

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3745.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
3301(a) .....	41:253(a)(1).	June 30, 1949, ch. 288, title III, § 303(a), 63 Stat. 395; July 12, 1952, ch. 703, §1(m), 66 Stat. 594; Pub. L. 90-268, §2, Mar. 16, 1968, 82 Stat. 49; Pub. L. 98-369, title VII, §2711(a)(1), July 18, 1984, 98 Stat. 1175; Pub. L. 103-355, title I, §1051(1), Oct. 13, 1994, 108 Stat. 3260.
3301(b)(1) ....	41:253(a)(2).	June 30, 1949, ch. 288, title III, §302(c)(2), as added Pub. L. 98-369, title VII, §2714(a)(1)(B), July 18, 1984, 98 Stat. 1184.
3301(b)(2) ....	41:252(c)(2).	
3301(c) .....	41:253(h).	June 30, 1949, ch. 288, title III, §303(h), as added Pub. L. 104-106, title XLI, §4101(b)(2), Feb. 10, 1996, 110 Stat. 642.

Editorial Notes

REFERENCES IN TEXT

Section 204 of title 23, referred to in subsec. (b)(2), was repealed and a new section 204 enacted by Pub. L. 112-141, div. A, title I, §1119(a), July 6, 2012, 126 Stat. 473, 489.

Statutory Notes and Related Subsidiaries

REGULATIONS

Pub. L. 113-291, div. A, title VIII, §836, Dec. 19, 2014, 128 Stat. 3449, provided that: “Not later than 180 days after the date of the enactment of this Act [Dec. 19, 2014], the Administrator for Federal Procurement Policy shall prescribe regulations providing that when the Federal Government makes a purchase of services and supplies offered under the Federal Strategic Sourcing Initiative (managed by the Office of Federal Procurement Policy) but such Initiative is not used, the contract file for the purchase shall include a brief analysis of the comparative value, including price and nonprice factors, between the services and supplies offered under such Initiative and services and supplies offered under the source or sources used for the purchase.”

CONSTRUCTION

Pub. L. 98-369, div. B, title VII, §2711(c), July 18, 1984, 98 Stat. 1181, provided that: “The amendments made by this section [see Tables for classification] do not supersede or affect the provisions of section 8(a) of the Small Business Act (15 U.S.C. 637(a)).”

PILOT PROGRAMS FOR AUTHORITY TO ACQUIRE INNOVATIVE COMMERCIAL ITEMS USING GENERAL SOLICITATION COMPETITIVE PROCEDURES

Pub. L. 114-328, div. A, title VIII, §880, Dec. 23, 2016, 130 Stat. 2313, as amended by Pub. L. 115-232, div. A, title VIII, §836(f)(10), Aug. 13, 2018, 132 Stat. 1872; Pub. L. 117-263, div. G, title LXXII, §7227(a), Dec. 23, 2022, 136 Stat. 3675, provided that:

“(a) AUTHORITY.—

“(1) IN GENERAL.—The head of an agency may carry out a pilot program, to be known as a ‘commercial solutions opening pilot program’, under which innovative commercial products may be acquired through a competitive selection of proposals resulting from a general solicitation and the peer review of such proposals.

“(2) HEAD OF AN AGENCY.—In this section, the term ‘head of an agency’ means the following:

- “(A) The Secretary of Homeland Security.
- “(B) The Administrator of General Services.

“(3) APPLICABILITY OF SECTION.—This section applies to the following agencies:

- “(A) The Department of Homeland Security.
- “(B) The General Services Administration.

“(b) TREATMENT AS COMPETITIVE PROCEDURES.—Use of general solicitation competitive procedures for the pilot program under subsection (a) shall be considered, in the case of the Department of Homeland Security and the General Services Administration, to be use of competitive procedures for purposes of division C of [subtitle I of] title 41, United States Code (as defined in section 152 of such title).

“(c) LIMITATION.—The head of an agency may not enter into a contract under the pilot program for an amount in excess of \$25,000,000.

“(d) GUIDANCE.—The head of an agency shall issue guidance for the implementation of the pilot program under this section within that agency. Such guidance shall be issued in consultation with the Office of Management and Budget and shall be posted for access by the public.

