

Date of 2021 Amendment note preceding section 3001 of this title.

RELAXATION OF UNDEFINITIZED CONTRACT ACTION LIMITATIONS AND RESTRICTIONS RELATED TO NATIONAL EMERGENCY FOR CORONAVIRUS DISEASE 2019

Pub. L. 116-136, div. B, title III, §13004, Mar. 27, 2020, 134 Stat. 522, provided that:

“(a) Section 2326(b)(3) of title 10, United States Code [now 10 U.S.C. 3372(a)(2)(B)], shall not apply to any undefinitized contract action of the Department of Defense related to the national emergency for the Coronavirus Disease 2019 (COVID-19).

“(b) In this section, the term ‘undefinitized contract action’ has the meaning given that term in section 2326(j)(6) of title 10, United States Code [probably means section 2326(j)(1) of title 10, now 10 U.S.C. 3377(b)(1), which defines “undefinitized contractual action”].”

Pub. L. 116-136, div. B, title III, §13005, Mar. 27, 2020, 134 Stat. 522, provided that:

“(a) The head of an agency may waive the provisions of section 2326(b) of title 10, United States Code [now 10 U.S.C. 3372(a)], with respect to a contract of such agency if the head of the agency determines that the waiver is necessary due to the national emergency for the Coronavirus Disease 2019 (COVID-19).

“(b) In this section, the term ‘head of an agency’ has the meaning given that term in section 2302(2) [probably means section 2302(1); now 10 U.S.C. 3004] of title 10, United States Code.”

§ 3373. Undefinitized contractual actions: limitation on inclusion of non-urgent requirements and on modification of scope

(a) INCLUSION OF NON-URGENT REQUIREMENTS.—Requirements for spare parts and support equipment that are not needed on an urgent basis may not be included in an undefinitized contractual action for spare parts and support equipment that are needed on an urgent basis unless the head of the agency approves such inclusion as being—

- (1) good business practice; and
- (2) in the best interests of the United States.

(b) MODIFICATION OF SCOPE.—The scope of an undefinitized contractual action under which performance has begun may not be modified unless the head of the agency approves such modification as being—

- (1) good business practice; and
- (2) in the best interests of the United States.

(Added and amended Pub. L. 116-283, div. A, title XVIII, §1819(a), (d), Jan. 1, 2021, 134 Stat. 4189, 4190.)

Editorial Notes

CODIFICATION

The text of subssecs. (d) and (e) of section 2326 of this title, which were transferred to this section, redesignated as subssecs. (a) and (b), respectively, and amended by Pub. L. 116-283, §1819(d), was based on Pub. L. 99-500, §101(c) [title X, §908(d)(1)(A)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-141, and Pub. L. 99-591, §101(c) [title X, §908(d)(1)(A)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-141; Pub. L. 99-661, div. A, title IX, formerly title IV, §908(d)(1)(A), Nov. 14, 1986, 100 Stat. 3920, 3921, renumbered title IX, Pub. L. 100-26, §3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 115-91, div. A, title VIII, §815(a)(1), Dec. 12, 2017, 131 Stat. 1462. Pub. L. 99-500, Pub. L. 99-591, and Pub. L. 99-661 added identical subsections.

AMENDMENTS

2021—Pub. L. 116-283, §1819(d), redesignated subssecs. (d) and (e) of section 2326 of this title as subssecs. (a) and (b), respectively, of this section.

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.

§ 3374. Undefinitized contractual actions: allowable profit

(a) ALLOWED PROFIT TO REFLECT CERTAIN REDUCED COST RISKS OF CONTRACTOR.—The head of an agency shall ensure that the profit allowed on an undefinitized contractual action for which the final price is negotiated after a substantial portion of the performance required is completed reflects—

- (1) the possible reduced cost risk of the contractor with respect to costs incurred during performance of the contract before the final price is negotiated; and
- (2) the reduced cost risk of the contractor with respect to costs incurred during performance of the remaining portion of the contract.

