

Section 3354, acts Aug. 10, 1956, ch. 1041, 70A Stat. 194; Sept. 2, 1958, Pub. L. 85-861, §1(80)(C), 72 Stat. 1468, related to appointment of warrant officers and enlisted members of Army National Guard of United States as reserve officers.

A prior section 3355, acts Aug. 10, 1956, ch. 1041, 70A Stat. 194; Sept. 2, 1958, Pub. L. 85-861, §33(a)(22), 72 Stat. 1565, related to appointment of graduates of Reserve Officers' Training Corps as reserve commissioned officers, prior to repeal by Pub. L. 88-647, title III, §301(5), Oct. 13, 1964, 78 Stat. 1071. See section 2106 of this title.

Prior sections 3357 to 3370 were repealed by Pub. L. 103-337, div. A, title XVI, §§1629(a)(1), 1691(b)(1), Oct. 5, 1994, 108 Stat. 2963, 3026, effective Oct. 1, 1996.

Section 3357, acts Aug. 10, 1956, ch. 1041, 70A Stat. 194; Sept. 2, 1958, Pub. L. 85-861, §1(60), (80)(D), 72 Stat. 1462, 1468, related to eligibility for appointment as reserve officer for service in Army Reserve in Army Nurse Corps or Army Medical Specialist Corps.

Section 3359, added Pub. L. 85-861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1469; amended Pub. L. 98-94, title X, §1014(a), Sept. 24, 1983, 97 Stat. 666; Pub. L. 98-525, title V, §521(a), Oct. 19, 1984, 98 Stat. 2522; Pub. L. 99-145, title V, §521(a), Nov. 8, 1985, 99 Stat. 631; Pub. L. 100-180, div. A, title V, §502(a), Dec. 4, 1987, 101 Stat. 1085; Pub. L. 101-189, div. A, title V, §503(a), Nov. 29, 1989, 103 Stat. 1437; Pub. L. 102-484, div. A, title V, §519(a), Oct. 23, 1992, 106 Stat. 2408; Pub. L. 103-160, div. A, title V, §514(a), Nov. 30, 1993, 107 Stat. 1649; Pub. L. 104-106, div. A, title V, §511(a), Feb. 10, 1996, 110 Stat. 298, related to determination of grade upon original appointment as reserve officer of Army. See section 12201 et seq. of this title.

Section 3360, added Pub. L. 85-861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1469; amended Pub. L. 86-559, §1(9), June 30, 1960, 74 Stat. 266; Pub. L. 96-513, title V, §§502(10), 512(4), Dec. 12, 1980, 94 Stat. 2910, 2929; Pub. L. 98-94, title X, §1016(b), Sept. 24, 1983, 97 Stat. 668, related to service required for promotion of Reserve commissioned officers. See section 14001 et seq. of this title.

Section 3362, added Pub. L. 85-861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1470; amended Pub. L. 86-559, §1(10), June 30, 1960, 74 Stat. 266, related to convening of selection boards to consider Reserve commissioned officers for promotion. See section 14101 et seq. of this title.

Section 3363, added Pub. L. 85-861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1470; amended Pub. L. 86-559, §1(11), June 30, 1960, 74 Stat. 266; Pub. L. 95-485, title VIII, §820(e)(1), Oct. 20, 1978, 92 Stat. 1627; Pub. L. 100-456, div. A, title XII, §1234(a)(1), Sept. 29, 1988, 102 Stat. 2059, related to requirements and procedures for promotion of officers in reserve grades. See section 14301 et seq. of this title.

Section 3364, added Pub. L. 85-861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1471; amended Pub. L. 86-559, §1(12), June 30, 1960, 74 Stat. 266; Pub. L. 95-485, title VIII, §820(e)(2)-(4), Oct. 20, 1978, 92 Stat. 1627; Pub. L. 98-525, title V, §512, Oct. 19, 1984, 98 Stat. 2521; Pub. L. 100-456, div. A, title XII, §1234(a)(4), Sept. 29, 1988, 102 Stat. 2059, related to commissioned reserve officers' selection for promotion, order of promotion, zone of consideration lists, and declinations of promotion. See section 14301 et seq. of this title.

Section 3365, added Pub. L. 85-861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1472, related to promotion of second lieutenants of Army Reserve. See section 14301 et seq. of this title.

