

(6) The term “qualified incurred cost submission” means a submission by a contractor of costs incurred under a flexibly priced contract that has been qualified by the Department of Defense as sufficient to conduct an incurred cost audit.

(7) The term “qualified private auditor” means a commercial auditor—

(A) that performs audits in accordance with generally accepted government auditing standards; and

(B) that has received a passing peer review rating, as defined by generally accepted government auditing standards.

(Added Pub. L. 115–91, div. A, title VIII, § 803(a), Dec. 12, 2017, 131 Stat. 1451; amended Pub. L. 115–232, div. A, title X, § 1081(a)(19), Aug. 13, 2018, 132 Stat. 1984.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsecs. (b)(1)(E)(i) and (g)(3), is the date of enactment of Pub. L. 115–91, which was approved Dec. 12, 2017.

Section 809 of the National Defense Authorization Act for Fiscal Year 2016, referred to in subsec. (f)(2), is section 809 of Pub. L. 114–92, div. A, title VIII, Nov. 25, 2015, 129 Stat. 889, which relates to the establishment of an advisory panel on streamlining acquisition regulations and is not classified to the Code.

AMENDMENTS

2018—Subsec. (b)(1)(E). Pub. L. 115–232 redesignated cls. (A) and (B) as (i) and (ii), respectively.

§ 2314. Laws inapplicable to agencies named in section 2303 of this title

Sections 6101 and 6304 of title 41 do not apply to the procurement or sale of property or services by the agencies named in section 2303 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 133; Pub. L. 96–513, title V, § 511(78), Dec. 12, 1980, 94 Stat. 2927; Pub. L. 103–160, div. A, title VIII, § 822(b)(2), Nov. 30, 1993, 107 Stat. 1706; Pub. L. 111–350, § 5(b)(16), Jan. 4, 2011, 124 Stat. 3843; Pub. L. 113–291, div. A, title X, § 1071(a)(4), Dec. 19, 2014, 128 Stat. 3504.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
2314	41:160.	Feb. 19, 1948, ch. 65, § 11(b), 62 Stat. 25.

AMENDMENTS

2014—Pub. L. 113–291 substituted “Sections 6101” for “Sections 6101(b)–(d)”.

2011—Pub. L. 111–350 substituted “Sections 6101(b)–(d) and 6304 of title 41” for “Sections 3709 and 3735 of the Revised Statutes (41 U.S.C. 5 and 13)”.

1993—Pub. L. 103–160 inserted “or sale” after “procurement”.

1980—Pub. L. 96–513 substituted “Sections 3709 and 3735 of the Revised Statutes (41 U.S.C. 5 and 13)” for “Sections 5, 6, 6a, and 13 of title 41”.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 2315. Law inapplicable to the procurement of automatic data processing equipment and services for certain defense purposes

For purposes of subtitle III of title 40, the term “national security system”, with respect to a telecommunications and information system operated by the Department of Defense, has the meaning given that term by section 3552(b)(6) of title 44.

(Added Pub. L. 97–86, title IX, § 908(a)(1), Dec. 1, 1981, 95 Stat. 1117; amended Pub. L. 97–295, § 1(25), Oct. 12, 1982, 96 Stat. 1291; Pub. L. 104–106, div. E, title LVI, § 5601(c), Feb. 10, 1996, 110 Stat. 699; Pub. L. 104–201, div. A, title X, § 1074(b)(4)(B), Sept. 23, 1996, 110 Stat. 2660; Pub. L. 105–85, div. A, title X, § 1073(a)(49), Nov. 18, 1997, 111 Stat. 1903; Pub. L. 107–217, § 3(b)(5), Aug. 21, 2002, 116 Stat. 1295; Pub. L. 109–364, div. A, title IX, § 906(c), Oct. 17, 2006, 120 Stat. 2354; Pub. L. 113–283, § 2(e)(5)(C), Dec. 18, 2014, 128 Stat. 3087; Pub. L. 114–92, div. A, title X, § 1081(a)(7), Nov. 25, 2015, 129 Stat. 1001.)

