

only for wage rates but also for wages for time not worked, including vacations, holidays, and other excused absences;

(B) all benefits received by the employees, including previous bonuses, insurance, and pensions; and

(C) the continuity and stability of employment.

(7) The public welfare.

(b) Compact agency's funding ability

An arbitrator rendering an arbitration award involving the employees of an interstate compact agency operating in the national capital area may not, with respect to a collective bargaining agreement governing conditions of employment, provide for salaries and other benefits that exceed the interstate compact agency's funding ability.

(c) Requirements for final award

In resolving a dispute submitted to arbitration involving the employees of an interstate compact agency operating in the national capital area, the arbitrator shall issue a written award that demonstrates that all the factors set forth in subsections (a) and (b) of this section have been considered and applied. An award may grant an increase in pay rates or benefits (including insurance and pension benefits), or reduce hours of work, only if the arbitrator concludes that any costs to the agency do not adversely affect the public welfare. The arbitrator's conclusion regarding the public welfare must be supported by substantial evidence.

(Pub. L. 104-50, title IV, §404, Nov. 15, 1995, 109 Stat. 464.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1304 of this title.

§ 1304. Procedures for enforcement of awards

(a) Modifications and finality of award

In the case of an arbitration award to which section 1303 of this title applies, the interstate compact agency and the employees in the bargaining unit, through their representative, may agree in writing upon any modifications to the award within 10 days after the award is received by the parties. After the end of that 10-day period, the award, with any such modifications, shall become binding upon the interstate compact agency, the employees in the bargaining unit, and the employees' representative.

(b) Implementation

Each party to an award that becomes binding under subsection (a) of this section shall take all actions necessary to implement the award.

(c) Judicial review

Within 60 days after an award becomes binding under subsection (a) of this section, the interstate compact agency or the exclusive representative of the employees concerned may file a civil action in a court which has jurisdiction over the interstate compact agency for review of the award. The court shall review the award on the record, and shall vacate the award or any part of the award, after notice and a hearing, if—

(1) the award is in violation of applicable law;

(2) the arbitrator exceeded the arbitrator's powers;

(3) the decision by the arbitrator is arbitrary or capricious;

(4) the arbitrator conducted the hearing contrary to the provisions of this chapter or other statutes or rules that apply to the arbitration so as to substantially prejudice the rights of a party;

(5) there was partiality or misconduct by the arbitrator prejudicing the rights of a party;

(6) the award was procured by corruption, fraud, or bias on the part of the arbitrator; or

(7) the arbitrator did not comply with the provisions of section 1303 of this title.

(Pub. L. 104-50, title IV, §405, Nov. 15, 1995, 109 Stat. 465.)

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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 10 section 2315; title 28 section 612; title 38 section 310.

§ 1401. Definitions

In this chapter:

(1) Director

The term “Director” means the Director of the Office of Management and Budget.

(2) Executive agency

The term “executive agency” has the meaning given that term in section 403(1) of title 41.

(3) Information technology

(A) The term “information technology”, with respect to an executive agency means any equipment or interconnected system or subsystem of equipment, that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the executive agency. For purposes of the preceding sentence, equipment is used by an executive agency if the equipment is used by the executive agency directly or is used by a contractor under a contract with the executive agency which (i) requires the use of such equipment, or (ii) requires the use, to a significant extent, of such equipment in the performance of a service or the furnishing of a product.

(B) The term “information technology” includes computers, ancillary equipment, software, firmware and similar procedures, services (including support services), and related resources.

(C) Notwithstanding subparagraphs (A) and (B), the term “information technology” does not include any equipment that is acquired by a Federal contractor incidental to a Federal contract.

(4) Information resources

The term “information resources” has the meaning given such term in section 3502(6) of title 44.

(5) Information resources management

The term “information resources management” has the meaning given such term in section 3502(7) of title 44.

(6) Information system

The term “information system” has the meaning given such term in section 3502(8) of title 44.

(7) Commercial item

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

(Pub. L. 104-106, div. E, §5002, Feb. 10, 1996, 110 Stat. 679.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this division” meaning division E (§§5001-5703) of Pub. L. 104-106, Feb. 10, 1996, 110 Stat. 679, which is classified principally to this chapter. For complete classification of division E to the Code, see Short Title note set out below and Tables.

EFFECTIVE DATE

Section 5701 of title LVII of div. E of Pub. L. 104-106 provided that: “This division [div. E (§§5001-5703) of Pub. L. 104-106, see Short Title note below] and the amendments made by this division shall take effect 180 days after the date of the enactment of this Act [Feb. 10, 1996].”

SHORT TITLE

Section 5001 of div. E of Pub. L. 104-106, as amended by Pub. L. 104-208, div. A, title I, §101(f) [title VIII, §808(b)], Sept. 30, 1996, 110 Stat. 3009-314, 3009-394, provided that: “This division [div. E (§§5001-5703) of Pub. L. 104-106, see Tables for classification] and division D

[[§ 4001-4402 of Pub. L. 104-106, see Tables for classification] may be cited as the ‘Clinger-Cohen Act of 1996.’”

SAVINGS PROVISION

Section 5702 of title LVII of div. E of Pub. L. 104-106 provided that:

“(a) REGULATIONS, INSTRUMENTS, RIGHTS, AND PRIVILEGES.—All rules, regulations, contracts, orders, determinations, permits, certificates, licenses, grants, and privileges—

“(1) which have been issued, made, granted, or allowed to become effective by the Administrator of General Services or the General Services Board of Contract Appeals, or by a court of competent jurisdiction, in connection with an acquisition activity carried out under section 111 of the Federal Property and Administrative Services Act of 1949 ([former] 40 U.S.C. 759), and

“(2) which are in effect on the effective date of this division [see Effective Date note above], shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the Director or any other authorized official, by a court of competent jurisdiction, or by operation of law.

“(b) PROCEEDINGS.—

“(1) PROCEEDINGS GENERALLY.—This division [see Short Title note above] and the amendments made by this division shall not affect any proceeding, including any proceeding involving a claim, application, or protest in connection with an acquisition activity carried out under section 111 of the Federal Property and Administrative Services Act of 1949 ([former] 40 U.S.C. 759) that is pending before the Administrator of General Services or the General Services Board of Contract Appeals on the effective date of this division.

“(2) ORDERS.—Orders may be issued in any such proceeding, appeals may be taken therefrom, and payments may be made pursuant to such orders, as if this division had not been enacted. An order issued in any such proceeding shall continue in effect until modified, terminated, superseded, or revoked in accordance with law by the Director or any other authorized official, by a court of competent jurisdiction, or by operation of law.

“(3) DISCONTINUANCE OR MODIFICATION OF PROCEEDINGS NOT PROHIBITED.—Nothing in this subsection prohibits the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this Act [see Tables for classification] had not been enacted.

“(4) OTHER AUTHORITY AND PROHIBITION.—Section 1558(a) of title 31, United States Code, and the second sentence of section 3552 of such title shall continue to apply with respect to a protest process in accordance with this subsection.

“(5) REGULATIONS FOR TRANSFER OF PROCEEDINGS.—The Director may prescribe regulations providing for the orderly transfer of proceedings continued under paragraph (1).

“(c) STANDARDS AND GUIDELINES FOR FEDERAL COMPUTER SYSTEMS.—Standards and guidelines that are in effect for Federal computer systems under section 111(d) of the Federal Property and Administrative Services Act of 1949 ([former] 40 U.S.C. 759(d)) on the day before the effective date of this division shall remain in effect until modified, terminated, superseded, revoked, or disapproved under the authority of section 5131 of this Act [40 U.S.C. 1441].”

RULES OF CONSTRUCTION

Section 5703 of title LVII of div. E of Pub. L. 104-106 provided that:

“(a) RELATIONSHIP TO TITLE 44, UNITED STATES CODE.—Nothing in this division [see Short Title note above] shall be construed to amend, modify, or supersede any provision of title 44, United States Code, other than chapter 35 of such title.

“(b) RELATIONSHIP TO COMPUTER SECURITY ACT OF 1987.—Nothing in this division shall affect the limitations on authority that is provided for in the administration of the Computer Security Act of 1987 (Public Law 100-235) [enacting sections 278g-3 and 278g-4 of Title 15, Commerce and Trade, amending section 759 of this title and section 272 of Title 15, and enacting provisions set out as notes under section 1441 of this title and section 271 of Title 15] and the amendments made by such Act.”

