

Subsec. (f)(3)(A). Pub. L. 110-315, §117(5)(B), substituted “paragraph (1);” for “paragraph (1)(A);”.

Subsec. (g)(3). Pub. L. 110-315, §117(6), struck out “not more than 25” before “technical and professional employees”.

Subsec. (h). Pub. L. 110-315, §117(7), substituted “effectiveness” for “organizational effectiveness”.

Subsecs. (i), (j). Pub. L. 110-315, §117(8)–(10), redesignated subsec. (j) as (i), struck out “, including transition costs” before period at end, and struck out former subsec. (i). Text of former subsec. (i) read as follows: “The Secretary and the Chief Operating Officer, not later than 180 days after October 7, 1998, shall report to Congress on the proposed budget and sources of funding for the operation of the PBO.”

STUDY OF MARKET MECHANISMS IN FEDERAL STUDENT LOAN PROGRAMS

Pub. L. 105-244, title VIII, §801, Oct. 7, 1998, 112 Stat. 1803, which directed the Comptroller General and Secretary of Education, in consultation with a study group, to design and conduct a study to identify and evaluate means of establishing a market mechanism for the delivery of certain student loans made pursuant to title IV of the Higher Education Act (20 U.S.C. 1070 et seq., 42 U.S.C. 2751 et seq.) and to transmit a final report to congressional committees not later than May 15, 2001, was repealed by Pub. L. 110-315, title IX, §931(1), Aug. 14, 2008, 122 Stat. 3456.

§ 1018a. Procurement flexibility

(a) Procurement authority

Subject to the authority of the Secretary, the Chief Operating Officer of a PBO may exercise the authority of the Secretary to procure property and services in the performance of functions managed by the PBO. For the purposes of this section, the term “PBO” includes the Chief Operating Officer of the PBO and any employee of the PBO exercising procurement authority under the preceding sentence.

(b) In general

Except as provided in this section, the PBO shall abide by all applicable Federal procurement laws and regulations when procuring property and services. The PBO shall—

- (1) enter into contracts to carry out the functions set forth in section 1018(b)(2) of this title;
- (2) obtain the services of experts and consultants without regard to section 3109 of title 5 and set pay in accordance with such section; and
- (3) through the Chief Operating Officer—
 - (A) to the maximum extent practicable, utilize procurement systems that streamline operations, improve internal controls, and enhance management; and
 - (B) assess the efficiency of such systems and assess such systems’ ability to meet PBO requirements.

(c) Service contracts

(1) Performance-based servicing contracts

The Chief Operating Officer shall, to the extent practicable, maximize the use of performance-based servicing contracts, consistent with guidelines for such contracts published by the Office of Federal Procurement Policy, to achieve cost savings and improve service.

(2) Fee for service arrangements

The Chief Operating Officer shall, when appropriate and consistent with the purposes of

the PBO, acquire services related to the functions set forth in section 1018(b)(2) of this title from any entity that has the capability and capacity to meet the requirements set by the PBO. The Chief Operating Officer is authorized to pay fees that are equivalent to those paid by other entities to an organization that provides services that meet the requirements of the PBO, as determined by the Chief Operating Officer.

(d) Two-phase source-selection procedures

(1) In general

The PBO may use a two-phase process for selecting a source for a procurement of property or services.

(2) First phase

The procedures for the first phase of the process for a procurement are as follows:

(A) Publication of notice

The contracting officer for the procurement shall publish a notice of the procurement in accordance with section 416 of title 41 and subsections (e), (f), and (g) of section 637 of title 15, except that the notice shall include only the following:

- (i) A general description of the scope or purpose of the procurement that provides sufficient information on the scope or purpose for sources to make informed business decisions regarding whether to participate in the procurement.
- (ii) A description of the basis on which potential sources are to be selected to submit offers in the second phase.
- (iii) A description of the information that is to be required under subparagraph (B).
- (iv) Any additional information that the contracting officer determines appropriate.

(B) Information submitted by offerors

Each offeror for the procurement shall submit basic information, such as information on the offeror’s qualifications, the proposed conceptual approach, costs likely to be associated with the proposed conceptual approach, and past performance of the offeror, together with any additional information that is requested by the contracting officer.

