otherwise failed to exercise due diligence in the detection and avoidance of such parts, including consideration of whether to suspend or debar a supplier until such time as the supplier has effectively addressed the issues that led to such failures;

''(4) establish processes for ensuring that Department personnel who become aware of, or have reason to suspect, that any end item, component, part, or material contained in supplies purchased by or for the Department contains counterfeit electronic parts or suspect counterfeit electronic parts provide a report in writing within 60 days to appropriate Government authorities and to the Government-Industry Data Exchange Program (or a similar program designated by the Secretary); and

''(5) establish a process for analyzing, assessing, and acting on reports of counterfeit electronic parts and suspect counterfeit electronic parts that are submitted in accordance with the processes under paragraph (4).

''(c) REGULATIONS.—

''(1) IN GENERAL.—Not later than 270 days after the date of the enactment of this Act [Dec. 31, 2011], the Secretary shall revise the Department of Defense Supplement to the Federal Acquisition Regulation to address the detection and avoidance of counterfeit electronic parts.

''(2) CONTRACTOR RESPONSIBILITIES.—The revised regulations issued pursuant to paragraph (1) shall provide that—

''(A) covered contractors who supply electronic parts or products that include electronic parts are responsible for detecting and avoiding the use or inclusion of counterfeit electronic parts or suspect counterfeit electronic parts in such products and for any rework or corrective action that may be required to remedy the use or inclusion of such parts; and

''(B) the cost of counterfeit electronic parts and suspect counterfeit electronic parts and the cost of rework or corrective action that may be required to remedy the use or inclusion of such parts are not allowable costs under Department contracts, unless—

''(i) the covered contractor has an operational system to detect and avoid counterfeit electronic parts and suspect counterfeit electronic parts that has been reviewed and approved by the Department of Defense pursuant to subsection (e)(2)(B);

''(ii) the counterfeit electronic parts or suspect counterfeit electronic parts were provided to the covered contractor as Government property in accordance with part 45 of the Federal Acquisition Regulation or were obtained by the covered contractor in accordance with regulations described in paragraph (3); and

''(iii) the covered contractor discovers the counterfeit electronic parts or suspect counterfeit electronic parts and provides timely notice to the Government pursuant to paragraph (4).

''(3) SUPPLIERS MEETING ANTICOUNTERFEITING REQUIREMENTS.—The revised regulations issued pursuant to paragraph (1) shall—

''(A) require that the Department and Department contractors and subcontractors at all tiers—

''(i) obtain electronic parts that are in production or currently available in stock from the original manufacturers of the parts or their authorized dealers, or from suppliers identified as suppliers that meet anticounterfeiting requirements in accordance with regulations issued pursuant to subparagraph (C) or (D) and that obtain such parts exclusively from the original manufacturers of the parts or their authorized dealers;

''(ii) obtain electronic parts that are not in production or currently available in stock from suppliers identified as suppliers that meet anticounterfeiting requirements in accordance with regulations issued pursuant to subparagraph (C) or (D); and

''(iii) obtain electronic parts from alternate suppliers if such parts are not available from original manufacturers, their authorized dealers, or suppliers identified as suppliers that meet anticounterfeiting requirements in accordance with regulations prescribed pursuant to subparagraph (C) or (D);

''(B) establish requirements for notification of the Department, and for inspection, testing, and authentication of electronic parts that the Department or a Department contractor or subcontractor obtains from any source other than a source described in clause (i) or (ii) of subparagraph (A), if obtaining the electronic parts in accordance with such clauses is not possible;

''(C) establish qualification requirements, consistent with the requirements of section 2319 of title 10, United States Code [now 10 U.S.C. 3243], pursuant to which the Department may identify suppliers that have appropriate policies and procedures in place to detect and avoid counterfeit electronic parts and suspect counterfeit electronic parts; and

''(D) authorize Department contractors and subcontractors to identify and use additional suppliers that meet anticounterfeiting requirements, provided that—

''(i) the standards and processes for identifying such suppliers comply with established industry standards;

''(ii) the contractor or subcontractor assumes responsibility for the authenticity of parts provided by such suppliers as provided in paragraph (2); and

''(iii) the selection of such suppliers is subject to review, audit, and approval by appropriate Department officials.

''(4) REPORTING REQUIREMENT.—The revised regulations issued pursuant to paragraph (1) shall require that any Department contractor or subcontractor who becomes aware, or has reason to suspect, that any end item, component, part, or material contained in supplies purchased by the Department, or purchased by a contractor or subcontractor for delivery to, or on behalf of, the Department, contains counterfeit electronic parts or suspect counterfeit electronic parts report in writing within 60 days to appropriate Government authorities and the Government-Industry Data Exchange Program (or a similar program designated by the Secretary).

''(5) CONSTRUCTION OF COMPLIANCE WITH REPORTING REQUIREMENT.—A Department contractor or subcontractor that provides a written report required under this subsection shall not be subject to civil liability on the basis of such reporting, provided the contractor or subcontractor made a reasonable effort to determine that the end item, component, part, or material concerned contained counterfeit electronic parts or suspect counterfeit electronic parts.

''(d) INSPECTION PROGRAM.—The Secretary of Homeland Security shall establish and implement a risk-based methodology for the enhanced targeting of electronic parts imported from any country, after consultation with the Secretary of Defense as to sources of counterfeit electronic parts and suspect counterfeit electronic parts in the supply chain for products purchased by the Department of Defense.

