

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].
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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 A, title VIII, §801(a), Aug. 13, 2018, 132 Stat. 1827, and consisting of reserved section 3401, was repealed by Pub.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.

(c) **APPLICABILITY OF RESTRICTION ON USE OF NONCOMPETITIVE PROCEDURES.**—The head of an agency may use procedures other than competitive procedures to enter into a task or delivery order contract under this section only if—

(1) an exception in subsection (a) of section 3204 of this title applies to the contract; and

(2) the use of such procedures is approved in accordance with subsection (e) of such section.

(d) **SINGLE AND MULTIPLE CONTRACT AWARDS.**—

(1) **EXERCISE OF AUTHORITY.**—The head of an agency may exercise the authority provided in this section—

(A) to award a single task or delivery order contract; or

(B) if the solicitation states that the head of the agency has the option to do so, to award separate task or delivery order contracts for the same or similar services or property to two or more sources.

(2) **DETERMINATION NOT REQUIRED.**—No determination under section 3203 of this title is required for award of multiple task or delivery order contracts under paragraph (1)(B).

(3) **WHEN SINGLE SOURCE AWARDS FOR TASK OR DELIVERY ORDER CONTRACTS EXCEEDING \$100,000,000 ARE ALLOWED.**—(A) Except as provided under subparagraph (B), no task or delivery order contract in an amount estimated to exceed \$100,000,000 (including all options) may be awarded to a single source unless the head of the agency determines in writing that—

(i) the task or delivery orders expected under the contract are so integrally related that only a single source can efficiently perform the work;

(ii) the contract provides only for firm, fixed price task orders or delivery orders for—

(I) products for which unit prices are established in the contract; or

(II) services for which prices are established in the contract for the specific tasks to be performed;

(iii) only one source is qualified and capable of performing the work at a reasonable price to the government; or

(iv) because of exceptional circumstances, it is necessary in the public interest to award the contract to a single source.

(B) A task or delivery order contract in an amount estimated to exceed \$100,000,000 (including all options) may be awarded to a single source without the written determination otherwise required under subparagraph (A) if the head of the agency has made a written determination pursuant to section 3204(a) of this title that procedures other than competitive procedures may be used for the awarding of such contract.

(4) **REGULATIONS.**—The regulations implementing this subsection shall—

(A) establish a preference for awarding, to the maximum extent practicable, multiple task or delivery order contracts for the same or similar services or property under the authority of paragraph (1)(B); and

(B) establish criteria for determining when award of multiple task or delivery order con-

tracts would not be in the best interest of the Federal Government.

(e) **CONTRACT MODIFICATIONS.**—A task or delivery order may not increase the scope, period, or maximum value of the task or delivery order contract under which the order is issued. The scope, period, or maximum value of the contract may be increased only by modification of the contract.

(f) **CONTRACT PERIOD.**—The head of an agency entering into a task or delivery order contract under this section may provide for the contract to cover any period up to five years and may extend the contract period for one or more successive periods pursuant to an option provided in the contract or a modification of the contract. The total contract period as extended may not exceed 10 years unless such head of an agency determines in writing that exceptional circumstances necessitate a longer contract period.

(g) **INAPPLICABILITY TO CONTRACTS FOR ADVISORY AND ASSISTANCE SERVICES.**—Except as otherwise specifically provided in section 3405 of this title, this section does not apply to a task or delivery order contract for the procurement of advisory and assistance services (as defined in section 1105(g) of title 31).

(h) **RELATIONSHIP TO OTHER CONTRACTING AUTHORITY.**—Nothing in this section may be construed to limit or expand any authority of the head of an agency or the Administrator of General Services to enter into schedule, multiple award, or task or delivery order contracts under any other provision of law.

(Added Pub. L. 103-355, title I, §1004(a)(1), Oct. 13, 1994, 108 Stat. 3249, §2304a; amended Pub. L. 108-136, div. A, title VIII, §843(b), Nov. 24, 2003, 117 Stat. 1553; Pub. L. 108-375, div. A, title VIII, §813(a), Oct. 28, 2004, 118 Stat. 2014; Pub. L. 110-181, div. A, title VIII, §843(a)(1), Jan. 28, 2008, 122 Stat. 236; Pub. L. 111-84, div. A, title VIII, §814(a), Oct. 28, 2009, 123 Stat. 2407; Pub. L. 112-81, div. A, title VIII, §809(b), Dec. 31, 2011, 125 Stat. 1490; Pub. L. 115-232, div. A, title VIII, §816, Aug. 13, 2018, 132 Stat. 1852; Pub. L. 116-92, div. A, title VIII, §816, Dec. 20, 2019, 133 Stat. 1487; renumbered §3403 and amended Pub. L. 116-283, div. A, title XVIII, §1820(c), Jan. 1, 2021, 134 Stat. 4191; Pub. L. 117-81, div. A, title XVII, §1701(b)(8)(B), Dec. 27, 2021, 135 Stat. 2133.)

Editorial Notes

AMENDMENTS

2021—Pub. L. 116-283, §1820(c)(1), renumbered section 2304a of this title as this section.

Subsec. (a). Pub. L. 116-283, §1820(c)(2), substituted “section 3406” for “section 2304c” and “section 3401” for “section 2304d”.

Subsec. (c). Pub. L. 116-283, §1820(c)(3), as amended by Pub. L. 117-81, §1701(b)(8)(B), inserted dash after “only if”, reorganized remainder of text of subsec. (c) into designated pars. (1) and (2), and substituted “subsection (a) of section 3204” for “subsection (c) of section 2304” and “subsection (e)” for “subsection (f)”.

