

EFFECTIVE DATE

Section 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.

CHAPTER 243—OTHER MATTERS RELATING TO AWARDING OF CONTRACTS

Sec.	
3341.	[Reserved].
3342.	[Reserved].
3343.	[Reserved].
3344.	Disclosure of identity of contractor.
[3345.	Omitted.]

Editorial Notes

PRIOR PROVISIONS

A prior chapter 243 “SPECIFIC TYPES 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 A, title VIII, § 801(a), Aug. 13, 2018, 132 Stat. 1827, and consisting of reserved section 3351, was repealed by Pub. L. 116-283, div. A, title XVIII, § 1816(b), Jan. 1, 2021, 134 Stat. 4182.

AMENDMENTS

2021—Pub. L. 117-81, div. A, title XVII, § 1701(v)(1)(B), Dec. 27, 2021, 135 Stat. 2154, amended Pub. L. 116-283, div. A, title XVIII, § 1818(a), Jan. 1, 2021, 134 Stat. 4188, which added this analysis, by striking out item 3345 “Contract authority for advanced development of initial or additional prototype units”.

Statutory Notes and Related Subsidiaries

ASSURING INTEGRITY OF OVERSEAS FUEL SUPPLIES

Pub. L. 117-81, div. A, title VIII, § 843, Dec. 27, 2021, 135 Stat. 1840, provided that:

“(a) IN GENERAL.—Before awarding a contract to an offeror for the supply of fuel for any overseas contingency operation, the Secretary of Defense shall—

“(1) ensure, to the maximum extent practicable, that no otherwise responsible offeror is disqualified for such award on the basis of an unsupported denial of access to a facility or equipment by the host nation government; and

“(2) require assurances that the offeror will comply with the requirements of subsections (b) and (c).

“(b) REQUIREMENT.—An offeror for the supply of fuel for any overseas contingency operation shall—

“(1) certify that the provided fuel, in whole or in part, or derivatives of such fuel, is not sourced from a nation or region prohibited from selling petroleum to the United States; and

“(2) furnish such records as are necessary to verify compliance with such anticorruption statutes and regulations as the Secretary determines necessary, including—

“(A) the Foreign Corrupt Practices Act [of 1977] ([see] 15 U.S.C. 78dd-1 et seq.);

“(B) the regulations contained in parts 120 through 130 of title 22, Code of Federal Regulations, or successor regulations (commonly known as the ‘International Traffic in Arms Regulations’);

“(C) the regulations contained in parts 730 through 774 of title 15, Code of Federal Regulations, or successor regulations (commonly known as the ‘Export Administration Regulations’); and

“(D) such regulations as may be promulgated by the Office of Foreign Assets Control of the Department of the Treasury.

“(c) APPLICABILITY.—Subsections (a) and (b) of this section shall apply with respect to contracts entered into on or after the date of the enactment of this Act [Dec. 27, 2021].

“(d) CONSIDERATION OF TRADEOFF PROCESSES.—If the Secretary of Defense awards a contract for fuel pro-

urement for an overseas contingency operation, the contracting officer for such contract shall consider tradeoff processes (as described in subpart 15 of the Federal Acquisition Regulation, or any successor regulation), including consideration of past performance evaluation, cost, anticorruption training, and compliance. With respect to any such contract awarded for which the contracting officer does not consider tradeoff processes, the contracting officer shall, before issuing a solicitation for such contract, submit to the Secretary a written justification for not considering tradeoff processes in awarding such contract.”

GUIDANCE, TRAINING, AND REPORT ON PLACE OF PERFORMANCE CONTRACT REQUIREMENTS

Pub. L. 117-81, div. A, title VIII, § 875, Dec. 27, 2021, 135 Stat. 1865, provided that:

“(a) GUIDANCE AND TRAINING.—Not later than July 1, 2022, the Secretary of Defense shall—

“(1) issue guidance on covered contracts to ensure that, to the maximum extent practicable, the terms of such covered contract avoid specifying an unnecessarily restrictive place of performance for such covered contract; and

“(2) implement any necessary training for appropriate individuals relating to the guidance required under paragraph (1).