(b) DATE AS OF WHICH CONTRACTOR COST RISK TO BE DETERMINED.—If a contractor submits a qualifying proposal to definitize an undefinitized contractual action and the contracting officer for such action definitizes the contract after the end of the 180-day period beginning on the date on which the contractor submitted the qualifying proposal, the head of the agency concerned shall ensure that the profit allowed on the contract accurately reflects the cost risk of the contractor as such risk existed on the date the contractor submitted the qualifying proposal.

(Added and amended Pub. L. 116-283, div. A, title XVIII, §1819(a), (e), Jan. 1, 2021, 134 Stat. 4189, 4190.)

Editorial Notes

CODIFICATION

The text of subsec. (f) of section 2326 of this title, which was transferred to this section and amended by Pub. L. 116-283, §1819(e), was based on Pub. L. 99-500, §101(c) [title X, §908(d)(1)(A)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-141, and Pub. L. 99-591, §101(c) [title X, §908(d)(1)(A)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-141; Pub. L. 99-661, div. A, title IX, formerly title IV, §908(d)(1)(A), Nov. 14, 1986, 100 Stat. 3921, renumbered title IX, Pub. L. 100-26, §3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 114-328, div. A, title VIII, §811(1), Dec. 23, 2016, 130 Stat. 2268; Pub. L. 115-91, div. A, title VIII, §815(a)(1), Dec. 12, 2017, 131 Stat. 1462. Pub. L. 99-500, Pub. L. 99-591, and Pub. L. 99-661 added identical subsections.

AMENDMENTS

2021—Pub. L. 116-283, §1819(e)(1)(A), transferred subsec. (f) of section 2326 of this title to this section and struck out subsec. (f) designation and heading “Allowable Profit” at beginning.

Subsec. (a). Pub. L. 116-283, §1819(e)(1)(B), (2), redesignated par. (1) of former section 2326(f) of this title as subsec. (a) of this section, inserted heading, and redesignated subpars. (A) and (B) as pars. (1) and (2), respectively.

Subsec. (b). Pub. L. 116-283, §1819(e)(1)(B), (3), redesignated par. (2) of former section 2326(f) of this title as subsec. (b) 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.

§ 3375. Undefined contractual actions: time limit

No undefinitized contractual action may extend beyond 90 days without a written determination by the Secretary of the military department concerned, the head of the Defense Agency concerned, the commander of the combatant command concerned, or the Under Secretary of Defense for Acquisition and Sustainment (as applicable) that it is in the best interests of the military department, the Defense Agency, the combatant command, or the Department of Defense, respectively, to continue the action.

(Added and amended Pub. L. 116-283, div. A, title XVIII, §1819(a), (f), Jan. 1, 2021, 134 Stat. 4189, 4190.)

Editorial Notes

CODIFICATION

The text of subsec. (g) of section 2326 of this title, which was transferred to this section and amended by Pub. L. 116-283, §1819(f), was based on Pub. L. 114-328, div. A, title VIII, §811(3), Dec. 23, 2016, 130 Stat. 2268; Pub. L. 115-91, div. A, title VIII, §815(a)(1), Dec. 12, 2017, 131 Stat. 1462; Pub. L. 116-92, div. A, title IX, §902(50), Dec. 20, 2019, 133 Stat. 1548.

PRIOR PROVISIONS

A prior section 3375, added Pub. L. 85-861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1475, related to transfer or discharge of reserve generals ceasing to occupy commensurate positions, prior to repeal 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. See section 14314(a) of this title.

AMENDMENTS

2021—Pub. L. 116-283, §1819(f), transferred subsec. (g) of section 2326 of this title to this section and struck out subsec. (g) designation and heading “Time Limit” 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.

§ 3377. Inapplicability to Coast Guard and National Aeronautics and Space Administration; definitions

(a) APPLICABILITY.—This chapter does not apply to the Coast Guard or the National Aeronautics and Space Administration.

