

the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf lands as defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, Wake Island, Eniwetok Atoll, Kwajalein Atoll, Johnston Island, and Canton Island, but shall not include any other territory under the jurisdiction of the United States or any United States base or possession within a foreign country.

(Pub. L. 89-286, § 8, Oct. 22, 1965, 79 Stat. 1036; Pub. L. 93-57, § 1, July 6, 1973, 87 Stat. 140; Pub. L. 94-489, § 3, Oct. 13, 1976, 90 Stat. 2358.)

#### REFERENCES IN TEXT

The Outer Continental Shelf Lands Act, referred to in subsec. (d), is act Aug. 7, 1953, ch. 345, 67 Stat. 462, as amended, which is classified generally to subchapter III (§1331 et seq.) of chapter 29 of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1331 of Title 43 and Tables.

#### AMENDMENTS

1976—Subsec. (b). Pub. L. 94-489 substituted provision defining service employees to include all employees, but excluding bona fide executive, administrative, and professional employees, for provision defining service employees as guards, watchmen, any person engaged in a recognized trade or craft, or in unskilled, semiskilled, or skilled manual labor occupations; and any other employee including a foreman or supervisor in a position having trade, craft, or laboring experience as the paramount requirement.

1973—Subsec. (d). Pub. L. 93-57 defined "United States" to include Canton Island.

#### EFFECTIVE DATE OF 1973 AMENDMENT

Section 2 of Pub. L. 93-57 provided that: "The amendment made hereby [amending this section] shall be effective with respect to all contracts entered into at any time after the date of enactment [July 6, 1973]."

### § 358. Wage and fringe benefit determinations of Secretary

It is the intent of the Congress that determinations of minimum monetary wages and fringe benefits for the various classes of service employees under the provisions of paragraphs (1) and (2) of section 351<sup>1</sup> of this title should be made with respect to all contracts subject to this chapter, as soon as it is administratively feasible to do so. In any event, the Secretary shall make such determinations with respect to at least the following contracts subject to this chapter which are entered into during the applicable fiscal year:

(1) For the fiscal year ending June 30, 1973, all contracts under which more than twenty-five service employees are to be employed.

(2) For the fiscal year ending June 30, 1974, all contracts, under which more than twenty service employees are to be employed.

(3) For the fiscal year ending June 30, 1975, all contracts under which more than fifteen service employees are to be employed.

(4) For the fiscal year ending June 30, 1976, all contracts under which more than ten service employees are to be employed.

(5) On or after July 1, 1976, all contracts under which more than five service employees are to be employed.

(Pub. L. 89-286, § 10, as added Pub. L. 92-473, § 5, Oct. 9, 1972, 86 Stat. 790; amended Pub. L. 94-273, § 29, Apr. 21, 1976, 90 Stat. 380.)

#### AMENDMENTS

1976—Par. (5). Pub. L. 94-273 substituted "On or after July 1, 1976" for "For the fiscal year ending June 30, 1977, and for each fiscal year thereafter".

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 353 of this title.

### CHAPTER 7—OFFICE OF FEDERAL PROCUREMENT POLICY

#### Sec.

- 401, 402. Repealed.  
 403. Definitions.  
 404. Establishment of Office of Federal Procurement Policy; appointment of Administrator.  
 405. Authority and functions of the Administrator.  
 (a) Development of procurement policy; leadership.  
 (b) Government-wide procurement regulations.  
 (c) Noninterference with executive agencies.  
 (d) Enumeration of included functions.  
 (e) Consultation; assistance of existing executive agencies; advisory committees and interagency groups.  
 (f) Oversight of regulations promulgated by other agencies relating to procurement.  
 (g) Assignment, delegation, or transfer of functions prohibited.  
 (h) Automatic data processing and telecommunications equipment; real property procurement; Office of Management and Budget.  
 (i) Recipients of Federal grants or assistance.  
 (j) Policy regarding consideration of contractor past performance.  
 (k) Annual reporting requirement.  
 405a. Uniform Federal procurement regulations and procedures.  
 405b. Conflict of interest standards for individuals providing consulting services.  
 (a) Issuance of policy and regulations.  
 (b) Services subject to regulations.  
 (c) Report to Congress by Comptroller General on effectiveness of regulations.  
 (d) Intelligence activities exemption; annual report by Director of Central Intelligence.  
 (e) Adverse effect determination by President prior to issuance of regulations; report to Congressional committees; voiding of regulations requirement.  
 406. Administrative powers.  
 407. Repealed.  
 408. Applicability of existing laws.  
 409. Repealed.  
 410. Authorization of appropriations.  
 411. Delegation of authority by Administrator.  
 412. Comptroller General's access to information from Administrator; rule making procedure.  
 413. Tests of innovative procurement methods and procedures.  
 414. Executive agency responsibilities.  
 414a. Personnel evaluation.  
 415. Repealed.  
 416. Procurement notice.

