

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.

§ 3309. Prohibition on release of contractor proposals

(a) DEFINITION.—In this section, the term “proposal” means any proposal, including a technical, management, or cost proposal, submitted by a contractor in response to the requirements of a solicitation for a competitive proposal.

(b) PROHIBITION.—Except as provided in subsection (c), a proposal in the possession or control of an agency named in section 3063 of this title may not be made available to any person under section 552 of title 5.

(c) INAPPLICABILITY.—Subsection (b) does not apply to any proposal that is set forth or incorporated by reference in a contract entered into between the Department and the contractor that submitted the proposal.

(Added and amended Pub. L. 116-283, div. A, title XVIII, § 1816(d), (f), Jan. 1, 2021, 134 Stat. 4185.)

Editorial Notes

CODIFICATION

The text of subsec. (g) of section 2305 of this title, which was transferred to this section and amended by Pub. L. 116-283, § 1816(f), was based on Pub. L. 104-201, div. A, title VIII, § 821(a), Sept. 23, 1996, 110 Stat. 2609; Pub. L. 106-65, div. A, title VIII, § 821, Oct. 5, 1999, 113 Stat. 714.

PRIOR PROVISIONS

A prior section 3309, act Aug. 10, 1956, ch. 1041, 70A Stat. 192, provided that President prescribe a system of physical examination for all commissioned officers of Regular Army in grades below brigadier general to determine their fitness for promotion in Regular Army, prior to repeal by Pub. L. 96-513, title II, § 204, title VII, § 701, Dec. 12, 1980, 94 Stat. 2880, 2955, effective Sept. 15, 1981. See section 624 of this title.

A prior section 3310, act Aug. 10, 1956, ch. 1041, 70A Stat. 192, provided that original appointments as warrant officers in the Regular Army were to be made from persons who have served on active duty at least one year in the Army, prior to repeal by Pub. L. 115-232, div. A, title V, § 511(a), Aug. 13, 2018, 132 Stat. 1751.

A prior section 3311, acts Aug. 10, 1956, ch. 1041, 70A Stat. 192; Sept. 2, 1958, Pub. L. 85-861, § 1(60), 72 Stat. 1462, provided that with the exception of those appointed as commissioned officers in Medical Corps, Dental Corps, Medical Service Corps, Veterinary Corps, Army Nurse Corps, or Army Medical Specialist Corps, women be appointed as commissioned officers in Regular Army only in Women’s Army Corps, prior to repeal by Pub. L. 95-485, title VIII, § 820(d)(4), Oct. 20, 1978, 92 Stat. 1627.

Prior sections 3312 to 3314 were repealed by Pub. L. 96-513, title II, § 204, title VII, § 701, Dec. 12, 1980, 94 Stat. 2880, 2955, effective Sept. 15, 1981.

Section 3312, act Aug. 10, 1956, ch. 1041, 70A Stat. 193, provided that an officer who is promoted in Regular Army is considered to have accepted his promotion on date of the order announcing it, unless he expressly declines it, without the need to take oath of office upon promotion if his service since last taking it has been continuous. See section 626 of this title.

Section 3313, act Aug. 10, 1956, ch. 1041, 70A Stat. 193, provided that in time of war or national emergency declared by Congress or President, President may suspend operation of provision of law relating to promotion, mandatory retirement, or separation of commissioned officers of the Regular Army. See section 123(a) and (b) of this title.

Section 3314, added Pub. L. 85-861, § 1(79)(A), Sept. 2, 1958, 72 Stat. 1467, provided that promotion to a higher grade of a commissioned officer of Regular Army who is on a recommendation list awaiting promotion not be withheld or delayed because of original appointment of any other person to a commissioned grade in Regular Army and that this section does not apply to appointments in Medical Corps, Dental Corps, Army Nurse Corps, or Army Medical Specialist Corps. See section 624 of this title.

AMENDMENTS

2021—Pub. L. 116-283, § 1816(f)(1)(A), transferred subsec. (g) of section 2305 of this title to this section and struck out subsec. (g) designation and heading “Prohibition on Release of Contractor Proposals” at beginning.

Subsec. (a). Pub. L. 116-283, § 1816(f)(1)(B), (C), (2), redesignated par. (3) of former section 2305(g) of this title as subsec. (a) of this section, moved it to the beginning, inserted heading, and substituted “In this section,” for “In this subsection.”

Subsec. (b). Pub. L. 116-283, § 1816(f)(1)(B), (3), redesignated par. (1) of former section 2305(g) of this title as subsec. (b) of this section, inserted heading, and substituted “subsection (c),” for “paragraph (2),” and “section 3063” for “section 2303”.

Subsec. (c). Pub. L. 116-283, § 1816(f)(1)(B), (4), redesignated par. (2) of former section 2305(g) of this title as subsec. (c) of this section, inserted heading, and substituted “Subsection (b)” for “Paragraph (1)”.

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CHAPTER 242—SPECIFIC TYPES OF CONTRACTS

Sec. 3321.	Contracts awarded using procedures other than sealed-bid procedures.
3322.	Cost contracts.
3323.	Cost-plus contracting prohibited for military construction and military family housing projects.
3324.	[Reserved].

Editorial Notes

AMENDMENTS

2021—Pub. L. 117-81, div. A, title XVII, § 1701(i)(4)(A), Dec. 27, 2021, 135 Stat. 2141, amended Pub. L. 116-283, div. A, title XVIII, § 1817(a), Jan. 1, 2021, 134 Stat. 4186, which added this analysis, by substituting “[Reserved]” for “Preference for fixed-price contracts” in item 3324.