(b) DEFINITIONS.—In this chapter:

(1) The term “undefinitized contractual action” means a new procurement action en-

tered into by the head of an agency for which the contractual terms, specifications, or price are not agreed upon before performance is begun under the action. Such term does not include contractual actions with respect to the following:

(A) Purchases in an amount not in excess of the amount of the simplified acquisition threshold.

(B) Special access programs.

(C) Congressionally mandated long-lead procurement contracts.

(2) The term “qualifying proposal” means a proposal that contains sufficient information to enable the Department of Defense to conduct a meaningful audit of the information contained in the proposal.

(Added and amended Pub. L. 116-283, div. A, title XVIII, §1819(a), (g), Jan. 1, 2021, 134 Stat. 4189, 4191.)

Editorial Notes

CODIFICATION

The text of subsec. (i) of section 2326 of this title, which was transferred to this section, redesignated as subsec. (a), and amended by Pub. L. 116-283, §1819(g), was based on Pub. L. 99-500, §101(c) [title X, §908(d)(1)(A)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-141, and Pub. L. 99-591, §101(c) [title X, §908(d)(1)(A)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-141; Pub. L. 99-661, div. A, title IX, formerly title IV, §908(d)(1)(A), Nov. 14, 1986, 100 Stat. 3921, renumbered title IX, Pub. L. 100-26, §3(5), Apr. 21, 1987, 101 Stat. 273. Pub. L. 99-500, Pub. L. 99-591, and Pub. L. 99-661 added identical subsections.

The text of subsec. (j) of section 2326 of this title, which was transferred to this section, redesignated as subsec. (b), and amended by Pub. L. 116-283, §1819(g), was based on Pub. L. 99-500, §101(c) [title X, §908(d)(1)(A)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-141, and Pub. L. 99-591, §101(c) [title X, §908(d)(1)(A)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-141; Pub. L. 99-661, div. A, title IX, formerly title IV, §908(d)(1)(A), Nov. 14, 1986, 100 Stat. 3921, renumbered title IX, Pub. L. 100-26, §3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 101-189, div. A, title XVI, §1622(c)(6), Nov. 29, 1989, 103 Stat. 1604; Pub. L. 102-25, title VII, §701(d)(5), Apr. 6, 1991, 105 Stat. 114; Pub. L. 103-355, title I, §1505, Oct. 13, 1994, 108 Stat. 3298; Pub. L. 114-328, div. A, title VIII, §811(2), (4), Dec. 23, 2016, 130 Stat. 2268, 2269; Pub. L. 115-91, div. A, title VIII, §815(a)(1), Dec. 12, 2017, 131 Stat. 1462. Pub. L. 99-500, Pub. L. 99-591, and Pub. L. 99-661 added identical subsections.

PRIOR PROVISIONS

Prior sections 3378 to 3390 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 3378, added Pub. L. 85-861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1476, related to promotion of reserve commissioned officers removed from active status. See section 14317(a) of this title.

Section 3380, added Pub. L. 85-861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1476; amended Pub. L. 98-94, title X, §1015(a)(1), Sept. 24, 1983, 97 Stat. 667; Pub. L. 99-145, title V, §521(b), Nov. 8, 1985, 99 Stat. 631; Pub. L. 100-180, div. A, title V, §502(b)(1), Dec. 4, 1987, 101 Stat. 1085; Pub. L. 101-189, div. A, title V, §503(b)(1), Nov. 29, 1989, 103 Stat. 1437; Pub. L. 102-484, div. A, title V, §519(b), Oct. 23, 1992, 106 Stat. 2408; Pub. L. 103-160, div. A, title V, §514(b), Nov. 30, 1993, 107 Stat. 1649; Pub. L. 104-106, div. A, title V, §511(b), Feb. 10, 1996, 110 Stat. 298, related to promotion of reserve commissioned officers on active duty and not on the active duty list. See section 14311(e) of this title.

Section 3382, added Pub. L. 85-861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1476, related to promotion of second lieu-