

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)”.

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.

§ 3306. Encouragement of alternative dispute resolution

The Federal Acquisition Regulation shall include a provision encouraging the use of alternative dispute resolution techniques to provide informal, expeditious, and inexpensive procedures for an offeror to consider using before filing a protest, prior to the award of a contract, of the exclusion of the offeror from the competitive range (or otherwise from further consideration) for that contract.

(Added and amended Pub. L. 116-283, div. A, title XVIII, §1816(c)(2)(F), (8), Jan. 1, 2021, 134 Stat. 4182, 4185.)

Editorial Notes

CODIFICATION

The text of subsec. (b)(8) of this title, which was transferred to this section and amended by Pub. L. 116-283, §1816(c)(1), (2)(F), (8), 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 3306, act Aug. 10, 1956, ch. 1041, 70A Stat. 190, related to promotion of officers in regular grade of colonel to grade of brigadier general, 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)(8), transferred subsec. (b)(8) of section 2305 of this title to this section and struck out par. (8) designation at beginning.

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.

§ 3307. Antitrust violations

If the head of an agency considers that a bid or proposal evidences a violation of the antitrust laws, he shall refer the bid or proposal to the Attorney General for appropriate action.

(Added and amended Pub. L. 116-283, div. A, title XVIII, §1816(c)(2)(G), (9), Jan. 1, 2021, 134 Stat. 4182, 4185.)

Editorial Notes

CODIFICATION

The text of subsec. (b)(9) of section 2305 of this title, which was transferred to this section and amended by Pub. L. 116-283, §1816(c)(1), (2)(G), (9), was based on Pub. L. 98-369, div. B, title VII, §2723(b), July 18, 1984, 98 Stat. 1192; Pub. L. 99-145, title XIII, §1303(a)(14), Nov. 8, 1985, 99 Stat. 739; Pub. L. 103-355, title I, §1014(1), Oct. 13, 1994, 108 Stat. 3255; Pub. L. 104-106, div. D, title XLI, §4104(a), Feb. 10, 1996, 110 Stat. 644.

PRIOR PROVISIONS

A prior section 3307, act Aug. 10, 1956, ch. 1041, 70A Stat. 191, related to promotion of officers in regular grade of brigadier general to grade of major general, 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)(9), transferred subsec. (b)(9) of section 2305 of this title to this section and struck out par. (9) designation at beginning.

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.

§ 3308. Protests

(a) PROTEST FILE.—

(1) ESTABLISHMENT AND ACCESS.—If, in the case of a solicitation for a contract issued by, or an award or proposed award of a contract by, the head of an agency, a protest is filed pursuant to the procedures in subchapter V of chapter 35 of title 31 and an actual or prospective offeror so requests, a file of the protest shall be established by the procuring activity and reasonable access shall be provided to actual or prospective offerors.

(2) REDACTED INFORMATION.—Information exempt from disclosure under section 552 of title 5 may be redacted in a file established pursuant to paragraph (1) unless an applicable protective order provides otherwise.

(b) AGENCY ACTIONS ON PROTESTS.—If, in connection with a protest, the head of an agency determines that a solicitation, proposed award, or award does not comply with the requirements of law or regulation, the head of the agency—

(1) may take any action set out in subparagraphs (A) through (F) of subsection (b)(1) of section 3554 of title 31; and

(2) may pay costs described in paragraph (1) of section 3554(c) of title 31 within the limits referred to in paragraph (2) of such section.

(Added and amended Pub. L. 116-283, div. A, title XVIII, §1816(d), (e), Jan. 1, 2021, 134 Stat. 4185.)

Editorial Notes

CODIFICATION

The text of subsec. (e) of section 2305 of this title, which was transferred to this section, redesignated as subsec. (a), and amended by Pub. L. 116-283, §1816(e), was based on Pub. L. 103-355, title I, §1015, Oct. 13, 1994,