

3243], [former] 2320, and [former] 2321 of title 10, United States Code (as added by subsection (a)), shall apply with respect to solicitations issued after the end of the one-year period beginning on the date of the enactment of this Act [Oct. 19, 1984].”

§ 3247. Contracts: regulations for bids

(a) The Secretary of Defense may—

(1) prescribe regulations for the preparation, submission, and opening of bids for contracts; and

(2) require that a bid be accompanied by a written guaranty, signed by one or more responsible persons, undertaking that the bidder, if his bid is accepted, will, within the time prescribed by the Secretary or other officer authorized to make the contract, make a contract and furnish a bond with good and sufficient sureties for the performance of the contract.

(b) If a bidder, after being notified of the acceptance of his bid, fails within the time prescribed under subsection (a)(2) to enter into a contract and furnish the prescribed bond, the Secretary concerned or other authorized officer shall—

(1) contract with another person; and

(2) charge against the defaulting bidder and his guarantors the difference between the amount specified by the bidder in his bid and the amount for which a contract is made with the other person, this difference being immediately recoverable by the United States for the use of the military department concerned in an action against the bidder and his guarantors, jointly or severally.

(c) Proceedings under this section are subject to regulations under section 121 of title 40, unless exempted therefrom under section 501(a)(2) of title 40.

(Aug. 10, 1956, ch. 1041, 70A Stat. 136, §2381; Pub. L. 98–525, title XIV, §1405(35), Oct. 19, 1984, 98 Stat. 2624; Pub. L. 103–355, title I, §1507, Oct. 13, 1994, 108 Stat. 3298; Pub. L. 107–217, §3(b)(6), Aug. 21, 2002, 116 Stat. 1295; renumbered §3247, Pub. L. 116–283, div. A, title XVIII, §1813(e), Jan. 1, 2021, 134 Stat. 4181.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2381(a)	5:218 (1st sentence, less 1st 16 words; and 2d sentence).	Apr. 10, 1878, ch. 58, 20 Stat. 36; Mar. 3, 1883, ch. 120, 22 Stat. 487; Oct. 31, 1951, ch. 654, §2(4), 65 Stat. 706.
2381(b)	5:218 (less 1st and 2d sentences).	Feb. 19, 1948, ch. 65, §12 (1st sentence), 62 Stat. 26.
2381(c)	5:218 (1st 16 words of 1st sentence) [applicability of 5:218 extended to Navy by 5:412b and 41:161 (1st sentence)].	

In subsection (a)(1), the word “may” is substituted for the words “is authorized to”. The words “rules and * * * to be observed” are omitted as surplusage.

In subsection (a)(2), the word “undertaking” is substituted for the words “to the effect that he or they undertake”. The words “make a contract” are inserted for clarity. The words “in the premises” are omitted as surplusage. The words “for the performance of the contract” are substituted for the words “to furnish the supplies proposed or to perform the service required”.

In subsection (b), the word “duly” is omitted as surplusage. The words “with good and sufficient security

for the proper fulfillment of its terms” are omitted as covered by subsection (a)(2). The words “the prescribed” are inserted before the word “bond”.

Subsection (b)(1) is substituted for the words “proceed to contract with some other person to furnish the supplies or perform the services required”.

In subsection (b)(2) the word “charge” is substituted for the words “forthwith cause * * * to be charged”. The words “a contract is made with the other person” are substituted for the words “he may have contracted with another party to furnish the supplies or perform the service for the whole period of the proposal”. The words “guarantor or” are omitted as surplusage. The words “this difference being” are substituted for the words “and the sum may be”. The words “of debt” are omitted, since that action no longer exists. The words “the bidder and his guarantors, jointly or severally” are substituted for the words “either or all of such persons”.

In subsection (c), the words “Proceedings under this section are” are inserted for clarity. The words “unless exempted therefrom under section 481(a) of that title” are inserted to preserve the possibility of exemption of proceedings under the revised section from the provisions of the Federal Property and Administrative Services Act of 1949, as amended.

Editorial Notes

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2381 of this title as this section.

2002—Subsec. (c). Pub. L. 107–217 substituted “section 121 of title 40” for “section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486)” and “section 501(a)(2) of title 40” for “section 201(a) of that Act (40 U.S.C. 481(a))”.

1994—Subsec. (a). Pub. L. 103–355 substituted “The Secretary of Defense may—

“(1) prescribe regulations for the preparation, submission, and opening of bids for contracts; and” for “The Secretary of a military department may—

“(1) prescribe regulations for the preparation, submission, and opening of bids for contracts with that department; and”.

1984—Subsec. (c). Pub. L. 98–525 substituted “section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486)” for “section 486 of title 40” and “section 201(a) of that Act (40 U.S.C. 481(a))” for “section 481(a) of this title”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

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 a note preceding section 3001 of this title.

§ 3249. Advocates for competition

Each advocate for competition designated pursuant to section 1705(a) of title 41 for an agency named in section 3063 of this title shall be a general or flag officer if a member of the armed forces or in a position classified above GS–15 pursuant to section 5108 of title 5, if a civilian employee and shall be designated to serve for a minimum of two years.

