

accurately reflect the past performance of the contractor.”

**INCLUSION OF DATA ON CONTRACTOR PERFORMANCE IN PAST PERFORMANCE DATABASES FOR SOURCE SELECTION DECISIONS**

Pub. L. 112–81, div. A, title VIII, § 806, Dec. 31, 2011, 125 Stat. 1487, as amended by Pub. L. 112–239, div. A, title X, § 1076(a)(11), Jan. 2, 2013, 126 Stat. 1948; Pub. L. 116–92, div. A, title IX, § 902(35), Dec. 20, 2019, 133 Stat. 1547, provided that:

“(a) **STRATEGY ON INCLUSION REQUIRED.**—Not later than 180 days after the date of the enactment of this Act [Dec. 31, 2011], the Under Secretary of Defense for Acquisition and Sustainment shall develop a strategy for ensuring that timely, accurate, and complete information on contractor performance is included in past performance databases used for making source selection decisions.

“(b) **ELEMENTS.**—The strategy required by subsection (a) shall, at a minimum—

“(1) establish standards for the timeliness and completeness of past performance submissions for purposes of databases described in subsection (a);

“(2) assign responsibility and management accountability for the completeness of past performance submissions for such purposes; and

“(3) ensure that past performance submissions for such purposes are consistent with award fee evaluations in cases where such evaluations have been conducted.

“(c) **CONTRACTOR COMMENTS.**—Not later than 180 days after the date of the enactment of this Act [Dec. 31, 2011], the Under Secretary of Defense for Acquisition and Sustainment shall revise the Defense Supplement to the Federal Acquisition Regulation to require the following:

“(1) That affected contractors are provided, in a timely manner, information on contractor performance to be included in past performance databases in accordance with subsection (a).

“(2) That such contractors are afforded up to 14 calendar days, from the date of delivery of the information provided in accordance with paragraph (1), to submit comments, rebuttals, or additional information pertaining to past performance for inclusion in such databases.

“(3) That agency evaluations of contractor past performance, including any information submitted under paragraph (2), are included in the relevant past performance database not later than the date that is 14 days after the date of delivery of the information provided in accordance with paragraph (1).

“(d) **CONSTRUCTION.**—Nothing in this section shall be construed to prohibit a contractor from submitting comments, rebuttals, or additional information pertaining to past performance after the period described in subsection (c)(2) has elapsed or to prohibit a contractor from challenging a past performance evaluation in accordance with applicable laws, regulations, or procedures.

“(e) **COMPTROLLER GENERAL REPORT.**—Not later than 18 months after the date of the enactment of this Act [Dec. 31, 2011], the Comptroller General of the United States shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the actions taken by the Under Secretary of Defense for Acquisition and Sustainment pursuant to this section, including an assessment of the extent to which such actions have achieved the objectives of this section.”

**§ 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 ac-

cordance 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.)

**Editorial Notes**

**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 subssecs. (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.

**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.

**§ 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 AWARDING 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.

(e) **EXCEPTION FOR PERISHABLE SUBSISTENCE ITEMS.**—Subsections (c) and (d) do 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; Pub. L. 117-81, div. A, title XVII, § 1701(b)(6)(A), Dec. 27, 2021, 135 Stat. 2133.)

### Editorial Notes

#### 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 consid-

ered 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)(C), (G), as amended and added by Pub. L. 117-81, § 1701(b)(6)(A), designated the second sentence of subsec. (c) as subsec. (d) and inserted heading.

Subsec. (e). Pub. L. 116-283, § 1816(c)(5)(C), (H), as amended and added by Pub. L. 117-81, § 1701(b)(6)(A), designated the third sentence of subsec. (c) as subsec. (e), inserted heading, and substituted “Subsections (c) and (d) do not” for “This subparagraph does not”.

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by 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.

#### 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.

#### PROCUREMENT OF TENTS OR OTHER TEMPORARY STRUCTURES

Pub. L. 112-81, div. A, title III, § 368, Dec. 31, 2011, 125 Stat. 1381, provided that:

“(a) **IN GENERAL.**—In procuring tents or other temporary structures for use by the Armed Forces, and in establishing or maintaining an alternative source for such tents and structures, the Secretary of Defense shall award contracts that provide the best value to the United States. In determining the best value to the United States under this section, the Secretary shall consider the total life-cycle costs of such tents or structures, including the costs associated with any equipment or fuel needed to heat or cool such tents or structures.

“(b) **INTERAGENCY PROCUREMENT.**—The requirements of this section shall apply to any agency or department of the United States that procures tents or other temporary structures on behalf of the Department of Defense.”

### § 3304. Post-award debriefings

(a) **REQUEST FOR DEBRIEFING.**—When a contract is awarded by the head of an agency on the