

Section 3574, acts Aug. 10, 1956, ch. 1041, 70A Stat. 205; Sept. 2, 1958, Pub. L. 85-861, §§1(86), 33(a)(24), 72 Stat. 1481, 1565, provided for determination of rank of commissioned officers of the same grade in the Regular Army who are on the same promotion list, rank of commissioned officers of the same grade in the Regular Army who are not on the same promotion list or not on a promotion list, and rank among graduates of each class at the United States Military, Naval, or Air Force Academies who, upon graduation, are appointed to the Regular Army. See section 741 of this title.

A prior section 3575 was renumbered section 7225 of this title.

Prior sections 3576 and 3578 were repealed by Pub. L. 90-235, §5(a)(2), Jan. 2, 1968, 81 Stat. 761.

Section 3576, act Aug. 10, 1956, ch. 1041, 70A Stat. 205, provided for command when different commands of the Army and Marine Corps joined or served together. See section 747 of this title.

Section 3578, act Aug. 10, 1956, ch. 1041, 70A Stat. 205, provided for command when two or more commissioned officers of the Army in the same grade were on duty at the same place. See section 749 of this title.

A prior section 3579 was renumbered section 7229 of this title.

A prior section 3580, act Aug. 10, 1956, ch. 1041, 70A Stat. 206, provided that the Secretary of the Army prescribe the military authority that commissioned officers of the Women's Army Corps may exercise, prior to repeal by Pub. L. 95-485, title VIII, §820(f), Oct. 20, 1978, 92 Stat. 1627.

A prior section 3581 was renumbered section 7231 of this title.

A prior section 3582, act Aug. 10, 1956, ch. 1041, 70A Stat. 206, provided that a retired officer has no right to command except when on active duty, prior to repeal by Pub. L. 96-513, title II, §211, title VII, §701, Dec. 12, 1980, 94 Stat. 2885, 2955, effective Sept. 15, 1981. See section 750 of this title.

A prior section 3583 was renumbered section 7233 of this title.

Prior sections 3611 and 3612 were repealed by Pub. L. 90-235, §8(2), Jan. 2, 1968, 81 Stat. 764.

Section 3611, act Aug. 10, 1956, ch. 1041, 70A Stat. 206, provided that the President could prescribe the uniform of the Army.

Section 3612, act Aug. 10, 1956, ch. 1041, 70A Stat. 206, provided for disposition of uniforms of enlisted members of Army who were discharged and for disposition of uniforms of and issuance of civilian clothing to enlisted members of Army who were discharged otherwise than honorably.

A prior section 3631, act Aug. 10, 1956, ch. 1041, 70A Stat. 207, prohibited officers of the Quartermaster Corps of the Army and officers performing duties of officers of that branch from dealing in quartermaster supplies, prior to repeal by Pub. L. 90-235, §7(b)(1), Jan. 2, 1968, 81 Stat. 763.

Prior sections 3632 and 3633 were repealed by Pub. L. 87-649, §§14c(6), (7), 15, Sept. 7, 1962, 76 Stat. 501, 502, effective Nov. 1, 1962.

Section 3632, act Aug. 10, 1956, ch. 1041, 70A Stat. 207, provided for forfeiture of pay during absence from duty due to disease from intemperate use of alcohol or drugs. See section 802 of Title 37, Pay and Allowances of the Uniformed Services.

Section 3633, act Aug. 10, 1956, ch. 1041, 70A Stat. 207, provided for forfeiture of pay of commissioned officers when dropped from rolls. See section 803 of Title 37.

A prior section 3634, act Aug. 10, 1956, ch. 1041, 70A Stat. 207; Pub. L. 101-510, div. A, title III, §327(a), Nov. 5, 1990, 104 Stat. 1531, generally prohibited Army band from being paid for performance outside Army post, prior to repeal by Pub. L. 110-181, div. A, title V, §590(b)(1), Jan. 28, 2008, 122 Stat. 138. See section 974 of this title.

A prior section 3635, act Aug. 10, 1956, ch. 1041, 70A Stat. 207, set forth restrictions on civilian employment for enlisted members of Army on active duty, prior to repeal by Pub. L. 90-235, §6(a)(7), Jan. 2, 1968, 81 Stat. 762.