(Added Pub. L. 98–525, title XII, §1216(a), Oct. 19, 1984, 98 Stat. 2593, §2318; amended Pub. L. 100–26, §7(d)(4), Apr. 21, 1987, 101 Stat. 281; Pub. L. 102–25, title VII, §701(f)(1), Apr. 6, 1991, 105 Stat. 115; Pub. L. 103–355, title I, §1031, Oct. 13, 1994, 108 Stat. 3260; Pub. L. 111–350, §5(b)(17), Jan. 4, 2011, 124 Stat. 3843; Pub. L. 112–239, div. A, title

X, §1076(f)(24), Jan. 2, 2013, 126 Stat. 1953; Pub. L. 115-232, div. A, title VIII, §811(d), Aug. 13, 2018, 132 Stat. 1845; renumbered §3249 and amended Pub. L. 116-283, div. A, title XVIII, §1813(f), Jan. 1, 2021, 134 Stat. 4181.)

Editorial Notes

PRIOR PROVISIONS

A prior section 3251 was renumbered section 7131 of this title.

AMENDMENTS

2021—Pub. L. 116-283, §1813(f), renumbered section 2318 of this title as this section and substituted “section 3063” for “section 2303(a)”.

2018—Pub. L. 115-232 substituted “Each advocate for competition designated pursuant to section 1705(a) of title 41 for” for “(b) Each advocate for competition of” and “in a position classified above GS-15 pursuant to section 5108 of title 5” for “a grade GS-16 or above under the General Schedule (or in a comparable or higher position under another schedule)” and struck out subsec. (a) which related to designation of an officer or employee of the Defense Logistics Agency to serve as the advocate for competition of the agency.

2013—Subsec. (a)(2). Pub. L. 112-239 substituted “subsections (b) and (c) of section 1705” for “section 1705(b) and (c)”.

2011—Subsec. (a)(1). Pub. L. 111-350, §5(b)(17)(A), substituted “section 1705(a) of title 41” for “section 20(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 418(a))”.

Subsec. (a)(2). Pub. L. 111-350, §5(b)(17)(B), substituted “section 1705(b) and (c) of title 41” for “sections 20(b) and 20(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 418(b), (c))”.

1994—Subsec. (c). Pub. L. 103-355 struck out subsec. (c) which read as follows: “Each advocate for competition of an agency of the Department of Defense shall transmit to the Secretary of Defense a report describing his activities during the preceding year. The report of each advocate for competition shall be included in the annual report of the Secretary of Defense required by section 23 of the Office of Federal Procurement Policy Act (41 U.S.C. 419), in the form in which it was submitted to the Secretary.”

1991—Subsec. (c). Pub. L. 102-25 substituted “section 23” for “section 21”.

1987—Subsec. (a)(1). Pub. L. 100-26, §7(d)(4)(A), inserted “(41 U.S.C. 418(a))” after “Policy Act”.

Subsec. (a)(2). Pub. L. 100-26, §7(d)(4)(B), inserted “(41 U.S.C. 418(b), (c))” after “Policy Act”.

Subsec. (c). Pub. L. 100-26, §7(d)(4)(C), inserted “(41 U.S.C. 419)” after “Policy Act”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

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 a note preceding section 3001 of this title.

EFFECTIVE DATE

Pub. L. 98-525, title XII, §1216(c)(1), Oct. 19, 1984, 98 Stat. 2599, provided that: “Section 2318 of title 10, United States Code [now 10 U.S.C. 3249] (as added by subsection (a)), shall take effect on April 1, 1985.”

§ 3252. Requirements for information relating to supply chain risk

(a) **AUTHORITY.**—Subject to subsection (b), the head of a covered agency may—

(1) carry out a covered procurement action; and

(2) limit, notwithstanding any other provision of law, in whole or in part, the disclosure of information relating to the basis for carrying out a covered procurement action.

(b) **DETERMINATION AND NOTIFICATION.**—The head of a covered agency may exercise the authority provided in subsection (a) only after—

(1) obtaining a joint recommendation by the Under Secretary of Defense for Acquisition and Sustainment and the Chief Information Officer of the Department of Defense, on the basis of a risk assessment by the Under Secretary of Defense for Intelligence and Security, that there is a significant supply chain risk to a covered system;

(2) making a determination in writing, in unclassified or classified form, with the concurrence of the Under Secretary of Defense for Acquisition and Sustainment, that—

(A) use of the authority in subsection (a)(1) is necessary to protect national security by reducing supply chain risk;

(B) less intrusive measures are not reasonably available to reduce such supply chain risk; and

(C) in a case where the head of the covered agency plans to limit disclosure of information under subsection (a)(2), the risk to national security due to the disclosure of such information outweighs the risk due to not disclosing such information; and

(3) providing a classified or unclassified notice of the determination made under paragraph (2) to the appropriate congressional committees, which notice shall include—

(A) the information required by section 3204(e)(2) of this title;

(B) the joint recommendation by the Under Secretary of Defense for Acquisition and Sustainment and the Chief Information Officer of the Department of Defense as specified in paragraph (1);

(C) a summary of the risk assessment by the Under Secretary of Defense for Intelligence¹ that serves as the basis for the joint recommendation specified in paragraph (1); and

(D) a summary of the basis for the determination, including a discussion of less intrusive measures that were considered and why they were not reasonably available to reduce supply chain risk.

(c) **DELEGATION.**—The head of a covered agency may not delegate the authority provided in subsection (a) or the responsibility to make a determination under subsection (b) to an official below the level of the service acquisition executive for the agency concerned.

(d) **LIMITATION ON DISCLOSURE.**—If the head of a covered agency has exercised the authority provided in subsection (a)(2) to limit disclosure of information—

(1) no action undertaken by the agency head under such authority shall be subject to review in a bid protest before the Government Accountability Office or in any Federal court; and

(2) the agency head shall—

¹ See Change of Name note below.