

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.

§ 3374. Undefined contractual actions: allowable profit

(a) ALLOWED PROFIT TO REFLECT CERTAIN REDUCED COST RISKS OF CONTRACTOR.—The head of an agency shall ensure that the profit allowed on an undefinitized contractual action for which the final price is negotiated after a substantial portion of the performance required is completed reflects—

(1) the possible reduced cost risk of the contractor with respect to costs incurred during performance of the contract before the final price is negotiated; and

(2) the reduced cost risk of the contractor with respect to costs incurred during performance of the remaining portion of the contract.

(b) DATE AS OF WHICH CONTRACTOR COST RISK TO BE DETERMINED.—If a contractor submits a qualifying proposal to definitize an undefinitized contractual action and the contracting officer for such action definitizes the contract after the end of the 180-day period beginning on the date on which the contractor submitted the qualifying proposal, the head of the agency concerned shall ensure that the profit allowed on the contract accurately reflects the cost risk of the contractor as such risk existed on the date the contractor submitted the qualifying proposal.

(Added and amended Pub. L. 116-283, div. A, title XVIII, §1819(a), (e), Jan. 1, 2021, 134 Stat. 4189, 4190.)

Editorial Notes

CODIFICATION

The text of subsec. (f) of section 2326 of this title, which was transferred to this section and amended by Pub. L. 116-283, §1819(e), was based on Pub. L. 99-500, §101(c) [title X, §908(d)(1)(A)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-141, and Pub. L. 99-591, §101(c) [title X, §908(d)(1)(A)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-141; Pub. L. 99-661, div. A, title IX, formerly title IV, §908(d)(1)(A), Nov. 14, 1986, 100 Stat. 3921, renumbered title IX, Pub. L. 100-26, §3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 114-328, div. A, title VIII, §811(1), Dec. 23, 2016, 130 Stat. 2268; Pub. L. 115-91, div. A, title VIII, §815(a)(1), Dec. 12, 2017, 131 Stat. 1462. Pub. L. 99-500, Pub. L. 99-591, and Pub. L. 99-661 added identical subsections.

AMENDMENTS

2021—Pub. L. 116-283, §1819(e)(1)(A), transferred subsec. (f) of section 2326 of this title to this section and struck out subsec. (f) designation and heading “Allowable Profit” at beginning.

Subsec. (a). Pub. L. 116-283, §1819(e)(1)(B), (2), redesignated par. (1) of former section 2326(f) of this title as subsec. (a) of this section, inserted heading, and redesignated subpars. (A) and (B) as pars. (1) and (2), respectively.

Subsec. (b). Pub. L. 116-283, §1819(e)(1)(B), (3), redesignated par. (2) of former section 2326(f) of this title as subsec. (b) 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.

§ 3375. Undefined contractual actions: time limit

No undefinitized contractual action may extend beyond 90 days without a written determination by the Secretary of the military department concerned, the head of the Defense Agency concerned, the commander of the combatant command concerned, or the Under Secretary of Defense for Acquisition and Sustainment (as applicable) that it is in the best interests of the military department, the Defense Agency, the combatant command, or the Department of Defense, respectively, to continue the action.

(Added and amended Pub. L. 116-283, div. A, title XVIII, §1819(a), (f), Jan. 1, 2021, 134 Stat. 4189, 4190.)

Editorial Notes

CODIFICATION

The text of subsec. (g) of section 2326 of this title, which was transferred to this section and amended by Pub. L. 116-283, §1819(f), was based on Pub. L. 114-328, div. A, title VIII, §811(3), Dec. 23, 2016, 130 Stat. 2268; Pub. L. 115-91, div. A, title VIII, §815(a)(1), Dec. 12, 2017, 131 Stat. 1462; Pub. L. 116-92, div. A, title IX, §902(50), Dec. 20, 2019, 133 Stat. 1548.

PRIOR PROVISIONS

A prior section 3375, added Pub. L. 85-861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1475, related to transfer or discharge of reserve generals ceasing to occupy commensurate positions, prior to repeal by Pub. L. 103-337, div. A, title XVI, §§1629(a)(1), 1691(b)(1), Oct. 5, 1994, 108 Stat. 2963, 3026, effective Oct. 1, 1996. See section 14314(a) of this title.

AMENDMENTS

2021—Pub. L. 116-283, §1819(f), transferred subsec. (g) of section 2326 of this title to this section and struck out subsec. (g) designation and heading “Time Limit” at beginning.

