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From Title 10-ARMED FORCES

Subtitle A-General Military Law

PART IV-SERVICE, SUPPLY, AND PROCUREMENT

CHAPTER 137-PROCUREMENT GENERALLY

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§2302. Definitions

In this chapter:

(1) The term "head of an agency" means the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, the Secretary of Homeland Security, and the Administrator of the National Aeronautics and Space Administration.

(2) The term "competitive procedures" means procedures under which the head of an agency enters into a contract pursuant to full and open competition. Such term also includes-

(A) procurement of architectural or engineering services conducted in accordance with chapter 11 of title 40;

(B) the competitive selection for award of science and technology proposals resulting from a general solicitation and the peer review or scientific review (as appropriate) of such proposals;

(C) the procedures established by the Administrator of General Services for the multiple award schedule program of the General Services Administration if-

(i) participation in the program has been open to all responsible sources; and

(ii) orders and contracts under such program result in the lowest overall cost alternative to meet the needs of the United States;

(D) procurements conducted in furtherance of section 15 of the Small Business Act (15 U.S.C. 644) as long as all responsible business concerns that are entitled to submit offers for such procurements are permitted to compete; and

(E) a competitive selection of research proposals resulting from a general solicitation and peer review or scientific review (as appropriate) solicited pursuant to section 9 of the Small Business Act (15 U.S.C. 638).

(3) The following terms have the meanings provided such terms in chapter 1 of title 41:

(A) The term "procurement".

(B) The term "procurement system".

(C) The term "standards".

(D) The term "full and open competition".

(E) The term "responsible source".

(F) The term "item".

(G) The term "item of supply".

(H) The term "supplies".

(I) The term "commercial item".

(J) The term "nondevelopmental item".

(K) The term "commercial component".

(L) The term "component".

(4) The term "technical data" means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer software documentation) relating to supplies procured by an agency. Such term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration.

"(3) Use of alternative dispute resolution techniques (including arbitration).

"(4) Elimination of contract provisions authorizing the Government to make unilateral changes to contracts."

ELIMINATION OF USE OF CLASS I OZONE-DEPLETING SUBSTANCES IN CERTAIN MILITARY PROCUREMENT CONTRACTS

Pub. L. 102-484, div. A, title III, §326, Oct. 23, 1992, 106 Stat. 2368 , as amended by Pub. L. 104-106, div. A, title XV, §§1502(c)(2)(A), 1504(c)(1), Feb. 10, 1996, 110 Stat. 506 , 514; Pub. L. 106-65, div. A, title X, §1067(8), Oct. 5, 1999, 113 Stat. 774 ; Pub. L. 113-291, div. A, title X, §1071(b)(14), Dec. 19, 2014, 128 Stat. 3508 , provided that:

"(a) ELIMINATION OF USE OF CLASS I OZONE-DEPLETING SUBSTANCES.-(1) No Department of Defense contract awarded after June 1, 1993, may include a specification or standard that requires the use of a class I ozone-depleting substance or that can be met only through the use of such a substance unless the inclusion of the specification or standard in the contract is approved by the senior acquisition official for the procurement covered by the contract. The senior acquisition official may grant the approval only if the senior acquisition official determines (based upon the certification of an appropriate technical representative of the official) that a suitable substitute for the class I ozone-depleting substance is not currently available.

"(2)(A)(i) Not later than 60 days after the completion of the first modification, amendment, or extension after June 1, 1993, of a contract referred to in clause (ii), the senior acquisition official (or the designee of that official) shall carry out an evaluation of the contract in order to determine-

"(I) whether the contract includes a specification or standard that requires the use of a class I ozone-depleting substance or can be met only through the use of such a substance; and

"(II) in the event of a determination that the contract includes such a specification or standard, whether the contract can be carried out through the use of an economically feasible substitute for the ozone-depleting substance or through the use of an economically feasible alternative technology for a technology involving the use of the ozone-depleting substance.

"(ii) A contract referred to in clause (i) is any contract in an amount in excess of \$10,000,000 that-

"(I) was awarded before June 1, 1993; and

"(II) as a result of the modification, amendment, or extension described in clause (i), will expire more than 1 year after the effective date of the modification, amendment, or extension.

"(iii) A contract under evaluation under clause (i) may not be further modified, amended, or extended until the evaluation described in that clause is complete.

"(B) If the acquisition official (or designee) determines that an economically feasible substitute substance or alternative technology is available for use in a contract under evaluation, the appropriate contracting officer shall enter into negotiations to modify the contract to require the use of the substitute substance or alternative technology.

