

Armed Services and Appropriations of the Senate and the House of Representatives] on the pilot program, including with respect to each qualified business wholly-owned through an Employee Stock Ownership Plan that received a follow-on contract under this section—

“(i) the size of such business;

“(ii) performance of the follow-on contract; and

“(iii) other information as determined necessary; and

“(C) providing information to leadership and the congressional defense committees on policy issues related to the pilot program.

“(2) LIMITATION.—The Secretary of Defense may not carry out the pilot program under this section before—

“(A) completing a data collection and reporting strategy and plan to meet the requirements of this subsection; and

“(B) submitting the strategy and plan to the congressional defense committees.

“(e) SUNSET.—Any pilot program established under this section shall expire on the date that is five years after the date of the enactment of this Act [Dec. 27, 2021].

“(f) COMPTROLLER GENERAL REPORT.—

“(1) IN GENERAL.—Not later than three years after the date of the enactment of this Act, the Comptroller General of the United States shall submit to Congress a report on any individual and aggregate uses of the authority under a pilot program established under this section.

“(2) ELEMENTS.—The report under paragraph (1) shall include the following elements:

“(A) An assessment of the frequency and nature of the use of the authority under the pilot program.

“(B) An assessment of the impact of the pilot program in supporting the national defense strategy required under section 113(g) of title 10, United States Code.

“(C) The number of businesses that became qualified businesses wholly-owned through an Employee Stock Ownership Plan in order to benefit from the pilot program and the factors that influenced that decision.

“(D) Acquisition authorities that could incentivize businesses to become qualified businesses wholly-owned through an Employee Stock Ownership Plan, including an extension of the pilot program.

“(E) Any related matters the Comptroller General considers appropriate.”

#### MODIFICATION OF JUSTIFICATION AND APPROVAL REQUIREMENT FOR CERTAIN DEPARTMENT OF DEFENSE CONTRACTS

Pub. L. 116-92, div. A, title VIII, §823, Dec. 20, 2019, 133 Stat. 1490, provided that:

“(a) MODIFICATION OF JUSTIFICATION AND APPROVAL REQUIREMENT.—Notwithstanding section 811 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84; 123 Stat. 2405) [41 U.S.C. 3304 note]—

“(1) no justification and approval is required under such section for a sole-source contract awarded by the Department of Defense in a covered procurement for an amount not exceeding \$100,000,000; and

“(2) for purposes of subsections (a)(2) and (c)(3)(A) of such section, the appropriate official designated to approve the justification for a sole-source contract awarded by the Department of Defense in a covered procurement exceeding \$100,000,000 is the official designated in section 2304(f)(1)(B)(ii) of title 10, United States Code [now 10 U.S.C. 3204(e)(1)(B)(ii)].

“(b) GUIDANCE.—Not later than 90 days after the date of the enactment of this Act [Dec. 20, 2019], the Secretary of Defense shall issue guidance to implement the authority under subsection (a).

“(c) COMPTROLLER GENERAL REVIEW.—

“(1) DATA TRACKING AND COLLECTION.—The Department of Defense shall track the use of the authority

as modified by subsection (a) and make the data available to the Comptroller General for purposes of the report required under paragraph (2).

“(2) REPORT.—Not later than March 1, 2022, the Comptroller General of the United States shall submit a report to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] on the use of the authority as modified by subsection (a) through the end of fiscal year 2021. The report shall include—

“(A) a review of the financial effect of the change to the justification and approval requirement in subsection (a) on the native corporations and businesses and associated native communities;

“(B) a description of the nature and extent of contracts excluded from the justification and approval requirement by subsection (a); and

“(C) other matters the Comptroller General deems appropriate.”

#### § 3205. Simplified procedures for small purchases

(a) AUTHORIZATION.—In order to promote efficiency and economy in contracting and to avoid unnecessary burdens for agencies and contractors, the Federal Acquisition Regulation shall provide for—

(1) special simplified procedures for purchases of property and services for amounts not greater than the simplified acquisition threshold; and

(2) special simplified procedures for purchases of property and services for amounts greater than the simplified acquisition threshold but not greater than \$5,000,000 with respect to 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) 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 in order to use the simplified procedures required by subsection (a).

