

determination or decision under section 2304 or 2305 of this title, is final.

“(b) Each determination or decision under section 2306(c), 2306(g)(1), 2307(c), or 2313(c) of this title shall be based on a written finding by the person making the determination or decision, which finding shall set out facts and circumstances that—

“(1) clearly indicate why the type of contract selected under section 2306(c) of this title is likely to be less costly than any other type or that it is impracticable to obtain property or services of the kind or quality required except under such a contract;

“(2) support the findings required by section 2306(g)(1) of this title;

“(3) clearly indicate why advance payments under section 2307(c) of this title would be in the public interest; or

“(4) clearly indicate why the application of section 2313(b) of this title to a contract or subcontract with a foreign contractor or foreign subcontractor would not be in the public interest.

Such a finding is final and shall be kept available in the agency for at least six years after the date of the determination or decision. A copy of the finding shall be submitted to the General Accounting Office with each contract to which it applies.”

1985—Subsec. (a). Pub. L. 99-145 inserted “this” after “2305 of”.

1984—Subsec. (a). Pub. L. 98-369, §2725(1), inserted “, except for determinations and decisions under section 2304 or 2305 of title,” and “, including a determination or decision under section 2304 or 2305 of this title,”.

Subsec. (b). Pub. L. 98-369, §2725(2), amended subsec. (b) generally, striking out requirement that determinations to negotiate contracts be based on written findings by the contracting officers making the determinations.

1968—Subsec. (b). Pub. L. 90-378 inserted “section 2306(g)(1),” after “clauses (11)–(16) of section 2304(a), section 2306(c),” and “(3) support the findings required by section 2306(g)(1),” after “kind or quality required except under such a contract,” and redesignated former cls. (3) to (5) as (4) to (6), respectively.

1966—Subsec. (b). Pub. L. 89-607 inserted reference to section 2313(c), added cl. (4), and redesignated former cl. (4) as (5).

1962—Subsec. (b). Pub. L. 87-653 substituted “section 2306(c)” for “section 2306”, required decisions to negotiate contracts under section 2304(a)(2), (7), (8), (10) to (12) of this title to be based on a written finding by the person making the decision, which findings shall set out facts and circumstances illustrative of conditions described in section 2304(a)(11) to (16), indicate why the type of contract selected under section 2306(c) is likely to be less costly than any other or that its impracticable to obtain the required property or services except under such contract, indicate why advance payments under section 2307(c) would be in the public interest, or establish with respect to section 2304(a), (2), (7), (8), (10) to (12) that formal advertising would not have been feasible and practicable.

1958—Subsec. (b). Pub. L. 85-800 substituted “2307(c)” for “2307(a)”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

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 OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103-355, see section 10001 of Pub. L. 103-355, set out as a note under section 8752 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-369, div. B, title VII, §2751, July 18, 1984, 98 Stat. 1203, provided that:

“(a) Except as provided in subsection (b), the amendments made by this title [see Tables for classification] shall apply with respect to any solicitation for bids or proposals issued after March 31, 1985.

“(b) The amendments made by section 2713 [amending section 759 of former Title 40, Public Buildings, Property, and Works, and enacting provisions set out as a note under section 759 of former Title 40] and subtitle D [enacting sections 3551 to 3556 of Title 31, Money and Finance] shall apply with respect to any protest filed after January 14, 1985.”

EFFECTIVE DATE OF 1962 AMENDMENT

For effective date of amendment by Pub. L. 87-653, see section 1(h) of Pub. L. 87-653, set out as a note under section 3065 of this title.

§ 4752. Remission of liquidated damages

Upon the recommendation of the head of an agency, the Secretary of the Treasury may remit all or part, as he considers just and equitable, of any liquidated damages assessed for delay in performing a contract, made by that agency, that provides for such damages.

(Aug. 10, 1956, ch. 1041, 70A Stat. 132, §2312; Pub. L. 104-316, title II, §202(c), Oct. 19, 1996, 110 Stat. 3842; renumbered §4752, Pub. L. 116-283, div. A, title XVIII, §1864(b), Jan. 1, 2021, 134 Stat. 4279.)

HISTORICAL AND REVISION NOTES

| <i>Revised section</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i> |
|------------------------|---------------------------|---|
| 2312 | 41:155. | Feb. 19, 1948, ch. 65, §6, 62 Stat. 24. |

The words “a contract, made by that agency, that provides for” are substituted for the words “any contract made on behalf of the Government by the agency head or by officers authorized by him so to do includes a provision”.

Editorial Notes

AMENDMENTS

2021—Pub. L. 116-283 renumbered section 2312 of this title as this section.

1996—Pub. L. 104-316 substituted “Secretary of the Treasury” for “Comptroller General”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

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.

§ 4753. Supplies: identification of supplier and sources

(a) The Secretary of Defense shall require that the contractor under a contract with the Department of Defense for the furnishing of supplies to the United States shall mark or otherwise identify supplies furnished under the contract with the identity of the contractor, the national stock number for the supplies furnished (if there is such a number), and the contractor’s identification number for the supplies.

