

head of the Defense Agency concerned, the commander of the combatant command concerned, or the Under Secretary of Defense for Acquisition, Technology, and Logistics (as applicable).

(2) COVERED CONTRACTS.—A contract described in this paragraph is—

(A) a cost-type contract in excess of \$50,000,000, in the case of a contract entered into on or after October 1, 2018, and before October 1, 2019; and

(B) a cost-type contract in excess of \$25,000,000, in the case of a contract entered into on or after October 1, 2019.

SEC. 830. REQUIREMENT TO USE FIRM FIXED-PRICE CONTRACTS FOR FOREIGN MILITARY SALES.

(a) REQUIREMENT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall prescribe regulations to require the use of firm fixed-price contracts for foreign military sales.

(b) EXCEPTIONS.—The regulations prescribed pursuant to subsection (a) shall include exceptions that may be exercised if the foreign country that is the counterparty to a foreign military sale—

(1) has established in writing a preference for a different contract type; or

(2) requests in writing that a different contract type be used for a specific foreign military sale.

(c) WAIVER AUTHORITY.—The regulations prescribed pursuant to subsection (a) shall include a waiver that may be exercised by the Secretary of Defense or his designee if the Secretary or his designee determines on a case-by-case basis that a different contract type is in the best interest of the United States and American taxpayers.

(d) PILOT PROGRAM FOR ACCELERATION OF FOREIGN MILITARY SALES.—

(1) IN GENERAL.—The Secretary of Defense shall establish a pilot program to reform and accelerate the contracting and pricing processes associated with full rate production of major weapon systems for no more than 10 foreign military sales contracts by—

(A) basing price reasonableness determinations on actual cost and pricing data for purchases of the same product for the Department of Defense; and

(B) reducing the cost and pricing data to be submitted in accordance with section 2306a of title 10, United States Code.

(2) EXPIRATION OF AUTHORITY.—Authority for the pilot program under this subsection expires on January 1, 2020.

SEC. 831. PREFERENCE FOR PERFORMANCE-BASED CONTRACT PAYMENTS.

(a) IN GENERAL.—Section 2307(b) of title 10, United States Code, is amended—

(1) in the subsection heading, by inserting “PREFERENCE FOR” before “PERFORMANCE-BASED”;

(2) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively;

(3) by striking “Wherever practicable, payment under subsection (a) shall be made” and inserting “(1) Whenever practicable, payments under subsection (a) shall be made using performance-based payments”; and

competitive procedures used under the program are competitive procedures under chapter 137 of title 10, United States Code.

The House amendment contained no similar provision.

The House recedes with an amendment that would make discretionary the use of side-by-side testing to fulfill competitive procedures for follow-on procurements and that would set a time limit within which such follow-on procurements could be conducted. The conferees expect that, prior to procuring any items under this provision, market research will be conducted to determine that comparable items are not available.

Defense Acquisition Challenge Program amendments (sec. 828)

The Senate bill contained a provision (sec. 824) that would amend section 2359b(a)(2) of title 10, United States Code, to expand the scope of the defense acquisition challenge program to include alternatives to existing acquisition programs and to clarify that the general solicitation competitive procedures used under the program are competitive procedures under chapter 137 of title 10, United States Code.

The House amendment contained no similar provision.

The House recedes.

Preference for fixed-price contracts (sec. 829)

The Senate bill contained a provision (sec. 827) that would revise the Defense Federal Acquisition Regulation Supplement to establish a preference for fixed-price contracts, including fixed-price incentive fee contracts, in the determination of contract type and establish an approval mechanism for the use of cost-type contracts over \$5.0 million in value.

The House amendment contained no similar provision.

The House recedes with an amendment that would expand the number of Department of Defense officials who can approve a cost-type contract and that would increase the contractual dollar threshold that require such approvals.

Requirement to use firm fixed-price contracts for foreign military sales (sec. 830)

The Senate bill contained a provision (sec. 828) that would require the Secretary of Defense to prescribe regulations to require the use of firm fixed-price contracts for foreign military sales not later than 180 days after the enactment of this Act. Additionally, this provision would grant the Secretary waiver authority if the Secretary determines that a different type of contract is in the best interest of the United States taxpayers.

The House amendment contained no similar provision.

The House recedes with an amendment that would clarify that foreign countries that are counterparties to foreign military sales may select a contracting vehicle that is not firm fixed-price. The conferees direct the Secretary of Defense to develop a process to determine the contracting preferences of foreign counterparties and to brief the Committees on Armed Services of the Senate and House of Representatives on the elements of the process no later than 6 months after enactment of this Act. The conferees further expect that the Secretary shall waive the requirement for firm fixed-price

contracts only in exceptional cases. The conferees expect that the Department of Defense will not interfere in the process of the host nation selecting a contract type. If a contract type other than firm fixed-price is selected at the request of a country, the Secretary of Defense shall be prepared to notify Congress that the Department of Defense did not encourage the country in the decision to pursue that contract type. The amendment also would establish a pilot program to accelerate contracting of foreign military sales by allowing the Department of Defense to base price reasonableness determinations on actual cost and pricing data for purchases of the same product for the Department.

Preference for performance-based contractual payments (sec. 831)

The Senate bill contained a provision (sec. 829) that would amend section 2307(b) of title 10, United States Code, to establish a preference for performance-based payments to contractors and would re-establish the policy objective laid out in Federal Acquisition Regulation 32.1001, which established performance-based payments as the preferred Government financing mechanism.

The House amendment contained no similar provision.

The House recedes with an amendment that would clarify that nothing in the provision authorizes the Defense Contract Audit Agency to perform audits of a contractor's compliance with Generally Accepted Accounting Principles.

Contractor incentives to achieve savings and improve mission performance (sec. 832)

The Senate bill contained a provision (sec. 829A) that would amend section 2332 of title 10, United States Code, to require the Defense Acquisition University to develop and implement a training program for Department of Defense acquisition personnel on share-in-savings contracts not later than 180 days after the enactment of this Act.

The House amendment contained no similar provision.

The House recedes with an amendment that would require the Defense Acquisition University to provide training on the use of contracting authorities that incentivize contractors to deliver additional savings to the government.

Sunset and repeal of certain contracting provisions (sec. 833)

The Senate bill contained a provision (sec. 829F) that would: (1) amend title 10, United States Code, to sunset sections 2212, 2220, 2228, 2304e, 2421 by September 30, 2018; (2) amend title 10, United States Code, to sunset section 1706 by September 30, 2019; and (3) repeal sections 2245a, 2225, 2302c, 2378, 2387 of title 10, United States Code.

The House amendment contained no similar provision.

The House recedes with an amendment that would retain the reporting requirement in section 2212 of title 10, United States Code, which provides budget information on service contracting, as well as section 1706 of title 10, United States Code, which provides the Department of Defense with a list of acquisition positions considered inherently governmental.