

Editorial Notes

CODIFICATION

Section 103 of Pub. L. 111-23, formerly set out as a note under section 2430 of this title, which was transferred to chapter 144 of this title, renumbered as section 2438, and amended by Pub. L. 111-383, §901(d), (k)(1)(F), and subsequently renumbered as this section and amended by Pub. L. 116-283, §1847(e)(3), was based on Pub. L. 111-23, title I, §103, May 22, 2009, 123 Stat. 1715.

AMENDMENTS

2021—Pub. L. 116-283, §1847(e)(3), renumbered section 2438 of this title as this section.

Subsec. (b)(2). Pub. L. 116-283, §1847(e)(3)(A), as amended by Pub. L. 117-81, §1701(b)(16)(B), substituted “section 4376(a)(1)” for “section 2433a(a)(1)”.

Subsec. (b)(5)(A). Pub. L. 116-283, §1847(e)(3)(B), substituted “sections 4736 and 4377” for “section 2433a”.

Subsec. (d). Pub. L. 116-283, §1847(e)(3)(B), substituted “sections 4736 and 4377” for “section 2433a” in introductory provisions.

2019—Subsec. (b)(1), (2). Pub. L. 116-92 substituted “Under Secretary of Defense for Acquisition and Sustainment” for “Under Secretary of Defense for Acquisition, Technology and Logistics”.

2015—Subsec. (f). Pub. L. 114-92 struck out subsec. (f) which related to annual report.

2013—Subsec. (a)(3). Pub. L. 112-239 inserted “the senior” before “official’s”.

2011—Pub. L. 111-383, §901(k)(1)(F), substituted “Performance assessments and root cause analyses” for “PERFORMANCE ASSESSMENTS AND ROOT CAUSE ANALYSES FOR MAJOR DEFENSE ACQUISITION PROGRAMS” in section catchline.

Pub. L. 111-383, §901(d), transferred section 103 of Pub. L. 111-23 to this chapter and renumbered it as this section. See Codification note above.

Subsec. (b)(2). Pub. L. 111-383, §901(d)(1), substituted “section 2433a(a)(1) of this title” for “section 2433a(a)(1) of title 10, United States Code (as added by section 206(a) of this Act)”.

Subsec. (b)(5)(A). Pub. L. 111-383, §901(d)(2), substituted “before” for “prior to” and “section 2433a of this title” for “section 2433a of title 10, United States Code (as so added)”.

Subsec. (b)(5)(B). Pub. L. 111-383, §901(d)(2)(B), substituted “before” for “prior to”.

Subsec. (d). Pub. L. 111-383, §901(d)(3), substituted “section 2433a of this title” for “section 2433a of title 10, United States Code (as so added)” in introductory provisions.

Subsec. (f). Pub. L. 111-383, §901(d)(4), struck out “beginning in 2010,” after “each year.”.

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 note below.

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 a note preceding section 3001 of this title.

EFFECTIVE DATE

Amendment by Pub. L. 111-383 effective Jan. 1, 2011, see section 901(p) of Pub. L. 111-383, set out as an Effective Date of 2011 Amendment note under section 131 of this title.

[§ 4274. Omitted]**Editorial Notes**

CODIFICATION

Pub. L. 116-283, div. A, title XVIII, §1847(e)(4), (5), Jan. 1, 2021, 134 Stat. 4256, 4257, enacted this section, transferred subsec. (b) of section 2547 of this title to this section, and made additional amendments, which were all to become effective Jan. 1, 2022. Subsequently, Pub. L. 117-81, div. A, title XVII, §1701(r)(1)(B), Dec. 27, 2021, 135 Stat. 2149, repealed section 1847(e)(4), (5) of Pub. L. 116-283, effective as if included therein, thereby omitting this section and eliminating the amendments before they took effect.

SUBCHAPTER V—CONTRACTORS

Sec. 4291.	[Reserved].
4292.	Contracts: limitations on lead system integrators.
4293.	Major defense acquisition programs: incentive program for contractors to purchase capital assets manufactured in United States.

Statutory Notes and Related Subsidiaries**PILOT PROGRAM FOR DISTRIBUTION SUPPORT AND SERVICES FOR WEAPON SYSTEMS CONTRACTORS**

Pub. L. 114-328, div. A, title VIII, §883, Dec. 23, 2016, 130 Stat. 2316, provided that:

“(a) **AUTHORITY.**—The Secretary of Defense may carry out a six-year pilot program under which the Secretary may make available storage and distribution services support to a contractor in support of the performance by the contractor of a contract for the production, modification, maintenance, or repair of a weapon system that is entered into by the Department of Defense.