A prior section 3636, act Aug. 10, 1956, ch. 1041, 70A Stat. 208, provided that pay and allowances do not accrue to an enlisted member of Army who is in confinement under sentence of dishonorable discharge, while execution of sentence to discharge is suspended, prior to repeal by Pub. L. 87-649, §§14c(8), 15, Sept. 7, 1962, 76 Stat. 501, 502, effective Nov. 1, 1962. See section 858b of this title.

A prior section 3637, act Aug. 10, 1956, ch. 1041, 70A Stat. 208, provided that an enlisted member of the Army who deserted forfeited all right to a pension, prior to repeal by Pub. L. 90-235, §7(b)(1), Jan. 2, 1968, 81 Stat. 763.

A prior section 3638, act Aug. 10, 1956, ch. 1041, 70A Stat. 208, required enlisted members to make up time lost, prior to repeal by Pub. L. 85-861, §36B(8), Sept. 2, 1958, 72 Stat. 1570. See section 972(a) of this title.

A prior section 3639 was renumbered section 7239 of this title.

AMENDMENTS

2021—Pub. L. 116-283 renumbered section 2338 of this title as this section.

2018—Pub. L. 115-232 substituted “The micro-purchase threshold for the Department of Defense is \$10,000” for “Notwithstanding subsection (a) of section 1902 of title 41, the micro-purchase threshold for the Department of Defense for purposes of such section is \$5,000”.

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.

CHAPTER 253—RAPID ACQUISITION PROCEDURES

Sec.
3601.

Procedures for urgent acquisition and deployment of capabilities needed in response to urgent operational needs or vital national security interest.

Editorial Notes

PRIOR PROVISIONS

A prior chapter 253 “EMERGENCY AND RAPID ACQUISITIONS”, as added by Pub. L. 115-232, div. A, title VIII, §801(a), Aug. 13, 2018, 132 Stat. 1828, and consisting of reserved section 3601, was repealed by Pub. L. 116-283, div. A, title XVIII, §1824(a), Jan. 1, 2021, 134 Stat. 4205.

AMENDMENTS

2022—Pub. L. 117-263, div. A, title VIII, §804(a), Dec. 23, 2022, 136 Stat. 2696, amended chapter analysis generally, substituting “RAPID ACQUISITION PROCEDURES” for “[Reserved]” in heading and item 3601 for former items for subchapters I and II, which were both “[Reserved]”.

2021—Pub. L. 117-81, div. A, title XVII, §1701(i)(5)(B)(i), Dec. 27, 2021, 135 Stat. 2141, amended Pub. L. 116-283, div. A, title XVIII, §1824(a), Jan. 1, 2021, 134 Stat. 4205, which added this analysis, by substituting “[Reserved]” for “RAPID ACQUISITION PROCEDURES” in chapter heading.

§ 3601. Procedures for urgent acquisition and deployment of capabilities needed in response to urgent operational needs or vital national security interest

(a) PROCEDURES.—

(1) IN GENERAL.—The Secretary of Defense shall prescribe procedures for the urgent ac-

quisition and deployment of capabilities needed in response to urgent operational needs. The capabilities for which such procedures may be used in response to an urgent operational need are those—

(A) that, subject to such exceptions as the Secretary considers appropriate for purposes of this section—

(i) can be fielded within a period of two to 24 months;

(ii) do not require substantial development effort;

(iii) are based on technologies that are proven and available; and

(iv) can appropriately be acquired under fixed-price contracts;

(B) that can be developed or procured under a section 804 rapid acquisition pathway; or

(C) with respect to an armed attack by a country of concern (as defined in section 1(m) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2651a(m)), to which the United States is not a party, for purposes of—

(i) replenishing United States stockpiles of defense articles when such stockpiles are diminished as a result of the United States providing defense articles in response to such armed attack by a country of concern against—

(I) a United States ally (as that term is defined in section 201(d) of the Act of December 2, 1942, titled “To provide benefits for the injury, disability, death, or enemy detention of employees of contractors with the United States, and for other purposes” (56 Stat. 1028, chapter 668; 42 U.S.C. 1711(d))); or

(II) a United States partner; or

(ii) contracting for the movement or delivery of defense articles transferred to such ally or partner through the President’s drawdown authorities under sections 506(a)(1) and 614 of the Foreign Assistance Act of 1961 (22 U.S.C. 2318(a)(1) and 2364) in connection with such response.

