

(4) require identification of any hours in excess of 40-hour weeks included in a proposal;

(5) ensure that offerors are notified that proposals which include unrealistically low labor rates or which do not otherwise demonstrate cost realism will be considered in a risk assessment and evaluated appropriately; and

(6) provide guidance to contracting officers to ensure that any use of uncompensated overtime will not degrade the level of technical expertise required to perform the contract.

(Added Pub. L. 101-510, div. A, title VIII, §834(a)(1), Nov. 5, 1990, 104 Stat. 1613, §2331; amended Pub. L. 102-25, title VII, §701(a), Apr. 6, 1991, 105 Stat. 113; Pub. L. 103-355, title I, §1004(c), Oct. 13, 1994, 108 Stat. 3253; Pub. L. 107-107, div. A, title VIII, §801(g)(1), Dec. 28, 2001, 115 Stat. 1177; renumbered §4507, Pub. L. 116-283, div. A, title XVIII, §1856(g), Jan. 1, 2021, 134 Stat. 4275.)

Editorial Notes

PRIOR PROVISIONS

A prior section 4507, act Aug. 10, 1956, ch. 1041, 70A Stat. 253, which related to sale of ordnance and ordnance stores to designers, was repealed by Pub. L. 103-160, div. A, title VIII, §822(b)(3), Nov. 30, 1993, 107 Stat. 1706.

AMENDMENTS

2021—Pub. L. 116-283 renumbered section 2331 of this title as this section.

2001—Pub. L. 107-107 substituted “Procurement of services: contracts” for “Contracts” in section catchline.

1994—Subsec. (c). Pub. L. 103-355 struck out text and heading of subsec. (c). Text read as follows:

“(1) The Secretary of Defense may waive the limitation in section 2304(j)(4) of this title on the total value of task orders for specific contracting activities to the extent the Secretary considers the use of master agreements necessary in order to further the policy set forth in subsection (a).

“(2) During any fiscal year, such a waiver may not increase the total value of task orders under master agreements of a contracting activity by more than 20 percent of the value of all contracts for advisory and assistance services awarded by that contracting activity during fiscal year 1989.

“(3) Such a waiver shall not become effective until 60 days after the Secretary of Defense has published notice thereof in the Federal Register.”

1991—Subsec. (c)(1). Pub. L. 102-25 struck out “on a case-by-case basis” after “value of task orders”, substituted “considers the use of master agreements necessary” for “considers necessary the use of master agreements”, and struck out “of this section” before period at end.

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 OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103-355, see section 10001 of Pub. L. 103-355, set out as a note under section 8752 of this title.

REGULATIONS

Pub. L. 101-510, div. A, title VIII, §834(b), Nov. 5, 1990, 104 Stat. 1614, provided that: “Not later than 180 days

after the date of the enactment of this Act [Nov. 5, 1990], the Secretary of Defense shall publish for public comment new regulations to carry out the requirements in this section [enacting this section]. The Secretary shall promulgate final regulations to carry out such requirements not later than 270 days after the date of the enactment of this Act.”

PROVISIONS NOT AFFECTED BY PUB. L. 103-355

Repeal of subsec. (c) of this section by Pub. L. 103-355 not to be construed as modifying or superseding, or as intended to impair or restrict, authorities or responsibilities under former 40 U.S.C. 759 or chapter 11 of Title 40, Public Buildings, Property, and Works, see section 1004(d) of Pub. L. 103-355, set out as a note preceding section 3401 of this title.

§ 4508. Contractor performance of acquisition functions closely associated with inherently governmental functions

(a) LIMITATION.—The head of an agency may enter into a contract for the performance of acquisition functions closely associated with inherently governmental functions only if the contracting officer for the contract ensures that—

(1) appropriate military or civilian personnel of the Department of Defense cannot reasonably be made available to perform the functions;

(2) appropriate military or civilian personnel of the Department of Defense are—

(A) to supervise contractor performance of the contract; and

(B) to perform all inherently governmental functions associated with the functions to be performed under the contract; and

(3) the agency addresses any potential organizational conflict of interest of the contractor in the performance of the functions under the contract, consistent with subpart 9.5 of part 9 of the Federal Acquisition Regulation and the best interests of the Department of Defense.

(b) DEFINITIONS.—In this section:

(1) The term “head of an agency” does not include the Secretary of Homeland Security or the Administrator of the National Oceanic and Atmospheric Administration.

(2) The term “inherently governmental functions” has the meaning given such term in subpart 7.5 of part 7 of the Federal Acquisition Regulation.

(3) The term “functions closely associated with inherently governmental functions” means the functions described in section 7.503(d) of the Federal Acquisition Regulation.

(4) The term “organizational conflict of interest” has the meaning given such term in subpart 9.5 of part 9 of the Federal Acquisition Regulation.

(Added Pub. L. 108-375, div. A, title VIII, §804(a)(1), Oct. 28, 2004, 118 Stat. 2007, §2383; renumbered §4508 and amended Pub. L. 116-283, div. A, title XVIII, §1856(g), (i), Jan. 1, 2021, 134 Stat. 4275.)

Editorial Notes

PRIOR PROVISIONS

A prior section 4508, acts Aug. 10, 1956, ch. 1041, 70A Stat. 253; Nov. 2, 1966, Pub. L. 89-718, §27, 80 Stat. 1119,

which related tests of iron, steel, and other materials, was repealed by Pub. L. 103-160, div. A, title VIII, §822(b)(3), Nov. 30, 1993, 107 Stat. 1706.

AMENDMENTS

2021—Pub. L. 116-283 renumbered section 2383 of this title as this section.

