

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2013

126 STAT. 1632 PUBLIC LAW 112–239—JAN. 2, 2013

Public Law 112–239

112th Congress

An Act

To authorize appropriations for fiscal year 2013 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

SEC. 853. INCLUSION OF DATA ON CONTRACTOR PERFORMANCE IN PAST PERFORMANCE DATABASES FOR EXECUTIVE AGENCY SOURCE SELECTION DECISIONS.

(a) STRATEGY REQUIRED.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Federal Acquisition Regulatory Council shall develop a strategy for ensuring that timely, accurate, and complete information on contractor performance is included in past performance databases used by executive agencies for making source selection decisions.

(2) CONSULTATION WITH USDATL.—In developing the strategy required by this subsection, the Federal Acquisition Regulatory Council shall consult with the Under Secretary of Defense for Acquisition, Technology, and Logistics to ensure that the strategy is, to the extent practicable, consistent with the strategy developed by the Under Secretary pursuant to section 806 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81; 125 Stat. 1487; 10 U.S.C. 2302 note).

(b) ELEMENTS.—The strategy required by subsection (a) shall, at a minimum—

(1) establish standards for the timeliness and completeness of past performance submissions for purposes of databases described in subsection (a);

(2) assign responsibility and management accountability for the completeness of past performance submissions for such purposes; and

(3) ensure that past performance submissions for such purposes are consistent with award fee evaluations in cases where such evaluations have been conducted.

(c) CONTRACTOR COMMENTS.—Not later than 180 days after the date of the enactment of this Act, the Federal Acquisition Regulation shall be revised to require the following:

(1) That affected contractors are provided, in a timely manner, information on contractor performance to be included in past performance databases in accordance with subsection (a).

(2) That such contractors are afforded up to 14 calendar days, from the date of delivery of the information provided in accordance with paragraph (1), to submit comments, rebuttals, or additional information pertaining to past performance for inclusion in such databases.

(3) That agency evaluations of contractor past performance, including any comments, rebuttals, or additional information submitted under paragraph (2), are included in the relevant past performance database not later than the date that is 14 days after the date of delivery of the information provided in accordance with paragraph (1).

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2013

(d) CONSTRUCTION.—Nothing in this section shall be construed to prohibit a contractor from submitting comments, rebuttals, or additional information pertaining to past performance after the period described in subsection (c)(2) has elapsed or to prohibit a contractor from challenging a past performance evaluation in accordance with applicable laws, regulations, or procedures.

(e) COMPTROLLER GENERAL REPORT.—Not later than 18 months after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the appropriate committees of Congress a report on the actions taken by the Federal Acquisition Regulatory Council pursuant to this section, including an assessment of the following:

- (1) The extent to which the strategy required by subsection (a) is consistent with the strategy developed by the Under Secretary of Defense for Acquisition, Technology, and Logistics as described in subsection (a)(2).
- (2) The extent to which the actions of the Federal Acquisition Regulatory Council pursuant to this section have otherwise achieved the objectives of this section.

(f) DEFINITIONS.—In this section:

- (1) The term “appropriate committees of Congress” means—
 - (A) the Committee on Armed Services, the Committee on Foreign Relations, the Committee on Homeland Security and Governmental Affairs, and the Committee on Appropriations of the Senate; and
 - (B) the Committee on Armed Services, the Committee on Foreign Affairs, the Committee on Oversight and Government Reform, and the Committee on Appropriations of the House of Representatives.
- (2) The term “executive agency” has the meaning given that term in section 133 of title 41, United States Code, except that the term excludes the Department of Defense and the military departments.
- (3) The term “Federal Acquisition Regulatory Council” means the Federal Acquisition Regulatory Council under section 1302(a) of title 41, United States Code.