

Subsec. (c). Pub. L. 107-314 substituted “this section” for “his section”.

1999—Subsec. (b). Pub. L. 106-65 substituted “under this section or any other provision of law providing for the presentation of a United States flag incident to release from active service for retirement.” for “under this section or section 3681, 6141, and 8681 of title 10.”

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107-296, set out as a note under section 101 of Title 10, Armed Forces.

EFFECTIVE DATE

Section applicable with respect to releases from active duty described in this section and sections 3681, 6141, and 8641 of Title 10, Armed Forces, on or after Oct. 1, 1998, see section 644(e) of Pub. L. 105-261, set out as a note under section 3681 of Title 10.

§ 517. Travel card management

(a) IN GENERAL.—The Secretary may require that travel or transportation allowances due a civilian employee or military member of the Coast Guard be disbursed directly to the issuer of a Federal contractor-issued travel charge card, but only in an amount not to exceed the authorized travel expenses charged by that Coast Guard member to that travel charge card issued to that employee or member.

(b) WITHHOLDING OF NONDISPUTED OBLIGATIONS.—The Secretary may also establish requirements similar to those established by the Secretary of Defense pursuant to section 2784a of title 10 for deduction or withholding of pay or retired pay from a Coast Guard employee, member, or retired member who is delinquent in payment under the terms of the contract under which the card was issued and does not dispute the amount of the delinquency.

(Added Pub. L. 108-293, title II, §210(a), Aug. 9, 2004, 118 Stat. 1036.)

§ 518. Reimbursement for medical-related travel expenses for certain persons residing on islands in the continental United States

In any case in which a covered beneficiary (as defined in section 1072(5) of title 10) resides on an island that is located in the 48 contiguous States and the District of Columbia and that lacks public access roads to the mainland and is referred by a primary care physician to a specialty care provider (as defined in section 1074i(b) of title 10) on the mainland who provides services less than 100 miles from the location where the beneficiary resides, the Secretary shall reimburse the reasonable travel expenses of the covered beneficiary and, when accompaniment by an adult is necessary, for a parent or guardian of the covered beneficiary or another member of the covered beneficiary’s family who is at least 21 years of age.

(Added Pub. L. 111-281, title II, §203(a), Oct. 15, 2010, 124 Stat. 2909.)

CHAPTER 15—ACQUISITIONS

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581. Definitions.

PRIOR PROVISIONS

A prior chapter 15 of this title, consisting of sections 561 to 576 and relating to Coast Guard discipline, was repealed by act May 5, 1950, ch. 169, §14(v), 64 Stat. 148.

SUBCHAPTER I—GENERAL PROVISIONS

§ 561. Acquisition directorate

(a) ESTABLISHMENT.—The Commandant of the Coast Guard shall establish an acquisition directorate to provide guidance and oversight for the implementation and management of all Coast Guard acquisition processes, programs, and projects.

(b) MISSION.—The mission of the acquisition directorate is—

(1) to acquire and deliver assets and systems that increase operational readiness, enhance mission performance, and create a safe working environment; and

(2) to assist in the development of a workforce that is trained and qualified to further the Coast Guard’s missions and deliver the best-value products and services to the Nation.

(Added Pub. L. 111-281, title IV, §402(a), Oct. 15, 2010, 124 Stat. 2931.)

PRIOR PROVISIONS

A prior section 561, act Aug. 4, 1949, ch. 393, 63 Stat. 538, related to limitations on punishment by commanding officer, prior to repeal by act May 5, 1950, ch. 169, §§5, 14(v), 64 Stat. 145, 148, effective May 31, 1951.

§ 562. Improvements in Coast Guard acquisition management

(a) PROJECT OR PROGRAM MANAGERS.—

(1) LEVEL 1 PROJECTS.—An individual may not be assigned as the project or program manager for a Level 1 acquisition unless the individual holds a Level III acquisition certification as a program manager.

(2) LEVEL 2 PROJECTS.—An individual may not be assigned as the project or program

¹ So in original. “Sec.” probably should not appear.

manager for a Level 2 acquisition unless the individual holds a Level II acquisition certification as a program manager.

