

“(1) determines that a waiver is in the national interest; and

“(2) provides to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] an economic analysis as described in subsection (c) at least 30 days before the waiver takes effect.

“(c) ECONOMIC ANALYSIS.—The economic analysis provided under subsection (b) shall include, at a minimum, the following:

“(1) A clear explanation of the need for the contract.

“(2) An examination of at least two alternatives for fulfilling the requirements that the contract is meant to fulfill, including the following with respect to each alternative:

“(A) A rationale for including the alternative.

“(B) A cost estimate of the alternative and an analysis of the quality of each cost estimate.

“(C) A discussion of the benefits to be realized from the alternative.

“(D) A best value determination of each alternative and a detailed explanation of the life-cycle cost calculations used in the determination.

“(d) DEFINITIONS.—In this section:

“(1) The term ‘military flight simulator’ means any major system to simulate the form, fit, and function of a military aircraft that has no commonly available commercial variant.

“(2) The term ‘service contract’ means any contract entered into by the Department of Defense the principal purpose of which is to furnish services in the United States through the use of service employees.

“(3) The term ‘service employees’ has the meaning provided in section 6701(3) of title 41, United States Code.

“(e) EFFECT ON EXISTING CONTRACTS.—The limitation in subsection (a) does not apply to any service contract of a military department to acquire a military flight simulator, or to any renewal or extension of, or follow-on contract to, such a contract, if—

“(1) the contract was in effect as of October 17, 2006;

“(2) the number of flight simulators to be acquired under the contract (or renewal, extension, or follow-on) will not result in the total number of flight simulators acquired by the military department concerned through service contracts to exceed the total number of flight simulators to be acquired under all service contracts of such department for such simulators in effect as of October 17, 2006; and

“(3) in the case of a renewal or extension of, or follow-on contract to, the contract, the Secretary of the military department concerned provides to the congressional defense committees a written notice of the decision to exercise an option to renew or extend the contract, or to issue a solicitation for bids or proposals using competitive procedures for a follow-on contract, and an economic analysis as described in subsection (c) supporting the decision, at least 30 days before carrying out such decision.”

IMPROVEMENTS IN PROCUREMENTS OF SERVICES

Pub. L. 106-398, § 1 [div. A], title VIII, § 821, Oct. 30, 2000, 114 Stat. 1654, 1654A-217, as amended by Pub. L. 108-136, div. A, title XIV, § 1431(c), Nov. 24, 2003, 117 Stat. 1672; Pub. L. 115-232, div. A, title VIII, § 836(f)(2), Aug. 13, 2018, 132 Stat. 1871, provided that:

“(a) PREFERENCE FOR PERFORMANCE-BASED SERVICE CONTRACTING.—Not later than 180 days after the date of the enactment of this Act [Oct. 30, 2000], the Federal Acquisition Regulation issued in accordance with sections 6 and 25 of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 405 and 421) [see 41 U.S.C. 1121 and 1303] shall be revised to establish a preference for use of contracts and task orders for the purchase of services in the following order of precedence:

“(1) A performance-based contract or performance-based task order that contains firm fixed prices for the specific tasks to be performed.

“(2) Any other performance-based contract or performance-based task order.

“(3) Any contract or task order that is not a performance-based contract or a performance-based task order.

“[(b) Repealed. Pub. L. 108-136, div. A, title XIV, § 1431(c), Nov. 24, 2003, 117 Stat. 1672.]

“(c) CENTERS OF EXCELLENCE IN SERVICE CONTRACTING.—Not later than 180 days after the date of the enactment of this Act [Oct. 30, 2000], the Secretary of each military department shall establish at least one center of excellence in contracting for services. Each center of excellence shall assist the acquisition community by identifying, and serving as a clearinghouse for, best practices in contracting for services in the public and private sectors.

“(d) ENHANCED TRAINING IN SERVICE CONTRACTING.—(1) The Secretary of Defense shall ensure that classes focusing specifically on contracting for services are offered by the Defense Acquisition University and the Defense Systems Management College and are otherwise available to contracting personnel throughout the Department of Defense.

