

(Added and amended Pub. L. 116–283, div. A, title XVIII, §1811(c), Jan. 1, 2021, 134 Stat. 4165; Pub. L. 117–81, div. A, title XVII, §1701(b)(4)(A), Dec. 27, 2021, 135 Stat. 2132.)

Editorial Notes

CODIFICATION

The text of subsec. (a) of section 2304 of this title, which was transferred to this section, redesignated as subsecs. (a) and (b), and amended by Pub. L. 116–283, §1811(c)(2), was based on Pub. L. 98–369, div. B, title VII, §2723(a)(1)(C), July 18, 1984, 98 Stat. 1187; Pub. L. 99–145, title XIII, §1303(a)(13), Nov. 8, 1985, 99 Stat. 739; Pub. L. 100–26, §7(d)(3)(A), Apr. 21, 1987, 101 Stat. 281; Pub. L. 103–355, title I, §1001(1), Oct. 13, 1994, 108 Stat. 3249.

The text of subsec. (j) of section 2304 of this title, which was transferred to this section, redesignated as subsec. (c), and amended by Pub. L. 116–283, §1811(c)(3), was based on Pub. L. 104–106, div. D, title XLI, §4101(a)(2), Feb. 10, 1996, 110 Stat. 642.

The text of subsec. (h) of section 2304 of this title, which was transferred to this section, redesignated as subsec. (d), and amended by Pub. L. 116–283, §1811(c)(4), was based on act Aug. 10, 1956, ch. 1041, 70A Stat. 128; Pub. L. 96–513, title V, §511(76), Dec. 12, 1980, 94 Stat. 2926; Pub. L. 97–295, §1(24)(B), Oct. 12, 1982, 96 Stat. 1291; Pub. L. 98–369, div. B, title VII, §§2723(a)(1)(B), 2727(b), July 18, 1984, 98 Stat. 1187, 1194; Pub. L. 98–577, title V, §504(b)(2), Oct. 30, 1984, 98 Stat. 3086; Pub. L. 104–106, div. D, title XLIII, §4321(b)(5), Feb. 10, 1996, 110 Stat. 672; Pub. L. 107–217, §3(b)(3), Aug. 21, 2002, 116 Stat. 1295; Pub. L. 111–350, §5(b)(12)(E), Jan. 4, 2011, 124 Stat. 3843.

The text of subsec. (k) of section 2304 of this title, which was transferred to this section, redesignated as subsec. (e), and amended by Pub. L. 116–283, §1811(c)(5), was based on Pub. L. 103–355, title VII, §7203(a)(1)(B), Oct. 13, 1994, 108 Stat. 3379; Pub. L. 104–106, div. D, title XLI, §4101(a)(1), Feb. 10, 1996, 110 Stat. 642.

PRIOR PROVISIONS

A prior section 3201 was renumbered section 7101 of this title.

Another prior section 3201, act Aug. 10, 1956, ch. 1041, 70A Stat. 172; Pub. L. 85–861, §1(62), Sept. 2, 1958, 72 Stat. 1462; Pub. L. 88–647, title III, §301(4), Oct. 13, 1964, 78 Stat. 1071, prescribed the authorized strength of the Army in members on active duty, exclusive of certain categories, and the authorized daily average strength of the Army in members on active duty during the fiscal year, exclusive of certain categories, prior to repeal by Pub. L. 96–513, title II, §202, title VII, §701, Dec. 12, 1980, 94 Stat. 2878, 2955, effective Sept. 15, 1981.

A prior section 3202, act Aug. 10, 1956, ch. 1041, 70A Stat. 172; Pub. L. 85–861, §1(63), Sept. 2, 1958, 72 Stat. 1463; Pub. L. 90–228, §1(1), (2), Dec. 28, 1967, 81 Stat. 745; Pub. L. 96–513, title II, §203(a), Dec. 12, 1980, 94 Stat. 2878, related to authorized strength of Army in general officers on active duty, prior to repeal by Pub. L. 101–510, div. A, title IV, §403(b)(1)(A), Nov. 5, 1990, 104 Stat. 1545.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, §1811(c)(2)(B), (C), as amended by Pub. L. 117–81, §1701(b)(4)(A)(i), inserted heading, struck out par. (1) designation at beginning and substituted “Except as provided in sections 3203, 3204(a), and 3205 of this title” for “Except as provided in subsections (b), (c), and (g)” in introductory provisions, and redesignated subpars. (A) and (B) as pars. (1) and (2), respectively. Par. (2) subsequently redesignated subsec. (b).

Pub. L. 116–283, §1811(c)(2), transferred subsec. (a) of section 2304 of this title to this section.

Subsec. (a)(1). Pub. L. 116–283, §1811(c)(2)(D), as amended by Pub. L. 117–81, §1701(b)(4)(A)(ii), substituted “this section and sections 3069, 3203, 3204, 3205, 3403, 3405, 3406, 3901, 4501, and 4502 of this title” for “this chapter”.