(2) DEFINITION.—In this section, the term “section 804 rapid acquisition pathway” means the rapid fielding acquisition pathway or the rapid prototyping acquisition pathway authorized under section 804 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 3201 prec.).¹

(b) MATTERS TO BE INCLUDED.—The procedures prescribed under subsection (a) shall include the following:

(1) A process for streamlined communications between the Chairman of the Joint Chiefs of Staff, the acquisition community, and the research and development community, including—

(A) a process for the commanders of the combatant commands and the Chairman of the Joint Chiefs of Staff to communicate their needs to the acquisition community and the research and development community; and

(B) a process for the acquisition community and the research and development community to propose capabilities that meet the needs communicated by the combatant commands and the Chairman of the Joint Chiefs of Staff.

(2) Procedures for demonstrating, rapidly acquiring, and deploying a capability proposed pursuant to paragraph (1)(B), including—

(A) a process for demonstrating and evaluating for current operational purposes the performance of the capability;

(B) a process for developing an acquisition and funding strategy for the deployment of the capability; and

(C) a process for making deployment and utilization determinations based on information obtained pursuant to subparagraphs (A) and (B).

(3) A process to determine the disposition of a capability, including termination (demilitarization or disposal), continued sustainment, or transition to a program of record.

(4) Specific procedures in accordance with the guidance developed under section 804(a) of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 3201 note prec.).

(c) RESPONSE TO COMBAT EMERGENCIES AND CERTAIN URGENT OPERATIONAL NEEDS.—

(1) DETERMINATION OF NEED FOR URGENT ACQUISITION AND DEPLOYMENT.—(A) In the case of any capability that, as determined in writing by the Secretary of Defense, is urgently needed to eliminate a documented deficiency that has resulted in combat casualties, or is likely to result in combat casualties, the Secretary may use the procedures developed under this section in order to accomplish the urgent acquisition and deployment of the needed capability.

(B) In the case of any capability that, as determined in writing by the Secretary of Defense, is urgently needed to eliminate a documented deficiency that impacts an ongoing or anticipated contingency operation and that, if left unfulfilled, could potentially result in loss of life or critical mission failure, the Secretary may use the procedures developed under this section in order to accomplish the urgent acquisition and deployment of the needed capability.

(C)(i) In the case of any cyber capability that, as determined in writing by the Secretary of Defense, is urgently needed to eliminate a deficiency that as the result of a cyber attack has resulted in critical mission failure, the loss of life, property destruction, or economic effects, or if left unfulfilled is likely to result in critical mission failure, the loss of life, property destruction, or economic effects, the Secretary may use the procedures developed under this section in order to accomplish the urgent acquisition and deployment of the needed offensive or defensive cyber capability.

(ii) In this subparagraph, the term “cyber attack” means a deliberate action to alter, disrupt, deceive, degrade, or destroy computer systems or networks or the information or

¹ So in original. Probably should be “10 U.S.C. 3201 note prec.”

programs resident in or transiting these systems or networks.

(2) DESIGNATION OF SENIOR OFFICIAL RESPONSIBLE.—(A)(i) Except as provided under clause (ii), whenever the Secretary of Defense makes a determination under subparagraph (A), (B), or (C) of paragraph (1) that a capability is urgently needed to eliminate a deficiency described in that subparagraph, the Secretary shall designate a senior official of the Department of Defense to ensure that the needed capability is acquired and deployed as quickly as possible, with a goal of awarding a contract for the acquisition of the capability within 15 days.

(ii) Clause (i) does not apply to an acquisition initiated in the case of a determination by the Secretary of Defense that funds are necessary to immediately initiate a project under a section 804 rapid acquisition pathway if the designated official for acquisitions using such pathway is a service acquisition executive.