EX. ORD. NO. 13011. FEDERAL INFORMATION TECHNOLOGY

Ex. Ord. No. 13011, July 16, 1996, 61 F.R. 37657, provided:

A Government that works better and costs less requires efficient and effective information systems. The Paperwork Reduction Act of 1995 [44 U.S.C. 3501 et seq.] and the Information Technology Management Reform Act of 1996 [now Clinger-Cohen Act of 1996, see Short Title note above] provide the opportunity to improve significantly the way the Federal Government acquires and manages information technology. Agencies now have the clear authority and responsibility to make measurable improvements in mission performance and service delivery to the public through the strategic application of information technology. A coordinated approach that builds on existing structures and successful practices is needed to provide maximum benefit across the Federal Government from this technology.

Accordingly, by the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

SECTION 1. *Policy.* It shall be the policy of the United States Government that executive agencies shall: (a) significantly improve the management of their information systems, including the acquisition of information technology, by implementing the relevant provisions of the Paperwork Reduction Act of 1995 (Public Law 104-13) [44 U.S.C. 3501 et seq.], the Information Technology Management Reform Act of 1996 (Division E of Public Law 104-106) (“Information Technology Act”) [now Clinger-Cohen Act of 1996, see Short Title note above], and the Government Performance and Results Act of 1993 (Public Law 103-62) [see Short Title of 1993 Amendment note set out under section 1101 of Title 31, Money and Finance];

(b) refocus information technology management to support directly their strategic missions, implement an investment review process that drives budget formulation and execution for information systems, and rethink and restructure the way they perform their functions before investing in information technology to support that work;

(c) establish clear accountability for information resources management activities by creating agency Chief Information Officers (CIOs) with the visibility and management responsibilities necessary to advise the agency head on the design, development, and implementation of those information systems. These responsibilities include: (1) participating in the investment review process for information systems; (2) monitoring and evaluating the performance of those information systems on the basis of applicable performance measures; and, (3) as necessary, advising the agency head to modify or terminate those systems;

(d) cooperate in the use of information technology to improve the productivity of Federal programs and to promote a coordinated, interoperable, secure, and shared Governmentwide infrastructure that is provided and supported by a diversity of private sector suppliers and a well-trained corps of information technology professionals; and

(e) establish an interagency support structure that builds on existing successful interagency efforts and shall provide expertise and advice to agencies; expand the skill and career development opportunities of information technology professionals; improve the management and use of information technology within and among agencies by developing information technology procedures and standards and by identifying and shar-

ing experiences, ideas, and promising practices; and provide innovative, multi-disciplinary, project-specific support to agencies to enhance interoperability, minimize unnecessary duplication of effort, and capitalize on agency successes.

SEC. 2. Responsibilities of Agency Heads. The head of each executive agency shall: (a) effectively use information technology to improve mission performance and service to the public;

(b) strengthen the quality of decisions about the employment of information resources to meet mission needs through integrated analysis, planning, budgeting, and evaluation processes, including:

(1) determining, before making investments in new information systems, whether the Government should be performing the function, if the private sector or another agency should support the function, and if the function needs to be or has been appropriately redesigned to improve its efficiency;

(2) establishing mission-based performance measures for information systems investments, aligned with agency performance plans prepared pursuant to the Government Performance and Results Act of 1993 (Public Law 103-62);

(3) establishing agency-wide and project-level management structures and processes responsible and accountable for managing, selecting, controlling, and evaluating investments in information systems, with authority for terminating information systems when appropriate;

(4) supporting appropriate training of personnel; and

(5) seeking the advice of, participating in, and supporting the interagency support structure set forth in this order;

(c) select CIOs with the experience and skills necessary to accomplish the duties set out in law and policy, including this order, and involve the CIO at the highest level of the agency in the processes and decisions set out in this section;

(d) ensure that the information security policies, procedures, and practices of the executive agency are adequate;

(e) where appropriate, and in accordance with the Federal Acquisition Regulation and guidance to be issued by the Office of Management and Budget (OMB), structure major information systems investments into manageable projects as narrow in scope and brief in duration as practicable, consistent with the Information Technology Act, to reduce risk, promote flexibility and interoperability, increase accountability, and better correlate mission need with current technology and market conditions; and

(f) to the extent permitted by law, enter into a contract that provides for multiagency acquisitions of information technology as an executive agent for the Government, if and in the manner that the Director of OMB considers it advantageous to do so.

SEC. 3. Chief Information Officers Council. (a) *Purpose and Functions.* A Chief Information Officers Council (“CIO Council”) is established as the principal interagency forum to improve agency practices on such matters as the design, modernization, use, sharing, and performance of agency information resources. The Council shall:

(1) develop recommendations for overall Federal information technology management policy, procedures, and standards;

(2) share experiences, ideas, and promising practices, including work process redesign and the development of performance measures, to improve the management of information resources;

(3) identify opportunities, make recommendations for, and sponsor cooperation in using information resources;

(4) assess and address the hiring, training, classification, and professional development needs of the Federal Government with respect to information resources management;

(5) make recommendations and provide advice to appropriate executive agencies and organizations, includ-

ing advice to OMB on the Governmentwide strategic plan required by the Paperwork Reduction Act of 1995; and

(6) seek the views of the Chief Financial Officers Council, Government Information Technology Services Board, Information Technology Resources Board, Federal Procurement Council, industry, academia, and State and local governments on matters of concern to the Council as appropriate.

(b) *Membership.* The CIO Council shall be composed of the CIOs and Deputy CIOs of the following executive agencies plus two representatives from other agencies:

1. Department of State;
2. Department of the Treasury;
3. Department of Defense;
4. Department of Justice;
5. Department of the Interior;
6. Department of Agriculture;
7. Department of Commerce;
8. Department of Labor;
9. Department of Health and Human Services;
10. Department of Housing and Urban Development;
11. Department of Transportation;
12. Department of Energy;
13. Department of Education;
14. Department of Veterans Affairs;
15. Environmental Protection Agency;
16. Federal Emergency Management Agency;
17. Central Intelligence Agency;
18. Small Business Administration;
19. Social Security Administration;
20. Department of the Army;
21. Department of the Navy;
22. Department of the Air Force;
23. National Aeronautics and Space Administration;
24. Agency for International Development;
25. General Services Administration;
26. National Science Foundation;
27. Nuclear Regulatory Commission; and
28. Office of Personnel Management.

The Administrator of the Office of Information and Regulatory Affairs of OMB, the Controller of the Office of Federal Financial Management of OMB, the Administrator of the Office of Federal Procurement Policy of OMB, a Senior Representative of the Office of Science and Technology Policy, the Chair of the Government Information Technology Services Board, and the Chair of the Information Technology Resources Board shall also be members. The CIO Council shall be chaired by the Deputy Director for Management of OMB. The Vice Chair, elected by the CIO Council on a rotating basis, shall be an agency CIO.

SEC. 4. Government Information Technology Services Board.

(a) *Purpose and Functions.* A Government Information Technology Services Board (“Services Board”) is established to ensure continued implementation of the information technology recommendations of the National Performance Review and to identify and promote the development of innovative technologies, standards, and practices among agencies and State and local governments and the private sector. It shall seek the views of experts from industry, academia, and State and local governments on matters of concern to the Services Board as appropriate. The Services Board shall also make recommendations to the agencies, the CIO Council, OMB, and others as appropriate, and assist in the following:

(1) creating opportunities for cross-agency cooperation and intergovernmental approaches in using information resources to support common operational areas and to develop and provide shared governmentwide infrastructure services;

(2) developing shared governmentwide information infrastructure services to be used for innovative, multi-agency information technology projects;

(3) creating and utilizing affinity groups for particular business or technology areas; and

(4) developing with the National Institute of Standards and Technology and with established standards

bodies, standards and guidelines pertaining to Federal information systems, consistent with the limitations contained in the Computer Security Act of 1987 (40 U.S.C. 759 note), as amended by the Information Technology Act.

(b) *Membership.* The Services Board shall be composed of individuals from agencies based on their proven expertise or accomplishments in fields necessary to achieve its goals. Major government mission areas such as electronic benefits, electronic commerce, law enforcement, environmental protection, national defense, and health care may be represented on the Services Board to provide a program operations perspective. Initial selection of members will be made by OMB in consultation with other agencies as appropriate. The CIO Council may nominate two members. The Services Board shall recommend new members to OMB for consideration. The Chair will be elected by the Services Board.

