

**CHAPTER 33—PLANNING AND SOLICITATION**

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## AMENDMENTS

2018—Pub. L. 115-232, div. A, title VIII, § 836(b)(10)(B)(ii), Aug. 13, 2018, 132 Stat. 1863, substituted “Preference for commercial products and commercial services” for “Preference for commercial items” in item 3307.

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)<sup>1</sup> of title 23 applies.

(c) EFFICIENT FULFILLMENT OF GOVERNMENT REQUIREMENTS.—The Federal Acquisition Regulation shall ensure that the requirement to ob-

tain 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.)

## HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
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).	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(b)(2) ....	41:252(c)(2).	
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.

## 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, as amended by Pub. L. 115-232, div. A, title VIII, § 836(f)(10), Aug. 13, 2018, 132 Stat. 1872, 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 products 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:

<sup>1</sup> See References in Text note below.

“(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).

“(c) LIMITATION.—The head of an agency may not enter into a contract under the pilot program for an amount in excess of \$10,000,000.

“(d) GUIDANCE.—The head of an agency shall issue guidance for the implementation of the pilot program under this section within that agency. Such guidance shall be issued in consultation with the Office of Management and Budget and shall be posted for access by the public.

“(e) REPORT REQUIRED.—

“(1) IN GENERAL.—Not later than three years after the date of the enactment of this Act [Dec. 23, 2016], the head of an agency shall submit to the congressional committees specified in paragraph (3) a report on the activities the agency carried out under the pilot program.

“(2) ELEMENTS OF REPORT.—Each report under this subsection shall include the following:

“(A) An assessment of the impact of the pilot program on competition.

“(B) A comparison of acquisition timelines for—

“(i) procurements made using the pilot program; and

“(ii) procurements made using other competitive procedures that do not use general solicitations.

“(C) A recommendation on whether the authority for the pilot program should be made permanent.

“(3) SPECIFIED CONGRESSIONAL COMMITTEES.—The congressional committees specified in this paragraph are the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform [now Committee on Oversight and Reform] of the House of Representatives.

“(f) INNOVATIVE DEFINED.—In this section, the term ‘innovative’ means—

“(1) any new technology, process, or method, including research and development; or

“(2) any new application of an existing technology, process, or method.

“(g) TERMINATION.—The authority to enter into a contract under a pilot program under this section terminates on September 30, 2022.”

#### GOVERNMENTWIDE SOFTWARE PURCHASING PROGRAM

Pub. L. 113-291, div. A, title VIII, §837, Dec. 19, 2014, 128 Stat. 3450, provided that:

“(a) IN GENERAL.—The Administrator of General Services shall identify and develop a strategic sourcing initiative to enhance Governmentwide acquisition, shared use, and dissemination of software, as well as compliance with end user license agreements.

“(b) GOVERNMENTWIDE USER LICENSE AGREEMENT.—The Administrator, in developing the initiative under subsection (a), shall allow for the purchase of a license agreement that is available for use by all Executive agencies (as defined in section 105 of title 5, United States Code) as one user to the maximum extent practicable and as appropriate.”

### § 3302. Requirements for purchase of property and services pursuant to multiple award contracts

(a) DEFINITIONS.—In this section:

(1) EXECUTIVE AGENCY.— The term “executive agency” has the same meaning given in section 133 of this title.

(2) INDIVIDUAL PURCHASE.—The term “individual purchase” means a task order, delivery order, or other purchase.

(3) MULTIPLE AWARD CONTRACT.—The term “multiple award contract” means—

(A) a contract that is entered into by the Administrator of General Services under the multiple award schedule program referred to in section 2302(2)(C) of title 10;

(B) a multiple award task order contract that is entered into under the authority of sections 2304a to 2304d of title 10, or chapter 41 of this title; and

(C) any other indefinite delivery, indefinite quantity contract that is entered into by the head of an executive agency with 2 or more sources pursuant to the same solicitation.

(4) SOLE SOURCE TASK OR DELIVERY ORDER.—The term “sole source task or delivery order” means any order that does not follow the competitive procedures in paragraph (2) or (3) of subsection (c).

(b) REGULATIONS REQUIRED.—The Federal Acquisition Regulation shall require enhanced competition in the purchase of property and services by all executive agencies pursuant to multiple award contracts.

(c) CONTENT OF REGULATIONS.—

(1) IN GENERAL.—The regulations required by subsection (b) shall provide that each individual purchase of property or services in excess of the simplified acquisition threshold that is made under a multiple award contract shall be made on a competitive basis unless a contracting officer—

(A) waives the requirement on the basis of a determination that—

(i) one of the circumstances described in paragraphs (1) to (4) of section 4106(c) of this title or section 2304c(b) of title 10 applies to the individual purchase; or

(ii) a law expressly authorizes or requires that the purchase be made from a specified source; and

(B) justifies the determination in writing.

(2) COMPETITIVE BASIS PROCEDURES.—For purposes of this subsection, an individual purchase of property or services is made on a competitive basis only if it is made pursuant to procedures that—

(A) require fair notice of the intent to make that purchase (including a description of the work to be performed and the basis on which the selection will be made) to be provided to all contractors offering the property or services under the multiple award contract; and

(B) afford all contractors responding to the notice a fair opportunity to make an offer and have that offer fairly considered by the official making the purchase.

(3) EXCEPTION TO NOTICE REQUIREMENT.—

(A) IN GENERAL.—Notwithstanding paragraph (2), and subject to subparagraph (B), notice may be provided to fewer than all contractors offering the property or services under a multiple award contract as described in subsection (a)(3)(A) if notice is