“(2) The Secretary of each military department and the head of each Defense Agency shall ensure that the personnel of the department or agency, as the case may be, who are responsible for the awarding and management of contracts for services receive appropriate training that is focused specifically on contracting for services.

“(e) DEFINITIONS.—In this section:

“(1) The term ‘performance-based’, with respect to a contract, a task order, or contracting, means that the contract, task order, or contracting, respectively, includes the use of performance work statements that set forth contract requirements in clear, specific, and objective terms with measurable outcomes.

“(2) The term ‘Defense Agency’ has the meaning given the term in section 101(a)(11) of title 10, United States Code.”

§ 4501. Procurement of contract services: management structure

(a) REQUIREMENT FOR MANAGEMENT STRUCTURE.—The Secretary of Defense shall establish and implement a management structure for the procurement of contract services for the Department of Defense. The management structure shall provide, at a minimum, for the matters specified in subsections (b), (c), (d), and (e).

(b) POLICIES, PROCEDURES, AND BEST PRACTICES GUIDELINES.—The management structure implemented pursuant to subsection (a) shall provide that the Under Secretary of Defense for Acquisition and Sustainment shall develop and maintain (in consultation with the service acquisition executives) policies, procedures, and best practices guidelines addressing the procurement of contract services, including policies, procedures, and best practices guidelines for—

- (1) acquisition planning;
- (2) solicitation and contract award;
- (3) requirements development and management;
- (4) contract tracking and oversight;
- (5) performance evaluation; and
- (6) risk management.

(c) PERSONNEL AND SUPPORT.—The management structure implemented pursuant to subsection (a) shall provide that the Under Secretary shall work with the service acquisition executives and other appropriate officials of the Department of Defense—

- (1) to identify the critical skills and competencies needed to carry out the procurement of contract services on behalf of the Department of Defense;

(2) to develop a comprehensive strategy for recruiting, training, and deploying employees to meet the requirements for such skills and competencies; and

(3) to ensure that the military departments and Defense Agencies have staff and administrative support that are adequate to effectively perform their duties under this section and section 4502 of this title.

(d) **CONTRACT SERVICES ACQUISITION CATEGORIES.**—The management structure implemented pursuant to subsection (a) shall provide that the Under Secretary shall establish contract services acquisition categories, based on dollar thresholds, for the purpose of establishing the level of review, decision authority, and applicable procedures in such categories.

(e) **OVERSIGHT OF IMPLEMENTATION.**—The management structure implemented pursuant to subsection (a) shall provide that the Under Secretary shall oversee the implementation of the requirements of this section and section 4502 of this title and the policies, procedures, and best practices guidelines established pursuant to subsection (b).

(f) **CONTRACT SERVICES.**—In this section, the term “contract services” has the meaning given that term in section 4502(d)(2) of this title.

(Added Pub. L. 107–107, div. A, title VIII, § 801(b)(1), Dec. 28, 2001, 115 Stat. 1174, § 2330; amended Pub. L. 107–314, div. A, title X, § 1062(a)(8), Dec. 2, 2002, 116 Stat. 2650; Pub. L. 109–163, div. A, title VIII, § 812(a)(1), Jan. 6, 2006, 119 Stat. 3376; Pub. L. 112–239, div. A, title VIII, § 845(d), Jan. 2, 2013, 126 Stat. 1848; Pub. L. 116–92, div. A, title IX, § 902(51), Dec. 20, 2019, 133 Stat. 1548; renumbered § 4501 and amended Pub. L. 116–283, div. A, title XVIII, § 1856(c)–(e), Jan. 1, 2021, 134 Stat. 4274.)

Editorial Notes

PRIOR PROVISIONS

A prior section 4501, act Aug. 10, 1956, ch. 1041, 70A Stat. 251, which related to industrial mobilization by the President in time of war, was repealed by Pub. L. 103–160, div. A, title VIII, § 822(a)(2), Nov. 30, 1993, 107 Stat. 1705. See section 4882 of this title.