Subsec. (b)(1), Pub. L. 116-283, §1856(i), which directed striking out “has the meaning given in section 2302(1) of this title, except that such term”, was executed by striking out “has the meaning given such term in section 2302(1) of this title, except that such term” before “does not include”, to reflect the probable intent of Congress.

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. 108-375, div. A, title VIII, §804(b), Oct. 28, 2004, 118 Stat. 2008, provided that: “Section 2383 of title 10, United States Code [now 10 U.S.C. 4508] (as added by subsection (a)), shall apply to contracts entered into on or after the date of the enactment of this Act [Oct. 28, 2004].”

§ 4509. Contracts for advisory and assistance services: cost comparison studies

(a) REQUIREMENT.—(1)(A) Before the Secretary of Defense enters into a contract described in subparagraph (B), the Secretary shall determine whether Department of Defense personnel have the capability to perform the services proposed to be covered by the contract.

(B) Subparagraph (A) applies to any contract of the Department of Defense for advisory and assistance services that is expected to have a value in excess of \$100,000.

(2) If the Secretary determines that Department of Defense personnel have the capability to perform the services to be covered by the contract, the Secretary shall conduct a study comparing the cost of performing the services with Department of Defense personnel and the cost of performing the services with contractor personnel.

(b) WAIVER.—The Secretary of Defense may, pursuant to guidelines prescribed by the Secretary, waive the requirement to perform a cost comparison study under subsection (a)(2) based on factors that are not related to cost.

(Added Pub. L. 103-337, div. A, title III, §363(a)(1), Oct. 5, 1994, 108 Stat. 2733, §2410l; renumbered §4509, Pub. L. 116-283, div. A, title XVIII, §1856(g), Jan. 1, 2021, 134 Stat. 4275.)

Editorial Notes

PRIOR PROVISIONS

A prior section 4531, act Aug. 10, 1956, ch. 1041, 70A Stat. 253, authorized Secretary of the Army to procure materials and facilities necessary to maintain and support the Army, prior to repeal by Pub. L. 103-160, div. A, title VIII, §823(2), Nov. 30, 1993, 107 Stat. 1707.

A prior section 4532 was renumbered section 7532 of this title.

Prior sections 4533 to 4535 were repealed by Pub. L. 103-160, div. A, title VIII, §823(3)-(5), Nov. 30, 1993, 107 Stat. 1707.

Section 4533, act Aug. 10, 1956, ch. 1041, 70A Stat. 254, related to purchases of army rations.

Section 4534, act Aug. 10, 1956, ch. 1041, 70A Stat. 254, related to subsistence supplies, contract stipulations, and place of delivery on inspection.

Section 4535, act Aug. 10, 1956, ch. 1041, 70A Stat. 254, provided that exceptional subsistence supplies could be purchased without advertising.

A prior section 4536 was renumbered section 7536 of this title.

Prior sections 4537 and 4538 were repealed by Pub. L. 103-160, div. A, title VIII, §823(6), (7), Nov. 30, 1993, 107 Stat. 1707.

Section 4537, acts Aug. 10, 1956, ch. 1041, 70A Stat. 254; Nov. 2, 1966, Pub. L. 89-718, §8(a), 80 Stat. 1117; Dec. 12, 1980, Pub. L. 96-513, title V, §512(14), 94 Stat. 2930, authorized Secretary of the Army to obtain assistance of United States mapping agencies in making and developing military surveys and maps.

Section 4538, acts Aug. 10, 1956, ch. 1041, 70A Stat. 255; Dec. 12, 1980, Pub. L. 96-513, title V, §512(15), 94 Stat. 2930, related to exchange and reclamation of unserviceable ammunition.

A prior section 4539, act Aug. 10, 1956, ch. 1041, 70A Stat. 255, provided for purchase of horses and mules in open market at Army posts, within maximum prices prescribed by Secretary of the Army, prior to repeal by Pub. L. 91-482, §1(a), Oct. 21, 1970, 84 Stat. 1082.

A prior section 4540 was renumbered section 7540 of this title.

Another prior section 4541 was renumbered section 7541 of this title.

Prior sections 4542 to 4544, 4551 to 4555, and 4561 to 4565 were renumbered sections 7542 to 7544, 7551 to 7555, and 7561 to 7565 of this title, respectively.

AMENDMENTS

2021—Pub. L. 116-283 renumbered section 2410l 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. 103-337, div. A, title III, §363(c), Oct. 5, 1994, 108 Stat. 2734, provided that: “Section 2410l of title 10, United States Code [now 10 U.S.C. 4509], as added by subsection (a), shall take effect 180 days after the date of the enactment of this Act [Oct. 5, 1994].”

PROCEDURES FOR CONDUCT OF STUDIES

Pub. L. 103-337, div. A, title III, §363(b), Oct. 5, 1994, 108 Stat. 2734, provided that: “The Secretary of Defense shall prescribe the following procedures:

“(1) Procedures for carrying out a cost comparison study under subsection (a)(2) of section 2410l of title 10, United States Code [now 10 U.S.C. 4509(a)(2)], as added by subsection (a), which may contain a requirement that the cost comparison study include consideration of factors that are not related to cost, including the quality of the service required to be performed, the availability of Department of Defense personnel, the duration and recurring nature of the services to be performed, and the consistency of the workload.

“(2) Procedures for reviewing contracts entered into after a waiver under subsection (b) of such section to determine whether the contract is justified and sufficiently documented.”

CHAPTER 343—[RESERVED]

Subchapter I. [Reserved] 4541