SEC. 5. *Information Technology Resources Board.*

(a) *Purpose and Functions.* An Information Technology Resources Board (“Resources Board”) is established to provide independent assessments to assist in the development, acquisition, and management of selected major information systems and to provide recommendations to agency heads and OMB as appropriate. The Resources Board shall:

- (1) review, at the request of an agency and OMB, specific information systems proposed or under development and make recommendations to the agency and OMB regarding the status of systems or next steps;
- (2) publicize lessons learned and promising practices based on information systems reviewed by the Board; and
- (3) seek the views of experts from industry, academia, and State and local governments on matters of concern to the Resources Board, as appropriate.

(b) *Membership.* The Resources Board shall be composed of individuals from executive branch agencies based on their knowledge of information technology, program, or acquisition management within Federal agencies. Selection of members shall be made by OMB in consultation with other agencies as appropriate. The Chair will be elected by the Resources Board. The Resources Board may call upon the department or agency whose project is being reviewed, or any other department or agency to provide knowledgeable representative(s) to the Board whose guidance and expertise will assist in focusing on the primary issue(s) presented by a specific system.

SEC. 6. *Office of Management and Budget.* The Director of OMB shall:

- (1) evaluate agency information resources management practices and, as part of the budget process, analyze, track and evaluate the risks and results of all major capital investments for information systems;
- (2) notify an agency if it believes that a major information system requires outside assistance;
- (3) provide guidance on the implementation of this order and on the management of information resources to the executive agencies and to the Boards established by this order; and
- (4) evaluate the effectiveness of the management structure set out in this order after 3 years and make recommendations for any appropriate changes.

SEC. 7. *General Services Administration.* Under the direction of OMB, the Administrator of General Services shall:

- (1) continue to manage the FTS2000 program and coordinate the follow-on to that program, on behalf of and with the advice of customer agencies;
- (2) develop, maintain, and disseminate for the use of the Federal community, as requested by OMB or the agencies, recommended methods and strategies for the development and acquisition of information technology;
- (3) conduct and manage outreach programs in cooperation with agency managers;
- (4) be a focal point for liaison on information resources management, including Federal information

technology, with State and local governments, and with nongovernmental international organizations subject to prior consultation with the Secretary of State to ensure such liaison would be consistent with and support overall United States foreign policy objectives;

(5) support the activities of the Secretary of State for liaison, consultation, and negotiation with intergovernmental organizations in information resources management matters;

(6) assist OMB, as requested, in evaluating agencies’ performance-based management tracking systems and agencies’ achievement of cost, schedule, and performance goals; and

(7) provide support and assistance to the interagency groups established in this order.

SEC. 8. *Department of Commerce.* The Secretary of Commerce shall carry out the standards responsibilities under the Computer Security Act of 1987 [40 U.S.C. 1441 note], as amended by the Information Technology Act, taking into consideration the recommendations of the agencies, the CIO Council, and the Services Board.

SEC. 9. *Department of State.* (a) The Secretary of State shall be responsible for liaison, consultation, and negotiation with foreign governments and intergovernmental organizations on all matters related to information resources management, including Federal information technology. The Secretary shall further ensure, in consultation with the Secretary of Commerce, that the United States is represented in the development of international standards and recommendations affecting information technology. In the exercise of these responsibilities, the Secretary shall consult, as appropriate, with affected domestic agencies, organizations, and other members of the public.

(b) The Secretary of State shall advise the Director on the development of United States positions and policies on international information policy and technology issues affecting Federal Government activities and the development of international information technology standards.

SEC. 10. *Definitions.* (a) “Executive agency” has the meaning given to that term in section 4(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(1)).

(b) “Information Technology” has the meaning given that term in section 5002 of the Information Technology Act [40 U.S.C. 1401].

(c) “Information resources” has the meaning given that term in section 3502(6) of title 44, United States Code.

(d) “Information resources management” has the meaning given that term in section 3502(7) of title 44, United States Code.

(e) “Information system” has the meaning given that term in section 3502(8) of title 44, United States Code.

(f) “Affinity group” means any interagency group focused on a business or technology area with common information technology or customer requirements. The functions of an affinity group can include identifying common program goals and requirements; identifying opportunities for sharing information to improve quality and effectiveness; reducing costs and burden on the public; and recommending protocols and other standards, including security standards, to the National Institute of Standards and Technology for Government-wide applicability, for action in accordance with the Computer Security Act of 1987 [40 U.S.C. 1441 note], as amended by the Information Technology Act.

(g) “National security system” means any telecommunications or information system operated by the United States Government, the function, operation, or use of which (1) involves intelligence activities; (2) involves cryptologic activities related to national security; (3) involves command and control of military forces; (4) involves equipment that is an integral part of a weapon or weapons system; or (5) is critical to the direct fulfillment of military or intelligence missions, but excluding any system that is to be used for routine administrative and business applications (including payroll, finance, logistics, and personnel management applications).

SEC. 11. *Applicability to National Security Systems.*

The heads of executive agencies shall apply the policies and procedures established in this order to national security systems in a manner consistent with the applicability and related limitations regarding such systems set out in the Information Technology Act.

SEC. 12. *Judicial Review.* Nothing in this Executive order shall affect any otherwise available judicial review of agency action. This Executive order is intended only to improve the internal management of the executive branch and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

WILLIAM J. CLINTON.

SUBCHAPTER I—RESPONSIBILITY FOR ACQUISITIONS OF INFORMATION TECHNOLOGY

PART A—DIRECTOR OF OFFICE OF MANAGEMENT AND BUDGET

§ 1411. **Responsibility of Director**

In fulfilling the responsibility to administer the functions assigned under chapter 35 of title 44, the Director shall comply with this subchapter with respect to the specific matters covered by this subchapter.

(Pub. L. 104–106, div. E, title LI, § 5111, Feb. 10, 1996, 110 Stat. 680.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original “this title” meaning title LI (§§ 5101–5142) of div. E of Pub. L. 104–106, Feb. 10, 1996, 110 Stat. 680, which enacted this subchapter, amended section 5315 of Title 5, Government Organization and Employees, and sections 3504, 3506, and 3518 of Title 44, Public Printing and Documents, and repealed section 759 of this title. For complete classification of title LI to the Code, see Tables.

EFFECTIVE DATE

Subchapter effective 180 days after Feb. 10, 1996, see section 5701 of Pub. L. 104–106, set out as a note under section 1401 of this title.

REVIEW AND ANALYSIS OF OUTSOURCING AND PRIVATIZATION

Pub. L. 104–208, div. A, title I, § 101(f) [title VI, § 640], Sept. 30, 1996, 110 Stat. 3009–314, 3009–365, as amended by Pub. L. 104–208, div. A, title I, § 101(f) [title VIII, § 808(c)], Sept. 30, 1996, 110 Stat. 3009–314, 3009–394, provided that: “In reviewing and analyzing the contracting out, outsourcing or privatization of business and administrative functions, and in implementing 40 U.S.C. sections 1413 and 1423, and other provisions, in title LI of the National Defense Authorization Act for fiscal year 1996 (the Clinger-Cohen Act of 1996) [40 U.S.C. 1411 et seq.]—

“(1) the Director of the Office of Management and Budget and the heads of the executive agencies may have studies, analyses, reviews and other management assistance performed by the private sector;

“(2) the reviews, analyses, and studies called for by 40 U.S.C. section 1413(b)(2)(B) and (C) shall be completed and reported to the Agency Head within 180 days, or less measured from when a study analysis or review is initiated unless the Agency Head determines additional time is needed;

“(3) in accordance with principles and rules governing organizational conflicts of interest, persons involved in a particular study may not compete for any work that is to be or is outsourced as a result of that study; and

“(4) this section will apply with respect to studies occurring on or after the date of enactment of this subsection [Sept. 30, 1996] and completed before September 1, 1999 and the Comptroller General of the United States shall review and provide an assessment of this program by January 1, 1999.”

§ 1412. **Capital planning and investment control**

(a) **Federal information technology**

The Director shall perform the responsibilities set forth in this section in fulfilling the responsibilities under section 3504(h) of title 44.

(b) **Use of information technology in Federal programs**

The Director shall promote and be responsible for improving the acquisition, use, and disposal of information technology by the Federal Government to improve the productivity, efficiency, and effectiveness of Federal programs, including through dissemination of public information and the reduction of information collection burdens on the public.

