

(b) **TERMINATION OR LIMITATION OF CONTRACT UNDER CERTAIN CIRCUMSTANCES.**—A contract entered into under subsection (a) shall contain a provision that the Secretary of Defense may terminate, prohibit, or suspend immediately any commercial test or evaluation activity to be conducted at the Major Range and Test Facility Installation under the contract if the Secretary of Defense certifies in writing that the test or evaluation activity is or would be detrimental—

- (1) to the public health and safety;
- (2) to property (either public or private); or
- (3) to any national security interest or foreign policy interest of the United States.

(c) **CONTRACT PRICE.**—A contract entered into under subsection (a) shall include a provision that requires a commercial entity using a Major Range and Test Facility Installation under the contract to reimburse the Department of Defense for all direct costs to the United States that are associated with the test and evaluation activities conducted by the commercial entity under the contract. In addition, the contract may include a provision that requires the commercial entity to reimburse the Department of Defense for such indirect costs related to the use of the installation as the Secretary of Defense considers to be appropriate. The Secretary may delegate to the commander of the Major Range and Test Facility Installation the authority to determine the appropriateness of the amount of indirect costs included in such a contract provision.

(d) **RETENTION OF FUNDS COLLECTED FROM COMMERCIAL USERS.**—Amounts collected under subsection (c) from a commercial entity conducting test and evaluation activities at a Major Range and Test Facility Installation shall be credited to the appropriation accounts under which the costs associated with the test and evaluation activities of the commercial entity were incurred.

(e) **REGULATIONS AND LIMITATIONS.**—The Secretary of Defense shall prescribe regulations to carry out this section.

(f) **DEFINITIONS.**—In this section:

(1) The term “Major Range and Test Facility Installation” means a test and evaluation installation under the jurisdiction of the Department of Defense and designated as a Major Range and Test Facility Installation by the Secretary.

(2) The term “direct costs” includes the cost of—

(A) labor, material, facilities, utilities, equipment, supplies, and any other resources damaged or consumed during test or evaluation activities or maintained for a particular commercial entity; and

(B) construction specifically performed for a commercial entity to conduct test and evaluation activities.

(Added Pub. L. 103–160, div. A, title VIII, §846(a), Nov. 30, 1993, 107 Stat. 1722, §2681; amended Pub. L. 105–85, div. A, title VIII, §842, Nov. 18, 1997, 111 Stat. 1844; Pub. L. 105–261, div. A, title VIII, §820, Oct. 17, 1998, 112 Stat. 2090; renumbered §4175 and amended Pub. L. 116–283, div. A, title XVIII, §§1844(b)(1), 1845(b), Jan. 1, 2021, 134 Stat. 4245, 4247; Pub. L. 117–81, div. A, title XVII, §1701(u)(5)(B), (6)(B), Dec. 27, 2021, 135 Stat. 2154.)

Editorial Notes

AMENDMENTS

2021—Pub. L. 116–283, §1845(b), as amended by Pub. L. 117–81, §1701(u)(6)(B), renumbered section 2681 of this title as this section.

Pub. L. 116–283, §1844(b)(1), which directed the renumbering of section 2681 of this title as section 4144 of this title instead of this section, was repealed by Pub. L. 117–81, §1701(u)(5)(B).

1998—Subsec. (g). Pub. L. 105–261, §820(a), struck out heading and text of subsec. (g). Text read as follows: “The authority provided to the Secretary of Defense by subsection (a) shall terminate on September 30, 2002.”

Subsec. (h). Pub. L. 105–261, §820(b), struck out heading and text of subsec. (h). Text read as follows: “Not later than March 1, 1998, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives a report identifying existing and proposed procedures to ensure that the use of Major Range and Test Facility Installations by commercial entities does not compete with private sector test and evaluation services.”

1997—Subsec. (g). Pub. L. 105–85, §842(a), substituted “2002” for “1998”.

Subsec. (h). Pub. L. 105–85, §842(b), amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows:

“(h) **REPORT.**—Not later than January 1, 1998, the Secretary of Defense shall submit to Congress a report describing the number and purposes of contracts entered into under subsection (a) and evaluating the extent to which the authority under this section is exercised to open Major Range and Test Facility Installations to commercial test and evaluation activities.”

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.

Subpart F—Major Systems, Major Defense Acquisition Programs, and Weapon Systems Development

Editorial Notes

PRIOR PROVISIONS

A prior subpart F “Special Categories of Contracting: Research, Development, Test, and Evaluation”, consisting of chapters 321 to 329, was repealed by Pub. L. 116–283, div. A, title XVIII, §1841(a)(1)(A), Jan. 1, 2021, 134 Stat. 4242.

CHAPTER 321—GENERAL MATTERS

Sec.

- 4201. Major defense acquisition programs: definition; exceptions.
- 4202. Authority to increase definitional threshold amounts: major defense acquisition programs; major systems.
- 4203. Major subprograms.
- 4204. Milestone decision authority.
- 4205. Weapon systems for which procurement funding requested in budget: development and procurement schedules.

Sec.

Editorial Notes**PRIOR PROVISIONS**

A prior chapter 321 “RESEARCH AND DEVELOPMENT GENERALLY”, consisting of reserved section 4201, was repealed by Pub. L. 116-283, div. A, title XVIII, § 1841(a)(1)(A), Jan. 1, 2021, 134 Stat. 4242.