<sup>1</sup> So in original. Probably should be section "351(a)".

Sec.		Sec.	
	(a) Covered executive agency activities; publication of notice; time limitations.		(d) Prohibition on former official's acceptance of compensation from contractor.
	(b) Contents of notice.		(e) Penalties and administrative actions.
	(c) Exempted, etc., activities of executive agency.		(f) Definitions.
	(d) Availability of complete solicitation package; payment of fee.		(g) Limitation on protests.
417.	Record requirements.	424.	Repealed.
	(a) Establishment and maintenance of computer file by executive agency; time period; coverage.	425.	Contract clauses and certifications.
	(b) Contents.		(a) Nonstandard contract clauses.
	(c) Record categories.		(b) Construction of certification requirements.
	(d) Transmission and data system entry of information.		(c) Prohibition on certification requirements.
417a.	Procurement data.	426.	Federal acquisition computer network (FACNET) architecture.
	(a) Reporting.		(a) In general.
	(b) Definitions.		(b) Functions of FACNET.
418.	Advocates for competition.		(c) Notice and solicitation regulations.
	(a) Establishment, designation, etc., in executive agency.		(d) "Architecture" defined.
	(b) Duties and functions.	426a.	Federal acquisition computer network implementation.
	(c) Responsibilities.		(a) Certification of FACNET capability in procuring activities and agencies.
418a.	Rights in technical data.		(b) Certification of Government-wide FACNET capability.
	(a) Regulations; legitimate proprietary interest of United States.		(c) Implementation of interim FACNET capability.
	(b) Unlimited rights; technical data; developed with Federal funds; unrestricted, royalty-free right to use; rights under law.		(d) Implementation of full FACNET capability.
	(c) Factors; regulations.		(e) Eligible contracts.
	(d) Provisions; contracts; regulations.	427.	Simplified acquisition procedures.
418b.	Publication of proposed regulations.		(a) Requirement.
	(a) Effective date; procurement policy, regulations, procedure or form; publication in Federal Register.		(b) Prohibition on dividing purchases.
	(b) Publication in Federal Register.		(c) Promotion of competition required.
	(c) Notice; proposed policy; contents.		(d) Consideration of offers timely received.
	(d) Waiver.		(e) Special rules for use of simplified acquisition procedures.
419.	Contracting functions performed by Federal personnel.		(f) Interim reporting rule.
	(a) Limitation on payment for advisory and assistance services.		(g) Special rules for commercial items.
	(b) Covered personnel.	428.	Procedures applicable to purchases below micro-purchase threshold.
	(c) Rule of construction.		(a) Requirements.
420.	Repealed.		(b) Exclusion for micro-purchases.
421.	Federal Acquisition Regulatory Council.		(c) Purchases without competitive quotations.
	(a) Establishment.		(d) Equitable distribution.
	(b) Membership.		(e) Implementation through FAR.
	(c) Functions.		(f) Micro-purchase threshold defined.
	(d) Additional responsibilities of membership.	429.	List of laws inapplicable to contracts not greater than simplified acquisition threshold in Federal Acquisition Regulation.
	(e) Governing policies.		(a) List of inapplicable provisions of law.
	(f) General authority with respect to FAR.		(b) Covered law.
	(g) Reports.		(c) Petition.
422.	Cost Accounting Standards Board.	430.	List of laws inapplicable to procurements of commercial items in Federal Acquisition Regulation.
	(a) Establishment; membership; terms.		(a) List of inapplicable provisions of law.
	(b) Senior staff.		(b) Subcontracts.
	(c) Other staff.		(c) Covered law.
	(d) Detailed and temporary personnel.		(d) Petition.
	(e) Compensation.	431.	Commercially available off-the-shelf item acquisitions: lists of inapplicable laws in Federal Acquisition Regulation.
	(f) Cost accounting standards authority.		(a) Lists of inapplicable provisions of law.
	(g) Requirements for standards.		(b) Covered law.
	(h) Implementing regulations.		(c) "Commercially available off-the-shelf item" defined.
	(i) Reports to Congress.	432.	Value engineering.
	(j) Effect on other standards and regulations.		(a) In general.
	(k) Examinations.		(b) "Value engineering" defined.
	(l) Authorization of appropriations.	433.	Acquisition workforce.
423.	Restrictions on disclosing and obtaining contractor bid or proposal information or source selection information.		(a) Applicability.
	(a) Prohibition on disclosing procurement information.		(b) Management policies.
	(b) Prohibition on obtaining procurement information.		(c) Senior procurement executive authorities and responsibilities.
	(c) Actions required of procurement officers when contacted by offerors regarding non-Federal employment.		