(c) **Use of budget process**

The Director shall develop, as part of the budget process, a process for analyzing, tracking, and evaluating the risks and results of all major capital investments made by an executive agency for information systems. The process shall cover the life of each system and shall include explicit criteria for analyzing the projected and actual costs, benefits, and risks associated with the investments. At the same time that the President submits the budget for a fiscal year to Congress under section 1105(a) of title 31, the Director shall submit to Congress a report on the net program performance benefits achieved as a result of major capital investments made by executive agencies in information systems and how the benefits relate to the accomplishment of the goals of the executive agencies.

(d) **Information technology standards**

The Director shall oversee the development and implementation of standards and guidelines pertaining to Federal computer systems by the Secretary of Commerce through the National Institute of Standards and Technology under section 1441 of this title and section 278g–3 of title 15.

(e) **Designation of executive agents for acquisitions**

The Director shall designate (as the Director considers appropriate) one or more heads of executive agencies as executive agent for Government-wide acquisitions of information technology.

(f) **Use of best practices in acquisitions**

The Director shall encourage the heads of the executive agencies to develop and use the best practices in the acquisition of information technology.

(g) **Assessment of other models for managing information technology**

The Director shall assess, on a continuing basis, the experiences of executive agencies, State and local governments, international organizations, and the private sector in managing information technology.

(h) Comparison of agency uses of information technology

The Director shall compare the performances of the executive agencies in using information technology and shall disseminate the comparisons to the heads of the executive agencies.

(i) Training

The Director shall monitor the development and implementation of training in information resources management for executive agency personnel.

(j) Informing Congress

The Director shall keep Congress fully informed on the extent to which the executive agencies are improving the performance of agency programs and the accomplishment of agency missions through the use of the best practices in information resources management.

(k) Procurement policy and acquisitions of information technology

The Director shall coordinate the development and review by the Administrator of the Office of Information and Regulatory Affairs of policy associated with Federal acquisition of information technology with the Office of Federal Procurement Policy.

(Pub. L. 104–106, div. E, title LI, §5112, Feb. 10, 1996, 110 Stat. 680.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1451 of this title.

§ 1413. Performance-based and results-based management**(a) In general**

The Director shall encourage the use of performance-based and results-based management in fulfilling the responsibilities assigned under section 3504(h),¹ of title 44.

(b) Evaluation of agency programs and investments**(1) Requirement**

The Director shall evaluate the information resources management practices of the executive agencies with respect to the performance and results of the investments made by the executive agencies in information technology.

(2) Direction for executive agency action

The Director shall issue to the head of each executive agency clear and concise direction that the head of such agency shall—

(A) establish effective and efficient capital planning processes for selecting, managing, and evaluating the results of all of its major investments in information systems;

(B) determine, before making an investment in a new information system—

(i) whether the function to be supported by the system should be performed by the private sector and, if so, whether any component of the executive agency performing that function should be converted from a governmental organization to a private sector organization; or

(ii) whether the function should be performed by the executive agency and, if so, whether the function should be performed by a private sector source under contract or by executive agency personnel;

(C) analyze the missions of the executive agency and, based on the analysis, revise the executive agency's mission-related processes and administrative processes, as appropriate, before making significant investments in information technology to be used in support of those missions; and

(D) ensure that the information security policies, procedures, and practices are adequate.

(3) Guidance for multiagency investments

The direction issued under paragraph (2) shall include guidance for undertaking efficiently and effectively interagency and Government-wide investments in information technology to improve the accomplishment of missions that are common to the executive agencies.

(4) Periodic reviews

The Director shall implement through the budget process periodic reviews of selected information resources management activities of the executive agencies in order to ascertain the efficiency and effectiveness of information technology in improving the performance of the executive agency and the accomplishment of the missions of the executive agency.

(5) Enforcement of accountability**(A) In general**

The Director may take any authorized action that the Director considers appropriate, including an action involving the budgetary process or appropriations management process, to enforce accountability of the head of an executive agency for information resources management and for the investments made by the executive agency in information technology.

(B) Specific actions

Actions taken by the Director in the case of an executive agency may include—

(i) recommending a reduction or an increase in any amount for information resources that the head of the executive agency proposes for the budget submitted to Congress under section 1105(a) of title 31;

(ii) reducing or otherwise adjusting apportionments and reapportionments of appropriations for information resources;

(iii) using other authorized administrative controls over appropriations to restrict the availability of funds for information resources; and

(iv) designating for the executive agency an executive agent to contract with private sector sources for the performance of information resources management or the acquisition of information technology.

(Pub. L. 104–106, div. E, title LI, §5113, Feb. 10, 1996, 110 Stat. 681.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1451 of this title.

¹ So in original. The comma probably should not appear.

PART B—EXECUTIVE AGENCIES

§ 1421. Responsibilities

In fulfilling the responsibilities assigned under chapter 35 of title 44, the head of each executive agency shall comply with this part with respect to the specific matters covered by this part.

(Pub. L. 104-106, div. E, title LI, §5121, Feb. 10, 1996, 110 Stat. 683.)

REFERENCES IN TEXT

This part, referred to in text, was in the original “this subtitle” meaning subtitle C (§§5121-5128) of title LI of div. E of Pub. L. 104-106, Feb. 10, 1996, 110 Stat. 683, which enacted this part and amended section 5315 of Title 5, Government Organization and Employees, and section 3506 of Title 44, Public Printing and Documents. For complete classification of subtitle C to the Code, see Tables.

PROCUREMENT OF AUTOMATIC DATA PROCESSING EQUIPMENT FOR TAX SYSTEMS MODERNIZATION PROGRAM; DELEGATION OF AUTHORITY

Pub. L. 104-52, title V, §526, Nov. 19, 1995, 109 Stat. 495, provided that: “Notwithstanding any other provision of law, the Administrator of General Services shall delegate the authority to procure automatic data processing equipment for the Tax Systems Modernization Program to the Secretary of the Treasury: *Provided*, That the Director of the Office of Management and Budget shall have the authority to revoke such delegation upon the written recommendation of the Administrator that the Secretary’s actions under such delegation are inconsistent with the goals of economic and efficient procurement and utilization of automatic data processing equipment: *Provided further*, That for all other purposes, a procurement conducted under such delegation shall be treated as if made under a delegation by the Administrator pursuant to [former] 40 U.S.C. 759.”

§ 1422. Capital planning and investment control**(a) Design of process**

In fulfilling the responsibilities assigned under section 3506(h) of title 44, the head of each executive agency shall design and implement in the executive agency a process for maximizing the value and assessing and managing the risks of the information technology acquisitions of the executive agency.

(b) Content of process

The process of an executive agency shall—

(1) provide for the selection of information technology investments to be made by the executive agency, the management of such investments, and the evaluation of the results of such investments;

(2) be integrated with the processes for making budget, financial, and program management decisions within the executive agency;

(3) include minimum criteria to be applied in considering whether to undertake a particular investment in information systems, including criteria related to the quantitatively expressed projected net, risk-adjusted return on investment and specific quantitative and qualitative criteria for comparing and prioritizing alternative information systems investment projects;

(4) provide for identifying information systems investments that would result in shared benefits or costs for other Federal agencies or State or local governments;

(5) provide for identifying for a proposed investment quantifiable measurements for determining the net benefits and risks of the investment; and

(6) provide the means for senior management personnel of the executive agency to obtain timely information regarding the progress of an investment in an information system, including a system of milestones for measuring progress, on an independently verifiable basis, in terms of cost, capability of the system to meet specified requirements, timeliness, and quality.

(Pub. L. 104-106, div. E, title LI, §5122, Feb. 10, 1996, 110 Stat. 683.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1451 of this title.

§ 1423. Performance and results-based management

In fulfilling the responsibilities under section 3506(h) of title 44, the head of an executive agency shall—

(1) establish goals for improving the efficiency and effectiveness of agency operations and, as appropriate, the delivery of services to the public through the effective use of information technology;

(2) prepare an annual report, to be included in the executive agency’s budget submission to Congress, on the progress in achieving the goals;

(3) ensure that performance measurements are prescribed for information technology used by or to be acquired for, the executive agency and that the performance measurements measure how well the information technology supports programs of the executive agency;

(4) where comparable processes and organizations in the public or private sectors exist, quantitatively benchmark agency process performance against such processes in terms of cost, speed, productivity, and quality of outputs and outcomes;

(5) analyze the missions of the executive agency and, based on the analysis, revise the executive agency’s mission-related processes and administrative processes as appropriate before making significant investments in information technology that is to be used in support of the performance of those missions; and

(6) ensure that the information security policies, procedures, and practices of the executive agency are adequate.