(b) GUIDANCE ON TENURE AND ACCOUNTABILITY OF PROGRAM AND PROJECT MANAGERS.—

(1) ISSUANCE OF GUIDANCE.—Not later than one year after the date of enactment of the Coast Guard Authorization Act of 2010, the Commandant shall issue guidance to address the qualifications, resources, responsibilities, tenure, and accountability of program and project managers for the management of acquisition projects and programs. The guidance shall address, at a minimum—

(A) the qualifications required for project or program managers, including the number of years of acquisition experience and the professional training levels to be required of those appointed to project or program management positions;

(B) authorities available to project or program managers, including, to the extent appropriate, the authority to object to the addition of new program requirements that would be inconsistent with the parameters established for an acquisition program; and

(C) the extent to which a project or program manager who initiates a new acquisition project or program will continue in management of that project or program without interruption until the delivery of the first production units of the program.

(2) STRATEGY.—

(A) IN GENERAL.—Not later than 18 months after the date of enactment of this section, the Commandant shall develop a comprehensive strategy for enhancing the role of Coast Guard project or program managers in developing and carrying out acquisition programs.

(B) MATTERS TO BE ADDRESSED.—The strategy required by this section shall address, at a minimum—

(i) the creation of a specific career path and career opportunities for individuals who are or may become project or program managers, including the rotational assignments that will be provided to project or program managers;

(ii) the provision of enhanced training and educational opportunities for individuals who are or may become project or program managers;

(iii) the provision of mentoring support to current and future project or program managers by experienced senior executives and program managers within the Coast Guard, and through rotational assignments to the Department of Defense;

(iv) the methods by which the Coast Guard will collect and disseminate best practices and lessons learned on systems acquisition to enhance project and program management throughout the Coast Guard;

(v) the templates and tools that will be used to support improved data gathering and analysis for project and program management and oversight purposes, including the metrics that will be utilized to assess

the effectiveness of Coast Guard project or program managers in managing systems acquisition efforts; and

(vi) the methods by which the accountability of project or program managers for the results of acquisition projects and programs will be increased.

(c) ACQUISITION WORKFORCE.—

(1) IN GENERAL.—The Commandant shall designate a sufficient number of positions to be in the Coast Guard's acquisition workforce to perform acquisition-related functions at Coast Guard headquarters and field activities.

(2) REQUIRED POSITIONS.—In designating positions under subsection (a), the Commandant shall include, at a minimum, positions encompassing the following competencies and functions:

(A) Program management.

(B) Systems planning, research, development, engineering, and testing.

(C) Procurement, including contracting.

(D) Industrial and contract property management.

(E) Life-cycle logistics.

(F) Quality control and assurance.

(G) Manufacturing and production.

(H) Business, cost estimating, financial management, and auditing.

(I) Acquisition education, training, and career development.

(J) Construction and facilities engineering.

(K) Testing and evaluation.

(3) ACQUISITION MANAGEMENT HEADQUARTER ACTIVITIES.—The Commandant shall also designate as positions in the acquisition workforce under paragraph (1) those acquisition-related positions located at Coast Guard headquarters units.

(4) APPROPRIATE EXPERTISE REQUIRED.—The Commandant shall ensure that each individual assigned to a position in the acquisition workforce has the appropriate expertise to carry out the responsibilities of that position.

(d) MANAGEMENT INFORMATION SYSTEM.—

(1) IN GENERAL.—The Commandant shall establish a management information system capability to improve acquisition workforce management and reporting.

(2) INFORMATION MAINTAINED.—Information maintained with such capability shall include the following standardized information on individuals assigned to positions in the workforce:

(A) Qualifications, assignment history, and tenure of those individuals assigned to positions in the acquisition workforce or holding acquisition-related certifications.

(B) Promotion rates for officers and members of the Coast Guard in the acquisition workforce.

(e) REPORT ON ADEQUACY OF ACQUISITION WORKFORCE.—

(1) IN GENERAL.—The Commandant shall report to the appropriate congressional committees and the Committee on Homeland Security of the House of Representatives by July 1 of each year on the scope of the acquisition activities to be performed in the next fiscal year

and on the adequacy of the current acquisition workforce to meet that anticipated workload.

(2) CONTENTS.—The report shall—

(A) specify the number of officers, members, and employees of the Coast Guard currently and planned to be assigned to each position designated under subsection (c); and

(B) identify positions that are understaffed to meet the anticipated acquisition workload, and actions that will be taken to correct such understaffing.

(f) APPOINTMENTS TO ACQUISITION POSITIONS.—The Commandant shall ensure that no requirement or preference for officers or members of the Coast Guard is used in the consideration of persons for positions in the acquisition workforce.

