

ance with performance or capability requirements; and

(2) identify suitable actions to be taken, including termination, with respect to those programs.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3743.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
3103	41:263.	June 30, 1949, ch. 288, title III, § 313, as added Pub. L. 103-355, title V, § 5051(a), Oct. 13, 1994, 108 Stat. 3351; Pub. L. 105-85, div. A, title VIII, § 851(a), Nov. 18, 1997, 111 Stat. 1851.

§ 3104. Small business concerns

It is the policy of Congress that a fair proportion of the total purchases and contracts for property and services for the Federal Government shall be placed with small business concerns.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3744.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
3104	41:252(b).	June 30, 1949, ch. 288, title III, § 302(b), 63 Stat. 393; July 12, 1952, ch. 703, § 1(m), 66 Stat. 594; Pub. L. 98-369, div. B, title VII, § 2714(a)(1)(A), July 18, 1984, 98 Stat. 1184.

The word “declared” is omitted as unnecessary.

§ 3105. New contracts and grants and merit-based selection procedures

(a) CONGRESSIONAL POLICY.—It is the policy of Congress that—

(1) an executive agency should not be required by legislation to award—

(A) a new contract to a specific non-Federal Government entity; or

(B) a new grant for research, development, test, or evaluation to a non-Federal Government entity; and

(2) a program, project, or technology identified in legislation be procured or awarded through merit-based selection procedures.

(b) NEW CONTRACT AND NEW GRANT DESCRIBED.—For purposes of this section—

(1) a contract is a new contract unless the work provided for in the contract is a continuation of the work performed by the specified entity under a prior contract; and

(2) a grant is a new grant unless the work provided for in the grant is a continuation of the work performed by the specified entity under a prior grant.

(c) REQUIREMENTS FOR AWARDING NEW CONTRACT OR NEW GRANT.—A provision of law may not be construed as requiring a new contract or a new grant to be awarded to a specified non-Federal Government entity unless the provision of law specifically—

(1) refers to this section;

(2) identifies the particular non-Federal Government entity involved; and

(3) states that the award to that entity is required by the provision of law in contravention of the policy set forth in subsection (a).

(d) EXCEPTION.—This section does not apply to a contract or grant that calls on the National Academy of Sciences to investigate, examine, or experiment on a subject of science or art of significance to an executive agency and to report on those matters to Congress or an agency of the Federal Government.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3744.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
3105(a)	41:253(i)(1). 41:266(a).	June 30, 1949, ch. 288, title III, § 303(i), as added Pub. L. 103-355, title VII, § 7203(b)(1)(B), Oct. 13, 1994, 108 Stat. 3380; Pub. L. 104-106, title XLI, § 4101(b)(1), Feb. 10, 1996, 110 Stat. 642. June 30, 1949, ch. 288, title III, § 316, as added Pub. L. 103-355, title VII, § 7203(b)(2), Oct. 13, 1994, 108 Stat. 3381; Pub. L. 104-106, title XLIII, § 4321(e)(9), Feb. 10, 1996, 110 Stat. 675.
3105(b)	41:253(i)(3).	
3105(c)	41:253(i)(2).	
3105(d)	41:253(i)(4). 41:266(d).	

§ 3106. Erection, repair, or furnishing of public buildings and improvements not authorized, and certain contracts not permitted, by this division

This division does not—

(1) authorize the erection, repair, or furnishing of a public building or public improvement; or

(2) permit a contract for the construction or repair of a building, road, sidewalk, sewer, main, or similar item using procedures other than sealed-bid procedures under section 3301(b)(1)(A) of this title if the conditions set forth in section 3301(b)(1)(A) of this title apply or the contract is to be performed outside the United States.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3745.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
3106	41:252(c)(1).	June 30, 1949, ch. 288, title III, § 302(c)(1), 63 Stat. 393; July 12, 1952, ch. 703, § 1(m), 66 Stat. 594; Pub. L. 85-800, § 2, 3, Aug. 28, 1958, 72 Stat. 966; Pub. L. 89-343, § 2, Nov. 8, 1965, 79 Stat. 1303; Pub. L. 89-348, § 1(2), Nov. 8, 1965, 79 Stat. 1310; Pub. L. 90-268, § 4, Mar. 16, 1968, 82 Stat. 50; Pub. L. 93-356, § 3, July 25, 1974, 88 Stat. 390; Pub. L. 98-191, § 9(a)(1), Dec. 1, 1983, 97 Stat. 1331; Pub. L. 98-369, div. B, title VII, § 2714(a)(1)(B), July 18, 1984, 98 Stat. 1184.

In paragraph (1), the words “but such authorization shall be required in the same manner as heretofore” are omitted as unnecessary.

CHAPTER 33—PLANNING AND SOLICITATION

HISTORICAL AND REVISION NOTES

Sec.	
3301.	Full and open competition.
3302.	Requirements for purchase of property and services pursuant to multiple award contracts.
3303.	Exclusion of particular source or restriction of solicitation to small business concerns.
3304.	Use of noncompetitive procedures.
3305.	Simplified procedures for small purchases.
3306.	Planning and solicitation requirements.
3307.	Preference for commercial items.
3308.	Planning for future competition in contracts for major systems.
3309.	Design-build selection procedures.
3310.	Quantities to order.
3311.	Qualification requirement.
3312.	Database on price trends of items and services under Federal contracts.

