

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

basis of competitive proposals, an unsuccessful offeror, upon written request received by the agency within 3 days after the date on which the unsuccessful offeror receives the notification of the contract award, shall be debriefed and furnished the basis for the selection decision and contract award.

(b) **WHEN DEBRIEFING TO BE CONDUCTED.**—The head of the agency shall debrief the offeror within, to the maximum extent practicable, five days after receipt of the request by the agency.

(c) **INFORMATION TO BE PROVIDED.**—(1) The debriefing shall include, at a minimum—

(A) the agency's evaluation of the significant weak or deficient factors in the offeror's offer;

(B) the overall evaluated cost and technical rating of the offer of the contractor awarded the contract and the overall evaluated cost and technical rating of the offer of the debriefed offeror;

(C) the overall ranking of all offers;

(D) a summary of the rationale for the award;

(E) in the case of a proposal that includes a commercial product that is an end item under the contract, the make and model of the item being provided in accordance with the offer of the contractor awarded the contract;

(F) reasonable responses to relevant questions posed by the debriefed offeror as to whether source selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency; and

(G) an opportunity for a disappointed offeror to submit, within two business days after receiving a post-award debriefing, additional questions related to the debriefing.

(2) The agency shall respond in writing to any additional question submitted under paragraph (1)(G) within five business days after receipt of the question. The agency shall not consider the debriefing to be concluded until the agency delivers its written responses to the disappointed offeror.

(d) **INFORMATION NOT TO BE INCLUDED.**—The debriefing may not include point-by-point comparisons of the debriefed offeror's offer with other offers and may not disclose any information that is exempt from disclosure under section 552(b) of title 5.

(e) **INCLUSION OF STATEMENT IN SOLICITATION.**—Each solicitation for competitive proposals shall include a statement that information described in subsection (c) may be disclosed in post-award debriefings.

(f) **AFTER SUCCESSFUL PROTEST.**—If, within one year after the date of the contract award and as a result of a successful procurement protest, the agency seeks to fulfill the requirement under the protested contract either on the basis of a new solicitation of offers or on the basis of new best and final offers requested for that contract, the agency shall make available to all offerors—

(1) the information provided in debriefings under this paragraph regarding the offer of the contractor awarded the contract; and

(2) the same information that would have been provided to the original offerors.

(g) **SUMMARY TO BE INCLUDED IN FILE.**—The contracting officer shall include a summary of

any debriefing conducted this section¹ in the contract file.

(Added and amended Pub. L. 116-283, div. A, title XVIII, §1816(c)(2)(D), (6), Jan. 1, 2021, 134 Stat. 4182, 4183.)

Editorial Notes

CODIFICATION

The text of subsec. (b)(5) of section 2305 of this title, which was transferred to this section, redesignated as subsecs. (a) to (f), and amended by Pub. L. 116-283, §1816(c)(1), (2)(D), (6)(A)–(J), was based on Pub. L. 103-355, title I, §1014(2), Oct. 13, 1994, 108 Stat. 3256; Pub. L. 104-106, div. D, title XLI, §4104(a)(1), Feb. 10, 1996, 110 Stat. 644; Pub. L. 115-91, div. A, title VIII, §818(b), Dec. 12, 2017, 131 Stat. 1463; Pub. L. 115-232, div. A, title VIII, §836(c)(3), Aug. 13, 2018, 132 Stat. 1864.

For derivation of subsec. (g) of this section, see Codification note related to subsec. (f) set out under section 3305 of this title.

PRIOR PROVISIONS

A prior section 3304, act Aug. 10, 1956, ch. 1041, 70A Stat. 189; Pub. L. 85-155, title I, §101(14), Aug. 21, 1957, 71 Stat. 378, covered promotion of officers in the Army Nurse Corps and the Army Medical Specialists Corps to colonel and lieutenant colonel, set out the requirements of officers on the promotion lists, and provided for the procedure to be followed in determining the order of promotion, prior to repeal by Pub. L. 90-130, §1(10)(C), Nov. 8, 1967, 81 Stat. 375.

AMENDMENTS

2021—Pub. L. 116-283, §1816(c)(6)(A), transferred subsec. (b)(5) of section 2305 of this title to this section and struck out par. (5) designation at beginning.