“(e) REPORT REQUIRED.—

“(1) IN GENERAL.—Not later than three years after the date of the enactment of this Act [Dec. 23, 2016], the head of an agency shall submit to the congressional committees specified in paragraph (3) a report on the activities the agency carried out under the pilot program.

“(2) ELEMENTS OF REPORT.—Each report under this subsection shall include the following:

- “(A) An assessment of the impact of the pilot program on competition.
- “(B) A comparison of acquisition timelines for—
  - “(i) procurements made using the pilot program; and
  - “(ii) procurements made using other competitive procedures that do not use general solicitations.
- “(C) A recommendation on whether the authority for the pilot program should be made permanent.

“(3) SPECIFIED CONGRESSIONAL COMMITTEES.—The congressional committees specified in this paragraph are the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform [now Committee on Oversight and Accountability] of the House of Representatives.

“(f) DEFINITIONS.—In this section—

- “(1) the term ‘commercial product’—
  - “(A) has the meaning given the term ‘commercial item’ in section 2.101 of the Federal Acquisition Regulation; and
  - “(B) includes a commercial product or a commercial service, as defined in sections 103 and 103a, respectively, of title 41, United States Code; and
- “(2) the term ‘innovative’ means—
  - “(A) any new technology, process, or method, including research and development; or
  - “(B) any new application of an existing technology, process, or method.

“(g) TERMINATION.—The authority to enter into a contract under a pilot program under this section terminates on September 30, 2027.”

GOVERNMENTWIDE SOFTWARE PURCHASING PROGRAM

Pub. L. 113-291, div. A, title VIII, §837, Dec. 19, 2014, 128 Stat. 3450, provided that:

“(a) IN GENERAL.—The Administrator of General Services shall identify and develop a strategic sourcing initiative to enhance Governmentwide acquisition, shared use, and dissemination of software, as well as compliance with end user license agreements.

“(b) GOVERNMENTWIDE USER LICENSE AGREEMENT.—The Administrator, in developing the initiative under subsection (a), shall allow for the purchase of a license agreement that is available for use by all Executive agencies (as defined in section 105 of title 5, United States Code) as one user to the maximum extent practicable and as appropriate.”

§ 3302. Requirements for purchase of property and services pursuant to multiple award contracts

(a) DEFINITIONS.—In this section:

(1) EXECUTIVE AGENCY.— The term “executive agency” has the same meaning given in section 133 of this title.

(2) INDIVIDUAL PURCHASE.—The term “individual purchase” means a task order, delivery order, or other purchase.

(3) MULTIPLE AWARD CONTRACT.—The term “multiple award contract” means—

(A) a contract that is entered into by the Administrator of General Services under the multiple award schedule program referred to in section 3012(3) of title 10;

(B) a multiple award task order contract that is entered into under the authority of chapter 245 of title 10 or chapter 41 of this title; and

(C) any other indefinite delivery, indefinite quantity contract that is entered into by the head of an executive agency with 2 or more sources pursuant to the same solicitation.

(4) SOLE SOURCE TASK OR DELIVERY ORDER.— The term “sole source task or delivery order” means any order that does not follow the competitive procedures in paragraph (2) or (3) of subsection (c).

(b) REGULATIONS REQUIRED.—The Federal Acquisition Regulation shall require enhanced competition in the purchase of property and services by all executive agencies pursuant to multiple award contracts.

(c) CONTENT OF REGULATIONS.—

(1) IN GENERAL.—The regulations required by subsection (b) shall provide that each individual purchase of property or services in excess of the simplified acquisition threshold that is made under a multiple award contract shall be made on a competitive basis unless a contracting officer—

(A) waives the requirement on the basis of a determination that—

(i) one of the circumstances described in paragraphs (1) to (4) of section 4106(c) of this title or section 3406(c) of title 10 applies to the individual purchase; or

(ii) a law expressly authorizes or requires that the purchase be made from a specified source; and

(B) justifies the determination in writing.

(2) COMPETITIVE BASIS PROCEDURES.—For purposes of this subsection, an individual purchase of property or services is made on a competitive basis only if it is made pursuant to procedures that—

(A) require fair notice of the intent to make that purchase (including a description of the work to be performed and the basis on which the selection will be made) to be provided to all contractors offering the property or services under the multiple award contract; and

(B) afford all contractors responding to the notice a fair opportunity to make an offer and have that offer fairly considered by the official making the purchase.