''(e) IMPROVEMENT OF CONTRACTOR SYSTEMS FOR DETECTION AND AVOIDANCE OF COUNTERFEIT ELECTRONIC PARTS.—

''(1) IN GENERAL.—Not later than 270 days after the date of the enactment of this Act [Dec. 31, 2011], the Secretary of Defense shall implement a program to enhance contractor detection and avoidance of counterfeit electronic parts.

''(2) ELEMENTS.—The program implemented pursuant to paragraph (1) shall—

''(A) require covered contractors that supply electronic parts or systems that contain electronic parts to establish policies and procedures to eliminate counterfeit electronic parts from the defense supply chain, which policies and procedures shall address—

''(i) the training of personnel;

''(ii) the inspection and testing of electronic parts;

''(iii) processes to abolish counterfeit parts proliferation;

''(iv) mechanisms to enable traceability of parts;

''(v) the use of suppliers that meet applicable anticounterfeiting requirements;

''(vi) the reporting and quarantining of counterfeit electronic parts and suspect counterfeit electronic parts;

''(vii) methodologies to identify suspect counterfeit parts and to rapidly determine if a suspect counterfeit part is, in fact, counterfeit;

''(viii) the design, operation, and maintenance of systems to detect and avoid counterfeit electronic parts and suspect counterfeit electronic parts; and

''(ix) the flow down of counterfeit avoidance and detection requirements to subcontractors; and

''(B) establish processes for the review and approval of contractor systems for the detection and avoidance of counterfeit electronic parts and suspect counterfeit electronic parts, which processes shall be comparable to the processes established for contractor business systems under section 893 of

the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111–383; 124 Stat. 4311; 10 U.S.C. 2302 note [now 10 U.S.C. 3841 note prec.]).

''(f) DEFINITIONS.—In subsections (a) through (e) of this section:

''(1) The term 'covered contractor' has the meaning given that term in section 893(f)(2) of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011.

''(2) The term 'electronic part' means an integrated circuit, a discrete electronic component (including, but not limited to, a transistor, capacitor, resistor, or diode), or a circuit assembly.''

[(g) Repealed. Pub. L. 115–232, div. A, title VIII, §812(b)(5), Aug. 13, 2018, 132 Stat. 1848.]

CONTRACTS FOR COMMERCIAL IMAGING SATELLITE CAPACITIES

Pub. L. 111–383, div. A, title I, §127, Jan. 7, 2011, 124 Stat. 4161, provided that:

''(a) TELESCOPE REQUIREMENTS UNDER CONTRACTS AFTER 2010.—Except as provided in subsection (b), any contract for additional commercial imaging satellite capability or capacity entered into by the Department of Defense after December 31, 2010, shall require that the imaging telescope providing such capability or capacity under such contract has an aperture of not less than 1.5 meters.

''(b) WAIVER.—The Secretary of Defense may waive the limitation in subsection (a) if—

''(1) the Secretary submits to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] written certification that the waiver is in the national security interests of the United States; and

''(2) a period of 30 days has elapsed following the date on which the certification under paragraph (1) is submitted.

''(c) CONTINUATION OF CURRENT CONTRACTS.—The limitation in subsection (a) may not be construed to prohibit or prevent the Secretary of Defense from continuing or maintaining current commercial imaging satellite capability or capacity in orbit or under contract by December 31, 2010.''

PILOT PROGRAM ON ACQUISITION OF MILITARY PURPOSE NONDEVELOPMENTAL ITEMS

Pub. L. 111–383, div. A, title VIII, §866(a)–(f), Jan. 7, 2011, 124 Stat. 4296–4298, as amended by Pub. L. 113–66, div. A, title VIII, §814, Dec. 26, 2013, 127 Stat. 808; Pub. L. 113–291, div. A, title X, §1071(b)(1)(B), Dec. 19, 2014, 128 Stat. 3505; Pub. L. 114–92, div. A, title VIII, §892, Nov. 25, 2015, 129 Stat. 952; Pub. L. 115–91, div. A, title X, §1051(p)(3), Dec. 12, 2017, 131 Stat. 1564; Pub. L. 116–283, div. A, title XVIII, §§1806(e)(3)(E), 1831(j)(2), Jan. 1, 2021, 134 Stat. 4156, 4216, provided that:

''(a) PILOT PROGRAM AUTHORIZED.—

''(1) IN GENERAL.—The Secretary of Defense may carry out a pilot program to assess the feasability [sic] and advisability of acquiring military purpose nondevelopmental items in accordance with this section.

''(2) SCOPE OF PROGRAM.—Under the pilot program, the Secretary may enter into contracts for the acquisition of military purpose nondevelopmental items in accordance with the requirements set forth in subsection (b).

''(b) CONTRACT REQUIREMENTS.—Each contract entered into under the pilot program—

''(1) shall be a firm, fixed price contract, or a firm, fixed price contract with an economic price adjustment clause;

''(2) shall be in an amount not in excess of $100,000,000, including all options;

''(3) shall provide—

''(A) for the delivery of an initial lot of production quantities of completed items not later than nine months after the date of the award of such contract; and

''(B) that failure to make delivery as provided for under subparagraph (A) may result in the termination of such contract for default; and

''(4) shall be—

''(A) exempt from the requirement to submit certified cost or pricing data under chapter 271 of title 10, United States Code, and the cost accounting standards under chapter 15 of title 41, United States Code; and

''(B) subject to the requirement to provide data other than certified cost or pricing data for the purpose of price reasonableness determinations, as provided in section 3705 of title 10, United States Code.

