

of that Act, unless otherwise excepted in accordance with Federal acquisition laws and regulations promulgated under those laws, including the Federal Acquisition Regulation.

(3) NO EFFECT ON SMALL BUSINESS ACT.—Nothing in this subsection shall be construed to supersede or otherwise affect the authorities provided by and under the Small Business Act (15 U.S.C. 631 et seq.).

(b) EXCEPTIONS.—

(1) NATIONAL DISTRESS AND RESPONSE SYSTEM MODERNIZATION PROGRAM; C4ISR; NATIONAL SECURITY CUTTERS 2 AND 3.—Notwithstanding subsection (a), the Commandant may use a private sector entity as a lead systems integrator for the Coast Guard to complete the National Distress and Response System Modernization Program (otherwise known as the “Rescue 21” program), the C4ISR projects directly related to the Integrated Deepwater program, and National Security Cutters 2 and 3, if the Secretary of the department in which the Coast Guard is operating certifies that—

(A) the acquisition is in accordance with Federal law and the Federal Acquisition Regulation; and

(B) the acquisition and the use of a private sector lead systems integrator for the acquisition is in the best interest of the Federal Government.

(2) REPORT ON DECISIONMAKING PROCESS.—If the Commandant uses a private sector lead systems integrator for an acquisition, the Commandant shall notify in writing the appropriate congressional committees of the Commandant’s determination and shall provide to such committees a detailed rationale for the determination, at least 30 days before the award of a contract or issuance of a delivery order or task order, using a private sector lead systems integrator, including a comparison of the cost of the acquisition through the private sector lead systems integrator with the expected cost if the acquisition were awarded directly to the manufacturer or shipyard. For purposes of that comparison, the cost of award¹ directly to a manufacturer or shipyard shall include the costs of Government contract management and oversight.

(c) LIMITATION ON LEAD SYSTEMS INTEGRATORS.—Neither an entity performing lead systems integrator functions for a Coast Guard acquisition nor a Tier 1 subcontractor for any acquisition may have a financial interest in a subcontractor below the Tier 1 subcontractor level unless—

(1) the subcontractor was selected by the prime contractor through full and open competition for such procurement;

(2) the procurement was awarded by the lead systems integrator or a subcontractor through full and open competition;

(3) the procurement was awarded by a subcontractor through a process over which the lead systems integrator and a Tier 1 subcontractor exercised no control; or

(4) the Commandant has determined that the procurement was awarded in a manner con-

sistent with Federal acquisition laws and regulations promulgated under those laws, including the Federal Acquisition Regulation.

(d) TERMINATION DATE FOR EXCEPTIONS.—Except as described in subsection (b)(1), the Commandant may not use a private sector entity as a lead systems integrator for acquisition contracts awarded, or task orders or delivery orders issued, after the earlier of—

(1) September 30, 2011; or

(2) the date on which the Commandant certifies in writing to the appropriate congressional committees that the Coast Guard has available and can retain sufficient acquisition workforce personnel and expertise within the Coast Guard, through an arrangement with other Federal agencies, or through contracts or other arrangements with private sector entities, to perform the functions and responsibilities of the lead systems integrator in an efficient and cost-effective manner.

(Added Pub. L. 111-281, title IV, § 402(a), Oct. 15, 2010, 124 Stat. 2935; amended Pub. L. 111-330, § 1(4), Dec. 22, 2010, 124 Stat. 3569.)

REFERENCES IN TEXT

The date of enactment of the Coast Guard Authorization Act of 2010, referred to in subsec. (a)(1), (2), is the date of enactment of Pub. L. 111-281, which was approved Oct. 15, 2010.

The Small Business Act, referred to in subsec. (a)(3), is Pub. L. 85-536, § 2(1 et seq.), July 18, 1958, 72 Stat. 384, which is classified generally to chapter 14A (§ 631 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 631 of Title 15 and Tables.

PRIOR PROVISIONS

A prior section 564, act Aug. 4, 1949, ch. 393, 63 Stat. 540; Aug. 3, 1950, ch. 536, § 29, 64 Stat. 407, related to general courts-martial, prior to repeal by act May 5, 1950, ch. 169, §§ 5, 14(v), 64 Stat. 145, 148, effective May 31, 1951.

AMENDMENTS

2010—Pub. L. 111-330 amended Pub. L. 111-281, § 402(a), which enacted this section.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-330, § 1, Dec. 22, 2010, 124 Stat. 3569, provided that the amendment made by section 1(4) is effective with the enactment of Pub. L. 111-281.

§ 565. Required contract terms

(a) IN GENERAL.—The Commandant shall ensure that a contract awarded or a delivery order or task order issued for an acquisition of a capability or an asset with an expected service life of 10 or more years and with a total acquisition cost that is equal to or exceeds \$10,000,000 awarded or issued by the Coast Guard after the date of enactment of the Coast Guard Authorization Act of 2010—

(1) provides that all certifications for an end-state capability or asset under such contract, delivery order, or task order, respectively, will be conducted by the Commandant or an independent third party, and that self-certification by a contractor or subcontractor is not allowed;

(2) provides that the Commandant shall maintain the authority to establish, approve, and maintain technical requirements;

¹ So in original.