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.

§ 3377. Inapplicability to Coast Guard and National Aeronautics and Space Administration; definitions

(a) APPLICABILITY.—This chapter does not apply to the Coast Guard or the National Aeronautics and Space Administration.

(b) DEFINITIONS.—In this chapter:

(1) The term “undefinitized contractual action” means a new procurement action en-

tered into by the head of an agency for which the contractual terms, specifications, or price are not agreed upon before performance is begun under the action. Such term does not include contractual actions with respect to the following:

(A) Purchases in an amount not in excess of the amount of the simplified acquisition threshold.

(B) Special access programs.

(C) Congressionally mandated long-lead procurement contracts.

(2) The term “qualifying proposal” means a proposal that contains sufficient information to enable the Department of Defense to conduct a meaningful audit of the information contained in the proposal.

(Added and amended Pub. L. 116–283, div. A, title XVIII, §1819(a), (g), Jan. 1, 2021, 134 Stat. 4189, 4191.)

Editorial Notes

CODIFICATION

The text of subsec. (i) of section 2326 of this title, which was transferred to this section, redesignated as subsec. (a), and amended by Pub. L. 116–283, §1819(g), was based on Pub. L. 99–500, §101(c) [title X, §908(d)(1)(A)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–141, and Pub. L. 99–591, §101(c) [title X, §908(d)(1)(A)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–141; Pub. L. 99–661, div. A, title IX, formerly title IV, §908(d)(1)(A), Nov. 14, 1986, 100 Stat. 3921, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 added identical subsections.

The text of subsec. (j) of section 2326 of this title, which was transferred to this section, redesignated as subsec. (b), and amended by Pub. L. 116–283, §1819(g), was based on Pub. L. 99–500, §101(c) [title X, §908(d)(1)(A)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–141, and Pub. L. 99–591, §101(c) [title X, §908(d)(1)(A)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–141; Pub. L. 99–661, div. A, title IX, formerly title IV, §908(d)(1)(A), Nov. 14, 1986, 100 Stat. 3921, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 101–189, div. A, title XVI, §1622(c)(6), Nov. 29, 1989, 103 Stat. 1604; Pub. L. 102–25, title VII, §701(d)(5), Apr. 6, 1991, 105 Stat. 114; Pub. L. 103–355, title I, §1505, Oct. 13, 1994, 108 Stat. 3298; Pub. L. 114–328, div. A, title VIII, §811(2), (4), Dec. 23, 2016, 130 Stat. 2268, 2269; Pub. L. 115–91, div. A, title VIII, §815(a)(1), Dec. 12, 2017, 131 Stat. 1462. Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 added identical subsections.

PRIOR PROVISIONS

Prior sections 3378 to 3390 were repealed by Pub. L. 103–337, div. A, title XVI, §§1629(a)(1), 1691(b)(1), Oct. 5, 1994, 108 Stat. 2963, 3026, effective Oct. 1, 1996.

Section 3378, added Pub. L. 85–861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1476, related to promotion of reserve commissioned officers removed from active status. See section 14317(a) of this title.

Section 3380, added Pub. L. 85–861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1476; amended Pub. L. 98–94, title X, §1015(a)(1), Sept. 24, 1983, 97 Stat. 667; Pub. L. 99–145, title V, §521(b), Nov. 8, 1985, 99 Stat. 631; Pub. L. 100–180, div. A, title V, §502(b)(1), Dec. 4, 1987, 101 Stat. 1085; Pub. L. 101–189, div. A, title V, §503(b)(1), Nov. 29, 1989, 103 Stat. 1437; Pub. L. 102–484, div. A, title V, §519(b), Oct. 23, 1992, 106 Stat. 2408; Pub. L. 103–160, div. A, title V, §514(b), Nov. 30, 1993, 107 Stat. 1649; Pub. L. 104–106, div. A, title V, §511(b), Feb. 10, 1996, 110 Stat. 298, related to promotion of reserve commissioned officers on active duty and not on the active duty list. See section 14311(e) of this title.

Section 3382, added Pub. L. 85–861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1476, related to promotion of second lieu-

tenants of Army Reserve assigned to units. See section 14301 et seq. of this title.

