

vided for determination of the place on a promotion list of name of each person who is originally appointed in a commissioned grade in Regular Army and whose name is to be carried on a promotion list, other than persons appointed in Medical Corps, Dental Corps, Army Nurse Corps, or Army Medical Specialist Corps. See section 624 of this title.

Section 3296, acts Aug. 10, 1956, ch. 1041, 70A Stat. 184; Aug. 21, 1957, Pub. L. 85-155, title I, §101(10), 71 Stat. 377; Aug. 6, 1958, Pub. L. 85-600, §1(5), 72 Stat. 522; June 4, 1968, Pub. L. 90-329, 82 Stat. 170; Oct. 20, 1978, Pub. L. 95-485, title VIII, §820(d)(2), 92 Stat. 1627; Oct. 30, 1978, Pub. L. 95-551, §2, 92 Stat. 2069, provided for promotion lists in Regular Army for all commissioned officers in grades below brigadier general on active list, with exceptions, which officers are known as “promotion-list officers”, a separate list for Chaplains and each of the several branches of Army Medical Department, and determination of place on list upon transfer or promotion. See section 624 of this title.

Section 3297, acts Aug. 10, 1956, ch. 1041, 70A Stat. 185; Aug. 21, 1957, Pub. L. 85-155, title I, §101(11), 71 Stat. 377; July 12, 1960, Pub. L. 86-616, §1(1), 74 Stat. 386; Oct. 20, 1978, Pub. L. 95-485, title VIII, §820(d)(3), 92 Stat. 1627, provided for selection boards to recommend promotion-list officers and brigadier generals of Regular Army for promotion in Regular Army. See section 611 et seq. of this title.

Section 3298, acts Aug. 10, 1956, ch. 1041, 70A Stat. 185; Aug. 21, 1957, Pub. L. 85-155, title I, §101(12), 71 Stat. 377; Nov. 8, 1967, Pub. L. 90-130, §1(10)(A), 81 Stat. 375, provided for promotion from grade of second lieutenant to first lieutenant after 3 years of service, discharge under section 3814 of this title upon failure of promotion, and filling vacancies for first lieutenants with second lieutenants prior to completion of 3 years of service. See section 630 of this title.

Section 3299, acts Aug. 10, 1956, ch. 1041, 70A Stat. 186; Aug. 21, 1957, Pub. L. 85-155, title I, §101(13), 71 Stat. 377; Sept. 2, 1958, Pub. L. 85-861, §33(a)(21), 72 Stat. 1565; Nov. 8, 1967, Pub. L. 90-130, §1(10)(B), 81 Stat. 375, provided that promotion-list officers be promoted to regular grades of captain, major, and lieutenant colonel, after specified length of service or without regard to length of service in view of actual or anticipated vacancies if Secretary of the Army so directs, or be eliminated from active list under section 3303 of this title and a promotion-list officer who has twice been considered and not recommended for promotion to any one regular grade not be again considered for promotion under this section. See sections 631 and 632 of this title.

Section 3300, acts Aug. 10, 1956, ch. 1041, 70A Stat. 186; July 12, 1960, Pub. L. 86-616, §1(2), 74 Stat. 386, provided for selection board procedure when promotion-list officers in regular grade of first lieutenant, captain, or major are to be considered for promotion under section 3299 of this title. See section 611 et seq. of this title.

AMENDMENTS

2021—Pub. L. 116-283, §1813(g), renumbered section 2339a of this title as this section.

Subsec. (b)(1). Pub. L. 116-283, §1081(a)(36), inserted “and Security” after “for Intelligence”.

Subsec. (b)(3)(A). Pub. L. 116-283, §1813(g)(1), substituted “section 3204(e)(2)” for “section 2304(f)(3)”.

Subsec. (e)(2)(A). Pub. L. 116-283, §1813(g)(2), substituted “section 3243” for “section 2319”.

Subsec. (e)(3)(A). Pub. L. 116-283, §1813(g)(3)(A), substituted “section 3206(a)(3)(B)” for “section 2305(a)(1)(C)(ii)” and “section 3206(b)(1)” for “section 2305(a)(2)(A)”.

Subsec. (e)(3)(B). Pub. L. 116-283, §1813(g)(3)(B), substituted “section 3406(d)(3)” for “section 2304c(d)(3)”.

2019—Subsec. (e)(5). Pub. L. 116-92 substituted “section 3552(b)(6)” for “section 3542(b)”.

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

Under Secretary of Defense for Intelligence redesignated and references deemed to refer to Under Sec-

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—[Reserved]

Sec. 3271. [Reserved].

Editorial Notes

AMENDMENTS

2021—Pub. L. 117-81, div. A, title XVII, §1701(i)(3), Dec. 27, 2021, 135 Stat. 2141, amended Pub. L. 116-283, div. A, title XVIII, §1813(h), Jan. 1, 2021, 134 Stat. 4181, which added this analysis, by substituting “[Reserved]” for “PLANNING AND SOLICITATION RELATING TO PARTICULAR ITEMS OR SERVICES” in chapter heading.

