

quisition Regulation provisions referred to in section 1901(e) of title 41.

(Added and amended Pub. L. 116-283, div. A, title XVIII, §1811(d)(1), (9), Jan. 1, 2021, 134 Stat. 4166, 4170.)

Editorial Notes

CODIFICATION

The text of subsec. (g) of section 2304 of this title, which was transferred to this section and amended by Pub. L. 116-283, §1811(d)(9), was based on Pub. L. 98-369, div. B, title VII, §2723(a)(1)(C), July 18, 1984, 98 Stat. 1187; Pub. L. 100-26, §7(d)(3)(A), Apr. 21, 1987, 101 Stat. 281; Pub. L. 101-510, div. A, title VIII, §806(b), Nov. 5, 1990, 104 Stat. 1592; Pub. L. 102-25, title VII, §701(d)(2)(A), Apr. 6, 1991, 105 Stat. 114; Pub. L. 103-355, title I, §1001(2), title IV, §4401(a), Oct. 13, 1994, 108 Stat. 3249, 3347; Pub. L. 104-106, div. D, title XLII, §4202(a)(1), Feb. 10, 1996, 110 Stat. 652; Pub. L. 105-85, div. A, title VIII, §850(f)(3)(B), Nov. 18, 1997, 111 Stat. 1850; Pub. L. 111-350, §5(b)(12)(D), Jan. 4, 2011, 124 Stat. 3843; Pub. L. 115-232, div. A, title VIII, §836(c)(2), Aug. 13, 2018, 132 Stat. 1864.

PRIOR PROVISIONS

A prior section 3205, act Aug. 10, 1956, ch. 1041, 70A Stat. 173; Pub. L. 85-600, §1(3), Aug. 6, 1958, 72 Stat. 522; Pub. L. 85-861, §1(60), (65), Sept. 2, 1958, 72 Stat. 1462, 1463; Pub. L. 95-551, §2, Oct. 30, 1978, 92 Stat. 2069, prescribed authorized strength of Regular Army in commissioned officers on active list, 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.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116-283, §1811(d)(9)(A), (C), inserted heading, struck out par. (1) designation before “In order to”, and redesignated subpars. (A) and (B) as pars. (1) and (2), respectively. Former pars. (2) to (4) redesignated subsecs. (b) to (d), respectively.

Pub. L. 116-283, §1811(d)(9), redesignated subsec. (g) of section 2304 of this title as subsec. (a) of this section.

Subsec. (b). Pub. L. 116-283, §1811(d)(9)(B), (D), redesignated subsec. (a)(2) as (b), inserted heading, and substituted “subsection (a)” for “paragraph (1)”.

Subsec. (c). Pub. L. 116-283, §1811(d)(9)(B), (E), redesignated subsec. (a)(3) as (c) and inserted heading.

Subsec. (d). Pub. L. 116-283, §1811(d)(9)(B), (F), redesignated subsec. (a)(4) as (d) and inserted heading.

Statutory Notes and Related Subsidiaries

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.

§ 3206. Planning and solicitation requirements

(a) PLANNING AND SPECIFICATIONS.—

(1) PREPARING FOR PROCUREMENT.—In preparing for the procurement of property or services, the head of an agency shall—

(A) specify the agency’s needs and solicit bids or proposals in a manner designed to achieve full and open competition for the procurement;

(B) use advance procurement planning and market research; and

(C) develop specifications in such manner as is necessary to obtain full and open com-

petition with due regard to the nature of the property or services to be acquired.

(2) REQUIREMENTS OF SPECIFICATIONS.—Each solicitation under chapter 137 legacy provisions shall include specifications which—

(A) consistent with the provisions of chapter 137 legacy provisions, permit full and open competition; and

(B) include restrictive provisions or conditions only to the extent necessary to satisfy the needs of the agency or as authorized by law.

(3) TYPES OF SPECIFICATIONS.—For the purposes of paragraphs (1) and (2), the type of specification included in a solicitation shall depend on the nature of the needs of the agency and the market available to satisfy such needs. Subject to such needs, specifications may be stated in terms of—

(A) function, so that a variety of products or services may qualify;

(B) performance, including specifications of the range of acceptable characteristics or of the minimum acceptable standards; or

(C) design requirements.