“(b) REPORT.—

“(1) IN GENERAL.—Not later than July 1, 2022, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on covered contracts.

“(2) ELEMENTS.—The report required under paragraph (1) shall include the following elements:

“(A) A description of the criteria that is considered when the Secretary specifies a particular place of performance in a covered contract.

“(B) The number of covered contracts awarded during each of fiscal years 2016 through 2020.

“(C) An assessment of the extent to which revisions to guidance or regulations related to the use of covered contracts could improve the effectiveness and efficiency of the Department of Defense, including a description of such revisions.

“(c) COVERED CONTRACT DEFINED.—In this section, the term ‘covered contract’ means a contract for which the Secretary of Defense specifies the place of performance for such contract.”

DEPARTMENT OF DEFENSE CONTRACTING DISPUTE MATTERS

Pub. L. 115-232, div. A, title VIII, § 822, Aug. 13, 2018, 132 Stat. 1853, provided that:

“(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Aug. 13, 2018], the Secretary of Defense shall carry out a study of the frequency and effects of bid protests involving the same contract award or proposed award that have been filed at both the Government Accountability Office and the United States Court of Federal Claims. The study shall cover Department of Defense contracts and include, at a minimum—

“(1) the number of protests that have been filed with both tribunals and results;

“(2) the number of such protests where the tribunals differed in denying or sustaining the action;

“(3) the length of time, in average time and median time—

“(A) from initial filing at the Government Accountability Office to decision in the United States Court of Federal Claims;

“(B) from filing with each tribunal to decision by such tribunal;

“(C) from the time at which the basis of the protest is known to the time of filing in each tribunal; and

“(D) in the case of an appeal from a decision of the United States Court of Federal Claims, from

the date of the initial filing of the appeal to decision in the appeal;

“(4) the number of protests where performance was stayed or enjoined and for how long;

“(5) if performance was stayed or enjoined, whether the requirement was obtained in the interim through another vehicle or in-house, or whether during the period of the stay or enjoining the requirement went unfulfilled;

“(6) separately for each tribunal, the number of protests where performance was stayed or enjoined and monetary damages were awarded, which shall include for how long performance was stayed or enjoined and the amount of monetary damages;

“(7) whether the protestor was a large or small business; and

“(8) whether the protestor was the incumbent in a prior contract for the same or similar product or service.

“(b) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives], the Committee on the Judiciary of the Senate, and the Committee on the Judiciary of the House of Representatives a report on the results of the study, along with related recommendations for improving the expediency of the bid protest process. In preparing the report, the Secretary shall consult with the Attorney General of the United States, the Comptroller General of the United States, and the United States Court of Federal Claims.

“(c) ONGOING DATA COLLECTION.—Not later than 270 days after the date of the enactment of this Act, the Secretary of Defense shall establish and continuously maintain a data repository to collect on an ongoing basis the information described in subsection (a) and any additional relevant bid protest data the Secretary determines necessary and appropriate to allow the Department of Defense, the Government Accountability Office, and the United States Court of Federal Claims to assess and review bid protests over time.

“(d) ESTABLISHMENT OF EXPEDITED PROCESS FOR SMALL VALUE CONTRACTS.—

“(1) IN GENERAL.—Not later than December 1, 2019, the Secretary of Defense shall develop a plan and schedule for an expedited bid protest process for Department of Defense contracts with a value of less than \$100,000.

“(2) CONSULTATION.—In carrying out paragraph (1), the Secretary of Defense may consult with the Government Accountability Office and the United States Court of Federal Claims to the extent such entities may establish a similar process at their election.

“(3) REPORT.—Not later than May 1, 2019, the Secretary of Defense shall submit to the congressional defense committees a report on the plan and schedule for implementation of the expedited bid protest process, which shall include a request for any additional authorities the Secretary determines appropriate for such efforts.”