Section 3366, added Pub. L. 85-861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1472; amended Pub. L. 86-559, §1(13), June 30, 1960, 74 Stat. 267; Pub. L. 90-130, §1(11)(A), Nov. 8, 1967, 81 Stat. 375, related to promotion of first lieutenants, captains, and majors of Army Reserve or Army National Guard of United States. See section 14301 et seq. of this title.

Section 3367, added Pub. L. 85-861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1473; amended Pub. L. 86-559, §1(14), June 30, 1960, 74 Stat. 268; Pub. L. 90-130, §1(11)(B), Nov. 8, 1967, 81 Stat. 375, related to promotion of first lieutenants, captains, and majors of Army Reserve to fill vacancies. See section 14301 et seq. of this title.

Section 3368, added Pub. L. 85-861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1474, related to second consideration for

promotion of first lieutenants, captains, and majors of Army Reserve. See section 14301 et seq. of this title.

Section 3369, added Pub. L. 85-861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1474, related to first promotion of reserve officers not assigned to unit after transfer from unit or from Army National Guard of United States.

Section 3370, added Pub. L. 85-861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1474; amended Pub. L. 86-559, §1(15), June 30, 1960, 74 Stat. 269; Nov. 8, 1967, Pub. L. 90-130, §1(11)(C), (D), 81 Stat. 375; Pub. L. 100-456, div. A, title XII, §1234(a)(5), Sept. 29, 1988, 102 Stat. 2059, related to promotion of officers to grade of colonel to fill vacancies. See section 14301 et seq. of this title.

AMENDMENTS

2021—Pub. L. 116-283, §1818(c), renumbered section 2302e of this title as this section.

Pub. L. 116-283, §831(a)(1), substituted "development and demonstration" for "advanced development" in section catchline.

Subsec. (a). Pub. L. 116-283, §1818(c), substituted "section 3012(2)" for "section 2302(2)(B)" in introductory provisions.

Subsec. (a)(1). Pub. L. 116-283, §831(a)(2), substituted "development and demonstration" for "provision of advanced component development, prototype,".

Subsec. (c). Pub. L. 116-283, §831(a)(3), added subsec. (c).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1818(c) 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 244—UNDEFINITIZED CONTRACTUAL ACTIONS

- Sec. 3371. Undefinitized contractual actions: required description of anticipated effect on military department requirements if use of undefinitized contractual action results in delay.
- 3372. Undefinitized contractual actions: requirements and limitations relating to definitization of contractual terms, specifications, and price.
- 3373. Undefinitized contractual actions: limitation on inclusion of non-urgent requirements and on modification of scope.
- 3374. Undefinitized contractual actions: allowable profit.
- 3375. Undefinitized contractual actions: time limit.
- 3376. [Reserved].
- 3377. Inapplicability to Coast Guard and National Aeronautics and Space Administration; definitions.

§ 3371. Undefinitized contractual actions: required description of anticipated effect on military department requirements if use of undefinitized contractual action results in delay

The head of an agency may not enter into an undefinitized contractual action unless the request to the head of the agency for authorization of the contractual action includes a description of the anticipated effect on requirements of the military department concerned if a delay is incurred for purposes of determining contractual terms, specifications, and price before performance is begun under the contractual action.

(Added and amended Pub. L. 116-283, div. A, title XVIII, §1819(a), (b), Jan. 1, 2021, 134 Stat. 4189.)

CODIFICATION

The text of subsec. (a) of section 2326 of this title, which was transferred to this section and amended by Pub. L. 116-283, §1819(b), was based on Pub. L. 99-500, §101(c) [title X, §908(d)(1)(A)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-140, and Pub. L. 99-591, §101(c) [title X, §908(d)(1)(A)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-140; Pub. L. 99-661, div. A, title IX, formerly title IV, §908(d)(1)(A), Nov. 14, 1986, 100 Stat. 3920, renumbered title IX, Pub. L. 100-26, §3(5), Apr. 21, 1987, 101 Stat. 273. Pub. L. 99-500, Pub. L. 99-591, and Pub. L. 99-661 added identical subsections.

PRIOR PROVISIONS

A prior section 3371, added Pub. L. 85-861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1475, related to promotion of brigadier generals and colonels not assigned to units, prior to repeal by Pub. L. 103-337, div. A, title XVI, §§1629(a)(1), 1691(b)(1), Oct. 5, 1994, 108 Stat. 2963, 3026, effective Oct. 1, 1996. See section 14301 et seq. of this title.