(b) CONTENTS OF SOLICITATION.—In addition to the specifications described in subsection (a), a solicitation for sealed bids or competitive proposals (other than for a procurement for commercial products or commercial services using special simplified procedures or a purchase for an amount not greater than the simplified acquisition threshold) shall at a minimum include—

(1) a statement of—

(A) all significant factors and significant subfactors which the head of the agency reasonably expects to consider in evaluating sealed bids (including price) or competitive proposals (including cost or price, cost-related or price-related factors and subfactors, and noncost-related or nonprice-related factors and subfactors); and

(B) the relative importance assigned to each of those factors and subfactors; and

(2)(A) in the case of sealed bids—

(i) a statement that sealed bids will be evaluated without discussions with the bidders; and

(ii) the time and place for the opening of the sealed bids; or

(B) in the case of competitive proposals—

(i) either a statement that the proposals are intended to be evaluated with, and award made after, discussions with the offerors, or a statement that the proposals are intended to be evaluated, and award made, without discussions with the offerors (other than discussions conducted for the purpose of minor clarification) unless discussions are determined to be necessary; and

(ii) the time and place for submission of proposals.

(c) EVALUATION FACTORS.—

(1) IN GENERAL.—In prescribing the evaluation factors to be included in each solicitation for competitive proposals, the head of an agency—

(A) shall (except as provided in paragraph (3)) clearly establish the relative importance assigned to the evaluation factors and subfactors, including the quality of the product or services to be provided (including technical capability, management capability, prior experience, and past performance of the offeror);

(B) shall (except as provided in paragraph (3)) include cost or price to the Federal Government as an evaluation factor that must be considered in the evaluation of proposals; and

(C) shall disclose to offerors whether all evaluation factors other than cost or price, when combined, are—

(i) significantly more important than cost or price;

(ii) approximately equal in importance to cost or price; or

(iii) significantly less important than cost or price.

(2) RESTRICTION ON IMPLEMENTING REGULATIONS.—The regulations implementing paragraph (1)(C) may not define the terms “significantly more important” and “significantly less important” as specific numeric weights that would be applied uniformly to all solicitations or a class of solicitations.

(3) EXCEPTIONS FOR CERTAIN MULTIPLE TASK OR DELIVERY ORDER CONTRACTS.—If the head of an agency issues a solicitation for multiple task or delivery order contracts under section 3403(d)(1)(B) of this title for the same or similar services and intends to make a contract award to each qualifying offeror—

(A) cost or price to the Federal Government need not, at the Government’s discretion, be considered under paragraph (1)(B) as an evaluation factor for the contract award; and

(B) if, pursuant to subparagraph (A), cost or price to the Federal Government is not considered as an evaluation factor for the contract award—

(i) the disclosure requirement of paragraph (1)(C) shall not apply; and

(ii) cost or price to the Federal Government shall be considered in conjunction with the issuance pursuant to section 3406(c) of this title of a task or delivery order under any contract resulting from the solicitation.

(4) DEFINITION.—In paragraph (3), the term “qualifying offeror” means an offeror that—

(A) is determined to be a responsible source;

(B) submits a proposal that conforms to the requirements of the solicitation; and

(C) the contracting officer has no reason to believe would likely offer other than fair and reasonable pricing.

(5) EXCLUSION OF APPLICABILITY TO CERTAIN CONTRACTS.—Paragraph (3) shall not apply to multiple task or delivery order contracts if the solicitation provides for sole source task or delivery order contracts pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

(d) ADDITIONAL INFORMATION IN SOLICITATION.—Nothing in this section prohibits an agency from—

(1) providing additional information in a solicitation, including numeric weights for all evaluation factors and subfactors on a case-by-case basis; or

(2) stating in a solicitation that award will be made to the offeror that meets the solicitation’s mandatory requirements at the lowest cost or price.

(e) LIMITATION ON EVALUATION OF PURCHASE OPTIONS.—The head of an agency, in issuing a solicitation for a contract to be awarded using sealed bid procedures, may not include in such solicitation a clause providing for the evaluation of prices for options to purchase additional property or services under the contract unless the head of the agency has determined that there is a reasonable likelihood that the options will be exercised.

(Added and amended Pub. L. 116-283, div. A, title XVIII, §1811(e), Jan. 1, 2021, 134 Stat. 4170; Pub. L. 117-81, div. A, title XVII, §1701(b)(4)(F), (d)(4), Dec. 27, 2021, 135 Stat. 2133, 2136.)