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
3301(a)	41:253(a)(1).	June 30, 1949, ch. 288, title III, § 303(a), 63 Stat. 395; July 12, 1952, ch. 703, § 1(m), 66 Stat. 594; Pub. L. 90-268, § 2, Mar. 16, 1968, 82 Stat. 49; Pub. L. 98-369, title VII, § 2711(a)(1), July 18, 1984, 98 Stat. 1175; Pub. L. 103-355, title I, § 1051(1), Oct. 13, 1994, 108 Stat. 3260.
3301(b)(1)	41:253(a)(2).	
3301(b)(2)	41:252(c)(2).	June 30, 1949, ch. 288, title III, § 302(c)(2), as added Pub. L. 98-369, title VII, § 2714(a)(1)(B), July 18, 1984, 98 Stat. 1184.
3301(c)	41:253(h).	June 30, 1949, ch. 288, title III, § 303(h), as added Pub. L. 104-106, title XLI, § 4101(b)(2), Feb. 10, 1996, 110 Stat. 642.

AMENDMENTS

2013—Pub. L. 112-239, div. A, title VIII, § 851(a)(2), Jan. 2, 2013, 126 Stat. 1855, added item 3312.

§ 3301. Full and open competition

(a) IN GENERAL.—Except as provided in sections 3303, 3304(a), and 3305 of this title and except in the case of procurement procedures otherwise expressly authorized by statute, an executive agency in conducting a procurement for property or services shall—

(1) obtain full and open competition through the use of competitive procedures in accordance with the requirements of this division and the Federal Acquisition Regulation; and

(2) use the competitive procedure or combination of competitive procedures that is best suited under the circumstances of the procurement.

(b) APPROPRIATE COMPETITIVE PROCEDURES.—

(1) USE OF SEALED BIDS.—In determining the competitive procedures appropriate under the circumstance, an executive agency shall—

(A) solicit sealed bids if—

(i) time permits the solicitation, submission, and evaluation of sealed bids;

(ii) the award will be made on the basis of price and other price-related factors;

(iii) it is not necessary to conduct discussions with the responding sources about their bids; and

(iv) there is a reasonable expectation of receiving more than one sealed bid; or

(B) request competitive proposals if sealed bids are not appropriate under subparagraph (A).

(2) SEALED BID NOT REQUIRED.—Paragraph (1)(A) does not require the use of sealed-bid procedures in cases in which section 204(e)¹ of title 23 applies.

(c) EFFICIENT FULFILLMENT OF GOVERNMENT REQUIREMENTS.—The Federal Acquisition Regulation shall ensure that the requirement to obtain full and open competition is implemented in a manner that is consistent with the need to efficiently fulfill the Federal Government's requirements.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3745.)

¹ See References in Text note below.

REFERENCES IN TEXT

Section 204 of title 23, referred to in subsec. (b)(2), was repealed and a new section 204 enacted by Pub. L. 112-141, div. A, title I, § 1119(a), July 6, 2012, 126 Stat. 473, 489.

REGULATIONS

Pub. L. 113-291, div. A, title VIII, § 836, Dec. 19, 2014, 128 Stat. 3449, provided that: "Not later than 180 days after the date of the enactment of this Act [Dec. 19, 2014], the Administrator for Federal Procurement Policy shall prescribe regulations providing that when the Federal Government makes a purchase of services and supplies offered under the Federal Strategic Sourcing Initiative (managed by the Office of Federal Procurement Policy) but such Initiative is not used, the contract file for the purchase shall include a brief analysis of the comparative value, including price and nonprice factors, between the services and supplies offered under such Initiative and services and supplies offered under the source or sources used for the purchase."

CONSTRUCTION

Pub. L. 98-369, div. B, title VII, § 2711(c), July 18, 1984, 98 Stat. 1181, provided that: "The amendments made by this section [see Tables for classification] do not supersede or affect the provisions of section 8(a) of the Small Business Act (15 U.S.C. 637(a))."

PILOT PROGRAMS FOR AUTHORITY TO ACQUIRE INNOVATIVE COMMERCIAL ITEMS USING GENERAL SOLICITATION COMPETITIVE PROCEDURES

Pub. L. 114-328, div. A, title VIII, § 880, Dec. 23, 2016, 130 Stat. 2313, provided that:

"(a) AUTHORITY.—

"(1) IN GENERAL.—The head of an agency may carry out a pilot program, to be known as a 'commercial solutions opening pilot program', under which innovative commercial items may be acquired through a competitive selection of proposals resulting from a general solicitation and the peer review of such proposals.

"(2) HEAD OF AN AGENCY.—In this section, the term 'head of an agency' means the following:

"(A) The Secretary of Homeland Security.

"(B) The Administrator of General Services.

"(3) APPLICABILITY OF SECTION.—This section applies to the following agencies:

"(A) The Department of Homeland Security.

"(B) The General Services Administration.

"(b) TREATMENT AS COMPETITIVE PROCEDURES.—Use of general solicitation competitive procedures for the pilot program under subsection (a) shall be considered, in the case of the Department of Homeland Security and the General Services Administration, to be use of competitive procedures for purposes of division C of [subtitle I of] title 41, United States Code (as defined in section 152 of such title).