

Works, see section 1004(d) of Pub. L. 103-355, set out as a note preceding section 3401 of this title.

§ 3405. Task order contracts: advisory and assistance services

(a) **ADVISORY AND ASSISTANCE SERVICES DEFINED.**—In this section, the term “advisory and assistance services” has the meaning given such term in section 1105(g) of title 31.

(b) **AUTHORITY TO AWARD.**—(1) Subject to the requirements of this section, section 3406 of this title, and other applicable law, the head of an agency may enter into a task order contract (as defined in section 3401 of this title) for procurement of advisory and assistance services.

(2) The head of an agency may enter into a task order contract for procurement of advisory and assistance services only under the authority of this section.

(c) **LIMITATION ON CONTRACT PERIOD.**—The period of a task order contract entered into under this section, including all periods of extensions of the contract under options, modifications, or otherwise, may not exceed five years unless a longer period is specifically authorized in a law that is applicable to such contract.

(d) **CONTENT OF NOTICE.**—The notice required by section 1708 of title 41 and section 8(e) of the Small Business Act (15 U.S.C. 637(e)) shall reasonably and fairly describe the general scope, magnitude, and duration of the proposed task order contract in a manner that would reasonably enable a potential offeror to decide whether to request the solicitation and consider submitting an offer.

(e) **REQUIRED CONTENT OF SOLICITATION AND CONTRACT.**—

(1) **SOLICITATION.**—The solicitation for the proposed task order contract shall include the information (regarding services) described in section 3403(b) of this title.

(2) **CONTRACT.**—A task order contract entered into under this section shall contain the same information that is required by paragraph (1) to be included in the solicitation of offers for that contract.

(f) **MULTIPLE AWARDS.**—

(1) **AUTHORITY TO MAKE MULTIPLE AWARDS.**—The head of an agency may, on the basis of one solicitation, award separate task order contracts under this section for the same or similar services to two or more sources if the solicitation states that the head of the agency has the option to do so.

(2) **CONTENT OF SOLICITATION.**—If, in the case of a task order contract for advisory and assistance services to be entered into under this section, the contract period is to exceed three years and the contract amount is estimated to exceed \$10,000,000 (including all options), the solicitation shall—

(A) provide for a multiple award authorized under paragraph (1); and

(B) include a statement that the head of the agency may also elect to award only one task order contract if the head of the agency determines in writing that only one of the offerors is capable of providing the services required at the level of quality required.

(3) **NONAPPLICATION.**—Paragraph (2) does not apply in the case of a solicitation for which

the head of the agency concerned determines in writing that, because the services required under the task order contract are unique or highly specialized, it is not practicable to award more than one contract.

(g) **CONTRACT MODIFICATIONS.**—

(1) **INCREASE IN SCOPE, PERIOD, OR MAXIMUM VALUE OF CONTRACT ONLY BY MODIFICATION OF CONTRACT.**—A task order may not increase the scope, period, or maximum value of the task order contract under which the order is issued. The scope, period, or maximum value of the contract may be increased only by modification of the contract.

(2) **USE OF COMPETITIVE PROCEDURES.**—Unless use of procedures other than competitive procedures is authorized by an exception in subsection (a) of section 3204 of this title and approved in accordance with subsection (e) of such section, competitive procedures shall be used for making such a modification.

(3) **NOTICE.**—Notice regarding the modification shall be provided in accordance with section 1708 of title 41 and section 8(e) of the Small Business Act (15 U.S.C. 637(e)).

(h) **CONTRACT EXTENSIONS.**—

(1) **WHEN CONTRACT MAY BE EXTENDED.**—Notwithstanding the limitation on the contract period set forth in subsection (c) or in a solicitation or contract pursuant to subsection (f), a task order contract entered into by the head of an agency under this section may be extended on a sole-source basis for a period not exceeding six months if the head of such agency determines that—

(A) the award of a follow-on contract has been delayed by circumstances that were not reasonably foreseeable at the time the initial contract was entered into; and

(B) the extension is necessary in order to ensure continuity of the receipt of services pending the award of, and commencement of performance under, the follow-on contract.

(2) **LIMIT OF ONE EXTENSION.**—A task order contract may be extended under the authority of paragraph (1) only once and only in accordance with the limitations and requirements of this subsection.

(i) **INAPPLICABILITY TO CERTAIN CONTRACTS.**—This section does not apply to a contract for the acquisition of property or services that includes acquisition of advisory and assistance services if the head of an agency entering into such contract determines that, under the contract, advisory and assistance services are necessarily incident to, and not a significant component of, the contract.

(Added Pub. L. 103-355, title I, §1004(a)(1), Oct. 13, 1994, 108 Stat. 3251, §2304b; amended Pub. L. 111-350, §5(b)(13), Jan. 4, 2011, 124 Stat. 3843; renumbered §3405 and amended Pub. L. 116-283, div. A, title XVIII, §1820(d), Jan. 1, 2021, 134 Stat. 4192; Pub. L. 117-81, div. A, title XVII, §1701(b)(8)(C), Dec. 27, 2021, 135 Stat. 2133.)