Subsec. (b). Pub. L. 116–283, §1811(c)(2)(A), (E), redesignated subsec. (a)(2) as (b) and inserted heading, redesignated subpar. (A) and cls. (i) to (iv) as par. (1) and subpars. (A) to (D), respectively, and redesignated subpar. (B) as par. (2) and substituted “paragraph (1)” for “clause (A)”.

Subsec. (c). Pub. L. 116–283, §1811(c)(3), redesignated subsec. (j) of section 2304 of this title as subsec. (c) of this section and inserted heading.

Subsec. (d). Pub. L. 116–283, §1811(c)(4), redesignated subsec. (h) of section 2304 of this title as subsec. (d) of this section and inserted heading.

Subsec. (e). Pub. L. 116–283, §1811(c)(5), redesignated subsec. (k) of section 2304 of this title as subsec. (e) of 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 3063” 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

Pub. L. 110–181, div. A, title VIII, §892, Jan. 28, 2008, 122 Stat. 270, provided that:

“(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. 3201 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 Iraqi security organizations.

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

COMPETITIVE AWARD OF CONTRACTS FOR RECONSTRUCTION ACTIVITIES IN IRAQ

Pub. L. 108–136, div. A, title VIII, §805(a), Nov. 24, 2003, 117 Stat. 1542, provided that: “The Department of Defense shall fully comply with [former] chapter 137 of title 10, United States Code, and other applicable procurement laws and regulations for any contract awarded for reconstruction activities in Iraq, and shall conduct a full and open competition for performing work needed for the reconstruction of the Iraqi oil industry.”

§ 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.

(Added and amended Pub. L. 116–283, div. A, title XVIII, §1811(d)(1), (2), Jan. 1, 2021, 134 Stat. 4166; Pub. L. 117–81, div. A, title XVII, §1701(d)(3), Dec. 27, 2021, 135 Stat. 2136.)

Editorial Notes

CODIFICATION

The text of subsec. (b) of section 2304 of this title, which was transferred to this section and amended by Pub. L. 116–283, §1811(d)(2), was based on Pub. L. 98–369, div. B, title VII, §2723(a)(1)(C), July 18, 1984, 98 Stat. 1187; Pub. L. 98–577, title V, §504(b)(1), Oct. 30, 1984, 98 Stat. 3086; Pub. L. 99–661, div. A, title XIII, §1343(a)(14), Nov. 14, 1986, 100 Stat. 3993; Pub. L. 101–189, div. A, title VIII, §53(d), Nov. 29, 1989, 103 Stat. 1519; Pub. L. 102–484, div. A, title VIII, §801(h)(2), Oct. 23, 1992, 106 Stat. 2445; Pub. L. 103–355, title I, §1002, Oct. 13, 1994, 108 Stat. 3249; Pub. L. 115–232, div. A, title VIII, §812(a)(2)(C)(v), Aug. 13, 2018, 132 Stat. 1847.

PRIOR PROVISIONS

A prior section 3203, act Aug. 10, 1956, ch. 1041, 70A Stat. 173; Pub. L. 85–861, §1(64), Sept. 2, 1958, 72 Stat. 1463, prescribed authorized strength of Regular Army in members on active duty, exclusive of officers candidates, prior to repeal by Pub. L. 96–513, title II, §202, title VII, §701, Dec. 12, 1980, 94 Stat. 2878, 2955, effective Sept. 15, 1981.

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.

Subsec. (a)(1). Pub. L. 116–283, §1811(d)(2)(A)–(C), inserted heading, substituted “covered by chapter 137 legacy provisions” for “covered by this chapter” in introductory provisions, and realigned margins of subpars. (A) to (F).

Subsec. (a)(2). Pub. L. 116–283, §1811(d)(2)(F), redesignated par. (4) as (2), inserted heading, and realigned margin. Former pars. (2) and (3) redesignated subsecs. (b) and (c), respectively.

Subsec. (b). Pub. L. 116–283, §1811(d)(2)(D), redesignated subsec. (a)(2) as (b), inserted heading, and substituted “chapter 137 legacy provisions” for “this section”.

Subsec. (c). Pub. L. 117–81 substituted “subsections (a)(1) and (b)” for “paragraphs (1) and (2)”.

Pub. L. 116–283, §1811(d)(2)(E), redesignated subsec. (a)(3) as (c), inserted heading, and substituted “section 3204(e)(1) of this title” for “subsection (f)(1)”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 117–81 to take effect immediately after the amendments made by title XVIII of Pub. L. 116–283 have taken effect, see section 1701(a)(3) 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.

§ 3204. Use of procedures other than competitive procedures

(a) WHEN PROCEDURES OTHER THAN COMPETITIVE PROCEDURES MAY BE USED.—The head of an agency may use procedures other than competitive procedures only when—

(1) the property or services needed by the agency are available from only one responsible source or only from a limited number of responsible sources and no other type of property or services will satisfy the needs of the agency;

(2) the agency’s need for the property or services is of such an unusual and compelling urgency that the United States would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals;

(3) it is necessary to award the contract to a particular source or sources in order—

(A) to maintain a facility, producer, manufacturer, or other supplier available for furnishing property or services in case of a national emergency or to achieve industrial mobilization;

(B) to establish or maintain an essential engineering, research, or development capa-