CODIFICATION

The text of subsec. (a) of section 2305 of this title, which was transferred to this section and amended by Pub. L. 116-283, §1811(e)(2)-(7), was based on Pub. L. 98-369, div. B, title VII, §2723(b), July 18, 1984, 98 Stat. 1191; Pub. L. 99-500, §101(c) [title X, §924(a)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-153, and Pub. L. 99-591, §101(c) [title X, §924(a)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-153; Pub. L. 99-661, div. A, title IX, formerly title IV, §924(a), Nov. 14, 1986, 100 Stat. 3932, renumbered title IX, Pub. L. 100-26, §3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 101-510, div. A, title VIII, §802(a)-(c), Nov. 5, 1990, 104 Stat. 1588, 1589; Pub. L. 103-355, title I, §1011, 1012, title IV, §4401(b), Oct. 13, 1994, 108 Stat. 3254, 3255, 3347; Pub. L. 104-106, div. D, title XLII, §4202(a)(2), Feb. 10, 1996, 110 Stat. 653; Pub. L. 114-328, div. A, title VIII, §825(a), Dec. 23, 2016, 130 Stat. 2279; Pub. L. 115-232, div. A, title VIII, §836(c)(3)(A), Aug. 13, 2018, 132 Stat. 1864.

Editorial Notes

PRIOR PROVISIONS

A prior section 3206, act Aug. 10, 1956, ch. 1041, 70A Stat. 173; Pub. L. 85-155, title I, §101(4), Aug. 21, 1957, 71 Stat. 376; Pub. L. 90-130, §1(9)(A), (B), Nov. 8, 1967, 81 Stat. 375, prescribed authorized strength of Regular Army Nurse Corps in commissioned officers on active list of Regular Army, 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—Pub. L. 116-283, §1811(e)(2), transferred subsec. (a) of section 2305 of this title to this section and redesignated pars. (2) to (5) thereof as subsecs. (b) to (e), respectively.

Subsec. (a). Pub. L. 116-283, §1811(e)(3)(A), (E)(i), inserted heading and redesignated subpars. (A) to (C) of par. (1) as pars. (1) to (3), respectively.

Subsec. (a)(1). Pub. L. 116-283, §1811(e)(3)(E), as amended by Pub. L. 117-81, §1701(b)(4)(F), redesignated par. (1)(A) as (1), inserted heading, redesignated cls. (i) to (iii) as subpars. (A) to (C), respectively, and realigned margins.

Subsec. (a)(2). Pub. L. 116-283, §1811(e)(3)(A), (B), (D), redesignated par. (1)(B) as (2), inserted heading, and realigned margin, redesignated cls. (i) and (ii) as subpars. (A) and (B), respectively, and substituted “chapter 137 legacy provisions” for “this chapter” in introductory

provisions and in subpar. (A). Former par. (2) redesignated subsec. (b).

Subsec. (a)(3). Pub. L. 117–81, §1701(d)(4), substituted “paragraphs (1) and (2)” for “subparagraphs (A) and (B)” in introductory provisions.

Pub. L. 116–283, §1811(e)(3)(A), (C), (D), as amended by Pub. L. 117–81, §1701(b)(4)(F), redesignated par. (1)(C) as (3), inserted heading, and realigned margin and redesignated cls. (i) to (iii) as subpars. (A) to (C), respectively. Former par. (3) redesignated subsec. (c).

Subsec. (b). Pub. L. 116–283, §1811(e)(2), (4), redesignated subsec. (a)(2) as (b), inserted heading, and substituted “subsection (a)” for “paragraph (1)” in introductory provisions, redesignated subpar. (A) and its cls. (i) and (ii) as par. (1) and subpars. (A) and (B), respectively, and redesignated subpar. (B), its cls. (i) and (ii), and each of their subcls. (I) and (II) as par. (2), subpars. (A) and (B), and cls. (i) and (ii), respectively.

Subsec. (c). Pub. L. 116–283, §1811(e)(2), (5)(A), (B), redesignated subsec. (a)(3) as (c), inserted heading, redesignated subpars. (A) to (E) as pars. (1) to (5), respectively, and realigned margins.

Subsec. (c)(1). Pub. L. 116–283, §1811(e)(5)(A), (C), inserted heading, substituted “paragraph (3)” for “subparagraph (C)” in two places, redesignated cls. (i) to (iii) as subpars. (A) to (C), respectively, and, in subpar. (C) as redesignated, redesignated subcls. (I) to (III) as cls. (i) to (iii), respectively.

Subsec. (c)(2). Pub. L. 116–283, §1811(e)(5)(B), (D), redesignated par. (3)(B) as (2), inserted heading, and substituted “paragraph (1)(C)” for “clause (iii) of subparagraph (A)”.