(Pub. L. 104-106, div. E, title LI, §5123, Feb. 10, 1996, 110 Stat. 683.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1451 of this title.

§ 1424. Acquisitions of information technology**(a) In general**

The authority of the head of an executive agency to conduct an acquisition of information technology includes the following authorities:

(1) To acquire information technology as authorized by law.

(2) To enter into a contract that provides for multiagency acquisitions of information tech-

nology in accordance with guidance issued by the Director.

(3) If the Director finds that it would be advantageous for the Federal Government to do so, to enter into a multiagency contract for procurement of commercial items of information technology that requires each executive agency covered by the contract, when procuring such items, either to procure the items under that contract or to justify an alternative procurement of the items.

(b) FTS 2000 program

Notwithstanding any other provision of this or any other law, the Administrator of General Services shall continue to manage the FTS 2000 program, and to coordinate the follow-on to that program, on behalf of and with the advice of the heads of executive agencies.

(Pub. L. 104-106, div. E, title LI, §5124, Feb. 10, 1996, 110 Stat. 684.)

§ 1425. Agency Chief Information Officer

(a) Omitted

(b) General responsibilities

The Chief Information Officer of an executive agency shall be responsible for—

(1) providing advice and other assistance to the head of the executive agency and other senior management personnel of the executive agency to ensure that information technology is acquired and information resources are managed for the executive agency in a manner that implements the policies and procedures of this chapter, consistent with chapter 35 of title 44 and the priorities established by the head of the executive agency;

(2) developing, maintaining, and facilitating the implementation of a sound and integrated information technology architecture for the executive agency; and

(3) promoting the effective and efficient design and operation of all major information resources management processes for the executive agency, including improvements to work processes of the executive agency.

(c) Duties and qualifications

The Chief Information Officer of an agency that is listed in section 901(b) of title 31 shall—

(1) have information resources management duties as that official's primary duty;

(2) monitor the performance of information technology programs of the agency, evaluate the performance of those programs on the basis of the applicable performance measurements, and advise the head of the agency regarding whether to continue, modify, or terminate a program or project; and

(3) annually, as part of the strategic planning and performance evaluation process required (subject to section 1117 of title 31) under section 306 of title 5 and sections 1105(a)(29), 1115, 1116, 1117, and 9703¹ of title 31—

(A) assess the requirements established for agency personnel regarding knowledge and skill in information resources management

and the adequacy of such requirements for facilitating the achievement of the performance goals established for information resources management;

(B) assess the extent to which the positions and personnel at the executive level of the agency and the positions and personnel at management level of the agency below the executive level meet those requirements;

(C) in order to rectify any deficiency in meeting those requirements, develop strategies and specific plans for hiring, training, and professional development; and

(D) report to the head of the agency on the progress made in improving information resources management capability.

(d) "Information technology architecture" defined

In this section, the term "information technology architecture", with respect to an executive agency, means an integrated framework for evolving or maintaining existing information technology and acquiring new information technology to achieve the agency's strategic goals and information resources management goals.

(Pub. L. 104-106, div. E, title LI, §5125, Feb. 10, 1996, 110 Stat. 684.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b)(1), was in the original "this division" meaning division E (§§ 5001-5703) of Pub. L. 104-106, Feb. 10, 1996, 110 Stat. 679, which is classified principally to this chapter. For complete classification of division E to the Code, see Short Title note set out under section 1401 of this title and Tables.

Section 9703 of title 31, referred to in subsec. (c)(3), probably means the section 9703 added by section 5(a) of Pub. L. 103-62, Aug. 3, 1993, 107 Stat. 289.

CODIFICATION

Section is comprised of section 5125 of Pub. L. 104-106. Subsec. (a) of section 5125 of Pub. L. 104-106 amended section 3506 of Title 44, Public Printing and Documents. Subsec. (e) of section 5125 of Pub. L. 104-106 amended section 5315 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1451 of this title.

§ 1426. Accountability

The head of each executive agency, in consultation with the Chief Information Officer and the Chief Financial Officer of that executive agency (or, in the case of an executive agency without a Chief Financial Officer, any comparable official), shall establish policies and procedures that—

(1) ensure that the accounting, financial, and asset management systems and other information systems of the executive agency are designed, developed, maintained, and used effectively to provide financial or program performance data for financial statements of the executive agency;

(2) ensure that financial and related program performance data are provided on a reliable, consistent, and timely basis to executive agency financial management systems; and

(3) ensure that financial statements support—

¹ See References in Text note below.

(A) assessments and revisions of mission-related processes and administrative processes of the executive agency; and

(B) performance measurement of the performance in the case of investments made by the agency in information systems.

(Pub. L. 104-106, div. E, title LI, §5126, Feb. 10, 1996, 110 Stat. 686.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1451 of this title.

§ 1427. Significant deviations

The head of an executive agency shall identify in the strategic information resources management plan required under section 3506(b)(2) of title 44 any major information technology acquisition program, or any phase or increment of such a program, that has significantly deviated from the cost, performance, or schedule goals established for the program.

(Pub. L. 104-106, div. E, title LI, §5127, Feb. 10, 1996, 110 Stat. 687.)

§ 1428. Interagency support

Funds available for an executive agency for oversight, acquisition, and procurement of information technology may be used by the head of the executive agency to support jointly with other executive agencies the activities of interagency groups that are established to advise the Director in carrying out the Director's responsibilities under this subchapter. The use of such funds for that purpose shall be subject to such requirements and limitations on uses and amounts as the Director may prescribe. The Director shall prescribe any such requirements and limitations during the Director's review of the executive agency's proposed budget submitted to the Director by the head of the executive agency for purposes of section 1105 of title 31.

(Pub. L. 104-106, div. E, title LI, §5128, Feb. 10, 1996, 110 Stat. 687.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original "this title" meaning title LI (§§5101-5142) of div. E of Pub. L. 104-106, Feb. 10, 1996, 110 Stat. 680, which enacted this subchapter, amended section 5315 of Title 5, Government Organization and Employees, and sections 3504, 3506, and 3518 of Title 44, Public Printing and Documents, and repealed section 759 of this title. For complete classification of title LI to the Code, see Tables.

PART C—OTHER RESPONSIBILITIES

§ 1441. Responsibilities regarding efficiency, security, and privacy of Federal computer systems

(a) Standards and guidelines

(1) Authority

The Secretary of Commerce shall, on the basis of standards and guidelines developed by the National Institute of Standards and Technology pursuant to paragraphs (2) and (3) of section 278g-3(a) of title 15, promulgate standards and guidelines pertaining to Federal computer systems. The Secretary shall make such standards compulsory and binding to the ex-

tent to which the Secretary determines necessary to improve the efficiency of operation or security and privacy of Federal computer systems. The President may disapprove or modify such standards and guidelines if the President determines such action to be in the public interest. The President's authority to disapprove or modify such standards and guidelines may not be delegated. Notice of such disapproval or modification shall be published promptly in the Federal Register. Upon receiving notice of such disapproval or modification, the Secretary of Commerce shall immediately rescind or modify such standards or guidelines as directed by the President.

(2) Exercise of authority

The authority conferred upon the Secretary of Commerce by this section shall be exercised subject to direction by the President and in coordination with the Director to ensure fiscal and policy consistency.

(b) Application of more stringent standards

The head of a Federal agency may employ standards for the cost-effective security and privacy of sensitive information in a Federal computer system within or under the supervision of that agency that are more stringent than the standards promulgated by the Secretary of Commerce under this section, if such standards contain, at a minimum, the provisions of those applicable standards made compulsory and binding by the Secretary of Commerce.

(c) Waiver of standards

The standards determined under subsection (a) of this section to be compulsory and binding may be waived by the Secretary of Commerce in writing upon a determination that compliance would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or cause a major adverse financial impact on the operator which is not offset by Government-wide savings. The Secretary may delegate to the head of one or more Federal agencies authority to waive such standards to the extent to which the Secretary determines such action to be necessary and desirable to allow for timely and effective implementation of Federal computer system standards. The head of such agency may redelegate such authority only to a Chief Information Officer designated pursuant to section 3506 of title 44. Notice of each such waiver and delegation shall be transmitted promptly to Congress and shall be published promptly in the Federal Register.

(d) Definitions

In this section, the terms "Federal computer system" and "operator of a Federal computer system" have the meanings given such terms in section 278g-3(d) of title 15.

