

as a matter of law vested in the Solicitor of the Treasury by Revised Statutes sections 377 and 379 (based on the Act of May 28, 1830, ch. 153, 45 Stat. 414). This function is now vested in the Attorney General. See 28:507 as enacted in 1948 and revision notes thereto and existing 28:519, 547, and 509. The words “bring a civil action” are substituted for “institute suit” for consistency in the revised title and with other titles of the United States Code. The word “amount” is substituted for “sum or balance” to eliminate unnecessary words. The words “reported to be” are omitted as surplus. The word “settlement” is substituted for “adjustment” for consistency. The words “by the person” are added for clarity. The words “stated to be”, “in every instance where suit is commenced and . . . thereon”, and “it shall be” are omitted as surplus.

SUBCHAPTER V—PROCUREMENT PROTEST SYSTEM

§ 3551. Definitions

In this subchapter:

(1) The term “protest” means a written objection by an interested party to any of the following:

(A) A solicitation or other request by a Federal agency for offers for a contract for the procurement of property or services.

(B) The cancellation of such a solicitation or other request.

(C) An award or proposed award of such a contract.

(D) A termination or cancellation of an award of such a contract, if the written objection contains an allegation that the termination or cancellation is based in whole or in part on improprieties concerning the award of the contract.

(E) Conversion of a function that is being performed by Federal employees to private sector performance.

(2) The term “interested party”—

(A) with respect to a contract or a solicitation or other request for offers described in paragraph (1), means an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by failure to award the contract; and

(B) with respect to a public-private competition conducted under Office of Management and Budget Circular A-76 with respect to the performance of an activity or function of a Federal agency, or a decision to convert a function performed by Federal employees to private sector performance without a competition under Office of Management and Budget Circular A-76, includes—

(i) any official who is responsible for submitting the agency tender in such competition; and

(ii) any one individual who, for the purpose of representing the Federal employees engaged in the performance of the activity or function for which the public-private competition is conducted in a protest under this subchapter that relates to such public-private competition, has been designated as the agent of the Federal employees by a majority of such employees.

(3) The term “Federal agency” has the meaning given such term by section 102 of title 40.

(Added Pub. L. 98-369, div. B, title VII, § 2741(a), July 18, 1984, 98 Stat. 1199; amended Pub. L. 99-145, title XIII, § 1304(d), Nov. 8, 1985, 99 Stat. 742; Pub. L. 103-272, § 4(f)(1)(K), July 5, 1994, 108 Stat. 1362; Pub. L. 103-355, title I, § 1401, Oct. 13, 1994, 108 Stat. 3287; Pub. L. 104-106, div. D, title XLIII, § 4321(d)(1), Feb. 10, 1996, 110 Stat. 674; Pub. L. 107-217, § 3(h)(6), Aug. 21, 2002, 116 Stat. 1300; Pub. L. 108-375, div. A, title III, § 326(a), Oct. 28, 2004, 118 Stat. 1848; Pub. L. 110-161, div. D, title VII, § 739(c)(1)(A), Dec. 26, 2007, 121 Stat. 2030; Pub. L. 110-181, div. A, title III, § 326(a), Jan. 28, 2008, 122 Stat. 62; Pub. L. 111-84, div. A, title III, § 327(a), (b), Oct. 28, 2009, 123 Stat. 2255.)

Editorial Notes

AMENDMENTS

2009—Par. (1)(E). Pub. L. 111-84, § 327(a), added subpar. (E).

Par. (2)(B)(i). Pub. L. 111-84, § 327(b), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: “any official who submitted the agency tender in such competition; and”.

2008—Par. (2). Pub. L. 110-181 amended par. (2) generally. Prior to amendment, par. (2) read as follows: “The term ‘interested party’—

“(A) with respect to a contract or a solicitation or other request for offers described in paragraph (1), means an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by failure to award the contract; and

“(B) with respect to a public-private competition conducted under Office of Management and Budget Circular A-76 regarding performance of an activity or function of a Federal agency, or a decision to convert a function performed by Federal employees to private sector performance without a competition under OMB Circular A-76, includes—

“(i) any official who submitted the agency tender in such competition; and

“(ii) any one person who, for the purpose of representing them in a protest under this subchapter that relates to such competition, has been designated as their agent by a majority of the employees of such Federal agency who are engaged in the performance of such activity or function.”

2007—Par. (2). Pub. L. 110-161 amended par. (2) generally. Prior to amendment, par. (2) read as follows:

“(2)(A) The term ‘interested party’, with respect to a contract or a solicitation or other request for offers described in paragraph (1), means an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by failure to award the contract.

“(B) The term includes the official responsible for submitting the Federal agency tender in a public-private competition conducted under Office of Management and Budget Circular A-76 regarding an activity or function of a Federal agency performed by more than 65 full-time equivalent employees of the Federal agency.”

2004—Par. (2). Pub. L. 108-375 designated existing provisions as subpar. (A) and added subpar. (B).

2002—Par. (3). Pub. L. 107-217 substituted “section 102 of title 40” for “section 3 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472)”.

1996—Pub. L. 104-106, § 4321(d)(1)(A), substituted “subchapter:” for “subchapter—” in introductory provisions.

Par. (2). Pub. L. 104-106, § 4321(d)(1)(B), substituted “or a solicitation or other request for offers” for “or proposed contract”.

1994—Par. (1). Pub. L. 103-355, § 1401(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “‘protest’ means a written objection by an interested party to a solicitation by a Federal agency for bids or proposals for a proposed contract for the pro-

curement of property or services or a written objection by an interested party to a proposed award or the award of such a contract.”.