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- (d) Management information systems.
  - (e) Applicability to acquisition work-force.
  - (f) Career development.
  - (g) Qualification requirements.
  - (h) Education and training.
434. Modular contracting for information technology.
- (a) In general.
  - (b) Modular contracting described.
  - (c) Implementation.

## CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 405a, 405b, 601, 607, 705 of this title; title 25 sections 450j, 458cc; title 40 sections 474, 481, 487.

**§§ 401, 402. Repealed. Pub. L. 104-106, div. D, title XLIII, § 4305(a)(2), Feb. 10, 1996, 110 Stat. 665**

Section 401, Pub. L. 93-400, § 2, Aug. 30, 1974, 88 Stat. 796; Pub. L. 96-83, § 2, Oct. 10, 1979, 93 Stat. 648; Pub. L. 98-191, § 3, Dec. 1, 1983, 97 Stat. 1325; Pub. L. 100-679, § 2(a), Nov. 17, 1988, 102 Stat. 4055; Pub. L. 103-355, title I, § 1091(a), Oct. 13, 1994, 108 Stat. 3272, stated policy of United States Government relating to procurement of property and services.

Section 402, Pub. L. 93-400, § 3, Aug. 30, 1974, 88 Stat. 796; Pub. L. 100-679, § 2(b), Nov. 17, 1988, 102 Stat. 4055, stated findings of Congress and purpose of this chapter.

## EFFECTIVE DATE OF REPEAL

For effective date and applicability of repeal, see section 4401 of Pub. L. 104-106, set out as an Effective Date of 1996 Amendment note under section 251 of this title.

## EFFECTIVE DATE OF 1979 AMENDMENT

Section 12 of Pub. L. 96-83 provided that: "Except to the extent otherwise provided therein, the amendments made by this Act [see Short Title of 1979 Amendment note below] shall take effect on October 1, 1979."

## SHORT TITLE OF 1988 AMENDMENT

Section 1 of Pub. L. 100-679 provided that: "This Act [enacting sections 421 to 424 of this title, amending this section, sections 402, 403, 405, 410, and 420 of this title, sections 5312 to 5315, 8331, 8401, 8701, and 8901 of Title 5, Government Organization and Employees, and section 541 of Title 40, Public Buildings, Property, and Works, repealing section 2168 of Title 50, Appendix, War and National Defense, and enacting provisions set out as notes under sections 405 and 423 of this title and section 5312 of Title 5] may be cited as the 'Office of Federal Procurement Policy Act Amendments of 1988'."

## SHORT TITLE OF 1983 AMENDMENT

Section 1 of Pub. L. 98-191 provided: "That this Act [enacting sections 413 to 415 of this title, amending this section, sections 5, 6a-1, 252, 403, 405, 407, 409, 410, and 411 of this title, section 831h of Title 16, Conservation, and sections 474, 481, and 487 of Title 40, Public Buildings, Property, and Works] may be cited as the 'Office of Federal Procurement Policy Act Amendments of 1983'."