"(C) A determination that a substitute substance or technology is not available for use in a contract under evaluation shall be made in writing by the senior acquisition official (or designee).

"(D) The Secretary of Defense may, consistent with the Federal Acquisition Regulation, adjust the price of a contract modified under subparagraph (B) to take into account the use by the contractor of a substitute substance or alternative technology in the modified contract.

"(3) The senior acquisition official authorized to grant an approval under paragraph (1) and the senior acquisition official and designees authorized to carry out an evaluation and make a determination under paragraph (2) shall be determined under regulations prescribed by the Secretary of Defense. A senior acquisition official may not delegate the authority provided in paragraph (1).

"(4) Each official who grants an approval authorized under paragraph (1) or makes a determination under paragraph (2)(B) shall submit to the Secretary of Defense a report on that approval or determination, as the case may be, as follows:

"(A) Beginning on October 1, 1993, and continuing for 8 calendar quarters thereafter, by submitting a report on the approvals granted or determinations made under such authority during the preceding quarter not later than 30 days after the end of such quarter.

"(B) Beginning on January 1, 1997, and continuing for 4 years thereafter, by submitting a report on the approvals granted or determinations made under such authority during the preceding year not later than 30 days after the end of such year.

"(5) The Secretary shall promptly transmit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives each report submitted to the Secretary under paragraph (4). The Secretary shall transmit the report in classified and unclassified forms.

"(b) **COST RECOVERY.**-In any case in which a Department of Defense contract is modified or a specification or standard for such a contract is waived at the request of a contractor in order to permit the contractor to use in the performance of the contract a substitute for a class I ozone-depleting substance or an alternative technology for a technology involving the use of a class I ozone-depleting substance, the Secretary of Defense may adjust the price of the contract in a manner consistent with the Federal Acquisition Regulation.

"(c) **DEFINITIONS.**-In this section:

"(1) The term 'class I ozone-depleting substance' means any substance listed under section 602(a) of the Clean Air Act (42 U.S.C. 7671a(a)).

"(2) The term 'Federal Acquisition Regulation' means the single Government-wide procurement regulation issued under section 1303(a) of title 41, United States Code."

PAYMENT PROTECTIONS FOR SUBCONTRACTORS AND SUPPLIERS

Pub. L. 102-190, div. A, title VIII, §806, Dec. 5, 1991, 105 Stat. 1417, as amended by Pub. L. 102-484, div. A, title X, §1053(5), Oct. 23, 1992, 106 Stat. 2502; Pub. L. 103-355, title II, §2091, title VIII, §8105(k), Oct. 13, 1994, 108 Stat. 3306, 3393; Pub. L. 113-291, div. A, title X, §1071(b)(15), Dec. 19, 2014, 128 Stat. 3508, provided that:

"(a) **REGULATIONS.**-The Secretary of Defense shall prescribe in regulations the following requirements:

"(1) **INFORMATION PROVIDED BY DEPARTMENT OF DEFENSE RELATING TO PAYMENT.**-(A) Subject to section 552(b)(1) of title 5, United States Code, upon the request of a subcontractor or supplier of a contractor performing a Department of Defense contract, the Department of Defense shall promptly make available to such subcontractor or supplier the following information:

"(i) Whether requests for progress payments or other payments have been submitted by the contractor to the Department of Defense in connection with that contract.

"(ii) Whether final payment to the contractor has been made by the Department of Defense in connection with that contract.

"(B) This paragraph shall apply with respect to any Department of Defense contract that is in effect on the date which is 270 days after the date of enactment of this Act [Dec. 5, 1991] or that is awarded after such date.

"(2) **INFORMATION PROVIDED BY DEPARTMENT OF DEFENSE RELATING TO PAYMENT BONDS.**-(A) Upon the request of a subcontractor or supplier described in subparagraph (B), the Department of Defense shall promptly make available to such subcontractor or supplier any of the following:

"(i) The name and address of the surety or sureties on the payment bond.

"(ii) The penal amount of the payment bond.

"(iii) A copy of the payment bond.

"(B) Subparagraph (A) applies to-

"(i) a subcontractor or supplier having a subcontract, purchase order, or other agreement to furnish labor or material for the performance of a Department of Defense contract with respect to which a payment bond has been furnished to the United States pursuant to the Miller Act; and

"(ii) a prospective subcontractor or supplier offering to furnish labor or material for the performance of such a Department of Defense contract.

"(C) With respect to the information referred to in subparagraphs (A)(i) and (A)(ii), the regulations shall include authority for such information to be provided verbally to the subcontractor or supplier.

"(D) With respect to the information referred to in subparagraph (A)(iii), the regulations may