

practicable, be performance-based contracts that identify objective outcomes and contain performance standards that will be used to measure achievement and milestones that must be met before payment is made.

(4) Contracts awarded pursuant to the authority of this section shall include a provision containing a quantifiable baseline that is to be the basis upon which a savings share ratio is established that governs the amount of payment a contractor is to receive under the contract. Before commencement of performance of such a contract, the senior procurement executive of the agency shall determine in writing that the terms of the provision are quantifiable and will likely yield value to the Government.

(5)(A) The head of the agency may retain savings realized through the use of a share-in-savings contract under this section that are in excess of the total amount of savings paid to the contractor under the contract, but may not retain any portion of such savings that is attributable to a decrease in the number of civilian employees of the Federal Government performing the function. Except as provided in subparagraph (B), savings shall be credited to the appropriation or fund against which charges were made to carry out the contract and shall be used for information technology.

(B) Amounts retained by the agency under this subsection shall—

- (i) without further appropriation, remain available until expended; and
- (ii) be applied first to fund any contingent liabilities associated with share-in-savings procurements that are not fully funded.

(b) Cancellation and termination

(1) If funds are not made available for the continuation of a share-in-savings contract entered into under this section in a subsequent fiscal year, the contract shall be canceled or terminated. The costs of cancellation or termination may be paid out of—

- (A) appropriations available for the performance of the contract;
- (B) appropriations available for acquisition of the information technology procured under the contract, and not otherwise obligated; or
- (C) funds subsequently appropriated for payments of costs of cancellation or termination, subject to the limitations in paragraph (3).

(2) The amount payable in the event of cancellation or termination of a share-in-savings contract shall be negotiated with the contractor at the time the contract is entered into.

(3)(A) Subject to subparagraph (B), the head of an executive agency may enter into share-in-savings contracts under this section in any given fiscal year even if funds are not made specifically available for the full costs of cancellation or termination of the contract if funds are available and sufficient to make payments with respect to the first fiscal year of the contract and the following conditions are met regarding the funding of cancellation and termination liability:

- (i) The amount of unfunded contingent liability for the contract does not exceed the lesser of—
 - (I) 25 percent of the estimated costs of a cancellation or termination; or

(II) \$5,000,000.

(ii) Unfunded contingent liability in excess of \$1,000,000 has been approved by the Director of the Office of Management and Budget or the Director's designee.

(B) The aggregate number of share-in-savings contracts that may be entered into under subparagraph (A) by all executive agencies to which this subchapter¹ applies in a fiscal year may not exceed 5 in each of fiscal years 2003, 2004, and 2005.

(c) Definitions

In this section:

(1) The term “contractor” means a private entity that enters into a contract with an agency.

(2) The term “savings” means—

- (A) monetary savings to an agency; or
- (B) savings in time or other benefits realized by the agency, including enhanced revenues (other than enhanced revenues from the collection of fees, taxes, debts, claims, or other amounts owed the Federal Government).

(3) The term “share-in-savings contract” means a contract under which—

- (A) a contractor provides solutions for—
 - (i) improving the agency's mission-related or administrative processes; or
 - (ii) accelerating the achievement of agency missions; and

(B) the head of the agency pays the contractor an amount equal to a portion of the savings derived by the agency from—

- (i) any improvements in mission-related or administrative processes that result from implementation of the solution; or
- (ii) acceleration of achievement of agency missions.

(d) Termination

No share-in-savings contracts may be entered into under this section after September 30, 2005.

(June 30, 1949, ch. 288, title III, §317, as added Pub. L. 107-347, title II, §210(b), Dec. 17, 2002, 116 Stat. 2934.)

REFERENCES IN TEXT

The words “this subchapter”, referred to in subsec. (b)(3)(B), were in the original “this chapter” and have been translated as if they read “this title” in the original, meaning title III of act June 30, 1949, ch. 288, to reflect the probable intent of Congress.

EFFECTIVE DATE

Section effective 120 days after Dec. 17, 2002, see section 402(a) of Pub. L. 107-347, set out as a note under section 3601 of Title 44, Public Printing and Documents.

SUBCHAPTER V—FOREIGN EXCESS PROPERTY

§§ 271 to 274. Transferred

CODIFICATION

Section 271, act June 30, 1949, ch. 288, title IV, §401, 63 Stat. 397, which related to disposal of foreign excess property, was transferred to section 511 of former Title

¹ See References in Text note below.

40, Public Buildings, Property, and Works, and was repealed and reenacted as section 701(b)(1), (b)(2)(B), (c) of Title 40, Public Buildings, Property, and Works, by Pub. L. 107-217, §1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304.

Section 272, act June 30, 1949, ch. 288, title IV, §402, 63 Stat. 398, which related to methods and terms of disposal, was transferred to section 512 of former Title 40, and was repealed and reenacted as sections 702 to 704 of Title 40, Public Buildings, Property, and Works, by Pub. L. 107-217, §1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304.

Section 273, act June 30, 1949, ch. 288, title IV, §403, 63 Stat. 398, which related to proceeds from disposals, was transferred to section 513 of former Title 40, and was repealed and reenacted as section 705 of Title 40, Public Buildings, Property, and Works, by Pub. L. 107-217, §1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304.