Subsec. (d)(1). Pub. L. 116-283, §1820(c)(4)(A), inserted heading.

Subsec. (d)(2). Pub. L. 116-283, §1820(c)(4)(B), inserted heading and substituted “section 3203” for “section 2304(b)”.

Subsec. (d)(3). Pub. L. 116-283, §1820(c)(4)(C), inserted heading and substituted “section 3204(a)” for “section 2304(c)” in subpar. (B).

Subsec. (d)(4). Pub. L. 116-283, §1820(c)(4)(D), inserted heading.

Subsec. (g). Pub. L. 116-283, §1820(c)(5), substituted “section 3405” for “section 2304b”.

2019—Subsec. (d)(3). Pub. L. 116-92 designated existing provisions as subpar. (A), substituted “Except as provided under subparagraph (B), no task or delivery order contract” for “No task or delivery order contract”, redesignated former subpars. (A) to (D) as cls. (i) to (iv), respectively, of subpar. (A), redesignated cls. (i) and (ii) of former subpar. (B) as subcls. (I) and (II), respectively, of subpar. (A)(ii), and added subpar. (B).

2018—Subsec. (d)(3)(A). Pub. L. 115-232 substituted “efficiently perform the work” for “reasonably perform the work”.

2011—Subsec. (d)(3). Pub. L. 112-81 struck out subpar. (A) designation before “No task”, redesignated cls. (i) to (iv) of former subpar. (A) as subpars. (A) to (D), respectively, of par. (3), redesignated subcls. (I) and (II) of former cl. (ii) as cls. (i) and (ii), respectively, of subpar. (B), and struck out former subpar. (B) which read as follows: “The head of the agency shall notify the congressional defense committees within 30 days after any determination under clause (i), (ii), (iii), or (iv) of subparagraph (A).”

2009—Subsec. (d)(3)(B). Pub. L. 111-84 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “The head of the agency shall notify Congress within 30 days after any determination under subparagraph (A)(iv).”

2008—Subsec. (d)(3), (4). Pub. L. 110-181 added par. (3) and redesignated former par. (3) as (4).

2004—Subsec. (f). Pub. L. 108-375 substituted “any period up to five years and may extend the contract period for one or more successive periods pursuant to an option provided in the contract or a modification of the contract. The total contract period as extended may not exceed 10 years unless such head of an agency determines in writing that exceptional circumstances necessitate a longer contract period” for “a total period of not more than five years”.

2003—Subsecs. (f) to (h). Pub. L. 108-136 added subsec. (f) and redesignated former subsecs. (f) and (g) as (g) and (h), respectively.

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 note below.

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 OF 2008 AMENDMENT

Pub. L. 110-181, div. A, title VIII, §843(a)(3)(A), Jan. 28, 2008, 122 Stat. 237, provided that: “The amendments made by paragraph (1) [amending this section] shall take effect on the date that is 120 days after the date of the enactment of this Act [Jan. 28, 2008], and shall apply with respect to any contract awarded on or after such date.”

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 section 3401 of this title.

§ 3405. Task order contracts: advisory and assistance services

(a) **ADVISORY AND ASSISTANCE SERVICES DEFINED.**—In this section, the term “advisory and assistance services” has the meaning given such term in section 1105(g) of title 31.

(b) **AUTHORITY TO AWARD.**—(1) 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 order contract (as defined in section 3401 of this title) for procurement of advisory and assistance services.

(2) The head of an agency may enter into a task order contract for procurement of advisory and assistance services only under the authority of this section.

(c) **LIMITATION ON CONTRACT PERIOD.**—The period of a task order contract entered into under this section, including all periods of extensions of the contract under options, modifications, or otherwise, may not exceed five years unless a longer period is specifically authorized in a law that is applicable to such contract.

(d) **CONTENT OF NOTICE.**—The notice required by section 1708 of title 41 and section 8(e) of the Small Business Act (15 U.S.C. 637(e)) shall reasonably and fairly describe the general scope, magnitude, and duration of the proposed task order contract in a manner that would reasonably enable a potential offeror to decide whether to request the solicitation and consider submitting an offer.

(e) **REQUIRED CONTENT OF SOLICITATION AND CONTRACT.**—

(1) **SOLICITATION.**—The solicitation for the proposed task order contract shall include the information (regarding services) described in section 3403(b) of this title.

(2) **CONTRACT.**—A task order contract entered into under this section shall contain the same information that is required by paragraph (1) to be included in the solicitation of offers for that contract.

(f) **MULTIPLE AWARDS.**—

(1) **AUTHORITY TO MAKE MULTIPLE AWARDS.**—The head of an agency may, on the basis of one solicitation, award separate task order contracts under this section for the same or similar services to two or more sources if the solicitation states that the head of the agency has the option to do so.

(2) **CONTENT OF SOLICITATION.**—If, in the case of a task order contract for advisory and assistance services to be entered into under this section, the contract period is to exceed three years and the contract amount is estimated to exceed \$10,000,000 (including all options), the solicitation shall—

(A) provide for a multiple award authorized under paragraph (1); and

(B) include a statement that the head of the agency may also elect to award only one task order contract if the head of the agency determines in writing that only one of the offerors is capable of providing the services required at the level of quality required.

(3) **NONAPPLICATION.**—Paragraph (2) does not apply in the case of a solicitation for which