GUIDANCE ON USE OF TIERED EVALUATIONS OF OFFERS FOR CONTRACTS AND TASK ORDERS UNDER CONTRACTS

Pub. L. 109–163, div. A, title VIII, §816, Jan. 6, 2006, 119 Stat. 3382, provided that:

“(a) GUIDANCE REQUIRED.—The Secretary of Defense shall prescribe guidance for the military departments and the Defense Agencies on the use of tiered evaluations of offers for contracts and for task or delivery orders under contracts.

“(b) ELEMENTS.—The guidance prescribed under subsection (a) shall include a prohibition on the initiation by a contracting officer of a tiered evaluation of an offer for a contract or for a task or delivery order under a contract unless the contracting officer—

“(1) has conducted market research in accordance with part 10 of the Federal Acquisition Regulation in order to determine whether or not a sufficient num-

ber of qualified small businesses are available to justify limiting competition for the award of such contract or task or delivery order under applicable law and regulations;

“(2) is unable, after conducting market research under paragraph (1), to make the determination described in that paragraph; and

“(3) includes in the contract file a written explanation of why such contracting officer was unable to make such determination.”

AUTHORIZATION OF EVALUATION FACTOR FOR DEFENSE CONTRACTORS EMPLOYING OR SUBCONTRACTING WITH MEMBERS OF THE SELECTED RESERVE OF THE RESERVE COMPONENTS OF THE ARMED FORCES

Pub. L. 109–163, div. A, title VIII, §819, Jan. 6, 2006, 119 Stat. 3385, as amended by Pub. L. 116–283, div. A, title VIII, §821, Jan. 1, 2021, 134 Stat. 3753, provided that:

“(a) DEFENSE CONTRACTS.—In awarding any contract for the procurement of goods or services to an entity, the Secretary of Defense is authorized to use as an evaluation factor whether the entity intends to carry out the contract using employees or individual subcontractors who are members of the Selected Reserve of the reserve components of the Armed Forces.

“(b) REGULATIONS.—The Federal Acquisition Regulation shall be revised as necessary to implement this section.”

§ 3344. Disclosure of identity of contractor

The Secretary of Defense may disclose the identity or location of a person awarded a contract by the Department of Defense to any individual, including a Member of Congress, only after the Secretary makes a public announcement identifying the contractor. When the identity of a contractor is to be made public, the Secretary shall announce publicly that the contract has been awarded and the identity of the contractor.

(Added Pub. L. 97–295, §1(26)(A), Oct. 12, 1982, 96 Stat. 1291, §2316; renumbered §3344, Pub. L. 116–283, div. A, title XVIII, §1818(b), Jan. 1, 2021, 134 Stat. 4188; amended Pub. L. 117–81, div. A, title XVII, §1701(b)(7), Dec. 27, 2021, 135 Stat. 2133.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
2316	10:2304 (note).	Oct. 7, 1970, Pub. L. 91–441, §507, 84 Stat. 913.

The words “company, or corporation” are omitted as included in “person” because of section 1:1. The words “On and after the date of enactment of this Act” are omitted as executed. The word “contractor” is substituted for “person, company, or corporation to whom such contract has been awarded” and “person, company, or corporation to whom any defense contract has been awarded” to eliminate unnecessary words. The words “and the identity of the contractor” are substituted for “and to whom it was awarded” for clarity.

Editorial Notes

PRIOR PROVISIONS

Prior sections 3351 and 3352 were renumbered sections 12211 and 12213 of this title, respectively.

Prior sections 3353 and 3354 were repealed by Pub. L. 103–337, div. A, title XVI, §§1629(a)(1), 1691(b)(1), Oct. 5, 1994, 108 Stat. 2963, 3026, effective Oct. 1, 1996.

Section 3353, added Pub. L. 85–861, §1(80)(B), Sept. 2, 1958, 72 Stat. 1468; amended Pub. L. 86–559, §1(8), June 30, 1960, 74 Stat. 265; Pub. L. 96–513, title II, §205(a), Dec.