(g) CAREER PATHS.—

(1) IDENTIFICATION OF CAREER PATHS.—To establish acquisition management as a core competency of the Coast Guard, the Commandant shall—

(A) ensure that career paths for officers, members, and employees of the Coast Guard who wish to pursue careers in acquisition are identified in terms of the education, training, experience, and assignments necessary for career progression of those officers, members, and employees to the most senior positions in the acquisition workforce; and

(B) publish information on such career paths.

(2) PROMOTION PARITY.—The Commandant shall ensure that promotion parity is established for officers and members of the Coast Guard who have been assigned to the acquisition workforce relative to officers and members who have not been assigned to the acquisition workforce.

(Added Pub. L. 111–281, title IV, § 402(a), Oct. 15, 2010, 124 Stat. 2931; 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 and the date of enactment of this section, referred to in subsec. (b)(1), (2)(A), is the date of enactment of Pub. L. 111–281, which was approved Oct. 15, 2010.

PRIOR PROVISIONS

A prior section 562, act Aug. 4, 1949, ch. 393, 63 Stat. 539; Aug. 3, 1950, ch. 536, § 27, 64 Stat. 407, related to deck courts, 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.

§ 563. Recognition of Coast Guard personnel for excellence in acquisition

(a) IN GENERAL.—Not later than 180 days after the date of enactment of the Coast Guard Authorization Act of 2010, the Commandant shall

commence implementation of a program to recognize excellent performance by individuals and teams comprised of officers, members, and employees of the Coast Guard that contributed to the long-term success of a Coast Guard acquisition project or program.

(b) ELEMENTS.—The program shall include—

(1) specific award categories, criteria, and eligibility and manners of recognition;

(2) procedures for the nomination by personnel of the Coast Guard of individuals and teams comprised of officers, members, and employees of the Coast Guard for recognition under the program; and

(3) procedures for the evaluation of nominations for recognition under the program by one or more panels of individuals from the Government, academia, and the private sector who have such expertise and are appointed in such manner as the Commandant shall establish for the purposes of this program.

(c) AWARD OF CASH BONUSES.—As part of the program required by subsection (a), the Commandant, subject to the availability of appropriations, may award to any civilian employee recognized pursuant to the program a cash bonus to the extent that the performance of such individual so recognized warrants the award of such bonus.

(Added Pub. L. 111–281, title IV, § 402(a), Oct. 15, 2010, 124 Stat. 2934; 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), is the date of enactment of Pub. L. 111–281, which was approved Oct. 15, 2010.

PRIOR PROVISIONS

A prior section 563, act Aug. 4, 1949, ch. 393, 63 Stat. 539; Aug. 3, 1950, ch. 536, § 28, 64 Stat. 407, related to summary 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.

§ 564. Prohibition on use of lead systems integrators

(a) IN GENERAL.—

(1) USE OF LEAD SYSTEMS INTEGRATOR.—Except as provided in subsection (b), the Commandant may not use a private sector entity as a lead systems integrator for an acquisition contract awarded or delivery order or task order issued after the date of enactment of the Coast Guard Authorization Act of 2010.

(2) FULL AND OPEN COMPETITION.—The Commandant and any lead systems integrator engaged by the Coast Guard, pursuant to the exceptions described in subsection (b), shall use full and open competition for any acquisition contract awarded after the date of enactment

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.)

REFERENCES IN TEXT

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

PRIOR PROVISIONS

A prior section 566, act Aug. 4, 1949, ch. 393, 63 Stat. 541, related to reviewing authorities, prior to repeal by act May 5, 1950, ch. 169, §§ 5, 14(v), 64 Stat. 145, 148, effective May 31, 1951.

AMENDMENTS

2010—Subsec. (d). Pub. L. 111-330, which directed the amendment of Pub. L. 111-281, § 402(a), which enacted this section, by substituting “Coast Guard Authorization Act of 2010” for “Coast Guard Authorization Act for Fiscal Years 2010 and 2011” wherever appearing, was executed in subsec. (d) of this section as added by section 402(a) by making the substitution for text which read “Coast Guard Authorization Act for fiscal years 2010 and 2011”, to reflect the probable intent of Congress.

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.