## SHORT TITLE OF 1979 AMENDMENT

Section 1(a) of Pub. L. 96-83 provided that: "This Act [amending this section, sections 403, 405, 407, and 409 to 412 of this title, and sections 474, 481, and 487 of Title 40, Public Buildings, Property and Works, and enacting provisions set out as notes under this section and section 405a of this title] may be cited as the 'Office of Federal Procurement Policy Act Amendments of 1979'."

## SHORT TITLE

Section 1(a) of Pub. L. 93-400, as amended by Pub. L. 103-355, title X, § 10005(a)(1), Oct. 13, 1994, 108 Stat. 3406,

provided that: "This Act [enacting this chapter and amending section 5315 of Title 5, Government Organization and Employees, and sections 474, 481, and 487 of Title 40, Public Buildings, Property, and Works] may be cited as the 'Office of Federal Procurement Policy Act'."

## STYLISTIC CONSISTENCY

Section 10005(b)(1) of Pub. L. 103-355 provided that: "The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.) is amended so that the section designation and section heading of each section of such Act is in the same form and typeface as the section designation and heading of this section [108 Stat. 3406]."

## REQUIREMENTS FOR USE OF APPROPRIATIONS BY EXECUTIVE AGENCIES FOR SERVICES BY CONTRACT

Pub. L. 102-394, title V, § 502, Oct. 6, 1992, 106 Stat. 1825, provided that: "No part of any appropriation contained in this Act or subsequent Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Acts shall be expended by an executive agency, as referred to in the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.), pursuant to any obligation for services by contract, unless such executive agency has awarded and entered into such contract in full compliance with such Act and regulations promulgated thereunder."

Similar provisions were contained in the following prior appropriation acts:

- Pub. L. 102-170, title V, § 502, Nov. 26, 1991, 105 Stat. 1140.
- Pub. L. 101-517, title V, § 502, Nov. 5, 1990, 104 Stat. 2221.
- Pub. L. 101-166, title V, § 502, Nov. 21, 1989, 103 Stat. 1189.
- Pub. L. 100-202, § 101(h) [title V, § 502], Dec. 22, 1987, 101 Stat. 1329-256, 1329-287.
- Pub. L. 99-500, § 101(i) [H.R. 5233, title V, § 502], Oct. 18, 1986, 100 Stat. 1783-287, and Pub. L. 99-591, § 101(i) [H.R. 5233, title V, § 502], Oct. 30, 1986, 100 Stat. 3341-287.
- Pub. L. 99-178, title V, § 502, Dec. 12, 1985, 99 Stat. 1132.
- Pub. L. 98-619, title V, § 502, Nov. 8, 1984, 98 Stat. 3332.
- Pub. L. 98-139, title V, § 502, Oct. 31, 1983, 97 Stat. 899.
- Pub. L. 97-377, title I, § 101(e)(1) [title V, § 502], Dec. 21, 1982, 96 Stat. 1878, 1904.

## EX. ORD. NO. 12073. FEDERAL PROCUREMENT IN LABOR SURPLUS AREAS

Ex. Ord. No. 12073, Aug. 16, 1978, 43 F.R. 36873, provided:

By the authority vested in me as President by the Constitution of the United States of America, and in order to strengthen the economic base of our Nation, it is hereby ordered as follows:

## 1-1. PROCUREMENTS IN LABOR SURPLUS AREAS

1-101. Executive agencies shall emphasize procurement set-asides in labor surplus areas in order to strengthen our Nation's economy.

1-102. Labor surplus area procurements shall be consistent with this Order and, to the extent funds are available, the priorities of Section 15 of the Small Business Act, as amended by Public Law 95-89 (15 U.S.C. 644).

## 1-2. ADMINISTRATOR OF GENERAL SERVICES

1-201. The Administrator shall coordinate with and advise State and local officials with regard to Federal efforts to encourage procurements in labor surplus areas with the aim of fostering economic development in labor surplus areas.

1-202. The Administrator shall establish specific labor surplus area procurement targets for Executive agencies in consultation with the heads of those agencies.

1-203. In cooperation with the heads of Executive agencies, the Administrator shall encourage the use of set-asides or other appropriate methods for meeting procurement targets in labor surplus areas.