

retary of Defense for Intelligence and Security, see section 1621(a) of Pub. L. 116-92, set out as a note under section 137 of this title.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1813(g) 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.

CHAPTER 225—PLANNING AND SOLICITATION RELATING TO PARTICULAR ITEMS OR SERVICES

Sec.
3271. [Reserved].

AMENDMENTS

2021—Pub. L. 116-283, div. A, title XVIII, §1813(h), Jan. 1, 2021, 134 Stat. 4181, added chapter heading and item 3271.

Subpart C—Contracting Methods and Contract Types

AMENDMENTS

2018—Pub. L. 115-232, div. A, title VIII, §801(a), Aug. 13, 2018, 132 Stat. 1827, added subpart heading.

CHAPTER 241—AWARDING OF CONTRACTS

Sec.
3301. Basis of award and rejection.
3302. Sealed bids.
3303. Competitive proposals.
3304. Post-award debriefings.
3305. Pre-award debriefings.
3306. Encouragement of alternative dispute resolution.
3307. Antitrust violations.
3308. Protests.
3309. Prohibition on release of contractor proposals.

PRIOR PROVISIONS

A prior chapter 241 “AWARDING OF CONTRACTS”, as added by Pub. L. 115-232, div. A, title VIII, §801(a), Aug. 13, 2018, 132 Stat. 1827, and consisting of reserved section 3301, was repealed by Pub. L. 116-283, div. A, title XVIII, §1816(b), Jan. 1, 2021, 134 Stat. 4182.

§ 3301. Basis of award and rejection

(a) AWARD.—The head of an agency shall evaluate sealed bids and competitive proposals and make an award based solely on the factors specified in the solicitation.

(b) REJECTION.—All sealed bids or competitive proposals received in response to a solicitation may be rejected if the head of the agency determines that such action is in the public interest.

(Added and amended Pub. L. 116-283, div. A, title XVIII, §1816(c)(2)(A), (3), Jan. 1, 2021, 134 Stat. 4182.)

CODIFICATION

The text of subsec. (b)(1), (2) of section 2305 of this title, which was transferred to this section and amended by Pub. L. 116-283, §1816(c)(1), (2)(A), (3), was based on Pub. L. 98-369, div. B, title VII, §2723(b), July 18, 1984, 98 Stat. 1191, 1192; Pub. L. 101-510, div. A, title VIII, §802(d)(1), Nov. 5, 1990, 104 Stat. 1589.

AMENDMENTS

2021—Pub. L. 116-283, §1816(c)(3), redesignated subsec. (b)(1) and (2) of section 2305 of this title as subsecs. (a)

and (b), respectively, of this section and inserted headings.

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.

§ 3302. Sealed bids

(a) OPENING OF BIDS.—Sealed bids shall be opened publicly at the time and place stated in the solicitation.

(b) CRITERIA FOR AWARDING CONTRACT.—The head of the agency shall evaluate the bids in accordance with section 3301(a) of this title without discussions with the bidders and, except as provided in section 3301(b) of this title, shall award a contract with reasonable promptness to the responsible bidder whose bid conforms to the solicitation and is most advantageous to the United States, considering only price and the other price-related factors included in the solicitation.

(c) NOTICE OF AWARD.—The award of a contract shall be made by transmitting, in writing or by electronic means, notice of the award to the successful bidder. Within three days after the date of contract award, the head of the agency shall notify, in writing or by electronic means, each bidder not awarded the contract that the contract has been awarded.

(Added and amended Pub. L. 116-283, div. A, title XVIII, §1816(c)(2)(B), (4), Jan. 1, 2021, 134 Stat. 4182.)

CODIFICATION

The text of subsec. (b)(3) of section 2305 of this title, which was transferred to this section and amended by Pub. L. 116-283, §1816(c)(1), (2)(B), (4) was based on Pub. L. 98-369, div. B, title VII, §2723(b), July 18, 1984, 98 Stat. 1192; Pub. L. 101-510, div. A, title VIII, §802(d)(2), Nov. 5, 1990, 104 Stat. 1589; Pub. L. 103-355, title I, §1013(a), Oct. 13, 1994, 108 Stat. 3255.

PRIOR PROVISIONS

A prior section 3302, act Aug. 10, 1956, ch. 1041, 70A Stat. 187, related to promotion to captain, major, or lieutenant colonel of commissioned officers of Medical Corps, Dental Corps, and Veterinary Corps upon examination of professional fitness and effect upon failure of promotion, prior to repeal by Pub. L. 96-513, title II, §204, title VII, §701, Dec. 12, 1980, 94 Stat. 2880, 2955, effective Sept. 15, 1981. See sections 631 and 632 of this title.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116-283, §1816(c)(4)(A), (C), redesignated subsec. (b)(3) of section 2305 of this title as subsec. (a) of this section and inserted heading. Former second and third sentences of subsec. (a) designated subsecs. (b) and (c), respectively.

Subsec. (b). Pub. L. 116-283, §1816(c)(4)(B), (D), designated second sentence of subsec. (a) as subsec. (b) of this section, inserted heading, and substituted “section 3301(a) of this title” for “paragraph (1)” and “section 3301(b) of this title” for “paragraph (2)”.

Subsec. (c). Pub. L. 116-283, §1816(c)(4)(B), (E), designated third sentence of subsec. (a) as subsec. (c) of this section and inserted heading.

EFFECTIVE DATE

Section and amendment by Pub. L. 116-283 effective Jan. 1, 2022, with additional provisions for delayed im-

plementation 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.