(B) Upon designation of a senior official under subparagraph (A) with respect to a needed capability, the Secretary shall authorize that senior official to waive any provision of law or regulation described in subsection (d) that such senior official determines in writing would unnecessarily impede the urgent acquisition and deployment of such capability. In a case in which such capability cannot be acquired without an extensive delay, the senior official shall require that an interim solution be implemented and deployed using the procedures developed under this section to minimize adverse consequences resulting from the urgent need.

(3) USE OF FUNDS.—(A) Subject to subparagraph (C), in any fiscal year in which the Secretary of Defense makes a determination described in subparagraph (A), (B), or (C) of paragraph (1) with respect to a capability, or upon the Secretary making a determination that funds are necessary to immediately initiate a project under a section 804 rapid acquisition pathway based on a compelling national security need, the Secretary may use any funds available to the Department of Defense to urgently acquire and deploy such capability or immediately initiate such project, respectively, if the determination includes a written finding that the use of such funds is necessary to address in a timely manner the deficiency documented or identified under such subparagraph (A), (B), or (C) or the compelling national security need identified for purposes of such section 804 pathway, respectively.

(B) The authority provided by this section may only be used to acquire capability—

(i) in the case of determinations by the Secretary under paragraph (1)(A), in an amount aggregating not more than \$200,000,000 during any fiscal year;

(ii) in the case of determinations by the Secretary under paragraph (1)(B), in an amount aggregating not more than \$200,000,000 during any fiscal year;

(iii) in the case of determinations by the Secretary under paragraph (1)(C), in an amount aggregating not more than \$200,000,000 during any fiscal year; and

(iv) in the case of a determination by the Secretary that funds are necessary to immediately initiate a project under a section 804 rapid acquisition pathway, in an amount aggregating not more than \$50,000,000 during any fiscal year.

(C) In exercising the authority under this section—

(i) none of the amounts appropriated for Operation and Maintenance may be used to carry out this section except for amounts appropriated for—

(I) Operation and Maintenance, Defense-wide;

(II) Operation and Maintenance, Army;

(III) Operation and Maintenance, Navy;

(IV) Operation and Maintenance, Marine Corps;

(V) Operation and Maintenance, Air Force; or

(VI) Operation and Maintenance, Space Force; and

(ii) when funds are utilized for sustainment purposes, this authority may not be used for more than 2 years.

(4) NOTIFICATION TO CONGRESSIONAL DEFENSE COMMITTEES.—(A) In the case of a determination by the Secretary of Defense under subparagraph (A) or (C) of paragraph (1), the Secretary shall notify the congressional defense committees of the determination within 15 days after the date of the determination.

(B) In the case of a determination by the Secretary under paragraph (1)(B), the Secretary shall notify the congressional defense committees of the determination at least 10 days before the date on which the determination is effective.

(C) In the case of a determination by the Secretary under paragraph (3)(A) that funds are necessary to immediately initiate a project under a section 804 rapid acquisition pathway, the Secretary shall notify the congressional defense committees of the determination within 10 days after the date of the use of such funds.

(D) A notice under this paragraph shall include the following:

(i) Identification of the capability to be acquired.

(ii) The amount anticipated to be expended for the acquisition.

(iii) The source of funds for the acquisition.

(E) A notice under this paragraph shall fulfill any requirement to provide notification to Congress for a program (referred to as a “new start program”) that has not previously been specifically authorized by law or for which funds have not previously been appropriated.

(F) A notice under this paragraph shall be provided in consultation with the Director of the Office of Management and Budget.

(5) LIMITATION ON OFFICERS WITH AUTHORITY.—The authority to make determinations under subparagraph (A), (B), or (C) of paragraph (1) and under paragraph (3)(A) that funds are necessary to immediately initiate a project under a section 804 rapid acquisition

pathway, to designate a senior official responsible under paragraph (3), and to provide notification to the congressional defense committees under paragraph (4) may be exercised only by the Secretary of Defense or the Deputy Secretary of Defense.

(d) **AUTHORITY TO WAIVE CERTAIN LAWS AND REGULATIONS.**—

(1) **AUTHORITY.**—Following a determination described in subsection (c)(1), the senior official designated in accordance with subsection (c)(2), with respect to that designation, may waive any provision of law or regulation addressing—

(A) the establishment of a requirement or specification for the capability to be acquired;

(B) the research, development, test, and evaluation of the capability to be acquired;

(C) the production, fielding, and sustainment of the capability to be acquired; or

(D) the solicitation, selection of sources, and award of the contracts for procurement of the capability to be acquired.