§ 567. Undefinitized contractual actions

(a) **IN GENERAL.**—The Coast Guard may not enter into an undefinitized contractual action unless such action is directly approved by the Head of Contracting Activity of the Coast Guard.

(b) **REQUESTS FOR UNDEFINITIZED CONTRACTUAL ACTIONS.**—Any request to the Head of Contracting Activity for approval of an undefinitized contractual action shall include a description of the anticipated effect on requirements of the Coast Guard if a delay is incurred for the purposes of determining contractual terms, specifications, and price before performance is begun under the contractual action.

(c) **REQUIREMENTS FOR UNDEFINITIZED CONTRACTUAL ACTIONS.**—

(1) **DEADLINE FOR AGREEMENT ON TERMS, SPECIFICATIONS, AND PRICE.**—A contracting officer of the Coast Guard may not enter into an undefinitized contractual action unless the contractual action provides for agreement upon contractual terms, specification, and price by the earlier of—

(A) the end of the 180-day period beginning on the date on which the contractor submits a qualifying proposal to definitize the contractual terms, specifications, and price; or

(B) the date on which the amount of funds obligated under the contractual action is equal to more than 50 percent of the negotiated overall ceiling price for the contractual action.

(2) **LIMITATION ON OBLIGATIONS.**—

(A) **IN GENERAL.**—Except as provided in subparagraph (B), the contracting officer for an undefinitized contractual action may not obligate under such contractual action an amount that exceeds 50 percent of the negotiated overall ceiling price until the contractual terms, specifications, and price are definitized for such contractual action.

(B) **EXCEPTION.**—Notwithstanding subparagraph (A), if a contractor submits a qualify-

ing proposal to definitize an undefinitized contractual action before an amount that exceeds 50 percent of the negotiated overall ceiling price is obligated on such action, the contracting officer for such action may not obligate with respect to such contractual action an amount that exceeds 75 percent of the negotiated overall ceiling price until the contractual terms, specifications, and price are definitized for such contractual action.

(3) **WAIVER.**—The Commandant may waive the application of this subsection with respect to a contract if the Commandant determines that the waiver is necessary to support—

(A) a contingency operation (as that term is defined in section 101(a)(13) of title 10);

(B) operations to prevent or respond to a transportation security incident (as defined in section 70101(6) of title 46);

(C) an operation in response to an emergency that poses an unacceptable threat to human health or safety or to the marine environment; or

(D) an operation in response to a natural disaster or major disaster or emergency designated by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

(4) **LIMITATION ON APPLICATION.**—This subsection does not apply to an undefinitized contractual action for the purchase of initial spares.

(d) **INCLUSION OF NONURGENT REQUIREMENTS.**—Requirements for spare parts and support equipment that are not needed on an urgent basis may not be included in an undefinitized contractual action by the Coast Guard for spare parts and support equipment that are needed on an urgent basis unless the Commandant approves such inclusion as being—

(1) good business practice; and

(2) in the best interests of the United States.

(e) **MODIFICATION OF SCOPE.**—The scope of an undefinitized contractual action under which performance has begun may not be modified unless the Commandant approves such modification as being—

(1) good business practice; and

(2) in the best interests of the United States.

(f) **ALLOWABLE PROFIT.**—The Commandant shall ensure that the profit allowed on an undefinitized contractual action for which the final price is negotiated after a substantial portion of the performance required is completed reflects—

(1) the possible reduced cost risk of the contractor with respect to costs incurred during performance of the contract before the final price is negotiated; and

(2) the reduced cost risk of the contractor with respect to costs incurred during performance of the remaining portion of the contract.

(g) **DEFINITIONS.**—In this section:

(1) **UNDEFINITIZED CONTRACTUAL ACTION.**—

(A) **IN GENERAL.**—Except as provided in subparagraph (B), the term “undefinitized contractual action” means a new procurement action entered into by the Coast Guard

for which the contractual terms, specifications, or price are not agreed upon before performance is begun under the action.

(B) EXCLUSION.—The term “undefinitized contractual action” does not include contractual actions with respect to—

- (i) foreign military sales;
- (ii) purchases in an amount not in excess of the amount of the simplified acquisition threshold; or
- (iii) special access programs.

(2) QUALIFYING PROPOSAL.—The term “qualifying proposal” means a proposal that contains sufficient information to enable complete and meaningful audits of the information contained in the proposal as determined by the contracting officer.

