

(2) An amount, as adjusted under paragraph (1), that is not evenly divisible by \$5,000,000 shall be rounded to the nearest multiple of \$5,000,000. In the case of an amount that is evenly divisible by \$2,500,000 but not evenly divisible by \$5,000,000, the amount shall be rounded to the next higher multiple of \$5,000,000.

(3) An adjustment under this subsection shall be effective after the Secretary transmits to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a written notification of the adjustment.

(Added Pub. L. 104-201, div. A, title VIII, §805(a)(2), Sept. 23, 1996, 110 Stat. 2605; amended Pub. L. 105-85, div. A, title X, §1073(a)(41), Nov. 18, 1997, 111 Stat. 1902; Pub. L. 106-65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 116-283, div. A, title XVIII, §§1806(c)(3), 1846(e)(1), Jan. 1, 2021, 134 Stat. 4155, 4249.)

#### AMENDMENT OF SECTION

*Pub. L. 116-283, div. A, title XVIII, §§1801(d), 1806(c)(3), 1846(e)(1), Jan. 1, 2021, 134 Stat. 4151, 4155, 4249, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is amended as follows:*

*(1) by transferring subsections (a) and (b) to subsections (c) and (d), respectively, of section 3041 of this title; and*

*(2) by transferring subsection (c) to section 4202(b) and (c) of this title.*

*See 2021 Amendment notes below.*

#### REPEAL OF SECTION

*Pub. L. 116-283, div. A, title XVIII, §§1801(d), 1881(a), Jan. 1, 2021, 134 Stat. 4151, 4293, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is repealed.*

#### AMENDMENTS

2021—Subsecs. (a), (b). Pub. L. 116-283, §1806(c)(3), redesignated subsecs. (a) and (b) as section 3041(c) and (d), respectively, of this title.

Subsec. (c). Pub. L. 116-283, §1846(e)(1), redesignated subsec. (c) as section 4202(b) and (c) of this title.

1999—Subsec. (c)(3). Pub. L. 106-65 substituted “and the Committee on Armed Services” for “and the Committee on National Security”.

1997—Subsec. (a)(2). Pub. L. 105-85 substituted “procurement for the system is estimated to be” for “procurement of”.

#### EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116-283, set out as a note preceding section 3001 of this title.

#### EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116-283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116-283, set out as a note preceding section 3001 of this title.

### § 2302e. Contract authority for development and demonstration of initial or additional prototype units

(a) **AUTHORITY.**—A contract initially awarded from the competitive selection of a proposal re-

sulting from a general solicitation referred to in section 2302(2)(B) of this title may contain a contract line item or contract option for—

(1) the development and demonstration or initial production of technology developed under the contract; or

(2) the delivery of initial or additional items if the item or a prototype thereof is created as the result of work performed under the contract.

#### (b) LIMITATIONS.—

(1) **MINIMAL AMOUNT.**—A contract line item or contract option described in subsection (a)(2) shall require the delivery of the minimal amount of initial or additional items to allow for the timely competitive solicitation and award of a follow-on development or production contract for those items.

(2) **TERM.**—A contract line item or contract option described in subsection (a) shall be for a term of not more than 2 years.

(3) **DOLLAR VALUE OF WORK.**—The dollar value of the work to be performed pursuant to a contract line item or contract option described in subsection (a) may not exceed \$100,000,000, in fiscal year 2017 constant dollars.

(4) **APPLICABILITY.**—The authority provided in subsection (a) applies only to the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, and the Secretary of the Air Force.

(c) **PROCEDURES.**—The Secretary of Defense shall establish procedures to collect and analyze information on the use and benefits of the authority under this section and related impacts on performance, affordability, and capability delivery.

(Added Pub. L. 115-91, div. A, title VIII, §861(a)(1), Dec. 12, 2017, 131 Stat. 1493; amended Pub. L. 116-283, div. A, title VIII, §831(a), Jan. 1, 2021, 134 Stat. 3753.)

#### TRANSFER OF SECTION

*Pub. L. 116-283, div. A, title XVIII, §§1801(d), 1818(c), Jan. 1, 2021, 134 Stat. 4151, 4188, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 243 of this title, inserted after section 3344, and redesignated as section 3345 of this title. See Effective Date of 2021 Amendment note below.*

#### AMENDMENTS

2021—Pub. L. 116-283, §831(a)(1), substituted “development and demonstration” for “advanced development” in section catchline.

Subsec. (a)(1). Pub. L. 116-283, §831(a)(2), substituted “development and demonstration” for “provision of advanced component development, prototype.”

Subsec. (c). Pub. L. 116-283, §831(a)(3), added subsec. (c).

#### EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1818(c) of Pub. L. 116-283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116-283, set out as a note preceding section 3001 of this title.

### § 2303. Applicability of chapter

(a) This chapter applies to the procurement by any of the following agencies, for its use or oth-

erwise, of all property (other than land) and all services for which payment is to be made from appropriated funds:

- (1) The Department of Defense.
- (2) The Department of the Army.
- (3) The Department of the Navy.
- (4) The Department of the Air Force.
- (5) The Coast Guard.
- (6) The National Aeronautics and Space Administration.

(b) The provisions of this chapter that apply to the procurement of property apply also to contracts for its installation or alteration.

(Aug. 10, 1956, ch. 1041, 70A Stat. 128; Pub. L. 85-568, title III, §301(b), July 29, 1958, 72 Stat. 432; Pub. L. 98-369, div. B, title VII, §2722(b), July 18, 1984, 98 Stat. 1187; Pub. L. 116-283, div. A, title XVIII, §1807(c)(2), (3), Jan. 1, 2021, 134 Stat. 4157.)

#### AMENDMENT OF SECTION

*Pub. L. 116-283, div. A, title XVIII, §§1801(d), 1807(c)(2), (3), Jan. 1, 2021, 134 Stat. 4151, 4157, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is amended as follows:*

- (1) by transferring introductory provisions of subsection (a) to section 3064(a) of this title;
- (2) by transferring paragraphs (1) to (6) of subsection (a) to section 3063 of this title; and
- (3) by transferring subsection (b) to section 3064(b) of this title.

*See 2021 Amendment notes below.*

#### REPEAL OF SECTION

*Pub. L. 116-283, div. A, title XVIII, §§1801(d), 1807(c)(4), Jan. 1, 2021, 134 Stat. 4151, 4157, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is repealed.*

#### HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2303(a) .....	41:151(a).	Feb. 19, 1948, ch. 65,
2303(b) .....	41:158 (clause (b), less last 5 words).	§§2(a), 9 (clause (b)), 62 Stat. 21, 24.
2303(c) .....	41:158 (last 5 words of clause (b)).	

In subsection (a), the words “all property named in subsection (b), and all services” are substituted for the words “for supplies or services”. The words “(each being hereinafter called the agency)”, are omitted, since the revised sections of this chapter make specific reference to the agencies named in this revised section. The words “United States” before the words “Coast Guard” are omitted, since they are not a part of the official name of the Coast Guard under section 1 of title 14.

In subsection (b), the introductory clause is substituted for the word “supplies”. Throughout the revised chapter reference is made to “property or services covered by this chapter”, instead of “supplies”, since the word “supplies” is defined in section 101(26) of this title in its usual and narrower sense, rather than the sense of the source statute for this revised chapter. It is desirable to avoid a usage which conflicts with the definition in section 101(26) of this title. The word “ships” and the words “of every character, type, and description”, after the word “vessels”, are omitted as covered by the definition of “vessel” in section 1 of title 1.

#### AMENDMENTS

2021—Subsec. (a). Pub. L. 116-283, §1807(c)(3), redesignated introductory provisions as section 3064(a) of this title.

Subsec. (a)(1) to (6). Pub. L. 116-283, §1807(c)(2), redesignated pars. (1) to (6) as pars. (1) to (6) of section 3063 of this title.

Subsec. (b). Pub. L. 116-283, §1807(c)(3), redesignated subsec. (b) as section 3064(b) of this title.

1984—Subsec. (a). Pub. L. 98-369, §2722(b)(1)(A), (B), substituted in provisions preceding cl. (1) “procurement” for “purchase, and contract to purchase,” and “(other than land) and all services” for “named in subsection (b), and all services.”

Subsec. (a)(1) to (6). Pub. L. 98-369, §2722(b)(1)(C), (D), added cl. (1) and redesignated existing cls. (1) to (5) as (2) to (6), respectively.

Subsecs. (b), (c). Pub. L. 98-369, §2722(b)(2), (3), redesignated subsec. (c) as (b). Former subsec. (b), which had provided that this chapter did not cover land but did cover public works, buildings, facilities, vessels, floating equipment, aircraft, parts, accessories, equipment, and machine tools, was struck out.

1958—Subsec. (a)(5). Pub. L. 85-568 substituted “The National Aeronautics and Space Administration” for “The National Advisory Committee for Aeronautics”.

#### EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116-283, set out as a note preceding section 3001 of this title.

#### EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116-283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116-283, set out as a note preceding section 3001 of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable with respect to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98-369, set out as a note under section 2302 of this title.

#### EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-568 effective 90 days after July 29, 1958, or on any earlier date on which the Administrator of the National Aeronautics and Space Administration determines, and announces by proclamation, that the Administration has been organized and is prepared to discharge the duties and exercise the powers conferred upon it, see note set out under section 2302 of this title.

#### TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

#### ACQUISITION, LEASE, OR RENTAL FOR USE BY THE ARMED FORCES OF MOTOR BUSES MANUFACTURED OUTSIDE THE UNITED STATES

Pub. L. 90-500, title IV, §404, Sept. 20, 1968, 82 Stat. 851, which provided that no funds for the armed forces were to be used to buy or lease buses other than those manufactured in the United States, except as regulation from the Secretary of Defense might authorize solely to avoid uneconomical procurement or one contrary to the national interest, was repealed and restated as section 2400 of this title by Pub. L. 97-295, §§1(29)(A), 6(b), Oct. 12, 1982, 96 Stat. 1294, 1314.

**[§ 2303a. Repealed. Pub. L. 98-577, title III, § 302(c)(1), Oct. 30, 1984, 98 Stat. 3077]**

Section, Pub. L. 98-525, title XII, §1212(a), Oct. 19, 1984, 98 Stat. 2590, related to publication of proposed regulations.

Section, pursuant to section 1212(b) of Pub. L. 98-525, was to have taken effect with respect to procurement policies, regulations, procedures, or forms first proposed to be issued by an agency on or after the date which was 30 days after the date of enactment of Pub. L. 98-525. Pub. L. 98-525 was approved Oct. 19, 1984. However, before that effective date, the section was repealed by Pub. L. 98-577.

**§ 2304. Contracts: competition requirements**

(a)(1) Except as provided in subsections (b), (c), and (g) and except in the case of procurement procedures otherwise expressly authorized by statute, the head of an agency in conducting a procurement for property or services—

(A) shall obtain full and open competition through the use of competitive procedures in accordance with the requirements of this chapter and the Federal Acquisition Regulation; and

(B) shall use the competitive procedure or combination of competitive procedures that is best suited under the circumstances of the procurement.

(2) In determining the competitive procedure appropriate under the circumstances, the head of an agency—

(A) shall 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; and

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

(b)(1) The head of an agency may provide for the procurement of property or services covered by this chapter using competitive procedures but excluding a particular source in order to establish or maintain an alternative source or sources of supply for that property or service if the head of the agency determines that to do so—

(A) would increase or maintain competition and would likely result in reduced overall costs for such procurement, or for any anticipated procurement, of property or services;

(B) would be in the interest of national defense in having a facility (or a producer, manufacturer, or other supplier) available for furnishing the property or service in case of a national emergency or industrial mobilization;

(C) would be in the interest of national defense in establishing or maintaining an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center;

(D) would ensure the continuous availability of a reliable source of supply of such property or service;

(E) would satisfy projected needs for such property or service determined on the basis of a history of high demand for the property or service; or

(F) in the case of medical supplies, safety supplies, or emergency supplies, would satisfy a critical need for such supplies.

(2) The head of an agency may provide for the procurement of property or services covered by this section using competitive procedures, but excluding concerns other than small business concerns in furtherance of sections 9 and 15 of the Small Business Act (15 U.S.C. 638, 644).

(3) A contract awarded pursuant to the competitive procedures referred to in paragraphs (1) and (2) shall not be subject to the justification and approval required by subsection (f)(1).

(4) A determination under paragraph (1) may not be made for a class of purchases or contracts.

(c) The head of an agency may use procedures other than competitive procedures only when—

(1) the property or services needed by the agency are available from only one responsible source or only from a limited number of responsible sources and no other type of property or services will satisfy the needs of the agency;

(2) the agency's need for the property or services is of such an unusual and compelling urgency that the United States would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals;

(3) it is necessary to award the contract to a particular source or sources in order (A) to maintain a facility, producer, manufacturer, or other supplier available for furnishing property or services in case of a national emergency or to achieve industrial mobilization, (B) to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center, or (C) to procure the services of an expert for use, in any litigation or dispute (including any reasonably foreseeable litigation or dispute) involving the Federal Government, in any trial, hearing, or proceeding before any court, administrative tribunal, or agency, or to procure the services of an expert or neutral for use in any part of an alternative dispute resolution or negotiated rulemaking process, whether or not the expert is expected to testify;

(4) the terms of an international agreement or a treaty between the United States and a foreign government or international organization, or the written directions of a foreign government reimbursing the agency for the cost of the procurement of the property or services for such government, have the effect of requiring the use of procedures other than competitive procedures;

(5) subject to subsection (k), a statute expressly authorizes or requires that the procurement be made through another agency or from a specified source, or the agency's need is for a brand-name commercial product for authorized resale;

(6) the disclosure of the agency's needs would compromise the national security un-