Statutory Notes and Related Subsidiaries**ENHANCED DOMESTIC CONTENT REQUIREMENT FOR MAJOR DEFENSE ACQUISITION PROGRAMS**

Pub. L. 118-31, div. A, title VIII, § 835, Dec. 22, 2023, 137 Stat. 338, provided that:

“(a) ASSESSMENT REQUIRED.—

“(1) IN GENERAL.—Not later than one year after the date of the enactment of this Act [Dec. 22, 2023], 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 assessing the domestic source content of procurements carried out in connection with a major defense acquisition program.

“(2) INFORMATION REPOSITORY.—The Secretary of Defense shall establish an information repository for the collection and analysis of information related to domestic source content for products the Secretary deems critical, where such information can be used for continuous data analysis and program management activities.

“(b) ENHANCED DOMESTIC CONTENT REQUIREMENT.—

“(1) IN GENERAL.—Except as provided in paragraph (2), for purposes of chapter 83 of title 41, United States Code, manufactured articles, materials, or supplies procured in connection with a major defense acquisition program are manufactured substantially all from articles, materials, or supplies mined, produced, or manufactured in the United States if the cost of such component articles, materials, or supplies—

“(A) supplied not later than the date of the enactment of this Act, exceeds 60 percent of cost of the manufactured articles, materials, or supplies procured;

“(B) supplied during the period beginning January 1, 2024, and ending December 31, 2028, exceeds 65 percent of the cost of the manufactured articles, materials, or supplies; and

“(C) supplied on or after January 1, 2029, exceeds 75 percent of the cost of the manufactured articles, materials, or supplies.

“(2) EXCLUSION FOR CERTAIN MANUFACTURED ARTICLES.—Paragraph (1) shall not apply to manufactured articles that consist wholly or predominantly of iron, steel, or a combination of iron and steel.

“(3) RULEMAKING TO CREATE A FALLBACK THRESHOLD.—

“(A) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall issue rules to determine the treatment of the lowest price offered for a foreign end product for which 55 percent or more of the component articles, materials, or supplies of such foreign end product are manufactured substantially all from articles, materials, or supplies mined, produced, or manufactured in the United States if—

“(i) the application of paragraph (1) results in an unreasonable cost; or

“(ii) no offers are submitted to supply manufactured articles, materials, or supplies manufactured substantially all from articles, materials, or supplies mined, produced, or manufactured in the United States.

“(B) TERMINATION.—Rules issued under this paragraph shall cease to have force or effect on January 1, 2031.

“(4) APPLICABILITY.—The requirements of this subsection—

“(A) shall apply to contracts entered into on or after the date of the enactment of this Act [Dec. 22, 2023];

“(B) shall not apply to articles manufactured in countries that have executed a reciprocal defense procurement memorandum of understanding with the United States entered into pursuant to section 4851 of title 10, United States Code; and

“(C) shall not apply to a country that is a member of the national technology and industrial base (as defined by section 4801 of title 10, United States Code).

“(c) MAJOR DEFENSE ACQUISITION PROGRAM DEFINED.—The term ‘major defense acquisition program’ has the meaning given in section 4201 of title 10, United States Code.”

PENALTY FOR COST OVERRUNS

Pub. L. 114-92, div. A, title VIII, § 828, Nov. 25, 2015, 129 Stat. 910, as amended by Pub. L. 115-91, div. A, title VIII, § 825, Dec. 12, 2017, 131 Stat. 1466; Pub. L. 115-232, div. A, title X, § 1081(d), Aug. 13, 2018, 132 Stat. 1986; Pub. L. 116-92, div. A, title VIII, § 805(a), (b)(2), Dec. 20, 2019, 133 Stat. 1485, provided that:

“(a) IN GENERAL.—For fiscal years 2018 and 2019, the Secretary of each military department shall pay a penalty for cost overruns on the covered major defense acquisition programs of the military department.

“(b) CALCULATION OF PENALTY.—For the purposes of this section:

“(1) The amount of the cost overrun on any major defense acquisition program or subprogram in a fiscal year is the difference between the current program acquisition unit cost for the program or subprogram and the program acquisition unit cost for the program as shown in the original Baseline Estimate for the program or subprogram, multiplied by the quantity of items to be purchased under the program or subprogram, as reported in the final Selected Acquisition Report for the fiscal year in accordance with section 2432 of title 10, United States Code [now 10 U.S.C. 4351].

“(2) Cost overruns for covered major defense acquisition programs that are joint programs of more than one military department shall be allocated among the military departments in percentages determined by the Under Secretary of Defense for Acquisition and Sustainment.

“(3) The cumulative amount of cost overruns for a military department in a fiscal year is the sum of the cost overruns for all covered major defense acquisition programs of the department in the fiscal year (including cost overruns allocated to the military department in accordance with paragraph (2)).

“(4) The cost overrun penalty for a military department in a fiscal year is three percent of the cumulative amount of cost overruns of the military department in the fiscal year, as determined pursuant to paragraph (3).

“(c) TOTAL COST OVERRUN PENALTY.—Notwithstanding the amount of a cost overrun penalty determined in subsection (b), the total cost overrun penalty for a military department (including any cost overrun penalty for joint programs of military departments) for a fiscal year may not exceed \$50,000,000.

“(d) TRANSFER OF FUNDS.—

“(1) REDUCTION OF RESEARCH, DEVELOPMENT, TEST, AND EVALUATION OR PROCUREMENT ACCOUNTS.—Not later than 60 days after the end of each of fiscal years 2018 through 2022, the Secretary of each military department shall reduce the research, development, test, and evaluation or procurement accounts of the military department by the amount determined under paragraph (2), and remit such amount to the Secretary of Defense.

“(2) DETERMINATION OF AMOUNTS.—The reductions to research, development, test, and evaluation or procurement accounts of a military department referred to in paragraph (1) are the reductions to such accounts necessary to equal, when combined, the cost