AMENDMENTS

2021—Pub. L. 116–283, § 1856(e)(2), redesignated par. (1) of subsec. (a) as subsec. (b) and subpars. (B) to (D) of former par. (1) as subsecs. (c) to (e), respectively.

Pub. L. 116–283, § 1856(d), transferred subsecs. (a)(2), (3), (b), and (c) to section 4502 of this title. Amendment notes below prior to 2021 relate to section as it read before such provisions were transferred.

Pub. L. 116–283, § 1856(c), renumbered section 2330 of this title as this section.

Subsec. (a). Pub. L. 116–283, § 1856(e)(1), substituted “for the matters specified in subsections (b), (c), (d), and (e).” for “for the following:”.

Subsec. (b). Pub. L. 116–283, § 1856(e)(3), inserted heading, substituted “The management structure implemented pursuant to subsection (a) shall provide that the Under Secretary of Defense for Acquisition and Sustainment shall develop and maintain” for “The Under Secretary of Defense for Acquisition and Sustainment shall—(A) develop and maintain”, redesignated cls. (i) to (vi) as pars. (1) to (6), respectively, substituted period for semicolon at end of par. (6), and realigned margins.

Subsec. (c). Pub. L. 116–283, § 1856(e)(4)(A)–(C), inserted heading, substituted “The management structure im-

plemented pursuant to subsection (a) shall provide that the Under Secretary shall work with” for “work with” in introductory provisions, redesignated cls. (i) to (iii) as pars. (1) to (3), respectively, and realigned margins.

Subsec. (c)(3). Pub. L. 116–283, § 1856(e)(4)(D), (E), substituted “under this section and section 4502 of this title.” for “under this section;”.

Subsec. (d). Pub. L. 116–283, § 1856(e)(5), inserted heading, substituted “The management structure implemented pursuant to subsection (a) shall provide that the Under Secretary shall establish contract” for “establish contract” and period for “; and”, and realigned margins.

Subsec. (e). Pub. L. 116–283, § 1856(e)(6), inserted heading, substituted “The management structure implemented pursuant to subsection (a) shall provide that the Under Secretary shall oversee the” for “oversee the” and “subsection (b)” for “subparagraph (A)”, inserted “and section 4502 of this title” after “of this section”, and realigned margins.

Subsec. (f). Pub. L. 116–283, § 1856(e)(7), added subsec. (f).

2019—Subsecs. (a)(1), (3), (b)(2), (3)(A). Pub. L. 116–92 substituted “Under Secretary of Defense for Acquisition and Sustainment” for “Under Secretary of Defense for Acquisition, Technology, and Logistics”.

2013—Subsec. (c)(2). Pub. L. 112–239 substituted “including services in support of contingency operations. The term does not include services relating to research and development or military construction.” for “other than services relating to research and development or military construction.”

2006—Pub. L. 109–163 amended section generally. Prior to amendment, section consisted of subsecs. (a) to (c) relating to requirement for management structure, contracting responsibilities of designated officials, and definitions.

2002—Subsec. (c). Pub. L. 107–314 inserted comma after “a task order”.

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.

§ 4502. Procurement of contract services: senior officials responsible for management of acquisition of contract services

(a) **SENIOR OFFICIALS.**—The management structure implemented pursuant to section 4501 of this title shall provide for the following:

(1) The service acquisition executive of each military department shall be the senior official responsible for the management of acquisition of contract services for or on behalf of the military department.

(2) The Under Secretary of Defense for Acquisition and Sustainment shall be the senior official responsible for the management of acquisition of contract services for or on behalf of the Defense Agencies and other components of the Department of Defense outside the military departments.

(b) **DUTIES AND RESPONSIBILITIES OF SENIOR OFFICIALS RESPONSIBLE FOR THE MANAGEMENT OF ACQUISITION OF CONTRACT SERVICES.**—(1) Except as provided in paragraph (2), the senior officials responsible for the management of acquisition of contract services shall assign responsibility for the review and approval of procurements in each contract services acquisition category es-