(2) **LIMITATIONS.**—Nothing in this subsection authorizes the waiver of—

(A) the requirements of this section;

(B) any provision of law imposing civil or criminal penalties; or

(C) any provision of law governing the proper expenditure of appropriated funds.

(e) **OPERATIONAL ASSESSMENTS.**—

(1) **IN GENERAL.**—The process prescribed under subsection (b)(2)(A) for demonstrating and evaluating for current operational purposes the performance of a capability proposed pursuant to subsection (b)(1)(B) shall include the following:

(A) An operational assessment in accordance with procedures prescribed by the Director of Operational Test and Evaluation.

(B) A requirement to provide information about any deficiency of the capability in meeting the original requirements for the capability (as stated in a statement of the urgent operational need or similar document) to the deployment decision-making authority.

(2) **LIMITATION.**—The process prescribed under subsection (b)(2)(A) may not include a requirement for any deficiency of capability identified in the operational assessment to be the determining factor in deciding whether to deploy the capability.

(3) **DIRECTOR OF OPERATIONAL TEST AND EVALUATION ACCESS.**—If a capability is deployed under the procedures prescribed pursuant to this section, or under any other authority, before operational test and evaluation of the capability is completed, the Director of Operational Test and Evaluation shall have access to operational records and data relevant to such capability in accordance with section 139(e)(3) of this title for the purpose of completing operational test and evaluation of the capability. Such access shall be provided in a time and manner determined by the Secretary of Defense consistent with requirements of

operational security and other relevant operational requirements.

(Added Pub. L. 117-263, div. A, title VIII, §804(a), Dec. 23, 2022, 136 Stat. 2696; amended Pub. L. 118-31, div. A, title VIII, §831, title XVIII, §1801(a)(28), Dec. 22, 2023, 137 Stat. 336, 684.)

Editorial Notes

AMENDMENTS

2023—Subsec. (a)(1)(C). Pub. L. 118-31, §831, added subpar. (C).

Subsec. (b)(4). Pub. L. 118-31, §1801(a)(28), inserted “note” before “prec.”

Statutory Notes and Related Subsidiaries

**RAPID RESPONSE TO EMERGENT TECHNOLOGY
ADVANCEMENTS OR THREATS**

Pub. L. 118-31, div. A, title II, §229, Dec. 22, 2023, 137 Stat. 200, provided that:

“(a) **AUTHORITIES.**—Upon approval by the Secretary of Defense of a determination described in subsection (b), the Secretary of a military department may use the rapid acquisition and funding authorities established pursuant to section 3601 of title 10, United States Code, to initiate urgent or emerging operational development activities for a period of up to one year, in order to—

“(1) leverage an emergent technological advancement of value to the national defense to address a military service-specific need; or

“(2) provide a rapid response to an emerging threat identified by a military service.

“(b) **DETERMINATION.**—A determination described in this subsection is a determination by the Secretary of a military department submitted in writing to the Secretary of Defense that provides the following:

“(1) Identification of a compelling urgent or emergency national security need to immediately initiate development activity in anticipation of a programming or budgeting action, in order to leverage an emergent technological advancement or provide a rapid response to an emerging threat.

“(2) Justification for why the effort cannot be delayed until the next submission of the budget of the President (under section 1105(a) of title 31, United States Code) without harming the national defense.

“(3) Funding is identified for the effort in the current fiscal year to initiate the activity.

“(4) An appropriate acquisition pathway and programmed funding for transition to continued development, integration, or sustainment is identified to on-ramp this activity within two years.

“(c) **ADDITIONAL PROCEDURES.**—

“(1) **IN GENERAL.**—Not later than 180 days after the date of the enactment of this Act [Dec. 22, 2023], the Secretary of Defense shall amend the procedures for the rapid acquisition and deployment of capabilities needed in response to urgent operational needs prescribed pursuant to such section 3601 to carry out this section. Such updated procedures shall be provided to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] concurrently with the promulgation to the rest of the Department of Defense.

