

CHAPTER 33—PLANNING AND SOLICITATION

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AMENDMENTS

2018—Pub. L. 115-232, div. A, title VIII, § 836(b)(10)(B)(ii), Aug. 13, 2018, 132 Stat. 1863, substituted “Preference for commercial products and commercial services” for “Preference for commercial items” in item 3307.

2013—Pub. L. 112-239, div. A, title VIII, § 851(a)(2), Jan. 2, 2013, 126 Stat. 1855, added item 3312.

§ 3301. Full and open competition

(a) IN GENERAL.—Except as provided in sections 3303, 3304(a), and 3305 of this title and except in the case of procurement procedures otherwise expressly authorized by statute, an executive agency in conducting a procurement for property or services shall—

- (1) obtain full and open competition through the use of competitive procedures in accordance with the requirements of this division and the Federal Acquisition Regulation; and
- (2) use the competitive procedure or combination of competitive procedures that is best suited under the circumstances of the procurement.

(b) APPROPRIATE COMPETITIVE PROCEDURES.—

(1) USE OF SEALED BIDS.—In determining the competitive procedures appropriate under the circumstance, an executive agency shall—

(A) solicit sealed bids if—

- (i) time permits the solicitation, submission, and evaluation of sealed bids;
- (ii) the award will be made on the basis of price and other price-related factors;
- (iii) it is not necessary to conduct discussions with the responding sources about their bids; and
- (iv) there is a reasonable expectation of receiving more than one sealed bid; or

(B) request competitive proposals if sealed bids are not appropriate under subparagraph (A).

(2) SEALED BID NOT REQUIRED.—Paragraph (1)(A) does not require the use of sealed-bid procedures in cases in which section 204(e)¹ of title 23 applies.

(c) EFFICIENT FULFILLMENT OF GOVERNMENT REQUIREMENTS.—The Federal Acquisition Regulation shall ensure that the requirement to ob-

tain full and open competition is implemented in a manner that is consistent with the need to efficiently fulfill the Federal Government’s requirements.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3745.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
3301(a)	41:253(a)(1).	June 30, 1949, ch. 288, title III, § 303(a), 63 Stat. 395; July 12, 1952, ch. 703, § 1(m), 66 Stat. 594; Pub. L. 90-268, § 2, Mar. 16, 1968, 82 Stat. 49; Pub. L. 98-369, title VII, § 2711(a)(1), July 18, 1984, 98 Stat. 1175; Pub. L. 103-355, title I, § 1051(1), Oct. 13, 1994, 108 Stat. 3260.
3301(b)(1)	41:253(a)(2).	June 30, 1949, ch. 288, title III, § 302(c)(2), as added Pub. L. 98-369, title VII, § 2714(a)(1)(B), July 18, 1984, 98 Stat. 1184.
3301(b)(2)	41:252(c)(2).	
3301(c)	41:253(h).	June 30, 1949, ch. 288, title III, § 303(h), as added Pub. L. 104-106, title XLI, § 4101(b)(2), Feb. 10, 1996, 110 Stat. 642.

REFERENCES IN TEXT

Section 204 of title 23, referred to in subsec. (b)(2), was repealed and a new section 204 enacted by Pub. L. 112-141, div. A, title I, § 1119(a), July 6, 2012, 126 Stat. 473, 489.

REGULATIONS

Pub. L. 113-291, div. A, title VIII, § 836, Dec. 19, 2014, 128 Stat. 3449, provided that: “Not later than 180 days after the date of the enactment of this Act [Dec. 19, 2014], the Administrator for Federal Procurement Policy shall prescribe regulations providing that when the Federal Government makes a purchase of services and supplies offered under the Federal Strategic Sourcing Initiative (managed by the Office of Federal Procurement Policy) but such Initiative is not used, the contract file for the purchase shall include a brief analysis of the comparative value, including price and nonprice factors, between the services and supplies offered under such Initiative and services and supplies offered under the source or sources used for the purchase.”

CONSTRUCTION

Pub. L. 98-369, div. B, title VII, § 2711(c), July 18, 1984, 98 Stat. 1181, provided that: “The amendments made by this section [see Tables for classification] do not supersede or affect the provisions of section 8(a) of the Small Business Act (15 U.S.C. 637(a)).”

PILOT PROGRAMS FOR AUTHORITY TO ACQUIRE INNOVATIVE COMMERCIAL ITEMS USING GENERAL SOLICITATION COMPETITIVE PROCEDURES

Pub. L. 114-328, div. A, title VIII, § 880, Dec. 23, 2016, 130 Stat. 2313, as amended by Pub. L. 115-232, div. A, title VIII, § 836(f)(10), Aug. 13, 2018, 132 Stat. 1872, provided that:

“(a) AUTHORITY.—

“(1) IN GENERAL.—The head of an agency may carry out a pilot program, to be known as a ‘commercial solutions opening pilot program’, under which innovative commercial products may be acquired through a competitive selection of proposals resulting from a general solicitation and the peer review of such proposals.

“(2) HEAD OF AN AGENCY.—In this section, the term ‘head of an agency’ means the following:

“(A) The Secretary of Homeland Security.

“(B) The Administrator of General Services.

“(3) APPLICABILITY OF SECTION.—This section applies to the following agencies:

¹ See References in Text note below.