(b)(1) The Secretary of Defense shall prescribe regulations requiring that, whenever practicable, each contract requiring the delivery of supplies (other than a contract described in

paragraph (2)) shall require that the contractor identify—

(A) the actual manufacturer or producer of the item or of all sources of supply of the contractor for that item;

(B) the national stock number of the item (if there is such a number) and the identification number of the actual manufacturer or producer of the item or of each source of supply of the contractor for the item; and

(C) the source of any technical data delivered under the contract.

(2) The regulations prescribed pursuant to paragraph (1) do not apply to a contract that requires the delivery of supplies that are commercial products (as defined in section 103 of title 41).

(3) The regulations prescribed pursuant to paragraph (1) do not apply to a contract for an amount not greater than the simplified acquisition threshold (as defined in section 134 of title 41).

(c) Identification of supplies and technical data under this section shall be made in the manner and with respect to the supplies prescribed by the Secretary of Defense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 137, §2384; Pub. L. 98-525, title XII, §1231(a), Oct. 19, 1984, 98 Stat. 2599; Pub. L. 99-500, §101(c) [title X, §928(a)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-156, and Pub. L. 99-591, §101(c) [title X, §928(a)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-156; Pub. L. 99-661, div. A, title IX, formerly title IV, §928(a), Nov. 14, 1986, 100 Stat. 3936, renumbered title IX, Pub. L. 100-26, §3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 103-355, title IV, §4102(d), title VIII, §8105(b), Oct. 13, 1994, 108 Stat. 3340, 3392; Pub. L. 104-106, div. D, title XLIII, §4321(b)(12), Feb. 10, 1996, 110 Stat. 672; Pub. L. 111-350, §5(b)(23), Jan. 4, 2011, 124 Stat. 3844; Pub. L. 115-232, div. A, title VIII, §836(e)(2), Aug. 13, 2018, 132 Stat. 1869; renumbered §4753, Pub. L. 116-283, div. A, title XVIII, §1864(b), Jan. 1, 2021, 134 Stat. 4279.)

HISTORICAL AND REVISION NOTES

| Revised section | Source (U.S. Code) | Source (Statutes at Large) |
|-----------------|---------------------|----------------------------|
| 2384 | 10:1207. 34:583. | R.S. 3731. |

The words “Each contractor” are substituted for the words “Every person”. The word “his” is substituted for the words “the name of the contractor furnishing such supplies”. The words “of any kind” and “and distinguish [distinguished]” are omitted as surplusage. The word “may” is substituted for the word “shall”.

Editorial Notes

CODIFICATION

Pub. L. 99-591 is a corrected version of Pub. L. 99-500.

AMENDMENTS

2021—Pub. L. 116-283 renumbered section 2384 of this title as this section.

2018—Subsec. (b)(2). Pub. L. 115-232 substituted “commercial products” for “commercial items”.

2011—Subsec. (b)(2). Pub. L. 111-350, §5(b)(23)(A), substituted “section 103 of title 41” for “section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))”.

Subsec. (b)(3). Pub. L. 111-350, §5(b)(23)(B), substituted “section 134 of title 41” for “section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))”.

1996—Subsec. (b)(2). Pub. L. 104-106, §4321(b)(12)(A), substituted “items (as)” for “items, as” and inserted a closing parenthesis after “403(12)”.

Subsec. (b)(3). Pub. L. 104-106, §4321(b)(12)(B), inserted a closing parenthesis after “403(11)”.

1994—Subsec. (b)(2). Pub. L. 103-355, §8105(b), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “Paragraph (1) does not apply to a contract that requires the delivery of supplies that are commercial items sold in substantial quantities to the general public if the contract—

“(A) provides for the acquisition of such supplies by the Department of Defense at established catalog or market prices; or

“(B) is awarded through the use of competitive procedures.”

Subsec. (b)(3). Pub. L. 103-355, §4102(d), added par. (3).

1986—Subsec. (b). Pub. L. 99-500, Pub. L. 99-591, and Pub. L. 99-661, amended subsec. (b) identically, designating existing provision as par. (1), redesignating former pars. (1) to (3) as subpars. (A) to (C), respectively, and inserting in provision preceding subpar. (A) “(other than a contract described in paragraph (2))”, and adding par. (2).

1984—Pub. L. 98-525 amended section generally, substituting “identification of supplier and sources” for “marking with name of contractor” in section catchline, and, in text, substituting provisions designated subsec. (a) and relating to the marking of supplies, providing the national stock number for the supplies furnished, and the contractor’s identification number for requirement that each contractor furnishing supplies to a military department mark the supplies with his name in the manner directed by the Secretary of the Department and prohibition of receipt of supplies unless so marked and adding subsecs. (b) and (c).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

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 OF 2018 AMENDMENT

Amendment by Pub. L. 115-232 effective Jan. 1, 2020, subject to a savings provision, see section 836(h) of Pub. L. 115-232, set out as an Effective Date of 2018 Amendment; Savings Provision note under section 453b of Title 6, Domestic Security.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104-106, see section 4401 of Pub. L. 104-106, set out as a note under section 2220 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103-355, see section 10001 of Pub. L. 103-355, set out as a note under section 8752 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-500, §101(c) [title X, §928(b)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-156, Pub. L. 99-591, §101(c) [title X, §928(b)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-156, and Pub. L. 99-661, Pub. L. 99-661, div. A, title IX, formerly title IV, §928(b), Nov. 14, 1986, 100 Stat. 3936, renumbered title IX, Pub. L. 100-26, §3(5), Apr. 21, 1987, 101 Stat. 273, provided that: “The amendments made by subsection (a) [amending this section] shall apply with respect to contracts entered into after the end of the 180-day period beginning on the date of the enactment of this Act [Oct. 18, 1986].”