“(2) **REQUIREMENTS TO BE INCLUDED.**—The procedures amended under paragraph (1) shall include the following requirements:

“(A) **FUNDING.**—(i) Subject to clause (ii), in any fiscal year in which a determination described in subsection (b) is made, the Secretary of the military department making the determination may initiate the activities authorized under subsection (a) using any funds available to the Secretary for such fiscal year for—

“(I) procurement; or

“(II) research, development, test, and evaluation.

“(ii) The total cost of all developmental activities within the Department of Defense, funded under this section, may not exceed \$100,000,000 for any fiscal year.

“(B) WAIVER AUTHORITY.—(i) Subject to clause (ii), the Secretary of the military department making a determination under subsection (b) may issue a waiver under subsection (d) of such section 3601.

“(ii) Chapter 221 of title 10, United States Code, may not be waived pursuant to clause (i).

“(C) TRANSITION.—(1) Any acquisition initiated under subsection (a) shall transition to an appropriate acquisition pathway for transition and integration of the development activity, or be transitioned to a newly established program element or procurement line for completion of such activity.

“(ii)(I) Transition shall be completed within one year of initiation, but may be extended one time only at the discretion of the Secretary of the military department for one additional year.

“(II) In the event an extension determination is made under subclause (I), the affected Secretary of the military department shall submit to the congressional defense committees, not later than 30 days before the extension takes effect, written notification of the extension with a justification for the extension.

“(3) SUBMITTAL TO CONGRESS.—Concurrent with promulgation to the Department of the amendments to the procedures under paragraph (1), the Secretary shall submit to the congressional defense committees the procedures updated by such amendments.

“(d) CONGRESSIONAL NOTIFICATION.—Within 15 days after the Secretary of Defense approves a determination described in subsection (b), the Secretary of the military department making the determination shall provide written notification of such determination to the congressional defense committees following the procedures for notification in subsections (c)(4)(D) and (c)(4)(F) of such section 3601. A notice under this subsection shall be sufficient to fulfill any requirement to provide notification to Congress for a new start program.”

SPECIAL AUTHORITY FOR RAPID CONTRACTING FOR
COMMANDERS OF COMBATANT COMMANDS

Pub. L. 118-31, div. A, title VIII, § 843, Dec. 22, 2023, 137 Stat. 342, provided that:

“(a) IN GENERAL.—The commander of a combatant command, upon providing a written determination to a senior contracting official (as defined in section 1737 of title 10, United States Code), may request use of the special authorities described in subsection (b)—

“(1) in support of a contingency operation (as defined in section 101(a) of title 10, United States Code);

“(2) to facilitate the defense against or recovery from a cyber attack, nuclear attack, biological attack, chemical attack, or radiological attack against the United States;

“(3) in support of a humanitarian or peacekeeping operation (as the term is defined in section 3015(2) of title 10, United States Code); and

“(4) for purposes of protecting the national security interests of the United States during directed operations that are below the threshold of traditional armed conflict.

“(b) SPECIAL AUTHORITIES DESCRIBED.—The special authorities for contracting that may be used by the senior contracting official to rapidly respond to time-sensitive or unplanned emergency situations are as follows:

“(1) Procedures applicable to purchases below micro-purchase threshold (described in section 1902 of title 41, United States Code), with respect to a single contracting action taken under subsection (a) for a contract to be awarded and performed, or purchase to be made—

“(A) in the United States, with a value less than \$15,000; or

“(B) outside the United States, with a value less than \$25,000.

“(2) Simplified acquisition procedures (described in section 1901 of title 41, United States Code), with respect to a single contracting action taken under subsection (a) for a contract to be awarded and performed, or purchase to be made—

“(A) in the United States, with a value less than \$750,000; or

“(B) outside the United States, with a value less than \$1,500,000.

“(3) For simplified procedures for purchases under section 3205 of title 10, United States Code, subsection (a)(2) of such section shall be applied by substituting ‘\$10,000,000’ for ‘\$5,000,000’.

“(4) The property or service being procured may be treated as a commercial product or a commercial service for the purpose of carrying out the procurement.