Section 3383, added Pub. L. 85–861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1477; amended Pub. L. 86–559, §1(16), June 30, 1960, 74 Stat. 270; Pub. L. 88–620, §2, Oct. 3, 1964, 78 Stat. 999; Pub. L. 90–130, §1(11)(E), Nov. 8, 1967, 81 Stat. 376; Pub. L. 95–485, title VIII, §820(e)(5), Oct. 20, 1978, 92 Stat. 1627, related to promotion of officers of Army Reserve to grades of first lieutenant, captain, major, lieutenant colonel, and colonel to fill vacancies. See section 14301 et seq. of this title.

Section 3384, added Pub. L. 85–861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1477, related to promotion of officers of Army Reserve to grades of brigadier general or major general to fill vacancies. See section 14315 of this title.

Section 3385, added Pub. L. 85–861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1477, related to promotion of officers of Army National Guard of United States upon Federal recognition. See section 14308(f) of this title.

Section 3386, added Pub. L. 85–861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1478, related to promotion of reserve commissioned officers upon release from active duty. See section 14301 et seq. of this title.

Section 3388, added Pub. L. 85–861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1478, related to effect of commissioned officer of Army Reserve entering upon active duty while eligible for promotion. See section 14301 et seq. of this title.

Section 3389, added Pub. L. 85–861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1478; amended Pub. L. 86–559, §1(17), June 30, 1960, 74 Stat. 270, related to promotion of commissioned officers of Army Reserve or Army National Guard of United States to higher reserve grades after temporary appointments. See section 14301 et seq. of this title.

Section 3390, added Pub. L. 85–861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1478; amended Pub. L. 100–456, div. A, title XII, §1234(a)(1), Sept. 29, 1988, 102 Stat. 2059, related to procedure for promotion to higher reserve grade of officer of Army National Guard of United States after temporary appointment. See section 14301 et seq. of this title.

A prior section 3391, added Pub. L. 85–861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1479; Pub. L. 86–559, §1(18), June 30, 1960, 74 Stat. 270, prohibited promotion of reserve officers of Army Nurse Corps or Army Medical Specialist Corps to reserve grades above colonel and prohibited promotion of reserve officers of Women’s Army Corps to reserve grades above lieutenant colonel, prior to repeal by Pub. L. 90–130, §1(11)(F), Nov. 8, 1967, 81 Stat. 376.

Prior sections 3392 to 3396 were repealed by Pub. L. 103–337, div. A, title XVI, §§1629(a)(1), 1691(b)(1), Oct. 5, 1994, 108 Stat. 2963, 3026, effective Oct. 1, 1996.

Section 3392, added Pub. L. 85–861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1479; amended Pub. L. 100–456, div. A, title XII, §1234(a)(1), Sept. 29, 1988, 102 Stat. 2059, related to appointment of adjutants general or assistant adjutants general as reserve officers of Army. See section 12215(a) of this title.

Section 3393, added Pub. L. 85–861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1479, provided that sea or foreign service not be made condition for promotion of reserve commissioned officers in reserve grades.

Section 3394, act Aug. 10, 1956, ch. 1041, 70A Stat. 195, related to acceptance of promotion by officers of Army National Guard of United States or Army Reserve. See section 14309 of this title.

Section 3395, act Aug. 10, 1956, ch. 1041, 70A Stat. 195, related to appointment of reserve officers in time of war. See section 14301 et seq. of this title.

Section 3396, added Pub. L. 96–513, title II, §206(a), Dec. 12, 1980, 94 Stat. 2884, provided that chapter, except section 3353, did not apply to reserve officers on active-duty list.

AMENDMENTS

2021—Pub. L. 116–283, §1819(g), redesignated subsecs. (i) and (j) of section 2326 of this title as subsecs. (a) and (b), respectively, of this section and substituted “chap-

ter” for “section” in subsec. (a) and in introductory provisions of subsec. (b).

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.

CHAPTER 245—TASK AND DELIVERY ORDER CONTRACTS (MULTIPLE AWARD CONTRACTS)

Sec.	
3401.	Task and delivery order contracts: definitions.
3402.	[Reserved].
3403.	Task and delivery order contracts: general authority.
3404.	[Reserved].
3405.	Task order contracts: advisory and assistance services.
3406.	Task and delivery order contracts: orders.

