

## EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103-355, set out as an Effective Date of 1994 Amendment note under section 2302 of this title.

## PROVISIONS NOT AFFECTED BY PUB. L. 103-355

This section not to be construed as modifying or superseding, or as intended to impair or restrict, authorities or responsibilities under former 40 U.S.C. 759 or chapter 11 of Title 40, Public Buildings, Property, and Works, see section 1004(d) of Pub. L. 103-355, set out as a note under section 2304a of this title.

**§ 2304d. Task and delivery order contracts: definitions**

In sections 2304a, 2304b, and 2304c of this title:

(1) The term “task order contract” means a contract for services that does not procure or specify a firm quantity of services (other than a minimum or maximum quantity) and that provides for the issuance of orders for the performance of tasks during the period of the contract.

(2) The term “delivery order contract” means a contract for property that does not procure or specify a firm quantity of property (other than a minimum or maximum quantity) and that provides for the issuance of orders for the delivery of property during the period of the contract.

(Added Pub. L. 103-355, title I, §1004(a)(1), Oct. 13, 1994, 108 Stat. 3253.)

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**§ 2304e. Contracts: prohibition on competition between Department of Defense and small businesses and certain other entities**

(a) EXCLUSION.—In any case in which the Secretary of Defense plans to use competitive procedures for a procurement, if the procurement is to be conducted as described in subsection (b), then the Secretary shall exclude the Department of Defense from competing in the procurement.

(b) PROCUREMENT DESCRIPTION.—The requirement to exclude the Department of Defense under subsection (a) applies in the case of a procurement to be conducted by excluding from competition entities in the private sector other than—

(1) small business concerns in furtherance of section 8 or 15 of the Small Business Act (15 U.S.C. 637 or 644); or

(2) entities described in subsection (a)(1) of section 2323 of this title in furtherance of the goal specified in that subsection.

(Added Pub. L. 103-160, div. A, title VIII, §848(a)(1), Nov. 30, 1993, 107 Stat. 1724, §2304a; re-

numbered §2304e, Pub. L. 104-106, div. D, title XLIII, §4321(b)(6)(A), Feb. 10, 1996, 110 Stat. 672.)

## AMENDMENTS

1996—Pub. L. 104-106 renumbered section 2304a of this title as this section.

## EFFECTIVE DATE

Section 848(b) of Pub. L. 103-160 provided that: “Section 2304a [now 2304e] of title 10, United States Code, as added by subsection (a), shall take effect on the date of the enactment of this Act [Nov. 30, 1993].”

**§ 2305. Contracts: planning, solicitation, evaluation, and award procedures**

(a)(1)(A) In preparing for the procurement of property or services, the head of an agency shall—

(i) specify the agency’s needs and solicit bids or proposals in a manner designed to achieve full and open competition for the procurement;

(ii) use advance procurement planning and market research; and

(iii) develop specifications in such manner as is necessary to obtain full and open competition with due regard to the nature of the property or services to be acquired.

(B) Each solicitation under this chapter shall include specifications which—

(i) consistent with the provisions of this chapter, permit full and open competition; and

(ii) include restrictive provisions or conditions only to the extent necessary to satisfy the needs of the agency or as authorized by law.

(C) For the purposes of subparagraphs (A) and (B), the type of specification included in a solicitation shall depend on the nature of the needs of the agency and the market available to satisfy such needs. Subject to such needs, specifications may be stated in terms of—

(i) function, so that a variety of products or services may qualify;

(ii) performance, including specifications of the range of acceptable characteristics or of the minimum acceptable standards; or

(iii) design requirements.

(2) In addition to the specifications described in paragraph (1), a solicitation for sealed bids or competitive proposals (other than for a procurement for commercial items using special simplified procedures or a purchase for an amount not greater than the simplified acquisition threshold) shall at a minimum include—

(A) a statement of—

(i) all significant factors and significant subfactors which the head of the agency reasonably expects to consider in evaluating sealed bids (including price) or competitive proposals (including cost or price, cost-related or price-related factors and subfactors, and noncost-related or nonprice-related factors and subfactors); and

(ii) the relative importance assigned to each of those factors and subfactors; and

(B)(i) in the case of sealed bids—

(I) a statement that sealed bids will be evaluated without discussions with the bidders; and