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-525, title XII, §1231(b), Oct. 19, 1984, 98 Stat. 2600, provided that: “The amendment made by sub-

section (a) [amending this section] shall take effect at the end of the one-year period beginning on the date of the enactment of this Act [Oct. 19, 1984].”

§ 4754. Management of purchase cards

(a) **MANAGEMENT OF PURCHASE CARDS.**—The Secretary of Defense shall prescribe regulations governing the use and control of all purchase cards and convenience checks that are issued to Department of Defense personnel for official use. Those regulations shall be consistent with regulations that apply Government-wide regarding use of purchase cards by Government personnel for official purposes.

(b) **REQUIRED SAFEGUARDS AND INTERNAL CONTROLS.**—Regulations under subsection (a) shall include safeguards and internal controls to ensure the following:

(1) That there is a record in the Department of Defense of each holder of a purchase card issued by the Department of Defense for official use, annotated with the limitations on amounts that are applicable to the use of each such card by that purchase card holder.

(2) That each purchase card holder and individual issued a convenience check is assigned an approving official other than the card holder with the authority to approve or disapprove transactions.

(3) That the holder of a purchase card and each official with authority to authorize expenditures charged to the purchase card are responsible for—

(A) reconciling the charges appearing on each statement of account for that purchase card with receipts and other supporting documentation; and

(B) forwarding that statement after being so reconciled to the designated disbursing office in a timely manner.

(4) That any disputed purchase card charge, and any discrepancy between a receipt and other supporting documentation and the purchase card statement of account, is resolved in the manner prescribed in the applicable Government-wide purchase card contract entered into by the Administrator of General Services.

(5) That payments on purchase card accounts are made promptly within prescribed deadlines to avoid interest penalties.

(6) That rebates and refunds based on prompt payment on purchase card accounts are properly recorded.

(7) That records of each purchase card transaction (including records on associated contracts, reports, accounts, and invoices) are retained in accordance with standard Government policies on the disposition of records.

(8) That periodic reviews are performed to determine whether each purchase card holder has a need for the purchase card.

(9) That appropriate training is provided to each purchase card holder and each official with responsibility for overseeing the use of purchase cards issued by the Department of Defense.

(10) That the Department of Defense has specific policies regarding the number of purchase cards issued by various organizations and categories of organizations, the credit limits authorized for various categories of card holders,

and categories of employees eligible to be issued purchase cards, and that those policies are designed to minimize the financial risk to the Federal Government of the issuance of the purchase cards and to ensure the integrity of purchase card holders.

(11) That the Department of Defense uses effective systems, techniques, and technologies to prevent or identify potential fraudulent purchases.

(12) That the Department of Defense takes appropriate steps to invalidate the purchase card of each card holder who—

(A) in the case of an employee of the Department—

(i) ceases to be employed by the Department, immediately upon termination of the employment of the employee; or

(ii) transfers to another unit of the Department, immediately upon the transfer of the employee unless the Secretary of Defense determines that the units are covered by the same purchase card authority; and

(B) in the case of a member of the armed forces, is separated or released from active duty or full-time National Guard duty.

(13) That the Department of Defense takes steps to recover the cost of any illegal, improper, or erroneous purchase made with a purchase card or convenience check by an employee or member of the armed forces, including, as necessary, through salary offsets.

(14) That the Inspector General of the Department of Defense, the Inspector General of the Army, the Naval Inspector General, and the Inspector General of the Air Force perform periodic audits to identify—

(A) potentially fraudulent, improper, and abusive uses of purchase cards;

(B) any patterns of improper card holder transactions, such as purchases of prohibited items; and

(C) categories of purchases that should be made by means other than purchase cards in order to better aggregate purchases and obtain lower prices.

(15) That the Inspector General of the Department of Defense conducts periodic audits or reviews of purchase card or convenience check programs to identify and analyze risks of illegal, improper, or erroneous purchases and payments and that the findings of such audits or reviews, along with recommendations to prevent abuse of purchase cards or convenience checks, are reported to the Director of the Office of Management and Budget and Congress.

(c) **PENALTIES FOR VIOLATIONS.**—The regulations prescribed under subsection (a) shall—

(1) provide—

(A) for the reimbursement of charges for unauthorized or erroneous purchases, in appropriate cases; and

(B) for appropriate adverse personnel actions or other punishment to be imposed in cases in which employees of the Department of Defense violate such regulations or are negligent or engage in misuse, abuse, or