

§ 4576. Requirement for consideration of certain matters during acquisition of noncommercial computer software

(a) CONSIDERATION REQUIRED.—As part of any negotiation for the acquisition of noncommercial computer software, the Secretary of Defense shall ensure that such negotiations consider, to the maximum extent practicable, acquisition, at the appropriate time in the life cycle of the noncommercial computer software, of all software and related materials necessary—

- (1) to reproduce, build, or recompile the software from original source code and required libraries;
- (2) to conduct required computer software testing; and
- (3) to deploy working computer software system binary files on relevant system hardware.

(b) DELIVERY OF SOFTWARE AND RELATED MATERIALS.—Any noncommercial computer software or related materials required to be delivered as a result of considerations in subsection (a) shall, to the extent appropriate as determined by the Secretary—

- (1) include computer software delivered in a useable, digital format;
- (2) not rely on external or additional software code or data, unless such software code or data is included in the items to be delivered; and
- (3) in the case of negotiated terms that do not allow for the inclusion of dependent software code or data, sufficient documentation to support maintenance and understanding of interfaces and software revision history.

(Added Pub. L. 115-91, div. A, title VIII, § 871(a)(1), Dec. 12, 2017, 131 Stat. 1496, § 2322a; renumbered § 4576, Pub. L. 116-283, div. A, title XVIII, § 1857(c), Jan. 1, 2021, 134 Stat. 4276.)

Editorial Notes

PRIOR PROVISIONS

Prior sections 4591 to 4595 were renumbered sections 7591 to 7595 of this title, respectively.

AMENDMENTS

2021—Pub. L. 116-283 renumbered section 2322a of this title as this section.

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.

GUIDANCE

Pub. L. 115-91, div. A, title VIII, § 871(b), Dec. 12, 2017, 131 Stat. 1497, provided that: “Not later than 180 days after the date of the enactment of this Act [Dec. 12, 2017], the Secretary of Defense shall issue updated guidance to implement section 2322a of title 10, United States Code [now 10 U.S.C. 4576], as added by subsection (a).”

Subpart H—Contract Management

Editorial Notes

AMENDMENTS

2018—Pub. L. 115-232, div. A, title VIII, § 801(a), Aug. 13, 2018, 132 Stat. 1830, added subpart heading.

CHAPTER 361—CONTRACT ADMINISTRATION

- Sec.
- 4601. Electronic submission and processing of claims for contract payments.
 - 4602. Contracted property and services: prompt payment of vouchers.
 - 4603. Advance notification of contract performance outside the United States.

Editorial Notes

PRIOR PROVISIONS

A prior chapter 361 “CONTRACT ADMINISTRATION”, consisting of reserved section 4601, was repealed by Pub. L. 116-283, div. A, title XVIII, § 1861(a), Jan. 1, 2021, 134 Stat. 4277.

Another prior chapter 361, consisting of sections 3811 to 3820 relating to separation for various reasons, some of which had previously been repealed, was repealed in its entirety by Pub. L. 103-337, div. A, title XVI, §§ 1629(a)(2), 1691(b)(1), Oct. 5, 1994, 108 Stat. 2963, 3026, effective Oct. 1, 1996.

Statutory Notes and Related Subsidiaries

MODIFICATION OF CONTRACTS AND OPTIONS TO PROVIDE ECONOMIC PRICE ADJUSTMENTS

Pub. L. 118-31, div. A, title VIII, § 826, Dec. 22, 2023, 137 Stat. 335, provided that:

“(a) AUTHORITY.—Amounts authorized to be appropriated by this Act [see Tables for classification] for the Department of Defense may be used to modify the terms and conditions of a contract or option to provide an economic price adjustment consistent with sections 16.203-1 and 16.203-2 of the Federal Acquisition Regulation during the relevant period of performance for that contract or option and as specified in section 16.203-3 of the Federal Acquisition Regulation, to the extent and in such amounts as specifically provided in advance in appropriations Acts for the purposes of this section.

“(b) GUIDANCE.—Not later than 30 days after the date of the enactment of this Act [Dec. 22, 2023], the Under Secretary of Defense for Acquisition and Sustainment shall issue guidance implementing the authority under this section.”

MODIFICATIONS TO EARNED VALUE MANAGEMENT SYSTEM REQUIREMENTS

Pub. L. 118-31, div. A, title VIII, § 827, Dec. 22, 2023, 137 Stat. 335, provided that:

“(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Dec. 22, 2023], the Department of Defense Supplement to the Federal Acquisition Regulation shall be revised to—

“(1) exempt all software contracts and subcontracts of the Department of Defense from earned value management system requirements;

“(2) impose earned value management system requirements for cost contracts or incentive contracts with a value greater than or equal to \$20,000,000 and less than \$50,000,000; and

“(3) require a defense contractor to use an earned value management system for contracts awarded with a value greater than or equal to \$50,000,000 and less than \$100,000,000.

“(b) IMPLEMENTATION.—If the Department of Defense Supplement to the Federal Acquisition Regulation is not revised as described in subsection (a) before the deadline specified in such subsection, the Under Sec-