

## AMENDMENTS

2021—Pub. L. 116-283, §1807(e)(3), transferred text of section to section 3068(b) of this title.

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 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 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.)

## TRANSFER OF SECTION

*Pub. L. 116-283, div. A, title XVIII, §§1801(d), 1818(b), 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, as added by section 1818(a) of Pub. L. 116-283, inserted after the table of sections, and redesignated as section 3344 of this title. See Effective Date of 2021 Amendment note below.*

## HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
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.

## 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.

## [§ 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.)

#### TRANSFER OF SECTION

*Pub. L. 116-283, div. A, title XVIII, §§ 1801(d), 1813(f), Jan. 1, 2021, 134 Stat. 4151, 4181, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 223 of this title, as added by section 1813 of Pub. L. 116-283, inserted after section 3247, and redesignated as section 3249 of this title. See Effective Date of 2021 Amendment note below.*

#### 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 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

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 agency obtained through interagency agreement, or under contract, or other methods approved by the agency (including use of approved testing and evaluation services not provided under contract to the agency);

(5) if testing and evaluation services are provided under contract to the agency for the purposes of clause (4), provide to the extent possible that such services be provided by a contractor who is not expected to benefit from an absence of additional qualified sources and who shall be required in such contract to adhere to any restriction on technical data asserted by the potential offeror seeking qualification; and

(6) ensure that a potential offeror seeking qualification is promptly informed as to whether qualification is attained and, in the event qualification is not attained, is promptly furnished specific information why qualification was not attained.

(c)(1) Subsection (b) of this section does not apply with respect to a qualification requirement established by statute or administrative action before October 19, 1984, unless such requirement is a qualified products list.

(2)(A) Except as provided in subparagraph (B), if it is unreasonable to specify the standards for qualification which a prospective offeror or its product must satisfy, a determination to that effect shall be submitted to the advocate for competition of the procuring activity responsible for the purchase of the item subject to the qualification requirement. After considering any comments of the advocate for competition reviewing such determination, the head of the purchasing office may waive the requirements of clauses (2) through (6) of subsection (b) for up to two years with respect to the item subject to the qualification requirement.

(B) The waiver authority provided in this paragraph does not apply with respect to a qualified products list.

(3) A potential offeror may not be denied the opportunity to submit and have considered an offer for a contract solely because the potential