(3) requires that any measurement of contractor and subcontractor performance be based on the status of all work performed, including the extent to which the work performed met all performance, cost, and schedule requirements;

(4) specifies that, for the acquisition or upgrade of air, surface, or shore capabilities and assets for which compliance with TEMPEST certification is a requirement, the standard for determining such compliance will be the air, surface, or shore standard then used by the Department of the Navy for that type of capability or asset; and

(5) for any contract awarded to acquire an Offshore Patrol Cutter, includes provisions specifying the service life, fatigue life, and days underway in general Atlantic and North Pacific Sea conditions, maximum range, and maximum speed the cutter will be built to achieve.

(b) PROHIBITED PROVISIONS.—

(1) IN GENERAL.—The Commandant shall ensure that any contract awarded or delivery order or task order issued by the Coast Guard after the date of enactment of the Coast Guard Authorization Act of 2010 does not include any provision allowing for equitable adjustment that is not consistent with the Federal Acquisition Regulations.

(2) EXTENSION OF PROGRAM.—A contract, contract modification, or award term extending a contract with a lead systems integrator—

(A) may not include any minimum requirements for the purchase of a given or determinable number of specific capabilities or assets; and

(B) shall be reviewed by an independent third party with expertise in acquisition management, and the results of that review shall be submitted to the appropriate congressional committees at least 60 days prior to the award of the contract, contract modification, or award term.

(c) INTEGRATED PRODUCT TEAMS.—Integrated product teams, and all teams that oversee integrated product teams, shall be chaired by officers, members, or employees of the Coast Guard.

(d) TECHNICAL AUTHORITY.—The Commandant shall maintain or designate the technical authority to establish, approve, and maintain technical requirements. Any such designation shall be made in writing and may not be delegated to the authority of the Chief Acquisition Officer established by section 56 of this title.

(Added Pub. L. 111–281, title IV, §402(a), Oct. 15, 2010, 124 Stat. 2936; amended Pub. L. 111–330, §1(4), Dec. 22, 2010, 124 Stat. 3569.)

REFERENCES IN TEXT

The date of enactment of the Coast Guard Authorization Act of 2010, referred to in subsecs. (a) and (b)(1), is the date of enactment of Pub. L. 111–281, which was approved Oct. 15, 2010.

PRIOR PROVISIONS

A prior section 565, act Aug. 4, 1949, ch. 393, 63 Stat. 540, related to Public Health Service officers as court members, prior to repeal by act May 5, 1950, ch. 169, §§5, 14(v), 64 Stat. 145, 148, effective May 31, 1951.

AMENDMENTS

2010—Pub. L. 111–330 amended Pub. L. 111–281, §402(a), which enacted this section.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–330, §1, Dec. 22, 2010, 124 Stat. 3569, provided that the amendment made by section 1(4) is effective with the enactment of Pub. L. 111–281.

§ 566. Department of Defense consultation

(a) IN GENERAL.—The Commandant shall make arrangements as appropriate with the Secretary of Defense for support in contracting and management of Coast Guard acquisition programs. The Commandant shall also seek opportunities to make use of Department of Defense contracts, and contracts of other appropriate agencies, to obtain the best possible price for assets acquired for the Coast Guard.

(b) INTERSERVICE TECHNICAL ASSISTANCE.—The Commandant shall seek to enter into a memorandum of understanding or a memorandum of agreement with the Secretary of the Navy to obtain the assistance of the Office of the Assistant Secretary of the Navy for Research, Development, and Acquisition, including the Navy Systems Command, with the oversight of Coast Guard major acquisition programs. The memorandum of understanding or memorandum of agreement shall, at a minimum, provide for—

(1) the exchange of technical assistance and support that the Assistant Commandants for Acquisition, Human Resources, Engineering, and Information technology may identify;

(2) the use, as appropriate, of Navy technical expertise; and

(3) the temporary assignment or exchange of personnel between the Coast Guard and the Office of the Assistant Secretary of the Navy for Research, Development, and Acquisition, including Naval Systems Command, to facilitate the development of organic capabilities in the Coast Guard.

(c) TECHNICAL REQUIREMENT APPROVAL PROCEDURES.—The Chief Acquisition Officer shall adopt, to the extent practicable, procedures modeled after those used by the Navy Senior Acquisition Official to approve all technical requirements.

(d) ASSESSMENT.—Within 180 days after the date of enactment of the Coast Guard Authorization Act of 2010, the Comptroller General of the United States shall transmit a report to the appropriate congressional committees that—

(1) contains an assessment of current Coast Guard acquisition and management capabilities to manage Level 1 and Level 2 acquisitions;

(2) includes recommendations as to how the Coast Guard can improve its acquisition management, either through internal reforms or by seeking acquisition expertise from the Department of Defense; and

(3) addresses specifically the question of whether the Coast Guard can better leverage Department of Defense or other agencies' contracts that would meet the needs of Level 1 or Level 2 acquisitions in order to obtain the best possible price.

(Added Pub. L. 111–281, title IV, §402(a), Oct. 15, 2010, 124 Stat. 2937; amended Pub. L. 111–330, §1(4), Dec. 22, 2010, 124 Stat. 3569.)