(Pub. L. 104-106, div. E, title LI, §5131, Feb. 10, 1996, 110 Stat. 687.)

CODIFICATION

Section is comprised of section 5131 of Pub. L. 104-106. Subsec. (e) of section 5131 of Pub. L. 104-106 amended sections 3504 and 3518 of Title 44, Public Printing and Documents.

COMPUTER SECURITY

Pub. L. 100-235, §§1, 2, 5-8, Jan. 8, 1988, 101 Stat. 1724, 1729, as amended by Pub. L. 104-106, div. E, title LVI,

§ 5607(b), Feb. 10, 1996, 110 Stat. 701; Pub. L. 104-208, div. A, title I, § 101(f) [title VIII, § 808(c)], Sept. 30, 1996, 110 Stat. 3009-314, 3009-394, provided that:

“SECTION 1. SHORT TITLE.

“This Act [enacting sections 278g-3 and 278g-4 of Title 15, Commerce and Trade, amending section 759 of this title and section 272 of Title 15, and enacting provisions set out as a note under section 271 of Title 15] may be cited as the ‘Computer Security Act of 1987’.

“SEC. 2. PURPOSE.

“(a) IN GENERAL.—The Congress declares that improving the security and privacy of sensitive information in Federal computer systems is in the public interest, and hereby creates a means for establishing minimum acceptable security practices for such systems, without limiting the scope of security measures already planned or in use.

“(b) SPECIFIC PURPOSES.—The purposes of this Act are—

“(1) by amending the Act of March 3, 1901 [15 U.S.C. 271 et seq.], to assign to the National Bureau of Standards responsibility for developing standards and guidelines for Federal computer systems, including responsibility for developing standards and guidelines needed to assure the cost-effective security and privacy of sensitive information in Federal computer systems, drawing on the technical advice and assistance (including work products) of the National Security Agency, where appropriate;

“(2) to provide for promulgation of such standards and guidelines;

“(3) to require establishment of security plans by all operators of Federal computer systems that contain sensitive information; and

“(4) to require mandatory periodic training for all persons involved in management, use, or operation of Federal computer systems that contain sensitive information.

“SEC. 5. FEDERAL COMPUTER SYSTEM SECURITY TRAINING.

“(a) IN GENERAL.—Each Federal agency shall provide for the mandatory periodic training in computer security awareness and accepted computer security practice of all employees who are involved with the management, use, or operation of each Federal computer system within or under the supervision of that agency. Such training shall be—

“(1) provided in accordance with the guidelines developed pursuant to section 20(a)(5) of the National Bureau of Standards Act (as added by section 3 of this Act) [15 U.S.C. 278g-3(a)(5)], and in accordance with the regulations issued under subsection (c) of this section for Federal civilian employees; or

“(2) provided by an alternative training program approved by the head of that agency on the basis of a determination that the alternative training program is at least as effective in accomplishing the objectives of such guidelines and regulations.

“(b) TRAINING OBJECTIVES.—Training under this section shall be started within 60 days after the issuance of the regulations described in subsection (c). Such training shall be designed—

“(1) to enhance employees’ awareness of the threats to and vulnerability of computer systems; and

“(2) to encourage the use of improved computer security practices.

“(c) REGULATIONS.—Within six months after the date of the enactment of this Act [Jan. 8, 1988], the Director of the Office of Personnel Management shall issue regulations prescribing the procedures and scope of the training to be provided Federal civilian employees under subsection (a) and the manner in which such training is to be carried out.

“SEC. 6. ADDITIONAL RESPONSIBILITIES FOR COMPUTER SYSTEMS SECURITY AND PRIVACY.

“(a) IDENTIFICATION OF SYSTEMS THAT CONTAIN SENSITIVE INFORMATION.—Within 6 months after the date of

enactment of this Act [Jan. 8, 1988], each Federal agency shall identify each Federal computer system, and system under development, which is within or under the supervision of that agency and which contains sensitive information.

“(b) SECURITY PLAN.—Each such agency shall, consistent with the standards, guidelines, policies, and regulations prescribed pursuant to section 5131 of the Clinger-Cohen Act of 1996 [40 U.S.C. 1441], establish a plan for the security and privacy of each Federal computer system identified by that agency pursuant to subsection (a) that is commensurate with the risk and magnitude of the harm resulting from the loss, misuse, or unauthorized access to or modification of the information contained in such system. Such plan shall be subject to disapproval by the Director of the Office of Management and Budget. Such plan shall be revised annually as necessary.

“SEC. 7. DEFINITIONS.

“As used in this Act, the terms ‘computer system’, ‘Federal computer system’, ‘operator of a Federal computer system’, ‘sensitive information’, and ‘Federal agency’ have the meanings given in section 20(d) of the National Bureau of Standards Act (as added by section 3 of this Act) [15 U.S.C. 278g-3(d)].

“SEC. 8. RULES OF CONSTRUCTION OF ACT.

“Nothing in this Act, or in any amendment made by this Act, shall be construed—

“(1) to constitute authority to withhold information sought pursuant to section 552 of title 5, United States Code; or

“(2) to authorize any Federal agency to limit, restrict, regulate, or control the collection, maintenance, disclosure, use, transfer, or sale of any information (regardless of the medium in which the information may be maintained) that is—

“(A) privately-owned information;

“(B) disclosable under section 552 of title 5, United States Code, or other law requiring or authorizing the public disclosure of information; or

“(C) public domain information.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1412 of this title; title 15 section 278g-3.

§ 1442. Sense of Congress

It is the sense of Congress that, during the next five-year period beginning with 1996, executive agencies should achieve each year at least a 5 percent decrease in the cost (in constant fiscal year 1996 dollars) that is incurred by the agency for operating and maintaining information technology, and each year a 5 percent increase in the efficiency of the agency operations, by reason of improvements in information resources management by the agency.

(Pub. L. 104-106, div. E, title LI, § 5132, Feb. 10, 1996, 110 Stat. 689.)

PART D—NATIONAL SECURITY SYSTEMS

§ 1451. Applicability to national security systems

(a) In general

Except as provided in subsection (b) of this section, this subchapter does not apply to national security systems.

(b) Exceptions

(1) In general

Sections 1423, 1425, and 1426 of this title apply to national security systems.

(2) Capital planning and investment control

The heads of executive agencies shall apply sections 1412 and 1422 of this title to national security systems to the extent practicable.

(3) Performance and results of information technology investments

(A) Subject to subparagraph (B), the heads of executive agencies shall apply section 1413 of this title to national security systems to the extent practicable.

(B) National security systems shall be subject to section 1413(b)(5) of this title except for subparagraph (B)(iv) of that section.

(Pub. L. 104-106, div. E, title LI, §5141, Feb. 10, 1996, 110 Stat. 689.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (a), was in the original “this title” meaning title LI (§§5101-5142) of div. E of Pub. L. 104-106, Feb. 10, 1996, 110 Stat. 680, which enacted this subchapter, amended section 5315 of Title 5, Government Organization and Employees, and sections 3504, 3506, and 3518 of Title 44, Public Printing and Documents, and repealed section 759 of this title. For complete classification of title LI to the Code, see Tables.

§ 1452. “National security system” defined

(a) Definition

In this part, the term “national security system” means any telecommunications or information system operated by the United States Government, the function, operation, or use of which—

- (1) involves intelligence activities;
- (2) involves cryptologic activities related to national security;
- (3) involves command and control of military forces;
- (4) involves equipment that is an integral part of a weapon or weapons system; or
- (5) subject to subsection (b) of this section, is critical to the direct fulfillment of military or intelligence missions.

(b) Limitation

Subsection (a)(5) of this section does not include a system that is to be used for routine administrative and business applications (including payroll, finance, logistics, and personnel management applications).

(Pub. L. 104-106, div. E, title LI, §5142, Feb. 10, 1996, 110 Stat. 689.)

SUBCHAPTER II—PROCESS FOR ACQUISITIONS OF INFORMATION TECHNOLOGY

§ 1461. Procurement procedures

The Federal Acquisition Regulatory Council shall ensure that, to the maximum extent practicable, the process for acquisition of information technology is a simplified, clear, and understandable process that specifically addresses the management of risk, incremental acquisitions, and the need to incorporate commercial information technology in a timely manner.

(Pub. L. 104-106, div. E, title LII, §5201, Feb. 10, 1996, 110 Stat. 689.)

EFFECTIVE DATE

Subchapter effective 180 days after Feb. 10, 1996, see section 5701 of Pub. L. 104-106, set out as a note under section 1401 of this title.

