

COMPETITIVE AWARD OF CONTRACTS FOR
RECONSTRUCTION ACTIVITIES IN IRAQ

Pub. L. 108-136, div. A, title VIII, §805(a), Nov. 24, 2003, 117 Stat. 1542, provided that: “The Department of Defense shall fully comply with [former] chapter 137 of title 10, United States Code, and other applicable procurement laws and regulations for any contract awarded for reconstruction activities in Iraq, and shall conduct a full and open competition for performing work needed for the reconstruction of the Iraqi oil industry.”

§ 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 procedures 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 subsections (a)(1) and (b) 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;

Pub. L. 117-81, div. A, title XVII, §1701(d)(3), Dec. 27, 2021, 135 Stat. 2136.)

Editorial Notes

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. 117-81 substituted “subsections (a)(1) and (b)” for “paragraphs (1) and (2)”.

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)”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 117-81 to take effect immediately after the amendments made by title XVIII of Pub. L. 116-283 have taken effect, see section 1701(a)(3) of Pub. L. 117-81, set out in a note preceding section 3001 of this title and Effective Date note below.

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