“(b) **SUPPORT CONTRACTS.**—

“(1) **IN GENERAL.**—Any storage and distribution services to be provided under the pilot program under this section to a contractor in support of the performance of a contract described in subsection (a) shall be provided under a separate contract that is entered into by the Director of the Defense Logistics Agency with that contractor. The requirements of section 2208(h) of title 10, United States Code, and the regulations prescribed pursuant to such section shall apply to any such separate support contract between the Director of the Defense Logistics Agency and the contractor.

“(2) **LIMITATION.**—Not more than five support contracts between the Director and the contractor may be awarded under the pilot program.

“(c) **SCOPE OF SUPPORT AND SERVICES.**—The storage and distribution support services that may be provided under this section in support of the performance of a contract described in subsection (a) are storage and distribution of materiel and repair parts necessary for the performance of that contract.

“(d) **REGULATIONS.**—Before exercising the authority under the pilot program under this section, the Secretary of Defense shall prescribe in regulations such requirements, conditions, and restrictions as the Secretary determines appropriate to ensure that storage and distribution services are provided under the pilot program only when it is in the best interests of the United States to do so. The regulations shall include, at a minimum, the following:

“(1) A requirement for the solicitation of offers for a contract described in subsection (a), for which storage and distribution services are to be made available under the pilot program, including—

“(A) a statement that the storage and distribution services are to be made available under the authority of the pilot program under this section to any contractor awarded the contract, but only on a

basis that does not require acceptance of the support and services; and

“(B) a description of the range of the storage and distribution services that are to be made available to the contractor.

“(2) A requirement for the rates charged a contractor for storage and distribution services provided to a contractor under the pilot program to reflect the full cost to the United States of the resources used in providing the support and services, including the costs of resources used, but not paid for, by the Department of Defense.

“(3) With respect to a contract described in subsection (a) that is being performed for a department or agency outside the Department of Defense, a prohibition, in accordance with applicable contracting procedures, on the imposition of any charge on that department or agency for any effort of Department of Defense personnel or the contractor to correct deficiencies in the performance of such contract.

“(4) A prohibition on the imposition of any charge on a contractor for any effort of the contractor to correct a deficiency in the performance of storage and distribution services provided to the contractor under this section.

“(5) A requirement that storage and distribution services provided under the pilot program may not interfere with the mission of the Defense Logistics Agency or of any military department involved with the pilot program.

“(6) A requirement that any support contract for storage and distribution services entered into under the pilot program shall include a clause to indemnify the Government against any failure by the contractor to perform the support contract, and to remain responsible for performance of the primary contract.

“(e) RELATIONSHIP TO TREATY OBLIGATIONS.—The Secretary shall ensure that the exercise of authority under the pilot program under this section does not conflict with any obligation of the United States under any treaty or other international agreement.

“(f) REPORTS.—

“(1) SECRETARY OF DEFENSE.—Not later than the end of the fourth year of operation of the pilot program, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report describing—

“(A) the cost effectiveness for both the Government and industry of the pilot program; and

“(B) how support contracts under the pilot program affected meeting the requirements of primary contracts.

“(2) COMPTROLLER GENERAL.—Not later than the end of the fifth year of operation of the pilot program, the Comptroller General of the United States shall review the report of the Secretary under paragraph (1) for sufficiency and provide such recommendations in a report to the Committees on Armed Services of the Senate and House of Representatives as the Comptroller General considers appropriate.

“(g) SUNSET.—The authority to enter into contracts under the pilot program shall expire six years after the date of the enactment of this Act. Any contracts entered into before such date shall continue in effect according to their terms.”

NONTRADITIONAL AND SMALL CONTRACTOR INNOVATION PROTOTYPING PROGRAM

Pub. L. 114-328, div. A, title VIII, §884, Dec. 23, 2016, 130 Stat. 2318, as amended by Pub. L. 115-91, div. A, title VIII, §865, Dec. 12, 2017, 131 Stat. 1495; Pub. L. 116-283, div. A, title XVIII, §1806(e)(3)(D), Jan. 1, 2021, 134 Stat. 4156, provided that:

“(a) IN GENERAL.—The Secretary of Defense shall conduct a pilot program for nontraditional defense contractors and small business concerns to design, develop, and demonstrate innovative prototype military platforms of significant scope for the purpose of dem-

onstrating new capabilities that could provide alternatives to existing acquisition programs and assets. The Secretary shall establish the pilot program within the Departments of the Army, Navy, and Air Force, the Missile Defense Agency, and the United States Special Operations Command.

