awarded after June 1, 1993, may include a specification or standard that requires the use of a class I ozone-depleting substance or that can be met only through the use of such a substance; and

(II) a determination that the contract includes such a specification or standard, whether the contract can be carried out through the use of an economically feasible substitute for the ozone-depleting substance or through the use of an economically feasible alternative technology for a technology involving the use of the ozone-depleting substance.

(iii) A contract under evaluation under clause (i) may not be further modified, amended, or extended until the evaluation described in that clause is complete.

(4) If the acquisition official (or designee) determines that an economically feasible substitute substance or alternative technology is available for use in a contract under evaluation, the appropriate contracting officer shall enter into negotiations to modify the contract to require the use of the substitute substance or alternative technology.

(C) A determination that a substitute substance or technology is not available for use in a contract under evaluation shall be made in writing by the senior acquisition official (or designee).

(D) The Secretary of Defense may, consistent with the Federal Acquisition Regulation, adjust the price of a contract modified under subparagraph (B) to take into account the use by the contractor of a substitute substance or alternative technology in the modified contract.

§ 3201. Full and open competition

(a) IN GENERAL.—Except as provided in sections 3203, 3204(a), and 3205 of this title and except in the case of procurement procedures otherwise expressly authorized by statute, the head of an agency in conducting a procurement for property or services—

(1) shall obtain full and open competition through the use of competitive procedures in accordance with the requirements of this section and sections 3069, 3203, 3204, 3205, 3403, 3405, 3406, 3901, 4501, and 4502 of this title and the Federal Acquisition Regulation; and

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

(b) DETERMINATION OF APPROPRIATE COMPETITIVE PROCEDURES.—In determining the competitive procedure appropriate under the circumstances, the head of an agency—

(1) shall solicit sealed bids if—

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

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

(C) it is necessary to conduct discussions with the responding sources about their bids; and

(D) there is a reasonable expectation of receiving more than one sealed bid; and

(2) shall notify the head of an agency of the determination made under paragraph (1) and the reasons for the determination.
(2) shall request competitive proposals if sealed bids are not appropriate under paragraph (1).

(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 Government’s requirements.

(d) Certain Purchases or Contracts to Be Treated as if Made With Sealed-Bid Procedures.—For the purposes of the following, purchases or contracts awarded after using procedures other than sealed-bid procedures shall be treated as if they were made with sealed-bid procedures:

(1) Chapter 65 of title I.

(2) Sections 3141–3144, 3146, and 3147 of title 40.

(e) New Contracts and Merit-Based Selection Procedures.

(1) Congressional Policy.—It is the policy of Congress that an agency named in section 3063 of this title should not be required by legislation to award a new contract to a specific non-Federal Government entity. It is further the policy of Congress that any program, project, or technology identified in legislation be procured through merit-based selection procedures.

(2) New Contract Described.—For purposes of this subsection, 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 preceding contract.

(3) Provision of Law Described.—A provision of law may not be construed as requiring a new contract to be awarded to a specified non-Federal Government entity unless that provision of law—

(A) specifically refers to this subsection;

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

(C) specifically states that the award to that entity is required by such provision of law in contravention of the policy set forth in paragraph (1).

(4) Exception.—This subsection shall not apply with respect to any contract that calls upon the National Academy of Sciences to investigate, examine, or experiment upon any subject of science or art of significance to an agency named in section 3063 of this title and to report on such matters to the Congress or any agency of the Federal Government.


Editorial Notes

Codification

this section, inserted subsec. and par. headings, switched order and designations of pars. (2) and (3), realigned margins of pars. (2) to (4), and substituted “section 3003” for “section 2303(a)” in pars. (1) and (4).

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 Effective Date note below.

Effective Date

Section and 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 an Effective Date of 2021 Amendment note preceding section 3001 of this title.

Competition for Procurement of Small Arms Supplied to Iraq and Afghanistan


“(a) Competition Requirement.—For the procurement of pistols and other weapons described in subsection (b), the Secretary of Defense shall ensure, consistent with the provisions of section 2304 of title 10, United States Code [see 10 U.S.C. 2301 et seq.], that—

“(1) full and open competition is obtained to the maximum extent practicable;

“(2) no responsible United States manufacturer is excluded from competing for such procurements; and

“(3) products manufactured in the United States are not excluded from the competition.

“(b) Procurements Covered.—This section applies to the procurement of the following:

“(1) Pistols and other weapons less than 0.50 caliber for assistance to the Army of Iraq, the Iraqi Police Forces, and other security organizations.

“(2) Pistols and other weapons less than 0.50 caliber for assistance to the Army of Afghanistan, the Afghan Police Forces, and other Afghan security organizations.

Competitive Award of Contracts for Reconstruction Activities in Iraq


§ 3203. Exclusion of particular source or restriction of solicitation to small business concerns

(a) Exclusion of Particular Source.—

(1) Criteria for Exclusion.—The head of an agency may provide for the procurement of property or services covered by chapter 137 legacy provisions using competitive procedures but excluding a particular source in order to establish or maintain an alternative source or sources of supply for that property or service if the head of the agency determines that to do so—

(A) would increase or maintain competition and would likely result in reduced overall costs for such procurement, or for any anticipated procurement, of property or services;

(B) would be in the interest of national defense in having a facility (or a producer, manufacturer, or other supplier) available for furnishing the property or service in case of a national emergency or industrial mobilization;

(C) would be in the interest of national defense in establishing or maintaining an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center;

(D) would ensure the continuous availability of a reliable source of supply of such property or service;

(E) would satisfy projected needs for such property or service determined on the basis of a history of high demand for the property or service; or

(F) in the case of medical supplies, safety supplies, or emergency supplies, would satisfy a critical need for such supplies.

(2) Determination for Class Disallowed.—A determination under paragraph (1) may not be made for a class of purchases or contracts.

(b) Exclusion of Other Than Small Business Concerns.—The head of an agency may provide for the procurement of property or services covered by chapter 137 legacy provisions using competitive procedures, but excluding concerns other than small business concerns in furtherance of sections 9 and 15 of the Small Business Act (15 U.S.C. 638, 644).

(c) Inapplicability of Justification and Approval Requirements.—A contract awarded pursuant to the competitive procedures referred to in subsections (a)(1) and (b) shall not be subject to the justification and approval required by section 3204(e)(1) of this title.


Editorial Notes

Compilations


Prior Provisions


Amendments

2021—Subsec. (a). Pub. L. 116–283, §1811(d)(2)(A), redesignated subsec. (b) of section 2304 of this title as subsec. (a) of this section and inserted heading.