AMENDMENTS

2015—Pub. L. 114–92 substituted “section 3552(b)(6)” for “section 3552(b)(5)”.

2014—Pub. L. 113–283 substituted “section 3552(b)(5)” for “section 3542(b)(2)”.

2006—Pub. L. 109–364 amended text generally. Prior to amendment, section consisted of subsecs. (a) and (b) defining “national security systems” as meaning telecommunications and information systems operated by the Department of Defense, the functions, operation or use of which involves intelligence or cryptologic activities, command and control of military forces, or equipment that is an integral part of a weapons system or is critical to military or intelligence missions but is not equipment or services to be used for routine administrative and business applications.

2002—Subsec. (a). Pub. L. 107–217 substituted “subtitle III of title 40” for “division E of the Clinger-Cohen Act of 1996 (40 U.S.C. 1401 et seq.)” in introductory provisions.

1997—Subsec. (a). Pub. L. 105–85 substituted “division E of the Clinger-Cohen Act of 1996 (40 U.S.C. 1401 et seq.)” for “the Information Technology Management Reform Act of 1996”.

1996—Subsec. (a). Pub. L. 104–106, as amended by Pub. L. 104–201, substituted “For the purposes of the Information Technology Management Reform Act of 1996, the term ‘national security systems’ means those telecommunications and information systems operated by the Department of Defense, the functions, operation or use of which” for “Section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759) is not applicable to the procurement by the Department of Defense of automatic data processing equipment or services if the function, operation, or use of the equipment or services”.

1982—Subsec. (a). Pub. L. 97–295 substituted “(40 U.S.C. 759)” for “(40 U.S.C. 795)”.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective 180 days after Feb. 10, 1996, see section 5701 of Pub. L. 104–106, Feb. 10, 1996, 110 Stat. 702.

EFFECTIVE DATE

Pub. L. 97–86, title IX, § 908(b), Dec. 1, 1981, 95 Stat. 1118, provided that: “Section 2315 of title 10, United States Code, as added by subsection (a), does not apply to a contract made before the date of the enactment of this Act [Dec. 1, 1981].”

LIMITATION REGARDING TELECOMMUNICATIONS
REQUIREMENTS

Pub. L. 103-337, div. A, title X, §1075, Oct. 5, 1994, 108 Stat. 2861, which set out conditions for availability of funds to be expended to provide for meeting Department of Defense telecommunications requirements through the telecommunications procurement known as “FTS-2000” or through any other Government-wide telecommunications procurement, was repealed by Pub. L. 115-232, div. A, title VIII, §812(b)(19), Aug. 13, 2018, 132 Stat. 1848.

§ 2316. Disclosure of identity of contractor

The Secretary of Defense may disclose the identity or location of a person awarded a contract by the Department of Defense to any individual, including a Member of Congress, only after the Secretary makes a public announcement identifying the contractor. When the identity of a contractor is to be made public, the Secretary shall announce publicly that the contract has been awarded and the identity of the contractor.

(Added Pub. L. 97-295, §1(26)(A), Oct. 12, 1982, 96 Stat. 1291.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
2316	10:2304 (note).	Oct. 7, 1970, Pub. L. 91-441, §507, 84 Stat. 913.

The words “company, or corporation” are omitted as included in “person” because of section 1:1. The words “On and after the date of enactment of this Act” are omitted as executed. The word “contractor” is substituted for “person, company, or corporation to whom such contract has been awarded” and “person, company, or corporation to whom any defense contract has been awarded” to eliminate unnecessary words. The words “and the identity of the contractor” are substituted for “and to whom it was awarded” for clarity.

[§ 2317. Repealed. Pub. L. 103-160, div. A, title VIII, § 821(a)(2), Nov. 30, 1993, 107 Stat. 1704]

Section, added Pub. L. 98-525, title XII, §1215, Oct. 19, 1984, 98 Stat. 2592, related to encouragement of competition and cost savings.

§ 2318. Advocates for competition

Each advocate for competition designated pursuant to section 1705(a) of title 41 for an agency named in section 2303(a) of this title shall be a general or flag officer if a member of the armed forces or in a position classified above GS-15 pursuant to section 5108 of title 5, if a civilian employee and shall be designated to serve for a minimum of two years.