''(c) REGULATIONS.—If the Secretary establishes the pilot program authorized under subsection (a), the Secretary shall prescribe regulations governing such pilot program. Such regulations shall be included in regulations of the Department of Defense prescribed as part of the Federal Acquisition Regulation and shall include the contract clauses and procedures necessary to implement such program.

''(d) PROGRAM ASSESSMENT.—If the Secretary establishes the pilot program authorized under subsection (a), not later than four years after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the congressional defense committees a report setting forth the assessment of the Comptroller General of the extent to which the pilot program—

''(1) enabled the Department to acquire items that otherwise might not have been available to the Department;

''(2) assisted the Department in the rapid acquisition and fielding of capabilities needed to meet urgent operational needs; and

''(3) protected the interests of the United States in paying fair and reasonable prices for the item or items acquired.

''(e) DEFINITIONS.—In this section:

''(1) The term 'military purpose nondevelopmental item' means a nondevelopmental item that meets a validated military requirement, as determined in writing by the responsible program manager, and has been developed exclusively at private expense. For purposes of this paragraph, an item shall not be considered to be developed exclusively at private expense if development of the item was paid for in whole or in part through—

''(A) independent research and development costs or bid and proposal costs that have been reimbursed directly or indirectly by a Federal agency or have been submitted to a Federal agency for reimbursement; or

''(B) foreign government funding.

''(2) The term 'nondevelopmental item'—

''(A) has the meaning given that term in section 110 of title 41, United States Code; and

''(B) also includes previously developed items of supply that require modifications other than those customarily available in the commercial marketplace if such modifications are consistent with the requirement in subsection (b)(3)(A).

''(3) The term 'nontraditional defense contractor' has the meaning given that term in section 3014 of title 10, United States Code (as added by subsection (g)).

''(4) The terms 'independent research and developments costs' and 'bid and proposal costs' have the meaning given such terms in section 31.205–18 of the Federal Acquisition Regulation.

''(f) SUNSET.—

''(1) IN GENERAL.—The authority to carry out the pilot program shall expire on December 31, 2019.

''(2) CONTINUATION OF CURRENT CONTRACTS.—The expiration under paragraph (1) of the authority to carry out the pilot program shall not affect the validity of any contract awarded under the pilot program before the date of the expiration of the pilot program under that paragraph.''

PUBLICATION OF NOTIFICATION OF BUNDLING OF CONTRACTS OF THE DEPARTMENT OF DEFENSE

Pub. L. 111–84, div. A, title VIII, § 820, Oct. 28, 2009, 123 Stat. 2410, provided that:

''(a) REQUIREMENT TO PUBLISH NOTIFICATION FOR BUNDLING.—A contracting officer of the Department of Defense carrying out a covered acquisition shall publish a notification consistent with the requirements of paragraph (c)(2) of subpart 10.001 of the Federal Acquisition Regulation on the website known as FedBizOpps.gov (or any successor site) at least 30 days prior to the release of a solicitation for such acquisition and, if the agency has determined that measurably substantial benefits are expected to be derived as a result of bundling such acquisition, shall include in the notification a brief description of the benefits.

''(b) COVERED ACQUISITION DEFINED.—In this section, the term 'covered acquisition' means an acquisition that is—

''(1) funded entirely using funds of the Department of Defense; and

''(2) covered by subpart 7.107 of the Federal Acquisition Regulation (relating to acquisitions involving bundling).

''(c) CONSTRUCTION.—

''(1) NOTIFICATION.—Nothing in this section shall be construed to alter the responsibility of a contracting officer to provide the notification referred to in subsection (a) with respect to a covered acquisition, or otherwise provide notification, to any party concerning such acquisition under any other requirement of law or regulation.

''(2) DISCLOSURE.—Nothing in this section shall be construed to require the public availability of information that is exempt from public disclosure under section 552(b) of title 5, United States Code, or is otherwise restricted from public disclosure by law or Executive order.

''(3) ISSUANCE OF SOLICITATION.—Nothing in this section shall be construed to require a contracting officer to delay the issuance of a solicitation in order to meet the requirements of subsection (a) if the expedited issuance of such solicitation is otherwise authorized under any other requirement of law or regulation.''

SMALL ARMS ACQUISITION STRATEGY AND REQUIREMENTS REVIEW

Pub. L. 110–417, [div. A], title I, § 143, Oct. 14, 2008, 122 Stat. 4381, as amended by Pub. L. 111–383, div. A, title X, § 1075(e)(1), Jan. 7, 2011, 124 Stat. 4374, provided that:

''(a) SECRETARY OF DEFENSE REPORT.—Not later than 120 days after the date of the enactment of this Act [Oct. 14, 2008], the Secretary of Defense 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 small arms requirements of the Armed Forces and the industrial base of the United States. The report shall include the following:

''(1) An assessment of Department of Defense-wide small arms requirements in terms of capabilities and quantities, based on an analysis of the small arms capability assessments of each military department.

''(2) An assessment of plans for small arms research, development, and acquisition programs to meet the requirements identified under paragraph (1).