SUBCHAPTER III—INFORMATION TECHNOLOGY ACQUISITION PILOT PROGRAMS

PART A—CONDUCT OF PILOT PROGRAMS

§ 1471. Authority to conduct pilot programs

(a) In general

(1) Purpose

The Administrator for Federal Procurement Policy (hereinafter referred to as the “Administrator”), in consultation with the Administrator for the Office of Information and Regulatory Affairs, may conduct pilot programs in order to test alternative approaches for acquisition of information technology by executive agencies.

(2) Multiagency, multi-activity conduct of each program

Except as otherwise provided in this subchapter, each pilot program conducted under this subchapter shall be carried out in not more than two procuring activities in each of the executive agencies that are designated by the Administrator in accordance with this subchapter to carry out the pilot program. The head of each designated executive agency shall, with the approval of the Administrator, select the procuring activities of the executive agency that are to participate in the test and shall designate a procurement testing official who shall be responsible for the conduct and evaluation of the pilot program within the executive agency.

(b) Limitations

(1) Number

Not more than two pilot programs may be conducted under the authority of this subchapter, including one pilot program each pursuant to the requirements of sections 1491 and 1492 of this title.

(2) Amount

The total amount obligated for contracts entered into under the pilot programs conducted under the authority of this subchapter may not exceed \$750,000,000. The Administrator shall monitor such contracts and ensure that contracts are not entered into in violation of the limitation in the preceding sentence.

(c) Period of programs

(1) In general

Subject to paragraph (2), any pilot program may be carried out under this subchapter for the period, not in excess of five years, that is determined by the Administrator as being sufficient to establish reliable results.

(2) Continuing validity of contracts

A contract entered into under the pilot program before the expiration of that program shall remain in effect according to the terms of the contract after the expiration of the program.

(Pub. L. 104-106, div. E, title LIII, §5301, Feb. 10, 1996, 110 Stat. 691.)

EFFECTIVE DATE

Subchapter effective 180 days after Feb. 10, 1996, see section 5701 of Pub. L. 104-106, set out as a note under section 1401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1472 of this title.

§ 1472. Evaluation criteria and plans**(a) Measurable test criteria**

The head of each executive agency conducting a pilot program under section 1471 of this title shall establish, to the maximum extent practicable, measurable criteria for evaluating the effects of the procedures or techniques to be tested under the program.

(b) Test plan

Before a pilot program may be conducted under section 1471 of this title, the Administrator shall submit to Congress a detailed test plan for the program, including a detailed description of the procedures to be used and a list of any regulations that are to be waived.

(Pub. L. 104–106, div. E, title LIII, §5302, Feb. 10, 1996, 110 Stat. 691.)

§ 1473. Report**(a) Requirement**

Not later than 180 days after the completion of a pilot program under this subchapter, the Administrator shall—

- (1) submit to the Director a report on the results and findings under the program; and
- (2) provide a copy of the report to Congress.

(b) Content

The report shall include the following:

- (1) A detailed description of the results of the program, as measured by the criteria established for the program.
- (2) A discussion of any legislation that the Administrator recommends, or changes in regulations that the Administrator considers necessary, in order to improve overall information resources management within the Federal Government.

(Pub. L. 104–106, div. E, title LIII, §5303, Feb. 10, 1996, 110 Stat. 692.)

§ 1474. Recommended legislation

If the Director determines that the results and findings under a pilot program under this subchapter indicate that legislation is necessary or desirable in order to improve the process for acquisition of information technology, the Director shall transmit the Director's recommendations for such legislation to Congress.

(Pub. L. 104–106, div. E, title LIII, §5304, Feb. 10, 1996, 110 Stat. 692.)

§ 1475. Rule of construction

Nothing in this subchapter shall be construed as authorizing the appropriation or obligation of funds for the pilot programs authorized under this subchapter.

(Pub. L. 104–106, div. E, title LIII, §5305, Feb. 10, 1996, 110 Stat. 692.)

PART B—SPECIFIC PILOT PROGRAMS

§ 1491. Share-in-savings pilot program**(a) Requirement**

The Administrator may authorize the heads of two executive agencies to carry out a pilot program to test the feasibility of—

- (1) contracting on a competitive basis with a private sector source to provide the Federal Government with an information technology solution for improving mission-related or administrative processes of the Federal Government; and
- (2) paying the private sector source an amount equal to a portion of the savings derived by the Federal Government from any improvements in mission-related processes and administrative processes that result from implementation of the solution.

(b) Limitations

The head of an executive agency authorized to carry out the pilot program may, under the pilot program, carry out one project and enter into not more than five contracts for the project.

(c) Selection of projects

The projects shall be selected by the Administrator, in consultation with the Administrator for the Office of Information and Regulatory Affairs.

(Pub. L. 104–106, div. E, title LIII, §5311, Feb. 10, 1996, 110 Stat. 692.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1471 of this title.

§ 1492. Solutions-based contracting pilot program**(a) In general**

The Administrator may authorize the heads of any of the executive agencies, in accordance with subsection (d)(2) of this section, to carry out a pilot program to test the feasibility of using solutions-based contracting for acquisition of information technology.

(b) Solutions-based contracting described

For purposes of this section, solutions-based contracting is an acquisition method under which the acquisition objectives are defined by the Federal Government user of the technology to be acquired, a streamlined contractor selection process is used, and industry sources are allowed to provide solutions that attain the objectives effectively.

(c) Process requirements

The Administrator shall require use of a process with the following aspects for acquisitions under the pilot program:

(1) Acquisition plan emphasizing desired result

Preparation of an acquisition plan that defines the functional requirements of the intended users of the information technology to be acquired, identifies the operational improvements to be achieved, and defines the performance measurements to be applied in determining whether the information technology acquired satisfies the defined requirements and attains the identified results.

(2) Results-oriented statement of work

Use of a statement of work that is limited to an expression of the end results or performance capabilities desired under the acquisition plan.

(3) Small acquisition organization

Assembly of a small acquisition organization consisting of the following:

(A) An acquisition management team, the members of which are to be evaluated and rewarded under the pilot program for contributions toward attainment of the desired results identified in the acquisition plan.

(B) A small source selection team composed of representatives of the specific mission or administrative area to be supported by the information technology to be acquired, together with a contracting officer and persons with relevant expertise.

(4) Use of source selection factors emphasizing source qualifications and costs

Use of source selection factors that emphasize—

(A) the qualifications of the offeror, including such factors as personnel skills, previous experience in providing other private or public sector organizations with solutions for attaining objectives similar to the objectives of the acquisition, past contract performance, qualifications of the proposed program manager, and the proposed management plan; and

(B) the costs likely to be associated with the conceptual approach proposed by the offeror.

(5) Open communications with contractor community

Open availability of the following information to potential offerors:

(A) The agency mission to be served by the acquisition.

(B) The functional process to be performed by use of information technology.

(C) The process improvements to be attained.

(6) Simple solicitation

Use of a simple solicitation that sets forth only the functional work description, the source selection factors to be used in accordance with paragraph (4), the required terms and conditions, instructions regarding submission of offers, and the estimate of the Federal Government's budget for the desired work.

(7) Simple proposals

Submission of oral presentations and written proposals that are limited in size and scope and contain information on—

(A) the offeror's qualifications to perform the desired work;

(B) past contract performance;

(C) the proposed conceptual approach; and

(D) the costs likely to be associated with the proposed conceptual approach.

(8) Simple evaluation

Use of a simplified evaluation process, to be completed within 45 days after receipt of proposals, which consists of the following:

(A) Identification of the most qualified offerors that are within the competitive range.

(B) Issuance of invitations for at least three and not more than five of the identified offerors to make oral presentations to, and engage in discussions with, the evaluating personnel regarding, for each offeror—

(i) the qualifications of the offeror, including how the qualifications of the offeror relate to the approach proposed to be taken by the offeror in the acquisition; and

(ii) the costs likely to be associated with the approach.

(C) Evaluation of the qualifications of the identified offerors and the costs likely to be associated with the offerors' proposals on the basis of submissions required under the process and any oral presentations made by, and any discussions with, the offerors.

(9) Selection of most qualified offeror

A selection process consisting of the following:

(A) Identification of the most qualified source, and ranking of alternative sources, primarily on the basis of the oral proposals, presentations, and discussions, and written proposals submitted in accordance with paragraph (7).

