

licts of interest that could be prejudicial to the interests of the United States; and

(3) other services related to Federal contracts as specified in the regulations prescribed under subsection (a) to the extent necessary to identify and evaluate the potential for conflicts of interest that could be prejudicial to the interests of the United States.

(c) INTELLIGENCE ACTIVITIES EXEMPTION.—

(1) ACTIVITIES THAT MAY BE EXEMPT.—Intelligence activities as defined in section 3.4(e) of Executive Order No. 12333 or a comparable definitional section in any successor order may be exempt from the regulations required by subsection (a).

(2) REPORT.—The Director of National Intelligence shall report to the Intelligence and Appropriations Committees of Congress each January 1, delineating the activities and organizations that have been exempted under paragraph (1).

(d) PRESIDENTIAL DETERMINATION.—Before the regulations required by subsection (a) are prescribed, the President shall determine if prescribing the regulations will have a significantly adverse effect on the accomplishment of the mission of the Defense Department or another Federal agency. If the President determines that the regulations will have such an adverse effect, the President shall so report to the appropriate committees of the Senate and the House of Representatives, stating in full the reasons for the determination. If such a report is submitted, the requirement for the regulations shall be null and void.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3736.)

#### HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
2304(a) .....	41:405b(a).	Pub. L. 100-463, title VIII, §8141, Oct. 1, 1988, 102 Stat. 2270-47.
2304(b) .....	41:405b(b).	
2304(c) .....	41:405b(d).	
2304(d) .....	41:405b(e).	

In this section, the text of 41:405b(c) is omitted as obsolete.

In subsection (a), before paragraph (1), the words “The Administrator shall prescribe under this division Government-wide regulations” are substituted for “Not later than 90 days after October 1, 1988, the Administrator of the Office of Federal Procurement Policy shall issue a policy, and not later than 180 days thereafter Government-wide regulations shall be issued under the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.)” to eliminate obsolete words.

In subsection (b), before paragraph (1), the words “the following types of consulting services” are omitted as unnecessary.

In subsection (c)(2), the words “Director of National Intelligence” are substituted for “Director of Central Intelligence” because of section 1081(a) of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108-458, 50 U.S.C. 401 note). The words “each January 1” are substituted for “no later than January 1, 1990, and annually thereafter to eliminate obsolete and unnecessary words. The words “exempted under paragraph (1)” are substituted for “exempted from the regulations required by subsection (a) of this section in accordance with the provisions of this subsection” to eliminate unnecessary words.

#### REFERENCES IN TEXT

Executive Order 12333, referred to in subsec. (c)(1), is set out as a note under section 3001 of Title 50, War and National Defense.

### § 2305. Authority of Director of Office of Management and Budget not affected

This division does not limit the authorities and responsibilities of the Director of the Office of Management and Budget in effect on December 1, 1983.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3737.)

#### HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
2305 .....	41:405(h)(2).	Pub. L. 93-400, §6(h)(2), Aug. 30, 1974, 88 Stat. 797; Pub. L. 96-83, §4, Oct. 10, 1979, 93 Stat. 649; Pub. L. 98-191, §5, Dec. 1, 1983, 97 Stat. 1328.

The words “in effect on December 1, 1983” are substituted for “current” for clarity.

### § 2306. Openness of meetings

The Administrator by regulation shall require that—

(1) formal meetings of the Office of Federal Procurement Policy, as designated by the Administrator, for developing procurement policies and regulations be open to the public; and

(2) public notice of each meeting be given not less than 10 days prior to the meeting.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3737.)

#### HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
2306 .....	41:412(b).	Pub. L. 93-400, §14(b), Aug. 30, 1974, 88 Stat. 800; Pub. L. 96-83, §9, Oct. 10, 1979, 93 Stat. 652.

### § 2307. Comptroller General's access to information

The Administrator and personnel in the Office of Federal Procurement Policy shall furnish information the Comptroller General may require to discharge the responsibilities of the Comptroller General. For this purpose, the Comptroller General or representatives of the Comptroller General shall have access to all books, documents, papers, and records of the Office of Federal Procurement Policy.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3737.)

#### HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
2307 .....	41:412(a).	Pub. L. 93-400, §14(a), Aug. 30, 1974, 88 Stat. 800.

### § 2308. Modular contracting for information technology

(a) USE.—To the maximum extent practicable, the head of an executive agency should use modular contracting for an acquisition of a major system of information technology.

