

Sec.	
3202.	[Reserved].
3203.	Exclusion of particular source or restriction of solicitation to small business concerns.
3204.	Use of procedures other than competitive procedures.
3205.	Simplified procedures for small purchases.
3206.	Planning and solicitation requirements.
3207.	Assessment before contract for acquisition of supplies is entered into.
3208.	Planning for future competition in contracts for major systems.

PRIOR PROVISIONS

A prior chapter 221 “PLANNING AND SOLICITATION GENERALLY”, as added by Pub. L. 115-232, div. A, title VIII, §801(a), Aug. 13, 2018, 132 Stat. 1827, and consisting of reserved section 3201, was repealed by Pub. L. 116-283, div. A, title XVIII, §1811(b), Jan. 1, 2021, 134 Stat. 4164.

§ 3201. Full and open competition

(a) IN GENERAL.—Except as provided in sections 3203, 3204(a), and 3205 of this title, 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—

(1) shall obtain full and open competition through the use of competitive procedures in accordance with the requirements of this section and sections 3069, 3203, 3204, 3205, 3403, 3405, 3406, 3901¹ 4501, and 4502 of this title and the Federal Acquisition Regulation; and

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

(b) DETERMINATION OF APPROPRIATE COMPETITIVE PROCEDURES.—In determining the competitive procedure appropriate under the circumstances, the head of an agency—

(1) shall solicit sealed bids if—

(A) time permits the solicitation, submission, and evaluation of sealed bids;

(B) the award will be made on the basis of price and other price-related factors;

(C) it is not necessary to conduct discussions with the responding sources about their bids; and

(D) there is a reasonable expectation of receiving more than one sealed bid; and

(2) shall request competitive proposals if sealed bids are not appropriate under paragraph (1).

(c) EFFICIENT FULFILLMENT OF GOVERNMENT REQUIREMENTS.—The Federal Acquisition Regulation shall ensure that the requirement to obtain full and open competition is implemented in a manner that is consistent with the need to efficiently fulfill the Government’s requirements.

(d) CERTAIN PURCHASES OR CONTRACTS TO BE TREATED AS IF MADE WITH SEALED-BID PROCEDURES.—For the purposes of the following, purchases or contracts awarded after using procedures other than sealed-bid procedures shall be treated as if they were made with sealed-bid procedures:

- (1) Chapter 65 of title 41.
- (2) Sections 3141–3144, 3146, and 3147 of title 40.

(e) NEW CONTRACTS AND MERIT-BASED SELECTION PROCEDURES.—

(1) CONGRESSIONAL POLICY.—It is the policy of Congress that an agency named in section 3063 of this title should not be required by legislation to award a new contract to a specific non-Federal Government entity. It is further the policy of Congress that any program, project, or technology identified in legislation be procured through merit-based selection procedures.

(2) NEW CONTRACT DESCRIBED.—For purposes of this subsection, a contract is a new contract unless the work provided for in the contract is a continuation of the work performed by the specified entity under a preceding contract.

(3) PROVISION OF LAW DESCRIBED.—A provision of law may not be construed as requiring a new contract to be awarded to a specified non-Federal Government entity unless that provision of law—

(A) specifically refers to this subsection;

(B) specifically identifies the particular non-Federal Government entity involved; and

(C) specifically states that the award to that entity is required by such provision of law in contravention of the policy set forth in paragraph (1).

(4) EXCEPTION.—This subsection shall not apply with respect to any contract that calls upon the National Academy of Sciences to investigate, examine, or experiment upon any subject of science or art of significance to an agency named in section 3063 of this title and to report on such matters to the Congress or any agency of the Federal Government.

(Added and amended Pub. L. 116-283, div. A, title XVIII, §1811(c), Jan. 1, 2021, 134 Stat. 4165.)

CODIFICATION

The text of subsec. (a) of section 2304 of this title, which was transferred to this section, redesignated as subsecs. (a) and (b), and amended by Pub. L. 116-283, §1811(c)(2), was based on Pub. L. 98-369, div. B, title VII, §2723(a)(1)(C), July 18, 1984, 98 Stat. 1187; Pub. L. 99-145, title XIII, §1303(a)(13), Nov. 8, 1985, 99 Stat. 739; Pub. L. 100-26, §7(d)(3)(A), Apr. 21, 1987, 101 Stat. 281; Pub. L. 103-355, title I, §1001(1), Oct. 13, 1994, 108 Stat. 3249.

The text of subsec. (j) of section 2304 of this title, which was transferred to this section, redesignated as subsec. (c), and amended by Pub. L. 116-283, §1811(c)(3), was based on Pub. L. 104-106, div. D, title XLI, §4101(a)(2), Feb. 10, 1996, 110 Stat. 642.

The text of subsec. (h) of section 2304 of this title, which was transferred to this section, redesignated as subsec. (d), and amended by Pub. L. 116-283, §1811(c)(4), was based on act Aug. 10, 1956, ch. 1041, 70A Stat. 128; Pub. L. 96-513, title V, §511(76), Dec. 12, 1980, 94 Stat. 2926; Pub. L. 97-295, §1(24)(B), Oct. 12, 1982, 96 Stat. 1291; Pub. L. 98-369, div. B, title VII, §§2723(a)(1)(B), 2727(b), July 18, 1984, 98 Stat. 1187, 1194; Pub. L. 98-577, title V, §504(b)(2), Oct. 30, 1984, 98 Stat. 3086; Pub. L. 104-106, div. D, title XLIII, §4321(b)(5), Feb. 10, 1996, 110 Stat. 672; Pub. L. 107-217, §3(b)(3), Aug. 21, 2002, 116 Stat. 1295; Pub. L. 111-350, §5(b)(12)(E), Jan. 4, 2011, 124 Stat. 3843.

The text of subsec. (k) of section 2304 of this title, which was transferred to this section, redesignated as subsec. (e), and amended by Pub. L. 116-283, §1811(c)(5), was based on Pub. L. 103-355, title VII, §7203(a)(1)(B),

¹ So in original. Probably should be followed by a comma.