Pub. L. 103-272 substituted “a Federal” for “an Federal”.

Par. (2). Pub. L. 103-355, §1401(b)(1), inserted “The term” after “(2)” and substituted a period for “; and” at end.

Par. (3). Pub. L. 103-355, §1401(b)(2), inserted “The term” after “(3)”.

1985—Par. (1). Pub. L. 99-145 substituted “Federal agency” for “executive agency”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111-84, div. A, title III, §327(d), Oct. 28, 2009, 123 Stat. 2255, provided that: “The amendments made by this section [amending this section and section 3554 of this title] shall apply—

“(1) to any protest or civil action that relates to a public-private competition conducted after the date of the enactment of this Act [Oct. 28, 2009] under Office of Management and Budget Circular A-76, or any successor circular; and

“(2) to a decision made after the date of the enactment of this Act to convert a function performed by Federal employees to private sector performance without a competition under Office of Management and Budget Circular A-76.”

EFFECTIVE DATE OF 2008 AMENDMENT

Par. (2)(B) of this section, as added by Pub. L. 110-181, applicable to a protest or civil action that challenges final selection of the source of performance of an activity or function of a Federal agency made pursuant to a study under OMB Circular A-76 on or after Jan. 1, 2004, and to any other protest or civil action that relates to a public-private competition under Circular A-76 or to a decision to convert a function performed by Federal employees to private sector performance without a competition under Circular A-76, on or after Jan. 28, 2008, see section 326(d) of Pub. L. 110-181, set out as a note under section 1491 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 2007 AMENDMENT

Paragraph (2)(B) of this section applicable to protests and civil actions that challenge final selections of sources of performance of an activity or function of a Federal agency that are made pursuant to studies initiated under Office of Management and Budget Circular A-76 on or after Jan. 1, 2004; and to any other protests and civil actions that relate to public-private competitions initiated under Office of Management and Budget Circular A-76, or a decision to convert a function performed by Federal employees to private sector performance without a competition under Office of Management and Budget Circular A-76, on or after Dec. 26, 2007, see section 739(c)(3) of Pub. L. 110-161, set out as a note under section 501 of this title.

Amendment by Pub. L. 110-161 applicable with respect to fiscal year 2008 and each succeeding fiscal year, see section 739(e) of Pub. L. 110-161, set out as a note under section 501 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-375, div. A, title III, §326(d), Oct. 28, 2004, 118 Stat. 1848, provided that: “The amendments made by this section [amending this section and sections 3552 and 3553 of this title] shall apply to protests filed under subchapter V of chapter 35 of title 31, United States Code, that relate to studies initiated under Office of Management and Budget Circular A-76 on or after the end of the 90-day period beginning on the date of the enactment of this Act [Oct. 28, 2004].”

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104-106, see section 4401 of Pub. L. 104-106, set

out as a note under section 2220 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103-355, see section 10001 of Pub. L. 103-355, set out as a note under section 8752 of Title 10, Armed Forces.

EFFECTIVE DATE

Section applicable with respect to any protest filed after Jan. 14, 1985, see section 2751(b) of Pub. L. 98-369, set out as a note under section 2302 of Title 10, Armed Forces.

CONSTRUCTION OF 2004 AMENDMENT

Pub. L. 108-375, div. A, title III, §326(e), Oct. 28, 2004, 118 Stat. 1849, provided that: “The amendments made by this section [amending this section and sections 3552 and 3553 of this title] shall not be construed to authorize the use of a protest under subchapter V of chapter 35 of title 31, United States Code, with regard to a decision made by an agency tender official.”

§ 3552. Protests by interested parties concerning procurement actions

(a) A protest concerning an alleged violation of a procurement statute or regulation shall be decided by the Comptroller General if filed in accordance with this subchapter.

(b)(1) In the case of an agency tender official who is an interested party under section 3551(2)(B) of this title, the official may file a protest in connection with the public-private competition for which the official is an interested party. At the request of a majority of the employees of the Federal agency who are engaged in the performance of the activity or function subject to such public-private competition, the official shall file a protest in connection with such public-private competition unless the official determines that there is no reasonable basis for the protest.

(2) The determination of an agency tender official under paragraph (1) whether or not to file a protest is not subject to administrative or judicial review. An agency tender official shall provide written notification to Congress whenever the official makes a determination under paragraph (1) that there is no reasonable basis for a protest.

(Added Pub. L. 98-369, div. B, title VII, §2741(a), July 18, 1984, 98 Stat. 1199; amended Pub. L. 103-272, §4(f)(1)(L), July 5, 1994, 108 Stat. 1362; Pub. L. 103-355, title X, §10005(d), Oct. 13, 1994, 108 Stat. 3408; Pub. L. 104-106, div. E, title LVI, §5603, Feb. 10, 1996, 110 Stat. 700; Pub. L. 108-375, div. A, title III, §326(b), Oct. 28, 2004, 118 Stat. 1848.)

Editorial Notes

AMENDMENTS

2004—Pub. L. 108-375 designated existing provisions as subsec. (a) and added subsec. (b).

1996—Pub. L. 104-106 struck out at end “An interested party who has filed a protest under section 111(f) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(f)) with respect to a procurement or proposed procurement may not file a protest with respect to that procurement under this subchapter.”

1994—Pub. L. 103-272 and Pub. L. 103-355 amended section identically, substituting “section 111(f)” for “section 111(h)” and “759(f)” for “759(h)”.