(b) **MODULAR CONTRACTING DESCRIBED.**—Under modular contracting, an executive agency's need for a system is satisfied in successive acquisitions of interoperable increments. Each increment complies with common or commercially accepted standards applicable to information technology so that the increments are compatible with other increments of information technology comprising the system.

(c) **PROVISIONS IN FEDERAL ACQUISITION REGULATION.**—The Federal Acquisition Regulation shall provide that—

(1) under the modular contracting process, an acquisition of a major system of information technology may be divided into several smaller acquisition increments that—

(A) are easier to manage individually than would be one comprehensive acquisition;

(B) address complex information technology objectives incrementally in order to enhance the likelihood of achieving workable solutions for attaining those objectives;

(C) provide for delivery, implementation, and testing of workable systems or solutions in discrete increments, each of which comprises a system or solution that is not dependent on a subsequent increment in order to perform its principal functions; and

(D) provide an opportunity for subsequent increments of the acquisition to take advantage of any evolution in technology or needs that occurs during conduct of the earlier increments;

(2) to the maximum extent practicable, a contract for an increment of an information technology acquisition should be awarded within 180 days after the solicitation is issued and, if the contract for that increment cannot be awarded within that period, the increment should be considered for cancellation; and

(3) the information technology provided for in a contract for acquisition of information technology should be delivered within 18 months after the solicitation resulting in award of the contract was issued.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3737.)

#### HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
2308 .....	41:434.	Pub. L. 93-400, § 38, formerly § 35, as added Pub. L. 104-106, title LII, § 5202(a), Feb. 10, 1996, 110 Stat. 690; renumbered § 38, Pub. L. 104-201, title X, § 1074(d)(1), Sept. 23, 1996, 110 Stat. 2660.

#### § 2309. Protection of constitutional rights of contractors

(a) **PROHIBITION ON REQUIRING WAIVER OF RIGHTS.**—A contractor may not be required, as a condition for entering into a contract with the Federal Government, to waive a right under the Constitution for a purpose relating to the Chemical Weapons Convention Implementation Act of 1998 (22 U.S.C. 6701 et seq.) or the Chemical Weapons Convention (as defined in section 3 of that Act (22 U.S.C. 6701)).

(b) **PERMISSIBLE CONTRACT CLAUSES.**—Subsection (a) does not prohibit an executive agen-

cy from including in a contract a clause that requires the contractor to permit inspections to ensure that the contractor is performing the contract in accordance with the provisions of the contract.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3738.)

#### HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
2309 .....	41:436.	Pub. L. 93-400, § 40, formerly § 39, as added Pub. L. 105-277, title III, § 308(a), Oct. 21, 1998, 112 Stat. 2681-879; renumbered § 40, Pub. L. 108-136, title XIV, § 1431(d)(2), Nov. 24, 2003, 117 Stat. 1672.

In subsection (a), the reference is to the Chemical Weapons Convention Implementation Act of 1998 rather than the Chemical Weapons Convention Implementation Act of 1997 to correct an error in the source provision.

#### REFERENCES IN TEXT

The Chemical Weapons Convention Implementation Act of 1998, referred to in subsec. (a), is Pub. L. 105-277, div. I, Oct. 21, 1998, 112 Stat. 2681-856, which is classified principally to chapter 75 (§ 6701 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 6701 of Title 22 and Tables.

#### § 2310. Performance-based contracts or task orders for services to be treated as contracts for the procurement of commercial items

(a) **CRITERIA.**—A performance-based contract for the procurement of services entered into by an executive agency or a performance-based task order for services issued by an executive agency may be treated as a contract for the procurement of commercial items if—

(1) the value of the contract or task order is estimated not to exceed \$25,000,000;

(2) the contract or task order sets forth specifically each task to be performed and, for each task—

(A) defines the task in measurable, mission-related terms;

(B) identifies the specific end products or output to be achieved; and

(C) contains firm, fixed prices for specific tasks to be performed or outcomes to be achieved; and

(3) the source of the services provides similar services to the general public under terms and conditions similar to those offered to the Federal Government.

(b) **REGULATIONS.**—Regulations implementing this section shall require agencies to collect and maintain reliable data sufficient to identify the contracts or task orders treated as contracts for commercial items using the authority of this section. The data may be collected using the Federal Procurement Data System or other reporting mechanism.

(c) **REPORT.**—Not later than 2 years after November 24, 2003, the Director of the Office of Management and Budget shall prepare and submit to the Committees on Homeland Security and Governmental Affairs and on Armed Services of the Senate and the Committees on Over-