“(b) FUNDING.—There is authorized to be made available \$250,000,000 from the Rapid Prototyping Fund established under section 804(d) of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92; 10 U.S.C. 2302 note [now 10 U.S.C. 3201 note prec.]) to carry out the pilot program.

“(c) PLAN.—

“(1) IN GENERAL.—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], concurrent with the budget for the Department of Defense for fiscal year 2018, as submitted to Congress pursuant to section 1105 of title 31, United States Code, a plan to fund and carry out the pilot program in future years.

“(2) ELEMENTS.—The plan submitted under paragraph (1) shall consider maximizing use of—

“(A) broad agency announcements or other merit-based selection procedures;

“(B) the Department of Defense Acquisition Challenge Program authorized under section 2359b of title 10, United States Code [now 10 U.S.C. 4062];

“(C) the foreign comparative test program;

“(D) projects carried out under the Rapid Innovation Program of the Department of Defense or pursuant to a Phase III agreement (as defined in section 9(r)(2) of the Small Business Act (15 U.S.C. 638(r)(2))); and

“(E) streamlined procedures for acquisition provided under section 804 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92; 10 U.S.C. 2302 note [now 10 U.S.C. 3201 note prec.]) and procedures for alternative acquisition pathways established under section 805 of such Act (10 U.S.C. 2302 note [now 10 U.S.C. 3201 note prec.]).

“(d) PROGRAMS TO BE INCLUDED.—As part of the pilot program, the Secretary of Defense shall allocate up to \$50,000,000 on a fixed price contractual basis for fiscal year 2017 or pursuant to the plan submitted under subsection (c) for demonstrations of the following capabilities:

“(1) Swarming of multiple unmanned air vehicles.

“(2) Unmanned, modular fixed-wing aircraft that can be rapidly adapted to multiple missions and serve as a fifth generation weapons augmentation platform.

“(3) Vertical takeoff and landing tiltrotor aircraft.

“(4) Integration of a directed energy weapon on an air, sea, or ground platform.

“(5) Swarming of multiple unmanned underwater vehicles.

“(6) Commercial small synthetic aperture radar (SAR) satellites with on-board machine learning for automated, real-time feature extraction and predictive analytics.

“(7) Active protection system to defend against rocket-propelled grenades and anti-tank missiles.

“(8) Defense against hypersonic weapons, including sensors.

“(9) Unmanned ground logistics and unmanned air logistics capabilities enhancement.

“(10) Other systems as designated by the Secretary.

“(e) DEFINITIONS.—In this section:

“(1) NONTRADITIONAL DEFENSE CONTRACTOR.—The term ‘nontraditional defense contractor’ has the meaning given the term in section 3014 of title 10, United States Code.

“(2) SMALL BUSINESS CONCERN.—The term ‘small business concern’ has the meaning given the term in section 3 of the Small Business Act (15 U.S.C. 632).

“(f) SUNSET.—The authority under this section expires at the close of September 30, 2026.”

ORGANIZATIONAL CONFLICTS OF INTEREST IN MAJOR DEFENSE ACQUISITION PROGRAMS

Pub. L. 111-23, title II, §207(a)–(c), May 22, 2009, 123 Stat. 1728, 1729, directed the Secretary of Defense to re-

wise, not later than 270 days after May 22, 2009, the Defense Supplement to the Federal Acquisition Regulation to provide uniform guidance and tighten existing requirements for organizational conflicts of interest by contractors in major defense acquisition programs and directed the Panel on Contracting Integrity established pursuant to former section 813 of Pub. L. 109-364 (former 10 U.S.C. 2304 note) to present recommendations on measures to eliminate or mitigate organizational conflicts of interest in major defense acquisition programs.

§ 4292. Contracts: limitations on lead system integrators

(a) IN GENERAL.—Except as provided in subsection (b), no entity performing lead system integrator functions in the acquisition of a major system by the Department of Defense may have any direct financial interest in the development or construction of any individual system or element of any system of systems.

(b) EXCEPTION.—An entity described in subsection (a) may have a direct financial interest in the development or construction of an individual system or element of a system of systems if—

(1) the Secretary of Defense certifies to the Committees on Armed Services of the Senate and the House of Representatives that—

(A) the entity was selected by the Department of Defense as a contractor to develop or construct the system or element concerned through the use of competitive procedures; and

(B) the Department took appropriate steps to prevent any organizational conflict of interest in the selection process; or

(2) the entity was selected by a subcontractor to serve as a lower-tier subcontractor, through a process over which the entity exercised no control.

