

3304(a)(7)(B), the Administrator, when making a determination that use of noncompetitive procedures is necessary for public interest in accordance with 41 U.S.C. 3304(a)(7)(A) in response to a public health emergency declaration by the Secretary of Health and Human Services under section 319 of the Public Health Service Act (42 U.S.C. 247(d) [247d]), is required to notify Congress in writing of that determination not less than 3 days prior to the award of the contract.”

JUSTIFICATION AND APPROVAL OF SOLE-SOURCE CONTRACTS

Pub. L. 111–84, div. A, title VIII, §811, Oct. 28, 2009, 123 Stat. 2405, as amended by Pub. L. 117–81, div. A, title XVII, §1702(i)(3), Dec. 27, 2021, 135 Stat. 2159, provided that:

“(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Oct. 28, 2009], the Federal Acquisition Regulation shall be revised to provide that the head of an agency may not award a sole-source contract in a covered procurement for an amount exceeding \$20,000,000 unless—

“(1) the contracting officer for the contract justifies the use of a sole-source contract in writing;

“(2) the justification is approved by the appropriate official designated to approve contract awards for dollar amounts that are comparable to the amount of the sole-source contract; and

“(3) the justification and related information are made public as provided in sections 3204(e)(1)(C) and 3204(f) of title 10, United States Code, or sections 303(f)(1)(C) and 303(j) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(f)(1)(C) and 253(j)) [now 41 U.S.C. 3304(e)(1)(C) and 3304(f)], as applicable.

“(b) ELEMENTS OF JUSTIFICATION.—The justification of a sole-source contract required pursuant to subsection (a) shall include the following:

“(1) A description of the needs of the agency concerned for the matters covered by the contract.

“(2) A specification of the statutory provision providing the exception from the requirement to use competitive procedures in entering into the contract.

“(3) A determination that the use of a sole-source contract is in the best interest of the agency concerned.

“(4) A determination that the anticipated cost of the contract will be fair and reasonable.

“(5) Such other matters as the head of the agency concerned shall specify for purposes of this section.

“(c) DEFINITIONS.—In this section:

“(1) COVERED PROCUREMENT.—The term ‘covered procurement’ means either of the following:

“(A) A procurement described in section 3204(e)(4)(D)(ii) of title 10, United States Code.

“(B) A procurement described in section 303(f)(2)(D)(ii) of the Federal Property and Administrative Services Act of 1949 [former] 41 U.S.C. 253(f)(2)(D)(ii) [see 41 U.S.C. 3304(e)(4)(D)].

“(2) HEAD OF AN AGENCY.—The term ‘head of an agency’—

“(A) in the case of a covered procurement as defined in paragraph (1)(A), has the meaning provided in section 3004 of title 10, United States Code; and

“(B) in the case of a covered procurement as defined in paragraph (1)(B), has the meaning provided the term ‘agency head’ in section 309(a) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 259(a)) [now 41 U.S.C. 151].

“(3) APPROPRIATE OFFICIAL.—The term ‘appropriate official’ means—

“(A) in the case of a covered procurement as defined in paragraph (1)(A), an official designated in section 3204(e)(1)(B) of title 10, United States Code; and

“(B) in the case of a covered procurement as defined in paragraph (1)(B), an official designated in section 303(f)(1)(B) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(f)(1)(B)) [now 41 U.S.C. 3304(e)(1)(B)].”

§ 3305. Simplified procedures for small purchases

(a) AUTHORIZATION.—To promote efficiency and economy in contracting and to avoid unnecessary burdens for agencies and contractors, the Federal Acquisition Regulation shall provide for special simplified procedures for purchases of property and services for amounts—

(1) not greater than the simplified acquisition threshold; and

(2) greater than the simplified acquisition threshold but not greater than \$5,000,000 for which the contracting officer reasonably expects, based on the nature of the property or services sought and on market research, that offers will include only commercial products or commercial services.

(b) LEASEHOLD INTERESTS IN REAL PROPERTY.—The Administrator of General Services shall prescribe regulations that provide special simplified procedures for acquisitions of leasehold interests in real property at rental rates that do not exceed the simplified acquisition threshold. The rental rate under a multiyear lease does not exceed the simplified acquisition threshold if the average annual amount of the rent payable for the period of the lease does not exceed the simplified acquisition threshold.

(c) PROHIBITION ON DIVIDING CONTRACTS.—A proposed purchase or contract for an amount above the simplified acquisition threshold may not be divided into several purchases or contracts for lesser amounts to use the simplified procedures required by subsection (a).

(d) PROMOTION OF COMPETITION.—In using the simplified procedures, an executive agency shall promote competition to the maximum extent practicable.

(e) COMPLIANCE WITH SPECIAL REQUIREMENTS OF FEDERAL ACQUISITION REGULATION.—An executive agency shall comply with the Federal Acquisition Regulation provisions referred to in section 1901(e) of this title.