“(c) DETERMINATION.—A written determination required under subsection (a)—

“(1) may include more than one requested action;

“(2) may be directed to more than one senior contracting official; and

“(3) shall include—

“(A) the rationale for the request in accordance with paragraphs (1) through (4) of such subsection;

“(B) a description of any special authority requested; and

“(C) an attestation that funds are available for such special authority.

“(d) SUNSET.—The authority under subsection (a) shall terminate on September 30, 2028.

“(e) ANNUAL REPORT.—Not later than January 15, 2025, and annually thereafter for four years, the Chairman of the Joint Chiefs of Staff, in coordination with the Under Secretary of Defense for Acquisition and Sustainment, shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the use of the authority under this section for the fiscal year preceding the date of submission of the report. The report shall include a summary of each instance of the authority being used, including—

“(1) an identification of each commander submitting a request under subsection (a);

“(2) an identification of each senior contracting official responding to such request; and

“(3) the specific special authority requested, including an identification of the contractor that performed the contract and the value of the contract.”

NOTICE TO COMMITTEES ON APPROPRIATIONS TO BE
CONCURRENTLY SUBMITTED TO SUBCOMMITTEES ON
DEFENSE

Pub. L. 117-328, div. C, title VIII, § 8072, Dec. 29, 2022, 136 Stat. 4605, provided that: “Any notice that is required to be submitted to the Committees on Appropriations of the House of Representatives and the Senate under section 3601 of title 10, United States Code, as added by section 804(a) of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, after the date of the enactment of this Act [Dec. 29, 2022] shall be submitted pursuant to that requirement concurrently to the Subcommittees on Defense of the Committees on Appropriations of the House of Representatives and the Senate.”

Similar provisions were contained in the following prior appropriation act:

Pub. L. 117-103, div. C, title VIII, § 8074, Mar. 15, 2022, 136 Stat. 193, as amended by Pub. L. 117-263, div. A, title VIII, § 804(d)(2), Dec. 23, 2022, 136 Stat. 2701.

RAPID ACQUISITION AND DEPLOYMENT PROCEDURES FOR
UNITED STATES SPECIAL OPERATIONS COMMAND

Pub. L. 113-291, div. A, title VIII, § 851, Dec. 19, 2014, 128 Stat. 3457, as amended by Pub. L. 117-263, div. A, title VIII, § 804(d)(3), Dec. 23, 2022, 136 Stat. 2701, provided that:

“(a) **AUTHORITY TO ESTABLISH PROCEDURES.**—The Secretary may prescribe procedures for the rapid acquisition and deployment of items for the United States Special Operations Command that are currently under development by the Department of Defense or available from the commercial sector and are—

“(1) urgently needed to react to an enemy threat or to respond to significant and urgent safety situations;

“(2) needed to avoid significant risk of loss of life or mission failure; or

“(3) needed to avoid collateral damage risk where the absence of collateral damage is a requirement for mission success.

“(b) **ISSUES TO BE ADDRESSED.**—The procedures prescribed under subsection (a) shall include the following:

“(1) A process for streamlined communication between the Commander of the United States Special Operations Command and the acquisition and research and development communities, including—

“(A) a process for the Commander to communicate needs to the acquisition community and the research and development community; and

“(B) a process for the acquisition community and the research and development community to propose items that meet the needs communicated by the Commander.

“(2) Procedures for demonstrating, rapidly acquiring, and deploying items proposed pursuant to paragraph (1)(B), including—

“(A) a process for demonstrating performance and evaluating for current operational purposes the existing capability of an item;

“(B) a process for developing an acquisition and funding strategy for the deployment of an item; and

“(C) a process for making deployment determinations based on information obtained pursuant to subparagraphs (A) and (B).

“(c) **TESTING REQUIREMENT.**—

“(1) **IN GENERAL.**—The process for demonstrating performance and evaluating for current operational purposes the existing capability of an item prescribed under subsection (b)(2)(A) shall include—

“(A) an operational assessment in accordance with expedited procedures prescribed by the Director of Operational Testing and Evaluation; and

“(B) a requirement to provide information to the deployment decision-making authority about any deficiency of the item in meeting the original requirements for the item (as stated in an operational requirements document or similar document).