Subsec. (a). Pub. L. 116-283, §1816(c)(6)(B), (E), redesignated subpar. (A) of former section 2305(b)(5) of this title as subsec. (a) of this section and inserted heading. Former second sentence of subsec. (a) designated subsec. (b).

Subsec. (b). Pub. L. 116-283, §1816(c)(6)(C), (F), designated second sentence of subsec. (a) as subsec. (b) of this section and inserted heading.

Subsec. (c)(1). Pub. L. 116-283, §1816(c)(6)(B), (G)(i), (ii), redesignated subpar. (B) of former section 2305(b)(5) of this title and its cls. (i) to (vii) as subsec. (c)(1) of this section and subpars. (A) to (G), respectively, and inserted subsec. heading.

Subsec. (c)(2). Pub. L. 116-283, §1816(c)(6)(D), (G)(iii), redesignated subpar. (C) of former section 2305(b)(5) of this title as subsec. (c)(2) of this section and substituted “paragraph (1)(G)” for “subparagraph (B)(vii)”.

Subsec. (d). Pub. L. 116-283, §1816(c)(6)(B), (H), redesignated subpar. (D) of former section 2305(b)(5) of this title as subsec. (d) of this section and inserted heading.

Subsec. (e). Pub. L. 116-283, §1816(c)(6)(B), (I), redesignated subpar. (E) of former section 2305(b)(5) of this title as subsec. (e) of this section, inserted heading, and substituted “subsection (c)” for “subparagraph (B)”.

Subsec. (f). Pub. L. 116-283, §1816(c)(6)(B), (J), redesignated subpar. (F) of former section 2305(b)(5) of this title as subsec. (f) of this section, inserted heading, and redesignated cls. (i) and (ii) as pars. (1) and (2), respectively.

Subsec. (g). Pub. L. 116-283, §1816(c)(6)(K), added subsec. (g) identical to subsec. (f) of section 3305 of this title.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section and amendment by Pub. L. 116-283 effective Jan. 1, 2022, with additional provisions for delayed im-

¹ So in original. Probably should be “under this section”.

plementation 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.

ENHANCED POST-AWARD DEBRIEFING RIGHTS; RELEASE OF CONTRACT AWARD INFORMATION

Pub. L. 115-91, div. A, title VIII, §818(a), Dec. 12, 2017, 131 Stat. 1463, provided that: “Not later than 180 days after the date of the enactment of this Act [Dec. 12, 2017], the Secretary of Defense shall revise the Department of Defense Supplement to the Federal Acquisition Regulation to require that all required post-award debriefings, while protecting the confidential and proprietary information of other offerors, include, at a minimum, the following:

“(1) In the case of a contract award in excess of \$100,000,000, a requirement for disclosure of the agency’s written source selection award determination, redacted to protect the confidential and proprietary information of other offerors for the contract award, and, in the case of a contract award in excess of \$10,000,000 and not in excess of \$100,000,000 with a small business or nontraditional contractor, an option for the small business or nontraditional contractor to request such disclosure.

“(2) A requirement for a written or oral debriefing for all contract awards and task or delivery orders valued at \$10,000,000 or higher.

“(3) Provisions ensuring that both unsuccessful and winning offerors are entitled to the disclosure described in paragraph (1) and the debriefing described in paragraph (2).

“(4) Robust procedures, consistent with section 2305(b)(5)(D) of title 10, United States Code [now 10 U.S.C. 3304(d)], and provisions implementing that section in the Federal Acquisition Regulation, to protect the confidential and proprietary information of other offerors.”

§ 3305. Pre-award debriefings

(a) REQUEST FOR DEBRIEFING.—When the contracting officer excludes an offeror submitting a competitive proposal from the competitive range (or otherwise excludes such an offeror from further consideration prior to the final source selection decision), the excluded offeror may request in writing, within three days after the date on which the excluded offeror receives notice of its exclusion, a debriefing prior to award.

(b) WHEN DEBRIEFING TO BE CONDUCTED.—The contracting officer shall make every effort to debrief the unsuccessful offeror as soon as practicable but may refuse the request for a debriefing if it is not in the best interests of the Government to conduct a debriefing at that time.

(c) PRECONDITION FOR POST-AWARD DEBRIEFING.—The contracting officer is required to debrief an excluded offeror in accordance with section 3304 of this title only if that offeror requested and was refused a preaward debriefing under subsections (a) and (b).