(3) EXCEPTION TO NOTICE REQUIREMENT.—

(A) IN GENERAL.—Notwithstanding paragraph (2), and subject to subparagraph (B), notice may be provided to fewer than all

contractors offering the property or services under a multiple award contract as described in subsection (a)(3)(A) if notice is provided to as many contractors as practicable.

(B) LIMITATION ON EXCEPTION.—A purchase may not be made pursuant to a notice that is provided to fewer than all contractors under subparagraph (A) unless—

(i) offers were received from at least 3 qualified contractors; or

(ii) a contracting officer of the executive agency determines in writing that no additional qualified contractors were able to be identified despite reasonable efforts to do so.

(d) PUBLIC NOTICE REQUIREMENTS RELATED TO SOLE SOURCE TASK OR DELIVERY ORDERS.—

(1) PUBLIC NOTICE REQUIRED.—The Federal Acquisition Regulation shall require the head of each executive agency to—

(A) publish on FedBizOpps notice of all sole source task or delivery orders in excess of the simplified acquisition threshold that are placed against multiple award contracts not later than 14 days after the orders are placed, except in the event of extraordinary circumstances or classified orders; and

(B) disclose the determination required by subsection (c)(1) related to sole source task or delivery orders in excess of the simplified acquisition threshold placed against multiple award contracts through the same mechanism and to the same extent as the disclosure of documents containing a justification and approval required by section 3204(e)(1) of title 10 and section 3304(e)(1) of this title, except in the event of extraordinary circumstances or classified orders.

(2) EXEMPTION.—This subsection does not require the public availability of information that is exempt from public disclosure under section 552(b) of title 5.

(e) APPLICABILITY.—The regulations required by subsection (b) shall apply to all individual purchases of property or services that are made under multiple award contracts on or after the effective date of the regulations, without regard to whether the multiple award contracts were entered into before, on, or after the effective date.

(f) COMMERCIAL LEASING SERVICES.—The regulations required by subsection (b) shall not apply to individual purchases for commercial leasing services that are made on a no cost basis and made under a multiple award contract awarded in accordance with the requirements for full and open competition.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3746; Pub. L. 111-383, div. A, title X, §1075(e)(14), Jan. 7, 2011, 124 Stat. 4375; Pub. L. 116-92, div. A, title VIII, §893(b), Dec. 20, 2019, 133 Stat. 1540; Pub. L. 117-81, div. A, title XVII, §1702(h)(12), Dec. 27, 2021, 135 Stat. 2158.)

AMENDMENT NOT SHOWN IN TEXT

*This section was derived from Pub. L. 110-417, [div. A], title VIII, §863(a)-(e), Oct. 14, 2008, 122 Stat. 4547, which was set out as a note under*

section 253h of former Title 41, Public Contracts, prior to being repealed and reenacted by Pub. L. 111–350, §§ 3, 7(b), Jan. 4, 2011, 124 Stat. 3677, 3855. Section 863(b)(3)(A) of Pub. L. 110–417 was restated as subsec. (c)(3)(A) of this section and subsequently amended by Pub. L. 111–383, div. A, title X, § 1075(e)(14), Jan. 7, 2011, 124 Stat. 4375. For applicability of that amendment to this section, see section 6(a) of Pub. L. 111–350, set out as a Transitional and Savings Provisions note preceding section 101 of this title. Section 863(b)(3)(A) of Pub. L. 110–417 was amended by striking “subsection (d)(2)(A)” and inserting “subsection (d)(3)(A)”. Such reference did not appear in the text of subsec. (c)(3)(A) as enacted. See Historical and Revision Notes below.

REPEAL OF SUBSECTION (f)

Pub. L. 116–92, div. A, title VIII, § 893(b)(2), Dec. 20, 2019, 133 Stat. 1540 provided that, effective Dec. 31, 2025, subsection (f) of this section is repealed. See 2019 Amendment note below.