Subpart C—Contracting Methods and Contract Types

Editorial Notes

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.

Editorial Notes

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.

Statutory Notes and Related Subsidiaries

DEVELOPMENT OF PROCUREMENT ADMINISTRATIVE LEAD TIME

Pub. L. 115-91, div. A, title VIII, §886, Dec. 12, 2017, 131 Stat. 1505, provided that:

“(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Dec. 12, 2017], the Secretary of Defense shall develop, make available for public comment, and finalize—

“(1) a definition of the term ‘Procurement Administrative Lead Time’ or ‘PALT’, to be applied Department of Defense-wide, that describes the amount of time from the date on which a solicitation is issued to the date of an initial award of a contract or task order of the Department of Defense; and

“(2) a plan for measuring and publicly reporting data on PALT for Department of Defense contracts

and task orders above the simplified acquisition threshold.

“(b) REQUIREMENT FOR DEFINITION.—Unless the Secretary determines otherwise, the amount of time in the definition of PALT developed under subsection (a) shall—

“(1) begin on the date on which the initial solicitation is issued for a contract or task order of the Department of Defense by the Secretary of a military department or head of a Defense Agency; and

“(2) end on the date of the award of the contract or task order.

“(c) COORDINATION.—In developing the definition of PALT, the Secretary shall coordinate with—

“(1) the senior contracting official of each military department and Defense Agency to determine the variations of the definition in use across the Department of Defense and each military department and Defense Agency; and

“(2) the Administrator of the General Services Administration on modifying the existing data system of the Federal Government to determine the date on which the initial solicitation is issued.

“(d) USE OF EXISTING PROCUREMENT DATA SYSTEMS.—In developing the plan for measuring and publicly reporting data on PALT required by subsection (a), the Secretary shall, to the maximum extent practicable, rely on the information contained in the Federal procurement data system established pursuant to section 1122(a)(4) of title 41, United States Code, including any modifications to that system.”

§ 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.)

Editorial Notes

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.

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.

INCLUSION OF BEST AVAILABLE INFORMATION REGARDING PAST PERFORMANCE OF SUBCONTRACTORS AND JOINT VENTURE PARTNERS

Pub. L. 115–232, div. A, title VIII, §823, Aug. 13, 2018, 132 Stat. 1855, provided that: “Not later than 180 days

after the date of the enactment of this Act [Aug. 13, 2018], the Secretary of Defense, in consultation with the Federal Acquisition Regulatory Council and the Administrator for Federal Procurement Policy, shall develop policies for the Department of Defense to ensure the best information regarding past performance of certain subcontractors and joint venture partners is available when awarding Department of Defense contracts. The policies shall include proposed revisions to the Defense Federal Acquisition Regulation Supplement as follows:

“(1) Required performance evaluations, as part of a government-wide evaluation reporting tool, for first-tier subcontractors on construction and architect-engineer contracts performing a portion of the contract valued at the threshold set forth in section 42.1502(e) of the Federal Acquisition Regulation, or 20 percent of the value of the prime contract, whichever is higher, provided—

“(A) the information included in rating the subcontractor is not inconsistent with the information included in the rating for the prime contractor;

“(B) the subcontractor evaluation is conducted consistent with the provisions of section 42.15 of the Federal Acquisition Regulation;

“(C) negative evaluations of a subcontractor in no way obviate the prime contractor’s responsibility for successful completion of the contract and management of its subcontractors; and

“(D) that in the judgment of the contracting officer, the overall execution of the work is impacted by the performance of the subcontractor or subcontractors.

“(2) Required performance evaluations, as part of a government-wide evaluation reporting tool, of individual partners of joint venture-awarded construction and architect-engineer contracts valued at the threshold set forth in section 42.1502(e) of the Federal Acquisition Regulation, to ensure that past performance on joint venture projects is considered in future awards to individual joint venture partners, provided—

“(A) at a minimum, the rating for joint ventures includes an identification that allows the evaluation to be retrieved for each partner of the joint venture;

“(B) each partner, through the joint venture, is given the same opportunity to submit comments, rebutting statements, or additional information, consistent with the provisions of section 42.15 of the Federal Acquisition Regulation; and

“(C) the rating clearly identifies the responsibilities of joint venture partners for discrete elements of the work where the partners are not jointly and severally responsible for the project.

“(3) Processes to request exceptions from the annual evaluation requirement under section 42.1502(a) of the Federal Acquisition Regulation for construction and architect-engineer contracts where submission of the annual evaluations would not provide the best representation of the performance of a contractor, including subcontractors and joint venture partners, including—

“(A) where no severable element of the work has been completed;

“(B) where the contracting officer determines that—

“(i) an insubstantial portion of the contract work has been completed in the preceding year; and

“(ii) the lack of performance is at no fault to the contractor; or

“(C) where the contracting officer determines that there is an issue in dispute which, until resolved, would likely cause the annual rating to in-