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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 A, title VIII, §801(a), Aug. 13, 2018, 132 Stat. 1827, and consisting of reserved section 3201, was repealed by Pub.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.

Oct. 13, 1994, 108 Stat. 3379; Pub. L. 104-106, div. D, title XLI, § 4101(a)(1), Feb. 10, 1996, 110 Stat. 642.

PRIOR PROVISIONS

A prior section 3201 was renumbered section 7101 of this title.

Another prior section 3201, act Aug. 10, 1956, ch. 1041, 70A Stat. 172; Pub. L. 85-861, §1(62), Sept. 2, 1958, 72 Stat. 1462; Pub. L. 88-647, title III, §301(4), Oct. 13, 1964, 78 Stat. 1071, prescribed the authorized strength of the Army in members on active duty, exclusive of certain categories, and the authorized daily average strength of the Army in members on active duty during the fiscal year, exclusive of certain categories, prior to repeal by Pub. L. 96-513, title II, §202, title VII, §701, Dec. 12, 1980, 94 Stat. 2878, 2955, effective Sept. 15, 1981.

A prior section 3202, act Aug. 10, 1956, ch. 1041, 70A Stat. 172; Pub. L. 85-861, §1(63), Sept. 2, 1958, 72 Stat. 1463; Pub. L. 90-228, §1(1), (2), Dec. 28, 1967, 81 Stat. 745; Pub. L. 96-513, title II, §203(a), Dec. 12, 1980, 94 Stat. 2878, related to authorized strength of Army in general officers on active duty, prior to repeal by Pub. L. 101-510, div. A, title IV, §403(b)(1)(A), Nov. 5, 1990, 104 Stat. 1545.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116-283, §1811(c)(2)(B), (C), inserted heading, struck out par. (1) designation at beginning and substituted “Except as provided in sections 3203, 3204(a), and 3205 of this title,” for “Except as provided in subsections (b), (c), and (g)” in introductory provisions, and redesignated subpars. (A) and (B) as pars. (1) and (2), respectively. Substitution was executed to reflect the probable intent of Congress because quoted text directed to be stricken contained a comma after “(g)” but no comma was present. Par. (2) subsequently redesignated subsec. (b).

Pub. L. 116-283, §1811(c)(2), transferred subsec. (a) of section 2304 of this title to this section.

Subsec. (a)(1). Pub. L. 116-283, §1811(c)(2)(D), substituted “this section and sections 3069, 3203, 3204, 3205, 3403, 3405, 3406, 3901 4501, and 4502 of this title” for “this chapter”.

Subsec. (b). Pub. L. 116-283, §1811(c)(2)(A), (E), redesignated subsec. (a)(2) as (b) and inserted heading, redesignated subpar. (A) and cls. (i) to (iv) as par. (1) and subpars. (A) to (D), respectively, and redesignated subpar. (B) as par. (2) and substituted “paragraph (1)” for “clause (A)”.

Subsec. (c). Pub. L. 116-283, §1811(c)(3), redesignated subsec. (j) of section 2304 of this title as subsec. (c) of this section and inserted heading.

Subsec. (d). Pub. L. 116-283, §1811(c)(4), redesignated subsec. (h) of section 2304 of this title as subsec. (d) of this section and inserted heading.

Subsec. (e). Pub. L. 116-283, §1811(c)(5), redesignated subsec. (k) of section 2304 of this title as subsec. (e) of this section, inserted subsec. and par. headings, switched order and designations of pars. (2) and (3), realigned margins of pars. (2) to (4), and substituted “section 3063” for “section 2303(a)” in pars. (1) and (4).

EFFECTIVE DATE

Section and 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 an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3203. Exclusion of particular source or restriction of solicitation to small business concerns

(a) EXCLUSION OF PARTICULAR SOURCE.—

(1) **CRITERIA FOR EXCLUSION.**—The head of an agency may provide for the procurement of property or services covered by chapter 137 legacy provisions using competitive proce-

dures 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) **DETERMINATION FOR CLASS DISALLOWED.**—A determination under paragraph (1) may not be made for a class of purchases or contracts.

(b) **EXCLUSION OF OTHER THAN SMALL BUSINESS CONCERNS.**—The head of an agency may provide for the procurement of property or services covered by chapter 137 legacy provisions 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).

(c) **INAPPLICABILITY OF JUSTIFICATION AND APPROVAL REQUIREMENTS.**—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 section 3204(e)(1) of this title.

(Added and amended Pub. L. 116-283, div. A, title XVIII, §1811(d)(1), (2), Jan. 1, 2021, 134 Stat. 4166.)

CODIFICATION

The text of subsec. (b) of section 2304 of this title, which was transferred to this section and amended by Pub. L. 116-283, §1811(d)(2), was based on Pub. L. 98-369, div. B, title VII, §2723(a)(1)(C), July 18, 1984, 98 Stat. 1187; Pub. L. 98-577, title V, §504(b)(1), Oct. 30, 1984, 98 Stat. 3086; Pub. L. 99-661, div. A, title XIII, §1343(a)(14), Nov. 14, 1986, 100 Stat. 3993; Pub. L. 101-189, div. A, title VIII, 853(d), Nov. 29, 1989, 103 Stat. 1519; Pub. L. 102-484, div. A, title VIII, §801(h)(2), Oct. 23, 1992, 106 Stat. 2445; Pub. L. 103-355, title I, §1002, Oct. 13, 1994, 108 Stat. 3249; Pub. L. 115-232, div. A, title VIII, §812(a)(2)(C)(v), Aug. 13, 2018, 132 Stat. 1847.

PRIOR PROVISIONS

A prior section 3203, act Aug. 10, 1956, ch. 1041, 70A Stat. 173; Pub. L. 85-861, §1(64), Sept. 2, 1958, 72 Stat. 1463, prescribed authorized strength of Regular Army in