§ 3303. Competitive proposals

(a) EVALUATION AND AWARD.—The head of an agency shall evaluate competitive proposals in accordance with section 3301(a) of this title and may award a contract—

(1) after discussions with the offerors, provided that written or oral discussions have been conducted with all responsible offerors who submit proposals within the competitive range; or

(2) based on the proposals received, without discussions with the offerors (other than discussions conducted for the purpose of minor clarification) provided that the solicitation included a statement that proposals are intended to be evaluated, and award made, without discussions, unless discussions are determined to be necessary.

(b) LIMIT ON NUMBER OF PROPOSALS.—If the contracting officer determines that the number of offerors that would otherwise be included in the competitive range under subsection (a)(1) exceeds the number at which an efficient competition can be conducted, the contracting officer may limit the number of proposals in the competitive range, in accordance with the criteria specified in the solicitation, to the greatest number that will permit an efficient competition among the offerors rated most highly in accordance with such criteria.

(c) CRITERIA FOR AWARDED CONTRACT.—Except as provided in section 3301(b) of this title, the head of the agency shall award a contract with reasonable promptness to the responsible source whose proposal is most advantageous to the United States, considering only cost or price and the other factors included in the solicitation.

(d) NOTICE OF AWARD.—The head of the agency shall award the contract by transmitting, in writing or by electronic means, notice of the award to such source and, within three days after the date of contract award, shall notify, in writing or by electronic means, all other offerors of the rejection of their proposals. This subsection does not apply with respect to the award of a contract for the acquisition of perishable subsistence items.

(Added and amended Pub. L. 116-283, div. A, title XVIII, § 1816(c)(2)(C), (5), Jan. 1, 2021, 134 Stat. 4182, 4183.)

CODIFICATION

The text of subsec. (b)(4) of section 2305 of this title, which was transferred to this section and amended by Pub. L. 116-283, § 1816(c)(1), (2)(C), (5) was based on Pub. L. 98-369, div. B, title VII, § 2723(b), July 18, 1984, 98 Stat. 1192; Pub. L. 99-500, § 101(c) [title X, § 924(b)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-153, and Pub. L. 99-591, § 101(c) [title X, § 924(b)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-153; Pub. L. 99-661, div. A, title III, § 313(b), title IX, formerly title IV, § 924(b), Nov. 14, 1986, 100 Stat. 3853, 3933, renumbered title IX, Pub. L. 100-26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 101-189, div. A, title VIII, § 853(f), Nov. 29, 1989, 103 Stat. 1519; Pub. L. 101-510, div. A, title VIII, § 802(d), Nov. 5, 1990, 104 Stat. 1589; Pub. L. 103-355, title I, § 1013(b), Oct. 13, 1994, 108 Stat. 3255; Pub.

L. 104-106, div. D, title XLI, § 4103(a), Feb. 10, 1996, 110 Stat. 643.

PRIOR PROVISIONS

A prior section 3303, act Aug. 10, 1956, ch. 1041, 70A Stat. 188; Pub. L. 86-616, § 1(3), July 12, 1960, 74 Stat. 386; Pub. L. 87-509, § 4(a), June 28, 1962, 76 Stat. 121, related to effect of failure of a promotion-list officer considered for promotion to grade of captain, major, or lieutenant colonel under section 3299 of this title to be recommended for promotion, which officer was to be known as a “deferred officer”, prior to repeal by Pub. L. 96-513, title II, § 204, title VII, § 701, Dec. 12, 1980, 94 Stat. 2880, 2955, effective Sept. 15, 1981. See sections 631 and 632 of this title.

AMENDMENTS

2021—Pub. L. 116-283, § 1816(c)(5)(A), transferred subsec. (b)(4) of section 2305 of this title to this section and struck out par. (4) designation at beginning.

Subsec. (a). Pub. L. 116-283, § 1816(c)(5)(B), (D), redesignated subpar. (A) of former section 2305(b)(4) of this title as subsec. (a) of this section, inserted heading, substituted “section 3301(a) of this title” for “paragraph (1)” in introductory provisions, and redesignated cls. (i) and (ii) as pars. (1) and (2), respectively.

Subsec. (b). Pub. L. 116-283, § 1816(c)(5)(B), (E), redesignated subpar. (B) of former section 2305(b)(4) of this title as subsec. (b) of this section, inserted heading, and substituted “subsection (a)(1)” for “subparagraph (A)(i)”.

Subsec. (c). Pub. L. 116-283, § 1816(c)(5)(B), (F), redesignated subpar. (C) of former section 2305(b)(4) of this title as subsec. (c) of this section, inserted heading, and substituted “section 3301(b) of this title” for “paragraph (2)”. Former second and third sentences designated subsec. (d).

Subsec. (d). Pub. L. 116-283, § 1816(c)(5)(G), inserted heading and substituted “This subsection” for “This subparagraph”.

Pub. L. 116-283, § 1816(c)(5)(C), which directed designation of the “second sentence of subsection (c)” as (d), was executed by designating the second and third sentences of subsec. (c) as subsec. (d) of this section to reflect the probable intent of Congress and the subsequent amendment made by section 1816(c)(5)(G), which was directed to “subsection (d), as so designated” and could only be executed in what had been the third sentence. See note above.

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.

§ 3304. Post-award debriefings

(a) REQUEST FOR DEBRIEFING.—When a contract is awarded by the head of an agency on the basis of competitive proposals, an unsuccessful offeror, upon written request received by the agency within 3 days after the date on which the unsuccessful offeror receives the notification of the contract award, shall be debriefed and furnished the basis for the selection decision and contract award.

(b) WHEN DEBRIEFING TO BE CONDUCTED.—The head of the agency shall debrief the offeror within, to the maximum extent practicable, five days after receipt of the request by the agency.

(c) INFORMATION TO BE PROVIDED.—(1) The debriefing shall include, at a minimum—

(A) the agency’s evaluation of the significant weak or deficient factors in the offeror’s offer;