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
3302 .....	41:253h note.	Pub. L. 110–417, [div. A], title VIII, § 863(a)–(e), Oct. 14, 2008, 122 Stat. 4547.

In subsection (b), the words “Not later than one year after the date of the enactment of this Act” are omitted because of section 6(f) of the bill. The words “shall require” are substituted for “shall be amended to require” to reflect the permanence of the provision.

In subsection (c)(2)(A), the words “except as provided in paragraph (3)” are omitted as unnecessary.

In subsection (c)(3)(A), “subsection (a)(3)(A)” is substituted for “subsection (d)(2)(A)” for consistency in the revised title and to correct an error in the law.

In subsection (d)(1), the words “Not later than one year after the date of the enactment of this Act” are omitted because of section 6(f) of the bill. The words “shall require” are substituted for “shall be amended to require” to reflect the permanence of the provision.

Editorial Notes

AMENDMENTS

2021—Subsec. (a)(3). Pub. L. 117–81, § 1702(h)(12)(A), substituted “section 3012(3)” for “section 2302(2)(C)” in subpar. (A) and “chapter 245 of title 10” for “sections 2304a to 2304d of title 10,” in subpar. (B).

Subsec. (c)(1)(A)(i). Pub. L. 117–81, § 1702(h)(12)(B), substituted “section 3406(c)” for “section 2304c(b)”.

Subsec. (d)(1)(B). Pub. L. 117–81, § 1702(h)(12)(C), substituted “section 3204(e)(1)” for “section 2304(f)(1)”.

2019—Subsec. (f). Pub. L. 116–92, § 893(b)(2), struck out subsec. (f). Text read as follows: “The regulations required by subsection (b) shall not apply to individual purchases for commercial leasing services that are made on a no cost basis and made under a multiple award contract awarded in accordance with the requirements for full and open competition.”

Pub. L. 116–92, § 893(b)(1), added subsec. (f).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2019 AMENDMENT

Pub. L. 116–92, div. A, title VIII, § 893(b)(2), Dec. 20, 2019, 133 Stat. 1540, provided that the amendment made by section 893(b)(2) is effective Dec. 31, 2025.

INDIVIDUAL ACQUISITION FOR COMMERCIAL LEASING SERVICES

Pub. L. 115–232, div. A, title VIII, § 877, Aug. 13, 2018, 132 Stat. 1907, which related to individual acquisition

for commercial leasing services not construed as purchase of property or services under certain conditions, was repealed by Pub. L. 116–92, div. A, title VIII, § 893(a), Dec. 20, 2019, 133 Stat. 1540.

§ 3303. Exclusion of particular source or restriction of solicitation to small business concerns

(a) EXCLUSION OF PARTICULAR SOURCE.—

(1) CRITERIA FOR EXCLUSION.—An executive agency may provide for the procurement of property or services covered by section 3301 of this title using competitive procedures but excluding a particular source to establish or maintain an alternative source of supply for that property or service if the agency head determines that to do so would—

(A) increase or maintain competition and likely result in reduced overall cost for the procurement, or for an anticipated procurement, of the property or services;

(B) be in the interest of national defense in having a facility (or a producer, manufacturer, or other supplier) available for furnishing the property or service in case of a national emergency or industrial mobilization;

(C) be in the interest of national defense in establishing or maintaining an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a Federally funded research and development center;

(D) ensure the continuous availability of a reliable source of supply of the property or service;

(E) satisfy projected needs for the property or service determined on the basis of a history of high demand for the property or service; or

(F) satisfy a critical need for medical, safety, or emergency supplies.

(2) DETERMINATION FOR CLASS DISALLOWED.—A determination under paragraph (1) may not be made for a class of purchases or contracts.

(b) EXCLUSION OF OTHER THAN SMALL BUSINESS CONCERNS.—An executive agency may provide for the procurement of property or services covered by section 3301 of this title using competitive procedures, but excluding other than small business concerns in furtherance of sections 9 and 15 of the Small Business Act (15 U.S.C. 638, 644).

(c) NONAPPLICATION OF JUSTIFICATION AND APPROVAL REQUIREMENTS.—A contract awarded pursuant to the competitive procedures referred to in subsections (a) and (b) is not subject to the justification and approval required by section 3304(e)(1) of this title.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3747.)