(d) INFORMATION TO BE PROVIDED.—The debriefing conducted under subsections (a) and (b) shall include—

(1) the executive agency’s evaluation of the significant elements in the offeror’s offer;

(2) a summary of the rationale for the offeror’s exclusion; and

(3) reasonable responses to relevant questions posed by the debriefed offeror as to whether source selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the executive agency.

(e) INFORMATION NOT TO BE DISCLOSED.—The debriefing conducted under subsections (a) and (b) may not disclose the number or identity of other offerors and shall not disclose information about the content, ranking, or evaluation of other offerors’ proposals.

(f) SUMMARY TO BE INCLUDED IN FILE.—The contracting officer shall include a summary of any debriefing conducted under this section in the contract file.

(Added and amended Pub. L. 116-283, div. A, title XVIII, §1816(c)(2)(E), (7), Jan. 1, 2021, 134 Stat. 4182, 4183; Pub. L. 117-81, div. A, title XVII, §1701(b)(6)(B), Dec. 27, 2021, 135 Stat. 2133.)

Editorial Notes

CODIFICATION

The text of subsec. (b)(6) of section 2305 of this title, which was transferred to this section, redesignated as subsecs. (a) to (e), and amended by Pub. L. 116-283, §1816(c)(1), (2)(E), (7)(A), (C)–(I), was based on Pub. L. 104-106, div. D, title XLI, §4104(a)(3), Feb. 10, 1996, 110 Stat. 644; Pub. L. 104-201, div. A, title X, §1074(a)(11), Sept. 23, 1996, 110 Stat. 2659.

The text of subsec. (b)(7) of section 2305 of this title, which was transferred to this section, redesignated as subsec. (f), and amended by Pub. L. 116-283, §1816(c)(1), (2)(E), (7)(B), (J), was based on Pub. L. 104-106, div. D, title XLI, §4104(a)(3), Feb. 10, 1996, 110 Stat. 644.

PRIOR PROVISIONS

A prior section 3305, act Aug. 10, 1956, ch. 1041, 70A Stat. 189; Pub. L. 85-155, title I, §101(16), Aug. 21, 1957, 71 Stat. 379; Pub. L. 90-130, §1(10)(D), (E), Nov. 8, 1967, 81 Stat. 375, related to promotion of officers in regular grade of lieutenant colonel to grade of colonel, 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 section 619 et seq. of this title.

AMENDMENTS

2021—Pub. L. 116-283, §1816(c)(7)(A), transferred subsec. (b)(6) of section 2305 of this title to this section and struck out par. (6) designation at beginning.

Subsec. (a). Pub. L. 116-283, §1816(c)(7)(C), (E), redesignated subpar. (A) of former section 2305(b)(6) of this title as subsec. (a) of this section and inserted heading. Former second sentence of subsec. (a) designated subsec. (b).

Subsec. (b). Pub. L. 116-283, §1816(c)(7)(D), (F), designated second sentence of subsec. (a) as subsec. (b) of this section and inserted heading.

Subsec. (c). Pub. L. 116-283, §1816(c)(7)(B), (G), redesignated subpar. (B) of former section 2305(b)(6) of this title as subsec. (c) of this section, inserted heading, and substituted “section 3304 of this title” for “paragraph (5)” and “subsections (a) and (b)” for “subparagraph (A)”.

Subsec. (d). Pub. L. 116-283, §1816(c)(7)(B), (H), redesignated subpar. (C) of former section 2305(b)(6) of this title and its cls. (i) to (iii) as subsec. (d) of this section and pars. (1) to (3), respectively, inserted heading, and substituted “subsections (a) and (b)” for “subparagraph (A)” in introductory provisions.

Subsec. (e). Pub. L. 116-283, §1816(c)(7)(B), (I), redesignated subpar. (D) of former section 2305(b)(6) of this title as subsec. (e) of this section, inserted heading, and substituted “subsections (a) and (b)” for “subparagraph (A)”.

Subsec. (f). Pub. L. 116-283, §1816(c)(7)(B), (J), as amended by Pub. L. 117-81, §1701(b)(6)(B), redesignated subsec. (b)(7) of section 2305 of this title as subsec. (f) of this section, inserted heading, and substituted “under this section” for “under paragraph (5) or (6)”.