(C) Selection for second phase

The contracting officer shall select the offerors that are to be eligible to participate in the second phase of the process. The contracting officer shall limit the number of the selected offerors to the number of sources that the contracting officer determines is appropriate and in the best interests of the Federal Government.

(3) Second phase

(A) In general

The contracting officer shall conduct the second phase of the source selection process in accordance with sections 253a and 253b of title 41.

(B) Eligible participants

Only the sources selected in the first phase of the process shall be eligible to participate in the second phase.

(C) Single or multiple procurements

The second phase may include a single procurement or multiple procurements within the scope, or for the purpose, described in the notice pursuant to paragraph (2)(A).

(4) Procedures considered competitive

The procedures used for selecting a source for a procurement under this subsection shall be considered competitive procedures for all purposes.

(e) Use of simplified procedures for commercial items

Whenever the PBO anticipates that commercial items will be offered for a procurement, the PBO may use (consistent with the special rules for commercial items) the special simplified procedures for the procurement without regard to—

(1) any dollar limitation otherwise applicable to the use of those procedures; and

(2) the expiration of the authority to use special simplified procedures under section 4202(e) of the Clinger-Cohen Act of 1996 (110 Stat. 654; 10 U.S.C. 2304 note).

(f) Flexible wait periods and deadlines for submission of offers of noncommercial items**(1) Authority**

In carrying out a procurement, the PBO may—

(A) apply a shorter waiting period for the issuance of a solicitation after the publication of a notice under section 416 of title 41 than is required under subsection (a)(3)(A) of such section; and

(B) notwithstanding subsection (a)(3) of such section, establish any deadline for the submission of bids or proposals that affords potential offerors a reasonable opportunity to respond to the solicitation.

(2) Inapplicability to commercial items

Paragraph (1) does not apply to a procurement of a commercial item.

(3) Consistency with applicable international agreements

If an international agreement is applicable to the procurement, any exercise of authority under paragraph (1) shall be consistent with the international agreement.

(g) Modular contracting**(1) In general**

The PBO may satisfy the requirements of the PBO for a system incrementally by carrying out successive procurements of modules of the system. In doing so, the PBO may use procedures authorized under this subsection to procure any such module after the first module.

(2) Utility requirement

A module may not be procured for a system under this subsection unless the module is useful independently of the other modules or useful in combination with another module previously procured for the system.

(3) Conditions for use of authority

The PBO may use procedures authorized under paragraph (4) for the procurement of an additional module for a system if—

(A) competitive procedures were used for awarding the contract for the procurement of the first module for the system; and

(B) the solicitation for the first module included—

(i) a general description of the entire system that was sufficient to provide potential offerors with reasonable notice of the general scope of future modules;

(ii) other information sufficient for potential offerors to make informed business judgments regarding whether to submit offers for the contract for the first module; and

(iii) a statement that procedures authorized under this subsection could be used for awarding subsequent contracts for the procurement of additional modules for the system.

(4) Procedures

If the procurement of the first module for a system meets the requirements set forth in paragraph (3), the PBO may award a contract for the procurement of an additional module for the system using any of the following procedures:

(A) Single-source basis

Award of the contract on a single-source basis to a contractor who was awarded a contract for a module previously procured for the system under competitive procedures or procedures authorized under subparagraph (B).

(B) Adequate competition

Award of the contract on the basis of offers made by—

(i) a contractor who was awarded a contract for a module previously procured for the system after having been selected for award of the contract under this subparagraph or other competitive procedures; and

(ii) at least one other offeror that submitted an offer for a module previously procured for the system and is expected, on the basis of the offer for the previously procured module, to submit a competitive offer for the additional module.

(C) Other

Award of the contract under any other procedure authorized by law.

(5) Notice requirement**(A) Publication**

Not less than 30 days before issuing a solicitation for offers for a contract for a module for a system under procedures authorized under subparagraph (A) or (B) of paragraph (4), the PBO shall publish in the Commerce Business Daily a notice of the intent to use such procedures to enter into the contract.

(B) Exception

Publication of a notice is not required under this paragraph with respect to a use of

procedures authorized under paragraph (4) if the contractor referred to in that subparagraph (who is to be solicited to submit an offer) has previously provided a module for the system under a contract that contained cost, schedule, and performance goals and the contractor met those goals.