''(3) An assessment of capabilities, capacities, and risks in the small arms industrial base of the United States to meet the requirements of the Department of Defense for pistols, carbines, rifles, and light, medium, and heavy machine guns during the 20 years following the date of the report.

''(4) An assessment of the costs, benefits, and risks of full and open competition for the procurement of non-developmental pistols and carbines that are not technically compatible with the M9 pistol or M4 carbine to meet the requirements identified under paragraph (1).

''(b) COMPETITION FOR A NEW INDIVIDUAL WEAPON.—

''(1) COMPETITION REQUIRED.—If the small arms capabilities based assessments by the Army identify gaps in small arms capabilities and the Secretary of the Army determines that a new individual weapon is required to address such gaps, the Secretary shall procure the new individual weapon using full and open competition as described in paragraph (2).

''(2) FULL AND OPEN COMPETITION.—The full and open competition described in this paragraph is competition among all responsible manufacturers that—

''(A) is open to all developmental item solutions and non-developmental item solutions; and

''(B) provides for the award of a contract based on selection criteria that reflect the key performance parameters and attributes identified in a service requirements document approved by the Army.

''(c) SMALL ARMS DEFINED.—In this section, the term 'small arms'—

''(1) means man-portable or vehicle-mounted light weapons, designed primarily for use by individual military personnel for anti-personnel use; and

''(2) includes pistols, carbines, rifles, and light, medium, and heavy machine guns.''

TRUSTED DEFENSE SYSTEMS

Pub. L. 110–417, [div. A], title II, § 254, Oct. 14, 2008, 122 Stat. 4402, as amended by Pub. L. 116–92, div. A, title IX, § 902(37), Dec. 20, 2019, 133 Stat. 1547; Pub. L. 116–283, div. A, title XVIII, § 1806(e)(2)(C), Jan. 1, 2021, 134 Stat. 4155, provided that:

''(a) VULNERABILITY ASSESSMENT REQUIRED.—The Secretary of Defense shall conduct an assessment of selected covered acquisition programs to identify vulnerabilities in the supply chain of each program's electronics and information processing systems that potentially compromise the level of trust in the systems. Such assessment shall—

''(1) identify vulnerabilities at multiple levels of the electronics and information processing systems of the selected programs, including microcircuits, software, and firmware;

''(2) prioritize the potential vulnerabilities and effects of the various elements and stages of the system supply chain to identify the most effective balance of investments to minimize the effects of compromise;

''(3) provide recommendations regarding ways of managing supply chain risk for covered acquisition programs; and

''(4) identify the appropriate lead person, and supporting elements, within the Department of Defense for the development of an integrated strategy for managing risk in the supply chain for covered acquisition programs.

''(b) ASSESSMENT OF METHODS FOR VERIFYING THE TRUST OF SEMICONDUCTORS PROCURED FROM COMMERCIAL SOURCES.—The Under Secretary of Defense for Acquisition and Sustainment, in consultation with appropriate elements of the Department of Defense, the intelligence community, private industry, and academia, shall conduct an assessment of various methods of verifying the trust of semiconductors procured by the Department of Defense from commercial sources for use in mission-critical components of potentially vulnerable defense systems. The assessment shall include the following:

''(1) An identification of various methods of verifying the trust of semiconductors, including methods under development at the Defense Agencies, government laboratories, institutions of higher education, and in the private sector.

''(2) A determination of the methods identified under paragraph (1) that are most suitable for the Department of Defense.

''(3) An assessment of the additional research and technology development needed to develop methods of verifying the trust of semiconductors that meet the needs of the Department of Defense.

''(4) Any other matters that the Under Secretary considers appropriate.

''(c) STRATEGY REQUIRED.—

''(1) IN GENERAL.—The lead person identified under subsection (a)(4), in cooperation with the supporting elements also identified under such subsection, shall develop an integrated strategy—

''(A) for managing risk—

''(i) in the supply chain of electronics and information processing systems for covered acquisition programs; and

''(ii) in the procurement of semiconductors; and

''(B) that ensures dependable, continuous, long-term access and trust for all mission-critical semiconductors procured from both foreign and domestic sources.

''(2) REQUIREMENTS.—At a minimum, the strategy shall—

''(A) address the vulnerabilities identified by the assessment under subsection (a);

''(B) reflect the priorities identified by such assessment;

''(C) provide guidance for the planning, programming, budgeting, and execution process in order to ensure that covered acquisition programs have the necessary resources to implement all appropriate elements of the strategy;

''(D) promote the use of verification tools, as appropriate, for ensuring trust of commercially acquired systems;

''(E) increase use of trusted foundry services, as appropriate; and

''(F) ensure sufficient oversight in implementation of the plan.

''(d) POLICIES AND ACTIONS FOR ASSURING TRUST IN INTEGRATED CIRCUITS.—Not later than 180 days after the date of the enactment of this Act [Oct. 14, 2008], the Secretary of Defense shall—

''(1) develop policy requiring that trust assurance be a high priority for covered acquisition programs in all phases of the electronic component supply chain and integrated circuit development and production process, including design and design tools, fabrication of the semiconductors, packaging, final assembly, and test;

''(2) develop policy requiring that programs whose electronics and information systems are determined to be vital to operational readiness or mission effectiveness are to employ trusted foundry services to fabricate their custom designed integrated circuits, unless the Secretary specifically authorizes otherwise;

''(3) incorporate the strategies and policies of the Department of Defense regarding development and use of trusted integrated circuits into all relevant Department directives and instructions related to the acquisition of integrated circuits and programs that use such circuits; and

''(4) take actions to promote the use and development of tools that verify the trust in all phases of the integrated circuit development and production process of mission-critical parts acquired from non-trusted sources.