Editorial Notes

PRIOR PROVISIONS

A prior chapter 245 “TASK AND DELIVERY ORDER CONTRACTS (MULTIPLE AWARD CONTRACTS)”, as added by Pub. L. 115-232, div. A, title VIII, §801(a), Aug. 13, 2018, 132 Stat. 1827, and consisting of reserved section 3401, was repealed by Pub. L. 116-283, div. A, title XVIII, §1820(a), Jan. 1, 2021, 134 Stat. 4191.

AMENDMENTS

2021—Pub. L. 117-81, div. A, title XVII, §1701(b)(8)(A), Dec. 27, 2021, 135 Stat. 2133, amended Pub. L. 116-283, div. A, title XVIII, §1820(a), Jan. 1, 2021, 134 Stat. 4191, which added this analysis, by substituting “[Reserved]” for “Guidance on use of task and delivery order contracts” in item 3404.

Statutory Notes and Related Subsidiaries

PROVISIONS NOT AFFECTED BY PUB. L. 103-355

Pub. L. 103-355, title I, §1004(d), Oct. 13, 1994, 108 Stat. 3253, as amended by Pub. L. 108-136, div. A, title X, §1045(f), Nov. 24, 2003, 117 Stat. 1613, provided that: “Nothing in section 2304a [now 10 U.S.C. 3403], 2304b [now 10 U.S.C. 3405], 2304c [now 10 U.S.C. 3406], or 2304d [now 10 U.S.C. 3401] of title 10, United States Code, as added by subsection (a), and nothing in the amendments made by subsections (b) and (c) [amending former sections 2304 of this title (now 10 U.S.C. 3201 et seq.) and 2331 of this title (now 10 U.S.C. 4507)], shall be construed as modifying or superseding, or as intended to impair or restrict, authorities or responsibilities under chapter 11 of title 40, United States Code.”

§ 3401. Task and delivery order contracts: definitions

In this chapter:

(1) DELIVERY ORDER CONTRACT.—The term “delivery order contract” means a contract for property—

(A) that does not procure or specify a firm quantity of property (other than a minimum or maximum quantity); and

(B) that provides for the issuance of orders for the delivery of property during the period of the contract.

(2) TASK ORDER CONTRACT.—The term “task order contract” means a contract for services—

(A) that does not procure or specify a firm quantity of services (other than a minimum or maximum quantity); and

(B) that provides for the issuance of orders for the performance of tasks during the period of the contract.

(Added Pub. L. 103-355, title I, §1004(a)(1), Oct. 13, 1994, 108 Stat. 3253, §2304d; renumbered §3401 and amended Pub. L. 116-283, div. A, title XVIII, §1820(b), Jan. 1, 2021, 134 Stat. 4191.)

Editorial Notes

AMENDMENTS

2021—Pub. L. 116-283, §1820(b)(1), (2), renumbered section 2304d of this title as this section, substituted “In this chapter” for “In sections 2304a, 2304b, and 2304c of this title” in introductory provisions, and reversed order and designations of pars. (1) and (2).

Par. (1). Pub. L. 116-283, §1820(b)(3), inserted heading, inserted dash after “for property”, and reorganized remainder of text of par. (1) into designated subpars. (A) and (B).

Par. (2). Pub. L. 116-283, §1820(b)(4), inserted heading, inserted dash after “for services”, and reorganized remainder of text of par. (2) into designated subpars. (A) and (B).

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

For effective date and applicability of section, see section 10001 of Pub. L. 103-355, set out as an Effective Date of 1994 Amendment note under section 8752 of this title.

PROVISIONS NOT AFFECTED BY PUB. L. 103-355

This section not to be construed as modifying or superseding, or as intended to impair or restrict, authorities or responsibilities under former 40 U.S.C. 759 or chapter 11 of Title 40, Public Buildings, Property, and Works, see section 1004(d) of Pub. L. 103-355, set out as a note preceding this section.

§ 3403. Task and delivery order contracts: general authority

(a) AUTHORITY TO AWARD.—Subject to the requirements of this section, section 3406 of this title, and other applicable law, the head of an agency may enter into a task or delivery order contract (as defined in section 3401 of this title) for procurement of services or property.

(b) SOLICITATION.—The solicitation for a task or delivery order contract shall include the following:

(1) The period of the contract, including the number of options to extend the contract and the period for which the contract may be extended under each option, if any.

(2) The maximum quantity or dollar value of the services or property to be procured under the contract.

(3) A statement of work, specifications, or other description that reasonably describes the general scope, nature, complexity, and purposes of the services or property to be procured under the contract.