(C) Content of notice

A notice published under subparagraph (A) with respect to a use of procedures described in paragraph (4) shall contain the information required under section 416(b) of title 41, other than paragraph (4) of such section, and shall invite the submission of any assertion that the use of the procedures for the procurement involved is not in the best interest of the Federal Government together with information supporting the assertion.

(6) Documentation

The basis for an award of a contract under this subsection shall be documented. However, a justification pursuant to section 253(f) of title 41 or section 637(h) of title 15 is not required.

(7) Simplified source-selection procedures

The PBO may award a contract under any other simplified procedures prescribed by the PBO for the selection of sources for the procurement of modules for a system, after the first module, that are not to be procured under a contract awarded on a single-source basis.

(h) Use of simplified procedures for small business set-asides for services other than commercial items

(1) Authority

The PBO may use special simplified procedures for a procurement of services that are not commercial items if—

(A) the procurement is in an amount not greater than \$1,000,000;

(B) the procurement is conducted as a small business set-aside pursuant to section 644(a) of title 15; and

(C) the price charged for supplies associated with the services procured are items of supply expected to be less than 20 percent of the total contract price.

(2) Inapplicability to certain procurements

The authority set forth in paragraph (1) may not be used for—

(A) an award of a contract on a single-source basis; or

(B) a contract for construction.

(i) Guidance for use of authority

(1) Issuance by PBO

The Chief Operating Officer of the PBO, in consultation with the Administrator for Federal Procurement Policy, shall issue guidance for the use by PBO personnel of the authority provided in this section.

(2) Guidance from OFPP

As part of the consultation required under paragraph (1), the Administrator for Federal Procurement Policy shall provide the PBO with guidance that is designed to ensure, to the maximum extent practicable, that the au-

thority under this section is exercised by the PBO in a manner that is consistent with the exercise of the authority by the heads of the other performance-based organizations.

(3) Compliance with OFPP guidance

The head of the PBO shall ensure that the procurements of the PBO under this section are carried out in a manner that is consistent with the guidance provided for the PBO under paragraph (2).

(j) Limitation on multiagency contracting

No department or agency of the Federal Government may purchase property or services under contracts entered into or administered by a PBO under this section unless the purchase is approved in advance by the senior procurement official of that department or agency who is responsible for purchasing by the department or agency.

(k) Laws not affected

Nothing in this section shall be construed to waive laws for the enforcement of civil rights or for the establishment and enforcement of labor standards that are applicable to contracts of the Federal Government.

(l) Definitions

In this section:

(1) Commercial item

The term “commercial item” has the meaning given the term in section 403(12) of title 41.

(2) Competitive procedures

The term “competitive procedures” has the meaning given the term in section 259(b) of title 41.

(3) Single-source basis

The term “single-source basis”, with respect to an award of a contract, means that the contract is awarded to a source after soliciting an offer or offers from, and negotiating with, only such source (although such source is not the only source in the marketplace capable of meeting the need) because such source is the most advantageous source for purposes of the award.

(4) Special rules for commercial items

The term “special rules for commercial items” means the regulations set forth in the Federal Acquisition Regulation pursuant to section 253(g)(1) of title 41 and section 427 of title 41.

(5) Special simplified procedures

The term “special simplified procedures” means the procedures applicable to purchases of property and services for amounts not greater than the simplified acquisition threshold that are set forth in the Federal Acquisition Regulation pursuant to section 253(g)(1)(B) of title 41 and section 427(a)(1) of title 41.

(Pub. L. 89-329, title I, §142, as added Pub. L. 105-244, title I, §101(a), Oct. 7, 1998, 112 Stat. 1611; amended Pub. L. 110-315, title I, §118, Aug. 14, 2008, 122 Stat. 3116.)

REFERENCES IN TEXT

Section 4202(e) of the Clinger-Cohen Act of 1996, referred to in subsec. (e)(2), is section 4202(e) of Pub. L.

104-106, which is set out as a note under section 2304 of Title 10, Armed Forces.

PRIOR PROVISIONS

A prior section 1018a, Pub. L. 89-329, title I, §142, as added Pub. L. 100-418, title VI, §6201, Aug. 23, 1988, 102 Stat. 1515, related to grants for literacy corps programs, prior to the general amendment of this subchapter by Pub. L. 102-325.

AMENDMENTS

2008—Subsec. (b)(1). Pub. L. 110-315, §118(1)(A), struck out “for information systems supporting the programs authorized under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42” after “enter into contracts” and “and” after semicolon.