''(e) SUBMISSION TO CONGRESS.—Not later than 12 months after the date of the enactment of this Act [Oct. 14, 2008], the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives]—

''(1) the assessments required by subsections (a) and (b);

''(2) the strategy required by subsection (c); and

''(3) a description of the policies developed and actions taken under subsection (d).

''(f) DEFINITIONS.—In this section:

''(1) The term 'covered acquisition programs' means an acquisition program of the Department of Defense that is a major system for purposes of section 3041 of title 10, United States Code.

''(2) The terms 'trust' and 'trusted' refer, with respect to electronic and information processing systems, to the ability of the Department of Defense to have confidence that the systems function as intended and are free of exploitable vulnerabilities, either intentionally or unintentionally designed or inserted as part of the system at any time during its life cycle.

''(3) The term 'trusted foundry services' means the program of the National Security Agency and the Department of Defense, or any similar program approved by the Secretary of Defense, for the development and manufacture of integrated circuits for critical defense systems in secure industrial environments.''

ENHANCED AUTHORITY TO ACQUIRE PRODUCTS AND SERVICES PRODUCED IN AFGHANISTAN

Pub. L. 110–181, div. A, title VIII, §886, Jan. 28, 2008, 122 Stat. 266, as amended by Pub. L. 112–239, div. A, title VIII, §842, Jan. 2, 2013, 126 Stat. 1845; Pub. L. 114–92, div. A, title VIII, §886(a), Nov. 25, 2015, 129 Stat. 949, provided that:

''(a) IN GENERAL.—In the case of a product or service to be acquired in support of military operations or stability operations in Afghanistan (including security, transition, reconstruction, and humanitarian relief activities) for which the Secretary of Defense makes a determination described in subsection (b), and except as provided in subsection (d), the Secretary may conduct a procurement in which—

''(1) competition is limited to products or services that are from Afghanistan;

''(2) procedures other than competitive procedures are used to award a contract to a particular source or sources from Afghanistan; or

''(3) a preference is provided for products or services that are from Afghanistan.

''(b) DETERMINATION.—A determination described in this subsection is a determination by the Secretary that—

''(1) the product or service concerned is to be used only by the military forces, police, or other security personnel of Afghanistan; or

''(2) it is in the national security interest of the United States to limit competition, use procedures other than competitive procedures, or provide a preference as described in subsection (a) because—

''(A) such limitation, procedure, or preference is necessary to provide a stable source of jobs in Afghanistan; and

''(B) such limitation, procedure, or preference will not adversely affect—

''(i) military operations or stability operations in Afghanistan; or

''(ii) the United States industrial base.

''(c) PRODUCTS, SERVICES, AND SOURCES FROM AFGHANISTAN.—For the purposes of this section:

''(1) A product is from Afghanistan if it is mined, produced, or manufactured in Afghanistan.

''(2) A service is from Afghanistan if it is performed in Afghanistan by citizens or permanent resident aliens of Afghanistan.

''(3) A source is from Afghanistan if it—

''(A) is located in Afghanistan; and

''(B) offers products or services that are from Afghanistan.

''(d) EXCLUSION OF ITEMS ON THE ABILITYONE PROCUREMENT CATALOG.—The authority under subsection (a) shall not be available for the procurement of any good that is contained in the procurement catalog described in section 8503(a) of title 41, United States Code, in Afghanistan if such good can be produced and delivered by a qualified nonprofit agency for the blind or a nonprofit agency for other severely disabled [sic] in a timely fashion to support mission requirements.''

[Pub. L. 112–239, div. A, title VIII, §842(1), Jan. 2, 2013, 126 Stat. 1845, which directed amendment of section 886 of Pub. L. 110–181, set out above, by striking ''Iraq or'' in section heading, was executed by striking ''Iraq and'', to reflect the probable intent of Congress.]

PREVENTION OF EXPORT CONTROL VIOLATIONS

Pub. L. 110–181, div. A, title VIII, §890, Jan. 28, 2008, 122 Stat. 269, as amended by Pub. L. 110–417, [div. A],

title X, §1061(b)(6), Oct. 14, 2008, 122 Stat. 4613; Pub. L. 111–383, div. A, title X, §1075(f)(6), Jan. 7, 2011, 124 Stat. 4376, provided that:

''(a) PREVENTION OF EXPORT CONTROL VIOLATIONS.—Not later than 180 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense shall prescribe regulations requiring any contractor under a contract with the Department of Defense to provide goods or technology that is subject to export controls under the Arms Export Control Act [22 U.S.C. 2751 et seq.] or the Export Administration Act of 1979 [50 U.S.C. 4601 et seq.] (as continued in effect under the International Emergency Economic Powers Act [50 U.S.C. 1701 et seq.]) to comply with those Acts and applicable regulations with respect to such goods and technology, including the International Traffic in Arms Regulations and the Export Administration Regulations. Regulations prescribed under this subsection shall include a contract clause enforcing such requirement.