“(2) **DEFICIENCY NOT A DETERMINING FACTOR.**—The process may not include a requirement for any deficiency of an item to be the determining factor in deciding whether to deploy the item.

“(3) **ADDITIONAL REQUIREMENT IN CASE OF DEFICIENCY.**—In the case of any deficiency of an item, a decision to deploy the item may be made only if the Commander of the United States Special Operations Command determines that, for reasons of national security, the deficiency of the item is acceptable.

“(d) **LIMITATION.**—The quantity of items of a system procured using the procedures prescribed pursuant to this section may not exceed the number established for low-rate initial production for the system. Any such items shall be counted for purposes of the number of items of the system that may be procured through low-rate initial production.

“(e) **ANNUAL FUNDING LIMITATION.**—Of the funds available to the Commander of the United States Special Operations Command in any given fiscal year, not more than \$50,000,000 may be used to procure items under this section.

“(f) **RELATIONSHIP TO OTHER RAPID ACQUISITION AUTHORITY.**—The Commander of the United States Special Operations Command may not use the authority under this section at the same time the Commander uses the authority under section 3601 of title 10, United States Code.

“(g) **CONGRESSIONAL NOTIFICATIONS.**—

“(1) **NOTIFICATION BEFORE PROCEDURES GO INTO EFFECT.**—The Secretary of Defense shall notify the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] at least 30 days before the procedures prescribed pursuant to this section are made effective.

“(2) **NOTIFICATION AFTER USE OF PROCEDURES.**—The Secretary of Defense shall notify the congressional defense committees not later than 48 hours after each use of the procedures prescribed pursuant to this section.”

CHAPTER 255—CONTRACTING WITH OR THROUGH OTHER AGENCIES

Editorial Notes

AMENDMENTS

2018—Pub. L. 115-232, div. A, title VIII, §801(a), Aug. 13, 2018, 132 Stat. 1828, added chapter heading.

Statutory Notes and Related Subsidiaries

DEFENSE PROCUREMENTS MADE THROUGH CONTRACTS OF OTHER AGENCIES

Pub. L. 108-375, div. A, title VIII, §854, Oct. 28, 2004, 118 Stat. 2022, provided that:

“(a) **LIMITATION.**—The head of an agency may not procure goods or services (under section 1535 of title 31, United States Code, pursuant to a designation under section 11302(e) of title 40, United States Code, or otherwise) through a contract entered into by an agency outside the Department of Defense for an amount greater than the simplified acquisition threshold referred to in section 2304(g) of title 10, United States Code [now 10 U.S.C. 3205], unless the procurement is done in accordance with procedures prescribed by that head of an agency for reviewing and approving the use of such contracts.

“(b) **EFFECTIVE DATE.**—The limitation in subsection (a) shall apply only with respect to orders for goods or services that are issued by the head of an agency to an agency outside the Department of Defense on or after the date that is 180 days after the date of the enactment of this Act [Oct. 28, 2004].

“(c) **INAPPLICABILITY TO CONTRACTS FOR CERTAIN SERVICES.**—This section does not apply to procurements of the following services:

“(1) Printing, binding, or blank-book work to which section 502 of title 44, United States Code, applies.

“(2) Services available under programs pursuant to section 103 of the Library of Congress Fiscal Operations Improvement Act of 2000 (Public Law 106-481; 114 Stat. 2187; 2 U.S.C. 182c).

“(d) **ANNUAL REPORT.**—(1) For each of fiscal years 2005 and 2006, each head of an agency shall submit to the Secretary of Defense a report on the service charges imposed on purchases made for an amount greater than the simplified acquisition threshold during such fiscal year through a contract entered into by an agency outside the Department of Defense.

“(2) In the case of procurements made on orders issued by the head of a Defense Agency, Department of Defense Field Activity, or any other organization within the Department of Defense (other than a military department) under the authority of the Secretary of Defense as the head of an agency, the report under paragraph (1) shall be submitted by the head of that Defense Agency, Department of Defense Field Activity, or other organization, respectively.

“(3) The report for a fiscal year under this subsection shall be submitted not later than December 31 of the calendar year in which such fiscal year ends.

“(e) **DEFINITIONS.**—In this section:

“(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.