(B) Conduct for 30 to 60 days of a program definition phase (funded, in the case of the source ultimately awarded the contract, by the Federal Government)—

(i) during which the selected source, in consultation with one or more intended users, develops a conceptual system design and technical approach, defines logical phases for the project, and estimates the total cost and the cost for each phase; and

(ii) after which a contract for performance of the work may be awarded to that source on the basis of cost, the responsiveness, reasonableness, and quality of the proposed performance, and a sharing of risk and benefits between the source and the Government.

(C) Conduct of as many successive program definition phases with alternative sources (in the order ranked) as is necessary in order to award a contract in accordance with subparagraph (B).

(10) System implementation phasing

System implementation to be executed in phases that are tailored to the solution, with various contract arrangements being used, as appropriate, for various phases and activities.

(11) Mutual authority to terminate

Authority for the Federal Government or the contractor to terminate the contract without penalty at the end of any phase defined for the project.

(12) Time management discipline

Application of a standard for awarding a contract within 105 to 120 days after issuance of the solicitation.

(d) Pilot program design**(1) Joint public-private working group**

The Administrator, in consultation with the Administrator for the Office of Information

and Regulatory Affairs, shall establish a joint working group of Federal Government personnel and representatives of the information technology industry to design a plan for conduct of any pilot program carried out under this section.

(2) Content of plan

The plan shall provide for use of solutions-based contracting in the Department of Defense and not more than two other executive agencies for a total of—

(A) not more than 10 projects, each of which has an estimated cost of between \$25,000,000 and \$100,000,000; and

(B) not more than 10 projects, each of which has an estimated cost of between \$1,000,000 and \$5,000,000, to be set aside for small business concerns.

(3) Complexity of projects

(A) Subject to subparagraph (C), each acquisition project under the pilot program shall be sufficiently complex to provide for meaningful evaluation of the use of solutions-based contracting for acquisition of information technology for executive agencies.

(B) In order for an acquisition project to satisfy the requirement in subparagraph (A), the solution for attainment of the executive agency's objectives under the project should not be obvious, but rather shall involve a need for some innovative development and systems integration.

(C) An acquisition project should not be so extensive or lengthy as to result in undue delay in the evaluation of the use of solutions-based contracting.

(e) Monitoring by GAO

The Comptroller General of the United States shall—

(1) monitor the conduct, and review the results, of acquisitions under the pilot program; and

(2) submit to Congress periodic reports containing the views of the Comptroller General on the activities, results, and findings under the pilot program.

(Pub. L. 104-106, div. E, title LIII, §5312, Feb. 10, 1996, 110 Stat. 692.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1471 of this title.

SUBCHAPTER IV—ADDITIONAL INFORMATION RESOURCES MANAGEMENT MATTERS

§ 1501. On-line multiple award schedule contracting

(a) Automation of multiple award schedule contracting

In order to provide for the economic and efficient procurement of information technology and other commercial items, the Administrator of General Services shall provide through the Federal Acquisition Computer Network (in this section referred to as "FACNET"), not later than January 1, 1998, Government-wide on-line computer access to information on products and

services that are available for ordering under the multiple award schedules. If the Administrator determines it is not practicable to provide such access through FACNET, the Administrator shall provide such access through another automated system that has the capability to perform the functions listed in subsection (b)(1) of this section and meets the requirement of subsection (b)(2) of this section.

(b) Additional FACNET functions

(1) In addition to the functions specified in section 426(b) of title 41, the FACNET architecture shall have the capability to perform the following functions:

(A) Provide basic information on prices, features, and performance of all products and services available for ordering through the multiple award schedules.

(B) Provide for updating that information to reflect changes in prices, features, and performance as soon as information on the changes becomes available.

(C) Enable users to make on-line computer comparisons of the prices, features, and performance of similar products and services offered by various vendors.

(2) The FACNET architecture shall be used to place orders under the multiple award schedules in a fiscal year for an amount equal to at least 60 percent of the total amount spent for all orders under the multiple award schedules in that fiscal year.

(c) Streamlined procedures

(1) Pilot program

Upon certification by the Administrator of General Services that the FACNET architecture meets the requirements of subsection (b)(1) of this section and was used as required by subsection (b)(2) of this section in the fiscal year preceding the fiscal year in which the certification is made, the Administrator for Federal Procurement Policy may establish a pilot program to test streamlined procedures for the procurement of information technology products and services available for ordering through the multiple award schedules.

(2) Applicability to multiple award schedule contracts

Except as provided in paragraph (4), the pilot program shall be applicable to all multiple award schedule contracts for the purchase of information technology and shall test the following procedures:

(A) A procedure under which negotiation of the terms and conditions for a covered multiple award schedule contract is limited to terms and conditions other than price.

(B) A procedure under which the vendor establishes the prices under a covered multiple award schedule contract and may adjust those prices at any time in the discretion of the vendor.

(C) A procedure under which a covered multiple award schedule contract is awarded to any responsible offeror that—

(i) has a suitable record of past performance, which may include past performance on multiple award schedule contracts;

(ii) agrees to terms and conditions that the Administrator determines as being required by law or as being appropriate for the purchase of commercial items; and

(iii) agrees to establish and update prices, features, and performance and to accept orders electronically through the automated system established pursuant to subsection (a) of this section.

(3) Comptroller General review and report

(A) Not later than three years after the date on which the pilot program is established, the Comptroller General of the United States shall review the pilot program and report to the Congress on the results of the pilot program.

(B) The report shall include the following:

(i) An evaluation of the extent to which there is competition for the orders placed under the pilot program.

(ii) The effect that the streamlined procedures under the pilot program have on prices charged under multiple award schedule contracts.

(iii) The effect that such procedures have on paperwork requirements for multiple award schedule contracts and orders.

(iv) The impact of the pilot program on small businesses and socially and economically disadvantaged small businesses.

(4) Withdrawal of schedule or portion of schedule from pilot program

The Administrator may withdraw a multiple award schedule or portion of a schedule from the pilot program if the Administrator determines that (A) price competition is not available under such schedule or portion thereof, or (B) the cost to the Government for that schedule or portion thereof for the previous year was higher than it would have been if the contracts for such schedule or portion thereof had been awarded using procedures that would apply if the pilot program were not in effect. The Administrator shall notify Congress at least 30 days before the date on which the Administrator withdraws a schedule or portion thereof under this paragraph. The authority under this paragraph may not be delegated.

(5) Termination of pilot program

Unless reauthorized by law, the authority of the Administrator to award contracts under the pilot program shall expire four years after the date on which the pilot program is established. Contracts entered into before the authority expires shall remain in effect in accordance with their terms notwithstanding the expiration of the authority to award new contracts under the pilot program.

(d) "FACNET" defined

In this section, the term "FACNET" means the Federal Acquisition Computer Network established under section 426 of title 41.

(Pub. L. 104-106, div. E, title LIV, § 5401, Feb. 10, 1996, 110 Stat. 695.)

EFFECTIVE DATE

Subchapter effective 180 days after Feb. 10, 1996, see section 5701 of Pub. L. 104-106, set out as a note under section 1401 of this title.

§ 1502. Identification of excess and surplus computer equipment

Not later than six months after February 10, 1996, the head of an executive agency shall inventory all computer equipment under the control of that official. After completion of the inventory, the head of the executive agency shall maintain, in accordance with title II of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481 et seq.), an inventory of any such equipment that is excess or surplus property.

(Pub. L. 104-106, div. E, title LIV, § 5402, Feb. 10, 1996, 110 Stat. 697.)

REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949, referred to in text, is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Title II of the Act is classified principally to subchapter II (§ 481 et seq.) of chapter 10 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 471 of this title and Tables.

§ 1503. Access of certain information in information systems to directory established under section 4101 of title 44

Notwithstanding any other provision of this chapter, if in designing an information technology system pursuant to this chapter, the head of an executive agency determines that a purpose of the system is to disseminate information to the public, then the head of such executive agency shall reasonably ensure that an index of information disseminated by such system is included in the directory created pursuant to section 4101 of title 44. Nothing in this section authorizes the dissemination of information to the public unless otherwise authorized.

(Pub. L. 104-106, div. E, title LIV, § 5403, Feb. 10, 1996, 110 Stat. 698.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this division" meaning division E (§§ 5001-5703) of Pub. L. 104-106, Feb. 10, 1996, 110 Stat. 679, which is classified principally to this chapter. For complete classification of division E to the Code, see Short Title note set out under section 1401 of this title and Tables.