''(b) TRAINING ON EXPORT CONTROLS.—The Secretary of Defense shall ensure that any contractor under a contract with the Department of Defense to provide goods or technology that is subject to export controls under the Arms Export Control Act or the Export Administration Act of 1979 (as continued in effect under the International Emergency Economic Powers Act) is made aware of any relevant resources made available by the Department of State and the Department of Commerce to assist in compliance with the requirement established by subsection (a) and the need for a corporate compliance plan and periodic internal audits of corporate performance under such plan.

''(c) REPORT.—Not later than 180 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report assessing the utility of—

''(1) requiring defense contractors (or subcontractors at any tier) to periodically report on measures taken to ensure compliance with the International Traffic in Arms Regulations and the Export Administration Regulations;

''(2) requiring periodic audits of defense contractors (or subcontractors at any tier) to ensure compliance with all provisions of the International Traffic in Arms Regulations and the Export Administration Regulations;

''(3) requiring defense contractors to maintain a corporate training plan to disseminate information to appropriate contractor personnel regarding the applicability of the Arms Export Control Act and the Export Administration Act of 1979; and

''(4) requiring a designated corporate liaison, available for training provided by the United States Government, whose primary responsibility would be contractor compliance with the Arms Export Control Act and the Export Administration Act of 1979.

''(d) DEFINITIONS.—In this section:

''(1) EXPORT ADMINISTRATION REGULATIONS.—The term 'Export Administration Regulations' means those regulations contained in parts 730 through 774 of title 15, Code of Federal Regulations (or successor regulations).

''(2) INTERNATIONAL TRAFFIC IN ARMS REGULATIONS.—The term 'International Traffic in Arms Regulations' means those regulations contained in parts 120 through 130 of title 22, Code of Federal Regulations (or successor regulations).''

QUALITY CONTROL IN PROCUREMENT OF SHIP CRITICAL SAFETY ITEMS AND RELATED SERVICES

Pub. L. 109–364, div. A, title I, §130(a)–(c), Oct. 17, 2006, 120 Stat. 2110, provided that:

''(a) QUALITY CONTROL POLICY.—The Secretary of Defense shall prescribe in regulations a quality control policy for the procurement of the following:

''(1) Ship critical safety items.

''(2) Modifications, repair, and overhaul of ship critical safety items.

''(b) ELEMENTS.—The policy required under subsection (a) shall include requirements as follows:

''(1) That the head of the design control activity for ship critical safety items establish processes to identify and manage the procurement, modification, repair, and overhaul of such items.

''(2) That the head of the contracting activity for a ship critical safety item enter into a contract for the procurement, modification, repair, or overhaul of such item only with a source on a qualified manufacturers list or a source approved by the design control activity in accordance with section 2319 of title 10, United States Code [now 10 U.S.C. 3243] (as amended by subsection (d)).

''(3) That the ship critical safety items delivered, and the services performed with respect to such items, meet all technical and quality requirements specified by the design control activity.

''(c) DEFINITIONS.—In this section, the terms 'ship critical safety item' and 'design control activity' have the meanings given such terms in subsection (g) of section 2319 of title 10, United States Code [now 10 U.S.C. 3243(g)] (as so amended).''

REVIEW AND DEMONSTRATION PROJECT RELATING TO CONTRACTOR EMPLOYEES

Pub. L. 108–375, div. A, title VIII, §851, Oct. 28, 2004, 118 Stat. 2019, provided that:

''(a) GENERAL REVIEW.—(1) The Secretary of Defense shall conduct a review of policies, procedures, practices, and penalties of the Department of Defense relating to employees of defense contractors for purposes of ensuring that the Department of Defense is in compliance with Executive Order No. 12989 [8 U.S.C. 1324a note] (relating to a prohibition on entering into contracts with contractors that are not in compliance with the Immigration and Nationality Act [8 U.S.C. 1101 et seq.]).

''(2) In conducting the review, the Secretary shall—

''(A) identify potential weaknesses and areas for improvement in existing policies, procedures, practices, and penalties;

''(B) develop and implement reforms to strengthen, upgrade, and improve policies, procedures, practices, and penalties of the Department of Defense and its contractors; and

''(C) review and analyze reforms developed pursuant to this paragraph to identify for purposes of national implementation those which are most efficient and effective.

''(3) The review under this subsection shall be completed not later than 180 days after the date of the enactment of this Act [Oct. 28, 2004].

''(b) DEMONSTRATION PROJECT.—The Secretary of Defense shall conduct a demonstration project in accordance with this section, in one or more regions selected by the Secretary, for purposes of promoting greater contracting opportunities for contractors offering effective, reliable staffing plans to perform defense contracts that ensure all contract personnel employed for such projects, including management employees, professional employees, craft labor personnel, and administrative personnel, are lawful residents or persons properly authorized to be employed in the United States and properly qualified to perform services required under the contract. The demonstration project shall focus on contracts for construction, renovation, maintenance, and repair services for military installations.

''(c) DEMONSTRATION PROJECT PROCUREMENT PROCEDURES.—As part of the demonstration project under subsection (b), the Secretary of Defense may conduct a competition in which there is a provision in contract solicitations and request for proposal documents to require significant weight or credit be allocated to—

''(1) reliable, effective workforce programs offered by prospective contractors that provide background checks and other measures to ensure the contractor is in compliance with the Immigration and Nationality Act; and

''(2) reliable, effective project staffing plans offered by prospective contractors that specify for all contract employees (including management employees, professionals, and craft labor personnel) the skills, training, and qualifications of such persons and the labor supply sources and hiring plans or procedures used for employing such persons.