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

(d) COMPLIANCE WITH SPECIAL REQUIREMENTS OF FEDERAL ACQUISITION REGULATION.—The head of an agency shall comply with the Federal Acquisition Regulation provisions referred to in section 1901(e) of title 41.

(Added and amended Pub. L. 116-283, div. A, title XVIII, §1811(d)(1), (9), Jan. 1, 2021, 134 Stat. 4166, 4170.)

#### Editorial Notes

##### CODIFICATION

The text of subsec. (g) of section 2304 of this title, which was transferred to this section and amended by Pub. L. 116-283, §1811(d)(9), was based on Pub. L. 98-369, div. B, title VII, §2723(a)(1)(C), July 18, 1984, 98 Stat. 1187; Pub. L. 100-26, §7(d)(3)(A), Apr. 21, 1987, 101 Stat. 281; Pub. L. 101-510, div. A, title VIII, §806(b), Nov. 5, 1990, 104 Stat. 1592; Pub. L. 102-25, title VII, §701(d)(2)(A), Apr. 6, 1991, 105 Stat. 114; Pub. L. 103-355, title I, §1001(2), title IV, §4401(a), Oct. 13, 1994, 108 Stat. 3249, 3347; Pub. L. 104-106, div. D, title XLII, §4202(a)(1), Feb. 10, 1996, 110 Stat. 652; Pub. L. 105-85, div. A, title

VIII, §850(f)(3)(B), Nov. 18, 1997, 111 Stat. 1850; Pub. L. 111-350, §5(b)(12)(D), Jan. 4, 2011, 124 Stat. 3843; Pub. L. 115-232, div. A, title VIII, §836(c)(2), Aug. 13, 2018, 132 Stat. 1864.

#### PRIOR PROVISIONS

A prior section 3205, act Aug. 10, 1956, ch. 1041, 70A Stat. 173; Pub. L. 85-600, §1(3), Aug. 6, 1958, 72 Stat. 522; Pub. L. 85-861, §1(60), (65), Sept. 2, 1958, 72 Stat. 1462, 1463; Pub. L. 95-551, §2, Oct. 30, 1978, 92 Stat. 2069, prescribed authorized strength of Regular Army in commissioned officers on active list, 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.

#### AMENDMENTS

2021—Subsec. (a). Pub. L. 116-283, §1811(d)(9)(A), (C), inserted heading, struck out par. (1) designation before “In order to”, and redesignated subpars. (A) and (B) as pars. (1) and (2), respectively. Former pars. (2) to (4) redesignated subsecs. (b) to (d), respectively.

Pub. L. 116-283, §1811(d)(9), redesignated subsec. (g) of section 2304 of this title as subsec. (a) of this section.

Subsec. (b). Pub. L. 116-283, §1811(d)(9)(B), (D), redesignated subsec. (a)(2) as (b), inserted heading, and substituted “subsection (a)” for “paragraph (1)”.

Subsec. (c). Pub. L. 116-283, §1811(d)(9)(B), (E), redesignated subsec. (a)(3) as (c) and inserted heading.

Subsec. (d). Pub. L. 116-283, §1811(d)(9)(B), (F), redesignated subsec. (a)(4) as (d) 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.

### § 3206. Planning and solicitation requirements

#### (a) PLANNING AND SPECIFICATIONS.—

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

(A) specify the agency’s 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 such manner as is 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 chapter 137 legacy provisions shall include specifications which—

(A) consistent with the provisions of chapter 137 legacy provisions, permit full and open competition; and

(B) include restrictive provisions or conditions only to the extent necessary to satisfy the needs of the 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 agency and the market available to satisfy such needs. Subject to such 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), a 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 which the head of the 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 award made after, discussions with the offerors, or a statement that the proposals are intended to be evaluated, and 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, the head of an agency—

(A) shall (except as provided in paragraph (3)) clearly establish 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) shall (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) shall 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