Section 274, act June 30, 1949, ch. 288, title IV, §404, 63 Stat. 398, which related to general provisions, was transferred to section 514 of former Title 40, and was repealed and reenacted as section 701(a), (b)(1), (2)(A), (3), (4) of Title 40, Public Buildings, Property, and Works, by Pub. L. 107-217, §1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304.

SUBCHAPTER VI—FEDERAL RECORD MANAGEMENT

§§ 281 to 291. Transferred

CODIFICATION

Section 281, acts June 30, 1949, ch. 288, title V, §502; Sept. 5, 1950, ch. 849, §6(d), 64 Stat. 583, which related to custody and control of property, was transferred to section 392 of former Title 44, Public Printing and Documents.

Section 282, acts June 30, 1949, ch. 288, title V, §503; Sept. 5, 1950, ch. 849, §6(d), 64 Stat. 583, which related to National Historical Publications Commission, was transferred to section 393 of former Title 44.

Section 283, acts June 30, 1949, ch. 288, title V, §504; Sept. 5, 1950, ch. 849, §6(d), 64 Stat. 583, which related to establishment of Federal Records Council, was transferred to section 394 of former Title 44.

Section 284, acts June 30, 1949, ch. 288, title V, §505; Sept. 5, 1950, ch. 849, §6(d), 64 Stat. 583, which related to records management by Administrator, was transferred to section 395 of former Title 44.

Section 285, acts June 30, 1949, ch. 288, title V, §506; Sept. 5, 1950, ch. 849, §6(d), 64 Stat. 583, which related to records management by agency heads, was transferred to section 396 of former Title 44.

Section 286, acts June 30, 1949, ch. 288, title V, §507; Sept. 5, 1950, ch. 849, §6(d), 64 Stat. 583, which related to Archival administration, was transferred to section 397 of former Title 44.

Section 287, acts June 30, 1949, ch. 288, title V, §508; Sept. 5, 1950, ch. 849, §6(d), 64 Stat. 583, which related to reports, was transferred to section 398 of former Title 44.

Section 288, acts June 30, 1949, ch. 288, title V, §509; Sept. 5, 1950, ch. 849, §6(d), 64 Stat. 583, which related to legal status of reproductions; official seal; fees for copies and reproductions, was transferred to section 399 of former Title 44.

Section 289, acts June 30, 1949, ch. 288, title V, §510; Sept. 5, 1950, ch. 849, §6(d), 64 Stat. 583, which related to limitation on liability, was transferred to section 400 of former Title 44.

Section 290, acts June 30, 1949, ch. 288, title V, §511; Sept. 5, 1950, ch. 849, §6(d), 64 Stat. 583, which related to definitions, was transferred to section 401 of former Title 44.

Section 291, act Aug. 2, 1946, ch. 753, title I, §140, 60 Stat. 833, which related to transfer of records of Congress, was transferred to section 402 of former Title 44.

Sections 392 to 402 of former Title 44 are covered by chapter 21 (§2101 et seq.), chapter 25 (§2501 et seq.),

chapter 27 (§2701 et seq.), chapter 29 (§2901 et seq.), and chapter 31 (§3101 et seq.) of Title 44, Public Printing and Documents.

CHAPTER 5—JUDICIAL REVIEW OF ADMINISTRATIVE DECISIONS

- Sec. 321. Limitation on pleading contract provisions relating to finality; standards of review.
- 322. Contract provisions making decisions final on questions of law.

§ 321. Limitation on pleading contract provisions relating to finality; standards of review

No provision of any contract entered into by the United States, relating to the finality or conclusiveness of any decision of the head of any department or agency or his duly authorized representative or board in a dispute involving a question arising under such contract, shall be pleaded in any suit now filed or to be filed as limiting judicial review of any such decision to cases where fraud by such official or his said representative or board is alleged: *Provided, however*, That any such decision shall be final and conclusive unless the same is fraudulent¹ or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith, or is not supported by substantial evidence.

(May 11, 1954, ch. 199, §1, 68 Stat. 81.)

AGENCY ACTIONS GENERALLY, JUDICIAL REVIEW

Judicial review of agency actions generally, see section 701 et seq. of Title 5, Government Organization and Employees.

§ 322. Contract provisions making decisions final on questions of law

No Government contract shall contain a provision making final on a question of law the decision of any administrative official, representative, or board.

(May 11, 1954, ch. 199, §2, 68 Stat. 81.)

CHAPTER 6—SERVICE CONTRACT LABOR STANDARDS

- Sec. 351. Required contract provisions; minimum wages.
- 352. Violations.
- 353. Law governing authority of Secretary.
- 354. List of violators; prohibition of contract award to firms appearing on list; actions to recover underpayments; payment of sums recovered.
- 355. Exclusion of fringe benefit payments in determining overtime pay.
- 356. Exemptions.
- 357. Definitions.
- 358. Wage and fringe benefit determinations of Secretary.

§ 351. Required contract provisions; minimum wages

(a) Every contract (and any bid specification therefor) entered into by the United States or the District of Columbia in excess of \$2,500, except as provided in section 356 of this title, whether negotiated or advertised, the principal

¹ So in original. Probably should be "fraudulent".