''(d) IMPLEMENTATION OF DEMONSTRATION PROJECT.—The Secretary of Defense shall begin operation of the demonstration project required under this section after completion of the review under subsection (a), but in no event later than 270 days after the date of the enactment of this Act.

''(e) REPORT ON DEMONSTRATION PROJECT.—Not later than six months after award of a contract under the demonstration project, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report setting forth a review of the demonstration project and recommendations on the actions, if any, that can be implemented to ensure compliance by the Department of Defense with Executive Order No. 12989.

''(f) DEFINITION.—In this section, the term 'military installation' means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility, which is located within any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, or Guam. Such term does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects.''

QUALITY CONTROL IN PROCUREMENT OF AVIATION CRITICAL SAFETY ITEMS AND RELATED SERVICES

Pub. L. 108–136, div. A, title VIII, §802(a)–(c), Nov. 24, 2003, 117 Stat. 1540, provided that:

''(a) QUALITY CONTROL POLICY.—The Secretary of Defense shall prescribe in regulations a quality control policy for the procurement of aviation critical safety items and the procurement of modifications, repair, and overhaul of such items.

''(b) CONTENT OF REGULATIONS.—The policy set forth in the regulations shall include the following requirements:

''(1) That the head of the design control activity for aviation critical safety items establish processes to identify and manage the procurement, modification, repair, and overhaul of aviation critical safety items.

''(2) That the head of the contracting activity for an aviation critical safety item enter into a contract for the procurement, modification, repair, or overhaul of such item only with a source approved by the design control activity in accordance with section 2319 of title 10, United States Code [now 10 U.S.C. 3243].

''(3) That the aviation critical safety items delivered, and the services performed with respect to aviation critical safety items, meet all technical and quality requirements specified by the design control activity.

''(c) DEFINITIONS.—In this section, the terms 'aviation critical safety item' and 'design control activity' have the meanings given such terms in section 2319(g) of title 10, United States Code [now 10 U.S.C. 3243(g)], as amended by subsection (d).''

PROCUREMENT OF ENVIRONMENTALLY PREFERABLE PROCUREMENT ITEMS

Pub. L. 107–314, div. A, title III, §314, Dec. 2, 2002, 116 Stat. 2508, as amended by Pub. L. 109–163, div. A, title X, §1056(e)(1), Jan. 6, 2006, 119 Stat. 3440, provided that:

''(a) TRACKING SYSTEM.—The Secretary of Defense shall develop and implement an effective and efficient tracking system to identify the extent to which the Defense Logistics Agency procures environmentally preferable procurement items or procurement items made with recovered material. The system shall provide for the separate tracking, to the maximum extent practicable, of the procurement of each category of procurement items that, as of the date of the enactment of this Act [Dec. 2, 2002], has been determined to be environmentally preferable or made with recovered material.

''(b) ASSESSMENT OF TRAINING AND EDUCATION.—The Secretary of Defense shall assess the need to establish a program, or enhance existing programs, for training and educating Department of Defense procurement officials to ensure that they are aware of any Department requirements, preferences, or goals for the procurement of environmentally preferable procurement items or procurement items made with recovered material.

''(c) REPORTING REQUIREMENT.—Not later than March 1, 2004, and each March 1 thereafter through 2007, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report detailing the results obtained from the tracking system developed under subsection (a).

''(d) RELATION TO OTHER LAWS.—Nothing in this section shall be construed to alter the requirements of the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

''(e) DEFINITIONS.—In this section:

''(1) The term 'environmentally preferable', in the case of a procurement item, means that the item has a lesser or reduced effect on human health and the environment when compared with competing products that serve the same purpose. The comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product.

''(2) The terms 'procurement item' and 'recovered material' have the meanings given such terms in section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903).''

REQUIREMENT TO DISREGARD CERTAIN AGREEMENTS IN AWARDING CONTRACTS FOR PURCHASE OF FIREARMS OR AMMUNITION

Pub. L. 106–398, §1 [[div. A], title VIII, §826], Oct. 30, 2000, 114 Stat. 1654, 1654A–220, provided that: ''In accordance with the requirements contained in the amendments enacted in the Competition in Contracting Act of 1984 (title VII of division B of Public Law 98–369; 98 Stat. 1175) [see Tables for classification], the Secretary of Defense may not, in awarding a contract for the purchase of firearms or ammunition, take into account whether a manufacturer or vendor of firearms or ammunition is a party to an agreement under which the manufacturer or vendor agrees to adopt limitations with respect to importing, manufacturing, or dealing in firearms or ammunition in the commercial market.''

PROCUREMENT OF CONVENTIONAL AMMUNITION

Pub. L. 105–261, div. A, title VIII, §806, Oct. 17, 1998, 112 Stat. 2084, provided that:

''(a) AUTHORITY.—The official in the Department of Defense designated as the single manager for conventional ammunition in the Department shall have the authority to restrict the procurement of conventional ammunition to sources within the national technology and industrial base in accordance with the authority in section 2304(c) of title 10, United States Code [now 10 U.S.C. 3204(a)].