Subsec. (b)(2), (3). Pub. L. 110-315, §118(1)(B), (C), substituted “; and” for period at end of par. (2) and added par. (3).

Subsec. (c)(2). Pub. L. 110-315, §118(2), added par. (2) and struck out former par. (2). Prior to amendment, text read as follows: “The Chief Operating Officer shall, when appropriate and consistent with the purposes of the PBO, acquire services related to the subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 delivery system from any entity that has the capability and capacity to meet the requirements for the system. The Chief Operating Officer is authorized to pay fees that are equivalent to those paid by other entities to an organization that provides an information system or service that meets the requirements of the PBO, as determined by the Chief Operating Officer.”

Subsec. (d)(2)(B). Pub. L. 110-315, §118(3), struck out “on Federal Government contracts” after “performance of the offeror”.

Subsec. (g)(4)(A). Pub. L. 110-315, §118(4)(A), substituted “Single-source basis” for “Sole source” in heading and “single-source” for “sole-source” in text.

Subsec. (g)(7). Pub. L. 110-315, §118(4)(B), substituted “single-source” for “sole-source”.

Subsec. (h)(2)(A). Pub. L. 110-315, §118(5), substituted “single-source” for “sole-source”.

Subsec. (l)(3). Pub. L. 110-315, §118(6), added par. (3) and struck out former par. (3). Prior to amendment, text read as follows: “The term ‘sole-source basis’, with respect to an award of a contract, means that the contract is awarded to a source after soliciting an offer or offers from, and negotiating with, only that source.”

§ 1018b. Administrative simplification of student aid delivery

(a) In general

In order to improve the efficiency and effectiveness of the student aid delivery system, the Secretary and the Chief Operating Officer shall encourage and participate in the establishment of voluntary consensus standards and requirements for the electronic transmission of information necessary for the administration of programs under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42.

(b) Participation in standard setting organizations

(1) The Chief Operating Officer shall participate in the activities of standard setting organizations in carrying out the provisions of this section.

(2) The Chief Operating Officer shall encourage higher education groups seeking to develop common forms, standards, and procedures in support of the delivery of Federal student financial assistance to conduct these activities within a standard setting organization.

(3) The Chief Operating Officer may pay necessary dues and fees associated with participat-

ing in standard setting organizations pursuant to this subsection.

(c) Adoption of voluntary consensus standards

Except with respect to the common financial reporting form under section 1090(a) of this title, the Secretary shall consider adopting voluntary consensus standards agreed to by the organization described in subsection (b) of this section for transactions required under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, and common data elements for such transactions, to enable information to be exchanged electronically between systems administered by the Department and among participants in the Federal student aid delivery system.

(d) Use of clearinghouses

Nothing in this section shall restrict the ability of participating institutions and lenders from using a clearinghouse or servicer to comply with the standards for the exchange of information established under this section.

(e) Data security

Any entity that maintains or transmits information under a transaction covered by this section shall maintain reasonable and appropriate administrative, technical, and physical safeguards—

(1) to ensure the integrity and confidentiality of the information; and

(2) to protect against any reasonably anticipated security threats, or unauthorized uses or disclosures of the information.

(f) Definitions

(1) Clearinghouse

The term “clearinghouse” means a public or private entity that processes or facilitates the processing of nonstandard data elements into data elements conforming to standards adopted under this section.

(2) Standard setting organization

The term “standard setting organization” means an organization that—

(A) is accredited by the American National Standards Institute;

(B) develops standards for information transactions, data elements, or any other standard that is necessary to, or will facilitate, the implementation of this section; and

(C) is open to the participation of the various entities engaged in the delivery of Federal student financial assistance.

(3) Voluntary consensus standard

The term “voluntary consensus standard” means a standard developed or used by a standard setting organization described in paragraph (2).

(Pub. L. 89-329, title I, §143, as added Pub. L. 105-244, title I, §101(a), Oct. 7, 1998, 112 Stat. 1615.)

PRIOR PROVISIONS

Prior sections 1018b to 1018f were omitted in the general amendment of this subchapter by Pub. L. 102-325.

Section 1018b, Pub. L. 89-329, title I, §143, as added Pub. L. 100-418, title VI, §6201, Aug. 23, 1988, 102 Stat. 1515, related to use of funds.