

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

members on active duty, exclusive of officers candidates, 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.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116-283, §1811(d)(2)(A), redesignated subsec. (b) of section 2304 of this title as subsec. (a) of this section and inserted heading.

Subsec. (a)(1). Pub. L. 116-283, §1811(d)(2)(A)–(C), inserted heading, substituted “covered by chapter 137 legacy provisions” for “covered by this chapter” in introductory provisions, and realigned margins of subpars. (A) to (F).

Subsec. (a)(2). Pub. L. 116-283, §1811(d)(2)(F), redesignated par. (4) as (2), inserted heading, and realigned margin. Former pars. (2) and (3) redesignated subsecs. (b) and (c), respectively.

Subsec. (b). Pub. L. 116-283, §1811(d)(2)(D), redesignated subsec. (a)(2) as (b), inserted heading, and substituted “chapter 137 legacy provisions” for “this section”.

Subsec. (c). Pub. L. 116-283, §1811(d)(2)(E), redesignated subsec. (a)(3) as (c), inserted heading, and substituted “section 3204(e)(1) of this title” for “subsection (f)(1)”.

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.

§ 3204. Use of procedures other than competitive procedures

(a) WHEN PROCEDURES OTHER THAN COMPETITIVE PROCEDURES MAY BE USED.—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—¹

(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—²

(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 section 3201(e) of this title, 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 unless the agency is permitted to limit the number of sources from which it solicits bids or proposals; or

(7) the head of the agency (who may not delegate the authority under this paragraph)—

(A) determines that it is necessary in the public interest to use procedures other than competitive procedures in the particular procurement concerned, and

(B) notifies the Congress in writing of such determination not less than 30 days before the award of the contract.

(b) PROPERTY OR SERVICES CONSIDERED TO BE AVAILABLE FROM ONLY ONE SOURCE.—For the purposes of applying subsection (a)(1)—

(A) in the case of a contract for property or services to be awarded on the basis of acceptance of an unsolicited research proposal, the property or services shall be considered to be available from only one source if the source has submitted an unsolicited research proposal that demonstrates a concept—

(i) that is unique and innovative or, in the case of a service, for which the source demonstrates a unique capability of the source to provide the service; and

(ii) the substance of which is not otherwise available to the United States, and does not resemble the substance of a pending competitive procurement; and

(B) in the case of a follow-on contract for the continued development or production of a major system or highly specialized equipment, or the continued provision of highly specialized services, such property or services may be deemed to be available only from the original source and may be procured through procedures other than competitive procedures when it is likely that award to a source other than the original source would result in—

(i) substantial duplication of cost to the United States which is not expected to be recovered through competition; or

(ii) unacceptable delays in fulfilling the agency’s needs.

(c) PROPERTY OR SERVICES NEEDED WITH UNUSUAL AND COMPELLING URGENCY.—

¹ So in original. The dash probably should be a semicolon.

² So in original. The dash probably should be “; or”.