''(b) REQUIREMENT.—The official in the Department of Defense designated as the single manager for conventional ammunition in the Department of Defense shall limit a specific procurement of ammunition to sources within the national technology and industrial base in accordance with section 2304(c)(3) of title 10, United States Code [now 10 U.S.C. 3204(a)(3)], in any case in which that manager determines that such limitation is necessary to maintain a facility, producer, manufacturer, or other supplier available for furnishing an essential item of ammunition or ammunition component in cases of national emergency or to achieve industrial mobilization.

''(c) CONVENTIONAL AMMUNITION DEFINED.—For purposes of this section, the term 'conventional ammuni-

tion' has the meaning given that term in Department of Defense Directive 5160.65, dated March 8, 1995.''

FIGHTER AIRCRAFT ENGINE WARRANTY

Pub. L. 97–377, title I, § 101(c) [title VII, § 797], Dec. 21, 1982, 96 Stat. 1865, provided that: ''None of the funds made available in the Act or any subsequent Act shall be available for the purchase of the alternate or new model fighter aircraft engine that does not have a written warranty or guarantee attesting that it will perform not less than 3,000 tactical cycles. The warranty will provide that the manufacturer must perform the necessary improvements or replace any parts to achieve the required performance at no cost to the Government.''

§ 3241. Design-build selection procedures

(a) AUTHORIZATION.—Unless the traditional acquisition approach of design-bid-build established under chapter 11 of title 40 is used or another acquisition procedure authorized by law is used, the head of an agency shall use the two-phase selection procedures authorized in this section for entering into a contract for the design and construction of a public building, facility, or work when a determination is made under subsection (b) that the procedures are appropriate for use.

(b) CRITERIA FOR USE.—A contracting officer shall make a determination whether two-phase selection procedures are appropriate for use for entering into a contract for the design and construction of a public building, facility, or work when—

(1) the contracting officer anticipates that three or more offers will be received for such contract;

(2) design work must be performed before an offeror can develop a price or cost proposal for such contract;

(3) the offeror will incur a substantial amount of expense in preparing the offer; and

(4) the contracting officer has considered information such as the following:

(A) The extent to which the project requirements have been adequately defined.

(B) The time constraints for delivery of the project.

(C) The capability and experience of potential contractors.

(D) The suitability of the project for use of the two-phase selection procedures.

(E) The capability of the agency to manage the two-phase selection process.

(F) Other criteria established by the agency.

(c) PROCEDURES DESCRIBED.—Two-phase selection procedures consist of the following:

(1) DEVELOPMENT OF SCOPE OF WORK STATEMENT.—The agency develops, either in-house or by contract, a scope of work statement for inclusion in the solicitation that defines the project and provides prospective offerors with sufficient information regarding the Government's requirements (which may include criteria and preliminary design, budget parameters, and schedule or delivery requirements) to enable the offerors to submit proposals which meet the Government's needs. If the agency contracts for development of the scope of work statement, the agency shall contract for architectural and engineering services as defined by and in accordance with chapter 11 of title 40.

(2) SOLICITATION OF PHASE-ONE PROPOSALS.—The contracting officer solicits phase-one proposals that—

(A) include information on the offeror's—

(i) technical approach; and

(ii) technical qualifications; and

(B) do not include—

(i) detailed design information; or

(ii) cost or price information.

(3) EVALUATION FACTORS.—

(A) EVALUATION FACTORS TO BE USED.—The evaluation factors to be used in evaluating phase-one proposals are stated in the solicitation and include—

(i) specialized experience and technical competence;

(ii) capability to perform;

(iii) past performance of the offeror's team (including the architect-engineer and construction members of the team); and

(iv) other appropriate factors, except that cost-related or price-related evaluation factors are not permitted.

(B) RELATIVE IMPORTANCE OF EVALUATION FACTORS AND SUBFACTORS.—Each solicitation establishes the relative importance assigned to the evaluation factors and subfactors that must be considered in the evaluation of phase-one proposals.

(C) EVALUATION OF PROPOSALS.—The agency evaluates phase-one proposals on the basis of the phase-one evaluation factors set forth in the solicitation.

(4) SELECTION BY CONTRACTING OFFICER.—

(A) NUMBER OF OFFERORS SELECTED AND WHAT IS TO BE EVALUATED.—The contracting officer selects as the most highly qualified the number of offerors specified in the solicitation to provide the property or services under the contract and requests the selected offerors to submit phase-two competitive proposals that include technical proposals and cost or price information. Each solicitation establishes with respect to phase two—

(i) the technical submission for the proposal, including design concepts or proposed solutions to requirements addressed within the scope of work (or both), and

(ii) the evaluation factors and subfactors, including cost or price, that must be considered in the evaluations of proposals in accordance with subsections (b), (c), and (d) of section 3206 of this title.

(B) The contracting officer separately evaluates the submissions described in clauses (i) and (ii) of subparagraph (A).

(5) AWARDING OF CONTRACT.—The agency awards the contract in accordance with section 3303 of this title.

(d) SOLICITATION TO STATE NUMBER OF OFFERORS TO BE SELECTED FOR PHASE TWO REQUESTS FOR COMPETITIVE PROPOSALS.—A solicitation issued pursuant to the procedures described in subsection (c) shall state the maximum number of offerors that are to be selected to submit competitive proposals pursuant to