§ 3321. Contracts awarded using procedures other than sealed-bid procedures

(a) AUTHORIZED TYPES.—Subject to the limitation in section 3322(a) of this title, the other provisions of this chapter, and other applicable provisions of law, the head of an agency, in awarding contracts under chapter 137 legacy

provisions after using procedures other than sealed-bid procedures, may enter into any kind of contract that he considers will promote the best interests of the United States.

(b) **REQUIRED WARRANTY.**—

(1) **CONTENT.**—Each contract awarded under chapter 137 legacy provisions after using procedures other than sealed-bid procedures shall contain a warranty, determined to be suitable by the head of the agency, that the contractor has employed or retained no person or selling agency to solicit or obtain the contract under an understanding or agreement for a commission, percentage, brokerage, or contingent fee, except a bona fide employee or established commercial or selling agency maintained by the contractor to obtain business.

(2) **REMEDY FOR BREAKING WARRANTY.**—If a contractor breaks such a warranty the United States—

(A) may annul the contract without liability; or

(B) may deduct the commission, percentage, brokerage, or contingent fee from the contract price or consideration.

(3) **INAPPLICABILITY TO CERTAIN CONTRACTS.**—This subsection does not apply—

(A) to a contract that is for an amount not greater than the simplified acquisition threshold; or

(B) to a contract for the acquisition of commercial products or commercial services.

(Added and amended Pub. L. 116–283, div. A, title XVIII, §1817(a), (b), (d), Jan. 1, 2021, 134 Stat. 4186.)

Editorial Notes

CODIFICATION

The text of subsec. (a) of section 2306 of this title, which was transferred to this section and amended by Pub. L. 116–283, §1817(b), (d)(1), was based on act Aug. 10, 1956, ch. 1041, 70A Stat. 130; Pub. L. 87–653, §1(d), Sept. 10, 1962, 76 Stat. 528; Pub. L. 98–369, div. B, title VII, §2724(a), July 18, 1984, 98 Stat. 1192; Pub. L. 99–145, title XIII, §1303(a)(15), Nov. 8, 1985, 99 Stat. 739.

The text of subsec. (b) of section 2306 of this title, which was transferred to this section and amended by Pub. L. 116–283, §1817(b), (d)(2), was based on act Aug. 10, 1956, ch. 1041, 70A Stat. 130; Pub. L. 98–369, div. B, title VII, §2724(b), July 18, 1984, 98 Stat. 1193; Pub. L. 103–355, title IV, §4102(b), Oct. 13, 1994, 108 Stat. 3340; Pub. L. 115–232, div. A, title VIII, §836(c)(4), Aug. 13, 2018, 132 Stat. 1865.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, §1817(b), (d)(1), transferred subsec. (a) of section 2306 of this title to this section, inserted heading before second sentence, and substituted “section 3322(a) of this title” for “the preceding sentence”, “provisions of this chapter” for “provisions of this section”, and “under chapter 137 legacy provisions” for “under this chapter”. Former first sentence of subsec. (a) designated section 3322(a) of this title.

Subsec. (b). Pub. L. 116–283, §1817(b), (d)(2), transferred subsec. (b) of section 2306 of this title to this section, inserted heading, and designated first, second, and third sentences as pars. (1) to (3), respectively.

Subsec. (b)(1). Pub. L. 116–283, §1817(d)(2)(A)–(C), inserted heading and substituted “under chapter 137 legacy provisions” for “under this chapter” and “maintained by the contractor” for “maintained by him”.

Subsec. (b)(2). Pub. L. 116–283, §1817(d)(2)(E), inserted heading, inserted dash after “the United States” and subpar. (A) designation before “may annul”, substituted “liability; or” for “liability or”, and inserted subpar. (B) designation before “may deduct”.

Subsec. (b)(3). Pub. L. 116–283, §1817(d)(2)(F), inserted heading, inserted dash after “does not apply” and subpar. (A) designation before “to a contract that is”, substituted “threshold; or” for “threshold or”, and inserted subpar. (B) designation before “to a contract for the acquisition”.

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§ 3322. Cost contracts

(a) **COST-PLUS-A-PERCENTAGE-OF-COST SYSTEM OF CONTRACTING PROHIBITED.**—The cost-plus-a-percentage-of-cost system of contracting may not be used.

(b) **COST-PLUS-A-FIXED-FEE CONTRACTS.**—The fee for performing a cost-plus-a-fixed-fee contract for experimental, developmental, or research work may not be more than 15 percent of the estimated cost of the contract, not including the fee. The fee for performing a cost-plus-a-fixed-fee contract for architectural or engineering services for a public work or utility plus the cost of those services to the contractor may not be more than 6 percent of the estimated cost of that work or project, not including fees. The fee for performing any other cost-plus-a-fixed-fee contract may not be more than 10 percent of the estimated cost of the contract, not including the fee. Determinations under this subsection of the estimated costs of a contract or project shall be made by the head of the agency at the time the contract is made.

(c) **ADVANCE NOTICE OF CERTAIN SUBCONTRACTS.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), each cost contract and each cost-plus-a-fixed-fee contract shall provide for notice to the agency by the contractor before the making, under the prime contract, of—

(A) a cost-plus-a-fixed-fee subcontract; or

(B) a fixed-price subcontract or purchase order involving more than the greater of (i) the simplified acquisition threshold, or (ii) 5 percent of the estimated cost of the prime contract.

(2) **EXCEPTION.**—Paragraph (1) shall not apply to a prime contract with a contractor that maintains a purchasing system approved by the contracting officer for the contract.

(Added and amended Pub. L. 116–283, div. A, title XVIII, §1817(a), (c), (e), (f), Jan. 1, 2021, 134 Stat. 4186, 4187.)

Editorial Notes

CODIFICATION

For derivation of subsec. (a) of this section, see Codification note related to subsec. (a) of section 2306 of this title set out under section 3321 of this title.