2011, the Under Secretary of Defense for Acquisition and Sustainment shall revise the Defense Supplement to the Federal Acquisition Regulation to require the following:

“(1) That affected contractors are provided, in a timely manner, information on contractor performance to be included in past performance databases in accordance with subsection (a).

“(2) That such contractors are afforded up to 14 calendar days, from the date of delivery of the information provided in accordance with paragraph (1), to submit comments, rebuttals, or additional information pertaining to past performance for inclusion in such databases.

“(3) That agency evaluations of contractor past performance, including any information submitted under paragraph (2), are included in the relevant past performance database not later than the date that is 14 days after the date of delivery of the information provided in accordance with paragraph (1).

“(d) CONSTRUCTION.—Nothing in this section shall be construed to prohibit a contractor from submitting comments, rebuttals, or additional information pertaining to past performance after the period described in subsection (c)(2) has elapsed or to prohibit a contractor from challenging a past performance evaluation in accordance with applicable laws, regulations, or procedures.

“(e) COMPTROLLER GENERAL REPORT.—Not later than 18 months after the date of the enactment of this Act [Dec. 31, 2011], the Comptroller General of the United States, considering only price and the other price-related factors included in the solicitation, shall evaluate the bids in accordance with section 3301(a) of this title, including an assessment of the extent to which such actions have achieved the objectives of this section.’’

§ 3302. Sealed bids

(a) OPENING OF BIDS.—Sealed bids shall be opened publicly at the time and place stated in the solicitation.

(b) CRITERIA FOR AWARDING CONTRACT.—The head of the agency shall evaluate the bids in accordance with section 3301(a) of this title without discussions with the bidders and, except as provided in section 3301(b) of this title, shall award a contract with reasonable promptness to the responsible bidder whose bid conforms to the solicitation and is most advantageous to the United States, considering only price and the other price-related factors included in the solicitation.

(c) NOTICE OF AWARD.—The award of a contract shall be made by transmitting, in writing or by electronic means, notice of the award to the successful bidder. Within three days after the date of contract award, the head of the agency shall notify, in writing or by electronic means, each bidder not awarded the contract that the contract has been awarded.


Editorial Notes

Codification


Prior Provisions


Amendments

2021—Subsec. (a). Pub. L. 116–283, §1816(c)(4)(A), (C), redesignated subsec. (b)(3) of section 3305 of this title as subsec. (a) of this section and inserted heading. Former second and third sentences of subsec. (a) designated subsec. (b) and (c), respectively. Subsec. (b). Pub. L. 116–283, §1816(c)(4)(B), (D), designated second sentence of subsec. (a) as subsec. (b) of this section, inserted heading, and substituted “section 3301(a) of this title” for “paragraph (1)” and “section 3301(b) of this title” for “paragraph (2)”.

Subsec. (c). Pub. L. 116–283, §1816(c)(4)(B), (E), designated third sentence of subsec. (a) as subsec. (c) of this section and inserted heading.

Statutory Notes and Related Subsidiaries

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.

§ 3303. Competitive proposals

(a) EVALUATION AND AWARD.—The head of an agency shall evaluate competitive proposals in accordance with section 3301(a) of this title and may award a contract—

(1) after discussions with the offerors, provided that written or oral discussions have been conducted with all responsible offerors who submit proposals within the competitive range; or

(2) based on the proposals received, without discussions with the offerors (other than discussions conducted for the purpose of minor clarification) provided that the solicitation included a statement that proposals are intended to be evaluated, and award made, without discussions, unless discussions are determined to be necessary.

(b) LIMIT ON NUMBER OF PROPOSALS.—If the contracting officer determines that the number of offerors that would otherwise be included in the competitive range under subsection (a)(1) exceeds the number at which an efficient competition can be conducted, the contracting officer may limit the number of proposals in the competitive range, in accordance with the criteria specified in the solicitation, to the greatest number that will permit an efficient competition among the offerors rated most highly in accordance with such criteria.

(c) CRITERIA FOR AWARDING CONTRACT.—Except as provided in section 3301(b) of this title, the head of the agency shall award a contract with reasonable promptness to the responsible source whose proposal is most advantageous to the
United States, considering only cost or price and the other factors included in the solicitation.

(d) NOTICE OF AWARD.—The head of the agency shall award the contract by transmitting, in writing or by electronic means, notice of the award to such source and, within three days after the date of contract award, shall notify, in writing or by electronic means, all other offerors of the rejection of their proposals.

(e) EXCEPTION FOR PERISHABLE SUBSISTENCE ITEMS.—Subsections (c) and (d) do not apply with respect to the award of a contract for the acquisition of perishable subsistence items.


Editorial Notes

CODIFICATION


PRIOR PROVISIONS


AMENDMENTS

2021—Pub. L. 116–283, §1816(c)(3)(A), transferred subsec. (b)(4) of section 2305 of this title to this section and struck out par. (4) designation at beginning.

Subsec. (a). Pub. L. 116–283, §1816(c)(3)(B), (D), redesignated subpar. (A) of former section 2305(b)(4) of this title as subsec. (a) of this section, inserted heading, substituted “section 3303(a) of this title” for “paragraph (1)” in introductory provisions, and redesignated cls. (1) and (2) as pars. (1) and (2), respectively.

Subsec. (b). Pub. L. 116–283, §1816(c)(3)(C), (E), redesignated subpar. (B) of former section 2305(b)(4) of this title as subsec. (b) of this section, inserted heading, and substituted “subsection (a)(1)” for “subparagraph (A)(ii)”.

Subsec. (c). Pub. L. 116–283, §1816(c)(3)(D), (F), redesignated subpar. (C) of former section 2305(b)(4) of this title as subsec. (c) of this section, inserted heading, and substituted “subsection (a)(1)” for “subparagraph (A)(ii)”.

Subsec. (d). Pub. L. 116–283, §1816(c)(3)(E), (G), as amended and added by Pub. L. 117–81, §1701(b)(6)(A), designated the second sentence of subsec. (c) of this subsection.