Editorial Notes

AMENDMENTS

2021—Pub. L. 116-283, §1820(d)(1), (2), renumbered section 2304b of this title as this section, moved subsec. (i)

to the beginning of the section and redesignated it as (a), and redesignated former subsecs. (a) to (h) as (b) to (i), respectively.

Subsec. (b)(1). Pub. L. 116-283, § 1820(d)(3), substituted “section 3406” for “section 2304c” and “section 3401” for “section 2304d”.

Subsec. (e). Pub. L. 116-283, § 1820(d)(4)(A), (B), as amended by Pub. L. 117-81, § 1701(b)(8)(C), inserted par. headings, substituted “section 3403(b)” for “section 2304a(b)” in par. (1), and realigned margin of par. (2).

Subsec. (f). Pub. L. 116-283, § 1820(d)(5), inserted par. headings and realigned margins of pars. (2) and (3).

Subsec. (g)(1). Pub. L. 116-283, § 1820(d)(6)(A), inserted heading.

Subsec. (g)(2). Pub. L. 116-283, § 1820(d)(6)(B), (C), inserted heading, realigned margin, and substituted “subsection (a) of section 3204” for “subsection (c) of section 2304” and “subsection (e)” for “subsection (f)”.

Subsec. (g)(3). Pub. L. 116-283, § 1820(d)(6)(B), (D), inserted heading and realigned margin.

Subsec. (h)(1). Pub. L. 116-283, § 1820(d)(7)(A), (B), inserted heading, and substituted “subsection (c)” for “subsection (b)” and “subsection (f)” for “subsection (e)”.

Subsec. (h)(2). Pub. L. 116-283, § 1820(d)(7)(C), inserted heading and realigned margin.

2011—Subsecs. (c), (f)(3). Pub. L. 111-350 substituted “section 1708 of title 41” for “section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416)”.

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 note below.

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 a note preceding section 3001 of this title.

EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103-355, set out as an Effective Date of 1994 Amendment note under section 8752 of this title.

PROVISIONS NOT AFFECTED BY PUB. L. 103-355

This section not to be construed as modifying or superseding, or as intended to impair or restrict, authorities or responsibilities under former 40 U.S.C. 759 or chapter 11 of Title 40, Public Buildings, Property, and Works, see section 1004(d) of Pub. L. 103-355, set out as a note preceding section 3401 of this title.

§ 3406. Task and delivery order contracts: orders

(a) **APPLICABILITY.**—This section applies to task and delivery order contracts entered into under sections 3403 and 3405 of this title.

(b) **ISSUANCE OF ORDERS.**—The following actions are not required for issuance of a task or delivery order under a task or delivery order contract:

(1) A separate notice for such order under section 1708 of title 41 or section 8(e) of the Small Business Act (15 U.S.C. 637(e)).

(2) Except as provided in subsection (c), a competition (or a waiver of competition approved in accordance with section 3204(e) of this title) that is separate from that used for entering into the contract.

(c) **MULTIPLE AWARD CONTRACTS.**—When multiple task or delivery order contracts are award-

ed under section 3403(d)(1)(B) or 3405(f) of this title, all contractors awarded such contracts shall be provided a fair opportunity to be considered, pursuant to procedures set forth in the contracts, for each task or delivery order in excess of \$2,500 that is to be issued under any of the contracts unless—

(1) the agency’s need for the services or property ordered is of such unusual urgency that providing such opportunity to all such contractors would result in unacceptable delays in fulfilling that need;

(2) only one such contractor is capable of providing the services or property required at the level of quality required because the services or property ordered are unique or highly specialized;

(3) the task or delivery order should be issued on a sole-source basis in the interest of economy and efficiency because it is a logical follow-on to a task or delivery order already issued on a competitive basis;

(4) it is necessary to place the order with a particular contractor in order to satisfy a minimum guarantee; or

(5) the task or delivery order satisfies one of the exceptions in section 3204(a) of this title to the requirement to use competitive procedures.

(d) **ENHANCED COMPETITION FOR ORDERS IN EXCESS OF \$5,000,000.**—In the case of a task or delivery order in excess of \$5,000,000, the requirement to provide all contractors a fair opportunity to be considered under subsection (c) is not met unless all such contractors are provided, at a minimum—

(1) a notice of the task or delivery order that includes a clear statement of the agency’s requirements;

(2) a reasonable period of time to provide a proposal in response to the notice;

(3) disclosure of the significant factors and subfactors, including cost or price, that the agency expects to consider in evaluating such proposals, and their relative importance;

(4) in the case of an award that is to be made on a best value basis, a written statement documenting the basis for the award and the relative importance of quality and price or cost factors; and

(5) an opportunity for a post-award debriefing consistent with the requirements of section 3304 of this title.

(e) **STATEMENT OF WORK.**—A task or delivery order shall include a statement of work that clearly specifies all tasks to be performed or property to be delivered under the order.

(f) **PROTESTS.**—(1) A protest is not authorized in connection with the issuance or proposed issuance of a task or delivery order except for—

(A) a protest on the ground that the order increases the scope, period, or maximum value of the contract under which the order is issued; or

(B) a protest of an order valued in excess of \$25,000,000.

(2) Notwithstanding section 3556 of title 31, the Comptroller General of the United States shall have exclusive jurisdiction of a protest authorized under paragraph (1)(B).