(Added Pub. L. 111–281, title IV, § 402(a), Oct. 15, 2010, 124 Stat. 2938.)

REFERENCES IN TEXT

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsec. (c)(3)(D), is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, which is classified principally to chapter 68 (§ 5121 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 567, act Aug. 4, 1949, ch. 393, 63 Stat. 541, related to jurisdiction of offenses, prior to repeal by act May 5, 1950, ch. 169, §§ 5, 14(v), 64 Stat. 145, 148, effective May 31, 1951.

§ 568. Guidance on excessive pass-through charges

(a) IN GENERAL.—Not later than 180 days after the date of enactment of the Coast Guard Authorization Act of 2010, the Commandant shall issue guidance to ensure that pass-through charges on contracts, subcontracts, delivery orders, and task orders that are entered into with a private entity acting as a lead systems integrator by or on behalf of the Coast Guard are not excessive in relation to the cost of work performed by the relevant contractor or subcontractor. The guidance shall, at a minimum—

- (1) set forth clear standards for determining when no, or negligible, value has been added to a contract by a contractor or subcontractor;
- (2) set forth procedures for preventing the payment by the Government of excessive pass-through charges; and
- (3) identify any exceptions determined by the Commandant to be in the best interest of the Government.

(b) EXCESSIVE PASS-THROUGH CHARGE DEFINED.—In this section the term “excessive pass-through charge”, with respect to a contractor or subcontractor that adds no, or negligible, value to a contract or subcontract, means a charge to the Government by the contractor or subcontractor that is for overhead or profit on work performed by a lower tier contractor or subcontractor, other than reasonable charges for the direct costs of managing lower tier contractors and subcontracts and overhead and profit based on such direct costs.

(c) APPLICATION OF GUIDANCE.—The guidance under this subsection shall apply to contracts

awarded to a private entity acting as a lead systems integrator by or on behalf of the Coast Guard on or after the date that is 360 days after the date of enactment of the Coast Guard Authorization Act of 2010.

(Added Pub. L. 111–281, title IV, § 402(a), Oct. 15, 2010, 124 Stat. 2940; 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 (c), is the date of enactment of Pub. L. 111–281, which was approved Oct. 15, 2010.

PRIOR PROVISIONS

A prior section 568, act Aug. 4, 1949, ch. 393, 63 Stat. 542, related to time limitations between offense and prosecution, 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.

§ 569. Report on former Coast Guard officials employed by contractors to the agency

(a) REPORT REQUIRED.—Not later than December 31, 2011, and annually thereafter, the Comptroller General of the United States shall submit a report to the appropriate congressional committees on the employment during the preceding year by Coast Guard contractors of individuals who were Coast Guard officials in the previous 5-year period. The report shall assess the extent to which former Coast Guard officials were provided compensation by Coast Guard contractors in the preceding calendar year.

(b) OBJECTIVES OF REPORT.—At a minimum, the report required by this section shall assess the extent to which former Coast Guard officials who receive compensation from Coast Guard contractors have been assigned by those contractors to work on contracts or programs between the contractor and the Coast Guard, including contracts or programs for which the former official personally had oversight responsibility or decisionmaking authority when they served in or worked for the Coast Guard.

(c) CONFIDENTIALITY REQUIREMENT.—The report required by this subsection shall not include the names of the former Coast Guard officials who receive compensation from Coast Guard contractors.

(d) ACCESS TO INFORMATION.—A Coast Guard contractor shall provide the Comptroller General access to information requested by the Comptroller General for the purpose of conducting the study required by this section.

(e) DEFINITIONS.—In this section:

(1) COAST GUARD CONTRACTOR.—The term “Coast Guard contractor” includes any person that received at least \$10,000,000 in contractor awards from the Coast Guard in the calendar year covered by the annual report.

(2) COAST GUARD OFFICIAL.—The term “Coast Guard official” includes former officers of the

Coast Guard who were compensated at a rate of pay for grade O-7 or above during the calendar year prior to the date on which they separated from the Coast Guard, and former civilian employees of the Coast Guard who served at any Level of the Senior Executive Service under subchapter VIII of chapter 53 of title 5, United States Code, during the calendar year prior to the date on which they separated from the Coast Guard.

(Added Pub. L. 111-281, title IV, § 402(a), Oct. 15, 2010, 124 Stat. 2940.)