(Pub. L. 111–350, §3, Jan. 4, 2011, 124 Stat. 3752; Pub. L. 115–232, div. A, title VIII, §836(b)(8), Aug. 13, 2018, 132 Stat. 1861.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
3305	41:253(g).	June 30, 1949, ch. 288, title III, §303(g), 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. 1178; Pub. L. 99–145, title XIII, §1304(c)(3), Nov. 8, 1985, 99 Stat. 742; Pub. L. 101–510, title VIII, §806(c), Nov. 5, 1990, 104 Stat. 1592; Pub. L. 103–355, title I, §1051(2), title IV, §4402(a), Oct. 13, 1994, 108 Stat. 3260, 3348; Pub. L. 104–106, title XLII, §4202(b)(1), Feb. 10, 1996, 110 Stat. 653; Pub. L. 105–85, title VIII, §850(d)(4)(B), Nov. 18, 1997, 111 Stat. 1850.

Editorial Notes**AMENDMENTS**

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

Statutory Notes and Related Subsidiaries**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.

§ 3306. Planning and solicitation requirements**(a) PLANNING AND SPECIFICATIONS.—**

(1) **PREPARING FOR PROCUREMENT.**—In preparing for the procurement of property or services, an executive agency shall—

(A) specify its needs and solicit bids or proposals in a manner designed to achieve full and open competition for the procurement;

(B) use advance procurement planning and market research; and

(C) develop specifications in the manner necessary to obtain full and open competition with due regard to the nature of the property or services to be acquired.

(2) **REQUIREMENTS OF SPECIFICATIONS.**—Each solicitation under this division shall include specifications that—

(A) consistent with this division, permit full and open competition; and

(B) include restrictive provisions or conditions only to the extent necessary to satisfy the needs of the executive agency or as authorized by law.

(3) **TYPES OF SPECIFICATIONS.**—For the purposes of paragraphs (1) and (2), the type of specification included in a solicitation shall depend on the nature of the needs of the executive agency and the market available to satisfy those needs. Subject to those needs, specifications may be stated in terms of—

(A) function, so that a variety of products or services may qualify;

(B) performance, including specifications of the range of acceptable characteristics or of the minimum acceptable standards; or

(C) design requirements.

(b) **CONTENTS OF SOLICITATION.**—In addition to the specifications described in subsection (a), each solicitation for sealed bids or competitive proposals (other than for a procurement for commercial products or commercial services using special simplified procedures or a purchase for an amount not greater than the simplified acquisition threshold) shall at a minimum include—

(1) a statement of—

(A) all significant factors and significant subfactors that the executive agency reasonably expects to consider in evaluating sealed bids (including price) or competitive proposals (including cost or price, cost-related or price-related factors and subfactors, and noncost-related or nonprice-related factors and subfactors); and

(B) the relative importance assigned to each of those factors and subfactors; and

(2)(A) in the case of sealed bids—

(i) a statement that sealed bids will be evaluated without discussions with the bidders; and

(ii) the time and place for the opening of the sealed bids; or

(B) in the case of competitive proposals—

(i) either a statement that the proposals are intended to be evaluated with, and the award made after, discussions with the offerors, or a statement that the proposals are intended to be evaluated, and the award made, without discussions with the offerors (other than discussions conducted for the purpose of minor clarification) unless discussions are determined to be necessary; and

(ii) the time and place for submission of proposals.

(c) EVALUATION FACTORS.—

(1) **IN GENERAL.**—In prescribing the evaluation factors to be included in each solicitation for competitive proposals, an executive agency shall—

(A) establish clearly the relative importance assigned to the evaluation factors and subfactors, including the quality of the product or services to be provided (including technical capability, management capability, prior experience, and past performance of the offeror);

(B) except as provided in paragraph (3), include cost or price to the Federal Government as an evaluation factor that must be considered in the evaluation of proposals; and

(C) except as provided in paragraph (3), disclose to offerors whether all evaluation factors other than cost or price, when combined, are—

(i) significantly more important than cost or price;

(ii) approximately equal in importance to cost or price; or

(iii) significantly less important than cost or price.

(2) **RESTRICTION ON IMPLEMENTING REGULATIONS.**—Regulations implementing paragraph (1)(C) may not define the terms “significantly more important” and “significantly less important” as specific numeric weights that would be applied uniformly to all solicitations or a class of solicitations.

(3) **EXCEPTIONS FOR CERTAIN INDEFINITE DELIVERY, INDEFINITE QUANTITY MULTIPLE-AWARD CONTRACTS AND CERTAIN FEDERAL SUPPLY SCHEDULE CONTRACTS FOR SERVICES ACQUIRED ON AN HOURLY RATE.**—If an executive agency issues a solicitation for one or more contracts for services to be acquired on an hourly rate basis under the authority of sections 4103 and 4106 of this title or section 152(3) of this title and section 501(b) of title 40 and the executive agency intends to make a contract award to each qualifying offeror and the contract or contracts will feature individually competed task or delivery orders based on hourly rates—

(A) the contracting officer need not consider price as an evaluation factor for contract award; and