(c) CONSTRUCTION.—Nothing in this section shall be construed to preclude an entity described in subsection (a) from performing work necessary to integrate two or more individual systems or elements of a system of systems with each other.

(Added Pub. L. 109-364, div. A, title VIII, § 807(a)(1), Oct. 17, 2006, 120 Stat. 2315, § 2410p; renumbered § 4292, Pub. L. 116-283, div. A, title XVIII, § 1847(f)(1), Jan. 1, 2021, 134 Stat. 4258.)

Editorial Notes

AMENDMENTS

2021—Pub. L. 116-283 renumbered section 2410p of this title as this section.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

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 a note preceding section 3001 of this title.

EFFECTIVE DATE

Pub. L. 109-364, div. A, title VIII, § 807(a)(3), Oct. 17, 2006, 120 Stat. 2316, provided that: “Section 2410p of title 10, United States Code [now 10 U.S.C. 4292], as added by paragraph (1), shall apply with respect to contracts entered into after December 31, 2006.”

PROHIBITION ON NEW LEAD SYSTEMS INTEGRATORS

Pub. L. 110-181, div. A, title VIII, § 802, Jan. 28, 2008, 122 Stat. 206, as amended by Pub. L. 110-417, [div. A], title I, § 112, Oct. 14, 2008, 122 Stat. 4374; Pub. L. 116-92, div. A, title IX, § 902(100), Dec. 20, 2019, 133 Stat. 1555, provided that:

“(a) PROHIBITIONS ON THE USE OF LEAD SYSTEMS INTEGRATORS.—

“(1) PROHIBITION ON NEW LEAD SYSTEMS INTEGRATORS.—Effective October 1, 2010, the Department of Defense may not award a new contract for lead systems integrator functions in the acquisition of a major system to any entity that was not performing lead systems integrator functions in the acquisition of the major system prior to the date of the enactment of this Act [Jan. 28, 2008].

“(2) PROHIBITION ON LEAD SYSTEMS INTEGRATORS BEYOND LOW-RATE INITIAL PRODUCTION.—Effective on the date of the enactment of this Act, the Department of Defense may award a new contract for lead systems integrator functions in the acquisition of a major system only if—

“(A) the major system has not yet proceeded beyond low-rate initial production; or

“(B) the Secretary of Defense determines in writing that it would not be practicable to carry out the acquisition without continuing to use a contractor to perform lead systems integrator functions and that doing so is in the best interest of the Department.

“(3) REQUIREMENTS RELATING TO DETERMINATIONS.—A determination under paragraph (2)(B)—

“(A) shall specify the reasons why it would not be practicable to carry out the acquisition without continuing to use a contractor to perform lead systems integrator functions (including a discussion of alternatives, such as the use of the Department of Defense workforce, or a system engineering and technical assistance contractor);

“(B) shall include a plan for phasing out the use of contracted lead systems integrator functions over the shortest period of time consistent with the interest of the national defense;

“(C) may not be delegated below the level of the Under Secretary of Defense for Acquisition and Sustainment; and

“(D) shall be provided to the Committees on Armed Services of the Senate and the House of Representatives at least 45 days before the award of a contract pursuant to the determination.

“(b) ACQUISITION WORKFORCE.—

“(1) REQUIREMENT.—The Secretary of Defense shall ensure that the acquisition workforce is of the appropriate size and skill level necessary—

“(A) to accomplish inherently governmental functions related to acquisition of major systems; and

“(B) to effectuate the purpose of subsection (a) to minimize and eventually eliminate the use of contractors to perform lead systems integrator functions.

“(2) REPORT.—The Secretary shall include an update on the progress made in complying with paragraph (1) in the annual report required by section 820 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364; 120 Stat. 2330) [former 10 U.S.C. 1701 note].

“(c) EXCEPTION FOR CONTRACTS FOR OTHER MANAGEMENT SERVICES.—The Department of Defense may continue to award contracts for the procurement of services the primary purpose of which is to perform acquisition support functions with respect to the development or production of a major system, if the following conditions are met with respect to each such contract:

“(1) The contract prohibits the contractor from performing inherently governmental functions.

“(2) The Department of Defense organization responsible for the development or production of the major system ensures that Federal employees are responsible for—