Subsec. (c)(3). Pub. L. 116–283, §1811(e)(5)(B), (E), redesignated par. (3)(C) as (3), inserted heading, and substituted “section 3403(d)(1)(B)” for “section 2304a(d)(1)(B)” in introductory provisions; redesignated cl. (i) as subpar. (A) and substituted “paragraph (1)(B)” for “clause (ii) of subparagraph (A)” and redesignated cl. (ii) and its subcls. (I) and (II) as subpar. (B) and cls. (i) and (ii), respectively, and substituted “subparagraph (A)” for “clause (i)” in introductory provisions, “paragraph (1)(C)” for “clause (iii) of subparagraph (A)” in cl. (i), and “section 3406(c)” for “section 2304c(b)” in cl. (ii).

Subsec. (c)(4). Pub. L. 116–283, §1811(e)(5)(B), (F), redesignated par. (3)(D) as (4), inserted heading, substituted “paragraph (3)” for “subparagraph (C)” in introductory provisions, and redesignated cls. (i) to (iii) as subpars. (A) to (C), respectively.

Subsec. (c)(5). Pub. L. 116–283, §1811(e)(5)(B), (G), redesignated par. (3)(E) as (5), inserted heading, and substituted “Paragraph (3)” for “Subparagraph (C)”.

Subsec. (d). Pub. L. 116–283, §1811(e)(2), (6), redesignated subsec. (a)(4) as (d), inserted heading, substituted “this section” for “this subsection” in introductory provisions, and redesignated subpars. (A) and (B) as pars. (1) and (2), respectively.

Subsec. (e). Pub. L. 116–283, §1811(e)(2), (7), redesignated subsec. (a)(5) as (e) and inserted heading.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1701(b)(4)(F) of Pub. L. 117–81 applicable as if included in the enactment of title XVIII of Pub. L. 116–283 as enacted, see section 1701(a)(2) of Pub. L. 117–81, set out in a note preceding section 3001 of this title and Effective Date note below.

Amendment by section 1701(d)(4) of 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 sec-

tion 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

PILOT PROGRAM TO USE ALPHA CONTRACTING TEAMS FOR COMPLEX REQUIREMENTS

Pub. L. 116–92, div. A, title VIII, §802, Dec. 20, 2019, 133 Stat. 1483, provided that:

“(a) IN GENERAL.—(1) The Secretary of Defense shall select at least 2, and up to 5, initiatives to participate in a pilot [program] to use teams that, with the advice of expert third parties, focus on the development of complex contract technical requirements for services, with each team focusing on developing achievable technical requirements that are appropriately valued and identifying the most effective acquisition strategy to achieve those requirements.

“(2) The Secretary shall develop metrics for tracking progress of the program at improving quality and acquisition cycle time.

“(b) DEVELOPMENT OF CRITERIA AND INITIATIVES.—(1) Not later than February 1, 2020, the Secretary of Defense shall establish the pilot program and notify the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] of the criteria used to select initiatives and the metrics used to track progress.

“(2) Not later than May 1, 2020, the Secretary shall notify the congressional defense committees of the initiatives selected for the program.

“(3) Not later than December 1, 2020, the Secretary shall brief the congressional defense committees on the progress of the selected initiatives, including the progress of the initiatives at improving quality and acquisition cycle time according to the metrics developed under subsection (a)(2).”

§ 3207. Assessment before contract for acquisition of supplies is entered into

The Secretary of Defense shall ensure that before a contract for the delivery of supplies to the Department of Defense is entered into—

(1) when the appropriate officials of the Department are making an assessment of the most advantageous source for acquisition of the supplies (considering quality, price, delivery, and other factors), there is a review of the availability and cost of each item of supply—

(A) through the supply system of the Department of Defense; and

(B) under standard Government supply contracts, if the item is in a category of supplies defined under regulations of the Secretary of Defense as being potentially available under a standard Government supply contract; and

(2) there is a review of both the procurement history of the item and a description of the item, including, when necessary for an adequate description of the item, a picture, drawing, diagram, or other graphic representation of the item.

(Added and amended Pub. L. 116–283, div. A, title XVIII, §1811(f), Jan. 1, 2021, 134 Stat. 4173.)

Editorial Notes

CODIFICATION

The text of subsec. (c) of section 2305 of this title, which was transferred to this section and amended by Pub. L. 116–283, §1811(f)(2), was based on Pub. L. 98–525, title XII, §1213(a), Oct. 19, 1984, 98 Stat. 2591.

PRIOR PROVISIONS

A prior section 3207, act Aug. 10, 1956, ch. 1041, 70A Stat. 173; Pub. L. 85–155, title I, §101(5), Aug. 21, 1957, 71