PRIOR PROVISIONS

Prior sections 569 and 570 were repealed by act May 5, 1950, ch. 169, §§ 5, 14(v), 64 Stat. 145, 148, effective May 31, 1951.

Section 569, act Aug. 4, 1949, ch. 393, 63 Stat. 542, related to trial by civil authorities for offenses against United States.

Section 570, act Aug. 4, 1949, ch. 393, 63 Stat. 542, related to designation of any Federal prison for execution of sentence.

SUBCHAPTER II—IMPROVED ACQUISITION PROCESS AND PROCEDURES

§ 571. Identification of major system acquisitions

(a) IN GENERAL.—

(1) SUPPORT MECHANISMS.—The Commandant shall develop and implement mechanisms to support the establishment of mature and stable operational requirements for all acquisitions.

(2) MISSION ANALYSIS; AFFORDABILITY ASSESSMENT.—The Commandant may not initiate a Level 1 or Level 2 acquisition project or program until the Commandant—

(A) completes a mission analysis that—

(i) identifies the specific capability gaps to be addressed by the project or program; and

(ii) develops a clear mission need to be addressed by the project or program; and

(B) prepares a preliminary affordability assessment for the project or program.

(b) ELEMENTS.—

(1) REQUIREMENTS.—The mechanisms required by subsection (a) shall ensure the implementation of a formal process for the development of a mission-needs statement, concept-of-operations document, capability development plan, and resource proposal for the initial project or program funding, and shall ensure the project or program is included in the Coast Guard Capital Investment Plan.

(2) ASSESSMENT OF TRADE-OFFS.—In conducting an affordability assessment under subsection (a)(2)(B), the Commandant shall develop and implement mechanisms to ensure that trade-offs among cost, schedule, and performance are considered in the establishment of preliminary operational requirements for development and production of new assets and capabilities for Level 1 and Level 2 acquisitions projects and programs.

(c) HUMAN RESOURCE CAPITAL PLANNING.—The Commandant shall develop staffing predictions, define human capital performance initiatives, and identify preliminary training needs required

to implement each Level 1 and Level 2 acquisition project and program.

(Added Pub. L. 111-281, title IV, § 402(a), Oct. 15, 2010, 124 Stat. 2941.)

PRIOR PROVISIONS

A prior section 571, act Aug. 4, 1949, ch. 393, 63 Stat. 542, related to Treasury and Navy Department jurisdiction, prior to repeal by act May 5, 1950, ch. 169, §§ 5, 14(v), 64 Stat. 145, 148, effective May 31, 1951.

§ 572. Acquisition

(a) IN GENERAL.—The Commandant may not establish a Level 1 or Level 2 acquisition project or program until the Commandant—

(1) clearly defines the operational requirements for the project or program;

(2) establishes the feasibility of alternatives;

(3) develops an acquisition project or program baseline;

(4) produces a life-cycle cost estimate; and

(5) assesses the relative merits of alternatives to determine a preferred solution in accordance with the requirements of this section.

(b) SUBMISSION REQUIRED BEFORE PROCEEDING.—Any Coast Guard Level 1 or Level 2 acquisition project or program may not begin to obtain any capability or asset or proceed beyond that phase of its development that entails approving the supporting acquisition until the Commandant submits to the appropriate congressional committees the following:

(1) The key performance parameters, the key system attributes, and the operational performance attributes of the capability or asset to be acquired under the proposed acquisition project or program.

(2) A detailed list of the systems or other capabilities with which the capability or asset to be acquired is intended to be interoperable, including an explanation of the attributes of interoperability.

(3) The anticipated acquisition project or program baseline and acquisition unit cost for the capability or asset to be acquired under the project or program.

(4) A detailed schedule for the acquisition process showing when all capability and asset acquisitions are to be completed and when all acquired capabilities and assets are to be initially and fully deployed.

(c) ANALYSIS OF ALTERNATIVES.—

(1) IN GENERAL.—The Coast Guard may not acquire an experimental or technically immature capability or asset or implement a Level 1 or Level 2 acquisition project or program, unless it has prepared an analysis of alternatives for the capability or asset to be acquired in the concept and technology development phase of the acquisition process for the capability or asset.

(2) REQUIREMENTS.—The analysis of alternatives shall be prepared by a federally funded research and development center, a qualified entity of the Department of Defense, or a similar independent third-party entity that has appropriate acquisition expertise and has no financial interest in any part of the acquisition project or program that is the subject of