(Added Pub. L. 98-525, title XII, §1216(a), Oct. 19, 1984, 98 Stat. 2593; amended Pub. L. 100-26, §7(d)(4), Apr. 21, 1987, 101 Stat. 281; Pub. L. 102-25, title VII, §701(f)(1), Apr. 6, 1991, 105 Stat. 115; Pub. L. 103-355, title I, §1031, Oct. 13, 1994, 108 Stat. 3260; Pub. L. 111-350, §5(b)(17), Jan. 4, 2011, 124 Stat. 3843; Pub. L. 112-239, div. A, title X, §1076(f)(24), Jan. 2, 2013, 126 Stat. 1953; Pub. L. 115-232, div. A, title VIII, §811(d), Aug. 13, 2018, 132 Stat. 1845.)

AMENDMENTS

2018—Pub. L. 115-232 substituted “Each advocate for competition designated pursuant to section 1705(a) of

title 41 for” for “(b) Each advocate for competition of” and “in a position classified above GS-15 pursuant to section 5108 of title 5” for “a grade GS-16 or above under the General Schedule (or in a comparable or higher position under another schedule)” and struck out subsec. (a) which related to designation of an officer or employee of the Defense Logistics Agency to serve as the advocate for competition of the agency.

2013—Subsec. (a)(2). Pub. L. 112-239 substituted “subsections (b) and (c) of section 1705” for “section 1705(b) and (c)”.

2011—Subsec. (a)(1). Pub. L. 111-350, §5(b)(17)(A), substituted “section 1705(a) of title 41” for “section 20(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 418(a))”.

Subsec. (a)(2). Pub. L. 111-350, §5(b)(17)(B), substituted “section 1705(b) and (c) of title 41” for “sections 20(b) and 20(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 418(b), (c))”.

1994—Subsec. (c). Pub. L. 103-355 struck out subsec. (c) which read as follows: “Each advocate for competition of an agency of the Department of Defense shall transmit to the Secretary of Defense a report describing his activities during the preceding year. The report of each advocate for competition shall be included in the annual report of the Secretary of Defense required by section 23 of the Office of Federal Procurement Policy Act (41 U.S.C. 419), in the form in which it was submitted to the Secretary.”

1991—Subsec. (c). Pub. L. 102-25 substituted “section 23” for “section 21”.

1987—Subsec. (a)(1). Pub. L. 100-26, §7(d)(4)(A), inserted “(41 U.S.C. 418(a))” after “Policy Act”.

Subsec. (a)(2). Pub. L. 100-26, §7(d)(4)(B), inserted “(41 U.S.C. 418(b), (c))” after “Policy Act”.

Subsec. (c). Pub. L. 100-26, §7(d)(4)(C), inserted “(41 U.S.C. 419)” after “Policy Act”.

EFFECTIVE DATE

Pub. L. 98-525, title XII, §1216(c)(1), Oct. 19, 1984, 98 Stat. 2599, provided that: “Section 2318 of title 10, United States Code (as added by subsection (a)), shall take effect on April 1, 1985.”

§ 2319. Encouragement of new competitors

(a) In this section, the term “qualification requirement” means a requirement for testing or other quality assurance demonstration that must be completed by an offeror before award of a contract.

(b) Except as provided in subsection (c), the head of the agency shall, before establishing a qualification requirement—

(1) prepare a written justification stating the necessity for establishing the qualification requirement and specify why the qualification requirement must be demonstrated before contract award;

(2) specify in writing and make available to a potential offeror upon request all requirements which a prospective offeror, or its product, must satisfy in order to become qualified, such requirements to be limited to those least restrictive to meet the purposes necessitating the establishment of the qualification requirement;

(3) specify an estimate of the costs of testing and evaluation likely to be incurred by a potential offeror in order to become qualified;

(4) ensure that a potential offeror is provided, upon request and on a reimbursable basis, a prompt opportunity to demonstrate its ability to meet the standards specified for qualification using qualified personnel and facilities of the agency concerned or of another