AMENDMENTS

2021—Pub. L. 116-283, §1819(b), transferred subsec. (a) of section 2326 of this title to this section and struck out subsec. (a) designation and heading “In General” at beginning.

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.

§ 3372. Undefinitized contractual actions: requirements and limitations relating to definitization of contractual terms, specifications, and price

(a) CONTRACTUAL ACTION TO PROVIDE TIME FOR DEFINITIZATION OF CONTRACTUAL TERMS, SPECIFICATIONS, AND PRICE; LIMITATIONS ON OBLIGATION OF FUNDS.—

(1) TERMS FOR TIME FOR DEFINITIZATION TO BE INCLUDED IN CONTRACTUAL ACTION.—A contracting officer of the Department of Defense may not enter into an undefinitized contractual action unless the contractual action provides for agreement upon contractual terms, specifications, and price by the earlier of—

(A) the end of the 180-day period beginning on the date on which the contractor submits a qualifying proposal to definitize the contractual terms, specifications, and price; or

(B) the date on which the amount of funds obligated under the contractual action is equal to more than 50 percent of the negotiated overall ceiling price for the contractual action.

(2) LIMITATION ON OBLIGATION OF FUNDS BEFORE DEFINITIZATION.—

(A) 50 PERCENT LIMITATION.—Except as provided in subparagraph (B), the contracting officer for an undefinitized contractual action may not obligate with respect to such contractual action an amount that is equal to more than 50 percent of the negotiated overall ceiling price until the contractual terms, specifications, and price are definitized for such contractual action.

(B) 75 PERCENT LIMITATION WHEN CONTRACTOR SUBMITS QUALIFYING PROPOSAL.—If a

contractor submits a qualifying proposal (as defined in section 3377(b) of this title) to definitize an undefinitized contractual action before an amount equal to more than 50 percent of the negotiated overall ceiling price is obligated on such action, the contracting officer for such action may not obligate with respect to such contractual action an amount that is equal to more than 75 percent of the negotiated overall ceiling price until the contractual terms, specifications, and price are definitized for such contractual action.

(3) WAIVER AUTHORITY.—The head of an agency may waive the provisions of this subsection with respect to a contract of that agency if that head of an agency determines that the waiver is necessary in order to support any of the following operations:

(A) A contingency operation.

(B) A humanitarian or peacekeeping operation.

(4) INAPPLICABILITY WITH RESPECT TO PURCHASE OF INITIAL SPARES.—This subsection does not apply to an undefinitized contractual action for the purchase of initial spares.

(b) LIMITATION ON UNILATERAL DEFINITIZATION BY CONTRACTING OFFICER.—With respect to any undefinitized contractual action with a value greater than \$50,000,000, if agreement is not reached on contractual terms, specifications, and price within the period or by the date provided in subsection (a)(1), the contracting officer may not unilaterally definitize those terms, specifications, or price over the objection of the contractor until—

(1) the service acquisition executive for the military department that awarded the contract, or the Under Secretary of Defense for Acquisition and Sustainment if the contract was awarded by a Defense Agency or other component of the Department of Defense, approves the definitization in writing;

(2) the contracting officer provides a copy of the written approval to the contractor; and

(3) a period of 30 calendar days has elapsed after the written approval is provided to the contractor.

(c) FOREIGN MILITARY CONTRACTS.—

(1) 180-DAY REQUIREMENT.—Except as provided in paragraph (2), a contracting officer of the Department of Defense may not enter into an undefinitized contractual action for a foreign military sale unless the contractual action provides for agreement upon contractual terms, specifications, and price by the end of the 180-day period described in subsection (a)(1)(A).

(2) WAIVER AUTHORITY.—The requirement under paragraph (1) may be waived in accordance with subsection (a)(3).

(Added and amended Pub. L. 116-283, div. A, title XVIII, §1819(a), (c), Jan. 1, 2021, 134 Stat. 4189.)

CODIFICATION

The text of subsec. (b) of section 2326 of this title, which was transferred to this section, redesignated as subsec. (a), and amended by Pub. L. 116-283, §1819(c)(1), (2), was based on Pub. L. 99-500, §101(c) [title X,